

**ACROPRINT TIME RECORDER COMPANY
MAINTENANCE AND SUPPORT SERVICES AGREEMENT**

This MAINTENANCE AND SUPPORT SERVICES AGREEMENT (this "Support Agreement"), entered into on the Support Commencement Date (as set forth below), is by and between Acroprint Time Recorder Company, a North Carolina corporation, with offices at 5640 Departure Drive, Raleigh, North Carolina 27616 ("Acroprint"), and the Customer of an Acroprint Time Recorder Company product.

1. Software and Customer Obligations.

- (a) **Software.** This Support Agreement shall apply only to the Software specified in purchase.
- (b) **Customer Obligations.** As a condition to receiving services under this Support Agreement, Customer agrees to do the following.
 - (i) **Information and Contacts.** Customer will download and install (including rebooting and checking applicable settings) the latest Service Pack provided by Acroprint for the Software. Service Packs are provided from Acroprint's web site located at www.acroprint.com. Customer shall check all electrical connections prior to contacting Acroprint, including power, modem and all related cabling.
 - (ii) **Support Contact.** Customer's Support Contact set forth above will be responsible for reviewing, verifying, and prioritizing Customer's requests as well as coordinating associated Customer activities under this Support Agreement. When contacting Acroprint, the Support Contact will have readily available the Software Serial Number, Version and Service Pack installed and relevant terminal serial number.
 - (iii) **Remote Access.** Customer agrees to provide remote access to Acroprint's technical support staff via Symantec Corporation's pcAnywhere software in order for Acroprint to provide services under this Agreement. Customer shall provide Acroprint with sufficient documentation, information, assistance, support and test time on Customer's computer system, to duplicate the problem, certify that the problem is with the Software, and certify that the problem has been corrected.

2. Maintenance and Support Services.

- (a) **Services.** Subject to the general terms and conditions set forth below, Acroprint shall provide the following maintenance and support services for the Software (the "Services"): (i) telephone and email support services to Customer's designated Support Contact, Monday through Friday between 8:00 a.m. and 4:30 p.m. Eastern time, excluding Acroprint regularly scheduled holidays; (ii) error correction services, as further set forth below, and (iii) Updates, as further set forth below.
- (b) **Error Correction Services.** During the term of this Support Agreement, Acroprint shall use commercially reasonable efforts to correct or provide a workaround to any error in the Software, which causes a substantial nonconformity to the applicable specifications. In addition, Acroprint shall use commercially reasonable efforts to provide an initial callback to Customer during business hours.
- (c) **Excluded from Support Services.** The following items are excluded from the support contract. (i) New Versions, for example from a 4.xx to 5.zz are excluded, from 4.xx to version 4.zz are covered under the contract. (ii) New or custom Payroll exports are excluded. (iii) Acroprint Terminal Hardware failures are excluded from the contract. (iv) Customer PC failures, crashes or issues would be excluded. (v) Misuse of the software would be excluded from the contract. (vi) Customer PC failure causing failure with the Acroprint product is excluded from the contract. (vii) Customer modification to the software are excluded from the contract. (viii) Customer errors are excluded from the contract. (ix) Acts of God are excluded from the contract. (x) Fire and Vandalism are excluded from the contract.
- (d) **Updates:** Acroprint shall provide Updates to the Software as Acroprint makes such Updates commercially available. For purposes of this Support Agreement, "Updates" means any new releases, revisions, corrections, and updates of the Software with release numbers that designate a change in tenths (the first number to the right of the decimal point) and or Builds of a particular Version. Acroprint reserves the right to charge additional fees for providing new versions of the Software (i.e., release or version numbers incremented in whole integers).
- (e) **Scope of Services:** Acroprint shall provide support to Customer only by telephone or email. Services do not include on-site services or system engineering services of any kind. Services shall not be provided for any problems, defects or errors in the Software that are caused by Customer's use of the Software in an environment, or in a manner, not approved by Acroprint.

3. Term. This Support Agreement will commence on the Support Commencement Date and continue in full force and effect, unless earlier terminated pursuant to the terms and conditions herein, for a period of one (1) year. This Support Agreement will be automatically renewed for successive renewal terms of one (1) year each upon Customer's payment of the then-current Annual Service Fee. Either party may terminate this Support Agreement upon the material breach by the other party if the breaching party fails to cure such breach within thirty (30) days after receipt of written notice of such breach. Sections 5, 6, 7 and 8 and any payment obligations incurred prior to termination or expiration of this Support Agreement will survive such termination or expiration.

4. Service Fees and Payment.

(a) **Service Fees.** Customer will pay to Acroprint the Annual Service Fee set forth in the purchase agreement. For the first one-year term of this Agreement, the Annual Service Fee shall be due and payable on the Support Commencement Date. For subsequent one-year periods, Acroprint shall invoice Customer for the then-current fee. All fees are due and payable per valid credit card or company check. Customer shall, in addition to the other amounts payable under this Support Agreement, pay all sales and other taxes, Federal, state, or otherwise, however designated, which are levied or imposed by reason of the transactions set forth in this Support Agreement, excluding only taxes based on Acroprint's income, according to the terms and conditions contained herein. The Annual Service Fee is nonrefundable.

(b) **Late Payments.** Any late payments will be subject to a late fee that will accrue at a monthly rate equal to the lesser of one and one-half percent (1½%) of the outstanding balance, or the maximum rate allowable under applicable law. In the event that Customer fails to pay the Annual Service Fee on due date, Acroprint reserves the right to suspend the provision of all Services under this Support Agreement until the outstanding Annual Service Fee (including applicable late fees) has been paid in full.

(c) **Changes in Service Fees.** Acroprint reserves the right to change the Annual Service Fee upon written notice to Customer; *provided, however*, that any such change will not take effect until the next one-year period.

5. Limited Warranty. Acroprint warrants that the Services will be performed in a workmanlike manner with the ordinary degree of skill prevalent in the industry. Customer's sole and exclusive remedy, and Acroprint's entire liability, for Acroprint's breach of this warranty is for Acroprint to perform the Services in a manner consistent with this warranty. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND. WITHOUT LIMITING THE FOREGOING, ACROPRINT DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. BOTH PARTIES ACKNOWLEDGE THAT THEY HAVE NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION OTHER THAN THOSE SET FORTH ABOVE.

6. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS OR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS SUPPORT AGREEMENT (WHETHER FROM BREACH OF CONTRACT, BREACH OF WARRANTY, OR FROM NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER FORM OF ACTION), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.

IN NO EVENT WILL ACROPRINT'S AGGREGATE, CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE SUM OF ALL ANNUAL SERVICE FEES ACTUALLY PAID TO ACROPRINT BY CUSTOMER UNDER THIS SUPPORT AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE, WITH ALL LIABILITY PAYMENTS BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE PARTIES ACKNOWLEDGE THAT THE PRICING SPECIFIED IN THIS AGREEMENT REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT ACROPRINT WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THE FOREGOING LIMITATIONS OF ITS LIABILITY AND THE WARRANTY DISCLAIMERS CONTAINED HEREIN.

7. General Provisions.

(a) **Governing Law.** This Support Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard for principles of choice of law. All disputes with respect to this Support Agreement shall be brought and heard either in the North Carolina state courts located in Wake County, North Carolina, or the federal district court for the Eastern District of North Carolina located in Raleigh, North Carolina. The parties to this Agreement each consent to the in personam jurisdiction and venue of such courts.

(b) **Independent Contractors.** Each party will perform its obligations hereunder as an independent contractor and, except as expressly provided to the contrary in this Support Agreement, will be solely responsible for its own financial obligations. Nothing contained herein shall be construed to imply a joint venture or principal-agent relationship between the parties, and neither party will have any right, power, or authority to create any obligation, express or implied, on behalf of the other in connection with performance of its obligations hereunder.

(c) **Severability; Waiver.** If any provision of this Support Agreement is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions will continue in full force without being impaired or invalidated in any way. The failure of either party to insist upon strict performance of any provision of this Support Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of the future enforcement of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.

(d) **Notices.** Any notice or communication permitted or required hereunder will be in writing and will be delivered by facsimile transmission with confirmation of receipt, in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and addressed as set forth above or to such other facsimile number or address as either party may provide from time to time to the other. If notice is given in person, by courier, or by facsimile, it will be effective upon receipt; and if notice is given by mail, it will be effective three (3) business days after deposit in the mail.

(e) **Force Majeure.** If performance of this Support Agreement, or any obligation hereunder (other than the obligation to pay) is prevented, restricted, or interfered with by any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the non-affected party, will be excused from such performance to the extent of such prevention, restriction, or interference.

(f) **Assignment.** No right or obligation of Customer under this Support Agreement will be assigned, delegated, or otherwise transferred, whether by agreement, operation of law, or otherwise, without the express prior written consent of Acroprint. Any purported assignment, delegation, or transfer in violation of this paragraph will be null and void. Subject to the foregoing, this Support Agreement in its entirety will bind each party and its permitted successors and assigns.

(g) **Amendments.** Any amendments, modifications, supplements, or other changes to this Support Agreement must be in writing and signed by duly authorized representatives of each party.

(h) **Entire Agreement.** This Support Agreement constitutes the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof, and supersede all prior oral and written proposals, representations, or other communication related to the subject matter hereof.

Once an authorized sales or support representative has approved the purchase of Acroprint Time Recorder Company Software Technical Support Agreement, this Support Services Agreement is executed as of the Support Commencement Date.

Acroprint Time Recorder Company
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www.acroprint.com