

**LIQUID COMMUNICATION SYSTEMS, LLC**  
**SOFTWARE MAINTENANCE AGREEMENT**

This Software Maintenance Agreement (the “Agreement”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) by and between Liquid Communication Systems, LLC, a North Carolina limited liability company having an office at 1305 Navaho Drive, Suite 101, Raleigh, NC 27609 (“Liquid”) and \_\_\_\_\_ (“Customer”).

**STATEMENT OF PURPOSE:**

- A. Customer has obtained from Liquid a limited right and license in and to Liquid’s software product referred to as the “Effusia Business Messenger” (the “Software”) as provided in an End-User License Agreement between the parties.
- B. Customer wishes to obtain from Liquid and Liquid wishes to provide to Customer certain software maintenance and support services with respect to the Software on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, for and in behalf of adequate consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

**1. Scope of Agreement**

During the term of this Agreement, as set forth in Section 2 below, Liquid agrees to provide Customer the “Standard Maintenance and Support Services” for the Software as set forth in Section 3 below.

**2. Term**

The initial term of this Agreement shall be for one (1) year from the Effective Date, unless terminated earlier as provided herein. Subsequent year support fees are billed and due on the yearly anniversary of the execution of this agreement. This agreement will remain in force as long as the support fees are paid in a timely manner.

**3. Standard Maintenance and Support Services**

a. **Scope of Services.** During the term of this Agreement, Liquid will provide Customer the following Maintenance and Support Services for the Software:

- i. Corrections of substantial defects in the Software so that the Software will operate as described in any printed or electronic documentation related to the Software.
- ii. Periodic updates of the Software that may incorporate (A) corrections of any substantial defects, (B) fixes of any minor bugs, and (C) at the sole discretion of Liquid, new

versions of the Software.

iii. Telephone and e-mail support between the hours of 9:00 a.m. and 5:00 p.m., Eastern Standard Time, Monday through Friday, excluding federal holidays, to assist Customer in using the Software.

iv. At the sole discretion of Liquid, access to beta versions of the Software and other software products developed by Liquid.

b. **Services Not Included.** Standard Maintenance and Support Services do not include: (i) custom programming services, (ii) on-site support, (iii) training, or (iv) hardware and related supplies.

#### 4. Maintenance Fee

a. **Amount of Fee.** On the Effective Date, Customer agrees to pay Liquid a "Maintenance Fee" which shall be equal to a flat amount of \$ \_\_\_\_\_ for concurrent-user licenses that Customer has obtained pursuant to an End-User License Agreement related to the Software as set forth in Exhibit A attached hereto and incorporated herein by reference. To maintain support, Customer agrees to pay Liquid a yearly "Maintenance Fee" which shall be equal to a flat amount of \$ \_\_\_\_\_ for concurrent users obtained in the above manner on the yearly anniversary date of the execution of this agreement as set forth in Exhibit A. Liquid reserves the right to change yearly fees for any reason but is required to notify Customer of such change in writing at least 90 days before it will take effect.

b. **Additional Concurrent-Users.** If Customer shall add any additional concurrent-user licenses during the term of this Agreement, Customer shall pay an additional Maintenance Fee for each such additional concurrent-user license on the date on which Customer obtains such additional concurrent-user license fees, which fee shall be pro-rated on a daily basis for the remaining term of this Agreement.

c. **Taxes.** Customer hereby agrees that it shall be liable for any and all Taxes. "Taxes" means all federal, state, local and other taxes, including sales, use and property taxes, related to this Agreement, Customer's use of the Software, or any services provided by Liquid to Customer related to the Software, excluding taxes based on Liquid's net income.

d. **Payment Terms.** In the event Customer fails to pay any amount when due, Customer agrees to pay interest on the unpaid amount at a rate equal to the prime plus two (2) percent or the highest rate allowed by law, whichever is less, plus all collection costs including attorneys' fees unless these payments are subject to the termination clause specified in Section 2 at which point non-payment will result in termination of this agreement.

#### 5. Obligations of Customer

a. **Customer Contact.** Customer shall notify Liquid of Customer's designated

Customer Contact. To the maximum extent practicable, Customer's communications with Liquid will be through the Customer Contact.

b. **Installation.** Customer agrees to install all corrections of substantial defects, minor bug fixes and updates, including any new versions, for the Software in accordance with the instructions and in order of receipt from Liquid.

c. **Personnel Access.** Customer agrees to grant Liquid access to Customer's personnel concerned with the operation of the Software to enable Liquid to provide services.

d. **No Modification of Software.** Customer agrees not to modify, enhance or otherwise alter the Software, unless the prior written consent of Liquid is obtained.

e. **Error Documentation.** Upon detection of any error in the Software, Customer, as requested by Liquid, agrees to provide Liquid output and any other data, including databases and backup systems, that Liquid reasonably may request in order to reproduce operating conditions similar to those present when the error occurred.

## 6. **Limitations**

Neither party shall be liable to the other for lost profits or indirect, special or consequential damages arising out of this Agreement, even if the party has been notified of the possibility of such damages. Under no circumstances will liability exceed the amounts paid by Customer to Liquid under this Agreement.

## 7. **Termination**

Liquid shall have the right to terminate this Agreement and all services provided pursuant to this Agreement (i) upon termination of the Customer's End-User License Agreement related to the Software by either party for any reason, and (ii) if Customer or its employees or agents violate any provision of this Agreement and Customer fails to cure such violation within fifteen (15) days after receipt of written notice from Liquid.

## 8. **Ownership**

Customer acknowledges that Liquid owns all proprietary rights, including patent, copyright, trade secret and other proprietary rights, in and to the Software and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to the Software.

## 9. **General Provisions**

a. **Notices.** All notices under this Agreement are to be sent by registered mail to the address below or to any other address as the party may designate:

LIQUID: Liquid Communication Systems, LLC  
1305 Navaho Drive  
Suite 101  
Raleigh, North Carolina 27609  
Attn: President

CUSTOMER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. **Assignment.** Customer will not assign or sublicense, in whole or in part, any of its rights or obligations under this Agreement without the prior written consent of Liquid.

c. **Complete Agreement; Amendment.** This Agreement and Exhibit A set forth the entire understanding of the parties with respect to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by both parties.

d. **Waiver.** The waiver or failure of Liquid to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.

e. **Severability.** If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

f. **Governing Law.** This Agreement is to be construed in accordance with the law of the State of North Carolina.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties have executed this Software Maintenance Agreement as of the date first above written.

LIQUID:

LIQUID COMMUNICATION SYSTEMS, LLC

\_\_\_\_\_  
By: Hayes Davis, President

CUSTOMER:

\_\_\_\_\_ (name)

By: \_\_\_\_\_

(Print Name): \_\_\_\_\_

(Print Title): \_\_\_\_\_

EXHIBIT A

First Year Maintenance Fee:

Concurrent User License Fee \_\_\_\_\_

(times)

Maintenance Fee Percentage \_\_\_\_\_

=====

Total Maintenance Fee \_\_\_\_\_

Subsequent Years Maintenance Fee:

Concurrent User License Fee \_\_\_\_\_

(times)

Maintenance Fee Percentage \_\_\_\_\_

=====

Total Maintenance Fee \_\_\_\_\_