



# SOFTWARE MAINTENANCE AGREEMENT

Dynamic Software Solutions, Inc. 4400 East Hwy 20 #511 Niceville, FL 32578 USA • TEL (850) 279-6176

## Software Maintenance Agreement No \_\_\_\_\_

This Software Maintenance Agreement ("Agreement") is between the licensee printed below ("Licensee") and Dynamic Software Solutions LLC. ("DS2 LLC").

### DEFINITIONS

"Software" means all or any portion of DS2 LLC's proprietary software technology accessed or downloaded from a DS2 LLC-authorized website or delivered on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

### ARTICLE 1—TERM AND FEE

The initial term of this Agreement will begin on receipt of order (renewal date) and will continue for twelve (12) consecutive months at the fee(s) noted in the DS2 Quotation. Thereafter, Licensee may continue the service for annual maintenance and update at the then current fee. DS2 LLC will issue a renewal quote sixty (60) days in advance of the renewal date. Payment is due annually or monthly in advance. If Licensee wishes to reinstate lapsed maintenance, Licensee agrees to pay a reinstatement fee as well as the maintenance fee. Licensee agrees to pay DS2 LLC invoices within thirty (30) days of receipt. To reinstate lapsed maintenance, maintenance fees from the date maintenance lapsed, in addition to the current fees, must be paid. Maintenance fees are nonrefundable.

### ARTICLE 2—SOFTWARE MAINTENANCE AND UPDATE SERVICE

As discussed further on the DS2 LLC website named below, DS2 LLC provides technical support in response to specific inquiries as well as software maintenance by way of patches, updates, and upgrades as applicable. Maintenance is composed of technical support, updates, and other benefits. DS2 LLC will support/maintain the Software for a period of twelve (12) months. Software maintenance will apply only to unmodified Software and commercially released updated versions of the Software. Software updates are provided only for standard hardware platforms and operating systems supported by DS2 LLC as described in the Software documentation. Licensee is responsible for making or arranging for updates to interfaces for nonstandard devices or custom applications.

DS2 LLC maintenance will be provided in compliance with the DS2 LLC Software Maintenance Program on the DS2 LLC website at <http://www.getdwos.com/support>. DS2 LLC supports users with the installation and maintenance of DS2 LLC Software, assistance in solving problems arising from the use of the Software, hardware interfacing of peripheral devices, and logging of enhancement requests and problems or issues submitted by the user. DS2 LLC's Support website is found at <http://www.getdwos.com/support>

Licensee may contact Technical Support at

Email: [support@getdwos.com](mailto:support@getdwos.com)

Website Address: <http://www.getdwos.com/>

Phone: +1-850-635-0198

Hours: 9:00 a.m. to 6:00 p.m. Central time

(Monday through Friday, except DS2 holidays)

Resultant order documents for maintenance must include the statement, "This order is subject to the terms and conditions of Software Maintenance Agreement. All other terms and conditions are void."

### ARTICLE 3—TERMINATION

This Agreement may be terminated by either party giving the other party thirty (30) days' notice of intent to terminate prior to the end of the term identified in Article 1.

### ARTICLE 4—LIMITATION OF LIABILITY AND REMEDIES

DS2 LLC will use commercially reasonable efforts to provide corrections or workaround solutions for any problem or issue reported and determined to be in the Software or the documentation at no cost to Licensee for the term of this Agreement. While it is DS2 LLC's goal to provide an acceptable resolution for incoming problems/issues and incidents, DS2 LLC cannot predict a resolution time and is unable to guarantee that all problems or issues can be resolved or addressed.

EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTY, DS2 LLC DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. DS2 LLC DOES NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION WILL MEET LICENSEE'S NEEDS, OR THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED.

If DS2 LLC fails to fulfill its obligations under this Agreement, Licensee's sole and exclusive remedy is the right to terminate this Agreement immediately for the affected Software.

IN NO EVENT SHALL DS2 LLC BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE SOFTWARE OR DOCUMENTATION, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT DS2 LLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

### ARTICLE 5—LICENSE

Maintenance and support are provided subject to the terms and conditions of the then-current General License Terms and Conditions/License Agreement and Exhibit 1 Scope of Use, available on DS2 LLC's website at <http://www.getdwos.com/support> or included with a quote or with the deliverable Software. Licensee may only use the type and number of copies of the Software, Data, Web Services, and Documentation for which the appropriate license fees have been paid to DS2 LLC and in accordance with the General License Terms and Conditions/License Agreement, Exhibit 1 Scope of Use, and the licensed configuration on file with DS2 Customer Service.

Licensee may not assign the rights granted hereunder, or any of them, without the prior written consent of DS2 LLC.

In the event that (i) DS2 becomes insolvent or bankrupt, (ii) DS2 makes an assignment for the benefit of creditors, (iii) DS2 consents to a trustee or receiver appointment, (iv) a trustee or receiver is appointed for DS2 or for a substantial part of its property without its consent, (v) DS2 voluntarily initiates bankruptcy, insolvency, or is the subject of involuntary bankruptcy, insolvency, or reorganization proceedings, then DS2 and Customer will negotiate in good faith to enter into a source code escrow agreement with CodeKeeper Incorporated in a form provided by CodeKeeper Incorporated (or if CodeKeeper Incorporated is no longer engaging in the source code escrow business, a mutually agreed source code escrow company) setting forth source code escrow deposit procedures and source code release procedures relating to the software defined within this agreement. Notwithstanding the foregoing, the escrow instructions shall provide for a release of the source code to Customer of the software only upon the occurrence of (a) the filing of a Chapter 7 bankruptcy petition by DS2, or a petition by DS2 to convert a Chapter 11 filing to a Chapter 7 filing; (b) the cessation of business operations by DS2. In the event of a release of the source code pursuant to this section, said source code shall continue to be the Confidential Information of DS2 or its successor in interest. In the event of a release of source code to Customer from escrow, Customer may only use, copy and/or modify the source code consistent with the purposes of this Agreement (or have a contractor who has agreed in writing to confidentiality provisions as restrictive as those set forth in this Agreement do so on its behalf).

### ARTICLE 6—APPLICABLE LAWS

This Agreement is governed by and construed in accordance with the laws of the State of Georgia without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property.

**ARTICLE 7—ENTIRE AGREEMENT**

This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matter. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by an authorized representative of each party.

The parties have agreed to these terms and have executed this Agreement on the date last signed below.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the last date written below.

(Licensee)

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

Authorized Signature

Printed Name: \_

Title: \_

Date: \_

By: \_\_\_\_\_  
Authorized Signature Date

Printed Name: \_\_\_\_\_

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

**Licensee Contact Information**

Contact: \_\_\_\_\_

Installation Address: \_\_\_\_\_

City, \_\_\_\_\_ State, \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_