

If you reach our voicemail system, please leave a message with your name, company name, and callback number. **All support requests received during business hours will be addressed on the same day.**

TRC Technical Support and Maintenance Covenants

TRC Consultants, LC (“TRC”) offers an ongoing technical support and maintenance program for the PHDwin and PHDRMS software products on the following and terms and conditions (“Support and Maintenance Terms”):

General Support and Maintenance

- A) Support and Maintenance. Support and maintenance are only available for current software versions.
- B) Support.
 - a. Support includes unlimited telephone and e-mail instruction to assist in operating and installing the licensed software. For authorized users, support is available Monday through Friday 9:00 AM to 5:00 PM CST on our toll-free technical support phone line ((888) 248-8063 Ext. 5 or (512) 467-2639 ext. 5) or through our support e-mail address (support@phdwin.com).
 - b. Support can be made available before or after the normal support periods by special arrangement.
- C) Maintenance.
 - a. Inter-version maintenance release updates are available from time to time, without additional charge, to client lessees and to client licensees who are enrolled in the support and maintenance program.
 - b. Inter-version maintenance updates are made available as downloads from the PHDwin website. Additionally, CD versions will be made available to the licensee’s/lessee’s designated point of contact upon request.
 - c. Version maintenance updates will also be made available from time to time, provided, however, TRC reserves the right to charge a fee for version updates.

Software Term and Cost

Support and maintenance are provided by TRC only together not separately. Support and maintenance are only available in one-year increments, for client perpetual licensees, and are only available in the leased/subscription term, for client lessees.

- A) Perpetual Licenses,
 - a. For client licensees, technical support and maintenance can be purchased, together and not separately, in yearly increments, with each yearly period commencing on the anniversary date of the initial licensing of the TRC software product. At or prior to each such anniversary date, the licensee has the option to purchase support and maintenance for the upcoming one-year period, commencing with such anniversary date through the next succeeding anniversary date.

- b. The cost of the support and maintenance for each client licensee will be based on **all** TRC products (network, standard, PHDwin, PHDRMS, custom) licensed by the client licensee as well as the number of licensed users or seats (i.e., costs are proportional to the licensed rights)
- B) Leased/Subscription Software,
- a. For client lessees, support and maintenance are included for the leased/subscription term.
 - b. The costs for support and maintenance are included in the costs for the leased/subscription software.

Non-Renewal Elections

If a perpetual client licensee elects to not renew/purchase their annual support and maintenance, the client licensee may continue to use the software version available at the time support and maintenance was discontinued. The client licensee will no longer be entitled to maintenance updates and version upgrades made available after the support and maintenance was discontinued. The client licensee will be frozen on the version/build published on the date its "Support and Maintenance" contract ended.

If a perpetual client licensee chooses not to maintain support and maintenance for a period, that client licensee can rejoin the support and maintenance program by paying any unpaid back support up to the cost of repurchasing the software at the then current rate. Specifically, such licensee's fee will be equal to the current annual support and maintenance fee for the total amount of software licensed, multiplied by the number of years since the support and maintenance was discontinued, plus any service fee accessed during the period of lapsed support and maintenance. This fee shall not exceed the then current rate for purchasing the software. The anniversary date of the initial licensing will be used to calculate the back support and will define the anniversary date for future support and maintenance renewal options.

Collecting Fees & Interest on Late Payments

Any payment received after the due date will be considered late. All invoices are due upon receipt. If payment is submitted within 30 days of the due date, fees and interest may be waived.

Interest fees may be charged on past due invoices in accordance with the Texas Finance Code Chapter 302, at a rate not to exceed 10% per annum, and any collection costs and reasonable attorney's fees incurred in the collection of delinquent accounts will be charged to the customer.

TRC reserves the right to engage a collection agency to pursue collection of any commercially delinquent debts, in accordance with the Finance Code of the State of Texas, U.S.A.

The Support and Maintenance Terms shall be governed by and construed in accordance with the laws of the State of Texas, U.S.A., without regard to conflicts of laws principles. TRC's support and maintenance program shall not be governed by the United Nations

Convention of Contracts for the International Sale of Goods, the application of which is hereby excluded. ALL DISPUTES ARISING OUT OF TRC's SUPPORT AND MAINTENANCE PROGRAM OR THESE SUPPORT AND MAINTENANCE TERMS SHALL BE LITIGATED IN THE FEDERAL OR STATE COURTS LOCATED IN SAN ANTONIO, BEXAR COUNTY, TEXAS.

Suspension or Termination of Services

TRC reserves the right to suspend or terminate services, without prior notice, for invoiced amounts that remain unpaid.

Any suspended services will be reinstated only after full payment is received. TRC reserves the right to charge an additional fee for reinstating services.

Changes to Support and Maintenance Terms

TRC reserves the right to modify its late payment policy at any time, without prior notice to clients. Any modifications to its late payment policy will be effective immediately upon posting on TRC's website or notifying clients via email.

Subject to the "Binding Terms" hereafter stated, TRC reserves the right to modify, revise, and update its Support and Maintenance Terms at any time without prior notice.

Binding Terms

Each client lessee accepts and agrees to be bound by the Support and Maintenance Terms posted by TRC on its website at the time of the commencement of such client lessee's leased/subscription term.

For each year of enrollment by a client licensee in TRC's technical support and maintenance program, a client licensee accepts, and agrees to be bound by, the Support and Maintenance Terms posted by TRC on its website at the time of the yearly enrollment.

Nothing in these Support and Maintenance Terms changes the licensing terms as defined by the current TRC Consultants, L.C. PHDWIN END-USER Software License Agreement (EULA). If there is a conflict in terms between these terms and the EULA, the EULA will control.

Support and maintenance are only available to entities licensed by TRC. Support and maintenance are not transferable between licenses. For additional information or questions, please contact a TRC sales staff member at Sales@phdwin.com.

Liability Limitation

TRC will use best efforts to keep confidential any data sent as part of a support request; provided, however, TRC accepts no risk relating to any confidential data which a client may choose to send. All data sent to TRC by a client shall be sent at the client sender's sole risk. Each client user waives and releases, and agrees not to sue TRC, its owners, managers, officers, employees, agents and servants (the "TRC Group"), for claims or

damages, of whatever kind or character, whether in contract, tort, or otherwise, arising from or relating to the client's confidential data sent by the client to TRC, including the possible release of such data.

TRC DISCLAIMS ALL LIABILITY FOR, AND UNDER NO CIRCUMSTANCES SHALL THE TRC GROUP BE LIABLE TO A CLIENT USER, OR ANY OTHER PERSON OR ENTITY, FOR ACTUAL OR ALLEGED DAMAGES OF ANY KIND OR CHARACTER INCLUDING WITHOUT LIMITATION SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES), WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION, LOSS OF DATA, LOSS OF PROFIT, LOSS OF USE, STOPPAGE OR INTERRUPTION OF BUSINESS, BREACH OF ANY TRADEMARKS, TRADE NAMES, TRADE SECRETS, COPYRIGHTS OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTIES, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES OF ANY KIND (COLLECTIVELY "LOSSES"), ARISING OUT OF THE USE, OR INABILITY TO USE, TRC'S SUPPORT SERVICES, AND THE MAINTENANCE UPDATES OR VERSION UPGRADES, WHETHER OR NOT FORESEEABLE, AND EVEN IF TRC IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH CLIENT USER RELEASES THE TRC GROUP FROM ANY LOSSES, AND EACH CLIENT USER AGREES NOT TO SUE THE TRC GROUP FOR ANY LOSSES.

In all events, the liability, if any, of TRC and the TRC Group for any Losses suffered by a client's use, or inability to use, TRC's support services, maintenance updates, and version upgrades, shall not collectively exceed, and is limited to, the fees paid by the client for the support and maintenance services during the twelve-month period preceding the event giving rise to the claim for damages.

EACH CLIENT USER AGREES TO DEFEND, INDEMNIFY AND HOLD THE TRC GROUP HARMLESS FOR ANY CLAIMS AGAINST OR DAMAGES INCURRED BY TRC GROUP AS A RESULT OF THE CLIENT USER'S BREACH OF THE SUPPORT AND MAINTENANCE TERMS.