

LICENSE AND SUPPORT AGREEMENT

This License and Support Agreement ("**Agreement**") is made this 5th day of October, 2010 (the "**Effective Date**") between Dialogic Communications Corporation, dba PlantCML, a Tennessee corporation ("**PlantCML**"), located at 730 Cool Springs Blvd., Suite 300, Franklin, Tennessee 37067, and City of Redlands ("**Licensee**"), located at 35 Cajon Street, Redlands, CA 92373.

1 Definitions.

- 1.1 "**Documentation**" means written and/or on-line material provided by PlantCML to assist Licensee in the use of the System.
- 1.2 "**Effective Date**" means the date set forth above.
- 1.3 "**Equipment**" means the Equipment or comparable equipment delivered by PlantCML hereunder.
- 1.4 "**Site**" means Licensee's location at 212 Brookside Ave, Redlands, CA 92373.
- 1.5 "**Software**" means the PlantCML software programs and any updates, modifications and corrections thereto provided by PlantCML to Licensee hereunder.
- 1.6 "**Third Party Software**" means any software developed by a third party which is installed by PlantCML on the Equipment.
- 1.7 "**Initial Support Term**" means the period beginning on the date set forth on the Customer Acceptance Certificate contained in the Statement of Work associated with this agreement, or ninety (90) calendar days after PlantCML determines that implementation of the Equipment and Software is complete, whichever is earlier, and ending one (1) year after such date.
- 1.8 "**Initial Warranty Period**" means the period beginning on the date set forth on the Customer Acceptance Certificate contained in the Scope of Work associated with this Agreement or ninety (90) calendar days after PlantCML determines that implementation of the Equipment and Software is complete, whichever is earlier, and ending one (1) year after such date.

2 **Delivery of Software and Equipment.** Licensee shall have the Site properly prepared to accept delivery of the Equipment and PlantCML shall deliver the Equipment to Licensee. In no event shall PlantCML be responsible for delays in delivery or installation or any damages to Licensee resulting from any delay. Delivery shall be F.O.B. point of origin. Title and risk of loss shall pass to Licensee upon shipment.

3 Payment and Taxes.

3.1 Licensee will pay PlantCML all fees within thirty (30) days of the date of invoice in accordance with **Schedule A**. PlantCML reserves and Licensee grants PlantCML a security interest in the Equipment as security for performance by Licensee of its obligations hereunder including, but not limited to, payment of the fees. Licensee shall execute other documents as requested to perfect this interest.

3.2 If Licensee elects to purchase annual support services for the Software, such support services shall automatically renew annually unless terminated by written notice by Licensee to PlantCML not less than ninety (90) days prior to the expiration of the then in effect term. A description of PlantCML's support services is set forth in **Schedule B** which is incorporated herein by reference.

3.3 Licensee will pay all taxes based on this Agreement or any product or services related thereto, excluding taxes based on PlantCML's income, but including personal property taxes, if any. All shipping and insurance charges for products shipped between PlantCML and Licensee will be paid by Licensee.

3.4 In addition to any other remedy available to PlantCML, for a late payment by Licensee, Licensee shall pay a charge of 1.5% per month, or the maximum percentage permitted by applicable law, whichever is less, on any amount not paid when due.

4 Installation and Training; Licensee Data.

4.1 **Installation.** PlantCML will provide installation as set forth in **Schedule A**.

4.2 **Training.** If purchased by Licensee, the nature and duration of training services will be reflected on **Schedule A**. The term of any annual training subscription purchased by Licensee shall expire with the Initial Support Term.

4.3 **Licensee Data.** Licensee shall have responsibility for the accuracy or functionality of any data it places into the System ("Licensee Data") and for adherence to any privacy act or regulation regarding such Licensee Data it selects and stores onto the System. Regarding any self registration portal tool purchased or licensed by Licensee through or with PlantCML, Licensee shall assume all duties, obligations and compliance with any applicable law regarding its use, including but not limited to the gathering, storage and dissemination of such Licensee Data. Licensee also shall be solely responsible for communicating any applicable notices or terms of use to its registrants. These duties and obligations are non-delegable by Licensee to PlantCML.

5 Warranty.

5.1 **Original Equipment Manufacturer.** PlantCML does not provide a warranty with respect to any third party equipment manufactured by an original equipment manufacturer (OEM); however, PlantCML will pass along to Licensee any existing OEM warranty to the extent authorized by the OEM.

5.2 Software Warranty. PlantCML warrants for the Initial Warranty Period that the PlantCML Software shall perform in material accordance with the Documentation current as of the Effective Date. ANY AND ALL THIRD PARTY SOFTWARE IS PROVIDED "AS IS" AND WITH ALL FAULTS.

5.2.1 During the Initial Warranty Period, PlantCML will provide such assistance as it deems reasonably necessary to cause the PlantCML Software to perform materially in accordance with the then current Documentation provided that Licensee installs all updates, modifications and corrections provided by PlantCML and that Licensee's use of the Software is in accordance with this Agreement and the Documentation.

5.2.2 Licensee may notify PlantCML of Software errors or defects it believes to exist and if PlantCML is able to confirm that such error or defect exists through independent testing, PlantCML will use commercially reasonable efforts to correct such error or defect.

5.2.3 LICENSEE'S EXCLUSIVE REMEDY, AND PlantCML'S ENTIRE LIABILITY IN CONTRACT, TORT OR OTHERWISE FOR BREACH OF ANY OF THE ABOVE WARRANTIES WILL BE TO USE ITS COMMERCIALY REASONABLE EFFORTS TO PROVIDE A CORRECTION OR WORK AROUND FOR ANY MATERIAL NONCONFORMITY WHICH IS (i) REPORTED TO PlantCML BY LICENSEE WHILE PlantCML IS OBLIGATED TO PERFORM SUPPORT SERVICES AND (ii) REPRODUCIBLE BY PlantCML IN THE EXECUTION ENVIRONMENT.

5.3 Limited Warranty. IF THE PlantCML SYSTEM IS USED IN EMERGENCY SITUATIONS, THEN THE SYSTEM IS INTENDED TO ONLY INCREASE THE NOTICE WHICH WILL BE GIVEN. THERE IS AND CAN NOT BE ANY GUARANTEE THAT ALL PERSONS INTENDED TO BE CONTACTED WILL BE CONTACTED. PlantCML ACCEPTS NO RESPONSIBILITY FOR ANY FAILURE OF THE PlantCML SYSTEM TO CONTACT ANY PERSON OR PERSONS AND IS NOT RESPONSIBLE FOR ANY DAMAGE OR INJURY WHICH RESULTS FROM ANY FAILURE TO CONTACT ANYONE.

5.4 Disclaimer of Warranties. THE EXPRESS WARRANTIES IN THIS SECTION 5 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES. PlantCML DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. PlantCML DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION.

5.5 The warranties in this Section 5 will not apply to any defects or problems caused in whole or part by (i) defects in any Equipment, (ii) failure of any portion of equipment to function in accordance with manufacturer's specifications, (iii) modifications or enhancements made to the Software by anyone other than PlantCML, (iv) any software, hardware, firmware, peripheral or communication devices used with the Software not provided by or approved of in writing by PlantCML, (v) failure of Licensee or any third party to follow PlantCML's most current instructions for proper use of the Software, (vi) negligence of Licensee or any third party, or (vii) failure to install and use the updates, modifications and corrections provided by PlantCML. If Licensee falls within any of the foregoing exceptions and requests PlantCML to provide support services for such defect or problem, Licensee will pay PlantCML for services at PlantCML's then current hourly rate.

6 Software Support Services.

6.1 Subject to the terms of this Agreement and provided that Licensee pays the fees specified in this Section 6.1, PlantCML will provide Licensee with the support services described in **Schedule B**, the PlantCML Technical Services Center Support Plan. Licensee will provide PlantCML with all information, documentation, technical assistance, and access to the Site as PlantCML may require in order to provide services hereunder.

7 License Grant.

7.1 **Scope.** PlantCML hereby grants to Licensee, and Licensee accepts, a non-exclusive, non-transferable license to use the object code version of the Software and the Documentation for its internal business purposes at the Site in accordance with this Agreement. Licensee may use the Software only on the Equipment or substitute equipment approved in writing by PlantCML. Licensee may make one copy of the Software for backup purposes only but shall include therein all proprietary marks and notices included in the original. Licensee may not otherwise copy or permit the copying of any part of the Software or Documentation.

7.2 **Restrictions on Use.** Licensee may not, directly or indirectly, (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; (ii) modify, translate, or create derivative works based on the Software; (iii) copy (except for archival purposes), rent, lease, resell, sublicense, distribute, assign, or otherwise transfer rights to the Software, except as otherwise provided herein; (iv) use or allow the transfer, transmission, export, or re-export of the Software in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; or (v) remove any proprietary notices or labels on the Software.

7.3 **Updates and Upgrades.** Updated or upgraded versions of the Software may be created or issued by PlantCML from time to time. If the Software is an updated or upgraded, Licensee is bound by the terms of this License and may only use that updated or upgraded Software in accordance with this License. PlantCML may, at its sole discretion, require the installation of software updates or upgrades to maintain any applicable warranty.

7.4 Intellectual Property, Trademark and Copyright. PlantCML retains ownership of the Software, any portions or copies thereof, and all rights therein. PlantCML reserves all rights not expressly granted to Licensee. This License does not grant Licensee any rights in connection with any trademarks or service marks of PlantCML, its suppliers or licensors. All right, title, interest and copyrights in and to the Software and the accompanying Documentation and any copies of the Software are owned by PlantCML, its suppliers or licensors. All title and intellectual property rights in and to the content which may be accessed through use of the Software is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This License grants Licensee no rights to use such content.

7.5 U.S. Government Restricted Rights. The Software and associated Equipment and Documentation are provided with RESTRICTED RIGHTS. With respect to any acquisition of the Software by or for any unit or agency of the United States Government ("Government"), the Software shall be classified as "commercial computer software," as that term is defined in the applicable provisions of the Federal Acquisition Regulation ("FAR") and supplements thereto, including the Department of Defense (DoD) FAR Supplement ("DFARS"). The Software was developed entirely at private expense and no part of the Software was first produced in the performance of a Government contract. If the Software is supplied for use by DoD, the Software is delivered subject to the terms of this LICENSE and either (i) in accordance with DFARS 227.7202-1(a) and 227.7202-3(a) or (ii) with restricted rights in accordance with DFARS 252-227-7013 (Oct. 1988), as applicable. If the Software is supplied for use by Government agency other than DoD, the Software is restricted computer software delivered subject to the terms of this LICENSE and (i) FAR 12.212; (ii) FAR 52.227-19; or (iii) FAR 52.227-14, as applicable.

7.6 Beta Release or Pre-Release Versions. In the event the licensed software or any software module is a beta release or pre-release version, the terms of this Section 7.6 and Agreement shall apply in their entirety. The license to use the licensed software shall expire on the date set forth in the applicable Beta Site Agreement signed by licensee or, in the absence of such agreement, 120 days after installation or 120 days from the date on which the software or module was first made available or presented to you. The licensed software may contain more or less features than the commercial release of the software that PlantCML ultimately intends to distribute. While PlantCML intends to distribute a commercial release of the licensed software, PlantCML reserves the right at any time not to release a commercial release of the licensed software or to alter features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the commercial release. You agree that the beta release or pre-release versions are not suitable for production use and may contain errors affecting their proper operation. In the event the beta or pre-release licensed software was provided to you at no charge, for purposes of the total liability limitation set forth in the section entitled "Limitation of Liability" the "total amount paid to PlantCML" shall be deemed to be PlantCML's list price for the licensed software or software module, or other amount as expressly stated in any Beta Site Agreement signed by you and PlantCML.

7.7 Demonstration Software. In the event the licensed software has been provided as a demonstration copy of the licensed software, whether for a fee or at no charge, the terms of this Section 7.7 and this Agreement shall apply in their entirety. Your license to use the licensed software shall expire 120 days after installation or 120 days from the date on which the demonstration software was first made available or presented to you. In the event the demonstration copy of the licensed software was provided to you at no charge, for purposes of the total liability limitation set forth in the section entitled "Limitation of Liability" the "total amount paid to PlantCML" shall be deemed to be PlantCML's list price for the licensed software or module.

8 Limitation of Liability. IN NO EVENT WILL PlantCML BE LIABLE TO LICENSEE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, LOSS OF PROFITS, LOSS OF BUSINESS INFORMATION, BUSINESS INTERRUPTION OR ANY OTHER PECUNIARY LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE HOSTING SERVICES, EQUIPMENT, SOFTWARE, AND/OR THIRD PARTY SOFTWARE OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF PlantCML HAS BEEN ADVISED OF, KNEW OF, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. PlantCML'S TOTAL LIABILITY TO LICENSEE HEREUNDER, IF ANY, WILL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID TO PlantCML HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

9 Confidentiality. A party receiving Information (defined below) of the other will not disclose such Information other than to persons in its organization who have a need to know and who will be required to comply with this Section 9. The party receiving Information will not use such Information for a purpose inconsistent with the terms of this Agreement. "Information" means the Software, Documentation and all information and intellectual property related thereto (including, but not limited to all databases provided to Licensee by PlantCML whether created by PlantCML or its third party licensors such as, without limitation, the mapping product databases) as well as information related to the business of PlantCML or Licensee. Information will not include: (i) information publicly known prior to disclosure; (ii) information coming into the lawful possession of the recipient without any confidentiality obligation; and (iii) information required to be disclosed pursuant to state or federal, regulatory action or court order, provided adequate prior written notice of any request to disclose is given to the party whose information is to be disclosed. Each party will exercise at least the same degree of care to safeguard the confidentiality of the other's Information as it does to safeguard its own proprietary confidential information, but not less than a reasonable degree of care.

10 Ownership. The Software and Documentation are PlantCML's exclusive property and constitute a valuable trade secret of PlantCML. Licensee will take reasonable steps to protect the trade secret of the Software and Documentation. Ownership of all copies is retained by PlantCML. Licensee may not disclose or make available to third parties the Software or Documentation or any portion thereof. PlantCML shall own all right, title and interest in and to all corrections, modifications, enhancements, programs, and work product conceived, created or developed, alone or with Licensee or others, as a result of or related to the performance of this Agreement, including all proprietary rights

therein and based thereon. Except and to the extent expressly provided herein, PlantCML does not grant to Licensee any right or license, express or implied, in or to the Software and Documentation or any of the foregoing.

11 Infringement Indemnity. With the exception of any third party software, hardware or equipment that may be provided under this Agreement, PlantCML agrees to hold Licensee harmless from liability to third parties resulting from infringement of any United States patent or copyright or trade secret by the PlantCML software purchased hereunder and PlantCML further agrees to pay all damages and costs, including reasonable legal fees, which may be assessed against Licensee under any such claim or action. PlantCML shall be released from the foregoing obligation unless Licensee provides PlantCML with (i) written notice within fifteen (15) days of the date Licensee first becomes aware of such a claim or action, or possibility thereof; (ii) sole control and authority over the defense or settlement thereof; and (iii) proper and full information and assistance to settle and/or defend any such claim or action. Without limiting the foregoing, if a final injunction is, or PlantCML believes, in its sole discretion, is likely to be, entered prohibiting the use of the software by Licensee as contemplated herein, PlantCML will, at its sole option and expense, either (a) procure for Licensee the right to use the infringing software as provided herein or (b) replace the infringing software with noninfringing, functionally equivalent products, or (c) suitably modify the infringing software so that it is not infringing; or (d) in the event (a), (b) and (c) are not commercially reasonable, terminate the license, accept return of the infringing software and refund to Licensee an equitable portion of the license fee paid therefor. Except as specified above, PlantCML will not be liable for any costs or expenses incurred without its prior written authorization. Notwithstanding the foregoing, PlantCML assumes no liability for infringement claims with respect to software (i) not supplied by PlantCML, (ii) made in whole or in part in accordance to Licensee's specifications, (iii) that is modified after delivery by PlantCML, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Licensee continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Licensee's use of the software is not strictly in accordance with this Agreement. THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF PlantCML AND THE EXCLUSIVE REMEDY OF LICENSEE WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SOFTWARE.

12 Injunctive Relief. Each party acknowledges that a violation or threatened violation by it of Section 9 or 10 hereof would result in damage that is largely intangible but nonetheless real and that is incapable of complete remedy by award of damages. Thus, such violation or threatened violation will give the injured party the right to a court-ordered injunction to specifically enforce such covenant or obligation. The party in violation of any such section shall pay as damages reasonable expenses, including but not limited to attorney fees, incurred in obtaining specific enforcement.

13 Term and Termination. This Agreement will commence upon the Effective Date and will continue until terminated in accordance with this Section 13.

13.1 Termination of Support Services. Annual support services shall automatically renew annually in accordance with Paragraph 3.2, above.

13.2 Termination by PlantCML. PlantCML may terminate this Agreement without further obligation or liability to Licensee if:

13.2.1 Licensee fails to timely pay any amounts due under this Agreement and fails to make such payments within ten (10) days of notice from PlantCML; or

13.2.2 Licensee commits any material breach of this Agreement and fails to remedy such breach within ten (10) days of notice from PlantCML; or

13.2.3 Licensee becomes the subject of a petition in bankruptcy; is or becomes insolvent; or admits a general inability to pay its debts as they become due.

13.3 Termination by Licensee. Licensee may terminate this Agreement:

13.3.1 If PlantCML commits any material breach of this Agreement and fails to remedy such breach within sixty (60) days of notice from Licensee; or

13.3.2 At will by giving PlantCML one hundred twenty (120) days notice of its election to terminate.

13.4 Effect. Upon termination of this Agreement all amounts owed to PlantCML will be immediately due and payable and PlantCML will cease performance of all obligations herein without liability to Licensee. Sections 5.3, 7, 8, 9, 10, 12, and 14 shall survive termination.

14 Other Remedies. PlantCML's rights and remedies under this Agreement will be cumulative and in addition to all other rights and remedies available to PlantCML in law and in equity.

15 Assignment. Neither this Agreement nor any rights or duties hereunder may be transferred, assigned, sublicensed or otherwise disposed of by Licensee to a third party, by operation of law or otherwise, without PlantCML's prior written consent. Notwithstanding the foregoing, PlantCML may assign its interests to a parent or affiliate company in the event of sale or merger of its assets so long as the acquiring entity agrees to assume all of PlantCML's duties and obligations hereunder.

16 **Partial Invalidity.** If any provision of this Agreement is ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected.

17 **Modification; Waiver.** This Agreement may not be modified or amended except in writing signed by the parties. No term or condition of this Agreement may be waived except in writing signed by the party charged with waiver. A waiver will operate only as to the specific term or condition waived and will not constitute a waiver for the future.

18 **Notice.** All notices and other communications required or contemplated herein will be in writing and delivered either by (i) personal delivery; (ii) expedited messenger service; (iii) postage prepaid return receipt requested certified mail; or (iv) facsimile and confirmed by postage prepaid U.S. certified mail, addressed to the party or parties for whom it is intended, at the addresses first written above or such other address as the intended recipient previously has designated by written notice to the sender.

19 **Governing Law.** This Agreement will be governed exclusively by the laws of the State of California, without regard to its conflict of laws provisions. All parties agree that venue regarding any action arising hereunder will be exclusively in San Bernardino County, California.

20 **Third Party Beneficiaries.** None of the provisions of this Agreement is intended by the parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement.

21 **Independent Contractors.** The relationship of the parties hereunder will be one of independent contractors and not that of a franchise, joint venture or employer. Neither party will have, and neither of them will represent to any other person that it has, any power, right or authority to bind the other, or to assume create, any obligation or responsibility, express or implied, on behalf of the other, except as expressly provided by this Agreement or as otherwise permitted in writing signed by both parties.

22 **Entire Agreement.** This Agreement and its schedules constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede and cancel all prior agreements between the parties, written, oral or implied with respect to the subject matter hereof. The terms of any customer-provided purchase order or invoice concerning any product or service provided hereunder will not serve to replace, modify or supersede the terms of this Agreement. The terms of this Agreement shall prevail for any and all purposes.

23 **Headings.** Headings are included in this Agreement for convenience only and are not to be deemed to be part of this Agreement. The interpretation of this Agreement will not be affected by any heading herein.

24 **Force Majeure.** In the event an act of government, war, fire, flood, act of God, power shortages or blackouts, breakdown of telephone lines and services, failure of the Internet, or other causes beyond the reasonable control of PlantCML prevents PlantCML from performing in accordance with the terms of this Agreement, such nonperformance shall be excused and shall not be considered a breach or default for so long as such conditions prevail.

25 **Marketing Material.** Licensee hereby provides its consent to be identified as a customer in sales announcements or other marketing material generated by PlantCML from time to time during the term of this Agreement.

26 **Attorneys' Fees.** In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement, the prevailing Party shall, in addition to costs and any other relief, be entitled to recovery of its reasonable attorneys' fees, including fees for use of in-house counsel of the Parties.

Dialogic Communications Corporation

By: Anna L. Jones

Title: Regal Counsel - Head of NSS

Date: 9.30.10

Licensee

City of Redlands

By: Pat Gilbreath

Pat Gilbreath, Mayor

Date: October 5, 2010

ATTEST:

Sam Irwin
Sam Irwin, City Clerk

SCHEDULE A

Software - License Fees:

Licensee shall pay to PlantCML an amount equal to \$34,776 for the Software license granted hereunder. This fee includes support for the first year. Such amount shall be paid within thirty (30) days of the date of PlantCML's invoice.

Hardware and Third Party Software:

Licensee shall pay to PlantCML an amount equal to \$17,952 for the Hardware and Third Party Software provided hereunder. Such amount shall be paid within thirty (30) days of the date of PlantCML's invoice.

Services:

Installation Fees

Installation fees are included in the Software – License Fee price.

Training Fees

Training fees are included in the Software – License Fee price.

Annual Software Support

Following the first year of Support, Licensee may continue support services pursuant to the terms of this Agreement by paying PlantCML the annual fee of \$5,359.68, to which an increase of 3.25% per year shall be applied for cost of business increases. Such amount shall be paid within thirty (30) days of the date of PlantCML's invoice. Failure to pay such amount when due will subject Licensee to a service charge to reactivate support if such services are interrupted.

SCHEDULE B

Technical Services Center - Support Plan for On Premise Systems

Dialogic Communications Corporation ("PlantCML") offers PlantCML Software support to purchasers ("Licensee" or "Customer") of its application Software, in accordance with the terms and conditions of this Technical Services Center Support Plan ("Support Plan"), which is made a part of and incorporated by reference into the License and Support Agreement entered into by Customer and PlantCML. Defined terms as set forth in the License and Support Agreement shall have the same meaning in this Support Plan. This Support Plan does not apply to system software or any other third party software.

Conditions of the Support Plan

In order to keep the Support Plan active, the Customer is required to:

Pay all applicable Support Plan Fees; and
Comply with all terms and conditions of this Support Plan and the License and Support Agreement.

Definitions

Response Time is the period of time that it takes the TSC to call back the Customer when a voice mail has been left or to provide an update on the call ticket. Response times are only implemented when the call is not resolved on the first call. Response Time does not mean Resolution Time.

Resolution Time is the period of time it takes to solve a problem. The resolution time is different for each situation and cannot be determined until the appropriate TSC personnel have evaluated the problem and is able to determine an approximate resolution time.

TSC Technical Services Center
TSS Technical Services Specialist
TSA Technical Services Analyst

Support Services Provided

Supported Products

The TSC will only support Software approved and installed by PlantCML. The TSC will not resolve requests associated with software other than that provided by PlantCML; the requests will, however, be logged into the database. Third Party Software loaded by Customer on a PlantCML system without PlantCML's prior written approval, voids the associated Software Warranty and this Support Plan. Pursuant to this Support Plan, PlantCML, as coordinated by its Technical Service Center, will provide issue resolution and updates to supported Software as further described below.

Hours of Operation

Normal Business Hours (NBH): Monday through Friday, excluding holidays, from 8:00AM to 5:00PM, Central Time.

After hours Emergency support only - see Call Levels

Services Provided

Issue Resolution

The TSC works with Customers to resolve issues related to supported Software that does not perform materially in accordance with the then current Documentation for such Software. This service is designed to support the

Customer's technician who is adequately trained in the product about which they are calling and listed as an approved Customer Contact with PlantCML TSC. To be adequately trained the Customer's technician must have received training directly through a PlantCML training program or have been trained by a Customer Technician that has received training directly through PlantCML. A trained Customer's technician is responsible for attempting to troubleshoot issues prior to calling TSC. If the Customer's technician is not adequately trained, based on the description above, in the product about which he or she is calling, and thus not listed as an approved Customer Contact, PlantCML TSC personnel will attempt to contact an approved Customer contact for problem resolution.

For security purposes, only Customer contacts that are listed with TSC will receive support unless a listed contact provides approval to do so. In the event of an emergency TSC may make a special allowance if TSC personnel are unable to reach one of the listed contacts for verification.

To better facilitate high first call resolution, the TSC will utilize remote control software. This will allow the TSC to connect to the Customer's system via a dial-up connection and "take control" of the system to perform troubleshooting and/or resolution services. The TSS/TSA will at all times advise the Customer of their intention to access the system, and upon completion will advise the Customer that they have left the system, relaying to them what steps were taken to resolve an issue. The TSC will maintain a database of all calls received from the Customer, the steps taken to resolve and the resolution. The database will show dates when a call was received and dates of all contacts related to call.

TSC will work with the Customer to identify errors or defects in the Software, and if the TSC is unable to confirm that such error or defect exists through independent testing, it will then escalate the issue to PlantCML's R&D Department. The TSC will remain as the Customer contact and will work with the R&D Department to provide updated information to the Customer through resolution of the issue.

Hardware Support

PlantCML's TSC will track hardware issues related to the system during the Initial Support Period and, if a hardware warranty is purchased through PlantCML from the third party vendor, PlantCML will contact the appropriate vendor for warranty repairs. For subsequent years the Customer has the option to extend their warranty by contacting PlantCML Sales. The PlantCML TSC will continue to work with the Customer to diagnose and make recommendations on hardware issues.

Contacting the PlantCML Technical Services Center

During Normal Business Hours: Customers may call a dedicated ACD at 615.794.2307. If all TSC personnel are busy assisting other customers, the call will go to voice mail. If the caller is experiencing an emergency (see Call Levels below) they may hit 00 for the operator and a TSC manager will be paged to assist.

If the call is not an emergency (as defined below), the caller should leave a message with their name, company name and ID, telephone number and a brief description of the reason for the call. Messages are checked frequently and calls are returned in the order in which they are received, but always within four (4) hours.

After Hours Emergency: If the Customer is experiencing an emergency (as defined below) they should call the TSC at 615.794.2307. The call will be routed to an answering service where the Customer should leave a clear message with their name, company name and ID, telephone number and a brief description of the reason for the call. The on-call TSS will be paged and will return the call within 15 minutes of receipt of the page.

E-mail Requests: The TSC will respond to e-mail requests within eight (8) business hours. **Note:** Emergency or very important requests should always be phoned into the TSC. E-mail can sometimes be unreliable and the TSC has no control over the timely delivery of requests. E-mail service level commitments are based on the time the requests actually reach the TSC.

Call Levels applied to this Support Plan

Emergency Call - Immediate Response during NBH; within 15 minutes of page outside NBH

- System will not boot or complete hardware failure.*
- Server Applications will not start.
- Site is experiencing an actual emergency and the system will not send out notifications to one or more device types.
- Site initiates activation, attempts to stop it, and experiences difficulty doing so.

*If it is determined the system failure is due to software or hardware loaded without coordination with PlantCML or other acts induced by the end user, resources will be allocated as available to assist but response time is not guaranteed.

Routine Call - 4 hour Response Time

- Attempting to perform maintenance and needs assistance.
- Experiencing partial hardware failure or needs to troubleshoot possible hardware problems.
- Reports are not functioning properly.
- Testing system and needs help making adjustments.
- Assistance with modifying roster members or groups.
- Assistance with speech recording done by Site.
- Assistance creating template scenarios.

Services that require advanced scheduling

- Installation of software or hardware updates or addition.
- Modifications to the system to accommodate telephony changes.
- PlantCML provided speech recording.
- GIS Updates.

Call Procedures & Escalation

The Technical Service Center will maintain call ownership throughout the entire request process. The TSC will address incoming calls as follows.

1. Capture the Request - The TSS/TSA will capture all requests by phone, e-mail, or voice mail and verify the right to service based on the Customer's name, support contract status and the approved software support list. If the request relates to unsupported software, the Customer will be notified. Otherwise, the analyst will continue with Step 2.
2. Log Request into the Database - The TSS/TSA will open a ticket in the call management system. Information included on the ticket will include the Customer's name, location, description of problem, severity of problem, and time of request and person reporting the issue.
3. Troubleshoot the Request - The TSS/TSA responsible for resolving the call will acknowledge the open ticket and work with the Customer to resolve the issue.
4. Escalate to Second Level - The TSS will escalate the request to second level support when the first contact is unable to make progress in the resolution of the issue in a timely manner.
5. Log Resolution into the Database - The TSS/TSA will log the resolutions to requests in the call management database
6. Verify Customer Satisfaction - The TSS/TSA will follow up and verify that the Customer is satisfied with the resolution.
7. Close the Request or Ticket - All tickets will be closed after the Customer satisfaction has been verified.

Customer Responsibilities

- Hardware Operating Environment. It is the Customer's responsibility to ensure that the hardware-operating environment is fully functional and meets PlantCML's minimum operating requirements for the PlantCML Software supported hereunder.

- Operating System and Ancillary Software Environment. It is the Customer's responsibility to ensure that the operating system and ancillary software are fully functional, commercially available (except as otherwise agreed to in writing by PlantCML) and meet PlantCML's minimum operating requirements for PlantCML's Software product(s).
- The Customer shall maintain a PlantCML application software release that is the most current version of the Software or one version back from the most currently released version.
- The Customer Site should have at least one system administrator that has attended PlantCML training, either at the Customer Site or at the PlantCML University. The Customer shall provide the administrator's contact information to PlantCML.
- The customer will perform regular maintenance to keep the system in optimal condition. This includes performing regular tape, CD or DVD backups and creating emergency repair discs when changes are made, de-fragmenting the hard drive on a regular basis, and testing the system at regular intervals.
- Customer will schedule install of all updates in a timely manner
- Customer will work with TSC staff to maintain an accurate database of contact names.
- Customer will respond to requests for information in a timely manner.
- The Customer will not add software to the system without prior PlantCML approval.
- Customer will not move the system to a new location without notifying PlantCML.
- Payment of all support fees when due. Failure to renew support fees before the expiration of the then in effect support term shall result in the imposition of a reinstatement fee at PlantCML's then current rate before resumption of support services.

Support Limitations

PlantCML's support obligations hereunder will not apply to any PlantCML supported application Software if correction of an error, adjustment, repair, or parts replacement is required because of:

- Accident, neglect, tampering, misuse, improper / insufficient grounding, failure of electric power, failure of the end user and/or others to provide appropriate environmental conditions, relocation of hardware or software, or causes other than ordinary use.
- Repair or alteration, or attempted repair or alteration of any PlantCML supported product (hardware and/or software) by the end user or others.
- Damage or destruction caused by natural or man-made acts or disasters
- Failure or degradation in performance of PlantCML supported equipment (hardware and/or software) due to the installation of another machine, device, application or interface not specifically certified and approved by PlantCML for use.
- The operation of the software in a manner other than that currently specified by PlantCML.
- The failure of the Customer to provide suitable qualified and adequately trained operating and maintenance staff.
- Incompatible or faulty Customer equipment.
- Modifications made without PlantCML's written approval to the OS, network, hardware or software environment or software applications.

Further, support described herein does not include cosmetic repairs, refurbishment, furnishing consumables, supplies or accessories, making accessory changes or adding additional devices or software applications.

Telephone support and/or field engineering to rectify such unsupported failures as described above may be obtained from PlantCML on a time & materials basis as set forth in the applicable price list. The labor rate charged will be the then current PlantCML labor rate (plus expenses) at the time service is requested.

Software Updates

PlantCML will provide application Software updates. Application Software updates are defined as minor enhancements to the already purchased product feature / functionality set. A product change is classified as minor, in the discretion of PlantCML, based upon the impact of the change to the core functionality of the product. Notice of all Software updates available during the term of the Support Plan will be posted under the "latest Updates and Patches" section for each product on the PlantCML Support Website located at <http://supportdccusa.com> (login required). Application Software program updates will roll into the existing Support Plan, thereby not extending the

term of the Support Plan. Any change in the two numbers following the decimal point within the product version number constitutes an application software program update (for example a change from product version 1.10 to 1.20, or 2.11 to 2.12, or 3.20 to 3.30, etc. will represent an application software program update).

Other Services

Other services not specifically identified as being included in this Support Plan, including but not limited to training, implementation services, and custom development, are not included.

Gilbreath voted No on the motion restating her position against the sales tax and the nonbinding nature of any allocations approved by this City Council.

City Council Benefits - On motions of Mayor Pro Tem Bean, seconded by Councilmember Gallagher, the City Council voted to direct the City Attorney to prepare for the next City Council meeting resolutions eliminating health, dental, vision and life insurance provisions, continuing the City of Redlands policy of no pension benefits for newly elected and newly re-elected City Council members, and limiting reimbursement to \$2,000 per councilmember for expenses and use of public resources. As a public comment, Steve Rogers pointed out that compensation and benefits of public officials is an item for investigation by the California Attorney General. The City Manager was directed to modify the FY2010-2011 Budget Resolution to reflect the impact of these changes. Councilmembers Harrison and Aguilar voted No on the motions citing a need for more time to consider the impacts of the proposals.

NEW BUSINESS:

Commission Appointments - On motion of Mayor Gilbreath, seconded by Mayor Pro Tem Bean, the City Council unanimously approved the appointment of Judith Ashton, Lorenzo Garbo, Edward P. Gomez, and Bart Stasiuk to serve four-year terms on the Human Relations Commission ending October 5, 2014.

Street Light Loan - On motion of Councilmember Harrison, seconded by Councilmember Gallagher, the City Council unanimously approved authorizing the City Manager to sign a California Energy Commission low interest loan application for the City of Redlands energy efficient Light Emitting Diode Street Lighting Initiative.

DOJ Grant - On motion of Councilmember Aguilar, seconded by Councilmember Gallagher, the City Council unanimously agreed to accept a cooperative agreement/grant from the U.S. Department of Justice (DOJ) in the amount of \$473,161 to develop an iPhone-based crime mapping application to assist law enforcement officers with understanding spatial and temporal crime patterns. As a public comment, Steve Rogers cautioned against infringing on the people's right to privacy.

✓ Reverse 911 Upgrade - On motion of Mayor Pro Tem Bean, seconded by Councilmember Gallagher, the City Council unanimously approved a license and support agreement between the City of Redlands and Dialogic Communications Corporation, dba Planet CML, to upgrade the currently unusable emergency notification system used by the Redlands Police Department for citizen alerts and employee callouts.

PUBLIC HEARINGS: