



## EXECU/CARE SUPPORT AGREEMENT

Execu/Tech Systems, Inc., with principal offices located at 535 Harrison Avenue, Panama City, FL 32401, hereinafter referred to as "EXECUTECH", enters into a support agreement with \_\_\_\_\_, hereinafter referred to as "CUSTOMER". From this date forward, EXECUTECH will supply to CUSTOMER the services described in this agreement, with respect to the products described, for which EXECUTECH has granted a license to CUSTOMER pursuant to a software license agreement between EXECUTECH and CUSTOMER.

**1. Included Services** – Execu/Care support provides end user customers with access to EXECUTECH's technical support department for telephone and web based remote access support 24 hours a day/7 days a week for EXECUTECH software issues. Support of EXECUTECH software is only available for software written, or developed by EXECUTECH. Execu/Care does NOT provide support for networking questions, operating system questions for desktop environments (Microsoft Windows), or server operating system questions (Microsoft Server). This agreement does not apply to third party products that may be bundled with EXECUTECH products. Execu/Care support includes specific how to questions about the software, direction in correction of data entry errors, warranty service correcting issues within the software that are deemed as errors in development. Questions such as "How do I go through the night audit process?" or "How do I set up a new company?" are broad questions and considered training. EXECUTECH in its sole discretion will determine if a question or series of questions would be considered training needs as opposed to support issues.

**a. Free Software Upgrades** - Your Execu/Care support contract includes free updates to the software as long as the CUSTOMER's account is current. Training is included regarding changes that accompany the free updates. CUSTOMER is responsible for scheduling upgrades and training to learn and implement new features within the upgrades. CUSTOMER must maintain an active support agreement for six consecutive months before receiving free updates. Customer's who choose to deny a support agreement may still get upgrades at the current pricing plus an additional fee for training.

**b. Web downloads** for all maintenance updates and bug fixes.

**c. Priority Access to Support Resources** – Execu/Care covered customers will receive response and priority over non Execu/Care customers.

**d. Execu/Care price\*\*** is based on user licenses but customers who use excessive Execu/Care will be referred back to their account manager for the purchasing of additional training. At no time will Execu/Care provide post training, training services. Training is always a billable service.

### **2. Items NOT included are as follows:**

Execu/Care support does not include support in setting up or correcting your network configuration, setting up or restoring from backups, accounting questions or training and such support if requested is billable at our then current hourly rate.

**a. General Accounting, Legal, and Bookkeeping Questions**

**b. Software Training** – Training is billable. Only those that have been trained and authorized may call for support. Training is a scheduled service and is not available outside of EXECUTECH's normal business hours, with exception to on-site training which may be purchased.

**c. Hardware Problems** – Whether your hard drive has become full or PCs cannot see the network, hardware setup, configuration, operational systems for PCs and servers, these issues are not handled and will be immediately referred to your local IT provider.

**d. Reinstallation of Interfaces and Execu/Tech Software** – These issues will be billed at the then current rate. These issues also require scheduling and are only available Monday through Friday from 8:30am to 5:00pm (CST). Emergency situations can be handled with after hours emergency fees applied.

**e. Problems with Backup Drives and Software** – Although a nightly backup is required prior to night audit or end of day, support for your backup hardware and its associated software is the responsibility of your IT provider.

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### **3. EXECUTECH's Responsibilities**

- a.** EXECUTECH will use commercially reasonable efforts to assist CUSTOMER to resolve problems in its use of EXECUTECH products. EXECUTECH makes no guarantee that it can, or will, solve any problems with respect to the products presented by CUSTOMER, and further disclaims any warranties above and beyond any limited warranties expressly made by EXECUTECH in the software license agreement.
- b.** EXECUTECH will provide access on its website to all maintenance updates of products to CUSTOMER as soon as practical in the ordinary course of business after commercial release of the same. Upon request, EXECUTECH will ship CDs of the same to CUSTOMER at no charge.
- c.** EXECUTECH will provide CUSTOMER with maintenance updates, which, in EXECUTECH's sole determination, correct application problems that are reasonably likely to prevent substantially full utilization of product(s).
- d.** EXECUTECH will offer services for the then current version of product(s). For not less than twelve (12) months from the release date of the then current version, EXECUTECH will also offer services for the immediately preceding version of the then current version.
- e.** EXECUTECH's Execu/Care support is limited to telephone and remote access support.

### **4. CUSTOMER's Responsibilities**

- a.** Customer is responsible for hardware, operating systems, network setup, network maintenance and setup and use of any file access control systems.
- b.** Customer is responsible for ensuring that its personnel have sufficient training to attain and maintain competence in the operation of the products. Only trained and authorized employees by a property should call EXECUTECH's support department as non supported issues may result in billed professional services.
- c.** If EXECUTECH determines, in its sole discretion, in responding to a customer request for telephone support, that the solution is provided in the User Guide, EXECUTECH may direct CUSTOMER's personnel to the User Guide for the solution to the problem.
- d.** EXECUTECH reserves the right at its sole discretion to unauthorize an employee of CUSTOMER's property to receive support until they have met training requirements. Such employees will be referred to their supervisor.
- e.** CUSTOMER is required to maintain a remote access (Remote Desktop/VNC/Terminal Services/PC Anywhere) while CUSTOMER is covered by Execu/Care. CUSTOMER confirms by this agreement that a high speed internet connection (DSL/Cable Modem/T-1) will be provided at all times while CUSTOMER is covered by Execu/Care for remote access.
- f.** CUSTOMER understands that EXECUTECH will not issue access codes to accounts with outstanding balances.

### **5. Renewal**

- a.** This agreement will renew each calendar year unless EXECUTECH receives written notice 30 days prior to when CUSTOMER wishes to cancel.
- b.** CUSTOMER may not cancel or modify this agreement within the first twelve (12) month period. If CUSTOMER wishes to terminate this agreement prematurely, CUSTOMER agrees to a cancellation fee which may equal the remainder of the first twelve (12) month period.
- c.** This agreement applies to current company signing. If an ownership change takes place, new owner will need to contact EXECUTECH to receive new agreement. Ownership change fees may apply.

### **6. Maintaining Current Hardware/Software Levels**

EXECUTECH will at its discretion from time to time retire certain obsolete versions of our software. CUSTOMER is encouraged to maintain both hardware and software compliance. EXECUTECH reserves the right to discontinue or provide limited support to customers who do not maintain current hardware and software. CUSTOMER is responsible for the financial obligations of this agreement even if support has been limited or discontinued for CUSTOMER's failure to maintain hardware or software compliance with EXECUTECH's requirements. EXECUTECH's current hardware requirements can be reviewed at: <http://www.execu-tech.com/hardware.html>

### **7. Payment for Services**

Your EXECU/CARE monthly support is price is based on user licenses and EXECUTECH products that are purchased. Should CUSTOMER add additional licenses or EXECUTECH products, an amendment to the license and support agreement will be generated and made part to the rest of the terms of this agreement. Failure to pay

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Execu/Care charges will result in your account being placed in a "DO NOT SUPPORT" status. Technicians will not open new services tickets for accounts with past due balances. Hours spent on training, development, support for non Execu/Care covered issues, or any other service not specifically included within this agreement are billable at our then current hourly rate. CUSTOMER is aware that employees that call in for support may be advised that such services would be billable and approves payment for time spent resolving issues from any employee authorized to call in for support. CUSTOMER commits to prompt payment of all invoices presented for support services.

**8. Disclaimer/Limitation of Liability**

There are no warranties, express or implied, by operation of law or otherwise, relating to products or services furnished to CUSTOMER hereunder. EXECUTECH specifically disclaims and excludes all implied warranties, including without limitation those of fitness for a particular purpose, merchantability or non-infringement. No representation or other affirmation of fact, whether made by EXECUTECH employees or otherwise, which is not contained in this agreement will be deemed to be a warranty by EXECUTECH for any purpose or give rise to any liability of EXECUTECH whatsoever. In no event, shall EXECUTECH's maximum liability for all damages exceed actual direct damages caused by the specific product or service complained of, shall EXECUTECH's maximum liability. For all damages exceed the total amount of fees paid hereunder, or shall EXECUTECH be liable for incidental, consequential, exemplary, special or indirect damages, including but not limited to lost business profits and the loss, damage or destruction of data, even if EXECUTECH has been advised of the possibility of the same. No limitation as to damages for personal injury is hereby intended. Some states do not allow the exclusion or limitation of incidental or consequential damages under certain circumstances and the above exclusion or limitation may not apply.

**9. Miscellaneous**

EXECUTECH and CUSTOMER are independent parties, and nothing in this agreement shall be construed as making them partners or as creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any other obligations, express or implied, in the other party's name or on its behalf. All notices given under this agreement shall be effective upon receipt and shall be in writing and sent to the address of the other party set out at the beginning of this agreement or to any replacement address of which the other party has been given notice in accordance with this section. In no event shall either party be liable for any delay or failure to perform under this agreement which is due to causes beyond the reasonable control of such party. This document contains the entire agreement between the parties relating to the matters covered by it, superseding all other oral or written representations, understandings, proposals, or other communications between the parties. This agreement may be modified only by EXECUTECH. In the event that any portion of this agreement is modified, CUSTOMER will be notified with an amendment notice. If this agreement is for any reason void or unenforceable in any respect, such provision shall be without effect to the extent of the voidness or unenforceability without affecting such provision in any other respect and without affecting any other provision. No action, regardless of form, arising out of this agreement may be brought by either party more than one year after the cause of action has been or reasonably should have been discovered, or, in the case of an action for nonpayment, more than two years after the date the last payment was due. \*\*Price subject to change without notice. This agreement shall be governed by the substantive laws, but no the conflicts of laws provisions, of County of Bay in the state of Florida.

Sign: \_\_\_\_\_ Title: \_\_\_\_\_

Print: \_\_\_\_\_ Date: \_\_\_\_\_