

**MASTER
PURCHASE AND MAINTENANCE AGREEMENT**

Commencement Date:	November 30, 2004
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Party:	VENDOR	CUSTOMER
Name:	EMC Corporation	Citigroup Technology, Inc.
Address:	176 South Street Hopkinton, MA 01748	333 West 34 th Street, 8 th Floor New York, NY 10001
State of Incorporation:	Massachusetts	Delaware

IN CONSIDERATION of the mutual covenants and undertakings contained herein, and intending to be legally bound, Vendor and Customer (as designated above) agree as follows.

1. DEFINITIONS

1.1 Specific Words or Phrases. For purposes of this Agreement, each word or phrase listed below shall have the meaning designated. Other words or phrases used in this Agreement may be defined in the context in which they are used, and shall have the respective meaning there designated.

"Acceptance Criteria" means the applicable Specifications and Documentation, together with such other test data, test conditions and exception conditions as may be specifically set forth or incorporated by reference in the Purchase Order.

"Affiliate" means and includes any entity that directly or indirectly controls, is controlled by, or is under common control with Customer, where "control" means the ownership of, or the power to vote, at least thirty percent (30%) of the voting stock, shares or interests of such entity. An entity that otherwise qualifies under this definition will be included within the meaning of "Affiliate" even though it qualifies after the execution of this Agreement.

"Agreement" means the terms of this Master Purchase Agreement (sometimes referred to herein as "Master Agreement"), together with the appendices and other exhibits attached hereto or incorporated herein by reference; provided, however, that for each particular Purchase Order, reference to "Agreement" shall be construed solely as a reference to the agreement that arises as a result of the execution of the Purchase Order, which agreement shall be a two party agreement between Vendor and the specific entity (either the entity designated above as "Customer" or an "Affiliate") that executes the Purchase Order.

"Customer" means, for the general purposes of the Master Agreement, the entity designated above as "Customer". However, for the particular purposes of any agreement that arises as a result of a Purchase Order, reference to "Customer" shall be construed solely as a reference to the specific entity (either the entity designated above as "Customer" or an Affiliate) that executes the Purchase Order.

"Defect" means a defect, failure, malfunction, or nonconformity in a Product that prevents the Product from operating in accordance with the applicable Acceptance Criteria.

"Documentation" means all documents and materials (in any language, format or medium) that are normally supplied by Vendor to its commercial customers to aid in the use and operation of the Products, and all modifications to such documents or materials that are made by or on behalf of Vendor from time to time (provided such modifications do not diminish the performance or operational capabilities of the Products), including: (i) functional, technical, design and performance specifications, (ii) installation, configuration, administration, operation and maintenance procedures and instructions, and (iii) training guides and user manuals.

"Equipment" means the hardware components, accessories, software media and spare parts furnished or made available by Vendor under this Agreement.

"Intellectual Property Rights" means all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, business names, internet domain names, e-mail address names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

"Maintenance Services" consists of the support and maintenance services to be provided by Vendor in accordance with the requirements set forth or referenced in **Section 11 and Appendix C**.

"Party" means either the "Vendor" or "Customer", individually as the context so requires; and **"Parties"** means the "Vendor" and "Customer", collectively.

"Personnel" means and includes a Party's or an Affiliate's directors, officers, employees, agents, auditors, consultants and subcontractors.

"Products" means and includes the products made available to Customer and the Affiliates by Vendor under this Master Agreement, including Systems, Equipment, standard operating and supervisory Software, firmware, and its or their features, conversions, and upgrades, or any combination of them.

"Product Notice" means the notice by which Vendor informs Customer of a Product's then current generally published warranty, warranty upgrade and maintenance terms by means of quotations, written notices, published specifications, contract riders and/or a posting on the applicable Vendor website (currently www.emc.com/products/warranty_maintenance/index.jsp) which apply to the Products to the extent specified on a Purchase Order.

"Professional Services" means the services to be provided by Vendor in accordance with **Appendix D**.

"Purchase Order" means a transactional document (which may be entitled "Purchase Order" or "Schedule" and in all such cases is intended to be considered a "Purchase Order" for all purposes under this Agreement) that is submitted pursuant to this Master Agreement by either the entity designated above as "Customer" or any Affiliate, and describes the Products or materials and Services to be provided by Vendor to such Customer / Affiliate.

"Services" means the services described on a Purchase Order that are to be furnished by Vendor to Customer.

"Software" means standard operating and supervisory Software (microcode, firmware and associated software provided by Vendor to enable Vendor furnished Equipment to perform its basic functions), and any customizations, enhancements, updates, upgrades, releases, Defect corrections, and other modifications thereto provided to Customer by Vendor pursuant to this Agreement or any related maintenance or support agreement, together with the related Documentation.

"Specifications" means and includes: (i) the standard published specifications for the Products (including both Vendor's proprietary products and all third-party equipment, software or other materials that are included as part of a Product); and (ii) any additional written description of the functional, technical, design and performance characteristics of the Products provided by Vendor to the "Customer".

"System" means and is comprised of: (i) items of computer hardware, their features, conversions, upgrades, or accessories, or any combination of them, and (ii) "Software" related to such computer hardware, together with application software that is not otherwise covered by a separately negotiated license agreement, if any, wherever resident and on whatever media, intended to operate as a unit.

1.2 Common Words. The following words shall be interpreted as designated: (i) "or" connotes any combination of all or any of the items listed; (ii) where "including" is used to refer to an example or begins a list of items, such example or items shall not be exclusive; and, (iii) "specified" requires that an express statement is contained in the relevant document.

2. TERM AND TERMINATION

2.1 Term. This Master Agreement shall commence as of the Commencement Date designated above, and shall continue in effect thereafter unless superceded or otherwise terminated by agreement of the Parties. Each Purchase Order shall only become effective when duly signed on behalf of the Parties to be bound thereby, and shall continue in effect thereafter through the date of termination specified by either Party in accordance with the provisions hereof. For the avoidance of doubt, the termination of the Master Agreement shall not result in the termination of any Purchase Order, each Purchase Order being terminable only in accordance with its own provisions.

2.2 Termination for Cause. If either Party breaches a material obligation under a Purchase Order and fails to cure such breach within thirty (30) days from the date it receives from the non-breaching Party a notice of the breach and a demand for cure, then the non-breaching Party may thereafter terminate the applicable Purchase Order immediately on notice. Notice of termination for any Purchase Order shall not be construed to be notice of termination for any other Purchase Order.

3. PROVISION OF PRODUCTS AND SERVICES

3.1 Geographic Scope. This Agreement applies to the purchase or license of Products or Services worldwide. The Parties shall conduct business under the terms and conditions of this Agreement. The parties recognize that for transactions in countries outside the United States (the "Additional Ordering Country(ies)") between each Party's local subsidiaries, parent company, and/or subsidiary(ies) of the parent company, located in an Additional Ordering Country (the "Local Entity(ies)") in which the Products will be installed, each Party authorizes its Local Entity(ies) to establish terms and conditions for Products to be ordered, delivered and installed in the applicable Additional Ordering Country in accordance with the following:

3.1.1 All transactions in an Additional Ordering Country shall take place solely by means of a Purchase

Order placed by Customer's Local Entity operating in the Additional Ordering Country with Vendor's Local Entity operating therein;

- 3.1.2 Before entering into any such transactions, each Party's Local Entity(ies) shall review this Agreement and determine if an addendum (the "Local Addendum") is required based on local law and regulation and business customs in the Additional Ordering Country. If each Party's Local Entity(ies) agree a Local Addendum is required, the Local entities shall enter into a Local Addendum that provides that (i) any order placed between them shall be subject to the terms of this Agreement and those of the applicable Local Addendum; and (ii) the Local Addendum shall control in case of conflict with the Agreement with regard to Purchase Orders for the applicable Additional Ordering Country;
- 3.1.3 If required, the Local Addendum shall provide for invoicing by and payment to Vendor's Local Entity in the local currency (unless otherwise agreed between the Local Entity (ies), and shall address such issues as are necessary to conform to the laws of the applicable Additional Ordering Country, as well as terms in this Master Agreement with which it is commercially impracticable for the Local Entity to comply;
- 3.1.4 Each such Purchase Order shall (i) reference the Local Addendum; (ii) be subject to acceptance by such Vendor Local Entity; and (iii) utilize pricing that (a) is determined by the then current Citigroup Global list price in effect in the Additional Ordering Country less the discount, if any applicable thereto, agreed upon between the Parties; and (b) does not include any local fees or taxes as described in Section 9.4;
- 3.1.5 Each Local Addendum shall be executed by the Local Entities for the Additional Ordering Country.

3.2 **Obligation to Sell.** This Master Agreement does not by itself commit Customer or any Affiliates to purchase or license any products or services. Rather, this Master Agreement merely sets forth the terms and conditions that will govern the sale or licensing of Vendor's Products or Services to Customer or an Affiliate as a result of the submission of a Purchase Order to Vendor by Customer or an Affiliate.

3.3 **Purchase Order.** Purchase Order may be submitted to Vendor under this Master Agreement by either the entity designated above as "Customer" or any Affiliate. All Purchase Orders are subject to acceptance by Vendor. The entity that submits a Purchase Order to Vendor shall be considered the "Customer" for all purposes of the Purchase Order; and the Purchase Order shall be considered a two party agreement between Vendor and such entity. Each Purchase Order shall be substantially in the form of **Appendix A**, shall incorporate by reference either on the face of the Purchase Order or in the pre-printed terms the provisions of this Master Agreement as though such provisions were set forth therein in their entirety, and shall set forth: (i) a description of the Products (or other materials) or Services to be purchased, (ii) the delivery site, (iii) the scheduled delivery date, (iv) the purchase price and any applicable fees or charges the applicable price quote, and, (v) such additional terms and conditions as may be mutually agreed upon by Vendor and the respective Customer. Each Purchase Order shall be deemed to incorporate the applicable Product Specifications that are in effect on the date the Purchase Order is executed by the Customer. In no event shall any shrinkwrap or any clickwrap (or other electronic agreement) constitute binding agreement hereunder, even if a user or authorized officer of Customer or an Affiliate purports to have affirmatively accepted such terms.

3.4 **Changes to Purchase Order.** Customer may, at its option, change the delivery location, delay the delivery date or installation date for any Product listed on a Purchase Order, make additions or deletions to a System's configuration, or otherwise add or delete Products or Services to or from a Purchase Order, by serving Vendor with notice of the change or delay at least five (5) business days prior to the scheduled delivery date specified on the Purchase Order. The Purchase Order shall be deemed to

have been amended as necessary and appropriate to reflect the changes set forth in Customer's notice. However, any delayed installation date or additional quantity of Products ordered is subject to the mutual agreement of the Parties.

3.5 Divested Entities. If control of an entity, or a division or department within an entity, that is included within the definition of "Customer" or an Affiliate is sold or otherwise transferred to one or more unrelated third parties, such entity, division or department ("Divested Entity") shall nevertheless continue to have a right to purchase or license Products or Services pursuant to this Master Agreement for one (1) year after the effective date of such transfer.

3.6 Resale Transactions. For selected transactions as may be agreed upon between the Parties under which Customer acquires Products from an authorized Vendor reseller, Licensor agrees to offer the terms and conditions specified in this Master Agreement to such an authorized reseller exclusively for the benefit of Customer under the transaction between Customer and such authorized reseller so that such authorized reseller may in turn offer the same terms and conditions to Customer for Vendor Products and related services as those terms specified herein.

3.7 Electronic Purchase Orders. Customer may submit Purchase Orders by means of electronic architecture using the access codes mutually agreed between Customer and Vendor and/or may submit unsigned Purchase Orders ("Electronic Orders"). Each Party shall designate an individual to coordinate the implementation of the electronic ordering architecture with the other. Each Party shall establish an appropriate authentication code to enable access to and use of the electronic ordering architecture for the placement and processing of Electronic Orders. Customer shall be solely responsible for (i) establishing its own internal security procedures and controls in order to prevent access to and/or use of the electronic ordering architecture by any unauthorized individual; and (ii) implementing and maintaining the equipment and network over which it submits Electronic Orders. Customer and Vendor agree to not contest the enforceability or legal sufficiency of Purchase Orders placed pursuant to this Section 3.7. Vendor shall have the right, but not the obligation, to periodically request confirmation or verification of specific Electronic Orders, especially when the Electronic Order process is first being established. Customer shall promptly notify Vendor if Customer suspects that an Electronic Order (a) has been placed by someone who Customer has not, or no longer wishes to be, authorized to submit an Electronic Order; or (b) has not been processed correctly by Vendor. Except as set forth below, Vendor shall not have any liability to Customer as a result of any unavailability of the electronic ordering architecture or failure to correctly process an Electronic Order. **IF AN ERROR OCCURS IN THE PROCESSING OF ANY ELECTRONIC ORDER, AND SUCH ERROR IS SOLELY DUE TO THE NEGLIGENT ACTS OR OMISSIONS OF VENDOR, OR A FAILURE OF VENDOR'S ELECTRONIC ORDER PROCESSING SYSTEMS, THEN CUSTOMER SHALL HAVE THE RIGHT TO CANCEL SUCH ELECTRONIC ORDER.**

4. DELIVERY AND RISK OF LOSS

4.1 Delivery Date. Vendor will deliver the Products to the scheduled delivery location, on or before the scheduled delivery date, as specified in the applicable Purchase Order. If a delivery date is not specified on the Purchase Order, then the scheduled delivery date shall be the date that is mutually agreed to by the Parties and confirmed in writing. At Customer's request, Vendor will provide Customer with documentation confirming the delivery of all Products in accordance with the terms of the applicable Purchase Order. If Vendor fails to deliver a Product within ten (10) business days after the scheduled delivery date (and provided such failure is not caused by the fault of Customer), then Customer may terminate the applicable Purchase Order (in whole or in part) upon notice to Vendor, without financial

liability or obligation (for the portion terminated).

4.2 Title and Risk of Loss. Risk of loss for the Products and title to Equipment shall pass to Customer upon delivery to the common carrier at Vendor's facilities, except title to Equipment being evaluated in accordance with Section 6.1 shall remain with Vendor at all times unless and until Customer purchases the Equipment. Unless Customer instructs Vendor to use a particular common carrier, Vendor will select a common carrier for shipment at Vendor's expense. The total price of the Products includes the cost of transit insurance up to the full replacement value of the Products. Vendor shall not be responsible for such insurance once the Products have been delivered to the proper Customer designated location. In the event of damage to any Products identified, Customer shall not be required to issue any additional ordering documentation other than the initial ordering documents submitted by Customer to Vendor.

4.3 If Customer is permitted under this Agreement to return a Product to Vendor, then the risk of physical loss or damage for the Product will revert to Vendor upon Customer's tendering the Product to a commercial carrier designated by Vendor. Customer's maximum liability for physical loss or damage to any Product shall be the purchase price for the Product; provided, however, that the maximum liability of Customer for physical loss or damage to any Software provided hereunder, shall be limited to the actual cost of reproducing the Software onto a new media.

5. INSTALLATION

5.1 Preparation of Installation Site. For each Product that requires a controlled installation environment to operate efficiently, Vendor will provide Customer with standard site specifications for the System. At Customer's request, Vendor will examine the designated installation site(s), and provide Customer with a detailed report setting forth any specific conditions at the installation site(s) that must be changed in order to ensure successful delivery, installation and implementation of the System (including such conditions as the availability and adequacy of electrical power, space and any other environmental requirements). Vendor's standard site specifications and Vendor's detailed report concerning a designated installation site shall collectively constitute the "Site Specifications" for such installation site. Customer will be responsible for preparing each installation site in accordance with the applicable Site Specifications. However, Vendor will (at no additional charge) provide such consultation and support as such Customer may reasonably require to properly prepare each installation site. In addition, at Customer's request, Vendor will examine the installation site prior to shipping the System to confirm that it has been properly prepared in accordance with the Site Specifications, and provide Customer with a detailed report setting forth any failure(s) of the installation site to conform to the Site Specifications.

5.2 Installation Requirements for Vendor. Unless Customer is designated on the Purchase Order as the Party responsible for installing a Product, Vendor will install the Product or System as soon as practicable after delivery. Vendor will not charge a fee for the installation services, unless an installation fee is separately specified on the Purchase Order. Throughout the period required for installation, Customer will provide reasonable working and storage space for the performance by Vendor of the installation services described herein. Vendor will ensure that its Personnel cooperate with all other trades performing work at the installation site to coordinate Product or System installation.

5.3 Installation Date. If Vendor is responsible for installing a Product, Vendor will install the Product as soon as reasonably possible after Customer's request.

5.4 Vendor's Installation Test. Upon completion of installation, Vendor will test the Product in the

presence of Customer's Personnel to demonstrate that the Product is performing in good working order, ready for use, and in accordance with the applicable Specifications and other Acceptance Criteria. If requested by Customer, Vendor will furnish to Customer any data demonstrating such performance.

5.5 Installation by Customer. If Customer is responsible for installing a Product, then Vendor will provide (at no additional cost to Customer) written instructions to assist Customer with the completion of the installation.

6. EVALUATION AND ACCEPTANCE

6.1 Evaluation Period. If requested by a Customer and subject to Vendor's approval, Vendor will (at no charge) provide an evaluation sample of any Product(s). Customer's request for an evaluation sample of a Product shall be set forth on a Product Evaluation Schedule substantially in the form of **Appendix B**. After a sample Product has been delivered by Vendor, Customer will have the right (without any obligation to purchase the Product) to evaluate the Product for a period of at least thirty (30) days from the date of delivery. At any time during or immediately following the evaluation period, Customer may, in its sole discretion, either: (i) return the Product without financial liability or obligation; (ii) execute a Purchase Order to effect the purchase of the Product or (iii) extend the evaluation period upon the mutual agreement of the Parties.

6.2 Acceptance Testing. After a Product has been delivered to Customer's premises pursuant to a Purchase Order, Customer will be entitled to test the Product to determine if it operates in accordance with, and otherwise conforms to, the Acceptance Criteria. If no Acceptance Criteria is set forth or incorporated by reference in the Purchase Order, the Acceptance Criteria shall be the Documentation and Specifications. Vendor will provide (at no additional cost to Customer) such assistance as Customer may reasonably require to conduct the acceptance test. If the period or procedures for the acceptance test are not specified on the Purchase Order, then (i) Customer will have thirty (30) days from the date the Product was installed (or forty-five (45) days from the date the Product was delivered if no installation is required for the Product) to conduct the test, and (ii) Customer may use its own internal test procedures and any sample input. The Products shall be deemed to have been accepted on the last day of the acceptance test period unless Customer has notified Vendor in accordance with Section 6.3 that the Product does not operate in conformance with the applicable Acceptance Criteria. Acceptance of a Product shall not be deemed to constitute a waiver by Customer of any rights it may have based on Vendor's warranties.

6.3 Acceptance or Rejection. If Customer determines that a Product does not operate in accordance with, or otherwise conform to, the applicable Acceptance Criteria, then Customer will provide Vendor with a notice describing the Defect. Vendor will, at no additional cost to Customer, correct the Defect within ten (10) business days after its receipt of Customer's notice, by either repairing or replacing the Product. After Vendor has repaired or replaced a Product, Customer will be entitled to repeat the testing process for such Product. If (through no fault of Customer) Vendor fails to provide, within the ten (10) day period, a Product (either repaired or replaced) that conforms to the Acceptance Criteria, then Customer may reject the Product and terminate the applicable Purchase Order (in whole or in part) upon notice to Vendor, without financial liability or obligation (for the portion terminated).

7. LICENSING OF SOFTWARE PRODUCTS

7.1 Applicability. The provisions of this Section 7 apply to all Software provided by Vendor pursuant to this Agreement. In the event a provision of any other Section of this Agreement conflicts with a provision of this Section 7, the provision of Section 7 will control for issues relating to Software.

7.2 Proprietary Rights to Software. As between Vendor and Customer, Vendor (or its licensor) shall be deemed to own the Intellectual Property Rights in or to the Software; and nothing contained in this Agreement shall be construed to convey any Intellectual Property Rights in or to the Software to Customer (or to any person or entity claiming through Customer) other than the license rights expressly set forth in this Master Agreement and in the applicable Purchase Order.

7.3 Software. The Software license granted by Vendor pursuant to this Agreement shall (upon payment of the applicable license fee or purchase price of the Equipment) be a fully paid-up, non-exclusive, non-transferable (except as specifically provided in this Section), perpetual license for Customer or its Affiliates to use the Software in accordance with this Section. The license granted herein commences on shipment and remains in effect as long as Customer complies with this Section. Vendor grants Customer a license to use the Software on the Equipment with which it is shipped.

7.4 Assignment and Transfer. Customer shall be entitled (at no additional charge) to transfer the Software with the applicable System, (i) from one installation site to another, (ii) from one country or region to another, (iii) from any Customer location to any Affiliate location, or (iv) from Customer to a permitted third party. Customer will provide Vendor with written notice following any such transfer unless Vendor assists with such transfer. Customer shall be entitled to assign Software license to a subsequent purchaser (or other transferee) of the applicable System, provided Customer notifies Vendor about the assignment and the assignee agrees to be bound by the terms and conditions of a license agreement acceptable to Vendor. Neither Customer nor its assignee will be required to pay any additional license fee in conjunction with the assignment.

7.5 Reproduction. Customer or its Affiliates may reproduce the Software as Customer may reasonably deem necessary for backup and archival purposes. All copies of the Software (including partial copies, physical and electronic copies) shall reproduce any copyright or other proprietary notices contained on the originals.

7.6 Authorized Users. Each License granted pursuant to this Agreement shall include the right for Customer to permit the Software to be used by or on behalf of: (i) Affiliates, (ii) joint ventures or partnerships of which Licensee or an Affiliate is a joint venturer or partner, (iii) third parties engaged by Customer or an Affiliate to conduct all or any portion of Licensee's or an Affiliate's information processing, programming, network services, disaster, back up, or recovery services, and (iv) consultants and clients of Customer or an Affiliate. Provided, however, usage of the Software by Affiliates, joint ventures, partnerships, consultants and clients (collectively, "Authorized Users") must be considered part of the business of Customer or an Affiliate and provided Customer does not furnish a copy of the Software to Authorized Users unless otherwise agreed by Vendor. Customer shall apply all reasonable efforts to ensure to Vendor the compliance of Authorized Users with the license terms of this Agreement. If Software was acquired, or is being used by or on behalf of a Divested Entity, so that the Divested Entity is the "Licensee" from an operating perspective (whether the acquisition occurred prior or subsequent to the change in status), then the Divested Entity will continue to enjoy its status as the Licensee, provided (i) the Divested Entity is the legal entity that submitted the applicable Purchase Order or received an assignment thereof, or (ii) the legal entity assuming control of the Divested Entity agrees in

writing to be bound by the license terms of this Agreement. In addition, a Customer that is not a Divested Entity may (at no additional charge) permit the Software to be used on behalf of a Divested Entity for up to two years after its change in status, provided the Divested Entity or the legal entity assuming control of the Divested Entity agrees in writing to be bound by the terms and conditions of the license terms of this Agreement.

7.7 Restrictions. Except to the extent authorized or permitted in this Agreement or by applicable law without the possibility of contractual waiver, Customer, including Authorized Users, shall not reverse assemble, reverse engineer, reverse compile, or otherwise translate the Software or modify, enhance, supplement or create derivative works of the Software.

8. DOCUMENTATION AND TRAINING

8.1 Documentation. On or before the date a Product is delivered, Vendor will (at no additional charge) deliver to Customer at least one (1) electronic and one (1) printed form copy of all generally available Documentation for the Product. The Documentation shall be sufficient to enable Customer's Personnel to use and understand the use and operation of the Product, and shall conform to generally accepted industry standards for the use and operation of similar products and internal operating logic of software. Throughout the warranty period or the term of any maintenance service agreement, Vendor will provide copies of any revisions, improvements, enhancements, modifications and updates to the Documentation, at no additional cost. Customer may make a reasonable number of copies of the Documentation for Customer's use, provided Customer reproduces copyright notices and any other legends of ownership on each copy.

8.2 Training. If Customer's Personnel require training in order to properly use a Product, Vendor will provide on-site training in the use of such Product for all users designated by Customer, at times agreed to by the Parties. All initial training generally offered by Vendor in connection with the sale or license of Products in the proper use of a Product (as well as initial training in the proper use of new updates, features, functions and other enhancements furnished by or on behalf of Vendor) shall be at no charge, unless a fee for such training is specified in the Purchase Order.

9. FEES AND PAYMENT TERMS

9.1 Prices and Discounts. The purchase price and all other fees to be paid by Customer for the Products or Services provided by Vendor pursuant to this Agreement shall be set forth on the applicable Purchase Order. All such prices fees and other charges shall be based on the prices, fees and charges which are mutually agreed upon between the Parties and specified in a pricing agreement executed by the Parties or such other prices, fees and charges as may be mutually agreed upon by the Parties. Such pricing agreement shall be subject to the terms and conditions of Agreement and this shall be reviewed and updated by the Parties each calendar quarter or revised as mutually agreed to by the Parties.

9.2 Pricing Adjustments. During the term of this Master Agreement, Vendor will not increase the prices for Maintenance Services specified on a Purchase Order provided to Customer or an Affiliate by more than the lesser of: (i) the amount by which Vendor increased the comparable prices or charges for its other commercial customers; (ii) five percent (5%) for each twelve (12) month period; and (iii) the percentage rate of increase in the CPI (all items) for Urban Wage Earners and Clerical Workers from the preceding calendar year as determined by the United States Bureau of Labor Statistics. In addition, if the Parties agree to a pricing schedule covering certain Products or Services for a specified period, then such

pricing schedule will apply to purchases of Products or Services by Customer or an Affiliate for the period specified, unaffected by Vendor's price changes.

9.3 Delivery and Related Charges. Unless otherwise specified on the applicable Purchase Order, Vendor will pay all transportation, rigging, drayage, packing and placement charges associated with delivering the Products to the delivery location, and (if applicable) to the installation site within the delivery location. Vendor will also pay all transportation, packing and a placement charge associated with Customer's return of a Product that Customer has the right to return under this Agreement.

9.4 Taxes. Customer shall pay or reimburse Vendor all for sales, use, excise taxes, customs duties, tariffs and other taxes properly levied against or upon (i) the furnishing of the Products or Services to Customer by Vendor pursuant to this Agreement, or (ii) Customer's use thereof. However, Customer shall not be obligated to pay any penalties, interest, or late charges imposed as a result of Vendor's failure to remit such taxes to the taxing authority on a timely basis. In addition, if Vendor fails to provide Customer with timely notice of any tax audit that could result in an increase in the amount of sales or use taxes assessed hereunder, then Customer shall not be required to pay any additional taxes assessed as a result of such audit. Vendor shall be solely responsible for the payment of all other taxes, including franchise taxes, corporate excise or corporate privilege, property or license taxes, all taxes relating to Vendor's Personnel, and all taxes based on the net income or gross revenues of Vendor.

9.5 Reimbursable Expenses. To the extent applicable, Vendor will only be reimbursed for expenses that are reasonable, warranted and cost effective, and that have been approved in advance by Customer. For each item of expense for which reimbursement is requested, Vendor will submit substantiating documentation in accordance with Customer's policies. All approved business expenses and pass-through charges will be reimbursed at cost (as actually incurred), without mark-up.

9.6 Terms of Payment. No amount arising under this Agreement shall be due from Customer prior to Customer's receipt of an invoice: (i) referencing the applicable Purchase Order; (ii) separately itemizing the charges for the Products, Services or other items covered therein, and setting forth, in reasonable detail, the basis for the charges; and (iii) including, in the case of any reimbursable expenses or other charges (including taxes), receipts or other documentation acceptable to Customer. Unless otherwise specified on a Purchase Order, Vendor may invoice Customer for the purchase price upon shipment of the Product by Vendor or upon the conclusion of an Evaluation Period specified in Section 6.1. If applicable, Vendor may invoice Customer for Maintenance Service fees for the initial maintenance term after the warranty period has expired. Maintenance Service fees for renewal terms may be invoiced not more than sixty (60) days prior to the effective date of renewal. Vendor may invoice Customer for any other charges payable under this Agreement after the occurrence of the event giving rise to the payment obligation underlying the invoice. All invoices shall be submitted to Customer at the billing address designated on the applicable Purchase Order. Each invoice shall be payable within sixty (60) days after its receipt by Customer. If Customer pays Vendor's invoice within ten (10) days of the date of the receipt of the invoice, then Customer shall be entitled to deduct from such payment an early payment credit in the amount of 2% of the invoice amount. The Parties agree to work together to implement a procedure to verify the date of receipt of each invoice. Customer will not be liable for interest or other late fees on past due invoices. Vendor specifically covenants that it will not use any methods of electronic repossession for any reason. For three years after an invoice has been paid, Vendor will maintain records in accordance with generally accepted accounting practices and (upon Customer's reasonable request) make available the records necessary to substantiate the correctness of the invoices. All payments shall be in the applicable currency of the Affiliate issuing the Purchase Order. The

applicable currency exchange rate and related conversion procedures shall be determined between each Party's Local Entities.

9.7 Disputed Invoices. Customer may withhold payments for any item(s) on Vendor's invoice that Customer reasonably disputes provided Customer promptly notifies Vendor of the dispute and Customer promptly pays the undisputed amounts in accordance with the payment terms of this Agreement. Pending settlement or resolution of the issue(s), Customer's non-payment of these items shall not constitute default by Customer, and shall not entitle Vendor to suspend or delay its furnishing of Products or performance of Services.

9.8 Third Party Designee. Customer may, upon notice to Vendor, designate a third party as identified on the applicable Purchase Order to purchase any Product for the purpose of leasing or otherwise providing the Product to Customer. Upon receipt of Customer's notice, Vendor will enter into such separate agreement with such third party designee, provided, however, that nothing in such agreement, unless otherwise agreed by Customer, will limit Customer's right to enjoy the benefit of the applicable terms and conditions of this Agreement and the Purchase Order for so long as the Product is leased or otherwise provided to Customer by such third party designee. Customer acknowledges that it shall remain obligated to pay the purchase price in accordance with the payment terms of this Agreement for any such Product if, and to the extent that, the third party designee fails to do so, unless otherwise agreed to by the Parties.

10. REPRESENTATIONS AND WARRANTIES

10.1 Authority and Non-Infringement. Vendor represents and warrants that Vendor has all rights and authority required to enter into this Agreement and each Purchase Order, and to convey to Customer good, clear and marketable title to the Equipment and license rights for the Software, and to perform the Services contemplated by this Agreement, free from all liens, claims, encumbrances, security interests and any other restrictions. Subject to the applicable terms and conditions of this Agreement and the applicable Purchase Order, Customer and Affiliates will be entitled to possess the Products (including Software Products) and to use and enjoy the benefit of all Products and Services without adverse interruption or disturbance by Vendor or any entity asserting a claim under or through Vendor. Vendor further represents and warrants that to the best of its knowledge the Service, Products and all other materials of whatsoever nature furnished under this Agreement, and the use thereof by Customer or the Affiliates in accordance with the terms and conditions of this Agreement, will not infringe, misappropriate or violate the Intellectual Property Rights of any third party, or violate the laws, regulations or orders of any governmental or judicial authority.

10.2 Personal Dealing and Non-Subornation. Vendor warrants that no officer, director, employee of Customer or any of their immediate family members will receive anything of value of any kind from Vendor or its Personnel in connection with this Agreement.. Vendor further warrants that Vendor has not and will not make (or offer to make) any payments to, or confer (or offer to confer) any benefit upon, any employee, agent or fiduciary of any third party, with the intent to influence the conduct of such employee, agent or fiduciary in any manner relating to the subject of this Agreement.

10.3 Conformity to Specifications. Vendor warrants that at the time of delivery and thereafter throughout the applicable warranty period, each Product (i) will be in good working order and conform to the applicable Acceptance Criteria, and (ii) will be free from any defects in material and workmanship. In addition, Vendor will (at no additional charge) make available to Customer (and install at Customer's request) any applicable engineering changes or Software updates that are generally released by Vendor

during the warranty period. Vendor further warrants that, throughout the warranty period, all components of a System (including all equipment, software or other materials provided to Vendor by any other manufacturer or supplier and remarketed by Vendor as part of Vendor's Products) shall operate collectively as a compatible System. If not specified by the Parties on the Purchase Order, the warranty period for the Product performance shall be the time period specified in the Product Notice, commencing upon shipment and measured from the date Customer accepts the Product. In addition, the warranty period for a Product will be extended by the aggregate time Customer is unable to effectively use the Product during the specified warranty period as a result of a Defect as agreed upon between the Parties. If Vendor receives notice of a Product Defect during the warranty period, Vendor will (at no additional charge) furnish all materials and make all adjustments, repairs and replacements required to correct the Defect. If (through no fault of Customer) Vendor is unable or unwilling to correct a Defect that has been identified by Customer during the warranty period, then Customer may terminate the applicable Purchase Order (in whole or in part) upon notice to Vendor, without financial liability or obligation (for the portion terminated). Locations outside the Vendor service area are subject to a travel surcharge in accordance with Vendor's standard rates, and on-site response times vary accordingly. The warranties described above and Maintenance Service do not include services required or efforts to remedy, repair or replace Products as a result of: (i) accidents or neglect by other than Vendor or its authorized representatives; (ii) problems relating to or residing in other hardware, software or services with which the Products are used unless caused by Vendor or its authorized representatives; (iii) installation of the Products not in accordance with Vendor's instructions or the Acceptance Criteria unless the improper installation was performed by Vendor or its authorized representatives; (iv) use of the Products in an environment, in a manner or for a purpose for which it was not designed; and (v) installation of non customer-installable Products, modification, alteration or repair of the Products by anyone other than Vendor or its authorized representatives. Vendor will have no Maintenance Service or warranty obligations whatsoever with respect to Software which is installed on hardware other than on the System on which the software was shipped or Products on which the original identification marks have been removed or altered.

10.4 Documentation. Vendor represents and warrants that the Documentation provided by Vendor will fully and accurately reflect the functionality of the applicable Product.

10.5 Standard of Service. Vendor warrants that all services provided by Vendor pursuant to this Agreement, or any other agreement relating to the Products, will be performed in a timely and professional manner, in conformity with standards generally accepted in the Vendor's industry, by qualified and skilled individuals. If Vendor fails to provide the services as warranted and Customer so notifies Vendor within thirty (30) days after the date Vendor declares the services to have been completed, then Vendor will re-perform the services at no additional charge. Vendor further warrants that its Personnel will provide services to Customer with a minimal amount of interference with Customer's normal business operations and subject to Customer's security and work place policies and procedures.

10.6 Disabling Devices. Vendor represents and warrants that prior to delivering any Software to Customer, Vendor will test the Software and the media on which it is to be delivered with a current version of a leading anti-virus application in efforts to detect, and if so detected, to eliminate, any computer code (sometimes referred to as "viruses" or "worms") designed to damage, disrupt, disable, harm, or otherwise impede in any manner, the orderly operation of the Software or any other software, data files, firmware, hardware, computer system or network. Vendor further represents and warrants that the Software, on the date of shipment to Customer, (and all other software delivered or installed by Vendor) shall not contain any computer code or any other procedures, routines or mechanisms designed by Vendor (or its Personnel or licensors) to: (i) disrupt, disable, harm or impair in any way the Software's (or any other software's) orderly operation based on the elapsing of a period of time, exceeding an

authorized number of copies, advancement to a particular date or other numeral (sometimes referred to as "time bombs", "time locks", or "drop dead" devices); (ii) cause the Software to damage or corrupt any of Customer's or its Affiliates' data, storage media, programs, equipment or communications, or otherwise interfere with Customer's or its Affiliates' operations, or (iii) permit Vendor, its Personnel, its licensors or any other third party, to access the Software (or any other software or Customer's or its Affiliates' computer systems) for any reason (sometimes referred to as "traps", "access codes" or "trap door" devices). Vendor will not unilaterally (*i.e.*, without appropriate judicial order) remove, deinstall, repossess, modify, delete, damage, deactivate, disable, or interfere with the Software or any System for any reason (including a dispute relating to this Agreement).

10.7 Spare Parts. Vendor warrants that all replacement parts furnished by Vendor shall equal or exceed the original manufacturer's specifications for such parts. Title to any replacement parts shall vest in Customer at the time of installation into the Equipment and title to the parts so replaced shall revert back to Vendor upon return to Vendor by Customer. Vendor represents and warrants that for a minimum period of five (5) years from Customer's acceptance of a Product, Vendor will manufacture or procure spare parts for each Product purchased hereunder. Without prejudice to any other rights and remedies available to Customer under this Agreement, in the event Vendor cannot procure spare parts in accordance with this Section, Vendor will replace the Products needing servicing (at no additional charge) with Products that are at least functionally equivalent thereto. Replacement Products shall assume the service status of the Products they replace.

10.8 Availability of Maintenance. Vendor warrants that, during the warranty period, Vendor will (at no additional charge) provide Customer with maintenance and support services for the Products at least as comprehensive as the Maintenance Services described in **Appendix C**.

10.9 Favorable Pricing. Vendor warrants that the pricing of the Products are or will be comparable to or better than the pricing offered by Vendor to any of its similarly situated commercial customers of equal or lesser size for comparable Products or Services in similar quantities under substantially similar circumstances and terms and conditions. If Vendor agrees to more favorable prices with any such customer within sixty (60) days of the date of a Purchase Order, prices terms will be made available by Vendor to Customer within thirty (30) days from the execution of such agreement.

10.10 Disclaimer. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT OR ESTABLISHED BY APPLICABLE LAW AS RIGHTS THAT CAN NOT BE WAIVED OR LIMITED BY CONTRACT, VENDOR DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

11. MAINTENANCE SERVICES

11.1 Support Obligation. For a minimum period of five (5) years commencing from the date the applicable warranty period expires, Vendor will make Maintenance Services available for the Products on terms at least as comprehensive as those set forth in **Appendix C**. Such Maintenance Services shall be provided on an annual renewable term basis, at Customer's election and subject to Customer's payment of the applicable Maintenance Services fee. Customer will be entitled to terminate the Maintenance Services at any time, for its convenience, by providing Vendor with no less than thirty (30) days prior notice of termination; and in the event of such termination, Customer shall be entitled to recover any

unused portion of the pre-paid Maintenance Service fees.

11.2 Long Term Archiving Solutions. Notwithstanding anything to the contrary stated in Section 11.1, Licensor shall provide a continuous upgrade path for Products designed to manage long term archiving solutions for regulatory compliance, which may include content migration services, for the purpose of providing customers with access to such content for required retention periods. The cost for the migration services shall not exceed ten (10) percent of the purchase price of the Equipment on which the content resides.

12. CONFIDENTIAL INFORMATION

12.1 Vendor's "Confidential Information". Vendor's "Confidential Information" means and refers to the Products, Documentation, and all other materials furnished by Vendor that are expressly identified and marked by Vendor as "Confidential" at the time of their delivery to Customer.

12.2 Customer's "Confidential Information". Customer's "Confidential Information" means and refers to all tangible or intangible information and materials, in any form or medium (and without regard to whether the information or materials are owned by Customer or by a third party), whether furnished or disclosed to Vendor by Customer or an Affiliate, or otherwise obtained, accessed or observed by Vendor from Customer or an Affiliate, that satisfies at least one of the following criteria:

- 12.2.1 Information or materials related to Customer's, an Affiliates' or any of their respective customer's business, trade secrets, customers (including identities, characteristics and activities), business plans, strategies, forecasts or forecast assumptions, operations, methods of doing business, records, finances, assets, technology (including software, data bases, data processing or communications networking systems), data or information or materials that reveal research, technology, practices, procedures, processes, methodologies, know how, or other systems or controls by which Customer's or an Affiliate's products, services, applications and methods of operations or doing business are developed, conducted or operated, and all information or materials derived therefrom or based thereon;
- 12.2.2 Information or materials designated or identified as confidential by Customer or an Affiliate, whether by letter or by an appropriate proprietary stamp or legend, prior to or at the time such information or materials are disclosed by Customer or an Affiliate to Vendor;
- 12.2.3 Information disclosed orally or visually, or written or other form of tangible information or materials without an appropriate letter, proprietary stamp or legend, if it would be apparent to a reasonable person, familiar with Customer's (or an Affiliates') business and the industry in which it operates, that such information or materials are of a confidential or proprietary nature; or,
- 12.2.4 Any non-public, personal, financial or identifying information of an individual, including Customer's or an Affiliate's customers or employees ("Nonpublic Personal Information").

12.3 Duty of Care. The Party receiving ("Receiving Party") Confidential Information of the other Party ("Disclosing Party") will exercise at least the same degree of care with respect to the Disclosing Party's Confidential Information that the Receiving Party exercises to protect its own Confidential Information; and, at a minimum, the Receiving Party will maintain adequate security measures to safeguard the Disclosing Party's Confidential Information from unauthorized disclosure, access, use and misappropriation. Without limiting the generality of the foregoing, the Receiving Party will only use or reproduce the Disclosing Party's Confidential Information to the extent necessary to enable the Receiving Party to fulfill its obligations under this Agreement, or in the case of Customer, to exercise its rights as contemplated by this Agreement. In addition, the Receiving Party will disclose the Disclosing Party's

Confidential Information only to those of the Receiving Party's (or in the case of Customer, also to its Affiliates') Personnel who have a "need to know" such Confidential Information (and only to the extent necessary) in order to fulfill the purposes contemplated by the Agreement. Prior to disclosing Customer's Confidential Information to any of its Personnel, Vendor will ensure that each of its Personnel who will be providing services for Customer is bound by a written non-disclosure agreement with terms and conditions no less restrictive than those set forth herein. If the Receiving Party becomes aware of any threatened or actual unauthorized access to, use or disclosure of, or any inability to account for, the Disclosing Party's Confidential Information, the Receiving Party will promptly notify the Disclosing Party thereof and will assist the Disclosing Party with its efforts to terminate such access, to curtail such threatened or actual unauthorized use or disclosure, or to recover such information or materials. The Receiving Party will be liable to the Disclosing Party for any non-compliance by its agents or contractors to the same extent it would be liable for non-compliance by its employees.

12.4 Exclusions. The obligations of confidentiality assumed under this Agreement shall not apply to the extent the Receiving Party can demonstrate, by clear and convincing evidence, that such information:

- 12.4.1 is or has become generally available to the public, without any breach by the Receiving Party of the provisions of this Agreement or any other applicable agreement between the Parties;
- 12.4.2 was rightfully in the possession of the Receiving Party, without confidentiality restrictions, prior to such Party's receipt pursuant to this Agreement;
- 12.4.3 was rightfully acquired by the Receiving Party from a third party who was entitled to disclose such information, without confidentiality or proprietary restrictions;
- 12.4.4 was independently developed by the Receiving Party without using or referring to the Disclosing Party's Confidential Information; or,
- 12.4.5 is subject to a written agreement pursuant to which the Disclosing Party authorized the Receiving Party to disclose the subject information.

12.5 Legally Required Disclosures. The obligations of confidentiality assumed under this Agreement shall not apply to the extent that the Receiving Party is required to disclose the Disclosing Party's Confidential Information under any applicable law, regulation or an order from a court, regulatory agency or other governmental authority having competent jurisdiction, provided that the Receiving Party:

- 12.5.1 promptly notifies the Disclosing Party of the order in order to provide the Disclosing Party an opportunity to seek a protective order;
- 12.5.2 provides the Disclosing Party with reasonable cooperation in its efforts to resist the disclosure, upon reasonable request by the Disclosing Party and at the Disclosing Party's expense; and,
- 12.5.3 disclose only the portion of the Disclosing Party's Confidential Information that is required to be disclosed under such law, regulation or order.

12.6 Nonpublic Personal Information. Notwithstanding any other provision of this Agreement, to the extent Nonpublic Personal Information is, either intentionally or unintentionally, disclosed to or otherwise obtained by Vendor in connection with the matters contemplated by this Agreement, Vendor will keep such Nonpublic Personal Information strictly confidential and strictly limit its use of such information to the purposes contemplated by this Agreement. Vendor agrees that Customer shall have the right to conduct a review of the procedures used by Vendor to maintain the confidentiality of such Nonpublic Personal Information.

12.7 Accounting for Confidential Information. Except as otherwise expressly provided in this Agreement, upon the request of the Disclosing Party at any time after the termination of this Agreement,

the Receiving Party will return (or purge its systems and files of, and suitably account for) all tangible Confidential Information supplied to, or otherwise obtained by, the Receiving Party in connection with this Agreement. The Receiving Party will certify in writing that it has fully complied with its obligations under this Section within seven (7) days after its receipt of a request by the Disclosing Party for such a certification. For the avoidance of doubt, this Section 12.7 shall not be construed (i) to require Customer to return any Software, or (ii) to limit either Party's right to seek relief from damages that are caused by the other Party's default.

13. PUBLICITY

Vendor will not disclose the identity of Customer as a customer of Vendor or the existence, nature or terms of this Master Agreement or any Purchase Order, without the prior written consent of Customer, which Customer may withhold in its sole discretion. Neither Party will use the other Party's proprietary indicia, trademarks, service marks, trade names, logos, symbols or brand names (collectively "Marks"), or otherwise refer to or identify the other Party in advertising, publicity releases, or promotional or marketing publications or correspondence to third parties without, in each case, securing the prior written consent of the other Party.

14. INDEMNITY

14.1 Infringement Indemnity. Vendor will defend Customer its Affiliates and their Personnel (collectively the "Indemnitees") at Vendor's expense against any third party claim that the Products, Deliverables or any other materials of any nature furnished by Vendor to Customer or the use thereof infringes, misappropriates or violates such third party's Intellectual Property Rights enforceable in the country where the Products are installed, and will indemnify and hold harmless the Indemnitees against the costs and damages (collectively "Damages") owed to the third party as a result of such claim. Vendor's indemnity obligation under this Section shall not extend to claims based on: (i) an unauthorized modification of a Product made by an Indemnitee where the Product would not be infringing without such modification, (ii) customized portions of a Product designed in accordance with written specifications provided by Customer where the Product would not be infringing without such customized portions or (iii) use of the Products in combination with products not furnished by Vendor except for Vendor's current, unmodified (unless by Vendor), Vendor branded Products furnished by a Vendor authorized reseller, (iv) use of the Products when use of and update or revision made available from Vendor would have avoided such infringement, and (v) any Intellectual Rights owned or licensed by Customer (other than the Software licensed from Vendor hereunder).

14.2 Confidential Information Indemnity. Vendor shall, at its expense, defend Indemnitees from and against any third party claim stemming from Vendor's breach of Section 12 and indemnify and hold harmless the Indemnitees against all damages owed to the third party by an Indemnitee as a result of such claim.

14.3 Indemnification Procedures. If an Indemnitee seeks indemnification under this Agreement, the Indemnitee will: (i) give prompt notice to Vendor concerning the existence of the indemnifiable event; (ii) grant sole authority and control to Vendor to defend or settle any related action or claim; and, (iii) provide, at Vendor's expense, such information, cooperation and assistance to Vendor as may be reasonably necessary for Vendor to defend or settle the claim or action. An Indemnitee's failure to give prompt notice shall not constitute a waiver of the Indemnitee's right to indemnification and shall affect Vendor's indemnification obligations only to the extent that Vendor's rights are materially prejudiced by such failure or delay. Notwithstanding anything to the contrary set forth herein, (i) an Indemnitee may

participate, at its own expense, in any defense and settlement directly or through counsel of its choice, and (ii) Vendor will not enter into any settlement agreement on terms that would diminish the rights provided to the Indemnitee (except as provided in and subject to Section 14.4) or increase the obligations assumed by the Indemnitee under this Agreement, without the prior written consent of the Indemnitee, which shall not be unreasonably withheld.

14.4 Mitigation of Damages. If any Product becomes, or (in Vendor's opinion) is likely to become, the subject of any such third party claim, then Vendor (at its sole cost and expense) may either: (i) procure the right for the Indemnitee to continue using such Product as contemplated hereunder; (ii) modify such Product to render it non-infringing (provided such modification does not materially degrade the Product's functionality); or (iii) replace and install such Product with an equally suitable, functionally equivalent, compatible, non-infringing Product. If none of the foregoing are commercially practicable despite Vendor using reasonable efforts and if Customer is not permitted to continue using the Product, then Customer shall return the Products and Customer shall be entitled to recover from Vendor the following upon return of the Products to Vendor. If Customer is prohibited from using the Product within two years after the date the Product was accepted, then Customer shall be entitled to recover an amount equal to the purchase price paid for the Product, plus all fees paid for services related to the Product and for any other products furnished by Vendor to Customer that were provided in conjunction with the Product and can not be utilized effectively or completely by Customer without using the Product. If Customer is prohibited from using the Product more than two years after the date the Product was accepted, then Customer shall be entitled to recover an amount equal to a pro-rated portion of the purchase price paid for the Product, plus a pro-rated portion of the fees paid for any other products furnished by Vendor to Customer that were provided in conjunction with the Product and that can not be utilized effectively or completely by Customer without using the Product (with the pro-rated portions equal to the remaining book value based on a straight line five (5) year basis).

14.5 Notification of 3rd Party Claims. Vendor will promptly notify Customer concerning any threat, warning, claim or action against Vendor or its customers or suppliers, which Vendor believes in its reasonable discretion, has a reasonable possibility of having an adverse impact on Customer's use of any Product provided or made available to Customer pursuant to this Agreement.

14.6 This Section 14 states Vendor's entire liability and Customer's exclusive remedies with respect to infringements of Intellectual Property Rights.

15. INSURANCE REQUIREMENTS

15.1 Required Coverage. During the term of this Agreement and for so long as any Purchase Order has not yet been completed or terminated, Vendor will maintain insurance coverage with limits no less than those set forth below, and with insurers and under forms of policies satisfactory to Customer.

15.1.1 Professional Liability Insurance ("Errors and Omissions") in the minimum amount of \$5,000,000 per occurrence, covering losses from operating errors, omissions, negligence, breach of contract and misrepresentations related to Vendor's obligations under this Agreement.

15.1.2 General Liability providing coverage against liability for bodily injury, death, and property damages in the minimum amount of \$5,000,000 per occurrence.

15.1.3 Workers Compensation insurance coverage at the statutory limits required for each state in which the Vendor will operate in fulfilling its obligations under this Agreement, and Employer's liability coverage in the minimum amount of \$1,000,000 per occurrence.

15.1.4 Umbrella Liability providing excess liability coverage in the minimum amount of \$5,000,000 per

occurrence, to supplement the primary coverage provided in the policies listed above.

15.2 Certificates of Insurance. Vendor will deliver Certificates of Insurance to Customer within ten (10) days after the Master Agreement has been executed. Each Certificate shall provide that no less than thirty (30) days notice will be given in writing to Customer prior to cancellation, termination, or redemption of any one of the policies. Vendor will deliver to Customer a Certificate of Insurance attesting to the renewal of such insurance as soon as reasonably possible after renewal of such insurance. In addition, each policy required pursuant to Subsections 15.1.1, 15.1.2 and 15.1.4 shall (by endorsement) name Customer and the Affiliates as additional insured. Customer's acceptance of delivery of a certificate of insurance that does not conform to the requirements of this Section shall not relieve Vendor of its obligation to provide insurance conforming to the requirements hereof.

15.3 No Limitation. The requirements set forth above as to types, limits and approval of insurance coverage to be maintained by Vendor will not in any manner limit the liabilities and obligations assumed by Vendor under this Agreement.

16. LIMITATION OF LIABILITY

16.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY AS SET FORTH IN THIS AGREEMENT, IT IS ACKNOWLEDGED AND AGREED THAT THE EXPRESS REMEDIES SET FORTH IN SECTIONS 10.3 AND 22.2 OF THIS AGREEMENT AND SECTION 12 OF THE ADDENDUM FOR PROFESSIONAL SERVICES (APPENDIX D) FOR A CLAIM BASED UPON A BREACH OF THE WARRANTIES SET FORTH IN SECTION 10.3 AND THE EXPRESS REMEDIES SET FORTH IN ARTICLE 14 BASED UPON ANY THIRD PARTY INTELLECTUAL PROPERTY CLAIM SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIMS.

16.2 WITH RESPECT TO ANY CLAIM FOR DIRECT DAMAGES THAT EITHER PARTY MAY BRING AGAINST THE OTHER UNDER THIS AGREEMENT IT IS AGREED THAT IN NO EVENT MAY EITHER PARTY'S LIABILITY IN ANY SUCH CLAIM EXCEED AN AMOUNT EQUAL TO THE GREATER OF (i) TWO (2) TIMES THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER IN ASSOCIATION WITH THE TRANSACTION THAT FORMS THE BASIS OF SUCH CLAIM, or (ii) TWO MILLION DOLLARS (\$2,000,000).

16.3 EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (OR TO ANY PERSON OR ENTITY CLAIMING THROUGH THE OTHER PARTY) FOR LOST PROFITS OR FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH PARTY HAS BEEN INFORMED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTIONS 16.2 AND THIS SECTION 16.3 SHALL NOT APPLY TO DAMAGES, (i) RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY OR ITS PERSONNEL, (ii) STEMMING FROM PERSONAL INJURY OR DEATH, CAUSED BY A PARTY OR ITS PERSONNEL OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY (EXCLUDING LOSSES THAT ARE THE CONSEQUENCE OF DAMAGE TO ANY SUCH PROPERTY WHICH LOSSES SHALL BE SUBJECT TO SUCH LIMITATIONS), (iii) ARISING FROM CLAIMS STEMMING FROM A

BREACH OF THE CONFIDENTIALITY OBLIGATIONS OF A PARTY OR (iv) VENDOR'S INDEMNITY OBLIGATIONS AS DESCRIBED IN ARTICLE 14.

17. SUBCONTRACTORS

Vendor may use a subcontractor to perform Vendor's obligations under this Agreement. However, Vendor's use of a subcontractor shall not constitute a waiver of any rights Customer may have based on Vendor's representations and warranties and Vendor will be fully responsible for all acts and omissions of its subcontractors and the compliance of its subcontractors with the terms and conditions of this Agreement. Customer may terminate Vendor's right to utilize a particular subcontractor upon thirty (30) days prior written notice for such subcontractor's failure to comply with the applicable terms and conditions of this Agreement. Nothing in this Agreement shall be construed to create any contractual relationship between Customer and any subcontractor, nor any obligation on the part of Customer, to pay or to ensure the payment of any money due any subcontractor.

18. ASSIGNMENT

Either party may, with notice to the other, assign this Agreement or any of its rights or interests hereunder, or delegate any of its obligations hereunder, to (i) in the case of Vendor, to a business entity controlling or under common control with Vendor, or in the case of Customer, to an Affiliate, (ii) a Party's successor pursuant to a merger, reorganization, consolidation or sale, or (iii) an entity that acquires all or substantially all of that portion of the assigning Party's assets or business. Except as otherwise provided above, neither Party may assign this Agreement nor any of its rights or interests hereunder, nor delegate any obligation to be performed hereunder, without the prior written consent of the other Party. Any attempted assignment or delegation in contravention of this Section shall be null and void, and of no force or effect. This Agreement shall be binding upon, and shall inure to the benefit of, the legal successors and permitted assigns of the Parties.

19. NOTICES

Any notice, demand or other communication (collectively "notice") required or permitted under this Agreement shall be made in writing and shall be deemed to have been duly given (i) when delivered personally to the representative(s) designated to receive notices for the intended recipient, or (ii) when mailed by certified mail (return receipt requested) or sent by overnight courier to the representative(s) designated to receive notices for the intended recipient at the address set forth in the introductory paragraph of this Master Agreement or in the applicable Purchase Order, as appropriate. Notices concerning the Master Agreement shall be given to the person who signed the Master Agreement on behalf of the intended recipient. Notices concerning a Purchase Order shall be given to the person designated on, or (if no designation is made) the person signing, the Purchase Order on behalf of the intended recipient. Any notice from Vendor that either (i) relates to the Master Agreement, or (ii) alleges Customer committed a material breach shall also be sent to Customer's General Counsel's Office, to the attention of the managing attorney responsible for intellectual property and technology. Either Party may change its address(es) or representative(s) for receiving notices upon notice to the other.

20. COMPLIANCE WITH LAW

20.1 In performing its obligations under this Agreement, each party will comply, and will cause its Personnel to comply, with the requirements of all applicable laws, ordinances, regulations, codes and executive orders. Vendor further warrants that all Products provided hereunder shall be designed,

produced, installed, furnished and in all respects provided, certified and maintained in conformance with all codes, ordinances, regulations and laws, and administrative and regulatory requirements (of all governmental authorities having appropriate jurisdiction) in effect at the time of such design, production, installation or furnishing.

20.2 Each Party agrees to comply with all applicable export laws pertaining to the equipment, software, documentation or technical data furnished to it under this Agreement. If either Party intends to export any of those items and an export license is required, that Party must obtain that license from the appropriate authorities.

21. CHOICE OF LAW AND JURISDICTION

21.1 **Governing Law.** The substantive laws of the State of New York shall in all respects govern this Agreement as though this Agreement was entered into, and was to be entirely performed within, the State of New York. The Parties expressly disclaim the applicability of, and waive any rights based upon, the Uniform Computer Information Transactions Act or the United Nations Convention on the Sale of Goods. For the avoidance of doubt, nothing stated in this Agreement will prejudice or limit the rights or remedies of either Party to enforce any award or decree under the laws of any jurisdiction where property or assets of the other Party may be located.

21.2 **Jurisdiction.** All claims or disputes arising out of or in connection with this Agreement shall be heard exclusively by any of the federal or state court(s) of competent jurisdiction located in the Borough of Manhattan, New York City, NY, USA. To that end, each Party irrevocably consents to the exclusive jurisdiction of, and venue in, such court(s), and waives any, (i) objection it may have to any proceedings brought in any such court, (ii) claim that the proceedings have been brought in an inconvenient forum, and (iii) right to object (with respect to such proceedings) that such court does not have jurisdiction over such Party. Without limiting the generality of the foregoing, Vendor specifically and irrevocably consents to personal and subject matter jurisdiction for such claims or disputes in the federal or state court sitting in New York City, NY, USA, and to the service of process in connection with any such claim or dispute by the mailing thereof by registered or certified mail, postage prepaid to Vendor, at the address for notice set forth in, or designated pursuant to, this Agreement.

22. REMEDIES

22.1 **Equitable Relief.** Vendor and Customer each acknowledge that the failure to perform their respective duties under Sections 12 or 13 may cause the other Party to suffer irreparable injury for which such injured Party may not have an adequate remedy available at law. Accordingly, the injured Party may seek to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting a bond or security and without prejudice to such other rights as may be available under this Agreement or under applicable law. For purposes of this Agreement, "equitable relief" means and includes those remedies traditionally and historically granted by courts of equity, including without limitation, injunction, attachment, declaratory relief, lis pendens, receivership and replevin.

22.2 **Recovery of Fees.** If Customer terminates a Purchase Order pursuant to Section 4.1, Section 6.3 or Section 10.3, then Customer will be entitled, as Vendor's entire liability and Customer's exclusive remedies to recover from Vendor all amounts paid by Customer pursuant to the Purchase Order on account of (i) the defective Product, and (ii) the services or other products furnished by Vendor to Customer in conjunction with such Product, that Customer is unable to utilize effectively or completely as

a result of Vendor's failure to fulfill (in a timely manner) its obligation to furnish a conforming Product or to correct the Defect. Upon Customer's receipt of such amounts, Customer will return to Vendor the affected Product and such related products.

22.3 Cumulative Remedies. Except as otherwise expressly provided in this Agreement, all remedies in this Agreement are cumulative and in addition to (not in lieu of) any other remedies available to a Party at law or in equity.

23. WAIVER

No course of dealing, failure by either Party to require the strict performance of any obligation assumed by the other hereunder, or failure by either Party to exercise any right or remedy to which it is entitled, shall constitute a waiver or cause a diminution of the obligations or rights provided under this Agreement. No provision of this Agreement shall be deemed to have been waived by any act or knowledge of either Party, but only by a written instrument signed by a duly authorized representative of the Party to be bound thereby. Waiver by either Party of any default shall not constitute a waiver of any other or subsequent default.

24. FORCE MAJEURE

A Party will be excused from a delay in performing, or a failure to perform, its obligations under this Agreement to the extent such delay or failure is caused by the occurrence of any contingency beyond the reasonable control, and without any fault, of such Party. In such event, the performance times shall be extended for a period of time equivalent to the time lost because of the excusable delay. However, if an excusable delay continues more than sixty (60) days, the Party not relying on the excusable delay may, at its option, terminate the affected Purchase Order(s) in whole or in part, upon notice to the other Party. In order to avail itself of the relief provided in this Section for an excusable delay, the Party must act with due diligence to remedy the cause of, or to mitigate or overcome, such delay or failure. For purposes of this Section, the phrase "due diligence" shall, at a minimum, require Vendor to maintain a contingency plan (and provide evidence of its current and periodic testing if requested by Customer) for the continuation of business so that despite any disruption in Vendor's ability to fulfill its service obligations from any particular location or through the efforts of any particular individuals, Vendor will be able to fulfill its service obligations from an alternative/backup location.

25. CUSTOMER'S POLICIES AND PROCEDURES

25.1 General. Vendor will ensure (i) that its Personnel comply with the corporate policies promulgated by Customer or an Affiliate that are designed to adhere to applicable laws and regulations, and with the security and work place policies and procedures in effect for any facility of Customer or an Affiliate where services are performed (including Information Security Standards and any supplementary practices or procedures provided by Customer to Vendor), and (ii) that all services are performed in a manner that will minimize any interference with Customer's normal business operations.

25.2 Equipment and Network Security. If access to Customer's or an Affiliate's computer systems, other equipment or personal property ("Customer's Systems") is required in order for Vendor to fulfill its services obligations to Customer, then Customer shall determine the nature and extent of such access. If Customer or an Affiliate provides Vendor with remote access to Customer's Systems, then any and all information relating to such remote access shall be considered Customer's Confidential Information and shall be subject to the obligations of confidentiality set forth in Section 12 above. In addition, any and all

access to Customer's Systems shall be subject to the following.

- 25.2.1 Customer's Systems shall be used solely to perform services for Customer, and shall not be used for any purpose other than the legitimate business purposes of Customer.
- 25.2.2 Access to Customer's Systems shall be restricted to Vendor's Personnel who need access in order for Vendor to fulfill its obligations under this Agreement; and no access rights will be transferred to any other individuals without the prior written consent of Customer.
- 25.2.3 Vendor will ensure that its Personnel do not attempt to break, bypass or circumvent Customer's or an Affiliate's security systems, or attempt to obtain access to any hardware, programs or data beyond the scope of the access granted by Customer in writing.
- 25.2.4 Without limiting any of its other rights, Customer reserves (for itself and its Affiliates) the rights to restrict and monitor the use of Customer's Systems, and to access, seize, copy and disclose any information, data or files developed, processed, transmitted, displayed, reproduced or otherwise accessed in conjunction with such use. Customer or an Affiliate may exercise its rights reserved hereunder: (i) to verify the performance of services; (ii) to assure compliance by Vendor's Personnel with Customer's or the Affiliate's policies and procedures; (iii) to investigate conduct that may be illegal or may adversely affect Customer, an Affiliate or its or their employees; or (iv) to prevent inappropriate or excessive personal use of Customer's Systems. Vendor will advise its Personnel concerning Customer's rights hereunder.

25.3 Removal of Vendor's Personnel. If any of Vendor's Personnel fails to comply with any applicable laws, ordinances, regulations, codes, or with Customer's security or work place policies and procedures (whether or not specified herein), or fails (in Customer's sole determination) to perform assignments in a professional and competent manner, then Vendor will bar such individual from performing any services for Customer immediately upon receiving a request from Customer.

25.4 Diversity Initiative. Vendor acknowledges that Customer has implemented a Supplier Diversity Program which, among other initiatives, encourages the use of minority and women-owned businesses ("Diverse Suppliers") as suppliers and subcontractors to the fullest possible extent consistent with the efficient performance of its business strategies. To assist Customer in complying with these goals, Vendor will (at no additional cost to Customer) report to Customer within thirty (30) days of the last day of each calendar quarter or such other period agreed upon between the Parties, the dollar amount spent by Vendor in connection with this Agreement with any Diverse Suppliers which are involved in the provision of the Products and services under this Agreement. These reports shall be forwarded to the attention of the Citigroup Supplier Diversity Program, 333 West 34th Street, 8th Floor, New York 10001, attention Director Supplier Diversity Program. All such reports shall be kept and treated by Customer in accordance with Customer's confidentiality obligations herein. Vendor further acknowledges that Customer prefers, when contracting with suppliers that are not directly Diverse Suppliers, to contract with suppliers who can substantiate that a minimum of ten percent (10%) of the subcontractors or suppliers that they utilize in providing their products or services to Customer are Diverse Suppliers. As such, Customer reserves the right to remove from its approved supplier lists any supplier that fails to meet this minimum requirement.

26. CONSTRUCTION

26.1 Inconsistencies. In the event of any inconsistency between the provisions of this Master Agreement and any Purchase Order, the provisions of this Purchase Order shall govern for purposes of such Purchase Order. The provisions of this Master Agreement and the applicable Purchase Order shall supersede the provisions of any shrink-wrap, clickwrap or other provisions included with any Product.

26.2 **Modification.** The terms, conditions, covenants and other provisions of this Agreement may hereafter be modified, amended, supplemented or otherwise changed only by a written instrument (excluding e-mail or similar electronic transmissions) that specifically purports to do so and is physically executed by a duly authorized representative of each Party.

26.3 **Severability.** If a court of competent jurisdiction declares any provision of this Agreement to be invalid, unlawful or unenforceable as drafted, the Parties intend that such provision be amended and construed in a manner designed to effectuate the purposes of the provision to the fullest extent permitted by law. If such provision cannot be so amended and construed, it shall be severed, and the remaining provisions shall remain unimpaired and in full force and effect to the fullest extent permitted by law.

26.4 **Survival.** The provisions of this Agreement that, by their nature and content, must survive the completion, rescission, termination or expiration of this Agreement in order to achieve the fundamental purposes of this Agreement, shall so survive and continue to bind the Parties. Without limiting the generality of the forgoing, the Parties specifically acknowledge that the following provisions shall survive and continue to bind the Parties: **Section 7**, entitled "Licensing of Software Products" (to the extent applicable); **Subsection 10.1**, entitled "Authority and Non-Infringement"; **Subsection 10.6**, entitled "Disabling Devices"; **Section 12**, entitled "Confidential Information"; **Section 13**, entitled "Publicity"; **Subsection 14**, entitled "Indemnity"; **Section 16**, entitled "Limitation of Liability"; **Section 18**, entitled "Assignment"; **Section 21**, entitled "Choice of Law and Jurisdiction"; and **Section 22**, entitled "Remedies".

26.5 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

27. AUDITED FINANCIAL STATEMENTS

Upon Customer's request, Vendor will provide a completed audited statement of the financial condition of Vendor's organization, including (i) audited year-end results for the three (3) previous years, including revenues, expenses, net income, total assets, liabilities and footnotes; and (ii) the most recent financial interim statement.

28. COMPLETE UNDERSTANDING

This Agreement (together with the schedules, exhibits, and other appendices attached hereto or specifically incorporated herein by reference) constitutes the complete understanding of the Parties, and supersedes all prior or contemporaneous agreements, discussions, negotiations, promises, proposals, representations, and understandings (whether written or oral) between the Parties, with regard to the subject matter hereof. This Agreement also supersedes any pre-printed terms or conditions contained on pre-printed forms submitted with Purchase Orders or invoices or other Customer or Vendor standard forms which relate to the subject matter of this Agreement. Provided however, that any preprinted reference to an existing master agreement shall remain in effect and shall be binding upon the Parties to such Order. Vendor specifically acknowledges and agrees that it did not enter into this Agreement in reliance upon any agreement, promise, representation, or understanding made by or on behalf of Customer that is not contained herein.

IN WITNESS WHEREOF, the Parties hereto, each acting with proper authority, have executed this

Master Purchase Agreement as of the Commencement Date designated above.

VENDOR:

By: *Kenneth M. Litvin*
Name: Kenneth M. Litvin
Title: Director, Global Sales Contracts
(type or print)
Date: December 6, 2004

CUSTOMER:

By: *DR*
Name: DIANE VOLLMER, DIRECTOR
Title: Technology Financial Management
(212) 615-9858
Date: 12/2/04

EMC
CONTRACTS
APPROVED
DL



citigroup

Citicorp North America, Inc.

APPENDIX A
PURCHASE ORDER

PAGE 1 OF 1
PURCHASE ORDER 1445494
REVISION 0
PURCHASE ORDER DATE 28-OCT-2004

SUPPLIER

PHONE:
FAX: (1-818) 548-7621
CONTACT NAME: UNKNOWN,
CONTACT PHONE: (818) 548-7870
PAYMENT TERMS: NET 60 DAYS
CARRIER: UPS
FOB: FOB DESTINATION
FREIGHT: Prepaid

SHIP TO

388 GREENWICH STREET
NEW YORK NY 10013
United States
PHONE: 813/604-0127

BILL TO
ACCOUNTS PAYABLE
3800 CITIBANK CENTER G3-03
TAMPA FL 33610-9122
United States
PHONE:
REVISED DATE:

This Purchase Order is hereby governed by the terms and conditions attached hereto.

LINE	NEED BY DATE	QTY UOM	UNIT PRICE	TOTAL PRICE(\$)
1	03-NOV-2004	13.00 EACH	125	1,625.00
	SUPPLIER ITEM #:	107737934X		
	DESCRIPTION:	CP SW NODE INTF TNS73B SX		
2	18-NOV-2004			2,500.00
	SUPPLIER ITEM #:	Training Class		
	DESCRIPTION:	Training Class: Computers and the Workplace 11		
	SHIPPING DT/QTY:	18-NOV-20 2500 UNIT		

PO TOTAL(\$): 4,125.00

Buyer Signature
Buyer Name

Langley, Melissa

Date

Purchasing Contact Name: P2P Customer Service Helpdesk
Purchasing Contact Phone: 1-813-604-1234

ENTERED

THIS PRODUCT EVALUATION SCHEDULE is entered as of the Effective Date designated above, by and between Vendor and the Customer designated below. The Parties hereto acknowledge that they are entering into this Product Evaluation Schedule pursuant to the provisions of the Master Purchase Agreement and the Master Software License & Support Agreement both dated as of November 30, 2004, between Vendor and Citigroup Technology, Inc.

Products (Itemize)

Specifications: Attached as **Annex 2** to this Product Evaluation Schedule.

Date: _____

APPENDIX C

MAINTENANCE SERVICES ADDENDUM

THIS MAINTENANCE SERVICES ADDENDUM is attached to and made a part of the Master Purchase Agreement entered into as of the Commencement Date designated above, by and between the Parties designated above.

1.0 DEFINITIONS

For purposes of this Maintenance Services Addendum, each word or phrase listed below has the meaning designated. Each word or phrase defined in the Master Purchase Agreement shall (unless otherwise specified herein) have the meaning there designated. Other words or phrases used herein may be defined in the context in which they are used, and shall have the respective meanings there designated.

- 1.1 "Application Software" shall mean the programming (excluding source code), and the related standard documentation therefor, which is designed for use on the Designated Vendor System and/or Host CPU, and is identified as such by Vendor.
- 1.2 "Designated Vendor System" shall mean the Equipment that consists of a storage device, identified by serial number on its cabinetry or packing slip, on which the Supervisory Software operates.
- 1.3 "Downtime" mean the total number of hours per calendar month, measured in ½ hour segments, for which maintenance coverage is provided to Customer in accordance with the periods of coverage specified on the Product Notice when the applicable System or Equipment component fails to perform at the required Uptime level as defined in Section 2.5 of this Addendum. Downtime for any incident will commence at the time customer makes a bona fide attempt to contact Vendor by telephone or otherwise and shall end when Vendor restores such System or component to satisfactory working order in accordance with Vendor's obligations as set forth in Section 2.2 of this Addendum.
- 1.4 "Vendor Service Area" shall mean a location within a one hundred (100) mile radius of a Vendor service location.
- 1.5 "Host CPU" shall mean a central processing unit designated by Customer to operate with the Designated Vendor System.
- 1.6 "Hours of Production" shall mean the total number of hours per calendar month, measured in ½ hour segments, for which maintenance coverage is provided to Customer in accordance with the periods of coverage specified on the Product Notice, less any time actually expended by Vendor for scheduled preventive maintenance or scheduled downtime activities such as scheduled power downs, microcode upgrades or similar activities.
- 1.7 "Installation Site" shall mean the location identified as such on the applicable Purchase Order.
- 1.8 "Maintenance Aids" shall mean any hardware, software and other tools and/or utilities used by Vendor to perform diagnostic or remedial activities in connection with Products.
- 1.9 "Product Notice" shall mean the notice by which Vendor tells Customer of a Product's current warranty, warranty upgrade and maintenance terms by quotation, written notice, published specification, contract rider and/or a posting on the applicable website (currently http://www.emc.com/products/warranty_maintenance/index.jsp).
- 1.10 "Software Release(s)" shall mean any new version of a specific Software Product that is made generally available by Vendor at no separate or additional charge during the period in which the Software Product is covered by the applicable Vendor warranty or by Maintenance Services, but does not mean a new Product.
- 1.11 "Supervisory Software" shall mean the programming, microcode and/or firmware (excluding source code) and the related standard documentation therefor that Vendor generally includes with the Designated Vendor System to enable it to perform its basic functions, but does not mean Application Software and Maintenance Aids.
- 1.12 "Time and Materials Service" shall mean any maintenance or remedial service beyond the scope of or excluded from Maintenance Services.

2.0 MAINTENANCE SERVICE

- 2.1 General – Maintenance Service shall be provided by Vendor for the Products listed on a mutually agreed Purchase Order. Time and Materials Service shall be made available by Vendor in accordance with the charges applicable thereto set forth in Exhibit 1 attached hereto and shall apply to any maintenance type services provided by Vendor to Customer that are not covered by Maintenance Services.
- 2.2 Equipment, Supervisory Software And Application Software – For Equipment, Supervisory Software and Application Software, Maintenance Services consists of (i) maintaining such in good operating condition in conformance with Vendor's applicable specifications (including on-site remedial maintenance and installation of engineering changes when in accordance with sub-section 3.4 below); (ii) providing English-language help line service (via telephone or other electronic media), Software Releases and documentation updates, as they become available all in accordance with the Product Notice and options selected by Customer, if applicable; and (iii) replacing Software if the media becomes destroyed or unusable through no fault or negligence of Customer, but does not include Equipment upgrades, if any, needed to utilize features or functionality in a Software Release. Vendor reserves the right to change the scope of Maintenance Services on sixty (60) days' prior written notice to Customer of such changes; however, no such changes shall apply during the remainder of the applicable warranty period or Maintenance Service term of a Product.
- 2.3 Response Times - Vendor shall use reasonable efforts to provide a telephone response to requests for Maintenance Services within two (2) hours after receipt of such request. When Vendor determines that the request requires an on-site response, Vendor shall use reasonable efforts to arrive at the Installation Site within four (4) hours for all Customer Installation Sites specified in Exhibit 3 except for Bogota, Colombia, Buenos Aires, Argentina, Dubai, United Arab Emirates, Kowloon, Hong Kong, and Santiago, Chile ("Exception Sites"). For the Exception Sites, Vendor will arrive at the Installation Sites as soon as reasonably possible after determination that an on-site response is necessary. Installation Sites may be deleted by Customer subject to Section 6 of this Addendum. The addition of new Installation Sites shall be subject to the mutual agreement of the Parties. The response time for any additional Installation Sites shall be determined by the Parties prior to the commencement of warranty or Maintenance Services.
- 2.4 Escalation – In addition to Vendor's other obligations contained herein, Vendor will escalate resolution efforts to correct defects in accordance with the Customer Services Escalation and Notification Guidelines attached hereto as Exhibit 2.
- 2.5 Performance Levels - Unless otherwise agreed by Customer and Vendor in a Purchase Order, each System shall perform at a level of at least ninety-nine percent (99%) in any one (1) month period in accordance with the Specification and documentation and any other additional descriptions, warranties and performance criteria agreed upon between the Parties ("Uptime"). For purposes of calculating actual Uptime in order to determine its conformity to the above referenced Uptime percentage, the following formula shall be used:
- $$\text{Uptime (in \%)} = \frac{\text{Hours of Production} - \text{Downtime}}{\text{Hours of Production}} \times 100$$
- In the event any System does not perform to the requisite Uptime level in any one (1) calendar month, the total monthly maintenance charge relative to such System shall be reduced by fifty percent (50%) for the succeeding month and for each month thereafter until the System performs at the required Uptime level. Provided Customer is not delinquent in its payment obligations to Vendor, if the failure for which the credit is due is in the last month of the term specified on the applicable Purchase Order, the credit due Customer shall be settled by a cash refund to customer by Vendor within thirty (30) calendar days following the expiration of the term of the applicable Purchase Order. If, as a result of Equipment component failure (a) any Equipment component does not operate at the requisite Uptime level in any consecutive sixty (60) day period, and/or (b) and/or (ii) any Equipment component experiences three (3) significant failures within any thirty (30) consecutive calendar-day period, Vendor shall, upon written notice from Customer, promptly replace such item with a suitable and comparable replacement Equipment component at not charge to Customer. Customer's exercise of the remedies set forth in this Section 2.4 shall not otherwise affect the customer's right to recover damages as otherwise set forth in the Agreement, nor shall it preclude Customer from exercising any of its rights as set forth in this Agreement.
- 2.6 Exclusions And Limitations – Maintenance Services does not include services required or efforts to remedy, repair or replace Products as a result of (i) accident or neglect or causes not attributable to normal wear and tear; (ii) problems relating to or residing in other hardware, software or services with which the Products are used; (iii) installation of the Products not in accordance with Vendor's instructions or their specifications; (iv) use of

the Products in an environment, in a manner or for a purpose for which they were not designed; and (v) installation, modification, alteration or repair of the Equipment or the Software by anyone other than Vendor or its authorized representatives. Vendor will not be responsible for the performance of its Maintenance Service obligations with respect to Equipment that has been moved without Vendor's consent to the extent its ability to perform its Maintenance Service obligations is affected thereby, Software which is installed on hardware other than Equipment or Host CPU, or Equipment or Software on which the original identification marks have been removed or altered. Maintenance Service does not apply to any Software Release other than the current and immediately prior Software Release, but Vendor may, in its discretion, make available support therefor as a Time and Materials Service except as is provided in Section 4.3.

- 2.7 Re-Instatement Of Continuous Coverage - If Maintenance Service has lapsed or been discontinued, Customer may request re-instatement thereof by retaining Vendor under a Time and Materials Service engagement to perform an inspection and determine what steps, if any, are needed to restore the applicable Products to proper operating condition. Once so restored, such Products shall be certified by Vendor and qualify for re-instatement of Continuous Coverage upon payment to Vendor of (i) the charge for the above described Time and Materials Service and the Vendor charges, if any, for the restoration; (ii) the amount Vendor would have normally charged had Maintenance Services been in effect during the period of the lapse or discontinuation; and (iii) the charge for the next twelve (12) months of the newly commenced Maintenance Services. However, the foregoing shall not apply to lapses in Maintenance Service caused by administrative delays in the renewal or ordering of Maintenance Service.
- 2.8 Customer Responsibilities - Customer shall (i) notify Vendor when Products fail; (ii) allow Vendor access to any Product to perform Product Maintenance or implement the terms of this Agreement; (iii) furnish necessary facilities (suitable work space, computers, power, light, phone, software and equipment reasonably required by Vendor); and (iv) promptly notify Vendor of any changes to, or movement of, the configuration by anyone other than Vendor. Vendor will not be responsible for the performance of its Maintenance Service obligations with respect to Equipment that has been moved or changed by anyone other than Vendor to the extent Vendor's ability to perform Maintenance Service is affected thereby. Any inspection or evaluation of such changes in configuration or location requested by Customer shall be performed at the Time and Materials Service rates specified in Exhibit 1. Additional Maintenance Services charges, if any, related to any such changes in configuration or location, shall apply from the date the change took place. Customer shall fulfill the responsibilities described in this sub-section promptly at no charge to Vendor.
- 2.9 Support Contacts - Customer shall designate in writing a reasonable number of authorized contacts, as determined by Customer and Vendor, who shall initially report problems and receive support from Vendor. Each Customer representative shall be familiar with Customer's requirements and shall have the expertise and capabilities necessary to permit Vendor to complete its obligations. A change to the authorized Support Contacts by Customer must be submitted in writing to Vendor by a duly authorized representative of Customer.

3.0 ADDITIONAL TERMS

- 3.1 Maintenance Aids And Spare Parts - Customer hereby authorizes Vendor to store a reasonable quantity of Maintenance Aids and spare parts at the Installation Site and agrees that such are for use only by Vendor authorized personnel. Customer shall not make, and shall use reasonable care to prohibit its personnel or any third party from making, any copies, use, disclosure or transfer of Maintenance Aids and/or such spare parts. Vendor is authorized, upon the conclusion of Maintenance Services or at any other time, upon reasonable notice to Customer, to enter the Installation Site, or to use remote means, to remove and/or disable Maintenance Aids and spare parts and Customer shall reasonably cooperate in this effort. Vendor shall store critical spare parts at the locations specified below at levels determined by Vendor. Additional quantities of critical spare parts beyond the levels normally recommended by Vendor may be stored at the locations specified below subject to the mutual agreement of the Parties.
- Rutherford, NJ; 390 Greenwich, NY; Weehawken, NJ; Silver Spring, MD; Westlake, TX; The Lakes, NV; Sioux Falls, SD; Meerbusch, Germany; London, England; Mexico City, Mexico; Telepark, Singapore; and Melbourne, Australia. Customer has the option to have the spare parts complements transferred to a new location upon notice to the Vendor.
- 3.2 Alterations And Attachments - Vendor does not restrict Customer from making alterations to, or installing other products in or with, the Equipment at Customer's expense. If the alterations or attachments prevent or hinder Vendor's performance of Maintenance Services, Customer shall, upon Vendor's request, take appropriate

corrective action or, at either party's option, either party may terminate Maintenance Service for the affected Equipment.

- 3.3 Replacement Parts - All Equipment and Software (or parts thereof) replaced hereunder shall belong to Vendor and shall be returned promptly upon Vendor's request. If the replaced part is not so returned, Customer shall pay Vendor's then current spare parts price for such parts, less applicable discounts, and subject to the mutual agreement of the Parties. For unreturned disk drives the price shall be specified in the pricing agreement mutually agreed upon between Vendor and Customer, if any. If no price is specified for the part in such pricing arrangement, Vendor's current spare parts price and the applicable discount for such part shall apply. Vendor shall comply with Customer's process for the removal of Customer Confidential Information from returned Equipment. However, if Customer Confidential Information inadvertently remains on returned Equipment after Customer makes all diligent efforts to remove such Confidential Information, and upon Vendor's knowledge of the presence of such Confidential Information, Vendor shall treat such information as Customer Confidential Information in accordance with 12 of the Agreement, inform Customer of its receipt of such Confidential Information for instructions on its disposal from Customer. In the event Vendor cannot comply with Customer's data removal process, Vendor will notify Customer and give the reasons therefore and the Parties shall establish a mutually agreed upon process for compliance. It is agreed that removal of Customer Confidential Information from Equipment prior to return by Customer is Customer's responsibility, except to the extent Vendor is engaged to perform data removal services for Customer.
- 3.4 Product Changes - Subject to Customer's prior authorization, Vendor may make changes to the Products (i) when such changes do not adversely affect interchangeability or performance of the Products; (ii) when Vendor believes changes are required for purposes of safety or reliability; or, (iii) when Vendor is required by law to do so. Customer shall give Vendor reasonable access to the Products for such purpose.
- 3.5 Software Releases - All or any portion of any Software Release provided hereunder shall be treated as Software. Upon use of a Software Release on the applicable Designated Vendor System (or multiple items of Equipment, devices, network(s) and/or related central processing unit(s) ("CPU") if Customer is so licensed), Customer shall remove and make no further use of all prior versions and Software Releases of the Software, and protect such prior versions and Software Releases from disclosure or use by any third party by use of the same degree of care as used by Customer to protect its own information of a similar nature and importance. Customer is authorized to retain a copy of each prior Software Release properly obtained by Customer for Customer's archive purposes and use such as a temporary back-up if the current Software Release becomes inoperable. Provided the Software has been registered by Customer, Vendor shall provide written notice of all Software Releases (via e-mail or letter notice) to the individual or organization named on the registration. Customer may appoint replacement contacts upon notification to Vendor.
- 3.6 Transfer Of Equipment To Secondary Purchasers - In the event that Customer decides to sell, assign or otherwise transfer the use and/or ownership of Equipment to a Secondary Purchaser, to the extent Vendor resources reasonably permit, Vendor shall make available to Customer, as a Time and Materials Service, de-installation services. In addition, and to the extent Vendor resources reasonably permit, Vendor shall make available to the Secondary Purchaser, (a) Equipment installation and re-certification services as a Time and Materials Service; and (b) Maintenance Services for Equipment meeting the certification criteria.
- 3.7 Change Of Location Or System - Customer may change the location of a Designated Vendor System or Host CPU upon which Application Software is used, to a replacement location. Customer shall provide written notice to Vendor following any such relocation unless Vendor assists with the change of location. If the replacement location is in a different country, then such move is subject to Vendor's prior written approval. Customer may move the Application Software to a different Designated Vendor System or Host CPU with a different model number than the originally Designated Vendor System or Host CPU, only after written notice to Vendor, provided Customer shall pay, if applicable, an upgrade fee. Beginning with the next Maintenance Services billing cycle, Customer shall pay applicable fees based upon the replacement model number.
- 3.8 Pricing - The initial Maintenance Services fee, warranty upgrade fees, maintenance upgrade fees, and affected configuration shall be set forth on the applicable Purchase Order. Additions to such configuration may result in additional Maintenance Services fees. Vendor may implement price changes affecting the Maintenance Services fees no more than five percent (5%) once per calendar year by sending Customer notice thereof. Such price changes shall not take effect until the latter of (i) sixty (60) days after the date the notice is issued; or (ii) the expiration of the pre-payment period, if any. Customer shall also pay supplementary amounts (surcharges and/or time and materials charges) invoiced by Vendor for Vendor's performance of (a) service calls outside of an Vendor Service Area; (b) refurbishment services; (c) installation of Products designated by Vendor as customer installable; (d) installation or configuration of Application Software provided under this Agreement; and/or

(e) configuration changes. If Vendor commences work pursuant to Maintenance Services and subsequently determines that an exclusion or limitation (as set forth in sub-section 2.6 above) applies, the work shall be deemed Time and Materials Service.

- 3.9 Change In Equipment Status - With regard to Software that is used on or operated in connection with Equipment that ceases to be covered by Equipment Maintenance Services or an Vendor Equipment warranty, Vendor reserves the right to (i) discontinue Maintenance Services for such Software; or (ii) change the price for Maintenance Services for such Software, with such price change effective as of the date that the applicable Equipment ceases to be covered by Equipment Maintenance Services or an Vendor Equipment warranty. If Vendor discontinues Maintenance Services for such Software under this sub-section, Vendor shall send Customer written notice thereof, such discontinuation shall be deemed a termination for convenience, and the payment credit provisions of sub-section 5.2 shall apply. If Vendor changes the price for Maintenance Services for such Software under this sub-section, Vendor shall send Customer written notice thereof and Customer shall have thirty (30) days from receipt of the notice (the "Response Period") to send Vendor a written notice that either (a) accepts such price change; or (b) rejects such price change and terminates the Maintenance Services for such Software. Such termination by Customer shall be deemed a termination for convenience and the payment credit provisions of sub-section 5.2 shall apply.
- 3.10 Remote Support Capability - As part of Maintenance Services, Vendor makes various remote support capabilities available for certain Products in accordance with its then current policies and procedures. One aspect of this remote support capability enables certain Designated Vendor Systems to directly contact the appropriate Vendor support center if the self-monitoring programming detects an abnormality that may affect performance. Upon such contact, Vendor has the ability to call back to the Designated Vendor System to gather additional diagnostic data, conduct further tests and remotely perform certain repairs and/or adjustments (collectively called the "Call-Home Feature"). Vendor shall use stringent security measures, such as authentication and encryption, when communicating with the service module to protect against unauthorized access. Vendor's standard Maintenance Services pricing is based on the use of the Call-Home Feature for early detection and remediation.
- 3.11 Disablement Of Remote Support And Surcharge - Customer acknowledges that it has been informed by Vendor that disabling or interfering in the operation of all or any portion of the Call-Home Feature increases the cost to Vendor of providing Maintenance Services, downgrades Vendor's ability to provide early detection and prompt resolution of problems, and shall serve as the basis for Vendor to increase the charge to Customer for Maintenance Services. If Customer sends Vendor written notice requesting disablement of all or any portion of the Call-Home Feature for a specific Designated Vendor System, Vendor shall do so and notify Customer of the effect of the disablement on maintenance costs and the response times specified in Section 2.3 above and the Escalation and Notification Guidelines set forth in Exhibit 2. Upon agreement between Customer and Vendor of any revised prices and terms resulting from the disablement and receipt of Purchase Order from Customer for any additional charges, the additional charges shall commence on the date mutually agreed upon between Customer and Vendor.

4.0 MAINTENANCE AVAILABILITY; END OF LIFE

- 4.1 Vendor shall offer Maintenance Services as described in this Appendix C while a Product is actively marketed and for a specified period of time after a Product Model/Model Number is no longer offered for sale or license and removed from Vendor's pricing systems (End-of-Life").
- 4.2 Vendor shall continue to offer Maintenance Services for Equipment for a period of five (5) years and for Software for a period of eighteen (18) months following the End-of-Life announcement of the Product.
- 4.3 Vendor shall offer Maintenance Services for the current release and immediately prior release of Software eligible for Maintenance Services. For Software that has multiple releases within an eighteen (18) month period, Maintenance Services are available for at least eighteen (18) months after the date the oldest release first became available. However, in some cases, resolution of an issue may be addressed by requiring a move to a more recent release. Vendor may elect to discontinue Maintenance Services for a specific release of Software when it is used with particular Equipment or other hardware or in a certain environment, such as when Software is used on a host computer that is no longer supported by its vendor. Discontinuance of Maintenance Services in accordance with this sub-section is not the End-of-Life of a Product within the meaning of sub-section 5.1 and the time periods specified in sub-section 5.2 shall not apply.

5.0 TERM AND TERMINATION

- 5.1 Term - Maintenance Services for a Product(s) shall commence when mutually agreed between the parties and shall continue until terminated in accordance with this Agreement.
- 5.2 Termination For Convenience - Customer may terminate Maintenance Services for a Product(s) for its convenience upon (i) thirty (30) days' prior written notice for an individual Product and (ii) sixty (60) days' prior written notice if the entire schedule specified on the Purchase Order will be terminated. After termination for convenience, Vendor shall grant Customer a pro-rated credit, reflecting the unused portion of any pre-paid Maintenance Services amounts, as described in sub-section 5.4 below. Vendor may terminate Maintenance Services for convenience in accordance with Sections 3.9 or 5.0 by giving written notice to Customer. In no event may Vendor terminate Maintenance Services for particular Product(s) during the warranty period of that Product(s). E-mail notifications by an authorized individual shall satisfy the written notice requirements of this sub-section 5.2.
- 5.3 Termination For Breach - Either party may terminate Maintenance Services for a Product(s) due to a failure of the other party to comply with the terms of this Agreement, provided that the terminating party has given thirty (30) days' written notice specifying the failure and the other party has not remedied such failure within such time. In the event Customer terminates Maintenance Services for any Product(s) affected by such a failure by Vendor, Vendor shall grant Customer a pro-rated credit for any pre-paid amounts, as described in sub-section 5.4 below. If Vendor terminates Maintenance Services for any Product(s) affected by such a failure by Customer, such termination shall be without further liability for Vendor and without any obligation to refund any fees already paid therefor.
- 5.4 Credit - The pro-rated credit described in sub-sections 5.2 and 5.3 above can be made available as a credit against purchases of Products, Maintenance Services or Time and Materials Service upon mutual agreement of the parties. Customer has the option to request payment for reimbursement of any pro-rated credit. The amount of such credit shall be reduced to account for the recapture of unearned discounts (discounts previously granted, if any, which are based on a Customer obligation that will no longer be fulfilled due to termination).

EXHIBIT 1 to APPENDIX C

Customer Service Billing Guidelines

The purpose of this document is to provide Customer personnel and Vendor Customer Service billing guidelines for the type of services that are outside of normal Equipment or Software maintenance. Vendor recognizes that the dynamics of Customer requires a service organization that can quickly react to their clients needs and we will continue to do our best to meet them. The expense incurred in meeting these needs has become a concern and Vendor is asking Customer to help contain them with some cost control guidelines. Vendor would like to institute the following guidelines that we feel would cut costs for both companies while maintaining the same level of service.

BIN Files

- At least two (2) days prior notice is required for Vendor to perform a Bin File change unless Vendor agrees otherwise.
- ECC Configuration Manager - Vendor's Configuration Manager allows customers to allocate volumes from a free pool of storage and specify the size, mirror protection level and type of volume. Configuration Manager lets administrators manually allocate storage or balance workloads by distributing volumes across multiple ports. Previously, when this type of change was required a Vendor representative had to make a change to the BIN File and schedule the activity with the customer. As Customer transitions their storage administrators into using Configuration Manager, Vendor will provide assistance to Customer and work together to perform any necessary BIN File changes until the Customer employees are adequately trained. Charges for Bin File changes shall not apply to Bin File changes in the course of a new installation, upgrades furnished by Vendor and changes performed for POCs or LAB testing. If a BIN file change is mutually agreed to as being outside the scope of non-billable BIN file changes either before or after the services are provided then Vendor is entitled to fees at the then current pricing.

Time & Material – To allow for easier administration of billable service all other actions performed by on-site Vendor personnel outside of normal maintenance activities will carry an hourly rate of \$240/hr. per person. Vendor shall provide Customer with prior written notification when T&M charges will apply and the performance of such services shall be subject to Customer's prior written approval. This will be more representative of the cost incurred by Vendor and prevent excessive charges to Customer. The following are some of the activities that are covered by T&M.

- Relocations – Only the hours incurred by a Vendor CE de-installing and installing a machine will be billable. BIN File changes will be free as long as the five-day requirement is met.
- Power downs – On-site support for Customer power downs are billable activities
- On-site Support – On-site support requirements outside of normal business hours that are not Vendor product related will be T&M.
- Equipment Certification – Vendor Equipment that has been under an Vendor maintenance contract and then de-installed will be considered Vendor Certified as long as it remains within Customer's control, has not been tampered with and is stored within a Customer facility. Re-certification charges will be waived when installed within a Customer affiliated site within a 60 day window.
- Audits – Requests for audits requiring Vendor to review and design system templates detailing cable layouts, host connection, port assignments and storage allocations will be considered T&M.
- Training – Vendor provides its customers comprehensive courses on all Equipment and Software products at their corporate facilities. It is recommended that Customer personnel attend these classes if they are to adequately maintain and use Vendor products and avoid client impact. T&M charges will be billed if there is a requirement for a Vendor Regional Software Specialist (RSSS) to provide on-site training. Although the RSSS is highly trained and knowledgeable on Vendor products, they are not educators and the training provided will not be as comprehensive as corporate training.
- Non-Vendor Issues – Vendor realizes that all vendors must work together to isolate problems especially in today's complex environments. Vendor will continue this practice but when a determination is made that the problem is not related to a Vendor product any additional on-site support will be considered T&M.
- Disk Scrubbing – Vendor shall comply with Customer's process for the removal of Customer Confidential Information from equipment to be returned. However, if Customer Confidential Information remains on the

Equipment to be returned after Customer makes all diligent efforts to remove such Confidential Information, the customer will render the Disk unusable and the Vendor shall bill the Customer the price specified in the pricing agreement mutually agreed upon between Vendor and Customer, if any. If no price is specified for the part in such pricing arrangement, Vendor's current spare parts price less applicable discount for such part shall apply. In the event Vendor cannot comply with Customer's data removal process, Vendor will notify Customer and give the reasons therefore and the Parties shall establish a mutually agreed upon process for compliance.

Unless otherwise specified for certain Products, remote Equipment and Software support is available 24x7 and is the first point of contact for any issue or questions that arise on a Vendor product. Interfacing and using Vendor remote services is more cost effective and better utilizes our support structure. All interaction with our remote support facility is free of charge provided the problem is related to a problem with a Vendor Product only.

EXHIBIT 2 to APPENDIX C

CUSTOMER SERVICES ESCALATION AND NOTIFICATION GUIDELINES

Escalation starts with the opening of a Clarify Case (see Matrix)

SEVERITY	DEFINITION	EXAMPLES	TECHNICAL ESCALATION TIMELINE	MANAGEMENT NOTIFICATION TIMELINE
ONE	Severe problem. Customer or workgroup cannot perform normal job functions. Customer "Go Live" will be missed if not resolved, sale at severe risk, with no contingency plan.	- System down - Data loss - Data unavailable - Workaround unavailable - System or S/W will not install - Critical resource unavailable needing immediate assistance "Hot Account" very sensitive customer needing special attention	(15Min) Field Resource opens case with support center. Support Center and Field Technical Owner identified Support Center Escalation Manager notified	(15Min) CST notifies District Service Manager or Strategic Account Manager. Customer Relationship Manager (CRM) role assigned
			(1 Hour) SCTO engages Technical Support. RXS engaged by RTM (2 Hours) SCTO notifies Engineering (3 Hours) SCTO engages engineering	(30 Min) CRM Notifies customer and local Sales (2 Hours) CRM notifies Regional Technical Manager, Regional Service Director/Area Service Manager(EMEA/API) Escalation Manager engages Customer Support Manager (4Hours) Regional Director notifies CS Area VP and VP Global Technical Support (6Hours) Area VP notifies VP Global Field Ops (8 Hours) VP Global Field Ops notifies Sr. VP Global Services . (10 Hours) Executive VP Sales and Service notified (12 Hours) <i>President/CEO Notified</i>
TWO	Major functionality impact. Degraded level of service. Workaround solution required. System cannot go live, but customer deadline not yet at risk.	- Major system function is unavailable or degraded - Repeated failures - Problem will create intolerable delays if not addressed. - New install with major problems, not yet impacting go live date. - Resource scheduling conflicts	(15 Min) Field Resource opens case with support center (2 Hr) Field Technical Owner engages Support Center or Support Center engages local CE. SCTO role assigned (4 Hr) SCTO engages Technical Support RXS Assigned (24 Hours) SCTO engages engineering	(15 Min) Customer Relationship Manager role assigned (2 Hr) CRM notifies District Service Manager or Strategic Account Manager (4 Hr) District Service Manager notifies Regional Technical Manager (24 Hours) District Service Manager notifies Area Service Manager (48 Hours) Regional Service Director Notified
			(15 Min) Field Resource opens case with support center (24 Hours)	(48 Hours) CRM notifies District Service Manager or Strategic Account Manager (3 Business Days)
	Issue has or will affect customer productivity. Workaround exists but problem must be fixed	- Failure in software component that is non critical. - Failure of redundant	(15 Min) Field Resource opens case with support center (24 Hours)	(48 Hours) CRM notifies District Service Manager or Strategic Account Manager (3 Business Days)

THREE	System can go live but with some level of degradation that is acceptable to customer in short term Customer Question or other non-problem related issue	component Implementation phone support required in area of unfamiliarity	SCTO notifies account CE (Next Day) SCTO engages Technical Support <i>RXS assigned</i>	DSM/SAM Notifies Regional Technical Manager
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STATUS UPDATE INTERVALS

The following update interval guidelines exist for all cases. Customer requirements may alter these guidelines.

Severity 1	Hourly
Severity 2	Each Business Day
Severity 3	Every 3 Business Days

LEGEND

Call Handling Roles

SCTO - Support Center Technical Owner
FRM - Field Relationship Manager
FTO - Field Technical Owner
CRM - Customer Relationship Manager

Support Center abbreviations

CST - Customer Support Technician
SAC - Software Assistance Center
PSE - Product Support Engineering
CSM - Customer Support Manager
CAC - Customer Action Committee

Field abbreviations

CE - Customer Engineer
DSM - CS District Service Manager
RTS - Regional Technical Specialist
RSS - Regional Software Specialist
RNS - Regional Network Specialist
RxS - RTS, RNS, RSS, RIS
RTM - Regional Technical Manager
RSM - Regional Software Manager
RxM - RTM, RSM
SAM - Strategic Account Manager
ASM - Area Service Manager (EMEA, APJ)
RSD - Regional Service Director
AVP - Area Vice President

Professional Services abbreviations

PSIS - PS Implementation Specialist (Consultant)
PSPM - Project Manager (Contractor)
PSSIM - Solutions Integration Manager (IM)
RPSD - Regional PS Director
DPSD - Divisional PS Director
QPR - Qualified PS Partner Resource

EMEA - Europe, Middle East, Africa
US - United States
CANADA - Canada
LA - Latin America
APJ - Asia Pacific / Japan

EXHIBIT 3 to APPENDIX C

INSTALLATION SITES

Sydney, Australia
Melbourne, Australia
Buenos Aires, Argentina
Rio De Janeiro, Brazil
Sao Paolo, Brazil
Darden Prairie, California
Los Angeles, California
Santiago, Chile
Stamford, Connecticut
New Castle, Delaware
Jacksonville, Florida
Tampa Florida
Dusseldorf, Germany
Meerbusch, Germany
Kowloon, Hong Kong
Chennai, India
East Mumbai, India
Mumbai, India
Milano, Italy
Kanagawa, Japan
Tokyo, Japan
Gaithersburg, Maryland
Silver Spring, Maryland
Mexico City, Mexico
Monterrey, Mexico
The Lakes, Nevada
Englewood Cliffs, New Jersey
Rutherford, New Jersey
Weehawken, New Jersey
Amherst, New York
Harrison, New York
Long Island City, New York
New York, New York
Pittsford, New York
San Juan, Puerto Rico
Singapore, Singapore
Zurich, Switzerland
Taipei, Taiwan
San Antonio, Texas
Westlake, Texas
Dubai, United Arab Emirates
Lewisham London, United Kingdom
London, United Kingdom
Layton, Utah

APPENDIX D
ADDENDUM FOR
PROFESSIONAL SERVICES

This Addendum, between Vendor and the Customer identified below hereby amends and supplements the Master Purchase and Maintenance Agreement between Vendor and Citigroup Technology, Inc. dated November 30, 2004 (the "Agreement") for purposes of engaging Vendor for professional services. All capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement. If there are any conflicts between the terms of this Addendum and the Agreement, the terms of this Addendum shall control.

IN CONSIDERATION of the mutual covenants and undertakings contained herein, and intending to be legally bound, Vendor and Customer agree as follows.

1. DEFINITIONS

1.1 Specific Words or Phrases. For purposes of this Addendum, each word or phrase listed below shall have the meaning designated. Other words or phrases used in this Addendum may be defined in the context in which they are used, and shall have the respective meaning there designated.

"Acceptance Criteria" means the criteria (the Specifications and other requirements) specifically set forth or incorporated by reference in a Work Order. In the event the Parties fail to specify an Acceptance Criteria, the Acceptance Criteria shall be based upon Customer's reasonable determination that the Services or Deliverables are satisfactory to Customer in all material respects.

"Customer" means, for the general purposes of the Addendum, the entity designated above as "Customer". However, for the particular purposes of any agreement that arises as a result of a Work Order, reference to "Customer" shall be construed solely as a reference to the specific entity (either the entity designated above as "Customer" or an Affiliate) that executes the Work Order.

"Defect" means a defect, failure, malfunction, or nonconformity in a Deliverable that prevents the Deliverable from operating in accordance with the applicable Acceptance Criteria.

"Deliverable(s)" means and includes the item(s) described on the applicable Work Order that is to be prepared by Vendor and furnished to Customer as further defined in Exhibit 3.

"Party" means either Vendor or Customer, individually as the context so requires; and **"Parties"** means Vendor and Customer, collectively.

"Personnel" means and includes a Party's or an Affiliate's directors, officers, employees, agents, auditors, consultants, and subcontractors.

"Project" means the particular project described on a Work Order.

"Services" means the services described on a Work Order that are to be furnished by Vendor to Customer.

"Specifications" means and includes the description of functional, technical, design and performance characteristics of the Deliverables agreed to by the Parties (including any requirements or characteristics specified in, or incorporated by reference into the applicable Work Order), and all modifications to the foregoing that are

made from time to time by written agreement of the Parties.

"Work Order" means a transactional document (which may be entitled "Work Order", "Statement of Work", or "Project Schedule" and in all such cases is intended to be considered a "Work Order" for all purposes under this Addendum) that is entered into pursuant to this Addendum by and between Vendor and either the entity designated above as "Customer" or an Affiliate and describes the Services or Deliverables to be provided by Vendor to such Customer / Affiliate. Each Work Order shall be subject to review and approval by each Party's Office of General Counsel, such approval to be indicated in writing on each Work Order.

"Work Product" means all written reports, analyses, other working papers delivered by Vendor to Customer in the performance of Vendor's obligations under any Work Order and as further defined in Section 7.1 below. Work Product shall not include Vendor Materials except as provided in Section 7.4 of this Addendum.

2. TERMINATION

2.1 Work Orders. A Work Order shall become effective only when duly signed on behalf of the Parties to be bound thereby, and shall continue in effect through the earlier of: (i) the date the Services have been satisfactorily completed or the Deliverables have been accepted and all applicable warranty and license periods have expired or otherwise terminated, or (ii) the date of termination specified by either Party in accordance with the following conditions.

2.1.1 Customer may terminate any Work Order with or without cause, at any time in its sole discretion, upon notice to Vendor. In the event Customer terminates a Work Order without cause, Customer will pay Vendor the value for: (i) Services properly performed by Vendor prior to the effective date of termination based on the fees and charges for milestones executed and for demonstrated work effort up to the effective date of termination, (ii) services performed by Vendor pursuant to **Section 2.2** of this Addendum, and, (iii) reimbursable expenses incurred by Vendor pursuant to **Section 9.4** of this Addendum.

2.1.2 Vendor may only terminate a Work Order if Customer defaults in any material obligation and fails to cure the default within thirty (30) days after Customer has received Vendor's notice of the default.

For the avoidance of doubt, notice of termination of any Work Order shall not be construed to be notice of termination of any other Work Order.

2.2 Orderly Transfer. Upon the termination of a Work Order for any reason whatsoever (including a default by either Party), Vendor will provide such information, cooperation and assistance to Customer, as Customer may reasonably request, to assure an orderly return or transfer to Customer or Customer's designee of all proprietary data (and related records and files) and materials of Customer, and all Work Product for which payment has been or is made, in their then current condition.

2.3 Retention of Archival Copy. If Customer's right to use any software provided by Vendor or any other Vendor Materials is terminated for any reason whatsoever, then Customer shall nevertheless be entitled to retain copies of such software, Vendor Materials, and related documentation for archival purposes and to satisfy Customer's obligations under all applicable laws.

3. PROJECT IMPLEMENTATION

3.1 Provision of Services and Deliverables. This Addendum does not by itself commit Customer or any Affiliates to purchase any Services. Rather, this Addendum merely sets forth the terms and conditions that will govern the provision of Services or Deliverables to Customer or an Affiliate as a result of the execution of a Work Order by Vendor and Customer or the Affiliate.

3.2 **Work Orders.** Work Orders may be entered into with Vendor under this Addendum by either the entity designated above as "Customer" or any Affiliate. The entity that executes a Work Order with Vendor shall be considered the "Customer" for all purposes of the Work Order; and the Work Order shall be considered a two party agreement between Vendor and such entity. Each Work Order shall incorporate by reference the provisions of the Agreement as though such provisions were set forth therein in their entirety, and shall set forth: (i) a description of the Services to be furnished by Vendor, (ii) the fees to be paid by Customer for the Services, (iii) the applicable Acceptance Criteria, (iv) the name of the Customer and Vendor primary contacts for Customer and the name of the Vendor and Customer primary contacts, and, (v) such additional terms and conditions as may be mutually agreed upon by Vendor and the respective Customer.

4. **RELATION OF PARTIES**

4.1 **Customer and Affiliates.** Vendor acknowledges that Customer and each of the Affiliates may use or benefit from the use of any Services performed, or Deliverables prepared and furnished, by Vendor as part of a Project.

4.2 **Project Managers and Status Reports.** For each Project, each Party will designate a suitably qualified project manager who will represent such Party and be responsible for assigning, scheduling and supervising such Party's Personnel. During a Project, Vendor's project manager will provide Customer's project manager with status reports (at intervals reasonably determined by Customer). Status reports may contain the following: (i) a summary of the current status of the Project (including specific progress made since the immediately preceding status report); (ii) a summary of the status of, or progress made on, all problems identified in previous status reports (and not previously reported as corrected); (iii) a summary of any problems identified since the preceding status report and any recommended remedial action; and, (iv) the amount of any anticipated delay in the completion of any milestone beyond the applicable date specified in the project schedule, the cause of such delay and any recommended remedial action.

4.3 **Independent Vendor.** Vendor will perform all Services as an independent Vendor. Neither this Agreement nor Vendor's performance of Services shall create an association, partnership, joint venture, or relationship of principal and agent, master and servant, or employer and employee, between Customer and Vendor; and neither Party will have the right, power or authority (whether expressed or implied) to enter into or assume any duty or obligation on behalf of the other Party.

4.4 **Vendor's Personnel.** Vendor will (if requested by Customer at any time before or during any Project) furnish information substantiating the qualifications of any key employee who Vendor intends to assign, or has assigned, to a Project. Customer will be entitled to review such information in order to confirm the qualifications. After a key employee has been assigned to a Project (and identified in the applicable Work Order), Vendor will not reassign such individual from the Project without the prior written consent of Customer, which consent shall not be unreasonably withheld or delayed. In addition, Vendor will assign its Personnel to Projects in a manner that minimizes disruptions caused by the need for reorientation. Vendor further warrants that Vendor's Personnel will not hold themselves out as employees or agents of Customer, nor seek to be treated as employees of Customer for any purpose, including claims of entitlement to fringe benefits provided by Customer, or for disability income, social security taxes or benefits, Federal unemployment compensation taxes, State unemployment insurance benefits or Federal income tax withholding at source. Vendor will file all applicable tax returns for all of its Personnel assigned hereunder in a manner consistent with its status as an independent Vendor of services; and Vendor will make all required payments and deposits of taxes in a timely manner.

4.5 **Replacement of Vendor Personnel.** Any individual who is assigned by Vendor to a Project may be temporarily replaced by Vendor if such individual does not report to work due to illness, accident or other events outside of Vendor's control. Any individual assigned by Vendor to a project on a part-time basis may be

reassigned or replaced at the Vendor's discretion. Upon written notice to Vendor, Customer shall be entitled to require Vendor to replace any individual who is assigned by Vendor to a Project and bar such individual from performing any Services for Customer if Customer determines in its reasonable discretion that the individual is unacceptable for any reason, including if the individual (i) is not compatible with Customer employees connected with the Project, (ii) fails to comply with any applicable laws, ordinances, regulations, codes, or with Customer's security or work place policies or procedures (whether or not specified herein), or (iii) fails (in Customer's sole determination) to perform assignments in a professional and competent manner. Vendor further agrees to bar any such individual from performing any Services for Customer immediately upon it becoming aware of such noncompliance. If one of Vendor's Personnel is removed from a Project either by Vendor or for cause at the request of Customer, then Vendor will (at its expense) provide the training and orientation required to enable the replacement Personnel to perform as required. All replacement Personnel must be acceptable to Customer in the sole exercise of Customer's reasonable discretion. If Customer requests in writing the replacement of Vendor personnel without cause, then completion date(s) for milestones, if any, in the relevant Work Order, shall be extended by the amount of time determined by the mutual agreement of the Parties.

4.6 Delays. Once a fixed price Project schedule has been mutually agreed upon, Vendor shall make reasonable efforts to accommodate changes to the schedule requested by Customer. Customer shall send the Vendor Project Manager notice of postponements or delays as soon as reasonably possible in advance of the scheduled event. If Vendor is not reasonably able to "work-around" the postponement or delay, especially in instances where the consulting and implementation services require participation by Customer personnel that become unavailable, Vendor may charge Customer for time lost and additional expenses incurred due to such delays or postponements at based on the rates set forth in the Schedule of Rates attached hereto as **Exhibit 1** or the rates specified in the affected Work Order. Any such additional expenses due Vendor must be mutually agreed to and may be invoiced by Vendor upon Vendor's receipt of a Work Order specifying the additional expenses.

5. CUSTOMER'S POLICIES AND PROCEDURES

5.1 Drug Abuse Policy. It is Customer's Drug Abuse Policy that its employees and contractor's working on-site at Customer's facilities do not sell, distribute, manufacture, process, possess, use or become under the influence of illegal drugs or illicit narcotics (non-prescriptive medication). The phrases "illegal drugs" and "illegal narcotics" shall have the meaning applied by the state or country in which the business is conducted. Based on the nature or scope of the assignment, Customer may require Vendor's on-site Personnel to be tested (at Customer's expense) for illegal drugs or illegal narcotics as a condition to performing Services for Customer. If an individual refuses to submit to the test or the individual's test results are positive, such individual will not be permitted to perform any Services for Customer.

5.2 Fingerprinting. Vendor will not assign, or retain on assignment, any person to provide Services for Customer that Vendor knows or has reason to believe has a criminal background. Based on the nature or scope of the assignment, and to the extent permitted by applicable law, Customer may require Vendor's Personnel to be fingerprinted and to pass successfully a criminal background check (at Customer's expense) as a condition for performing Services for Customer. Customer shall use the information contained in its criminal background check solely to evaluate the suitability of the person to perform the anticipated services and the evaluation process itself shall be substantially similar to that used by Customer to evaluate an existing or prospective employee for a position of similar nature and importance. Except where required or permitted by applicable law, no other use whatsoever will be made of such information. Customer shall store and protect such information from disclosure to any third party in the same manner Customer protects the corresponding information of its own employees. If Customer conducts a subsequent background check, the foregoing requirements shall continue to apply. Customer shall provide a copy of all information to the individual upon request of such individual.

5.3 Working Hours. Vendor's Personnel will observe the working hours, work rules and holiday schedule

of Customer when working on Customer's facilities, unless otherwise directed or agreed by Customer. The adherence by Vendor's Personnel to such working hours, work rules and holiday schedules shall not justify any failure by Vendor to comply with agreed upon schedules and deadlines. Vendor acknowledges that Customer's normal, professional workday consists of eight (8) working hours, Monday through Friday, between the hours of 8am and 6pm, exclusive of time required for personal breaks and meals.

6. ACCEPTANCE

6.1 Acceptance or Rejection. If Customer determines that the Services or a Deliverable have been successfully completed, and otherwise conforms to the Acceptance Criteria specified in a Work order, if any, Customer will confirm to Vendor the Services or the Deliverable have been completed by executing Vendor's Project Completion Form ("PCF"), a sample of which is attached hereto as **Exhibit 2**. If Customer determines that the Services have not been performed or the Deliverable has not been furnished in conformance with the Work Order, or otherwise does not conform to, the applicable Acceptance Criteria, then Customer will provide Vendor with a notice describing the Defect within ten (10) days of Customer's written confirmation of completion of the Services or the Deliverable. If no such notice is furnished by Customer within ten (10) days of Customer's execution of the PCF, such execution shall be considered Customer's notification of acceptance. Vendor will have twenty (20) days or such other time period agreed upon between Customer and Vendor from the date it receives Customer's notice of Defect to correct or re-perform (at no additional cost to Customer) the Services or the Deliverable. If Vendor re-performs the Services or redelivers a Deliverable, then Customer will be entitled to repeat the testing process. If (through no fault of Customer) Vendor fails to deliver, within the ten (10) day period, Services or a Deliverable that conform to the Acceptance Criteria, then Customer may reject the Services or Deliverable and terminate the applicable Work Order (in whole or in part) upon notice to Vendor, without financial liability or obligation (for the portion terminated).

6.2 Project Completion. A Project shall be deemed to have been successfully completed only upon Customer's acceptance of all Services or Deliverables. If (through no fault of Customer) all of the Services and Deliverables have not been furnished in an acceptable manner by the date set forth as the "Completion Date" on the project schedule (subject to re-performance permitted under **Section 6.1**), Customer may terminate the Work Order (in whole or in part) upon notice to Vendor, without financial liability or obligation (for the portion terminated).

7. PROPRIETARY RIGHTS

7.1 Work Product. The phrase "Work Product" shall mean and include the Deliverables, specifications, designs, methods, devices, systems, reports, studies, computer software (in object or source code), programming and other documentation, flow charts, diagrams and all other information or tangible material of any nature whatsoever (in any medium and in any stage of development or completion), including without limitation all Intellectual Property Rights included in the foregoing and furnished to Customer pursuant to the applicable Work Order, that are conceived, designed, practiced, prepared, produced or developed by Vendor or any of its Personnel and included in the Work Product. To the fullest extent permitted under law, and except for materials described in **Sections 7.4, 7.5 and 7.6** below and unless stated expressly to the contrary in any particular Work Order, all Work Product shall be the property of Customer and shall be deemed to be a "work made for hire" (as defined in Section 101 of Title 17 of the United States Code). Vendor shall keep and maintain adequate and current written records of all Work Products made by Vendor or its Personnel. The records will be in the form of notes, sketches, drawings, or any other format that may be specified by Customer, and will be available to Customer at all times. The categories of Deliverables and the associated ownership rights for the Work Product furnished for each category are specified on **Exhibit 3**. The category of Deliverable shall be specified on each Work Order, and if no category is specified, ownership rights shall be governed by the terms of this Section 7.

7.2 **Assignment of Rights to Work Product.** To the extent any Work Product is (for any reason whatsoever) determined not to be "work made for hire", Vendor hereby irrevocably and exclusively assigns, transfers and conveys to Customer all Intellectual Property Rights, in and to any and all Work Product. Vendor acknowledges that neither it nor its Personnel will retain any Intellectual Property Rights in the Work Product.

7.3 **Legend.** Vendor acknowledges that all or part of the Work Product owned by Customer may be copyrighted, trademarked, or patented solely by Customer or its designee. Vendor will assist Customer, or its designee, in every proper way to secure the Intellectual Property Rights in the portion of the Work Product owned by Customer. and will disclose to Customer all pertinent information and data, and execute all applications, specifications, oaths, assignments and all other instruments which Customer shall deem necessary in order to obtain and secure the Intellectual Property Rights in and to the Work Product.

7.4 **Vendor Materials/Vendor Proprietary Deliverables.** Customer acknowledges that in developing or furnishing a Deliverable (or any other Work Product), Vendor may utilize pre-existing proprietary materials, methodologies, tools, models, software, procedures, documentation, know-how and processes owned by Vendor and any idea, concept, know-how or technique Vendor conceives or first reduces to practice in furnishing a Deliverable (or any other Work Product) ("Vendor Materials"). Customer further acknowledges that Vendor may modify or improve the Vendor Materials during the course of a Project. Customer agrees that all such modifications or improvements shall be included within the meaning of "Vendor Materials", unless otherwise specifically agreed by the Parties. If any Vendor Materials are incorporated into a Deliverable or furnished in conjunction with a Deliverable, Vendor will so notify Customer to the extent reasonably practical, and Vendor will be conclusively deemed to have (at no additional cost) granted to Customer and its Affiliates a perpetual, worldwide, irrevocable, royalty-free, non-exclusive license to (i) use, execute, reproduce, display, perform, distribute, and prepare derivative works of the Vendor Materials in conjunction with the use of the Work Product or other Deliverable, and (ii) authorize or sublicense Authorized Users from time to time to do any or all of the foregoing internally for the purpose the Deliverable was provided. If the performance of such a Deliverable can be impaired as a result of a defect or malfunction in Vendor Materials, then Vendor will provide reasonable assistance to Customer to correct the defect or malfunction. Furthermore, it is hereby acknowledged that unless stated expressly to the contrary in any particular Work Order, where Customer has engaged Vendor to supplement, modify or enhance a base proprietary software tool or application owned or licensed by Vendor (any such deliverable which is based upon Vendor's pre-existing proprietary tools or applications to be hereinafter called "Vendor Proprietary Deliverable(s)") Vendor shall retain all ownership rights in all such Vendor Proprietary Deliverables. Vendor hereby grants to Customer a perpetual, worldwide, irrevocable, royalty-free, non-exclusive license to (i) use, execute, reproduce, display, perform, distribute, and prepare derivative works of the Vendor Proprietary Deliverable, and (ii) authorize or sublicense Authorized Users from time to time to do any or all of the foregoing internally for the purpose such Deliverable was provided. Customer shall be fully responsible to Vendor for the compliance of Authorized Users with the license terms of this Section 7.4.

7.5 **Third Party Intellectual Property.** If Vendor intends to develop a Deliverable in a manner that requires Customer to use any software or other intellectual property of a third party ("Third Party Materials") in order to use such Deliverable, then Vendor will (i) provide Customer with prior notice, specifying in reasonable detail the nature of the Deliverable's dependency on the Third Party Materials, and arrange for Customer to obtain the Third Party Materials in connection with Client's or an Affiliates' use of the Deliverable.

7.6 **License Rights Under Separate Agreement.** The Parties specifically acknowledge and agree that the respective rights of the Parties hereto in any of Vendor's proprietary software, any third party software, and any other intellectual property that Customer has licensed (or agrees to license) under a separate license agreement shall be determined in accordance with the provisions of the applicable license agreement and shall not be included within the meaning of the phrase "Vendor Materials", as defined in Section 7.4 for the purpose of governing the use of such software.

7.7 Residuals. Either party may use Residuals for any purpose. The term "Residuals" means any general technological ideas, concepts, know-how and techniques belonging to a Party and contained in the Deliverable or Work Product retained in the unaided memories of any of either party's Personnel who have had access to such information relating to this Agreement or a Work Order. A person's memory is unaided if the person has not intentionally memorized the relevant information for the purpose of retaining and subsequently using or disclosing it for purposes unrelated to the purposes of this Agreement or a Work Order. Notwithstanding anything to the contrary contained herein, this sub-paragraph shall not be deemed to grant to the other Party a license under such Party's copyrights or patents nor shall this sub-paragraph relieve such other Party from keeping such Residuals confidential pursuant to the terms of this Agreement.

8. TRAINING

For any Vendor software or software add-on installed by Vendor as part of the Services described in the Work Order, Vendor will provide a functional overview of such software to Customer's personnel. The purpose of the functional overview is to (i) demonstrate that the software was installed correctly and functioning within Customer's environment, and, (ii) provide an orientation of the software and review with Customer its major functions. The functional overview is not intended to be a substitute for formal Vendor education on the usage of the software or a demonstration of its full functionality. When a Work Order includes the custom creation of a Deliverable, if any, Vendor will provide a knowledge transfer to Customer's personnel in order to properly use the Deliverable at a time or times reasonably agreeable to both Parties. All such training by Vendor in the proper use of a Deliverable shall be at no additional charge, unless a fee for such training is specified in the Work Order.

9. FEES AND PAYMENT TERMS

9.1 Project Fees. The Project fees payable by Customer for the Services properly furnished by Vendor pursuant to this Addendum shall be designated (or determined based on the rates designated) on the applicable Work Order. The maximum time and material rates that may be charged by Vendor for Services or Deliverables furnished pursuant to this Agreement shall be the rates set forth the Schedule of Rates attached hereto as **Exhibit 1**.

9.3 Taxes. Vendor may invoice Customer for sales and use taxes properly levied against or upon (i) the furnishing of the Services or Deliverables to Customer by Vendor pursuant to this Addendum, or (ii) Customer's use thereof. However, Customer shall not be obligated to pay any penalties, interest, or late charges imposed as a result of Vendor's failure to remit such taxes to the taxing authority on a timely basis. In addition, if Vendor fails to provide Customer with timely notice of any tax audit that could result in an increase in the amount of sales or use taxes assessed hereunder, then Customer shall not be required to pay any additional taxes assessed as a result of such audit. Vendor shall be solely responsible for the payment of all other taxes, including personal property taxes, franchise taxes, corporate excise or corporate privilege, property or license taxes, all taxes relating to Vendor's Personnel, and all taxes based on the net income or gross revenues of Vendor. If required by the law, Customer may withhold or deduct taxes from any payment to be made by Customer to Vendor; and Customer's payment of the balance, after deducting any such withholding or deduction, will constitute payment in full of the amount owed by Customer to Vendor.

9.4 Reimbursable Expenses. To the extent applicable, Vendor will only be reimbursed for expenses that are reasonable, warranted and cost effective, and have been approved in advance by Customer's Project Manager. For each item of expense for which reimbursement is requested, Vendor will submit substantiating documentation in accordance with Customer's policies. All approved business expenses and pass-through charges will be reimbursed at cost (as actually incurred), without mark-up.

9.5 Non-Reimbursable Fees and Expenses. Vendor acknowledges it is being retained because of its

expertise. Accordingly, Vendor will not request payment or reimbursement for time spent educating Vendor's Personnel, or for any costs or fees associated with training Vendor's Personnel (including time required for orientation of replacement Personnel). Vendor will not request payment for any charges reflecting duplication of services or costs (including more than one of Vendor's Personnel attending the same meeting, or conversations among Vendor's Personnel), unless such duplication is essential for Vendor's proper performance of its obligations. Further, Vendor will not be reimbursed for charges incurred for or by its support staff, for any overhead items, or for the time spent preparing invoices.

9.6 Terms of Payment. Unless otherwise specified on a Work Order, Vendor will invoice Customer for charges payable under this Addendum after the execution of the Project Completion or Acknowledgement of Project Completion Form. All such invoices shall be payable in accordance with the terms of Section 9 of the Agreement.

10. WARRANTY

10.1 Conformity to Specifications. Vendor warrants that at the time of delivery and thereafter throughout the applicable warranty period, each Deliverable will conform to the applicable Acceptance Criteria. If not specified by the Parties on the Work Order, the warranty period for a Deliverable performance shall be the ninety (90) day period commencing from the date Customer accepts the Deliverable. In addition, the warranty period for a Deliverable will be extended by the aggregate time Customer is unable to effectively use the Deliverable during the specified warranty period as a result of a Defect. If Vendor receives notice of a Deliverable Defect during the warranty period, then Vendor will (at no additional charge) correct the Defect. If Vendor is unable or unwilling to correct a Defect that has been identified by Customer during the warranty period, then Customer may terminate the applicable Work Order (in whole or in part) upon notice to Vendor, without financial liability or obligation (for the portion terminated).

10.2 Standard of Service. Vendor warrants that the Services will be performed in a timely and professional manner, in conformity with standards generally accepted in the Software industry, by qualified and skilled individuals. If Vendor fails to provide the Services as warranted and Customer so notifies Vendor within ten (10) days after the date Vendor declares the Services to have been completed, then Vendor will re-perform the Services at no additional charge. If Vendor is unable or unwilling to re-perform the Services as warranted, then Customer shall be entitled to recover the fees paid to Vendor for the deficient Services.

10.3 EXCEPT AS EXPRESSLY STATED IN THIS ADDENDUM OR THE AGREEMENT, VENDOR PROVIDES SERVICES "AS IS" AND MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

11. NON-EXCLUSIVE RIGHTS

Nothing in this Addendum or the Agreement shall preclude or limit either party from independently acquiring or developing competitive products or services for itself or its customers, or from providing competitive products or services to its customers, so long as neither party breaches the obligations (including the obligations of confidentiality) it has assumed under this Agreement.

12. RECOVERY OF FEES