

RESOLUTION NO. 2005-44

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, RATIFYING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF SOFTWARE PURCHASE AND LICENSE AGREEMENT BETWEEN ST. JOHNS COUNTY PUBLIC LIBRARY AND DYNIX CORPORATION EXECUTED ON DECEMBER 6, 2004, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE ON BEHALF OF ST. JOHNS COUNTY, FLORIDA THE FIRST AMENDMENT TO THE SOFTWARE PURCHASE AND LICENSE AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND DYNIX CORPORATION

WHEREAS, Dynix Corporation (Dynix) entered into a Software Purchase and License Agreement (Agreement) with the St. Johns County Public Library on December 6, 2004 (which is attached and incorporated as Exhibit "A"); and

WHEREAS, subsequent to Dynix's execution of the Agreement, it was determined that the proper local government party to the Agreement, should have been St. Johns County, Florida (County), as opposed to St. Johns County Public Library; and

WHEREAS, subsequent to Dynix's execution of the Agreement, it was determined that the Agreement should be amended to reflect the proper party, and revised, so as to include the controlling State law, provide for proper venue, and authorize execution by the proper representative; and

WHEREAS, a First Amendment (Amendment) to the Agreement has been developed and drafted to incorporate the above-noted revisions; and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of the Amendment (attached hereto, and incorporated as Exhibit "B"); and

WHEREAS, the County has determined that ratifying the Agreement, accepting the terms of the Amendment, and entering into the Amendment will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby ratifies the terms, provisions, conditions, and requirements of the Software Purchase and License Agreement between St Johns County Public Library and Dynix Corporation executed on December 6, 2004, and authorizes the County Administrator to execute on behalf of St. Johns County, the First Amendment to the Software Purchase and License Agreement between St. Johns County, Florida, and Dynix Corporation.

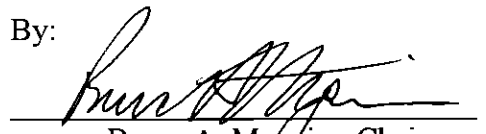
PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 23rd day of February, 2005.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

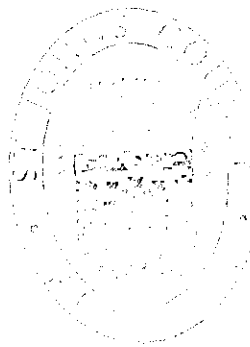
Attest: Cheryl Strickland, Clerk


Deputy Clerk

By:


Bruce A. Maguire, Chairman

RENDITION DATE 2-28-05





PURCHASE AND LICENSE AGREEMENT

This Agreement is made and entered into this 6 day of December 2004 ("Effective Date") by and between Dynix Corporation ("Dynix"), a Utah corporation having its offices at 400 Dynix Drive, Provo, Utah 84604 and St. Johns County Public Library ("Customer"), having its offices at 6670 US1 South, St. Augustine, Florida 32086. The term "Dynix" shall also refer to the company, its agents, suppliers, and its subcontractors.

1. DEFINITION OF TERMS.

Database Server: The computer acquired and operated by Customer to provide database management services in connection with the Licensed Software.

Hardware: The hardware items listed on Schedule 1 hereto.

Horizon Application Server: The computer acquired and operated by Customer to provide web access and gateway services to the Database Server in connection with the Licensed Software.

Licensed Software (or Software): Each Dynix-developed or Dynix-owned software product, which may include third-party technology, as listed in Schedule 1, including machine-readable object code (not source code) for such product, any user documentation for such product, and any other related materials which are furnished to Customer by Dynix for use in connection with such product, as well as any subsequent releases and error corrections for Software previously licensed to Customer.

System: The total complement of Hardware, Licensed Software, and Third Party Software furnished and maintained by Dynix.

Third Party Software: Software listed in Schedule 1 owned by an entity other than Dynix which is re-licensed or sublicensed by Dynix to Customer.

Workstation: An end user machine provided by Customer on which client software operates to access the Database Server and which meets or exceeds Dynix's specifications required for operation of the Licensed Software.

2. CONTRACT DOCUMENTS. The contract documents are this Agreement, including the following schedules attached hereto:

Schedule 1—Configuration

Schedule 2—End User License Agreements

Each of these documents is incorporated herein by this reference as if set forth in full, and shall constitute a part of this Agreement.

3. FURNISHING OF GOODS, LICENSES, AND SERVICES. Subject to the terms and conditions set forth herein, Dynix agrees to provide and Customer hereby agrees to purchase the goods, licenses, and services described in Schedule 1. Customer agrees to provide Dynix with access to the System via a dedicated data-grade phone line and the Internet to install and support the System. Customer shall be responsible for maintaining: (i) a telephone within reach of the Database Server; (ii) an auto-answer Dynix-approved modem attached to a port for the exclusive use of Dynix; (iii) an "outside" data grade phone line for the modem to be used in dial-up diagnostics and maintenance; and/or (iv) Internet access including access through any security measures. Dynix alone shall decide reasonably whether access to the System is sufficient for installation and support.

4. RISK OF LOSS AND TITLE. Dynix is responsible for all risks of loss or damage to Hardware furnished under this Agreement until delivery is made to Customer. Thereafter Customer will be responsible for risks of loss or damage, except for loss or damage caused by Dynix in the process of installation. Title to the Hardware shall pass from Dynix to Customer upon delivery at Customer.

5. WARRANTY.

A. WARRANTIES

1. Dynix warrants that for a period of one year from commencement of live operation thereon, the Licensed Software will operate in all material respects in conformity with the applicable user manuals so long as Customer has incorporated into the Software all releases and corrections to

the Software that Dynix has made available to Customer. Dynix does not warrant uninterrupted or error-free operation of the Licensed Software.

2. Dynix warrants that the services listed in Schedule 1 will be performed in a workmanlike manner consistent with industry standards reasonably applicable to the performance of such services.

- B. **EXCLUSIVE REMEDY.** Dynix's sole obligation and Customer's exclusive remedy for a breach of warranty will be for Dynix to correct or modify the Software to make it perform as warranted or to re-perform the services. If Dynix is unable, within a reasonable time, to correct a breach of Section 5A, Customer will be entitled to an equitable adjustment in the monies owing under this Agreement, up to the total amount of payments for either the Software or services received over the prior 12 month period, to reflect any reduction in the value of the Licensed Software or services resulting from the uncorrected error.
- C. **NO BREACH OF WARRANTY.** Dynix is not responsible for any claimed breach of any warranty caused by: (i) modifications made to the System by anyone other than Dynix; (ii) the combination, operation or use of the System components with any items not supplied by Dynix to Customer; (iii) Customer's failure to use any new or corrected versions of the System components made available by Dynix; or (iv) Dynix's adherence to Customer's specifications or instructions.
- D. **NO ADDITIONAL WARRANTIES.** THE WARRANTIES SET FORTH IN SECTION 5A OF THIS AGREEMENT ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT THE LICENSED SOFTWARE IS ERROR-FREE; AND (ii) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND (iii) ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ADVICE, STATEMENT OR INFORMATION GIVEN BY DYNIX, ITS AFFILIATES, CONTRACTORS OR EMPLOYEES SHALL CREATE OR CHANGE ANY WARRANTY.
- E. **THIRD PARTY WARRANTIES.** Third party products may come with a manufacturer's warranty. Such warranties begin on shipment of the third party products from the manufacturer, whether shipment is to Dynix or to Customer.

6. **DEDICATED SERVERS.** All servers that are part of the System shall be dedicated servers and shall only contain software and content for, and shall only be operated for the purposes of, the System. Failure to comply with this requirement by Customer may result in Dynix's voiding its warranties made under this Agreement and/or terminating maintenance.

7. PAYMENT.

- A. **PAYMENT ARRANGEMENTS.** Dynix shall submit all invoices to Customer at the address shown in the first paragraph of this Agreement. Customer is solely responsible for payment of all invoices. Invoices shall be considered past due 30 days after the date shown thereon. Past due balances are subject to the lesser of a 1½% per month interest charge (18% per annum) or the highest rate allowed by law.
- B. **DISPUTED INVOICES.** Customer is not required to pay the disputed portion of any invoice, pending resolution of that dispute, if written notice of the dispute has been provided to Dynix within 15 days of receipt of the invoice.
- C. **TAXES.** Unless otherwise noted, the prices in this Agreement do not include taxes. Customer agrees to pay directly or reimburse Dynix for any taxes arising out of this Agreement or Dynix's performance under this Agreement, excluding taxes on Dynix's net income. If Customer is exempt from taxes, photocopies of applicable certificates demonstrating exemption shall be provided by Customer prior to the execution of this Agreement.
- D. **MILESTONES.** Payment is due upon invoice for successful completion of the following milestones:

<u>MILESTONE</u>	<u>AMOUNT</u>
Delivery of Client Licensed Software Modules to Customer	34,206
Completion of MARC Data Load	29,418
Delivery of Database Server to Customer	29,199
30 Days Following Commencement of Live Operation	10,313
TOTAL	\$103,136

8. SOFTWARE LICENSE.

- A. Dynix hereby grants Customer a non-exclusive, non-transferable, non-sublicenseable and limited use license to use the Software solely in the conduct of the business of Customer on the Database Server, Horizon Application Server, and Workstations.
- B. Customer may not rent or lease the Software to any other entity or use the Software as part of a commercial time-sharing, subscription bureau or service bureau operation.
- C. The Software is confidential and copyrighted and all rights therein not expressly granted to Customer are reserved to Dynix.
- D. Dynix retains title to all copies of the Software; all training and procedural materials developed by Dynix in conjunction with the Software; and any additions and supplements to the Software which may be developed for Customer through the reimbursed or unreimbursed efforts of Dynix employees or agents. Except to the extent permitted by applicable law, Customer may not make copies of the Software, other than for archival or backup purposes, nor shall it modify, decompile, or reverse-engineer the Software.
- E. Dynix may update and modify the Software from time to time, as it deems necessary.
- F. Dynix or its independent audit firm may, upon reasonable notice, examine and audit the records and systems of Customer to ensure compliance with any license granted by Dynix. Any audit will be performed during the Customer's regular business hours and in a manner which avoids unreasonable interference with the Customer's operations. If such an audit reveals that Customer has underpaid or failed to pay any license fee, Customer agrees promptly to correct such underpayment.
- G. Customer acknowledges that any breach or threatened breach of any license involving unauthorized use of Dynix's intellectual property rights will result in irreparable harm to Dynix for which damages would not be an adequate remedy.
- H. Customer may not alter or obscure any proprietary rights notice, including the phrase "powered by Dynix," appearing on any Dynix-supplied materials and must include such notices on any copies.
- I. Dynix's placement of a copyright notice on any portion of any Software or any update to such Software will not be construed to mean that such portion has been published and will not derogate from any claim that such portion contains proprietary and confidential information of Dynix.
- J. Upon termination of this license, Customer shall destroy or return to Dynix all copies of the Licensed Software and accompanying documentation.

9. INTELLECTUAL PROPERTY CLAIMS.

- A. Dynix will defend or settle, at its option and expense, any suit brought against Customer based on a claim that the Licensed Software infringes a third party's intellectual property rights. "Intellectual property rights" means patents, trademarks, design rights, copyrights, database rights, trade secrets and all other rights of an equivalent nature. Dynix will indemnify Customer against all damages and costs attributable exclusively to such suit, provided that Customer:
 - 1. promptly gives written notice of the suit to Dynix;
 - 2. gives Dynix sole control of the defense and settlement of the suit;
 - 3. provides Dynix, at Dynix's expense, with all available information and assistance relating to the suit;
 - 4. does not compromise or settle such suit; and
 - 5. is not in material breach of any agreement with Dynix.
- B. If the Licensed Software is found to infringe, or in the reasonable opinion of Dynix is likely to be the subject of a claim, Dynix will, at its option:

1. procure for Customer the right to continue using the Licensed Software;
 2. replace or modify the Licensed Software so it becomes non-infringing; or
 3. upon failure of (1) nor (2), remove the Licensed Software in question and refund its net book value based on a straight-line basis over a five year period commencing on the date of initial live operation of the Software.
- C. Dynix has no obligation to the extent any suit results from:
1. modification of the Licensed Software other than at the direction of Dynix, or
 2. use of an allegedly infringing version of the materials, if the infringement could have been avoided by the use of a different version made available to Customer.

THIS SECTION STATES DYNIX'S ENTIRE OBLIGATION TO CUSTOMER AND CUSTOMER'S SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT.


- 10. LIMITATION OF LIABILITY.** DYNIX'S TOTAL LIABILITY TO CUSTOMER UNDER THIS AGREEMENT, EXCLUDING LIABILITY FOR PERSONAL INJURY, DAMAGE TO REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY, AND LIABILITY PURSUANT TO CLAIMS OF INFRINGEMENT, WILL BE LIMITED TO THE PAYMENTS MADE BY CUSTOMER DURING THE PREVIOUS 12 MONTHS FOR THE PRODUCT OR SERVICE WHICH IS THE SUBJECT MATTER OF THE CLAIM. IN NO EVENT WILL DYNIX BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT DYNIX HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDY.
- 11. TERMINATION.** Either party may terminate this Agreement immediately upon written notice if the other party commits a non-remediable material breach of this Agreement or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach. Following termination of this Agreement (for whatever reason), each party will deliver to the other any property of the other in its possession or control in good condition, reasonable wear and tear excepted. Neither party will be liable for any damages arising out of the termination of this Agreement, provided that such termination will not affect any right to recover damages sustained by reason of material breach or any payments owing under the Agreement.
- 12. RETURNS.** Customer may incur restocking fees and other like assessments if it changes the types and quantities of items purchased under this Agreement after the items have been ordered. Returns of third party products shall be governed by the manufacturer's policies.
- 13. DISPUTE RESOLUTION.** The parties will use reasonable efforts to resolve any dispute arising out of the Agreement through a meeting of appropriate managers from each party. If the parties are unable to resolve the dispute, either party may escalate it to its executives. If an executive level meeting fails to resolve the dispute within 30 days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other provisional relief at any time.
- 14. GENERAL.**
- A. **Force Majeure.** The parties will exercise every reasonable effort to meet their respective obligations hereunder but shall not be liable for delays resulting from force majeure or other causes beyond their reasonable control. This provision does not relieve Customer of its obligation to make payments then owing.
- B. **Assignment.** Customer may not assign or transfer the Agreement or its rights under it without Dynix's prior written approval, which approval will not be unreasonably withheld.

- C. **Notices.** All written notices required by this Agreement will be effective upon receipt. Notices communicated by electronic mail or facsimile will be deemed to be written.
- D. **Relationship.** This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.
- E. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- F. **Survival.** Rights and obligations under the Agreement which by their nature should survive will remain in effect after termination or expiration of the Agreement.
- G. **No Waiver.** Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.
- H. **Modification.** No modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party.
- I. **Section Headings.** Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.
- J. **Entire Agreement.** This Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations, and warranties, and prevails over any conflicting or additional terms contained in any quote, purchase order, acknowledgement, or other communication between parties relating to its subject matter during its term.
- K. **Counterparts.** The parties agree that this Agreement may be executed in one or more counterparts, each of which shall constitute an enforceable original of the Agreement, and that facsimile signatures shall be as effective and binding as original signatures.

IN WITNESS WHEREOF, the parties have caused this Agreement, which shall inure to the benefit of and be binding upon the successors of the respective parties, to be signed and entered as of the Effective Date.

Dynix Corporation

St. Johns County Public Library

By: 
 Title: CFO

By: Mary Jane Little
 Title: Library Director

SCHEDULE 1

CONFIGURATION # 42915

Qty	Description	Unit Price	Total Price	Annual Maint
<i>DYNIX SOFTWARE</i>				
1	Horizon Public Library Suite	73,491	73,491	8,819
	General			
	Horizon Cataloging			
	Horizon Circulation			
	Horizon Information Portal			
	Horizon Kids' Information Portal			
	Horizon Acquisitions			
	Horizon Debt Collect			
	Horizon Community Resources			
	Horizon Home Service			
<i>DATABASE SOFTWARE</i>				
1	MS SQL 2K Standard Run Time Edition Lic. (Per Processor)	3,015	3,015	352
1	Dynix Support for MSSQL Server 2000	1,500	1,500	1,500
<i>PERIPHERAL SOFTWARE</i>				
1	Horizon Web Reporter	4,680	4,680	700
1	Horizon Web Reporter - Windows	810		
1	Horizon Web Professional - Windows	1,160		
1	Horizon Web Reporter System Admin - Windows	2,710		
	Horizon Web Reporter Pro-Maintenance			
	Note : Web based prerecorded training is included with the purchase of Horizon Web Reporter.			
<i>DATA SERVICES</i>				
HORIZON DATA LOAD SERVICES				
1	MARC Data Load - One Time	6,000	6,000	
1	MARC Bibliographic and Item Record Load	2,938	2,938	
	Desc: Load MARC bibliographic records with item information			
1	Circulation Transaction Migration			
1	Less than 500,000 bib records	5,000	5,000	
	Requirements: The library must provide a single file in pre-defined or ASCII delimited format with field definitions. File contains item status, fines and fees, notices, and requests. History is not transferable however balance totals may be			

	preserved.			
1	Patron File Load - One Time	2,500	2,500	
IMPLEMENTATION SERVICES				
1	Profiling Set-up - One time	3,000	3,000	
SERVER STAGING				
1	Server Staging	2,400	2,400	
	Staging for:			
	DATABASE SERVER			
	HORIZON APPLICATION SERVER			
SERVER INTEGRATION				
1	On-site Server Integration (at the library)	3,750	3,750	
	Integration for:			
	DATABASE SERVER			
1	Additional On-site Server Integration (at the library)	400	400	
	Integration for:			
	HORIZON APPLICATION SERVER			
EDUCATION & CONSULTATION SERVICES				
1	HORIZON TRAINING & Consulting	10,000	10000	
	Access to Web Training for software products purchased during implementation up to on site post go live consulting			
	1 On site go live consultation (3 Days)			
	1 On site post go live consultation (3 Days)			
SERVER HARDWARE				
DATABASE SERVER				
1	Dell PowerEdge 2800 Server	6,785	6,785	1,018
	1 x 3.0 GHz Intel Xeon Processor(s) with 1 MB cache			
	2048 MB DDR2 SDRAM Memory			
	6 x 36 GB 10000 rpm Hot Swappable Disk(s)			
	Internal HW RAID			
	Media: CDRW/DVD , No Floppy			
	DAT72 Tape Drive			
	17 Inch Monitor			
	MicroSoft Win 2003 Server			
	3 Year, 4-Hour Response Warranty Uplift	-	-	
HORIZON APPLICATION SERVER				
1	Dell PowerEdge 2800 Server	7,306	7,306	1,096
	1 x 3.06 GHz Intel Xeon Processor(s) with 1 MB cache			

	4096 MB DDR2 SDRAM Memory			
	2 x 36 GB 10000 rpm Hot Swappable Disk(s)			
	Internal HW RAID			
	Media: CDRW/DVD , No Floppy			
	20/40 GB DDS-4 Tape Drive			
	17 Inch Monitor			
	MicroSoft Win 2003 Server			
	3 Year, 4-Hour Response Warranty Uplift	-	-	
	WEB REPORTER SERVER			
1	Dell PowerEdge 700 Server	2,974	2,974	446
	1 x 2.8 GHz Pentium IV Processor(s) with 512 KB cache			
	2048 MB DDR SDRAM Memory			
	1 x 80 GB 7200 rpm Disk(s)			
	NO RAID			
	Media: CDRW/DVD , 1.44 MB Floppy			
	0 Tape Drive			
	17 Inch Monitor			
	MicroSoft Win 2003 Server			
	3 Year, Next-Business Day Response Warranty Uplift	-	-	
	SERVER ACCESSORIES			
	SUPPORT SOFTWARE			
3	Symantec pcAnywhere (Host/Remote)	208	624	-
	OPERATING SYSTEM SUPPORT			
1	OS Technical Support - (First Dell Server)			2,600
	Includes:			
	- Operating system tuning assistance			
	- Operating system patches (upon request)			
	- Phone support for general questions concerning the operating system			
	- Phone coverage Monday - Friday, 8:00 a.m. - 8:00 p.m. Eastern Standard Time			
	- Emergency coverage Monday - Thursday, 8:00 p.m. - 8:00 a.m. Eastern Standard Time			
	- Emergency coverage Friday, 8:00 p.m. - Monday, 8:00 a.m. Eastern Standard Time			
	- Hardware break-fix support is subject to Vendor Contract purchased and maintained			
2	OS Technical Support - (Additional Dell Server(s))			2,000
	Includes:			
	- Operating system tuning assistance			
	- Operating system patches (upon request)			
	- Phone support for general questions concerning the operating system			
	- Phone coverage Monday - Friday, 8:00 a.m. -			

	8:00 p.m. Eastern Standard Time			
	- Emergency coverage Monday - Thursday, 8:00 p.m. - 8:00 a.m. Eastern Standard Time			
	- Emergency coverage Friday, 8:00 p.m. - Monday, 8:00 a.m. Eastern Standard Time			
	- Hardware break-fix support is subject to Vendor Contract purchased and maintained			
	MAINTENANCE MODEMS			
2	Multitech 33.6K Modem with DB9 Cable	159	318	60
	UPS			
2	Liebert Upstation GXT2U Online 1500 VA UPS	1,350	2,700	486
2	1 Year Extended Maintenance (3 yrs. total)	29	58	
2	Liebert Multilink License for 1 Computer	Free Download		
<i>Note:</i>	<i>Liebert UPS Includes:</i>			
	<i>- Liebert Two Year Warranty.</i>			
	<i>- 10 foot long input cord with a NEMA 5-15P plug for GXT2U 1000 and 1500</i>			
	BUNDLED HARDWARE			
	TELEPHONE MESSAGING UPGRADE			
1	Telephone Messaging Upgrade Kit for 2 Line System.	0	0	
	Includes Licenses, Upgrade and Install Doc, Media			
1	Staging Services	750	750	
1	WorkStation, Dell GXT270	2500	2500	
1	NMS Board AG-2000	3564	3564	
1	L&H European Language Upgrade	0	0	
1	Telephone Messaging Maintenance			2,587
	SUPPLIES			
	Documentation Bundle			
1	Horizon Public Library Suite Doc And Media			
	SYSTEM TOTAL		146,252	21,664
	Shipping:		868	
1	Dynix Customer Loyalty Discount:	(22,047)	047)	
	Dynix to Horizon Migration Incentive:	(21,938))	
	Total Discount:		(43,985)	
	GRAND TOTAL		103,136	21,664

SCHEDULE 2

END USER LICENSE AGREEMENTS

Microsoft® SQL Server™ 2000 Standard Edition, Runtime-Restricted Use Software End-User License Agreement (Per Processor)

of Licenses: 1

IMPORTANT—READ CAREFULLY: This End-User License Agreement ("EULA ") is a legal agreement between you (either an individual or a single entity) and Dynix Corporation ("Licensor") of the software application or suite of applications with which you acquired the Microsoft software product identified above, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation ("Product"). An amendment or addendum to this EULA may accompany the Product. Microsoft Corporation or one of its affiliates (collectively, "Microsoft") has licensed the Product to Licensor. **YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY INSTALLING, COPYING, OR OTHERWISE USING THE PRODUCT. IF YOU DO NOT AGREE, DO NOT INSTALL OR USE THE PRODUCT; YOU MAY RETURN IT TO YOUR PLACE OF PURCHASE FOR A FULL REFUND.**

The Product may contain the following software:

- "Server Software" provides services or functionality on your server (your computers capable of running the Server Software are "Servers");
 - "Client Software" allows an electronic device ("Device") to access or utilize the Server Software.
1. **GRANT OF LICENSE.** Licensor grants you the following rights provided you comply with all terms and conditions of this EULA:
- a. **Server Software.** You may install one copy of the Server Software on a single Server. If the Server has more than one processor, you must obtain a separate license for each processor on that Server. You may use the Server Software only with that number of processors for which you are properly licensed, as set forth above. You may install and additional copies of the Server Software on additional Servers, and/or use the Server Software with additional processors. However, the sum of the total number of processors with which the Server Software is used and the total number of Devices on which SQL Server Personal Edition is installed pursuant to Section 1(h) below may not exceed the number of "Licenses" specified above. If a number of "Licenses" is not indicated above, then you are licensed to use either (i) one copy of the Server Software with one processor, or (ii) one copy of SQL Server Personal Edition on one Device pursuant to Section 1(h) below. You may use the Management Tools, Books Online and Development Tools components of Microsoft SQL Server (collectively "Tools") solely for internal use in conjunction with your Server Software. **SQL Server, Enterprise Edition.** If you have acquired the Enterprise Edition of the Server Software, you may install any number of instances of the Server Software on that Server for use by any processor for which you have acquired a license. An "instance" shall mean a running copy of the Server Software.
 - b. **Client Software.** You may either (i) install the Client Software (SQL Server Personal Edition) on any internal Devices so long as it is being used only in conjunction with the Server Software and the integrated software turnkey application or suite of applications delivered by or on behalf of Licensor of the Product (such application or applications referred to as the "Integrated Application") as part of the Integrated Application, or (ii) install and use SQL Server Personal Edition without installing the Server Software as specified in Section 1(h) below so long as SQL Server Personal Edition is used only in conjunction with the Integrated Application as part of the Integrated Application.
 - c. **SQL Server 2000 Device Access.** Any number of Devices may use or access the services of the Server Software in conjunction with the Integrated Application so long as you have acquired a valid license for each processor running such Server Software. This EULA grants you the right to permit Devices to access or use only the services of the Server Software provided with the Integrated Application.
 - d. **Use of Redistributable Code.** In addition to the rights granted above, Licensor grants you the nonexclusive, royalty-free right to use, reproduce and distribute the Microsoft SQL Server Desktop Engine ("MSDE") and the files listed in the REDIST.TXT contained in the Product (collectively, the "Redistributable Code"), provided that you also comply with the following:
 - i. **General Requirements.** If you choose to redistribute any portion of the Redistributable Code, you agree:
 - A. To distribute the Redistributable Code in object code form and only in conjunction with and as a part of a software application product developed by you that adds significant and primary functionality to the Product ("Application");

- B. Not to use Microsoft's name, logo, or trademarks to market the Application;
- C. To include a valid copyright notice in your name on the Application;
- D. To indemnify, hold harmless, and defend Licensor and Microsoft from and against any claims or lawsuits, including attorney's fees, that arise or result from the use or distribution of the Application; and
- E. To otherwise comply with the terms of this EULA.

You also agree not to permit further distribution of the Redistributable Code by your end users except you may permit further redistribution of the Redistributable Code by your distributors if they only distribute the Redistributable Code in conjunction with, and as part of, the Application and you and your distributors comply with all other terms of this EULA.

ii. **Additional Requirements for MSDE.** If you choose to redistribute MSDE, you also agree:

- A. That your Application shall not substantially duplicate the capabilities of Microsoft Access or, in the reasonable opinion of Microsoft, compete with same; and
- B. That unless your Application requires your customers to license Microsoft Access in order to operate, you shall not reproduce or use MSDE for commercial distribution in conjunction with a general purpose word processing, spreadsheet or database management software product, or an integrated work or product suite whose components include a general purpose word processing, spreadsheet, or database management software product except for the exclusive use of importing data to the various formats supported by Microsoft Access. **Note:** A product that includes limited word processing, spreadsheet or database components along with other components which provide significant and primary value, such as an accounting product with limited spreadsheet capability, is not considered to be a "general purpose" product.

- e. **Reservation of Rights.** Licensor and Microsoft reserve all rights not expressly granted to you in this EULA.
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 - h. **Use of SQL Server Personal Edition Not in Conjunction with Server Software.** You may install and use one copy of SQL Server Personal Edition on one internal Device without installing or using the Server Software in conjunction with that copy of SQL Server Personal Edition so long as SQL Server Personal Edition is used only in conjunction with the Integrated Application. You may install additional copies of SQL Server Personal Edition on additional Devices without installing the Server Software provided that such copies of SQL Server Personal Edition are used only in conjunction with the Integrated Application. However, you must acquire a separate SQL Server processor license for each Device on which you install SQL Server Personal Edition that is not used in conjunction with the Server Software. Furthermore, the sum of the total number of processors with which the Server Software is used and the total number of Devices on which SQL Server Personal Edition is installed pursuant to this Section 1(h) may not exceed the number of "Licenses" specified above. If a number of "Licenses" is not indicated above, then you are licensed to use either (i) one copy of the Server Software with one processor, or (ii) once copy of SQL Server Personal Edition on one Device pursuant to this Section 1(h). Any number of Devices may use or access the services of a Device running SQL Server Personal Edition that is not used in conjunction with the Server Software so long as you have acquired a separate, valid processor license for the Device being used or accessed.
 - i. **Runtime-Restricted Use Software.** The Product is "Runtime-Restricted Use" software; as such, the Product may only be used to run the Integrated Application as part of the Integrated Application. The Product may not be used either (i) to develop and/or (ii) in conjunction with, new applications, databases or table other than those contained in the Integrated Application. The foregoing provision, however, does not prohibit you from using a tool to run queries or reports from existing tables, and/or from using a development environment or workbench which is part of the Integrated Application to configure or extend such Integrated Application. Notwithstanding any provision of this EULA, you may only transfer the "Runtime-Restricted Use" Product as part of the Integrated Application, subject to the terms and conditions specified in Section 5 below.
2. **INSTALLATION OF SERVER SOFTWARE ON PASSIVE FAIL-OVER SERVER.** If the Server Software is used in a clustered environment, you may use the Server Software on a temporary basis on a Server that is employed only for fail-over support (the "Passive Server") so long as the number of processors on the Passive Server does not exceed the number of processors on your primary active Server.
3. **NO RENTAL/NO COMMERCIAL HOSTING.** You may not rent, lease, lend, or provide commercial hosting services with the Product.

4. **ADDITIONAL SOFTWARE/COMPONENT LICENSES.** This EULA applies to updates or supplements to the original Product provided by Licensor or Microsoft, unless Licensor or Microsoft provides other terms along with the update or supplement. The Product may contain certain components (each, a "Component") that included a separate end user license agreement (a "Component Agreement"). The terms of any Component Agreement are herein incorporated by reference to this EULA; in the event of any inconsistencies between this EULA and any Component Agreement, the terms of this EULA shall control.
5. **TRANSFER-Internal.** You may move the Server Software to a different Server or SQL Server Personal Edition (installed and used pursuant to Section 1(h) above) to a different Device. **Transfer to Third Party.** The initial user of the Product may make a one-time transfer of the Product to another end user. The transfer has to include all component parts, media, printed materials, this EULA, and if applicable, the Certificate of Authenticity. The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the transferred Product must agree to all the EULA terms.
6. **LIMITATION ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY.** You may not reverse engineer, decompile, or disassemble the Product, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation.
7. **TERMINATION.** Without prejudice to any other rights, Licensor or Microsoft may cancel this EULA if you do not abide by the terms and conditions of this EULA, in which case you must destroy all copies of the Product and all of its component parts.
8. **CONSENT TO USE OF DATA.** You agree that Microsoft and its affiliates may collect and use technical information you provide as a part of support services related to the Product. Microsoft agrees not to use this information in a form that personally identifies you.
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10. **EXPORT RESTRICTIONS.** You acknowledge that Product is subject to U.S. export jurisdiction unless otherwise indicated by Microsoft. You agree to comply with all applicable international and national laws that apply to the Product, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
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12. The Product is protected by copyright and other intellectual property laws and treaties. Microsoft or its suppliers own the title, copyright, and other intellectual property rights in the Product. **The Product is licensed, not sold.**
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FIRST AMENDMENT TO MAINTENANCE AND SUPPORT AGREEMENT

This First Amendment to the Maintenance and Support Agreement ("Maintenance Agreement") is made and entered into this ____ day of _____, 2005 ("Effective Date") by and between Dynix Corporation ("Dynix"), a Utah corporation having its offices at 400 Dynix Drive, Provo, Utah 84604 and St. Johns County, Florida, on behalf of St Johns County, Florida Public Library Department/System, having its offices at 6670 US 1 South, St. Augustine, Florida 32086.

RECITALS

WHEREAS, Dynix Corporation previously signed the Maintenance Agreement with St Johns County Public Library with an effective date of December 6, 2004; and

WHEREAS, the correct contracting entity for St Johns County, Florida should have been the County itself; and

WHEREAS, the parties are in agreement that the Maintenance Agreement should be amended to reflect the correct contracting parties, and furthermore that certain other changes should be made to the Maintenance Agreement;

NOW THEREFORE, the parties hereby agree as follows:

1. If there is any inconsistency between the terms of this First Amendment and the Maintenance Agreement, the terms of this First Amendment will govern.
2. The Maintenance Agreement shall be between Dynix Corporation on the one hand and St. Johns County, Florida, on behalf of St Johns County, Florida Public Library Department/System on the other hand.
3. The following language is added to the Maintenance Agreement as Section 13.K:
Governing Law/Venue. This Agreement shall be construed according to the laws of the State of Florida. Venue for any State administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida. Venue for any Federal action arising under this Agreement shall be in the United States District Court, Middle District of Florida, Jacksonville Division.

IN WITNESS WHEREOF, the parties have caused this First Amendment, which shall inure to the benefit of and be binding upon the successors of the respective parties, to be signed and entered as of the Effective Date.

Dynix Corporation

St. Johns County, Florida, on behalf of
St Johns County, Florida Public Library Department/System

By: 

By: _____

Title: Chief Financial Officer

Title: _____