

NOTE:	
Notice of Default	

To:	+15102387128
Phone	
Fax Number	+15102387128

From:	glenn vodhanel
	National Bureau of Business
	PO BOX 811
	Brea
	CA 92822
Phone	+1 (714) 671-1597
Fax Number	(866) 936-0963

FAX

Date:	09/08/2014
Pages including cover sheet:	3

PROGRESSIVE SOLUTIONS, INC.

PO BOX 783
Brea, California 92822
(714) 671-1597 voice
(714) 255-9775 facsimile

Mr. David McPherson, Revenue Manager

Sep 8th, 2014

cc: Mr. David McPherson, Revenue Manager
City of Oakland
150 Frank Ogawa Plaza
Oakland, CA 94612
Mr. Celso D. Ortiz
Deputy City Attorney
1 Frank Ogawa Plaza, 6th Fl.
Oakland, CA 94612
cc: Mr. Henry Gardner (or current), City Administrator
City of Oakland
1 Frank Ogawa Plaza
Oakland, CA 94612

VIA CERTIFIED MAIL: 7012 2920 0000 6821 5739 also via FAX at: (510) 238-7128

RE: **Notice of Default-Agreement for License of Software, Purchase of Equipment, Information Technology Services and for Maintenance and Support Services dated 5/7/2007**

Dear Mr. McPherson,

This **Notice of Default** is required by section 27 the above referenced agreement and sub paragraph a(1) which requires to respond within. The default was triggered by failure to tender payment mandated as a result of automatic renewal. (See *Attached Invoice*.) Per the above agreement, "City will have five (5) calendar days after receipt of Licensors Notice of Default to dispute Licensors Notice of Default if City believes it is not in breach of the Agreement, and ten (10) calendar days after receipt of Licensors Notice of Default to provide a written plan to cure the default ("Cure Plan)". The amount due is the amount requested and invoiced of \$104,816.58 plus the \$200,000 reinstatement fee for a total of \$304,816.58. Notice has been provided via certified letter and tax per section 40 of the above referenced agreement. The licensed software went live June 6th 2008 and assisted in the generation of approximately \$200 million in tax revenue **each year**. On July 11th 2014, per section X(c) of our agreement PSI suspended maintenance support for *LicenseTrack*. PSI subsequently, at the NBBLO conference in San Diego, signed the city proposed amendment as is and tendered it to you. City then came back to PSI with another proposed amendment that contained impossible terms. PSI may also pursue other options as specified in the Default provisions of our agreement (a copy is provided on the reverse side of this letter for your convenience). The PSI licensed software in operation at Oakland is NO LONGER SUPPORTED by PSI. AS PSI IS NO LONGER INVOLVED, PSI ACCEPTS NO RESPONSIBILITY FOR ANY RESULTS OF THE SOFTWARE. The City of Oakland ultimately bears responsibility for ALL results (i.e. 2015 issuance of approximately 70,000 invoices and collection of approximately \$200 million). The City of Oakland demanded the highest level of continuous support. There is no reason to believe that requirement has abated. NO THIRD PARTIES HAVE BEEN LICENSED TO VIEW OR WORK WITH PSI'S TECHNOLOGY.

We look forward to a prompt mutually agreeable resolution of this Default. If you have any questions or would like additional information, please contact me at: (714) 671-1597.

Sincerely,

Glenn R. Vodhanel, President
Progressive Solutions Inc.

II. NATURE AND DURATION OF SUPPORT.

Licensor is in the business of providing software support services. Software support services are intended to facilitate smooth & efficient ongoing operations of the licensed software. Licensee desires to obtain software support services for the Licensed software specified in section V. This Agreement provides for service only during normal business hours (from 8am to 5pm PST) and shall expire at 5:00 PM Pacific Standard Time on June 30, 2007 unless renewed as set forth below. Support outside of normal business hours is available for purchase. Requests for service for which the intended result is of negligible operational benefit are not available free of additional charge under this software support agreement (i.e. Changing the name of a server (absent a hardware upgrade) which consequently results in the need to reinstall/verify the SQL data base software, the operating system, the Licensed software and to update every client machine which run the Licensed software.) Licensees that purchase after hours support will be provided with the appropriate contact information. Licensor reserves the right to prorata the software support fee and provide more or less than one year of coverage so that subsequent Software Maintenance Agreements expire on June 30th. Unless written notice of termination has been provided by Licensee to Licensor no later than 30 days prior to expiration of this support services agreement, the Agreement shall automatically renew each year thereafter at the support rate in effect at that time. In the event Licensee drops coverage of any module/product and later requests to reinstate the same module/product, Licensee agrees to pay all support fees for the lapsed period(s). If at any time after software acceptance, the customer's right to receive Software Support or comparable services from Licensor under this agreement or a comparable agreement has lapsed for any reason whatsoever, voluntary or otherwise, and the Licensee wishes to receive Software Support from Licensor, Licensee will pay Licensor prior to the reinstatement of Software Support. All fees that would have been payable hereunder had the Software Maintenance agreement been in force during the time during which Software Maintenance rights had so lapsed, and

2. An additional fee of forty per cent (40%) of the license fees which would be payable if the software subject to such Software Maintenance were licensed anew at Licensee's then standard license fees on the date of re-instatement of Software Maintenance rights;

3. If Licensee has terminated Licensor for default, Licensee may reinstate the software maintenance agreement at the prevailing annual maintenance fee without additional fees as stated in numbers 1 and 2 above.

5. Nature and Duration of License. (Master)

(a) Licensor hereby grants and Licensee accepts a perpetual, non-exclusive, non-assignable and non-transferable license to use Licensor's database structure and corresponding software for the product(s) listed in Section IX. The Licensed software (and any upgrades provided by Licensor) shall be installed on the purchased HP server (delivered as Phase B of this project). Prospective users of the Licensed software will be setup to obtain and shall be required to obtain the Licensed software exclusively from the purchased HP server. All Licensed database structures are designed for and require Microsoft® SQL Server®. The Licensed software shall only function when the Licensed software and data are obtained from the HP server configuration specified and provided herein. Licenses for SQL software are not included in this agreement unless listed as 3 party deliverables in Section IX. Only authorized Sub-agencies as specified in Section IX and Licensee are authorized to use the Licensed software, data structures & documentation on Licensee's premises for the purpose of supporting the internal business practices. NO OTHER RIGHT OR USE IS PERMITTED UNDER THIS AGREEMENT.

(b) If at any time after software acceptance, the customer's right to receive Software Maintenance support or comparable services from Licensor under this agreement or a comparable agreement has lapsed for any reason whatsoever, voluntary or otherwise (except for Licensor's default) and City subsequently wishes to receive Software Maintenance Support from Licensor, Licensee will pay Licensor prior to the reinstatement of Software Maintenance support according to the terms specified in section II of Exhibit C: Software Maintenance Agreement.

27. Default and Termination. (Master)

(a) Default by Licensee. In the event Licensee breaches a material obligation under this Agreement, Licensee must cure that default as is provided below for breaches by Licensor. If Licensee does not cure said breach, then Licensor shall be entitled to terminate this Agreement and Licensee shall immediately discontinue use of database/structure, software and related electronic forms. In addition, Licensee shall provide Licensor with written confirmation that previously licensed components have been erased and copies are no longer on Licensee's computer or backup tapes. Licensor may also pursue any other remedy available at law or in equity, including injunctive relief.

(b) Default by Licensor. If Licensor fails to achieve Acceptance on all or part of the Licensed software components in accordance with this Agreement, fails to successfully cure any defects in the Licensed Software components in a reasonable time or otherwise breaches a material obligation under this Agreement, Licensor will be in default of this Agreement, unless City or a Force Majeure causes such failure.

(1) Opportunity to Cure. When City asserts a default, it will give Licensor a written and detailed notice of the default specifying the precise aspects of the default ("Notice of Default"). Licensor will have five (5) calendar days after receipt of City's Notice of Default to dispute City's Notice of Default. If Licensor believes it is not in breach of the Agreement, and ten (10) calendar days after receipt of City's Notice of Default to provide a written plan to cure the default ("Cure Plan") to City, which time limits shall run concurrently until the Cure Plan is acceptable. Any dispute will be subject to the Dispute Resolution provisions herein (Section 28). If Licensor provides a Cure Plan, it will begin implementing the Cure Plan immediately after receipt of City's written approval of the Cure Plan. If Licensor fails to provide a Cure Plan or the City does not unreasonably reject Licensor's Cure Plan, then Licensor will be in Default.

(2) Licensor's Failure to Cure. In the event Licensor fails to cure its default as provided herein, City shall have the right to:

- a. Continue licensing and requiring Licensor to maintain the Deliverables which have been either Conditionally or Finally Accepted and require Licensor to remove all other Deliverables and refund to City all monies it has received from City under the Agreement for all Deliverables for which Licensor was not able to cure Licensor's default; or
 - b. City may require Licensor to remove some of the Deliverables and to refund to City all monies it has received from City under the Agreement for the software that City does not accept
 - c. City may require Licensor to remove all of the Deliverables and to refund to City all monies it has received from City under the Agreement
- (3) The rights and remedies of City provided in this Section 27 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement

NOTE:

Corrected Notice of Default

From:	glenn vodhanel	National Bureau of Business	PO BOX 811	Brea	CA	92822			Phone	+1 (714) 671-1597	Fax Number	(866) 936-0963
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To:	+15102387128								Phone		Fax Number	+15102387128
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FAX

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Pages including cover sheet: 4

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The PSI licensed software in operation at Oakland is NO LONGER SUPPORTED by PSI. AS PSI IS NO LONGER INVOLVED, PSI ACCEPTS NO RESPONSIBILITY FOR ANY RESULTS OF THE SOFTWARE. The City of Oakland ultimately bears responsibility for ALL results (i.e. 2015 issuance of approximately 70,000 invoices and collection of approximately \$200 million). The City of Oakland demanded the highest level of continuous support. There is no reason to believe that requirement has abated.

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5. Nature and Duration of License. (Master)

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(3)

The rights and remedies of City provided in this Section 27 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement

Invoice

DATE	5/30/2014
INVOICE #	36721

Progressive Solutions Inc.

PO BOX 0783
Brea, CA 92822
714/671-1597

BILL TO	
CITY OF OAKLAND	
Attn: Accounts Payable	
150 Frank H. Ogawa Plaza, Suite 5342	
Oakland, CA 94612	

Fax Call Report

HP LaserJet M3035 MFP Series

Page 1

Fax Header Information

city of oakland business
510-238-7128
2014-Sep-08 09:31 PM

Job

Date/Time

Type

Identification

Duration

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Result

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No answer (0)