
SAMPLE SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT
THE EFFECTIVE DATE, CUSTOMER'S NAME, ADDRESS, TAXPAYER
IDENTIFICATION NUMBER, EMAIL ADDRESS AND SERVICES FEE ARE UNIQUE TO
EACH LICENSEE AND REMAIN AS SET FORTH IN THE MOST RECENT SOFTWARE
MAINTENANCE AGREEMENT PROVIDED TO YOU BY APPLIED BUSINESS SOFTWARE,
INC., HOWEVER OTHER TERMS AND CONDITIONS MAY DIFFER

THE MORTGAGE OFFICE
SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

This Agreement is made as of _____ (the "Effective Date") by and between Applied Business Software, Inc., a California corporation with a place of business at 2847 Gundry Avenue, Long Beach, California 90755 ("Company"), and _____, having a taxpayer identification number _____ and on the date of this Agreement a place of business at _____ and email address of _____ ("Customer").

RECITALS

A. Customer has been granted a license and may be granted updated or additional licenses to use certain software produced by Company and the documentation therefor (collectively, the "Software") under a separate Software License Agreement(s) between Company and Customer (the "License Agreement").

B. Customer desires to obtain certain maintenance and support services from Company for the Software as set forth in this Agreement, and Company is willing to provide such services to Customer, pursuant and subject to the terms and conditions of this Agreement.

In consideration of these premises, and the mutual promises and conditions in this Agreement, the parties hereby agree as follows:

1. Services.

1.1 Services. In consideration of Customer's payment of the maintenance and support fees as set forth in this Agreement, and provided Customer is not in breach of this Agreement or the then current License Agreement, Company shall provide the following services to Customer during the term of this Agreement (the "Services"):

(a) Telephone Consultation. Company shall provide to Customer telephone consultation with respect to the use and operation of the Software, Monday through Friday between the hours of 9:00 AM and 6:00 PM (Pacific time zone), excluding all Company holidays ("Business Hours"). If support personnel are unavailable at the time Customer calls during Business Hours, Company will use commercially reasonable efforts to return the call no later than the end of the next business day following the business day in which the call was received. Company is obligated to provide a maximum of eight (8) hours of telephone consultation per month. If Company agrees, in its sole discretion, to provide additional hours of telephone consultation in any given month, Customer will be charged and agrees to pay Company's then current hourly rate for such telephone consultation.

(b) Provision of Upgrades. Company shall provide Customer with enhancements, updates and new versions of the Software (collectively, “Upgrades”), if any, generally released by Company during the term of this Agreement. Such Upgrades will be provided at no additional charge to Customer, except that Company reserves the right to charge, and Customer agrees to pay, a fee for the media, shipping and handling, if any, with respect to such Upgrades. Any Upgrades furnished pursuant to this Agreement shall be considered “Software” under the License Agreement and this Agreement, and shall be licensed to Customer pursuant and subject to the terms and conditions of the License Agreement.

1.2 Services Not Covered By This Agreement.

(a) Exclusions. Company shall have no obligation to provide Services for any hardware used by Customer in connection with use of the Software or for any request for Services caused by: (i) the improper use, alteration, or damage of the Software; (ii) modifications to the Software not made by Company; (iii) application or other software not provided or approved by Company; (iv) use of the Software on hardware that has not been approved by Company for use with the Software; (v) failure to meet the system requirements for the then current version of the Software; or (v) hardware failures.

(b) Scope of Services. This Agreement only covers the Services described in Section 1.1, and does not include other services, including without limitation: (a) Software customization; (b) custom development of software; or (c) training of Customer’s personnel in the use of the Software. Company may agree, in its sole discretion, to provide such other services pursuant to a separate written agreement between the parties, and for a separate charge.

(c) Back Version Support. Company shall only be obligated to provide Services for Software corresponding to the most recent Upgrade; provided, however, Company may provide back version support for a limited period of time, in its sole discretion.

2. Customer Obligations. Company agrees to provide the Services hereunder only if Customer meets all of the following conditions and obligations: (a) the Software is used in the form in which Company originally supplied it, plus all Upgrades delivered by Company to Customer; (b) the Software is and has been at all times used in a proper manner and in accordance with the instructions and documentation supplied by Company; (c) Customer has agreed to and is in compliance with the License Agreement; and (d) Customer is in compliance with all of the terms and conditions of this Agreement.

3. Maintenance and Support Fees.

3.1 Fees. For Services provided by Company to Customer during the initial term of this Agreement, Customer Agrees to pay the sum of \$_____ (the “Services Fee”). The initial Services Fee amount shall apply to each successive term of this Agreement unless changed by Company as hereafter set forth.

3.2 Payment. Customer may elect to pay the Services Fee in one lump sum payment, or in four (4) equal installments. If Customer elects to pay the Services Fee in one lump sum payment, payment is due in full on the Effective Date of this Agreement, and for any renewal term, on the first day of such renewal term. If Customer elects to pay the Services Fee in installments, the first installment shall be due on the Effective Date of this Agreement, and for any renewal term, on the first day of such renewal term. The remaining three (3) installments shall be due no later than the first day of each subsequent three (3) calendar month period under the applicable term of this Agreement.

3.3 Invoicing. Company may, but shall not be obligated to, issue invoices for Services Fees, and the failure of Company to issue an invoice for Services Fees shall not relieve Customer of its obligation to pay such fees when due. For all other amounts due under this Agreement, Company shall issue an invoice, and payment under each such invoice shall be due no later than thirty (30) days after the date of the invoice.

3.4 Late Fees. If any payment hereunder is not received by Company on or before its due date, Customer agrees to pay a late charge equal to the lesser of: (a) five percent (5%) of the amount in default plus interest at the rate of ten percent (10%) measured from the due date until paid; or (b) the maximum amount allowed by law.

3.5 Price Changes. Company may change prices, terms and conditions of this Agreement at any time, effective on the first day of the next renewal term of this Agreement, upon at least thirty (30) days prior written notice to Customer. If Customer does not wish to continue this Agreement under the changed prices, terms and conditions specified in Company's notification, Customer may elect not to renew this Agreement by giving written notice to Company within ten (10) days from receipt of notification of such change.

3.6 State and Local Taxes. Customer shall be responsible for the payment of applicable sales and/or use taxes with respect to this Agreement.

4. Term and Termination.

4.1 Term. This Agreement shall commence on the Effective Date and shall continue until the end of the first twelve (12) full calendar months following the Effective Date. This Agreement shall automatically renew for successive terms of twelve (12) calendar months each, unless either party gives written notice to the other of its intention not to renew this Agreement at least ninety (90) days prior to the end of the then current term.

4.2 Termination.

(a) Either party may terminate this Agreement if the other party breaches this Agreement and fails to cure such breach within thirty (30) days after the non-breaching party's written notice to the breaching party of the breach; provided, however, the cure period shall be ten (10) days in cases of non-payment of amounts due hereunder. Customer shall be in breach of this Agreement if Company fails to receive back from Customer a copy of this Agreement executed by Customer within 30 days of this Agreement being mailed by Company to Customer. In case of breach of this Agreement by Customer, Company may suspend the provision of Services under this Agreement pending Customer's cure of such breach.

(b) This Agreement shall automatically terminate upon: (i) termination of the License Agreement; or (ii) the modification or attempted modification of the Software, or to the computer operating system under which the Software is designed to run, by any persons other than those authorized by Company to do so.

(c) Notwithstanding the termination provisions contained in this Agreement or the License Agreement, Company providing Services for the Software and/or billing for such Services and/or receiving compensation for such Services shall not waive any of Company's rights or estop

Company from enforcing its rights under this Agreement or the License Agreement including, but not limited to the termination provisions.

4.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason: (a) Company shall not be obligated to provide further Services under this Agreement; (b) all unpaid installments of the Services Fee, if any, for the then current term of this Agreement shall become immediately due and payable, and Customer shall immediately pay the full amount of such unpaid installments; and (c) all amounts previously paid under this Agreement shall be non-refundable under any circumstances, and Customer shall not be entitled to a refund of any amounts paid upon termination or expiration of this Agreement for any reason.

5. Disclaimer of Warranties. COMPANY MAKES NO WARRANTIES EXPRESS OR IMPLIED WITH RESPECT TO THE SERVICES AND ANY UPGRADES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, CONDITION OR THE QUALITY OF THE MATERIAL AND WORKMANSHIP OF THE UPGRADES.

6. Limitation of Liability. COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, OR OTHERWISE OUT OF OR CONNECTED WITH ITS PERFORMANCE HEREUNDER EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL COMPANY'S ENTIRE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE THEN CURRENT MAINTENANCE TERM.

IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SERVICES OR UPGRADES, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO THE SHORTEST PERIOD OF TIME REQUIRED BY LAW.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY COMPANY, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

7. General.

7.1 Independent Contractor Status. Each party agrees and acknowledges that in its performance of its obligations under this Agreement, it is an independent contractor of the other party, and is solely responsible for its own activities. Neither party shall have any authority to make commitments or enter into contracts on behalf of, bind or otherwise obligate the other party in any manner whatsoever. No joint venture, franchise or partnership is intended to be formed by this Agreement.

7.2 Governing Law/Class Action Limitation. This Agreement shall be governed by the laws of the State of California without regard to conflicts of law principles, and shall benefit Company, its successors and assigns. Customer hereby consents to the exclusive jurisdiction of and venue of the state courts sitting in Los Angeles County, California or the federal courts in the Central District of California to resolve any disputes under this Agreement. The Customer and Company agree that no class action lawsuits, private attorney-general actions and/or any other proceedings whereby someone or some entity

acts in a representative capacity are allowed under this Agreement. Any joinder of separate individual proceedings is prohibited.

7.3 Entire Agreement. This Agreement is the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof, and supersedes all written and oral contracts, proposals, and other communications between the parties relating to that subject matter. Customer agrees that any varying or additional terms contained in any purchase order or other written notification or document issued by Customer in relation to the Services provided hereunder shall be of no effect.

7.4 Waiver and Amendment. This Agreement may be amended and rights under this Agreement may be waived only by a written document signed by an authorized officer of Customer and Company. Failure at any time of either party to require performance of any obligation of the other under this Agreement shall not affect the right at a later time to require such performance. No waiver of the breach of any provision of this Agreement shall be deemed a further or continuing waiver of any such breach or a waiver of the breach of any other provision of this Agreement. No Company dealer, agent or employee is authorized to make any amendments to this Agreement. Customer warrants that Customer has made no changes to this Agreement as presented to Customer from Company for signature.

7.5 Attorneys' Fees. If either party commences any action or proceeding to enforce this Agreement or any right arising under this Agreement, the prevailing party shall be entitled to recover from the other party the actual attorneys' fees, costs and expenses (and all related fees, costs and expenses) incurred by it in connection with such action or proceeding and in connection with the enforcement of any judgment thereby obtained.

7.6 Assignment. Customer may not assign any of its rights, nor delegate any of its obligations, under this Agreement without Company's prior, written consent, which consent Company may withhold in its sole discretion.

7.7 Parties Bound. This Agreement shall be binding on and inure to the benefit of Company and its successors and assigns and to Customer.

7.8 Injunctive Relief. Customer acknowledges that any breach of Customer's obligations under this Agreement may result in irreparable injury for which Company shall not have an adequate remedy at law. Accordingly, if Customer breaches or threatens to breach any of Customer's obligations under this Agreement, Company shall be entitled, without showing or proving any actual damage sustained, to a temporary restraining order, preliminary injunction, permanent injunction, and/or order compelling specific performance, to prevent the breach of Customer's obligations under this Agreement. Nothing in this Agreement shall be interpreted as prohibiting Company from pursuing or obtaining any other remedies otherwise available to it for such actual or threatened breach, including recovery of damages.

7.9 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is invalid under applicable law, that provision will be ineffective to the extent of the invalidity, without affecting the remainder of that provision or the remaining provisions of this Agreement.

7.10 Survival. Sections 3, 4.3, 5, 6 and 7, and any other provisions that may be reasonably interpreted to survive termination of this Agreement, shall survive termination of this Agreement for any reason.

7.11 Notices. Any notices or reports required by this Agreement to be given by one party to the other party shall be made in writing to that party at the mailing address or email address shown at the beginning of this Agreement or any other addresses that may be designated in writing from time to time. All notices to be given by either party to the other under this Agreement shall be deemed given: (i) upon receipt, in the case of personal delivery; (ii) on the third day following deposit in the mail if the notice is sent by prepaid certified mail, return receipt requested; (iii) on the date of delivery to a nationally recognized overnight courier service by the party giving notice if the notice is sent via an overnight delivery service; or (iv) on the date emailed by Company to Customer at the email address provided above.

7.12 Export. Customer shall comply with all applicable provisions of the Export Administration Regulations of the United States Department of Commerce, and all similar laws and regulations, in effect from time to time with respect to the Software (including Upgrades) and Services, and shall provide Company with all documentation and data necessary or desirable in monitoring such compliance. Customer agrees to defend, indemnify and hold Company harmless against any liability arising from the failure of Customer or Customer's customers to comply with such regulations.

7.13 U.S. Government Restricted Rights. If Customer is a U.S. Government user then the Software (including Upgrades) and Services are provided with "RESTRICTED RIGHTS" as set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights clause at FAR 52.227 19 or subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause DFARS 252.277 7013, or any other successor or similar regulation or statute, as applicable. Manufacturer: Applied Business Software, 2847 Gundry Avenue, Long Beach, California 90755.

7.14 Counterparts. This Agreement may be executed in counterparts. For purposes hereof, a facsimile copy of this Agreement, including the signature page hereto, shall be deemed to be an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

APPLIED BUSINESS SOFTWARE, INC.

CUSTOMER

Signature

Signature

Print Name

Print Name

Title

Title