

PURCHASE ORDER TERMS AND CONDITIONS (SOFTWARE MAINTENANCE AGREEMENT)

1. DEFINITIONS AND ACCEPTANCE OF ORDER.

- A. "Customer," "Buyer," "Licensee" or "Lessee" means the entity name listed on the Purchase Order/Subcontract. "Licensor," "Seller," "Vendor" or "Lessor" means the party with whom the Customer is contracting. The term "Purchase Order" means the name or title of the instrument of contracting, including all documents, exhibits and attachments referenced thereon.
- B. This Order constitutes Customer's offer. Acceptance is expressly limited to the terms of the Order and Customer hereby objects to any additional or different terms in the acceptance. This Order is accepted as written by executing the Acknowledgement or Acceptance copy of the Order, or by beginning performance.
- C. No modification of this Order (including any additional terms or different terms contained in the acceptance) shall be binding on Customer unless agreed to in writing and signed by Customer's duly authorized Purchase Representative.

2. ENTIRE AGREEMENT.

This Agreement, including the Purchase Order and all documents referenced herein, constitutes the entire agreement between Vendor and Customer and supersedes all proposals, oral and written, between the parties on this subject.

3. THE SERVICES.

In consideration of the payments to be made to the Vendor, the Vendor agrees to provide the services (the "Services") described in this Agreement, including the Purchase Order or in any attachment hereto, with respect to the software (the "Software") as referenced herein. The location(s) at which the Services shall be performed, and the term of this Agreement, shall be as set forth in the Purchase Order.

4. CONFIDENTIALITY OF VENDOR'S INFORMATION.

Notwithstanding any other provisions of this Agreement to the contrary, Customer hereby agrees that it shall use reasonable efforts to avoid disclosure of Vendor's proprietary/confidential information to any third party other than Buyer's consultants, agents and representatives having access to Customer proprietary data. Further, Vendor agrees that all such proprietary/confidential information shall be marked with a stamp or legend indicating its confidential/proprietary nature. For the purposes of the Agreement, the term "reasonable efforts" shall mean that Customer shall treat such proprietary/confidential information in accordance with Customer's procedures regarding vendor/ customer proprietary information. Further, Customer shall have the right to copy the Software for backup and archival purposes.

Customer shall not be liable for use or disclosure of any such proprietary information if the same is:

- A. In the public domain at the time it was disclosed;

- B. Known to the party receiving it at the time of disclosure;
- C. Used or disclosed inadvertently provided the appropriate degree of care is exercised;
- D. Used or disclosed with the prior written approval of the other party;
- E. Independently developed by the receiving party;
- F. Becomes known to the receiving party without similar restrictions from a source other than the disclosing party having the right to disclosure.

5. APPLICABILITY TO SOFTWARE LICENSE AGREEMENT.

During the warranty period of any agreement between Vendor and Customer pertaining to the Software described in the Purchase Order, all of the provisions of this Agreement shall be applicable without additional charge.

6. SERVICE RESPONSIBILITIES OF THE VENDOR.

- A. Maintenance. Vendor shall maintain the Software so that it operates in conformity with all descriptions and specifications herein and in the application Software License or Purchase Agreement, including specifications for the performance of all improved or modified versions of the Software which the Customer has been licensed to use. Vendor shall correct all errors discovered by the Customer or Vendor.
- B. Support and Response Time. In the event that Customer detects any error, defect or non-conformity in the Software, Vendor shall furnish complete off-site telephone support, in the form of consultations, assistance and advice on the use and maintenance of the Software, within eight (8) hours of Customer's request therefore. In the event that such problem in the Software is not corrected within twenty-four (24) hours of the initiation of such off-site telephone support, Customer may submit to Vendor a listing of output and all such other data conditions similar to those present when the error, defect or nonconformity was discovered. In the event that such problem is not corrected within five (5) working days after Vendor receives from Customer a listing of output and other data, Vendor shall within the next twenty-four (24) hours provide on-site Service. Vendor shall implement temporary work around procedures and shall demonstrate to Customer the good faith and diligent initiation and prosecution of corrective measures for all such problems involving the Software within seventy-two (72) hours of the commencement of such on-site Services. In the event it is determined that the problem was due to Customer error in the use of the Software, as opposed to an error, defect or nonconformity in the Software itself, Customer shall pay Vendor Vendor's standard commercial time and materials rates or such rate as may be established by Customer and Vendor for the reasonable value of the on-site Service provided plus Vendor's reasonable travel and per diem expenses if said costs and expenses are authorized in writing by Customer.

7. RESPONSIBILITIES OF THE CUSTOMER.

- A. The Customer shall notify the Vendor immediately following the discovery of any error, defect or nonconformity in the Software, unless such error, defect or nonconformity is discovered after 5:00 p.m. on a business day. In that case, the Customer shall notify the Vendor by 10:00 a.m. on the following business day. In the event that an error, defect or nonconformity is discovered between Friday at 5:00 p.m. and 9:00 a.m. Monday, the Customer shall notify the Vendor of the error, defect or nonconformity by 10:00 a.m. on the Monday morning immediately following the weekend during which the error, defect or nonconformity was discovered. The period within which Vendor is obligated herein to provide telephone off-site support shall not commence until such time as the Vendor receives the Customer's notification of the error, defect or nonconformity.
- B. The Customer, upon detection of any error, defect or nonconformity in the Software, may, if requested to do so by the Vendor under Section 6B hereof, submit to the Vendor a listing of output and any such other data which Vendor reasonably may request in order to reproduce operating conditions similar to those present when the error occurred or the defect or nonconformity was discovered, as the case may be.

8. CHARGES.

- A. Computation. Charges shall be as stated in the Purchase Order. These charges shall cover all Services provided under this Agreement, and all charges shall be paid within thirty (30) days of receipt of the invoice.
- B. Price Protection. The charges set forth herein for the Services shall not be increased for a period of two (2) years after commencement of Services hereunder. Thereafter, such prices may be increased to Vendor's prevailing prices to its Customers generally for similar services, not to exceed, in any event, an increase of ten percent (10) per year over the previous year's price.

9. RENEWAL OF THE AGREEMENT.

The Customer shall have the option, exercisable by notice given to the Vendor thirty (30) days prior to the expiration of any term of this Agreement, to renew this Agreement for annual periods. No work shall be performed by Vendor after expiration of this Agreement.

10. WARRANTIES.

- A. The Vendor warrants that it will maintain the Software so that such Software will be free from all programming errors and from defects in workmanship and materials and shall conform to the performance capabilities, specifications, functions and other descriptions and standards applicable thereto as set forth in the Software License or Purchase Agreement applicable to the Software, and so that the Software will operate in conformity with all improvements, additions, or modifications of the Software installed at Customer's site or sites. The Services will be performed in a timely and professional manner by qualified maintenance technicians familiar with the Software and its operation, and the Services shall conform to the standards generally observed in the industry for similar services.

- B. This warranty shall not be affected by Customer's modification of the Software (including source code) so long as Vendor can discharge its warranty obligations notwithstanding such modifications or following their removal by Customer.
- C. The performance of the Services by Vendor will not in any way constitute infringement or other violation of any copyright, trade secret, trade-mark, patent, invention, proprietary information or nondisclosure rights of any third party.
- D. Services provided by the Vendor will be in compliance with all applicable laws, rules and regulations.

11. TERMINATION/CANCELLATION.

- A. Termination-Convenience. The performance of Services under this Agreement may be terminated, in whole or in part, by Customer for Customer's convenience at any time and for any reason on Customer giving written termination notice to Vendor and shall pay to Vendor termination charges computed in the following manner; (1) a sum computed and substantiated in accordance with standard accounting practices for those reasonable costs incurred by Vendor prior to the date of termination for completed Services, Services in process, materials directly related to the Agreement, for orderly phase out of performance as requested by Customer in order to minimize the costs of the termination and for preparation and settlement of Vendor's termination claim and (2) a reasonable profit on such Services performed; provided, however, that Customer shall not be liable to Vendor for any costs which would not have been charged had the agreement not been terminated nor for any sum in excess of the total price stated in the Agreement for the terminated Services.
- B. Cancellation-Default. Except in the case of delay or failure resulting from circumstance beyond the control and without the fault or negligence of Vendor or of its suppliers or subcontractors, Customer shall be entitled, by written cancellation notice to Vendor, to cancel the whole or any part of this Agreement for default, without granting an extension of time, and to have all other rights against Vendor by reason of Vendor's default as provided by law. If it be found that Vendor was not in default, the rights and obligations of the parties shall be the same as if a Notice of Cancellation had been issued pursuant to Clause 11.A above, Termination-Convenience.
- C. Other. By written notice to Vendor, Customer may cancel the whole or part of this Agreement in the event of suspension of Vendor's business, insolvency of Vendor, institution of bankruptcy, reorganization, arrangement, liquidation proceedings by or against Vendor or proceedings for the benefit of creditors or for any failure by Vendor to provide adequate assurances (as provided for in Uniform Commercial Code, section 2-609) of its ability or willingness to perform its obligations under this Agreement. Such cancellation shall be deemed "for default" in accordance with paragraph B. of this Termination/Cancellation clause and the rights and obligations of the parties shall be determined as therein provided.

- D. Vendor shall also be deemed in default if the Software program continues to exhibit defects causing serious disruption of use and/or repeated periods of downtime, notwithstanding Vendor's remedial or maintenance efforts, over a continuous period of three months or more.
- E. Rights and Obligations of the Parties on Termination. In the event that this Agreement is terminated, each party shall forthwith return to the other all papers, materials, and other properties of the other party then in its possession or certify to the destruction of same.
- F. Refund of Payments. The Vendor shall, upon termination by Customer due to default by Vendor, and in addition to any other remedies at law or in equity available to Customer, return payments it received under this Agreement. The refund of monies paid hereunder shall not be deemed the exclusive remedy of Customer in the event of a default or breach of this Agreement by Vendor.

12. CLEARANCE OF MATERIALS INTENDED FOR PUBLIC RELEASE.

No news release, including photographs and films, advertisement, public announcement, denial or confirmation of same, or any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of both parties.

13. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY.

Seller shall defend, indemnify, and hold Buyer, Buyer's officers, agents, employees, and customers harmless against all claims and liabilities, including costs, for infringement of any United States patent, trademark, or copyright by any Products delivered under this Order or, at Seller's option and expense, Seller shall obtain such licenses as are necessary to remove such infringement, provided that Seller is reasonably notified of such claims and liabilities. Seller's obligation shall not apply to Products manufactured by Seller pursuant to detailed designs developed by Buyer and furnished to Seller under an Order which does not require research, development, or design work by Seller. Seller's obligation shall also not apply to any infringement arising from the use or sale of Products in combination with items not delivered by Seller if such infringement would not have occurred from the use or sale of such Products solely for the purpose for which they were designed or sold to Buyer. Seller's obligation shall extend to the U.S. Government only if and to the extent Buyer has agreed to indemnify the U.S. Government.

14. TAXES.

All prices herein, unless otherwise provided, include all applicable Federal, state and local taxes as may be assessed against Vendor except those sales or use taxes required by law to be paid by Customer.

15. ASSIGNMENT.

Neither party shall be assigned or subcontract all or any part of this Agreement without the other party's written consent, except that Customer may assign to any corporate affiliate without Vendor's consent provided that Customer remains the guarantor of all of its obligations under this Agreement.

16. SUBCONTRACTING.

No services or products to be delivered under this Agreement shall be procured or licensed by Vendor from a third party in completed or substantially completed form without Customer's written consent.

17. MISCELLANEOUS.

- A. Choice of Law. This Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's Choice of Law provisions shall not apply.
- B. Insurance. Vendor shall maintain in effect at all times during the term hereof insurance against all losses, and damages arising out of the fault or negligence of Vendor, its agents and subcontractors.
- C. Cumulation of Remedies. All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusions of other remedies.
- D. Severability. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other of its provisions.
- E. Notices. Any notice or other communication hereunder shall be in writing.
- F. Waiver. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

18. DISPUTES.

Either party may litigate any dispute arising under or relating to this order. Such litigation shall be brought and jurisdiction and venue shall be proper only in a state or federal district court in Los Angeles County. Pending resolution of any such dispute by settlement or by final judgment, the parties shall proceed diligently with performance.

19. WAIVER OF RIGHT TO JURY TRIAL.

Buyer and Seller hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or hearing brought by either Seller against Buyer or Buyer against Seller on any matter whatsoever arising under, relating to, or in any way connected with this Order, the relationship of Seller and Buyer or any claim of injury or damage, or the enforcement of any remedy under any law, statute or regulation now or hereafter in effect.