

# Guaranteed Professional Maintenance Agreement

Agreement Date	Proposal Number	Agreement Number
March 6, 2018	PG51310	

**BY AND BETWEEN:**

ABM Building Services, LLC 9326 Florida Palm Dr. Tampa, FL 33619  Hereinafter: Contractor	AND	Town of Belleair 901 Ponce de Leon Blvd. Belleair, FL 33756  Hereinafter: Customer
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**SERVICE LOCATION(S): Town of Belleair**

<b>Town Hall</b> <b>John J. Osborne Public Works Building</b> <b>Well Pumps 2, 3, 5, 6, 7, 9 &amp; 10</b>	<b>Dimmit Community Center</b> <b>Water Treatment Plant</b>
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AGREEMENT coverage will commence on March 6, 2018. The AGREEMENT price is **\$37,620.00** per year, payable **\$9,405.00** per quarter in advance beginning on April 1, 2018 and continuing on the first day of each subsequent quarter with an additional payment of **\$2680.00** payable on the commencement date for period from commencement through March 31, 2018.

**SCHEDULES INCLUDED:**

- |                                  |                                      |
|----------------------------------|--------------------------------------|
| <b>1- Inventory of Equipment</b> | <b>3- Special Services</b>           |
| <b>2- Air Filter Service</b>     | <b>4- Managed Well Pump Services</b> |

Contractor guarantees the price stated in this Agreement for thirty (30) days from the Agreement date above. This Agreement will be binding upon the parties after it is duly executed by authorized representatives of each party. This Agreement sets forth all of the terms and conditions binding upon the parties hereto; and no person has authority to make any claim, representation, promise, or condition on behalf of Contractor which is not expressed herein. This annual Agreement shall continue in effect for 5 years, renewable for 5 years and then renewable annually thereafter, unless either party gives written notice to the other of intention not to renew at least thirty (30) days prior to any anniversary date. The Customer reserves the right to terminate this Agreement immediately for cause if Contractor breaches the Agreement by failing to timely provide required services and fails to cure such breach within 15 days of being provided written notice thereof.

**Approved for Contractor**

**Approved for Customer**

\_\_\_\_\_  
Account Executive: Rob Duncan

\_\_\_\_\_  
Signature (Authorized Representative)

**Approved for Contractor**

\_\_\_\_\_  
Dan Klein / Senior Vice President

\_\_\_\_\_  
JP Murphy / Town Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Guaranteed Professional Maintenance Program (GPM)

This GUARANTEED PROFESSIONAL MAINTENANCE PROGRAM (GPM) provides the Customer with an ongoing, comprehensive maintenance program for HVAC equipment. The GPM program will be initiated, scheduled, administered, monitored, and updated by the Contractor. The service activities will be directed and scheduled, on a regular basis, by our comprehensive equipment maintenance scheduling system based on manufacturers' recommendations, equipment location, application, type, run time, and Contractor's own experience. The Customer is informed of the program's progress and results on a continuing basis via a detailed Service Report, presented after each service call for Customer's review, approval signature, and record.

CONTRACTOR WILL PROVIDE THE FOLLOWING PROFESSIONAL MAINTENANCE SERVICES FOR THE BUILDING ENVIRONMENTAL MECHANICAL SYSTEM(S) COMPRISED OF the new HVAC equipment installed under the GUARANTEED ENERGY, WATER, AND WASTEWATER PERFORMANCE SAVINGS CONTRACT dated February 6, 2018 and the existing HVAC equipment onsite in the buildings identified on Schedule 1 (INVENTORY OF EQUIPMENT) of this Agreement:

**TEST AND INSPECT:** Job labor, travel labor and travel and living expenses required to visually INSPECT and TEST equipment to determine its operating condition and efficiency. Typical activities include:

- TESTING for excessive vibration; motor winding resistance; refrigerant charge; fan RPM; refrigerant oil (acid); water condition; flue gas analysis; safety controls; combustion and draft; crankcase heaters; control system(s); etc.
- INSPECTING for worn, failed, or doubtful parts; mountings; drive couplings; oil level; rotation; soot; flame composition and shape; pilot and igniter; steam, water, oil and/or refrigerant leaks; etc.

**PREVENTIVE MAINTENANCE:** Job labor, travel labor and travel and living expenses required to clean, align, calibrate, tighten, adjust, lubricate, and paint equipment. These activities are intended to extend equipment life and assure proper operating condition and efficiency. Typical activities include:

- CLEANING coil surfaces; fan impellers and blades; electrical contracts; burner orifices; passages and nozzles; pilot and igniter; cooling tower baffles, basin, sump and float; chiller, condenser, and boiler tubes; etc.
- ALIGNING belt drives; drive couplings; air fins; etc.
- CALIBRATING safety controls; temperature and pressure controls; etc.
- TIGHTENING electrical connections; mounting bolts; pipe clamps; refrigerant piping fittings; damper sections; etc.
- ADJUSTING belt tension; refrigerant charge; super heat; fan RPM; water chemical feed and feed rate; burner fuel/air ratios; gas pressure; set point of controls and limits; compressor cylinder unloaders; damper close-off; sump floats; etc.
- LUBRICATING motors; fan and damper bearings; valve stems; damper linkages; fan vane linkages; etc.
- PAINTING for corrosion control, as directed by our scheduling system and on an as-needed basis.

**REPAIR AND REPLACE:** Job labor, travel labor, parts procurement labor (locating, ordering, expediting, and transporting) and travel and living expenses required to REPAIR or REMOVE AND REPLACE broken, worn and/or doubtful components and or parts.

**TROUBLE CALLS:** Job labor and travel labor, including overtime, plus travel and living expenses required for unscheduled work resulting from an abnormal condition.

**COMPONENTS, PARTS, AND SUPPLIES:** The cost of COMPONENTS, PARTS, AND SUPPLIES required to keep the equipment operating properly and efficiently.

**RESPONSE TIME:** Contractor will respond to HVAC problem calls are based on the potential impact to the City on safety, health, and comfort.

- Direct effect on health, safety or comfort to the building occupants will be deemed as a P1 emergency and require a response time within 4 hours.
- HVAC issues that do not directly affect health, safety or the comfort of the occupants will be deemed as a P2 with a committed response time of 24 hours from the time the call is placed.

## TERMS AND CONDITIONS

1. Customer shall permit Contractor free and timely access to areas and equipment, and allow Contractor to start and stop the equipment as necessary to perform required services. All planned work under this Agreement will be performed during the Contractor's normal working hours.
2. In case of any failure to perform its obligations under this Agreement, Contractor's liability is limited to repair or replacement at its option and such repair or replacement shall be Customer's sole remedy. This warranty is conditioned upon proper operation and maintenance by Customer and shall not apply if the failure is caused or contributed to by accident, alteration, abuse or misuse, and shall not extend beyond the term of this Agreement.
3. The annual Agreement price is conditioned upon the system(s) covered being in a maintainable condition. If the initial inspection or initial seasonal start-up indicates repairs are required, a firm quotation will be submitted for Customer's approval. Should Customer not authorize the repairs, Contractor may either remove the unacceptable system(s), component(s), or part(s) from its scope of responsibility and adjust the annual Agreement price accordingly or cancel this Agreement.
4. The Agreement price is subject to an adjustment of 2% on each year to reflect increases in labor, material, and other costs.
5. Customer shall provide evidence of tax exempt status.
6. Customer will promptly pay invoices within thirty (30) days of receipt. Should a payment become sixty (60) days or more delinquent, Contractor may stop all work under this Agreement without notice and/or cancel this Agreement, and the entire Agreement amount shall become due and payable immediately upon demand.
7. This Agreement applies only to the maintainable portions of the system(s). Repair or replacement of non-maintainable parts such as duct work, boiler shell and tubes, cabinets, boiler refractory material, heat exchangers, main power service and electrical wiring, piping, tube bundles, valve bodies, structural supports and other similar items are excluded. Coils and Coil replacements will be included under this Agreement.
8. Any alteration to, or deviation from, this Agreement involving extra work, cost of materials or labor will become an extra charge (fixed price amount to be negotiated or on a time-and-material basis at Contractor's rates then in effect) over the sum stated in this Agreement.

9. Contractor will not be required to move, replace, or alter any part of the building structure in the performance of this Agreement.

10. This Agreement does not include responsibility for the design of the system, safety test, and valve bodies other than those associated with equipment listed on Schedule 1, repair or replacement necessitated by freezing weather, electrical power failure, low voltage, burned-out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s), negligence of others (including Customer), failure of Customer to properly operate the system(s), requirements of governmental regulatory or insurance agencies, or other causes beyond control of Contractor.

11. If a trouble call is made at Customer's request and inspection indicates a condition which is not covered under this Agreement, Contractor may charge Customer at the rate then in effect for such services.

12. Customer shall permit only Contractor's personnel or agent to perform the work included in the scope of this Agreement. Should anyone other than Contractor's personnel perform such work, Contractor may, at its option, cancel this Agreement or eliminate the involved item of equipment from inclusion in this Agreement. Notwithstanding the foregoing, if Contractor fails to respond to HVAC problem calls by appearing onsite within the time frames agreed upon in this Agreement for P1 and P2 HVAC issues, Customer retains the right to hire an alternative duly licensed HVAC contractor to provide necessary HVAC repair services, the reasonable cost of which shall be borne by Contractor.

13. Contractor shall not be liable for any delay, loss, damage, or detention caused by unavailability of machinery, equipment or materials, delay of carriers, strikes, including those by Contractor's employees, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond its control.

14. Customer shall make available to Contractor's personnel all pertinent Material Safety Data Sheets (MSDS) that are in the Customers possession pursuant to OSHA'S Hazard Communication Standard Regulations.

15. Contractor expressly disclaims any and all responsibility and liability for the indoor air quality of the customer's facility, including without limitation injury or illness to occupants of the facility or third parties, arising out of or in connection with the Contractor's work under this agreement.

16. Contractor's obligation under this proposal and any subsequent contract does not include the identification, abatement or removal of asbestos or any other toxic or hazardous substances, hazardous wastes or hazardous materials. In the event such substances, wastes, and materials are encountered, Contractor's sole obligation will be to notify the Owner of their existence. Contractor shall have the right thereafter to suspend its work until such substances, wastes or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.

**17. UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, WILL CONTRACTOR BE RESPONSIBLE FOR LOSS OF USE, LOSS OF PROFIT, INCREASED OPERATING OR MAINTENANCE EXPENSES, CLAIMS OF CUSTOMER'S TENANTS OR CLIENTS, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES**

Schedule 1  
**Inventory of Equipment**

Building	Tag	Manufacturer	Tons
Town Hall	SS1 CU	ICP	5
Town Hall	SS1 AHU	Carrier	
Town Hall	SS2 CU	ICP	3
Town Hall	SS2 AHU	ICP	
Town Hall	SS3 CU	Carrier	5
Town Hall	SS3 AHU	Carrier	
Town Hall	SS4 CU	ICP	7.5
Town Hall	SS4 AHU	ICP	
Town Hall	SS5 CU	ICP	5
Town Hall	SS5 AHU	ICP	
Town Hall	SS6 CU	ICP	1.5
Town Hall	SS6 AHU	ICP	
Town Hall	SS7 CU	ICP	2
Town Hall	SS7 AHU	ICP	
Town Hall	SS8 CU	ICP	4
Town Hall	SS8 AHU	ICP	
Town Hall	IT Room Mini Split 1	Gree	1.5
Town Hall	RTU 1	Trane	3
Town Hall	RTU 2	Trane	3
Town Hall	RTU 3	Trane	5
Town Hall	RTU 4	Trane	5
Dimmit Community Center	CU 1	ICP	2.5
Dimmit Community Center	AHU 1	ICP	
Dimmit Community Center	RTU 1	Carrier	10
Dimmit Community Center	RTU 2	ICP	10
Dimmit Community Center	RTU 3	ICP	7.5
Dimmit Community Center	RTU 6	ICP	7.5
Dimmit Community Center	RTU 7	ICP	6
Dimmit Community Center	RTU 8	ICP	6
Dimmit Community Center	RTU 9	Carrier	6
John J. Osborne Building	IM 1	Hoshizaki	2
John J. Osborne Building	MS1	Mitsubishi	1
John J. Osborne Building	MS2	Mitsubishi	0.75
John J. Osborne Building	SS1	Trane	5
John J. Osborne Building	SS2	Trane	5
John J. Osborne Building	SS3	Trane	3

Building	Tag	Manufacturer	Tons
Water Treatment Plant	CU 1	Trane	3
Water Treatment Plant	AHU 1	Trane	
Water Treatment Plant	CU 2	Carrier	4
Water Treatment Plant	AHU 2	Carrier	

Schedule 2  
**Air Filter Service**

Contractor will furnish and install air filter materials on equipment installed under the GUARANTEED ENERGY, WATER, AND WASTEWATER PERFORMANCE SAVINGS CONTRACT dated March 6, 2018 and Listed in Schedule 1 – Inventory of Equipment, on a quarterly basis. The filter media utilized will meet or exceed the quality than that specified by the equipment manufacturer.

**THE SERVICES DESCRIBED ABOVE GOVERNED BY THE TERMS AND CONDITIONS OF THE PROGRAM OF WHICH THIS SCHEDULE IS A PART.**

\*Should experience show that more or less frequent media changes are required, the Agreement price will be adjusted based on Contractor's rates then in effect with the prior approval of the customer.

## Schedule 3 Special Services

Additions, deletions, and modifications to the equipment included in this Agreement are acceptable when mutually agreed upon by Contractor and Customer.

### LED Lighting Warranty and Repairs

ABM will manage all warranty replacements of LED Lighting installed as part of the GUARANTEED ENERGY, WATER, AND WASTEWATER PERFORMANCE SAVINGS CONTRACT dated March 6, 2018 as long as this Guaranteed Professional Maintenance program is in effect. The Customer will not be responsible for any cost or labor associated with the replacement of LED Lighting installed as part of the GUARANTEED ENERGY, WATER, AND WASTEWATER PERFORMANCE SAVINGS CONTRACT.

All lamps and ballasts must be compatible and approved by the manufacturers. If unapproved materials are installed by Customer after ABM's installation of the lighting upgrade, damage may ensue and manufacturer's warranties may be void. By installing or incorporating unapproved materials, customer agrees and acknowledges assuming all responsibility and liability associated with doing so and will hold ABM harmless from liabilities resulting from such action, and Customer acknowledge that all warranties provided by ABM are void.

### Offer Extended to Other Government Entities

Customer encourages and agrees to the Contractor extending the pricing, terms, and conditions of this Agreement to other governmental entities at the discretion of the Company.

### Rate Schedule

Pricing for this Agreement and any changes requested by the Customer will be based upon rates indicated below:

<b>PROFESSIONAL SERVICES</b>			
<b>Personnel Category</b>	<b>Regular Rate</b>	<b>Overtime</b>	<b>Holiday Rate</b>
Administrative / Clerical	\$50.00	\$75.00	\$100.00
Project Developer	\$110.00		
Energy Engineer – CEM	\$120.00		
Professional Engineer - PE	\$170.00		
Associate Project Engineer	\$100.00		
Project Manager	\$120.00	\$180.00	\$240.00
<b>HVAC SERVICES</b>			
<b>Personnel Category</b>	<b>Regular Rate</b>	<b>Overtime</b>	<b>Holiday Rate</b>
Mechanical Technician	\$85.00	\$125.00	\$170.00
Chiller Mechanic - over 200 tons	\$100.00	\$150.00	\$200.00
Controls & Retro Commissioning	\$95.00	\$140.00	\$180.00
Helper	\$70.00	\$105.00	\$130.00
<b>MARKUPS</b>			
Parts & Material	1.25		
Subcontract	1.25		



## Schedule 4

# Managed Well Pump Services

### 1. Managed Services Definition

Blue Pillar will monitor your complete Aurora system and server (Windows OS, Aurora platform software, database, network connectivity, and Aurora gateways) in accordance with the terms set forth below.

**I.1. AURORA Monitoring:** Aurora Monitoring covers the 24x7x365 Aurora system monitoring and event notification of the Aurora gateways and Customer data points collected in the Aurora system (“**Connected Points**”). Blue Pillar’s Aurora Monitoring covers the real-time remote network maintenance that allows Blue Pillar to identify and address support tickets.

Specific Aurora Monitoring services include:

- 1.1.1. Monitoring of the Connected Points to the Aurora system 24x7x365 and reporting of network impacting events
- 1.1.2. Notice and generation of a support ticket for each incident
- 1.1.3. Notification to Customer of necessary field dispatches for troubleshooting or repair. If a service call is triggered through Aurora Monitoring, and the system is no longer under warranty, and the root cause of the support ticket is caused by the Customer, Blue Pillar will invoice the Customer for the service call at the rates described in the Customer Requested On-Site Service Call section.
- 1.1.4. Escalation for support of all Blue Pillar Products
- 1.1.5. Configuration management of the Connected Points, systems, and associated firmware to ensure the reliability of the Aurora system
- 1.1.6. Mutually agreed methods of procedure and control plans for all scheduled activities including routine and emergency. Initially Blue Pillar shall communicate any information regarding the Aurora Monitoring services and all scheduled network activities via email or telephone.
- 1.1.7. If remote recovery fails to clear the network trouble, Blue Pillar will engage Customer to assess options to further resolve issue.

### I.2. Software Maintenance & Technical Support:

- 1.2.1. “**Fix**” means bug fixes, corrections and patches to the Blue Pillar Proprietary Software which Blue Pillar may prepare from time to time (prior to issuance of an Upgrade or an Update) to correct programming errors that prevent or obstruct normal operation of the Software in accordance with the Documentation. Fixes shall not include Customer’s suggested or desired enhancements to the Software.
- 1.2.2. “**New Products**” means new program products or modules or process managers, new platforms, major enhancements or modifications to the Software which add one or more new functions which are not present in the most current Version of the Software or which otherwise materially enhance functionality, value or performance. A new name may be associated with New Products.
- 1.2.3. “**Standard Support**” means the technical and advisory support provided throughout the term of the Agreement, beginning with the Commissioning Event.
- 1.2.4. “**Update**” means new releases, new Versions, revisions, updates (including updates to accommodate changes in Federal law), minor enhancements, minor modifications and Fixes to the most current Version of the Software or Documentation which Blue Pillar may release from time to time, when and if available, on a general basis at no additional cost to its other customers

that subscribe to Software Maintenance and Technical Support services. Updates, once installed, shall be included in the definition of Software and are licensed to Customer under the same terms as the Software pursuant to the MLSA. Updates shall not include any new Version or Upgrade that Blue Pillar decides, in its discretion, to make generally available as a separately-priced New Product.

**I.3. Customer Support:** Customer Service is available Monday – Friday 8-5 ET. Customers can contact Blue Pillar Customer Service by emailing help@bluepillar.com, calling 1-888-234-3212; option 2 or entering the support web form in the Aurora application. Email acknowledgement with a support desk ticket number will be sent within one hour for reference on follow up communication.

A Blue Pillar Customer Service Agent will respond to all support tickets, including those generated through Aurora Monitoring, during standard Customer Support Business Hours. Each support ticket will be assigned a severity level and managed as described below. The procedure for after-hours support is described separately in the Emergency After-Hours Support section.

**I.4. Emergency After Hours Support:** Blue Pillar emergency support phone number is available 24x7x365 by calling 1-888-234-3212; option 2. If immediate emergency support is required, your call will be escalated to the on-call Blue Pillar Customer Service Agent who will return your call within 1 hour.

**I.5. Hardware Warranty & Replacement Services:** Hardware Warranty and Replacement Services means, in addition to its obligations under the Agreement with respect to replacing or repairing defective hardware purchased from Blue Pillar.

1.5.1. Blue Pillar will also pay for necessary service call dispatches in first year provided Blue Pillar selects the contractor. If customer mandates specific contractor, customer incurs the cost of the service call.

1.5.2. Blue Pillar hardware will be replaced within 60 days from support ticket origination date when source of failure is hardware related.

1.5.3. Force Majeure. Except for payment obligation, neither party shall be liable for the performance of its obligations under this Agreement if it becomes commercially impracticable to perform due to any contingency beyond the reasonable control of that party, including as a result of disruptions of transportation facilities, inability to obtain supplies or materials, failures or breaches by suppliers, acts of government, strikes, labor disputes, power or telecommunications disruptions, judicial action, or any other act of God (“Force Majeure”) and the obligation of a party to perform hereunder shall be suspended during the occurrence of a Force Majeure.

**I.6. Data Back-Up and Disaster Recovery Services:** Data Back-Up and Disaster Recovery Services means in the event of a deletion or damage of Aurora platform configurations and/or historical Customer data from Connected Points (“**Customer Content**”) within the Aurora Software, Blue Pillar shall exercise commercially reasonable efforts to restore such Customer Content utilizing the most recent, usable back-up in Blue Pillar’s possession. Upon any expiration or termination of this Work Statement, Blue Pillar shall provide to Customer a copy of the most recent daily back-up of the Customer Content, in a format reasonably specified by Blue Pillar.

**I.7. Remote Professional Services:** 10 hours of Remote Professional Services per year are included. Utilization of time needs to be coordinated in advance with the Customer Service contact. Remote Professional Services may include Server Management, Custom Reporting, Blue Pillar Platform or Hardware Diagnostics and Product Training. Assistance provided during normal business hours. 8-5 ET Monday - Friday, excluding Federal Holidays.

**I.8. Customer Requested Onsite Service Call:** Managed Services Support scope includes one on-site retro-commissioning trip per Aurora Software platform license by Blue Pillar every three years under contract. Additional site visits will be coordinated in advance with the facilities coordinator and the Blue Pillar Operations team. Blue Pillar will need access to all areas with installed hardware and software for complete system evaluation. For additional Remote Professional Service hours and / or on-site service calls, the labor rate is billed at \$175 per hour during normal business hours or \$350 per hour outside of business hours or during Federal Holidays plus any necessary travel and material cost plus mark-up.

**2. Training**

Unlimited access to Blue Pillar’s scheduled web-based and video training classes.

**3. Event Response Time and Escalation:**

- 3.1. Critical Severity Level (“**Critical**”) is categorized as a complete Aurora system failure; the system is deemed inoperable and no work around is available. In addition, any system state (a system element or greater) that Customer or Blue Pillar may deem impacting human safety is considered a “Critical.”
- 3.2. Major Severity Level (“**Major**”): is categorized by a portion of the system being deemed partially inoperative, but still useable by Customer per previously agreed to standards or pursuant to discussions with Customer.
- 3.3. Minor Severity Level (“**Minor**”): the system is functional and useable by Customer, with limited impact to operations. The condition does not severely impact Customer overall operations.

Severity Level	Notification	Escalation Time
Critical	Within 1 hour	Within 6 Hours
Major	Within 4 hours	Next Business Day
Minor	Within 24 Hours	2 Business Days

#### 4. Customer Dependencies

- 4.1. In order to perform the Aurora Monitoring services, Blue Pillar requires access to the Connected Points. In addition, Blue Pillar requires a Customer identified contact point for event notification and escalation.
- 4.2. Customer shall be responsible for the following: (a) procure, install, operate and maintain computer programs and operating programs that are compatible with the most-current supported Version of the Software as recommended by Blue Pillar; (b) establish adequate operational back-up provisions in the event of malfunctions or errors; (c) maintain an operating environment free of any modifications or other programming that might interfere with the functioning of the Software; (d) maintain Software hardware and programs consistent with the Technical Requirements; (e) fully cooperate with Blue Pillar in the performance of the Software Maintenance and Technical Support and in diagnosing and correcting any error, including by providing Blue Pillar with timely, accurate and complete information; and (f) provide Blue Pillar with reasonable access to personnel having sufficient experience and knowledge to assist Blue Pillar in determining and responding to Customer's needs in a timely manner.
- 4.3. Customer will designate in writing no more than two (2) Customer contacts plus Customer's project manager who will be Customer's exclusive support contacts for Software Maintenance and Technical Support ("**Maintenance Contacts**"). The Maintenance Contacts may be changed from time to time upon ten (10) days advance written notice from Customer to Blue Pillar. All Software Maintenance and Technical Support will be provided to Customer by Blue Pillar personnel or subcontractors. Customer agrees that all Software Maintenance and Technical Support inquiries from Customer's individual users will be directed to a Maintenance Contact, and Customer's communications with Blue Pillar for Software Maintenance and Technical Support will be through the Maintenance Contact(s).

#### 5. Blue Pillar Scope

- 5.1. Blue Pillar shall use its reasonable commercial efforts to respond, remedy, and resolve errors that Customer experiences in using the most current Version of the Software released by Blue Pillar. Customer hereby agrees that it shall be in Blue Pillar's discretion whether to resolve errors by providing Customer with a Fix, Update, Upgrade, or some other remedial resolution.
- 5.2. Blue Pillar shall provide to Customer, when and if available, such periodic or standard Updates to the most-current Version of the Software (which Blue Pillar may release from time to time on a general basis its customers that subscribe to Software Maintenance and Technical Support). This Section shall not be interpreted to require Blue Pillar to develop and release Updates, Upgrades, or New Products or customize the Software or any other Products to satisfy Customer's particular requirements.
- 5.3. Unless otherwise provided to the contrary in the Agreement, Blue Pillar, in its discretion, shall provide to Customer New Products as part of the Software Maintenance and Technical Support, so long as the New Product has been introduced by Blue Pillar for the purposes of phasing out existing Blue Pillar Products then-currently licensed by Customer. Blue Pillar shall not be required to provide Customer with a New Product as part of these Software Maintenance and Technical Support in the event Customer does not currently hold a license to the corresponding Blue Pillar programs product that the New Product replaces.

## 6. Acknowledgements

- 6.1. Software Maintenance and Technical Support extend only to the Blue Pillar-proprietary Software licensed under the Agreement by Blue Pillar, free of any additions or modifications. Software Maintenance and Technical Support do not include the provision of New Products (except as provided in Section 3.3 hereinabove), hardware/programs or configuration changes. Further, Software Maintenance and Technical Support extend only to the most current Version of the Software as used on an operating environment that, at a minimum, complies with the Technical Requirements.
- 6.2. For the sake of clarity, and not as a limiting or exhaustive list, Software Maintenance and Technical Support also does not include the following, and Blue Pillar shall have no responsibility or liability for:
  - (a) Addressing errors, defects or damage in or to the Software resulting from causes other than those arising in the ordinary use of the Software (or caused by Blue Pillar), or from the use of third party programs, firmware or data, or from the use of IT Infrastructure not meeting Blue Pillar's minimum recommended configuration. Blue Pillar shall not be responsible to resolve any Software problems or correct any errors due to the misuse or abuse of the Software or use of the Software in connection with other programs not provided or authorized by Blue Pillar, a defect or failure of the computer network, malfunctions not caused by Blue Pillar, or unauthorized repairs or modifications.
  - (b) Developing, modifying or otherwise providing Customer with additional features, functionality or customizations to the Software;
  - (c) Any other support or services not expressly set forth in this Section.
- 6.3. Blue Pillar Materials. Customer acknowledges and agrees that all Updates, Upgrades, New Products, patches, bug fixes, modifications, enhancements, new Versions and all other results of Maintenance and Support hereunder, and all work product and deliverables thereof (collectively, the "Blue Pillar Materials"), are the exclusive property of Blue Pillar, regardless of whether Customer, its employees, agents or contractors may have contributed to the conception of, joined in the development effort for or paid Blue Pillar for use of the Blue Pillar Materials, unless otherwise agreed in writing by Blue Pillar in an applicable independent agreement. Customer agrees that the Blue Pillar Materials shall be deemed Confidential Information or Trade Secrets of Blue Pillar, as applicable, and Customer hereby agrees to abide by the terms of the Agreement in its use of the Blue Pillar Materials. The provisions of this Section 6.3 shall survive the termination, expiration, or cancellation of the Agreement and this Work Statement.