■■ BI² TECHNOLOGIES

Biometric Intelligence & Identification Technologies

6-16-09 –
NO NEED FOR
LEGAL APPROVAL
PER
J. Finnerty

ANNUAL MAINTENANCE AGREEMENT AND TERMS AND CONDITIONS FOR IMATS™

SOFTWARE MAINTENANCE AND SUPPORT

All Software Maintenance and Support for IMATS™ is provided subject to the following Standard Terms and Conditions. These provisions set forth are only obligations of BI2 TECHNOLOGIES regarding IMATS™ Software Maintenance and Support. For purposes of this Agreement, "PCSD" shall refer to the Plymouth County Sheriff's Department IMATS™ Maintenance and Support hereunder.

I. BI2 TECHNOLOGIES IMATS SOFTWARE MAINTENANCE SERVICES

1. Unlimited use of BI2 TECHNOLOGIES' online and telephone support – Monday through Friday 9:00 AM to 5:00 PM eastern time, excluding national and state holidays, to receive technical assistance and/or general consultation with regard to IMATS™ software PCSD has licensed from BI2 TECHNOLOGIES and for which PCSD has elected to purchase Maintenance and Support (the "Covered Software").

2. BI2 TECHNOLOGIES will repair any material defect found in the programming code of the IMATS™ Software identified during the Maintenance and Support period at no cost to PCSD. IMPORTANT NOTE: BI2 TECHNOLOGIES, in its sole discretion, shall determine whether the programming code is materially defective.

3. As they become available, BI2 TECHNOLOGIES will make available, at no cost to PCSD, new versions, updates and/or enhancements to current versions of the IMATS™ Software. If new versions, updates and/or enhancements are determined to require more advanced or larger capacity equipment and/or third party software, such equipment and software compatibility shall be PCSD's sole responsibility.

4. As they become available, BI2 TECHNOLOGIES will make available updates and enhancements to existing documentation.

5. BI2 TECHNOLOGIES will take all reasonable steps to correct defects in the IMATS™ Software that are directly attributable to programming if BI2 TECHNOLOGIES, in its sole discretion, recognizes them as having a materially detrimental effect on the performance of the IMATS™ Software.

II. CHARGES

1. The Annual Maintenance period for Plymouth County begins on March 1st for each annual period.

2. The initial Annual Maintenance fee is based upon an eighteen (18%) of the purchase price of the IMATS™ Software. The cost to PCSD for the first annual period is $10,800. Renewal fees are calculated annually for a one (1) year period and may be subject to an inflationary adjustment defined at the time of renewal. If an increase is anticipated, BI2 TECHNOLOGIES must notify PCSD, in writing, at least sixty (60) days in advance of any proposed increase in the annual Maintenance Fee.

3. Annual Maintenance Fees are payable in advance. Failure to give at least thirty (30) days notice of intention not to renew the Maintenance contract will result in automatic renewal and PCSD will be liable for an additional year's charges.

4. Charges do not include charges related to third party software programs, which may be required to run the IMATS™ Software. PCSD may be required to pay separately for any upgrades in such third party program.

III.   EXCLUSIONS FROM BI2 TECHNOLOGIES SOFTWARE MAINTENANCE SERVICE

The following is expressly excluded from the terms of this Agreement:

Provision, installation and/or support of new versions and/or enhancements to current versions of non-BI2 TECHNOLOGIES software. Non-BI2 TECHNOLOGIES software includes, but shall not be limited to, operating system software, word processing, spreadsheet, reporting and/or database software.

Upgrading any hardware and memory on the system on which PCSD's uses the IMATS™ Software.

If PCSD is using BI2 TECHNOLOGIES products that require a common database, PCSD must remain current on Maintenance for all products for as long as the IMATS™ Software is in use in order to assure the integrity of PCSD's IMATS™ Software. Cancellation of Maintenance on any one system may cause incompatibilities with related products, and performance of all IMATS™ Software could be adversely affected.

Repair of the IMATS™ Software if BI2 TECHNOLOGIES determines the failure is related to:

(a)   the equipment or supplies PCSD are using;

(b)   misuse or neglect of the IMATS™ Software;

(c)   anyone other than a member of BI2 TECHNOLOGIES 's staff making any alteration to the Covered Software or to the system files which may affect the IMATS™;

(d)   environmental conditions, including, but not limited to, insufficient, excessive, or irregular electrical power, failure of air conditioning, excessive heat or humidity, flood, water, wind or lightening;

(e)   use of the IMATS™ Software for purposes other than those for which it was expressly designed; and/or; and/or,

(f)   the relocation or reinstallation of the IMATS™ Software.

BI2 TECHNOLOGIES reserves the right to charge additional support fees at its then standard rates for services performed in connection with reported incidents that are later determined to have been due to hardware or software not supplied by BI2 TECHNOLOGIES. Notwithstanding the foregoing, BI2 TECHNOLOGIES has no obligation to perform support services in connection with issues resulting from hardware or software not supplied by BI2 TECHNOLOGIES.

IV.   SOFTWARE MODIFICATIONS

Any modifications that PCSD makes to the IMATS™ Software, including any modifications to any third party licensed software included with or embedded in the Software, will render any Maintenance or Warranty obligations contained in this Agreement null and void. BI2 TECHNOLOGIES will not be liable, in any respect, for any such modifications or any errors, losses or damage resulting from such modifications. BI2 TECHNOLOGIES has no other responsibilities with respect to Maintenance other than those specified in this Section and will not be responsible for maintaining other than the most current, unaltered release of the Software.

V.   DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

NO WARRANTIES: BI2 TECHNOLOGIES DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR   RESULTS OBTAINED BY PCSD IN USING THE SOFTWARE, THAT THE SOFTWARE WILL MEET PCSD'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. THE SOFTWARE IS LICENSED "AS IS" AND THE MAINTENANCE SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. BI2 TECHNOLOGIES EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE AND SERVICES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

LIMITATION OF LIABILITY. IN NO EVENT WILL BI2 TECHNOLOGIES BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUE, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST TO COVER OR OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE DELIVERY OF MAINTENANCE SERVICES OR ANY DELAY IN DELIVERY OF THE MAINTENANCE SERVICES. BI2 TECHNOLOGIES'S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER FORM OF LIABILITY) FOR DAMAGES OR LOSS, HOWSOEVER ARISING OR CAUSED, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY PCSD FOR THE RELEVANT MAINTENANCE SERVICES GIVING RISE TO THE LIABILITY.

VI.   GENERAL

1. Delivery of any Maintenance service to PCSD by BI2 TECHNOLOGIES is subject to conditions beyond the control of BI2 TECHNOLOGIES or its agents, including but not limited to, Acts of God, acts of any public enemy, fire, flood, epidemic or quarantine restrictions, strikes, riots or civil commotion, freight or other

embargoes, weather conditions or any failures by BI2 TECHNOLOGIES 's subcontractors or suppliers.

2. BI2 TECHNOLOGIES will provide PCSD with an electronic version copy of the source code for the IMATS™ software currently operating at PCSD. BI2 TECHNOLOGIES will provide the source code initially, and within a reasonable period of time following any major revision or release to the source code has been completed. It is understood and agreed by PCSD that this source code is for PCSD's use only. PCSD may not transfer, give, sub-license, sell, rent, lend or lease any portion of the IMATS™ Software. PCSD may not translate or create derivative works based on the IMATS™ Software. PCSD may, however, use the source code in its internal operations as its deems appropriate.

3. PCSD may cancel maintenance by giving notice at least 30 days notice in advance of the annual period renewal date. Cancellations will become effective on the renewal date. No credit will be given for partial Maintenance periods.

4. If PCSD allows PCSD's Maintenance coverage to lapse, PCSD may purchase telephone and/or email support for currently supported software versions of IMATS™ on an as-needed basis.

5. Telephone and/or email support is billed at $200 per hour, with a minimum charge of one hour. After the first hour, support is billed in 15-minute increments of $50.00 each. Software updates and access to the Support web site are not available without Maintenance.

6. Reinstatement of lapsed Maintenance will require full payment of Maintenance fees that would have been due from the expiration of the last active Maintenance period through the reinstatement date, plus a 15% administrative surcharge. Payment of the applicable amount for the current Maintenance period will be due upon reinstatement. This reinstatement policy applies if Maintenance has been cancelled or there is otherwise a lapse in Maintenance coverage, such as for nonpayment of fees. Upon reinstatement, PCSD will receive the latest version of the IMATS™ software.

7. The laws of the Commonwealth of Massachusetts shall govern all provisions of this agreement.

For the Plymouth County Sheriff's Office: _John Finnerty, Director of Administration and Finance_

Name and Title

Signature   Date: 6/16/2009

For BI2 TECHNOLOGIES Technologies: Sean G. Mullin, President

Name and Title

Signature   Date: February 25, 2009