

DEPARTMENTAL INPUT
CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

New Contract **OTR** **X Sole Source** **Bid Waiver** **Emergency** Previous Contract/Project No. SS9152-0/11

Re-Bid **Other** LIVING WAGE APPLIES: **YES** **NO**

Requisition No./Project No.: RQPD1200006 TERM OF CONTRACT One (1) year initial term, with two (2) two (2) year options-to-renew

Requisition /Project Title: TELEPHONE SURVEILLANCE SYSTEM

Description: This contract will provide Miami-Dade Police Department (MDPD) with continued software maintenance, updates, upgrades, and support for 15 user intercepts and 12 channel licenses for the PEN-LINK ® LINCOLN System (System) provided by PEN-LINK LTD. This System provides MDPD with the latest telecommunication technology and the ability to collect critical evidence and record intercepted communication through the following type of systems: wired, wireless, Voice Over Internet Protocol (VoIP), third generation mobile technology (3G) and Internet Protocol (IP). This System is capable of automatically loading various formatted calls, IPs, and transaction records from a wide variety of communication and internet service providers.

Issuing Department: ISD Contact Person: Leida Altman Carrillo Phone: 305-375-1084

Estimate Cost: Initial Term \$52,625 for initial one year term, \$263,125 should all OTRs be exercised.

GENERAL FEDERAL OTHER

Funding Source: General Funds

ANALYSIS

Commodity Codes: 680-87

Contract/Project History of previous purchases three (3) years

Check here if this is a new contract/purchase with no previous history.

EXISTING

2ND YEAR

3RD YEAR

Contractor:	PEN-LINK LTD #470707585 / 01		
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Small Business Enterprise:			
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Contract Value:	\$75,000.00	\$	\$
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Comments:

Continued on another page (s): **YES** **NO**

RECOMMENDATIONS

	Set-aside	Sub-contractor goal	Bid preference	Selection factor
SBE				

Basis of recommendation:

2011 DEC -9 AM 10:08

Signed: LEIDA ALTMAN CARRILLO	Date sent to DBD: 12/9/2011
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	Date returned to DPM:
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PEN·LINK™

It's the Key™

Shelley Sorensen | Territory Sales Manager

ssorensen@penlink.com | www.penlink.com

Leida Altman Carrillo
Miami- Dade County Department of Procurement Management
Miami, Florida

November 30, 2011

Dear Ms Altman Carrillo,

Pen-Link, Ltd. is the sole source provider of all Pen-Link Software Products, including Pen-Link and LINCOLN Administrative Software. We utilize no agents, dealers, or distributors. Pen-Link and LINCOLN software products are proprietary software and can only be purchased directly from Pen-Link, Ltd., which is located in Lincoln, Nebraska. Pen-Link's Federal Tax I.D. # is 47-0707585

Sincerely,

Shelley Sorensen

Justification/Input Document for "Sole Source" Acquisition
Title: Telephone Surveillance System

ITB # _____

It is the policy of Miami-Dade County, to consistently purchase goods and services using full and open competition. The citizens of Miami-Dade County are best served when we make sound business decisions based on competitive bids or proposals. Early acquisition planning that includes DPM can help to avoid delays and to facilitate effective market research. However, there may be instances when other than full and open competition may be justified. When a user department(s) has determined that there is only one source of supply for a product or service, appropriate justification for that course of action must be submitted to the CA Office for approval in order to waive the competitive bid/proposal process, as a sole source purchase.

Please provide the information requested below to support the need and feasibility for waiving the competitive bid/proposal process.

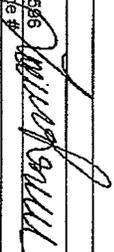
Purchase Requisition No.: N/A Contract # SS9152-0/11 Date Required: 02/15/2012 Commodity # 680-87 Est. Value: \$ 52,625.00
 Proposed Vendor: Pen-Link LTD (470707585-01) Previous Contract # SS9152-0/11 Estimated Cost: \$ 52,625.00 BCC Date: N/A

1. Purpose of the purchase. Please describe your minimum requirements and the benefits of making the acquisition.
 See Attached

2. Uniqueness of vendor's item/service. Please describe how this vendor is uniquely qualified to provide the needed product/service.
 See Attached

3. Market Research. Please describe your market research and the results thereof. The should include a description of other, similar sources or products available in the market, if any, and why they are not acceptable.
 See Attached

4. Proposed Actions. Please describe the actions the department will take to overcome the present barriers to competition and future acquisition of this product or service.
 See Attached

Laura Romano 305-471-2586 
 Contact Person and Phone #
 James K. Loftus 
 Department Director's Approval
 11-9-11
 Date Approved

FAB 8561

Purpose of Purchase:

To renew the PEN-LINK ® LINCOLN system maintenance agreement for the initial system purchased by the Miami-Dade Police Department.

In 2003, the Miami-Dade Police Department's, Homeland Security Bureau's Technical Operations Unit purchased the initial (6) channel, 10-user LINCOLN system which included three years of system maintenance (PO #APPD0300060.) In 2006, this system was expanded with the additional purchase of a (12) channel 15 user system. These PEN-LINK ® systems are currently installed and utilized in the Department's Headquarters building wire room. The maintenance period for the initial (6) channel, 10-user system is due to expire December 1, 2007.

The Homeland Security Bureau's Technical Operations Unit has historically been the departmental entity responsible for the coordination, operation and supervision of telephone surveillance ranging from the collection of telephone number data via the use of dialed number recorders to Title III, oral communications intercepts.

The PEN-LINK ® LINCOLN system provides telephone intercept surveillance in support of major investigations being conducted by the Criminal Investigations Division and the Department. Additionally, these systems play a critical role in the Department's ability to track and locate criminals utilizing cellular telephones.

Uniqueness of Vendor's Item/Service:

The proposed PEN-LINK ® system maintenance agreement would allow for the continued ability of providing criminal investigators with crucial evidence collected through telephone line intercept surveillance. The maintenance agreement will insure that the currently installed systems stay up to date with newly developed engineering and software upgrades that are produced to stay current with many newly developed telecommunication technologies such as Voiceover IP and Broadband IP services on 3G phones. These proprietary engineering and software developments are required to maintain the functionality of the system and to ensure continued compliance with the Communications Assistance for Law Enforcement Act (CALEA.)

Market Research:

PEN-LINK, Ltd. is the sole source provider of the LINCOLN system. The company utilizes no agents, dealers, or distributors. PEN-LINK ® LINCOLN system maintenance can only be purchased directly from PEN-LINK, Ltd., which is located in Lincoln Nebraska. PEN-LINK, Ltd. is currently an active Miami-Dade County Vendor, number: 470707585.

Proposed Actions:

The proprietary nature of this purchase necessitates the acquisition from a specific vendor.

Non-Competitive IT Project Review

Directions for Completion: Departments requesting a non-competitive project review for new or existing Information Technology (IT) Systems are required to complete this questionnaire along with the appropriate Bid Waiver/Sole Source Justification Form. The response and explanation fields are to be fully completed to provide all background on the project. Please be as specific as possible and provide all backup documentation, doing so will expedite the review of your project.

The answers provided in the response field shall be according to the following format:

- "Y" – Yes
- "N" – No
- "N/A" – Not applicable

Existing Systems		
Questions:	Response:	Explanation:
Current Contract Information:		
When and how was the IT software/hardware initially purchased by the County? (Please provide contract number, award info, and applicable documentation)	Y	The software along with the hardware was purchased back in 2003 / 2006.
When does the current contract expire?	Y	Soon
If the contract has expired, how are/have you been maintaining the IT hardware/software? (Provide explanation and documentation if applicable)	N/A	
Was maintenance and support included in the current contract? If no, why not? Did it include assistance with transition to a new system?	Y	Yes, Support was built into the contract
What other applications does the System integrate/interface with?	N	Independent from the county network reference security. Runs on its own internal network using VPN tunnels.

Non-Competitive IT Project Review

<p>If a new system were deployed would it still be necessary to support the current system in parallel? How long would the legacy system need to be maintained and operational? Could historical data be stored in a data warehouse? What would be the cost?</p>	N/A	
<p>What is the purpose of this IT hardware /software? What is the expected life cycle?</p>	Y	<p>To allow for the continued ability of providing criminal investigators with crucial evidence collected through telephone line intercept surveillance</p>
<p>Is this product an integral part of the County / Department's technical infrastructure? Does it perform system critical functions? If so, what?</p>	N/A	
<p>Are these solutions delivered through the Original Equipment Manufacturer (OEM) support? If no, is it delivered through authorized reseller or dealers?</p>	Y	<p>As part of the service agreement all software is kept up to date by Penlink Limited.</p>
<p>On the current contract, is the User Access Program (UAP) and Inspector General being collected?</p>	N/A	
<p>Does the current contract require insurance? <i>(Note: Any vendor required to come onto County property is required to have insurance throughout the term of the Agreement.)</i></p>	N	
<p>Have you encountered any issues during the contract term regarding performance or compliance?</p>	N	
<p>Have you been satisfied with the performance of the vendor to date?</p>	Y	<p>Penlink has provided the assistance need to complete the job on a timely mater 24/7</p>

Non-Competitive IT Project Review

Questions:	Response:	Explanation:
<p>Market Research:</p> <p>Are there available equivalents to the product or service you are requesting for this new project? (Please provide documentation regarding your Department's market research)</p>	Y	<p>PEN-LINK, Ltd. is the sole source provider of the LINCORN system. The company utilizes no agents dealers, or distributors. PEN-LINK @ LINCORN system maintenance can only be purchased directly from PEN LINK, Ltd., which is located in Lincoln Nebraska. PEN LINK, Ltd. is currently an active Miami-Dade County Vendor, number: 470707585.</p>
<p>If there are available equivalents, why do these products not meet your needs? What are the differences? (Please be as specific as possible to provide sufficient detail to justify your request.)</p>	Y	<p>Re-investing large sums of money to redo what is in currently in place. (Not cost effective)</p>
<p>Can the vendor meet your long term needs? What research has been conducted to verify their ability to meet your expectation? (Please provide documentation, as applicable, to show your findings)</p>	Y	<p>The company was founded in 1987 we have been doing business with Penlink since 2003. Recently they have built on to their product line X-Net, PLM and Pen-Proxy as part of our service agreement we will receive the new products.</p>
<p>What other vendors offer systems capable of providing the County with a solution?</p>	Y	<p>JSI, https://www.jsitelecom.com/</p>
<p>Are these solutions delivered through the Original Equipment Manufacturer (OEM) support or is it delivered through authorized reseller or dealers.</p>	Y	<p>Original Equipment Manufacture</p>

Non-Competitive IT Project Review

<p>Are dealers required to complete a certification program or are they restricted to levels of support set up by the vendor/mfg? <i>(I.e. gold plan vs. platinum plan – gold allows vendor to maintain equipment but they do not have access to software upgrades or new system implementations. Platinum allows vendors to complete new product installs and all other support).</i></p>	N/A	
<u>Questions:</u>	<u>Response:</u>	<u>Explanation:</u>
<p>What level support does the County require for this new project?</p>	Y	Network connection
<p>Are there other systems currently employed by the department / County that are similar that could provide a solution?</p>	N	
<p>If a new system were deployed would it still be necessary to support the current system in parallel?</p>	Y	No Need
<p>How long would the legacy system need to be maintained and operational?</p>	Y	Indefinite Service agreement
<p>Could historical data be stored in a data warehouse? What would be the cost?</p>	N/A	

Non-Competitive IT Project Review

Has the replacement system been reviewed and approved by the IT Leadership Council?	N/A	
New Project Information:		
<p>Questions:</p> <p>What are the business goals and objectives of this new project? (Please be specific)</p> <p>What contract term would you like established? (<i>Initial term plus any renewals</i>)</p>	<p>Response:</p> <p>Y</p>	<p>Explanation:</p> <p>The maintenance agreement will insure that the currently installed systems stay up to date with newly developed engineering and software upgrades that are produced to stay current with many newly developed telecommunication technologies such as Voiceover IP and Broadband IP services on 3G phones. These proprietary engineering and software developments are required to maintain the functionality of the system and to ensure continued compliance with the Communications Assistance for Law Enforcement Act (CALEA.)</p>
<p>Questions:</p> <p>What allocation is requested on this new project? What is the basis of the allocation request? (<i>i.e. Vendor quote, market research, etc.</i>)</p> <p>Please provide documentation if applicable.</p>	<p>Response:</p> <p>Y</p>	<p>Explanation:</p> <p><i>Vendor quote</i></p>
<p>What is your funding source(s) for this new project?</p>	<p>N</p>	
<p>Is this a grant funded project? If so, please provide grant documentation outlining the expiration date and requirements.</p>	<p>N/A</p>	

Non-Competitive IT Project Review

What budget year is it scheduled for?		
Is the allocation enterprise or department based?	N/A	
Scope Information:		
<p>Questions:</p> <p>Please provide a high level overview as to the scope of this project. A defined scope of work is to be provided with your submission.</p>		<p>Response:</p> <p>The PEN-LINK @ LINCOLN system provides telephone intercept surveillance in support of major investigations being conducted by the Criminal Investigations Division and the Department. Additionally, these systems play a critical role in the Department's ability to track and locate criminals utilizing cellular telephones.</p>
What is your Project Timeline?	Y	ASAP
What are the roles and responsibilities of the vendor?	Y	To provide 24/7 real-time support and software upgrades to the Penlink System
What are the roles and responsibilities of the County?	Y	To provide 24/7 real-time assistance to the investigators wishing to go up on a Title III or PenRegister for tracking.
Software Acquisitions:		
Is this a replacement of an existing software/system?	N/A	
<p>Questions:</p> <p>Is the software perpetual? If so, please provide a copy of the license agreement with your submission.</p>	N/A	
<p>Questions:</p> <p>Do you require professional services on the new contract? (i.e. Training, custom programming, consulting)</p>	N/A	

Non-Competitive IT Project Review

How is the software licensed? (i.e. Per User, Enterprise, Concurrent User, Site)	Y	Per User
How many users?	Y	15
Do you want/need the new contract to provide the option to purchase additional licenses or services during the term?	Y	
Do you require training for users on the new contract? How many users are to be trained? Levels?	Y	4 new users
Where is the software hosted?	Y	Miami Dade Police Department (Cold Room)
Do you have a disaster recovery plan? If no, is the vendor required to provide collocation under the new contract?	Y	Backup The Homeland Security Bureau's Technical Operation Unit has historically been the departmental entity responsible for the coordination, operation and supervision of telephone surveillance ranging from the collection of telephone number data via the use of dialer number recorders to Title III, oral communication intercepts.
What are your long term plans with the system?	Y	The PEN-LINK @ LINCOLN system provides telephone intercept surveillance in support of major investigations being conducted by the Criminal Investigations Division and the Department. Additionally, these systems play a critical role in the Department's ability to track and locate criminals utilizing cellular telephones.
Do you have the source code?	N	

Non-Competitive IT Project Review

Would you like software escrow added to the new contract?	Y	
What is the life expectancy of the software? What value does this project provide to your department?	Y	Service Agreement (Up to Date)
Hardware Acquisitions:		
Questions:		
Was maintenance and support included in the original contract? If not, why?	Y	
Did it include assistance with transition to a new system?	Y	
Is this product an integral part of the County / Department's technical infrastructure?	N	
What are the requirements for maintenance and support under the new contract?	Y	Network connection
Will the vendor be required to come onto County property to provide technical support/assistance? If not, how will this be accomplished?	Y	As needed by County
What level of support is required by your Department under the new contract? (I.e. 24x7, onsite repair, parts, etc.)	N/A	
Does it perform system critical functions? If so, what?	N	
What would be the effect to the County if the maintenance / support services were not obtained?	Y	With time Cell Phone Technology would leave us behind and the system would become obsolete.

Non-Competitive IT Project Review

<p>What other systems does the hardware integrate/interface with?</p>	N/A	
<p>Will the new contract require the vendor to maintain these integrations/interfaces with these systems also?</p>	N/A	
<p>Questions:</p>	<p>Response:</p>	<p>Explanation:</p>
<p>What is the life expectancy of the hardware?</p>	N/A	
<p>What value does this project provide to your department?</p>	Y	<p>These systems play a critical role in the Department's ability to track and locate criminals utilizing cellular telephones.</p>
<p>Do you need to have the ability in the new contract to purchase additional hardware components, parts, or services? If so, please provide a detailed explanation as to your Department's requirements.</p>	N/A	



PEN·LINK™

It's the Key™

QUOTE

5936 VanDervoort Drive | Lincoln, NE 68516
402.421.8857 phone | 402.421.9287 fax

QUO-01051-GW72D5

Date: 10/6/2011

Revision: 1

BILL TO:

SHIP TO:

SALESPERSON	EXPIRATION DATE	CUSTOMER ACCOUNT NAME
Shelley Sorensen	1/4/2012	Miami-Dade PD-Miami-ND
FREIGHT TERMS	SHIPPING METHOD	PAYMENT TERMS
FOB Origin	Ground	Net 30

QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	COLLECTION MAINTENANCE - PREMIUM	\$52,625.00	\$52,625.00
Period of Performance is 12/1/2011 through 11/30/2012			

SUB-TOTAL AMOUNT:	\$52,625.00
DISCOUNT AMOUNT:	\$0.00
TAX AMOUNT:	\$0.00
TOTAL AMOUNT:	\$52,625.00

Pen-Link Software Annual Maintenance
Updates, Upgrades and Support
LINCOLN Admin Software
15 User Intercept
12 Channel
Terms: 12/01/11 - 11/30/12

Pen-Link, Ltd is a U.S. - Based Small Business

DUNS: 195956636 / TIN: 47-0707585 / CAGE: 0K6H9

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Pen-Link, Ltd. Maintenance and Support Terms and Conditions

1. Terminology

The following terms and definitions apply throughout this document.

- 1.1. **Pen-Link Software.** Pen-Link Software is software developed and manufactured by Pen-Link, Ltd.
- 1.2. **Pen-Link Customer (also "Customer").** A Pen-Link Customer, or Customer, is any agency or other entity that has one or more current, valid Licenses for Pen-Link Software purchased from or through Pen-Link, Ltd.
- 1.3. **Basic Technical Support Package.** Entitles our customers to normal business hours telephone support at Pen-Link, Ltd.'s published number and/or assistance via e-mail.
- 1.4. **Standard Maintenance and Support.** Standard Maintenance is a Maintenance option that includes Software Updates, Software Upgrades, and Basic Technical Support as defined herein.
- 1.5. **Premium Maintenance and Support.** Premium Maintenance is a Maintenance option that includes Software Updates, Software Upgrades, and Premium Technical Support as defined herein.
- 1.6. **Software Update.** A Software Update is an enhancement—including additions, changes, and bug fixes—to Pen-Link Software that is already in the applicable commercial market. Software Updates occur within the same major version number of an existing software product. For example, replacing Pen-Link v8.1.29.0 with Pen-Link v8.1.30.0 would constitute a Software Update. Such an update is often referred to as a "New Build" of the Pen-Link Software.
- 1.7. **Software Upgrade.** A Software Upgrade is the replacement of an older major version of an existing Pen-Link Software product or products, with a newer major version of a Pen-Link Software product or products, to the extent required to maintain the same operational functionality that was supported by the Pen-Link Software prior to the upgrade. For example, upgrading from Pen-Link Version 7 to Pen-Link Version 8 (where 8 is the newer major version) would constitute a Software Upgrade, so long as the installation of the newer version of the Pen-Link Software supported at least the same operational functionality that the Customer had under Pen-Link version 7. Upgrades do **not** apply to *new* software products that Pen-Link, Ltd. may release to the commercial market from time to time in the future.
- 1.8. **Basic Technical Support (also "Basic Support").** Basic Technical Support is a Support option that includes telephone-based Technical Support for the Pen-Link Software licensed by the Customer. Basic Technical Support also includes assistance via email or other automated processes such that Pen-Link, Ltd. may deem fit to offer. Basic Technical Support may be obtained by contacting Pen-Link, Ltd. via its published, main telephone number (currently 402-421-8857), its general support email account (support@penlink.com), or its World Wide Web site (www.penlink.com). Basic Technical Support is available Monday through Friday, from 8:00 AM to 5:00 PM Central time, except for holidays.
- 1.9. **Premium Technical Support (also "Premium Support").** Premium Technical Support is a Support option that includes all of the support services offered with Basic Technical Support (Section 1.8), plus Emergency After-Hours support for live communication interception and collection operations. Emergency After-Hours support services may be accessed through methods, including telephone access, that are provided to the customer at the time of purchase. Emergency After-Hours support services are available Monday through Friday, from 5:01 PM - 7:59 AM Central time and all day Saturday & Sunday, including holidays.
- 1.10. **Maintenance and Support Agreement ("Agreement").** This Maintenance and Support Agreement is the Agreement between Pen-Link, Ltd. and the Customer regarding the terms and conditions under which the Maintenance and Support Services described in this document are purchased and provided.

2. Software Maintenance ("Maintenance")

- 2.1. Maintenance is an optional service offered by Pen-Link Ltd. to augment a purchase of Pen-Link Software. Maintenance may be purchased by a Pen-Link Customer along with, or subsequent to, the purchase of Pen-Link Software.
- 2.2. Maintenance is offered only pursuant to a Maintenance and Support Agreement between the Customer and Pen-Link, Ltd.
- 2.3. Pen-Link, Ltd. offers two levels of Maintenance that a Customer may purchase: Standard Maintenance and Premium Maintenance, as defined in Sections 1.4 and 1.5 respectively.

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2.4. Maintenance applies only to software developed and manufactured by Pen-Link, Ltd. Maintenance does not apply to software developed and manufactured by companies other than Pen-Link, Ltd. Unless otherwise specified in a separate, written agreement between Pen-Link, Ltd. and the Customer, to which Pen-Link, Ltd. is a signatory party, Maintenance does not include updates, upgrades, or bug fixes to, or new releases of, any third-party software or hardware purchased through Pen-Link, Ltd. or with the assistance of Pen-Link, Ltd. Support for third party software and hardware products bundled with Pen-Link, Ltd. licensed Pen-Link Software is available only according to the third-party manufacturer's support policies.

2.5. All Maintenance deliveries are subject to the terms and conditions of the applicable End User License Agreement ("EULA") for the Licensed Software.

3. Technical Support ("Support")

3.1. Technical Support ("Support") is an optional service offered by Pen-Link, Ltd. to support a Customer in the authorized use of licensed Pen-Link Software.

3.2. Support is offered only pursuant to a Maintenance and Support Agreement between the Customer and Pen-Link, Ltd.

3.3. Pen-Link, Ltd. offers two levels of Technical Support: Basic Technical Support and Premium Technical Support, as defined in Sections 1.8 and 1.9 respectively.

3.4. Pen-Link, Ltd. will make every reasonable attempt to answer a Customer's Support questions and address a Customer's Support concerns. However, Support is offered on a good faith, diligent effort basis only, and Pen-Link, Ltd. may not be able to resolve every request for Support.

3.5. Technical Support is provided for ongoing, operational use of the licensed Pen-Link Software; Support is not intended to be a substitute for training or professional services necessary for the implementation or system redesign of the licensed Pen-Link Software, which are outside the scope of this agreement. All such services, including without limitation, training, on-site assistance, consultation, custom programming and other software customizations, network design, and database and network administration, may be provided pursuant to separate agreements with and by Pen-Link, Ltd.

3.6. Unless otherwise specified in a separate, written agreement between Pen-Link, Ltd. and the Customer, to which Pen-Link, Ltd. is a signatory party, Support is available only for the current and immediately preceding version of the licensed Pen-Link Software. Support for a previous version of Pen-Link Software is provided up to a maximum of eighteen (18) months after the release of the current version of software, provided that the Customer and Pen-Link, Ltd. are parties to a current Maintenance and Support Agreement.

3.7. Unless otherwise specified in a separate, written agreement between Pen-Link, Ltd. and the Customer, to which Pen-Link, Ltd. is a signatory party, Support does not include any of the following:

3.7.1. Support for database products or so-called "DBMS" or Database Management Systems, including without limitations, setup and alteration and/or configuration of such products, and resolution of errors related directly to such products.

3.7.2. Resolving network, workstation, or other environmental errors not directly related to the licensed Pen-Link Software.

3.7.3. Support for any licensed Pen-Link Software working on or with any version of any database, Database Management System, operating system, or other hardware or software product or system that is not specifically identified as interoperable and compatible with the specific version of the license Pen-Link Software being used.

3.7.4. Support for any "alpha," "beta," or other preproduction release of any software, including Pen-Link Software.

3.7.5. Support for any changes to Pen-Link Software made outside of the product's scope by a customer or by any third party.

3.7.6. Support for any licensed Pen-Link Software that is used for a purpose, or in a manner, for which it was not designed.

4. Terms and Conditions

4.1. Maintenance and Support Agreements are options made available by Pen-Link, Ltd. for a Customer to purchase.

4.2. Maintenance and Support Agreements are offered on an annual basis.

4.3. Unless otherwise specified in a separate, written agreement between Pen-Link, Ltd. and the Customer, to which Pen-Link, Ltd. is a signatory party, Maintenance and Support Agreements will renew automatically at the end of each annual term, provided that the Customer pays the applicable renewal fees.

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4.4. Unless otherwise specified in a separate, written agreement between Pen-Link, Ltd. and the Customer, to which Pen-Link, Ltd. is a signatory party, a Customer's Maintenance and Support Agreement is to be paid at the start of each annual term.

4.5. **Payment.** The Customer will be invoiced prior to any annual Maintenance and Support term (initial or renewal terms). The Customer agrees to make payment to Pen-Link, Ltd. no later than thirty (30) days from the date of the invoice, unless otherwise agreed upon in writing. Unless otherwise instructed, the Customer will make payment directly to Pen-Link, Ltd.

4.6. Pen-Link, Ltd.'s obligations hereunder are subject to the Customer's timely payment for Maintenance and Support. Failure of the Customer to pay fees in a timely manner for any term of Maintenance and Support may, at the sole discretion of Pen-Link, Ltd., result in the termination or suspension of Maintenance and Support services.

4.7. **Lapses and Reinstatement.** If a Customer's Maintenance and Support agreement terminates as a result of expiration or otherwise pursuant to this Agreement, and the Customer decides to reinstate the Agreement, the Customer will be required to pay the applicable Maintenance and Support fees for the lapsed period (the time elapsed between the Agreement expiring and subsequently being reinstated), plus a reinstatement fee equal to 10% of the fees for the lapsed period.

4.8. **Taxes.** The Customer is responsible for payment of all applicable taxes, value added taxes, or other taxes (however designated) related to the Maintenance and Support of the Licensed Software, unless otherwise agreed upon and stated in writing.

4.9. This Agreement will automatically terminate for each Licensed Pen-Link Software product upon termination of the EULA corresponding to such Pen-Link Software product.

4.10. The Customer may terminate this Agreement for Convenience, but the Customer will not be entitled to a refund of any paid fees in such an event.

4.11. **Additional Orders.** Orders by the Customer for additional Pen-Link Software products or additional licenses of Pen-Link Software products will increase the Customer's Maintenance and Support fees under this Agreement.

5. Warranty and Liability Disclaimer

5.1. Pen-Link, Ltd. warrants that the Maintenance and Support services provided to the Customer under this Agreement shall be performed with due care, and in a professional and workmanlike manner. Pen-Link, Ltd. does not otherwise warrant the accuracy or completeness of any services provided pursuant to this Agreement. PEN-LINK, LTD. DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, IN CONNECTION WITH THE SUBJECT OF THIS AGREEMENT. IN NO EVENT, UNDER ANY THEORY OF LAW, SHALL EITHER PARTY AND/OR ITS AFFILIATES BE LIABLE TO THE OTHER FOR ANY INDEMNITY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS AND/OR ITS AFFILIATES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PEN-LINK, LTD.'S LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PREPAID AND UNUSED PORTION OF THE CUSTOMER'S MAINTENANCE AND SUPPORT FEES PAID TO PEN-LINK, LTD. PEN-LINK, LTD. SPECIFICALLY DISCLAIMS ALL RESPONSIBILITY FOR ANY SERVICES PROVIDED BY ANY PARTNER OR ANY OTHER THIRD PARTY.

5.2. It is the sole responsibility of the Customer to make and maintain adequate backup copies of software and data.

5.3. In no event will Pen-Link, Ltd. be responsible for lost data.

6. Miscellaneous

6.1. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Customer and Pen-Link, Ltd. related to the subject matter hereof, and additions or modifications shall be binding upon the parties only if the same shall be in writing and duly executed by the Customer and a duly authorized officer of Pen-Link, Ltd. The Licensed Pen-Link Software is licensed under a separate End User License Agreement (EULA) and professional services, if any, are provided under a separate professional services agreement. The terms and conditions of any Customer purchase order are only binding on Pen-Link, Ltd. if they are agreed to in writing by an authorized Pen-Link, Ltd. officer and in a document other than the purchase order.

6.2. **Waiver.** The waiver or failure of either party to exercise in any respect any right shall not be deemed a waiver of any further or future right.

6.3. **Assignment.** The Customer may assign this Agreement only in connection with a proper and valid assignment of the corresponding EULA to the extent permitted there under; provided that the Customer gives written notice of such assignment to Pen-Link, Ltd. Pen-Link, Ltd. may freely assign this Agreement to a purchaser of that portion of Pen-Link Ltd.'s business to which this Agreement relates, to the surviving corporation in the event of a merger, and to any affiliate or third-party whom Pen-Link authorizes to provide Maintenance and Support for the Licensed Pen-Link Software of the nature contemplated hereby.

Pen-Link, Ltd is a U.S. - Based Small Business

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