



# Support Agreement

<b>Client:</b> <u>County of Monterey</u>	<b>Client ID No.:</b> <u>MON200</u>
<b>Address:</b> <u>1590 Moffett Street</u>	<b>Purchase Order No.</b> _____
<u>Salinas, CA 93905</u>	<b>Purchase Order Date:</b> _____
<b>Date:</b> <u>July 23, 2019</u>	<b>Date Fiscal Year Begins:</b> _____
	<b>County Code:</b> _____
	<b>Sales Tax Percentage:</b> _____

This Software Support Agreement (“Agreement”) is entered into by and between QSI 2011, Inc. d/b/a Questys Solutions (hereinafter referred to as “QUESTYS”) and **County of Monterey** (hereinafter referred to as “Client”). The parties hereto mutually agree that the provisions herein shall apply to the Questys software purchased from QUESTYS or its distributors/resellers and in consideration of the charges as set forth herein.

### A. TERMS AND FEE

- The Agreement shall commence on **September 1, 2019** (“Commencement Date”) and continue for a thirty-six (36) month period (“Agreement Term”).
- The initial term of this Agreement shall be for thirty-six (36) months from the Commencement Date, subject to the early termination provisions of this Article A. Following the expiration of the initial Agreement Term the parties may renew this Agreement on terms agreed to by the parties, provided that under no circumstances will the cost of support for the same software increase by more than ten percent (10%) in successive renewal terms.
- QUESTYS may immediately terminate this Agreement or any license upon written notice if Client breaches this Agreement. Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relieve, nor shall such termination relieve Client’s obligation to pay all fees that accrued prior to such termination.
- The Client may terminate this Support Agreement at any time, with or without cause, on 30 days written notice to Questys.
- The total annual fee for services provided under this Agreement and any renewal terms are outlined below:

Level	Support	Fee	
		9/1/2019 to 8/31/2020	\$119,309.78
GOLD	Response Time: Within 4 hours during the available support period 6:00 AM to 6:00 PM Pacific Time	9/1/2020 to 8/31/2021	\$125,275.27
		9/1/2021 to 8/31/2022	\$131,539.03

- The fees listed in this Agreement do not include taxes. If QUESTYS is required to pay sales, use, property, value-added, or other federal, state or local taxes based on any licenses granted in this Agreement, the provision of services hereunder, or on Client’s use of QUESTYS Software, then such taxes shall be billed to and paid by the Client. This shall not apply to taxes based on QUESTYS’ income.
- Client’s payment of fees shall in all respects be subject to the terms of the Services Agreement



## Support Agreement

### B. RESPONSIBILITIES OF QUESTYS AND EXCLUSIONS

QUESTYS offers services at the following levels:

#### 1. GOLD LEVEL SUPPORT

QUESTYS shall maintain the software in good operating condition and repair software malfunctions in a professional and responsive manner. Specifically, QUESTYS shall:

- a. Provide software bug fixes as necessary.
- b. Provide new releases of software manufactured by QUESTYS within sixty (60) days from official release. New releases will be made available as electronic downloads at no charge. Only QUESTYS developed software in new releases will be provided at no charge. Any additional third-party products that may be made available within the QUESTYS software will not be provided free of charge. These third-party products will be disabled in the QUESTYS software if the client chooses not to purchase them. QUESTYS guarantees a minimum of one new release annually.
- c. Access to the Questys Online Knowledge Base.
- d. Unlimited e-mail, online, and phone technical support for users and administrators with a response time not to exceed four (4) hours during the available support period of 6:00 AM Pacific Time to 6:00 PM Pacific Time, excluding weekends and QUESTYS holidays (the "Gold Level Support Period"). The response time guarantee is calculated from the time that the support request is received. The four-hour response time shall be limited to available hours within the Gold Level Support Period.

"Response time" is defined as the period of time elapsed between the initial contact by Client personnel to QUESTYS and the acknowledgement by QUESTYS to Client that a support case has been opened. Response time is limited to, and counted in, hours available within the support periods defined elsewhere in this Agreement.

This Agreement specifically excludes the following:

- Cost of any and all hardware and third party (non-QUESTYS developed) software.
- The cost of repairs of any and all hardware and third party (non-QUESTYS developed) software.
- Major software updates or upgrades, installation of software updates or upgrades, conversion of data, training of Client personnel or any other on-site or off-site professional services unless specifically outlined below and specifically related to the Questys Software Products. These additional products and services are available at standard QUESTYS billing rates.



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### C. RESPONSIBILITIES OF CLIENT

1. Client equipment shall include hardware, software, and communications components necessary for remote communications and diagnostics.
2. Client shall notify QUESTYS's service personnel upon system failure by calling QUESTYS's service line at 877-362-6246 option 3 or e-mail to support@questys.com.
3. Client personnel shall not perform maintenance or attempt repairs to QUESTYS supplied software except by prior written agreement with QUESTYS.
4. Alterations in or modifications to the QUESTYS software may not be made without prior written consent of QUESTYS.
5. Fees shall be payable when invoiced and are non-refundable. All fees shall be deemed overdue if they remain unpaid thirty-one (31) days after they become payable.

### D. DISCLAIMERS

QUESTYS obligations and warranties under this agreement are in lieu of all other warranties, expressed or implied. In no event shall QUESTYS be liable for special or consequential damages, including loss of profits, revenue, data, or use, incurred by client or any third party, whether in an action in contract or tort, arising from the provision of service hereunder, even if the other party or any other person has been advised of the possibility of such damages. Liability of QUESTYS in any and all other categories and for any and all causes, including breach of any express or implied warranty or representation shall, in the aggregate, not exceed the then current annual maintenance fee as set forth in the services agreement.

### E. GOVERNING LAW AND AMENDMENTS

This Agreement is governed by and construed according to the laws of the State of California without regard to principles of conflict of laws. This Agreement constitutes the entire agreement between QUESTYS and Client with respect to the furnishing of maintenance and/or support to QUESTYS software as defined in this Agreement. No provision of this Agreement shall be deemed waived, amended, or modified by either party unless such waiver, amendment or modification be in writing and signed by a duly authorized representative of the party against whom it is sought to enforce the waiver, amendment, or modification. In the event any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. The terms stated in this Agreement shall prevail over any conflicting terms in any purchase order or other instrument covering the services subscribed to as issued by Client.



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**F. PAYMENT AND SIGNATURE:**

This Order Form is subject to the terms and conditions above and as set forth on the Software Support Agreement between the Client and QUESTYS, attached and herein incorporated.

Quantity	Level	Support Period	Fee
1	Gold	Fee for September 1, 2019 – August 30, 2020	\$119,309.78
1	Gold	Fee for September 1, 2020 – August 30, 2021	\$125,275.27
1	Gold	Fee for September 1, 2021 – August 30, 2022	\$131,539.03

Payment is due on or before the start of each annual renewal period.

**QSI 2011, INC., DBA QUESTYS SOLUTIONS:**

**COUNTY OF MONTEREY**

Name: Dylan Tan

Name: ERIC A. CHATHAM

Signature: *Dylan Tan*

Signature: *Eric A. Chatham*

Title: Director of Customer Services

Title: DIR ITD

Date: July 23, 2019

Date: 9/3/19

APPROVED AS TO FORM  
*Kay Reiman* 8/6/19  
 DEPUTY COUNTY COUNSEL  
 COUNTY OF MONTEREY

Reviewed as to fiscal provisions  
*[Signature]*  
 Auditor-Controller  
 County of Monterey 8/7/19