

LMS HOSTING AGREEMENT

1.	<u>Parties</u>	MAINTSTAR MaintStar, Inc. 28 Hammond, Unit D Irvine, California 92618 Attention: Contracts P: 949.458.7560 F: 949.458.7626 e-mail: sales@maintstar.com	CUSTOMER OR AGENCY Lake Havasu City 2330 McCulloch Blvd. N Lake Havasu City, AZ 86403 Jeff Thuneman, C.B.O. P: 928-854-0714 F: e-mail: ThunemanJ@lhcaz.gov
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This Hosting Agreement (“HA”) is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination

- 2.1 **Term** This agreement will be effective after both parties sign and will continue for twelve (12) months and continues automatically when the Customer elects to extend maintenance coverage for at least five (5) annual terms by paying to MaintStar the fees associated when due.
- 2.2 **Hosting Fees** Hosting fees are included in maintenance coverage and in the annual maintenance fee. This Hosting agreement offers the Customer compensation if certain system availability and performance standards are not maintained (see Section 3.5).
- 2.3 **Termination** Either party may terminate if the other party materially breaches this HA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Customer may terminate this LA without cause and for convenience upon ninety (90) days’ written notice directed to Maintstar. Upon any termination or expiration of this HA, all rights granted to Customer are canceled and revert to MaintStar.

3. Hosting Services

- 3.1 **Scope of Hosting Services** MaintStar will provide the hosting services described in this Section and in Exhibit A for the following software products (“Hosted Applications”):
MaintStar LMS Enterprise Software
- 3.2 **System Administration and Security** The Hosted Applications will be hosted by MaintStar on MaintStar - leased equipment at a physically-secure commercial third-party hosting facility. MaintStar will perform system administration duties as required to maintain the service levels described below and to facilitate timely restoration of Customer’s data and operations, if necessary, following unanticipated interruptions of the Hosted Applications. MaintStar will implement suitable network security measures to minimize the likelihood of unanticipated interruptions of the Hosted Applications.

- 3.3 **Infrastructure Availability** MaintStar will endeavor to provide Customer with no less than twenty-four (24) hours' notice prior to Hosted Applications unavailability due to planned maintenance (other than during MaintStar's standard maintenance window between the hours of 9:00 PM [21:00] Thursday and 1:00 AM [1:00] Friday Pacific time); MaintStar will endeavor to provide as much notice as is practicable under the circumstances for updates and fixes which must be applied on a more urgent basis. MaintStar will provide five (5) business days' notice prior to any planned network, server hardware, operating environment, or database modifications of a material nature. Excluding the foregoing events, MaintStar warrants that the Hosted Applications will be generally-available no less than ninety-nine point nine percent (99.9%) of each calendar month. For each calendar month during which the availability of the Hosted Applications does not achieve the established standard, MaintStar will provide a credit to Customer's account as liquidated damages calculated pursuant to Subsection 3.5 below, provided that the substandard availability is identified by Customer in writing or by e-mail to MaintStar and can be objectively verified. Credits accumulated pursuant to this Section may be applied to additional MaintStar products and/or services, but will not be refunded to Customer.
- 3.4 **Warranty** MaintStar will commence and complete the obligations described in this HA in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of MaintStar's industry, to ensure that the operation and availability of the Hosted Applications does not materially differ from documented specifications. MaintStar may make repeated efforts within a reasonable time period to resolve operational issues. When an operational issue cannot be resolved, Customer's exclusive remedy will be damages in an amount equal to the total of hosting fees paid to MaintStar for the defective or non-conforming software products amongst the Hosted Applications during the twelve (12) calendar months immediately preceding the occurrence of the unresolved operational issue.
- 3.5 **System Availability and Performance** The performance requirements for the hosted system, excluding planned maintenance downtime, are set forth below. Uptime is calculated on a calendar month basis as $U = O / (M - P) * 100$, where U is Uptime as used in the table below, O is the amount of operational uptime for the hosted system during a given calendar month, M is the number of minutes in said calendar month, and P is the number of minutes of planned downtime during said calendar month.

Uptime	Credit
Greater than or equal to 99.9%	None
Less than 99.9% but greater than or equal to	15% of pro-rated monthly hosting
Less than 99.0% but greater than or equal to	35% of pro-rated monthly hosting
Less than 95.0%	100% of pro-rated monthly hosting

4. **Customer Property**

Customer warrants that it exclusively owns its data and that it has both the right and the authority to provide such data to MaintStar. Customer retains full ownership of its data and grants to MaintStar a limited, nonexclusive, nontransferable license to use said data only to perform MaintStar's obligations in accordance with the terms and conditions of this HA. Throughout the term of this HA, upon the request of Customer, MaintStar will provide Customer with:

- (i) a copy of its data in an SQL database dump file, not more than once per calendar quarter,
- (ii) an LMS (land management data) property conversion upload, not more than twice per annual term, and
- (iii) a Crystal Report placement, not more than two (2) times per annual term.

Within thirty (30) calendar days following termination or expiration of this HA, Customer may request that MaintStar provide a complete copy of Customer's data, as such may be updated or modified by Customer's use of the Hosted Applications, to Customer in a machine-readable format. MaintStar will comply in a timely manner with such request, provided that Customer a) pays all costs of and associated with such copying, as calculated at MaintStar's then-current time-and-materials rates; and b) pays all unpaid amounts due to MaintStar. If Customer elects to transition to another hosting option, including self-hosting or hosting by third parties, MaintStar will assist Customer during such transition to ensure uninterrupted access to Customer's data and the Hosted Applications, provided that Customer pays all costs of and associated with such services, as calculated at then current hosting and/or time-and-materials rates, as applicable.

5. Compensation

- 5.1 **Hosting Fee** In exchange for the Hosting Services described herein above, Customer will pay to MaintStar a single annual recurring support fee which includes hosting services. Customer will pay to MaintStar the annual amounts plus CPI annual adjustment as specified in Exhibit A.
- 5.2 **Payment Terms** Amounts are quoted in United States dollars and do not include applicable taxes, if any. Customer will be responsible for payment of all federal, state or provincial, and local taxes and duties, except those based on MaintStar's income. If Customer is exempt from certain taxes, Customer will provide MaintStar with an appropriate certificate of exemption. Customer will be invoiced for all amounts upon occurrence of the billing events described herein. The payment terms of all invoices are net thirty (30) calendar days from the dates of the invoices. MaintStar may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer.

6. Confidentiality

- 6.1 **Definitions** "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either MaintStar or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:
- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
 - b) information which is available to Recipient from a third party without violation of this HA or Disclosing Party's intellectual property rights;
 - c) information disclosed pursuant to Subsection 6.4 below;
 - d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
 - e) information which is subpoenaed by governmental or judicial authority;
 - f) information subject to disclosure pursuant to a state's public records laws.
- 6.2 **Confidentiality Terms** The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this HA ("Confidentiality Term").

- 6.3 **Confidentiality Obligations** During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.
- 6.4 **Confidentiality Obligations** During the term of this HA, including the term of any amendment hereto, MaintStar may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the MaintStar product(s) and services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on MaintStar web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of MaintStar's products or services without Customer's prior written authorization.

7. **Other Terms and Conditions**

- 7.1 **Limitation of Liability** MaintStar provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Application Services may be adversely affected by remedial or other actions performed pursuant to this HA; MaintStar bears no liability for and has no obligation to remedy such effects. Except as set forth herein, MaintStar provides all Hosting Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will MaintStar's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to MaintStar by Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if MaintStar or its agents have been advised of the possibility of such damages.
- 7.2 **Force Majeure** MaintStar provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Application Services may be adversely affected by remedial or other actions performed pursuant to this HA; MaintStar bears no liability for and has no obligation to remedy such effects. Except as set forth herein, MaintStar provides all Hosting Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will MaintStar's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to MaintStar by Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if MaintStar or its agents have been advised of the possibility of such damages.

- 7.3 **Dispute Resolution** This HA is governed by the laws of the State of Arizona. Any controversy or claim arising out of or relating to this HA, or the breach thereof, will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration will be Mohave County, Arizona. Either party may apply to the arbitrator for injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this HA, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. Each party will initially bear its own expenses and an equal share of the costs of the arbitration, but the prevailing party may be awarded its expenses, reasonable attorneys' fees, and costs. The failure of either party to object to a breach of this HA will not prevent that party from thereafter objecting to that breach or any other breach of this HA.
- 7.4 **Survival** The following provisions will survive the termination or expiration of this HA: Section 3.4, as to limitation of remedy; Section 5 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 6 and all subsections thereof with the exception of Subsection 6.4; and Section 7 and all subsections thereof with the exception of Subsection 7.2.
- 7.5 **Alternate Terms Disclaimed** The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.
- 7.6 **Severability and Amendment** If any particular provision of this HA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this HA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this HA will be effective unless it is described in writing and signed by the Parties.
- 7.7 **Conflict of Interest** This HA may be cancelled under Arizona Revised Statutes ("ARS") § 38-511.
- 7.8 **Forced Labor of Ethnic Uyghurs Certification** Maintstar certifies that it does not currently, and agrees for the duration of the HA that it will not, use: (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (3) any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Maintstar becomes aware it is not in compliance with this certification, it shall notify the Customer within five business days after becoming aware. This HA will terminate upon failure to remedy the noncompliance within 180 days of the notification. (A.R.S. § 35-394).
- 7.9 **No Boycott of Israel** Maintstar certifies that it is not currently engaged in, and agrees for the duration of this HA that it will not engage in, a boycott of goods and services from Israel, as defined in A.R.S. § 35-393.

AGREED AND ACCEPTED:

MaintStar ("MaintStar")

By

Printed

Title

Date

Customer or Agency ("The Customer")

By

Printed

Title

Date