

# Technical Support Services Agreement

This TECHNICAL SUPPORT SERVICES AGREEMENT ("Technical Support Services Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by fP Technologies, Inc., an Indiana corporation (referred to as "Supplier") located at 8383 Craig Street, Suite 270 Indianapolis, IN 46250, and \_\_\_\_\_, a company or individual located at \_\_\_\_\_ (referred to as "Customer").

WHEREAS, the Supplier is interested in providing fee-based support services to the Customer and the Customer is interested in receiving the services provided for in this Agreement.

NOW, THEREFORE, in consideration of their mutual undertakings, and other good and valuable consideration, the parties hereby agree as follows:

**STANDARD TERMS AND CONDITIONS:** The Customer agrees to all provisions of Supplier's' Standard Terms and Conditions, Form 100 which is herein incorporated by reference to this Agreement.

**PRICING:** The pricing for providing services under this agreement will be based on all of the Suppliers supported products that the Customer has purchased. Schedule A Support Contract Pricing is incorporated herein. In the event the Customer purchases additional supported products during the term of this Agreement, The Customer may purchase within 15 business days, contract coverage for the additional product at a pro-rated contract fee based on the shipment date of the additional product.

**PAYMENT:** Payment will be due in advance of the effective contract date. Payment for non-contract support services as specified in the support coverage clause will be paid before those services are rendered.

**TRAINING AND CONSULTING SERVICES:** The Customer will be eligible for a 20% discount off of the standard pricing for any Supplier provided Training or Consulting services.

**SERVICES PROVIDED:** Support services provided by the Supplier under the terms and conditions of this agreement will be limited to filePro® issues relating to the current supported versions only. These services are provided on a best effort basis. If it is determined to be a non-contract support issue such as hardware, application, or operating system issue, the Customer agrees to pay the then prevailing per-incident fee. Services provided under this Agreement will be preformed at a Supplier support services location. If on-site services are requested and performed by the Supplier, the Customer agrees that the services provided will be at the then prevailing non-contract rates or proposal rate.

Cooperation of the Customer. The Customer agrees to comply with all requests of the Supplier and to provide access to all documents and files necessary to the performance of the Supplier's duties under this Agreement.

Specific Services. The Supplier agrees to provide, on its own premises, free telephone consultation, instruction, or support (including installation, setup, troubleshooting, and operational information) as it pertains to the qualifying software product listed in Schedule A.

Method of Performing Services The Supplier will determine the method, details, and means of performing the above-described services.

**CONTRACT TERM:** This agreement will remain in force for a period of one year from the effective date. The agreement will automatically renew for an additional one(1) year period at the then prevailing support contract rates, unless terminated by either party in writing 30 days prior to the renewal date. Payments are due prior to the actual renewal date.

**ASSIGNMENT:** The Customer may not assign any rights hereunder without the prior written approval of the Supplier, and any attempt to assign any rights, duties, or obligations hereunder without the Supplier's written consent will be void. The Supplier may assign all or any part of its rights or obligations without the Customer's consent.

**DISCLAIMER OF WARRANTY:** THE SUPPLIER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH REGARD TO THE SERVICES PROVIDED HEREUNDER.

**LIMITATION OF LIABILITY:** IN NO EVENT WILL THE SUPPLIER BE LIABLE TO CUSTOMER OR ANY OTHER INDIVIDUAL OR ENTITY CONNECTED WITH CUSTOMER FOR ANY CLAIM, LOSS, OR DAMAGE OR ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE

OF THIS AGREEMENT OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE OF THE SOFTWARE, OR ANY FILES, DATA, OR OTHER COMPUTER SYSTEMS; (1) ANY SOFTWARE FAILURE; OR (2) ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR LOSS OR DAMAGE OF ANY KIND OR NATURE RESULTING FROM THE FOREGOING, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**PARTIAL INVALIDITY:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

**ARBITRATION:** Any controversy between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of this Agreement will, on the written request of one party served on the other, be submitted to arbitration. The arbitration will comply with and be governed by the provisions of the State of Indiana Code of Civil Procedure. The parties will each appoint one person to hear and determine the dispute and if they are unable to agree, then the two persons so chosen will select a third impartial arbitrator whose decision will be final and conclusive on both parties. The cost of arbitration will be borne in such proportions as the arbitrators decide.

**ATTORNEYS' FEES:** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

**GOVERNING LAW:** The parties hereby agree that any dispute regarding the interpretation or validity of, or otherwise arising out of, these standard terms and conditions for sale, or relating to the support hereunder shall be subject to the exclusive jurisdiction of the courts, and governed by the laws of, the State of Indiana without regard to that body of law controlling conflicts of law.

#### **TERMINATION OF AGREEMENT:**

Termination upon Notice. Notwithstanding any other provisions of this Agreement, either party hereto may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Unless otherwise terminated as provided herein, this Agreement shall continue in force for a period of one (1) year. The Customer will forfeit any and all moneys paid upon execution of this agreement.

Termination on Occurrence of Stated Events. This Agreement shall terminate automatically on the occurrence of (1) bankruptcy or insolvency of either party; (2) sale of the business of either party; (3) death of the Customer; or (4) assignment of this Agreement by either party without the express written consent of the other party.

Termination by the Customer for Default of the Supplier. Should the Supplier default in the performance of this Agreement or materially breach any of its provisions, the Customer, at the Customer's option, may terminate this Agreement by giving written notification to the Supplier.

Termination for Failure to Make Agreed-Upon Payments. Should the Customer fail to pay the Supplier all or any part of the fees set forth in this Agreement on the due date, the Supplier, at the Supplier's option, may terminate this Agreement if the failure is not remedied by the Customer within thirty (30) days from the date payment is due.

**NOTICES:** All notices and demands of any kind which Customer or Supplier may be required or desire to serve upon the other under the terms of this Agreement shall be in writing and shall be served by personal service or by mail at the address of the receiving party set forth above (or at such different addresses as may be designated by either party by written notice to the other party). All notices or demands by mail shall be by certified or registered mail, return receipt requested, and shall be deemed complete three days after mailing. Notices sent to Supplier shall be addressed to the attention of "Legal Services."

**UNENFORCEABLE PROVISIONS:** In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions of this Agreement shall remain in full force and effect, provided that in such event the parties agree to negotiate in good faith substitute enforceable provisions which most nearly effect the parties' intent in entering into this Agreement.

**WAIVER:** The failure of either party to enforce at any time, or for any period of time, the provisions hereof shall not be construed to be a waiver of such provisions or of the right of such party to enforce each and every such provision.

**ENTIRE AGREEMENT:** This Agreement, including any attachments hereto, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all written or oral agreements heretofore existing between the parties hereto are expressly canceled. Each party acknowledges that it is not entering into this Agreement on the basis of, and has not relied on, any representations not expressly contained herein. Any modifications of this Agreement must be in writing and signed by both parties hereto.

fP Technologies, Inc. Customer:  
by: \_\_\_\_\_ (,Title) By: \_\_\_\_\_ (,Title)

Print Names:  
\_\_\_\_\_ (,Title) \_\_\_\_\_ (,Title)

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

## Schedule A – Annual Support Fees

Checked Items are the current qualifying items covered under the initial contract term

### Group A [Check one of the choices]

filePro Single User	\$ 195.00	<input type="checkbox"/>
Network version 1-5 User	\$ 395.00	<input type="checkbox"/>
6-16 Users	\$ 595.00	<input type="checkbox"/>
17-32 Users	\$ 795.00	<input type="checkbox"/>
33-64 Users	\$ 1195.00	<input type="checkbox"/>
65–128 Users	\$ 2095.00	<input type="checkbox"/>
128 and above Users	\$ 3695.00	<input type="checkbox"/>

### Group B [Check all that apply]

fileProGI	\$ 200.00	<input type="checkbox"/>
fPcgi	\$ 150.00	<input type="checkbox"/>
fpSQL	\$ 150.00	<input type="checkbox"/>
HP-UX version of filePro	\$ 300.00	<input type="checkbox"/>
Sun version of filePro	\$ 300.00	<input type="checkbox"/>
AIX version of filePro	\$ 300.00	<input type="checkbox"/>

**Initial Contract Annual Fee:** \$ \_\_\_\_\_ **Due upon execution of this Agreement**  
**[Sum of all checked items]**

Non-contract Services to be provided at the current prevailing service rates as listed in Schedule B, Non-Contract Technical Services Rates.

These annual fees are subject to change without notice. The current prevailing fees will apply at contract renewal. In the event new qualifying products are added to this Agreement, the then contract fee will apply and will be pro-rated if the Customer requests this coverage.

## Schedule B - Non-Contract Technical Services Rates

Telephone Technical Support	\$ 85 per incident
Custom one-on-one training at fP Center	\$ 500.00 per student day
On-site Training/Consultation	\$ 1000.00 per student day plus expenses
Custom Programming Services [application specific programming]	\$ 150.00 per hour plus expenses
OS and/or Network services	\$ 150.00 per hour plus expenses

Travel expenses are not discountable.

These rates are subject to change without notice.