

CITY CLERK
ORIGINAL
Intelex Technologies Inc.
SUPPORT AND MAINTENANCE AGREEMENT

C-10142
07/13/15

THIS SUPPORT AND MAINTENANCE AGREEMENT ("Agreement") is made as of June 1, 2015 (the "**Effective Date**") between Intelex Technologies Inc., a Canadian corporation having registered offices at 905 King Street West, Suite 600, Toronto, Ontario, Canada, M6K 3G9 ("**Intelex**") and **City of Glendale**, an Arizona municipal corporation ("**Licensee**") (collectively, the Licensee and Intelex are the "**Parties**" and each is a "**Party**").

WITNESSETH

WHEREAS, Intelex has developed and owns certain Software and related documentation; and

WHEREAS, Licensee acquired a license to use such Software ("the Licensed System") and the Parties wish to enter into this Support and Maintenance Agreement whereby Intelex undertakes to provide support and maintenance services related to the Licensed System.

NOW THEREFORE, in consideration of the mutual covenants, promises and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

1 Services

Intelex will provide technical support and maintenance services in respect of the Licensed System ("**Support and Maintenance**") in accordance with the terms and conditions of the Schedule B and Schedule C attached hereto, which are incorporated herein by this reference. During the term of this Agreement, the database where Licensee data is held will be backed up using SQL Server 2008 at reasonable intervals to ensure data is fully protected, but not less frequently than once every six months.

2 Fees and Payment

- 2.1 Subject to the fulfilment of Licensee's obligations as provided under this Agreement, Intelex shall invoice Licensee in accordance with the fees outlined in Schedule A hereto. Upon receipt of an invoice from Intelex, Licensee agrees to pay Intelex subject to Payment Terms outlined in Schedule A hereto.
- 2.2 The Licensee and Intelex will abide by all applicable tax legislation applicable to this Agreement and shall be responsible for all taxes and any duties or other similar charges payable on the services provided.

3 Warranties

- 3.1 Each Party to this Agreement hereby warrants and represents that it has full power and authority to enter into and perform its obligations under this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter into this contract.
- 3.2 Intelex warrants that services will be performed by qualified and competent Intelex personnel in a timely, professional and workmanlike manner in accordance with commercial industry standards.
- 3.3 **THE WARRANTIES SET OUT IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING FROM STATUTE OR USAGE OF TRADE.**

4 Term and Termination

- 4.1 The term of this Agreement shall be for one (1) year commencing on the Effective Date of the Agreement.
- 4.2 Either Party may terminate this Agreement, upon written notice, if the other Party takes or is required by any person with proper authority to take, any of the following actions:

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- 4.2.1 the filing of a petition for bankruptcy, insolvency or relief of debtors or the institution of any proceedings relating to bankruptcy, insolvency or relief of debtors;
- 4.2.2 committing or threatening to commit any act of bankruptcy; or
- 4.2.3 a winding-up, liquidation or dissolution of the business pursuant to an order of a court of competent jurisdiction.
- 4.3 In the case of material breach by the Licensee of its obligations hereunder, and provided that such breach is not cured within forty five (45) days of written notification by Intelex of such breach, Intelex may:
 - 4.3.1 where such breach relates to payment of fees for any service, cease providing such service and claim payment of the amount payable;
 - 4.3.2 terminate this Agreement.
- 4.4 Either Party's right to terminate this Agreement is without prejudice and shall not affect any other remedies available to the Parties.

5 Limitation of Liability

- 5.1 Neither Party shall be liable for any special, incidental, indirect, or consequential damages whatsoever (including without limitation, damages for business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use the Licensed System, even if the parties have been advised of the possibility of such damages.

Except for willful misconduct, gross negligence, fraud or bodily injury or death neither Party's aggregate total liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) (in contract, tort or otherwise) to the other Party arising in connection with this Agreement shall exceed the total price paid by Licensee in the twelve months preceding the incident that gave rise to the cause of action.

6 General

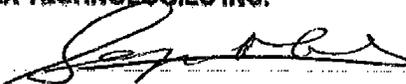
- 6.1 This is the entire agreement between the parties with respect to the subject matter hereof. Any modifications to these terms and conditions shall be in writing, and shall be signed by each party's authorized representative. This Agreement is governed by the laws of the Province of Ontario, Canada, and the courts of that province shall have exclusive jurisdiction over all matters arising hereunder.
- 6.2 This Agreement may be executed either by original signature, or by PDF signature attached to an e-mail, e-signature or by facsimile signature and may be executed by the Parties in one or more counterparts, each of which when so executed and delivered, shall be an original and such counterparts shall together constitute one and the same instrument.
- 6.3 This Agreement may only be amended or modified by a written agreement signed by both parties.
- 6.4 Intelex warrants that it either has been approved as a foreign corporation authorized to transact business in the State Arizona in accordance with in ARIZ. REV. STAT. § 10-1503 or is exempt from such requirement as provided in ARIZ. REV. STAT. § 10-1501.
- 6.5 Cancellation. This Agreement may be cancelled for a conflict of interest pursuant to ARIZ. REV. STAT. § 38-511.
- 6.6 E-verify. If applicable, Contractor agrees to comply with ARIZ. REV. STAT. § 23-214 and agrees to comply with the requirements of ARIZ. REV. STAT § 41-4401.

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6.7 Non-Discrimination Policies. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

IN WITNESS WHEREOF the parties have caused this Schedule to be executed by their duly authorized representatives as of the date first set out above.

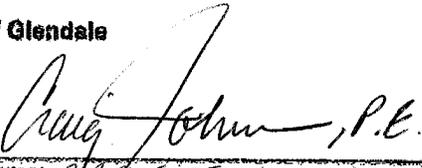
INTELEX TECHNOLOGIES INC.

By: 

Name: SAPNA MAMBODHANI
Title: MANAGER, LEGAL CONTRACTS

(I have authority to bind the corporation)

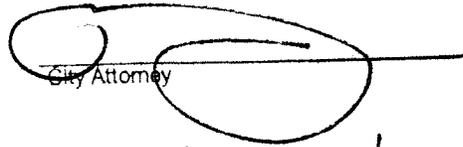
City of Glendale

By: 

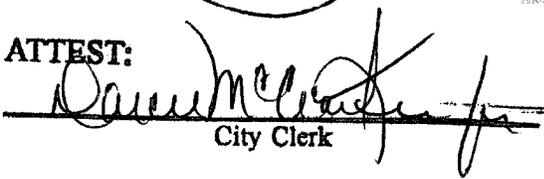
Name: CRAG JOHNSON
Title: DIRECTOR, WATER SERVICES

(I have authority to bind the corporation)

Approved as to form


City Attorney

ATTEST:


City Clerk

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**Schedule A
Specific Terms**

1. Licensee Organization:
City of Glendale

The Support and Maintenance fee are as follows:

| Item | Cost |
|--|-------------------|
| <i>Intelex Support and Maintenance Fee (for the period of June 1, 2015 to May 31, 2016)</i> This support covers the following applications: <ul style="list-style-type: none">• Document Control• Permits Management• Legal and Other Requirements• Audit Trail With the following user licenses: System Administrator – 1 Full Access – 0 Concurrent Supervisor Access – 2 Concurrent Limited Access – 3 | \$4,480.18 |
| Subtotal | \$4,480.18 |
| Total Sales Tax | \$282.25 |
| Total Amount Due | \$4,762.43 |

The Support and Maintenance Fee is calculated as a percentage of the Software License Fee, User License fee and configuration/customizations done for Licensee that are supported by Intelex. All amounts are exclusive of any duties, or applicable taxes.

If the user or module configuration changes or if additional customization/configuration work is completed within the term, then an additional amount of Support and Maintenance will be charged.

Support and Maintenance Fee will be due thirty days from receipt of the invoice by City of Glendale.

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Schedule B

Support and Maintenance Services

This Schedule sets out the terms and conditions under which Intelex agrees to provide support and maintenance services (the “**Support and Maintenance**”) in respect of the Licensed System.

1. Intelex (by itself or through a subcontractor) agrees to provide technical support, in English, for the Licensed System in accordance with the terms and conditions of this Agreement.
2. Intelex will provide technical support for the most recent version of the Licensed System and the immediately preceding version, such that the Licensed System will function and perform in accordance with its Documentation. If an older version of the Software is being used, Intelex will continue to provide phone support but will not commit to fixing any technical issues or Defects in that version. Support services will be provided via the following:
 - 2.1 Telephone Assistance: Intelex’s Global Support representatives will be pleased to answer any questions related to our solution during the following local business hours.

Toronto, Canada: 7:00 am – 8:00 pm EST: 416 599-6009

London, England: 9:00 am – 5:00 pm BST: 011-44-(0) 208 819 6320
 - 2.2 On-Line Ticketing System: Intelex Ticketing System is available 24/7 at www.intelex-exchange.com.
 - 2.3 Emergencies (Severity 1 Defects only): If outside of North America business hours a 24/7 Call Center (416-847-8985) will record issue and alert appropriate Intelex personnel to a Severity 1 Defect as defined below.
3. Support and Maintenance will consist of Intelex providing:
 - 3.1 Phone and Email Support on application functionality;
 - 3.2 Submission and tracking of **Defects** (any error, problem or malfunction that causes the system not to meet the Documentation) and enhancements via Intelex Ticketing System (available at www.intelex-exchange.com or its future successor),
 - 3.3 Access to the following information via www.intelex-exchange.com or its future successor:
 - Generic reports and dashboards
 - Videos on product functionality and new functionality
 - Technical Documentation
 - 3.4 Troubleshooting, error analysis and correction with response times as described in Section 6 below.
4. Support and Maintenance also includes upgrades, enhancements and fixes for the Licensed System. These updates are as follows:
 - 4.1 From time to time Intelex will make changes to the Software and Documentation of the Licensed System, which Intelex, at its sole discretion, deems to be desirable. During the term of this Agreement, Intelex will provide access to the updated versions of the Licensed System periodically and deliver one copy of such updated versions of the Licensed System to Licensee.
 - 4.2 Intelex provides notification to Licensee in writing when updates are available. Licensee does not have to accept the update. If the Licensee is using an older version of the Licensed System than the immediately preceding version of the current release (for clarity – older than 2 versions), Intelex will provide phone support only but may require Licensee to transition to a more recent version to resolve issues and Licensee may incur a fee at the time of such migration.

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- 4.3 Support and Maintenance includes support and upgrades for custom modules. Intelex continues to support all customization work in each new release if the Licensee receives Support and Maintenance Services.
- 4.4 Unless explicitly specified in the Implementation Plan in Schedule C, all interfaces, including schedule imports/exports from Licensed System to third party systems, are not covered under Support and Maintenance fees. If problems are encountered with the interface(s) due to a change in 3rd party system or an Intelex update, Intelex will charge an additional time and material fee at the agreed upon rate to resolve the problem(s).
5. If the Licensee suspects that a Defect exists in the Software, Licensee shall promptly notify Intelex as provided in Section 3.2 of this Schedule (the "**Notification**"). This Notification shall describe the nature of the suspected Defect and provide details of the circumstances of its occurrence sufficient, at Intelex's discretion, for Intelex to be able to reproduce the suspected Defect. Upon Notification, Intelex will work continually on Severity 1 Defect and Severity 2 Defect and use reasonable effort on Severity 3 Defect to confirm the existence of the Defect, correct it, and respond within the times specified in this Agreement. Licensee shall provide reasonable assistance in the fulfillment of the support services as requested by Intelex including reasonable access to the Software. Intelex shall have the sole authority to assign the severity level to any suspected Defect.
6. The following terms shall have the respective meanings and response times ascribed to them:
- 6.1 "**Severity 1 Defect**" means a Defect in the Licensed Systems such that Licensee is unable to use the Software (entirely inoperable or fails catastrophically). Intelex shall provide a Response for a Severity 1 Defect within four (4) hours of such Notification of such Defect if on Licensee production environment (installation being used for ongoing business) and one (1) Business Day if on test environment (installation being used to assess/test new versions/code fixes, etc.). Severity 1 Defects explicitly exclude issues resulting from Licensee infrastructure. Licensee agrees to test all changes (including but not limited to new versions/code fixes, customer prepared configurations/applications, modifications to 3rd party interfaces) on test environment prior to authorizing Intelex to transfer said code to production environment.
- 6.1.1 Licensee must notify Intelex by phone and provide a full description of the issue as well as remote access to the Licensed System to allow diagnostics to be run and the testing of any fixes. If during North American business hours (generally 8:00 a.m. to 5:00 p.m.), the Licensee will call technical support or call the phone number in Section 2.3 of this Schedule.
- 6.1.2 Intelex commits to have personnel work on the issue continuously if related to Production environment following notification, including after regular business hours.
- 6.2 "**Severity 2 Defect**" means a Defect in the Licensed System such that Licensee is able to use the Software but usage of the Licensed System is severely limited or essential Software functions are inoperable to Licensee. Intelex shall provide a Response for a Severity 2 Defect on Licensee production environment within two (2) Business Days of Notification of such Defect and four (4) Business Days on the Test environment.
- 6.3 "**Severity 3 Defect**" means a Defect in the Licensed System such that Licensee is able to use the Software but usage of features of the Software not critical to Licensee is unavailable. Intelex shall provide a Response for a Severity 3 Defect within five (5) Business Days of Notification of such Defect.
- 6.4 "**Severity 4 Defect**" means a Defect in the Licensed System which is not a Severity 1, 2 or 3 Defect. Intelex shall provide a Response for a Severity 4 Defect as part of a future update release of the software.
7. **Response** consists of providing, as appropriate, one of the following to the Licensee: an existing correction; a new correction, a viable work around; a request for more information to complete the analysis of the problem, or a plan on how the problem will be corrected.

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8. If Intelex is unable to fix such Defect within the time period specified in Section 6 of this Schedule, Intelex shall, after approval by Licensee, provide an intermediate solution by bypassing the error.