Plan

DuVoice Software Support Agreement

DuVoice Software Support Agreement provides software upgrades and updates, as well as technical support and training. This agreement covers a specific DuVoice messaging system. This agreement is separate from and in addition to the DuVoice Warranty and DuVoice Extended Warranty policies. To be eligible for the Software Support Agreement, systems must be covered by the DuVoice Warranty or DuVoice Extended Warranty.

Software Upgrades and Updates

During the term of the Agreement, the system is eligible for any upgrades or updates released for that model by DuVoice. These upgrades and updates are generally made available as downloadable files, access to which is controlled by a system specific password. At its discretion, DuVoice may use other means to upgrade the system.

Technical Support

During the term of the Agreement, DuVoice Reseller technicians are entitled to technical support for an unlimited number of incidents. The End User is entitled to Technical support for up to three incidents per year. Technical support includes assistance via telephone from the DuVoice Technical Support Center. DuVoice technicians may also access the system via modem, or Internet access to diagnose problems and / or to assist in programming the system.

Technical Training

DuVoice Corporation provides regularly scheduled technical training for administration of our products. Classes are limited in size and are conducted over the Internet with a live instructor. Classes feature demonstrations as well as class participation. During the term of the Agreement DuVoice Reseller and End User employees are entitled to access any DuVoice training class on a first come, first served basis. In addition, DuVoice Reseller and End User employees have access to pre-recorded streaming classes available through the DuVoice web site.

Application Development

The DuVoice Reseller and End User are entitled to receive limited consulting support from DuVoice Corporation for ongoing assistance in developing applications for DuVoice products.

Limitations

Technical Telephone Support

Standard technical telephone support is provided from 8:00 AM to 5:00 PM Monday through Friday, Pacific time. Call back support for emergencies (i.e. more than 50% of ports not functioning) is available twenty-fours hours a day, seven days a week.

Remote Support

Support provided under the DuVoice Software Support Agreement is remote support. While DuVoice technicians have the ability to perform a wide variety of diagnostic, programming and software installation remotely, there may be occasions where physical components must be moved, changed, adjusted, or tested by an individual on site. In most cases, DuVoice personnel will advise DuVoice Reseller and End User employees in the successful completion of these tasks. In no event will DuVoice be responsible for providing physical on-site support under terms of this agreement.

PBX Programming

DuVoice technicians are knowledgeable in the programming and configuration of a variety of PBX systems and will generally be able to advise DuVoice Reseller and End-User employees in the best way to program and configure the telephone switch system. In no event will DuVoice be responsible for providing actual telephone switch programming.

Terms and Conditions

This DuVoice Software Support Agreement Terms and Conditions ("Agreement") is entered into as of the acceptance date by DuVoice between End User and DuVoice Corporation (DuVoice) with its principle business location at 608 State Street South, Kirkland, Washington 98033.

1.0 **DEFINITIONS**

1.1 "**Agreement**" means the Software Support Agreement ordered by the End-User or Reseller, these Terms and Conditions, and any applicable addenda.

1.2 "**System**" means the DuVoice system covered under this agreement.

1.3 "**End-User**" means the company or organization that owns the DuVoice System that is receiving support from DuVoice under terms of this agreement.

1.4 "**Reseller**" means the authorized installer / service provider of DuVoice Corporation System.

1.5 "**Software**" means those computer programs that the End User has licensed from DuVoice Corporation and any Software Update related thereto.

1.6 "**Warranty**" means the original one year software, hardware, Reseller support warranty package.

1.7 "**Extended Warranty**" means the extension of the software, hardware, Reseller support warranty package beyond the first year covered under the original Warranty.

1.8 "**Certified Technician**" means an individual employed by an authorized Reseller who has successfully completed DuVoice Technical Training for the Product.

2.0 **TERM AND TERMINATION**

2.1 **Term** The Term of this Agreement begins upon acceptance of this Agreement by DuVoice *and* receipt of funds by DuVoice, and shall continue for one (1) year from commencement date, unless the agreement is terminated for cause. The Agreement will automatically be extended for additional one (1) year terms thereafter and the End-User / Dealer will be billed for the Agreement unless one party gives at least thirty (30) days notice to the other party prior to the expiration of the current term of its intention that the Agreement expire at the end of its current term.

2.2 **Termination for Cause** Either party may terminate this Agreement for Cause if the other party: (a) fails to perform any material term or condition of this agreement and does not remedy the failure within thirty (30) days after receipt of written notice of such default, or (b) becomes insolvent, files or has filed against them a petition under applicable bankruptcy or insolvency laws which is not dismissed within ninety (90) days, or makes any other or similar agreements for the benefit of its creditors or takes any similar actions.

3.0 **ELIGIBILITY FOR SUPPORT**

3.1 **Under Warranty** To be eligible for the Software Support Agreement, the System must be currently covered under the original one year Warranty or subsequent Extended Warranty.

3.2 **Current Software** To be eligible for the Software Support Agreement, the System must contain the most current revision of DuVoice Corporation Software. The System must be installed and remain in an operations environment that is in accordance with the specifications set forth in the System Reference Guide provided with the System. These requirements include, but are not limited to Uninterruptible Power Supply, (UPS) installation, and modem / Internet access. *Systems or Software that have been modified without the prior written approval by DuVoice is not eligible for the End User Support Agreement.*

4.0 **RIGHTS AND OBLIGATIONS**

4.1 **DuVoice Access** End User shall cooperate with DuVoice Corporation and provide access to the System (either via modem or by Internet access).

5.0 **NO OTHER WARRANTIES**

5.1 There shall be no other warranties, expressed, statutory, or otherwise, including any implied warranty of fitness or any other obligation on the part of DuVoice Corporation with respect to any of the System, except that this Agreement does not alter the existing Warranty or Extended Warranty policy for the System.

6.0 **SERVICE EXCLUSIONS**

6.1 The following services are specifically excluded from the Software Support Agreement, however, DuVoice Corporation may provide them at the request of the End User for an additional charge:

6.1.1 Any work on the customer's PBX / KSU

6.1.2 Any services that, in the reasonable opinion of DuVoice Corporation are necessitated by the product being misused or used in a negligent manner, or used for other than its intended use or outside the environmental range specified by DuVoice Corporation.

6.1.3 Any service arising from the introduction of any computer viruses, worms, or spyware subsequent to shipment of the System from DuVoice.

6.1.4 Any services arising from the introduction of any unauthorized third party software programs to the System.

6.1.5 Any services arising from the unauthorized upgrade or change in the Operating System of the System

6.1.6 Any services to the System or the Software resulting from unusual external causes such as, but not limited to power failure, power surges, air conditioning failure, humidity, accident, fire, flood, or Act of God.

6.2 DuVoice will not perform moves, additions and changes to the End User's System. DuVoice Professional services can perform system programming for a fee. Contact DuVoice sales for details.

7.0 PAYMENT TERMS

7.1 **Payment for the Software Support Agreement is in advance.**

7.2 **Price Changes** DuVoice Corporation may change the EUSA price upon thirty (30) days written notice prior to the expiration of the current Term. As new Hardware or Software is added, the EUSA provided for such additional System or Software will be at the then current DuVoice list price, prorated for the balance of the current Term.

8.0 GENERAL

8.1 **Relationship Between Parties** This Agreement does not in any way create the relationship of principal and agent, or employer and employee between DuVoice Corporation and End User or Reseller, and under no circumstances, shall End User or Reseller be considered to be an agent or employee of DuVoice Corporation

8.2 **Entire Agreement** This Agreement supersedes and cancels any and all agreements between the parties hereto expressed or implied, with respect to end-user support of the System. This Agreement does not alter the existing Warranty or Extended Warranty policy for the System. This Agreement may not be changed, altered, or amended except in writing signed by both parties.

8.3 **Force Majeure.** DuVoice Corporation shall not be liable under the provisions of this Agreement for damages on account of strikes, lockouts, accidents, fire, delays in manufacturing, delays of carriers, Acts of God, governmental actions, state of war, or any other causes beyond the control of DuVoice Corporation.

8.4 **Non-waiver** the failure or refusal by DuVoice Corporation either to insist upon the strict performance of any provision of this Agreement, or to exercise any right in any one or more instances shall not be construed as a waiver or relinquishment of such provision or right, nor shall failure or refusal be deemed a custom or practice contrary to such provision or right.

8.5 **Amendments** This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by written amendments signed by the parties hereto.

8.6 **Severability** In the event that any provision of this agreement is found to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of any or the remaining provisions shall not be affected thereby.

8.7 **Assignment** Neither the Agreement, nor any right hereunder, or interest herein may be assigned by either party with the prior written consent of the other party. Such approval shall not be unreasonable withheld. Notwithstanding the foregoing, DuVoice Corporation shall be entitled to assign this Agreement to a successor to all or substantially all of its assets, whether by sale, merger, or otherwise.

8.8 **Notices** Unless otherwise specified, all notices required or permitted to be given hereunder shall be in writing and personally delivered, faxed, Emailed, or sent by mail to the principal office of the other party. If mailed, notices will be deemed received in three days after mailing.

9.0 **Governing Law and Arbitration** The agreement and performance hereunder shall in all respects be governed by the laws of the state of Washington, without reference to the conflict of laws principles. The parties agree that all disputes arising out of this Agreement shall be subjected to the exclusive jurisdiction and venue of the Washington State Courts of King County, Washington, (or, if there is exclusive federal jurisdiction, the United States District Court for the Western Washington District), and the parties consent to the personal and exclusive jurisdiction of these. However, both parties will agree that prior to the initiation of any legal action, they will submit any disputes to binding arbitration through the American Arbitration Association of King county, Washington.