

MAINTENANCE AND TECHNICAL SUPPORT AGREEMENT

QDABRA SOFTWARE

This MAINTENANCE AND TECHNICAL SUPPORT AGREEMENT (“SLA”) is entered by and between QDABRA SOFTWARE (“LICENSOR” or “QDABRA”) and LICENSEE. QDABRA and LICENSEE are sometimes referenced to herein as the “Parties” and each of them is sometimes referenced to herein as a “Party.”

For and in consideration of the maintenance fees described herein and for other good and valuable consideration, the Parties agree to the following terms and conditions, as follows:

Section 1. NOTICES.

- a. **GOVERNNG TERMS AND CONDITIONS.** These SLA terms apply during the aforesaid Term so long as all fees described herein or in Schedule 1 are timely paid during the Term hereof. As used herein, Software Product refers to a LICENSOR software product. All services to be provided by LICENSOR shall be at LICENSOR’s support site or sites and none shall require any physical presence at any of LICENSEE sites unless the Parties agree to in writing on mutually satisfactory terms as to fees and costs and any other terms that the Parties may mutually accept in writing.
- b. **CHANGES TO SLA.** Any changes to this SLA shall be effective only if made in a writing signed by the Parties.
- c. **NON-ENGLISH VERSION SOFTWARE PRODUCTS.** If after-hour support is required for a non-English version of a Software Product, the hours of operation may be different for non-English version support affiliates and there may be other differences with respect to time for response and other terms and conditions set forth below. Otherwise all other terms and conditions described in this SLA apply to any support agreement.

Section 2. MAINTENANCE AND SUPPORT HOURS AND LEVELS; UPDATES.

- a. **NORMAL MAINTENANCE HOURS:**

LICENSOR’s regular maintenance hours are from 7 am to 4 pm Pacific Time Monday through Friday except for the following United States designated days in any calendar year:

- Memorial Day (last Monday of May)
- Independence Day (July 4th)
- Labor Day (first Monday in September)
- Thanksgiving (fourth Thursday of November)
- Christmas (December 25th)
- New Years Day (January 1st)

LICENSOR support usually responds to maintenance calls beginning at 7 am Pacific Time, taking into account Daylight Savings when applicable.

b. **AFTER HOURS MAINTENANCE:**

LICENSOR offers after hour support on a “per incident” basis for an additional fee. The charge is variable depending on a LICENSEE's maintenance status. “Active maintenance Licensees” (those Licensees having paid for and having active maintenance agreements in force) pay sixty percent (60%) less for after hours support charges than “non-maintenance Licensees” (those Licensees having no maintenance agreements in force regardless of reason – not purchased, terminated, or not renewed). Licensees calling in for after-hours support will be informed of an incident charge and will be given the option to call back during normal working hours. A technical support representative will call back within one (1) hour for Licensees who require immediate support and agree to pay the incident charge. After hours support provides Level 1 and Level 2 support only. Non-maintenance Licensees are entitled to releases that may provide a problem resolution (for example, version 2.2 to version 2.3 of a Software Product) but are not entitled to any version that would ordinarily require purchase without an active maintenance agreement in place (for example, version 2.2 to version 3.0 of a Software Product).

c. **LEVEL 3, 4 AND 5 SUPPORT:**

Support as defined in Level 3, 4 and 5 shall be made in the discretion of LICENSOR. Any services for these levels may be requested by a LICENSEE on mutually agreed-upon terms and conditions

d. **TECHICAL SUPPORT LEVELS:**

LEVEL 1. Initial call will be attempted to be fielded by a qualified tech support representative within about twenty (20) to forty (40) minutes after the call is made with identification of the problem. Problem identification is the first step. LICENSOR's experience is that a large percentage of problem issues may be resolved by verifying and correcting software configuration of Microsoft SharePoint on server and/or Microsoft InfoPath on client machines. For example, SharePoint can disable other Web services installed on a server and there are known defect in Microsoft InfoPath regarding form caching on client machines which require clearing the InfoPath cache on the client machine. For another example and in addition, there are known defects in Microsoft's Vista operating systems (problems with support for WebDAV protocol) that may require the installation and/or special configuration of software applications on server machines. Please refer to Product Release Notes for details on the most common configuration issues. A very common Qdabra Software Product issue is an error in the mapping from XML to SQL. Please refer to the Qdabra event log on server machines to confirm a Qdabra Software Product problem. While LICENSOR anticipates that resolution can usually be found, sometimes a software issue in the Software Product will be identified. If a “hot fix” or new version resolves any such software issue, Licensee will be advised to download and update accordingly. If no resolution is then available, Licensee will be advised of the current status, such as by way of examples only (and without limitation), whether: (1) the problem has been replicated; (2) the problem has been replicated and a programmatic fix is underway; (3) the problem has been replicated, a fix programmed and is being tested; (4) a workaround to the problem is available; or (5) no workaround is currently available. If the

problem is not readily apparent, it is common for a support representative to ask Licensee to run the software after being advised to make setting changes or to perform tests in order to receive additional information about the nature of the problem. A level 1 diagnostic can take minutes to hours to days to weeks depending on the nature of the problem, and how responsive a Licensee is in providing supplemental information that is critical to an accurate diagnosis.

LEVEL 2. If the tech support representative cannot identify the nature of the problem, a senior support representative will be consulted or will directly take over the problem diagnosis. This can typically take two (2) to four (4) hours, but can be much longer depending on LICENSEE delays in requested feedback. For problems that are difficult to diagnose, LICENSOR uses an Internet-based remote control software product. With this tool, a technical support representative can take control of a LICENSEE machine and can quickly perform tests to aid in a correct diagnosis of a problem, particularly when it is a network or software setting issue. If the nature of the problem appears to be a LICENSOR software bug, user conditions must allow the problem to be confirmed, as opposed to a one-shot occurrence or an intermittent problem that cannot be made to occur through a set of known and reproducible actions. Programmers cannot begin to work on a program resolution until a software problem can be reliably replicated. Senior support representatives have extensive experience at both solving very difficult issues within LICENSEE environments that are not directly caused by LICENSOR Software's products, and discovering hard-to-find or obscure combinations of events that cause software failures. Upon discovering a software product bug, deficiency or LICENSEE environment issue that a software fix may resolve, an entry is made into LICENSOR's Bug Tracking System. Depending on the level of severity to the LICENSEE, the following actions may be taken: (1) a programmer is assigned to work on a fix right away (critical bugs); (2) a programmer is assigned to work on the bug in the order of assignment (important bug but not critical); (3) a programmer is assigned to work on the bug as time permits (a work around is available); or (4) the bug is not assigned to a programmer because it is very low level or it is not a bug at all but rather a new feature request to solve a LICENSEE environment issue or is simply a LICENSEE feature request.

LEVEL 3. A software problem has been identified, replicated and has been entered into LICENSOR's Bug Tracking System for a programmatic resolution. Critical bugs are assigned top priority and a developer will be diverted from lower priority work to program a fix. Programming a fix can be relatively very fast compared to the time necessary to identify and determine the set of circumstances that will replicate a LICENSEE problem. Forecasting the exact amount of time to discover a bug and program a fix is impossible. What LICENSOR commits to is allocating the resources and the best people available to find, solve and fix critical LICENSEE problems. LICENSOR uses state of the art source code program debugging tools to expedite the discovery of root problems.

LEVEL 4. A fix is compiled in the main source code tree of the software to fix a reported problem. In the development of releases, new versions of the software are generated from the main source code tree, and it is company policy to fix reported bugs here first to keep "fixed bugs" from reappearing in subsequent releases. The fixed version is tested against the set of circumstances that were known to replicate the problem. The testing department also tests other software functions to guard against the fix causing another problem that could be equal to or worse than the problem solved.

LEVEL 5. Once the programmed fix has passed internal testing, the same programmatic changes are made into a special “hot fix” version of the software that can be made available to a LICENSEE immediately. The only exception would be if the changes to the main source code tree coincide with a new general release. The hot fixed version is then tested rigorously. This is because the source code changed is based on the current release version. This process is followed so that the current version and version under development both have the problem fixed. Upon passing internal testing, the hot fix version is made available to the LICENSEE for download and testing to validate the fix in the LICENSEE environment (which frequently cannot be replicated in LICENSOR’s testing facility). If the fix solves the LICENSEE problem, the hot fix version may become the new general release depending on the nature of the LICENSEE problem (which can be very unique or which could affect every LICENSEE). If the problem persists or other problems are discovered due to the fix, the cycle is repeated until resolved.

LEVEL 3, 4 AND 5 SUPPORT:

Support as defined in Level 3, 4 and 5 shall be made in the discretion of LICENSOR taking into account LICENSOR’s staffing and other then existing factors. Any expedited services for these levels may be requested by a LICENSEE and may be provided only on mutually agreed-upon terms and conditions of an additional executed written agreement between LICENSOR and Licensing that contain among other terms, such consideration that is acceptable to LICENSOR. In some such cases, LICENSEE may desire a custom coding project, and in any such situation, a written agreement acceptable to both LICENSOR and LICENSEE must be agreed upon and executed.

e. **NO CONSULTING SERVICES.**

Nothing in this Agreement shall be deemed a consulting agreement. Any issues that are not DBXL-caused for which LICENSEE wishes to engage LICENSOR for services shall be billed and paid at the greater of One Hundred and Fifty U.S. Dollars (U.S. \$150.00) per incident or One Hundred and Fifty U.S. Dollars (U.S. \$150.00) per hour and further subject to a written consulting agreement having terms and conditions mutually acceptable to the parties.

Section 3. LIMITED WARRANTY; LIMITATIONS OF LIABILITY AND REMEDIES.

a. **LIMITED WARRANTY.** LICENSOR makes only to LICENSEE the limited warranty expressly described in this Section 3 with respect to the subject matter of this SLA, including without limitation any updates, fixes, new code, configurations, or other services described herein. LICENSOR makes no warranties of any kind to any other Persons. Furthermore to the maximum extent permitted by applicable laws, no other warranty of any kind, whether express or implied, is made by LICENSOR to the LICENSEE or any other Person.

(1) LICENSOR warrants that LICENSOR has the rights and/or licenses to provide the services described herein or to provide any updates, fixes, or other code that may be provided pursuant to this SLA or otherwise provided by LICENSOR.

(2) LICENSOR makes no warranty of any kind, implied or express, that any Software Product or any updates, fixes or other code will meet LICENSEE’s

requirements, or that any Software Product or any updates, fixes or other code will be uninterrupted or error-free. The Software Products are licensed "AS IS" and with all faults. LICENSOR makes no warranty as to use or performance of a Software Product, any updates, fixes or other code provided pursuant to this SLA or otherwise provided by LICENSOR.

b. **NO IMPLIED WARRANTIES.** EXCEPT AS EXPRESSLY STATED IN SECTION 3.a.(1) ABOVE, LICENSOR DOES NOT MAKE AND HEREBY SPECIFICALLY EXCLUDES AND DISCLAIMS ALL WARRANTIES AND/OR INDEMNITIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY TRADE USAGE OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS, RESULTS, LACK OF NEGLIGENCE, OR ANY THING ELSE. FURTHERMORE THIS SLA SHALL NOT BE SUBJECT TO ANY EXISTING VERSIONS OR DRAFTS OF THE UNIFORM COMMERCIAL CODE THAT PURPORTEDLY MAY OTHERWISE APPLY TO SOFTWARE LICENSES.

c. **LIMITATIONS OF LIABILITY AND REMEDIES.**

(1) UNDER NO CIRCUMSTANCES SHALL LICENSOR OR ITS MEMBERS, DIRECTORS, EQUITY OWNERS, SHAREHOLDERS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, DISTRIBUTORS, RESELLERS OR OTHER AFFILIATES BE LIABLE FOR ANY SPECIFIC PERFORMANCE OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL, TREBLE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, ARISING OUT OF OR IN ANY WAY RELATING TO THIS SLA OR ANY ACT, OMISSION OR OTHER ALLEGED CONDUCT RELATING TO THE SOFTWARE PRODUCTS OR TO LICENSOR, INCLUDING WITHOUT LIMITATION, ANY DAMAGES FOR LOST GOODWILL OR PROFITS, LOSS OF DATA OR SOFTWARE, WORK STOPPAGE OR IMPAIRMENT OF OTHER GOODS, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR REASONABLE CARE, OR FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) EVEN IF LICENSOR OR ITS MEMBERS, DIRECTORS, EQUITY OWNERS, SHAREHOLDERS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, DISTRIBUTORS, RESELLERS, OR OTHER AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR KNOWS OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER OR NOT THIS SLA FAILS IN ITS ESSENTIAL PURPOSE.

(2) THE RIGHTS AND REMEDIES OF LICENSEE ARE SPECIFICALLY SET FORTH IN THIS SECTION 3 AND ARE THE LICENSEE'S EXCLUSIVE REMEDIES, NOTWITHSTANDING ANY DAMAGES THAT LICENSEE MIGHT INCUR FOR ANY REASON WHATSOEVER. IN NO CASE SHALL ANY POTENTIAL LIABILITY

TO A LICENSEE FOR ANY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION, DIRECT OR GENERAL DAMAGES, BY LICENSOR OR ITS MEMBERS, DIRECTORS, EQUITY OWNERS, SHAREHOLDERS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, DISTRIBUTORS, RESELLERS, OR OTHER AFFILIATES) IN THE AGGREGATE FOR ALL POTENTIAL CLAIMS (WHETHER BASED ON CONTRACT, TORT, STATUTES OR OTHER AUTHORITIES) EXCEED THE AMOUNTS DESCRIBED BELOW:

- (A) FOR A PURCHASED MAINTENANCE AND SUPPORT AGREEMENT, A MAXIMUM AMOUNT EQUAL TO (1) EITHER THE PRODUCT OF (i) THE PURCHASE PRICE PAID BY THE LICENSEE TIMES (ii) THE NUMBER OF MONTHS REMAINING IN THE MAINTENANCE AND SUPPORT PERIOD OF THE CURRENT MAINTENANCE AND SUPPORT AGREEMENT (iii) DIVIDED BY THE TOTAL MONTHS FOR MAINTENANCE AND SUPPORT OF THE CURRENT MAINTENANCE AND SUPPORT AGREEMENT;
 - (B) FOR PRE-RELEASE, BETA, TEST, TRIAL OR OTHER EVALUATION SOFTWARE, "FREE DOWNLOAD" OR "FREE DEVELOPER EDITION," A MAXIMUM AMOUNT EQUAL TO TEN UNITED STATES CENTS (U.S. \$ 0.10); OR
 - (C) FOR ANY LICENSEE WITHOUT A PURCHASED MAINTENANCE AND SUPPORT AGREEMENT, A MAXIMUM AMOUNT EQUAL TO TEN UNITED STATES CENTS (U.S. \$0.10).
- (3) NOTHING IN THE FOREGOING SHALL BE DEEMED TO BE A BAR, DISCHARGE, RELEASE, FORGIVENESS, WAIVER, FOREBEARANCE, IMPAIRMENT, OR OTHER LIMITATION OF ANY OF LICENSOR'S RIGHTS IN LAW OR EQUITY AGAINST THE LICENSEE OR ANY OTHER PERSON FOR ANY INFRINGEMENT OR OTHER VIOLATION OF ANY OF LICENSORS'S INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS OR OF ANY OTHER RIGHTS OR REMEDIES OF LICENSOR..

Section 4. PROPRIETARY RIGHTS.

- a. LICENSEE shall use its best efforts to prevent unauthorized installation, copying, display, execution, performance, distribution or any other use in whole or in part of any Software Products and any updates, upgrades, fixes or other code that may be provided under this SLA. No title to or ownership of any Software Product, updates, upgrades, fixes or other code provided under this SLA, or any related materials and documentation is transferred to LICENSEE hereunder. LICENSEE is granted no rights of any kind with respect to the source code of any Software Product or any updates, upgrades, fixes or other code provided under this SLA. LICENSEE recognizes and acknowledges the exclusive right of LICENSOR in and to LICENSOR's trademarks, service marks, trade names, copyrights, and other

intellectual property and proprietary rights in and to each Software Product. SharePoint, InfoPath and Vista are registered trademarks of The Microsoft Corporation.

Section 5. RESTRICTED GOVERNMENT RIGHTS; EXPORT.

- a. Restricted Government Rights. If LICENSEE is a governmental agency, LICENSEE agrees that any Software Product and any updates, upgrades, fixes or other code provided under this SLA are provided with restricted rights. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (c) (2)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252. 227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. To the extent that these regulations have been or are amended or supplemented, all terms and conditions elsewhere in this SLA and the EULA related to the Software Product shall prevail to the fullest extent allowable by these regulations, any amendments and any future changes or supplements. Contractor/manufacture is **QDABRA SOFTWARE**, 218 Main Street, #731, Kirkland, WA 98033, United States of America.
- b. Export. The Software Products are subject to U.S. export jurisdiction.

Section 6. DISPUTES; ARBITRATION; GOVERNING LAW; MISCELLANEOUS

- a. Arbitration, Jurisdiction, Venue and Attorneys' Fees. LICENSEE agrees that any dispute regarding, relating to, or arising from this SLA or the EULA related to a Software Product or LICENSOR shall be determined in accordance with the Commercial Arbitration Rules of the American Arbitration Association before a single arbitrator mutually selected by the parties with the arbitration to take place in Seattle, Washington, United States of America. The award of the arbitrator shall be final and binding on the parties. LICENSEE agrees and consents to personal jurisdiction, subject matter jurisdiction and venue in a federal or state court located in Seattle, King County, Washington, to enforce this SLA and such EULA and any arbitration award and LICENSEE waives all defenses of lack of personal jurisdiction or *forum nonconveniens*. The prevailing party shall be entitled to its reasonable attorney fees and costs as awarded by the arbitrator (or the court, as the case may be). This SLA and such EULA shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party may seek to enforce a final arbitration award in any and all courts or forums that have jurisdiction over the losing party. The parties agree that this Section 6 is subject to the New York Convention and fully enforceable in all countries that are signatories to the New York Convention.
- b. Invalidity/Unenforceability/Waiver. The invalidity or unenforceability of any provision of this SLA and such EULA shall not affect or impair the validity or enforceability of any other provision hereof. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein or by law, subject to the terms and conditions of this SLA or such EULA. No waiver of rights shall be valid unless contained in a writing

specifically referring hereto and signed by the Person against whom enforcement is sought.

Section 7: MISCELLANEOUS.

- a. Notices. Any written notice required under this Agreement shall be delivered personally or be sent by United States registered or certified mail, postage prepaid and return receipt requested, and addressed or delivered to the Parties at the following addresses, or such other address as may hereafter be designated by a Party by written notice thereof to the other Party:

QDABRA

Attention: Patrick Halstead, CEO
Qdabra Software
218 Main Street, #731
Kirkland, WA 98033
Tel. (425) 205-0412

With a copy to:

Daniel D. Woo, Attorney
Law & IP Consultant Affiliates
Post Office Box 16500
Seattle, WA 98116
Tel. (206) 937-6161
Fax. (206) 937-5353

With respect to Mr. Woo, CLIENT shall also deliver by email a pdf copy of any notice required to be made under this Agreement to dwoop@msn.com or such other email account that Mr. Woo may later notify Client to use. In no event shall delivery of a pdf copy of notice to Mr. Woo by email be deemed to be notice on QDABRA.

If personally delivered, such notice shall be effective upon delivery. If mailed as provided for above, such notice shall be effective three (3) business days after it is placed in the United States mail.

- b. Waiver. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented.
- c. Headings. The section headings set forth in this Agreement are for convenience or reference only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the Parties.
- d. Binding Effect. Subject to the limitations expressed herein, this Agreement will inure to the benefit of and be binding upon the Parties, their successors, administrators, and assigns.

- e. Cumulative Remedies. All remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- f. Entire Agreement; Modification or Rescission. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be changed or modified except in writing signed by both parties. This Agreement supersedes any and all prior agreements, written or oral, between the Parties; provided, however that any prior nondisclosure agreement between the Parties shall survive as to the confidentiality provisions in any such prior agreement.
- g. Severability. The provisions of this Agreement shall be severable. If any portion of this Agreement is held invalid, illegal, or unenforceable in any respect, for any reason, under any applicable statute, regulation, or rule of law, such portion shall be deemed inoperative and severed or modified as may best preserve the intent of the Parties. The remainder of this Agreement shall remain effective and binding upon the Parties.
- h. Beneficiaries. This Agreement shall be binding upon and inure to the benefit of each Party's successors, assigns, executors, administrators, and personal representatives.
- i. Force Majeure. Notwithstanding any other provision of this Agreement, no Party to the Agreement shall be deemed in default or breach of this Agreement or liable for any loss or damages or for any delay or failure in performance due to any cause beyond its reasonable control. The Parties shall promptly resume performance hereunder after the force majeure event has passed.
- j. Capacity to Sign. Each Party warrants, represents and covenants that the person signing this agreement on its behalf has full power and authority to sign this Agreement on behalf of such Party.
- k. No Changes to EULAs. Nothing in this SLA shall amend the terms and conditions of the EULA applicable to any Software Product that is licensed to the LICENSEE.
- l. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same document. For purposes of this Agreement, copies of signatures sent via facsimile or emailed or otherwise electronically transmitted pdf or other imaged copies of signatures shall be deemed original signatures and shall have the same force and effect as if they were originals.

SCHEDULE 1

FEES

In addition to the fees that may be incurred as described in the SLA, LICENSEE shall pay LICENSOR maintenance fees as follows:

Qdabra Annual Support Plan is \$2,500 (twenty five hundred dollars) per year.