



EMPHASYS SOFTWARE LICENSE AND SERVICE AGREEMENT

This Emphasys Software License and Service Agreement ("Agreement") is entered into effective the ____ day of _____, 2017 ("Effective Date") by and between Emphasys Software, Inc., a Michigan corporation, with its principal place of business located at: 2200 Powell Street, Suite 370, Emeryville, CA 94608 ("Emphasys"), and Milwaukee County, WI, a Wisconsin County, with its principal place of business located at: 901 N. 9th Street, Milwaukee, WI 53233 ("Licensee").

RECITALS

- A. Emphasys designs, develops and licenses a proprietary computer software solution known as the SymPro Treasury Management Software.
- B. Licensee desires to obtain a personal, nontransferable, non-exclusive limited right and perpetual license to use such software and related documentation and services for Licensee's and Licensee Affiliate's own internal business purposes only and Emphasys is willing to grant such a license on the terms and subject to the conditions of this Agreement.

THEREFORE, in consideration for the fees to be paid by Licensee hereunder and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree:

1. Certain Definitions.

As used in this Agreement, the following terms shall have the following definitions:

- A. "Annual Maintenance and Support Plan" or "Plan" shall mean the then-current support services Licensee elects to purchase from Emphasys. The Annual Maintenance and Support Plan as of the Effective Date is summarized in the attached Exhibit B. Emphasys may change the support services it offers with a 60 day written notice to Licensee regarding changes that will be effective with the next Annual Support and Maintenance renewal date.
- B. "Authorized Users" shall mean Licensee, Licensee Affiliate and their employees and/or contractors and no other persons or entities; the number of which is stated in the attached Exhibit A and which may be changed by amendment to the attached Exhibit A or authorized purchase order issued by Licensee and accepted by Emphasys.
- C. "Confidential Information" shall mean any non-public information of an Affiliate or a Licensee Affiliate or Emphasys that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; or (ii) the Discloser regularly discloses to third parties without restriction on disclosure; or (iii) the Recipient obtains

from a third party without restriction on disclosure and without breach of a non-disclosure obligation; or (iv) is independently developed by the Recipient without access to Confidential Information; or (v) is subject to Wisconsin Public Records Law, Wis. Stat. § 19.21 *et seq.* Confidential Information of Licensee or Licensee Affiliate includes, without limitation, Licensee Data or Licensee Affiliate Data or any information related to Licensee's or Licensee Affiliate's operations, finance and/or staff (full-time, part-time, seasonal, retired or contractors) that is shared by or on behalf of Licensee or Licensee Affiliate with Emphasys or Affiliate during the Term of this Agreement

D. "Designated Equipment" shall mean a single Intel based computer or a network file server on which Licensee uses the Software pursuant to this Agreement and which is more fully described in the attached Exhibit A.

E. "Designated Site" shall mean the locations of Licensee and Licensee Affiliate or their respective data center service providers at which the Designated Equipment and Licensed Products are located during the term of this Agreement as identified on Exhibit A to this Agreement or such other location as may be expressly approved in writing by Emphasys.

F. "Discloser" means the party providing Confidential Information to the Recipient.

G. "Documentation" shall mean all user/operation manuals and other materials or information describing the Software, as hereinafter defined, its performance characteristics, technical features and other relevant information reasonably required for use of the Software, including all physical media upon which the materials or information are provided.

H. "Licensed Products" shall mean the Software and the Documentation.

I. "Licensee Affiliate" shall mean Milwaukee Transport Services, Inc. ("MCTS").

J. "Recipient" means the party receiving Confidential Information of the Discloser.

K. "Software" shall mean that certain Emphasys proprietary computer software solution known as SymPro Treasury Management Software, Debt: V2.41, Investments: V7.41, in machine readable, object code form, as listed on Exhibit A, and any modules, bug fixes, modifications, enhancements and other SymPro or third party software provided to and licensed hereunder by Emphasys to the Licensee during the Term.

2. Software License.

A. License Grant. Subject to the terms of this Agreement, Emphasys hereby grants to Licensee, and Licensee accepts, a limited, personal, non-transferable and non-exclusive perpetual license to use the Licensed Products solely for Licensee's and Licensee Affiliate's own internal business purposes and solely on the Designated Equipment located at the

Designated Site by the number of Authorized Users stated in the attached Exhibit A or such Authorized Users added during the Term. Licensee shall be permitted to make one copy of the Software for backup and archival purposes only. Each copy must reproduce all copyright and other proprietary notices.

B. Warranty of Ownership. Emphasys warrants to Licensee (and no other person or entity) that it is the author and owner or proper Licensee of the Licensed Products and has the right to enter into this Agreement.

C. Emphasys Retains Title. Licensee acknowledges that Emphasys and its licensors retain title to the Licensed Products, all copyrights, trade secrets and other intellectual property rights licensed to Licensee even if Licensee's suggestions are incorporated into subsequent versions of the Software. The Licensed Products constitute a trade secret and are confidential to Emphasys.

D. No Ownership Rights. Other than the limited right of use of the Licensed Products described in this Agreement, Licensee neither shall have nor shall it acquire any right, title or interest in or to any of the Licensed Products or in any intellectual or proprietary rights represented thereby.

E. License Restrictions. Licensee agrees that it will not modify, decompile, disassemble, translate or reverse engineer the Licensed Products, in whole or in part. Except as expressly stated, this Agreement does not include any rights to use, disclose, sublicense, or otherwise transfer the Licensed Products, or other proprietary information of Emphasys. Licensed Products shall not be used to process data except for Licensee's and Licensee Affiliate's internal purposes.

F. Licensee shall immediately notify Emphasys in writing of any actual or suspected breach of this Agreement, including, without limitation, its terms limiting use.

G. Audit. Upon 30 days prior written request and not more than once during a one year period of the term of this Agreement, Emphasys may audit and examine such records at Licensee's offices during normal business hours, solely for the purpose of confirming the accuracy of all amounts due and paid hereunder. In the event that an audit reveals an overpayment by Licensee, Emphasys will credit Licensee's account for such overpaid amount. In the event that such audit reveals an underpayment by Licensee, Licensee agrees to pay Emphasys the amount of such underpayment within 30 days from Emphasys' written notice.

H. Licensee Affiliate. The parties agree that Licensee Affiliate shall be entitled to use all Licensed Products and Annual Maintenance and Support Plan services under this Agreement, as long as the Licensee Affiliate remains a quasi-governmental body under the jurisdiction of Licensee. In the event that any such Licensee Affiliate is no longer under the jurisdiction of Licensee, the Licensee Affiliate may enter into a separate agreement with Emphasys to

continue to use the Licensed Products and Annual Maintenance and Support Plan services, on the same terms and conditions as contained in this Agreement and any of its exhibits.

3. Delivery of Licensed Products.

Software shall be delivered to Licensee by remote telecommunications from Emphasys' place of business unless the parties agree in writing to an alternative method of delivery. Emphasys is not responsible for installing the Software unless Emphasys is specifically contracted to perform installation and training services.

4. Fees and Payment.

A. License Fee. Licensee shall pay the fee for the Licensed Products ("License Fees") for the initial number of Authorized Users as set out in Exhibit A, and the Parties will mutually agree upon the per license fee for any additional Authorized Users added subsequently.

Licensee will remit payment for the Licensed Products within 30 days of Emphasys' proper and accurate invoice.

B. Annual Maintenance and Support Plan. If Licensee elects to purchase services under the Annual Maintenance and Support Plan, Licensee shall pay the initial annual service fee as set out in Exhibit A within 30 days of Emphasys' proper and accurate invoice. Emphasys agrees to send invoices for subsequent renewal of the Annual Maintenance and Support Plan at least 45 days prior to the beginning of the following year's Annual Maintenance and Support Plan and Licensee shall pay such invoices within 30 days in advance of the beginning of such subsequent Annual Maintenance and Support Plan. Emphasys may adjust the services fees for Licensed Products added in any annual period in the subsequent year by not more 3%.

C. Payments. All payments (i) shall be made by bank check or Licensee's check or wire transfer of immediately available funds and (ii) shall be due and payable to Emphasys (or Emphasys' assignee) in U.S. Dollars, at Emphasys' address as stated above, or such other places as Emphasys may from time to time designate in writing. All payments shall be made without offset or deduction of any nature whatsoever and are nonrefundable except in cases of termination under Section 8.B.(iii) or as provided for in the Service Level Agreement (Exhibit F).

D. Invoices. All invoices submitted by Emphasys shall set forth the following information: (i) the Effective Date of this Agreement; (ii) the subject matter (software license or support and maintenance services) of the invoice; (iii) Licensee's purchase order number, if applicable; and (iv) the amount being billed.

All invoices shall be sent by email and postal mail to both of the following addresses:

Milwaukee County DAS-IMSD
Attn: Accounts Payable
901 N. 9th Street, Room 301
Milwaukee, WI 53233
APinvoices@milwaukeecountywi.gov

With a copy to:

Milwaukee County DAS-IMSD
Attn: IMSD Invoices
633 W. Wisconsin Avenue, STE 1100
Milwaukee, WI 53203
IMSDinvoices@milwaukeecountywi.gov

If Licensee has a dispute with an invoice, Licensee shall notify Emphasys of any disputed fees within ten (10) business days of the invoice receipt date. Promptly after the written request of either party, each of the parties will appoint a designated representative to meet promptly in person or by telephone to attempt to resolve in good faith any dispute concerning any invoice. Such designated representatives should resolve the dispute within five (5) business days after the initial request, and if not resolved within five (5) business days either party may request that this is re-evaluated by Emphasys management and management of Licensee. Emphasys and Licensee management shall meet either in person or by telephone to resolve the dispute in good faith within fifteen (15) calendar days after the request to ensure that the invoice is paid promptly.

Licensee is exempt from state and local taxes. Any invoices submitted by Emphasys should be without such taxes. However, Emphasys shall be responsible for all federal, state and local permits, licenses, and fees, together with all governmental filing related thereto, which arise out of the performance of services or delivery of software hereunder, or which arise as a result of fees paid hereunder. Licensee will provide Emphasys with a valid tax exemption certificate.

The making of any payment by Licensee, or the receipt thereof by Emphasys, shall not imply waiver of any representations or warranties or requirements of this Agreement.

5. Representations and Warranties, Disclaimer of Warranties, and Remedies.

A. Emphasys represents and warrants that:

- (i) It owns all right, title and interest in and to the Licensed Products and/ or has obtained rights in such Licensed Products sufficient to grant the licenses granted to Licensee under this Agreement.

- (ii) It has good and marketable title to the Licensed Products sold hereunder free and clear from all liens, encumbrances, and claims of infringement of Intellectual Property Rights of third parties.
- (iii) Neither the Licensed Products as delivered by Emphasys to Licensee, nor any normal use thereof by Licensee or its modifications, enhancements, updates or upgrades thereto, will infringe any Intellectual Property Rights of any third party.
- (iv) Licensee's exclusive remedy, and Emphasys exclusive obligation, for a breach of the warranties in this Section 5.A. is set forth in Section 6 (Indemnity by Emphasys).
- (v) The Software as described in Exhibit A will perform in accordance with functionalities described in the RFP Functionality Matrix attached as Exhibit C, during the Term of this Agreement.
- (vi) It has or will obtain appropriate agreements with its employees and others whose services it may require, sufficient to enable full compliance with all the provisions of this Agreement.
- (vii) As of the Effective Date, there are no existing or threatened legal proceedings against Emphasys and/or its affiliates that would have a material adverse effect upon its ability to perform its obligations under this Agreement.
- (viii) It shall maintain at all times, an adequate staff of experienced and qualified employees for efficient performance under this Agreement. Emphasys agrees that, at all times, the employees of Emphasys furnishing or performing any services shall do so in a proper, workmanlike, and dignified manner.
- (ix) No 'back door' password or other method of remote access into the software codes of Software exists.
- (x) All Software that Emphasys licenses to the Licensee and used by the Licensee after the calendar year 2000, includes or shall include, at no added cost to Licensee, design and performance so Licensee shall not experience Software abnormality and/or generation of incorrect results from the Software, due to date oriented processing, in the operation of the business of the Licensee.

The Software design, to insure year 2000 compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event

recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any Licensee system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

Licensee may continue the warranty protection described above by purchasing and paying for on-going Annual Maintenance and Support Plan described in Exhibit B. By doing so, all warranties included herein shall remain in effect, in perpetuity, as long as payments for Annual Maintenance and Support Plan fees are kept current under this Agreement.

- (xi) Each Software will operate without a defect for a period of one hundred and eighty (180) days from the delivery date.
- (xii) The media on which the Software is delivered will be free of material defects in material and workmanship for a period of one hundred and eighty (180) days from the delivery date.

B. Limited Software Warranty by Emphasys and Remedy For Breach.

- (i) Emphasys warrants that the Software will operate without a material documented defect during the Term. Emphasys sole obligation with respect to a breach of the foregoing warranty shall be to repair or replace the Software giving rise to the breach of warranty.
- (ii) If Emphasys is unable to repair or replace such Software within a reasonable period of time, then, subject to the limitations set forth in Section 7 of this Agreement, Licensee may pursue its remedies at law to recover direct damages resulting from the breach of this warranty. The remedies in this Section 5.B. are exclusive and in lieu of all other remedies, and represent Emphasys sole obligations, for a breach of the foregoing warranty. Licensee must provide notice to Emphasys of any warranty claim within the warranty period.

C. Malicious Code. Emphasys represents that it has used commercially reasonable best efforts utilizing generally accepted industry tools and practices to provide Software that does not contain any "time bombs," "worms," "viruses," "Trojan horses," "protect codes," "data destruct keys," or other programming devices that are intended to access, modify, delete, damage, deactivate or disable the Software ("Malicious Code"). As Licensee's sole remedy for breach of this representation, Emphasys shall take action immediately to investigate, identify and remove such Malicious Code from the Software.

D. Disclaimer of Warranties. The warranties in this Section 5 are made to Licensee exclusively and are in lieu of all other warranties. EMPHASYS MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE LICENSE AND SUPPORT AND MAINTENANCE SERVICES PROVIDED UNDER THIS AGREEMENT, IN WHOLE OR IN PART. EMPHASYS EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. EMPHASYS EXPRESSLY DOES NOT WARRANT THAT THE SOFTWARE OR SUPPORT AND MAINTENANCE SERVICES, IN WHOLE OR IN PART, WILL BE ERROR FREE, OPERATE WITHOUT INTERRUPTION OR MEET LICENSEE'S REQUIREMENTS.

E. Abrogation of Limited Warranty. Emphasys will have no obligation under this Section 5 to the extent that any alleged breach of warranty is caused by any modification of the Software not performed by or on behalf of Emphasys as part of Support or by Infor, Inc. under the Software Services Agreement.

F. **FAILURE OF ESSENTIAL PURPOSE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 5 AND 7 WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER LICENSEE HAS ACCEPTED ANY SOFTWARE OR SUBSCRIPTION SERVICE UNDER THIS AGREEMENT.**

G. **HIGH RISK ACTIVITIES. THE SOFTWARE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, MASS TRANSIT, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACCORDINGLY, EMPHASYS DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. LICENSEE AGREES THAT EMPHASYS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO THE USE OF THE SOFTWARE IN SUCH APPLICATIONS.**

6. Indemnification.

A. General Indemnity. The parties agree to the fullest extent permitted by law, to indemnify, defend and hold harmless, the other party and its agents, officers and employees, from and against all loss or expenses including cost and attorney's fees by reason of liability to third-parties for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of the indemnifying party, or its (their) agent(s) which may arise out

of or are connected with the activities covered by this Agreement. The parties' liability shall be limited by Wis. Stat. Section 893.80 for general liability.

The foregoing obligations are conditioned upon:

- (i) Prompt written notice by the indemnified party to the indemnifying party of any claim, action or demand for which indemnity is claimed, provided however that the failure to give such notice shall not relieve the indemnifying party of its obligations hereunder except to the extent that such indemnifying party is materially prejudiced by such failure;
- (ii) Complete control of the defense and settlement thereof by the indemnifying party, provided that no settlement of an indemnified claim shall be made without the written consent of the indemnified party; and
- (iii) Reasonable cooperation by the indemnified party in the defense as the indemnifying party may request. The indemnified party shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

B. Intellectual Property Rights Indemnity. Emphasys will defend, indemnify and hold Licensee harmless from and against any loss, cost and expense that Licensee incurs because of a third party claim that the Licensed Products infringe any Intellectual Property Rights of others. Emphasys obligations under this indemnification are expressly conditioned on the following: (i) Licensee must promptly notify Emphasys of any such claim; (ii) Licensee must in writing grant Emphasys sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if Licensee chooses to represent its own interests in any such action, Licensee may do so at its own expense, but such representation must not prejudice Emphasys right to control the defense of the claim and negotiate its settlement or compromise); (iii) Licensee must cooperate with Emphasys to facilitate the settlement or defense of the claim. Emphasys will not have any liability hereunder to the extent the claim arises from any modification of the Software, except for configurations. If any Licensed Product is, or in Emphasys opinion is likely to become, the subject of an Intellectual Property Rights infringement claim, then Emphasys, at its sole option and expense, will either: (A) obtain for Licensee the right to continue using the Licensed Product under the terms of this Agreement; (B) replace the Licensed Product with products that are substantially equivalent in function, or modify the Licensed Product so that it becomes non-infringing and substantially equivalent in function; or (C) refund to Licensee the un-used portion of the License and Support and Maintenance fee, if any, paid to Infor for the Licensed Product giving rise to the infringement claim, and discontinue Licensee's use of such Licensed Product. **THE FOREGOING SETS FORTH EMPHASYS'S EXCLUSIVE OBLIGATION AND LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

C. The provisions of this Section 6 state each party's entire obligation and liability with respect to the infringement of any property right based on the use of the Licensed Products.

7. LIMITATION OF LIABILITY.

A. **LIMITED LIABILITY OF EMPHASYS.** EXCEPT WITH RESPECT TO INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS AGREEMENT, THE TOTAL LIABILITY OF EMPHASYS IN CONNECTION WITH OR RELATED TO THE LICENSED PRODUCTS, THE ANNUAL MAINTENANCE AND SUPPORT PLAN SERVICES, OR ANY OTHER MATTER RELATING TO THIS AGREEMENT (WHATEVER THE BASIS FOR THE CAUSE OF ACTION) WILL NOT EXCEED 1.5 TIMES THE FEES PAID OR PAYABLE TO EMPHASYS HEREUNDER FOR THE TWELVE-MONTH PERIOD IN WHICH SUCH LIABILITY FIRST AROSE.

B. **EXCLUSION OF DAMAGES.** EXCEPT WITH RESPECT TO INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL EMPHASYS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER EMPHASYS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Term and Termination.

A. **Term.** This Agreement is for a perpetual license and shall continue until terminated by either party ("Term") under the following conditions. However, the Annual Maintenance and Support Plan shall be valid for a 12-month period and the Licensee may opt to renew it for a further annual terms upon 60 days prior written notice to Emphasys before the end of the then current Plan.

B. **Termination.**

- (i) **Emphasys' Right of Termination.** Emphasys may terminate this Agreement after 30 days prior written notice for Licensee's failure to pay any amounts due (including any additional mutually agreed upon License Fees or service fees resulting from legal changes expanding Licensee's rights of use).
- (ii) **Licensee's Right of Termination.** Licensee may terminate this Agreement without cause upon 60 days prior written notice prior to the annual anniversary date of this Agreement.
- (iii) **Either Party's Right to Termination.** Either party may terminate this Agreement,

(a) upon 30 days' prior written notice for the other party's failure to cure any other material breach of this Agreement; (b) immediately upon: (I) termination or suspension of Licensee's business, (II) insolvency or filing of a voluntary or involuntary petition in bankruptcy, which petition is not dismissed within 30 calendar days of filing, (III) appointment of a receiver, assignee or other liquidating officer for all or substantially all of the Licensee's assets or (IV) an assignment for the benefit of creditors.

C. Termination of Maintenance and Support Plan. Licensee may terminate the Plan upon 60 days written notice before the annual anniversary date of this Agreement. Emphasys may only terminate the Plan under terms of Section 8.B.(iii) above.

D. Effect of Termination or Expiry. Upon termination of this Agreement by either party, Emphasys will discontinue the provision of all services and Licensee will promptly pay Emphasys for all services rendered by Emphasys and accepted by Licensee through the effective date of such termination.

Upon termination, or expiration of this Agreement, Emphasys will immediately cease all use of Licensee Data and Confidential Information and/or any other information and shall deliver to Licensee all items containing, embodying, relating to or comprising Licensee Confidential Information and/or Licensee Data.

Upon termination of this Agreement, Emphasys agrees to immediately return all Licensee and Licensee Affiliate data in its systems, in a machine readable format mutually agreed upon by both the parties.

The parties agree that at all times during the Term of this Agreement, the Licensee shall have full access and ability to automatically export any and/ or all of Licensee and Licensee Affiliate's data in Software and Third Party Software.

E. Termination for Insufficient Funds. This Agreement, and/or Annual Maintenance and Support Plan hereunder, shall terminate at such time, if any, that the Licensee fails to appropriate sufficient sums in the budget year for which the Agreement and/or such Annual Maintenance and Support Plan applies to pay the amount due. Licensee will immediately notify Emphasys when it becomes aware that funding may not be appropriated. Licensee will use its best efforts to provide Emphasys with at least 30 days written notice prior to terminating the Agreement for lack of sufficient funds. The Licensee's decision as to whether sufficient appropriations and authorizations are available shall be accepted by Emphasys as final. In such an event, Emphasys shall immediately reduce and/or discontinue its activities hereunder as requested by Licensee. The parties agree that Emphasys will not charge Licensee with any termination fee or penalty for such early termination.

9. Insurance.

Emphasys shall purchase and maintain policies of insurance to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from Emphasys activities, by whomever performed, in such coverage amounts as Licensee's County's Risk Manager prior to services commenced under this Agreement. A Certificate of Insurance shall be submitted for review for each successive period of coverage for the duration of this Agreement, unless otherwise specified by the Licensee, in the minimum amounts specified below.

It is understood and agreed that Emphasys shall obtain information on the technology liability coverages of all sub-consultants and/or sub-contractors in the same form as specified above for review of the Licensee.

Emphasys shall provide evidence of the following coverages and minimum amounts:

Type of Coverage Minimum Limits

Wisconsin Workers' Compensation	Statutory (Waiver of Subrogation for Workers Comp by Endorsement)
Employer's Liability	\$100,000/\$500,000/\$100,000
General Liability	
General Aggregate \$1,000,000	Per Occurrence
Bodily Injury & Property Damage	\$2,000,000 Aggregate
Personal Injury	\$1,000,000 Per Person
Contractual Liability	\$1,000,000 Per Occurrence
Fire Legal Liability	\$50,000 Per Occurrence
Umbrella Liability	\$10,000,000 Aggregate
Technology Liability	
Errors & Omissions	\$5,000,000 Per Occurrence/ \$5,000,000 Per
Aggregate	
Automobile Liability	
Bodily Injury & Property Damage	\$1,000,000 Per Accident
All Autos-Owned, non-owned	
Uninsured Motorists	Per Wisconsin Requirements

Licensee, as its interests may appear, shall be named as an additional insured for general, automobile, and umbrella liability as respects the services provided in this Agreement. A

waiver of subrogation shall be afforded to Licensee on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County. Disclosure must be made of any nonstandard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable.

The insurance specified above shall be placed with a carrier approved to do business in the State of Wisconsin. All carriers must be A rated or better per AM Best's Rating Guide. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by Licensee's Risk Manager as a condition of this Agreement.

A Certificate of Insurance shall be submitted for review to the Licensee for each successive period of coverage for the term of this Agreement.

10. Confidential Information and Public Records.

Except as otherwise permitted under this Agreement, the Recipient will not disclose to any third party, or make any use of the Discloser's Confidential Information. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. The non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for perpetuity.

Both parties understand that Licensee is bound by the public records law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Emphasys hereby agrees that it shall be obligated to assist Licensee in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made. Except as otherwise authorized by Licensee in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under this Agreement. In the event that Licensee receives a request to disclose any Emphasys information defined as "Confidential Information" or labeled as such by Emphasys, Licensee will promptly provide Emphasys notice of the open records request to enable Emphasys to resist any required disclosure and/or to obtain suitable protection regarding such required disclosure by Licensee. In the event the designation of "Confidential Information" of such Emphasys information is challenged by the requestor and Emphasys resists disclosure by Licensee, Emphasys hereby agrees to provide legal counsel or other necessary assistance to Licensee to defend the designation of confidentiality and agrees to indemnify and hold Licensee harmless for any costs or damages arising out of Licensee's agreement to withhold such Emphasys information from disclosure.

11. Milwaukee County Technology Directives.

Emphasys hereby attests that it has familiarized itself with terms of Exhibits D and E and will make its employees and agents aware of the provisions of these directives. Licensee may, at its discretion, require specific users of Licensee-provided technology, to sign a "User Statement" acknowledging receipt of a copy and awareness of these directives.

12. Licensee Resources, Licensee Personal Data.

Licensee, in its sole discretion, may permit Emphasys to have on-line access to Licensee-designated networks and computer systems of Licensee ("Licensee Resources") in order to facilitate Emphasys ability to perform its obligations to Licensee under this Agreement. The term "Licensee Resources" also includes all information obtained, stored, or accessible on such networks and systems. If such access is granted, Emphasys will promptly give Licensee in writing the names of Emphasys employees who have a legitimate business need for such access to Licensee Resources ("Authorized Personnel"), and Licensee will provide a separate user identification code for each person ("Password"). Only Authorized Personnel may access and use Licensee Resources. Authorized Personnel will access and use Licensee Resources solely for the purpose of fulfilling Emphasys obligations to Licensee under this Agreement ("Permitted Use"). Passwords and Licensee Resources are provided on an "AS-IS" basis and constitute Licensee's Confidential Information. Emphasys is responsible for all costs and expenses it incurs in accessing Licensee Resources, including the cost of any hardware, telecommunications services, network connections, and software not furnished by Licensee. Licensee, in its sole discretion, may terminate with or without cause Emphasys and/or any Authorized Personnel's access to Licensee Resources at any time. Emphasys agrees that Emphasys (including the Authorized Personnel) have no expectation of privacy when using or accessing Licensee Resources, and that Licensee may access, review, copy or delete any messages and files for any purpose and disclose them to any party that Licensee deems appropriate. Emphasys, including Authorized Personnel, will: (i) comply with all instructions Licensee provides concerning access to Licensee Resources; (ii) not access or attempt to access those Licensee Resources that Licensee has not authorized in writing Emphasys to access; (iii) not modify, copy, store, transfer, install, delete or obtain programs or data from Licensee Resources, unless Licensee has expressly authorized Emphasys to do so in advance and in writing; (iv) not cause Licensee to incur fees or service charges; and (v) not change the configuration or topology of Licensee Resources. Emphasys will immediately notify Licensee verbally and in writing should Emphasys become aware of any prohibited use or unauthorized access involving Licensee Resources. Emphasys, including Authorized Personnel, will immediately cease accessing all Licensee Resources upon the earliest to occur: (a) when no longer required to perform work under this Agreement; (b) when notified by Licensee; or (c) when this Agreement terminates or expires. Emphasys will promptly notify Licensee if it becomes aware of any unauthorized access to or use of Licensee Resources, and will instruct Authorized Personnel to do the same. Any document properly transmitted by computer access will be considered a "writing" delivered in connection with this Agreement.

Electronic documents will be considered signed by a party if they contain an agreed upon electronic identification symbol or code as required by law. Electronic documents will be deemed received by a party when accessible by the recipient on the computer system.

Emphasys will immediately notify Licensee verbally and in writing should Emphasys become aware of any prohibited use or unauthorized access involving Licensee Resources. Emphasys, including Authorized Personnel, will immediately cease accessing all Licensee Resources upon the earliest to occur: (a) when no longer required to perform work under this Agreement; (b) when notified by Licensee; or (c) when this Agreement terminates or expires. Emphasys will promptly notify Licensee if it becomes aware of any unauthorized access to or use of Licensee Resources, and will instruct Authorized Personnel to do the same.

The parties agree that at all times during the Term of this Agreement, the Licensee shall have full access and ability to automatically export any and/or all of Licensee and Licensee Affiliate's data in Emphasys software.

13. Equal Opportunity Employment and Non-discrimination Policy.

It is the policy of Licensee that all parties who provide services to the Licensee by contract, shall, as a condition of providing services, adhere to all Federal, State and Local laws, ordinances, rules and regulations, and policies, and if applicable, prohibiting discrimination in regard to persons to be served and employees and applicants for employment including, but not limited to, the following:

- (i) Section 504 of the Federal Rehabilitation Act of 1973, PL 93-112, 87 Stat 355, as amended and rules adopted thereunder.
- (ii) The Americans with Disabilities Act of 1990, PL 101-336, 104 Stat 327 (42 USCA 12101 et seq.) as amended, and regulations promulgated thereunder.

Emphasys shall, as a condition of providing services, as required by law and/or the Licensee's Equal Opportunity Employment/Nondiscrimination Policy, not discriminate against persons to be served of an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, or marital status. Where there has been a conclusive finding that Emphasys has violated Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies, then Emphasys shall be barred from providing services to Licensee for five (5) years from the date that a determination of the violation has been made in accordance with applicable statutes, ordinances, rules/regulations, or policies or from the date that such determination becomes known, unless a specific exemption is granted by the Licensee's governing body.

Any violation of Federal, State, or Local equal opportunity statutes, ordinances, or rules/regulations during the course of time during which Emphasys is providing deliverables and/or services to Licensee shall be regarded as a material breach of this Agreement, and Licensee may terminate this Agreement effective as of the date of delivery or written notification to Emphasys.

Any employee of Emphasys providing services to the Licensee, or any employee of a subcontractor of Emphasys providing services to the Licensee, or any bona fide organization representing such employees may file a written complaint with the Licensee's governing body or its designated agent, if any, challenging the compliance by Emphasys with the terms of this policy, the Licensee's governing body or its designated agent shall then conduct an investigation to determine whether the policy has been violated. Should Emphasys be found to have retaliated in violation of a Federal or State law against an employee for filing a claim of violation of Federal, State, or Local equal opportunity statutes, ordinances, or rules/regulation, Emphasys shall be ineligible to provide any services to the Licensee for a period of five (5) years from the date of such finding.

14. Non-Performance Escalation Procedures.

Promptly upon receipt of a written request of either Party, each of the Parties will appoint a designated representative to meet promptly in person or by telephone to attempt to resolve in good faith any dispute concerning the licensed software and/or maintenance and support services and/or Emphasys invoices or other matters related to this Agreement. If the designated representatives are not able to resolve the dispute within a reasonable time, then either Party may request that an officer of Emphasys and an officer of Licensee meet promptly in person or by telephone to review and attempt to resolve the dispute in good faith.

15. Assignment, Merger or Acquisition.

A. Assignment, Merger or Acquisition. Neither Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Emphasys may assign or transfer this Agreement in the event of a merger, consolidation, stock transfer or sale of all or substantially all of its assets, provided however that any such assignee (i) is not debarred from doing business in the State of Wisconsin, and (ii) holds similar or larger market share in ERP software industry. Any attempt to assign or transfer this Agreement in contravention of this Section 15 is void.

B. Subcontracting. Any subcontractors or other parties performing work on behalf of Emphasys under this Agreement shall be bound by the same terms and conditions as Emphasys.

16. Security Policies and Safeguards.

A. Security Policies and Safeguards. Emphasys shall establish and maintain administrative, technical, and physical safeguards designed to protect against the destruction, loss, unauthorized access or alteration of Licensee Data and Personal Information in the possession or under the control of Emphasys or to which Emphasys has access, which are: (i) no less rigorous than those maintained by Emphasys for its own information of a similar nature; (ii) no less rigorous than generally accepted industry standards; and (iii) no less rigorous than as required by applicable laws. If applicable for the maintenance and support of on-premise software, the security procedures and safeguards implemented and maintained by Emphasys pursuant to this Section 8 (a) shall include, without limitation:

- (i) User identification and access controls designed to limit access to Licensee's Data to authorized users;
- (ii) The use of appropriate procedures and technical controls governing data entering Emphasys network from any external source;
- (iii) The use of strong encryption techniques when Licensee's Data is transmitted or transferred into or out of the hosted environment;
- (iv) Physical security measures, including without limitation securing Licensee's Data within a secure facility where only authorized personnel and agents will have physical access to Licensee Data;
- (v) Periodic employee training regarding the security programs referenced in this Section; and
- (vii) Periodic testing of the systems and procedures outlined in this Section.

B. Security Incident Response. In the event that Emphasys becomes aware that the security of any Licensee Data or Personal Information has been compromised, or that such Licensee Data or Personal Information has been or is reasonably expected to be subject to a use or disclosure not authorized by this Agreement (an "Information Security Incident"), Emphasys shall: (i) promptly (and in any event within 24 hours of becoming aware of such Information Security Incident), notify Licensee, in writing, of the occurrence of such Information Security Incident; (ii) investigate such Information Security Incident and conduct a reasonable analysis of the cause(s) of such information Security Incident; (iii) provide periodic updates of any ongoing investigation to Licensee; (iv) develop and implement an appropriate plan to remediate the cause of such information Security Incident to the extent such cause is within Emphasys's control; and (v) cooperate with Licensee's reasonable investigation or Licensee's efforts to comply with any notification or other regulatory requirements applicable to such information Security Incident.

C. Upon termination of this Agreement, for whatever reason, Emphasys shall stop the processing of Licensee Data, unless instructed otherwise by Licensee in writing, and these undertakings in Section 8 shall remain in force until such time as Emphasys no longer possesses Licensee Personal Data.

17. No Waiver.

Unless in writing, no failure or delay by a Party to exercise any right it may have under this Agreement, shall operate as a waiver or modification of this Agreement and shall be construed to be a waiver of the right of such Party thereafter to enforce each and every provision of this Agreement. No waiver by a Party of any breach of this Agreement shall be deemed to be a waiver of any other breach. A Party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that Party to later enforce any such rights or to enforce any other or any subsequent breach.

18. Force Majeure.

Except with respect to the payment of fees hereunder, neither Party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, limited to, Acts of God, war, terrorist acts and official, governmental and judicial action not the fault of the Party failing or delaying in performance, or the threat of any of the foregoing. Force majeure shall not be allowed unless within ten (10) calendar days of the occurrence of force majeure, the Party whose performance is delayed thereby shall provide the other Party with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.

19. Choice of Law; Arbitration and Regulation.

A. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Wisconsin, without application of any conflict of laws provisions thereof. The United Nations Convention on the International Sale of Goods (CISG) shall not apply to the interpretation or enforcement of this Agreement. All legal actions hereunder shall be brought in the State of Wisconsin, and the exclusive forum and venue for such disputes shall Milwaukee County Circuit Court located in Milwaukee, Wisconsin.

B. Arbitration. In the event that the Parties are unable to resolve differences, and after exhausting the terms and conditions of the Non-Performance Escalation Procedures clause herein, that may arise relating to this Agreement, all disputes arising from this Agreement shall be resolved through the Milwaukee County Circuit Court, unless both Parties agree to binding arbitration, which shall take place in Milwaukee, WI. If arbitration is agreed to, the arbitration shall be governed by the most recently published Commercial Arbitration Rules of the American Arbitration Association. Both Parties agree to submit disputes to a single arbitrator

acceptable to both Parties. The arbitrator will be selected from a list compiled by the Parties' respective legal counsels. Every person named on the list of potential arbitrators must be a neutral and impartial lawyer who has at least fifteen years specializing in the field of general commercial litigation and is knowledgeable about software licensing contracts. The arbitrator shall base its award on applicable law and judicial precedent and unless both Parties agree, otherwise shall include in such award the finding of fact and conclusions of law upon which the award is based. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

C. Effect of Regulation. Should any local, state, or national regulatory authority having jurisdiction over Licensee enter a valid and enforceable order upon Licensee which has the effect of changing or superseding any term or condition of this Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive Licensee of a material part of its Agreement with Emphasys. In the event this order results in depriving Licensee of material parts or raising their costs beyond that defined in this Agreement, Licensee shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon thirty (30) days written prior notice to Emphasys. Should the Agreement be terminated under such circumstances, such termination shall be considered a termination for convenience.

20. Conflict of Interest and Non Collusion.

A. Conflict of Interest. Emphasys will not knowingly employ as a director, officer, employee, agent or subcontractor any elected or appointed office of Licensee or any member of his or her immediate family.

B. Non Collusion. Emphasys hereby represents and agrees that it has in no way entered into any contingent fee arrangement with any firm, employee of Licensee, or other person or entity concerning the obtaining of this Agreement. In addition, Emphasys agrees that a duly authorized Emphasys representative will sign a non-collusion affidavit, in a form acceptable to Licensee that Emphasys has not received from Licensee any incentive or special payments, or considerations not related to the provision of the software and services described in this Agreement.

C. County Fraud Hotline. Emphasys agrees to post in locations accessible to its employees Licensee provided bulletins concerning the County Fraud Hotline.

21. Notices.

All notices related to this Agreement shall be in writing and shall be deemed delivered when:

A. Actually received, or

B. Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party, or

C. If not actually received, 10 days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address (es) set out in this section of this Agreement, or such other address as the party may have designated by notice or Agreement amendment to the other party.

Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of the intended receiving party's new address will be borne by the intended receiving party. The addresses for any notices under this Agreement are as follows:

Emphasys, Inc.

Peter Bakonyvari
9675 NW 117th Ave
Suite #305
Medley, FL 33178

Milwaukee County

Attention: Paul Kuglitsch
Principal Assistant Corporation Counsel
Room 303
901 N 9th St, Milwaukee, WI 53233

Milwaukee Transit Services, Inc.

Attention: James Martin
Deputy Director, MCDOT
10320 W. Watertown Plank Rd., 2nd Floor
Wauwatosa, WI 53226

22. Product Replacement.

To the extent that Emphasys makes generally available to any of its customers any separately named or marketed software product that has substantially the same price, features, and functionality as the Software (the "Replacement Product"), Licensee may exchange its current Software or a portion of the Software, as may be applicable, for the Replacement Product at no additional fee, provided that: (1) the Agreement and Order Form is then in full force and effect and Licensee is not in material breach of the Agreement or Order form; (2) Licensee enters into an Order Form reflecting the exchange; and (3) upon delivery of the Replacement Product, Licensee's rights to use the replaced Software or a portion of the Software, as may be applicable, shall immediately terminate and Licensee's rights to use the Replacement Product

will commence. The reference to Software in this Agreement includes any Replacement Products.

23. Maintenance of Records; Audits.

A. Maintenance of Records. Emphasys shall maintain accurate and complete documents and records relating to charges under this Agreement and documents relating to confidentiality, subcontracts and intellectual property ownership. All financial records shall be maintained in accordance with generally accepted accounting principles. All such documents and records shall be kept and maintained by Emphasys and shall be made available to Licensee during the term of this Agreement and for a period of three (3) years thereafter unless Licensee provides Emphasys with written permission to dispose of any such material prior to such time. Such audit shall take place at Licensee's reasonable request in writing.

B. County's Right to Audit. Pursuant to Section 56.30(6)(e) of the Milwaukee County Code of General Ordinances, Emphasys, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of Emphasys and/or its contractors related to the performance of this Agreement, including without limitation, (i) the accuracy of Emphasys invoices, (ii) audits and examinations performed or required by regulatory authorities, (iii) validating compliance with this Agreement, (iv) compliance with applicable laws and regulations, and (v) compliance with Licensee policies and procedures referred to this Agreement; for a period of up to three years following the date of last payment under this Agreement. Emphasys shall provide to Licensee (or its Designated Personnel) any assistance they may reasonably require in connection with such audits and inspections.

Any contractors or other parties performing work on this Agreement will be bound by the same terms and responsibilities as Emphasys. All subcontracts or other agreements for work performed on this Agreement will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. Any and all County contracts and solicitations for contracts shall include a statement that the contractor and any subcontractors understand and will abide by the requirements of this chapter

24. General.

A. Safety and Security Policies. Emphasys agrees to use all commercially reasonable efforts to cause any of its employees or contractors who provide services under this Agreement on Licensee's premises to comply with Licensee's safety and security policies that Licensee communicates to the extent that such policies are applicable to the site where Emphasys or its contractors employees are providing Services. Notwithstanding the above, such standard safety and security policies shall not include policies related to drug testing and

background checks.

B. Severability. If a provision is declared invalid, the remainder of the Agreement will continue in full force and effect. The offending provision shall be interpreted to whatever extent possible to give effect to its stated intent.

C. Entire Agreement. This Agreement represents the entire agreement on this subject matter and overrides and terminates all prior agreements, representations, statements, negotiations, and understandings and provisions in any Orders issued hereunder. This Agreement may be modified only by a written agreement signed by a party's authorized representative, which for Licensee means at a minimum the County Executive, Corporation Counsel and Comptroller.

D. Conflict. Should any Exhibit conflict with this Agreement, this Agreement shall control.

E. Independent. Each party is acting as an independent contractor and not as an agent, partner, or joint venture partner with the other party for any purpose.

F. Compliance with all Applicable Laws. Export. At all times, both Parties will adhere to all applicable state, federal and local laws and regulations in the conduct of its business, installation and use of the Software. Licensee shall comply with all applicable export and import control laws and regulations in its use of the Software and, in particular, Licensee shall not export or re-export the Software without all required United States and foreign government licenses.

G. Advertisement. Emphasys shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of Licensee unless Emphasys receives specific written authorization in advance from the Licensee's County Administrator or designee. Emphasys will limit and direct any of its advertising on the Licensee's premises and shall make arrangements for such advertising the Licensee's County Administrator or the Executive Director. Emphasys shall not install any signs or other displays within or outside of the Licensee's premises unless in each instance the prior written approval of the Licensee's County Administrator or the Executive Director has been obtained. However, nothing in this clause shall preclude Emphasys from listing Licensee on its routine client list for matters of reference.

H. Headings. All headings and subheadings of any section, subsections and paragraphs in this Agreement are included for convenience only and shall not affect the construction or interpretation of the contents of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Emphasys Software, Inc.
a Michigan corporation

Milwaukee County, WI
("Licensee")

By: _____

Name: Michael Byrne

Title: President and CEO

Address:
2200 Powell Street, Suite 1170
Emeryville, California 94608
Tel. No. 510 655 0900
Fax: 510-655-4064

By: _____
(Authorized Representative)

Print Name: _____

Title: _____

Address:
901 N. 9th Street
Milwaukee, WI 53233

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____
Community Business Development Partners

Reviewed by:

By: _____ Date: _____
Risk Management

Approved for execution:

By: _____ Date: _____
Corporation Counsel

*Approved as to funds available per
Wisconsin Statutes Section 59.255(2)(e):*

By: _____ Date: _____
Comptroller

Approved:

By: _____ Date: _____
County Executive

Approved as compliant under sec. 59.42(2)(b)5, Stats.:

By: _____ Date: _____
Corporation Counsel

Exhibit A
to
EMPHASYS SOFTWARE LICENSE AND SERVICE AGREEMENT

By and Between

Emphasys Software. and Milwaukee County, WI, Licensee

Effective Date _____

1. **Designated Equipment:**

Workstations: Current generation workstation; 64 bit operating system; Windows operating systems (7, 8 or 10); minimum 2 GB RAM; 2 GB of storage. Networking: Microsoft Windows Server (2012 or 2016). Hard drive storage: Minimum 4 GB for software and portfolio data, depending on size and type of portfolio(s); 8 GB of RAM; Licensee's Installation: Installation is on a network server. For equipment or operating systems not named in this section, contact SymPro for compatibility information.

2. **Designated Site:**

- All departments and office locations of Milwaukee County and MCTS.
- Milwaukee County remote servers located in and outside Milwaukee, WI.

3. **Software and Services:**

Debt Management

Debt Module V2.41

General Ledger Module

(Creation of Journal Entries & Interface to General Ledger)

Investment Portfolio Management

Fixed Income

Multi-User License (6 concurrent users, Network)

Earning Allocation Module

Market Pricing Module

General Ledger Module

(Creation of Journal Entries & Interface to General Ledger)

4. **Authorized Users:**

- Network installation with concurrent access and support for 6 Authorized Users.

5. **License and Service Fees:**

- a. License and Service Fees:

Total Software License Fee	\$83,000
1 st yr support and maintenance	\$16,600
TOTAL	\$99,600

6. **Payment Schedule:**

License fees will be invoiced upon delivery of the software. The Annual Maintenance and Support fee for year one will be invoiced upon installation of the software. The following Annual Maintenance and Support fee will be invoiced prior to beginning of the subsequent term of such Annual Maintenance and Support.

Exhibit B

to

EMPHASYS SOFTWARE LICENSE AND SERVICE AGREEMENT

By and Between

Emphasys Software and Milwaukee County, WI Licensee

Effective Date _____

Annual Support and Maintenance Plan

The following SymPro Support and Maintenance Plan applies as of the Effective Date. Emphasys reserves the right to change this Plan at any time, with 60 days written notice. All changes will be posted at its website: www.sympro.com and will become effective as of the next Renewal Term. However, any Support and Maintenance Plan will include at least the following essential elements:

- Priority service from technical support and client service representatives
- Free SymPro version corrections and enhancements released in the license and service term
- Access to the SymPro Internet Site for Support (www.sympro.com)
- Unlimited telephone technical support in the following areas:

Loading and configuring of SymPro Software

Operational Questions, including standard SymPro reports

Data entry support for all debt and investment types supported within SymPro, including:

Debt

- Serial Bonds
- Term Bonds
- Discount Bonds
- Variable Rate Coupon
- Commercial Paper
- Commercial Paper Discount
- Medium Term Notes

Investments

- Certificates of Deposits
- Negotiable Certificates of Deposits
- Checking Accounts
- Commercial Paper
- Commercial Paper Discount
- United States Treasury Issues, Coupon & Discount
- Federal Agency Issues, Coupon & Discount
- Rolling Repurchase Agreements
- GNMA, Pass Through
- Bankers Acceptances
- Corporate Bonds
- Medium Term Notes

Tele-consultation is provided during normal business hours (6:30AM TO 5:00PM - Pacific Time), Monday through Friday for questions dealing with the operations of the Licensed

Software on Designated Equipment. Support issues may be reported via voicemail (510-655-0900 Selection 2), fax (510-655-4064), or email (support@sympro.com), 24 hours a day. Answers to "Frequently Asked Questions" are available at www.sympro.com, 24 hours a day. The resolution of some issues may require that Licensee provide Emphasys with a copy of Licensee's data. Licensee agrees to provide Emphasys with a copy of their data for the purpose of resolving Licensee's issue and Emphasys agrees to maintain full confidentiality of any required data and will use it only for the resolution of the Licensee's issue.

Not Included: Consulting on issues concerning investment accounting matters, specific financial or investment matters, research on investments not supported within the Licensed Software, or data entry for investments not supported in the Licensed Software system are not included.

Exhibit C

to

EMPHASYS SOFTWARE LICENSE AND SERVICE AGREEMENT

By and Between

Emphasys Software and Milwaukee County, WI, Licensee

Effective Date _____

RFP Functionality Matrix

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Code	Availability Definition
Y	Functionality is provided out of the box through the completion of a task associated with a routine configurable area that includes, but is not limited to, user-defined fields, delivered or configurable workflows, alerts or notifications, standard import/export, table driven setups and standard reports with no changes. These configuration areas will not be affected by a future upgrade. The proposed services include implementation and training on this functionality, unless specifically excluded in the Statement of Work, as part of the deployment of the solution.
R	Functionality is provided through reports generated using proposed Reporting Tools.
T	Functionality is provided by proposed third party functionality (i.e., third party is defined as a separate software vendor from the primary software vendor). The pricing of all third party products that provide this functionality MUST be included in the cost proposal.
M	Functionality is provided through customization to the application, including creation of a new workflow or development of a custom interface, that may have an impact on future upgradability.
F	Functionality is provided through a future general availability (GA) release that is scheduled to occur within 1 year of the proposal response.
N	Functionality is not provided.

Number	Application Requirements	Priority	Availability	Cost	Required Product(s)	Comments
Debt Service Management						
1	Debt Instrument Set-Up					
2	Ability to establish a debt instrument for a single year or multiple years.	H	T		SymPro Debt Manager	
3	Ability to track and manage the following related to the County's debt:	-			-	
4	Bond Issued amount	H	T		SymPro Debt Manager	
5	Issue Date (Bond Issue)	H	T		SymPro Debt Manager	
6	Call Date (Bond Issue)	H	T		SymPro Debt Manager	
7	Closing Date (Bond Issue)	H	T		SymPro Debt Manager	
8	Reimbursement Revenue Date (Bond Issue)	H	T		SymPro Debt Manager	There are additional data fields or notes/comment section that can capture this type of information.
9	Bond ID (Bond Issue)	H	T		SymPro Debt Manager	
10	Additions	H	T		SymPro Debt Manager	Sympro has functionality to enter new debt or additional components. Standard bond issues do not allow the principal to change after issuance.
11	Reductions / Refunding	H	T		SymPro Debt Manager	
12	Payments	H	T		SymPro Debt Manager	
13	Principal / Year and inception to date	H	T		SymPro Debt Manager	
14	Interest / Year and inception to date	H	T		SymPro Debt Manager	
15	Dollar Amount Interest/ Year and inception to date	H	T		SymPro Debt Manager	
16	Interest Rate/ Year and inception to date	H	T		SymPro Debt Manager	
17	Remaining Original Issue Premium/Discount	H	T		SymPro Debt Manager	
18	Issuance type (new, refunds)	H	T		SymPro Debt Manager	
19	Taxable Status of Bonds (Taxable/ Tax Exempt)	H	T		SymPro Debt Manager	
20	Ratio of Bond Amount to total Capital Project Amount	H	N		SymPro Debt Manager	Sympro can calculate current total debt outstanding.
21	Private Activity Indicator by project, sub project and phase level	H	T		SymPro Debt Manager	Sympro can label bonds as "public" or "private placement"
22	Bad Money Indicator By project, sub project and phase level	H	N			
23	Multiple Accts depending on type of issuance (Cost of Issuance, Escrow, Capitalized Interest, Deferred Revenue, Premium, etc.)	H	T		SymPro Debt Manager	Sympro can itemize COI, track bonds in escrow, track CABs, track deferred gain/loss and premiums/discou nts.
24	Project, sub project and phase principal / interest by year and inception to date	H	R		SymPro Debt Manager	Through reporting.
25	Total bond principal / interest by year and inception to date	H	T		SymPro Debt Manager	
26	Fund	H	T		SymPro Debt Manager	
27	Project, sub project and phase level	H	T		SymPro Debt Manager	Sympro can allocate bond cash flows, premiums/discou nts, and accrued interest to project level.

28	All general ledger account coding for this bond, including project, sub project and phase	H	T		SymPro Debt Manager / GL	Sympro can allocate and journalize bond cash flows, premiums/discou nts, and accrued interest to project level.
29	Ability to track total of ALL debt including principal / interest by project, sub project and phase by year.	H	R		SymPro Debt Manager	Sympro can allocate bond cash flows, premiums/discou nts, and accrued interest to project level.
30	Ability to track by debt types:	-			-	
31	Individual Lease Agreements (including excise tax leases)	H	T		SymPro Debt Manager	
32	Master Lease Agreements and link to the individual leases	M	T		SymPro Debt Manager	
33	General Obligation Debt	H	T		SymPro Debt Manager	As long as they have defined cash flows
34	Revenue Bonds	H	T		SymPro Debt Manager	As long as they have defined cash flows
35	Notes Payable	H	T		SymPro Debt Manager	As long as they have defined cash flows
36	Conduit Debt	H	T		SymPro Debt Manager	As long as they have defined cash flows
37	Debt Instrument (other providers)	H	T		SymPro Debt Manager	As long as they have defined cash flows
38	Contractual Obligations	H	T		SymPro Debt Manager	As long as they have defined cash flows
39	Debt Service / Management					
40	Ability to analyze different financing options through analytics and "what-if" scenarios.	H	T		SymPro Debt Manager	A copy routine allows you to mirror the live portfolio to enter "what if" scenarios and run reporting against the adjusted portfolio.
41	Ability to track movement of bonds between projects when funds are left unexpended (i.e. lapsed proceeds).	H	N			
42	Ability to track bond spending within projects, sub project and phase.	M	T		SymPro Debt Manager	Sympro can track project expenses in list form.
43	Ability to track lapsed bond proceeds within projects, sub project and phase.	H	N			
44	Ability to track debt covenant compliance.	M	T		SymPro Debt Manager	Sympro can track covenants in list form.
45	Ability to track invoices and other costs associated with a debt instrument through the work order system.	H	T		SymPro Debt Manager	Invoices can be imported and attached to an issuance. Other costs can be tracked in the COI section.
46	Ability to initiate the work orders against a debt instruments for reimbursement purposes.	H	N			This would typically be handled in the ERP system.
47	Ability to track expenditure of accounts held by a trustee.	H	N			Usually would be in ERP GL.
48	Ability to report cash flows for arbitrage calculations.	H	T		SymPro Debt Manager	
49	Ability to automatically generate journals for debt service payments including monthly expensing of principal and interest.	H	T		SymPro Debt Manager / GL	
50	Ability to either amortize or not amortize premiums / discounts on issued debt.	H	T		SymPro Debt Manager	
51	Ability to provide amortization entries for original issue premium/discount based on user defined method.	H	T		SymPro Debt Manager	Sympro can amortize using the following methods: Expense, Level Yield, Straight Line, Proportional
52	Ability to modify debt based on budget adjustments (fund transfers).	H	N			

53	Ability to track debt by Project, subproject and phase.	H	T		SymPro Debt Manager	Sympro can allocate bond cash flows, premiums/discou nts, and accrued interest to project level.
54	Ability to track debt by Asset.	H	T		SymPro Debt Manager	Debt can be tracked by multiple criteria. Asset may be one that is defined.
55	Debt Payment Scheduling					
56	Ability to automate debt payments generated from debt module directly into cash flow forecast.	H	T		SymPro Debt Manager, ERP cash flow module.	SymPro calculates the debt payments and exports them in a standard export file to the ERP Cash system
57	Ability to create debt schedules through analytics and "what-if" scenarios.	H	T		SymPro Debt Manager	A copy routine allows you to mirror the live portfolio to enter "what if" scenarios and run reporting against the adjusted portfolio.
58	Ability to make debt service payments from the debt schedule.	H	T		SymPro Debt Manager	Standard flat file or Excel interfaces available with system standard data fields. Additional interfaces or data fields would be custom and need to be further defined.
59	Ability to initiate payments to the paying agent/trustee.	H	T		SymPro Debt Manager	Standard flat file or Excel interfaces available with system standard data fields. Additional interfaces or data fields would be custom and need to be further defined.
60	Ability to charge debt payments to one program that may be in multiple funds.	H	N			
61	Ability to calculate debt service schedules for interest and principal payments for multiple years by Fund.	H	T		SymPro Debt Manager	Sympro can allocate bond cash flows, premiums/discou nts, and accrued interest to Fund/project level.
62	Interface / Integration					
63	Ability to allocate Interest Earnings/Interest Allocation based on remaining bond proceeds.	H	N			
64	Ability to integrate debt service functionality with the bank reconciliation process.	H	T		SymPro Debt Manager	Standard flat file or Excel interfaces available with system standard data fields. Additional interfaces or data fields would be custom and need to be further defined.

65	Ability to integrate to the G/L module and the Treasury module for debt management.	H	T		SymPro Debt Manager / GL	Sympro can create journal entries that may be mapped to account strings.
66	Ability to integrate to the AP module for payments.	H	T		SymPro Debt Manager	Standard flat file or Excel interfaces available. Additional interfaces would be custom and need to be further defined.
67	Ability to integrate with the facilities system.	H	T		SymPro Debt Manager	Standard flat file or Excel interfaces available. Additional interfaces would be custom and need to be further defined.
68	Ability to integrate to the work order module.	H	T		SymPro Debt Manager	Standard flat file or Excel interfaces available with system standard data fields. Additional interfaces or data fields would be custom and need to be further defined.
69	Ability to integrate with the fixed asset module.	H	T		SymPro Debt Manager	Standard flat file or Excel interfaces available with system standard data fields. Additional interfaces or data fields would be custom and need to be further defined.
70	Ability to integrate with a project management system.	H	T		SymPro Debt Manager	Standard flat file or Excel interfaces available with system standard data fields. Additional interfaces or data fields would be custom and need to be further defined.
71	Ability to integrate with the project accounting and grant module.	H	T		SymPro Debt Manager	Standard flat file or Excel interfaces available. Additional interfaces would be custom and need to be further defined.

72	Ability to integrate with the Budget module for annual budget purposes.	H	T		SymPro Debt Manager	Standard flat file or Excel interfaces available with system standard data fields. Additional interfaces or data fields would be custom and need to be further defined.
73	Reporting					
74	Ability to report projects by bond issue, unspent bonds until the debt has been paid off.	H	R		SymPro Debt Manager	
75	Ability to generate a Debt Service Schedule that exports to Excel for each debt instrument type (leases, g.o. bonds, utility bonds) by year, broken down by program (which is then broken down by principal and interest) and total principal and interest across all programs.	H	R		SymPro Debt Manager	
76	Ability to report on lapsed bond proceeds by project, subproject, and phase.	H	N		T	
77	Ability to generate annual debt service schedules for payment and tracking.	H	R		SymPro Debt Manager	
78	Ability to report on debt that has been refinanced for footnoting purposes.	H	R		SymPro Debt Manager	
79	Ability to create debt amortization schedules on a detail and summary basis.	H	R		SymPro Debt Manager	
80	Ability to report on individual debt types.	H	R		SymPro Debt Manager	
81	Ability to report on debt by asset.	H	R		SymPro Debt Manager	
82	Ability to provide reports that include GASB-related information for the following:	-			-	
83	Ability to track "bad money" by debt issue	H	R		SymPro Debt Manager	Sympro users can create a separate portfolio to label the "bad money" debts issues.
84	All g.o. issues outstanding and remaining balance (by issue)	H	R		SymPro Debt Manager	
85	All utility issues outstanding and remaining balance (by issue)	H	R		SymPro Debt Manager	
86	All revenue bond issues outstanding and remaining balance (by issue)	H	R		SymPro Debt Manager	
87	Debt service schedules	H	R		SymPro Debt Manager	
88	GASB 34 entries to restate debt to Accrual Basis	H	R		SymPro Debt Manager	
89	Disclosure of notes payable (outstanding principal and interest)	H	R		SymPro Debt Manager	
90	Disclosure of debt instruments (outstanding principal and interest)	H	R		SymPro Debt Manager	
91	Listing of capital assets acquired related to debt instruments	H	N			
92	Ability to generate reports listing all entries by date range and include actual and accrual information.	H	R		SymPro Debt Manager	Actual and accrual information are found on separate reports.
93	Ability to track and provide reports to monitor variable rate debt with varying terms and maturity dates.	M	R		SymPro Debt Manager	
Investment Management						
1	System Requirements					
2	Ability to track pooled investments.	M	T		SymPro Investments	LGIP, MM, etc.
3	Ability to provide reconciliation of monthly custodian report to par, cost and interest income.	M	T		SymPro Investments, Custodial Recon module	reconcile by par and cost
4	Ability to maintain a database of negotiable instruments held for safekeeping.	M	T		SymPro Investments	
5	Ability to manage agreements and track letters of credit, performance bonds and cash deposits.	M	N			
6	Ability to flag performance bonds and cash deposits to indicate debt offset.	M	N			
7	Ability to associate draw bill/refund relationship.	M	N			
8	Ability to tie 'letter of credit' system to accounts payable for cash deposit release.	M	N			
9	Ability to itemize investment activity in the general ledger.	M	T		SymPro Investments, GL interface module	
10	Ability to integrate Investment Management activities into general ledger directly.	M	T		SymPro Investments, GL interface module	
11	Ability to record project, reconcile, report and record amortization and accretion on a monthly basis.	M	T		SymPro Investments	
12	Ability to perform interest projections based on user specifications.	M	T		SymPro Investments	Projections by an user defined date range in standard reporting
13	Ability to provide detailed projected yield and maturity analysis tools:	-				
14	Based on current	M	T		SymPro Investments	
15	Based on "what if"	M	T		SymPro Investments	Live portfolio can be mirrored and used for "what if" reporting
16	Ability to track:	-				
17	U.S. Treasury Bills	M	T		SymPro Investments	
18	U.S. Treasury Notes	M	T		SymPro Investments	

19	U.S. Treasury Strips	M	T		SymPro Investments	
20	Repurchase Agreements	M	T		SymPro Investments	
21	Commercial Paper	M	T		SymPro Investments	
22	Bankers Acceptances	M	T		SymPro Investments	
23	Agency Discount Notes	M	T		SymPro Investments	
24	Agency Bonds - Bullets	M	T		SymPro Investments	
25	Agency Bonds - Callables	M	T		SymPro Investments	
26	Reverse Repurchase Agreements	M	T		SymPro Investments	
27	Certificates of Deposit	M	T		SymPro Investments	
28	Collateral	M	T		SymPro Investments	
29	Local Government Investment Pool (LGIP)	M	T		SymPro Investments	
30	Municipal Bonds	M	T		SymPro Investments	
31	Ability to maintain the following information for each investment:	-			T	
32	Par Value	M	T		SymPro Investments	
33	Security Type	M	T		SymPro Investments	
34	CUSIP	M	T		SymPro Investments	
35	Purchased Interest	M	T		SymPro Investments	
36	Premium/Discount	M	T		SymPro Investments	
37	Purchase Date	M	T		SymPro Investments	
38	Settlement Date	M	T		SymPro Investments	
39	Issue Date	M	T		SymPro Investments	
40	Purchase Price	M	T		SymPro Investments	
41	Sale Price	M	T		SymPro Investments	
42	Custodian / Holder	M	T		SymPro Investments	
43	Broker/dealer	M	T		SymPro Investments	
44	Purchase Price/Sale Price/Market Price	M	T		SymPro Investments	
45	Book Value	M	T		SymPro Investments	
46	Market Value	M	T		SymPro Investments	
47	Interest Rate	M	T		SymPro Investments	
48	Yield	M	T		SymPro Investments	
49	Issue Date	M	T		SymPro Investments	
50	Maturity Date	M	T		SymPro Investments	
51	Short/Long First/Last Coupon	M	T		SymPro Investments	
52	Next Interest Payment Date	M	T		SymPro Investments	
53	Last Interest Payment Date	M	T		SymPro Investments	
54	Call Date(s)	M	T		SymPro Investments	
55	Call Price	M	Y		SymPro Investments	
56	Net Gain/Loss	M	Y		SymPro Investments	
57	Entry Audit Log	M	T		SymPro Investments	
58	Ability to assign and track an investment that is associated with one or more funds.	M	T		SymPro Investments	
59	Ability to target investment earnings to another fund.	M	T		SymPro Investments, Earnings Allocation module	In running an internal investment pool, user can redirect earnings to another fund
60	Ability to set up a fund as non-interest bearing.	H	T		SymPro Investments, Earnings Allocation module	In running an internal investment pool, user can redirect earnings to another fund
61	Ability to track fund balances for distribution of interest.	M	T		SymPro Investments, Earnings Allocation module	Individual accounts are established for each pool participant. Balances can be imported from the GL.
62	Ability to record an estimated interest rate for pooled investments for the month.	M	T		SymPro Investments	
63	Ability to allocate interest earnings, including negative interest, based on average balances calculated from user defined to/from dates.	H	T		SymPro Investments, Earnings Allocation module	
64	Ability to allocate unrealized gain/losses resulting from fair valuation of pooled investments based on average balances calculated from user defined to/for dates.	H	T		SymPro Investments, Earnings Allocation module	
65	Ability to track interest receivable by fund/org.	H	T		SymPro Investments	
66	Ability to track FMV balances on a fund/org level.	H	T		SymPro Investments	
67	Ability to track historical cash flow activity.	H	T		SymPro Investments	
68	Ability to auto post interest distribution to the G/L module based on full accrual.	M	T		SymPro Investments, GL interface module	
69	Ability to auto post FMV adjustment to the G/L module.	M	T		SymPro Investments, GL interface module	
70	Ability to automatically record interest receivable and revenue to the General Ledger for all investments including the estimated pool investment interest monthly.	M	T		SymPro Investments, GL interface module	

71	Ability to reconcile the estimated versus actual interest income for pooled investments and automatically generate and record the appropriate journal into the General Ledger monthly.	M	T		SymPro Investments	SymPro calculates the estimated income based on the rates and balances in the system. Once interest is posted on these types of accounts, the actual amounts will be used throughout the system
72	Ability to determine and track interest income that considers situations in which portions of a pooled investment have been drawn down or added to the pool during the investment period such that the original, deposits and withdrawals activity can be tracked separately.	M	T		SymPro Investments	
73	Ability to post journal voucher entries in current month to the portfolio.	H	N			
74	Ability to record investment purchases.	M	T		SymPro Investments	
75	Ability to record investment complete sales.	M	T		SymPro Investments	
76	Ability to record investment partial sales.	M	T		SymPro Investments	
77	Ability to record investment interest earned by individual investment.	M	T		SymPro Investments	
78	Ability to record investment gain/loss (both realized and unrealized).	M	T		SymPro Investments	
79	Ability to record investment interest receivable.	M	T		SymPro Investments	
80	Ability to record rate changes.	M	T		SymPro Investments	
81	Ability to adjust investments to market (FMV).	M	T		SymPro Investments, Market Pricing Module	
82	Ability to record investment calls and partial calls.	M	T		SymPro Investments	
83	Ability to modify/adjust fields rather than reverse entries for investment activity with an audit trail of changes.	M	T		SymPro Investments	
84	Ability to generate and update required tables (Bank, Broker, Custodian, Security Types, etc.).	M	T		SymPro Investments	
85	Ability to manage multiple portfolios.	M	T		SymPro Investments	
86	Ability to auto-generate the security ID No.	M	T		SymPro Investments	Investment numbers can be auto-generated. Security ID's (CUSIP's) are manually entered.
87	Ability to create user defined portfolios.	M	T		SymPro Investments	
88	Ability to calculate amortization/accretion utilizing a user defined method (i.e., straight line, constant yield, etc.).	M	T		SymPro Investments	Straight line, constant yield are available
89	Ability to project interest payment dates, maturities and calls.	M	T		SymPro Investments	
90	Ability to calculate multiple yields (e.g. yields based on industry standards).	M	T		SymPro Investments	Yield to maturity, yield to call, effective rate of return
91	Ability to perform and print investment compliance review (comparing the portfolio to the policy) based on user-defined parameters.	M	T		SymPro Investments	Investment compliance review available through multiple reports by investment type, issuer, broker or custodian.
92	Ability to amortize discounts taken.	M	T		SymPro Investments	
93	Ability to track each fund's share of the investment portfolio.	M	T		SymPro Investments, Earnings Allocation module	
94	Ability to produce an investment ledger which contains a history of the investment.	M	T		SymPro Investments	
95	Reporting					
96	Ability to create an Interest Apportionment Report based on user defined dates:	M	T		SymPro Investments, Earnings Allocation module	
97	Ability to graph portfolio statistics (investment allocation, historical yields, etc.).	M	T		SymPro Investments	Some graphing capabilities are available in the system
98	Ability to generate historical reports.	M	T		SymPro Investments	
99	Ability to generate a Monthly Investment Report that includes the following:	-				
100	Individual investments within a particular portfolio including Book Value, Market Value and Maturity Date	M	T		SymPro Investments	
101	Listing of investments by fund type (Book Value)	M	T		SymPro Investments	
102	Listing of investments by broker/dealer (Par Value)	M	T		SymPro Investments	
103	Comparison of current month, previous month and current month previous year's rate comparing LGIP to the overall City investment portfolio rate.	M	N			
104	Comparison of Fed rates (3-month, 6-month, 1 year, 3 year, 5 year) for the current month and same month prior year to the overall City investment portfolio performance for that month	M	N			
105	Comparison of Portfolio size with increase/decrease amount as compared to same month in the previous year	M	N			

106	Interest income for current month (bonds, all else), YTD (bonds, all else) and prior year month and YTD (bonds, all else)	M	T		SymPro Investments	Two separate report would need to be run
107	Ability to generate GASB disclosures.	M	T		SymPro Investments	
108	Ability to generate the following reports:	-				
109	Bond Calls Report	M	T		SymPro Investments	
110	Investment Inventory by Type	M	T		SymPro Investments	
111	Investment Inventory by Maturity Date	M	T		SymPro Investments	
112	Purchases Report	M	T		SymPro Investments	
113	Sales Report	M	T		SymPro Investments	
114	Ability to perform a Maturity Analysis for the following scenarios:	-				
115	To stated Maturity	M	T		SymPro Investments	
116	To first call date	M	T		SymPro Investments	The next scheduled call is used in the analysis.
117	To final call date	M	T		SymPro Investments	The next scheduled call is used in the analysis.

Exhibit D

to

EMPHASYS SOFTWARE LICENSE AND SERVICE AGREEMENT

By and Between

Emphasys Software and Milwaukee County, WI, Licensee

Effective Date _____

Administrative Directive on Remote Network Access for Vendors

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Information Management Services Division

Department of Administrative Services

Title: Administrative Directive on Remote Network Access for Vendors **Issue Date:** 05/23/2017

Approval: Chief Information Officer

Supersedes: Based on Administrative Directive on Remote Network Access 09/17/2015

<p>Definitions:</p>	<ul style="list-style-type: none"> • County: Milwaukee County Government • Directive: This Administrative Directive on Remote Network Access for Vendors • Remote Access: a secure connection to the County network in order to access resources that are not otherwise publicly available, from a computer that is not directly connected to the Milwaukee County network. • Vendor: a party in the supply chain that provides goods and services to the County; a third party or independent business partner • User: Any person using Information System, including a Vendor employee, consultant, contractor, and agent who is authorized to use County Information System • IMSD Service Desk: Information Management Services Division Contact the Service Desk regarding requests, incidents, and approvals. Email imsdhelp@milwaukeecountywi.gov Phone 414-278-7888
<p>Purpose:</p>	<p>Directive defining the Vendor requirements for remote access to County networks and systems from outside networks, computers, and agencies, when not using Microsoft DirectAccess. Microsoft DirectAccess is a technology that is used to provide a transparent tunnel to the County network for IMSD managed computing devices, and is the County standard solution for remote access.</p> <p>Access to publicly available web services is not considered “remote access” for the purposes of this directive.</p>
<p>Requesting Remote Access:</p>	<p>All remote access must be justified by a business need. Requests that do not clearly specify the business need will be rejected. Remote access is granted on a least-privilege basis. That means that a valid request must also include the exact County resources that the requestor needs remote access to. Access will be granted to these resources only, and all change requests must go through the same procedure.</p>



Information Management Services Division

Department of Administrative Services

	<p>A request for remote access must be sent to the IMSD Service Desk and must include the following information for each individual person who will need access:</p> <p>Name, email address, contact phone number, company or agency, County resources to be accessed remotely, contract expiration date (if this need is based on a support or other contract with a defined end date)</p> <p>Each request will be reviewed by IMSD business analysts to validate the business need, and ensure that the collected information is complete and accurate. After this review is complete, and the business analyst approves the request, the IMSD Service Desk will send the County remote access agreement to be signed by all requestors. This will be placed on file prior to user accounts being created.</p>
<p>Security Requirements:</p>	<p>All user accounts for non-County users requesting remote access will be configured to be disabled at all times, unless an approved business need exists. When a User requires remote access for any purpose, they will need to contact the IMSD Service Desk (see Definitions section) and provide the reason they are accessing the network. This will be reviewed, and if valid, the user account will be enabled for the appropriate amount of time based on the need.</p> <p>In cases where an approved business need exists for the account to be kept enabled, an expiration date will still be applied for no more than a one year duration. After each year the account shall be reviewed to ensure that the business need is still valid, and contact information is still accurate.</p> <p>A virus protection product must be installed on all remote devices running Microsoft Windows as the operating system. This product must be receiving virus definition updates at an interval no longer than every day.</p> <p>Split tunneling (allowing access to the County network and to the remote user's local network simultaneously) will be disabled for all remote users unless an approved business need exists. Convenience in more efficiently accessing documents or data on the remote network is not an approved business need for the purposes of this section.</p> <p>All remote user accounts will be configured for password expiration.</p> <p>Remote Users are not permitted to share their login credentials, nor write them down or keep them in an electronic file in any unencrypted form.</p>



Information Management Services Division

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	<p>Remote Users are required to notify the IMSD Service Desk (see Definitions section) immediately when leaving their company or agency, changing roles that no longer requires remote access, contract expiration, loss or theft of a device that has been configured for remote access to the County network, or suspected loss or theft of user credentials and passwords. Vendors should also notify the IMSD Service Desk of any employee changes.</p>
<p>Web or Client Based Remote Access Tools:</p>	<p>Web or client based remote access tools (examples: LogMeIn, Teamviewer, GoToMyPC) are not allowed to be used on the Milwaukee County network without express written permission from IMSD. Permission will generally be granted for isolated, vendor-supported systems. Permission will generally be denied for general Milwaukee County PCs. To apply for permission to use a web or client based remote access tool please submit your request and business need to the IMSD Service Desk.</p>
<p>Change Management:</p>	<p>Milwaukee County enforces a change management process for all IMSD managed systems. Any change to production environments requires approval by this process prior to proceeding. Users are responsible for following this process when connecting to Milwaukee County systems. If a User is unfamiliar with this process, the User should work with the IMSD business analyst for the department for which they are working, prior to making any changes to systems. If the IMSD business analyst is not known, please contact the IMSD Service Desk (see Definitions section).</p> <p>All exceptions made to the user account disabled rule will require the remote access requestor to read, understand, and comply with on the Milwaukee County change management process.</p>
<p>Approved Business Need:</p>	<p>All exceptions to this directive, or any subsections that require an “approved business need”, will be approved by the following process: 1) exception submitted to IMSD business analyst for the requesting department/division; 2) if business analyst agrees, request will then be submitted to Connectivity manager and reviewed; 3) if manager agrees, request will be submitted to CTO for final approval.</p>
<p>Contact:</p>	<p>IMSD Service Desk at imsdhelp@milwaukeecountywi.gov or call 414-278-7888. Urgent requests or security incidents should be reported via phone call for the fastest response.</p>



Information Management Services Division
Department of Administrative Services

MILWAUKEE COUNTY
ADMINISTRATIVE DIRECTIVE ON REMOTE NETWORK ACCESS FOR VENDORS

2017

VENDOR STATEMENT

_____ (Vendor name) acknowledges to be in receipt of the Milwaukee County Remote Network Access Directive for Vendors, and that this Directive applies to all Vendor employees, consultants, contractors, and agents who will be part of the Milwaukee County engagement. Violations of these obligations to adhere to this Directive may result in Milwaukee County taking action that will deny Vendor access or rights to any of Milwaukee County's technology resources. Progressive steps of corrective action may include termination of the Milwaukee County engagement.

My signature on this Directive shows that I have read and received a copy of this directive from the Milwaukee County representative.

* * *

Signature of Company representative

Printed name of Company representative

Date

Exhibit E

to

EMPHASYS SOFTWARE LICENSE AND SERVICE AGREEMENT

By and Between

Emphasys Software and Milwaukee County, WI, Licensee

Effective Date _____

Administrative Directive on Acceptable Use for Vendors

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Information Management Services Division

Department of Administrative Services

Title: Administrative Directive on Acceptable Use for Vendors **Issue Date:** 05/23/17
Approval: Chief Information Officer **Supersedes:** *Based on*
 Acceptable Use Directive 05/01/2015

<p>Definitions:</p>	<ul style="list-style-type: none"> • County: Milwaukee County Government • Directive: This Administrative Directive on Acceptable Use for Vendors • Information System: Hardware, Software, Data, Networks, Portable Devices and any other County data processing infrastructure, equipment, technology, components, information or material of any sort. <ul style="list-style-type: none"> ○ Hardware: Physical data processing components, goods or equipment of any sort owned or controlled by the County. Hardware includes Portable Devices. ○ Software: Data processing programs on or associated with Hardware, irrespective of where software resides or executes. ○ Data: Information, communication, material or graphics of any sort stored or transmitted electronically via the Information System. ○ Networks – Connecting systems that allow the Information System to communicate. This includes wireless networks. ○ Portable Devices – County portable Hardware, including cellphones, tablets and laptops. • Vendor: a party in the supply chain that provides goods and services to the County; a third party or independent business partner • User: Any person using Information System, including a Vendor employee, consultant, contractor, and agent who is authorized to use County Information System • IMSD Service Desk: Information Management Services Division Contact the Service Desk regarding requests, incidents, and approvals. Email imsdhelp@milwaukeecountywi.gov Phone 414-278-7888
<p>Purpose:</p>	<p>This Directive sets out acceptable uses of the County’s Information System for Vendors and Vendor-specific Users.</p>



Information Management Services Division

Department of Administrative Services

<p>IMSD Principles:</p>	<p>Everything on the Information System, whether job-related or personal, belongs to the County. The County is the sole owner of the Information System and all Data.</p> <p>The Information System is owned and controlled by the County and is provided to further the efficient operation of the County’s business. The Information System is not provided for inappropriate uses or for the personal convenience of Users.</p> <p>Users have no expectation of privacy when using the County Information System. The County Information System is subject to search at any time by the County or its agents, without notice to or permission of Users.</p> <p>All Data, whether or not “personal,” is subject to the County’s monitoring, review, deletion or collection at any time, without notice or permission, to ensure compliance with this Directive, to comply with law enforcement requests, to complete an investigation, to defend the County in legal proceedings, to comply with open records requests or for any other reason consistent with the law. This includes documents, emails, texts, instant messages, graphics, photos or any other items.</p> <p>Any Data or Software created by a User in the scope of or related to the User’s engagement or work for the County becomes the property of the County upon creation and must not be copied or shared except to assist the User in the performance of his or her County work.</p>
<p>Accountability and Enforcement:</p>	<p>All Vendors will be required to acknowledge and sign this Directive. Vendors may sign collectively for all Users under their management and oversight. Vendors must use due diligence to ensure these Users who are providing County support or services are trained in and are continuously compliant with this Directive.</p> <p>Failure to comply with this Directive will constitute action outside the scope of the Vendor’s County engagement or obligations and may result in denial of access to the Information System. Failure to comply may also result in County actions up to and including termination of the Vendor’s engagement.</p> <p>Federal law may also apply when the crime is committed on a computer or communications device that communicates to another device outside of the state.</p>



Information Management Services Division

Department of Administrative Services

User Procedures and Conduct:

1. The Information System

a. Access

- i.* Only authorized Users may use the County Information System, and only through their own usernames, passwords and other means made available by the County.
- ii.* Users must not knowingly share or allow the use of usernames and passwords with anyone, whether or not another User.
- iii.* Users may access, use or share Data only to the extent authorized and necessary to fulfill assigned job duties.
- iv.* Users are accountable for all work, transactions and communications under their usernames and passwords.
- v.* Users are expressly prohibited from pursuing unauthorized access to restricted areas of the Information System and from accessing or trying to access, copy, alter or delete the Data of any other User without authorization.
- vi.* Users requiring job access to material or sites otherwise prohibited under this Directive may submit a specific written request, approved by management, to IMSD for consideration.

b. Inappropriate Activity

- i.* Users are expressly prohibited from accessing, displaying, downloading or distributing any Data or material of any sort that could be deemed pornographic, racist, sexist, defamatory, discriminatory, harassing or otherwise offensive or in violation of County policies, resolutions or ordinances, state or federal law, or any other applicable law
- ii.* Users are expressly prohibited from using the County Information System to attempt to probe, scan, disable, overload or breach the security or authentication measures of any system or Network, either internally or externally.
- iii.* Users are expressly prohibited from knowingly introducing or propagating any computer virus or other harmful feature in the Information System. Users must use extreme caution when clicking on links or opening e-mail attachments received from unknown senders, which may contain malicious content. A User who becomes aware of a virus or other harmful feature must immediately disconnect from all Networks, cease using the Information System and immediately report the discovery to the IMSD Service Desk (see Definitions section).



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c. Software

- i.* Only Software owned, licensed or authorized by the County may be installed or used on the Information System. Users are expressly prohibited from installing or attempting to install unauthorized Software.
- ii.* Users must not download Software from the Internet unless specifically authorized to do so by IMSD. Users must not download or distribute pirated Software or Data.

d. Data and Physical Security

- i.* Users must store all County-related Data in County designated storage locations where it can be backed up. No personal, non-County Data is to be stored on the Information System nor should the Information System be used to collect, store, transmit or transfer any type of personal data and information.
- ii.* Any theft, loss or unauthorized disclosure of Data must be reported immediately to the IMSD Service Desk (see Definitions section).
- iii.* Any Data or material, including personal material, that is stored on the Information System is not private and is subject to County access and disclosure at any time, including to comply with law enforcement requests, to complete an investigation, or to defend the County in legal proceedings.
- iv.* Users must take adequate steps to protect the physical security of the Information System by ensuring Portable Devices are securely stored when not in use and workstations are locked when left unattended. Any theft or loss of Hardware must be reported immediately to the IMSD Service Desk (see Definitions section).
- v.* Users must preserve all Data required to be retained under applicable law, resolution or policy. This includes emails, texts and, where possible, instant messaging where applicable.
- vi.* Users who maintain “isolated” Data such as safe combinations, alarm codes, domain name registry passwords, administrative passwords, off-site storage access codes, etc., must contact the IMSD Service Desk (see Definitions section) to ensure that duplicate copies of the information are securely maintained.



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e. Portable or mobile Hardware

- i.* Users who have been issued County Portable Hardware (such as BlackBerrys, smartphones, tablets, or network access devices) or access the County Information System remotely through any other personally owned Hardware that is approved by IMSD must ensure they are protected with a password or a passcode, and must secure the equipment when left unattended.
- ii.* The theft or loss of any County- or personally-owned portable or mobile Hardware (such as BlackBerrys, smartphones, or tablets) that accesses the County Information System remotely must be reported immediately to IMSD Service Desk (see Definitions section).
- iii.* Users using County Portable Hardware must comply with applicable laws and ordinances restricting mobile device usage while driving.
- iv.* Users are not allowed to use mobile devices while operating a vehicle even where it is legal to do so.

2. Email and Texting, Instant Messaging, Social Media and Internet

a. General

- i.* Users must not send sensitive or confidential Data over the Internet or via email without adequate protection securing the Data. Examples include credit card numbers, telephone calling card numbers, fixed passwords, health information or customer account numbers which relate to personal identification information or personal health information.
- ii.* The Information System, including email, texting, etc., is not to be used to convey non-work-related information other than described in the section on ***Incidental Personal Use***.



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b. Email and Texting

- i.* Users must take particular care when using email or texting as a means of communication because, although often informal in nature, email communications may be subject to production in a legal action or Public Records request.
- ii.* Users must not knowingly distribute or forward hoax virus warnings, chain letters, jokes, political commentaries, or similar unsolicited email or texts of any kind.
- iii.* Users must not access any other User's email or texts without explicit authorization from that User (e.g. through Outlook delegates) or proper management permission.
- iv.* Users must not send any email or text purporting to come from another User without explicit authorization from that User (e.g., through Outlook delegates).
- v.* Due to their disruptive effect, system-wide or "all user" messages or blasts are prohibited, except as part of the County's authorized emergency response efforts. Please note the County intranet may provide a suitable location for information of interest to all employees.

c. Instant Messaging

- i.* Users may access approved instant messaging services only for informal business communication similar to a quick phone call or quick in-person verbal communication, unless the content of the messages is subject to an instruction to preserve records and electronically stored information.
- ii.* Users may not send or receive file attachments via instant messaging services.
- iii.* Users must communicate only with known and trusted correspondents via instant messaging
- iv.* Instant messages should not be used to transfer or record any substantive government information, because instant messages are not normally stored or saved.



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	<p>3. Internet and Intranet</p> <p>a. Business Internet Access</p> <ul style="list-style-type: none"><i>i.</i> When visiting an Internet site, information identifying a User's PC may be logged (i.e. cookies, temp files). Therefore, Users must assume they are identified as County employees or contractors and act appropriately at all times.<i>ii.</i> Users must not access websites, blogs, discussion forums, chat rooms or other locations that are in appropriate or have any content that could be construed as defamatory, harassing or otherwise offensive (e.g. pornography, bullying) or in violation of County policies.<i>iii.</i> Users must always exercise caution when using a County e-mail address to join networking sites. While such use may be appropriate as part of job duties for some (e.g. LinkedIn), for others this may not be the case.<i>iv.</i> Users accessing a web site must comply with its terms and conditions. Users may not infringe copyrights or other protections.<i>v.</i> Users may not use the Information System to download, play or store personal photographs, music or video files (e.g. MP3, MP4) due to capacity, copyright and legal issues. Personal photographs, music and video files will be deleted from County servers when found. Users may not stream video or audio (e.g., Internet radio, Pandora, sports video) whose content is not directly related to the business of Milwaukee County Government.<i>vi.</i> The County routinely blocks access to Internet sites that are deemed to be inappropriate or to pose an information security threat to the County. Access is prohibited. Any attempts to access blocked Internet sites are monitored and recorded. Persistent attempts to access blocked sites may result in discipline or termination.<i>vii.</i> The County may monitor and disclose User's Internet activity to ensure compliance with this Directive or for any other purpose permitted or required by law. <p>b. Social Media or Networking Sites</p> <ul style="list-style-type: none"><i>i.</i> Users must be mindful of, and clear about, the capacity in which they are participating. Only authorized County spokespersons
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	<p>should make statements on social media sites on behalf of the County.</p> <ul style="list-style-type: none"><i>ii.</i> Social media or networking sites may be accessed only as needed for the User's job. Personal use of social media on the Information System is prohibited.<i>iii.</i> Interactions on social media or networking sites must comply with all County policies. <p>4. Incidental Personal Use</p> <ul style="list-style-type: none"><i>i.</i> Incidental Personal Use of the Information System consists of occasional, brief use of the Information System (including email or Internet) for short, routine, non-sensitive, non-confidential communications. For illustration, this might include: an email to check on a child's arrival home from school, an email to meet someone for lunch, a <u>quick</u> check of the Internet for weather or news.<i>ii.</i> Incidental Personal Use is permitted. This use is at the absolute discretion of the County and no User may expect or claim such personal use as a right or expect such use to be private. Excessive use or other abuse may result in discipline or termination.<i>iii.</i> Incidental Personal Use is not allowed if it interferes with the performance of the User's duties, exposes the County to expense or liability, or is unlawful for the County. <p>5. Prohibited Uses</p> <p>In addition to prohibited activity set out elsewhere, the following are also expressly prohibited:</p> <ul style="list-style-type: none"><i>i.</i> Users are prohibited from using the Information System for solicitations for outside organizations, political or religious causes, or with the operation or management of any business other than that of the County.<i>ii.</i> Users are prohibited from using the Information System for personal online shopping, personal online sales, or other online transactions. Users <u>may</u> use the Information System for occasional, <u>brief</u> access of online services such as online banking, using the User's personal email and account information.<i>iii.</i> Users are strictly prohibited from using County email addresses for non-County business. For example, a County email address may <u>not</u> be used for personal online shopping or financial transactions, personal blog or bulletin board memberships, personal email alerts
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	<p>from merchants or teams, etc., or as part of a payment such as PayPal.</p> <ul style="list-style-type: none"> <i>iv.</i> A County email address may <u>not</u> be used as a User’s personal address for: Facebook, social media, Twitter or similar services, online subscriptions, game systems, online gaming or gambling, couponing, or contests and sweepstakes. <i>v.</i> Use of the Information System for gambling of any sort (including “social” gambling or office pools), games of chance or games of skill, online video games, lotteries, or sweepstakes is strictly prohibited. <i>vi.</i> Personal, offensive or inappropriate use of webcams, video conferencing equipment, recording devices or microphones is prohibited.
<p>Reporting Violations:</p>	<p>Users are required to report violations, or suspected violations of the Acceptable Use directives. Violations may expose the County to a host of legal and information security risks. Activities that should immediately be reported to the IMSD Service Desk include, but are not limited to:</p> <ul style="list-style-type: none"> ○ attempts to circumvent established computer security systems ○ use or suspected use of virus, Trojan horse hacker programs or any other intrusive program ○ obtaining or trying to obtain another User's password ○ using the computer to make harassing or defamatory comments or to violate Milwaukee County's Harassment Policy or Milwaukee County Civil Service Rules ○ illegal conduct of any kind. <p>Reported violations will be investigated. Failure to adhere to this reporting policy may result in discipline, up to and including discharge.</p> <p>Users who, in good faith, report violations or suspected violations will be protected from retaliation. However, Users who falsely accuse another of violations without a good faith basis for such accusation are also subject to discipline, up to and including removal from Vendor engagement.</p>
<p>Contact:</p>	<p>IMSD Service Desk at imsdhelp@milwaukeecountywi.gov or call 414-278-7888</p>



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**MILWAUKEE COUNTY
ADMINISTRATIVE DIRECTIVE ON ACCEPTABLE USE FOR VENDORS**

2017

VENDOR STATEMENT

_____ (Vendor name) acknowledges to be in receipt of the Milwaukee County Administrative Directive on Acceptable Use for Vendors, and that this Directive applies to all Vendor employees, consultants, contractors, and agents who will be part of the Milwaukee County engagement. Violations of these obligations to adhere to this Directive may result in Milwaukee County taking action that will deny Vendor access or rights to any of Milwaukee County's technology resources. Progressive steps of corrective action may include termination of the Milwaukee County engagement.

My signature on this Directive shows that I have read and received a copy of this directive from the Milwaukee County representative.

* * *

Signature of Company representative

Printed name of Company representative

Date

Exhibit F
to
EMPHASYS SOFTWARE LICENSE AND SERVICE AGREEMENT

By and Between
 Emphasys Software and Milwaukee County, WI, Licensee
 Effective Date _____

Service Level Agreement

1 Severity Levels

1.1 Definitions

In an effort to assign resources to incoming calls as effectively as possible, we have identified four types of call severities, 1, 2, 3, and 4. A Severity 1 call is deemed as an Urgent Priority call, Severity 2 is classified as a High Priority, Severity 3 is Medium Priority, and Severity 4 is Low Priority. The criteria used to establish guidelines for these calls are as follows:

Severity Levels	Definition
Severity 1	The total unavailability of the production application, or a repeatable malfunction within the production application causing impact to business operation if not promptly restored. <ul style="list-style-type: none"> ▪ System Down (Software Application) ▪ Program errors without workarounds ▪ Aborted postings or error messages preventing data integration and update ▪ Performance issues of severe nature impacting critical processes
Severity 2	Reproducible issues that affect the functioning of components within the application, or data inconsistencies with no work around available. <ul style="list-style-type: none"> ▪ Calculation errors impacting a minority of records ▪ Report calculation issues ▪ User Security/Permission issues ▪ Workstation connectivity issues (Workstation specific)
Severity 3	Reproducible or intermittent Issues that affect the functioning of components within the application, or data inconsistencies. Workaround available. <ul style="list-style-type: none"> ▪ Usability issues ▪ Performance issues not impacting critical processes ▪ Report formatting issues ▪ Training questions, how to, or implementing new processes ▪ Recommendations for enhancements on system changes
Severity 4	Requests for information, assistance on application capabilities, and other requests that do not fit the criteria for Severity 1, Severity2, or Severity 3. <ul style="list-style-type: none"> ▪ Questions about documentation ▪ Requests for documentation or information ▪ Questions about products

	▪ Aesthetic issues
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2 Service Levels
 2.1 Response Time

Severity Levels	Response Time	Update/ Resolution Time
Severity 1	1 - 4 Business Hours	Updates every 2 hours with resolution within 1 Business Day
Severity 2	1 - 8 Business Hours	Updates every 2 hours with resolution within 2 Business Days
Severity 3	1 - 5 Business Days	Updates every 48 hours with resolution within 10 Business Days
Severity 4	1 - 10 Business Days	Answer within 3 Business Days

- Response times are not applicable during office closure for published holidays, or natural disasters.
- In the event that Emphasys is unable to provide resolution within the below stated time, and Licensee’s system is not available due to Emphasys omission to provide a resolution to the above mentioned Severity Levels issues raised by Licensee, Emphasys shall apply service level credits as follows:

Response Time. If Emphasys does not meet the Severity 1 or 2 resolution time requirements set forth above, the Licensee shall be entitled to a credit of \$500 per eight hours the Licensee does not get a resolution of such Severity 1 and 2 defects.

Notwithstanding anything contained in this section, Licensee shall not be entitled to any credits in respect of any error, failure or default in the Software to perform in accordance with its documentation that is caused solely by and results from any of the following circumstances: (a) use of the Software in other than the manner for which it was intended; (b) any installation, integration, modification or enhancement of the Software by or on behalf of Licensee that is not carried out by Emphasys or its authorized agent; (c) Licensee providing improperly formatted data to be processed through the Software; (d) any use or combination with any software, equipment or services other than compatible software or which was not supplied by or on behalf of Emphasys or approved by Emphasys (Emphasys confirms that its Software may be integrated and used with Licensee’s other existing software and certain software licensed as part of the ERP Solution that is to be implemented under the Software Implementation Services Agreement by Infor.); (e) Licensee’s failure to install a new Update which has been released to remedy an error or bug, and which Emphasys has stated to Licensee is a required Update necessary for security purposes or for legislative compliance purposes; or (f) Licensee’s failure to upgrade hardware to meet the demands of any Release that has been implemented by Licensee and which upgrade Emphasys has notified Licensee in writing is required for utilization of the Release at least 1 calendar year prior to such Release.

Request for Credit. Any request for credit under this Section must be made within fifteen (15)

days of performance failure following the month in which the failure occurred, and shall include date time and duration of the interruption. In instances of uncertainty or dispute as to whether an actual service interruption has occurred, the parties shall make a joint determination with respect to the uncertainty and/or dispute, in good faith, based on its review of data provided by system logs, monitoring reports and configuration records, which Emphasys shall make available to Licensee, at Licensee's request. Emphasys shall provide such data to dispute any credit requests within fifteen (15) days of Licensee's submittal of such request.

Any credit issued for performance failure under the Section shall be computed and applied as a credit against any Annual Support and Maintenance Services Fee. If the computed credit exceeds required Annual Support and Maintenance Services Fee in any fiscal year, the credit shall be applied against the subsequent Annual Support and Maintenance Services Fee.