

RESOLUTION NO. 4144

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A
CONTRACT WITH TYLER TECHNOLOGIES FOR THE PURCHASE OF A NEW
GOVERNMENTAL ACCOUNTING SOFTWARE PROGRAM AT A COST OF \$114,963**

WHEREAS, in 1996 the City of Soledad purchased and implemented the current governmental accounting software program known as ForFund accounting system by Mirasoft, Incorporated; and

WHEREAS, Microsoft's poor customer support, coupled with the system becoming obsolete, prompted Staff to seek a new governmental accounting software program; and

WHEREAS, in the Fiscal Year 2007/08 operating budget, the City Council approved \$115,000 for the purchase of a new governmental accounting software program; and

WHEREAS, a Request for Proposal (RFP) for a new governmental accounting software program was mailed out on October 11, 2007. Proposals were received from six (6) vendors; and

WHEREAS, The six (6) proposals were reviewed by a panel comprised of City Staff and after evaluating the vendors on the basis of experience, quality and content of the submittal and cost of accounting software program, it has been determined that the Incode software system from Tyler Technology is best suited to meet the City's needs.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Soledad that the System Agreement between the City of Soledad and Tyler Technologies, Inc., a copy of which is attached hereto and by this reference incorporated herein, is hereby approved and the City Manager is hereby authorized to execute the same on behalf of the City of Soledad.


PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 2nd day of January 2008, by the following vote:

AYES, and in favor thereof, Councilmembers: Martha Camacho, Juan Saavedra, Patricia Stephens, Mayor Pro Tem Christopher Bourke

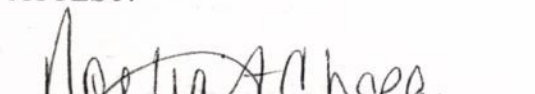
NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmembers: Mayor Richard Ortiz


RICHARD V. ORTIZ, Mayor

ATTEST:


NOELIA F. CHAPA, City Clerk

System Agreement
Between

Tyler Technologies, Inc.

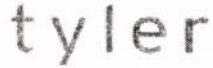
5808 4th Street
Lubbock, Texas 79416
(800) 646-2633
(806) 797-4849 Fax

AND

City of Soledad

248 Main Street
Soledad, CA 93960
Phone: 831-223-5074
Fax: (831) 678-3965

tyler
TECHNOLOGIES



AGREEMENT

This agreement is entered into by and between Tyler Technologies, Inc., hereinafter referred to as COMPANY, located at 5808 4th Street, Lubbock, Texas 79416; and, City of Soledad, hereinafter referred to as CLIENT on, _____, 2007.

COMPANY and CLIENT agree as follows:

1. COMPANY shall furnish the products and services as described in this Agreement, and CLIENT shall pay the prices set forth in this Agreement.
2. This Agreement consists of this Cover and the following Attachments and Exhibits:
Section A Investment Summary (A-E)
Section B COMPANY Agreement Terms and Conditions
Section C Data Conversion Process Document
3. The License Fees set forth in the Investment Summary are based on defined category levels. Placement within a category is based on the size of the organization serviced and measured by such factors as operating budget, number of employees, number of utility accounts, number of sworn officers, population of the entity, etc.

IN WITNESS WHEREOF, persons having been duly authorized and empowered to enter into this Agreement hereunto executed this Agreement effective as of the date last set forth below.

Client: **City of Soledad**

Tyler Technologies, Inc.:

By: _____
Signature

Printed Name

Title

Date

Sales Tax Certificate Number

By: _____
Signature
S. Brett Cate

Printed Name
President, INCODE Solution

Title
12/13/07

Issue Date

Investment Summary

Prepared for:	City of Soledad	Contract ID # :	2007-0361
Contact Person:	Rudy Hernandez	Issue Date:	12/13/07
Address:	248 Main Street Soledad, CA 93960	Salesman:	J.Rowe
Phone:	831-223-5074	Tax Exempt:	Yes / No
Fax:	(831) 678-3965		
Email:	rudy@cityofsoledad.com		

Product Service & Equipment	On Signature	On Delivery	As Verified	As Progress Occurs	Totals	Maintenance
Total Applications Software						
License Fees	10,399.50	24,958.80	6,239.70		54,535.00	14,484.00
Less Preferred Customer Discount					(12,537.00)	
Total Professional Services						
On-Site Services				36,600.00	36,600.00	
Final Implementation				4,800.00	4,800.00	
Project Management				5,000.00	5,000.00	
Project Consulting				1,920.00	1,920.00	
Data Conversion & Assistance				25,045.00	25,045.00	
Totals	10,399.50	24,958.80	6,239.70	73,365.00	114,963.00	14,484.00

Please Note: Travel expenses will be billed as incurred.

Software Licenses and Professional Services

Application Software	Pricing				INCODE - Implementation				
	QTY	License Fee	Discount %	Total License Fees	Conversion	Estimated Hours	Estimated Services	Total Cost	Annual Maintenance
INCODE Financial Applications									
Core Financials <i>(General Ledger, Budget Prep, Bank Reconciliation, Journal Entry Import, Exporter, Accounts Payable, Report Writer, Viewer, Office Exporter)</i>	1	12,000	25%	9,000	6,495	54	6,480	21,975	3,000
Purchase Orders	1	5,000	25%	3,750		12	1,440	5,190	1,250
Fixed Assets	1	2,500	25%	1,875		2	240	2,115	625
Project Accounting	1	3,750	25%	2,813		8	960	3,773	938
INCODE Human Resources Systems									
Base Package	1	5,000	25%	3,750		40	4,800	8,550	1,250
- FMLA Leave Tracking									
- Benefits Administration									
- Position Control / Budgeting									
- Applicant Tracking									
Payroll/Personnel	1	6,000	25%	4,500	8,100	40	4,800	17,400	1,500
INCODE Customer Relationship Management Applications									
Utility CIS System	1	8,000	25%	6,000	10,450	88	10,560	27,010	2,000
Central Cash Collection	1	2,000	25%	1,500		8	960	2,460	500
Miscellaneous Accounts Receivable	1	2,000	25%	1,500		12	1,440	2,940	500
Business License	1	2,500	25%	1,875		32	3,840	5,715	625
INCODE Central									
INCODE Central (INCODE Online & INCODE Help)	1	N/A		N/A		N/A	N/A	N/A	N/A
INCODE Printing and Reporting Solutions									
Forms Overlay <i>(4 Overlays for Financials, 5 Overlays for CRM, 1 Logo)</i>	1	1,000	25%	750		N/A	N/A	750	250
Enhanced Utility Bill Printing	1	1,000	25%	750		N/A	N/A	750	250
Secure Signatures <i>(includes 2 signatures)</i>	1	1,000	25%	750		N/A	N/A	750	250
INCODE Content Management									
Tyler Content Manager LE	1	Included				4	480	480	250
INCODE Professional Services									
Network Support							600	600	600
Project Management							5,000	5,000	
Project Consulting						16	1,920	1,920	
Final Implementation						40	4,800	4,800	
System Software									
System Software	1	2,785		2,785			N/A	2,785	696
INCODE Subtotal		51,750		38,813	25,045	300	36,600	100,458	13,788
Project Management							5,000	5,000	
Project Consulting						16	1,920	1,920	
Final Implementation						40	4,800	4,800	
INCODE System Software Subtotal		2,785		2,785				2,785	696
Total		54,535		41,598	25,045	356	48,320	114,963	14,484

tyler

Customer Name:

City of Soledad

Contact:

Rudy Hernandez

Date:

December 13, 2007

Salesman:

John Rowe

Conversion Breakdown

Application Software	Conversion Programming Fee	Estimated Hours	Estimated Services
Utility CIS			
Master File	3,125	35	4,200
Transaction History	2,025		
Consumption History - requires Trx History Conversion	1,100		
General Ledger			
Chart of Accounts - No History	1,925		
Budgets	825	6	720
Accounts Payable			
Vendor File - No History	3,025		
Payroll			
Master File, History, YTD Balances	4,500	30	3,600
Conversion Total	16,525	71	8,520

COMPANY AGREEMENT TERMS AND CONDITIONS

General Payment Terms

1. CLIENT will pay to COMPANY an initial deposit upon execution of this Agreement that equals 25% of the total amount specified in this Agreement, not including Annual Software Maintenance, Third Party Software Maintenance, and/or Hardware Maintenance fees;
2. CLIENT will pay a second installment to COMPANY upon delivery of the software products that equals 60% of the Application Software License Fees and 75% of the System Software License Fees.
3. The remaining 15% balance of the total amount specified in this Agreement for all products and License fees shall be paid after (a) COMPANY's verification of the software products, (b) CLIENT's completion of its own validation process, or (c) CLIENT's live processing. In no case, shall this period exceed thirty (30) days from live processing or one hundred-eighty (180) days from installation of the software.
4. Services shall be billed as delivered plus expenses and are due and payable net 30 days.

Software License Agreement

1) Software Product License.

- a) Upon CLIENT's payment for the software products license fees set forth in the Investment Summary of this Agreement, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY a non-exclusive, nontransferable, nonassignable license to use the software products and accompanying documentation for internal business purposes of CLIENT, subject to the conditions and limitations in this Software License Agreement.
- b) Ownership of the software products, accompanying documentation and related materials, and any modifications and enhancements to such software products and any related interfaces shall remain with COMPANY.
- c) The software products are not licensed to perform functions or processing for subdivisions or entities that were not

considered by COMPANY at the time COMPANY issued this Agreement.

d) The right to transfer this license to a replacement hardware system is included in this Software License Agreement. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to CLIENT. Advance written notice of any such transfer shall be provided to COMPANY.

e) CLIENT agrees that the software products, any modifications and enhancements and any related interfaces are proprietary to COMPANY and have been developed as a trade secret at COMPANY's expense. To the extent permitted by law, CLIENT agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.

f) If CLIENT has made modifications to the software products, COMPANY will not support or correct errors in the modified software products, unless modifications were specifically authorized in writing by COMPANY.

g) CLIENT may make copies of the software products for archive purposes only. CLIENT will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use.

h) The term of the license granted by this Section shall be perpetual.

i) COMPANY maintains an escrow agreement with an Escrow Services Company under which COMPANY places the source code of each major release. At CLIENT's request, COMPANY will add CLIENT as a beneficiary on its escrow account. CLIENT will be invoiced the annual beneficiary fee by COMPANY and is solely responsible for maintaining its status as a beneficiary.

2) License Fees.

a) CLIENT agrees to pay COMPANY, and COMPANY agrees to accept from CLIENT

COMPANY AGREEMENT TERMS AND CONDITIONS

as payment in full for the license herein, the total sum of the COMPANY license fees set forth in the Investment Summary.

b) The license fees listed in the Investment Summary do not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.

c) In the event of any disputed invoice, CLIENT shall provide written notice of such disputed invoice to Attention: COMPANY Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to COMPANY within fifteen (15) days. An additional fifteen (15) days is allowed for the CLIENT to provide written clarification and details for the disputed invoice. COMPANY shall provide a written response to CLIENT that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by COMPANY and CLIENT to resolve any issues presented in CLIENT's notification to COMPANY. CLIENT may withhold payment of only the amount actually in dispute until COMPANY provides the required written response, and full payment shall be remitted to COMPANY upon COMPANY's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if COMPANY is unable to complete all material action steps required to remedy the disputed matter because CLIENT has not completed the action steps required of them, CLIENT shall remit full payment of the invoice.

d) Any invoice not disputed as described above shall be deemed accepted by the CLIENT. If payment of any invoice that is

not disputed as described above is not made within sixty (60) calendar days, COMPANY reserves the right to suspend delivery of all services under the Investment Summary, this Software License Agreement, the Professional Services Agreement, the Maintenance Agreement and, if applicable, the Third Party Product Agreement.

3) Verification of the Software Products.

a) At the CLIENT's request, within thirty (30) days after the software products have been installed on CLIENT's system, COMPANY will test the software products in accordance with COMPANY's standard verification test procedure. Demonstration shall constitute CLIENT's verification that the software products substantially comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT. Upon such verification, CLIENT shall pay the remaining balance in accordance with the payment terms listed in Section General Payment Terms or amended in any attached addendum.

b) At its option, CLIENT may perform CLIENT's own defined internal validation process to test the software to substantially comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT. Such validation test shall constitute CLIENT's verification. Upon such validation, CLIENT shall pay the remaining balance in accordance with the payment terms listed in Section General Payment Terms or amended in any attached addendum.

c) Notwithstanding anything contrary herein, CLIENT's use of the software products for its intended purpose, shall constitute CLIENT's verification of the software products, without exception and for all purposes.

d) Verification or validation, by CLIENT, that the software products substantially

COMPANY AGREEMENT TERMS AND CONDITIONS

comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT shall be final and conclusive except for latent defect, fraud, and such gross mistakes that amount to fraud and the operation of any provision of this Agreement which specifically survives verification. In the event said verification becomes other than final, or becomes inconclusive, pursuant to this paragraph, CLIENT's sole right and remedy against COMPANY shall be to require COMPANY to correct the cause thereof.

e) COMPANY shall correct any functions of the software products which failed the standard verification testing or failed to comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT. If CLIENT has made modifications to the software programs, COMPANY will not make such corrections, unless such modifications were specifically authorized in writing by COMPANY.

4) Schedule of Verification. COMPANY will install the software products and cause the same to be verified within sixty (60) days after CLIENT makes available to COMPANY the equipment into which the software product is to be loaded. COMPANY shall exercise reasonable efforts to cause the software products to be verified according to the schedule set forth in this paragraph, but COMPANY shall not be liable for failure to meet said schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.

5) Limited Warranty. COMPANY warrants that the then current, unmodified version of the COMPANY Software Products will substantially conform to the then current version of its published current specifications. If the Software Products do not perform as warranted, COMPANY's

obligation will be to use reasonable efforts, consistent with industry standards, to cure the defect. Should COMPANY be unable to cure the defect or provide a TYLER replacement product, CLIENT shall be entitled to a refund for the license fee paid for application. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED OR VERBAL, STATUTORY OR OTHERWISE, AND WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6) Limitation of Liability.

(a) In the event that the software products are determined to infringe upon any existing United States patent copyright or trademark rights held by any other person or entity, COMPANY shall defend and hold harmless CLIENT and its officers, agents and employees from any claim or proceedings brought against CLIENT and from any cost damages and expenses finally awarded against CLIENT which arise as a result of any claim that is based on an assertion that CLIENT's use of the software products under this Software License Agreement constitutes an infringement of any United States patent, copyright or trademark provided that CLIENT notifies COMPANY promptly of any such claim or proceeding and gives COMPANY full and complete authority, information and assistance to defend such claim or proceeding and further provided that COMPANY shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement provided that COMPANY shall consult with CLIENT regarding such defense. In the event that the software products are finally held to be

COMPANY AGREEMENT TERMS AND CONDITIONS

infringing and its use by CLIENT is enjoined, COMPANY shall, at its election; (1) procure for CLIENT the right to continue use of the software products; (2) modify or replace the software products so that it becomes non-infringing; or (3) if procurement of the right to use or modification or replacement can not be completed by COMPANY, terminate the license for the infringing software product, and upon termination, refund the license fees paid for the infringing software product as depreciated on a straight-line basis over a period of seven (7) years with such depreciation to commence on the execution of this Agreement. COMPANY shall have no liability hereunder if CLIENT modified the software products in any manner without the prior written consent of COMPANY and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement or if the infringement would have been avoided by CLIENT's use of the most current revision of the software products. The foregoing states COMPANY's entire liability and CLIENT's exclusive remedy with respect to any claims of infringement of any copyright, patent, trademark, or any property interest rights by the software products, any part thereof, or use thereof.

b) THE RIGHTS AND REMEDIES SET FORTH IN THIS SOFTWARE LICENSE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

c) In no event shall COMPANY be liable for special, indirect, incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the software products. COMPANY's liability for

damages arising out of this Software License Agreement, whether based on a theory of contract or tort, including negligence and strict liability shall be limited to the COMPANY license fees identified in the Investment Summary. The license fees set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Software License Agreement.

7) Dispute Resolution. In the event of a dispute between the parties under this Software License Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

8) No Intended Third Party Beneficiaries. This agreement is entered into solely for the benefit of COMPANY and CLIENT. No third party shall be deemed a beneficiary of this agreement, and no third party shall have the right to make any claim or assert any right under this agreement.

9) Governing Law. This Software License Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

10) Entire Agreement.

a) This Software License Agreement, including the functional description of the software products found in COMPANY's written proposal to CLIENT, represents the entire agreement of CLIENT and COMPANY with respect to the software products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Software License Agreement and the functional description of the software products found in COMPANY's written proposal to CLIENT.

b) If any term or provision of this Software License Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable,

COMPANY AGREEMENT TERMS AND CONDITIONS

the remainder of this Software License Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Software License Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Software License Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

11) Cancellation or Termination. In the event of cancellation or termination of this Software License Agreement, CLIENT will make payment to COMPANY for all software products, services and expenses delivered or incurred prior to the termination or cancellation of this Software License Agreement.

12) Approval of Governing Body. CLIENT represents and warrants to COMPANY that this Software License Agreement has been approved by its governing body and is a binding obligation upon CLIENT. CLIENT represents and warrants that funds are appropriated and/or arrangements have been made with a third party financier.

Professional Services Agreement

1) Services Provided. COMPANY shall provide some or all of the following services to CLIENT, as evidenced in the attached Investment Summary:

a) Installation as described in the Investment Summary;

b) Conversion of CLIENT's existing data as set forth in the Investment Summary. CLIENT is responsible for reading and complying with COMPANY's Conversion Statement.

c) Training/Implementation as set forth in the Investment Summary;

d) Consulting/Analysis as set forth in the Investment Summary; and

e) Verification Testing as described in the Software License Agreement.

2) Professional Services Fees.

a) Notwithstanding specific prices to the contrary identified in the Investment Summary, all services will be invoiced in hourly increments as delivered, plus travel and other expenses, plus a 10% travel processing fee. CLIENT agrees to pay COMPANY for the actual amount of training provided. The quantity in the Investment Summary represents only an estimate of time required to complete all phases of this Agreement.

b) Upon the completion of each service day, or group of days, COMPANY will present a Daily Log. CLIENT will sign the report indicating acceptance of the service day and its subsequent billing, or noting reasons for CLIENT's non-acceptance of such. This acceptance is final.

c) CLIENT is not charged for travel time to and from the CLIENT's site. Only time spent on-site is billed as training time; excluding those cases in which the CLIENT requires the COMPANY trainer(s) to travel on the weekend, in which case CLIENT will be billed for weekend travel time at a rate of \$500 per weekend day.

d) If CLIENT travels to COMPANY location for training, then CLIENT agrees to pay all expenses related to transportation of CLIENT's employees.

e) All requests for supporting documentation shall be made within thirty (30) calendar days of invoice delivery. Such documentation will consist of quoted internet rates within 7 days from the date the request is received by the COMPANY and not actual receipts. Such quotes will be deemed acceptable documentation if price is within 25% of actual amounts charged to CLIENT, adjusted by unusual or seasonal travel circumstances.

f) The rates for Verification Testing shall be the same as the Training/Implementation rates set forth in the Investment Summary.

COMPANY AGREEMENT TERMS AND CONDITIONS

- g) The rates listed in the Investment Summary do not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.
- h) Payment is due within thirty (30) calendar days of invoice.
- i) In the event of any disputed invoice, CLIENT shall provide written notice of such disputed invoice to Attention: COMPANY Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to COMPANY within fifteen (15) calendar days of CLIENT's receipt of the invoice. An additional fifteen (15) days is allowed for the CLIENT to provide written clarification and details for the disputed invoice. COMPANY shall provide a written response to CLIENT that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by COMPANY and CLIENT to resolve any issues presented in CLIENT's notification to COMPANY. CLIENT may withhold payment of only the amount actually in dispute until COMPANY provides the required written response, and full payment shall be remitted to COMPANY upon COMPANY's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if COMPANY is unable to complete all material action steps required to remedy the disputed matter because CLIENT has not completed the action steps required of them, CLIENT shall remit full payment of the invoice.
- j) Any invoice not disputed as described above shall be deemed accepted by the CLIENT. If payment of any invoice that is

not disputed as described above is not made within sixty (60) calendar days, COMPANY reserves the right to suspend delivery of all services under the Investment Summary, the Software License Agreement, this Professional Services Agreement, the Maintenance Agreement and, if applicable, the Third Party Product Agreement.

3) Training Environment. If training is being conducted at the CLIENT's site, the CLIENT is responsible for providing a productive environment to conduct training. COMPANY is not responsible for its inability to conduct training or for inadequate training arising due to interruptions and/or unavailability of CLIENT personnel to be trained. Time spent on-site by COMPANY that results in non-productive training time beyond COMPANY's control will be billed as training time. COMPANY will make reasonable efforts to schedule training on dates requested by the CLIENT. Trainers will be on-site approximately noon Monday through noon Friday. This allows appropriate travel time to and from the CLIENT's site.

4) Additional Services. Services utilized in excess of those set forth in the Investment Summary and additional related services not set forth in the Investment Summary will be billed at COMPANY's then current market rate for the service as they are incurred. Travel and other expenses, plus a 10% travel processing fee will be billed as delivered.

5) Limitation of Liability. COMPANY shall not be liable for inaccurate data in COMPANY's application software which is the result of conversion of inaccurate data from the previous system. COMPANY's liability for damages arising out of this Professional Services Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the professional service fees identified in the Investment Summary. The CLIENT shall not in any event be entitled to, and COMPANY shall not be liable for, indirect, special, incidental, consequential or exemplary damages of any

COMPANY AGREEMENT TERMS AND CONDITIONS

nature. The professional service fees set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Professional Services Agreement.

6) Dispute Resolution. In the event of a dispute between the parties under this Professional Services Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

7) No Intended Third Party Beneficiaries. This Professional Services Agreement is entered into solely for the benefit of COMPANY and CLIENT. No third party shall be deemed a beneficiary of this Professional Services Agreement, and no third party shall have the right to make any claim or assert any right under this Professional Services Agreement.

8) Governing Law. This Professional Services Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

9) Cancellation or Termination. In the event of cancellation or termination of this Professional Services Agreement, CLIENT will make payment to COMPANY for all services and expenses delivered or incurred prior to the termination or cancellation of this Professional Services Agreement.

10) Entire Agreement.

a) This Professional Services Agreement represents the entire agreement of CLIENT and COMPANY with respect to the professional services and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Professional Services Agreement.

b) If any term or provision of this Professional Service Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid

or unenforceable, the remainder of this Professional Services Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Professional Services Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Professional Services Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

11) Approval of Governing Body. CLIENT represents and warrants to COMPANY that this Professional Services Agreement has been approved by its governing body and is a binding obligation upon CLIENT. CLIENT represents and warrants that funds are appropriated and/or arrangements have been made with a third party financier.

Annual Software Maintenance Agreement

1) Scope of Agreement. The CLIENT agrees to purchase and COMPANY agrees to provide services for the software products listed in the Investment Summary of this Agreement in accordance with the following terms and conditions. Both parties acknowledge that this Annual Software Maintenance Agreement covers both Support for the software products listed in the Investment Summary of this Agreement and Licensing of updates of such installed software products.

2) Term of Agreement. This Annual Software Maintenance Agreement is effective on the date executed by an officer of COMPANY and shall have a term beginning upon the first of the month six months after the installation of the COMPANY Software and ending upon the

COMPANY AGREEMENT TERMS AND CONDITIONS

last day of the month one year following that date.

a) This Annual Software Maintenance Agreement will automatically renew for subsequent one-year terms unless either party gives the other party at least thirty days prior written notice of its intent not to renew. Fees for subsequent years are subject to change.

b) If CLIENT has not elected to participate in the COMPANY Annual Software Maintenance Agreement, or elects not to renew the Agreement, the CLIENT shall acquire Software maintenance in accordance to the Section entitled "Support Terms for CLIENTs Not Participating in the Annual Software Maintenance Agreement".

3) Payment.

a) CLIENT agrees to pay COMPANY the amount identified in the Investment Summary for licensing and support services, as described below. The licensing fee of the COMPANY Software includes six month's maintenance from the time the Software is installed. The annual amount identified in the Investment Summary will become due the first of the month following six months after the installation of the COMPANY software. This payment is due and payable in accordance with Section General Payment Terms or amended in any attached addendum.

b) Additional Charges. Any maintenance performed by COMPANY for the CLIENT, which is not covered by this Annual Software Maintenance Agreement, will be charged at COMPANY's then current market rates. All materials supplied in connection with such non-covered maintenance or support plus expenses will be charged to CLIENT.

c) Support and services will be suspended whenever CLIENT's account is thirty (30) calendar days overdue. Support and services will be reinstated when CLIENT's account is made current.

4) Terms and Conditions for Licensing of Updates of the Installed Software Products.

a) CLIENT is hereby granted the non-exclusive and nontransferable license and

right to use the additional versions of the installed software products listed in the Investment Summary of this Agreement which COMPANY may release during the term of this Annual Software Maintenance Agreement. COMPANY agrees to extend and CLIENT agrees to accept a license subject to the terms and conditions contained herein for the installed software products.

b) The installed software products listed are licensed for use only for the benefit of CLIENT listed in the Investment Summary of this Agreement. The software products are not licensed to perform functions or processing for subdivisions or entities that were not considered by COMPANY when COMPANY placed CLIENT in the categories listed on the cover of this Agreement.

c) As long as a current Annual Software Maintenance Agreement is in place, this License may be transferred to another hardware system used for the benefit of CLIENT. CLIENT agrees to notify COMPANY prior to transferring the licensed products to any other system. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to the CLIENT.

d) CLIENT agrees that the software products are proprietary to COMPANY and have been developed as a trade secret at COMPANY's expense. To the extent permitted by law, CLIENT agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.

e) If CLIENT has made modifications to the software products, COMPANY will not support the modified software products, unless modifications were specifically authorized in writing by COMPANY.

f) CLIENT may make copies of the licensed software products for archive purposes only. The CLIENT will repeat any proprietary notice on the copy of the software products.

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The documentation accompanying the product may not be copied except for internal use.

g) For as long as a current Annual Software Maintenance Agreement is in place, COMPANY shall promptly correct any functions of the software products which fail to substantially comply with COMPANY's current specifications for the most current version of the software products. If CLIENT has made modifications to the software products, COMPANY will not make such corrections, unless modifications were specifically authorized in writing by COMPANY.

h) COMPANY reserves the right to change the functionality of future releases of its software and CLIENT understands that COMPANY is not obligated to include specific functionality in future releases unless provided for herein.

5) Terms and Conditions for Support.

a) COMPANY shall provide software related CLIENT support during standard support hours. Currently, standard support hours are from 7:00am to 7:00pm Central Standard Time, Monday thru Friday, excluding holidays. COMPANY reserves the right to modify these support hours as COMPANY sees fit in order to better serve its CLIENT. Assistance and support requests which require special assistance from COMPANY's development group will be taken and directed by support personnel.

b) COMPANY will maintain staff that is appropriately trained to be familiar with the software products in order to render assistance, should it be required.

c) COMPANY will provide CLIENT with all updates that COMPANY may make to the then current version of the installed software products covered in this Agreement.

d) CLIENT acknowledges that the updates/enhancements may not be compatible with CLIENT's particular hardware configuration or operating system. CLIENT acknowledges that additional hardware and software may be required at

the CLIENT's expense in order to utilize the updates/enhancements.

e) COMPANY will make available appropriately trained personnel to provide CLIENT additional training, program changes, analysis, consultation, recovery of data, conversion, non-coverage maintenance service, etc., billable at the current per diem rate plus expenses. *COMPANY employs many CPAs but is not a board registered CPA firm.*

COMPANY shall provide CLIENT with on-line support through the use of communications modem and software through the use of secure connection over the internet via Citrix GotoAssist.

6) Support Terms for CLIENTs Not Participating in the Annual Software Maintenance Agreement. The Software License Agreement includes six months free maintenance. If CLIENT elects not to participate in the COMPANY Annual Software Maintenance Agreement, CLIENT shall receive support on a Time and Materials basis following six months after the COMPANY Software is installed in accordance with the following terms:

a) CLIENTs not on Software Support Maintenance will receive the lowest priority for Software Support.

b) CLIENTs not on Software Support Maintenance will be required to purchase new releases of the Software. New Releases will include fixes, enhancements and updates, such as, Tax Tables, W/2 reporting formats, 1099 changes, etc.

c) CLIENTs not on Software Support Maintenance will be charged \$175 per hour with a one-hour minimum for all software support calls.

d) CLIENTs not on Software Support Maintenance will not be granted access to COMPANY's software support web-site.

e) CLIENTs not on Software Support Maintenance are subject to higher rates for training and continuing education performed by COMPANY employees. This is due to the fact that the CLIENT may not be utilizing the most current version of our software.

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f) COMPANY will not guarantee a program fix to a documented bug for software versions that are not the currently released version. Since every CLIENT is on Software Support Maintenance, often times, bug fixes are rolled into the latest release and then sites are upgraded to the latest release of the software.

g) If a CLIENT decides to discontinue Software Support Maintenance and later chooses to reinstate Software Support Maintenance, the CLIENT will be required to pay the portion of annual software support maintenance fees for the Enhancement and Software Updates (27%), dating back to the date when the CLIENT discontinued Software Support Maintenance. Once again, COMPANY feels any CLIENT not on Software Support Maintenance will not be satisfied with the level of support they will receive, which in turn, makes a dissatisfied CLIENT. COMPANY prides itself on customer satisfaction, which is why we strongly encourage every CLIENT to purchase Software Support Maintenance.

7) Additional Services. The Services listed below are not included in the COMPANY Software Maintenance Agreement. These services shall be provided at COMPANY's discretion and will be billed on a Time and Materials basis at COMPANY's current rates.

- a) Changes to print programs.
- b) Software modifications.
- c) Software Training.
- d) Responding to problems caused by bad data.
- e) Responding to problems caused by hardware.
- f) Responding to problems caused by operator error.
- g) Responding to problems caused by software that is not COMPANY software.
- h) Responding to problems resulting from misuse, accidents, CLIENT neglect, fire, or any other cause not within COMPANY's reasonable control.
- i) Changes made to the COMPANY Software by someone other than COMPANY personnel.

j) Any other services performed by COMPANY not otherwise specifically provided for in this Agreement, including but not limited to, bank reconciliation, reconciling out of balance reports, balancing segments of the system, etc.

8) Limitations and Exclusions. The support and services of this Maintenance Agreement do not include the following:

a) Support service does not include the installation of the software products, onsite support, application design, and other consulting services, support of an operating system or hardware, or any support requested outside of standard support hours.

b) CLIENT shall be responsible for implementing at its expense, all changes to the current version. CLIENT understands that changes furnished by COMPANY for the current version are for implementation in the current installed software products version, as it exists without customization or CLIENT alteration.

9) CLIENT Responsibilities.

a) CLIENT shall provide, at no charge to COMPANY, full and free access to the programs covered hereunder: working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide the specified support and maintenance service. Such environment includes, but is not limited to; use of the appropriate operating system at the version and release levels specified by COMPANY and additionally specifies that the environment for any COMPANY software application requires the CLIENT to have e-mail and Internet access. CLIENT will be responsible for all additional costs incurred to the extent such hardware and software does not conform to COMPANY's current specifications. The acquisitions of necessary hardware and software meeting the requirements then in effect shall be sole responsibility of the CLIENT.

b) CLIENT shall maintain IP or VPN connection through Microsoft Terminal Services. COMPANY shall use the

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connection to assist with problem diagnosis and resolution.

c) CLIENT must maintain an active e-mail address capable of receiving a 5 MB attachment. This e-mail account must be accessible from a PC connected to the server hosting the COMPANY software applications.

d) CLIENT must open firewall ports to enable access to COMPANY's FTP server for program updates via Live Update.

10) Non-Assignability. The CLIENT shall not have the right to assign or transfer its rights hereunder to any party.

11) Force Majeure. COMPANY shall not be responsible for delays in servicing the products covered by this Annual Software Maintenance Agreement caused by strikes, lockouts, riots, epidemic, war, government regulations, fire, power failure, acts of God, or other causes beyond its control.

12) Limitation of Liability. The liability of COMPANY is hereby limited to a claim for a money judgment not exceeding the fees paid by the CLIENT for services under this Annual Software Maintenance Agreement. The CLIENT shall not in any event be entitled to, and COMPANY shall not be liable for, indirect, special, incidental, consequential or exemplary damages of any nature.

13) Governing Law. This Annual Software Maintenance Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

14) Entire Agreement.

a) This Annual Software Maintenance Agreement represents the entire agreement of CLIENT and COMPANY with respect to the maintenance of the software products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Annual Software Maintenance Agreement.

b) If any term or provision of this Agreement or the application thereof to any

person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Annual Software Maintenance Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Annual Software Maintenance Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Annual Software Maintenance Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

Hardware and System Software Agreement

1) Agreement to License or Sell Hardware. For the price set forth in the Investment Summary (Hardware & System Software), COMPANY agrees to license or sell and deliver to CLIENT, and CLIENT agrees to accept from COMPANY the hardware and system software products set forth in the Investment Summary.

2) License of Hardware.

a) Upon CLIENT's payment for the hardware listed in the Investment Summary, for the license fees set forth in the Investment Summary, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY a non-exclusive, nontransferable, non-assignable license to the hardware and system software products and accompanying documentation and related materials for internal business purposes of CLIENT, subject to the conditions and limitations in this section.

3) Price. CLIENT agrees to pay COMPANY and COMPANY agrees to accept from CLIENT as payment in full for the hardware and system software products,

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the price set forth in the Investment Summary at the following manner:

a) Twenty-five percent (25%) of the price of all hardware and system software products listed in the Investment Summary upon execution of this Agreement; and

b) The remaining balance of the price of each item delivered to CLIENT upon delivery of each product.

c) In the event of any disputed invoice, CLIENT shall provide written notice of such disputed invoice to Attention: COMPANY Controllera t the address listed on the cover of this Agreement. Such written notice shall be provided to COMPANY within fifteen (15) calendar days of CLIENT's receipt of the invoice. An additional fifteen (15) days is allowed for the CLIENT to provide written clarification and details for the disputed invoice. COMPANY shall provide a written response to CLIENTt hat shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by COMPANY and CLIENT to resolve any issues presented in CLIENT's notification to COMPANY. CLIENT may withhold payment of only the amount actually in dispute until COMPANY provides the required written response, and full payment shall be remitted to COMPANY upon COMPANY's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if COMPANY is unable to complete all material action steps required to remedy the disputed matter because CLIENT has not completed the action steps required of them, CLIENT shall remit full payment of the invoice.

d) Any invoice not disputed as described above shall be deemed accepted by the CLIENT. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, COMPANY reserves the right to suspend delivery of a ll services under the Investment Summary, the Software License Agreement, the Professional Services Agreement, the

Maintenance Agreement and this Hardware and System Software Agreement.

4) Costs and Taxes.

a) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in transit for the hardware and system software products from the supplier's place of manufacture to CLIENT's site.

b) The price listed in the Investment Summary does not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.

5) F.O.B. Point. Delivery of each hardware and system software product shall be F.O.B. CLIENT's site.

6) Schedule of Delivery. Delivery of each hardware and system software product shall take place according to mutually agreeable schedule, butC OMPANY shall notb e liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.

7) CLIENT Delays. If any act orf ailure to act by the CLIENT delays COMPANY's performance, COMPANY shall be excused from performance for an amount of time commensurate with the delay caused by CLIENT. CLIENT acknowledges that its delay may excuse COMPANY from performance for an amount of time greater than the delay caused by CLIENT. Such delays by CLIENT that may cause COMPANY to delay performance include, but are not limited to failure to have prepared any data in the form and format requested by COMPANY, on or before the date specified by COMPANY or to have verified such data for accuracy, submission of erroneous data to COMPANY or CLIENT's failure to have

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completely prepared the Hardware's installation site prior to the Hardware's actual delivery including, but not limited to, failure to have all electrical work and cable installation completed.

8) Installation and Verification. If itemized in the Investment Summary, the price includes installation of the hardware and system software products. Upon the completion of installation, CLIENT shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute CLIENT's acceptance of the hardware and system software products. Such acceptance shall be final and conclusive except for latent defects, fraud, and such gross mistakes as amount to fraud and rights and remedies available to CLIENT under the paragraph hereof entitled Warranties.

9) Site Requirements. CLIENT shall prepare the installation site prior to the delivery of the hardware and system software. CLIENT is solely responsible for and will furnish all necessary labor and material to install all associated electrical lines, CRT cables, and telephone lines for communication modems. CLIENT is responsible for installing all required cables.

10) Warranties.

ALL WARRANTIES RELATING TO THE HARDWARE AND SYSTEM SOFTWARE ARE PROVIDED DIRECTLY FROM THE HARDWARE MANUFACTURERS AND/OR SOFTWARE PUBLISHERS UNDER THE TERMS AND CONDITIONS OF THEIR RESPECTIVE WARRANTIES. THE WARRANTIES SET FORTH IN THIS HARDWARE AND SYSTEM SOFTWARE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

11) Maintenance. There is no hardware maintenance provided pursuant to this Agreement. Hardware warranty and/or maintenance are typically provided by the manufacturer or a Third Party. In situations where COMPANY and the CLIENT agree that COMPANY will provide hardware maintenance, such hardware maintenance shall be governed by the terms of COMPANY's Annual Hardware Maintenance agreement.

12) Limitation of Liability. CLIENT expressly assumes sole responsibility for the selection and use of the hardware and system software. In no event shall COMPANY be liable for special, indirect, incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the hardware and system software products. COMPANY's liability for damages arising out of this Hardware and System Software Agreement, whether based on a theory of contract or tort, including negligence and strict liability shall be limited to the price of the hardware and system software products set forth in the Investment Summary. The prices set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Hardware and System Software Agreement.

13) Dispute Resolution. In the event of a dispute between the parties under this Hardware and System Software Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

14) Governing Law. This Hardware and System Software Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

15) Cancellation or Termination. In the event of cancellation or termination of this Hardware and System Software Agreement, CLIENT will make payment to COMPANY

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for all products and related services and expenses delivered or incurred prior to the termination or cancellation of this Hardware and System Software Agreement. CLIENT may also be responsible for restocking fees.

16) Entire Agreement.

a) This Hardware and System Software Agreement represents the entire agreement of CLIENT and COMPANY with respect to the hardware and system software products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Hardware and System Software Agreement.

b) If any term or provision of this Hardware and System Software Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Hardware and System Software Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Hardware and System Software Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Hardware and System Software Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

17) Approval of Governing Body.

CLIENT represents and warrants to COMPANY that this Hardware and System Software Agreement has been approved by its governing body and is a binding obligation upon CLIENT. CLIENT represents and warrants that funds are

appropriated and/or arrangements have been made with a third party financier.

Annual Hardware Maintenance Agreement

1) **Scope of Agreement.** For the prices set forth in the Investment Summary, CLIENT requests to cover and COMPANY agrees to cover the equipment specified on the cover of this agreement in accordance with the following terms and conditions. COMPANY requires all like-kind hardware to be covered (i.e. ALL cash drawers, ALL receipt printers, etc.).

2) **Price.** The CLIENT agrees to pay the Annual Hardware Maintenance fee specified in this Agreement. COMPANY guarantees this fee for the term of the Annual Hardware Maintenance Agreement. However, fees for subsequent years are subject to change.

3) **Payment.** CLIENT agrees to pay the Annual Hardware Maintenance Agreement fee in accordance with the following terms:

a) The CLIENT will be invoiced 12 months after the initial installation of the hardware.

b) In order for equipment to be eligible to be covered under this Annual Hardware Maintenance Agreement, the equipment must be covered beginning 12 months after the installation date of the equipment and must remain under continuous coverage on the Annual Hardware Maintenance Agreement

4) Equipment Maintenance Program

Terms. COMPANY agrees to provide the maintenance on the equipment specified under this agreement in accordance to the following terms:

a) In the event of equipment failure, COMPANY will repair the defective equipment and provide the CLIENT with "like or near like" equipment while the defective equipment is being repaired.

b) CLIENT shall notify COMPANY of equipment failure. Upon notification, COMPANY will ship via over-night service to the CLIENT the appropriate loaner equipment. The CLIENT shall package the

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defective equipment in its original container and ship the equipment to COMPANY.

c) Once the equipment is repaired, it will be shipped to the CLIENT. Upon receipt of the repaired equipment the CLIENT shall ship the loaner equipment back to COMPANY. The loaner equipment should be shipped back to COMPANY within two days of receiving the repaired equipment. The CLIENT agrees to pay daily rental fees to COMPANY if the loaner equipment is not shipped back to COMPANY within the time frame specified.

d) The CLIENT is responsible for shipping cost related to shipping equipment to COMPANY. COMPANY is responsible for shipping cost related to shipping equipment to the CLIENT.

5) Definitions. The following definitions apply to the terms of this Annual Hardware Maintenance Agreement:

a) **Loaner Equipment.** Equipment loaned to the CLIENT by COMPANY for use while the CLIENT's equipment is being repaired.

b) **Like or Near-Like Equipment.** Equipment compatible with the CLIENT's computer system and capable of performing the tasks performed by the equipment being repaired.

6) Limitation of Liability. The liability of COMPANY is hereby limited to that claim for the money judgment not exceeding the fees paid by the CLIENT for services under this Annual Hardware Maintenance Agreement. The CLIENT shall not in any event be entitled to, and COMPANY shall not be liable for, indirect, special, incidental, consequential or exemplary damages of any nature.

7) Governing Law. This Annual Hardware Maintenance Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

8) Entire Agreement.

a) This Annual Hardware Maintenance Agreement represents the entire agreement of CLIENT and COMPANY with respect to the maintenance of the hardware and system software products and supersedes any prior

agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Annual Hardware Maintenance Agreement.

b) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Annual Hardware Maintenance Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Annual Hardware Maintenance Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Annual Hardware Maintenance Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

Third Party Product Agreement

1) Agreement to License or Sell Third Party Products. For the price set forth in the Investment Summary (Hardware & System Software), COMPANY agrees to license or sell and deliver to CLIENT, and CLIENT agrees to accept from COMPANY the third party products set forth in the Investment Summary.

2) License of Third Party Software Products.

a) Upon CLIENT's payment for the third party software products listed in the Investment Summary, for the license fees set forth in the Investment Summary, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY a non-exclusive, nontransferable, non-

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assignable license to use the third party software products and accompanying documentation and related materials for internal business purposes of CLIENT, subject to the conditions and limitations in this section.

b) Ownership of the third party software products, accompanying documentation and related materials, shall remain with the third party manufacturer or supplier.

c) The right to transfer this license to a replacement hardware system is governed by the Third Party. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to CLIENT. Advance written notice of any such transfer shall be provided to COMPANY.

d) CLIENT agrees that the third party software products are proprietary to the third party manufacturer or supplier and have been developed as a trade secret at the third-party's expense. To the extent permitted by law, CLIENT agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the third party software products or accompanying documentation.

e) CLIENT shall not perform decompilation, disassembly, translation or other reverse engineering on the software products.

f) CLIENT may make copies of the software products for archive purposes only. CLIENT will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use.

3) Price. CLIENT agrees to pay COMPANY and COMPANY agrees to accept from CLIENT as payment in full for the third party products, the price set forth in the Investment Summary at the following manner:

a) Twenty-five percent (25%) of the price of all third party products listed in the Investment Summary upon execution of this Agreement; and

b) The remaining balance of the price of each item delivered to CLIENT upon delivery of each product.

c) In the event of any disputed invoice, CLIENT shall provide written notice of such disputed invoice to Attention: COMPANY Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to COMPANY within fifteen (15) calendar days of CLIENT's receipt of the invoice. An additional fifteen (15) days is allowed for the CLIENT to provide written clarification and details for the disputed invoice. COMPANY shall provide a written response to CLIENT that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by COMPANY and CLIENT to resolve any issues presented in CLIENT's notification to COMPANY. CLIENT may withhold payment of only the amount actually in dispute until COMPANY provides the required written response, and full payment shall be remitted to COMPANY upon COMPANY's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if COMPANY is unable to complete all material action steps required to remedy the disputed matter because CLIENT has not completed the action steps required of them, CLIENT shall remit full payment of the invoice.

d) Any invoice not disputed as described above shall be deemed accepted by the CLIENT. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, COMPANY reserves the right to suspend delivery of all services under the Investment Summary, the Software License Agreement, the Professional Services Agreement, the Maintenance Agreement and this Third Party Product Agreement.

4) Costs and Taxes.

a) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in

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transit for the third party products from the supplier's place of manufacture to CLIENT's site.

b) The price listed in the Investment Summary does not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.

5) F.O.B. Point. Delivery of each third party product shall be F.O.B. CLIENT's site.

6) Schedule of Delivery. Delivery of each third party product shall take place according to mutually agreeable schedule, but COMPANY shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.

7) Installation and Verification.

a) If itemized in the Investment Summary, the price includes installation of the third party products. Upon the completion of installation, CLIENT shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute CLIENT's acceptance of the third party products. Such acceptance shall be final and conclusive except for latent defects, fraud, and such gross mistakes as amount to fraud and rights and remedies available to CLIENT under the paragraph hereof entitled Warranties.

8) Site Requirements. CLIENT shall provide:

- a) a suitable environment, location and space for the installation and operation of the third party products;
- b) sufficient and adequate electrical circuits for the third party products; and
- c) installation of all required cables.

9) Warranties.

a) COMPANY is authorized by the manufacturer or supplier of all third party software products listed in the Investment Summary to grant licenses or sublicenses to such products.

b) Unless otherwise noted in any attached addendum, COMPANY warrants that each third party product shall be new and unused, and if CLIENT fully and faithfully performs each and every obligation required of it under the Third Party Product Agreement, CLIENT's title or license to each third party product shall be free and clear of all liens and encumbrances arising through COMPANY.

c) The parties understand and agree that COMPANY is not the manufacturer of the third party products. As such, COMPANY does not warrant or guarantee the condition of the third party products or the operation characteristics of the third party products. d) THE WARRANTIES SET FORTH IN THIS THIRD PARTY PRODUCT AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

10) Maintenance. It shall be the responsibility of CLIENT to repair and maintain the third party products after acceptance. Support for Third Party Application Software is not provided by COMPANY unless otherwise specified in this Agreement. COMPANY's responsibility is limited to delivering the Third Party Application Software and installing the software if installation services are provided in this Agreement.

11) Limitation of Liability. CLIENT expressly assumes sole responsibility for the selection and use of the Third Party Application Software. In no event shall COMPANY be liable for special, indirect,

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incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the third party products. COMPANY's liability for damages arising out of this Third Party Product Agreement, whether based on a theory of contract or tort, including negligence and strict liability shall be limited to the price of the third party products set forth in the Investment Summary. The prices set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Third Party Product Agreement.

12) Dispute Resolution. In the event of a dispute between the parties under this Third Party Product Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

13) Governing Law. This Third Party Product Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.

14) Cancellation or Termination. In the event of cancellation or termination of this Third Party Product Agreement, CLIENT will make payment to COMPANY for all products and related services and expenses delivered or incurred prior to the termination or cancellation of this Third Party Product Agreement.

15) Entire Agreement.

a) This Third Party Product Agreement represents the entire agreement of CLIENT and COMPANY with respect to the third party products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Third Party Product Agreement.

b) If any term or provision of this Third Party Product Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Third Party Product Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Third Party Product Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Third Party Product Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

16) Approval of Governing Body. CLIENT represents and warrants to COMPANY that this Third Party Product Agreement has been approved by its governing body and is a binding obligation upon CLIENT. CLIENT represents and warrants that funds are appropriated and/or arrangements have been made with a third party financier.

General Return Merchandise Authorization (RMA) Policy.

a) In order to return or replace any product ordered from COMPANY, CLIENT will need to request and obtain an RMA number from appropriate COMPANY personnel. RMA numbers will be issued at the discretion of COMPANY and products returned without an RMA number may be refused by COMPANY. COMPANY reserves the right to refuse the return of any product or to refuse the issuance of an RMA number.

b) All shipping costs are the responsibility of the CLIENT. COMPANY recommends the use of a traceable and insurable shipping source. COMPANY will not be responsible

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for lost or damaged products as a result of the shipping process.

c) Qualifying products must be returned unopened with original packaging and materials unless otherwise agreed upon by COMPANY. The following situations will result in the refusal of an RMA number and credit will not be issued to client:

- Opened inkjet or laser jet printers
- Opened Third Party Software
- Damaged products as a result of irregular use or mishandling by customer

d) Products may only be returned to COMPANY for account credit after an RMA number has been issued by COMPANY. All returns are subject to a restocking fee of 20% of original purchase price. Failure to comply with this policy will result in a refusal of credit and future product placement.

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The Data Conversion Process

Purpose

One of the most difficult aspects of software transition revolves around data conversion. This process takes place in one of two ways:

1. The manual method - In the manual mode the Client enters data from the existing system into the new Tyler Technology system.
2. The automated method - In the automated mode a software program is written or coded in order to facilitate moving information from the existing system to the new Tyler Technology system.

This document is provided to aid the Client in understanding the automated conversion process and provide clear direction as to the responsibility and the scope of the process.

Who should read this document?

The obvious answer to this question is the individual at the Client site that is most responsible for the transition. Specifically it should be:

1. The individual responsible for extracting and providing data from the old system to the Tyler Technology system.
2. Any individuals responsible at a department level.
3. Any individual that would benefit from understanding the conversion process

The Conversion Process

The process itself has a predefined set of steps that must take place for a successful conversion.

1. Initial data extraction - The Client must perform the preliminary extraction and transmission of data.
2. Data Evaluation - Tyler Technologies will then be responsible for evaluating the information that has been transmitted. Upon a successful evaluation the Client will be contacted for further scheduling.
3. Conversion scheduling - Once a schedule has been decided upon, Tyler Technologies will proceed in development of the conversion programs. During the development step, the Client will be responsible for providing knowledge and insight into the information from their current system.
4. On-Site Conversion - Upon Tyler Technology's arrival at the Client's site for the conversion, the Client will be responsible for a final extraction of the data. In most situations the Client will not have to transmit the final extraction to Tyler Technologies. The Tyler Technology trainer on site will assist the Client in preliminary INCODE application setup that is required for the conversion as well as execute the conversion programs and assist in the verification of the converted information's integrity.

Even though the Tyler Technology trainers possess a great deal of knowledge in the area of conversion, it is ultimately the Client's responsibility to validate any converted data. The sections that follow clearly outline and describe each of the above steps.

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Data Extraction and Transmission of Data

As stated in the contract, the Client must supply data in ASCII file format with unpacked data fields. This terminology is sometimes considered confusing. The ASCII (pronounced as AS-key) is an abbreviation that represents the American Standard Code for Information Interchange. This standard was established in 1967 and still represents one of the most important standards in the computer industry. Since that time, some vendors have deviated from this standard. An example would be IBM's has a proprietary standard format abbreviated EBCDIC (pronounced EBB-see-dik). This is their current standard on the System36 and AS400. Vendors also use compression techniques in their data structures to pack numeric fields and dates. Since these techniques are not standard and vary from vendor to vendor, we are unable to process this information. In the simplest of terms the Client's data that is transmitted to The Tyler Technology system should be legible in a standard text processing program such as Windows textpad or wordpad. The characters that you view on screen should be the same characters that are on your computer keyboard.

File Descriptions and layout

The contract further states that the Client must supply sufficient file descriptions and layout information for the data. Sometimes file descriptions will be referenced as data definitions. Normally data files have one row after another. Each row represents a record or grouping of information. As an example, a vendor file would normally have a row for each vendor in the system. The rows then have to be broken down further into columns or fields. An example of a field in the vendor file could be vendor name. The file description provides the information needed to know exactly what position each field starts and stops in each row. In all cases, file descriptions are absolutely necessary for any type of conversion.

Media Type

Also outlined in the contract is the media type that the information can be transmitted to The Tyler Technology system. Unless the Client's existing system has a unix operating system, the most desirable media to transmit the data would be a cd. In situations where a writable cd is not available the Client can submit the information on a zip disk or 4mm tape. If a 4mm tape is used then the Client should transfer the information to the tape using the standard Windows backup software. The Client may also submit the data via email when the Client has a compression utility such as winzip and a fast and reliable internet connection. When the Client's existing system has a unix operating system, the Client may use any of the methods mentioned above with the additional transmittal method of a 4mm tape with the maximum capacity of 4gb or a 1/4 inch tape with the maximum capacity of 1gb. The Client should include the Data Transmission Form with the media. If the Client is using email to transmit the data please include the information from the Data Transmittal Form in the email's text or an attachment. In situation where none of the above options are available to the Client, arrangements should be made with Tyler Technologies as to viable alternatives. These alternatives may involve additional fees.

There are certain vendors that Tyler Technologies has had considerable conversion experience and has developed processes to extract the information from their proprietary data files. Other vendors store their data in Microsoft Access or Microsoft SQL Server database. It is possible in these situations that the Client can provide their existing data files in their current state without data extraction. In this scenario the Client would only be responsible for providing a backup of their current data.

The first data extraction is for the sole purpose of developing the conversion software. This extraction should contain all the tables or files that are to be converted along with the appropriate record layouts. An incomplete extraction can produce time delays and undesirable results during the actual conversion.

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Final Data Extraction

The final data extraction will be performed on the day of or a day very close to the final conversion. This extraction will be coordinated with Tyler Technology's conversion personnel and implementation coordinator.

Data Extraction Assistance

In almost all instances the Client owns its data, but the current software provider's file descriptions will be considered proprietary information. There will be scenarios where the software provider will not provide file descriptions or will provide the descriptions for a fee. Any fees required by the vendor are the responsibility of the Client and are not included in the contract. In many situations the data will have proprietary fields with no easy solution for extraction. Tyler Technology's years of experience with data conversions has led to many innovative techniques for data extraction. When the Client has exhausted their available options, Tyler Technologies can assist with the data extraction for additional fees. The Client will have the responsibility of contacting their sales representative for a quote for additional services. Upon receipt of a purchase order from the Client, Tyler Technologies will proceed with this assistance.

Conversion Scheduling

Once Tyler Technologies has received the data from the Client a three stage evaluation process will be implemented. Media will be evaluated as to its readability. Each data file transmitted will be reviewed as to its format, file description, and estimated complexity. When these two stages have been successfully completed, Tyler Technology's implementation coordinator will schedule with the Client a time for the data conversion, conversion assistance, and training. The third stage of the evaluation is more detailed and will follow in approximately 3 weeks. During this stage the data will be evaluated for its completeness, validity, and mandatory fields needed in the conversion. If problems arise during this process, Tyler Technologies will communicate to the Client the problems. The Client will be responsible for resolving the problems in a timely manner as possible so that the schedule is not affected. If no problems arise then the Client can assume that Tyler Technologies is on schedule.

Timing is an important element during a data conversion. Scheduling of the conversion will revolve around the most advantageous cutoff dates. For example, if a Client bills their utility customers at the end of each month, the best time to do the conversion would be during the last two weeks of the month. Financial conversions will be easier to validate if performed after a period has been closed. All of these elements will be discussed by the implementation coordinator with the Client during scheduling.

Conversion Program Development

After Tyler Technologies receives and validates the Client's data, the development of the conversion program will begin. During the development process, questions about the Client's current data or application may be raised. The Client is responsible for providing contact information for staff member(s) that are capable of responding to questions for each module being converted.

It is important for the Client to understand that Tyler Technologies has a minimal amount of experience with the Client's current application. Questions raised by Tyler Technologies will be the result of analyzing data. There are a significant number of times when the data being analyzed does not correspond with the information that the Client views on the screen in their current application. Providing staff members that have an in-depth knowledge of the Client's current application is a key element of a successful conversion.

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Part of the development process will be testing the program with the data provided in the first extraction. This testing will take place at Tyler Technology's facilities. Any potential problem areas will be communicated to the Client.

Conversion Assistance

As part of the contract, a Tyler Technology's trainer will be at the Client location during the actual conversion. The trainer will provide conversion assistance in the areas of preliminary setup, conversion program execution and data validation. Even though the primary focus of the trainer is a successful completion of the conversion process, the trainer will be providing a limited amount of training in certain areas. In a majority of cases, the trainer responsible for the conversion assistance will also be responsible for the training that will occur either before or after the conversion.

It is important to note that the trainer will not be the programmer responsible for the creating or modifying conversion program. The trainer will be responsible for conveying to the programmer discovery of Client specific information before the final conversion and any mistakes found after the conversion. The Client will need to facilitate the trainer by providing a comfortable place to work, access to facilities before and after normal work hours and telephone communications.

Data Validation

The final step in the conversion process is the data validation. Much attention will be given to data integrity during the testing phase by the program developers. The conversion assistant will also spend time testing the integrity of the information. Balances and the output of processes will be tested after the conversion. A visual inspection of different modules will be performed by choosing different records on an random base. But Data validation is ultimately her responsibility of the Client.

Conclusion

After over 20 years and several hundred conversion experiences, Tyler Technologies has determined that there are several key factors in a successful conversion. The Client needs to have a realistic expectation of what is going to happen. The Client must understand that there are no pleasant conversions; therefore a successful conversion is one that provides the least amount of displacement and discomfort. More than likely, the Client will have to change their schedules and prepare for a heavier work load during the conversion. The Client has to realize that the data on the system being converted is exactly how the data will be on the new system. The conversion process does not clean up or correct any information during the conversion process. The old adage "garbage in, garbage out" is very relevant during the conversion process. One example would be a general ledger conversion where the current system's ledger is out of balance. After the conversion, the INCODE general ledger will be out of balance. Conversions maybe somewhat mystical but the process is not magical. And finally, to have a successful conversion, there must be a team approach by all those involved.