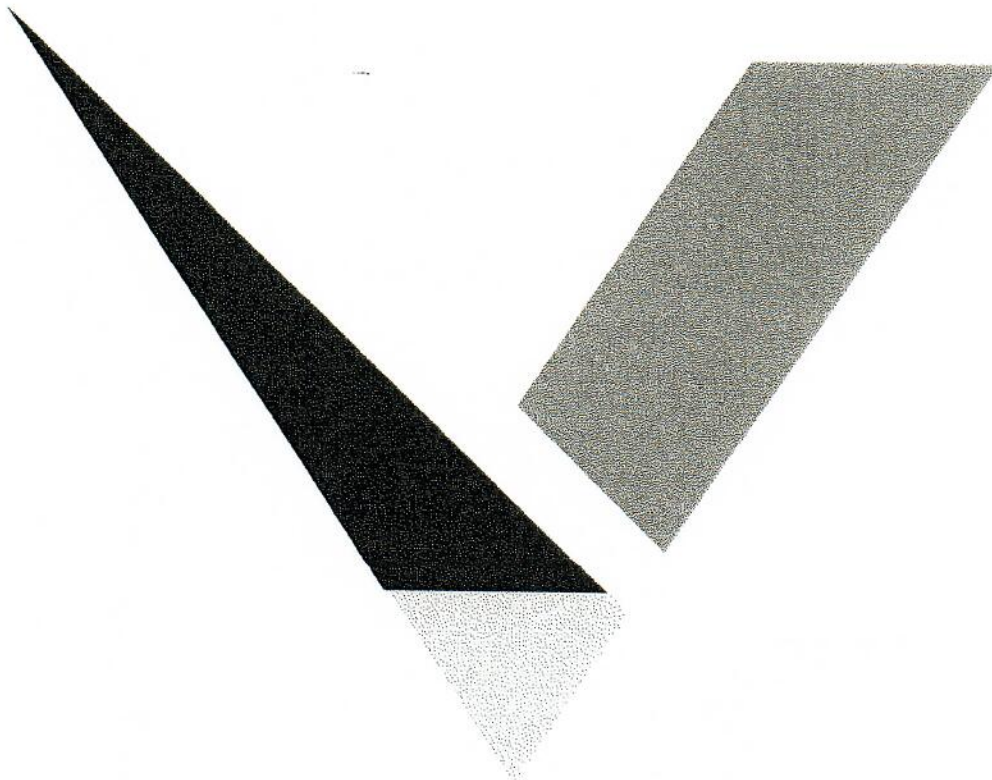


Software License, Maintenance and Support Agreement

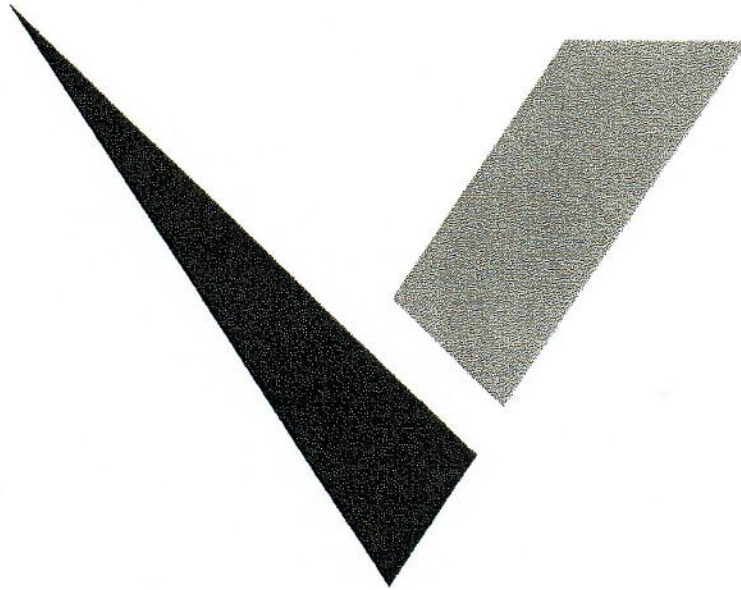


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July 18, 2018

Vermont Systems

| 877-883-8757



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Vermont Systems, Inc.
12 Market Place
Essex Junction, VT 05452
www.vermontsystems.com

Software License, Maintenance and Support Agreement

This SOFTWARE LICENSE, MAINTENANCE AND SUPPORT AGREEMENT ("Agreement"), is made and entered into on 7/26/2018 by and between Vermont Systems, Inc., a Vermont corporation (hereinafter "VSI", and **The City of Diamond Bar** (hereinafter "Customer"), collectively referred to herein as the "Parties" or singularly "Party".

In consideration of the mutual covenants and obligations expressed herein, the Parties agree to the following:

Article 1 – Software License

- 1.1 VSI hereby grants the Customer and the Customer thereby accepts a perpetual, non-transferable, and non-exclusive right to use the Licensed Software and Related Materials, as described in the attached Exhibit B price quote. The Licensed Software includes Related Materials, such as online User Reference Manuals, Sample Reports, Installation Planning Guides, Installation Instructions, On-Line Help, and Sample Training Database with Tutorials.
- 1.2 VSI uses the Progress OpenEdge V11 Development software to develop its' applications and deploys using the OpenEdge Workgroup or Enterprise RDBMS (embedded database) with RDBMS support for 4GL, SQL, ODBC, JDBC, and Enterprise Cluster Manager Integration, and OpenEdge Application Server, Basic and Enterprise Editions with Replication. Therefore, Progress software with RDBMS is required to operate the application software by platform type, and pricing is included in the attached Exhibit B. The client uses a standard HTML and Java Script browser interface
- 1.3 The license granted herein authorizes the Customer to install the Licensed Software on the designated computer platform using one copy of the programs to support live processing, training, and disaster recovery databases without incurring additional license charges. Further, the Customer can make copies of the Licensed Software for safe keeping purposes.
- 1.4 At any time, the Customer can add software and user licenses under the terms of this Agreement by paying the additional license and maintenance fees. The total number of authorized user workstations permitted to use the Licensed Software is limited to the number listed in Exhibit B pricing.

Article 2 – Annual Software Maintenance and Support Services

- 2.1 VSI shall provide the Customer with Software Maintenance and Software Support services for the Licensed Software in accordance with VSI standard Sales and Support Policies, as described in Exhibit A. The extent of support services being provided to the Customer are specifically listed in Exhibit B pricing.
- 2.2 The Annual Software Maintenance & Support fee includes ongoing software repairs and enhancements, subsequent to the initial installation. VSI uses the Evergreen method for program updates. Minor "Builds" that do not require any downtime are released every 3-4 weeks. Two or three times per year, VSI "Updates" the database schema, which does require the database to be down briefly. In most cases

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the down time is limited to one hour or less. Both Builds and Updates are completed using automated scripts to minimize user interaction.

Article 2 – Annual Software Maintenance and Support Services - continued

- 2.3 The Software Maintenance and Support fee will be billed annually, and it becomes effective on the first day of your **July 1st** fiscal year for one year. New customers will be charged on a prorated basis from the first day of the installation month through the end of the current fiscal year.
- 2.4 The required Software Maintenance and Support Agreement will automatically renew annually, unless the Customer notifies VSI in writing prior to the end of the fiscal year that the Customer is terminating VSI Maintenance Support. VSI reserves the right to increase the annual maintenance fees up to 3% annually, although VSI has rarely increased these fees in the past. Customers can contact VSI in advance to obtain a firm quote for the next fiscal year.
- 2.5 The Customer is licensed to use the VSI software indefinitely, even if it terminates annual maintenance support. The Customer is the sole owner of its' data, whether Customer hosted or VSI hosted.

Article 3 – Software Training and Installation Services

- 3.1 Training is offered at the Customer site, at VSI (12 Market Place, Essex Junction, Vermont), and remotely based on a quoted daily or hourly rate, as described in the Exhibit A, VSI standard Sales and Support Policies.
- 3.2 Any training services and estimated charges for each Customer, including the number of training days, and travel, lodging, meals, and other expenses, are itemized in Exhibit B. All training dates must be mutually agreed upon by VSI and the Customer. The Customer can request a change of training dates and number of training days. However, if a change is made after travel arrangements have been completed, the Customer will be responsible for any additional costs incurred as a result of the changes.
- 3.3 If VSI is providing other Installation Services, such as hardware and network operating system installation and setup services, they will be listed in Exhibit B pricing, as well.
- 3.4 The Customer is responsible for reimbursing VSI for all reasonable expenses, such as travel, lodging, meals, and other expenses necessary to complete the training, as requested by the Customer. VSI quotes per diem for meals based on GSA rates, unless the Customer requests actual receipts. While the other estimated out-of-pocket expenses are also listed in Exhibit B, only the actual expenses will be billed to the Customer, unless the Customer requires a fixed price in advance.
- 3.5 VSI will honor training and other services quotes for up to 120 days but reserves the right to modify these rates thereafter.

Article 4 – VSI Hosting Services

- 4.1 Web Server Hosting Service - Does not apply to this Agreement.
- 4.2 Full Hosting Services – Does not apply to this Agreement.

4.3 Full Hosting Services - Does not apply to this Agreement

Article 5 – Charges and Payment

- 5.1 Customer On-Premise Hosted Software – if the Customer is installing the software on its own servers, the Licensed Software charges will be billed to the Customer following the initial training session and will be due within 30 days. The initial Software License fee includes downloading the software and documentation from VSI's FTP web site. All major software upgrades with database changes are obtained the same way. Customers are alerted when program only updates become available, so that they can download at their convenience.
- 5.2 VSI Full Hosted Software: Does not apply to this agreement.
- 5.3 VSI Full Hosting Services: Does not apply to this agreement.
- 5.4 The Customer shall pay all applicable sales, consumer use, and other taxes required by law, unless it is exempt from any or all of these taxes. If tax-exempt, the Customer must provide a tax exemption certificate.
- 5.5 VSI will invoice the Customer for training and installation services, along with travel and other expenses, immediately following the completion of each occurrence of training or other services.

Article 6 – Security of Programs

- 6.1 The Customer shall be solely responsible for the supervision and control of the licensed Customer hosted software to ensure that it is stored in a secure location for Customer use only and that no unauthorized and unlicensed third-party gains access to it.
- 6.2 Under no circumstances shall the Customer be authorized to perform Reverse Engineering of the software object code, in order to illegally generate source code.

Article 7 – Warranties

- 7.1 VSI warrants that it has the right to license the Licensed Software, and that there are no pending liens, claims, or encumbrances against the software.
- 7.2 VSI warrants that the software shall conform to its published specifications in the Related Materials, including, but not limited to, the Capabilities Summary, On-Line Help, Reports Manual, User Reference Manual, and Training Tutorials. VSI warrants that the software is merchantable, in that it will properly install and operate according to the specifications herein.
- 7.3 VSI warrants to the Customer that it is solvent, not in bankruptcy proceedings or receivership, nor is it engaged in any proceedings, which would have an adverse effect on its ability to perform its obligations under this Agreement.
- 7.4 VSI warrants that there has been no violation of copyrights or patent rights in connection with the Licensed Software in this Agreement. VSI shall indemnify and save harmless the Customer from any suit or proceeding brought against the Customer by reason of any such infringement or any wrongful use.

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VSI will defend or settle any such claim, although the Customer shall be entitled to be independently represented by counsel of its own choice.

Article 8 – Limitation of Liability

- 8.1 Except for the warranties specified in Section 7, VSI grants no warranties, expressed or implied, including, but not limited to any implied warranties of fitness for a particular purpose. Notwithstanding anything to the contrary in this Agreement, it is expressly agreed that neither VSI nor the Customer shall be liable to the other Party for special, incidental, indirect, or consequential damages, or for any loss or claim by either Party.
- 8.2 **Liability Insurance.** VSI provides the Customer with a Certificate of Liability Insurance with the Customer named as the Certificate Holder. The standard coverages with limits and insurer(s) are listed in the attached Exhibit C. If a customer requires insurance coverage beyond the standard limits provided by the VSI Certificate of Insurance, then the customer can either accept the VSI standard coverage at no additional charge or pay for the additional insurance coverage at VSI cost.
- 8.3 **Cyber Liability Insurance.** The Certificate of Liability Insurance, Exhibit C, also includes Cyber Liability Insurance with up to \$2,000,000 for each occurrence.

Article 9 – Risk of Loss

- 9.1 For Customer hosted installations, the risk of loss or destruction, regardless of the cause, shall be the responsibility of VSI until the Licensed Software and Related Materials have been delivered to the Customer's premises or downloaded to the Customer's servers.
- 9.2 For Customer hosted installations, the Customer shall be responsible for verifying that the Licensed Software and Related Materials have been received, installed on the designated computer(s), and are operational, unless the Agreement specifies that VSI will install the Licensed Software as part of the on-site training.

Article 10 – Personal Information Protection

- 10.1 **Customer On-Premise Hosted Software & Database:** if the Customer installs the VSI application software on its' own servers, the Customer will be responsible for the SSL (Secure Socket Layer) to protect confidentiality of patron data flow between the server and the user workstations. To protect data at rest, VSI offers the chargeable Progress TDE (Transparent Data Encryption) software option to encrypt user-selected sensitive data fields to secure them from unauthorized access.
- 10.2 **VSI Hosted Software & Database:** Does not apply to this agreement.
- 10.3 VSI is covered with Cyber Liability Insurance up to two million dollars for each occurrence. This applies primarily to Network Security and Privacy Liability, as part of Exhibit C described in Article 8.

Article 11 – Application Source Code

- 11.1 The Source Code for all VSI application software, along with a list of licensed customers, is held in escrow by VSI's Escrow Agent, Kolvoord, Overton, & Wilson, Attorneys, at 6 Joshua Way, Suite B, Essex Junction, Vermont 05452, Attn: Jason Ruwet 802-878-3346, jfr@essexvtlaw.com. The source code held in escrow is updated after each software release. If VSI defaults in providing software maintenance support due to company failure, or bankruptcy, or discontinuance of said service by VSI, it will notify the Customer and the Escrow Agent that it is in default. The Escrow Agent will then make the source code available to the Customer within thirty days of written notice for Customer support use only.

Article 12 – Independent Contractor

- 12.1 In performing the work under this Agreement, VSI acts as an Independent Contractor and is solely responsible for necessary and adequate workers' compensation insurance, as well as personal injury and property damage insurance.

Article 13 – Change Orders or Extensions

- 13.1 The Customer may require changes in the scope of services to be performed by VSI. Such changes, including any increase or decrease in compensation amount, must be mutually agreed upon in writing by the Customer and VSI. VSI shall be compensated for all authorized changes in services.

Article 14 – Governing Laws & Venue

- 14.1 The Parties agree that the laws of the State of California will govern this Agreement, and that the venue for legal resolution shall be in Los Angeles County, California.

Article 15 – Authorization and Entire Agreement

- 15.1 Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights stated herein, and to perform the duties and obligations described herein.
- 15.2 This Agreement and the attached Exhibits A, B, C constitute the entire Agreement between Vermont Systems and the Customer.
- 15.3 If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced, then all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

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Signatures


Vermont Systems, Inc.


Authorized Signature

John Willey, Vice Pres. Sales
Printed Name and Title

7/18/18
Date

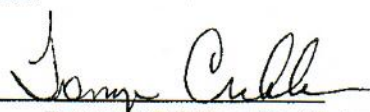
Customer


Authorized Signature

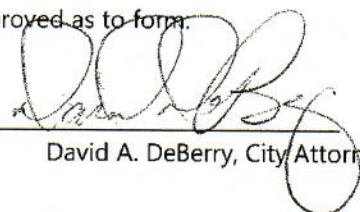
Dan Fox, City Manager
Printed Name and Title

7-26-18
Date

ATTEST:

By: 
Tommye Cribbins, City Clerk

Approved as to form:

By: 
David A. DeBerry, City Attorney