



eSmart Solutions S.A.R.L.

Software Maintenance Agreement

Kaslik 564 Facing Altavista Center, Bloc C, 3rd Floor, Kaslik, Lebanon

This Software Maintenance & Technical Support Agreement ("Agreement") for _____ from eSmart Solutions S.A.R.L. is entered into on the date signed below between eSmart Solutions S.A.R.L. ("Company"), and the undersigned individual or entity ("You") for the services and number of authorized users as referenced in a corresponding order form; the terms of which are incorporated by reference.

1. DEFINITIONS

"Documentation" means the manuals, user guides, and other materials provided by Company to assist You in using the Products.

"Fix(es)" means a Workaround and/or additional or replacement lines of Software code provided by Company to remedy a defect in the Materials that caused it to not operate substantially in accordance with its written specifications.

"Materials" means the Software and Documentation provided under a separate grant to You.

"Maintenance" means Services relating to any Updates that may become available by Company during the Term of this Agreement if such Service has been elected by You and evidenced in a corresponding order form.

"Problem" means hardware that does not operate in accordance with its written specifications; Software that does not operate substantially in accordance with its written specifications; or Documentation that is not correct.

"Product" means the proprietary computer software program identified above. "Product" is the following, including the original and all whole or partial copies: 1) machine-readable instructions and data, 2) components, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related software materials, and 5) software use documents or keys, and documentation.

"Response Time" means the elapsed time from when Company receives a request for assistance until the commencement of assistance.

"Services" or "Maintenance & Technical Support Services" means the maintenance and support to be provided pursuant to the terms of this Agreement repairing or replacing Product that does not operate in accordance with its written specifications.

"Software" means computer programs in machine-readable form granted to You under a separate software agreement by Company for use on designated CPU(s). Software does not include any version of Source Code and any operating system software installed on the CPU.

"Source Code" means a high level program in that is not machine-readable.

"Start Date" means the date of the first invoice sent to Customer which shall begin the Initial Term (defined in Section 2).



"Support Period" means the initial 12 months following the Start Date (the "Initial Support Period"). The Support Period shall also include any subsequent 12 month renewal periods in which you have paid for Services.

"Special Services" means any Services provided that are not part of the Maintenance & Technical Support Services in Section 3 as well as any Services provided in excess of the Monthly Allotment or total maximum allotment defined in Section 3(B).

"System Administrator" means an employee or agent of You with sufficient training and experience to identify and isolate Problems and to provide sufficient information and assistance to Company to be able to reproduce such Problems. The System Administrator or his/her delegate shall be the single point of contact with Company when reporting Problems. Company may require You to appoint a new System Administrator if Company reasonably determines that the System Administrator does not possess the training or experience necessary to perform the required functions of the System Administrator or cannot communicate effectively with Company's support personnel.

"Technical Support" means access to telephone based support personnel for the purpose of providing second line assistance to your System Administrator with the standard business use of the Product as well as any Fixes.

"Updates" means subsequent releases of Company Software which are generally made available for supported Software at no additional charge, other than media and handling charges, to correct design faults, discrepancies or defects ("bugs") in the Product. Updates are generally designated by a change in the number appearing to the right of the initial decimal point in the Product's version number (i.e., 1.1 vs. 1.0).

"Workaround" means a temporary solution to a Problem.

2. TERM AND TERMINATION

The term of this Agreement shall commence on the Start Date of the initial term and end 12 months thereafter (the "Initial Term"). Thereafter, this Agreement shall automatically renew for succeeding 12 month annual term(s), hereinafter known as the "renewal period(s)" (collectively "Term"); unless either party provides written notice on or before 30 days preceding an anniversary of the Start Date of its intent not to renew for the next annual period. The amount of charges for any renewal period for Services shall be at Company's then current prices in effect at the time of such renewal. If a lapse in Services coverage occurs at any time, Company may invoice You a reactivation fee to inspect the Products prior to entering into a new agreement. In the event of the termination of the underlying end user software agreement for the Product, it is the intent of the parties that this Agreement shall concurrently terminate. If You fail to pay any invoice in full within a period of 30 days after the same is due, Company may terminate this Agreement upon 5 business days' notice to You without any liability to You whatsoever. Except for Your failure to make payments, as invoiced, either party may terminate this Agreement on notice if the other party has defaulted in the performance of its obligations under



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this Agreement, has breached any material provision of this Agreement, or becomes insolvent, invokes as a debtor any laws relating to the relief of debtors' or creditors' rights, or has such laws invoked against it as a debtor. Such termination shall be effective 30 days after notice, unless such default or breach has been cured or the terminating party is satisfied with other party's solvency within that time. Upon termination of the Agreement due to your breach, Company shall be entitled to accelerate all remaining payments for the Term and any prepaid fees shall not be refunded.

3. SOFTWARE MAINTENANCE & TECHNICAL SUPPORT

Company provides the following software maintenance and technical support and reserves the right to change or modify the Services at any time and from time to time upon 30 days written notice to you.

3.1 SOFTWARE MAINTENANCE

Delivery of Updates. Provided you have elected maintenance service and paid the applicable fees, whenever Company makes Updates generally available to its users who have purchased Services, Company will grant you a copy of the new release containing the Updates. Your use of all such Updates is subject to this Agreement and the terms of the applicable software agreement previously entered into by You for the Materials.

3.2 TECHNICAL SUPPORT

Provided you have elected technical support and paid the applicable fees and subject to the level of support chosen, during its normal business hours of 8:00 a.m. to 5:00 p.m., Eastern Standard Time, Monday through Friday (except Company holidays), Company will make a member of its technical support staff available by telephone and/or Online Support Center to your System Administrator to assist you in the standard business use of the Product. Your System Administrator will be responsible for the daily maintenance of the Product per the Documentation, and will provide the first line technical support of the Product to your users. Telephone Technical Support includes assistance relating to any Fixes and Workarounds as well as minor modifications.

You can reach the Company's telephone support at 674 479 4397, extension 1010 or 416 458 5554. The Online Support Center is an eSmart Solutions website that authorized callers can use to get self-help and web-based assisted support. Authorized callers can submit support Incidents, track Incidents, and review bug status. The Online Support Center can be found at <http://support.e-smartsolutions.com>



Company provides the following level of support:

Support level	Number of Hours of Technical Support per Month
Basic	10 hour
Silver	40 hours
Gold	50 hours
Platinum	No set limit

Depending upon the level of support elected by You, You will receive a certain amount of hours per month for Technical Support ("Monthly Allotment") free of an additional charge. The Monthly Allotment is measured from the time assistance is provided in fifteen minute increments. For customers that select the Gold level support, You may carry forward up to five unused hours of the Monthly Allotment to the next month for a maximum Monthly Allotment in any given month of 10 hours. Any use of the Services over the total maximum allotment shall be considered a Special Service and any excess hours over the total maximum allotment may not be carried forward to the next month. Any overage of the Monthly Allotment is measured from the time assistance is provided in thirty minute increments. For purposes of clarity, the following is an illustration of the total maximum allotment of support hours: In Month 1 You have 5 hours of support and use 3 hours for a remainder of 2 hours for the month. For Month 2 You will have the Monthly Allotment plus the 2 hours carried forward from Month 1 for a total of 7 hours. In Month 2 you use a total of 10 hours; 7 of which will be free of an additional charge but the remaining 3 hours will be considered a Special Service and therefore charged the Special Service rate.

4. SPECIAL SERVICES

Any Special Services performed are billed on an hourly basis of \$250/hour (or the then current published rate), with a four-hour minimum. If applicable, You are also responsible for any reasonable travel and living expenses associated with on-site Special Services. The hourly rate is measured from the time assistance is provided or arrival on-site whichever the case may be. Each additional hour or fraction thereof will be charged in thirty minute increments.

5. USE GRANT FOR REMOTE ASSISTANCE

You may permit any device to access and use your authorized copy of the Product for the sole purpose of providing You with technical support and maintenance services.

You agree that Company and its affiliates may collect and use technical information gathered as part of the Technical Support Services provided to You, if any, related to the Product. Company may use this information to ensure proper authorization of all copies of the Software as well as to improve Company's products or provide customized services or technologies to You. Company will not disclose this information in a form that personally identifies You to any third parties.

6. MAINTENANCE & TECHNICAL SUPPORT SERVICE EXCLUSIONS

Unless otherwise agreed to in writing by Company, the Maintenance & Technical Support Services and the charges quoted by Company for such Services do not cover or include the following:

- A. Support of a Product which has been modified or repaired other than by Company;
- B. Making specification changes or performing Services connected with the relocation of a Product;
- C. Modification or replacement of a Product, repair of damage, or increase in service time caused by failure to continually provide a suitable operational environment with all facilities prescribed by the applicable documentation; including, but not limited to, the failure to provide or the failure of adequate electrical power, temperature or humidity control, or computing environment;
- D. Modification or replacement of a Product, repair of damage, or increase in service time caused by the use of the Product for other than the purposes for which it is authorized or not in accordance with the Materials operating guidelines;
- E. Modification or replacement of a Product, repair of damage, or increase in service time caused by:
 - Accident
 - Natural or man-made disaster which shall include but not be limited to fire, water, wind, and lightning
 - transportation
 - neglect or misuse
- F. Modification or replacement of a Product, or increase in service time caused by the use of the Product in combination with other products or materials not furnished by Company or in combination with other Product or materials furnished by, but not combined by, Company;
- G. Backing up or restoring programs and/or data;
- H. Keying, importing, converting or manipulation of data;
- I. On-site or formal classroom training on the operation and use of the Product or Software;
- J. Creation of any new non-standard, customer-defined reports; or
- K. Installation of the Product.

At Your request and in the Company's sole discretion, Company may perform any of the foregoing services on a billable Special Service basis or as part of a separate professional services agreement. You agree that any Services rendered pursuant to Your request for Service which is determined by Company to have been caused by a problem set forth above will be considered a Special Service.

7. OBLIGATIONS OF CUSTOMER



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You shall provide access to your facilities and equipment in connection with Company's performance of its obligations hereunder. No charge shall be made for such access and Company will provide prior notification when such access is required;

You shall maintain a proper network connection near any CPU used with a Product being maintained by Company hereunder and provide access to a voice grade local telephone;

You shall be responsible for obtaining any required third party hardware and/or software, including updates thereto;

Your System Administrator must be present when any on-site Service is provided. If applicable, You agree that if a representative is not present when Company's technician arrives on site that no Service will be performed and You will be charged at the Special Service rate then in effect for such visit.

You may permit any device to access and use your authorized copy of the Product for the sole purpose of providing you with technical support and maintenance services. Prior to providing on-site or remote Maintenance & Technical Support, it is Your responsibility to properly backup all data.

You agree that Company and its affiliates may collect and use technical information gathered as part of the Maintenance & Technical Support Services provided to you. Company may use this information to ensure proper authorization of all copies of the Software as well as to improve Company's products or provide customized services or technologies to you. Company will not disclose this information in a form that personally identifies you to any third parties.

8. SOFTWARE UPDATES, FIXES AND WORKAROUNDS

You agree that all Updates, Fixes or Workarounds furnished to You shall be deemed to be part of such Materials subject to the terms and conditions of the end user software agreement for the Materials.

9. INVOICES, TAXES AND PAYMENTS

Services fees and any Special Services charges, shall be payable within 30 days of the date of Company's invoice. If You request Special Services, the charges for such services shall be invoiced as soon as practicable after the Special Services are provided.

If any authority imposes a duty, tax, levy or fee, excluding those based on Company's net income, upon the Product, you agree to pay the amount specified. You are responsible for any personal property taxes for the Product from the date it was acquired.

Payments provided for in this Agreement shall, when overdue, be subject to a late payment charge calculated at a rate of one and one-half percent (1.5%) per month until paid; provided, however, that if the amount of such late payment charge exceeds the maximum permitted by law for such charge, such charge shall be reduced to such maximum amount.



10. ADDITIONAL CPUS

If You become authorized under the terms of any separate Agreement to use the Software on additional CPU(s) and You desire to include such additional CPU(s) under this Agreement, You will be responsible for additional charges for such Services. For purposes of this Agreement, the term "CPU" shall include both the original CPUs and the new CPUs.

11. WARRANTY

Company warrants to You that Services hereunder will be performed in a professional manner and in accordance with good usage and accepted practices as established in the community in which such Services are performed. If such Services prove to be not so performed and if You notify Company within a forty five (45) day period commencing on the date of completion of the Service, Company will, at its sole discretion, either correct any defects and deficiencies for which it is responsible or render a full or prorated refund or credit based on the original charge for the Service. THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE COMPANY'S OBLIGATION TO MAKE CORRECTIONS OR GIVE A FULL OR PRORATED CREDIT OR REFUND AS SET FORTH ABOVE.

12. LIMITATION OF LIABILITY

COMPANY SHALL IN NO EVENT BE LIABLE TO YOU OR ANY PERSON OR ENTITY USING ANY SERVICE SUPPLIED UNDER THIS AGREEMENT FOR ANY LOSS OF TIME, REVENUE, PROFITS, BUSINESS INTERRUPTION, INCONVENIENCE, LOSS OR DAMAGE OF DATA, LOSS OF USE OF ANY PRODUCT OR EQUIPMENT OR PROPERTY DAMAGE CAUSED BY ANY TECHNICIAN, PRODUCT OR EQUIPMENT OR THEIR FAILURE TO WORK, OR FOR ANY OTHER INDIRECT, SPECIAL, RELIANCE, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT OR ANY OBLIGATION RESULTING THEREFROM, OR THE USE OR PERFORMANCE OF ANY PRODUCT OR PRODUCTS WHETHER IN AN ACTION FOR OR ARISING OUT OF ALLEGED BREACH OF WARRANTY, ALLEGED BREACH OF CONTRACT, DELAY, NEGLIGENCE (ACTIVE OR PASSIVE), STRICT TORT LIABILITY OR OTHERWISE. COMPANY'S ENTIRE LIABILITY FOR ANY CLAIM OR LOSS, DAMAGE, OR EXPENSE FROM ANY CAUSE WHATSOEVER, SHALL IN NO EVENT EXCEED THE FEES ACTUALLY PAID BY YOU. NO ACTION OR PROCEEDING AGAINST COMPANY MAY BE COMMENCED MORE THAN ONE YEAR AFTER THE SERVICES ARE COMPLETED EXCEPT FOR COMPANY CLAIMS RELATING TO COLLECTION OF FEES DUE AND PAYABLE BY YOU. THIS PARAGRAPH SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

13. NONWAIVER

No course of dealing, course of performance, or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right, or condition. No waiver of breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision.



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14. FORCE MAJEURE

Except with respect to Your obligation to make timely payments, neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosions, earthquakes, floods, wars, water, the elements, labor disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation, facilities, acts or omissions of carriers or suppliers, or other causes beyond its control whether or not similar to the foregoing.

15. CHOICE OF LAW

This construction, interpretation and performance of and all transactions under this Agreement shall be governed by the law of the Province of Ontario.



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16. ENTIRE AGREEMENT

The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties, shall constitute the entire Agreement between the parties with respect to the subject matter of this Agreement and shall not be contradicted, explained, or supplemented by any course of dealing between Company or any of its affiliates and You or any of Your affiliates. Company employees' statements and Company advertisements or descriptions other than its published specifications do not constitute warranties or other contractual obligations, and shall not be relied upon by You as such. This Agreement shall not be modified or amended except by a writing signed by an authorized representative of both parties.

17. ASSIGNMENT

This Agreement may not be assigned by You without the prior written consent of Company. Company may assign this Agreement to any affiliate, subsidiary or successor to all or substantially all of its business relating to the Materials.

18. PARTIES BOUND

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, legatees, successors, and assignees.

19. NOTICES

All notices under this Agreement (except for requests for Service) shall be in writing and shall be given by mail, postage prepaid or by overnight delivery addressed to the respective parties, if to You, at Your addresses set forth in the signature block below or to COMPANY at:

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Such notice shall be deemed to have been given when received. Either party may change its notice address upon notice to the other party pursuant to this provision.

20. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, then the meaning of such paragraph or clause shall be construed so as to render it enforceable, to the extent feasible; and if no feasible interpretation would save such paragraph or clause, it shall be severed from this Agreement and the remainder shall remain in full force and effect. However, in the event such paragraph or clause is considered an essential element of this Agreement, the parties shall promptly negotiate a replacement thereof. If the parties are unable to agree upon a replacement term within 30 days of the final ruling, either party may terminate this Agreement upon 10 days prior written notice.



21. RELEASE VOID

You shall not require releases or waivers of any personal rights from representatives of Company in connection with visits to its premises and agrees that no such releases or waivers shall be pleaded by it in any action or proceeding.

22. INDEPENDENT CONTRACTOR

All work performed under the Agreement by a party shall be performed as an independent contractor and not as an agent of the other. No persons furnished by either party shall be considered the other party's employees or agents, and each party shall be responsible for its own and its employees' compliance with all laws, rules, and regulations involving employment of labor, working conditions, payment of wages, and payment of taxes, such as unemployment, social security, and other payroll taxes, including applicable contributions from such persons when required by law.

AGREED TO AND ACCEPTED BY
<Client Name>

AGREED TO AND ACCEPTED BY
eSmart Solutions S.A.R.L.

Support Level	
Monthly Cost	
Signature	
Name	
Title	
Date	
Fax	

Signature	
Name	
Title	
Date	
Fax	