Software Maintenance & Support Agreement

This agreement ("Support Agreement", "Software Assurance", "Agreement") is for the purpose of defining the terms and conditions under which Technical Support, Maintenance and Software Upgrades will be provided by Albanese Consulting ("ALBX", "Vendor") to the undersigned organization ("Customer", "Client") for the support of Software ("Software").

Overview
Software Assurance is an annual subscription that includes: Technical Support, Maintenance and Software Upgrades.

Support Fees
Customer agrees to pay a fee of $299/year for each user license. Payment for each renewal term shall be due within thirty (30) days of the renewal date at the Vendor's current price for a support agreement.

Non-Support Agreement Customers
Customers not engaged in a current Support Agreement contained herein, may only obtain technical support at a cost of $199 per incident and software upgrade licenses at $499/per user.

Taxes
All fees under this Agreement exclude all applicable sales, use, and other taxes and government charges, whether federal, state or foreign, and Customer shall be responsible for payment of all such taxes (other than taxes based on Service Provider's income), fees, duties, and charges, and any related penalties and interest, arising from the payment of any and all fees under this Agreement including the access to or license of the Supported Software and performance of the Services hereunder.

Term
This agreement shall start on the Effective Date stated below. This agreement shall run for a period of two (2) years from the Effective Date and shall automatically renew for consecutive one (1) year periods unless either party provides written notice of termination within sixty (60) days prior to the anniversary of the Effective Date.

Vendor Responsibilities
Vendor will notify Client of any material defects or malfunctions in the Software or related documentation that it learns from any source. These material defects will be published in one of the following methods: Vendor's website, email, telephone or written letter.

Vendor will, from time to time, supply Client with copies of the Software and relevant documentation revised to reflect significant updates and enhancements to the software made by Vendor, if any, during the period of this Agreement. Such enhancements may include, without limitation, modifications to the Software that increase its speed, efficiency, and/or ease of operation.

Within a reasonable time after being given written notice thereof, Vendor will correct inherent material errors in the Software that are not caused by Client's misuse, improper use, alteration or damage of the Software.

Vendor will supply Client with reasonable means of accessing modifications and enhancements to the Software, through the use of a network download. Vendor is not obligated under this Agreement to perform on-site installation of modifications and enhancements.

Customer Responsibilities

Customer shall always supply support requests in written form, either by letter, fax or email.

Customer agrees to comply with all requests of the Vendor and to provide access to all documents, files, computers and servers necessary to the performance of the Vendor's duties under this Agreement.

Customer agrees to follow the Vendor's minimum hardware and software requirements in order for the Software to function properly in a production environment.

Customer agrees that Vendor is not responsible, nor obligated to change Software due to Customer's change in business practices, polices or procedures. However, Customer may request new features or upgrades to accommodate all or part of said practices, polices or procedures.

Customer shall provide to Vendor all data that is relevant for resolving each support request. Relevant data may include, but is not limited to, log files, database dumps, program scripts, descriptions of the hardware and software environment, examples of inputs, and expected and actual outputs.

Customer acknowledges that it is the sole responsibility of the Customer, at all times, including specifically during all service functions performed by Vendor pursuant to this Agreement and undertaken on the Customer's local installation of the supported Software, to protect and maintain an up-to-date and restorable backup of any and all databases, files, utilities, software and other systems which Vendor's staff may directly access or in connection with which Vendor's staff may offer advice.

Customer represents and warrants to Vendor that it:

(a) is engaged in a lawful business enterprise;
(b) is not a competitor or competing organization with a similar product;
(b) can form legally binding contracts and is authorized to enter into this Agreement; and
(c) is in compliance with all applicable laws appropriate to its location of business and nature of work.

Technical Support

The Client may open a new *Support Incident* by calling the Vendor's telephone support phone number, emailing a technical support engineer or submitting a form online. Support assistance may be delivered by telephone, email and/or remote assistance via a web meeting. Vendor will respond to the Support Incident in accordance with the *Support Response Times* section.

Support will be provided to the Client for assistance with software bugs, repair of known issues, troubleshooting of software malfunctions, installation and deployment, general questions, end user questions, software administration and best practices procedures. Vendor is not responsible for software or hardware of third parties, but may, at the discretion of the support engineer, assist in troubleshooting these third party hardware/software issues.

Vendor will supply user license copies of any of these updates and/or enhancements without additional charge. Vendor will give reasonable assistance to Client in installing and operating any new release or enhancement, provided, however, that if such assistance is to be provided on-site, such services will be charged at Vendor's then current consulting rate.

Software Maintenance

During the term of this agreement, Vendor will provide the Customer with copyrighted patches, bug fixes and releases of the Software along with other generally available technical material. These maintenance materials including the Software may not be used to increase the licensed number of versions or copies of the Software. The Customer agrees not to use, sell or transfer the prior version but to destroy or archive the prior version of the Software. All patches, bug fixes and releases shall be subject to the license agreement related to the Software.

Software Upgrades

Vendor will provide the Customer with all minor/major software version releases during the term of this Agreement. Customer agrees that the releases of software upgrades are at the sole discretion of the Vendor and shall follow the Vendor's internal quality standards. Further, Vendor will choose software features to be depreciated or included. Shall the Customer receive a software upgrade after the Anniversary Date of the current agreement, this shall constitute the Customer's consent to renew or engage in a new Support Agreement according to the *Terms Section* below. Customers not engaged in a current Agreement will be required to purchase an upgrade at a rate of the Vendor's current upgrade pricing.

Support Hours

Vendor will provide support Monday through Friday from 9:00AM to 5:00PM CST with the exception of Vendor holidays. If Customer requires support outside of normal support hours, this can be arranged on a case by case basis and is subject to the availability of the support engineer and may require a minimum of 24 hrs advance notice to the Vendor. An emergency 24x7x365 telephone contact will be provided for P1 Incidents (*see Support Priority Definitions*), database or server connectivity if the client is subscribed to a Dedicated Hosting Agreement.

Support Priority Definitions

A priority issue may only be reclassified to a lower or higher priority issue, upon the prior approval of Vendor's Support Manager. Priority Issues are classified into: P1, P2 and P3.

Priority Issue ("P1"), High Severity
- Any fault which causes failure of a critical feature
- Significant loss of visibility of application performance or irreparable loss of data within the application (such as connectivity to the host server)
- Customer declared critical issue with the concurrence of customer and vendor management
- Any fault that keeps the system from meeting significantly documented standards or performance specifications
- Any fault that keeps the system from meeting regulatory and safety standards
- Discovery of application bug with NO short term workaround

Priority Issue ("P2"), Medium Severity
- Any fault which causes failure of a non-critical feature of the application
- Application is running at a degraded capacity with potential risk of losing critical data
- Failures in application performance that requires additional dedicated resources to maintain core application elements

Priority Issue ("P3"), Low Severity
- Loss of administrative capabilities (non-P1/non-P2)
- Loss of full feature functionality (non-P1/non-P2)
- Discovery of application bug with a short term workaround
- Any remote upgrade or support not associated with resolution of a P1 or P2 issue

Support Response Times

Classification	Initial Resolution	Final Resolution
P1 – High	< 1 business days	< 5 business days
P2 – Medium	< 3 business days	< 10 business days
P3 – Low	< 5 business days	< 15 business days

Unresolved Calls

Not all calls may be resolved while the technician is on the phone. Some calls require testing and/or assistance from our programming department to resolve. Vendor will keep the designated contact person updated as to the status of the open call if the problem cannot be resolved while on the phone with the technician.

Confidential Information

All information relating to Client that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Vendor and will not be disclosed or used by Vendor except to the extent that such disclosure or use is reasonably necessary to the performance of Vendor's Work.

All information relating to Vendor that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Client and will not be disclosed or used by Client except to the extent that such disclosure or use is reasonably necessary to the performance of Client's duties and obligations under this Agreement.

These obligations of confidentiality will extend for a period of 12 months after the termination of this agreement, but will not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

Customer agrees not to directly or indirectly reverse engineer, decompile, replicate, reproduce any or all parts of the software, including but not limited to its screens, database, database structures, executable programs, libraries, images, or scripts.

Entire Agreement

This Agreement together with any attachments referred to herein constitute the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

Warranty

Vendor will undertake all reasonable efforts to provide technical assistance under this agreement and to rectify or provide solutions to problems where the Software does not function as described in the Software documentation, but Vendor does not guarantee that the problems will be solved or that any item will be error-free. This agreement is only applicable to Vendor Software running under the certified environments specified in the release notes for that product. Vendor will provide the Customer with substantially the same level of service throughout the term of this agreement. Vendor may from time to time, however, discontinue Software products or versions and stop supporting Software products or versions one year after discontinuance, or otherwise discontinue any support service. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.

Termination

This agreement may be terminated for non-payment or material breach. Fees paid or due are non-refundable unless. Termination of this agreement may only be made by a designated contact listed in the *Designated Contacts* section of this agreement. Upon termination of this Agreement, Service Provider shall have no further obligation to provide any Services hereunder to Customer.

Intellectual Property

Vendor will retain ownership of all proprietary rights in the Software, including certain rights, if any, that Vendor has pursuant to license from another party. Upon full payment of the fees set forth in this Agreement, Vendor will grant to Client a non-exclusive license to use the Software in its own business. Client is not authorized to sell, transfer or license the Software or rights thereto to any other person or organization.

Limitation of Liability

Neither party will be liable to the other for special, indirect or consequential damages incurred or suffered by the other arising as a result of or related to the performance of Vendor's Work, whether in contract, tort, or otherwise, even if the other has been advised of the possibility of such loss or damages. Client will indemnify and hold Vendor harmless against any claims incurred by Vendor arising out of or in conjunction with Client's breach of this Agreement, as well as all reasonable costs, expenses and attorneys' fees incurred therein. Vendor's total liability under this Agreement with respect to the Work, regardless of cause or theory of recovery, will not exceed the total amount of fees paid by Client to Vendor during the six (6) month period prior to the date the claim arises.

Assignment

Customer will not assign this Agreement, in whole or in part, without the prior written consent of the other party. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

Arbitration

Any dispute arising under this Agreement will be subject to binding arbitration by a single Arbitrator with the American Arbitration Association (AAA), in accordance with its relevant industry rules, if any. The parties agree that this Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Illinois. The arbitration will be held in Illinois. The Arbitrator will have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgment on any award rendered by the Arbitrator may be entered in any Court of competent jurisdiction.

Attorneys' Fees

If any litigation or arbitration is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.

Severability

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified

to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

Force Majeure

Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control.

No Waiver

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.

Designated Contacts

During the term of this agreement, the Customer may delete and add Designated Contacts by sending notification in writing on Customer's letter head to Albanese Consulting. We may rely on such notice to make the change.

Please provide one or more designated contacts below.

Technical Contact (upgrades, technical issues, deployment to customer machines)

Name/Title: _____

Phone: _____

Email: _____

Purchasing/Billing Contact (contract renewals, purchase orders, etc.)

Name/Title: _____

Phone: _____

Email: _____

Management Contact (Primary decision maker)

Name/Title: _____

Phone: _____

Email: _____

End User Contact (Represents end users, feedback, feature requests, etc.)

Name/Title: _____

Phone: _____

Email: _____

Please sign, date and return copy of this Agreement to ALBX Solutions via fax to 217-522-0069 or email digital copy to sales@albx.com

CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. CUSTOMER REPRESENTS TO ALBX THAT CUSTOMER UNDERSTANDS THOSE TERMS AND CONDITIONS AND AGREES TO BE BOUND BY THEM.

CUSTOMER:

_____
Software Product Name

_____
Organization

_____
Name & Title

_____
Authorized Signature

_____
Effective Date