|  |  |
| --- | --- |
| SystemWORKS License & Maintenance Agreement | Appendix |
| C |

FILEONE, INC.

**SOFTWARE LICENSE/MAINTENANCE AND SUPPORT AGREEMENT**

THIS SOFTWARE LICENSE/MAINTENANCE AND SUPPORT AGREEMENT (“Agreement”) is made effective as of the date set forth below, by and between FileONE, Inc., a North Carolina corporation (“FileONE”) and the State of Montana acting through its Secretary of State (“Customer”).

RECITALS:

1. Customer desires to license certain of FileONE proprietary SystemWorks software, as described on Attachment 1 (the “Software”), and to obtain maintenance and support services for the Software.
2. FileONE has agreed to provide such license and services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference) and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

1. LICENSE OF SOFTWARE
   1. **Grant of License.** Subject to the terms and conditions of this Agreement, FileONE hereby grants to Customer a nonexclusive, nontransferable license to use the Software and all related operating instructions, user manuals and training materials supplied by FileONE (collectively the “Documentation”) in the State of Montana, (“Jurisdiction”). The license allows Customer to use and copy the Software (in object code only) and the Documentation, solely for the purposes of automating and managing the business entity, uniform commercial code, trademark, notary, apostille, and candidate filing of the Customer. The license does not permit Customer to take any of the following actions:
      1. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the Software;
      2. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Documentation, in whole or in part, to or by any third party including, but not limited to, any transfer of possession to, or use of the Software or Documentation by any third party to perform any services for Customer without FileONE’s prior written consent; or
      3. Cause or permit any change to be made to the Software without FileONE’s prior written consent.
      4. Cause or permit any copying, reproduction or printing of any output generated by the Software in which FileONE owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent).
   2. **Delivery; Risk of Loss.** FileONE will ship the Software to Customer on a mutually agreed-upon date, and risk of loss with respect thereto shall pass to Customer when such items are delivered to Customer’s designated location
   3. **License Fee.** In consideration for FileONE’s grant of the license in Section 1.1, Customer shall pay FileONE the License Fee set forth on Attachment 1.
   4. **Term of License.** The license granted in Section 1.1 shall commence upon the delivery of the Software, and shall continue until the first to occur of the following: (a) Customer ceases to use the Software; (b) Customer fails to pay the consideration due for the license; (c) Customer breaches any material provision of this Article 1, or (d) Customer fails to pay the consideration due for post-warranty Software Maintenance and Support (as defined below) at any time. Upon the termination of the license, Customer shall immediately return the Software and Documentation (including any and all copies thereof) to FileONE, or (if requested by FileONE) destroy the Software and Documentation and certify in writing to FileONE that such destruction has occurred.
   5. **Warranty.** FileONE warrants that for each applicable licensed Software module during the period from which each applicable Software module goes live with Customer through June 30, 2009 (the “Warranty Period”), it will repair or replace any component of the Software which, while under normal use and service: (a) fails to perform in accordance with its Documentation in all material respects, or (b) is defective in material or workmanship. The Warranty Period will commence on the date of delivery of the Software. Any repaired or replaced Software shall be warranted only for the unexpired term of the original Warranty Period. All replaced components of the Software will become the property of FileONE. This warranty is effective provided that (i) Customer promptly notifies FileONE of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (ii) the Software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by FileONE, (iii) the Software to be repaired or replaced is not damaged due to accident, theft, vandalism, neglect, abuse, use which is not in accordance with instructions or specifications furnished by FileONE or causes beyond the reasonable control of FileONE or Customer, including natural disaster, fire, flood, unusually severe weather or Acts of God, and (iv) Customer has installed and is using the most recent Update (as defined below), provided to it by FileONE. **FILEONE’S OBLIGATIONS, AS DESCRIBED IN THIS SECTION 1.5, ARE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR A BREACH OF THE ABOVE-DESCRIBED WARRANTY. FILEONE EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
   6. **Updates.** During the Warranty Period, FileONE may provide new releases, upgrades or maintenance patches to the Software, along with appropriate Documentation (“Updates”), on a schedule defined by FileONE. Customer is responsible for obtaining and installing any upgrades or purchases of third party hardware or software required to operate the Updates. All Updates shall be deemed to be “Software”, and shall be subject to the terms and conditions of FileONE’s license of the Software, upon delivery. Customer shall install Updates in accordance with FileONE’s recommended instructions or may request that FileONE install the Updates. FileONE may charge Customer at its then-current rates to (a) deliver the Updates, (b) install Updates, or (c) provide maintenance and support which is required as a result of Customer’s failure to timely install an Update. Customer shall be responsible for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by Customer’s failure to install and use the most recent Update provided to it by FileONE. If Customer proposes changes in the Software to FileONE, such proposals will become FILEONE’ property. FileONE may, in its sole discretion, elect to make or not to make such changes without reference or compensation to Customer or any third party. FileONE represents to Customer that the Updates will comply with all applicable state law requirements at the time of delivery. Customer shall be responsible to ensure that it has installed and is using only certified version of Software in accordance with applicable law. Customer shall pay FileONE for any Update which is required due to a change in federal, state or local law. Upon the termination of the Warranty Period, Customer shall be entitled to receive the Software Maintenance and Support described in Article II below.
   7. **Source Code**. The license granted in Section 1.1 does not permit Customer to use the source code for the Software. FileONE shall place the source code in escrow with its then-current third party escrow agent. In the event of notice by the Customer that FileONE is in material breach, FileONE will have two sequential thirty (30) calendar day cure periods in which to cure the material breach. If FileONE is unable to cure the breach after the expiration of both cure periods, the Customer may terminate this Agreement for default. In such event, the source code in escrow will be released to the Customer. The Customer will not be able to provide the source code to any other parties or use it for any purpose other than to maintain the Software. The Customer may not create derivative products from the source code. Irrespective of any release of the source code which may occur in accordance with the terms of this Section 1.7, the source code shall at all times remain the property of FileONE and may not otherwise be used by Customer other than as specifically set forth herein. The cost of using an alternative third party escrow agent shall be borne by Customer.
   8. **Add-Ons and New Products**. From time to time, FileONE may offer new features which can be added on to the Software (“Add-Ons”) and new software products (“New Products”) to Customer. Customer may elect to license an Add-On or New Product upon the payment of a license fee to FileONE. Unless any such license is effectuated pursuant to a separate license agreement, the Add-On or New Product shall be deemed to be part of the Software upon payment of such license fee.
   9. **Proprietary Rights.**  Customer acknowledges and agrees that FileONE owns all right, title and interest in and to the Software and Documentation, subject to the license granted herein. FileONE likewise owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the Software and Documentation. The Software and Documentation also contain confidential and proprietary trade secrets of FileONE which are protected by law and are of substantial value to FileONE. Customer shall keep the Software and Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices which are set forth on the Software, the Documentation, and all permitted copies thereof.
   10. **Indemnification For Intellectual Property Infringement.** Subject to Section 1.11 below, FileONE will indemnify and hold Customer harmless from and against any and all damages, amounts paid in settlement and reasonable fees and costs (including reasonable attorneys fees) (collectively “Adverse Consequences”) arising out of or relating to a claim that the Software infringes upon any third party’s United States patent existing as of the date hereof or United States copyright, trademark or trade secret (a “Third Party Infringement Claim”). Customer shall notify FileONE immediately if it becomes aware of any Third Party Infringement Claim. Customer hereby gives FileONE full and complete authority, and shall provide such information and assistance as is necessary (at FileONE’s expense with respect to reasonable out-of-pocket costs), to enable FileONE to defend, compromise or settle a Third Party Infringement Claim. In addition, if Customer is prevented by a Third Party Infringement Claim from using the Software in substantially the manner contemplated by this Agreement, FileONE shall, at its sole option and expense, procure for Customer the right to continue such use or replace or modify the infringing item. If neither option is commercially reasonable, FileONE may direct Customer to cease use of the Software and shall refund thedepreciated cost thereof (as determined in accordance with United States generally accepted accounting principles)to Customer. **THE FOREGOING STATES FILEONE’S ENTIRE LIABILITY FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT ARISING UNDER THIS AGREEMENT.**
   11. **Indemnification By Customer**. To the extent permitted by the constitution and laws of the State of Montana and subject to available appropriation or the limits of applicable insurance (it being understood that the state’s risk management fund created under N.D.C.C. chapter 32-12.2 will not cover any claims under this section 3.7) Customer shall indemnify and hold harmless FileONE from and against any and all Adverse Consequences arising out of or relating to the following:

a. Any Third Party Infringement Claim resulting from (i) Customer’s failure to timely or properly install and use any Update provided to it by FileONE; (ii) the use of any FileONE Software in combination with other equipment, hardware or software not meeting FileONE’s specifications for use with such FileONE Software; or (iii) Customer’s modification or alteration of any item of FileONE Software without the prior written consent of FileONE;

b. Any claims by Third Parties arising out of or relating to the use or misuse by Customer, its employees and any other persons under its authority or control (“Customer’s Representatives”) of any third party items;

c. Personal injury (including death) or property damage that is caused by any negligent or willful act, error or omission of one or more of Customer’s Representatives; and

d. Customer’s election not to receive, or to terminate, FileONE Software Maintenance and Support Services.

FileONE shall notify Customer immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 1.11, and hereby gives Customer full and complete authority, and shall provide such information and assistance as is necessary (at Customer’s expense with respect to reasonable out-of-pocket costs), to enable Customer to defend, compromise or settle any such claim.

* 1. **Scope of Work; Services.**  FileONE agrees to perform certain services necessary to enable the Customer to utilize the business entity, uniform commercial code, trademark, notary, apostille, and licensing software modules in accordance with each software module’s Documentation and Customer agrees to pay FileONE for such services.  The services to be provided by FileONE are specifically set forth on Attachment 3 attached hereto and fully incorporated herein by this reference (the “Services”).   Any changes to the scope of Services set forth on Attachment 3 shall be documented in writing between the parties prior to taking effect.

1. SOFTWARE MAINTENANCE AND SUPPORT
   1. **Term; Termination**. Customer hereby subscribes and agrees to pay (in accordance with the payment dates set forth on Schedule 2-A) for Software Maintenance and Support for the six (6) year period beginning on the date of the expiration of the Warranty Period (the “Software Maintenance Term”). The Software Maintenance Term shall automatically renew for an unlimited number of successive one year periods (each a “Renewal Term”) until terminated by the first to occur of the following: (a) a termination of the license for the Software; (b) either party’s election to terminate it upon expiration of the Software Maintenance Term or any renewal thereof, written notice of which election shall be given to the other party at least sixty (60) calendar days prior to such annual expiration date, (c) the date which is thirty (30) days after either party notifies the other that it has materially breached this Agreement, if the breaching party fails to cure such breach (except for a breach pursuant to subsection (d), which will require no notice), (d) the date which is thirty (30) days after Customer fails to pay any amount due to FileONE under this Agreement, or (e) by either party in the event that funds are not appropriated or otherwise made available to support the continuation of performance by Customer hereunder in any subsequent fiscal period; provided, however, that this Section 2.1(e) shall not be construed so as to permit Customer to terminate this Agreement in order to acquire a replacement system other than SystemWorks and/or related services from a third party. Either party may notify the other of the termination, which may occur no later than the beginning of the subsequent fiscal period. Upon termination, Customer shall pay FileONE for all services performed by FileONE up to the date of termination and reasonable exit costs incurred by FileONE. The amount of such payment may be paid from any appropriations available for such purposes, and Customer’s highest-ranking officer or official shall use his/her best efforts to timely and sufficiently request the appropriation necessary to pay such amount. Customer acknowledges and agrees that sufficient funds to pay for the “Net Software License Fee” listed on Attachment 1 are available, and that funds necessary to satisfy Customer’s remaining obligations are likely to be available from sources which are identified in writing. The termination of the Software Maintenance Term shall not relieve Customer of its liability to pay any amounts due to FileONE hereunder.
   2. **Services**. FileONE shall provide maintenance and support services for the Software (“Software Maintenance and Support”) (a) to enable the Software to perform in all material respects in accordance with its Documentation, and (b) to cure any defect in material or workmanship. The specific Software Maintenance and Support services provided by FileONE and each party’s obligations with respect to such services are set forth on Attachment 2.
   3. **Updates.** During the Software Maintenance Term and any renewal thereof, FileONE shall continue to provide Updates in the manner described in, and subject to the terms and conditions of, Section 1.6 above.
   4. **Reinstatement of Software Maintenance and Support**. If the Software Maintenance Term or any renewal thereof expires without being renewed, Customer may thereafter resume receiving Software Maintenance and Support upon (a) notification to FILEONE, (b) payment of all fees which would have been due to FileONE had the Software Maintenance Term not expired, including a reinstatement fee, and (c) execution of a new license agreement by the parties and delivery of the then current version of the Software to Customer.
   5. **Conditions**. FileONE shall not be obligated to provide Software Maintenance and Support for any item of Software if such item requires such services due to (a) repairs, changes, modifications or alterations not authorized or approved by FileONE, (b) accident, theft, vandalism, neglect, abuse or use which is not in accordance with instructions or specifications furnished by FileONE, (c) causes beyond the reasonable control of FileONE or Customer, including natural disaster, fire, flood, unusually severe weather or Acts of God, or (d) Customer’s failure to install and use the most recent Update provided to it by FileONE. FileONE shall likewise not be obligated to provide Software Maintenance and Support if Customer does not notify FileONE within 24 hours after it knows of the need for such services or is otherwise not in compliance with its obligations under this Agreement. Replacement versions of Software requested by Customer as a result of items set forth in this Section 2.5 or as a result of Customer’s actions or inactions shall be billable to Customer at FileONE’s then current rates.
   6. **Fees**. In consideration for FileONE’s agreement to provide Software Maintenance and Support under this Agreement, Customer shall pay to FileONE a Software Maintenance Fee for the initial Software Maintenance Term. The Software Maintenance Fee shall be in addition to any fees or charges separately referred to in any Section of this Agreement. The Software Maintenance Fee for the initial Software Maintenance Term is set forth on Attachment 2 and is due on the first day of the Software Maintenance Term. The Software Maintenance Fees for any renewal period shall be the then current fees in effect and are due and payable no later than 30 days prior to the beginning of such renewal period The Software Maintenance Fee shall be comprised of a fee for the Software Maintenance and Support provided for the Software, and shall be in addition to any fees or charges separately referred to in any Section of this Agreement. If Customer elects to receive Software Maintenance and Support for an Add-On or New Product during the Term or any renewal thereof, FileONE will charge an incremental Software Maintenance Fee for such services. In the event Customer terminates this Agreement through no fault of FileONE and later desires to subscribe for a maintenance and support plan, or otherwise changes its maintenance and support plan with FileONE during the Initial Maintenance Term or any renewal thereof, FileONE will charge the Customer its then current contract administration fee in order to process such new subscription for, or change in, maintenance and support coverage.
   7. **Proprietary Rights**. FileONE shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of the Software Maintenance and Support, including all proprietary rights therein or based thereon. Subject to the payment of the Software Maintenance Fee, FileONE hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that FileONE actually delivers to Customer pursuant to this Agreement. All licensed items shall be deemed to be “Software”, and shall be subject to all the terms and conditions of FILEONE’ license of the Software, upon delivery. Except as, and to the extent, expressly provided herein, FileONE does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement.
2. MISCELLANEOUS
   1. **Taxes; Interest**. Customer will provide FileONE with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse FileONE for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement, but shall in no event be liable for taxes imposed on or measured by FileONE’s income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 3.1, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to FileONE will bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.
   2. **Limitation of Liability.** FileONE will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by (a) Customer’s failure to install and use the most recent Update provided to it by FileONE, or (b) Customer’s election not to receive, or to terminate, the Software Maintenance and Support.Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. FileONE’s liability to Customer shall be limited to the total amount of license and maintenance fees actually paid hereunder by Customer to FileONE. Any action by Customer against FileONE shall be commenced within 1 year after the cause of action has accrued.
   3. **Excusable Nonperformance**. If FileONE is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, unusually severe weather, Acts of God, labor disputes and governmental regulations, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. FileONE agrees to work with Customer, at Customer's request, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.
   4. **Confidentiality.** During the term of this Agreement, each party (the “Disclosing Party”) may provide the other (the “Receiving Party”) with certain confidential and proprietary information (“Confidential Information”). Confidential Information includes the terms of this Agreement, the Documentation, and any other information relating to Customer’s or FileONE’s operations, services, products, research or development. “Confidential Information” will not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; (c) is published or otherwise made known to the public by the Disclosing Party; or (d) was generated independently by the Receiving Party before disclosure by the Disclosing Party. The Receiving Party will refrain from using the Disclosing Party’s Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement. The Receiving Party will likewise restrict its disclosure of the Disclosing Party’s Confidential Information to those who have an absolute need to know such Confidential Information in order for the Receiving Party to perform its obligations and enjoy its rights under this Agreement. Such persons will be informed of and will agree to the provisions of this Section 3.4, and the Receiving Party will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. The Receiving Party may also disclose Confidential Information of the Disclosing Party pursuant to the requirement or request of a governmental agency, a court or administrative subpoena, an order or other legal process or requirement of law, or in order to defend its rights hereunder, so long as it shall (x) first notify the Disclosing Party of such request, requirement or proposal for use in defense; (y) in the case of a required disclosure, furnish only such portion of the Confidential Information as it is advised in writing by counsel that it is legally required to disclose; and (z) cooperate with the Disclosing Party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed. Upon the termination of this Agreement in its entirety, each Receiving Party shall return all Confidential Information of the Disclosing Party which is in its possession or under its control.
   5. **Assignment.** Except in the case of a sale, transfer or assignment of all or substantially all of the assets of FileONE to a successor who has asserted its intent to continue the business of FileONE, neither party may assign or transfer this Agreement or assign, subcontract or delegate any of its rights, duties or obligations hereunder without the prior written consent of the other party hereto, such consent not to be unreasonably withheld or conditioned, nor unduly delayed
   6. **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by confirmed fax, sent by commercial overnight courier (with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses or fax numbers set forth on such signature page unless other names, addresses or fax numbers are provided by either or both parties.
   7. **Entire Agreement.** This Agreement, including Attachments 1 and 2 (which are specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana without regard to its conflicts of laws principles. Except in the case of a sale, transfer or assignment of all or substantially all of the assets of FileONE to a successor who has asserted its intent to continue the business of FileONE, neither party may assign or transfer this Agreement without the prior written consent of the other party hereto, such consent not to be unreasonably withheld. FileONE may engage duly qualified subcontractors to perform certain of the Software Maintenance and Support, but shall remain fully responsible for such performance.
   8. **Counterparts; Execution By Facsimile**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this Agreement and exchange counterparts of the signature pages by means of facsimile transmission, and the receipt of such executed counterparts by facsimile transmission shall be binding on the parties. Following such exchange, the parties shall promptly exchange original versions of such signature pages.
   9. **Independent Contractor.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. FileONE is providing Software and Software Maintenance and Support to Customer as an independent contractor, and shall not be deemed to be a “state actor” for purposes of 42 U.S.C. § 1983. FileONE will not be responsible for (a) user errors or (b) compatibility problems encountered through the use of the Software with equipment or software not meeting FileONE’s specifications. FileONE may engage subcontractors to provide certain of the Software or Software Maintenance and Support, but shall remain fully responsible for such performance. The provisions of Sections 1.4, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.1, 2.3, 2.7, 3.1, 3.2, 3.4 and this Section 3.8 shall survive the termination of this Agreement, to the extent applicable.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Agreement has been executed effective as of the date it is signed by the last of the parties hereto.

FILEONE, INC. STATE OF MONTANA

5520 Dillard Drive, Suite 280 acting through its Secretary of State

Cary, NC 27518 State Capitol, Room 260

Fax No.: (919) 854-4115 1301 6th Avenue

Helena, MT 59620

Fax No.: (406) 444-3976

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (Printed or Typed) Name (Printed or Typed)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Date

**Attachment 1**

**TO SOFTWARE LICENSE/MAINTENANCE AND SUPPORT**

**AGREEMENT BETWEEN FILEONE, INC. AND**

**THE STATE OF MONTANA ACTING THROUGH ITS SECRETARY OF STATE**

**SOFTWARE DESCRIPTION AND SOFTWARE LICENSE FEES**

**[END OF ATTACHMENT 1]**

**Attachment 2**

**TO SOFTWARE LICENSE/MAINTENANCE AND SUPPORT**

**AGREEMENT BETWEEN FILEONE, INC. AND**

**THE STATE OF MONTANA ACTING THROUGH ITS SECRETARY OF STATE**

**SOFTWARE MAINTENANCE AND SUPPORT SERVICES (POST WARRANTY)**

**ARTICLE I**

**Scope of Services**

1. **Scope of Services.** During the Software Maintenance Term and any Renewals thereof, as set forth in Article 2, Section 2.1 of the Agreement, FileONE agrees to provide Customer Standard Maintenance and Non-Standard-Maintenance Technical Services as set forth in Articles II and III of this Attachment 2 for the SystemWorks Products licensed by the Customer as set forth in Attachment 1. Services other than those set forth in Article II herein shall be considered Non-Standard-Maintenance Technical Services and are subject to charges in addition to the annual Maintenance Fee set forth herein. The fee schedule for both Standard and Non-standard Maintenance Services is set forth on Schedule 2-A of this Attachment 2.

**ARTICLE II**

**Software Maintenance and Support Services**

1. **Standard Maintenance Services.** During the Software Maintenance Term and any Renewals thereof, FileONE shall provide Customer the following Standard Maintenance Services for the SystemWorks Products, such Standard Maintenance Services shall include Support Services, Help Desk Services and Update Services as described herein.
2. **Support Services.** The term “Support Service” means support for the SystemWorks Products to include the following:

i. problem determination,

ii. corrections of all material defects in the SystemWorks Products so that the SystemWorks Products will perform in accordance with its Documentation in all material respects.

* + - 1. user assistance,
      2. FileONE shall make weekly off-site back-ups of all object and source code and components required to maintain the SystemWorks system for the purposes of disaster recovery, and
      3. correction of system outages, Moderate Impact Severity Issues identified during the Software Maintenance Term

b. **Help Desk; Response Times.** Support Services shall be provided by FileONE during the business hours of 8:30 A.M. to 5:00 P.M. (Eastern Time), Monday through Friday (Federal holidays excluded). Support Service may be requested by the Customer either by telephone request to FileONE’s Customer Service representative at (919) 854-4123 or E-mail request addressed to [*support@fileoneinc.com*](mailto:support@fileoneinc.com)*.* FileONE’s response times will depend on the severity of the issue. The Standard Level Support response times are as follows:

i. System Outage: FileONE will respond within sixty (60) minutes;

1. Moderate Impact Severity, but overall System is operational: FileONE will respond within four (4) hours, and

iii. Limited Impact Issues (all issues other than Moderate Severity issues): FileONE will respond within eight (8) hours.

Response times are business hours measured from the time the request for service is received until FileONE’s Customer Service representative commences service. All requests for service must be made by Customer's Designated Points of Contact, pursuant to Article 7 below. Support requests will be responded to within the response time indicated for each support level and issue severity. FileONE’s efforts to respond to any support issues shall be limited to the support period identified herein. The measurement of response time will not include time outside of the contracted support period indicated for each support level.Finally, FileONE shall provide on-site support in the operation of the SystemWorks Products if reasonably convenient or necessary at FileONE’s sole discretion.

c. **Update Services.** During the Software Maintenance Term and any renewals thereof, FileONE shall continue to provide updates in accordance with any update schedule determined by FileONE. Customer shall be responsible for all shipping and handling charges incurred in order to deliver any Updates to Customer. In the event that on-site labor is required to implement the update on the customer site, time-and-material labor charge may apply. For any reported issue classified as a System Outage or a Moderate Impact Severity issue, FileONE shall work with the Customer to implement any required update immediately upon completion (“Hot Fix”). For any Limited Impact issues, FileONE shall implement any necessary update through a scheduled periodic release and update schedule determined by FileONE.

2.2 **Services Not Included.** Standard Maintenance Services shall not include any additional services other than those Support Services and Update Services set forth herein. The list of services not covered under this Agreement, includes but is not limited to the following:

1. Enhancements that are offered to Customers for an additional fee (“System Enhancements”);
2. Custom Programming Services;
3. Hardware and related supplies;
4. Diagnosis, repair, or replacement of the SystemWorks Product components that have been improperly altered or affected by the actions or inaction of the Customer, its employees, contractors or agents;
5. Regular database backups and disaster recovery;
6. Mirroring of Customer data and images for disaster recovery purposes;
7. Support of the “platform” upon which the SystemWorks Product executes, including workstations, servers, Local Area Network (LAN);
8. Database administration (DBA). However, Support Service does include corrections to the database, or providing the Customer with database update utilities to be executed by the Customer’s support personnel or contractors, when database corrections are warranted as the result of the improper functioning of the SystemWorks Product(s);
9. If FileONE’s analysis of a problem report determines that it does not come under Standard Maintenance Services, the Customer will be billed for Non-Standard Maintenance Technical Services, as detailed in Article III after prior notice to and approval by Customer.

Customer may elect to use hours from the Professional Services Package purchased separately to perform any of the services not covered under the Agreement if FileONE, in its sole discretion, determines to provide such services to the Customer.

2.3 **Network Security.** FileONE and Customer understand and agree that if remote access is required at any time during the Software Maintenance Term or any Renewal thereof, FileONE and Customer agree to implement/maintain a Virtual Private Network (“VPN”) for such connectivity. The required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (i.e. VPN concentrator, PIX firewall, etc.) on the Customer’s premises. FileONE agrees that it will, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on FileONE’s premises.

**ARTICLE III**

**Non-Standard Software Maintenance and Support Services**

3.1 **General.** If amatter is not covered under Standard Maintenance Services as set forth in Article II, at the request and authorization of the Customer and written acceptance by FileONE, FileONE shall provide the Customer with support for the SystemWorks Product(s) of a technical nature, both on-site and off-site as agreed upon by the parties. Any hours expended by FileONE for Non-Standard Maintenance services will be billed to the Customer at the hourly rate of $150.00 per hour. All requests for Non-Standard Maintenance Technical Support must be made by the person designated in Article 7 below as the Customer’s Point of Contact, or such other person designated from time to time by prior written notice to FileONE.

All travel and per diem expenses will be invoiced by FileONE as they are incurred. FileONE understands and agrees that Customer is exempt from the payment of taxes. Payment will be made in accordance with Article 6 herein. FileONE may, upon obtaining the prior mutual written agreement of the parties, increase its hourly fees set forth in this Article, with such increase becoming effective on the anniversary date of this Agreement.

3.2 **Custom Programming Services.** FileONE may provide Custom Programming Services to Customer, upon receipt of a written request from Customer which FileONE accepts in writing. A Statement of Work detailing the Custom Programming Services to be provided by FileONE and the fee for such services must be approved in writing by FileONE and Customer prior to the commencement of work. Custom Programming Services shall include, but are not limited to, development of custom computer programs and installation, training and maintenance with respect to such computer programs.

3.3 **Training.** Upon receipt of a written request from Customer which FileONE accepts in writing, FileONE will provide Training at a mutually agreed time at FileONE’s offices in Cary, North Carolina, unless FileONE agrees to conduct the Training elsewhere.

**ARTICLE IV**

**Customer Obligations**

4.1 **Point of Contact.** Customer shall notify FileONE of Customer’s designated points of contact (“POC”) for all calls to FileONE. Customer’s POC’s will be its supervisory personnel or above. The following communication is required when making a maintenance call:

1. The caller’s name, agency, and site ID;
2. Is the call regarding a new or existing issue? If new, the POC will be given a tracking number. If existing — the POC provides the open call tracking number;
3. A description of the problem, the products involved, and the impact on system and business operation;
4. Any changes made to Customer’s product environment since Customer’s last call to FileONE;
5. A phone and/or pager number where POC can be reached, and a secondary contact;
6. Any available error messages, reports, screen prints and/or system diagnostics.

4.2 **Installation.** Customer agrees to install all corrections of substantial defects, minor bug fixes and updates, including any enhancements, for the SystemWorks Product(s) in accordance with the instructions provided by FileONE. It is understood by the parties that no updates will be made by FileONE to Customer’s production environment without the prior approval of the Customer.

4.3 **Facility and Personnel Access.** Customer agrees to grant authorized FileONE representatives access to Customer’s facilities and personnel concerned with the operation of the SystemWorks Product(s) to enable FileONE to provide services set forth herein.

**Schedule 2-A**

**Fee Schedule for Maintenance and Support Services**