



9420 Maltby Rd. | Brighton, MI, 48116 | 810-229-7200 | [lowrysolutions.com](http://lowrysolutions.com)

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## SOFTWARE MAINTENANCE AND SUPPORT TERMS

These Software Maintenance and Support Terms (together with all Lowry-provided schedules, statements of work, quotations, Lowry sales or purchase orders, or Lowry sales or purchase order acknowledgements that refer to these or similar Lowry Software Maintenance and Support Terms, this “Agreement”) apply to the following parties.

**Lowry Holding Company, Inc.**, a Delaware corporation that does business as Lowry Solutions, Inc. (“Lowry”)  
Address: 9420 Maltby Road  
Brighton Michigan 48116  
Phone: (810) 229-7200  
Fax: (810) 229-5189  
Attention: Contract Administrator

and

The individual or business enterprise named in one or more schedules, statements of work, quotations, Lowry sales or purchase orders, or Lowry sales or purchase order acknowledgements that refer to these or similar Lowry Software Maintenance and Support Terms (“Customer”).

Each of Lowry and Customer is a “Party” and they are, collectively, the “Parties.”

1. **Definitions.** Without limiting any other defined term in this Agreement, the following terms will have the following meanings.
  - a. **“Base Agreement”** means the license agreement between Customer and Lowry,.
  - b. **“Documentation”** means the materials associated with the Software that are so designated by Lowry.
  - c. **“Maintenance and Support”** means the maintenance and support services provided to Customer by Lowry under this Agreement.
  - d. **“Software”** means the software so identified in the applicable Lowry-provided schedule, statement of work, quotation, Lowry purchase order, or Lowry purchase order acknowledgement.
  - e. **“Enhancement”** means a revision or enhancement to the Software that Lowry does not generally make available to its maintenance customers for such Software free of additional charge beyond the fees for such maintenance. Enhancements are usually new releases or substantially different or more functional iterations of the Software.
  - f. **“Update”** means a bug fix or other correction to the Software that Lowry makes available generally to its maintenance customers for such Software free of additional charge beyond the fees for such maintenance.

- g. “Remote Access” means access by means of remote communication between Lowry’s computers and Customer’s computers to troubleshoot or update the Lowry software for Maintenance and Support purposes.
2. Maintenance and Support. During the term of this Agreement, and provided that Customer has fully performed under this Agreement and the Base Agreement, Lowry will provide to Customer the following services (the “Maintenance and Support Services”). Lowry will provide such Maintenance and Support Services during the times, and through the means of contact, identified in Schedule A.
- a. Maintenance. Lowry will provide to Customer such Updates as Lowry makes generally available to its maintenance customers with respect to the Software.
  - b. Support. Lowry shall provide telephone support services and/or written support services through fax, email, internet, Remote Access or other manner identified by Lowry, to Customer’s designated personnel to provide such personnel with support with respect to the Software as and when the Software fails to conform in all material respects to the Documentation therefor. Lowry will analyze each claim of Customer and inform Customer of the result of its analysis. If a defect in the Software is confirmed by Lowry, acting reasonably, Lowry will exercise commercially reasonable efforts to provide to Customer the corrected Software as soon as possible by commercially reasonable means.
  - c. Exceptions to Maintenance and Support Obligations. The following items are expressly excluded from the Maintenance and Support Services. If Lowry provides any of the following services to Customer, Customer will pay Lowry at Lowry’s then-current rates for such services.
    - i. Maintenance and/or support of software not delivered by Lowry.
    - ii. Maintenance and/or support of Software or a version of the Software that has been retired by Lowry.
    - iii. Repairs caused by other than normal use or repairs caused by force majeure (such as, but not limited to, fire, flood, failure of electric power or air conditioning).
    - iv. Repairs required by the fact that maintenance has been done by a third party that is not authorized by Lowry.
    - v. Data or application hosting, archiving, storage, transfer, or migration.
  - d. Additional Support. Customer may request additional support from Lowry. Such additional support may include training or on-site support at Lowry’s facilities. A quote will be provided for such services at current rates.
  - e. Scope of Maintenance and Support Services.
    - i. It is a condition precedent to the delivery of any maintenance and support under this Agreement by Lowry that Customer have personnel on site that possess the knowledge of a person of ordinary skill in the art of computer programming and that Lowry be able to interact with such personnel in providing maintenance and support services under this Agreement. If, in Lowry’s reasonable opinion, no such person is employed by Customer, Lowry may, at its option, terminate this Agreement and return any unused portion of the maintenance fees paid for the current term. Unused maintenance fees will be calculated according to the following formula:  $(\text{Annual Maintenance fee} / 12) \times (\text{Number of full months remaining in the current term})$ .
    - ii. The Maintenance and support services described in this Agreement shall be provided to Customer only. Customer may not provide the Maintenance and Support Services, or any part thereof, to any third party.

### 3. Fees.

- a. Maintenance & Support. During the term of this Agreement, Customer shall pay to Lowry a maintenance and support fee equal to the Maintenance and Support Fee stated in the applicable Lowry-provided schedule, statement of work, quotation, Lowry purchase order, or Lowry purchase order acknowledgement.
- b. Other Fees. Except as otherwise agreed in writing by the Parties:
  - i. Lowry may invoice for any training or service provided under this Agreement as early as the completion of the service; and
  - ii. Lowry may invoice for any maintenance or support services as the beginning of the period in which the maintenance or support services are provided.
- c. Payment Terms. For the initial term of this Agreement and renewals, payment of the Maintenance and Support Fee is due and payable within 30 days after the invoice date. All payments for services as described in the applicable Lowry-provided schedule, statement of work, quotation, Lowry purchase order, or Lowry purchase order acknowledgement are due within 30 days after receipt of invoice. Lowry may suspend Maintenance and Support Services if any payment is past due under this Agreement or the Base Agreement.
- d. Remote Access. Where Lowry deems Remote Access the best means of providing maintenance or support services, Customer must make available Remote Access to its computers. If Customer does not make available to Lowry Remote Access to Customer's computer(s), for such purposes and Lowry is required to travel or otherwise physically access Customer's computers, additional fees may apply.

### 4. Term.

- a. Term. The term of this Agreement begins on the date stated in the applicable Lowry-provided schedule, statement of work, quotation, Lowry purchase order, or Lowry purchase order acknowledgement and run (i) if a term is stated in the applicable Lowry-provided schedule, statement of work, quotation, Lowry purchase order, or Lowry purchase order acknowledgement, for that term, or (ii) if no term is stated in the applicable Lowry-provided schedule, statement of work, quotation, Lowry purchase order, or Lowry purchase order acknowledgement, until the first anniversary of the date stated in the applicable Lowry-provided schedule, statement of work, quotation, Lowry purchase order, or Lowry purchase order acknowledgement. The term of this Agreement may be renewed for one or more additional one-year terms by a writing executed by the Parties.
- b. Termination for Cause. This Agreement may be terminated for cause, as follows:
  - i. by Lowry, if Customer fails to make timely payment, and any such failure is not remedied within ten (10) days after receipt of written notice stating such failure;
  - ii. by Lowry, immediately upon notice to Customer, if Customer: (i) fails to abide by the restricted use or confidentiality provisions of the Base Agreement; or (ii) exceeds the scope of the license granted by the Base Agreement.
  - iii. by either Party, upon notice to the other Party, if the other Party becomes unable to pay its debts as they become due or ceases to do business in the ordinary course.
- c. Obligations upon Termination. Upon termination, Customer shall immediately pay all outstanding amounts incurred prior to termination to Lowry.
- d. Termination Concurrent with Termination of Base Agreement. This Agreement shall terminate upon termination of the Base Agreement.

5. Limitations. UNDER NO CIRCUMSTANCES WILL LOWRY BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE AMOUNTS PAID UNDER THIS AGREEMENT OR FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY, OR INDIRECT DAMAGES. These limitations of liability will apply notwithstanding that Lowry knew, or should have known, of the possibility a particular kind of damages and notwithstanding that any limitation causes any remedy to fail of its essential purpose.
6. Miscellaneous.
- a. This Agreement shall be governed in all respects by the laws of the State of Michigan without regard for its conflict of laws provisions. Any claim, suit, or cause of action arising out of, or relating to, this Agreement must be brought solely in the Michigan state courts sitting in Livingston County, Michigan or the United States District Court for the Eastern District of Michigan and each Party consents to the personal jurisdiction of, and exclusive venue in, such courts.
  - b. Notwithstanding anything in Section 6(i) to the contrary, at Lowry's option and upon notice given by Lowry, the Parties will resolve any claim, suit, or cause of action, or portion thereof, by arbitration under the rules of the International Chamber of Commerce. In such a case:
    - i. The language of the arbitration will be English;
    - ii. The place of the arbitration will be London, England;
    - iii. The Parties will cause the arbitrator(s) to, to the maximum extent permitted by the applicable rules, permit participation in the arbitration by remote means, including, but not limited to, videoconference and teleconference, and will structure such remote participation in a manner reasonably calculated to give the Parties the opportunity to be on equal footing for interactions during the arbitration (such as, but not limited to, requiring that both Parties present by teleconference regardless of whether a Party is presenting from a remote location);
    - iv. The judgment and award of the arbitrator(s) may be entered in, and enforced by, any court of competent jurisdiction; and
    - v. Nothing in this Section 6(ii) will prevent either Party from seeking in any court any relief not reasonably available from an arbitrator.
  - c. Assignment. Neither Party may assign, without the prior written consent of the other Party, any of its rights, duties, or obligations under this Agreement to any person whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise.
  - d. Notice. Any notice required or permitted to be given under this Agreement must be in writing and will be deemed effective (a) if given by personal delivery, upon such personal delivery, (b) if given by nationally-recognized courier or mail service (in either case that has realtime or near-realtime tracking), at the time that the notice is delivered (or an attempt is made to deliver the notice, regardless of whether refused) to the receiver's premises according to the tracking records of the courier or mail service, or (c) if given by fax, at the beginning of the next business day at the receiver's location, provided that the sender's fax device generates a confirmation that the fax arrived at the receiver's device and that there is no indication in the course of the transmission that the notice did not arrive at the receiver's fax device. The addresses for notice for each Party are those in the preamble to this Agreement and/or the applicable Lowry-provided schedule, statement of work, quotation, Lowry purchase order, or Lowry purchase order acknowledgement. Either Party may change its address for notice by notice to the other Party.
  - e. Waiver. The waiver of, or failure of either Party to exercise, any right in any respect provided for herein shall not be deemed a waiver of any further right under this Agreement or a waiver of the

ability to exercise the same right on a different occasion.

- f. Severability. If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.
- g. Counterparts. This Agreement may be executed in one or more counterparts.
- h. Drafting Party. No rule of law that requires that any part of the Agreement be construed against the party drafting the language will be used in interpreting this Agreement.
- i. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and there are no representations, understandings or agreements about the subject matter hereof that are not fully expressed in this Agreement. No amendment, change, waiver, or discharge of this Agreement shall be valid unless in a record signed by the Party against whom enforcement is sought.

[The remainder of this page is intentionally left blank. Signatures appear on the next page.]

## SCHEDULE A

### CUSTOMER SUPPORT CENTER

1. Lowry's contact information for technical support will be:
  - Telephone: 800-733-0010
  - Fax: 810-220-6491
  - e-mail address: [servicerequest@lowrysolutions.com](mailto:servicerequest@lowrysolutions.com)
  - Website: [lowrysolutions.com](http://lowrysolutions.com)
2. Lowry's normal business hours are as follows:
  - Monday – Friday 8:30 a.m. to 5:30 p.m. Eastern Time
3. The current Lowry-specified holidays are as follows:
  - New Year's Day
  - Memorial Day
  - Independence Day
  - Labor Day
  - Thanksgiving Day
  - Day after Thanksgiving
  - Christmas
4. Customer shall contact Lowry's personnel via the telephone and fax numbers or via the e-mail address listed above to request the technical support services described in this Agreement.