

RENEWAL ADDENDUM - SOFTWARE MAINTENANCE AND SUPPORT; HOSTING

THIS RENEWAL ADDENDUM (this "Addendum") is made and entered into as of 7/1/2018 (the "Renewal Date") and renews and amends the License Agreement dated 01/10/2001 ("Agreement"), by and between DAVID Corporation, a California corporation with its principal offices at 301 Edgewater Place, Suite 160, Wakefield, MA 01880 ("DAVID"), and City of Clearwater ("Customer"), with office 100 S. Myrtle Avenue Clearwater, FL 33756-5520. Schedules are attached to this Addendum and are incorporated herein.

DAVID has developed and owns certain proprietary software for use in the insurance industry. Pursuant to the Agreement, Customer has a license to use the software, as modified and enhanced by DAVID ("Software"), and DAVID has provided certain Software maintenance and support services ("Software Maintenance and Support Services"), and as applicable managed hosting ("Hosting") and hosting support services ("Hosting Support Services"), in connection therewith. Customer desires to receive continued such services by DAVID, and DAVID desires to provide the same on the terms and conditions set forth in this Addendum.

1. **DEFINED TERMS.** Capitalized terms not otherwise defined in this Addendum have the meaning ascribed to them in the Agreement. If there is any conflict between this Addendum and the Agreement, the terms of this Addendum shall govern and the terms of the Agreement shall be deemed amended and modified as provided herein.
2. **SOFTWARE MAINTENANCE AND SUPPORT SERVICES.** Subject to Customer's payment in full when due of all Software Maintenance and Support Fees and other fees as listed on Schedule A attached hereto, and other costs and expenses required to be paid by Customer as provided in the Agreement or this Addendum, and subject further to compliance by Customer with the other terms, conditions and restrictions of this Addendum or the Agreement, DAVID shall provide Software Maintenance and Support during the Renewal Term (as defined below) pursuant to the terms and conditions of this Addendum and the Agreement.
3. **HOSTING; HOSTING SUPPORT SERVICES.** If DAVID is providing Hosting and Hosting Support Services to Customer pursuant to the Agreement, subject to Customer's payment in full when due of all Hosting and Hosting Support Services Fees and other fees as listed on Schedule A attached hereto, and other costs and expenses required to be paid by Customer as provided in the Agreement or this Addendum, and subject further to compliance by Customer with the other terms, conditions and restrictions of this Addendum or the Agreement, DAVID shall provide Hosting and Hosting Support Services during the Renewal Term pursuant to the terms and conditions of this Addendum and the Agreement.

4. **PRICING; PAYMENT.** The Fees listed in Schedule A attached hereto are due and payable on an annual basis. DAVID will only increase the amount one time annually for the term of this renewal by the CPI at time of renewal, not less than 1% and not greater than 3%; also, Software Maintenance and Support Fees in connection with specialty modules may not be increased for current services provided for that term. The only change that might incur an increase in annual support fee would be with the addition or change of services purchased by the client.
5. **RENEWAL TERM.** Subject to the early termination provisions of in the Agreement, the term of this Agreement will commence on the Renewal Date and will continue in Annual renewals until it expires on the third anniversary of the Renewal Date (the "**Renewal Term**"); At this time a new support agreement will need to be in place for the support of NAVRISK or VISION to continue.
6. **ALLOCATED SUPPORT SERVICE HOURS.** Support services, including Software Maintenance and Support Services and Hosting and Hosting Support Services ("**Support Services**"), are provided based on a total annual amount of funded hours of services as provided in Schedule A. Half of the Software Maintenance and Support Fee is allocated to Maintenance Release (as defined below) services and bug fixes provided to customers generally, and the other half of the Software Maintenance and Support Fee is allocated to services for work performed in connection with the Software specifically for Customer. The number of hours allocated for Support Services is calculated by dividing the fee for such support services by DAVID's standard hourly services rate for that year. Any service hours allocated but unused at the end of a year expire, and will not be carry over to the next year's allocation of service hours. Invoices will be generated, if due, for overages of support hours usage on a monthly or quarterly basis.

Additional support services, over and above the amount allocated for a year, and any additional services not included as part of Support Services are available to Customer on a time and materials basis as part of the change request (CR) process. Overages for support hours will be reported to Customer and invoices will be provided if due. The following services are specifically not included as part of Support Services, and will be billed on a time and materials basis: (a) custom program upgrades; (b) reprogramming services, custom forms, scanned forms, custom documents; (c) third party program upgrades or custom program requests are billable on a time and materials basis; and (d) other professional services, including, installation, implementation, training, customization and other consulting services. The above list of additional services is meant to be illustrative and not exhaustive; DAVID reserves the right to bill for any additional services.

7. MAINTENANCE RELEASES.

7.1 During the Term, DAVID will provide Customer with all Maintenance Releases that DAVID may, in its sole discretion, make generally available to its customers at no additional charge. The term “**Maintenance Release**” means any update, upgrade, release, new version or other adaptation or modification of the licensed Software, including any updated documentation, that DAVID may provide to Customer from time to time during the Renewal Term, which shall contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the licensed Software.

7.2 DAVID provides up to eight (8) hours of Maintenance Release services work per year to the standard Software, including NAVRISK, without charge to Customer. Additional upgrade services may be required and available to Customer on a time and materials basis as part of the change request (CR) process. In addition, any allocated but unused Maintenance and Support service hours may be applied by Customer to Maintenance Release service work done in the same service year.

7.3 All Maintenance Releases, on being provided by DAVID to Customer hereunder, are deemed part of the licensed Software subject to all applicable terms and conditions in this Agreement. If DAVID is providing managed hosting services, DAVID shall be responsible for installation of all Maintenance Releases. If DAVID is not providing managed hosting services, Customer will install all Maintenance Releases as soon as practicable after receipt. Customer does not have the right hereunder to receive, at no additional license cost, new products of the licensed Software (as may be indicated by DAVID's designation of a new product number, as opposed to a new version number of the Software licensed to Customer) that DAVID, in its sole discretion, may release from time to time. DAVID will support the then-current version of the licensed Software and two previous versions as part of its maintenance obligations. If Customer has failed to install two or more of any Maintenance Releases, then DAVID may charge Customer for support calls to address problems with older versions.

8. **REMOTE ACCESS.** Customer shall provide access to Customer systems as requested by DAVID to provide Maintenance and Support services, or any additional services. Access provided can be requested, provided and then terminated at the resolution of the support or maintenance issue.

9. **SECURITY AUDITS AND RISK ASSESSMENT SERVICE REQUESTS.** If Customer requires services or assistance from DAVID in connection with special security audits, security questionnaires, or other security or risk assessment services, they may request such service and

such service will be available to Customer on a time and materials basis as part of the change request (CR) process.

10. **FROI AND SROI FORMS.** Currently installed FROI and SROI forms are supported on a limited basis and updates to any other forms are not included in Software Maintenance and Support Services. New FROI and SROI forms supported in NAVRISK Releases 5.8 and NAVRISK VISION are provided to customers as a new Claimwire/NAVRISK integrated product pursuant to a separate fee and support agreement. FROI and SROI Forms may be automated using alternative vendor partners as needed in the future.
11. **CUSTOM REPORTS.** Support Services to provide custom reports, including, without limitation, custom reports required by Customer in connection with software upgrades, are not included in Software Maintenance and Support services but will be available to Customer on a time and materials basis as part of the change request (CR) process. Other new programs are available including the NAVRISK SAP reporting system and/or NAVRISK VISION Data Analytics that can be licensed separately as part of an ongoing support agreement. Customer is required to have dedicated internal staff resources assigned to all report and data analytic processing.
12. **SPECIALTY MODULES.** Support Services to support specialty modules with approved third partner software automation programs (e.g. Franco Signor for MMR, Healthtech for EDI, and others for Medical Bill Review) are limited to sixteen hours and Customer data error resolution related to these services are not included in Maintenance and Support services but are available to Customer on a time and materials basis as part of the change request (CR) process. New technology programs that are provided as part of Third Party Software to meet unique new compliance needs may be offered under a separate support fee and support agreement. These programs include NAVRISK Automated MMR Reporting using Franco Signor and NAVRISK Automated EDI Submission using HealthTech EDI services. Customer has sole responsible for their data compliance accuracy that impact data submission to third parties and compliance organization. Customer is required to have dedicated internal staff resources assigned to all compliance processing.
13. **CUSTOMER DISCOUNTS.** Customer shall be eligible for the following discounts subject to the following conditions:
 - (a) If Customer has three or more NAVRISK Level 200 Certified Users, Customer shall be eligible for a one-time 5% discount on their Maintenance and Support Fee, which shall be applied to the next year's invoice for Maintenance and Support Fees;

(b) If Customer has three or more employees attend a DAVID Corporation User Conference, Customer shall be eligible for a 5% one-time discount on any new or additional software licensed and purchased within six (6) months of the conference date.

In addition, if enrolled, Customer shall be eligible for other benefits from DAVID's REWARD PRO Customer Recognition Program. For more information, contact DAVID's Customer Support Manager.

14. EXCLUSIONS. DAVID is not responsible for providing, or obligated to provide, Maintenance and Support under this Agreement: (1) in connection with any Errors or problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the NAVRISK Software, or from any design defect in any configuration of the NAVRISK Software, which activities in any such case were undertaken by any party other than DAVID without its authorization; (2) in connection with any Errors if DAVID has previously provided reasonable corrections for such Error which Customer fails to implement or overwrites; (3) in connection with any Errors or problems that have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in third party software (other than

Third Party Software or third party software embedded in the NAVRISK Software by DAVID), hardware or any system or networking utilized by Customer without authorization by DAVID; (4) if the NAVRISK Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect other than by DAVID or an authorized subcontractor of DAVID; (5) if any party other than DAVID, or an authorized subcontractor specifically selected or approved by DAVID in writing, has provided any services in the nature of Professional Services, Upgrades and Enhancements, Maintenance and Support, or any other similar to Customer with respect to the NAVRISK Software; or (6) Customer fails or refuses upgrades for the Software and is not within one upgrade version of current published technology requirements. (7) for Customer data errors or data coding errors.

Any third party providing Maintenance and Support services or any other services to Customer in connection with the Software must be pre-approved by DAVID. Such third parties, even if approved by DAVID, shall be required to sign a Confidentiality, Non-Solicitation, and NonCompetition Agreement with DAVID in a form approved by DAVID prior to commencing services.

15. SERVICE HOURS. Requests for Maintenance and Support services can be entered online in the DAVID support system at any time 24x7. DAVID support personnel are available Monday through Friday, from 8:00 AM – 8:00 PM EST for telephone support or for responses to Customer support requests. Maintenance and Support services on weekends or after regular support hours may be available at an hourly rate of \$250/hr. or otherwise preapproved.

- 16. CUSTOMER NAVRISK PORTAL SUPPORT.** Portal related program support other than specific warranty corrections and program upgrades are not included as part of the Maintenance and Support Fee. Customers offering use of any DAVID Portal program should assume training, support and security management responsibilities. Portal support from DAVID can be offered on a time and materials basis to approved licensed users ("Portal Users"). Any Portal User is expected to be trained and following Customer created procedures and processes to manage its Portal User. Customer may also need to purchase the Portal Program as a new module if the NAVRISK program if it was not previously licensed by Customer.
- 17. ACCOUNT MANAGEMENT.** All account management done by DAVID employees for the client will be counted against the client's support hours unless pre-paid T&M or package hours are purchased. Account Management includes; client support list discussions, all project discussions not covered by a Change Request or Service Request or any client assistance function that is not covered by the base support agreement. DAVID recommends that clients purchase a Major Account Package plan or pre-paid T&M Block hours at a discount to use for account management or other special projects.
- 18. AUDITING OF USER LICENSES.** DAVID audits Customer use of the Software to ensure licensed users are using the Software in accordance to this Addendum and the EXISTING DAVID/CUSTOMER Software Agreement. Programs to verify the quantity of users are part of the Software. DAVID will notify Customer of any violation in the quantity or type users and
Customer will have the option to pay for licensing or suspend the user; provided, however, the failure by DAVID to notify the Customer shall not be deemed a waiver of such violation. DAVID provides software use as part of a named authorized user definition. Unlicensed users are not permitted and present a security risk and an operational risk that is the Customer's responsibility.
- 19. SAP, PURESHARE AND THIRD PARTY PROGRAMS.** SAP and other Third Party Software are supported by DAVID within the service level limits service levels and support terms such third-party vendors provide to DAVID. DAVID cannot control, and is not responsible for, the response time of SAP or other similar third party vendors that provide programs that DAVID integrates into the Software. PURESHARE, an old third party program used for some reporting functions, will no longer be supported as a reporting program after December 31st, 2017. Customer will have the option to upgrade as additional cost item to NAVRISK VISION Data Analytics and reporting or have similar reports created in more current technology on a time and material basis.
- 20. PERSONAL HEALTH INFORMATION.** DAVID provides general data security practices as part of standard operating procedures. Special requests for providing Personal Health

Information data processes or procedures, unless otherwise contracted, is not included in Maintenance and Support services and must follow all HIPPA compliance regulations.

- 21. RE-INSTALLING SOFTWARE.** Re-installing Software is not included in Maintenance and Support services but will be available to Customer on a time and materials basis as part of the change request (CR) process. Re-installing Software may require onsite assistance as well as other specialty resources to reinstall Software and recertify that such Software is operationally suitable.
- 22. DATA.** Under no circumstances is DAVID responsible for correcting or updating Customer data entry or making changes to data transferred from other third-party interfaces, or making system code file changes, organizational hierarchy changes or similar content change issues. Such services will be available to Customer on a time and materials basis as part of the change request (CR) process. Customer is also required to audit their data as well as protect and secure their data. DAVID is not responsible data, data breaches or data risks associated with equipment or operations managed by the Customer at their location.
- 23. USER ACCESS MANAGEMENT.** Under no circumstance is DAVID responsible for updating or maintaining; user passwords, user access privileges, related security and privileges related to Active Directory or similar user systems.
- 24. CUSTOMER RESPONSIBILITIES.** Customer is responsible for providing trained staff to operate and manage their software system. Customer duties and responsibilities are outlined in Schedule B – Customer Responsibilities. These include; data quality, system admin, report processing technician, trained end users manage and support of the portal users, IT Services for maintaining interfaces and automation processes, third party data upload, maintaining current software, upgrade level, risk management, documented workflow procedures, job description for key roles.
- 25. LIMITATION OF LIABILITY.**

(a) DAVID SHALL NOT BE LIABLE FOR ANY (i) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS ADDENDUM OR THE AGREEMENT OR ANY ORDER OR THE OPERATION OR USE OF THE SOFTWARE AND SERVICES INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, EVEN IF DAVID HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (ii) CLAIMS MADE A SUBJECT OF A

LEGAL PROCEEDING AGAINST DAVID MORE THAN ONE YEAR AFTER THE DISCOVERY OF SUCH CAUSE OF ACTION BY CUSTOMER.

(b) EXCEPT FOR (i) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT (IF ANY), (ii) PERSONAL INJURY OR DEATH OR DAMAGE TO ANY REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY A PARTY'S GROSSLY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT, OR (iii) THE GROSSLY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF A PARTY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS ADDENDUM OR THE AGREEMENT, NEITHER PARTY'S LIABILITIES UNDER THIS ADDENDUM AND AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED TWO TIMES (2X) THE AMOUNTS ACTUALLY RECEIVED BY DAVID UNDER THIS ADDENDUM FOR THE MOST RECENT ANNUAL MAINTENANCE AND SUPPORT FEE."

26. AGREEMENT. Except as amended by the Addendum, the Agreement remains in full force and effect.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the dates set forth below.

Countersigned:



George N. Cretekos
Mayor

CITY OF CLEARWATER, FLORIDA

By:



William B. Horne II
City Manager

Approved as to form:



Paul Richard Hull
Assistant City Attorney

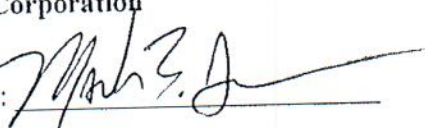
Attest:

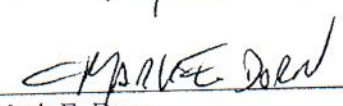


Rosemarie Call
City Clerk



DAVID Corporation

Signature: 


Mark E. Dorn

President and CEO

Date: 6/25/2018

SCHEDULE A
NAVRISK® MAINTENANCE AND SUPPORT RENEWAL ADDENDUM

Software Maintenance and Support Fee (Per Year, No increase for 3 years):	\$ <u>13,132.62</u>
Covers: NAVRISK/VISION Core System	
Price Is Less Any Customer Rewards Pro or Certification Discount	
Total Funded NAVRISK Program Service Hours (Per Year/Per Month):	<u>37</u> / <u>3</u>
Total Hours Available For Software Release Change Updates: 8 Hrs.	
Specific to Customer System. Additional Hours Are Done On Time & Materials Basis.	<u>8</u>
Rate for Additional Change Request or Program Services	\$200/Hour.
DAVID SUPPORT CENTER – Online User System	Included
Webinar Training – Per Year as Posted	Included
NAVRISK Claimwire Data Ready WC Forms Service (If Licensed)	Included
(Optional) VISION Account Management Package – Gold - \$25,000	\$ _____
(Optional) Pre- Paid T&M Block Hours @ \$180/hour (100 minimum)	\$ _____
(Optional) MMR Automated Services with Franco Signor	\$5,000/yr.
Includes One RRE If Licensed By Customer.	
(Optional) EDI Automated Services with HealthTech	\$ _____
If Licensed By Customer, Transaction Fee Based On Use And Billed Monthly)	(Estimated)
(Optional) Hosting with Hosting Support Services (Per Year)	\$ <u>0</u>

Total Funded Hosting Service Hours (Per Year): 0 **SCHEDULE B**
NAVRISK® and NAVRISK VISION MAINTENANCE AND SUPPORT RENEWAL
ADDENDUM

CUSTOMER RESPONSIBILITIES

The purpose of this schedule is to better define the scope of the DAVID Maintenance and Support agreement. This section includes the Customer's responsibility for usage of the NAVRISK Software within their business.

The Customer is responsible for having trained staff, documented workflow process, documented reports and staff to support their IT work including system administration and user service tasks. The Customer is also responsible for having dedicated roles for compliance topics like MMR and EDI. These internal Customer staff roles include:

1. **NAVRISK System Administrator** - Trained in the Administration of the NAVRISK or NAVRISK VISION product and its modules. They should be able to add users, data codes, use system maintenance and be the final line of internal Customer support before they contact the DAVID Support Center.
2. **Reporting Product Specialist** – Trained in the reporting systems that NAVRISK uses. Specifically, SAP and/or VISION Data Analytics. The Specialist should be able to manipulate the Reporting system to create ad hoc reports, review and adjust standard reports, and assist users in dashboard creation. They would be the Customer's first line of resolution for reporting issues.
3. **Database (IT) Administrator** – Trained in maintenance of the servers, the databases, and user maintenance. For DAVID hosted Customers, some of this will be delegated to the DAVID Hosting staff.

The Customer will need to attempt to resolve and at least define any issue before contacting DAVID Support. Once contacted, the DAVID Support Technician will advise the Customer of the nature of the issue: Routine Maintenance & Support (RMS), other Services Request (SR) for Training, Operational IT requests, User Data Anomalies or Other.