



# **STANDARD MAINTENANCE AGREEMENT**

Prepared for:

**INDIAN RIVER COUNTY**

# STANDARD MAINTENANCE AGREEMENT (US)

Agreement Preparation Date: October 4, 2017

This Post-Warranty Maintenance Agreement (the "Agreement") by and between HigherGround, Inc. (HigherGround), a California corporation having its principal place of business at 21201 Victory Blvd., Suite 105, Canoga Park, CA 91303, and Indian River County, having its principal place of business at 4225 43rd Avenue, Vero Beach, FL is Effective on the date set forth in the Agreement Signatures.

This Agreement is the complete agreement between the parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the parties. In the event of conflict between the terms of this Agreement and the terms of an Exhibit, the terms of the Exhibit shall govern. This Agreement may only be modified by a written document executed by the parties hereto.

## **Warranty Period**

HigherGround warrants its Products to be free of defects in both material and workmanship, under normal use and service, when installed and maintained in accordance with HigherGround written instructions. The warranty period is one (1) year and begins on the installation date or 30 days after the system is shipped by HigherGround, whichever is earlier. For Software orders, the shipment date is the date HigherGround delivers the software to the Customer. *Please see the Limited Warranty for full terms and conditions.*

## **Post-Warranty Maintenance and Support Summary**

HigherGround shall be responsible for using all commercially reasonable diligence to correct any verifiable and reproducible fault of the recording system when reported to HigherGround in accordance with its standard reporting procedures. All work will be performed remotely using high-speed access via a mutually agreed upon, secure method.

HigherGround will perform all routine maintenance, support, and updates during Business Hours. Remote software updates will be performed as Mandatory Updates, Software Updates, Service Packs or Software Patches become available. Service required for failures that are not a result of normal wear and tear, or otherwise not covered by this agreement shall be furnished on a time and materials basis. HigherGround shall maintain a trained staff capable of rendering the services set forth in this Agreement.

## **Definitions**

**Critical Maintenance:** Critical maintenance includes any action necessary to restore primary operation of the HigherGround system.

**Routine Maintenance:** Routine maintenance includes preventative maintenance as well as any repairs not required immediately to restore primary operation of the system.

**Critical Alarms:** Critical alarms are indications of a failure or impending failure of a major component, feature or function of the system.

**Minor Alarms:** Minor alarms are indications of abnormalities or malfunctions that do not impact primary operation of the system.

Remote: HigherGround certified technicians connect to Customer's recording system using remote control software or VPN.

Onsite: At the address where the HigherGround system is located.

HigherGround Business Hours: Monday thru Friday, except Holidays, 6 am to 6 pm Pacific Time.

Local Business Hours: Monday thru Friday, except Holidays, 8 am to 5 pm at the Customer location.

24-Hour: 24 hours per day, 7 days per week.

Mandatory Updates: corrections to the computer code or documentation included in the Products required in order to maintain marketable performance of the Products (address Critical Maintenance issues) and, in connection therewith, conformity of the code, documentation, and marketing literature relating to a particular Product.

Current Product: At this time, HigherGround offers two different products, each of which is a package of applications. The current products are NextGen Capture911 and Calibre. In the future, HigherGround may offer new or different products under different product names.

Supported End-of-Life Product: A product which is no longer offered for sale by HigherGround, and for which HigherGround will continue to provide support for a specific period of time. For example, Fusion Series 7 is a Supported End-of-Life Product. HigherGround will continue to support for Fusion Series 7 until December 31, 2018.

Product Upgrade: means a change from one product to another, for example from Fusion Series 7 to Calibre. Product upgrades are provided at an additional charge that will be determined by HigherGround when a new product becomes available.

Software Patch: Software code written to address local functionality issues (bug fixes) not currently fixed with the latest Service Pack, Software Update, or Software Upgrade.

Service Pack: A specific, sequential edition of a given Release/Version, which may include updates, and/or bug fixes. A Service Pack is designated by a letter *to the right of the second decimal point* (such as R.v.x or R.v.y or R.v.z) a.k.a. "Update".

Software Release: A specific edition of the licensed Software that provides additional feature(s). For example, Calibre is designated by a number located *to the left of the first decimal point*. Calibre r. 8.5.2 is read as "Calibre release eight dot five dot two" or Release 8, Version 5, Service Pack 2.

Active Release: The current Software Release.

Supported Release: Any release prior to the Active Release for which HigherGround continues to provide support. Generally, HigherGround supports one (1) or two (2) Releases prior to the Active Release.

Inactive Release: Any Release prior to the Active and Supported Releases. HigherGround will not provide Patches or Service Packs for Inactive Releases. Any Customer on an Inactive Release will be updated to the Active Release prior to troubleshooting or patching most issues.

Software Version: A specific edition of the Software Release that includes minor feature or feature set additions. A Version is designated by a number *to the right of the first decimal point*. Calibre r 8.5.2 is read as "Calibre Release eight dot five dot two" or Release 8, Version 5, Service Pack 2.

Software Upgrade: means a change that may represent an improvement in the quality or performance of the product or provide additional functionality. It may be represented by but is not limited to Releases or Versions. (For example, Release 8 version 5 may be upgraded to Release 8 version

6). Software upgrades to a newer version of the same product will be provided at no charge to Customer while under an active maintenance agreement.

Software Updates: HigherGround will periodically release new versions of its Software. Software updates, which include new features and enhancements as they come available, will be provided at no charge to End-Users under warranty or an active maintenance agreement.

### **Problem Severities**

#### **Severity 1 – Critical Failure**

An existing recording system is down, more than 50% of the endpoints are not being recorded or there is a critical impact to an End User's business operation.

#### **Severity 2 – Major Failure**

Operation of Customer's recording system is severely degraded, more than 10% of endpoints are not being recorded; recording quality is severely degraded, End User's are unable to access the recording system to retrieve data or significant aspects of End User's business operation are negatively impacted by unacceptable network or environment performance.

#### **Severity 3 – Minor Failure**

Operational performance of End User's recording system is impaired, fewer than 10% of endpoints are not being recorded, recording quality is somewhat degraded and End User's access to the system or data is limited, although most business operations remain functional.

#### **Severity 4 – Request for Assistance**

End User requires information or assistance on HigherGround product capabilities, installation, or configuration.

### **Business Day Support**

HigherGround will provide both Critical and Routine Remote Maintenance Services during the Business Day (8am – 6pm local time). Requests for service under this agreement may be initiated by calling the HigherGround Client Support Center at (818) 251-5277 or sending an e-mail to [service@higherground.com](mailto:service@higherground.com). All requests must include a detailed description of the issue being reported and any diagnostic or corrective actions already taken. Automated service tickets will be opened by HigherGround when the recording system delivers critical alarms to our Center.

HigherGround will advise Customer when software updates or upgrades are available. If, after reviewing release notes, Customer approves an update or upgrade, HigherGround will apply the update or upgrade during Business Hours.

## HigherGround Response Times for Business Day Support

Severity	Response Time		Resolution Time	
	Local Business Day	Off Hours	Local Business Day	Off Hours
Severity 1 Critical Failure	1 Hour	Next Business Day	8 Hours	1 Business Day
Severity 2 Major Failure	2 Hours	Next Business Day	16 Hours	2 Business Days
Severity 3 Minor Failure	1 Business Day	Next Business Day	4 Business Days	4 Business Days
Severity 4 Request for Assistance	1 Business Day	Next Business Day	As Agreed	As Agreed

When HigherGround responds to an alarm, we will attempt to notify Customer by phoning and/or emailing the primary contact before connecting to the system. If the alarm is for a Critical or Major Failure, the technician will still connect to the system and attempt to rectify the problem, even if the primary contact does not respond. If the technician is unable to connect to the recording system using the standard high-speed connection provided by Customer, response and resolution may be delayed.

### Exclusions from Business Day Support

The following services are not covered under this maintenance agreement:

- System administration, including additions, moves and changes of phones or users.
- Support or maintenance of cabling, hardware or software not provided by HigherGround such as routers, switches, phones, SPAN ports, PBXs or ACDs.
- Maintenance of the data network including ensuring Customer workstations can access the recording system, ensuring HigherGround can access the system remotely, and ensuring the system can deliver alarms to HigherGround via e-mail.
- Maintenance of all user workstations and domain user accounts, including ensuring that workstations and users have appropriate permissions to access all features of the recording system.
- Support or maintenance outside of Business Hours.
- On-site support or maintenance.

### 24 Hour Support

HigherGround will provide Routine Remote Maintenance Services during the Business Day (8am – 6pm local time). HigherGround will provide Critical Remote Maintenance Services as needed, 24 hours a day. Requests for service under this agreement may be initiated by calling the HigherGround Client Support Center at (818) 251-5277 or sending an e-mail to [service@higherground.com](mailto:service@higherground.com). All requests must include a detailed description of the issue being reported and any diagnostic or corrective actions already

taken. HigherGround will open automated service tickets when the recording system delivers critical alarms to our Center.

### HigherGround Response Times for 24 Hour Support

Severity	Response Time		Resolution Time	
	Local Business Day	Off Hours	Local Business Day	Off Hours
Severity 1 Critical Failure	1 Hour	4 Hours	8 Hours	1 Business Day
Severity 2 Major Failure	2 Hours	4 Hours	16 Hours	2 Business Days
Severity 3 Minor Failure	1 Business Day	1 Business Day	4 Business Days	4 Business Days
Severity 4 Request for Assistance	1 Business Day	1 Business Day	As Agreed	As Agreed

When HigherGround responds to an alarm, we will attempt to notify Customer by phoning and/or emailing the primary contact before connecting to the system. If the alarm is for a Critical or Major Failure, the technician will still connect to the system and attempt to rectify the problem, even if the primary contact does not respond. If the technician is unable to connect to the recording system using the standard high-speed connection provided by Customer, response and resolution may be delayed.

### Exclusions from 24 Hour Support

The following services are not covered under this maintenance agreement:

- System administration, including additions, moves and changes of phones or users.
- Support or maintenance of cabling, hardware or software not provided by HigherGround such as routers, switches, phones, SPAN ports, PBXs or ACDs.
- Maintenance of the data network including ensuring Customer workstations can access the recording system, ensuring HigherGround can access the system remotely, and ensuring the system can deliver alarms to HigherGround via e-mail.
- Maintenance of all user workstations and domain user accounts, including ensuring that workstations and users have appropriate permissions to access all features of the recording system.
- Non-critical support or maintenance outside of Business Hours.
- On-site support or maintenance.

### Hardware Support

If Hardware Support is included in this Maintenance Agreement, HigherGround will troubleshoot hardware problems within the recording system including problems with hard drives, power supplies, recording cards, NICs, etc. Our response times for hardware support will be the same as our response times for software support. HigherGround will provide advanced replacement of defective hardware as detailed in our RMA policy. HigherGround will be responsible for 3-day shipment of replacement

hardware to Customer. Customer will be responsible for the additional cost of expedited shipment. Customer will be responsible for the cost of shipping the defective hardware to HigherGround. Customer will be responsible for installing replacement parts, taking standard precautions to protect electronic parts from liquids, static discharge and physical damage.

### **Hardware Refresh Program**

HigherGround offers a hardware refresh program to customers on current Maintenance Agreements. Under this program, HigherGround will provide discounted professional services to migrate HigherGround applications to new hardware, whether the hardware is provided by HigherGround or by the Customer.

### **Customer Responsibilities**

Customer is obligated to share the responsibility of keeping the recording system in good physical condition, recognizing that electronic equipment is, by its nature, subject to misuse and neglect. The customer agrees to maintain an environment conducive to computer equipment operation. Customer agrees to ensure the provision of uninterrupted power to and a dedicated UPS for the recording system.

Customer agrees to protect the recording system's operating system and associated software from infiltration of malicious software programs known as "viruses" or "worms". Customer agrees to bear sole responsibility for ensuring the recording system is protected against such infiltration, eradication of same, and any cost associated with recovering lost or damaged data.

Customer will be prepared to assist the HigherGround certified technician by providing a complete and accurate description of the trouble symptoms over the phone, performing any routine front panel functions including removing and reapplying main power to the unit as instructed. Customer is responsible for making the recording system accessible to the HigherGround technician via high-speed remote access for scheduled updates and maintenance at times acceptable to both parties.

### **Limitations on Contract Service**

The Maintenance Agreement covers repairs and service required as a result of normal use and DOES NOT COVER service necessitated by damage incurred in accident, abuse, lightning, earthquake, water damage, flood or other similar causes. Third party software, including viruses and worms, third party equipment, telephone company line(s) problems, or any damage to or failure of the system caused by same WILL NOT be covered under this Maintenance Agreement. NO COVERAGE is extended under this Agreement to archive media of any type including but not limited to magnetic tape, magneto-optical disk, external hard drive, or other removable media, whether provided as part of the original recording system or subsequently purchased from HigherGround, beyond replacement cost of the media. HigherGround IS NOT responsible for, and Customer agrees not to hold HigherGround liable for lost data. Any cost involved in attempting to recover lost or damaged data will be the sole responsibility of Customer. HigherGround's obligations under this paragraph do not extend to claims arising from any modification to the HigherGround system not made by HigherGround or from the use or combination of the software provided by HigherGround with products provided by the Customer or others.

### **Limitation of Liability**

HigherGround shall not be liable for any loss or damage suffered by the Customer caused by "Acts of God" or from any other cause beyond the control of HigherGround, and Customer, by signing this Agreement, acknowledges and agrees to this provision. EXCEPT AS PROVIDED HEREIN, HIGHERGROUND'S MAXIMUM LIABILITY WILL BE LIMITED IN ANY EVENT TO ACTUAL DIRECT DAMAGES TO THE EXTENT CAUSED SOLELY BY THE ACTS OR OMISSIONS OF HIGHERGROUND,

SUBJECT TO A MAXIMUM LIABILITY OF THE ANNUAL AMOUNT PAID FOR SERVICE, WHICH DIRECTLY CAUSED SUCH DAMAGE. IN NO EVENT WILL HIGHERGROUND BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, LOST BUSINESS PROFITS, OR LOSS, DAMAGE OR DESTRUCTION OF COMPUTER NETWORKS, SYSTEMS OR DATA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, EVEN IF HIGHERGROUND HAS BEEN ADVISED AS TO THE POSSIBILITY OF SAME. NO LIMITATION AS TO DAMAGES FOR PERSONAL INJURY IS HEREBY INTENDED. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES AND THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY.

### **Entire Agreement**

HigherGround has not made nor is Customer relying upon any representations other than those specifically set forth herein. Both parties concur that the entire Agreement between the parties is set forth herein. Additions, deletions or changes to this Agreement must be in writing and signed by HigherGround and Customer to become effective. This Agreement, additions, deletions or changes to this Agreement shall be null and void unless signed by an Officer of HigherGround.

### **Survivability**

If any one or more of the provisions of this Agreement, or the application of such provisions to the Customer, HigherGround or any circumstances shall be held invalid, the remainder of this Agreement shall remain in full force and effect. If for any reason this Agreement between Customer and HigherGround is terminated, abridged, canceled, breached or nullified, both parties agree that any license agreement, confidentiality or non-disclosure agreements executed between both parties shall remain in effect in perpetuity.

### **Term and Termination**

The term of this Agreement shall commence on the Effective Date set forth on Exhibit A. The term shall continue for a period of one (1) year and upon receipt of payment will be renewed automatically for successive one (1) year terms on the anniversary of the effective date (renewal date). This Agreement shall cover the product specified in Exhibit A. If there are any changes to the covered product, a new Agreement will be executed by the parties.

Either party may notify the other of its intent not to renew the Agreement at any time up to thirty (30) days prior to the renewal date. In the event either party gives such notice, the Agreement will remain in effect through the renewal date. HigherGround will continue providing service under the terms of the Agreement and will not be obligated to refund any portion of the monies paid by the Customer for the Agreement.

If Customer has not been paying for maintenance, they may reestablish a new Maintenance Agreement under the following conditions:

- a) If Customer has been off maintenance for less than 9 months, they will pay a fee equal to the support fee for all of the months they have been off and will pay for three months support in advance.
- b) If Customer has been off maintenance for more than 9 months, they will pay a fee equal to the support fee for 9 months and will pay for three months of support in advance.
- c) HigherGround will, at its discretion and at the Customer's cost, inspect the system for damage and require that Customer pay HigherGround to repair any defects prior to the commencement of a new maintenance period.

### **Anti-Virus Software Notice**




To prevent potential conflicts with other existing anti-virus programs that may be operating on the Customer's network, anti-virus software is not included with the recording system. Because of the potential damage computer viruses can do, HigherGround strongly recommends the purchase of anti-virus protection to be installed and kept current on all recording system servers. There are several anti-virus programs commercially available and HigherGround makes no specific recommendation other than the program should include current updates. This should be discussed with your Information Technology (IT) Administrator. Should your recording system become infected with a computer virus, it will be the Customers' responsibility to eradicate the virus before HigherGround performs any maintenance. If requested, HigherGround will assist in the removal of a virus infection during normal business hours at the standard time-and-materials rate.

**System Monitoring (Telemetry)**

In an effort to improve the products and services we provide our customers, HigherGround gathers information about how our software is used. None of the information we collect contains sensitive data. We are not capturing personal user details or metadata (e.g. phone numbers, attachments, ANI/ALI information, workstation names, etc.). The only information we collect is how the HigherGround software is being used. The types of data collected from customers' systems on a monthly basis are: Feature Statistics (module being run, feature being used, number of times the feature is used, the number of workstations running each version of Windows, the version of HigherGround software running on the system, alarms that occurred and how many times, errors that occurred and how many times); Data Table Size (data table name, number of records in the table, table size, size of index, total size, record size); Data Table Purge Statistics (data table name, number of records in the table, total time spent purging old records); Reports Run (report name, number of times run, total number of records reported on, average number of records reported on, total time to generate reports, average time to generate reports); Free Space Statistics (server name, drive letter, free space); Help File Statistics (help file/topic accessed, number of times accessed). If you have any questions about the HigherGround system monitoring policy, or if you would like to opt out of monitoring, please contact HigherGround Client Support: Local 1-818-251-5277; Toll Free 1-877-998-7999; Email [support@higherground.com](mailto:support@higherground.com).

**Agreement Signatures**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, each party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Agreement.

Company Name:  <hr/> Authorized Signature  <hr/> Name  <hr/> Title  <hr/> Date	HigherGround, Inc.   <hr/> Authorized Signature  Ric Cahak <hr/> Name Vice President, Client Support <hr/> Title  <hr/> Date <i>10/30/17</i>
--	--

# EXHIBIT A

## Equipment List and Maintenance Fee

**Company:** Indian River County

**Equipment Location:** Indian River County (EOC, Sebastian PD, Sheriff Office, Vero PD)

HigherGround, Inc. agrees to maintain the HigherGround recording system during the term of this Maintenance Agreement by furnishing service accepted by Customer as indicated below:

Equipment Description:
<b>Software</b> – Instant Retrieval, Real-Time Monitor, Control Tower and Report Commander
<b>Hardware</b> – NG Capture 911 Voice Recorder Server

