



# Maintenance and Support Terms and Conditions

The following Maintenance and Support Terms and Conditions that have been referenced in the Quote and that, along with the Quote, comprise the binding "Support Agreement" between the Customer (as identified on the Quote) and Everest Software, Inc. ("Service Provider").

This Support Agreement sets forth the terms and conditions pursuant to which Service Provider will provide certain maintenance and support services to the Customer subject to the terms of this Support Agreement.

## 1. DEFINITIONS.

1.1. "Defect" means a failure of the Software to substantially conform to the functional specifications set forth in the Documentation (as defined in the License Agreement).

1.2. "Updates" means a subsequent release of the Software that Service Provider makes generally available to its supported customers, as indicated by a version number increase to the right of the first decimal point (e.g., 2.1 to 2.2). Updates shall not include any other releases of the Software (e.g. 2.5 to 3.0) or any other products that Service Provider, in its sole discretion, licenses separately for an additional fee.

1.3. "Workaround" means a modification or "patch" for a particular version of the Software, which may be of a temporary or interim nature, to help avoid a Defect.

1.4. "Software" means certain software program(s) licensed to Customer by Service Provider pursuant to a separate, previously executed, license agreement ("License Agreement"), for which Maintenance and Support Services are being provided hereunder. If the Quote references specific software program(s), then "Software" shall be limited to only those specific software program(s) listed therein. If the Quote does not reference specific software program(s), then "Software" shall mean all software program(s) licensed by Customer pursuant to the License Agreement, and for which Service Provider continues to provide Maintenance and Support during the Term to its general customer base, shall be deemed to be the Software for the purpose of this Quote and Support Agreement.

1.5. "Service Level" means the certain level of Maintenance and Support (Standard, Gold or Platinum) that has been selected by the Customer on the Quote.

1.6. "Term" means the number of years of Maintenance and Support services purchased by Customer pursuant to the Quote.

## 2. MAINTENANCE AND SUPPORT.

Upon payment of the fees applicable to the Term and Level selected on the Quote ("Fees"). Service Provider agrees to provide the Service Level of Maintenance and Support selected by the Customer on the Quote, for the duration of the Term, and solely for the Software. Section 2.1 describes the Standard Maintenance and Support services to be provided hereunder:

### 2.1. "Standard Maintenance and Support" Level Defined.

2.1.1. Annual Software Maintenance. Service Provider shall use commercially reasonable efforts to maintain the Software so that it operates without Defects.

2.1.2. Updates. Service Provider shall supply Customer with Updates for the Software that is released to the general customer base during the Term. Such Updates shall be

provided to Customer at no additional charge, other than any applicable shipping charges. Except for Updates, Customer shall not be entitled to any other software as part of any level of Maintenance and Support. Updates may be delivered via physical media or made available electronically, at Service Provider's discretion.

2.1.3. Bulletins. From time to time, at its sole discretion, Service Provider may publish bulletins containing information about Updates and other Service Provider news.

### 2.2. Support.

2.2.1. "Support" Defined. Support shall consist of internet assistance to Customer with respect to use of the Software and to resolve Defects through access to a website that may include any of the following: a knowledge base, online case tracking, frequently asked questions, Updates, and Documentation. Support will be available from 8:00 am to 6:00 pm, Central Time, Monday through Friday, excluding holidays. Unless otherwise designated by Service Provider, Customer should access the website described on the Quote.

2.2.2. Submission of Issues for Resolution. Customer shall submit the following information: (a) Customer contact information; (b) Software version; and (c) a complete description of the Defect and Customer Software environment. Customer shall also provide access to the Customer Software environment so the Defect may be replicated.

2.2.3. Problem Definition. Customer shall record the following information for reference and provide it to Service Provider: (a) error messages and indications that Customer received when the malfunction occurred; (b) what the user was doing when the malfunction occurred; (c) what steps Customer has taken to reproduce the malfunction; (d) what steps Customer may have already taken to solve the problem; and (e) system logging.

2.3. Severity Classification. Defects in the Software are classified according to severity of impact on the use of the Software, according to the chart below. All disputes regarding severity classification will be resolved by Service Provider in its sole discretion.

<u>Severity</u>	<u>Impact</u>
1	Defect prevents all useful work from being done. Material Defects in essential functions for which no non-manual workaround exists; or Defects that cause a material loss of data.

<b>Severity</b>	<b>Impact</b>
2	Defects that disable essential functions but for which a non-manual workaround exists;  Defects that block systems test or deliverables; or  Defects that violate the material specifications in the Documentation.
3	All other Defects.

2.4. **Response Time Goals.** Service Provider agrees to use its reasonable efforts to (i) acknowledge Defects reported to Service Provider by Customer on Service Provider’s problem reporting form and (ii) provide Workarounds. Acknowledgements will be sent to Customer via email, or if no email is available, via fax. The following response time goals will be in effect:

2.4.1. **Severity 1.** If a Severity 1 Defect occurs during normal operating hours (8:00 am – 6:00 pm Central Time weekdays), Service Provider will begin immediate and continuous efforts to reproduce and resolve the Defect, and will carry out those efforts until the Defect is resolved. Service Provider will use reasonable efforts to resolve all Severity 1 Defects in the shortest time possible, and will review status with Customer on a daily basis or more frequently, if requested.

2.4.2. **Severity 2.** If the Defect is a Severity 2 issue, Service Provider will begin efforts to reproduce the problem no later than the opening of the next business day after receipt of the issue by Customer. Service Provider will use reasonable efforts to resolve Severity 2 problems as rapidly as practical, but no later than the next Update after reproduction of the Defect.

2.4.3. **Severity 3.** Severity 3 Defects will be addressed in Service Provider’s normal Update.

2.5. **Inclusion.** All Workarounds and Updates are licensed pursuant to and subject to the terms and conditions of the License Agreement.

**3. GOLD MAINTENANCE AND SUPPORT.**

3.1. **Gold Services.** In consideration of Customer’s payment of the Gold Support Fees, Customer shall be eligible to receive the “Gold Services” that Service Provider makes generally available to its Gold Services customer base during the applicable term. Such Gold Services shall be in addition to standard Maintenance and Support described herein.

3.2. **Electing Gold Support.** Standard Maintenance and Support Customers may upgrade to Gold Maintenance and Support at any time provided that Customer pays additional fees indicated on the applicable Quote. Such fees may be pro rated if the upgrade is made any time during then-current Term. However, Customer may only downgrade from Gold Maintenance and Support to Standard Maintenance and Support at the time of renewal. To downgrade from Gold Maintenance and Support to Standard Maintenance and Support, Customer must provide written notice to Service Provider at least sixty (60) days prior to the expiration of the then-current Term. Upon such downgrade, Customer shall be obligated to pay Service Provider’s then-current fees for Standard Maintenance and Support.

**4. PLATINUM MAINTENANCE AND SUPPORT.**

4.1. **Platinum Services.** In consideration of Customer’s payment of the Platinum Support Fees, Customer shall be eligible to receive the “Platinum Services” that Service Provider makes generally available

to its Platinum Services customer base during the applicable term. Such Platinum Services shall be in addition to Gold Maintenance and Support described herein.

4.2. **Electing Platinum Support.** Customer may upgrade to Platinum Maintenance and Support at any time provided that Customer pays additional associated fees indicated on the applicable Quote. Such fees may be pro rated if the upgrade is made any time during then-current Term. However, Customer may only downgrade from Platinum Maintenance and Support to another level at the time of renewal. To downgrade from Platinum Maintenance and Support to either Gold or Standard Maintenance and Support, Customer must provide written notice to Service Provider at least sixty (60) days prior to the expiration of the then-current Term. Such notice shall specify whether the downgrade is to Gold or Standard Maintenance and Support and Customer shall be obligated to pay Service Provider’s then-current fees for that level of Maintenance and Support.

**5. ADDITIONAL SERVICES.**

5.1. **Coverage.** For an additional fee, Customer may elect to receive certain additional services. Fees related to such services will be described in a Statement of Work signed by both parties and will be provided by Service Provider at the fee stated therein, or if no fee is stated, at Service Provider’s standard rate for equivalent services in effect at the time the Statement of Work is executed. For clarity, if any services are explicitly included in the Maintenance and Support plan selected by Customer, then such Services do not require payment of additional fee.

5.1.1. **On-Site Services.** For an additional fee, Customer may elect to receive on-site support and maintenance.

5.1.2. **Training.** For an additional fee, Customer may elect to receive training with respect to the Software.

5.1.3. **Consulting.** For an additional fee, Customer may elect to receive consulting services related to defects caused by issues other than the Software.

5.2. **Out of Pocket Expenses.** Customer shall pay all reasonable out-of-pocket expenses incurred by Service Provider, including costs for meals, lodging and travel related to additional support services.

**6. OBLIGATIONS OF CUSTOMER.**

6.1. **First Level Support/Single Point of Contact.** All communications relating to Maintenance and Support shall be supervised, coordinated, and undertaken by no more than two (2) designated contact persons per Customer work-shift who shall act as a single point of contact between Customer and Service Provider. Each contact must possess or, at Customer’s expense, acquire the necessary expertise and training to diagnose and resolve Defects with direction by Service Provider.

6.2. **Pre-Call Procedures.** Prior to requesting support from Service Provider, Customer shall comply with all published operating and troubleshooting procedures for the Software. If such efforts are unsuccessful in eliminating the Defect, Customer shall then promptly notify Service Provider of the Defect. Customer shall confirm that the following conditions are true before contacting Service Provider for support:

6.2.1. **Reproduction.** If possible, the situation giving rise to the problem is reproducible in a single supported Software;

6.2.2. **Support Representative.** The Customer contact has the technical knowledge regarding the Software and any other software or hardware systems involved, and in the facts and circumstances surrounding the problem;

6.2.3. Access. The entire system, including all software and hardware, is available to the Customer contact without limit during any telephone discussions with Service Provider support personnel; and

6.2.4. Cooperation. The Customer contact will follow the instructions and suggestions of Service Provider's support personnel when servicing the Software.

6.3. Remote Connection. If appropriate, Customer will cooperate with Service Provider to allow and enable Service Provider to perform support services via remote connection using standard, commercially available remote control software. Customer shall be solely responsible for instituting and maintaining proper security safeguards to protect Customer's systems and data.

6.4. Updates. Customer acknowledges and agrees that Updates provided by Service Provider pursuant to this Support Agreement may, in Service Provider's sole discretion, require additional training of Customer's personnel. Such training shall be performed in accordance with Section 5.

6.5. Disclaimer. Service Provider shall not be responsible to provide Maintenance and Support, Updates, or any other maintenance and support to the extent that Defects arise because Customer (a) misuses, improperly uses, mis-configures, alters, or damages the Software; (b) uses the Software with any hardware or software not supplied or supported by Service Provider; (c) uses the Software at any unauthorized location; (d) fails to install an Update to the Software if such Update would have resolved the Defect; or (e) otherwise uses the Software in a manner not in accordance with the Support Agreement or License Agreement.

## **7. LIMITATIONS ON MAINTENANCE AND SUPPORT SERVICES.**

7.1. Customer Defects. If Customer notifies Service Provider of a problem and Service Provider correctly determines that the problem is due to Customer's incorrect or improper use of the Software or failure to comply with the terms of this Support Agreement or the License Agreement (as opposed to a Defect in the Software), the resolution of such problem is not covered by Maintenance and Support. However, Service Provider may provide consulting services to correct the problem pursuant to Section 5.

7.2. Release Support Period. Service Provider shall support a release of the Software if such release (a) was made generally available during the previous twelve (12) months; and (b) is no more than one major release (e.g. 2.0 to 3.0) behind the most current release of the Software. Major release upgrades are not included in the Fee and must be purchased separately. Other versions of the Software will not be supported unless Service Provider and Customer mutually agree otherwise in writing.

7.3. Third Party Products. Maintenance and Support does not cover the operation or use of third party hardware or software or Software modified by any party other than Service Provider or used in any manner in violation of the License Agreement or inconsistent with the Documentation.

7.4. Data. Customer is encouraged to backup data often and to always do so prior to installing any Update. Service Provider shall have no responsibility for loss of or damage to Customer's data, regardless of the cause of any such loss or damage.

## **8. TERM AND TERMINATION.**

8.1. Term. The Maintenance and Support Services Term shall be as indicated in the Quote. For clarity, the Quote will provide the Customer with an option to select a single year or multi-year period of coverage; upon selecting such period of coverage and the period

selected shall constitute the Term, Customer shall be contractually obligated to pay the Maintenance Fees for the full length of the Term and Service Provider shall be obligated to provide the selected Service Level to the Customer for the Term. Maintenance and Support Services shall automatically renew for successive Terms equal to the Term in the Quote unless Customer notifies Service Provider in writing of Customer's intent not to renew at least sixty (60) days prior to the expiration of the then-current Term. Fees for Maintenance and Support Services provided during renewal Terms shall be at Service Providers then current rates.

8.2. Renewal of Lapsed Maintenance and Support. If Customer elects not to renew Maintenance and Support, Customer shall no longer be eligible for Maintenance and there shall be no right of reinstatement.

8.3. Termination of Support Agreement. If Service Provider or Customer terminates the License Agreement in accordance with the terms provided therein, then the Maintenance and Support hereunder shall also terminate. Further, Service Provider may terminate this Support Agreement upon the following conditions:

8.3.1. if Customer fails to make any payments due hereunder within fifteen (15) days after Service Provider delivers notice of default to Customer;

8.3.2. by giving prior written notice to Customer if Customer fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from Customer's receipt of Service Provider's notice to cure such non-performance of material obligation; or

8.3.3. if Customer files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern.

8.4. Effect of Termination. All Fees already due or payable to Service Provider prior to the date of termination shall become immediately payable upon termination.

## **9. MISCELLANEOUS.**

9.1. Customer Facilities. To the extent required by Service Provider, Customer will, upon request, promptly make available to Service Provider certain of its facilities, computer resources, software programs, networks, personnel, and business information as are required to perform any service or obligation hereunder. Service Provider agrees to comply with Customer's rules and regulations regarding safety, security, and conduct, provided Service Provider has been made aware of such rules and regulations.

9.2. Purchase Orders. Customer agrees to provide Service Provider with a valid purchase order immediately upon execution of a Quote. Notwithstanding anything to the contrary herein, purchase orders are to be used solely for Customer's accounting purposes and any terms and conditions contained therein shall be deemed null and void with respect to the parties' relationship and this Support Agreement, including any Quotes entered into pursuant hereto. Customer's failure to issue a purchase order or provide such purchase order to Service Provider shall in no way relieve Customer of any obligation entered into pursuant to this Support Agreement including, but not limited to, its obligation to pay Service Provider in a timely fashion.

9.3. Foreign Nationals. Customer acknowledges that Service Provider employs foreign nationals, and that these foreign national employees will work, on Service Provider's behalf, to perform its obligations and services hereunder.

9.4. Third Parties. Subject to Section 9.9, Service Provider shall have the right to use third parties, including offshore entities who employ foreign nationals, as well as employees of Service Provider's affiliates who may also be foreign nationals ("Subcontractors") in performance of Service Provider's obligations hereunder and, for purposes of this Support Agreement, all references to Service Provider or its employees shall be deemed to include such Subcontractors.

9.5. Technical Data. Customer shall not provide to Service Provider any Technical Data as that term is defined in the International Traffic in Arms Regulations ("ITAR") at 22 CFR 120.10. Customer shall certify that all information provided to Service Provider has been reviewed and scrubbed so that all Technical Data and other sensitive information relevant to Customer's ITAR regulated projects has been removed and the information provided is only relevant to bug reports on Service Provider products.

9.6. Warranty. Service Provider warrants all services performed under this Support Agreement shall be performed in a workmanlike and professional manner. EXCEPT AS OTHERWISE STATED IN THIS SUPPORT AGREEMENT, SERVICE PROVIDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

9.7. LIMITATION OF LIABILITY AND DAMAGES DISCLAIMER. IN NO EVENT SHALL SERVICE PROVIDER, ITS AFFILIATES, OR ITS THIRD PARTY SERVICE PROVIDERS OR SUBCONTRACTORS BE LIABLE ON ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE MAINTENANCE AND SUPPORT SERVICES WHICH GAVE RISE TO SUCH DAMAGES DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

IN NO EVENT SHALL SERVICE PROVIDER, ITS AFFILIATES OR ITS THIRD PARTY SERVICE PROVIDERS OR SUBCONTRACTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOOD WILL EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

9.8. Suggestions/Improvements to Software. All suggestions, solutions, improvements, corrections, and other contributions provided by Customer regarding the Software or other Service Provider materials provided to Customer shall be owned by Service Provider, and Customer hereby agrees to assign any such rights to Service Provider. Nothing in this Support Agreement shall preclude Service Provider from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by Service Provider in the performance of services hereunder.

9.9. Confidentiality. Each party ("Receiving Party") agrees to keep confidential all technical, product, business, financial, and other information regarding the business and software programs of the

other party ("Disclosing Party"), its affiliates, customers, employees, investors, contractors, vendors and suppliers (the "Confidential Information"). Receiving Party shall at all times protect and safeguard the Confidential Information and agrees not to disclose, give, transmit or otherwise convey any Confidential Information, in whole or in part, to any third party, except Subcontractors. Receiving Party shall not, by authorized or unauthorized access, review, reverse engineer, disassemble or decompile any Confidential Information. Except as provided hereunder, Receiving Party agrees that it will not use any Confidential Information for its own purpose or for the benefit of any third party and shall honor the copyrights and other intellectual property rights of the Disclosing Party and will not copy, duplicate, or in any manner reproduce any such copyrighted materials. Upon request of Disclosing Party or upon termination of this Support Agreement, the Receiving Party shall promptly deliver to the Disclosing Party any and all documents, notes, or other physical embodiments of or reflecting the Confidential Information (including copies thereof) that are in its possession or control. Within seven (7) days of termination of this Support Agreement or upon request by the Disclosing Party, the Receiving Party shall return or destroy all Confidential Information of the Disclosing Party. If Confidential Information is destroyed rather than returned, the returning party shall certify such destruction. Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party shall be entitled to, in addition to any other remedies available at law or in equity, to seek temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under this Section.

9.10. Governing Law. This Support Agreement shall be governed by the laws of the State of Texas, without regard to any conflict of law principles of any state or jurisdiction.

9.11. Dispute Resolution. Any dispute, controversy or claim arising under, out of or relating to this Support Agreement and any subsequent amendments hereto, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Austin, Texas. The language to be used in the mediation shall be English.

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within sixty (60) days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the sixty (60) day period, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be Austin, Texas. The language to be used in the arbitral proceedings shall be English.

Notwithstanding anything contained hereunder, Customer agrees and acknowledges that no dispute resolution or litigation shall be pursued by Customer for any breach of this Support Agreement until and unless Service Provider has had an opportunity to cure any alleged breach. Customer agrees to provide Service Provider with a detailed description of any alleged failure and a description of the steps that Customer understands must be taken by Service Provider to resolve the failure. Service Provider shall have thirty (30) days from Service Provider's receipt of Customer's notice to complete the cure.

The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief as necessary, without breach of this Section and without abridgment of the powers of the arbitrator.

9.12. Entire Agreement. The provisions of this Support Agreement constitute the entire agreement between the parties with respect to the subject matter herein and supersede all prior agreements, oral or written, and all other communications relating to the subject matter of the Support Agreement. This Support Agreement may only be modified or supplemented by a writing manually signed by the authorized representatives of the parties. This Support Agreement does not in any way amend any portion of the License Agreement except for the portion of the License Agreement that specifically governs maintenance and support activities as to the Software. All other terms and conditions of the License Agreement remain in full force and effect, including, but not limited to all license provisions.

9.13. Severability. Each provision of this Support Agreement is a separately enforceable provision. If any provision of this Support Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Support Agreement will remain in full force and effect and will be interpreted, to the extent possible, to achieve its purposes without the invalid, illegal or unenforceable provision.

9.14. Waiver. Any waiver made by either party of any term or condition of this Support Agreement shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof.

9.15. Import/Export Laws. Customer agrees to abide by the export control laws/regulations of the United States and other jurisdictions.

9.16. Independent Contractor. Each party is and will remain an independent contractor with respect to all performance rendered pursuant to the Support Agreement.

9.17. Headings. The headings of this Support Agreement are provided for reference only and will not be used as a guide to interpretation

9.18. Notices. All notices under this Support Agreement will be in writing and will be considered given as of twenty-four (24) hours after sending by electronic means (such as fax or e-mail as duly provided by the authorized representatives of either party for such

purpose) or by overnight air courier service, or as of forty-eight (48) hours after deposit in the United States mail (certified, return receipt requested) to the addresses mentioned hereinabove.

9.19. Force Majeure. Service Provider shall not be liable to Customer for any delay or failure of Service Provider to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of Service Provider. Such causes shall include but are not limited to acts of God, floods, fire, utility failure, acts of terrorism, war etc.

9.20. Conflict. In the event of a conflict between the terms and conditions of this Support Agreement, the License Agreement, or a Quote, the terms and conditions of the Quote, this Support Agreement or License Agreement shall prevail, in that order.

9.21. Survival. The terms of Sections 8 and 9 shall survive the Term of this Support Agreement.

9.22. Payment. Unless otherwise specified in the Quote, all fees shall be due and payable within thirty (30) days of the invoice date. Notwithstanding any provision to the contrary, any and all payments required to be made hereunder shall be timely made, and no payments to Service Provider shall be withheld, delayed, reduced or refunded if Service Provider has performed its material obligations.

9.23. Late Payment Fees. Late fees will be applied to all past due payments according to the following schedule: three percent (3%) of the past due amount at thirty (30) days past due, five percent (5%) of the past due amount at sixty (60) days, ten percent (10%) of the past due amount at ninety (90) days past due.

9.24. Nonsolicitation. During the term of this Support Agreement and for a period of two (2) years thereafter, Customer agrees not to hire, solicit, nor attempt to solicit, the services of any employee or Subcontractor of Service Provider without the prior written consent of Service Provider. Customer further agrees not to hire, solicit, nor attempt to solicit, the services of any former employee or Subcontractor of Service Provider for a period of one (1) year from such former employee's or Subcontractor's last date of service with Service Provider. Violation of this provision shall entitle Service Provider to liquidated damages against Customer equal to two hundred percent (200%) of the solicited person's gross annual compensation.