

Provisions

1. Payment is due at the commencement of the annual maintenance period.
2. Econolite may invoice for any time, travel and lodging costs required for support or upgrades. One on-site, annual visit is included for the silver and gold support agreements; additional visits may be invoiced accordingly. Econolite may invoice up to but not exceed two hundred, twenty-five dollars (\$225.00) per hour. Invoice to be paid to Econolite according to standard payment terms.
3. In the event remote access is granted (*required for Bronze agreement*), the Distributor shall ensure the Agency maintains a dedicated telephone line, or VPN (Virtual Private Network) connection for remote access to the system by Econolite. Econolite will provide support services by means judged appropriate by Econolite. Such means may include, without limitation, remote access to Agency computer(s), remote telephone consultations, and the provision of written documentation and other materials to Agency, by mail or electronic means. Response time for requests for remote support shall be kept under twenty-four (24) hours.
4. In the event that hardware, operating system, or other third party software, in use by the Agency is deemed by Econolite not to be sufficient for installation of an Upgrade Release, then the Distributor working with the Agency shall be responsible for the cost of any new hardware or software as may be required.
5. In the event that Econolite identifies a fault or failure in software or hardware not covered under this agreement, which affects the operation of the ATMS, then the Distributor working with the Agency agrees to take prompt action to correct such faults and failures. Upon correction of said failures, Econolite shall ensure that the ATMS is restored and operational within five (5) working days.
6. In the event that Econolite identifies a fault or failure in Econolite developed software or manufactured hardware covered under this agreement, which affects the operation of the ATMS, Econolite shall ensure that the system is restored and operational within five (5) working days. If the failure is due to third party hardware or software, provided by Econolite, Econolite will ensure that the system is restored within five (5) days of the third party replacing or repairing the items which they supplied.
7. This agreement may be voided at the option of Econolite if the Distributor or Agency modifies any part of the ATMS software where source code has been provided. Econolite will determine, in its discretion, if these modifications impede the ability to provide continued support and system upgrades.
8. A software upgrade may require hardware and third party COTS software (e.g. operating systems, database servers, drivers, etc.) upgrades to ensure the performance and functionality of the system. Econolite will provide details of minimum system requirements and the system will be upgraded at the Distributor's cost to meet or exceed these requirements at least one week prior to the base ATMS software upgrade.

9. This upgrade may not support all the functionality of the previous version of the ATMS. Prior to the upgrade, Econolite will provide the Distributor with release notes for the new product that describes new and modified functionality. It is not anticipated that any core functionality will be lost, however support for obsolete field devices may not be included in future system upgrades.
10. There shall be no third party applications loaded onto any server, workstation or laptop accessing or forming part of the ATMS without the prior approval of Econolite.
11. This agreement specifically excludes damage to the ATMS caused by the following: accident, unusual physical, electrical, electromechanical stress, neglect, misuse, failure of electric power, environmental conditions, transportation, or operating with operating systems, media or other software programs or use with hardware not approved by Econolite.
12. Econolite is not responsible for obsolescence of the ATMS that may result from changes in Agency computer or informational needs requirements or from changes in Agency's operational hardware or software programs.
13. Econolite warrants the ATMS will perform as defined in the published product specification provided that:
 - (a) the ATMS is used only with the hardware approved by Econolite and in accordance with Econolite's documentation and use instructions; (b) the hardware is in good operating condition at all times and is installed in a suitable operating environment and is regularly maintained in accordance with the user documentation provided by Econolite or the manufacturer; (c) any error or defect in the ATMS is not caused by Agency, its employees, agents, contractors, or any third party.
14. Major system upgrades that include new features and functions also include new ATMS user manuals. New documentation is not generated for minor system upgrades to correct errors.
15. Any lawsuit pertaining to any matter arising under, or growing out of this Agreement shall be instituted in the State of California.
16. This Agreement shall not be assigned by any party, or any party substituted, without prior written consent of Agency and Econolite.
17. No supplement, modification or amendment of this Agreement or waiver of the provisions thereof shall be binding unless executed in writing by Agency and Econolite. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
18. In the event any action in law or equity, arbitration or other proceeding is brought for the enforcement of this Agreement or in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to its attorneys' fees and other costs reasonably incurred in such action or proceeding.
19. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

20. In the event any of the provisions of this Agreement shall, for any reason, be held void or unenforceable, the remaining provisions shall remain in full effect and shall control.
21. Any provisions of this Agreement prohibited by the law of any state shall, as to said state, be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Agreement.
22. Should any obligation of either party hereunder (except with respect to timely payment of invoices) be delayed by events beyond such party's control, including but not limited to, natural or man-made disasters, strikes, government actions or regulations, failure of a third party to comply or conform or inability to obtain labor or materials through its regular sources, that party's time for performance shall be extended by the period of delay upon approval by Agency.
23. Except as otherwise provided in this Agreement, no provision of this Agreement is intended, nor shall be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any affiliate or subsidiary, and all provisions hereof shall be personal solely between the parties hereto.
24. Any provision which by its nature shall survive the expiration, cancellation or early termination of this Agreement shall survive the expiration, cancellation or early termination of this Agreement.

Software Maintenance Level Bronze

Econolite will provide the following services during the term of this agreement:

- Upgrades to current version of system software.
- Technical support of system software via telephone, email or remote access.
 - Provisions for telephone, email or remote access support are defined as follows:
 - Times: 8:00 am to 5:00 pm (Mountain Standard Time).
 - Days: Monday to Friday, except for holidays recognized by ECONOLITE.
- On-site support shall be at "Time & Materials" pricing.
 - Agency shall be billed for all travel expenses and materials required.