

SimpleSoftware Maintenance Agreement

1. **Purpose of Agreement.** You (hereinafter "Customer") desire that SimpleSoftware, 500 W. Summit Hill, Suite 302 Knoxville, TN 37902 (hereinafter "SimpleSoftware") maintain certain computer software programs (the "Programs"). SimpleSoftware is willing to provide these services upon the terms and conditions herein.

2. **Term.** Customer will receive 1 year of Maintenance Services from the date of Customer's initial maintenance purchase ("Initial Term"), as described herein. This agreement shall, unless earlier terminated pursuant to paragraph 8 below, remain in full force and effect for the Initial Term. Thereafter, this Agreement shall automatically renew for additional twelve (12) month renewal terms, provided that Customer pays the current renewal fee to SimpleSoftware, or unless either party terminates this Agreement in accordance with paragraph 8 below. *ALL SimpleSoftware products must remain current on their maintenance agreements for support to be given for any one application in the suite of products purchased.* If you no longer wish to utilize one component in the purchased suite you are allowed to then send us a deactivation code for that product and no maintenance will be billed for that product. If maintenance lapses for any product, Customer is required to pay for one year of maintenance for each year from the date that the maintenance lapsed.

3. **Maintenance Charge.** The maintenance fee shall cover all services provided hereunder, but shall not cover costs of any materials, parts, manuals, software, travel, or other disbursements as may be necessary or requested by Customer, which shall be billed to Customer as separate costs when they occur. SimpleSoftware may change the yearly maintenance fee to reflect its then-current standard fees by notice to Customer at least thirty (30) days prior to the date on which the next maintenance fee payment is due from the Customer.

4. **Maintenance Services.** SimpleSoftware shall, in exchange for payment of the Maintenance Fee, perform the following maintenance services:

(a) **Error Correction.** SimpleSoftware shall work to correct all reproducible errors that materially affect operation of the Program(s) as follows: Customer shall notify SimpleSoftware of any such errors in writing, with a written description of each claimed error and the conditions under which it occurred. SimpleSoftware shall work to correct all such errors that it can verify based on Customer information, and shall continue working either until it corrects the error, develops a workaround for that error, or determines in good faith that the error cannot be corrected as part of the then current releases of the Program(s) (in which event SimpleSoftware shall attempt to correct or eliminate the error in the next release of the Program(s)). Customer may notify SimpleSoftware of claimed errors by telephone, provided that the written notice described above must be furnished by the next business day, and that SimpleSoftware need not begin work promptly if the telephone information is incomplete or inadequate.

(b) **Telephone Support.** SimpleSoftware will be available from the hours of 9:00AM-4:30PM Eastern Standard Time, Monday-Friday, excluding federal holidays. This includes any assistance Customer may require in using the Program(s) that can be handled by telephone, but may need to be scheduled in advance if all technicians are currently assisting other customers. For Technical Support call 1-865-637-8986. Error correction services are subject to the provisions (a) above.

(c) **Maintenance Updates.** Customer will receive all standard Maintenance Updates released by SimpleSoftware for any of the Program(s), free of charge, during the paid maintenance period. A "Maintenance Update" is a modified version of a Program released by SimpleSoftware generally to its existing Customers without charge, primarily to correct or eliminate errors in the prior release of the Program and also to enhance existing features (example: Updating from revision 4.1.1 to revision 4.1.2. Updating from revision 4.1 to revision 4.2 or even updating from revision 4.2 to revision 5.0).; it does not include new versions or upgrades of any Program for which SimpleSoftware generally charges an additional fee, or any new modules or products SimpleSoftware releases that are commercially sold separately).

(d) **New Release and End of Life.** In the event that SimpleSoftware releases a new version of the Program(s) or end of life's the Program(s), SimpleSoftware shall provide telephone support only for such prior release or end of life Program(s) for one year from the date of the new release or end of life Program(s).

(e) **Other Services.** All services not listed above, such as any on-site assistance or maintenance, and any requested modifications to any of the Programs, shall be performed by SimpleSoftware at its sole discretion, at its then-current standard hourly rates, and subject to such other written agreements as may be required by SimpleSoftware. Tech support only covers existing configurations and set-ups and does not cover training or new set-ups performed by us, which would be billed at an hourly rate.

5. Customer's Obligations. Customer will cooperate with SimpleSoftware in connection with SimpleSoftware's performance of its services hereunder and shall provide SimpleSoftware with such information concerning Customers operations as SimpleSoftware shall reasonably request and as shall be necessary for the performance of SimpleSoftware's services hereunder.

6. Modifications by Customer. Customer shall not modify, create any derivative work of, or incorporate any other software into the computer software programs or any portion thereof. SimpleSoftware shall not be responsible for maintenance of or for repair of errors or malfunctions occasioned by any modification or enhancement to the Programs made by Customer or by anyone other than SimpleSoftware. Any modifications or enhancements made by Customer or by anyone other than SimpleSoftware shall be grounds for immediate termination of this Maintenance Agreement.

7. WARRANTY AND LIABILITY.

ALL SERVICES AND MATERIALS ARE PROVIDED BY SimpleSoftware "AS IS". IN NO EVENT SHALL SimpleSoftware, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND/OR CONSULTANTS, BE LIABLE TO CUSTOMER OR ANY OF ITS AFFILIATES FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES EVEN IF SimpleSoftware HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR LOSS OR DAMAGE DIRECTLY OR INDIRECTLY ARISING FROM THE SERVICES PROVIDED HEREUNDER. SimpleSoftware's cumulative liability hereunder for damages, regardless of the form of action, shall not exceed the Maintenance Fee actually paid hereunder as of the date such claim arose. SimpleSoftware shall not be liable for any lost profits, or for any claim or demand against the Customer by any third party on account of services performed hereunder. SimpleSoftware recommends that the Programs be installed by an SimpleSoftware certified implementation specialist through SimpleSoftware's Professional Services Group. However, if the Customer elects to install the Programs without the assistance of an SimpleSoftware certified implementation specialist, the Customer is solely responsible for ensuring that the Programs are installed properly to achieve their intended results and the results actually obtained. Accordingly, SimpleSoftware shall have no responsibility or liability under this Maintenance Agreement or any warranty hereunder, to the extent such warranty exists, to correct, validate, bring into compliance or otherwise remedy any problem with the Program(s) that is caused in whole or in part by the improper or inadequate installation of the Program(s) by Customer or incompatibility of Customer's environment, hardware or software with the Program(s).

8. Termination. SimpleSoftware may terminate this Agreement upon ten days' written notice to Customer in the event Customer fails to pay the Maintenance Fee within thirty (30) days of the date of invoice or breaches any of the terms set forth herein. Customer may terminate this Agreement immediately at any time, provided that it is responsible for the full amount of all maintenance payments due through the end of the term, unless termination is due to breach by SimpleSoftware.

9. License Rights. Any and all Program modifications and Maintenance Updates provided by SimpleSoftware hereunder shall be considered part of the Program(s) to which they apply and owned exclusively by SimpleSoftware, and Customer's rights and/or licenses thereto shall be governed by Customer's then-current agreement with SimpleSoftware regarding such Program(s).

10. General

(a) **Merger.** This Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes all existing agreements and all oral, written or other communications between them concerning its subject matter. This Agreement shall not be modified in any way except by a writing signed by both parties.

(b) **Assignment.** Customer may not assign this Agreement without prior written consent by SimpleSoftware. This Agreement shall be fully binding and enforceable as against all permitted assignees and successors in interest.

(c) **Enforceability.** If any provision of the Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.

(d) **Law and Forum.** This Agreement (and any and all amendments thereto) and its validity, construction and performance shall be governed in all respects by the laws of the State of Tennessee, without regard to Tennessee's choice of law rules. Exclusive jurisdiction and venue for all matters relating to this Agreement shall be in the State of Tennessee, and the parties hereby agree and consent to such jurisdiction and venue.

(e) **Notices.** All notices shall be in writing and shall be forwarded by registered or certified mail or by overnight express courier requiring signature of the recipient to complete delivery, and sent to the parties at the addresses set forth at the top of this Agreement or to any other addresses designated in writing hereafter, if to Customer, ATT: President, if to SimpleSoftware, ATT: COO. Notices sent by registered or certified mail shall be deemed delivered seven (7) business days after mailing; notices sent by express courier as described above shall be deemed delivered the day after they are given to the courier by the notifying party. Notwithstanding the foregoing, notices of Program errors under this Agreement may be sent by facsimile transmission with voice verification of receipt.

(f) **Headings.** The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation.

(g) **Non-Waiver.** The failure of either Customer or SimpleSoftware to insist upon strict performance of any of the provisions contained herein shall in no way constitute a waiver of future violations of the same or any other provision.

(h) **No Third Party Rights.** This Agreement does not create any rights in any third parties, except assigns, successors of heirs expressly permitted hereunder.