



**Thoroughbred Software International, Inc.**

**Software Maintenance Program**  
**Agreement**

**SOFTWARE MAINTENANCE PROGRAM TERMS AND CONDITIONS**

The Software Maintenance Program is designed to keep Thoroughbred based systems current with the latest software releases from Thoroughbred. This Agreement describes the responsibilities of Thoroughbred Software and the Value Added Reseller (VAR), or user purchasing the Software Maintenance Program.

**1. *Addresses and Communications***

Thoroughbred Software Int'l., Inc.  
285 Davidson Ave., Suite 302  
Somerset, NJ 08873  
Telephone: (732) 560-1377  
Fax Number: (732) 560-1594

**2. *Definitions***

- A. "Maintained software" means the registered copy of the Thoroughbred software product licensed to you and designated on the maintenance registration form. If the license of the maintained software is a corporation or other entity, the "you" as used in this agreement refers to that corporation or entity.
- B. "Current release" means the most recent version of the software product within the software product level being licensed by Thoroughbred.
- C. "Software product level" means the differentiating factor that defines a new product group.
- D. "Contact" means the VAR or person authorized by you on the maintenance registration form to communicate with Thoroughbred to receive the maintenance software.
- E. "Discrepancy" means a defect in the distribution media or a material difference between the operation of the maintained software and the description of the operation of the maintained software as provided in current end-user documentation for the maintained software provided by Thoroughbred.
- F. "Correction" means replacement distribution media or corrective code or documentation which rectifies a discrepancy as described above. Thoroughbred may, at its discretion, modify the user documentation to (i) remove inaccuracies in the documentation, or (ii) describe changes, modifications or improvements made to the maintained software. "Correction" includes, but is not limited to, workarounds, support releases, update disks, immediate correction disks, component replacements and patches.
- G. "Agreement" means these terms and conditions of the Thoroughbred software maintenance program.

**3. *Applicability of Thoroughbred Software License Agreement***

This agreement and all software, documentation and media provided under it is subject to all terms and conditions of the Thoroughbred Software License agreement which exists between you and Thoroughbred, including the disclaimer of warranty and limitation of liability.

**4. *Enhancement upgrades to new releases***

Thoroughbred will periodically prepare a major enhancement upgrade release of the maintained software which will contain a new set of software and may contain replacements for all or some of the existing documentation set.

**5. Maintenance updates to current releases (Fixes to reported problems)**

In response to a confirmed discrepancy in the mentioned software, Thoroughbred shall use reasonable efforts to provide on an as-needed basis at its discretion a correction in the form of a workaround, support release, update media, immediate correction media, or electronic transfer equivalent, component replacement, patch, major upgrade release, or other suitable form, from time to time. Then provided under this agreement, such correction will be provided without charge except reasonable shipping, handling, media and material charges.

Thoroughbred reserves the right to discontinue maintenance services without notice on a past workaround, support release, update media or immediate correction media, or electronic transfer equivalent once a new version of the software with the correction of the discrepancy is available.

**6. Thoroughbred Products Eligible**

All Thoroughbred software products are eligible to be covered by the Software Maintenance Agreement. The products listed in "Exhibit A – Maintained Products" will be those covered by this agreement. Eligible Products will be offered Upgrades to new Thoroughbred Versions at no charge except a \$25.00 media fee. Operating System Platform changes and user level upgrades will be valued at 90% of the List Price as a Trade-In value as long as the Maintenance is current. Product whose Maintenance lapses or is cancelled will revert to the original date of purchase for the purposes of determining trade-in or upgrade value.

**7. Software not covered by this agreement**

- A. Altered or modified software unless approved by Thoroughbred.
- B. Any combination of maintained software and other software not covered by this agreement.
- C. A release of maintained software for which maintenance services have been discontinued.
- D. Discrepancies caused by your negligence or faulty action.
- E. Discrepancies resulting from hardware malfunction.
- F. Discrepancies that do not significantly impair or effect the operation of the maintained software.
- G. Maintained software used on a computer or operation system other than that specified by you and accepted by Thoroughbred on the maintenance registration form.
- H. Discrepancies resulting from third party software programs.

**8. Your Responsibilities**

You agree to install and use the current Thoroughbred software release for the maintained software made available by Thoroughbred within six (6) months of its release unless Thoroughbred agrees to an alternate time frame.

**9. Additional Services and Charges**

- A. Thoroughbred offers additional services such as training and consulting under separate arrangements. Such services can be performed on-site or remotely under terms and conditions defined in a Thoroughbred Consulting Service Agreement.
- B. Reasonable shipping, handling, media, expenses and user documentation charges in connection with the provision of upgrades and services are paid by you.

**10. Payment/Cost**

The annual maintenance fee must be paid in advance of each year as described on the registration form.

**11. Term and Termination**

This agreement will be effective and services provided hereunder will commence as of the completion of Thoroughbred's: (1) registration of this agreement upon receipt of the maintenance registration form you have submitted; (2) receipt of the warranty registration/information card as proof of proper license for the software designed on the maintenance form, and (3) acceptance of the appropriate maintenance fee payment.

Maintenance fees are subject to change without notice, and become effective upon renewal of this agreement.

This agreement will remain in effect unless terminated upon sixty (60) days written notice by either party by reason of any violation of the terms and conditions of this agreement.

If terminated by Thoroughbred, Thoroughbred will refund the prorated portion of the maintenance fee. If terminated by you, the maintenance fee is non-refundable.

**12. Renewal**

Sixty (60) days prior to the expiration of the maintenance term, Thoroughbred will invoice you for the next year's renewal fee for the software maintenance program. To register for an additional year of maintenance under this agreement, pay the invoice and you will continue to receive maintenance services.

If you allow your maintenance to expire and are not at the current release level of the product, then you may be required to purchase an upgrade to the current release, at then current upgrade prices to receive continued maintenance.

If you allow your maintenance to expire and are at the current release level of the product, then you may re-register for maintenance by filling out a software maintenance program registration form and returning it to the appropriate office location listed on page 1. Your renewal year will be retroactive to your renewal date. You will receive an invoice for the annual fee, back to the date your prior agreement expired. Pay the invoice and your maintenance will be renewed.

If you do not have a software maintenance program registration form, please call a Thoroughbred sales representative and one will be sent to you.

Thoroughbred reserves the right to withdraw maintenance services on any or all maintained software or other products, and to alter the prices, terms, and conditions of the software maintenance program, in advance of any maintenance renewal. Any such withdrawal or alterations will amend the software maintenance program between you and Thoroughbred as of your next renewal date.

**13. Miscellaneous**

This agreement is non-transferable and you may not assign this agreement. This agreement and the Thoroughbred end-user software license agreement shall be the only agreements between Thoroughbred and you with respect to the maintained software. They cannot be modified except in writing and with the approval of both parties. These agreements supersede all prior agreements, oral and written, relating to the maintained software. The laws of New Jersey shall govern the validity of these agreements, the construction of their terms and the interpretation of the rights and duties of the parties.

We agree to the terms and conditions of the Thoroughbred Software Maintenance Agreement as listed above.

\_\_\_\_\_  
Company

\_\_\_\_\_  
By (Printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Accepted By:  
Thoroughbred Software International, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# **Software Maintenance Program Agreement**

## **Exhibit A – Maintained Products**

<b>Item Description</b>	<b>User Level</b>	<b>S/N</b>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____