Miami Tax 52pTBM01

(1)

TECHNICAL SERVICE AGREEMENT

This agreement is entered into by and between

Low Associates, Inc
4612 S. Main St.
South Bend, IN 46614
(Herein after "Company")

And

Miami County
25 N. Broadway, Courthouse
Peru, IN 46970
(Herein after "Customer")

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GENERAL TERMS AND CONDITIONS

I. DEFINITIONS

"Documentation" shall mean the user manual and other similar information about the features and use of the program products. Such documentation shall be provided, at Company's option, in either hard copy or in electronic form.

"Database Management Software" shall mean a third party software product that supports the program product in transaction processing application in a distributed environment.

"Database" shall mean a large collection of data organized especially for rapid search and retrieval by a computer.

"Designated Holiday" means each of the following days: New Year's Eve, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the immediately succeeding Friday, Christmas Eve and Christmas Day.

"Software Release" means the original of or a successor to a specified program product and which is generally offered and expressly designated by the Company in its sole discretion as a Version.

"Software Error/Defect" Software Error/Defects means any failure of the program product to perform correct calculations.

"Program Products" means Company authored proprietary application software used by the Customer.

II. COMPENSATION

In consideration of the performance of such services as set forth in this Agreement, the Company will receive fees in the amounts set forth in the schedules attached. These fees are subject to change annually or as service changes. Notice of such adjustment charges shall be invoiced to customer not later than thirty (30) days prior to billing date.

III. PAYMENT

Service shall be invoiced as specified on attached schedules. Customer agrees to pay the Company within thirty (30) days of an invoice. Company may at its discretion charge customer interest on any late payment at the rate of 1.5% per month, or the maximum rate allowed by law including, but not limited to, legal fees and court costs.

IV. TERM OF SUPPORT AGREEMENT

The initial Agreement shall commence upon the acceptance and signature of Agreement by both the Company and Customer and shall expire on December 31st of the calendar year following the initial Agreement. This Agreement shall renew automatically for an additional term of twelve (12) months unless either party provides the other written notice of termination one hundred and eighty (150) days prior to the expiration date of the initial term or any subsequent twelve-month term.

V. CONFLICT

In case of conflict between the terms of this Agreement and terms of the attached schedule(s), the terms of the attached schedule(s) will control.

VI. SEVERABILITY/GOVERNING LAW

If any provision of this Agreement is declared invalid or unenforceable, such invalidity or unenforceability will not affect the balance of this Agreement, but the balance of this Agreement will be construed as if not containing the provision, and the rights and obligation of the parties will be construed and enforced accordingly, provided that same is not of a material nature and does not substantially affect the work or the cost associated. This Agreement will be interpreted under the laws of the State of Indiana.

VII. DEFAULT

The Company may declare this Agreement in default (a) if the company has not received any payments due hereunder within thirty (30) days after their due date, or (b) the Customer fails to fulfill its obligation or violates any other term of this Agreement and fails to correct such violation within thirty (30) days after written notice from the Company, or (c) the Customer violates the terms of any license or agreement for the software provided under this Agreement. Company may pursue any alternative or additional and cumulative remedies provided by law and may assess against Customer all costs and attorney fees incurred in enforcing its right herein, to the extent permitted my law.

VIII. AGREEMENT

This Agreement includes the schedules attached hereto and, by this reference, made an integral part hereof and constitute the complete and entire Agreement between the parties with respect to the subject matter hereof and supercedes all previous proposals, oral or written, express or implied, and all negotiations, conversations or discussions heretofore had between the parties related to the subject matter of this Agreement. The attached schedules are subject to change annually. It is intended that while the schedule(s) would change periodically, the base agreement will remain in effect until terminated or amended.

Proposed schedule changes will be submitted by July 1st for the subsequent Agreement term. The Customer agrees to make every effort to agree upon proposed schedule changes by July 31st following their submission, else written notice of termination should be provided per VI. Term of Support Agreement.

IX. LIFE EXPECTANCY

Customer understands, acknowledges and agrees that the technology upon which computer equipment and software is based changes very rapidly. Company makes no representations that the software products identified in the Agreement will be functional for the Customer indefinitely. Future resources may be necessary which include, but are not limited to, additional disk storage and memory, as well as workstations/servers and third party software upgrades. The product provided the Customer hereunder will continue to be functional throughout the term of the then current agreement.

X. AMENDMENT

This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived, in whole or in part, except in writing signed by both parties.

XI. INDEPENDENT CONTRACTOR

The relationship of the Company to the Customer will be that of an independent contractor, and no principal-agent or employee relationship is created by this Agreement.

XII. LIABILITY

During the term of this Agreement, Company shall maintain insurance coverage covering its operations as follows:

A. Worker's compensation
B. Employer's liability

Upon request by Customer, Company shall provide Customer with Certificate (s) of Insurance.

Company shall not be liable for:

Damages (regardless of their nature) for any delay or failure by Company to perform its obligations under this Agreement due to any cause beyond its reasonable control.

Company shall not be liable for any loss, damage or claim resulting from any of the products or services provided, except for loss or damage caused solely by the negligence of Company.

Not withstanding any other provision of this Agreement, Company's liabilities under this Agreement, whether under contract law, tort law or otherwise shall in no event exceed Company's insurance coverage. To the extent that a claim is not within Company's insurance coverage, Company's liability shall in no event exceed the amount actually received by the Company.

XIII. WAIVER

No failure by either party hereto to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstance giving rise to such right.

XIV. REPRESENTATIONS OF CUSTOMER

The Customer is authorized to enter into and to carry out its obligations under this Agreement. This Agreement has been authorized, executed and delivered by the Customer in accordance with all applicable laws, rules, ordinances and regulations. This Agreement is valid, legal, binding and enforceable in accordance with its terms. The person signing this Agreement has the authority to do so, and is acting with the full authorization of the Customer's governing body.

XV. REPRESENTATIONS OF COMPANY

The Company is authorized to enter into and to carry out its obligations under this Agreement. This Agreement has been authorized, executed and delivered by the Company in accordance with all applicable laws, rules, ordinances and regulations. This Agreement is valid, legal, binding and enforceable in accordance with its terms. The person signing this Agreement has the authority to do so, and is acting with the full authorization of the Company's governing body.

XVI. NON-SOLICITATION CUSTOMER

For the duration of this Agreement and for the period of two (2) years following termination hereof, Customer shall not directly or indirectly recruit or attempt to recruit any employee or agent of Company or otherwise initiate any offer or promise of employment with any employee or agent of Company without the prior written consent of Company. If permission is granted by Company to Customer and an employee or agent of Company is employed by Customer any time prior to the termination of this Agreement or the two (2) year period thereafter, then Customer shall pay a fee to Company in the amount of two (2) times the annual salary of

such employee or agent for the period in which such employee or agent is employed by Customer.

XVII. NON-SOLICITATION COMPANY

For the duration of this Agreement and for the period of two (2) years following termination hereof, Company shall not directly or indirectly recruit or attempt to recruit any employee or agent of Customer or otherwise initiate any offer or promise of employment with any employee or agent of Customer without the prior written consent of Customer. If permission is granted by Customer to Company and an employee or agent of Customer is employed by Company any time prior to the termination of this Agreement or the two (2) year period thereafter, then Company shall pay a fee to Customer in the amount of two (2) times the annual salary of such employee or agent for the period in which such employee or agent is employed by Company. Company has Employee Agreement prohibiting such activities without prior written consent.

XVIII. CUSTOMER RESPONSIBILITIES

Customer shall provide the Company with access to customer's facilities and use of Customer's office space, office equipment, computers and other equipment or records that may be required to perform the tasks described herein, including access after normal working hours and on weekends if required. The customer shall provide the necessary personnel to maintain security of the facility, as deemed appropriate by the Customer.

Customer shall create and maintain timely, accurate and readable electronic backups of all data, program and system files. Company shall not be responsible for data lost due to Customer's failure to maintain proper backups. Company shall not be responsible for data, which cannot be retrieved due to damage or faulty backup media or other circumstance beyond reasonable control.

Customer shall provide and maintain an outside connection to facilitate remote support services. This connection shall be installed prior to equipment/software installation.

XIX. COMPANY RESPONSIBILITIES

Company shall provide support services for the licensed software identified on Schedule hereto. Such services shall include troubleshooting, technical analysis, problem diagnosis and procedural assistance. Company shall provide all such services via telephone or on-site contact with Customer and/or remote access into customer's computer system.

Company shall be responsible for using due diligence to attempt to correct or cure any verifiable and reproducible defect in a program product by issuing corrected instructions, a restriction, a bypass or procedural work around or a new release. Company shall not be responsible for correcting any Defect in any version of the program product other than the most recent version/release of the program product.

Company shall issue a new release of the program products from time to time to its contracted support customers. Such releases may include functionality enhancements, error corrections and modifications required by legislation and/or administrative rule.

From time to time, Company may develop a completely new version of a program product. Said version would typically incorporate the use of new technologies as well as the addition of significant functional enhancements. This may also include substantial modifications that become necessary because of changes in legislation and/or administrative rule. New versions may require the Customer to pay additional license fees as determined by Company. In such event, Company shall continue to support the current version of the program product for a reasonable period.

The company shall maintain a trained staff capable of rendering the services set forth herein and will perform its services under this Agreement in a professional manner consistent with standard industry practices.

The Company will safeguard any materials, equipment and information provided by the Customer including 3rd party software products, during the term of this Agreement in a manner prescribed by the Customer. In lieu of specific guidance from the Customer, the Company will comply with applicable state laws, rules, ordinances and regulations to prevent unauthorized disclosure of Customer information.

XX. INTERNET ACCESS

Company shall not be liable except for loss or damage caused solely by the negligence of the Company.Customer hereby assumes the risk of and shall indemnify and hold harmless the Company from and against any claim, loss, damage or expense, either direct or indirect, incurred, made or suffered by Customer in connection with or in any way arising out of Customer's use of the Internet, including, but not limited to, any occurrences of (a) unauthorized access by any party (hacking) into any of Customer's equipment, software or databases and (b) computer viruses downloaded to or found to exist on Customer's equipment, software or databases.

In the event Customer experiences problems associated with or caused by instances of hacking and/or computer viruses and requests Company's technical assistance, Company shall provide such assistance at its then standard rates, plus travel expenses, except as covered by technical agreements already in place.

XXI. GENERAL

Customer shall maintain a telephone support line to report problems to support staff associated with the covered products listed on Attached Schedules. Telephone support is not intended to serve as a training facility.

Service coverage is 7:30 a.m. to 4:30 p.m. local time, Monday through Friday, excluding Designated Holidays. Special Support if necessary, can be scheduled. Emergency or unscheduled support will be billed at the then current Level 1 Technical Services/Support Agreement rate plus expenses with a four (4) hour minimum.

The company shall activate an escalation plan to involve the necessary technical resources in the event of extraordinary circumstances. In certain situations a problem may require special effort to return the system, to normal operation, i.e., reloading of system and/or application software, restoration of data files, etc. In such cases it may be necessary to secure the onsite services of a Company technician. These services will be provided per the Advanced Technical or Additional Support Schedule attached. Expenses incurred by the company to resolve software error/defects in the program product will be paid for by the Company.

Company shall have no responsibility or liability with respect to any problems associated in any way with Customer's installation and/or use of any equipment, system or application software purchased by Customer from another vendor. Customer acknowledges that its use of such products may adversely affect the operation of those products supplied by Company. In such event Company will provide it best efforts to identify and if practical to resolve the problem. These services will be provided per the Advanced Technical or Additional Support Schedule attached.

APPLICATION SOFTWARE

I. DELIVERABLES

The Company does hereby grant and Customer accepts personal, nontransferable and nonexclusive right and license to use the application software identified on the attached Schedule during the term of Agreement.

II. OWNERSHIP/CONFIDENTIALITY

Customer acknowledges that the program products, including all underlying intellectual property rights, are and shall remain the exclusive property of Company and that Company holds the copyright interests therein, the program products being treated as unpublished works. Customer further acknowledges that the program products incorporate trade secrets and confidential information of Company, and Customer shall hold the trade secrets and confidential information in trust and shall not disclose, publish, release, transfer or otherwise make available any program products, in any form, to any person other than an employee of Customer or Company without the prior written consent of Company, except during the period any such person is on Customer's premises for purposes specifically related to Customer's use of the program products. Customer shall take all reasonable steps to insure that its employees comply with the terms of the provision. Customer shall not allow the Company's program products to enter the public domain.

The program products shall be used only for the processing of Customer's own transactions and maintaining its own records. Customer shall not: (a) permit any third party to use the program products or the related documentation, or (b) permit access thereto except by its employees and/or associated government agencies as required to carry out duties the ordinary and normal course of business.

Customer shall have the right to copy the program products for backup and archival purposes only. Customer shall not remove any copyright, trademark, proprietary legends, or legal or warning notices included on or embedded in any program products. All copies made by Customer shall be the property of Company.

III. DATABASE MANAGEMENT SOFTWARE

Customer will purchase the third party's Database Management Software that the program product uses and will abide by agreement contract of the third party's Database Management Software.

IV. WARRANTY

Each program product is warranted to conform to the specifications as provided in writing by the Company. Customer agrees that its sole and exclusive remedy and Company's sole obligation, if a program product warranted hereunder fails to conform to the applicable specifications, and Customer has advised Company of such failure in writing during the term of the warranty, is for Company to provide programming services to attempt to correct any defect in a timely manner. For purposes of this provision, non-conformance to specification and the term "error/defect" shall mean only significant deviations from the specifications for such current release of the program product.

THE ABOVE IS THE ONLY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, THAT IS MADE BY THE COMPANY WITH RESPECT TO PROGRAM PRODUCTS. THE COMPANY MAKES NO OTHER SUCH WARRANTY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH IS HEREBY DISCLAIMED. NO ORAL OR WRITTEN REPRESENTATIONS, INFORMATION OR ADVICE GIVEN BY THE COMPANY, ITS AGENTS OR ITS EMPLOYEES SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE FOR THAT PURPOSE.

V. INTELLECTUAL PROPERTY INDEMNITY

Company agrees to indemnify and defend Customer from any and all suits, judgments, damages, claims, demands, actions, causes of action, proceedings, expenses or liabilities of any nature, which are threatened or brought against or are incurred by Customer arising from a claim that the licensed application program product constitutes an infringement of any United States patent or copyright, or is a trade secret of another, provided, however, that Company is notified thereof promptly in writing. Company shall have the sole control of the defense of any such suit, proceeding or action. Company, in its sole discretion, shall have the right to settle any suit, proceeding or action.

If the use of any element of a program product is enjoined or prohibited or threatened to be enjoined or prohibited as a result of any such claim, suit, action, proceeding or settlement, Company shall have the right to (a) procure for Customer the right to continue to use said element; (b) replace said element with a comparable element which is non-infringing or is not such a trade secret; (c) modify said element so it becomes non-infringing or no longer is such a trade secret; or (d) terminate the license for said

element and credit Customer the amounts Customer has paid to Company for said program product.

VI. TERMINATION

Within thirty (30) days after the termination or cancellation for any reason of the license(s) granted hereunder. Customer shall certify, in writing, to Company that it has destroyed all electronic and/or archival copies of the program products. With written authorization from the Company the Customer shall be permitted for a reasonable period thereafter to retain one copy of certain materials for record or conversion purposes. The specific materials and period of time the Customer may retain them shall be determined at the time of termination or cancellation and agreed to in writing by the Customer and the Company.

If Company has ceased its ongoing business operations and is not providing the services per this contract regarding the sale or support of "Company authored proprietary application software"; Company will provide the source code to Customer specifically for the purpose of converting software/data.

This Agreement shall be binding upon the successors and assigns of the parties, provided, however, that no assignment shall be made by either party without the prior consent of the other. Any attempt by either party to assign this Agreement or any of the right or duties hereunder contrary to the foregoing provision shall be void.

Notice permitted or required under this Agreement shall be deemed acceptable when mailed by certified mail, postage prepaid, or when dispatched by facsimile, telex, or cablegram (and followed by a written confirmation mailed by certified mail, postage prepaid, within twenty-four hours after such dispatch).

VII. LOW SOFTWARE LICENSE AGREEMENT

IMPORTANT: By loading and using this software, you agree to all of the terms of this Agreement. Do not load this software until you have carefully read and agreed to the following terms and conditions. If you do not agree to the terms of this Agreement, do not install or use this software.

LICENSE: Company grants Customer the following non-exclusive, non-transferable, royalty-free, copyright license subject to the terms of this Agreement. Company grants you the right to copy the software and materials ("Materials") onto a computer for your use. You will not use copies in excess of your purchase agreement, and further, you will not copy, modify, see or transfer any part of the materials except as provided in this Agreement. You will not reverse engineer, recompile, or disassemble the software.

OWNERSHIP AND COPYRIGHT OF MATERIAL: Title to the Materials and all copies thereof remains with Company or its suppliers. The Materials are copyrighted and are protected by United States copyright laws and international treaty provisions. You will not remove the copyright notice from the Materials. Except as expressly provided herein, Company does not grant any express or implied right to you under Company patents, copyrights, trademarks, or trade secret information.

LIMITATION OF LIABILITY: THE MATERIALS ARE PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY, OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL COMPANY OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE MATERIALS.

Company and Customer, by signature below, acknowledge that they have read this Agreement, including the schedules, understand it, and agree to all its terms and conditions. This Agreement constitutes the entire Agreement, between the parties and supercedes all prior communications, proposals, or agreements relative to the hardware, software or services outlined herein.

Low Associates, Inc.

Low Associates, Inc.
4612 S. Main St.
South Bend, IN 46614

BY: Low Associates, Inc

NAME: _____

TITLE: _____

DATE: _____

Customer

Miami County
25 N. Broadway, Courthouse
Peru, IN 46970

Miami County

NAME: _____

TITLE: _____

DATE: _____

SCHEDULE A

Annual Maintenance/License Fee – Financial Accounting Suite

Terms of Agreement: January 1, 2004 through December 31, 2004
Services will be billed semi-annually

Software Maintenance For Application Software Designed, Authored And Licensed By Low **$11,976.00 annual fee**

All Low software products are subject to continued revisions

General Ledger
User Defined Query
Payroll/Human Resources
Report Viewer
Optional Software not included can be added

License of Software above allows for a single installation except as noted.

The first year will be prorated and billing will begin the first month following installation.

Annual Maintenance Fee includes support questions regarding the application software via our software support phone number, or application software trouble-shooting and resolution via a modem. If appropriate, application software support may also be provided via the internet, mail, or email. The annual Maintenance Fee also includes software updates necessary to correct software defects or periodic software updates for enhancements to the application software provided by Low. All Low software products are subject to continued revisions. Any services not covered by the Annual Maintenance/License Fee can be provided through the use of the Technical Service/Support Agreement.

Customer _____ Date _____
Company _____ Date _____

FEES ABOVE INCLUDE ALL EMPLOYEE EXPENSES:
LOCAL, STATE, AND FEDERAL TAXES, INSURANCE, VACATION, SICK LEAVE, TRAINING, HOLIDAYS, OVERTIME, RETIREMENT ALLOWANCE AND ANY OTHER EMPLOYEE COSTS, DIRECT OR INDIRECT.

SCHEDULE B
Technical Service/Support Agreement

Terms of Agreement: January 1, 2004 through December 31, 2004.

Technical Services (Due 30 days after billing) $ 31,920.00

Technical Service/Support will be used for the following:
All technical service/support not covered in Schedule A

Technical Service/Support to be provided includes but is not limited to:
Data Conversion
Training on Licensed Software and related Software
Staff Development and retraining on any software as requested
Hardware Installation and Setup
Installation of Application Software
Installation of Data Base Software
Installation of other Software as required
Consulting and planning as required and requested by Authorized customer personnel.

Staff assigned as required.

Technical Services will be reviewed and a new fee established on an annual basis. The fee presented above is a first year fee which includes significant startup expenses (i.e. conversion, initial training on Windows applications, etc.). Year-end balances of annual Technical Services, will be carried forward.

Customer _____ Date _____
Company _____ Date _____

FEES ABOVE INCLUDE ALL EMPLOYEE EXPENSES:
LOCAL, STATE, AND FEDERAL TAXES, INSURANCE, VACATION, SICK LEAVE, TRAINING, HOLIDAYS, OVERTIME, RETIREMENT ALLOWANCE AND ANY OTHER EMPLOYEE COSTS, DIRECT OR INDIRECT.

SCHEDULE C

Base Software License: Financial Accounting Suite

Terms of Agreement: **One time cost.**
(Base Software license requires an annual Maintenance/License Fee)

Payment Due Date: 30 Days prior to installation $55,580.00

Financial Accounting Suite

General Ledger
User Defined Query
Payroll/Human Resources
Report Viewer
Optional Software not included can be added

Customer _____ Date _____
Company _____ Date _____

The Software proposed requires properly configured Network Hardware. For equipment requirements, see: www.lllow.com. Low Associates is a Dell Computer provider and can supply all of the necessary equipment, including preparation and installation needs.

FEES ABOVE INCLUDE ALL EMPLOYEE EXPENSES:
LOCAL, STATE, AND FEDERAL TAXES, INSURANCE, VACATION, SICK LEAVE, TRAINING, HOLIDAYS, OVERTIME, RETIREMENT ALLOWANCE AND ANY OTHER EMPLOYEE COSTS, DIRECT OR INDIRECT.

(2)

To: Office

From: Steve McKinney

Miami County Contract

II