

Board of Trustees Agenda Item

Board Meeting Date: June 21, 2010

Title of Item: **Five-year maintenance agreement for library system software**
(amendment to 1996 Software Services Agreement between Sirsi Corporation and De Anza College)

Background and Analysis:

In January 1996, both the Foothill and De Anza College libraries entered into a software license agreement with Sirsi Corporation for use of their proprietary integrated library system software. This software provides the database infrastructure for the full spectrum of academic library operations: circulation, reserves, acquisitions, cataloging, and serials management, along with the staff work clients and the web-based public catalog front end.

Each year there is a software service maintenance renewal, which routinely entails a small percentage increase in the overall cost. What used to be a standard 3% increase, however, has jumped in recent years to 6%, and now to 6.5% for 2010-2011, at \$30,570 for the year.

As an alternative to these year-to-year renewals that have been subject to higher percentage increases, Sirsi Corporation (now called SirsiDynix) has agreed to cap the increases for De Anza College at 4% in return for a commitment of five years. In addition, one of the software components, which currently costs about \$1,500 to renew annually, will be provided at no cost for each of the five years.

This five-year agreement will result in a total cost of \$153,483, as opposed to the cost of five year-to-year renewals at \$174,052. The overall savings from this five-year agreement between De Anza College and SirsiDynix, in place of year-to-year renewals, is 12%, or \$20,569.

Recommendation: (specify if information only)

President Brian Murphy recommends approval.

Submitted by:	Brian Murphy, President, De Anza College x 8705
Additional contact names:	Judy Mowrey, Director, De Anza College Library
Is backup provided?	Yes

**AMENDMENT TO
1996 SOFTWARE SERVICES AGREEMENT
with
DE ANZA COLLEGE**

This amendment ("**Amendment**") is made by and between **De Anza College**, with address at: 21250 Stevens Creek Blvd. Cupertino, California 95014-5797 United States ("**Customer**"), and **Sirsi Corporation dba SirsiDynix ("SirsiDynix")**, with offices at 400 W. Dynix Drive, Provo, Utah 84604.

Whereas the parties have entered 1996 Software Services Agreement with an effective date of 3 January 1996 (hereinafter collectively the "**Agreement**");

Whereas the parties hereto wish to amend certain terms of the Agreement, now therefore, for good and valuable consideration the receipt of which is hereby acknowledged, SirsiDynix and Customer agree as follows:

1. Definitions.

For purposes of this Amendment and attached Quote, the following terms shall have the meaning set forth herein:

"**Content**" means any information, data, text, software, music, sound, photographs, graphics, video messages or other material to which Customer is provided on-line access to through SirsiDynix on a subscription basis.

"**License Metrics**" means the limitation on the usage of each of the Software or SaaS Services as designated and/or defined in the applicable Quote by a term such as the number of titles, circulation, users, students, seats, reports, and the like.

"**Maintenance**" means the technical support and provision of Updates for the level of support services ordered, all of which are provided under SirsiDynix's Support Policies in effect at the time the Services are provided. A current version of such Support Policies can be found at:

http://clientcare.sirsidyndix.com/index.php?goto=Knowledge&pid=1&docs&kcat_id=58.

"**Quote**" means the document executed by the parties specifically referencing this Schedule, which contains Customer's order specific information, including description of Software and Maintenance ordered, License Metrics and associated fees and payment terms.

"**SaaS Services**" means the provision of (i) Software as a service (SaaS) hosted by SirsiDynix from a server farm that is comprised of application, data and remote access servers used to store and run the Software and Customer Data, and/or (ii) web access to Content and (iii) associated Maintenance.

"**Software**" means the SirsiDynix Software and Third Party Software.

"**System**" means the total complement of hardware and Software furnished and maintained by SirsiDynix.

"**Third Party Software and Products**" means content and software including Documentation and Updates, owned by an entity other than SirsiDynix which are to be provided to Customer by SirsiDynix on a pass-through or OEM basis pursuant to the terms of the EULA.

All other capitalized terms used herein have the meaning set forth in the Agreement, unless expressly stated otherwise in this Amendment.

2. Amendments.

The parties agree to amend the Agreement as follows:

All Clauses in the Agreement referencing a set Term and/or Termination date are hereby superseded by the following:

Term and Renewal. Maintenance and/or SaaS services (collectively "Services") starts on 1 July 2010 and continues, subject to State Statutes, through the expiration of the initial term set forth in the attached Quote ("**Initial Term**"). Following the end of the Initial Term, Services shall automatically renew for the same length as the Initial Term ("**Renewal Term**"), unless Customer gives written notice 60 days prior to the end of the Initial Term or any Renewal Term, of its intention to terminate Services. Written notice shall be given to legal@sirsidyndix.com or by registered mail to SirsiDynix Legal, 400 W. Dynix Drive, Provo, Utah 84604. The pricing for the first twelve months of any Renewal Term shall be provided in writing by SirsiDynix no less than 90 days prior to the end of the Initial Term or any Renewal Term. Renewal pricing may increase.

Subject to timely payment of the applicable fees, Maintenance is provided for all Software, unless otherwise noted in the Quote, provided however that with respect to Third Party Software, SirsiDynix's obligation is limited to using commercially reasonable efforts to obtain Maintenance from the third party owner of such software.

Third Party Software and Products. SirsiDynix may add and/or substitute functionally equivalent products for any Third Party Products in the event of product unavailability, end-of-life, or changes to software requirements. Use of the Third Party Software and Products subject to all terms and conditions of the applicable Third Party EULA and SirsiDynix makes no warranty with respect to such. Customer's sole remedy with respect to such shall be pursuant to the original licensor's warranty, if any, to SirsiDynix, to the extent permitted by the original licensor. Third Party Software and Products are made available by SirsiDynix on an "AS IS, AS AVAILABLE" BASIS.

Use. Software and/or Services purchased may be accessed by or used to manage no more than the number of License Metrics specified in the Quote. Additional License Metrics may be purchased under an additional Quote at the pricing as defined in the Quote in effect at the time the additional License Metrics are added, prorated for the remainder of the then-current Term. The Services for added License Metrics shall terminate on the same date as the pre-existing Services. Fees are based on Software and/or Services and License Metrics purchased and not actual usage.

Early Termination. Customer acknowledges that, based on Customer's willingness to enter into this Amendment for a 5 year Service term, SirsiDynix has provided Customer with Services at rates that represent a substantial discount from the rates that SirsiDynix would otherwise charge, along with certain other free or substantially discounted products or services, as identified in the Quote for the Initial Term or Renewal Term(s) of the Services (each referred to individually as a "**Term**"), based on the assumption that Customer will remain a client for the whole of such Term. Customer therefore agrees that it is reasonable for Customer to pay a fee to SirsiDynix in the event of

File: De Anza College GC 310037

SirsiDynix Confidential

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Customer Initial and Date: _____

termination of a Service ("Terminated Service") by Customer, other than due to breach by SirsiDynix, prior to the expiration the then-current Term. Such fee shall be equal to (i) the difference of 8% of the total Terminated Service fees related to the prorated Term which is terminated early and actual Maintenance fees paid plus (ii) the amount discounts on Software, Content or professional services (excluding the Terminated Service) extended to Customer during the Term which is terminated early. Customer agrees that damages suffered by

SirsiDynix in the event of early termination are difficult or impossible to determine and that the above amount is intended to be a reasonable approximation of such damages and not a penalty. Customer agrees that it will pay such amounts within thirty (30) days of any early termination of the Services. Customer shall notify SirsiDynix in writing of its intent to terminate such Services not less than ninety (90) days prior to the date of termination and Customer is not eligible for any pro-rata credit or refund for unused partial year Services fees paid.

Unless expressly amended in this Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

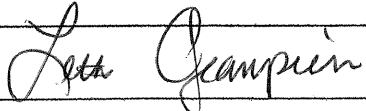
If the foregoing correctly sets forth your understanding of your agreement with respect to the matters treated above, please indicate your acceptance and approval below and return either a PDF or a fax of the signed document to legal@sirsidynix.com or 801-223-5561; with original to follow to 400 West Dynix Drive, Provo UT 84604 USA.

This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of such counterparts shall constitute one and the same instrument. PDF documents and facsimile transactions shall be considered and have the same effect as originals.


The Effective Date of this Amendment shall be _____.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as identified below.

De Anza College

Authorizing Signature	
Name	Letha Jeanpierre
Address	21250 Stevens Creek Blvd
Title	VP Fin + Edu. Resources
Date	6/10/2010

SirsiDynix

Authorizing Signature	
Name	Matthew Flanking
Address	400 West Dynix Drive Provo UT 84604-5939
Title	COO
Date	June 3, 2010



LONG TERM MAINTENANCE OR SAAS SERVICES
QUOTE for
De Anza College

Dated: 21 May 2010

Initial Term of Maintenance or SaaS Services: Five (5) years
Initial Term Pricing for SirsiDynix Products/Services: 4% increase cap until Term renewal

Customer will receive Serials maintenance free for the 5 years of this Amendment

Fees for the Initial Term are due annually in advance on 1 July.

The above quoted Initial Term price is for SirsiDynix products or services only. Third Party/integrated product/service fees may, at the discretion of the Third Party, increase more than the above noted Initial Term pricing and shall be increased accordingly by SirsiDynix. SirsiDynix reserves the right to adjust Initial Term pricing in regards to Third Party/integrated products/services.

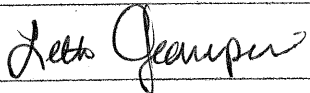
Customer's System shall remain within two (2) previously released software versions of the most recent version of the software at all times.

All other capitalized terms used herein have the meaning set forth in the Agreement, unless expressly stated otherwise in this quote.

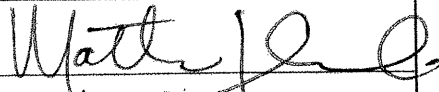
The Effective Date of this document shall be the last date of signature below.

IN WITNESS WHEREOF, the parties have caused this Quote to be executed by their duly authorized representatives as identified below.

De Anza College

Authorizing Signature	
Name	Letha Jeanpierre
Address	21250 Stevens Creek Blvd
Title	Fin & Eds Manager V.P. Student S.
Date	6/10/2010

SirsiDynix

Authorizing Signature	
Name	Mathew Hawking
Address	400 West Dynix Drive Provo UT 84604-5650
Title	CO
Date	June 3, 2010

(original 1996 agreement)



689 Discovery Drive
Huntsville, Alabama 35806
(205) 922-9820

SOFTWARE SERVICE AGREEMENT

Agreement Number

Licensee name and mailing address

DeAnza College
21250 Stevens Creek Blvd.
Cupertino, California 95014

In consideration of the payment of the service fees pursuant to Section 2 and the mutual promises herein, Sirsi agrees to provide you, the Licensee executing this Agreement, DeAnza College agree to accept and pay for the services described in this Agreement, and subject to the following terms and conditions:

SECTION 1. TERM.

The term of this Agreement shall be for one year from delivery and shall be automatically renewed for successive one year periods unless notice of non-renewal is received by either party from the other not less than thirty (30) days prior to the expiration of this Agreement.

SECTION 2. FEES.

You agree to pay for the services hereunder at the rates on the attached Schedule "A". No change in Sirsi's software service fees, terms and conditions shall be effective prior to the end of the initial one-year term.

SECTION 3. TAXES AND DUTIES.

You agree to pay any taxes arising out of this Agreement, except for taxes based on our net income.

SECTION 4. COVERAGE.

The Software covered is that listed in the attached Schedule "A". During the term of this Agreement, Sirsi will supply you with any improvements or modifications ("Enhancements") to the Software which are announced by Sirsi to be generally available without charge to all users of the Software, including all related user documentation. You agree to furnish access to your equipment and Software for the installation or loading of the Enhancements, which will be accomplished by Sirsi in cooperation with you.

During the term of this Agreement, we will provide our reasonable effort to correct or replace Software and to remedy any programming error which is attributable to us and which significantly affects performance of the Software. Such correction, replacement, and service will be promptly accomplished after you have identified and notified us of any such error in accordance with our reporting procedures.

You agree to provide us with audit trails and other data, and with sufficient support and test time on your computer system to duplicate the problem, and to verify that the error has been fixed.

SECTION 5. HOURS.

Service hours are Monday through Friday from 8:00 a.m. to 6:00 p.m. central time, excluding the following holidays recognized by Sirsi:

New Years Day
Memorial Day
Independence Day
Labor Day
Thanksgiving (2 days)
Christmas Eve
Christmas Day.

SECTION 6. LIMITATION OF LIABILITY.

Your exclusive remedy for any defect in the Software for which Sirsi is responsible shall be to repair or replace the Software as described above. However, Sirsi cannot guarantee that all programming or database errors can be corrected. Furthermore, Sirsi is not obligated to correct, cure or otherwise remedy any defect in the Software if the Software has not been properly installed, is not operated and maintained under normal conditions by qualified personnel, or is misused or modified without Sirsi's consent, or damaged, or if you have not notified Sirsi promptly upon discovery of a defect. Sirsi shall not in any event be liable for any loss of profits, incidental, special, exemplary or consequential damages to you, or claims or demands against you by any other party even if Sirsi has been advised of the possibility of such claims.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SIRSI DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE. SIRSI IS IN NO WAY RESPONSIBLE FOR AND MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE OPERATING SYSTEM SOFTWARE FURNISHED IN CONNECTION WITH ANY HARDWARE ON WHICH THE SOFTWARE IS USED.

Sirsi is not responsible for delays or failure to perform resulting from acts or omissions beyond its control or from events, acts or omissions attributable to manufacturers of the media on which the Software is delivered to you.

SECTION 7. TELE-MAINTENANCE HOT-LINE.

You agree to install and maintain for the duration of this Agreement a modem accessing your Equipment in which the Software is resident. You agree to pay for the installation, maintenance, and use of this modem and any associated telephone line. Sirsi will use this modem and telephone line in performing its services under this Agreement. Such access by Sirsi shall be subject to your approval, and such access will be solely for the purpose of maintaining your Software.

SECTION 8. TRAVEL EXPENSES.

You agree to reimburse Sirsi for any out-of-pocket expenses incurred by Sirsi in connection with duties performed under this Agreement at your request, including travel to and from your site, lodging, meals, telephone and shipping.

SECTION 9. PROPRIETARY RIGHTS.

Enhancements as may be provided under this Agreement shall remain the proprietary property of Sirsi. Any such programming and documentation provided under this Agreement shall be subject to the proprietary rights restrictions contained in the Proprietary Software License And Hardware Sales Agreement between Sirsi and you, the Licensee.

SECTION 10. TERMINATION.

In the event (a) of a breach by Licensee of any of your obligations hereunder; (b) of a termination for any reason of the Proprietary Software License And Hardware Sales Agreement; or (c) of any modification of the Software by or on behalf of you, then, in addition to any other remedies available, Sirsi may, at its option, terminate this Agreement.

No delay by Sirsi in exercising, or failure to exercise any right hereunder, and no partial exercise thereof shall be deemed to constitute a waiver of any rights granted hereunder or at law.

SECTION 11. GENERAL.

This Agreement shall be binding when accepted by Sirsi at 689 Discovery Drive, Huntsville, Alabama 35806, and will be governed by the laws of Alabama.

The terms and conditions stated herein supercede all prior agreements between parties relating to the subject matter of this Agreement. The Agreement may be changed or modified only in writing, signed by Sirsi and Licensee.

 SIRSI CORPORATION

By: CHIEF FINANCIAL OFFICER

Date Signed: 11/3/96

 LICENSEE

By: MANAGER, MAT'L SVCS

Date Signed: 12/19/95

SCHEDULE "A"
TO
SOFTWARE SERVICE AGREEMENT

Maintenance Period: One Year

UNICORN COLLECTION MANAGEMENT SYSTEM
Model II
(up to 150,000 title license)

DESCRIPTION

FEES

Bibliographic and Inventory Control
- Z39.50 compliant catalog
Authority Control
Enhanced Public Access
Request System
Circulation Control
Academic Reserves
Acquisition Control
Serials Control
Information Gateway
MARC Bibliographic Import Utility
MARC Authority Import Utility
ASCII Patron Record Loader Utility
Reports/Report Writer
Unlimited Host Server User License
GUI Client Site License
(Windows & Mac) with Z39.50
WebCAT

TOTAL SOFTWARE MAINTENANCE

First Year maintenance
included as a part
of the purchase price

Support includes; DirectLINE, Sirsi's telephone consultation service; Enterface, Sirsi's remote diagnostics service via modem connection; and any enhancements that Sirsi provides for the Unicorn modules purchased.

Second year annual software support is approximately \$11,335.

DeAnza Community College