

**SYMPRO SOFTWARE MAINTENANCE AGREEMENT**

THIS MAINTENANCE AGREEMENT ("Agreement") is being entered into this 1st day of July, year 2008, between SymPro, Inc., a California corporation ("SymPro"), and El Dorado County, CA, a California county ("Licensee").

**PRELIMINARY STATEMENT**

SymPro has designed and developed a software program known as the SymPro Treasury Management Software, which consists of computer software programs in machine-readable form and related user documentation ("Software").

Licensee is entering a SymPro Software License Agreement ("License") to be executed concurrently with this Agreement, which grants Licensee a personal, nontransferable, non-exclusive limited right and license to use the Software within the terms of such License. Licensee has elected to enter into this SymPro Software Maintenance Agreement ("Maintenance Agreement") under which SymPro will provide Licensee maintenance and support services for the Software set forth in Exhibit "A" attached hereto, as follows:

**SYMPRO AND LICENSEE MUTUALLY AGREE AS FOLLOWS:**

**Section 1. Software Maintenance**

1.1. SymPro shall provide to Licensee all modifications and enhancements to the Software in the form of fixes and further releases that SymPro makes generally available to all end-users. All such modifications and enhancements shall be transferred by remote telecommunications from SymPro's place of business to Licensee. No storage media, including CD's, will be provided unless expressly requested by Licensee. Such modifications shall be released at least once each year. SymPro reserves the option to require the payment of an additional fee if substantial additional functions or improved performance are provided. SymPro will charge Licensee and Licensee will pay all applicable taxes resulting from delivering any such modifications or enhancements on storage media. SymPro shall provide a minimum of sixty (60) days notice of such changes. Licensee reserves the right to refuse acceptance of delivery of such modifications or enhancements and not incur any additional fees.

1.2. Such modifications, when delivered, shall become part of the Software, shall be maintained in accordance with this Agreement, and shall otherwise be subject to all of the terms of the License Agreement.

**Section 2. Error Correction**

SymPro shall correct, within a reasonable period of time, any material, documented, reproducible error or malfunction in the System. SymPro agrees to commence correction as soon as reasonably possible after such error or malfunction is detected, in no event shall the period commencement of correction an error or malfunction exceed 72 hours. If SymPro, in its discretion, requests written verification of an error or malfunction discovered by Licensee, Licensee shall immediately provide such verification, by facsimile or mail, setting forth in detail the respects in which the System fails to perform. An error or malfunction shall be "material" if it represents a nonconformity to SymPro's specifications pertaining thereto, as set forth in the current published user documentation for the Software. SymPro shall determine if the reported error or malfunction interferes with the Licensee's utilization of the Software.

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### **Section 3. Technical Support**

3.1 Telephone and email technical support is provided during normal business hours (8:00AM TO 5:00PM – Pacific Time) Monday through Friday for questions dealing with the operations of the Software.

3.2 Support issues may be reported via voicemail, fax or email, 24 hours a day.

3.3 The resolution of some issues may require that Licensee provide SymPro with a copy of Licensee's portfolio. Licensee agrees to provide SymPro with a copy of their portfolio for the purpose of resolving Licensee's issue and SymPro agrees to maintain full confidentiality of any required portfolio data and will use it only for the resolution of the Licensee's issue. In the event that a claim is made against the County as the result of the failure of SymPro to keep the information confidential, SymPro shall defend and indemnify the County against any such claims.

3.4 Unlimited telephone support will be provided in the following areas:

- (a) Loading and configuring of SymPro Software
- (b) Operational Questions, including standard SymPro reports
- (c) Data Entry Questions for all investment types supported in SymPro, including:
  - Certificates of Deposits
  - Negotiable Certificates of Deposits
  - Checking Accounts
  - Commercial Paper
  - Medium Term Notes
  - Commercial Paper Discount
  - United States Treasury Issues, Coupon & Discount
  - Federal Agency Issues, Coupon & Discount
  - GNMA, Pass Through
  - Bankers Acceptances
  - Corporate Bonds
  - Rolling Repurchase Agreements

3.5 **EXCLUSIONS.** CONSULTING ON ISSUES CONCERNING INVESTMENT ACCOUNTING, SPECIFIC FINANCIAL OR INVESTMENT MATTERS, MATTERS REQUIRING PROFESSIONAL LICENSING, RESEARCH ON INVESTMENTS NOT SUPPORTED WITHIN THE LICENSED SOFTWARE OR DATA ENTRY FOR INVESTMENTS NOT SUPPORTED IN THE LICENSED SOFTWARE ARE NOT INCLUDED IN SUPPORT SERVICES.

### **Section 4. Other Modifications**

Licensee may request that SymPro make additional modifications to the System to add functions or improve performance. SymPro shall, within thirty (30) days after receiving Licensee's request in writing, take one of the following actions, in its sole discretion:

- A. Notify Licensee that SymPro has determined that the modification would be of sufficient general interest to that SymPro intends to provide such modification as part of its regular maintenance service at some future time. Such notice shall specify an

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estimated date on which the modification may be available. Licensee will have the option to wait for the regular maintenance release or to request an estimate of the costs for custom modification to be made available to the Licensee.

- B. Notify Licensee that SymPro has determined that the modification will be undertaken only on an individual custom basis and provide Licensee with a written estimate of the charges for performing such modification. If Licensee accepts SymPro's proposal by written notice, SymPro agrees to perform the modification for the estimated costs and for any required travel on a prepaid basis. Licensee acknowledges that SymPro may impose additional charges, calculated at its then current rates, for work performed to accommodate revisions to the request for modification if such revisions are requested by Licensee after Licensee accepts the estimate.

### **Section 5. Fees**

5.1 Licensee shall pay SymPro fees for the term and at the rate of \$3,900 per year plus the applicable sales tax on 50% of fee ("Fees").

5.2 For subsequent terms, Fees may be reset by SymPro, on an annual basis at a maximum of 4% increase from the previous year's rate and SymPro will provide Licensee sixty (60) days written notice of such increase.

5.3 Fees shall be due and payable in full on or before the beginning date of the term set forth herein "Term".

5.4 If applicable to the Licensee, Licensee agrees to pay when due (or, if necessary, reimburse SymPro for) any applicable sales, use, property, excise, and other similar taxes.

5.5 In the event that this agreement is terminated prior to the expiration of the annual term for any reason as discussed in Section 8, Section 11 or Section 12, SymPro shall refund any prorated amount of the fee paid in advance for that annual term.

### **Section 6. Ownership**

The modifications to the Software, including all intellectual property rights associated therewith, made or provided by SymPro pursuant to this Agreement, whether alone or with any contribution from Licensee or its personnel, shall be owned exclusively by SymPro. Licensee shall maintain and enforce agreements and policies with its personnel sufficient to give effect to the provisions of this Section.

### **Section 7. Limited Warranty**

For the term of this Agreement and the Software listed in Exhibit "A", SymPro warrants that such Software will conform to SymPro's specifications pertaining thereto, as set forth in the current published user documentation for the Software, provided that said warranty shall apply only to the most current version of the Licensed Products, as used on a supported operating environment and to defects that can with reasonable effort be recreated by SymPro using a supported operating environment. As SymPro's sole responsibility and Licensee's exclusive remedy in the event of any material failure to meet such specifications, SymPro shall make a reasonable effort to remedy any resulting discrepancies. Any claim based on the foregoing

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warranty must be submitted in writing in accordance with SymPro's reporting procedures, as set forth in Section 2. EXCEPT AS EXPRESLY SET FORTH IN THIS AGREEMENT, SYMPRO MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ITS SERVICES, THE SYSTEM, THE DESIGN OR CONDITION OF THE EQUIPMENT OR ANY PROGRAMMING, OR ANY OUTPUT BASED ON USE OF THE SYSTEM. SYMPRO SPECIFICALLY DISCLAIMS, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **Section 8. Term**

8.1. Unless sooner terminated in accordance with this Section 8, this Maintenance Agreement shall continue for the period and dates starting: July 01, 2008 and ending June 30, 2009.

8.2. Thereafter, this Maintenance Agreement will be renewed automatically for successive terms, unless and until either party elects to terminate this Agreement upon expiration of the then current term. Neither party shall be obligated to renew this Agreement.

8.3. In addition to its termination rights set forth in Section 8.2 hereof, SymPro may terminate this Agreement by giving written notice of termination to Licensee upon the occurrence of any of the following events:

- (a) Licensee defaults in the performance of any material requirement or obligation created by this Agreement, or in any other agreement entered into between SymPro and Licensee and such failure has not been remedied by the end of such 30-day period.
- (b) Licensee fails to make any payment to SymPro within thirty (30) days of its due date, whether under this Agreement, or the License Agreement;
- (c) Licensee ceases doing business;
- (d) Licensee is the subject of any state or federal bankruptcy, insolvency, or similar proceeding, becomes insolvent, or makes an assignment for the benefit of creditors.

8.4 All communications from Licensee relating to the termination of this Agreement shall be directed to SymPro at the address indicated in Section 10.

8.5. If this Agreement is terminated, SymPro acknowledges Licensee's right to the perpetual use of the Software pursuant to the SymPro Software License Agreement between Licensee and SymPro.

### **Section 9. Delays**

The date on which SymPro's obligations are required to be fulfilled will be extended for a period equal to the time lost by reason of any delay arising directly or indirectly from (1) acts of God, unforeseeable circumstances, acts (including a delay or failure to act) of any governmental authority (de jure or de facto), war (declared or undeclared), riot, revolution, priorities, earthquakes, fires, floods, strikes, labor disputes, sabotage, or epidemics; (2) inability due to causes beyond SymPro's reasonable control to timely obtain instructions or information from Licensee, necessary and proper labor, materials, components, facilities, or transportation; or (3) any other cause beyond SymPro's reasonable control. The foregoing extension will apply even

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though such cause(s) may occur after SymPro's performance of its obligations has been delayed for other causes.

**Section 10. Notices**

Any notice to either party required or permitted hereunder shall be sufficiently given only when provided in writing, and either personally delivered or sent via certified or registered mail to the authorized persons indicated herein. Licensee shall promptly give SymPro notice of any address change. The persons and their addresses having the authority to give and receive notices under this Agreement include the following:

<u>Licensee</u>	<u>SymPro</u>
El Dorado County	SymPro
360 Fair Lane	License Services Manager
Placerville, CA 95667	2200 Powell Street, 11 <sup>th</sup> Floor
ATTN: Louise Gresham	Emeryville, CA 94608
Assistant Treasurer/Tax Collector	
or to such other location as the Licensee directs.	

The County Officer or employee with responsibility for administering this Agreement is Louise Gresham, Assistant Treasurer-Tax Collector, or successor.

**Section 11. Indemnity:**

The Consultant shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of the willful, intentional or reckless conduct of Consultant in connection with the Consultant's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Consultant, subConsultant(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778

**Section 12. Insurance:**

SymPro shall provide proof of a policy of insurance satisfactory to the Licensee and documentation evidencing that SymPro maintains insurance that meets the following requirements:

12.1 Full Workers' Compensation and Employers' Liability Insurance covering all employees of SymPro as required by law in the State of California.

12.2 Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.

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12.3 Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the SymPro in the performance of the Agreement.

12.4 In the event SymPro is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.

12.5 SymPro shall furnish a certificate of insurance satisfactory to the Licensee as evidence that the insurance required above is being maintained.

12.6 The insurance will be issued by an insurance company acceptable to the Licensee, or be provided through partial or total self-insurance likewise acceptable to the Licensee.

12.7 SymPro agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, SymPro agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and SymPro agrees that no work or services shall be performed prior to the giving of such approval. In the event the SymPro fails to keep in effect at all times insurance coverage as herein provided, Licensee may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- 12.8 The certificate of insurance must include the following provisions stating that:
- (a) The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Licensee, and;
  - (b) The Licensee, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

12.9 SymPro's insurance coverage shall be primary insurance as respects the Licensee, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Licensee, its officers, officials, employees or volunteers shall be excess of SymPro's insurance and shall not contribute with it.

12.10 Any deductibles or self-insured retentions must be declared to and approved by the Licensee, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Licensee, its officers, officials, employees, and volunteers; or SymPro shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

12.11 Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Licensee, its officers, officials, employees or volunteers.

12.12 The insurance companies shall have no recourse against the Licensee, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

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12.13 SymPro's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

12.14 In the event SymPro cannot provide an occurrence policy, SymPro shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

12.15 Certificate of insurance shall meet such additional standards as may be determined by the Licensee as essential for the protection of the Licensee.

### **Section 13. Miscellaneous**

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13.1 A failure by either party to enforce any right under this Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under this Agreement.

13.2 No assignment or transfer of any interest in this Agreement may be made by Licensee without the prior written consent of SymPro (which consent may be withheld in SymPro's sole and absolute discretion). SymPro may freely assign any interest and/or obligations under this Agreement and will provide Licensee with thirty (30) days written notice of any such assignment.

13.3 The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision, the remaining provisions being deemed to continue in full force and effect.

13.4 Notwithstanding anything in this Agreement to the contrary, the laws of the State of California shall govern the validity and construction of this Agreement and the interpretation of the parties' rights and duties without reference to conflicts of laws. Each party hereto hereby submits to the exclusive jurisdiction of any state or federal court located in El Dorado County, California.

13.5 This Agreement and the SymPro Software License Agreement are the entire agreements of the parties, and supersede all prior agreements and communications, whether oral or in writing, between the parties with respect to the subject matter of this Agreement. No amendment or modification of this Agreement shall be effective unless made in writing and signed by SymPro and Licensee.

13.6 Fiscal Consideration: The parties to this agreement recognize and acknowledge that the Licensee is a political subdivision of the State of California. As such, the Licensee is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of Licensee business, Licensee will adopt a proposed budget prior to a given fiscal year, but that the final adoption does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, Licensee shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget that does provide funding for the

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Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and Licensee released from any further liability hereunder.

In addition to the above, should the Licensee's County Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the Licensee, this Agreement may be deemed in its entirety subject to payment for services performed prior to cancellation.

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REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: *Louise Gresham*  
Louise Gresham  
Assistant Treasurer-Tax Collector  
Treasurer-Tax Collector's Office

Dated: 1/29/09

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: *C. L. Raffety*  
C. L. Raffety  
Treasurer-Tax Collector  
Treasurer-Tax Collector's Office

Dated: 1/29/09

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement for Services #472-S0911 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement

COUNTY OF EL DORADO

Dated: \_\_\_\_\_

ATTEST:  
Suzanne Allen de Sanchez,  
Clerk of the Board of Supervisors

By: \_\_\_\_\_

~~Gayle Erbe-Hamlin, Purchasing Agent~~  
~~Chief Administrative Office~~  
~~"County"~~  
Chairman

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Deputy Clerk

Board of Supervisors  
"County"



**SYMPRO**

Dated: 2-24-09

SYMPRO  
A CALIFORNIA CORPORATION

By:   
Michael Byrne  
CEO

By:   
Corporate Secretary

Dated: 2-24-09

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1. **Designated Equipment:**

Workstations: Intel Pentium type personal computer or equivalent; 32 bit operating system; minimum speed 500Mhz; all current Windows operating systems that are Windows 95 or more current; minimum 256 MB RAM; 300 MB of storage. Networking: Novell or Microsoft NT or Windows 2000 Server. Hard drive storage: Minimum 300 MB for software, 100 MB for portfolio data, depending on size and type of portfolio(s); 512 MB of RAM; 500Mhz processor speed or higher. Licensee's Installation: Installation is on a network server. For equipment or operating systems not named in this section, contact SymPro for compatibility information.

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