

(04-06-04) original: City Clerk
cc: Finance (Sherry)
MSC (Gay)
Vendor

Selectron Technologies, Inc.
Support and Maintenance Agreement

I1394

This Support and Maintenance Agreement (this "Agreement") is entered into upon commencement of the Warranty between Selectron Technologies, Inc. ("Company") and the City of Delray Beach, Florida ("Customer").

For the fees specified below, Company will provide to Customer support and maintenance for the Products, as outlined below and as set forth in Exhibit A, for the term of the Agreement.

1. Term:

a) The Term of this Agreement shall commence upon the issuance of the Second Invoice (as that term is defined in the Professional Services Agreement, Ex. A) of the Company product(s) to which this Agreement relates (the "Products"), and shall end on the last day of the twelfth month. A list of the Products is attached as Exhibit A.

b) If this Agreement is entered into after the commencement of the Warranty or subsequent support periods, the Customer will be charged for the entire Term beginning on the Warranty Date.

2. Renewal:

a) The Term of this Agreement will automatically renew for successive terms of one year each unless either party gives written notice of non-renewal prior to thirty (30) days before the end of the then-current term.

b) The Customer shall maintain continuous coverage of its support contracts in order to be eligible for telephone support, and other services provided hereunder. If this Agreement is not renewed and the Customer later decides to reinstate support services, the Customer must pay all fees that would otherwise have been paid had this Agreement been renewed without interruption.

c) The Customer may request concurrent expiration dates for support agreements purchased at different times of the year. The Customer must work directly with Company to adjust (prorate) their support coverage so the terms of all such agreements expire concurrently.

3. Termination: This Agreement may be terminated by either party upon ninety (90) days written notice to the other party.

4. Fees: The Customer shall prepay Company an annual fee for the support services as set forth in Exhibit A.

5. Support Services: Company shall provide customer support for technical problems that occur when using the Products. This Agreement does not include support of the following items:

- a) Altered or modified Software not performed by Company.
- b) Errors caused the Customer's negligence, or other causes beyond Company's reasonable control.
- c) Version Upgrades of Third Party Software not provided by Company.
- d) Enhancements or modifications to current versions performed at the Customer's request and not intended to resolve a product failure.

Company Software Developers will directly handle the Customer issues outlined in the following levels of support.

6. Support and Maintenance:

Standard Support

The fee for Standard Support includes:

- a. Telephone Support for installation and general use questions during normal business hours (8:30 a.m. to 5:30 p.m. CST, Monday through Friday).
- b. On-Line technical diagnostic support
 - a. Software correction upgrades
 - b. Use of Company's Toll Free Number
 - c. 1 business day relief goal

Premier Support (IVR/IWR only)

The fee for Premier Support includes:

- a. Telephone Support for installation and general use questions during normal business hours (7:00 a.m. to 5:00 p.m. PST, Monday through Friday).
- b. Use of Company's Toll Free Number
- c. On-Line technical diagnostic support
- d. Software correction upgrades
- e. 1 business day relief goal
- f. 24 Hours, 7 days per week, 365 days per year support for emergency (system down or inoperable) calls

Non-emergency calls made after normal business hours will be billed at an hourly rate of 1.5 times the

current day labor rate, with a two hour minimum charge.

7. Hardware Maintenance. Company, at its sole discretion, may use new or refurbished parts for the repair or replacement of any Company provided Hardware.

8. Customer Warranty: Customer shall perform all necessary preventative maintenance as outlined in Company's Administrative Guide. If Customer's failure to perform the required preventative maintenance is determined, in Company's and Customer's reasonable discretion, to be the cause of any support call, Customer will be billed at the current hourly rate.

9. Response Times: Non-emergency support calls will be responded to within one business day, however most calls are handled within two hours of receipt. For Premier Support during non-business hours, an answering service takes all support calls. Calls that are placed as an emergency (system down or inoperable) will be dispatched to the on-call support staff for response within four hours. Non-emergency calls will be directed to support personnel, and will be responded to the next business day.

10. Customer Contacts: Three customer support contacts are allowed. Additional contacts may be added at any time for an additional \$500.00 per contact. Only Customer's customer support contacts may contact Company for support services.

Customer's customer support contacts are as set forth on Exhibit A. Customer may change its customer support contacts upon 30 days written notice to Company.

11. Warranty Disclaimer: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED TO CUSTOMER "AS IS" AND COMPANY AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. This limitation on liability is made regardless of whether Company knows or had a reason to know of Customer's particular needs. No employee, agent, dealer or distributor of Company is authorized to modify this limited warranty, or make any additional warranties.

12. Limitation of Liability: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR CUSTOMER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL

DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT. COMPANY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES PROVIDED HEREUNDER, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO COMPANY HEREUNDER. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT COMPANY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

13. Limited Remedy: If Company materially fails to perform its obligations under this Agreement, and such failure results in downtime of the relevant hardware and software that exceeds 48 hours, Customer's sole remedy, and Company's entire liability, shall be a pro rata refund for the services ("Downtime Credit"). In order to receive a Downtime Credit, the Customer must notify Company in writing within 7 days from the time of Downtime. In no event shall any Downtime Credit or the total cumulative damages for a breach of this Agreement by Company be more than the amounts previously paid by Customer under this Agreement in the 12 month period immediately preceding the Downtime Credit or breach.

14. Severability: If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Customer agrees that Sections 12 and 13 will remain in effect notwithstanding the unenforceability of any provision in Section 11.

15. Force Majeure: Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

16. Independent Contractors: The relationship between Customer and Company is that of an independent contractor, and neither party is an agent or partner of the other. Customer or Company will not have, and will not represent to any third party that it has, any authority to act on behalf of either party.

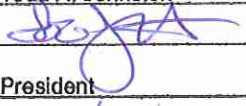
17. Applicable Law: This Agreement will be governed by the laws of the State of Florida. The

United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in the federal or state court located in Palm Beach County, Florida and each party irrevocably submits to the jurisdiction and venue of any such courts in any such action or proceeding.

18. Survival. Sections 11, 12, 13, 14, 16, 17, 18, 19 and 20 will survive expiration or termination of this Agreement

19. Entire Agreement: This Agreement and the attached Addendum, which are incorporated herein by reference, constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. The terms on any purchase order or similar document submitted by Customer to Company will have no effect.

Selectron Technologies, Inc.

By: Todd A. Johnston
Signed: 
Title: President
Date: 4/12/04
Address: 7405 SW Tech Center Drive, Suite 140
Portland, OR 97223

Customer City of Delray Beach, Florida

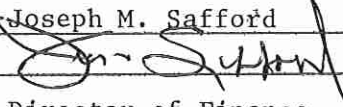
By: Joseph M. Safford
Signed: 
Title: Director of Finance
Date: 04-05-2004
Address: 100 NW 1st Avenue
Delray Beach, FL 33444

EXHIBIT A

Pricing

Support Level: ☐ Standard ☒ Premier

Effective Dates: 12-Month Warranty begins at the completion of on-site installation

Annual Cost: Warranty included in Professional Services Agreement

Extended Maintenance Estimate:

Item	Dates covered	Amount	Payment Due Date
VoicePermits with Additional Functionality	June 1, 2004 through May 31, 2005	0.00	Warranty
VoicePermits with Additional Functionality	June 1, 2005 through May 31, 2006	\$5,040.00	May 15, 2005
VoicePermits with Additional Functionality	June 1, 2006 through May 31, 2007	\$5,292.00	May 15, 2006
VoicePermits with Additional Functionality	June 1, 2007 through May 31, 2008	\$5,556.60	May 15, 2007

Notes:

- For this purpose, we will assume a June 1, 2004 warranty date on the currently scheduled System. Actual date is based on the on-site implementation and will be mutually determined with your Project Coordinator.
- The System Value for maintenance calculations is \$50,400.
- Year over year maintenance support costs will not increase more than 5%.
- Maintenance estimates for future periods do not include increases to reflect additional functionality purchased.
- Maintenance estimates for future periods are not a guarantee that annual support agreements will be offered. You will receive a minimum of 12 months notice of discontinuance of annual support agreements.

Products and Licenses

Workstation (Minimum Specifications Summary):

Intel® Xeon™ Processor 2.40GHz/533MHz
768 MB RAM
Two (2) 80 GB hard drive (RAID I mirroring)
CD ROM, 56K Modem, Network Card

Microsoft™ Windows® 2000 Server
Microsoft SQL Server
Remote Access Software
4-Port Voice Card

Basic Modules (Including):

Schedule an Inspection
Cancel an Inspection
Obtain Inspection Results
Post Inspection Results

Speak Site Address
Permit Based Messaging
VP Reporting Module

Inspection Results & History (Fax)

Inspection Failure Codes

Plan Review Status (Spoken & Fax)

SmartFAX (Required when fax functionality is purchased)

Customer Support Contacts

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Contact: _____ Email: _____ Telephone: _____

Contact: _____ Email: _____ Telephone: _____

Contact: _____ Email: _____ Telephone: _____

Group Email for all three contacts: _____