



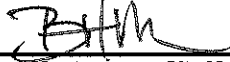
Agenda Date: 11/18/2014

Agenda Item: 3.12

STAFF REPORT

Date: November 13, 2014
To: Bryan H. Montgomery, City Manager
From: Libby Vreonis, City Clerk/Paralegal
Cc: William R. Galstan, Special Counsel
Subject: **Resolution Approving Agreements with Provox Systems, Inc for an Agenda Management System**

Approved and Forwarded to City Council:


Bryan Montgomery, City Manager

FOR CONSIDERATION AT THE OAKLEY CITY COUNCIL MEETING ON 11/18/14

Summary and Background

On June 30, 2014, the City Council approved the Fiscal Year 2014-2015 Budget that included a number of expenditures from the General Fund's fund balance. At the recommendation of Staff and recognizing the system would save money over time, the City Council appropriated \$9,000 as start-up funds to acquire an agenda management system.

Agenda management systems allow the entire agenda process to be automated from start to finish; enabling electronic item creation, routing for approvals, and eventually compilation into a dynamic agenda – completely online and paperless. This type of automation reduces staff processing time, materials, and money associated with paper and printing costs.

After researching a number of agenda management systems utilized by other cities, Staff feels that Provox Systems, Inc. provides the best value for the City. The Provox system is well-tested and well-recommended by other users and will help enhance operational efficiency, reduce operational costs, and reduce paper usage. To assist in the process of going paperless, Provox will also be providing five (5) iPads as part of the package for City Council use. Here is a link to learn more about Provox: <http://www.provox-systems.com/>

Fiscal Impact

The City Council appropriated \$9,000 toward an agenda management system from the General Fund's fund balance in this year's budget. Initial start-up costs for the system total \$7,300, less than the approved amount; however, there are some internal IT services costs and web hosting fees. Pursuant to the agreement, Provox is also eligible for reimbursement of travel & training costs to come train City Staff on the system. These costs can be dealt with administratively and total approximately \$6,500. The overall cost of the agreement is estimated to be \$40,850 over a five-year period.

Recommendation

Staff recommends that the City Council adopt a resolution approving agreements with Provox Systems, Inc. for an agenda management system and authorizes the City Manager to execute the agreements.

Attachments

1. Resolution
2. Agreements with Provox Systems, Inc.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY
APPROVING AGREEMENTS WITH PROVOX SYSTEMS, INC FOR AN
AGENDA MANAGEMENT SYSTEM**

WHEREAS, City staff seeks to enter into an agreement with Provox Systems, Inc. for the purchase of an agenda management system to enhance operational efficiency, reduce operational costs and reduce paper usage; and

WHEREAS, on June 30, 2014, the City Council appropriated funds for an agenda management program.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Oakley that it hereby approves the agreements with Provox Systems, Inc that are attached hereto in Exhibit A, and further authorizes the City Manager to execute the agreements on behalf of the City.

The foregoing resolution was adopted at a regular joint meeting of the Oakley City Council/ Oakley City Council acting as the Successor Agency to the Oakley Redevelopment Agency held on the 18th day of November, 2014, by Councilmember _____, who moved its adoption, which motion being duly seconded by Councilmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date



Contract No. 10193

Prepared for: City of Oakley
Address: 3231 MAIN STREET

City: Oakley
State: CA
Zip: 94561

Attn: Libby Vreonis

PROVOX Systems, Inc.
8951 Synergy Drive
Suite 223
McKinney
Texas
75070

Telephone: 972.547.0504
Fax: 972.215.7656
Created On: November 5th, 2014
Prepared By: Kathy Vogt, Intern. Sales & Marketing Director

ENTERPRISE – AGENDA MANAGEMENT AGREEMENT

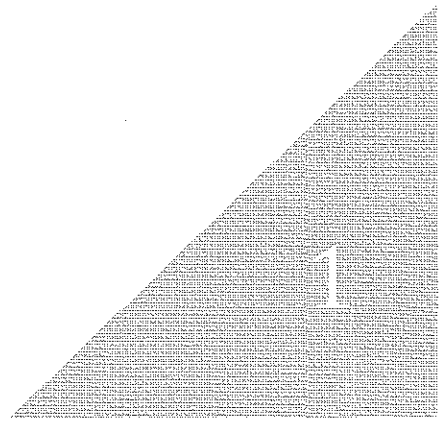
COMPOSITE SIGNATURE AGREEMENT

This Composite Signature Agreement is entered into by and between PROVOX Systems, Inc, A Texas Company ("PROVOX") and the customer referenced above ("Customer"), and shall commence on the day accepted and executed by PROVOX ("Effective Date").

By executing this Composite Signature Agreement, Customer accepts and agrees to all of the terms and conditions of this Composite Agreement (including the general terms and conditions set forth below) and of the documents listed below beside which Customers designated representatives initials appear (copies of which are attached hereto), each of which is hereby incorporated by reference (this Composite Signature Agreement and the initialed documents below shall be collectively referred to as the "Agreement"):

The Agreement Documents that constitute the agreement between City of Oakley and Provox are listed below. In the event of conflict between or among the documents, the documents listed below are in the order of precedence.

- | Initials | Title of Document |
|----------|--------------------------------------|
| _____ | PROVOX Sales Agreement |
| _____ | PROVOX Pricing and Configuration |
| _____ | PROVOX License Agreement |
| _____ | PROVOX Maintenance Concept Agreement |
| _____ | |





Contract No. 10193

In the event of a conflict or ambiguity between documents, the specific shall control the general; the relative order of specific of the documents is as follows: (1) Maintenance Concept Agreement, (2) All other Addendums and (3) the Sales Agreement.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS COMPOSITE SIGNATURE AGREEMENT (INCLUDING THE GENERAL TERMS AND CONDITIONS BELOW) AND EACH DOCUMENT ATTACHED HERETO WHICH COMPRISE THE AGREEMENT, THAT CUSTOMER UNDERSTANDS EACH DOCUMENT AND AGREES TO BE BOUND BY THEIR TERMS AND CONDITIONS.

Agreed and Accepted by:

PROVOX, A Texas Company

By: _____

Printed Name: Markus Vogt

Title: President

Date: November 5 , 2014

Authorized Agent of Customer

By: _____

Printed Name: _____

Title: _____

Date: _____



GENERAL TERMS AND CONDITIONS

The following general terms and conditions shall apply to this Agreement and each document and Addendum that forms a part hereof:

1. Disclaimer of Warranties. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVOX MAKES NO WARRANTIES OF ANY KIND TO CUSTOMER, EXPRESS OR IMPLIED, AND HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, ORAL AND WRITTEN, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO AGENT OF PROVOX IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTY OBLIGATIONS OF PROVOX AS SET FORTH IN THIS AGREEMENT.
2. Limitations of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL PROVOX TOTAL LIABILITY TO CUSTOMER, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR WHETHER CUSTOMER HAS ACCEPTED ANY HARDWARE OR SOFTWARE PROVIDED HEREUNDER. IN NO EVENT SHALL PROVOX BE LIABLE FOR ANY LOST PROFITS, LOST DATA, OR ANY FORM OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND, WHETHER OR NOT FORESEEABLE OR WHETHER PROVOX HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

Customer agrees that the limitations and disclaimers of this Agreement will apply regardless of whether Customer has accepted the System, the Software, the Hardware, or any other product or service delivered by PROVOX. The parties agree that PROVOX has set its prices and entered into this Agreement in reliance upon such limitations and disclaimers, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

3. Terms and Termination. This Agreement shall continue until terminated as provided below, or by mutual written agreement of the parties. Either party shall have the right to terminate this Agreement or any document or Addendum that forms a part hereof if either party as well breaches any term or condition thereof and fails to cure such breach within thirty (30) days after written notice of the same from either party. The insolvency, bankruptcy, assignment for the benefit of creditors, or dissolution, liquidation, or winding up of the business of Customer shall constitute a default hereunder for which no cure period shall be applicable, and such default shall afford PROVOX the remedies of a secured party under the Uniform Commercial Code (UCC) in addition to all other remedies. The General Terms and Conditions of this Composite Signature Agreement, and all disclaimers of warranty and limitations of liability contained in this Agreement, shall survive any termination.

4. Entire Agreement. This Agreement, including all documents and Addenda that form a part hereof, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings, negotiations, or agreements, written or oral, regarding such subject matter.
5. Governing Law and Disputes. This Agreement will be governed by and construed in accordance with the laws of Contra Costa County, California, without regard to or application of choice of law rules or principles..
6. Waiver and Modification. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties.
7. Severability. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.
8. Assignment. Customer shall not assign its rights or delegate its obligations hereunder without the express written consent of PROVOX, such consent not to be unreasonably withheld. Any attempted assignment in violation of this section shall be void. Subject to the foregoing, this Agreement will benefit and bind the successors and permitted users of the parties.
9. No Third Party Beneficiaries; No Agency. Except as expressly provided herein to the contrary, no provision of this Agreement, express or implied, is intended to be or will be construed to confer rights, remedies or other benefits to any third party under or by reason of this Agreement. This Agreement will not be construed as creating an agency, partnership, joint venture, or any other form of legal association (other than as expressly set forth herein) between the parties.
10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.
11. Uncontrollable Events. PROVOX shall not be liable to Customer for any failure or delay in performance or shipment caused by events beyond PROVOX's reasonable control, including but not limited to acts of God, strikes, acts of war, governmental action and riots, transportation, and similar causes, and any such failure or delay will not constitute a material breach of this Agreement. In the event of such an event, the time for performance or shipment will be extended for a period equal to the duration of such delay.



12. Interest. Does not apply.

13. Attorney Fees. Each party waives the right to attorney fees.

14. Indemnification

The provider shall assume the defense of, indemnify, and save harmless any City of Oakley Agency receiving services under this contract from any claims or liabilities of any type or nature to any person, firm, or corporation arising in any manner from the provider's performance of the work required under this contract and the provider shall pay any judgment obtained or growing out of said claims, liabilities, or any of them.

SALES AGREEMENT

The "Customer" and PROVOX, A Texas Company ("PROVOX") agree to the terms and conditions in this Sales Agreement (the "Sales Agreement"). Customer desires to purchase certain hardware and license certain software from PROVOX, which collectively will be referred to as the "System". Customer may also obtain certain professional services (such as training and installation) in connection with the System.

- I. Supply of Hardware and Software. PROVOX agrees to supply Customer with the hardware (if any) listed in Pricing and Configuration (the "Hardware") at the prices listed therein. PROVOX agrees to license Customer the software listed in Pricing and Configuration (the "Software") at the prices listed herein. The terms of the license pursuant to which Customer is entitled to use the Software are set forth in the Licensing Agreement.
- II. Professional Services. PROVOX agrees to provide Customer with the Professional Services as described in Pricing and Configuration. If application development services are listed in Pricing and Configuration, Customer shall own any specific applications developed by PROVOX for Customer, but PROVOX shall retain ownership of any preexisting software upon which such applications may be based. Customer agrees to reimburse PROVOX for all professional services travel and travel related costs.
- III. Payment. Payment is due as outlined in Pricing and Configuration. Prices do not include, and Customer shall pay reimburse PROVOX for all transportation (shipping) and related handling charges.
- IV. Taxes. Governments exempt from taxes. Taxes do not exist. In case taxes do exist, the Customer is responsible or shall reimburse PROVOX for those taxes. Tax amount will be on top of the system total.

- V. Shipment/Title/Risk of Loss. All shipments are F.O.B. PROVOX's offices unless otherwise specified in Pricing and Configuration. Title to, and risk of loss of each component of Hardware and Software shall pass to Customer upon delivery by PROVOX to the carrier or delivery services. Any component of the System held or stored for Customer shall be at the Customer risk and expense.
- VI. Delivery. Any shipping and delivery dates quoted to Customer, whether in response to Customers request or otherwise, are approximate. If reasonable conditions arise which prevent compliance with delivery dates, PROVOX shall not be liable for any damages or penalty for delay in delivery or failure to give notice of delay and such delay shall not constitute grounds for cancellation or termination. Any delays encountered with respect to shipping and delivery beyond the reasonable control of PROVOX shall be governed by paragraph 11 of the Terms and Conditions of the Composite Signature Agreement.
- VII. Installation. If system installation services are listed in Pricing and Configuration, then PROVOX agrees to install the System in accordance with the provisions of this paragraph. The provisions of paragraph VI above shall apply to installation dates. Customer shall provide a suitable installation environment and facilities for the System as prescribed by PROVOX. PROVOX shall furnish labor required for unpacking and installing the components of the System. The System shall be installed in good working order by PROVOX. The installation date shall be the first business day following that on which either (a) the components of the System have been installed in good working order, or (b) the components of the System are delivered and the Customer fails to provide a suitable installation environment.
- VIII. Limited Warranty on Software and Disclaimer of Warranty on Hardware. PROVOX agrees to warrant the Software on the terms and conditions set forth in the Maintenance Concept Agreement. Customer acknowledges that PROVOX is not the manufacturer of the Hardware, and that PROVOX THEREFORE MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE HARDWARE AND HEREBY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Hardware may, however, be warranted by its manufacturer(s) and PROVOX agrees to, and does hereby, assign any such manufacturer warranties covering the Hardware to Customer. Provided that Customer has paid all current charges due for the Maintenance Concept services described in the Maintenance Concept Agreement, PROVOX will assist Customer in determining whether any problem encountered with the System is caused by the Hardware rather than the Software and, if so, Customer agrees to pursue any manufacturer's warranty remedies with respect to the Hardware component(s). In addition, PROVOX will, upon the request of Customer, assist Customer in locating a third party service organization that can service the Hardware on Customers behalf.

- IX. Maintenance Concept. Upon expiration of the Warranty Period described in the Licensing Agreement with respect to the Software and payment of the annual fee specified in the Maintenance Concept Agreement, PROVOX shall provide the support services specified in the Maintenance Concept Agreement.
- X. Indemnity. If any designs or specifications for the System are supplied by Customer, Customer agrees to indemnify, hold harmless, and at PROVOX's option, defend PROVOX against any loss, damage or liability (including court costs and reasonable fees, costs and expenses of attorneys and expert witnesses) arising in connection with any claim of patent, trademark, copyright or other proprietary right infringement arising out of the manufacturing, configuration, sale, licensing or use of the System.
- XI. Proprietary Rights. PROVOX warrants to Customer that it has the full legal right to grant to Customer the license granted under this Agreement, and that the Software and Documentation, as and when delivered to Customer by PROVOX and when properly used for the purpose and in the manner specifically authorized by this Agreement, do not infringe upon any United State patent, copyright, trade secret or other proprietary right of any Person. PROVOX shall defend and indemnify Customer against any third party claim to the extent attributable to a violation of the foregoing warranty. PROVOX shall have no obligation under this Section unless Customer promptly gives written notice to PROVOX after any applicable infringement claim is initiated against Customer and allows PROVOX to have sole control of the defense or settlement of the claim. The remedies in this Section are the sole remedies for a breach of the warranty contained in this Section.

If any applicable infringement claim is initiated, or in PROVOX's sole opinion is likely to be initiated, then PROVOX shall have the option, at its expense, to:

- Modify or replace all or the infringing part of the Software or Documentation so that it is no longer infringing, provided that the Software functionality does not change in any material adverse respect; or
- Procure for Customer the right to continue using the infringing part of the Software or Documentation; or
- Remove all or the infringing part of the Software or Documentation.



PRICING AND CONFIGURATION

PROVOX Software & Services		QTY	Unit Price	Price
001	PROVOX Agenda.NET - Unlimited Users - Workflow Management - One Time License Fee - Webform	1	\$10,500.00	\$10,500.00
		1	\$0.00	\$0.00
002	PROVOX Agenda.NET Internet Module	1	\$0.00	\$0.00
003	PROVOX Migration & Replication	1	\$0.00	\$0.00
			Total	\$10,500.00

First Class Maintenance Concept				Price
100	First-Class Maintenance Agreement Per year	1	\$2,870.00	\$2,870.00

PROVOX Professional On-Site and Off-Site Services		QTY	Unit Price	Price
201	On-Site: PROVOX Services Package • Incl. Installation & Configuration • Incl. PowerUser Training • Incl. Agenda & Meeting Management Training • Project Meetings (4 hrs. each) • Workshop	6.5 days	\$11,500.00	\$11,500.00
	Off-Site: PROVOX System Adjustments / Integrations • Project Plan Creation • Document Template Creation • Internet Information Portal Adaption (PROVOX will integrate the existing layout into the Internet Information Portal)		\$0.00	\$0.00
			Total	\$11,500.00



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	Solution Total	
Terms	PROVOX Software:	\$10,500.00
* System total payable as following:	Maintenance Concept (for a 5-year-period) per year:	\$2,870.00
Monthly payment option: \$606.00 monthly	On-Site and Off-Site Services:	\$11,500.00
Additional Web Hosting IIP: \$75.00 monthly	Estimated Travel:	After effort
Travel billed after effort	System Total first year:	\$24,870.00
	Taxes:	
* First auto-renewal will start after January 1 st , 2020		
* No reductions can be made until January 1 st , 2020		
* 5 free iPads for the customer included		



LICENSING AGREEMENT

This License Agreement applies to the following PROVOX products.

Product Name	Authorized Number of Concurrent Users for this Product
Agenda.NET Agenda and Meeting Management	Unlimited
Agenda.NET Internet Module	Unlimited
Agenda.NET Workflow Management	Unlimited
Migration & Replication	Unlimited

Grant of License. PROVOX, a Texas Company ("PROVOX") grants to the "Customer" identified above a license to load and use the PROVOX software programs listed above (the "Software") on a single server with a single CPU or, if Customer has paid the applicable concurrent use network licensing fees, on a LICENSED COMPUTER NETWORK for up to the AUTHORIZED NUMBER OF CONCURRENT USERS at any given time listed above. A computer network is any combination of two or more terminals that are electronically linked and capable of sharing the use of a single software program. A "LICENSED COMPUTER NETWORK" is a computer network for which Customer has purchased and dedicated at least one PROVOX Municipal license and a PROVOX user license for each of a designated maximum number of concurrent users on the network (the "AUTHORIZED NUMBER OF CONCURRENT USERS").

Copyright. The SOFTWARE is owned by PROVOX and is protected by the United State copyright laws and international treaties. Customer may not distribute, sublicense, disclosure or transfer the SOFTWARE to any third party without the prior written consent of PROVOX. Except as permitted above in connection with concurrent use of the SOFTWARE on a LICENSED COMPUTER NETWORK, Customer may not copy the SOFTWARE in whole or in part, except that Customer may:

1. make one copy of the SOFTWARE solely for backup or archival purposes; and
2. Transfer the SOFTWARE to a single hard disk drive provided Customer keeps the original copy solely for backup or archival purposes.

Customer may not copy the written materials accompanying the SOFTWARE, except for in-house purposes.



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Other Restrictions. Customer may not rent, lease or otherwise transfer or assign the SOFTWARE to any individual or organization. Customer acknowledges that the SOFTWARE constitutes and contains trade secrets and confidential information of PROVOX. In order to protect such trade secrets and confidential information, Customer agrees not to reverse engineer, decompile, or disassemble the SOFTWARE or permit anyone else to do so.

Limited Warranty and Remedies. PROVOX warrants for a period of ninety (90) days from the date of installation that, under normal use and without unauthorized modification, the SOFTWARE will perform substantially in accordance with the specifications published in the written material accompanying the SOFTWARE; and that, under normal use, the magnetic media upon which the SOFTWARE is recorded will be free of defects in materials and workmanship.

If during the ninety (90) day warranty period a demonstrable error in the SOFTWARE should appear that cause it not to perform substantially in accordance with the specifications published in the written material accompanying the SOFTWARE (an "ERROR"), PROVOX shall exert commercially reasonable efforts to provide Customer with a correction as soon as reasonably possible. If PROVOX cannot correct such ERROR after 90 days, then the Customer shall be entitled to a full refund of the applicable license fee. If during the ninety (90) day warranty period a defect in materials or workmanship appears in the magnetic media containing the SOFTWARE, then PROVOX will repair or replace it at no cost to Customer. The foregoing shall constitute Customers sole and exclusive remedy for a breach of the limited warranty set forth in this Section.

PROVOX shall have no obligations or responsibilities of any kind with respect to problems caused in the use or functioning of the SOFTWARE by any hardware or software not supplied by PROVOX, or by any modification of the SOFTWARE by any person or entity other than PROVOX.

As set forth in Section 1 of the General Terms and Conditions of this Agreement, PROVOX disclaims all other warranties, either express or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose, with respect to the SOFTWARE and the accompanying written materials, and disclaims any liability of any type for any lost profits, lost data, or any form of special, incidental, indirect, consequential or punitive damages of any kind.

U.S. Government Restricted Rights. The Software and documentation are provided with RESTRICTED RIGHTS.

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c) (l) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013. Manufacturer PROVOX, A Texas Company, 8951 Synergy Drive, McKinney, TX 75070.

MAINTENANCE CONCEPT AGREEMENT

1. Initial Term and Renewals

The initial term of this Maintenance Concept Agreement shall be 60 months commencing on January 1st, 2015, and shall be automatically renewable year to year from the commence date by the Customer under the terms and conditions set forth herein, unless Customer provides 30 days written notice of its intent not to renew.

2. Maintenance Concept Fee

Maintenance Concept Fee – The Customer shall pay to PROVOX, A Texas Company an initial maintenance Concept Fee of \$2,870.00 per year. The aforesaid amount shall be due as outlined on page 9. After five (5) years, both partners will review the population of City of Oakley and calculate the new annual maintenance fee. The new annual maintenance fee will be based on the actual population in 2020 and will not be increased over 20% from the annual maintenance fee of \$2,870.00. Each year the contract is renewed, the Maintenance concept fee shall be due in full in advance of the renewal date.

3. Software Services

PROVOX, a Texas Company shall on a timely basis and without additional charges or fee, provide the Customer with all version updates, bug fixes, and other modifications of SOFTWARE licensed by the Customer which are released during the term of this Agreement and with respect to which Customer has paid the applicable Maintenance Concept Fee. In addition, PROVOX, A Texas Company shall extend the limited warranty remedies set forth in the Licensing Agreement with respect to such SOFTWARE throughout the term(s) of the Maintenance Concept Agreement.

Customer agrees to promptly install all updates, bug fixes and other modifications supplied hereunder to maintain the SOFTWARE in the most current revision level. Customer may request assistance from PROVOX, with respect to any such installation, upon which services will be rendered by PROVOX at its then standard commercial time and materials rates for such services. PROVOX shall also provide customer with the software necessary for remote maintenance and diagnostics service.

4. Support Services

During the term of this Maintenance Concept Agreement, Customer shall also be entitled to telephone, fax, mail, Internet, and/or web site (<http://www.provox-systems.com>) support regarding the installation, use, and operation of such SOFTWARE, to include:

- Free telephone support between 8:00 a.m. and 6:00 p.m. CST, from the support organization at 972-547-0504
- After hours emergency incident reporting between 1:00 a.m. and 8:00 a.m. and 6:00 p.m. and 9:00 p.m. CST, charged on a per incident call basis
- Three (rfp has three)-hours guaranteed response time
- Call logging system
- Escalation procedure
- Web site access, FTP site, and e-mail
- Remote site support, diagnostics, and maintenance service

Technical support will not cover problems relating to applications, development, consultancy, computer hardware, operating systems, and printers. PROVOX reserves the right to limit the number of authorized callers.

5. Customer Obligations

During the term of this Maintenance Concept Agreement, Customer shall also be entitled to telephone, fax, mail, Internet, and/or web site (<http://www.provox-systems.com>) support regarding the installation, use, and operation of such SOFTWARE, to include>

- Customer must be operating with approved PROVOX and network software configurations.
- Customer must have a CD-ROM drive for the installation and update of PROVOX products.
- Customer must ensure the products supported under this Agreement are used only on the specific computer hardware for which the product have been licensed and approved by PROVOX.
- Customer must maintain and operate the products supported under this Agreement in a proper and prudent manner in accordance with such advice and instructions as PROVOX may issue from time to time, and allow its use only by competent and authorized personnel.
- Customer must maintain a PROVOX trained Agenda Management Administrator.

- Customer must ensure that the systems are regularly backed up and provide proof of a recovery plan.
- Customer must grant PROVOX monitored access to their Agenda Management System and network for maintenance purposes.
- Customer must make available to PROVOX without charges, any information, materials, or facilities to enable PROVOX to discharge its obligations under this contract, provided always that PROVOX shall hold as confidential any such information provided by the Customer.

6. Incorporation of License Agreement

The term, conditions, limitations, disclaimers, and restrictions contained in the PROVOX Licensing Agreement with respect to the SOFTWARE are hereby incorporated into this Maintenance Concept Agreement by this reference.

7. This Agreement Covers the Following Products

- Agenda.NET – Agenda and Meeting Management – unlimited users
- Agenda.NET – Internet Module – unlimited users
- Agenda.NET – Workflow Management – unlimited users
- PROVOX Migration & Replication Tool – unlimited users

8. Liability

Under no circumstances will PROVOX be liable to the Customer or third parties for loss of profit or direct or indirect loss or damage whether special or consequential or otherwise and however arising including, but not limited to, loss of profit or loss or damage arising from the services provided by PROVOX.

9. Uncontrollable Events

Neither party to this Agreement shall be liable for the failure to perform or for the delay in performing, its obligations under this Agreement if such failure or delay is due to Acts of God, war, riot, civil commotion, weather, labor disputes, and failure of sub-contractors or any other cause beyond the reasonable control of the party concerned.

10. Non-Assignment

The Customer is not permitted to assign the benefits and obligations of this Agreement to a third party unless the prior written consent to PROVOX has been obtained.

11. Notices

Any notices to be given by either party under the terms of this Agreement shall be given by mail or facsimile transmission at the address for such party.



12. Revisions and Modifications

This Agreement may be amended to include additional product services as agreed in writing by the Customer and PROVOX. This Agreement cannot, however, be modified by any representation, promise, or course of dealing not contained or referenced in this Agreement.

13. Termination

Either party may terminate this Agreement upon written notice in either of the following events:

- Either party commit a breach of any of the terms and conditions of this Agreement and in circumstances where such breach is capable of rectification has failed to rectify such breach within thirty (30) days of receiving written notice it to do so.
- Either party becomes insolvent or goes into liquidation, other than for the purpose of reconstruction or amalgamation, or has a receiver of its assets appointed.

14. Law

This Agreement shall be construed and operated in accordance with the laws of Contra Costa County, California without regard to choice of law rules or principles.