

# ConEst®

## Software Systems

### Software Maintenance and Support Agreement

CONEST CORPORATION, DOING BUSINESS AS CONEST® SOFTWARE SYSTEMS ("LICENSOR"), WILL PROVIDE SOFTWARE TRAINING, MAINTENANCE AND SUPPORT SERVICES TO YOU ("LICENSEE") ONLY IF YOU HAVE PLACED AN ORDER FOR SOFTWARE; ACCEPTED AN END USER LICENSE AGREEMENT ("EULA"); AND AGREED TO ALL TERMS AND CONDITIONS OF THIS SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT ("AGREEMENT"). PLEASE CAREFULLY READ THIS AGREEMENT BEFORE USING ANY CONEST® SOFTWARE PRODUCTS.

By clicking the "I Accept" button when you placed an order for the Software (as defined below), or by installing or using the Software, you have indicated that you have read and understand this Agreement and accept all terms. If you do not accept all the terms of this Agreement, do not click "I Accept," do not install the Software and do not use the Software.

**1. Purpose.** Licensee has purchased one or more software products ("Software") from Licensor, subject always to the terms and conditions of Licensor's End User License Agreement ("EULA"), and has also agreed to purchase at least one year of training, maintenance and support services from Licensor. This Agreement sets forth the terms and conditions pursuant to which Licensor shall provide those training, maintenance and support services to Licensee. The terms of this Agreement supplement the terms of the EULA. In the event of any direct conflict between the terms of this Agreement and the EULA, the terms of the EULA shall supersede and control.

**2. Initial Term; Automatic Renewals; Termination.** The term of this Agreement shall commence on the date that the Software is installed and shall remain in force for one (1) year (the "Initial Term"), provided that Licensee has paid the Licensor's Annual Software Maintenance and Support Fee ("Annual Fee"). Thereafter, this Agreement shall be automatically renewed for successive one-year terms (each such renewal term being a "Renewal Term") subject to Licensee's payment of the Annual Fee on or before the expiration of one year from the date of this Agreement or before the expiration of any subsequent Renewal Term, as the case may be ("Anniversary Date"). No later than thirty (30) days before each Anniversary Date, Licensor shall deliver to Licensee a notice of its then-current Annual Fee. Such notice shall be delivered via email to the Licensee's current email address as reflected in Licensor's records. In the event that Licensee fails to pay the Annual Fee on or before the Anniversary Date, this Agreement shall be deemed automatically terminated, provided however that at Licensor's option and subject to the payment by Licensee of the Reinstatement Fee, this Agreement may be reinstated after such termination. "Reinstatement Fee" shall mean the amount equivalent to the Annual Fees due from the date of such termination. This Agreement shall also be deemed to be automatically terminated, without any requirement of notice, if: a) either Licensor or Licensee terminates the EULA in accordance with the terms thereof; b) Licensee makes any unauthorized modifications, alterations, or integration of the Software into any other software application or program; c) Licensee makes, or attempts to make, any unauthorized sale of copies of the Software; or d) Licensee breaches any other material term of this Agreement or of the EULA.

**3. Training.** During the Initial Term, Licensor will provide Licensee with online training hours (see \* below) for each Software license purchased, up to a maximum of eight (8) online training hours per Initial Term for Software products purchased. Unused online training hours may not be carried over into subsequent Renewal Terms.

\* IntelliBid: Two (2) online training hours  
IntelliBid Plus: Three (3) online training hours  
IntelliBid Pro & DB: Four (4) online training hours  
JobTrac: Two (2) online training hours  
SureCount: One (1) online training hour

**4. Support Availability.** Licensor will provide Licensee with email, telephone and web-based support during normal business hours, which currently are Monday through Friday (excluding holidays) from 7:30 a.m. through 6:00 p.m. Eastern time. Licensor reserves the right to change its normal business hours and will notify Licensee of any such changes. In addition, product upgrades, training and support documents, and Licensor's online product knowledge base for answers to frequently asked questions are available at Licensor's Online Service Center 24 hours a day, seven days a week.

**5. Contact Information.** For email support, Licensee may contact Licensor at: [support@conest.com](mailto:support@conest.com). For telephone support, Licensee may contact Licensor at 800-662-7687.

**6. Licensee Responsibility.** Licensee's provision of support to Licensee is subject to Licensee's compliance with the following: Licensee shall insure that an appropriate SQL application is installed in its host processor(s) and that any modifications to the SQL application necessary for the Software to operate properly are made.

Licensee shall train (or have trained by Licensor) its personnel in the use and application of the software.

Licensee shall document and promptly report all errors or malfunctions of the software to Licensor, using one of the contact methods specified in Section 5 of this Agreement.

Licensee shall provide Licensor with access to Licensee's personnel and hardware if a problem Licensee is experiencing cannot be reasonably duplicated at Licensor's support facilities.

Licensee shall maintain a current backup copy of all of its content and data. In no event shall Licensor be responsible for any loss of Licensee's content or data, even if a Software problem or error causes the loss of the same.

Licensee is responsible for the protection of all data and content that may constitute or contain information protected by privacy laws, rules or regulations, or which may be confidential or proprietary. If Licensor or its authorized representatives need to access or to copy any such information during the performance of any support or other services, Licensee shall notify Licensor or its representatives of the protected nature of such information and devise a method for the protection of the same which is constituent with Licensee's legal obligations in this regard.

Licensee shall be responsible to reimburse all reasonable costs incurred by Licensor for any onsite assistance that is requested in writing by Licensee including travel, meals, and lodging.

**7. Software Problems and Errors.** Software problems and errors are generally addressed in the order in which they are reported to Licensor, but Licensor reserves the right to prioritize its responses depending on the seriousness of the issue and the manner in which it affects Licensee's use of the Software.

**8. Updates.** During the Initial Term and any Renewal Term of this Agreement, provided that Licensee is current in its Annual Fee and is not otherwise in breach of this Agreement or of the EULA, Licensor shall provide Licensee with updates to the Software on the same schedule that Licensor makes such updates generally available to its customers. Licensor typically provides one major upgrade to the Software per year, in addition to any required maintenance or security updates.

**9. Exclusions.** The training, maintenance and support services which are included with Licensee's Annual Fee will not include services or support requested as a result of, or with respect to, causes which are not attributable to Licensor. Support or other services which are required as a result of causes that are not attributable to Licensor will be billed to Licensee at Licensor's then-current rates. Causes which are not attributed to Licensor include, but are not limited to:

a) Any improvements, customizations, modifications, alterations or additions, or attempted improvements, customizations, modifications, alterations or additions, to the Software undertaken by persons other than Licensor or Licensor's authorized representatives to the Software, unless otherwise agreed to in a written agreement executed by Licensor and Licensee.

b) Accidents; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; failure of media or hardware not furnished by Licensor; excessive heat or cold; fire or smoke damage; or, any other factor other than ordinary use of the Software.

c) Installation or operation of the Software with other media, hardware, software or telecommunication interfaces not meeting or not maintained in accordance with the manufacturer's specifications.

d) Configuration of the Software or of other software programs required as a result of Licensee's unique technology environment.

e) Improper installation of the Software by or on behalf of Licensee.

f) Use of the Software for any purpose for which it was not intended or in a manner which deviates from any operating procedures established by Licensor in the applicable Documentation.

g) Support or service fees will also be charged for any work which Licensor agrees to perform at Licensee's request on any Software programs made by Licensee or by any third parties.

#### **10. Limited Warranty and Liability.**

Licensor warrants that the Maintenance and Support Services will be provided in conformance with the terms of this Agreement. Licensor does not make any other warranties, whether expressed or implied, whether regarding the performance of the Licensed Program or the services provided under this Agreement.

Licensee acknowledges and agrees that Licensor has not warranted that the installation or use of the Software protects Licensee from cyber threats such as ransomware, hacking, data theft, data loss or any other perils resulting from the unauthorized acts of any third party or from Licensee's own agents, consultants, contractors or employees.

Licensee further acknowledges and agrees that Licensor has not warranted that will be possible to recover any data or other content that Licensee inputs or generates during the use of the Software in the event any such data or other content is lost or corrupted.

LICENSOR SHALL NOT BE LIABLE IN ANY EVENT FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE LICENSED PROGRAM OR SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORT CONDUCT, INCLUDING NEGLIGENCE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO THE FOREGOING AND NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE CONTAINED, IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF THE LICENSOR IN CONNECTION WITH THIS AGREEMENT EXCEED THE MAINTENANCE AND SUPPORT FEE PAID BY THE LICENSOR IN THE SIX (6) MONTHS PRECEDING THE CLAIM.

**11. Assignment.** Licensee may not assign this Agreement to a third party without the prior written consent of Licensor, which may be withheld for any reason.

**12. General.** This Agreement, the EULA and any Quote issued by Licensor constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, and understandings between the parties regarding such subject matter. Any conflicting or additional terms in your purchase orders or in any of your other documentation are expressly rejected.

This Agreement may be modified only in writing, signed by authorized representatives of both parties. No use of trade, other regular practice, or course of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement.

No failure of either party to exercise any power or right hereunder or to insist upon strict compliance with the terms of this Agreement, and no custom or practice of the parties at variance with the terms hereof, will constitute a waiver of either party's right to demand compliance with the terms of this Agreement.

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, such provision will be severed from the Agreement, and the remainder of this Agreement will be valid and enforceable to the extent permitted by applicable law, provided that the intent of the parties is not materially impaired. The parties will use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by law, achieves the purposes intended under the invalid or unenforceable provision.

This Agreement is governed by the laws of the State of New Hampshire without regard to choice of law rules. You hereby agree that the federal and state courts located in said State shall be the exclusive forums in which any dispute arising hereunder may be litigated, and you further agree to submit to the jurisdiction of such courts and to accept service of process with respect to the same.

Except for the obligation to make timely payments, neither party shall be in default, or otherwise responsible or liable, for any delay in or failure of its performance under this Agreement if such delay or failure is caused by or due to any reason beyond its reasonable control, including without limitation strike, labor unrest, fire, flood, the elements, earthquake, act of God, governmental act or order or restriction, act of terrorism, war, epidemic, riot, failure or delay in transportation or communications or utilities, or any other reason where the delay or failure to perform is beyond the reasonable control of the non-performing party and is not due to its fault or negligence or to the act or failure to act of its officers, employees, agents, consultants or contractors.