

# Schedule D - Daystar Software Support Agreement

An Agreement by and between Daystar Computer Systems, Inc., an Illinois corporation (Daystar), with its principal place of business at 600 W. Jackson Blvd. Suite 580, Chicago, IL 60661, and Daystar's client identified below (Licensee).

Licensee: City of Columbus, Ohio

Primary Contact: Thomas Diamond

Software: Legistar

Serial No.: \_\_\_\_\_

Effective Date: December 1, 2003

Initial Fee: \$22,515.00

Renewal Date: November 30, 2004

## 1. TERM:

The term of this Agreement is defined by the Effective and Renewal Dates indicated above. At the Renewal Date and at each subsequent anniversary of the Renewal Date, this Agreement shall be automatically renewed for the following one (1) year period at the Daystar charge in effect at that time for similar maintenance, unless either party gives written notice at least thirty (30) days prior to the end of the current Agreement period that it wishes to modify or cancel this Agreement.

## 2. SCOPE OF SERVICES:

Daystar shall provide software support services requested by Licensee in relation to Licensee's use of the Daystar software listed described above (the Software). This Agreement includes support services under the following classifications:

### **CLASSIFICATION (A) Unlimited services:**

- Investigation and correction of any software problems reported by Licensee or discovered by Daystar;
- In house application maintenance including duplicate customized system upkeep;
- Interim version updates as they are made available;
- Technical assistance on the use and maintenance of the software;

### **CLASSIFICATION (B) Billable services and expenses:**

- Report modifications and remote database maintenance;
- Installation services for Software updates;
- Expenses beyond normal operational costs related to the delivery of any services as described in this Agreement;
- Training Services;
- Travel time and travel related expenses.

The Licensee may report any Classification (A) or Classification (B) service requests to Daystar via email at [support@daystarnet.com](mailto:support@daystarnet.com) or fax transmittal to (312) 896-5052 or voice at (312) 559-0900 or such other phone numbers or email addresses as Daystar might provide.

Unless special arrangements are made, Daystar shall provide software support by phone during its regular business hours (7 AM to 7 PM Central Time).

When deemed necessary by Daystar or requested by Licensee, Daystar will make arrangements to provide face-to-face support services either on Licensee's site or at Daystar's offices. Daystar will respond to telephone inquiries within two (2) business hours.

During the course of this Agreement, Daystar will provide copies of any upgrades or new feature releases of the software at no cost to the Licensee other than the costs of installation. The programming time associated with any such installation may be charged against this Agreement as a Classification (B) service.

Daystar will not perform any Classification (B) services without written authorization to perform such services from Licensee. Daystar will provide written or faxed estimates of any Classification (B) services when such estimate is requested by the Licensee.

## 3. DAYSTAR FEE SCHEDULE:

The following table lists Daystar's standard rates for various service in effect at the time of this Agreement:

Consultation/Training	\$1800/day
Analysis/Programming	\$200/hour
Clerical Support Time	\$ 40/hour

During the effective period of this Agreement, all other services not identified as Classification (A) services in Section 2. SCOPE OF SERVICES will be billed at a cost no greater than Daystar's rates indicated above. The Licensee will pay Daystar reasonable travel and other out-of-pocket expenses associated with any services provided under this agreement. Such out-of-pocket travel expenses shall not exceed the current published GSA rates for the location.

## 4. LICENSEE'S OBLIGATIONS:

As conditions to receiving support under this Agreement, Licensee agrees to:

- Load and test all new revisions and updates of Daystar software within fifteen (15) days of receipt by Licensee.
- Perform any software tests requested by Daystar support personnel who may be investigating any reported problems.

- c. Provide written statements or descriptions of software problems at Daystar's request.
- d. Provide Daystar with suitable scratch media and supplies to investigate reported problems. These will be returned upon request.
- e. Provide Daystar with the ability to remotely login to the system running the Daystar software using Internet T1 or DSL access.

**5. CHARGES:**

The initial fee as listed above for this Software Support Agreement shall be due and payable on or before the first day of the Agreement period. All support services described herein may be charged against this support Agreement. The charge for this Software Support Agreement and the hourly charges for Classification (B) services provided under this Agreement are listed above and in Section 3.

Daystar will invoice Licensee monthly and provide detailed accounting for all Classification (B) services and expenses provided. Licensee agrees to pay invoices within 30 calendar days of receipt.

Licensee reserves the right to review, reject and deny authorization for payment of any charges and costs which have not been previously authorized under the terms of this agreement, provided that the Licensee provides Daystar written or Faxed notice of any such determination within 10 days of receipt of the invoice. The balance of the invoice will remain due within 30 calendar days of the invoice date.

Unreturned equipment or media charges shall be added to invoices at Daystar's prevailing charge at the time of delivery to Licensee. Licensee shall pay all sales, use and other taxes, and all shipping and handling costs, phone modern time costs associated with Classification (B) support services, and duty applicable to the charges. Such items shall be included on invoices and billed at direct cost without mark-up.

**6. LIMITATIONS TO LIABILITY:**

DAYSTAR DOES NOT WARRANT THAT ITS PRODUCTS OR SERVICES ARE ERROR FREE AND DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO ITS

SOFTWARE PRODUCTS AND SERVICES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS.

IN NO EVENT SHALL DAYSTAR BE LIABLE FOR ANY LOSS OF DATA OR PROFITS, CONSEQUENTIAL, INCIDENTAL OR ANY SPECIAL INDIRECT DAMAGES OF ANY KIND AS A RESULT OF DAYSTAR'S DELIVERY, PERFORMANCE, OR FAILURE TO PERFORM SERVICES UNDER THIS AGREEMENT OR FOR ANY USE, THE RESULTS OF SUCH USE, OR INABILITY TO USE ANY SOFTWARE OR SERVICES FROM DAYSTAR, EVEN IF DAYSTAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL DAYSTAR'S LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE FEE PAID BY LICENSEE UNDER THIS AGREEMENT.

**7. MISCELLANEOUS:**

- a. If any provision of this Agreement shall be held invalid, illegal, or unenforceable for any reason, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- b. Failure to pay any invoice on the date due, or failure by Licensee to perform an obligation or covenant under this Agreement shall be a default under this Agreement. Upon default Daystar, in its sole discretion, may terminate this Agreement immediately upon written notice of Licensee.
- c. Neither party may assign this Agreement, Support Identification Number (SID), or any rights hereunder, without prior written approval of the other party.
- d. Failure by either party on one occasion to insist on full or timely performance by the other party of any obligation under Agreement shall not be deemed a waiver of such performance, and shall not prevent enforcement of such obligation on other occasions.
- e. The terms and conditions of this agreement shall supercede any conflicting terms or conditions contained in any purchase orders, work orders, or other instructions or orders to deliver any products or services specified in this agreement.

**ACCEPTANCE**

For Licensee

Signature: \_\_\_\_\_

Printed Name: Andrea Blevins, CMC

Title: City Clerk Date: \_\_\_\_\_

For Daystar

Signature: 

Printed Name: JOHN CIOFALO

Title: CONTRACT MANAGER Date: 11/12/03