

# Software Support Agreement

**THIS AGREEMENT** by and between **PAPCON** (hereinafter "Licensor") and **WEBB COUNTY DISTRICT CLERK'S OFFICE** (hereinafter "Client") is made and entered into this date of \_\_\_\_\_, \_\_\_\_\_; and pursuant to the requirements of the **WEBB COUNTY AUDITORS OFFICE**, this Agreement must be renewed annually by both parties.

1. **SCOPE.** This Agreement covers support services that Client hereby request Licensor provide for the Program(s) licensed from Licensor under the terms and conditions of the End-User License Agreement.

2. **QUALIFICATION FOR SERVICE.** Licensor will provide the support described in this Agreement for Licensed Programs if: (1) Licensor has an executed copy of this agreement on file, (2) Licensor has an executed copy of the End-User Agreement on file and that Agreement is still in effect, (3) Client's computer(s) contain an Internet Connection and remote support software (as specified by the Licensor) which allows Client's computer to be remotely accessed, and (4) Client's account balance with the Licensor is current at any time that support services are required or Program updates become available.

3. **SUPPORT SERVICES.** For each Program covered under the End-User Agreement, Licensor currently provides the following support services:

- a) Telephone assistance from 8:00am to 5:00pm CST Monday through Friday, excluding regularly scheduled holidays observed by the Licensor and Client;
- b) Remote assistance, during the times described above;
- c) All updates and new releases, at no additional cost except for data conversion if required, for the Programs covered by this Agreement and not specifically excluded.

4. **EXCLUSIONS.** The following are expressly excluded from the support services:

- a) Support for a release of a Program which has been declared non-supported by the Licensor. Client will be notified 90 days prior to any such declaration by Licensor. If the Client account with Licensor is current, Client will have been shipped any new releases (current releases), if the Client has let support lapse and thereby not kept current on releases, Client will be permitted to re-subscribe to support at current fees and thereby receive an upgrade to the current supported release of a program. Nothing in this subsection gives the Licensor the right to declare a current release of a program non-supported.

- b) Custom developed software and/or modifications to Licensor's Program executed by anyone other than Licensor.
- c) Rights to separately priced and marketed programs which Licensor develops. Such programs will be offered as options which Client may choose to license.
- d) This Agreement covers only ongoing support of the Programs. Training services are available separately.

5. **SPECIAL SITUATIONS.** Licensor may charge an additional fee of eighty-seven and 50/100 dollars (\$87.50) per hour plus travel expenses (if incurred) for providing support services in the following instances:

- a) Client support request is due to the Program being run on equipment or in combination with other software not approved by Licensor.
- b) Program's data files have been modified by personnel other than those of Licensor by using programs other than standard application programs licensed by Licensor.
- c) A reinstallation of the Program and/or data files is required because either current functioning backup does not exist or the original Program media is not available.
- d) Federal or State (or other government entity) mandated changes require a data reorganization or custom program changes.

6. **CONFIDENTIALITY.** Subject to the requirements of the **Tex. Gov't Code Chap. 552 et seq.**, as amended (the "Public Information Act"), all support material received from Licensor is subject to the confidentiality and proprietary rights provisions described within the End-User Agreement. Use of the support materials Client receives will be subject to the terms and conditions of the End-User Agreement. All support material is the property of the Licensor.

Nothing in this agreement shall require Client to violate the Public Information Act. To the extent, if any, that any provision of this agreement is in conflict with the Public Information Act, the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Client, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of **Texas** in regard to the application of the Public Information Act to any items or data furnished to Client and/or whether or not the same are available to the public. It is further understood that Client, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General of the State of **Texas**, and that Client, its officers and employees shall have no liability or obligations to licensor for the disclosure to the public, or to any person or persons of any items or data furnished to Client by Licensor in reliance on any advice, decision or opinion of the Attorney General of the State of **Texas**.

7. **COST and BILLING.** Support fees are nine-hundred dollars (\$900.00) per annum for the software (currently 3 licensed Users and a Server) and one-hundred thirty five dollars (\$135.00) per annum for the internet remote control software. The fees are payable on an annual basis to coincide with the Client's fiscal year. A pro-rata fee may be charged in the first 1st year of service in order to accommodate the fiscal year billing period rather than the actual installation date.

8. **REPRESENTATIONS.** Licensor represents that for a period of 90 days from the installation date of the Program, providing such installation is on hardware approved by Licensor, new releases of the Program will perform substantially in accordance with the specifications, features and functions that are described in current Program documentation and in the standard user manual. Upon written notification from Client that new releases do not perform as warranted, and Licensor determines that to be the case, Licensor will modify the new release so that it does OR allow Client to continue operation of the previous release of the Program.

9. **DISCLAIMER.** Licensor and its suppliers disclaim all other warranties of any kind, express or implied, oral or written, regarding support services, including, but not limited to, the warranties of MERCHANTABILITY or fitness for a specific purpose.

10. **LIMITATION OF LIABILITY.** The maximum liability of Licensor for breach of this Agreement shall be the amounts paid by Client to Licensor for the previous 12 month period under the terms hereof and in no event shall Licensor's liability to Client exceed the total of the license fees paid to Licensor by the Client. Neither party shall be liable for indirect, consequential, or special damages.

Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or for any interruption in service, for any reason beyond its reasonable commercial control; however, specifically excluded from this limitation are failures of either party to perform for economic reasons or for reason's of a party's inability to attract and retain competent personnel.

11. **TERMINATION.** Licensor may terminate this Agreement if: (1) The End-User License Agreement has been terminated, (2) Client breaches this Agreement and does not cure the breach within 15 days after Licensor notifies Client in writing of the breach, (3) Licensor provides Client 6 months written notification of cancellation. Client may terminate this Agreement by notifying Licensor in writing 0 days in advance. The termination date will be 90 days from the date on which Licensor receives such notice. Regardless of the reason for the termination of this Agreement, any outstanding account balance Client has with Licensor is due and payable immediately upon termination.

Upon termination of this Agreement, the provisions of this Agreement relating to confidentiality, disclaimer and limitation of liability will survive and remain in full force and effect.

12. **EXCLUSIVITY.** This Agreement is the complete and entire agreement of the parties concerning support services for Programs.

13. **MISCELLANEOUS.**

- a) Licensor will not be in default if it fails in its performance under this Agreement if the failure arises, directly or indirectly, out of causes beyond control or foresee ability of Licensor.
- b) Client may only transfer its rights and obligations under this Agreement if Client transfers its rights to all Programs. Any and all such transfers must be approved by Licensor in writing, prior to such transfer.
- c) This Agreement will be governed, construed, and interpreted in accordance with the laws of the State of **Texas**. The exclusive jurisdiction and venue over any action, suit or other legal proceedings that may arise out of this agreement will be in the federal or state courts of **Webb County** in the State of **Texas**.
- d) Neither party will not by mere lapse of time without giving notice or taking any other action under this Agreement be deemed to have waived any breach by the other party of any of the provisions of this Agreement.
- e) All notices and other communications required or permitted to be given under this Agreement will be in writing and will be considered effective when mailed by registered or certified mail or hand delivered.

14. **RE-QUALIFICATION.** If Client becomes unqualified for service under section 2 of this contract, Client must re-qualify by fulfilling the following requirements:

- a) Client must pay any outstanding account balance in full, plus a re-certification fee of one thousand dollars (\$1,000); and
- b) Client must pay for an examination (either remotely or on-site if necessary) of the Software and an upgrade to the current supported level. Cost for examination, upgrade will be \$87.50 per hour, plus travel expenses.

CLIENT:

PAPCON:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_