PCSC

Next Generation Solutions Provider

PCSC Software
Maintenance Agreement

The technology world in which you use your PCSC software is forever changing. New versions of operating systems, databases and software updates are released at any given time; industry standards evolve; and access control systems cannot be compromised. Proper understanding of the use and procedures of software is essential. Minimizing downtime and preventing system outages should be a priority.

PCSC's Software Maintenance Program is an agreement designed to make sure that you and your colleagues continue to get the maximum value from your organization's investment in PCSC products. Mission critical system operations demand a high-level of expert technical support, periodic maintenance and occasionally custom development.

Our focus is to help companies achieve their goals by offering services and products that allow them to focus on their strengths. You can rely on PCSC when it's needed most.

What you will recieve

- Personal Helpdesk Assistance

- Telephone Support 6am to 5pm PST

- Determining Cause and Source of Errors in the Software

- Prior Notification of Upgrades

Understanding the Details

In an effort to provide the best possible services we have detailed the agreement set forth in the section below. The maintenance provided to you under this agreement includes all software and documentation updates and upgrades that PCSC makes publicly available during the maintenance period. Each update or upgrade may include error corrections, function or performance improvement, or the addition of new features. PCSC makes no warranties, expressed or implied, concerning the amount, extent or content of updates and upgrades. For the purposes of the PCSC software license agreement, updates and upgrades shall be considered as being part of the original software package, such that all material supplied under the PCSC Software Maintenance Agreement is subject to the terms and condition of the PCSC software license agreement. Any compatibility between PCSC software packages is only warranted if all packages are maintained under a PCSC Software Maintenance Agreement.

Software Maintenance Agreement (SMA)

1. **Definitions and Interpretation**

1.1   In this Agreement:

"**Charges**" means the amounts payable by the Dealer to PCSC under or in relation to this Agreement (as set out in Schedule 2, attached);

"**Effective Date**" means the date of execution of this Agreement;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including [failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections,] power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related

rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Modifications**" means additions, edits, alterations and modifications made to the Software by PCSC [or PCSC's authorized sub-contractor] under this Agreement [including Upgrades applied to the Software] [in executable format only / in both executable format and source code format];

"**Personal Data**" has the meaning given to it in the Data Protection Act 1998;

"**Software**" means the following computer software: LiNC-NXG, Host, workstation and all applicable versions of the software, including modules NXG-ID, NXG View.

"**Upgrades**" means [new versions of, and updates to, the Software released by PCSC to its customers generally, whether for the purpose of fixing an error, bug or other issue in the Software or enhancing the functionality of the Software].

2. **Term**

The period of twelve (12) months following the Effective Date.

3. Services

3.1 PCSC will provide the Services specified in Schedule 1 to Dealer during the Term in accordance with the terms and conditions of this Agreement.

3.2 PCSC may sub-contract the provision of any of the Services provided herein after obtaining the consent of the Customer.

3.3 PCSC may suspend the provision of any Services if any amount due to be paid by the Dealer to PCSC under this Agreement is over due by more than 30 days.

4. Dealer Obligations

4.1 Proper software training and PCSC certifications are required before purchase of software.

4.2 Purchase Order (PO) must be provided in accordance with a Sales Order.

5. Invoicing

5.1 Invoices not paid within 30 days under the Agreement will delay or suspend Service (3.3)

6. Payment

6.1 Payment and credit conditions are based on the PCSC Dealer Agreement. Any conditions not met per the PCSC Dealer Agreement shall suspend or revoke this Agreement.

7. Modifications: License

7.1 Except to the extent mandated by applicable law or expressly permitted in this Agreement, the license granted by PCSC to Customer through Dealer is subject to the following prohibitions:

    (a) The Customer must not sell, resell, rent, lease, supply, publish or distribute the Modifications;

    (b) Dealer is obligated to ensure that its Customers are notified of this require-ment and to obtain their consent in writing for PCSC.

8. Customer License

Dealer shall secure the written consent of its Customers to grant to PCSC during the Term, a non-exclusive license to copy, adapt and otherwise use:

    (a) Any works or materials provided by or on behalf of the Customer to PCSC for the purpose of assisting with or enabling the maintenance of the Software; and

    (c) Any works or materials the rights in which have been assigned or exclusively licensed by PCSC to the Customer under this Agreement, in each case to the extent reasonably necessary to enable PCSC to fulfil its obligations under this Agreement, and to exercise its rights, under this Agreement.

9. Warranties

9.1 The Dealer warrants and represents to PCSC that:

    (a) It has the legal right and authority to enter into and perform its obligations under this Agreement; and

    (b) The LiNC-NXG Software (excluding the Modifications) and any works or materials provided by or on behalf of the Customer to PCSC for the purpose of assisting with or enabling the maintenance of the Software, and their use by PCSC in accordance with the terms of this Agreement will not infringe on any Intellectual Property Rights or other legal rights of any third party;

10. Limitations and Exclusions of Liability

PCSC shall use commercially reasonable efforts to provide maintenance and support services for any problem or issue reported and determined to be in or caused by the Software as long as this Agreement remains in full force and effect. While PCSC will strive to provide an acceptable

resolution for problems, issues and incidents reported by Dealer or its Customer, PCSC can not predict a resolution time and is unable to guarantee that all problems or issues can be resolved or addressed.

EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTY, PCSC DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MER-CHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE, SYSTEM INTEGRATION, AND NON-INFRINGEMENT. PCSC DOES NOT WARRANT THAT THE SOFT-WARE OR DOCUMENTATION WILL MEET CUSTOMER'S NEEDS, OR THAT CUSTOMER'S OPERATION OF THE SAME WILL BE UNIN-TERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMANITIES CAN OR WILL BE CORRECTED.

If PCSC fails to fulfil its obligations under this Agreement, Customer's sole and exclusive remedy is the right to terminate this Agreement immediately for the affected Software.

IN NO EVENT SHALL PCSC BE LIABLE TO CUSTOMER FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST SALES, BUSINESS INTERRUP-TION, OR BUSINESS EXPENDITURES, INVEST-MENTS, OR COMMITMENTS IN CONNEC-TION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPE-CIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE SOFT-WARE OR DOCUMENTATION, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT PCSC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Dealer shall be responsible for notifying its Customers of these Limitations and Exclusions from Liability and obtaining their written consent for PCSC.

11. Termination

11.1 Dealer and PCSC each has the right to terminate this Agreement by written notice for any reason. Termination shall be effective thirty (30) days after delivery of the written notice of termination.

12. Effects of Termination

12.1 Upon the effective date of termination of this Agreement, Dealer shall not be entitled to receive software upgrades or additional support services from PCSC and PCSC shall not be obligated to provide such services or updates.

13. General

13.1 Applicable Laws and Venue. The laws, rules and regulations of the State of California shall govern the application, interpretation, enforcement and remedies of this Agreement. In the event of a dispute relating to or arising from this Agreement, the Parties agree that any and all such disputes shall be brought exclusively in the state or federal courts located in the City of Los Angeles, California. The Parties submit to the personal and subject matter jurisdiction of said courts.

13.2 Attorneys' Fees and Costs. In the event of a dispute relating to or arising from this Agreement, the prevailing party in such dispute shall be entitled to recover from the non-prevailing party, its legal expenses and costs including, but not necessarily limited to, attorneys' fees and costs incurred.

13.3 Entire Agreement. This Agreement represents the entire agreement and understanding between the Parties with respect to the Software and related services, support and maintenance. All prior agreements, contracts, understandings and communications between the Parties in regard to the Software and related services, support and maintenance, are superseded and replaced by this Agreement. Any changes, amendments and modifications of this Agreement must be in a writing executed by the authorized person by both Parties.

13.4   Non-Assignment or Transfer. This Agreement and the rights and obligations set forth herein may not be transferred, assigned, sold, licensed, or delegated by Dealer to any third party without PCSC's written authorization. PCSC is not obligated to authorize such transfer, assignment, sale, license or delegation but its refusal to do so shall not be unreasonably withheld. To receive the benefits of this Agreement, the person succeeding to Dealer's rights executes his/her/its own Software Maintenance Agreement with PCSC.

Schedule 1
Maintenance Service Levels

1.   **Introduction**

SMA service levels are determined by severity and type of issue, among other factors.

2.   **Helpdesk**

2.1   PCSC will make available, [during Business Hours of 6am to 5pm PST], a [telephone 800-899-PCSC] helpdesk facility for the purposes of:

(a)   Assisting the Dealer and its Customer with the proper use of the Software;

(b)   Determining the causes of errors in the Software; and/or

(c)   Fixing errors in the Software.

3.   **Response and Resolution Times**

3.1   PCSC will:

(a)   Use all reasonable efforts to respond to requests for Services made through the helpdesk; and

(b)   Use all reasonable endeavors to resolve issues raised by the Dealer or Customer, promptly and in accordance with the following response time matrix.

Severity	Examples	Response time *	Resolution time *
Critical	Software is not functional and critical systems such as as Alarms and Reporting are unavailable.	Contact within 30 minutes.	Determined at time of incident.
Serious	System functions, but occasionally non-responsive. System reset resumes normal operation.	Contact within 3 hours.	Determined at time of incident.
Minor	System functions normally, but certain not-critical features are not accessible.	Contact within 24 hours.	Determined at time of incident.

*Note Technical Support hours of operation.

4.   **Upgrades**

4.1   PCSC will:

(a)   Give to the Dealer, reasonable prior notification of the general release of an Upgrade;

(b)   Provide copies of such Upgrades to the Dealer promptly following the general release of the relevant Upgrade; and

(c)   Apply such Upgrades to the Software promptly following the general release of the relevant Upgrade.

5.   **Development Services**

5.1   From time to time during the Term, the Dealer may request that PCSC provide development Services for the purpose of creating new functionality for the Software, in which case PCSC will provide such development Services at PCSC's standard hourly rates unless PCSC is not reasonably able to perform the requested development Services by reason of a lack of relevant expertise, or a shortage of resources, or personnel.

PCSC will perform such development Services if the parties agree in writing to the Scope of Work (SOW) and required performance, after which a Design Parameters document shall be provided to Dealer for approval.

6.   **Limits on Services**

Where the total person-hours spent by PCSC performing the Services (excluding development Services under Paragraph 5 during any 5 day period exceeds forty (40) hours, then:

(a)   PCSC and Dealer will re-evaluate the obligation to provide those Services to the Dealer following that period; provided that

(b)   PCSC may agree to provide additional Services to the Dealer during that period, but the provision of such services will be subject to additional Charges at PCSC's standard hourly rates.

Schedule 2
Fees

1.   Introduction

1.1   References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

1.2   The Charges under the Agreement will consist of the following elements:

(a)   Standard maintenance Charges;

2.   Standard Maintenance Fees

2.1   Fees based on current PCSC Price List (subject to change)

3.   Other Charges

3.1   In addition to the Charges detailed in Paragraphs above, PCSC will invoice in respect of, and the Dealer shall pay to PCSC any additional fees associated with shipping, transporting or delivery of any materials or products not associated with the software upgrade or correction. This may include:

· PCSC Hardware, i.e. IQ, FT, modules and readers, power supply, cables etc.
· Peripheral products, such as; Hard drives, memory, cables, etc.
· Troubleshooting hardware, equipment rental, consulting services.

4.   Expenses

4.1   When additional services are required to support the Dealer, the following expenses may be passed on by PCSC to the Dealer at cost:

· Travel Expenses, accommodation expenses and subsistence expenses.

- End -