

# Software Maintenance Agreement

6/15/2016

This SOFTWARE MAINTENANCE AGREEMENT (the "Maintenance Agreement") is a legal agreement between **you** - a business entity and not an individual ("**Customer**") and **Polty's Inc.** for Polty's Inc. ("**Polty's**"), 3300 N. Main Street, Suite D #160, Anderson, SC 29621-4128.

Customer entered this Maintenance Agreement for a certain Product End User License (EULA). Customer desires to purchase and Polty's desires to provide corresponding maintenance services and/or to provide updates and revisions ("Revisions") to the Program on the following terms and conditions:

## 1. RELATIONSHIP BETWEEN AGREEMENTS

1.1 The purchase of Maintenance Services hereunder constitutes an independent and mutually exclusive agreement from the corresponding EULA, except that:

(A) Revisions provided hereunder are subject to the provisions of the corresponding EULA; and

(B) Terms defined in the EULA and not otherwise defined herein will have the meanings ascribed to them in the License.

1.2 This Maintenance Agreement may not be assigned or otherwise transferred except:

(A) as part of a transfer of the corresponding EULA,

(B) subject to the same terms and conditions applicable to such transfer.

The transferee's right to receive maintenance and Polty's' obligations to send related invoices for renewals will in any event be subject to notice to Polty's of the transfer.

## 2. ELIGIBILITY

To receive any maintenance services, License transfer from one machine to another at same site and/or Revisions hereunder, Customer must:

(1) be current in the payment of all fees and charges due Polty's under this Maintenance Agreement and the corresponding License Agreement; and

(2) have accepted and installed the Revisions most recently provided by Polty's.

## 3. TERMS

3.1 The initial term of this Maintenance Agreement will be one (1) year from the date of purchase, and will automatically terminate upon termination of the corresponding License or Customer's failure to pay the applicable Maintenance Fee (as provided by Section 5) when due.

3.2 This Maintenance Agreement will continue to be in effect unless Customer fails to pay the required Maintenance Fee or provides Polty's with written notice of its intent to not to renew not less than thirty (30) days before the annual renewal date.

3.3 Customers not renewing the SMA at the time of original purchase have a thirty (30) day grace period to renew at 18% of Dealer List Price for each item (does not include installation, configurations services, or on-site support). After the thirty (30) day grace period, customers will have to purchase a new license.

3.4 Polty's may elect to not renew this Maintenance Agreement by providing to Customer not less than sixty (60) days written notice that Polty's has generally ceased to provide maintenance for Polty's' Program that is the subject of the corresponding License.

3.5 The MAINTENANCE FEE Section (maintenance fees, to the extent unpaid); LIMITED WARRANTY Section, LIMITATION OF LIABILITY Section, and the GENERAL Section will survive termination.

3.6 Pollys shall be not liable to Customer for lost profits or incidental, punitive, or consequential damages relative to termination of this Agreement in accordance with Section 7, even if advised of the possibility of such damages.

#### **4. MAINTENANCE SERVICES**

4.1 Pollys will provide to Customer during the Term (as it may be renewed) the following Maintenance Services:

4.1.1 Subsequent Updates as available, containing modifications that are not charged for separately;

4.1.2 Updates to Documentation as may from time-to-time become available;

4.1.3 Pollys' reasonable efforts promptly to fix or provide a "work around" to any programming errors which are directly attributable to Pollys in the then current release of the Program.

4.1.4 Technical Phone / Webex Support - The Software Maintenance Contract entitles you to 10 hours technical telephone/webex support during Pollys business hours from 7:00 AM to 5:00 PM Monday through Friday (Eastern Standard Time). Pollys Technical Support telephone number is +1 (864) 642-6103. Also the Software Maintenance Contract entitles you to 10 emails for technical support. Additional calls and emails for technical support will be invoiced at the following rates: US\$100/call/webex and US\$10/email. Calls and emails concerning bugs are free. In order to provide quick response to support calls, please provide your name, company name, the product and version number, and product ID number if available; and

4.1.5 Internet Support - Pollys maintains a World Wide Web site on the Internet at <http://www.poltys.com> . Technical Support e-mail can be sent to [support@pollys.com](mailto:support@pollys.com).

4.2 Pollys' obligations to provide Maintenance Services are subject to Customer:

4.2.1 Providing notice to Pollys' designated maintenance telephone number or email address of the appearance of an apparent programming error;

4.2.2 Providing Pollys with such information as it may reasonable request to identify the error, such as error diagnostic messages, diagnostic memory dumps, operator console logs, data file dumps, application program listings, and a written explanation of the problem; and

4.2.3 Using reasonable efforts before contacting Pollys to resolve the error if it is not clearly related to an error in the applicable Program. Such efforts will include, as appropriate: (1) a technical analyst attempting to resolve End-User issues based on personal knowledge or investigation; and (2) diagnostic investigation to define, isolate, and resolve the suspected error.

#### **5. MAINTENANCE FEE**

For the initial one-year term hereunder, the Maintenance Fee will be \$0.00 (zero). For subsequent one year renewal terms hereunder, the Maintenance Fee will be a percentage (the "Maintenance Percentage", designated below) of the software license fee for the corresponding Program at the time of Renewal.

#### **6. LIMITED WARRANTY**

Pollys will provide Maintenance Services in a professional manner. This warranty is limited and shall be void in case of improper use of the Program or any modifications to the Program not made by Pollys. SUCH LIMITED WARRANTY WITH RESPECT TO SUCH SERVICES IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND IS THE ONLY WARRANTY MADE BY POLTYS IN CONNECTION WITH SUCH SERVICES, AND ALL OTHER INSTALLATION OR SUPPORT SERVICES AS MAY BE RENDERED BY POLTYS. No employee or agent of Pollys is authorized to give a greater or different warranty.

## 7. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL POLTYS BE LIABLE UNDER ANY THEORY OF LIABILITY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOSS OF PROFITS, REVENUE, DATA OR USE, OR FROM INTERRUPTED COMMUNICATIONS OR DAMAGED DATA, OR FROM ANY DEFECT OR ERROR OR IN CONNECTION WITH LICENSEE'S ACQUISITION OF SUBSTITUTE GOODS OR SERVICES OR MALFUNCTION OF THE POLTYS PRODUCT, OR ANY SUCH DAMAGES ARISING FROM BREACH OF CONTRACT OR WARRANTY OR FROM NEGLIGENCE OR STRICT LIABILITY, EVEN IF POLTYS OR ANY OTHER PERSON HAS BEEN ADVISED OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY REMEDY TO ACHIEVE ITS INTENDED PURPOSE.

## 8. GENERAL

8.1 Entire Agreement. This Agreement together with the corresponding License constitutes the entire agreement between the parties with respect to its subject matter and (A) supersedes all prior oral and written quotations, communications, agreements and understandings of the parties with respect to its subject matter; and (B) may not be modified or rescinded except by a writing signed by Pollys and Customer. Any provision of Customer's Order or Pollys' invoice inconsistent with or in addition to the terms and conditions of this Agreement will not bind the parties, notwithstanding any failure to object thereto.

8.3 **Taxes.** Except to the extent based upon Pollys' net income, Customer shall have sole liability and duty to pay all taxes arising hereunder now or hereafter in effect, including any sales, use, export or import taxes, personal property, excise, and value added taxes, and other governmental duties and charges.

8.4 Law and Venue. The parties agree to the non-exclusive jurisdiction of the state and federal courts in Anderson County, South Carolina in connection with the litigation of any dispute under this Agreement and waive any objection to such jurisdiction based on venue or personal jurisdiction. In addition, this Agreement will not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Transactions Act (UCITA), even if that law has been adopted in South Carolina, and the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.

8.5 Payment for the annual maintenance fee represents acceptance of this agreement

8.6 Partial Invalidity. If any of the provisions of this Agreement will be invalid or unenforceable, the invalidity or unenforceability will not invalidate or render unenforceable this entire Agreement, which will instead be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties will be construed and enforced accordingly.

## 9. DESIGNATIONS

### 9.1 Maintenance Fees

Maintenance Percentage is 18% of Dealer List Price.

Transaction fees related to the payment for the Software Maintenance Agreement are not included in the Maintenance Percentage

Payment with respect to renewals is due in full no later than thirty (30) days after the first day of the renewal term. Unless otherwise herein expressly provided, payment of the Maintenance Fee in full is due without any requirement of any purchase order, prior authorization, or any other documentation or conditions or contingencies from Customer. Unless otherwise herein expressly provided, payment of the Maintenance Fee in full is due without regard to any use or acceptance of Programs or services by Customer. Customer agrees to pay Pollys a service charge of 1.5% per month on any overdue fees. All payments must be made in the currency in which the Program License was purchased.