

# Master Subscription Agreement

## EMAINT.COM TERMS OF USE:

BY SIGNING THIS AGREEMENT, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF THE EMAINT ENTERPRISES LLC ("EMAINT") ONLINE SERVICE, INCLUDING OFFLINE COMPONENTS (COLLECTIVELY, THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT SIGN THIS AGREEMENT.

## Welcome

As part of the Service, eMaint will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the eMaint website incorporated by reference herein, including but not limited to eMaint 's privacy and security policies. For reference, a Definitions section is included at the end of this Agreement. The Service is offered as the eMaint Online hosted edition, and has several add-on services available, including eMaint University, eMaint MX Mobile Wireless and eMaint MX Mobile.

In addition, we offer a 30-day free trial of our eMaint Online hosted edition with no further obligation.

## 1. Service Level

eMaint provides 24-hour access to its web-based eMaint Online hosted application, and users may access their eMaint Online account any time. Availability of eMaint Online may be hampered by circumstances and events beyond eMaint's reasonable control, such as power outages, disruptions along Internet pathways, or a force majeure.

eMaint monitors its servers and website availability 24/7. Upon discovery of service disruptions due to server-related issues, eMaint will notify immediately its third-party web hosting provider(s) and will work with the third-party provider(s) to resolve any issue(s) as quickly as possible so as to minimize any disruptions of service to eMaint customers. Should an unplanned service outage occur, and should such an outage result in the service being unavailable for more than 2 consecutive hours, eMaint will notify its customers, via email, of the disruption in service and of the steps eMaint and/or its third-party provider(s) is taking to resolve the matter. Service outages that are reported to eMaint by eMaint customers will be investigated immediately, and eMaint will inform the customer, via email, of the resolution of the matter. For planned outages, such as for server upgrades or maintenance, eMaint will notify, via email, its eMaint Online customers of a disruption in service at least 48 hours in advance of the planned outage.

## 2. License Grant & Restrictions

eMaint hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service, solely

for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by eMaint and its licensors.

You may not access the Service if you are a direct competitor of eMaint, except with eMaint's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way, except with eMaint's prior written consent; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

### **3. Your Responsibilities**

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify eMaint immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to eMaint immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another eMaint user or provide false identity information to gain access to or use the Service.

### **4. Account Information and Data**

eMaint does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). You, not eMaint, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and eMaint shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), eMaint will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. eMaint reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and eMaint shall have no obligation to maintain or forward any

Customer Data.

## 5. Data Access and Rights

Collection and Ownership. You acknowledge that data related to usage of eMaint and the Services eMaint may be collected (“Usage Data”).

Use and Access. eMaint shall have access to your Usage Data and Customer Data. However, for avoidance of doubt, eMaint may not, either directly or indirectly, sell or share Usage Data or Customer Data with any third parties, without your prior express written consent, except as otherwise provided in this Agreement. You may sell or share Customer Data with third parties without the consent of eMaint. Unless mutually agreed upon by the parties, in no event may a party sell or share with any third-party data owned by the other party. eMaint’s use of the Usage Data and Customer Data shall primarily be for purposes of improving eMaint and the Services.

Anonymization and Aggregation. You hereby agree eMaint and its successors and assigns may collect, use, publish, disseminate, sell, transfer, and otherwise exploit the collected Customer Data and Usage Data if such data has been anonymized by eMaint or its designee (“Anonymized User Data”). Anonymized User Data may also be aggregated (“Aggregate Data”). Anonymized User Data and Aggregate Data shall not identify you, any user, or any individual. Anonymized User Data and Aggregate Data in any form may be used by eMaint for any lawful purpose. eMaint is the sole owner of all right, title, and interest in and to the Anonymized User Data and Aggregate Data and any conclusions, impressions, understandings, insights, process improvements, or other information (collectively “Analytics”) derived, extracted or otherwise obtained by eMaint from any form of Anonymized User Data and the Aggregate Data shall be owned exclusively by eMaint with all rights thereto, which shall be deemed eMaint Intellectual Property for purposes of this Agreement.

Combination. Anonymized User Data, Aggregate Data and data obtained from other sources may be combined (“Combined Data”) either by eMaint or by a third-party data analysis vendor and stored either at a an eMaint-controlled repository or a third-party repository in any form of structured, raw, or other data format. Combined Data in any form may be used by eMaint for any lawful purpose. eMaint is the sole owner of all right, title, and interest in and to the Combined Data and any analytics generated from the Combined Data, including the right to collect, use, publish, disseminate, sell, transfer, and otherwise exploit the Combined Data and analytics, which shall be deemed eMaint Intellectual Property for purposes of this Agreement.

Transport, Security and Storage. eMaint shall take commercially reasonable steps to ensure transport of the data is securely undertaken, including the use of various encryption technologies and other security measures. Further security shall include maintaining adequate physical controls and password protections for any server or system on which data is stored and any other measures reasonably necessary to prevent any use or disclosure of data other than as allowed under this Agreement.

Affiliation. Customer hereby agrees if eMaint is divested, sold, separated or otherwise no longer affiliated with, or under common control of, its parent company, a copy of all data including Usage Data, Anonymized User Data, Aggregate Data and Combined Data shall remain with the parent company along with all the same rights, title and obligations as eMaint as set forth herein.

## 6. Intellectual Property Ownership

eMaint alone (and its licensors, where applicable) shall own all right, title and interest, including all

related Intellectual Property Rights, in and to the eMaint Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the eMaint Technology or the Intellectual Property Rights owned by eMaint. The eMaint name, the eMaint logo, and the product names associated with the Service are trademarks of eMaint or third parties, and no right or license is granted to use them.

## **7. Third Party Interactions**

During use of the Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party. eMaint and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. eMaint does not endorse any sites on the Internet that are linked through the Service. eMaint provides these links to you only as a matter of convenience, and in no event shall eMaint or its licensors be responsible for any content, products, or other materials on or available from such sites. eMaint provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

## **8. Charges and Payment of Fees**

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges will be equal to the current number of total User licenses requested times the User license fee currently in effect. Payments must be made annually in advance unless otherwise mutually agreed upon in an Order Form. All payment obligations are non-cancelable and all amounts paid are nonrefundable. You are responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used. You must provide eMaint with valid credit card or approved purchase order information as a condition to signing up for the Service. An authorized License Administrator may add licenses by executing an additional written Order Form or using the 'Add New User' feature in the Service. Added licenses will be subject to the following: (i) added licenses will be coterminous with the pre-existing License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged in full for that billing month. eMaint reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

## **9. Contingency, Backup and Disaster Recovery**

eMaint performs data backups of all paying customers' eMaint Online account data. The servers' data backup procedure typically occurs between the hours of 12 midnight and 2 a.m. Eastern Time, seven days a week. During the backup process, you may incur a momentary pause (up to 90 seconds) should

you be accessing your data at the precise moment the backup of your account data is taking place. Backup functions on other client data will have no effect on your access to your data. In the event that a web server ceases to function or that data files become corrupt, a system restore from backup will be performed, with every reasonable attempt being made to recover lost data. In the event that such a system restore from backup is required, eMaint will seek to have the system fully operational and back on-line within 48 hours. eMaint will notify its customers, via email, that such a procedure is taking place and will inform customers of the estimated date and time that the server is due to be operational.

## **10. Billing and Renewal**

eMaint charges and collects in advance for use of the Service. eMaint will automatically renew and bill your credit card or issue an invoice to you each year on the subsequent anniversary or as otherwise mutually agreed upon. The renewal charge will be equal to the then-current number of total User licenses times the license fee in effect during the prior term, unless eMaint has given you at least 30 days prior written notice of a fee increase, which shall be effective upon renewal and thereafter, but which in no event may exceed 3% of the previous year's license fees. Fees for other services will be charged on an as quoted basis. eMaint's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on eMaint's income.

You agree to provide eMaint with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, eMaint reserves the right to terminate your access to the Service in addition to any other legal remedies. Unless eMaint in its discretion determines otherwise, all entities will be billed in U.S. dollars and be subject to U.S. payment terms and pricing schemes at the discretion of eMaint.

If you believe your bill is incorrect, you must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

## **11. Non-Payment and Suspension**

In addition to any other rights granted to eMaint herein, eMaint reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User licenses during any period of suspension. If you or eMaint initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that eMaint may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees. eMaint reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that eMaint has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

## **12. Termination upon Expiration/Reduction in Number of**

## Licenses

This Agreement commences on the Effective Date of your use of the Service. The Initial Term will be as you elect during the online subscription process or as otherwise mutually agreed upon in an Order Form. Upon the expiration of the Initial Term, this Agreement may be renewed by You for successive one-year renewal terms correspondent to Customer's fiscal year, which runs from July 1 to June 30 of each year, at eMaint's then current fees, provided notification of renewal is received at least five (5) business days prior to the expiration of the current (Initial or Renewal) term. Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least five (5) business days prior to the date of the invoice for the following term. In the case of free trials, notifications provided through the Service indicating the remaining number of days in the free trial shall constitute notice of termination. In the event this Agreement is terminated (other than by reason of your breach), eMaint will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that eMaint has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

## 13. Termination for Cause

Any breach of your payment obligations or unauthorized use of the eMaint Technology or Service will be deemed a material breach of this Agreement. eMaint, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, eMaint may terminate a free account at any time in its sole discretion. You agree and acknowledge that eMaint has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

## 14. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. eMaint represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online eMaint help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

## 15. Mutual Indemnification

You shall indemnify and hold eMaint, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all third party claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that eMaint (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release eMaint of all liability and such

settlement does not affect eMaint's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

eMaint shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all third party: claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by eMaint of its representations or warranties; or (iii) a claim arising from breach of this Agreement by eMaint; provided that you (a) promptly give written notice of the claim to eMaint; (b) give eMaint sole control of the defense and settlement of the claim (provided that eMaint may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to eMaint all available information and assistance; and (d) have not compromised or settled such claim. eMaint shall have no indemnification obligation for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

## **16. Disclaimer of Warranties**

EMAINT AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. EMAINT AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY EMAINT AND ITS LICENSORS.

## **17. Internet Delays**

EMAINT'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. EMAINT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **18. Limitation of Liability**

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO

ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **19. Additional Rights**

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

## **20. Local Laws and Export Control**

This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 428/2009.

eMaint and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government for such purposes.

## **21. Notice**

eMaint may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in eMaint 's account information, or by written communication sent by first class mail or pre-paid post to your address on record in eMaint 's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class



mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to eMaint (such notice shall be deemed given when received by eMaint ) at any time by any of the following: letter sent by confirmed facsimile to eMaint at the following fax number: 253-323-6353; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to eMaint at the following address: 3181 North Bay Village Court, Bonita Springs, FL 34135, addressed to the attention of: Financial Department.

## **22. Modification to Terms**

The terms of this agreement may only be modified by written amendment, mutually agreed and signed between the Parties.

## **23. Assignment; Change in Control**

This Agreement may not be assigned by you without the prior written approval of eMaint but may be assigned without your consent by eMaint to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of eMaint directly or indirectly owning or controlling 50% or more of you shall entitle eMaint to terminate this Agreement for cause immediately upon written notice.

## **24. General**

This Agreement shall be governed by Oklahoma law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Tulsa County, Oklahoma. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and eMaint as a result of this agreement or use of the Service. The failure of eMaint to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by eMaint in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between you and eMaint and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

## **25. Definitions**

As used in this Agreement and in any Order Forms now or hereafter associated herewith: "Agreement" means this master subscription agreement, any written Order Forms, and any Appendices included with or referenced in this Agreement; "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service; "Customer Data" means any data, information or material provided or submitted by you to the Service; in the course of using the Service; "Effective Date" means the date this Agreement is accepted and





# Subscription and Order Form Agreement

**Account Name:** Tulsa County

**Billing Address:** 218 W. 6th St., Suite 110  
Tulsa, OK, 74119

**Contact Name:** Patti Farrar  
**Contact Email:** pfarrar@tulsacounty.org

Agreement ID	Quote Created	Term Start Date	Prepared By Name	Prepared By Email	Quote Expiration
Q-91315	2/15/2022	7/1/2021	Colleen Eliason	colleen.eliason@fluke.com	5/27/2022

Product	Charge Type	Unit Price (USD)	Qty (Each)	Extended Price (USD)
<b>Professional Edition User</b>	<b>Recurring</b>	<b>USD 948.60</b>	<b>20.00</b>	<b>USD 18,972.00</b>
Professional Edition Annual Subscription includes: - 24/7 access, daily data backups, automatic system updates and upgrades - Designated Customer Success Manager/Account Manager for the full term of your contract - Toll-Free Access with Priority Response - Unlimited technical helpdesk support via phone, live chat & email - eMaint University unlimited access (e-learning & reliability portal) - Choice of Work Requester Options - Look & feel Branding option - "Sandbox" staging account - Advanced storeroom features - Integrated Document Storage feature (includes 100GB of storage) - Experience Center Access				
<b>X4 Tech Select (Technician Limited User License)</b>	<b>Recurring</b>	<b>USD 223.20</b>	<b>38.00</b>	<b>USD 8,481.60</b>
Tech Select (Technician Limited User License) Annual Subscription includes: - Access to MX Mobile, a wireless mobile version of eMaint for use with mobile devices, such as tablets, smart phones and bar code scanners. [MX Mobile functionality provides a limited feature set and not all features available in the full version are available in the mobile/tech solution. Features most notably absent are: Access to saved/hard filters, multiple forms, purchasing, reports and eMaint University]				
<b>Executive Dashboard</b>	<b>Recurring</b>	<b>USD 480.00</b>	<b>2.00</b>	<b>USD 960.00</b>
Type of a user account access that limits an individual to only have Dashboard visibility. This is useful for Corporate and Executive levels to view real time dashboards of an account.				
<b>Integrated Document Storage - Supplemental Storage</b>	<b>Recurring</b>	<b>USD 24.96</b>	<b>2.00</b>	<b>USD 49.92</b>
Annual fee for 50GB of supplemental storage for the Integrated Document Storage feature.				
<b>Professional Services</b>	<b>Non-Recurring</b>	<b>USD 0.00</b>	<b>1.00</b>	<b>USD 0.00</b>
Change to Inventory Journal (ICJOURNAL) transaction: This interface creates an entry in the Inventory Journal as a 'PHY COUNT' presently and with a positive 'Qty' transaction. Since this transaction is for fuel consumption, a change will be made to the transaction to update the Transaction Type from a 'PHY COUNT' to 'ISSUE' so that the Qty from Fuel Master reflects quantities being removed from inventory levels rather than added to it.				
<b>DISCOUNT:</b>				USD 2,216.40
<b>Total:</b>				USD 28,463.52

**Total: USD 28,463.52**

Initials of Signer: \_\_\_\_\_

## Subscription Term

Initial Term (Months): 12  
The initial subscription term will run through the last day of: 6/30/2022

## Renewal Term

Renewal Term (Months): 12

## Payment Terms and Schedule

Payment Frequency Annual Payment Terms Net 30

## Order Placement

Include Item Numbers on your Order.

**All Orders are to be issued to eMaint Enterprises LLC**

Submit Orders via email or fax to:

Email: [sales@emaint.com](mailto:sales@emaint.com) and **CC: colleen.eliason@fluke.com**

Fax: **(253) 323-6353**

**Credit Card** – eMaint accepts Visa, MasterCard and American Express..

**Payments** – Payments should be submitted to:

**eMaint Enterprises, LLC**

**3181 North Bay Village Ct**

**Bonita Springs, FL 34135**

**Email: [FDS-Accounts-Receivable@fluke.com](mailto:FDS-Accounts-Receivable@fluke.com)**

Fax: (253) 323-6353

Phone: 856-810-2700

ACH/EFT Information: Routing Number 071923284 Account Number 8765230088

Corporate Information – eMaint Enterprises LLC EIN: 91-2171817 DUNS New Jersey 075904479 DUNS FL 061678302.

## Additional Terms

If on-site services are included in this order, travel and living expenses will be billed separately.


Users may be added after order is signed by contacting eMaint. eMaint will pro-rate the fees of additional users to your existing subscription term.

Contract renewal must be agreed to by both parties prior to entering into a subsequent annual agreement. By signing below, you indicate that you agree to the subscription terms and pricing above and that you are authorized and empowered by the Subscriber to execute and deliver this Agreement for and on behalf of the Subscriber.

Agreement is effective upon signature. Unsigned agreements will expire 30 days from create date.

Customer listed at top of form represents that its signatory below has the authority to bind Customer to the terms of this Order and the Agreement. The terms of this Order are eMaint Confidential Information.

This offer is expressly conditioned upon and subject to the terms referenced herein and referenced in the MSA. It is expressly agreed that any terms and conditions in Customer's Order and/or acknowledgement of acceptance which are different from or contrary to the MSA terms shall be of no force nor effect unless modified and agreed to in writing by an authorized eMaint representative.

Initials of Signer: 

# Subscription and Order Form Agreement

## Payment Method

Please indicate your payment preference:

Do you prefer to have a copy of the invoice emailed to you? (circle one)

Purchase Order Number: \_\_\_\_\_

No or Yes; Email invoice to pfarrar@tulsacounty.org

**(Please include a copy of your PO with the signed Agreement)**

Unless otherwise agreed to, the credit card used for this transaction will be the same credit card used for the Renewal Term on the last day of the current Subscription Term.

Card Type :(circle one) Visa MasterCard American Express Last 4 Digits of Card Number: \_\_\_\_\_

Cardholder Name: \_\_\_\_\_

Cardholder Phone Number: \_\_\_\_\_

## Signature and Acceptance

Please complete this section of the form, sign it, and return via email to sales@emaint.com OR via fax at 253-323-6353.

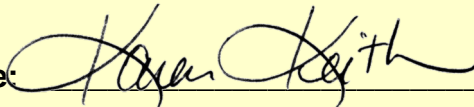
Accounts Payable Name: Patti Farrar

Accounts Payable Email: pfarrar@tulsacounty.org

Accounts Payable Phone: 918-596-5502

APPROVED AS TO FORM:

\_\_\_\_\_  
 ASSISTANT DISTRICT ATTORNEY

Signature:  Date: 5/2/2022

Name: Karen Keith Title: Chairman

Email: \_\_\_\_\_

BY SIGNING ABOVE, YOU CERTIFY THAT YOU HAVE READ THIS AGREEMENT, THAT YOU KNOW AND UNDERSTAND THE MEANING AND INTENT OF THIS AGREEMENT AND AGREE TO THE TERMS AS STATED WITHIN THIS DOCUMENT AND REFERENCED IN THE MASTER SUBSCRIPTION AGREEMENT SIGNED AND EXECUTED BY BOTH PARTIES.

This offer is expressly conditioned upon and subject to the eMaint Enterprises LLC (eMaint) terms referenced herein and referenced in the Master Subscription Agreement signed and executed by both parties. It is expressly agreed that any terms and conditions in Customer's Order and/or acknowledgement of acceptance which are different from or contrary to eMaint's Terms shall be of no force nor effect unless modified and agreed to in writing by an authorized eMaint representative. If on-site services are included in this order, travel and living expenses will be billed separately.

Initials of Signer: 