

Sirsi Corporation

AND

University of Puerto Rico - Mayaguez

**AGREEMENT FOR SOFTWARE SUPPORT, MAINTENANCE
AND UPDATE SERVICE**

THIS AGREEMENT, made this ____ day of _____, 2003, ("Agreement") by and between **Sirsi Corporation**, a Delaware Corporation, with principal offices located at 101 Washington Street SE, Huntsville, Alabama 35806-4827 ("SIRSI"), and **University of Puerto Rico - Mayaguez** located at Mayaguez, PR 00681-9022 ("LIBRARY"), is for the following purposes: (a) securing software update service and maintenance on the software described in Appendix A to this Agreement; and (b) providing consulting and support services to assist and advise LIBRARY in the operation of the computer system which is the subject of that certain license agreement between the parties dated _____ ("License Agreement").

1. **Term.**

This Agreement shall commence when signed by both parties, and shall be effective for an initial term of twelve (12) months and shall automatically renew thereafter unless terminated by ninety (90) days' written notice by either party.

2. **Scope of Services.**

During the term of this Agreement, SIRSI agrees to provide the following services:

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- A. Software Update and Maintenance Service. To the extent SIRSI makes generally available to its customers updates to the software listed in Appendix A during the term of this Agreement, SIRSI shall provide such updates, including appropriate documentation, to LIBRARY at no charge other than that for the media and transportation expense. All such updates and documentation shall be subject to all provisions of the original license for the software. SIRSI shall remedy any nonconformance of the software in Appendix A with its applicable User's Manual as soon as is reasonably possible after receipt by SIRSI of written notice from LIBRARY of such nonconformance. Such corrections shall be made at no charge to the LIBRARY other than travel, media and transportation expense. However, LIBRARY shall reimburse SIRSI on a time-and-materials basis for any claim which upon investigation SIRSI in good faith determines is not due to nonconformance of the software to the User's Manual. LIBRARY shall also reimburse SIRSI for time, materials, and travel expenses in connection with any work requested and performed which is not directly related to software maintenance. In consideration for such services, LIBRARY shall pay SIRSI the annual fees listed in Appendix A, payable annually in advance commencing upon installation of LIBRARY's live data.
 - B. Telephone assistance to LIBRARY for communications with systems support personnel to procure assistance in identification, verification and resolution of problems, and on-site visits where deemed required;
 - C. Written responses to LIBRARY Software Service Requests ("SSR's"); and
 - D. Improvements and enhancements to software reference manuals generally made available to customers during the term hereof.

3. **Eligibility for Service.**

Software is eligible hereunder upon installation of the LIBRARY's live data. The system on which the software resides must be unmodified and properly maintained at the latest revision level. The system must contain at least the minimum equipment configuration and prerequisite software as specified in the original License Agreement between the parties. Maintenance eligibility is also contingent upon proper use of the products by LIBRARY. If services are requested and performed to remedy a malfunction which is due to the following conditions, such services shall be deemed not to be due to nonconformance of the software to the applicable User's Manual and shall be billable on a time, materials and travel expense basis:

- (a) adjustment, repair or parts replacement is required because of accident, unusual physical, electrical or electro-magnetic stress, neglect, misuse, failure of electric power, air conditioning, humidity control, transportation, failure of rotating media not furnished by SIRSI, operation with media not meeting or not maintained in accordance with Manufacturer's specifications or causes other than ordinary use;
- (b) products have been modified by LIBRARY;
- (c) products as specified by Manufacturer or SIRSI in the documentation or User's Manual are missing;
- (d) products have been dismantled or reinstalled by LIBRARY without the supervision of or prior written approval of SIRSI;
- (e) Manufacturer's serial numbers or warranty date decals have been removed or altered; or
- (f) LIBRARY deviates from the software operating procedures established by SIRSI in the applicable documentation.

4. **Authorization for Service.**

LIBRARY shall provide SIRSI with the names of up to four (4) people who are authorized to log service calls with the SIRSI Service Desk and Help Desk. It is expected that the staff who are so authorized have been fully trained in the use of the SIRSI system. The training requirement may be fulfilled by the named individuals attending SIRSI training classes, or by being trained by someone who was trained by SIRSI personnel.

In the event LIBRARY requires additional people to be authorized to log service calls, authorization for additional staff can be purchased for an additional \$150.00 per month, per named individual. These individuals must also be certified as fully trained in the use of the SIRSI system.

5. **Responsibilities of LIBRARY.**

LIBRARY acknowledges and agrees that all software and/or changes, improvements or updates thereto provided to LIBRARY by SIRSI are subject to the terms and conditions of the software product license contained in the above-referenced License Agreement between the parties. LIBRARY shall provide SIRSI with access to LIBRARY personnel and equipment during normal business hours for the purpose of performing services under this Agreement. This access shall include the ability to access the server(s) on which the software is operated via ftp and telnet, upon request by SIRSI, in order to respond to a log placed by LIBRARY. LIBRARY shall maintain a current backup copy of all programs and data.

6. **Most Advantageous Accounting.**
In the event that SIRSI determines that a service request may be legitimately performed under multiple portions of this Agreement, such services will be performed pursuant to that portion providing the lowest actual cost to LIBRARY.
7. **Charges.**
LIBRARY shall pay the total annual charge prorated to a monthly basis, thirty (30) days from the date of receipt of an invoice, until the Licensees new fiscal year begins at which time the total annual charge shall be due thirty (30) days from the date of receipt of an invoice therefor. If payment is not made within thirty (30) days, an interest charge shall be assessed for each additional day the invoice remains unpaid at the rate of eighteen percent (18%) per annum. Charges are exclusive of, and LIBRARY is responsible for, all sales, use and like taxes (unless exempt therefrom as documented by applicable exemption certificate).
8. **Travel Expense.**
LIBRARY shall reimburse SIRSI for reasonable travel expense for those services for which such reimbursement is provided herein. Such expenses may include but are not limited to: meals, private hotel or motel room, taxi or carfare, coach airfare, and tips. SIRSI will invoice LIBRARY for such expenses as occurred, and LIBRARY agrees to pay such invoices within thirty (30) days of receipt thereof.
9. **Price Changes.**
SIRSI may, at any time after the initial 12-month term of this Agreement, change the price of services provided hereunder by giving ninety (90) days written notice to LIBRARY.
10. **Assignment.**
Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written approval of the other party, and any attempt by such party to do so without such approval shall be void.
11. **Force Majeure.**
SIRSI shall not be liable for any damages resulting from any delay in delivery or failure to give notice of delay which directly or indirectly results from the elements, acts of God, delays in transportation, delays in delivery by SIRSI's vendors, or any other cause beyond reasonable control of SIRSI.
12. **Waivers.**
No waiver of any right, obligation, or default shall be implied, but must be in writing, signed by the party against whom the waiver is sought to be enforced. One or more waivers of any right, obligation, or default shall not be construed as a waiver of any subsequent right, obligation, or default.
13. **Exclusion of Implied Warranties/Limitation of Liability.**
EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, SIRSI DISCLAIMS ALL WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

LIBRARY'S RIGHT TO RECOVER PROPERTY DAMAGES CAUSED BY SIRSI'S FAULT OR NEGLIGENCE SHALL BE LIMITED TO ONE MILLION DOLLARS (\$1,000,000.00). SIRSI WILL NOT BE LIABLE FOR DAMAGES RESULTING FROM LOSS OF DATA, LOSS OF PROFITS, LOSS OF USE OF PRODUCTS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS LIMITATION OF SIRSI'S LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT INCLUDING NEGLIGENCE. ANY ACTION AGAINST SIRSI MUST BE

BROUGHT WITHIN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF THE ACTION ACCRUES.

14. **Notices.**

Any notices required or permitted under this Agreement shall be in writing and delivered in person, by facsimile, overnight express, or by registered or certified mail, return receipt requested, with proper postage prepaid, properly addressed as set forth below. Notice shall be effective upon delivery. Facsimile notices shall also be delivered by another means listed above, but shall still be effective upon facsimile transmission. The following persons are duly authorized to receive and accept such notice:

FOR SIRSI:

Sirsi Corporation
101 Washington Street SE
Huntsville, Alabama 35801-4827
Attn: Finance and Administration/Contracts
FAX: (256) 704-7007

FOR LIBRARY:

University of Puerto Rico - Mayaguez

FAX: _____

15. **Severability.**

If any provision of this Agreement is determined to be unenforceable or invalid, the remaining provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.

16. **Governing Law.**

This Agreement shall be governed by the laws of the state of the principal place of business of LIBRARY both as to interpretation and performance.

17. **Attorneys' Fees.**

Should either party be required to file a legal action to enforce any provision of this Agreement, the prevailing party shall be paid its reasonable attorneys' fees and costs by the other party.

18. **Ownership of Library Data.**

All bibliographic, item, fine, patron, and other records entered into the database of LIBRARY or supplied to SIRSI by LIBRARY are and shall remain the sole property of LIBRARY. SIRSI shall not, without LIBRARY's written consent, copy or use such records except to carry out contracted work, and will not transfer such records to any other party not involved in the performance of this Agreement, and will return submitted records to LIBRARY upon completion of the work hereunder. LIBRARY shall have the right, without the consent of SIRSI, to extract such data in industry-standard formats, using standard SIRSI utilities and at no cost to LIBRARY. LIBRARY acknowledges that the storage compilation, format and layout constitute proprietary and trade secret information of SIRSI and are protected by federal copyright law. SIRSI agrees to assist LIBRARY, if requested, in making such extracts, subject to reasonable compensation therefor.

19. **Modifications to Agreement.**

The provisions of this Agreement may only be modified in writing, and are binding only if executed by a representative of SIRSI and LIBRARY authorized to execute legally binding agreements on each party's behalf.

20. Entire Agreement.

This Agreement is the result of negotiation of the parties and has been agreed to by both parties after careful and prolonged discussion. The provisions hereof supersede all prior agreements between the parties regarding software update and maintenance service and consulting and systems support service, and no change, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by a duly authorized representative of each party. All other terms and conditions of the License Agreement between the parties, and any amendments thereto, pertaining to matters other than the subject matter of this Agreement, shall not be changed hereby. In the event of a conflict between the terms of this Agreement, and the terms of any Purchase Order issued by LIBRARY, the provisions of this Agreement shall control.

IN WITNESS WHEREOF, the undersigned parties hereto have executed this Agreement in duplicate copies, each of which shall be deemed an original, as of the day and year first above written.

University of Puerto Rico - Mayaguez

Sirsi Corporation

By: _____

By: _____

Name: Jorge Ivan Velez Aracho

Name: _____

Title: Chancellor

Title: _____

Email: _____

Email: _____

APPENDIX A, Schedule 1

The following software shall be included under the terms of this Agreement:

LINK Software

<i>Description</i>	<i>Annual Support</i>
<hr/>	
Model G Package licensed for 350,000 to 500,000 titles includes 100 user level licenses equivalent to the following modules transferred from DRA CLASSIC System:	
▪ Bibliographic Control	\$ 4,164
▪ Authority Control	Included
▪ Choice of Web2 or iLINK Research Portal with Z39.50 Simultaneous Data Base Searching and MyLink Selective Dissemination of Information (SDI)	\$ 2,652
▪ Z39.50 Version 3 Server (TZIG/Bath Profile compliant)	\$ 5,508
▪ Circulation Control, including Inventory Control Academic Reserves, and Backup Circulation	\$ 3,528 \$ 300
▪ Acquisitions and Fund Accounting	\$ 2,652
▪ Serials Checkin and Control	\$ 2,652
▪ Secondary Database Maintenance	\$ 1,680
▪ Materials Booking	\$ 2,652
▪ Complete Electronic System Documentation (includes updates and rights for internal distribution)	Included
▪ WorkFlows Windows 95/NT staff clients (100 users)	Included
▪ (4) SmartPORT Client	Included
▪ Sirsi Reporting Module and MARC Import/Export utilities	\$ 3,996
Standard Sirsi System Software	\$ 5,000
SOFTWARE SUBTOTAL	<hr/> \$34,784