



## SOFTWARE MAINTENANCE AND SERVICES AGREEMENT

NOTICE TO ALL USERS: PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING THE ACCEPT BUTTON AT THE BOTTOM OF THIS PAGE OR BY INSTALLING THE SOFTWARE, YOU AGREE TO ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK ON THE BUTTON THAT INDICATES THAT YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT AND DO NOT USE THIS SOFTWARE.

WHEREAS, BizNet has licensed to you (“*Customer*”) BizNet’s proprietary BizNet Insight software in accordance with that certain Product Order (the “*Order*”), and the End User License Agreement (the “*EULA*”); and

WHEREAS, Customer desires to have BizNet maintain and support the Software, and BizNet desires to maintain and support the Software for Customer under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. The following words shall have the following meanings when used in this Agreement:

1.1 “*Bypass*” shall mean a procedure communicated by BizNet to Customer, which permits Customer to avoid Error(s) by implementing the same when using the Software.

1.2 “*Enhancement(s)*” shall mean a modification to the Software that alters the functionalities described in the Functional Specifications without materially degrading the functionalities or performance of the Software prescribed by the Functional Specifications.

1.3 “*Error(s)*” shall mean a failure of the Software to conform to the Functional Specifications.

1.4 “*Error Report*” shall mean the document to be created by BizNet, pursuant to Article 3 hereof, each time that Customer reports an Error.

1.5 “*Fix(es)*” shall mean the document to be created by BizNet pursuant to this Agreement in order to correct Errors.

1.6 “*License(s)*” shall mean any license or licenses granted by BizNet to Customer to use the Software under the EULA.

1.7 “*Object Code*” shall mean the binary machine-readable version of the Software.

1.8 “*Maintenance Services*” shall mean the services to be provided under this Agreement.

1.9 “**Optional Maintenance Services**” means the services that Customer may elect to receive from BizNet pursuant to the provisions of Article 4 hereof; it is hereby agreed that if Customer elects to receive any Optional Maintenance Services, the said Optional Maintenance Services shall thenceforth be deemed to constitute Maintenance Services.

1.10 “**Severity Level**” shall mean the level of severity assigned to a reported Error with the Software, in accordance with the Severity Level definitions set forth in Exhibit A to this Agreement.

1.11 “**Site**” shall mean a Customer computer facility located in one specific geographic location.

1.12 “**Software**” shall mean BizNet’s proprietary BizNet Insight software as modified with Customer’s specified enhancements, including Bypasses, Fixes, Enhancements, Updates, and Upgrades. The term “Software” includes Software Products.

1.13 “**Software Products**” shall mean all physical components, other than program codes that are offered by BizNet, including but not limited to, manuals, documentation, magnetic media, job aids, templates, and other similar devices.

1.14 “**Update**” shall mean a compendium of Fixes which BizNet releases to the users of the Software from time to time and which BizNet shall supply to Customer pursuant to the terms of this Agreement.

1.15 “**Upgrades**” shall mean a new release or version of the Software constituting a compendium of Enhancements.

Any capitalized terms not defined in this Agreement shall have the meaning set forth in the EULA.

## 2. Biznet’s Obligations.

2.1 In consideration of Customer’s performance hereunder, BizNet shall, in addition to the other obligations imposed on BizNet hereby, render the Maintenance Services pursuant to Article 3 hereof, and render such Optional Maintenance Services as Customer may elect to purchase pursuant to the provisions of Article 4 hereof.

2.2 All Maintenance Services performed by BizNet under this Agreement shall be performed by BizNet in a professional manner in accordance with industry standards. If BizNet receives notice of defects in the Maintenance Services, BizNet shall reperform said Maintenance Services. BizNet does not warrant that the Maintenance Services or Software will be uninterrupted or error free.

2.3 The parties acknowledge and agree that, notwithstanding anything to the contrary herein contained, BizNet shall not maintain the Hardware or the Third Party Software.

## 3. Maintenance Services.

3.1 By rendering the Maintenance Services, BizNet shall correct all Errors, regardless of how such Errors are brought to the attention of BizNet, in accordance with this Agreement, and, in particular,

Exhibit A hereto. During the term of this Agreement, BizNet shall provide the following types of Maintenance Services:

3.1.1 General Support. BizNet telephone support representatives shall be available at (972) 893-0000 to receive Customer telephone calls between the hours of 7:00 a.m. and 7:00 p.m., Dallas, Texas time, Monday through Friday, excluding public holidays. Support is also available via email at [support@biznetsoftware.com](mailto:support@biznetsoftware.com) or on-line at [www.biznetsoftware.com/support](http://www.biznetsoftware.com/support). BizNet support representatives shall provide support for the installation, configuration, and general use of the Software.

3.1.2 Error Reports. Customer may submit Error Reports to BizNet support representatives at (972) 893-0000, via email at [support@biznetsoftware.com](mailto:support@biznetsoftware.com), or on-line at [www.biznetsoftware.com/support](http://www.biznetsoftware.com/support). Errors shall be handled as specified in Exhibit A hereto. All Errors shall be investigated and if the Error relates to the Software, or is directly caused by the Software, (a) an Error Report shall be opened, (b) the Error shall be assigned a Severity Level as per the provisions of Exhibit A hereto, and (c) the Error shall be resolved in accordance with the procedures and processes set forth in Exhibit A hereto.

3.1.2 Installation Assistance. BizNet shall provide to Customer telephone assistance for the implementation or installation of Bypasses, Fixes, and Updates between the hours of 7:00 a.m. and 7:00 p.m., Dallas, Texas time, Monday through Friday, excluding public holidays.

3.1.3 Bypasses. BizNet shall provide to Customer such Bypasses as are necessary to ensure the resolution of Errors that can be resolved by a Bypass.

3.1.4 Fixes. BizNet shall provide to Customer such Fixes as are necessary to ensure the resolution of Errors that can be resolved by a Fix.

3.1.5 Updates. BizNet shall provide to Customer such Updates as it provides to the users for the Software from time to time.

3.1.6 Enhancements. BizNet shall provide to Customer such Enhancements as it provides to the users for the Software from time to time.

3.1.7 Upgrades. BizNet shall provide to Customer such Upgrades as it provides to the users for the Software from time to time.

3.2 Other Software Products. BizNet shall provide to Customer, at no additional cost, any Software Products relating to the Software made generally available to other Software users without charge. Any Software Products so made available at a given cost to the other Software users shall be offered to Customer at BizNet's then-existing rates.

3.3 Activity Reports. Upon written request by Customer, BizNet shall provide: (a) a status report of Error resolution activities; and (b) a status report of all outstanding Error Reports. Such status reports shall contain BizNet's tracking number, Error description, Error resolution status, and a definitive resolution time frame and release number for all Errors.

3.4 **Limitation on Maintenance Services.** Notwithstanding any other provisions in this Maintenance and Services Agreement, BizNet shall provide Maintenance Services only with respect to the two (2) most recent Upgrades of the Software.

3.5 **Intellectual Property Rights.** Title to all Bypasses, Fixes, Updates, Enhancements, and Upgrades shall remain solely and exclusively with BizNet. It is hereby acknowledged and agreed that the former shall be deemed to constitute Software for purposes of the application of the EULA.

4. **Optional Maintenance Services.**

4.1 Customer shall be entitled to purchase from BizNet the following Optional Maintenance Services:

4.1.1 **Training.** Upon request, BizNet will provide training at Customer's location or in BizNet's Irving, Texas facility. All expenses arising from travel to Customer's location shall be billed to the Customer at BizNet's actual cost, provided all such travel and expenses shall be approved by Customer in advance. All expenses arising from travel by Customer to BizNet's Irving, Texas facility shall be the sole responsibility of Customer.

4.1.2 **Consulting Services.** BizNet will provide on-site or off-site consultant support to assist with the operations and support of the Software. Such consultant shall offer training, support, and consultation to optimize the Software system and the Customer's practices. The consultant will also act as liaison between Customer and BizNet. All travel and expenses arising from consultant support shall be billed to the Customer at BizNet's actual cost, provided all such travel and expenses shall be approved by Customer in advance.

5. **Out Of Scope Problems.**

5.1. Any time incurred by BizNet in diagnosing or fixing problems that are not caused by the Software, or are not covered by this Agreement are billable to the Customer at BizNet's then-existing rates, with a one-hour minimum per call.

5.2. Any travel and expenses incurred in conjunction with out of scope maintenance and support shall be billed to Customer at BizNet's actual costs, provided all such travel and expenses shall be approved by Customer in advance.

6. **Term Of Agreement.** This Agreement shall become effective on the Effective Date and continue for a one (1) year term (the "Initial Term"). Thereafter, it shall continue on a year-to-year basis, until terminated by either party by providing the other party with written notice of termination at least ninety (90) days prior to the anniversary date of this Agreement.

7. **Fees For Maintenance And Services.**

7.1 Customer shall pay BizNet for the Maintenance Services set forth in Section 3 the annual maintenance fee specified in the Order (the "Annual Maintenance Fee").

7.2. BizNet shall charge Customer its then-existing rates for all optional services, including without limitation, any enhancements or modifications to the Software undertaken by BizNet at the

written request of Customer, any change orders received under the Order and any Optional Maintenance Services.

8. Designated Customer Personnel. The Customer shall identify in writing, by name and location, all Customer personnel who may contact the BizNet representatives as set forth in Sections 3 and 4. The personnel identified shall have authority to authorize an investigation of software problems and have knowledge of the rules of engagement for maintenance and support. The list of authorized Customer contact personnel may be revised by Customer at any time as long as BizNet is informed in writing and such list does not exceed a maximum of fifteen (15) Customer contact personnel.

9. Reproduction Of Manuals, Documentation, And Object Code.

9.1. Customer shall have the right, at no additional charge, to reproduce solely for its internal use, all manuals and documentation furnished by BizNet relating to the Software, regardless of whether such manual or documentation is copyrighted by BizNet. All copies of manuals or documentation made by Customer shall include any proprietary notice or stamp that has been affixed by BizNet. BizNet shall furnish to Customer and at no additional charge to Customer, one (1) hard copy of the relevant documentation sufficient to enable Customer to maintain and operate the Software. All documentation shall be in the English language.

9.2. One (1) copy of the Object Code may be reproduced by Customer, at no additional charge, only for back-up or archival purposes. On written request by BizNet, Customer shall notify BizNet in writing of its methods and procedures for archiving of Object Code software prior to doing so.

10. Limitation Of Liability And Disclaimer Of Warranty.

10.1. IN NO EVENT SHALL BIZNET BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS ARISING FROM OR RELATED TO THE BREACH OF THIS AGREEMENT, EVEN IF BIZNET HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN THE EVENT ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE, BIZNET'S LIABILITIES UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNT ACTUALLY RECEIVED BY BIZNET PURSUANT TO THIS AGREEMENT.

10.3 EXCEPT AS SET FORTH IN SECTION 2.2, BIZNET MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE OR MAINTENANCE SERVICES OR THEIR CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY CUSTOMER. BIZNET FURNISHES THE WARRANTIES IN SECTION 2.2 IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10.4 No action, regardless of form, arising under this Agreement, may be brought more than one (1) year after the cause of action has arisen, except that an action for nonpayment may be brought within two (2) years after the date of the most recent payment.

11. Independent Contractor. All work performed by BizNet in connection with the Software and/or Maintenance Services described in this Agreement shall be performed by BizNet as an

independent contractor and not as the agent or employee of Customer. All persons furnished by BizNet shall be for all purposes solely the BizNet's employees or agents and shall not be deemed to be employees of Customer for any purpose whatsoever. BizNet shall furnish, employ and have exclusive control of all persons to be engaged in performing maintenance services under this Agreement and shall prescribe and control the means and methods of performing such maintenance services by providing adequate and proper supervision. BizNet shall be solely responsible for compliance with all rules, laws, and regulations relating to employment of labor, hours of labor, working conditions, payment of wages, and payment of taxes, such as employment, Social Security, and other payroll taxes including applicable contributions from such persons when required by law.

12. Force Majeure. Neither party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil, or military authority, act of God, act or omission of carriers, or other similar causes beyond its control. If any such an event of force majeure occurs and such event continues for ninety (90) days or more, the party delayed or unable to perform shall give immediate notice to the other party, and the party affected by the other's delay or inability to perform may elect at its sole discretion to: (a) terminate this Agreement or the affected order solely upon mutual agreement of the parties; (b) suspend such order for the duration of the condition and obtain or sell elsewhere Software, Software Products, or Maintenance Services comparable to the Software, Software Products, or Maintenance Services to have been obtained under the order; or (c) resume performance of such order once the condition ceases with the option of the affected party to extend the period of this Agreement up to the length of time the condition endured. Unless written notice is given within thirty (30) days after the affected party is notified of the condition, option (c) shall be deemed selected.

13. Assignment. This Agreement shall be binding on the successors and assigns of both parties, provided, that neither party may assign or transfer its interests, rights, or obligations under this Agreement or any order by written agreement, merger, consolidation, operation of law, or otherwise without the prior written consent of an authorized executive officer of the other party, which consent shall not be unreasonably withheld. It shall be reasonable to withhold consent to such assignment or transfer if the assignee or transferee is in direct competition with the other party. Any purported assignment of this Agreement in violation of this Section 13 shall be null and void.

14. Amendments, Modifications, Or Supplements. Amendments, modifications, or supplements to this Agreement shall be permitted, provided all such changes shall be in writing signed by the authorized representatives of both parties, and all such changes shall reference this Agreement and identify the specific articles or sections of this Agreement that is amended, modified, or supplemented.

15. Notices. All notices, demands, or other communications herein provided to be given or that may be given by any party to the other shall be deemed to have been duly given when made in writing and delivered in person, or upon receipt, if (a) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, or (b) sent by reputable overnight courier to the address set forth in the Order, or such address as the parties may provide to each other in writing from time to time.

16. Obligations That Survive Termination. The parties recognize and agree that the obligations of the other party under Sections 9, 11, and 18 of this Agreement, shall survive the cancellation, termination, or expiration of this Agreement.

17. Export Regulations. Customer and BizNet acknowledge that the Software and all related technical information, documents, and materials may be subject to export controls under the U.S. Export

Administration Regulations and, to the extent applicable, Customer and BizNet shall (a) comply with all requirements set forth in such regulations, and (b) cooperate fully with each other in any official or unofficial audit or inspection that relates to such export requirements.

18. Governing Law. The validity, construction, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Texas except as to its principles of conflicts of laws. The parties acknowledge and agree that the United Nations Convention for the Sale of Goods shall not apply to this Agreement. The parties irrevocably submit to the jurisdiction of the state and federal courts located in Dallas, Texas to resolve any disputes arising under or related to this Agreement.

19. Recitals, Enumerations, And Headings. The recitals, enumerations and headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement.

20. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and replaces and supersedes all prior agreements, written and oral, relating to the subject matter hereof, between the parties to this Agreement.

## Exhibit A

### ESCALATION PROCEDURES AND PROCESSES FOR SOFTWARE ERROR RESOLUTION

Classification of Errors. All Errors reported by Customer to BizNet shall be assigned a Severity Level jointly agreed upon by Customer and BizNet. The point of contact throughout this initial Error reporting procedure shall be the applicable BizNet support representative available to Customer under the terms of this Agreement. Reported Errors shall be classified as follows:

Severity Level 1 - Severity Level 1 implies that the Software is not functioning. Some examples of Severity Level 1 Errors are as follows:

1. Production System down and will not restart;
2. Production Software not able to communicate with external systems (including the network control center) that halts online and other processing and no Bypass is available; and
3. Production Software is generating a data corruption condition that halts online and other processing and no Bypass is available.

Severity Level 2 - Severity Level 2 implies that the Software is running but that Customer is unable to use major portions of the Software, and no Bypass is available. Some examples of Severity Level 2 Errors are as follows:

1. Intermittent Error in a live, production system that continues processing with no Bypass; and
2. Major functional component is unavailable with no Bypass.

Severity Level 3 - Severity Level 3 implies that the Software is operating close to normal, but there is a noncritical Error for which an operational Bypass exists for such Error. Severity Level 3 Errors will be fixed in the next scheduled Update.

Severity Level 4 - Severity Level 4 includes purely cosmetic Errors and documentation anomalies.

Out-of-Scope - A reported problem is out-of-scope when it is determined not to be related to the Software and is beyond the bounds of BizNet's responsibility. Examples of such unrelated problems include, but are not limited to, Customer host or applications software, Customer hardware and cabling, power or environmental conditions, and human error.

#### **SEVERITY LEVEL 1**

Error Resolution - Immediate steps shall be taken toward solving the Error. BizNet shall work to resolve Severity Level 1 Errors, using commercially reasonable efforts, until the Error is resolved. If required, BizNet staff shall be moved off of lower Severity Level Errors to service Severity Level 1 Errors.

Resource Commitment - When a Severity Level 1 Error is reported, BizNet shall assign all resources required to correct the Error. Work on the Error shall be continuous until a Fix is found. If

system access is required, Customer shall provide a contact available to BizNet and access to its system and software for the duration of the Error correction procedures.

Completion Goal - The completion goal shall be to resolve one hundred percent (100%) of all Severity Level 1 Errors with a Fix or Bypass within twenty-four (24) hours of receipt of the Error Report.

## **SEVERITY LEVEL 2**

Error Resolution - Severity Level 2 Errors will be analyzed in the order that they are reported. Severity Level 1 Errors will take priority over Severity Level 2 Errors.

Resource Commitment - Appropriate technical resources will be assigned to Severity Level 2 issues as long as Severity Level 1 Errors are not open.

Completion Goal - The completion goal will be to resolve one hundred percent (100%) of all Severity Level 2 Errors with a Fix or Bypass within five (5) business days of receipt of the Error Report.

## **SEVERITY LEVEL 3**

Error Resolution - Severity Level 3 errors shall be researched after Severity Level 1 and Severity Level 2 Errors. The majority of the Severity Level 3 Errors shall be scheduled for correction and be resolved as part of the next scheduled Update.

Resource Commitment - Severity Level 3 Fixes shall be included in the next scheduled Update.

Completion Goal - The completion goal and objective shall be to correct Errors in the next scheduled Update.

## **SEVERITY LEVEL 4**

Error Resolution - Severity Level 4 Errors shall be addressed at BizNet's discretion after Severity Level 1, Severity Level 2 and Severity Level 3 Errors are corrected. All Severity Level 4 Errors shall be scheduled for correction and be resolved as part of the next scheduled Update.

Resource Commitment - Severity Level 4 Fixes shall be included in the next scheduled Update.

Completion Goal - The completion goal and objective will be to correct issues in the next scheduled Update.