



AGENDA: \_\_\_\_\_ August 6, 2024

July 18, 2024

Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

**SUBJECT: APPROVE AN AGREEMENT WITH THE COMPUTER SOLUTION COMPANY OF VIRGINIA, LLC FOR BREATH ALCOHOL DATABASE**

Dear Board Members:

**RECOMMENDATIONS:**

Approve an agreement (Procurement Contract No. 26738) between the Alameda County Sheriff's Office Crime Lab and The Computer Solution Company of Virginia, LLC (Principal: David Romig II; Location: Winston-Salem, North Carolina) for installing software updates, maintenances and additional services related to the breath alcohol data management system in the amount not to exceed \$111,323, effective upon execution until terminated pursuant to the provisions of the agreement.

**DISCUSSION/SUMMARY:**

On January 23, 2024, your Board approved (Item No. 34) accepting the FY2023 STEP Crime Lab Grants from the National Highway Traffic Safety Administration (NHTSA) pass through the State of California, Office of Traffic Safety (OTS) Programs to operate a countywide forensic breath alcohol program to test individuals suspected of driving under the influence of alcohol.

Since 2004, the Sheriff's Office Driving Under the Influence (DUI) Unit has arrested more than 4,000 suspected DUI drivers, while making a noticeable reduction in DUI related injuries and fatalities within the unincorporated area of Alameda County. The Alameda County Sheriff's Office (ACSO) is committed to DUI enforcement, traffic safety and the safety of its residents.

As part of an Office of Traffic and Safety (OTS) funding, the ACSO Crime Lab plans to replace its current Draeger breath alcohol data management system. The ACSO Crime Lab is requesting to purchase a new breath alcohol data management system named Forensic Advantage - Breath Alcohol Database (FA BrAD). FA BrAD is a custom integration service data management system designed specifically for Draeger's 9510 breath alcohol equipment. FA BrAD connects to the

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breath alcohol instrument through ethernet, gets the encrypted data and results, and utilizes a publishing application to generate custom reports for evidential and investigative purposes. FA BrAD provides comprehensive data privacy and secure storage systems, while adhering to severe requirements to protect all acquired information, including test results, maintenance history, certifications, and responses to subpoena duces tecum requests.

This agreement has been approved as to form by The Computer Solution Company of Virginia, LLC, and County Counsel.

**SELECTION CRITERIA/PROCESS:**

*The Sheriff's Office requested and received Sole Source approval # 9583 on November 30, 2023, from the General Services Agency (GSA) Purchasing Department for the purchase of a Data Management System. A Federal Grants SLEB waiver # 2414 was granted by the Alameda County Auditor-Controller Agency, Office of Contract Compliance and Reporting (OCCR) on January 8, 2024, in the amount of \$111,323, which is valid through September 30, 2024.*

**FINANCING:**

No additional appropriations are required. The costs associated with the data management system will be fully offset with funding from the FY2023 STEP Crime Lab Grants from the National Highway Traffic Safety Administration (NHTSA) pass through the State of California, Office of Traffic Safety (OTS). There will be no increase in net County cost as a result of your approval.

**VISION 2026 GOAL:**

This agreement between the Alameda County Sheriff's Office Crime Lab and The Computer Solution Company of Virginia, LLC meets the 10x goal pathways of **Crime Free County** in support of our shared vision of **Safe and Livable Communities**.

Respectfully submitted,

DocuSigned by:  
*April Luckett-Fahimi*  
7B226C003FF04FA...

for

Yesenia Sanchez  
Sheriff-Coroner

YS:APE:ape

C-26738



THE COMPUTER SOLUTION COMPANY OF VIRGINIA, LLC

MASTER PURCHASE, LICENSE & SERVICES AGREEMENT

This Master Purchase, License & Services Agreement which includes the attached Exhibits (this "Agreement") is between The Computer Solution Company of Virginia, LLC ("TCSC") and County of Alameda by and through the Alameda County Sheriff's Office ("Customer").

NOW THEREFORE, in consideration of the mutual covenants set out in this agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

The attached Exhibits include:

Exhibit A.....PAYMENT SCHEDULE

Exhibit B.....STANDARD SOFTWARE MAINTENANCE SERVICES

Table with 4 columns: Customer, Address, Contact, Email, Phone, Mobile. Values include County of Alameda by and through the Alameda County Sheriff's Office, 2901 Peralta Oaks Ct., 3rd Floor, Oakland, CA 94605, Capt. Anthony De Sousa, adesousa@acgov.org.

By signing below, each of us agrees to the terms and conditions of this Agreement together with the attached Exhibits. This Agreement contains the complete and exclusive statement of the agreement between us relating to the matters referenced herein and replaces any prior oral or written representations or communications between us.

ACKNOWLEDGED AND AGREED TO BY:

The Computer Solution Company of Virginia, LLC

By: [Signature]
Name: David P. Romig, II
Title: Vice-President
Date: July 9, 2024

County of Alameda by and through the Alameda County Sheriff's Office

By: [Signature]
Name: Nate Miley
Title: President of the Board
Date: 8/13/2024

Approved as to Form:
Donna R. Ziegler, County Counsel
By: [Signature]
Clay Christianson, Deputy County Counsel



## 1. Definitions.

**"AFFILIATE"** shall mean the following, as applicable:

If Customer is not a government body or entity, then "Affiliate" shall mean an entity which, as of the Effective Date, controls, is controlled by or is under common control with the Customer. For the purpose of this definition, "control" means the legal or beneficial ownership of (a) fifty percent (50%) or more of the outstanding voting stock of a corporation, (b) fifty percent (50%) or more of the equity of a limited liability company, partnership or joint venture or (c) a general partnership interest in a partnership or joint venture. If Customer is an agency or department of a state, then "Affiliate" shall mean any other agency or department of such state and any county, city, town or municipality in such state. If Customer is a Council of Governments, then "Affiliate" shall mean any government body or entity on behalf of which Customer is entering into this Agreement, provided that Customer has disclosed the identify of such government body or entity to TCSC prior to the execution hereof.

**"APPLICATION RELATED SOFTWARE"** shall mean all premise-based computer software developed by TCSC and/or TCSC's partners, resellers, OEM or distributors for which said computer software is designed to help the end-user to perform specific tasks, and which computer software is listed on a Quotation/Order Form. Examples include, but are not limited to, Forensic Advantage®, Batch Processing, AuthXAccess, Property Connect, Expungment, Breath Alcohol Database, DNA Databank and PERK Software, which list may be modified at TCSC's sole discretion.

**"AUTHORIZED COPIES"**: Except as provided in Section 2, the only authorized copies of the Software and Documentation are the copies of each application software package defined in this Paragraph. They are:

- a. The single copy of the Software and the related Documentation delivered by TCSC under this Agreement; and
- b. Any additional copies made by Customer as authorized under Section 2

**"CONCURRENT USER LICENSE"** shall mean a license that restricts the total number of Users who can access the Application Related Software simultaneously at any one time as set forth in a Quotation/Order Form.

**"CONFIDENTIAL INFORMATION"**: Information disclosed or obtained by one party in connection with, and during the term of, this Agreement and designated as "Confidential" by the party claiming confidentiality at the time of disclosure. Confidential Information does not include any information which was previously known to the other party without obligation of confidence or without breach of this Agreement, is publicly disclosed either prior or subsequent to the other party's receipt of such information, or is rightfully received by the other party from a third party without obligation of confidence.

**"CUSTOMER LIAISON"**: A Customer employee assigned to act as liaison between Customer and TCSC for the duration of the Agreement. Within ten (10) days of the Effective Date, Customer shall notify TCSC of the name of the Customer Liaison.

**"CUT LIVE"** shall mean the moment a Customer processes a forensic event through its System.

**"DOCUMENTATION"** shall mean the reference, installation, administrative and programmer manuals relating to the use of the Software delivered by TCSC to Customer with the Software. Documentation shall not include marketing materials.

**"EFFECTIVE DATE"** shall mean the latter of the two dates in the above signature block.

**"Enterprise Server License"** shall mean a single server license of an Application Related Software or module as set forth in a Quotation/Order Form installed at a single specified Location for access and use by Customer remotely from multiple Locations owned or controlled by the Customer.

**"EXTERNAL USER"** shall mean a user of a website owned or operated by Customer, or on Customer's behalf, that is not an employee, onsite contractor, or onsite agent of Customer or its Affiliates.

**"INSTANCE SERVER LICENSE"** shall mean a single server license of an Application Related Software or module as set forth in a Quotation/Order Form installed at a single specified Location for access and use by the Customer solely from that same Location.

**"License Type(s)"** shall mean a Concurrent User License, Enterprise Server License, Instance Server License, and/or Named User License.

**"Location"** shall mean the address where the System is permitted to be installed as set forth in the applicable Quotation/Order Form.

**"Modules"** shall mean the following Software add-on functionality options to Forensic Advantage®: Batch Processing, AuthXAccess, Property Connect, and Expungment.

**"NAMED USER LICENSE"** shall mean a license to access and use an Application Related Software that is restricted to the maximum number of named Users as set forth in a Quotation/Order Form, without regard to number of devices and when purchased with an Enterprise license, without regard to number of Locations.



"**QUOTATION/ORDER FORMS**" shall mean the TCSC ordering schedules which are signed by TCSC and Customer (or a Customer Affiliate) to place orders for TCSC's Application Related Software products, Third Party Software or Services under this Agreement

"**SERVICES**" has the meaning set forth in Section 9 below.

"**SOFTWARE**" shall mean all or any portion of the Application Related Software product(s) and Documentation provided by TCSC to Customer, whether in machine-readable or printed form, which application software product(s) are listed in the applicable Quotation/Order Form and all corrections, updates, upgrades, and enhancements thereto.

"**SOFTWARE LICENSE**" shall mean the specific number of Application Related Software licenses granted by TCSC to Customer for use at a Location subject to the term of this Agreement as set forth in a Quotation/Order Form, addendum or amendment to this Agreement.

"**SSMS**": The TCSC Standard Software Maintenance Services as set forth in Exhibit B.

"**STATEMENTS OF WORK**" or "**SOWs**" shall mean statements of work which are signed by TCSC and Customer (or a Customer Affiliate) to place orders for professional services to be performed by TCSC under this Agreement.

"**SUPPORTED SOFTWARE**" shall mean Software for which Customer is entitled to receive Software Maintenance.

"**SYSTEM**" shall mean the Software, Third Party Software and Services described in the applicable Quotation/Order Form or Statement of Work.

"**SUBSYSTEM**" shall mean a component of the System comprised of the Software separately noted on the Quotation/Order Form Summary and, Third Party Software and Services associated with that separately noted Software.

"**Sublicensed Software**" shall mean those components of the Application Related Software that are sublicensed by TCSC.

"**SYSTEM CHARGE**" shall mean collectively, as specified in each Quotation/Order Form or Statement of Work (as applicable), fees for Software and Third Party Software licenses and fees for installation, training and other services.

"**THIRD PARTY SOFTWARE**" shall mean (I) open-source software provided to Customer by TCSC; (II) operating system software and database software; and (III) software that the copyrights therein are owned by a party other than TCSC and installed on Customer's equipment. This definition of Third Party Software expressly excludes any products that are considered Application Related Software.

"**UPGRADE**" shall mean any enhanced and/or improved versions of the Software released after execution of this Agreement.

## 2. Software License and Restrictions.

- a. Conditional upon Customer's compliance with the terms and conditions of this Agreement, including without limitation payment of all Annual Maintenance Fees, TCSC, and its licensors, grants to Customer a limited, non-exclusive, perpetual (subject to Section 12) and non-transferable license to (i) install and permit its employees ("Users") to use the Software solely in accordance with all License Type(s), Location, User and use restrictions as set forth on a Quotation/Order Form for Customer's internal purposes.
- b. **Restrictions.** Customer shall not, and shall not permit its employees to, (i) copy or otherwise reproduce the Software in whole or in part, except for such copying as is essential for archival, test and system recovery purposes; (ii) modify, adapt, disassemble, decompile, or otherwise reverse engineer the Software or any part thereof (or otherwise attempt to create or divulge any related source code); (iii) create Modifications; or (v) rent, lease, lend, distribute, transfer, assign or use the Software for time sharing or bureau use or to publish or host the Software for others to use (other than the limited right to permit External Users to access and use the Application Related Software in accordance with this Agreement); or (v) use the Software in any manner to provide services to any third party (other than the limited right to permit External Users to access and use the Application Related Software in accordance with this Agreement) or any facility (other than a Location). For purposes of clarification, Customer shall not be prohibited from remotely accessing the Software, provided such remote access is to provide services for a Location and otherwise in compliance with this Agreement.
- c. Except as otherwise provided in this Agreement, Customer shall not, and shall not permit its employees to, access, sell, lease, assign, sublicense or otherwise transfer the Software or any portion thereof, or this Agreement.

## 3. Installation and Training.

TCSC will provide the installation services and training services specified in a Quotation/Order Form or Statement of Work. Customer will provide prompt and reasonable access to Customer's information, documentation, facilities, equipment, hardware and personnel as requested by TCSC to facilitate TCSC's performance of the installation services and training services.

## 4. Maintenance.

- a. Software Maintenance. Subject to Customer's payment of the applicable maintenance fees ("Software Maintenance Fees") to TCSC, TCSC will provide maintenance, software correction and support services for the Software, excluding Third Party Software and Project Deliverables, (such services, "Software Maintenance") during the term of Customer's SSMS and the concurrent warranty period.

Software Maintenance will be provided in accordance with TCSC's SSMS, in effect as of the Effective Date and attached hereto as Exhibit B.

**b.** No Additional Maintenance. TCSC will have no obligation to provide any maintenance or support services beyond such Software Maintenance as Customer may be entitled to receive by virtue of having paid the associated fees unless such maintenance or support services are expressly set forth in a Quotation/Order Form or Statement of Work.

## 5. Fees & Additional Purchases.

**a.** Payment Terms. The attached Exhibit A sets forth the manner in which fees and payments will be allocated and made under this Agreement. Customer will pay without deduction or set-off the fees set forth on the Quotation/Order Form for each TCSC Offering purchased or licensed by Customer and services ordered under any Statement of Work. All payments are due within 30 days of the invoice date. Customer shall pay any and all applicable federal, state and local sales, use, value added, excise, duty and any other taxes of any nature (except any taxes based on TCSC's net income) assessed on the TCSC Offerings. To the extent Customer imposes additional requirements on TCSC for Services other than those expressly provided in this Agreement, TCSC retains the right to make additional price adjustments and/or any other adjustments that may be necessitated. Before performing these additional Services, TCSC will notify Customer that the Services are subject to additional charge(s).

**b.** If Customer wishes to add additional TCSC Offerings, Customer agrees to pay the additional fees at the then current Software and Services prices in effect. Software Maintenance Fees shall be increased according to the additional Software fees on the next annual billing date after the additional Software is added. With said payment, the license provided in Section 2 permits Customer's use of the Software.

**c.** Annual Software Maintenance. Customer shall pay without deduction or set-off annual Software Maintenance Fee(s) ("Annual Maintenance Fee(s)") as set forth on the Quotation/Order Form for each TCSC Offering purchased or licensed by Customer. TCSC reserves the right to increase Customer's Annual Maintenance Fees on the anniversary of Customer's Software renewal. All payments are due within 30 days of the invoice date. Customer shall pay any and all applicable federal, state and local sales, use, value added, excise, duty and any other taxes of any nature (except any taxes based on TCSC's net income) assessed on Customer's Annual Maintenance Fees.

**d.** Exclusions. The System Charge does not include, and Customer agrees to pay, any additional sums for:

- (i) Software, Third Party Software and services not included as part of the System Charge and requested by Customer (including software changes or reconfiguration).
- (ii) Services required by or incurred due to: (1) incomplete site preparation, in accordance with an agreed-upon schedule; or (2) any Third Party Software not furnished with the System that either fails to interface or integrate with the System or materially impairs the System's operation.
- (iii) All of TCSC's direct, out-of-pocket travel and associated living expenses, including applicable travel policy per diems and other travel fees.
- (iv) Charges for shipping, freight, insurance, loading, unloading and storage associated with the delivery, installation and repair of the System.

## 6. Confidentiality.

**a.** Subject to the requirements of the Freedom of Information Act (FOIA) and/or other comparable applicable state law, each party shall hold all Confidential Information in trust and confidence for the party claiming confidentiality and not use such Confidential Information absent express written consent by the party claiming confidentiality. The other party agrees not to disclose any such Confidential Information, by publication or otherwise, to any other person or organization. Customer agrees to timely notify TCSC of any request(s) made for disclosure of confidential information.

**b.** Customer hereby acknowledges and agrees that all Licensed Products are Confidential Information and proprietary to TCSC. In addition to the other restrictions set forth elsewhere in this Agreement or otherwise agreed to in writing, Customer agrees to implement all reasonable measures to safeguard TCSC's proprietary rights in the TCSC Offerings, including without limitation the following measures:

- (i) Customer shall only permit access to the TCSC Offerings to those employees who require access and only to the extent necessary to perform Customer's internal processing needs.
- (ii) Customer shall not permit removal of copyright or confidentiality labels or notifications from its proprietary materials; and
- (iii) Customer shall not attempt to disassemble, decompile or reverse engineer the Software.



c. In the event that a party is required by law to disclose Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt prior notice of such pending disclosure so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. The Receiving Party shall cooperate with any attempts by the Disclosing Party to obtain such protective order or other appropriate remedy. In the absence of a protective order or a receipt of a waiver, the Receiving Party agrees to furnish only that portion of the Confidential Information that it is legally required to disclose and such disclosure shall not be a breach of this Agreement.

d. Notwithstanding the foregoing: nothing herein shall be construed as to prevent TCSC or its employees from providing services or developing materials that are similar or identical to or competitive with those developed or provided under this Agreement; TCSC may disclose Customer's Confidential Information to contractors engaged by TCSC to assist in the performance of any Services hereunder; TCSC may disclose to its licensors Customer's identity and such other information regarding Customer's use of the Software as such licensors may require be disclosed by TCSC; and TCSC may use any ideas, concepts, know-how and techniques used, discovered or reduced to practice while furnishing TCSC Offerings to Customer for the benefit of TCSC and other TCSC customers.

e. Customer agrees that in addition to any other remedies that may be available at law, equity or otherwise, TCSC shall be entitled to seek and obtain a temporary restraining order, injunctive relief, or other equitable relief against the continuance of a breach or threatened breach of this Section 6 on Confidentiality and Non-Disclosure without the requirement of posting a bond or proof of injury as a condition for the relief sought.

## 7. Ownership.

a. Except for the limited license set forth herein, all rights, title and interests to and in the Software and Services, including without limitation all trademarks, service marks, patents, copyrights, trade secrets and other proprietary rights therein, are reserved and will remain the exclusive property of TCSC or its licensors. Customer will not take any action that jeopardizes TCSC's or its licensors' proprietary rights. Customer acknowledges and agrees that it acquires no right in the Software, except the limited use license specified in Section 2 above. TCSC and its licensors, as applicable, will own all rights in any Authorized Copies of the Software made by Customer. Customer agrees to take, at TCSC's sole expense, any actions reasonably requested by TCSC to reflect, confirm or perfect such rights in TCSC's or an applicable licensor's name. Customer acknowledges that any breach of this Agreement by its employees and External Users shall constitute a breach by Customer.

## 8. Warranty, Indemnity, Remedies.

a. Software Warranty. TCSC warrants, for Customer's benefit only, that Supported Software will perform substantially in accordance with the Documentation for a period of one (1) year after the date on which Customer's license for such Supported Software is i) initially installed by TCSC per the Quotation/Order Form and SOW, or ii) if by Customer, initially delivered to Customer by TCSC. TCSC's warranty shall not apply to Supported Software that has been modified by Customer or third parties, or to Supported Software that is installed on computer systems not approved by TCSC. Customer agrees to notify TCSC in writing before expiration of the preceding period of the failure of any Supported Software to satisfy the foregoing warranty and, after verification thereof by TCSC, TCSC will undertake to correct any reported error in accordance with its Software Maintenance Guide. Customer acknowledges that the Software may not satisfy all of Customer's requirements and the use of the Software may not be uninterrupted or error-free. TCSC warrants, for Customer's benefit only, that it possesses the necessary intellectual rights to license to Customer the Supported Software provided hereunder.

b. Services Warranty. TCSC warrants that: (i) it will perform the Services in a professional and workmanlike manner; and (ii) the Project Deliverables will perform substantially in accordance with the specifications set forth in the applicable Statement of Work and applicable Documentation for a period of thirty (30) days after delivery to Customer. Customer agrees to notify TCSC in writing before expiration of the preceding period of the failure of any Project Deliverable to satisfy the foregoing warranty and, after verification thereof by TCSC, TCSC will undertake to correct any reported error in accordance with its Software Maintenance Guide.

c. Intellectual Property Indemnity. If a lawsuit is brought against Customer claiming the Software, other than Third Party Software, infringes a U.S. copyright or misappropriates a third party trade secret, TCSC will defend Customer in the lawsuit at TCSC's expense, and TCSC will pay the damages and costs finally awarded against Customer or agreed upon in settlement in the action, but only if: (i) Customer notifies TCSC in writing promptly upon learning that a claim may be asserted, but in any case not later than five (5) days after Customer receives notice of such lawsuit; (ii) Customer grants TCSC sole control over the defense of the claim and any negotiation for its settlement or compromise; (iii) Customer accepts any remedial actions provided by TCSC pursuant to Paragraph 8(e) below; and (iv) Customer provides assistance as TCSC reasonably requests. TCSC's obligation to indemnify and save Customer harmless under this Section is void if the claim of infringement arises out of or in connection with any modification made to the Software or any use of the Software not specifically authorized in writing by TCSC.

d. Other Rights. In the event of a claim under Paragraph 8(c) above, TCSC shall have the rights to: (i) replace the Software alleged to be infringing with non-infringing software that provides substantially the same functionality; (ii) procure for Customer the right to continue using the affected Software; and (iii) if TCSC determines that the foregoing actions set forth in clauses (i) and (ii) of

this Paragraph 8(d) are not reasonably practicable or commercially reasonable, terminate Customer's license to use the Software alleged to be infringing and, if such termination occurs before the date that is five (5) years after the date the Software was first licensed by Customer, refund to Customer a pro-rata portion of the license fees paid for the Software based on a five (5) year straight-line depreciation schedule commencing upon such date. This Paragraph 8(d) and 8(e) state Customer's exclusive remedy, and TCSC's exclusive liability, for any claim of infringement or misappropriation.

**e. General Indemnity.** To the fullest extent permitted by and in compliance with applicable law, Contractor, will agree to defend the County and its individual members, officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties") from and against all damages, liability, losses, judgments and expenses, subrogations (of any party involved in the subject of the Agreement), attorneys' fees, court costs, defense costs that are finally awarded by a court of competent jurisdiction in any claims, suits or action or proceedings brought against the Indemnified Parties resulting from physical injury to any person (including death), or damage to real or tangible property to the extent directly caused by the gross negligence or willful misconduct of the Contractor in the performance of the Services by Contractor, its subcontractor(s), Contractor's subcontractor's(s') employees, agents, assigns, volunteers and those designated by Contractor to perform the work or services encompassed by the contract.

**f. Limitations.** TCSC will have no obligation to Customer under this Section 8 if: (i) any portion of the Software has been modified after delivery to Customer by any party other than TCSC (ii) Customer does not promptly install each Upgrade, update and other fix or error correction provided to Customer by TCSC or its licensors or manufacturers; (iii) an alleged infringement or misappropriation or warranty failure is based upon the combination of the Software with any software not provided to Customer by TCSC; or (iv) an alleged infringement or misappropriation or warranty failure was caused by TCSC's compliance with Customer's instructions or upon the incorporation of computer code or other materials into the Software at Customer's request.

**g. Third Party Software.** Customer acknowledges and agrees that Third Party Software provided to Customer by TCSC is provided to Customer pursuant to the terms of the licensor's applicable license, and Customer agrees to be bound thereby and that such terms govern any conflict between those terms and this Agreement. Customer will acquire only those rights in the Third Party Software granted by applicable license and accorded by applicable law. In the event that any Third Party Software provided by TCSC to Customer requires acceptance of a "shrink wrap" or "box top" license or agreement or execution of a "click-through" license or agreement for the access, opening, unpacking, installation or configuration thereof, Customer acknowledges and agrees that TCSC may act as an agent on Customer's behalf in accepting and executing such license or agreement on behalf of Customer. TCSC PROVIDES THE THIRD PARTY SOFTWARE "AS IS" AND WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. THE WARRANTIES, INDEMNITIES, AND REMEDIES SET FORTH IN THIS SECTION 8 DO NOT APPLY TO THIRD PARTY SOFTWARE OR ANY BREACH, INFRINGEMENT, OR MISAPPROPRIATION ALLEGED TO BE CAUSED BY THIRD PARTY SOFTWARE. Customer acknowledges it must look exclusively to the manufacturer of the Third Party Software for any warranty, maintenance, support or other service or remedy relating thereto. Software Maintenance does not apply to Third Party Software.

**h. High Risk Activities.** The TCSC Offerings and Project Deliverables may contain technology that is not fault-tolerant and is not designed or intended for use in hazardous environments or other applications requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines or any other application in which the failure of the TCSC Offerings or Project Deliverables could lead directly to death, personal injury or severe physical or property damage (collectively, "High Risk Activities"). Customer represents that it is not acquiring any of the TCSC Offerings for use with High Risk Activities and Customer agrees that TCSC shall have no liability of any kind relating to any TCSC Offering used in High Risk Activities.

**i. Compliance with Laws.** Customer agrees that it will comply with all U.S. and foreign laws, regulations and orders applicable to Customer's use of the Systems, including all applicable U.S. export control laws and U.S. Export Administration Regulations and related Executive Orders. Customer shall defend, indemnify, pay and hold harmless TCSC from and against all loss and liability arising out of or relating to Customer's failure to comply with such applicable U.S. and foreign laws, regulations or orders.

**j. WARRANTY DISCLAIMER.** TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, TCSC, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR REPRESENTATIONS CONCERNING THE SOFTWARE, SERVICES, TCSC OFFERING(S) OR ANY THIRD PARTY SOFTWARE OR OTHER MATERIALS, SERVICES, INFORMATION OR TECHNOLOGY HEREUNDER OR IN CONNECTION HEREWITH, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF TCSC.

**k. Publication of Data.** Customer assumes all risks associated with enabling access to the Application Related Software to third parties, whether such access is made available from within Customer's firewall or via the Internet. Customer agrees to defend, indemnify and hold harmless Licensor, its affiliates and each of their respective officers, directors, employees, and agents (the "Indemnities") from and against all losses, costs, damages, liabilities, and expenses (including reasonable attorney's fees) incurred by the Indemnities in any claim, action, suit or proceeding arising out of or in connection with the use of the Application Related Software and/or any



website operated by or on behalf of Customer that displays any part of the Software Programs, and the publication, display and use of the information and data described and/or contained on the Application Related Software or such website, including but not limited to any claim with respect to any improper or incorrect use of the information or any defamatory, offensive, or other illegal conduct of users or third parties.

## 9. Additional Professional Services.

TCSC will provide the professional services described in each Statement of Work signed by the parties (the "Services"). Customer agrees that each such Statement of Work incorporates by reference the terms and conditions of this Agreement and constitutes a separate agreement for the purchase of Services. Any change in the scope of Services must be agreed upon in writing by TCSC and Customer, and may result in additional fees and scheduling changes, as determined by TCSC. If specified in a Statement of Work, TCSC will provide to Customer deliverable(s) created specifically for Customer (any such deliverables provided to Customer by TCSC being referred to herein as the "Project Deliverable"). Unless otherwise set forth in a Statement of Work or in this Agreement, Project Deliverables shall be deemed to be part of the Software for purposes of this Agreement. During installation of the System or any Project Deliverables, the Customer shall have the same responsibilities as are outlined in section 7 of the Software Maintenance Guide (EXHIBIT B, attached), including but not limited to the Customer's responsibility to provide TCSC with secure high speed remote access to all servers and workstations running the Software. Customer will grant access rights to all TCSC personnel so designated by TCSC as authorized by TCSC to need access rights.

## 10. Acceptance Testing.

a. Acceptance Testing Procedure. In the event a Quotation/Order Form specifies that Customer's acceptance of all or part of the order specified therein is subject to successful completion of acceptance testing, the following procedures and time periods shall apply: Customer will be entitled to test the, Software and Project Deliverable as applicable to determine if they operate in accordance with, and otherwise conforms to the mutually agreed upon criteria ("Acceptance Criteria"). If acceptance testing is a required term in a Quotation/Order Form but the period or procedures for such acceptance testing are not specified on the Quotation/Order Form, then (i) Customer will have thirty (30) days from the date the Software/Project Deliverable is delivered to Customer in which to complete all acceptance testing, and (ii) Customer may use its own internal test procedures and any sample input. Acceptance of the Software/Project Deliverable shall not be deemed to constitute a waiver by Customer of any rights it may have based on TCSC's warranties. If no Acceptance Criteria are set forth in a Quotation/Order Form or SOW, then the Acceptance Criteria shall be that the Software/Project Deliverables perform in substantial compliance with the applicable Documentation.

b. Acceptance or Rejection. If Customer determines the Project Deliverable/Software (as applicable) successfully operates in accordance with, and otherwise conforms to, the Acceptance Criteria, Customer will notify TCSC that Customer accepts the Software/Project Deliverable within ten (10) days of the completion of the applicable testing period. If Customer determines the Software/Project Deliverable does not operate in accordance with, or otherwise conform to, the applicable Acceptance Criteria, then Customer will provide TCSC with a notice describing the nonconformance to the Acceptance Criteria within ten (10) days of the completion of the applicable testing period. TCSC will have thirty (30) days from the date it receives Customer's notice of the nonconformance to correct (at no additional cost to Customer) the Software/Project Deliverable. When TCSC redelivers the Software/Project Deliverable, Customer will be entitled to repeat the testing process. The Software/Project Deliverable ordered on any Quotation/Order Form will be deemed to have been accepted by Customer if (i) Customer does not provide TCSC with a written notice of nonconformance to the Acceptance Criteria within ten (10) days after expiration of the applicable testing period, or (ii) the Project Deliverable/Software (as applicable) is put into production use by the Customer.

## 11. LIABILITY LIMITATION.

TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER AGREES THAT THE ENTIRE LIABILITY OF TCSC, ITS LICENSORS AND SUPPLIERS, AND CUSTOMER'S EXCLUSIVE REMEDIES ARE SET FORTH HEREIN. UNDER NO CIRCUMSTANCES WILL TCSC, ITS LICENSORS OR SUPPLIERS, BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS OR COSTS OF COVER, WHETHER FORESEEABLE OR UNFORESEEABLE, REGARDLESS OF WHETHER SUCH DAMAGES ARE ASSERTED TO ARISE OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR OTHERWISE, DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS AND DAMAGE TO EQUIPMENT. NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, IN NO EVENT WILL TCSC, ITS LICENSORS OR ITS SUPPLIERS BE LIABLE FOR DAMAGES OR LOSSES THAT EXCEED, IN THE AGGREGATE, THE FOLLOWING FOR EACH RESPECTIVE BREACH OR SERIES OF RELATED BREACHES: (I) WITH RESPECT TO SOFTWARE, THE AMOUNT OF LICENSE FEES PAID BY CUSTOMER FOR THE SOFTWARE THAT GAVE RISE TO SUCH DAMAGES OR LOSSES; AND (II) WITH RESPECT TO ANY SERVICES PROVIDED HEREUNDER, THE AMOUNT OF FEES PAID FOR THE SERVICES THAT GAVE RISE TO SUCH DAMAGES OR LOSSES. EXCEPT WITH REGARD TO PAYMENTS DUE TCSC, NEITHER PARTY WILL BE LIABLE FOR ANY DELAYS OR FAILURES IN

PERFORMANCE DUE TO CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL THAT COULD NOT BE AVOIDED BY ITS EXERCISE OF DUE CARE.

## **12. Term and Termination.**

The term of this Agreement will commence upon the Effective Date and shall continue until terminated pursuant to the provisions herein (such period, the "Term").

**a.** If Customer fails to make prompt payments to TCSC when invoiced, including but not limited to all fees specified in Exhibit A, including Annual Maintenance Fees, or if Customer fails to fulfill its responsibilities under this Agreement, including but not limited to those outlined in Section 16, then TCSC may at its option terminate this Agreement with written notice as follows:

(i) The termination notice shall define the reason for termination;

(ii) If the cited reason for termination is Customer's failure to make prompt payment, Customer shall have ten (10) days from receipt of said notice to make payment in full for all outstanding invoiced payments due;

(iii) If the cited reason for termination is Customer's failure to fulfill its responsibilities, Customer shall have ninety (90) days from receipt of said notice to correct any actual deficiencies in order to satisfy the terms of this Agreement;

(iv) During the applicable cure period, TCSC will use sound management practices and its best efforts to resolve any issues or obstacles – including the reassignment of personnel if necessary to improve the working relationship;

(v) At the end of the applicable cure period, unless the termination has been revoked in writing by TCSC the Agreement terminates.

**b.** In the event of termination, TCSC shall continue to provide its services, as previously scheduled, through the termination date and the Customer shall continue to pay all fees and charges incurred through the termination date as provided in the attached Exhibits.

**c.** Upon termination under Subparagraph 12.a, Customer shall return to TCSC all Licensed Products, including any copies provided to or created by Customer under this Agreement. If termination is for lack of payment, Customer shall return all tangible TCSC Offerings identified on the Quotation/Sales Order Form.

**d.** The Terms and Conditions relating to ownership, warranties, non-recruitment of personnel, confidentiality and non-disclosure, limitation of liability and recoverable damages, dispute resolution and the General provisions, survive termination.

**13** If in the reasonable determination of the Customer, TCSC breaches any of its obligations under this Agreement ("Default") Customer shall provide written notice of said Default to TCSC ("Default Notice"). Upon receipt of the Default Notice, TCSC shall have thirty (30) days, or such longer period as may be agreed to by the Customer and TCSC, to cure or make reasonable progress to cure, said Default. If TCSC fails to cure, or make substantial progress to cure the Default after said thirty (30) days, the Customer may, at its discretion, terminate this agreement upon written notice to TCSC.

## **14 RESERVED.**

## **15 Assignment.**

Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. TCSC may assign this Agreement to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status, its right to payment hereunder or grant a security interest in this Agreement or such payment right to any third party. TCSC may perform any obligation pursuant to this Agreement using agents and subcontractors. The Agreement shall inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors and permitted assigns.

## **16 Customer Liaison and Customer Responsibilities**

The successful implementation of the Licensed Products into Customer's environment requires Customer's commitment to and cooperation in the implementation process. Accordingly, Customer hereby agrees to the following:

**a.** Customer understands that, in the event Customer procures its own equipment, the Licensed Software is designed to run in a specified operating environment which includes hardware, software and related equipment

**b.** Customer is responsible for assuring that the appropriate hardware equipment, related components and all cabling are installed timely and are suitable for the successful installation of the Licensed Software.

**c.** Customer agrees to provide the management interface and support necessary to successfully complete the implementation of the Licensed Software. This support includes upper level management priority setting and timely involvement during and after a change in Customer's organization, Customer's operations and/or after changes in Customer's internal policies or procedures which directly affect the software implementation.

**d.** Customer shall assign an upper level employee to serve as the Customer Liaison for the duration of the Licensed Software implementation. If Customer must replace the Customer Liaison for reasons beyond its control, Customer will assign a new Customer Liaison as soon as reasonably possible. TCSC is not responsible for any delay caused directly or indirectly by the reassignment of the Customer Liaison. In addition to other duties and responsibilities, the Customer Liaison shall:

- (i) provide timely answers to TCSC's requests for information;
- (ii) coordinate a mutually agreeable implementation and training schedule;
- (iii) have authority to sign for and obligate Customer to any matters relating to service requests, design documents, performance test documents and/or delivery and service dates;
- (iv) in situations where Customer participation is required, provide timely input for systems definition, detail design, and use of the software system.

**e.** Customer is responsible for creating and maintaining its master files, tables and the like which includes accurate data entry, accurate file editing and overall file control to assure successful systems performance.

**f.** Customer shall provide qualified personnel with sufficient backup to be trained to use the Licensed Software and to interpret the output. Applying the output information in Customer's environment is Customer's sole responsibility.

## 16 General.

**a.** Customer will not knowingly transfer to parties that will subsequently re-export the Software to embargoed countries or allow export, directly or indirectly, of any product acquired under this Agreement without first obtaining an export license from the US Department of Commerce or any other agency or department of the United States Government, as required.

**b.** All notices required or provided hereunder shall be in writing and will be deemed given as of the day received either by receipted, nationwide overnight delivery service or in the U.S. mails, postage prepaid, certified or registered, return receipt requested, to the addresses and attention of the representatives specified below with copy to each party's General Counsel.

**To: The Computer Solution Company of Virginia, LLC**  
102 West 3<sup>rd</sup> Street, Suite A05  
Winston-Salem, NC 27101

**To: Customer** – sent to the Customer address noted on page 1

**c.** The Software, both TCSC and Third Party Software (including documentation), is provided with Restricted Rights. Use, duplication, or disclosure for or by the government of the United States, including without limitation any of its agencies or instrumentalities, is subject to restrictions set forth, as applicable: (i) in subparagraphs (a) through (d) of the *Commercial Computer Software-Restricted Rights* clause at FAR 52.227-14, or FAR 52.227-19; (ii) in subparagraph (c)(1)(ii) of the *Rights in Technical Data and Computer Software* clause at DFAR 252.227-7014, DFAR 252.227-7015, DFAR 252.227-7018, or DFARS 252.227-7013; or (iii) in similar clauses in other federal regulations, including the NASA FAR supplement. The contractor or manufacturer is TCSC, and/or a Third Party as may be noted on the Quotation/Order Form and/or SOW. Customer will not remove or deface any restricted rights notice or other legal notice appearing in the Software or on any packaging or other media associated with the Software. Customer will require that its users and other recipients, if any so authorized by TCSC herein, agree to and acknowledge the provisions of this Section 16.c, in writing.

**d.** TCSC shall not use the name of Customer, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of the Customer in each instance, which shall not be unreasonably withheld. ..

**e.** TCSC and Customer are independent parties. Nothing in this Agreement will be construed to make either party an agent, employee, franchisee, joint venturer or legal representative of the other party.

**f.** Neither Party shall be liable to the other Party or shall be subject to termination of this Agreement by the other Party, for any delay, nonperformance, loss or damage (other than for failure to pay any amount when due) because of reasons beyond its reasonable control including, but not limited to, acts of God, acts, regulations or laws of any government, acts of terrorism, war, riots, civil unrest, power failures, accidents in transportation or other causes beyond the reasonable control of the respective Party.

**g.** Except as otherwise provided, any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement, including the terms of Sections 1, 2, 5, 6, 7, 8, 11, 12, 13, 14, and 16.

**h.** This Agreement will be governed by and interpreted in accordance with the laws of the State of California, excluding its conflict of law principles. Further, the Parties agree that the Superior Court for the County of Alameda, State of California or the United States District Court for the Northern District of California shall be the exclusive courts in which either party may seek such relief. TCSC will



be entitled to its reasonable attorneys' fees in addition to any other damages and amounts awarded to it in any action to collect unpaid fees owed pursuant to this Agreement.

**i.** No waiver, amendment or other modification of this Agreement will be effective unless in writing and signed by the party against whom enforcement is sought. The paragraph headings which appear herein are included solely for convenience and shall not be used in the interpretation of this Agreement. If any provision of this Agreement is held unenforceable, in whole or in part, such holding will not affect the validity of the other provisions of this Agreement.

**j.** This Agreement and its schedules constitute the complete and entire statement of all terms, conditions and representations of the agreement between TCSC and Customer with respect to its subject matter and supersede all prior writings or understandings, including any prior agreement regarding confidentiality that may have been entered into by the parties. Notwithstanding the forgoing, TCSC shall not agree to and rejects any additional or conflicting terms provided Customer, including those in any form purchasing document.

**k.** This Agreement may be executed by the parties hereto in multiple counterparts and shall be effective as of the Effective Date when each party shall have executed and delivered a counterpart hereof, whether or not the same counterpart is executed and delivered by each party. When so executed and delivered, each such counterpart shall be deemed an original and all such counterparts shall be deemed one and the same document. Transmission of images of signed signature pages by facsimile, e-mail or other electronic means shall have the same effect as the delivery in person of manually signed documents.



## The Computer Solution Company of Virginia, LLC

### EXHIBIT A: PAYMENT SCHEDULE

TCSC will provide a payment schedule for the premise-based Software, Third Party Software and Services for each premise-based Subsystem listed on the Quotation/Order Form as follows:

#### 1. Maintenance Service & Payments in Subsequent Years

The term "Annual Maintenance" when used on a Quotation/Order Form designates fees associated the annual fee for maintenance services only. Second year maintenance service for each Subsystem begins on the anniversary date of TCSC's delivery to the Customer. Prior to the beginning of the second and subsequent year maintenance service periods, TCSC shall determine the fees applicable to such year and provide the Customer with an invoice for annual maintenance for that Subsystem and likewise for each of the other Subsystems upon the anniversary date of the order of that Subsystem. The maintenance service period for future years for all Subsystems will begin on the anniversary date of the maintenance service for the first Subsystem delivered to the Customer.



## The Computer Solution Company of Virginia, LLC

### EXHIBIT B: Standard Software Maintenance Services

This Standard Software Maintenance Services ("SSMS") between TCSC and Customer sets forth the standard software maintenance support services provided by TCSC. The Software manufactured by TCSC is covered under this Agreement. Any Third Party Software included in Customer's System is not covered under this Agreement and shall be covered under the third party manufacturers' maintenance terms for support. Capitalized terms in this Agreement shall have the same meaning as defined in the Master Purchase, License and Services Agreement to which this Agreement is attached as Exhibit B.

#### 1. Warranty Period and Service Period

The warranty period shall begin on the delivery date of the Software and end one (1) year later. This SSMS shall begin concurrently with the warranty period and remain in effect for so long as the Customer pays Annual Maintenance Fees per the terms of the Agreement ("SSMS Term").

#### 2. Licenses Included In SSMS

The SSMS entitles customers to obtain licenses to utilize all upgrades and new releases of the Software released by TCSC over the SSMS Term. Prior releases of licensed Software are supported no longer than twenty-four (24) months after a new release is announced by TCSC. Through participation in working groups across the country, as well as regular interaction with Customers, TCSC is continuously improving its Software and this SSMS gives Customers the ability to take advantage of the latest innovations.

The costs associated with an upgrade or moving a Customer to a new version of Software are only included for STAGE and PRODUCTION environments under the SSMS. Additional environments will require a cost estimate and payment to perform the upgrade. Consequently, costs including but not limited to travel to the site, assembly, set up, configuration, consulting, installation, and training will be billed at the then current hourly rate, plus travel expenses. A cost estimate will be provided to Customer and approved by Customer before work commences. Customer will also be responsible for the cost of any equipment replacements or upgrades that may be necessary to accomplish the upgrade or to install the new version of Software.

#### 3. Support Services for Software

##### a. Description of How Support Is Performed

The SSMS includes the services of TCSC's technical staff that perform support remotely utilizing the phone and a high speed internet connection. Software issues can be diagnosed and fixed remotely as long as the Customer has not misused the System and has maintained its equipment and Software in accordance with the Systems manual. In any case in which technical staff is required to visit the site to perform support services, the Customer will be charged for time and materials at the then current TCSC hourly rate, plus travel expenses.

##### b. Covered Software Issues

Software Maintenance covers any issue or problem that is the result of a verifiable, replicable error (TCSC will use all reasonable means to verify and replicate) in the Licensed Software ("Verifiable TCSC Issue"). An error will be a Verifiable TCSC Issue only if it constitutes a material failure by the licensed Software to function in accordance with the applicable licensed Software Documentation. Errors caused by the following circumstances are not covered under the SSMS:

- i. The licensed Software was modified by a party other than TCSC or
- ii. The error was caused by a defect, failure or issue with Customer's equipment or third party software not procured by TCSC, unless TCSC specifically indicated the equipment and/or software was interoperable with the licensed Software.

If Technical Support determines the Customer's problem is not caused by TCSC or its Systems, or Software, or is otherwise outside TCSC's reasonable control, TCSC is not obligated to provide support under this Agreement. This scenario is called "out of scope support." For out of scope support, whether provided remotely or at Customer's site, the Customer agrees to pay TCSC its fees for time and expense at TCSC's then current rate, in addition to any travel expenses incurred by TCSC for onsite "out of scope support."

##### c. Availability of Support—Hours and Days

Customer will have access to TCSC's technical support personnel ("Technical Support") 8:00am to 7:00pm Eastern Time, Monday – Friday, except holidays. Communications with Technical Support will take place through the phone or Status Report.

The technical support personnel can be reached at the following phone number and Status Report address:

Phone: Toll Free – 800-274-2911; <http://TCSCpublicsafety.na3.teamsupport.com/>



TCSC provides a single entry point of contact that routes requests/problems to the appropriate Technical Support. The following chart depicts Severity Levels for problem reporting and response plan requirement for ensuring timely restoration. Users will report software and system related problems to the technical support personnel based upon the chart below.

Severity Level	Problem Type	Response
1 – Inoperable (Urgent/Critical)	Licensed Software <b>inoperable</b> and reasonable efforts by Customer to resolve the issue have been unsuccessful. Company shall make every effort to provide immediate resolution.	Within <b>two (2) hours</b> from receipt of notification – during normal business hours – problems are acknowledged and appropriate personnel are assigned to / engaged in problem resolution with workaround or long-term fix.
2 – Unstable (Major)	Licensed Software not performing in a manner consistent with Documentation. While Software is operable, reported issue is <b>replicable and affects ongoing performance of the system.</b>	Within <b>eight (8) hours</b> from receipt of notification – during normal business hours – problems are acknowledged and appropriate personnel are assigned to / engaged in problem resolution with workaround or long-term fix.
3 – Inconvenience (Medium)	Licensed Software not performing in a manner consistent with Documentation. Reported issue is not replicable, does not affect the ongoing performance of the system, and/or a <b>satisfactory work-around has been identified.</b>	Within <b>forty-eight (48) hours</b> from receipt of notification – during normal business hours – problems are acknowledged and appropriate personnel are assigned to / engaged in problem resolution with workaround or long-term fix.
4 – Question (Minor)	Customer is unclear regarding proper operation of Licensed Software and/or has identified an opportunity for improving the system.	Questions should receive a response within <b>seventy-two (72) hours</b> from receipt of notification – during normal business hours.

#### 4. Representative

The Customer shall designate a specific person or persons from each location at which the Licensed Software is installed to be the point of contact under this Agreement (the “Representative”). The Customer may change the Representative upon notice to TCSC.

#### 5. Billing

Maintenance costs will be billed annually, subject to annual price increases not to exceed 8% annually, beginning on the start date and on the same day each year thereafter. The Annual Maintenance Fees for each renewal are payable in full prior to the start of the renewal term and are non-refundable. All payments are due within 30 days of the invoice date. Late payments will incur a charge of 1.0% per month, not to exceed the maximum amount allowed by law. Customer shall pay any and all applicable federal, state and local sales, use, value added, excise, duty and any other taxes of any nature (except any taxes based on TCSC’s net income) assessed on Customer’s Annual Maintenance Fees.

#### 6. Additions of Software to Maintenance Agreement

Additional Software licenses purchased by Customer will be added to the SSMS upon delivery. Costs of the maintenance for the additional Software will be billed to Customer on a pro rata basis for the remainder of the maintenance year and on a full year basis thereafter.

#### 7. Customer’s Responsibilities

- a. Customer will initiate all requests for Software Maintenance. A Representative of the Customer must be present at the location during the performance of any Software Maintenance if required. Customer may add additional contacts to the list of Software Maintenance contacts.
- b. In the event Customer and TCSC have agreed that TCSC will provide any installation services, Customer agrees to assist in the provision of such installation services.
- c. Customer accepts sole responsibility for any compatibility problems between the Software and any other application software or non-current software programs not maintained or supported by TCSC.

- d. Customer will provide TCSC with a secure high speed remote direct access with a static internet IP address, to all servers and work stations running the Software, with firewall protection between the TCSC network and the internet ("Secure VPN"). Customer will grant access rights to all TCSC personnel designated by TCSC as authorized by TCSC to need access rights. The Secure VPN solution employed by the Customer must support the Cisco VPN client and/or the Windows VPN client and/or TCSC's BOMGAR support tool. Should customer fail to provide a direct Secure VPN, TCSC reserves the right at any time, without notice, to triple the then current annual maintenance fee billed Customer.
- e. Customer shall at all times maintain protection against network virus, worms and other external threats to the Software.
- f. It shall be the responsibility of the Customer to maintain all operating system and firmware updates, including version releases, patches and service packs for any Third Party Software that has been installed by TCSC.
- g. It shall be the sole responsibility of the Customer to perform any and all backups of their System.
- h. It shall be the sole responsibility of the Customer to administer any and all passwords and password changes in their System, including any password changes to TCSC solutions; TCSC will defer all requests for password changes to the Customer's Administrator.

## 8. Virtual Environments.

- a. When using Virtual Machines ("VM's") running VMware or other Virtual Environments, the customer is responsible for the following:
  - i. TCSC must approve the Customer-provided Virtual Environment, including hardware, number of virtual machines running on the host, network bandwidth, disk systems or any other aspect of the Virtual Environment.
  - ii. Customer is responsible for the hardware and hardware support for the physical server that runs the Virtual Machines – the VM Ware Host
  - iii. Customer is responsible for the support of the VMware, including but not limited to, licensing, updates, support, and any other issue which is VMware related
  - iv. Customer will provide and procure support and maintenance of the Operating system and Database software running on the Virtual Machines
  - v. TCSC is not responsible for loss of performance due to issues with VMware, Host Server workload, Host network bandwidth or disk storage space.

## 9. Submitting a Request / Obtaining an Answer.

At the time of Customer's initial call or e-mail, please prepare to provide:

- a. Contact name, company name and Software Customer is using;
- b. The type of browser (with release version) and hardware Customer is using (if applicable);
- c. Software Version Number
- d. Telephone number and alternate method of contact (i.e. a pager number or email address);
- e. Contact method preferred (i.e. phone or email);
- f. A concise description of Customer's problem or question;
- g. The circumstances under which the problem does or does not occur; and
- h. Specific error messages, error numbers, log files and program numbers.

For new cases, a TCSC Customer Support Specialist will use the following process to assist Customer with a new case (problem):

- a. Document the supplied information;
- b. Document Customer's questions or issues (symptom and function in which it occurs);
- c. Answer Customer's questions or have Customer run tests to further identify and isolate the problem; and
- d. Research the problem and provide resolution according to the aforementioned guidelines.

## 10. Limitation

This Standard Software Maintenance Services states Customer's sole and exclusive remedies and TCSC's sole and exclusive responsibilities with respect to Software Maintenance of any TCSC Software.