



FILE

**ANNUAL MAINTENANCE AGREEMENT
FOR KOMPUTROL SOFTWARE SYSTEMS**

1. Parties

Agreement made as of October 26, 2004, between Komputrol, a division of A.E. Boyce & Co., Inc. an Indiana corporation, with its principal place of business at 109 West Jackson Street, Cicero, IN 46034-0500 ("Licensor"), and the County Commissioners of Scott County, Indiana, with its principal place of business at 1 East McClain Avenue, Suite 130, Scottsburg, IN 47170 ("Licensee"). Licensor and Licensee agree that the terms and conditions of this Maintenance Agreement cover maintenance services to be provided by Licensor to Licensee for the software licensed by Licensor to Licensee as more particularly described on Schedule 1 hereto.

2. Definitions

- (a) **Effective Date.** The date set forth on Schedule A.
- (b) **Errors, Malfunctions or Defects.** Deviations between the Licensed Software and the documentation furnished by Licensor for such Software.
- (c) **Licensed Software.** All programs and associated documentation licensed to Licensee under one or more Licenses for Software Products between the parties. ~~Definitions in such Licenses shall apply to this Agreement unless plainly inconsistent.~~
- (d) **Maintenance Period.** The initial period of twelve (12) consecutive months and any twelve (12) consecutive month renewal period thereafter commencing on the Effective Date of this Agreement, or the anniversary thereof.
- (e) **Software Product.** A licensed program and associated documentation that has been licensed by Licensor to Licensee.
- (f) **Successor Product.** A Software Product generally offered and expressly designated by Licensor in its sole discretion as a successor to a specified Software Product.
- (g) **Support End Date.** A date established by Licensor after which Support Service for a specific Software Product is no longer available.
- (h) **Support Service.** The Licensed Software support service ordered by Licensee and furnished under this Agreement, as such service is available and constituted from time to time.

3. Support Service Term

(a) **Commencement.** Licensor will begin Support Service for each Software product on the date of installation of such Product or on the effective date set forth in Schedule A attached hereto, whichever is later.

(b) **Continuation.** Licensor will continue to furnish Support Service for the Maintenance Period. With respect to each Software Product set forth in Schedule A, this Agreement shall remain in effect for successive Maintenance Periods until terminated by notice from one party to the other.

(c) **Termination.** Except as otherwise provided herein,

(i) *Notice.* Either party may terminate this Agreement as of the end of any Maintenance Period by giving written notice to the other, such notice to be given by Licensor not less than sixty (60) days before the end of the Maintenance Period, or by Licensee as to any specific Software Product at any time before the end of the Maintenance Period.

(ii) *Default.* Either party may terminate this Agreement if the other party defaults in the performance of any of its obligations hereunder or under a License Agreement for Software Product, effective after written notification of default and failure to cure the default after ten (10) days. "Default" shall be defined as: (a) breach of any material term of this Agreement, including but not limited to, the failure of Licensee timely to pay Licensor fees or charges owed; or (b) breach of any material term or condition of any License Agreement between the parties; (c) Licensee being declared a user not in good standing by Licensor, or (d) proceedings in bankruptcy are commenced against either of the parties, or either is adjudicated a bankrupt, or a receiver of either is appointed and qualifies. Licensor shall have the sole right to declare Licensee a user not in good standing for just cause, which shall include but not be limited to the following: abuse or misuse of the Systems, related materials, support services or Licensor staff; failure to obtain appropriate training for Licensee staff; ceasing to use the Systems on a regular basis for their intended purposes or replacing the Systems with those of another computer software Licensor. In the event of a default by either party, including that Licensor elects to declare Licensee a user not in good standing, then the party declaring the default shall give the other written notice of such declaration. The party receiving a declaration of default shall then have ten (10) days after receipt of such notice to cure the declared default. Failure to cure a default within the ten (10) day time limit shall give the party not in default the sole right and power to terminate this Agreement.

(iii) *Remedies.* If Licensee fails to pay any amount owed to Licensor under this Agreement or otherwise breaches this Agreement and Licensor terminates this Agreement as provided in paragraph 3(c)(ii), it is agreed that in addition to any

Software Product. All common carrier charges incurred by Licensee and all costs of telephone and terminal equipment incurred by Licensee shall be the responsibility of Licensee.

(d) **Regulatory and Statutory Requirements.** Except for extraordinary changes caused by regulatory or statutory requirements as determined by the Licensor, Licensor will make any changes to the application Software Systems necessitated by new or modified regulatory or statutory requirements of federal or state government agencies at no additional charge.

(e) **Data Transmittal Programs.** Licensor will provide to Licensee, at no additional charge, software programs for magnetic media transmittal of W-2 payroll information to federal and state government agencies. Licensee is responsible for transmittal of its information. Licensor will develop and distribute programs to the Licensee to facilitate electronic transmittal of data to federal and state government agencies, as federal and state government agencies begin to accept electronically transmitted reports, at no additional charge to the Licensee.

(f) **Newsletter.** Licensor publishes a periodic newsletter for clients including announcements and information of interest to clients, and the Licensee will receive the Licensor newsletter.

(g) **Cooperative Software Development.** Licensor may make available to the Licensee the opportunity to participate with other License holders in the cooperative development of custom application software systems. The selection of any software systems to be developed shall be within the sole discretion of Licensor, and any software systems so developed shall remain the sole property of Licensor. Licensor will advise the Licensee of each such opportunity to be made available to Licensee and the cost of participation in the cooperative development of custom application software systems.

(j) **Cooperative Purchasing of Supplies.** Licensor may make available to the Licensee the opportunity to participate with other Licensor users in the cooperative purchase of supplies. The selection of any such supplies to be purchased shall be within the sole discretion of Licensor. Licensor will advise the Licensee of each such opportunity to be made available to the Licensee and the cost of participation in the cooperative purchase of such supplies.

5. Licensee Responsibilities

(a) **Interface.** Licensee shall be responsible for the interface between Software Products for which Support Service is available and all other software used by Licensee, whether or not such software is licensed to Licensee by Licensor or by others, or has been developed by Licensee.

(b) **Limitation of Remedy.** Licensee agrees that Licensor's liability hereunder for damages shall not exceed the annual maintenance fee paid, or payable, by Licensee for the Software Product, which Licensee claims resulted in Licensee being damaged for the Maintenance Period in which the cause of action accrued.

(c) **Limitation of Damages.** **IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR TORT DAMAGES.**

8. General

(a) **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein, or in any prior existing written agreement between the parties, or as duly set forth on or subsequent to the effective date hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. No provision appearing on any form originated by Licensee shall be applicable unless such provision is expressly accepted in writing by Licensor.

(b) **Force Majeure.** If Licensor shall be delayed or prevented from performing this Agreement due to any cause beyond its reasonable control, such delay shall be excused during the continuance of such delay, and the period of performance shall be extended to such extent as may be necessary to enable Licensor to perform after the cause of delay has been removed.

(c) **Licensee Forms and Non-Waiver.** Any provision of Licensee's order that is in any way inconsistent with or in addition to the terms and conditions of this Agreement shall not bind Licensor, and Licensor's failure to object to any such provision shall neither be construed as a waiver of the terms and conditions of this Agreement nor as an acceptance of any such provision.

(d) **Notices.** Any notice, request, instruction or other document pertaining to this Agreement shall be in writing and delivered personally or sent by certified or registered U.S. Mail, postage prepaid, and addressed as follows:

If to Licensor: Komputrol
 Attn: Teresa Roberts Title: Office Administrator
 P.O. Box 500
 Cicero, IN 46034-0500

If to Licensee: Scott County Auditor
 Attn: Ms. Iva Gasaway Title: Auditor
 1 East McClain Avenue, Suite 130
 Scottsburg, IN 47170

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.

(e) **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Indiana. The exclusive jurisdiction for any legal proceeding regarding this Agreement shall be the appropriate federal or state court in the State of Indiana, and the parties hereto expressly submit to the jurisdiction of said courts.

(f) **Assignments.** None of the Products or Services may be assigned or transferred by the Licensee without the prior written consent of Licensor. Any attempt by Licensee to assign or transfer any of the rights, duties, or obligations of this Agreement without Licensor's written consent is void.

(g) **Captions.** Captions contained in this Agreement are for reference purposes only and are not part of the Agreement.

(h) **Attorneys' Fees.** If any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

9. Execution

Licensee acknowledges that it has read this Maintenance Agreement and agrees to all the terms and conditions stated herein. The parties have hereunto set their hands and seals as of the day and year first above written by their duly authorized officers.

County Commissioners
of Scott County, Indiana

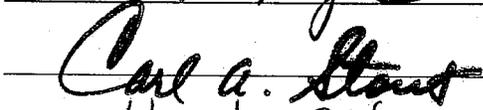
A.E. Boyce Co., Inc.







Michael B. Galliher, President



Date: 11-1-04

Date: October 26, 2004

SCHEDULE A

**APPLICATION SOFTWARE SYSTEM
MAINTENANCE FEES**

EFFECTIVE DATE

MARCH 1, 2005

**County Comprehensive Financial Accounting
Software, including:**

**Budgetary Accounting System
Payroll Processing System
Fixed Asset Inventory System
Treasurer's System**

TOTAL ANNUAL MAINTENANCE FEES

\$ 12,000.00

PAYABLE PER MONTH

\$ 1,000.00