

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

00-1147
52176

**MASTER AGREEMENT
FOR THE PURCHASE OF HARDWARE,
LICENSE OF SOFTWARE AND PROVISION OF SERVICES**

I. PARTIES

A. Address

THIS MASTER AGREEMENT FOR THE PURCHASE OF HARDWARE, LICENSE OF SOFTWARE AND PROVISION OF SERVICES ("Contract") is made on the Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and home-rule City of the State of Texas principally situated in Harris County, acting by and through its governing body, the City Council and **UNISYS CORPORATION** ("Contractor"), a Delaware corporation doing business in the State of Texas.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

<u>City</u>	<u>Contractor</u>
Director of Finance and Administration or Designee City of Houston P.O. Box 1562 Houston, Texas 77251	Unisys Corporation Township Line and Union Meeting Roads Blue Bell, Pennsylvania 19426

B. Index

The City and Contractor hereby agree to the terms and conditions of this Contract. This Contract consists of the following sections:

<u>Description</u>	<u>Page</u>
I. PARTIES	1
A. <u>Address</u>	1
B. <u>Index</u>	1
C. <u>Parts Incorporated</u>	7
D. <u>Controlling Parts</u>	7
E. <u>Signatures</u>	8
II. DEFINITIONS	9
III. DUTIES OF CONTRACTOR	12
A. <u>Scope of Services - General</u>	12
B. <u>Products and Services</u>	13
C. <u>Procedures for Obtaining Products and Services</u>	14
D. <u>Substitution of Products</u>	20
E. <u>Delivery De-installation and Installation</u>	21
F. <u>Acceptance of Products and Services</u>	23
G. <u>Coordinate Performance</u>	25
H. <u>Payment of Subcontractors</u>	25
I. <u>Personnel of Contractor</u>	25
J. <u>Insurance</u>	26
K. <u>Warranties and Disclaimers</u>	27
(1) <u>Equipment</u>	27
(2) <u>Software and Software Maintenance Releases and Updates</u>	29
(3) <u>Services</u>	30
L. <u>Indemnity</u>	34
M. <u>Liability for Loss or Corruption of Data</u>	34
N. <u>Alterations and Attachments</u>	36
O. <u>Limitation of Liability</u>	37
P. <u>Patent, Copyright, and Trade Secret Indemnification for Products and Services</u>	38
Q. <u>Compliance with Equal Opportunity Ordinance</u>	41
R. <u>MWBE Compliance</u>	41
S. <u>Drug Abuse Detection and Deterrence</u>	42
IV. DUTIES OF CITY	43
A. <u>City's Operational Responsibilities</u>	43
B. <u>Protection of Proprietary Information</u>	45
C. <u>Payment Terms</u>	46
(1) <u>Commodity Products and Services</u>	46
(2) <u>Tested Products and Services</u>	48

(3)	<u>Payment of Invoices; Passage of Title; Ownership of Software License</u>	49
(4)	<u>Upgraded Contractor-Owned Software Item</u>	49
D.	<u>Price Protection</u>	50
E.	<u>Limit of Appropriation; Allocated Funds; Limitation of City's Duties</u>	50
F.	<u>Risk of Loss</u>	51
G.	<u>Access to Site</u>	51
H.	<u>Taxes</u>	52

V. SOFTWARE 52

VI. TERM AND TERMINATION 55

A.	<u>Contract Term</u>	55
B.	<u>Renewals - Automatic</u>	56
C.	<u>Termination by the City</u>	56
(1)	<u>Termination by the City for Cause</u>	56
(2)	<u>Termination by City Due to Non-Allocation of Funds</u>	57
D.	<u>Termination and Cancellation by Contractor</u>	57
(1)	<u>Termination for Default</u>	57
(2)	<u>SURETY Support Services</u>	58
(3)	<u>Software Licenses</u>	58
E.	<u>Effects of Schedule Termination</u>	59

VII. MISCELLANEOUS 62

A.	<u>Independent Contractor</u>	62
B.	<u>Force Majeure</u>	62
C.	<u>Severability</u>	63
D.	<u>Entire Agreement</u>	63
E.	<u>Written Amendment</u>	63
F.	<u>Notices</u>	63
G.	<u>Captions</u>	64
H.	<u>Acceptance and Approval</u>	64
I.	<u>Inspections and Audits</u>	64
J.	<u>Survival</u>	64
K.	<u>Parties In Interest</u>	65
L.	<u>Assignment</u>	65
M.	<u>Applicable Laws</u>	65
N.	<u>Drug Detection and Deterrence</u>	65

EXHIBIT "A"

SCHEDULE I

Houston Police Department (HPD) ClearPath Upgrade	A-1
I. OVERVIEW	A-1

A.	<u>Scope of Services - General</u>	A-1
B.	<u>Delivery, De-installation and Installation</u>	A-1
C.	<u>Migration</u>	A-2
D.	<u>Reimbursable Expenses</u>	A-3
II.	HARDWARE	A-3
A.	<u>Hardware Description</u>	A-3
(1)	<u>Commodity Products</u>	A-3
(2)	<u>Contractor-Installed Hardware Items</u>	A-3
(3)	<u>City-Installed Hardware Items</u>	A-3
B.	<u>Warranties</u>	A-3
(1)	<u>Contractor Hardware Items</u>	A-3
(2)	<u>EMC Hardware Items</u>	A-5
(3)	<u>Hardware Items With No Warranty</u>	A-5
(4)	<u>Hardware Item Warranty Start Dates</u>	A-6
(5)	<u>Warranties for Maintenance Services for Hardware Items</u>	A-6
(a)	<u>Contractor-provided Equipment Maintenance Services</u>	A-6
(b)	<u>EMC Maintained Hardware Items</u>	A-6
C.	<u>Patent, Copyright, and Trade Secret Indemnification for EMC Hardware Items</u>	A-6
D.	<u>Hardware Maintenance</u>	A-7
(1)	<u>Maintained Hardware Items</u>	A-7
(a)	<u>Contractor-Provided Equipment Maintenance Services</u>	A-7
(b)	<u>Maintenance for EMC Hardware Items</u>	A-8
(2)	<u>Hardware Items That Are Not Maintained</u>	A-9
(3)	<u>Hardware Maintenance Services Charges</u>	A-9
III.	SOFTWARE	A-10
A.	<u>Software Licenses</u>	A-10
(1)	<u>Licensed Software</u>	A-10
(2)	<u>One Time Charge Software Items</u>	A-10
(a)	<u>Contractor-Owned Software Items</u>	A-10
(b)	<u>Non-Contractor-Owned Licensed Software Item</u>	A-10
(3)	<u>Extended Term Plan Software Items</u>	A-12
(a)	<u>Definition</u>	A-12
(b)	<u>Additional Licenses for Extended Plan Software Items</u>	A-14
B.	<u>Software Installation</u>	A-15
C.	<u>Warranties</u>	A-15
(1)	<u>Contractor-Owned and Warranted Software Items</u>	A-15
(2)	<u>Microsoft / BEA-Owned and Warranted Software Items</u>	A-16
(3)	<u>Microsoft-Owned and Warranted Software Items</u>	A-16
(4)	<u>EMC-Owned and Warranted Software Items</u>	A-16

(5)	<u>Warranties for Maintenance Services for Software Items</u>	....	A-17
(a)	<u>Contractor-Owned Software Item Maintenance Services</u>	.....	A-17
(b)	<u>Maintenance of Microsoft / BEA-Owned Software Items</u>	.....	A-17
(c)	<u>Maintenance of Microsoft Software Items</u>	.....	A-17
(d)	<u>Maintenance of EMC Software Items</u>	.....	A-17
D.	<u>Patent, Copyright, and Trade Secret Indemnification for Software Items</u>	.....	A-18
E.	<u>Maintenance Services</u>	.....	A-18
(1)	<u>Maintained Software Items</u>	.....	A-18
(2)	<u>Software Items That Are Not Maintained</u>	.....	A-20
(3)	<u>Software Maintenance Services Charges</u>	.....	A-20
IV.	<u>SERVICES</u>	.....	A-21
A.	<u>Provision of Services</u>	.....	A-21
B.	<u>Warranties</u>	.....	A-21
V.	<u>SCHEDULE TERM</u>	.....	A-22
VI.	<u>PAYMENTS</u>	.....	A-22
A.	<u>Hardware and Software Items</u>	.....	A-22
(1)	<u>Payment Terms for Hardware and Software Items</u>	.....	A-22
(2)	<u>Software Exchange Credits</u>	.....	A-22
(3)	<u>Invoice for Hardware and Software Items</u>	.....	A-23
(4)	<u>Invoice to Continue Warranty Uplift for a Contractor Hardware Item</u>	.....	A-26
(5)	<u>Invoice for Maintenance for Hardware and Software Items</u>	..	A-26
B.	<u>Services</u>	.....	A-27
C.	<u>Invoices</u>	.....	A-27
(1)	<u>Payment of Invoices</u>	.....	A-27
(2)	<u>Consolidation of Invoices</u>	.....	A-28
VII.	<u>MWBE COMPLIANCE</u>	.....	A-28
VIII.	<u>SIGNATURES</u>	.....	A-30
TABLE I -	<u>CLEARPATH IX6600 HARDWARE</u>	.....	A-31
TABLE II -	<u>SOFTWARE LICENSES</u>	.....	A-39
TABLE III -	<u>CLEARPATH UPGRADE SERVICES</u>	.....	A-42
APPENDIX I			
SURETY	<u>Comprehensive Gold Coverage</u>	.....	A-43
APPENDIX II			
EMC:	<u>STATEMENT OF WARRANTY</u>	.....	A-47
APPENDIX III			
MICROSOFT:	<u>SOFTWARE LICENSE AND WARRANTY PROVISIONS</u>	.....	A-50

APPENDIX IV

**EMC LICENSE PROVISIONS AND PATENT AND COPYRIGHT
PROVISIONS**

A-69

EXHIBIT "B"

EQUAL EMPLOYMENT OPPORTUNITY

B-1

EXHIBIT "C"

MWBE SUBCONTRACT TERMS

C-1

EXHIBIT "D"

DRUG POLICY COMPLIANCE AGREEMENT

D-1

EXHIBIT "E"

**CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

E-1

EXHIBIT "F"

DRUG POLICY COMPLIANCE DECLARATION

F-1

EXHIBIT "G"

**ITEMS TO CONSIDER WHEN CREATING A SCHEDULE
UNDER THE UNISYS MASTER AGREEMENT**

G-1

C. Parts Incorporated

All of the above described sections and documents are hereby incorporated into this Contract by this reference for all purposes.

D. Controlling Parts

In the event of any conflict or inconsistency between or among the provisions of such sections or documents, it is agreed that the provisions of this Contract shall control over the provisions of the Exhibits which shall control over the provisions of the Schedules.

E. Signatures

IN WITNESS HEREOF, the City and Contractor have made and executed this Contract in multiple copies, each of which is an original.

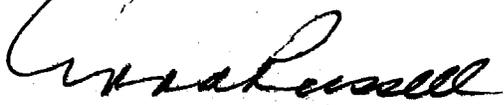
ATTEST/SEAL ATTACHED

By: _____
Name:
Title:

UNISYS CORPORATION

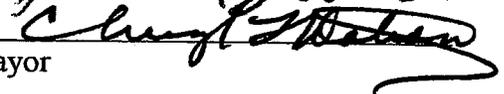
By: 
Name: **MARY E. PALMA**
Title: **CONTRACT MANAGER**
Tax Identification No. 35-0387840

ATTEST/SEAL:



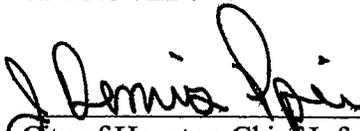
City Secretary

CITY OF HOUSTON, TEXAS

Signed by: 


Mayor

APPROVED:

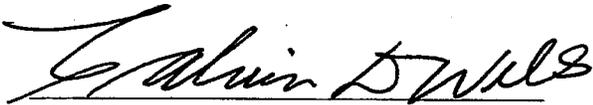


City of Houston Chief Information
Officer (CIO)

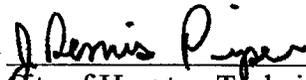
COUNTERSIGNED BY:



City Controller

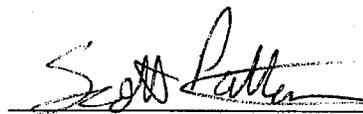


City of Houston Purchasing Agent



City of Houston Technical Steering
Committee

APPROVED AS TO FORM:



Assistant City Attorney
L.D. File No. 034-9900338-002

DATE COUNTERSIGNED:

12-20-00

II. DEFINITIONS

As used in this Contract, the following terms shall have meanings set out below:

"Alterations" are defined in Section III. N. (4).

"Attachments" are defined in Section III. N. (4).

"Canceled Maintenance Services" are defined in Section III. C. (2).

A "Cancellation Document" is defined in Section III. C. (2).

"City" is defined in the preamble of this Contract and includes its successors and assigns.

"City-Owned Software" is defined in Section V. A.

A "City-Owned Software Item" is defined in Section III. K. (2) (a).

"Commodity Products and Services" are defined in Section III. F. (1) (a).

"Contract" means this Master Agreement between Contractor and the City.

"Contract Term" is defined in Section VI. A.

A "Contractor-Owned Licensed Software Item" is defined in Section V. B.

A "Contractor-Owned Software Item" is defined in Section III. K. (2) (a).

"Contractor-provided Equipment" is defined in Section III. K. (1) (a).

"Contractor-provided Equipment Warranty Period" is defined in Section III. K. (1) (a).

"Contractor's QISV Catalogue" means the catalogue of automated information systems (AIS) Products and Services that Contractor makes available to state agencies and local governments that qualify for cooperative purchasing through the Catalogue Purchase Method, as provided in Subchapter B of Chapter 2157 of the Texas Government Code.

"Countersignature Date" means that date shown as the date countersigned by the City Controller on the signature page of this Contract.

"Director" shall mean the City's Chief Information Officer (CIO), the City's Purchasing Agent, or such person as they shall designate.

The "Effective Date" of a Schedule is defined in Section III. C. (1) (a) (iii).

"Equipment" means the equipment described in Schedules as authorized in this Contract.

A "Equipment or Software Maintenance and Support Commodity Service" is defined in Section IV. C. (1) (b) (i).

"Equipment User Documentation" is defined in Section III. E. (2).

A "Final Cancellation Cost" is defined in Section III. C. (2).

A "Final Cancellation Date" is defined in Section III. C. (2).

A "Final Cancellation Refund" is defined in Section III. C. (2).

The Initial Term" is defined in Section VI. A.

"Installation Date" means the date Contractor completes its provision of the Products set out in a Schedule entered into by the parties under this Contract and the Director concurs that Contractor has demonstrated that the Products are ready for the City's use and testing, having successfully completed Contractor's standard testing procedure at the City's location (if required by the Schedule under which the Products are provided by Contractor).

"Installation Site" means the location(s) described in a Schedule entered into by the parties under this Contract where the Products set out in that Schedule are to be installed by Contractor or the City (as set out in the Schedule).

"Licensed Software" is defined in Section V. A.

"Non-Contractor Equipment" is defined in Section III. K. (1) (a).

A "Non-Contractor Licensed Software Item" is defined in Section V. C.

A "Non-Contractor-Owned Software Item" as defined in Section III. K. (2) (a).

"Outstanding Equipment or City-Owned Software" is defined in Sections VI. E. (5) and VI. E. (6).

"Products" means Equipment, Software, documentation (including manuals and education materials) and software maintenance releases and updates provided by Contractor under a Schedule entered into by the parties under this Contract.

"Professional Services" means all Services provided by Contractor under a Schedule entered into by the parties under this Contract other than SURETY Support Services.

"Professional Special Services" are defined in Section III. C. (1) (b) (ii).

"Proprietary Information" means Software, diagnostics, documentation, including manuals, and any other information confidential to Contractor or its licensor.

"Qualified Information Systems Vendor" means a manufacturer or reseller of an automated information system who is authorized by the Texas General Services Commission to publish a catalogue of products and services that may be directly purchased by a state agency or a local government that qualifies for cooperative purchasing, as defined in Chapter 2157 of the Texas Government Code.

"QISV" means a "Qualified Information Systems Vendor."

"Reimbursable Expenses" are defined in Section III. C. (1) (a) (ii).

The "Renewal Terms" are defined in Section VI. B.

"Services" means the services provided by Contractor under the Schedules entered into under this Contract.

"Schedules" means the documents attached to this Contract that describe the Products and

Services the City obtains from Contractor under this Contract.

"Software" means the object code version and, when provided by Contractor, the source code version, of computer programs and any related documentation, excluding maintenance diagnostics as provided by Contractor under a Schedule entered into by the parties under this Contract.

"Software Processing Unit" (SPU) means equipment which controls and executes Software.

"SURETY Support Services" means various forms of maintenance, installation and support services provided by Contractor through Schedules entered into by the parties under this Contract.

"SURETY Support Services Equipment" is defined in Section IV. A. (4).

"System" means a City computer system.

"Term" means the Initial Term of this Contract and any renewals thereafter.

A "Test Period" is defined in Section III. F. (2) (a).

A "Tested Product or Service" is defined in Section III. F. (2).

The "Tested Product or Service Standards" are defined in Section III. F. (2) (b).

A "Training Specification" document is defined in Section III. C. (1) (b) (ii) (A).

III. DUTIES OF CONTRACTOR

A. Scope of Services - General

Contractor shall provide all labor, material, and supervision necessary to provide the Products and perform the Services as fully described in Schedules entered into by the parties under this Contract (the "Products and Services") for and in consideration of the payments specified in such Schedules.

B. Products and Services

Under this Contract, the City may obtain Contractor-provided Products and Services so long as:

- ▶ the added Products and Services are exempt from the competitive bidding or proposal requirements, set forth in Tex. Local Govt. Code Chapter 252; or
- ▶ the City acquires the Products and Services from Contractor through a competitive bid or competitive proposal.

One method under which Contractor may provide and the City may obtain Products and Services under a Schedule entered into by the parties under this Contract is for the City to obtain Products and Services that are included in Contractor's Qualified Information Systems Vendor (QISV) Catalogue. Contractor shall be solely responsible for ensuring that the Products and Services to be obtained by the City under this QISV method are included in Contractor's QISV Catalogue prior to the time that the Schedule under which such Products and Services are to be provided to the City is entered into by the parties under this Contract.

NOTWITHSTANDING ANYTHING ELSE CONTAINED IN THIS MASTER AGREEMENT, CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE CITY SHALL NOT BE RESPONSIBLE FOR PAYING FOR ANY PRODUCTS OR SERVICES ACQUIRED UNDER THIS MASTER AGREEMENT NOR FOR ANY OTHER COSTS RELATING THERETO UNLESS FUNDS TO PAY FOR SUCH PRODUCTS OR SERVICES HAVE BEEN APPROVED BY CITY COUNCIL AND ALLOCATED IN A SCHEDULE, AND THE CITY ACKNOWLEDGES THAT CONTRACTOR SHALL NOT BE RESPONSIBLE FOR PROVIDING ANY PRODUCTS AND SERVICES UNDER THIS CONTRACT UNTIL THE PARTIES HAVE AGREED TO A SCHEDULE SETTING OUT SUCH PRODUCTS AND

SERVICES AND THE CITY HAS ALLOCATED FUNDS UNDER THAT SCHEDULE TO PAY FOR SUCH PRODUCTS AND SERVICES.

Contractor shall never require the City to sign any documents, including but not limited to individual product licenses, other than this Master Agreement or the Schedules that the City and Contractor enter into under this Contract.

C. Procedures for Obtaining Products and Services

(1) Products and Services

(a) The Director may obtain products and Services under this Contract under the following procedure:

(i) The Director shall identify to Contractor in writing the Products and Services desired and request that Contractor identify if it is able to provide such Products and Services.

(ii) If Contractor is able to provide the Products and Services requested by the Director, Contractor shall create and provide to the Director a proposed written Schedule that identifies the Products and Services and Contractor's itemized prices to provide such Products and Services to the City, and the actual expenses Contractor will incur in the course of providing such Products and Services for which Contractor proposes the City shall reimburse Contractor (the "Reimbursable Expenses"). Such Reimbursable Expenses shall be the actual expenditures Contractor will make while providing Products and Services under the Schedule, and may include travel costs outside

the City and its extraterritorial jurisdiction (not to exceed the amounts established under the City's then-current travel reimbursement policy for its employees), if reasonably necessary to accomplish a task in connection with the project, plus living expenses in connection with out-of-town travel, long distance communications, and fees paid for securing approval of authorities having jurisdiction over the project.

- (iii) After the Director receives Contractor's proposed written Schedule, the Director and Contractor shall then negotiate the Products, Services, terms, prices, and Reimbursable Expenses contained in the proposed Schedule. Once the Director and Contractor agree to the Products, Services, terms, prices, and Reimbursable Expenses in the proposed Schedule, then Contractor shall create a final hardcopy version of the Schedule. Once the City has allocated funds to pay for the Products and Services set forth in the Schedule, the Director and Contractor shall sign the final hardcopy version of the Schedule created by Contractor. Once the Schedule is valid and binding, it shall be incorporated into this Contract as of the date of countersignature by the City Controller (the "Effective Date"), and the City shall be able to obtain the Products and Services set out in the Schedule in accordance with the provisions of this Contract as of the "Effective Date" of that Schedule. To be valid and binding, a Schedule must meet all of the requirements set forth in this Contract; make specific reference to this

Contract and expressly state that it is issued hereunder; be approved by the City Council, signed by the Mayor, countersigned by the City Controller; and accepted in writing by the Contractor. In the event that Reimbursable Expenses are identified in a Schedule, the Schedule shall identify the maximum amount for each Reimbursable Expense and provide that the Director must approve Reimbursable Expenses before Contractor incurs them. The compensation for the Reimbursable Expenses under a Schedule shall never exceed the agreed-upon maximum amount for such Reimbursable Expenses as identified in the Schedule. Each proposed Schedule shall be reviewed by the City's Legal Department to ensure compliance with the terms of this Contract and applicable law before the parties sign a final version of that Schedule which will be incorporated in this Contract and under which Contractor shall provide and the City shall obtain Products and Services under this Contract. The initial Schedule which has been agreed to be entered into by the parties under this Contract is set forth in Exhibit "A". **NOTE: EXHIBIT "G" CONTAINS A LIST OF ITEMS THAT SHOULD BE CONSIDERED WHENEVER A NEW SCHEDULE IS TO BE ENTERED INTO BY THE PARTIES UNDER THIS CONTRACT.**

- (b) The Products and Services that the Director may obtain under Schedules entered into by the parties under this Contract shall include, but not be limited

to, the following, so long as such Products and Services meet the requirements of this Contract, including Section III. B. (However, the following listing of these specific Products and Services shall not be interpreted to in any way limit the types of Products and Services the City may obtain under this Contract.)

(i) Additional and necessary items of Equipment and Software for SURETY Support Services.

(ii) The following "Professional Special Services":

(A) Training. Contractor's provision of and/or arranging for the provision of training to City personnel selected by the Director in the use of any of the City's System software or related System products. Whenever Contractor provides and/or arranges for such training, Contractor shall document the type and scope of each training session it provides under this Contract in a "Training Specification" document for that training session, which shall include, but shall not be limited to, a final recommended schedule for that training session that is approved by all of the parties providing such training, and each "Training Specification" document shall be approved by the Director prior to the start of the training session addressed by that Document. When requesting such training, the Director shall also be able to request that Contractor provide

such training:

1. solely by Contractor,
2. solely by Contractor's subcontractor, as approved in advance by the Director, or
3. by Contractor in conjunction with
 - a. a subcontractor approved in advance by the Director, and/or
 - b. City personnel specified by the Director.

(B) Professional Consulting Services. Contractor's provision of the professional consulting services specifically identified by the Director in order to assist the City in implementing specific study recommendations related to the City's existing or planned Systems. The professional consulting services that may be requested by the Director shall include, but are not limited to, the following:

1. studies,
2. analysis of other governmental computer systems,
3. training,
4. policy/procedure development, and
5. solicitation development and/or evaluation assistance.

(C) Computer-Related Services. Contractor's provision of the professional programming services, software installation

services, Systems generation services, and System application services specifically identified by the Director in order to enable the City to enhance its computer systems and/or permit such systems to interface with those of other governmental agencies.

- (c) As of the Effective Date for a Schedule agreed to by the Director and Contractor, each Product and Service identified in that Schedule and added to this Contract is subject to this Contract, as if it had originally been a part, but the charge for each Product or Service starts to accrue only on date that Contractor provides such Product or Service to the City under this Contract.

(2) Cancellation of Maintenance Services

If the Director wishes no longer to have Contractor provide any Maintenance Services under this Contract then the parties shall negotiate the specific Maintenance Services that Contractor is no longer to provide (the "Canceled Maintenance Services"), the specific date on which Contractor shall halt its provision of such Canceled Maintenance Services (the "Final Cancellation Date"), the cost (if any) that Contractor shall charge the City to cancel Contractor's provision of the Canceled Maintenance Services (the "Final Cancellation Cost"), and the amount (if any) of any refund Contractor shall pay to the City for Canceled Maintenance Services that the City paid for in advance but which will not be provided by Contractor under this Contract (the "Final Cancellation Refund"). Once the Director and Contractor agree on the Canceled Maintenance Services, the Final Cancellation Date, the Final Cancellation Cost (if any), and the Final Cancellation Refund (if any) then the parties shall document these items in a "Cancellation Document", which the Director and Contractor shall

sign. Once the parties have signed the Cancellation Document, Contractor shall immediately halt its provision of the Canceled Maintenance Services identified in that Document and issue an invoice to the City for any Final Cancellation Cost or pay any Final Cancellation Refund to the City. The City shall, subject to the allocation of funds, pay Contractor's invoice for any Final Cancellation Cost within thirty (30) days after receipt and approval of Contractor's invoice by the Director. Contractor shall pay any Final Cancellation Refund amount to the City within thirty (30) days after Contractor halts its provision of the Canceled Maintenance Services identified in the Cancellation Document. However, the parties may document provisions concerning the cancellation of maintenance services in the Schedule under which Contractor provides such maintenance services under this Contract, and such provisions shall supersede the provisions set out in this subsection (2) of this Section. Such alternate maintenance service cancellation provisions shall document the amount of any Final Cancellation Cost (if any), and the Final Cancellation Refund (if any) that results from the cancellation of maintenance services under that Schedule.

D. Substitution of Products

Upon the City's approval, Contractor may substitute Products of equivalent or superior functionality and performance for the Products originally identified in a Schedule in the event that any of the originally identified Products are not available at the time of shipment. Contractor's substitution of Products identified in a Schedule shall not result in the City's payment of any increased prices, fees, costs, or Reimbursable Expenses in excess of those already identified in that Schedule. Contractor shall provide written notification of its substitution of the Products identified in a Schedule at the time Contractor delivers the Products to the City, unless alternate notification and/or approval of such substitution is otherwise provided for in that Schedule. Such written notification shall specify the

differences between the Products originally identified in the Schedule and Contractor's substituted Products. Items which are ordered in quantities of more than one shall be identical, except where differences are by design and not by convenience. All differences between the original and substituted Products shall be subject to City's written approval prior to acceptance; however, the parties may agree and document in a Schedule that, during the period between the time that a Product is ordered by the City under a Schedule and the time that Contractor actually provides that Product under the Schedule, Contractor may upgrade the Product that Contractor actually provides to the City to a new and improved version that still meets the requirements of this Contract, and that Contractor may provide such a new and improved version of the Product without first obtaining the City's written approval prior to acceptance.

E. Delivery De-installation and Installation

(1) Notwithstanding anything to the contrary in this Contract, the charges listed on Schedules under which Contractor is to provide Products and Services to the City under this Contract shall reflect applicable transportation, de-installation, installation and cable charges. The City will not be charged any additional fees for these services with respect to the Products and Services obtained by the City under Schedules entered into by the parties under this Contract.

(2) Prior to delivering any Equipment identified in a Schedule to the City, Contractor shall provide the City with one copy of the then-current user documentation for such Equipment in paper or electronic form ("Equipment User Documentation"). The Equipment User Documentation shall include all environmental specifications that must be met in order for the Equipment to operate in accordance with the Equipment User Documentation. Prior to the installation of Equipment (whether performed by the City or Contractor), the City shall prepare the Installation Site in accordance with

the environmental specifications set forth in the Equipment User Documentation provided by Contractor. Following the installation of such Equipment, the City shall maintain the Installation Site where the Equipment has been installed in accordance with the environmental specifications set forth in the Equipment User Documentation. In the event that there are any updates or modifications to the Equipment User Documentation for any Equipment provided by Contractor under this Contract, including the environmental specifications for such Equipment, Contractor shall provide such updates or modifications to the City as soon as they are available. The City shall not be obligated to maintain an Installation Site in accordance with revised or modified environmental specifications for the Equipment located at that Installation Site until after the City has received the revised or modified specifications from Contractor and after the passage of a reasonable period of time for the City's performance of the required changes or modifications to the Installation Site. Additionally, in the event that any Equipment or other items are to be disposed of under a Schedule, the Schedule shall identify each party's responsibility to dispose of such Equipment or items.

(3) In each Schedule, the City and Contractor shall identify who will install Products and Software obtained by the City in that Schedule and, in the event Contractor is to install such Products or Software, the Schedule shall identify all Contractor charges and conditions to perform such installation. All Products to be installed by Contractor will be installed during Contractor normal working hours, unless otherwise provided in this Contract.

(4) In any Schedules entered into by the parties under this Contract, if additional labor and rigging is required for installation due to the City's special site requirements, the City shall pay those costs including costs to meet union or local law requirements, provided City council approves sufficient funds to pay for such services.

F. Acceptance of Products and Services

(1) Commodity Products and Services.

- (a) Under this Contract, the City may obtain Contractor "Commodity Products and Services", which, in addition to meeting this Contract's requirements to be considered "Products and Services" (including the provisions of Section III. B.), consist of :
- (i) standard Contractor commercial-off-the-shelf ("COTS") Equipment or licenses to Software that are not customized or configured in any way by Contractor before they are provided to the City, and which appear in Contractor's standard price lists.
 - (ii) Contractor's performance of maintenance services for such COTS Equipment or licensed Software, including SURETY Support Services.
- (b) If the Director and Contractor agree that the City is obtaining Commodity Products and Services under a Schedule entered into under this Contract, then the parties shall document in the final written, signed Schedule agreed to by the parties which of the Products or Services identified in that Schedule are Commodity Products and Services.
- (c) Under this Contract there shall be no "acceptance test" period for the City to evaluate such Commodity Products and Services, but instead the City shall rely on the warranty for such Products and Services as set forth in Section III. K. of this Contract in the event that the Product or Service is defective or

does not operate in or has not been provided in accordance with Contractor's documentation, the requirements of this Contract, and the Schedule under which Contractor provides the Product or Service.

(2) Tested Products and Services. In each Schedule entered into by the parties under this Contract the Director and Contractor shall document an acceptance test procedure in accordance with the provisions of this subsection (2) for each Product or Service the City obtains under that Schedule that is not a "Commodity Product or Service" as defined in subsection (1) of this Section (a "Tested Product or Service"). (Examples of Tested Products or Services may include, but are not limited to, Contractor's performance of software development or large system integration projects under a Schedule entered into by the parties under this Contract.) Such an acceptance test procedure for a Tested Product or Service shall include the following:

- (a) The time period(s) in which the City shall be able to test the Tested Product or Service (the "Test Period").
- (b) The standards under which the City shall evaluate the Tested Product or Service during the Test Period (the "Tested Product or Service Standards.")
However, in no event shall the Tested Product or Service Standards for a Tested Product or Service be less than the standards for that Tested Product or Service as set forth in any Contractor documentation concerning the Tested Product or Service, this Contract, or the Schedule under which Contractor provides the Tested Product or Service to the City.
- (c) The actions the parties are to perform in the event that the City finds that the Tested Product or Service has fully met the Tested Product or Service

Standard set forth in the Schedule during the Test Period.

- (d) The actions the parties may take in the event that the City finds that the Tested Product or Service has not fully met the Tested Product or Service Standard set forth in the Schedule during the Test Period, which may include provisions for the City's partial acceptance and partial payment for the Tested Product or Service to the extent that the Tested Product or Service meets some, but not all, of the Tested Product or Service Standards.

G. Coordinate Performance

Contractor shall coordinate all of its performance with the Director and such other person(s) as the Director may specify. Contractor shall keep said person(s) currently advised of developments relating to the performance of this Contract, and contractor shall at all appropriate times advise and consult with the Director.

H. Payment of Subcontractors

Contractor shall make timely payments to all persons and entities supplying labor, materials or equipment for the execution of this Contract. Contractor agrees to protect, defend, and indemnify the City from any claims or liability arising out of Contractor's failure to make such payments.

I. Personnel of Contractor

The City shall have the right to require that any Contractor's employees assigned to the City be replaced for good and sufficient cause so long as the City provides Contractor written notice containing substantiation for the request, and which allows Contractor a reasonable period of time to substitute another appropriate Contractor employee.

J. Insurance

(1) Contractor shall maintain in effect during the Term of this Contract, insurance coverage as set out below, and shall furnish certificates of insurance or self-insurance, in duplicate form, upon the City's request. All liability policies shall be issued by a company authorized to do business in Texas.

- (a) Comprehensive General Liability insurance including Contractual Liability insurance:
 - \$1,000,000 per occurrence; \$2,000,000 aggregate per 12-month policy period
- (b) Worker's Compensation including Broad form All States endorsement:
 - Amount shall be in statutory amount.
- (c) Professional Liability
 - Contractor is self-insured with respect to professional liability
- (d) Automobile Liability insurance
 - \$2,000,000 combined single limit per occurrence

All of Contractor' insurance policies shall state on their face, or by endorsement, that the insurance carrier shall give ten (10) days written notice to the City before they may be canceled or materially changed and within such ten (10) period Contractor covenants that it will provide other suitable policies in lieu of those about to be canceled or materially changed, so as to maintain in effect the coverage required under the provisions hereof. If Contractor fails or refuses to obtain and keep in force the above-required insurance coverage, then Contractor shall within three (3) days of such lapse of coverage, procure a performance bond or provide evidence of other equivalent surety or financial protection until such replacement insurance coverage is obtained. The decision of the Director as to the equivalency of such coverage shall be final, provided, such decision shall not be

arbitrary or capricious.

The City shall be named as an additional insured on all such policies except worker's Compensation and Professional Liability.

K. Warranties and Disclaimers

EXCEPT AS EXPRESSLY STATED IN THIS CONTRACT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE. CONTRACTOR DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE AS TO BOTH CONTRACTOR AND NON-CONTRACTOR PRODUCTS AND SERVICES. CONTRACTOR WARRANTIES EXTEND SOLELY TO CITY.

(1) Equipment:

- (a) In each Schedule entered into by the parties under this Contract in which Contractor provides Equipment to the City, Contractor shall identify the warranty, if any, for each item of Equipment, whether the Equipment is provided by Contractor ("Contractor-provided Equipment") or provided by a third-party ("Non-Contractor Equipment"). At a minimum, however, Contractor warrants that Contractor-provided Equipment will be free from defects in material and workmanship and will substantially conform to relevant Contractor published specifications for a period of twelve (12) months from (i) its Installation Date, if the Contractor-provided Equipment is installed by Contractor, or (ii) from the date the Contractor-provided Equipment is delivered to the City, if the Contractor-provided Equipment is not installed by

Contractor (the "Contractor-provided Equipment Warranty Period"). Equipment (i) may be newly manufactured, (ii) may be assembled from new or serviceable used parts that are equivalent to new parts in performance, or (iii) may have been previously installed. During the Contractor-provided Equipment Warranty Period, Contractor will repair or replace any defective Contractor-provided Equipment promptly reported or sent to Contractor by City which Contractor determines was defective due to faulty material or workmanship. City will pay transportation and insurance costs to ship Contractor-provided Equipment if an off-site repair location is designated by Contractor; Contractor will pay the return costs if the Equipment was defective. Labor costs of diagnosis are not included in this warranty. Notwithstanding the foregoing, so long as the City is operating under an on-site maintenance agreement with Contractor, such shipment costs and labor costs of diagnosis will be Contractor's responsibility.

- (b) Because Contractor-provided Equipment requires on-going maintenance, the preceding warranty is not a substitute for the City's obtaining maintenance for such Contractor-provided Equipment as a Service under a Schedule entered into by the parties under this Contract.
- (c) Contractor makes no representation or warranty as to Non-Contractor Equipment provided to City under a Schedule entered into by the parties under this Contract, all of which is sold or licensed to City "AS IS". City agrees to look solely to the warranties and remedies, if any, provided by the

manufacturer of such Non-Contractor Equipment, which Contractor agrees to assign to the City.

(2) Software and Software Maintenance Releases and Updates:

- (a) In each Schedule entered into by the parties under this Contract in which Contractor provides Software and/or Software Maintenance Releases and Updates to the City (collectively, for the purposes of this subsection (2) "Software Items"), Contractor shall identify the warranty, if any, for each Software Item, whether the Software Item is Contractor-owned (a "Contractor-Owned Software Item"), is owned by a third-party licensor or vendor (a "Non-Contractor-Owned Software Item") or is to be owned by the City following Contractor's performance of Services involving computer programming and the City's acceptance of such Services in accordance with Section III. F. (a "City-Owned Software Item") At a minimum, however, each Contractor-Owned Software Item shall, in its unaltered form, be warranted to conform substantially to the then-current published functional specifications for ninety (90) days from (i) its Installation Date, if the Contractor-Owned Software Item is installed by Contractor, or (ii) the date Contractor delivers the Contractor-Owned Software Item to the City, if Contractor does not install the Contractor-Owned Software Item, provided such Contractor-Owned Software Item is used in a manner consistent with any applicable Contractor minimum Equipment and Software configuration specifications. Contractor will make reasonable efforts to correct such errors

reflecting significant deviations from the functional specifications as are reported by City to Contractor during the Warranty Period.

(b) Because not all errors in Software can be corrected, Contractor does not warrant that all Software defects will be corrected. Contractor shall correct errors reflecting significant deviations from the published functional specifications which substantially impact City's business operations.

(c) All Non-Contractor-Owned Software Items delivered to the City under Schedules entered into by the parties under this Contract are not warranted by Contractor and are licensed "AS IS". In the case of a Non-Contractor-Owned Software Item, City agrees to look solely to the warranties and remedies, if any, provided by the third-party licensor or vendor that owns that Non-Contractor-Owned Software Item, which Contractor agrees to assign to the City and to identify in the Schedule under which Contractor provides that Non-Contractor-Owned Software Item to the City.

(3) Services.

(a) With regards to the Services Contractor performs under a Schedule entered into by the parties under this Contract, Contractor warrants that it shall perform all such Services in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for Services of that kind. Contractor will endeavor to provide services on a timely basis subject to availability of qualified personnel and the difficulty and scope of the services to be provided. However, this provision will not diminish

Contractor's responsibility to fulfill specific additional obligations under a particular Schedule under which Contractor is to provide services as agreed upon in writing by the parties under this Contract.

(b) Parts and Goods

(i) With respect to any parts and goods Contractor produces or develops and furnishes in the course of performing such Services, Contractor warrants:

(A) that all items are free of defects in title, design, material, and workmanship,

(B) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

(C) that, in the event that the item is a replacement item provided by Contractor in the course of performing maintenance or repair services entered into under a Schedule, that each such replacement item is in accordance with original equipment manufacturer's specifications and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and

(D) that no item or its use infringes any patent, copyright, or proprietary right.

(iii) In the event that Contractor furnishes parts or goods in the course of

performing Services under a Schedule that are produced or developed by a third party and not by Contractor, then Contractor shall

(A) notify the Director in writing of the warranty provided by the third party for such parts or goods prior to Contractor's furnishing such parts or goods under the Schedule, and

(B) if necessary, provide support to the City in the City's enforcement of the third party's warranty.

(c) SURETY Support Services. In the event that Contractor provides SURETY Support Services to the City under a Schedule entered into by the parties under this Contract, then:

(i) Contractor warrants that Equipment and Software will be supported in accordance with the specific SURETY Service Plan selected. Contractor's sole and exclusive obligations under this warranty will be to conform to the SURETY Support Service's Service Descriptions. Equipment parts which are removed for replacement by Contractor become the property of Contractor.

(ii) To determine eligibility and prerequisites for SURETY Support Services, Contractor may require inspection, at City expense, of Equipment which (i) has not been maintained continuously by Contractor from the date of purchase by City or (ii) has been relocated. Upon such inspection, Contractor shall provide the City with written notice that it has inspected such Equipment and

determined its eligibility for SURETY Support services.

- (iii) All Equipment, interconnected by Contractor signal and power cables, and non-application Software, located at the same site and which are subject to SURETY Support Services are required to be supported at the same Service Level as the SPU. Local area networks, workstations and remote data communication Products are not required to be at the same Service Level as the SPU.
 - (iv) SURETY Support services do not cover the parts and service required to repair damage attributable to (i) alterations, out-of-specification supplies, or defects in design, material or workmanship of non-Contractor products and services, (ii) accidents, misuse, negligence or failure of City to follow instructions for proper use, care and cleaning of Equipment, (iii) external factors (e.g., failure or fluctuation of electrical power or air conditioning, fire, flood), or (iv) failure by City to comply with Contractor environmental specifications.
- (d) In the event that the City requires a warranty for Services provided by Contractor under a Schedule that exceeds the warranty set forth in Sections III. K. (3) (a), III. K. (3) (b), and III. K. (3) (c) of this Contract, then the Director and Contractor shall negotiate a new warranty for such services that the parties shall document in the signed Schedule under which Contractor provides such services.

L. Indemnity

CONTRACTOR COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, IN THE EVENT OF INJURY TO PERSONS OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT THAT THE INJURY TO PERSONS OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY ARISES OUT OF OR IN CONNECTION WITH CONTRACTOR'S NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER ANY PURCHASE ORDER OR WRITTEN AGREEMENT WITH THE CITY. THE FOREGOING INDEMNITY SHALL APPLY EXCEPT IF SUCH INJURY, DEATH OR DAMAGE IS CAUSED DIRECTLY BY THE NEGLIGENCE OR OTHER FAULT OF THE CITY.

M. Liability for Loss or Corruption of Data

(1) The parties' default obligations concerning the liability for any loss or corruption of data under a Schedule entered into by the parties under this Contract are as follows:

- (a) The City shall be responsible for
 - (i) instituting proper and timely backup procedures for City software and data,
 - (ii) creating timely backup copies of any City software or data that may be damaged, lost, or corrupted due to Contractor's provision of

Products and Services under a Schedule entered into by the parties under this Contract, and

- (iii) using such backup copies to restore such City software or data in the event of any loss of, damage to, or corruption of the operational version of such City software or data, even if such damage, loss, or corruption is due to Contractor's negligence.
- (b) If, as a direct result of Contractor's negligence during the term of this Contract, such City software or data is damaged, lost, or corrupted, Contractor shall assist City personnel in loading the media (e.g., tape) in which the City has stored the backup copy of such City software or data onto the server, mainframe, or other computer system to which the City software or data is to be restored. The assistance provided by Contractor may consist of telephone support to the City personnel performing such software or data restoration. However, such Contractor assistance is conditioned upon Contractor being notified by the Director within twenty-four (24) hours of the City's becoming aware that City software or data has been damaged, lost, or corrupted as a direct result of Contractor's negligence. However, regardless of any such assistance provided by Contractor,
- (i) Contractor shall in no way be liable for the accuracy, completeness, success, or results of the City's efforts to restore such City software or data,
 - (ii) any assistance provided by Contractor under this provision is without

warranty, express or implied, and

(iii) in no event will Contractor be liable for loss of, damage to, or corruption of City data from any cause.

(2) Despite the default provisions set forth in subsection (1) of this Section, the parties may document alternate provisions concerning the parties' respective responsibilities and liabilities for any loss or corruption of data occurring under a specific Schedule by documenting such alternate provisions in the written Schedule entered into by the parties in accordance with the provisions of Section III. C. If the parties include such alternate provisions in a Schedule, such alternate provisions shall supplant and replace the default provisions set forth in subsection (1) of this Section. (For example, alternate provisions establishing a greater Contractor responsibility and liability for the loss or corruption of data may be included in a Schedule under which Contractor is to administer City computers.)

N. Alterations and Attachments

(1) If Contractor is providing SURETY Support Services under a Schedule entered into by the parties under this Contract, City shall give Contractor prior written notice of any proposed alterations or attachments to Equipment. Contractor has no obligation to provide SURETY Support Services for non-Contractor attachments, altered Equipment or modified Software. Should Contractor agree to maintain, support or correct altered Products, Contractor may impose additional charges.

(2) Contractor is not responsible for any malfunction, nonperformance or degradation of performance of Products, supplies or maintenance support materials caused by or resulting directly or indirectly from any alteration or attachment unless Contractor is maintaining the alteration or

attachment that causes the malfunction.

(3) Contractor warranties will not apply if attachment of non-Contractor equipment or alteration of Products by City directly or indirectly results in any malfunction, nonperformance or degradation of performance of Contractor Products; in addition, City will be solely responsible for resulting infringement, personal injury or damage to property and Products.

(4) For purposes of this Contract, "alterations" includes, but is not limited to, the incorporation of non-Contractor components, boards and subassemblies into equipment, as well as modifications to Software. "Attachments" includes, but is not limited to, any non-Contractor equipment, software, components or devices which are connected to Contractor Products.

O. Limitation of Liability

(1) Unless further limited elsewhere in the Contract, the entire liability of Contractor and City's exclusive remedy for damages from any cause related to or arising out of this Contract, regardless of the form of action, whether in contract or in tort, will not exceed the greater of (a) \$100,000 or (b) the charges paid to Contractor during the 24-month period immediately prior to City's notice pursuant to Section VII. F. for the Products or Services which are the subject matter of or directly related to the causes of action asserted. This Section does not apply to claims covered by Section III. P. (1) or claims for personal injury or damage to tangible property.

(2) In no event will Contractor be liable for (i) any incidental, indirect, special or consequential damages, including, but not limited to, loss of use, revenues, profits, or savings, even if Contractor knew or should have known of the possibility of such damages, (ii) claims, demands or actions against City by any person, except as provided in Section III. P. (1) or in any alternate provisions concerning the parties' respective responsibilities and liabilities for any loss or corruption

of data that are set forth in a specific Schedule as set forth in Section III. M. (2), or (iii) loss of or damage to City data from any cause.

(3) The entire liability of Contractor and City's exclusive remedy for any defective non-Contractor Products provided under this Contract is limited to their return to Contractor within ninety (90) days after shipment for refund of the amount paid to Contractor for such Products (not including any amounts paid for related services).

(4) Contractor may direct City to third parties having products or services which may be of interest to City for use in conjunction with the Products. Notwithstanding any Contractor recommendation, referral or introduction, City will independently investigate and test third-party products and services and will have sole responsibility for determining suitability for use of third-party products and services. Contractor has no liability with respect to claims relating to or arising from use of third-party products and services. Contractor has no liability with respect to claims relating to or arising from use of third-party products and services.

P. Patent, Copyright, and Trade Secret Indemnification for Products and Services

(1) Services and Contractor Produced or Developed Products

(1) Contractor, at its own expense, will defend and indemnify the City against claims that any and all Services performed by Contractor under this Contract or any Products produced or developed and furnished by Contractor under this Contract (the "Contractor Produced or Developed Products") infringe a United States patent, copyright, or trademark or misappropriate trade secrets protected under United States law, provided City (i) gives Contractor prompt written notice of such claims pursuant to Section VII. F., (ii) permits

Contractor to defend or settle the claims, and (iii) provides all reasonable assistance to Contractor in defending or settling the claims.

(2) As to any Service or Contractor Produced or Developed Product that Contractor provides under this Contract which is the subject of a claim of infringement or misappropriation, Contractor may elect to (a) obtain the right of continued use of such Product or Service for City or (b) replace or modify such Product or Service to avoid such claim. If neither alternative is available on commercially reasonable terms, then,

(i) in the case of Equipment that is part of any Contractor Produced or Developed Product provided by Contractor under this Contract, City will discontinue its use of and return such Equipment and Contractor will grant a credit for the price paid to Contractor, less a reasonable offset for use and obsolescence; and

(ii) in the case of Software that is part of any Contractor Produced or Developed Product provided by Contractor under this Contract or results from Contractor's performance of Services under this Contract, the City shall discontinue its use of and return such Software and

(A) if the Software is licensed to the City by Contractor, then that license will be terminated and no further charges will accrue,

or

(B) if the Software was to be owned by the City following provision of the Software by Contractor, then Contractor will

grant a credit for the price paid to Contractor for such Software.

- (c) Contractor will not defend or indemnify City if any claim of infringement or misappropriation (i) is asserted by a parent, subsidiary or affiliate of City, (ii) results from City's design or alteration of a Service or Contractor Produced or Developed Product, (iii) results from use of any Service or Contractor Produced or Developed Product in combination with any non-Contractor products, or (iv) solely relates to an product or service that is not a Service or Contractor Produced or Developed Product that Contractor provides or has provided to the City under this Contract.
- (d) Subsection (1) of this Section states the entire liability of Contractor and City's sole and exclusive remedies for patent or copyright infringement and trade secret misappropriation concerning any Services or Contractor Produced or Developed Products obtained by the City under this Contract.

(2) Third Party Produced or Developed Products or Services

In the event that Contractor furnishes Products or Services under a Schedule that are developed or produced by a third party and not by Contractor (for the purposes of this Section, "Third Party Produced or Developed Products or Services"), then Contractor shall

- (a) notify the Director in writing of the Patent, Copyright, and Trade Secret Indemnification for such Third Party Produced or Developed Products or Services that is provided by the third party, if any, prior to the time Contractor furnishes such Third Party Produced or Developed Products or Services under

the Schedule, and

- (b) if necessary, provide support to the City in the City's enforcement of the third party's Patent, Copyright, and Trade Secret Indemnification.

Q. Compliance with Equal Opportunity Ordinance

Contractor shall comply with all provisions of the City's Equal Employment Opportunity Ordinance as set out in Exhibit "B".

R. MWBE Compliance

The parties shall ensure that, in the event that Contractor's compliance with the City's Minority and Women Business Enterprise programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances is required under a Schedule entered into by the parties under this Contract, that the parties include the following paragraph in that Schedule through the parties' (a) agreement to the actual percentage values to be inserted in the blank spaces set forth in the second sentence of the paragraph and (b) inclusion of the paragraph, as modified to include the actual percentage values agreed to by the parties, in the Schedule prior to the parties' final agreement to and signature of the Schedule under the procedures set forth in Section III. C.

"Contractor agrees to comply with the City's Minority and Women Business Enterprise programs as set out in Chapter 15, Article V of the City of Houston code of Ordinances insofar as such programs apply to this Contract. Contractor further agrees that it will make good faith efforts to award subcontracts or supply agreements in at least _____ percent (_____ %) of the value of this Contract to Minority and Women-owned Business Enterprises certified by the City's Affirmative action division. In addition, Contractor acknowledges that it has reviewed the requirements

for good faith efforts that are on file with the City's Affirmative Action division and Contractor acknowledges that it has reviewed and is familiar with such requirements and will comply with them.

"Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "C" of the "Master Agreement for the Purchase of Hardware, License of Software and Provision of Services" under which this Schedule is entered into by the parties. If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties."

S. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

(a) a copy of its drug-free workplace policy,

- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "E."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

IV. DUTIES OF CITY

A. City's Operational Responsibilities

(1) City has sole responsibility for use of the Products, including operating procedures, audit controls, accuracy and security of input and output data, restart and recovery routines, and

other procedures necessary for City's intended use of the Products.

(2) City will use its best efforts to instruct its personnel so that they are, at all times, educated and trained in the proper use and operation of the Products and that the Products are used in accordance with applicable Contractor manuals and instructions.

(3) If Contractor is providing SURETY Support Services under a Schedule entered into by the parties under this Contract, City will (a) maintain the operating environment in accordance with Contractor specifications, (b) provide adequate working and storage space for use by Contractor personnel near the Equipment on which the Existing Software receiving such SURETY Support Services are installed and operating (the "SURETY Support Services Equipment"), (c) provide Contractor full access to the SURETY Support Services Equipment and sufficient computer time, subject only to City's security rules, (d) follow Contractor procedures for determining if remedial service is required, (e) follow Contractor instructions for operator maintenance and obtaining services, (f) provide a memory dump and additional data in machine readable form if requested, (g) reproduce suspected errors or malfunctions in Software, and (h) install all error corrections and maintenance releases supplied by Contractor.

(4) In order to provide the Products and Services set out in a Schedule entered into by the parties under this Contract, Contractor may require certain working and storage space within one or more City locations. The Director and Contractor shall define and document Contractor's working and storage space requirements in the Schedule under which Contractor is to provide the Products and Service to the City, and the City shall ensure that Contractor is provided with such working and storage space during Contractor's provision of such Products and Services under that Schedule.

(5) Professional Services supplied by Contractor under this Contract will require the

written approval of Director prior to commencement of such services by Contractor.

B. Protection of Proprietary Information

(1) City agrees to instruct its employees that the Proprietary Information, together with all materials and knowledge related thereto obtained by the City, shall be held in confidence and shall not at any time, either during the Term of the Contract or thereafter, be made available in any form to any person entity other than to employees of City or consultants or contractors retained by or responsible to City to the extent that such disclosure is reasonably necessary to City's use of the Proprietary Information authorized hereunder, without the express written consent of Contractor. The standard of care for protecting Proprietary Information will be that degree of care the City uses to protect its own proprietary or confidential information, which shall be no less than a reasonable degree of care. The City shall not be liable for either the inadvertent or accidental disclosure of Proprietary Information, if such disclosure occurs despite the City's exercise of reasonable care, or for any release of information required under federal or State law. City agrees that in the event of its employing any consultants or contractors who would have access to the Proprietary Information, it will make all reasonable efforts to insure that such consultants or contractors execute an agreement or agreements whereby they recognize, accept, and agree to observe the protection agreements afforded to Contractor by this Section. The term of this paragraph extend to entities who have contracted for services with City.

(2) Upon termination or cancellation of any license granted under this Contract, City will destroy (and, in writing, certify destruction) or return to Contractor all copies of the Software the license for which has been so terminated or canceled and any other related Proprietary Information in City's possession (including Proprietary Information incorporated in other software or writings).

(3) Any ideas, concepts, know-how, data-processing techniques, Software, documentation, diagrams, schematics or blueprints developed by Contractor personnel (alone or jointly with City) in connection with services provided to City will be the exclusive property of Contractor, unless explicitly and mutually agreed upon otherwise in a Schedule executed by both parties under this Contract. Contractor grants to City a personal, non-exclusive, non-transferable, royalty-free license to use any of the foregoing in accordance with the terms of this Contract for the City's internal use.

(4) City acknowledges that all support materials, including without limitation, diagnostic software, are the property of and include Proprietary Information of Contractor. City assures that such materials will be used only by Contractor maintenance personnel, and that Contractor has the right to remove such materials from City's facility at any time. This provision applies even though such materials may be listed in the Contractor prices lists, catalogs, invoices or contracts..

C. Payment Terms. Subject to all terms and conditions of this Contract, the City shall pay fees to Contractor and Contractor agrees to accept payment as provided below for all Services rendered and Products furnished by Contractor in accordance with the terms and conditions of this Contract, but such fees shall only be payable from certain Allocated Funds, as provided below.

(1) Commodity Products and Services

(a) Commodity Products. At or after the time Contractor provides to the City a Commodity Product identified in a Schedule, Contractor shall submit an invoice to the City that sets out the Commodity Product, the price associated with that Commodity Product as set out in the applicable Schedule, any Reimbursable Expenses set out in the applicable Schedule that were actually

incurred by Contractor in the course of its provision of the Commodity Product, and any itemized listings, receipts, or other documents required as set out in the applicable Schedule that are necessary to support such Contractor's prices and Reimbursable Expenses.

(b) Commodity Services

(i) Equipment or Software Maintenance and Support Commodity

Services. In the event that the City obtains maintenance or support services for Equipment or Software under a Schedule entered into by the parties under this Contract that the parties agree are "Commodity Services" (a "Equipment or Software Maintenance and Support Commodity Service"), then on or after the date that Contractor starts performance of such an Equipment or Software Maintenance and Support Commodity Service under the Schedule Contractor shall submit an invoice to the City setting out the Equipment or Software Maintenance and Support Commodity Service being performed and the price associated with that Equipment or Software Maintenance and Support Commodity Service (as set out in the applicable Schedule).

(ii) Other Commodity Services. For all other Commodity Services that are not Equipment or Software Maintenance and Support Commodity Services, upon Contractor's completion of the Commodity Service, or upon such other payment schedule mutually agreed upon by the

parties and set out in a Schedule, Contractor shall submit an invoice to the City that sets out the Commodity Service being performed, the price associated with that Commodity Service as set out in the applicable Schedule, any Reimbursable Expenses set out in the applicable Schedule that were actually incurred by Contractor in the course of its provision of the Commodity Service and any itemized listings, receipts, or other documents required as set out in the applicable Schedule that are necessary to support such Contractor's prices and Reimbursable Expenses.

- (2) Tested Products and Services. Following the City's acceptance of a Tested Product or Service provided by Contractor under a Schedule (whether such an acceptance is a full acceptance of the Tested Product or Service, as set forth in Section III. F. (2) (c), or a partial acceptance of a Tested Product or Service, as set forth in Section III. F. (2) (d)), or upon such other payment schedule mutually agreed upon by the parties and set out in a Schedule, Contractor shall submit an invoice to the City setting forth the Tested Products and Services provided by Contractor and accepted by the City, the fee charged by Contractor for such accepted Tested Products and Services as set forth in the Schedule agreed to by the parties, any Reimbursable Expenses set out in the applicable Schedule that were actually incurred by Contractor in the course of its provision of such Tested Products and Services, the total charge for the Tested Products and Services provided by Contractor, and any itemized listings, receipts, or other documents required as set out in the applicable Schedule that are necessary to

support such Contractor's charges and Reimbursable Expenses.

- (3) Payment of Invoices; Passage of Title; Ownership of Software License. The City shall pay the Contractor invoices set forth in subsections (1) and (2) of this Section within thirty (30) days after receipt and approval of the invoice by the Director. Upon the City's payment of a Contractor invoice,
- (a) title to all Equipment and City-Owned Software set forth in that invoice and all documentation associated with such Equipment and City-Owned Software shall pass to the City, and Contractor shall create and process all documents necessary to evidence the passage of title in such Equipment, City-Owned Software, and documentation to the City, and
 - (b) the City shall own the license to use all Licensed Software that is identified in the invoice, as well as all documentation associated with such Licensed Software, in accordance with the license terms and conditions for such Licensed Software as set forth in Article V. of this Contract.
- (4) Upgraded Contractor-Owned Software Item. If the City elects to upgrade any Contractor-Owned Software Item under a Schedule entered into by the parties under this Contract to a higher level of Contractor-Owned Software Item before the end of a period for which the City has paid Contractor the license fee for such Contractor-Owned Software Item in advance, Contractor shall grant to the City full credit for the unused portion of the license fee for the Contractor-Owned Software Item, determined by straight line depreciation method, to be applied toward the license fee for the upgraded Contractor-Owned Software Item. In no event shall the amount of

the credit exceed the license fee for the upgraded Contractor-Owned Software Item.

D. Price Protection

The prices for Products in any accepted Schedule will remain firm through delivery, unless through no fault of Contractor shipment takes place more than one year after the Effective Date of that Schedule. If Contractor notifies City that an increase in prices will apply to the Products and/or Services identified in a Schedule, City may terminate the affected part of that Schedule by giving written notice to Contractor within ten (10) days of the date of notification of the increase.

E. Limit of Appropriation; Allocated Funds; Limitation of City's Duties

(1) The City's duties to pay money to the Contractor for any purpose under this Contract are limited in their entirety by the provisions of this Section. The City has allocated no funds to pay for products under this Contract and can only allocate funds by issuance of a Schedule.

(2) The City shall fund each Schedule separately. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$4,618,319.00 to pay money due under Schedule I of this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

(3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and approved by motion or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$ _____, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Contract, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$ _____.

SIGNED:

(Signature of the City Controller)
City Controller of the City

REQUESTED:

(Signature of the Director)
Director

(4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

(5) Contractor shall not deliver any Products or Services to the City unless properly authorized by such Schedule and no funds shall actually be encumbered by the City until the

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issuance of the Schedule. The parties expressly agree that City shall never be liable for any payment to Contractor in excess of the amount allocated for the Schedule.

(f) Contractor must assure itself that sufficient allocations have been made to pay for Products and Services it provides under this Contract. If allocated funds for a Schedule are exhausted, Contractor's only remedy is suspension or termination of its performance under that Schedule, and it has no other remedy in law or equity against the City and no right to damages of any kind.

F. Risk of Loss

- (1) Commodity Products. Upon Contractor's delivery to the City of a Commodity Product the risk of loss for that Commodity Product and any and all additions, repairs, replacements, or modifications to that Commodity Product shall pass from Contractor to the City.
- (2) Tested Products. Upon the City's acceptance of a Tested Product provided by Contractor under a Schedule (in accordance with the procedures set forth in Section III. F. of this Contract), then the risk of loss for that Tested Product and any and all additions, repairs, replacements, or modifications to that Tested Product shall pass from Contractor to the City.

G. Access to Site

Contractor is granted the reasonable lawful right to ingress to and egress from the premises where Contractor is to provide Products and Services under Schedules entered into by the parties under this Contract, without charge. Contractor and its employees, subject to safety and security restrictions imposed by the Director, shall have the right to use, in common with other duly authorized users, the common areas and roadways of such premises and the appurtenances thereto, together with all facilities, equipment, improvements, and services that have been or may hereafter be provided at or in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair to a condition acceptable to the Director any damage caused by Contractor or its employees as a result of Contractor's use of such premises, the appurtenances thereto, or the facilities, equipment, improvements, and services provided at or in connection with the premises for common use.

H. Taxes

The City is exempt from payment of Federal Excise Tax, Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City shall not contain assessments of any of these taxes. The City's Texas Limited Sales Tax Number is 1-74-600-1164-0. The City will furnish its federal tax identification number to Contractor if requested.

V. SOFTWARE

A. In the event that the City is to obtain Software and/or software maintenance releases or updates (collectively, for the purposes of this Article V., "Software") under a Schedule entered into by the parties under this Contract, the Schedule shall specify whether the City is obtain ownership of such Software (i.e. whether the Software is "City-Owned Software") or a license to use such Software ((i.e. whether the Software is "Licensed Software") upon the City's payment of the Contractor invoice for such Software as set forth in Section IV. C. (3). In the event that the City is obtaining a license to use such Software, the Schedule shall include the terms and conditions of that Software license.

B. The following default license terms and conditions shall apply to any Contractor-Owned Software Item obtained by the City under a Schedule that is identified in that Schedule as "Licensed Software" (a "Contractor-Owned Licensed Software Item"), and shall take precedence over any alternate license terms and conditions applicable to any Contractor-Owned Licensed Software Item obtained by the City under a Schedule, unless the Schedule agreed to and signed by the parties in accordance with the procedures set forth in this Contract includes all such alternate terms and conditions, identifies the Contractor-Owned Software Items to which such alternate

terms and conditions apply, and specifically states that such alternate terms and conditions supplant and supersede the following default terms and conditions with respect to those Contractor-Owned Software Items .

- (1) Contractor grants to City a personal, non-exclusive and non-transferable license to use the Contractor-Owned Licensed Software Item and related documentation according to the terms and conditions of this Contract, solely for City's internal data processing requirements on the Contractor SPU in the United States on which the Contractor-Owned Licensed Software Item is initially installed. City agrees that Contractor may periodically inspect the computer site in order to audit the Contractor-Owned Licensed Software Item installed at City's site at mutually agreed upon times.
- (2) City may develop application programs, may modify any Contractor-Owned Licensed Software Item and may combine such with other programs or materials to form an updated work, provided that upon discontinuance or termination of the license, the Contractor-Owned Licensed Software Item will be removed from the updated work and returned to Contractor.
- (3) City will not decompile or disassemble any Contractor-Owned Licensed Software Item provided under this Contract or modify a Contractor-Owned Licensed Software Item which bears a copyright notice of any third party. City will make and maintain no more than one archival copy (for backup purposes) of each Contractor-Owned Licensed Software Item, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the

original.

- (4) If the SPU on which any Contractor-Owned Licensed Software Item is licensed becomes temporarily unavailable, use of such Contractor-Owned Licensed Software Item may be temporarily transferred to an alternative SPU.
- (5) No license is granted to City to use any Contractor proprietary operating system Software to (a) assess, test or develop any hardware products either for others or where they are to be marketed by City for compensation, or (b) develop any software program other than an application program. This license restriction does not apply to MS/DOS, UNIX and CTOS/BTOS operating systems. Application programs means programs for performing specific automatic data processing tasks such as payroll, inventory control, information retrieval or repetitive arithmetic operations, but excludes programs such as environmental programs, handlers, operating systems and data base management programs.
- (6) If City desires to use a Contractor-Owned Licensed Software Item in a service bureau mode or at another location or as described in Section V. B. (5), City shall request prior permission in writing from Contractor. Contractor will then advise City whether, and under what terms and conditions, Contractor will license the Contractor-Owned Licensed Software Item as requested. All restrictions applicable to City will also apply to any permitted service bureau users.
- (7) This Contract does not transfer to City title to any intellectual property contained in any Contractor-Owned Licensed Software Item, or any documentation or Proprietary Information concerning a Contractor-Owned Licensed Software Item.

C. In the event that the City obtains a Non-Contractor-Owned Software Item under a Schedule that is identified in that Schedule as "Licensed Software" (a "Non-Contractor-Owned Licensed Software Item"), then the applicable license agreement shall exist between the City and the third-party owner of that Non-Contractor-Owned Licensed Software Item, and Contractor shall not be a party to that license agreement. However, Contractor shall:

- (1) notify the Director in writing of the license terms and conditions for that Non-Contractor-Owned Licensed Software Item that are provided by the third party owner of that Software Item prior to Contractor's furnishing that Software Item under the Schedule,
- (2) take commercially reasonable actions to ensure that the third party owner of the Non-Contractor-Owned Licensed Software Item acknowledges and agrees that the City possesses a enforceable license to use that Software Item, and
- (3) if necessary, provide support to the City in the City's enforcement of such license terms and conditions against the third party owner of the Non-Contractor-Owned Licensed Software Item.

VI. TERM AND TERMINATION

A. Contract Term

This Contract shall become effective on the date of countersignature by the City Controller, and shall remain in effect until midnight five (5) years thereafter ("the Initial Term") unless sooner terminated as provided for in this Contract.

B. Renewals - Automatic

Upon expiration of the Initial Term, this Contract shall be automatically renewed for five (5) successive one-year terms ("Renewal Terms") upon the same terms and conditions unless the City shall fail to make sufficient supplemental allocations or Director gives Contractor written notice of non-renewal at least thirty (30) days before expiration of the then-current term.

Following the completion of the final Renewal Term, the Director and Contractor may agree in writing to extend this Contract for an additional 90-day period.

C. Termination by the City

- (1) Termination by the City for Cause. Without prejudice to other remedies, the City may terminate its performance under a Schedule entered into by the parties under this Contract in the event of default by the Contractor under that Schedule and a failure by the Contractor to cure such default after receiving notice thereof, all as provided in this paragraph. Default by the Contractor shall occur if the Contractor fails to observe or perform any of its material duties under a Schedule, or if Contractor shall become insolvent, or if all or a substantial part of Contractor's assets shall be assessed for the benefit of Contractor's creditors or if a receiver or trustee shall be appointed for Contractor. Should such a default occur, the Director will deliver a written notice to the Contractor identifying the Schedule, describing the default under that Schedule, and stating the proposed date of termination of that Schedule. Such date may not be sooner than thirty (30) days following Contractor's receipt of the notice. City, at its sole option, may extend the proposed date of termination of the Schedule to a later date. If prior to the

proposed date of termination, the Contractor cures such default to the Director's satisfaction, then the proposed termination of the Schedule shall be ineffective. If the Contractor fails to cure such default prior to the proposed date of termination of the Schedule, then the City may terminate its performance under the Schedule as of such date, as set forth in the termination notice, at no further obligation of the City. Upon the third occurrence of a default under a Schedule entered into by the parties under this Contract, the City may at its discretion terminate that Schedule upon ten (10) days written notice to Contractor regardless of whether Contractor cures the default or not. Final termination of the Schedule for cause by the City shall be effected by a written notice from the Director to the Contractor.

- (2) Termination by City Due to Non-Allocation of Funds. If the government body that appropriates the City's funds for Information Technology does not allocate such funds beyond the then-current fiscal period, the City may terminate all or any portion of this Contract. City will be liable for any accumulated payments due prior to the effective date of the new fiscal year subject to the limits of the Supplemental Allocation Clause in Section IV. E.

D. Termination and Cancellation by Contractor

- (1) Termination for Default. Without prejudice to other remedies, Contractor may cancel any Schedule entered into by the parties under this Contract for the City's failure to (i) pay an invoice submitted by Contractor under that Schedule within thirty (30) days after the City's receipt of such invoice or (ii) the City's failure to cure a default under that Schedule relating to Section IV. B. or the City's license to

use any Licensed Software provided by Contractor under that Schedule in accordance with the license for such Licensed Software as set forth in Section V. of this Contract within thirty (30) days following the date that such default occurs.

(2) SURETY Support Services.

(a) Contractor may terminate SURETY Support Services or change the levels of support available to an item of Software upon the expiration of the then-current term for SURETY Support Services under a Schedule entered into by the parties under this Contract.

(b) Contractor may terminate its performance of SURETY Support Services under a Schedule entered into by the parties under this Contract on thirty (30) days prior written notice to the Director if Contractor determines that any alterations, attachments, City Software modification or failure to install a maintenance release will interfere with the provision of such services, provided that the City fails to cure said interference problem, as defined in Contractor's written notice to City, within the thirty (30) day period.

(c) Upon termination or cancellation of SURETY Support Services, all diagnostics will be returned to Contractor.

(3) Software Licenses. The licenses for any Contractor-Owned Licensed Software Item obtained by the City under a Schedule entered into by the parties under this Contract automatically terminate upon City's discontinuance of use of the SPU on which the Contractor-Owned Licensed Software Item was licensed under that Schedule, at which time City must either destroy or return the Contractor-Owned

Licensed Software Item and documentation to Contractor.

E. Effects of Schedule Termination. Upon the termination of a Schedule entered into under this Contract there shall be no further obligation or liability on the part of either party under that Schedule as to the terminated items, except for the following:

- (1) Upon receipt of the Director's notice of final termination of a Schedule entered into by the parties under this Contract, the Contractor shall, unless the notice directs otherwise, immediately discontinue all services in connection with that Schedule, and promptly cancel all orders or subcontracts chargeable to that Schedule.
- (2) If the City terminates a Schedule for any reason, the City shall return any Licensed Software Items (including any and all copies made by the City) and all manuals and all other documentation for such Licensed Software Items that have been supplied by Contractor under that Schedule.
- (3) The obligations for confidentiality and the protection of proprietary rights as set forth in this Contract shall remain in effect despite such termination.
- (4) If the City has made advance payments for Products or Services under the terminated Schedule which Contractor has not provided to the City as of the termination date, then Contractor shall refund to the City such advance payments within thirty (30) days of termination of that Schedule.
- (5) If the City obtains possession of Equipment or City-Owned Software from Contractor under a Schedule that is subsequently terminated by Contractor under Section VI. D. and title to such Equipment or City-Owned Software has not yet

passed to the City in accordance with Section IV. C. (3) (a) of this Contract as of the date of Contractor's termination of the Schedule ("Outstanding Equipment or City-Owned Software") then (so long as there has been no default by Contractor under the terminated Schedule) as soon as practicable on or after the date of Contractor's termination of the Schedule Contractor shall identify to the Director which one of the following actions the City shall take with regards to that Outstanding Equipment or City-Owned Software:

- (a) The City shall return the Outstanding Equipment or City-Owned Software to Contractor.
 - (b) If Contractor has not previously provided the City with an invoice for the Outstanding Equipment or City-Owned Software in accordance with Section IV. C., then Contractor shall provide the City with such an invoice for the Outstanding Equipment or City-Owned Software, under which the City shall pay for (and obtain title to) the Outstanding Equipment or City-Owned Software in accordance with the terms of this Contract.
 - (c) If Contractor has previously provided the City with an invoice for the Outstanding Equipment or City-Owned Software in accordance with Section IV. C., then the City shall continue to pay for (and obtain title to) the Outstanding Equipment or City-Owned Software under that existing invoice in accordance with the terms of this Contract.
- (6) If the City obtains possession of Equipment or City-Owned Software from Contractor under a Schedule that is subsequently terminated by the City under

Section VI. C. and title to that Equipment or City-Owned Software has not yet passed to the City in accordance with Section IV. C. (3) (a) of this Contract as of the date of the City's termination of the Schedule ("Outstanding Equipment or City-Owned Software") then (so long as there has been no default by the City under the terminated Schedule) as soon as practicable on or after the date of the City's termination of the Schedule the City shall notify Contractor in writing which one of the following actions Contractor shall take with regards to that Outstanding Equipment or City-Owned Software and Contractor shall perform such identified action as soon as practicable after receiving such written notice from the City:

- (a) Contractor shall retrieve the Outstanding Equipment or City-Owned Software at no additional cost to the City.
- (b) If Contractor has not previously provided the City with an invoice for the Outstanding Equipment or City-Owned Software in accordance with Section IV. C., then Contractor shall provide the City with such an invoice for the Outstanding Product, under which the City shall pay for (and obtain title to) the Outstanding Product in accordance with the terms of this Contract.
- (c) If Contractor has previously provided the City with an invoice for the Outstanding Equipment or City-Owned Software in accordance with Section IV. C., then the City shall continue to pay for (and obtain title to) the Outstanding Equipment or City-Owned Software under that existing invoice in accordance with the terms of this Contract.

VII. MISCELLANEOUS

A. Independent Contractor

The Contractor agrees to perform the Work as independent contractor and not as a subcontractor, agent or employee of the City.

B. Force Majeure

"Force Majeure" means:

- (a) acts of God, landslides, lightning, earthquakes, hurricanes, tornadoes, blizzards and other adverse and inclement weather, fires, explosions, floods, acts of a public enemy, wars, blockades, insurrections, riots or civil disturbances;
- (b) labor disputes, strikes, work slowdowns, or work stoppages;
- (c) orders or judgments of any federal, state or local court, administrative agency or governmental body, if not the result of willful or negligent action of the party relying thereon;
- (d) power failure and outages affecting the Premises; and
- (e) any other similar cause or event, provided that the foregoing is beyond the reasonable control of the party claiming Force Majeure.

If, because of Force Majeure any party hereto is rendered unable, wholly or in part, to carry out its obligations under this Contract, then such party shall give to the other party prompt written notice of the Force Majeure with reasonable full details concerning it; thereupon the obligation of the party giving the notice, so far as they are affected by the Force Majeure, shall be suspended during, but not longer than, the continuance of the Force Majeure. The affected party shall use all possible diligence to remove the Force Majeure as quickly as possible, but his obligation shall not be deemed

to require the settlement of any strike, lockout, or other labor difficulty contrary to the wishes of the party involved.

C. Severability

In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either the Contractor or the City in their respective rights and obligations contained in the valid terms, covenants or condition hereof.

D. Entire Agreement

This Contract merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are no other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to this Contract, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

E. Written Amendment

Unless otherwise provided herein, this Contract may be amended only by written instrument duly executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director or the City Representative is only authorized to perform the functions specifically delegated to him or her in this Contract.

F. Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested)

addressed to the respective other party at the address prescribed in the preamble of this Contract or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

G. Captions

Captions contained in this Contract are for reference purposes only, and therefore will be given no effect in construing this Contract and are not restrictive of the subject matter of any Section in this Contract. Any reference to gender shall include the masculine, feminine and neutral.

H. Acceptance and Approval

An approval by the Director, or by any other instrumentality of the City, of any part of Contractor's performance shall not be construed to waive compliance with this Contract or to establish a standard of performance other than required by this Contract or by law. The Director is not authorized to vary the terms of this Contract.

I. Inspections and Audits

City representatives shall have the right to perform, or cause to be performed, during reasonable times (1) audits of Contract-related books and records of the Contractor, and (2) and inspections of all places where work is undertaken in connection with this Contract. The Contractor shall be required to keep such books and records available for such purpose for at least three (3) years after the ceasing of its performance under this Contract. The Director shall give Contractor reasonable prior advance notice before such audits are performed. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations. City representatives who are not City personnel are subject to the confidentiality provisions of this Agreement, unless disclosure is required by law.

J. Survival

Each party to this Contract shall remain obligated to the other party under all clauses of this

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Contract that expressly or by their nature extend beyond and service the expiration or termination of this Contract, including but not limited to the indemnity and protection of proprietary rights provisions hereof.

K. Parties In Interest

This Contract shall not bestow any rights upon any third party, but rather shall bind and benefit the City and Contractor only.

L. Assignment

Neither party shall assign its obligations under this Contract at law or otherwise without the prior written consent of the other party, which consent shall not be unreasonably withheld.

M. Applicable Laws

This Contract is subject to all laws of the State of Texas, the City Charter and Ordinance of the City of Houston, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction, including the City's Charter and code of Ordinances.

Venue for any litigation relating to this Contract shall be Harris County, Texas.

N. Drug Detection and Deterrence

It is the policy of the City to achieve a drug-free workforce and to provide a workplace that is free from the use of illegal drugs, substance abuse and alcohol abuse. The manufacture, distribution, dispensation, possession (either externally or internally), sale or use of illegal drugs by Contractor's employees while on duty at City work sites or on City projects is prohibited. Contractor's employees are prohibited from working at City work sites or on City projects while impaired by alcohol or under the influence of illegal or illicit substances.

EXHIBIT "A"**SCHEDULE I****Houston Police Department (HPD) ClearPath Upgrade****I. OVERVIEW****A. Scope of Services - General**

For and in consideration of the payments specified in this Schedule made under the terms and conditions of the Contract for the Purchase of Hardware, License of Software and Provision of Services (the "Contract") between Unisys ("Contractor") and the City of Houston (the "City"), Contractor shall provide all labor, material, and supervision necessary to provide the Products and perform the Services as fully described in this Schedule. All Products and Services obtained by the City as set forth in this Schedule are included in Contractor's Qualified Information Systems Vendor (QISV) Catalogue, which is one method by which the City may obtain Products and Services from Contractor as set forth in Section III. B. of the Contract.

B. Delivery, De-installation and Installation

- (1) Notwithstanding anything to the contrary in the Contract, the charges listed in this Schedule, which describes the initial order under the Contract, reflect applicable transportation, de-installation, removal installation and cable charges. The City will not be charged any additional fees for these services with respect to this Schedule.
- (2) Within twenty-one (21) days following Contractor's provision of the hardware and software items set forth in this Schedule, the Police Chief and Contractor shall schedule and Contractor shall install the Contractor-Installed Hardware Items and all software items identified in this Schedule and perform the services set forth in this Schedule, and the Police Chief and Contractor shall operate the installed hardware and software items to ensure that they meet or exceed HPD's current

system requirements. In the event that the Police Chief and Contractor determine that more than twenty-one (21) days are required to perform such installation, the Police Chief and Contractor may agree to extend this twenty-one (21) day period of time and agree to a new extended installation date for such hardware and software items; this agreement will not require amendment of this Schedule or the Contract but must be in writing (an "Extension Letter").

- (3) All Products to be installed by Contractor will be installed during Contractor normal working hours, unless production downtime is required. Production downtime will be scheduled during low peak periods at the convenience of the Houston Police Department, but Contractor and the City shall perform the installation of the Products in accordance with Section I. B. (2) of this Schedule.

C. Migration

The Equipment, Software and Services specified in this Schedule will provide a migration package for replacement of the City's currently installed 2200/500 computer system with the Equipment and Software specified in this Schedule including all required Equipment, Software and Services, rigging, cables, and shipping charges, such that all delivered components will operate in conjunction with each other and in conjunction with all EMC peripherals on the currently installed and operational 2200/500 computer system at no additional charge to the City. Contractor will provide the installation and de-installation necessary to perform such migration during non-prime (weekends and after-hours) at the request of the City to minimize disruptions, at no additional charge to the City, with the provision that Contractor's provision of such installation will be in accordance with Section I. B. (2) of this Schedule.

D. Reimbursable Expenses.

Contractor shall charge no Reimbursable Expenses under this Schedule, as that term is defined in the Contract.

II. HARDWARE

A. Hardware Description.

- (1) Commodity Products. All of the hardware items obtained by the City as set forth in Table I of this Schedule are "Commodity Products" as that term is defined in the Contract.
- (2) Contractor-Installed Hardware Items. The hardware items in Table I with "NO" in the "CITY SET UP" column shall be installed by Contractor ("Contractor-Installed Hardware Items").
- (3) City-Installed Hardware Items. The hardware items in Table I with "YES" in the "CITY SET UP" column shall be installed by the City ("City-Installed Hardware Items").

B. Warranties.

- (1) Contractor Hardware Items.
 - (a) Each hardware item in Table I with the term "Contractor Warranty" identified in the "WARRANTY" column of Table I (a "Contractor Hardware Item") is
 - (i) "Contractor-provided Equipment" as defined in the Contract, and
 - (ii) is warranted by Contractor under the minimum warranty for Contractor-provided Equipment that is set forth in Section III. K.

(1) (a) of the Contract for the period set forth in the "WARRANTY TERM" column of Table I that is associated with that Contractor Hardware Item (the "Contractor-provided Equipment Warranty Period" for that Contractor Hardware Item).

(b) During the Contractor-provided Hardware Warranty Period for a Contractor Hardware Item Contractor shall accept City requests for warranty coverage and perform warranty work for that Contractor Hardware Warranty Item twenty-four hours a day, seven (7) days a week.

(i) During the Contractor-provided Hardware Warranty Period for Contractor Hardware Items that have an associated charge in the "WARRANTY UPLIFT CHARGE" column in Table I, Contractor would normally shall accept City requests for warranty coverage and perform warranty work for those Contractor Hardware Items from 8:00 a.m. to 5:00 p.m. Monday through Friday. However, in exchange for the City's payment of the amount associated with those Contractor Hardware Items in the "WARRANTY UPLIFT CHARGE" column of Table I during the "Contractor-provided Hardware Warranty Period" for such Contractor Hardware Items, Contractor shall accept City requests for warranty coverage and shall perform warranty work for those Contractor Hardware Items 24 hours a day, 7 days a week. Contractor's performance of an enhanced warranty for such Contractor Hardware Items is a

"Equipment or Software Maintenance and Support Commodity Service" as defined in the Contract.

- (ii) For all other Contractor Hardware Items in Table I that are warranted by Contractor but do not have an associated charge in the "WARRANTY UPLIFT CHARGE" column in Table I, Contractor shall accept City requests for warranty coverage and shall perform warranty work for such Contractor Hardware Items 24 hours a day, 7 days a week without the City's payment of any additional "WARRANTY UPLIFT CHARGE" for those Contractor Hardware Items.
- (2) EMC Hardware Items. Each hardware item in Table I with the term "EMC Warranty" identified in the "Warranty" column of Table I is "Non-Contractor Equipment" as that term is defined in the Contract, and is warranted by the third-party vendor of that hardware item, EMC, and not by Contractor (an "EMC Hardware Item") for the period set forth in the "WARRANTY TERM" column of Table I (a "EMC Hardware Item Warranty Term"). EMC's warranty for each EMC Hardware Item is as set forth in Appendix II. For the purposes of the EMC warranty set out in Appendix II, all EMC Hardware Items shall be considered as part of "Symmetrix" as that term is used in Appendix II.
- (3) Hardware Items With No Warranty. The hardware items in Table I with the term "No Warranty" identified in the "Warranty" column of Table I have no warranty under this Schedule (a "No Warranty Hardware Item").

- (4) Hardware Item Warranty Start Dates. The warranties for all hardware items set forth in Table I start immediately upon Contractor's provision of that hardware item to the City.
- (5) Warranties for Maintenance Services for Hardware Items.
- (a) Contractor-provided Equipment Maintenance Services. Contractor warrants that it shall perform maintenance services for Contractor-provided Equipment as set forth in Section II. D. (1) (a) of this Schedule in accordance with the warranty set forth in Section III. K. (3) of the Contract.
- (b) EMC Maintained Hardware Items. EMC's warranty for provision of maintenance services for EMC Maintained Hardware Items (as set forth in Section II. D. (1) (b) of this Schedule) shall be in accordance with the provisions of Appendix II. For the purposes of the EMC maintenance provisions set out in Appendix II, all EMC Maintained Hardware Items shall be considered as part of "Symmetrix" as that term is used in Appendix II.

C. Patent, Copyright, and Trade Secret Indemnification for EMC Hardware Items.

Each EMC Hardware Item is a "Third-Party Produced or Developed Product" as that term is defined in Section III. P. (2) of the Contract, and is provided by the third-party vendor of that hardware item, EMC, and not by Contractor. Under Section III. P. (2) of the Contract, Contractor is to notify the Director in writing of the "Patent, Copyright, and Trade Secret Indemnification", if any, provided by the vendor of such Third-Party Produced or Developed

Products before such Products are provided under this Schedule. The "Patent, Copyright, and Trade Secret Indemnification" provided by EMC for the EMC Hardware Items is set out in Appendix IV.

D. Hardware Maintenance.

(1) Maintained Hardware Items. If a hardware item set forth in Table I has a dollar amount specified in the "MONTHLY HARDWARE ITEM MAINTENANCE FEE" column in Table I, then Contractor shall provide maintenance services for that hardware item under this Schedule (a "Maintained Hardware Item"), and such maintenance services shall be considered a "Equipment or Software Maintenance and Support Commodity Service" as that term is defined in the Contract. Such maintenance services shall be provided as follows:

(a) Contractor-Provided Equipment Maintenance Services.

(i) If the Maintained Hardware Item is also a "Contractor Hardware Item" with a "Contractor-provided Equipment Warranty Period" as set forth in Section II. B. (1) (a) of this Schedule, then Contractor shall provide maintenance services for that Maintained Hardware Item upon the expiration of the Contractor-provided Equipment Warranty Period for that Maintained Hardware Item.

(ii) If the Maintained Hardware Item is also a "No Warranty Hardware Item" as set forth in Section II. B. (3) of this Schedule, then Contractor shall provide maintenance services for that Maintained Hardware Item as follows:

- (A) If the Maintained Hardware Item has a "YES" associated with it in the "CITY SET UP" column in Table I then Contractor's provision of maintenance services for that Maintained Hardware Item shall begin immediately upon Contractor's delivery of that hardware item to the City.
- (B) If the Maintained Hardware Item has a "NO" associated with it in the "CITY SET UP" column in Table I then Contractor's provision of maintenance services for that Maintained Hardware Item shall begin immediately following the completion of Contractor installation of that hardware item under this Schedule.
- (iii) Contractor's performance of hardware maintenance services under this Schedule shall be in accordance with Contractor's SURETY Comprehensive Gold Coverage maintenance, as set out in Appendix I.
- (b) Maintenance for EMC Hardware Items. If a Maintained Hardware Item is also an EMC Hardware Item, then following the expiration of the EMC Hardware Item Warranty Term for that Maintained Hardware Item as set forth in this Schedule, the City shall be responsible for obtaining maintenance services for those Maintained Hardware Items ("EMC Maintained Hardware Items") from a separate vendor under another City contract.

- (2) Hardware Items That Are Not Maintained. If a hardware item set forth in Table I does not have a dollar amount specified in the "MONTHLY MAINTENANCE FEE" column in Table I, then no maintenance services shall be provided for that hardware item under this Schedule, either by Contractor or by a third-party.
- (3) Hardware Maintenance Services Charges.
- (i) Contractor shall charge the City for all hardware item maintenance services obtained by the City under this Schedule (whether such maintenance services are provided by Contractor or by a third party). Contractor's charge for such hardware item maintenance services shall be based on the Monthly Hardware Item Maintenance Fee associated with that hardware item, which shall be determined in accordance with the provisions of this Section.
 - (ii) During the first 36 months of this Schedule, the Monthly Hardware Item Maintenance Fee for a hardware item shall equal the amount in the "Monthly Hardware Item Maintenance Fee" column that is associated with that hardware item as set forth in Table I.
 - (iii) Following the expiration of the first 36 months of this Schedule, the Monthly Hardware Item Maintenance Fee associated with a hardware item may be increased by Contractor's provision of 30 days written advance notice of such an increase to the Director. However, the cumulative increase in a Monthly Hardware Item Maintenance Fee shall not exceed 7% during each one-year period that follows the expiration of the first 36-

months that this Schedule is in effect, and the Monthly Hardware Item Maintenance Fee for a hardware item shall never exceed Contractor's or EMC's then-published list price for that Monthly Hardware Item Maintenance Fee. The Director may terminate maintenance services for a hardware item under this Schedule rather than pay an increase in the price for such maintenance services.

III. SOFTWARE

A. Software Licenses

- (1) Licensed Software. All of the software items obtained by the City as set forth in Table II of this Schedule are "Commodity Products" and "Licensed Software" as those terms are defined in the Contract.
- (2) One Time Charge Software Items. Each software item set out in Table II with the value "OTC" associated with that item in the "PLAN" column is a "One Time Charge Software Item."
 - (a) Contractor-Owned Software Items. The One Time Charge Software Items which are identified as being owned by "UNISYS" in the "Software Owned and Warranted by" column of Table II are "Contractor-Owned Software Items" as that term is defined in the Contract ("One Time Charge Contractor-Owned Software Items"). The City's license to use such One Time Charge Contractor-Owned Software Items shall be subject to the terms and conditions set forth in Section V. B. of the Contract.
 - (b) Non-Contractor-Owned Licensed Software Item. The One Time Charge

Software Items which are not identified as being owned by "UNISYS" in the "Software Owned and Warranted by" column of Table II are "Non-Contractor-Owned Licensed Software Items" as that term is defined in the Contract. The City's license to use such One Time Charge Software Items that are also Non-Contractor-Owned Licensed Software Items shall be subject to the following terms and conditions:

- (i) If the One Time Charge Software Item is identified as being owned by "MICROSOFT / BEA" in the "Software Owned and Warranted by" column of Table II, then the City's license to use that One Time Charge Software Item is subject to the terms and conditions set forth in Appendix III.
- (ii) If the One Time Charge Software Item is identified as being owned by "MICROSOFT" in the "Software Owned and Warranted by" column of Table II, then the City's license to use that One Time Charge Software Item is subject to the terms and conditions set forth in Appendix III.
- (iii) If the One Time Charge Software Item is identified as being owned by "EMC" in the "Software Owned and Warranted by" column of Table II, then the City's license to use that One Time Charge Software Item is subject to the terms and conditions set forth in Appendix IV.

(3) Extended Term Plan Software Items

(a) Definition. Each software item set out in Table II with the value "ETP" associated with that item in the "PLAN" column is an "Extended Term Plan Software Item." Each Extended Term Plan Software Item present in Table II is identified as being owned by "UNISYS" in the "Software Owned and Warranted by" column of Table II, and therefore each Extended Term Plan Software Item is a "Contractor-Owned Software Item" as that term is defined in the Contract. The City's license to use each Extended Term Plan Software Item is subject to the following terms and conditions, which supplant and supersede the default terms and conditions applicable to Contractor-Owned Software Items as set forth in Section V. B. of the Contract:

(i) Contractor grants to City a personal, non-exclusive and non-transferable 60-month license to use the Extended Term Plan Software Item and related documentation according to the terms and conditions of this Contract, solely for City's internal data processing requirements on the Contractor SPU in the United States on which the Extended Term Plan Software Item is initially installed. City agrees that Contractor may periodically inspect the computer site in order to audit the Extended Term Plan Software Item installed at City's site at mutually agreed upon times.

(ii) City may develop application programs, may modify any Contractor

application Extended Term Plan Software Item and may combine such with other programs or materials to form an updated work, provided that upon discontinuance or termination of the license, the Extended Term Plan Software Item will be removed from the updated work and returned to Contractor.

- (iii) City will not decompile or disassemble any Extended Term Plan Software Item provided under this Contract or modify a Extended Term Plan Software Item which bears a copyright notice of any third party. City will make and maintain no more than one archival copy (for backup purposes) of each Extended Term Plan Software Item, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original.
- (iv) If the SPU on which any Extended Term Plan Software Item is licensed becomes temporarily unavailable, use of such Extended Term Plan Software Item may be temporarily transferred to an alternative SPU.
- (v) No license is granted to City to use any Contractor proprietary operating system Software to (a) assess, test or develop any hardware products either for others or where they are to be marketed by City for compensation, or (b) develop any software program other than an application program. This license restriction does not apply to MS/DOS, UNIX and CTOS/BTOS operating

systems. Application programs means programs for performing specific automatic data processing tasks such as payroll, inventory control, information retrieval or repetitive arithmetic operations, but excludes programs such as environmental programs, handlers, operating systems and data base management programs.

- (vi) If City desires to use a Extended Term Plan Software Item in a service bureau mode or at another location or as described in Section III. A. (3) (a) (v) of this Schedule, City shall request prior permission in writing from Contractor. Contractor will then advise City whether, and under what terms and conditions, Contractor will license the Extended Term Plan Software Item as requested. All restrictions applicable to City will also apply to any permitted service bureau users.
 - (vii) This Contract does not transfer to City title to any intellectual property contained in any Extended Term Plan Software Item, or any documentation or Proprietary Information concerning a Extended Term Plan Software Item.
- (b) Additional Licenses for Extended Plan Software Items. Following the expiration of the City's sixty-month license to use an Extended Plan Software Item, the Director and Contractor may negotiate a price for the City to obtain an additional license to use the Extended Plan Software Item. In the event that the Director and Contractor agree on such an

extended license for the City's use of an Extended Plan Software Items, Contractor shall document the terms and condition of the license and the price to be charged by Contractor for such a license in a "New Extended Plan Software Item Document" for that Extended Plan Software Item, which both parties shall sign. Once signed, the New Extended Plan Software Item Document shall be incorporated into this Agreement. Following both parties signature of the New Extended Plan Software Item Document Contractor shall submit an invoice to the City for the license fee for the Extended Plan Software Item as recorded in that Document which the City shall, subject to the allocation of funds, pay within 30 days following the Director's receipt and approval of the invoice.

B. Software Installation. Contractor shall install all software items identified in Table II on the hardware identified in Table I.

C. Warranties.

(1) Contractor-Owned and Warranted Software Items. Each software item in Table II which is identified as being warranted by "UNISYS" in the "Software Owned and Warranted by" column of Table II is a Contractor-Owned Software Item as that term is defined in the Contract (a "Contractor-Owned and Warranted Software Item"). Each Contractor-Owned and Warranted Software Item shall, in its unaltered form, be warranted by Contractor to conform substantially to its then-current published functional specifications for ninety (90) days from the date the Contractor provides the Contractor-Owned and Warranted Software Item to the

City (the "Contractor Software Warranty Period"), provided such Contractor-Owned and Warranted Software Item is used in a manner consistent with any applicable Contractor minimum Equipment and Software configuration specifications. Contractor will make reasonable efforts to correct such errors reflecting significant deviations from the functional specifications as are reported by City to Contractor during this 90-day Warranty Period.

- (2) Microsoft / BEA-Owned and Warranted Software Items. Each software item in Table II which is identified as being warranted by "MICROSOFT / BEA" in the "Software Owned and Warranted by" column of Table II (a "Microsoft / BEA-Owned Software Item") shall be warranted by Microsoft / BEA as set forth in Appendix III.
- (3) Microsoft-Owned and Warranted Software Items. Each software item in Table II which is identified as being warranted by "MICROSOFT" in the "Software Owned and Warranted by" column of Table II (a "Microsoft-Owned Software Item") shall be warranted by Microsoft as set forth in Appendix III.
- (4) EMC-Owned and Warranted Software Items. Each software item in Table II which is identified as being warranted by "EMC" in the "Software Owned and Warranted by" column of Table II (an "EMC-Owned Software Item") shall be warranted by EMC as set forth in Appendix II for 90 days from the date that Contractor provides the EMC-Owned Software Item to the City under this Schedule. For the purposes of the EMC warranty set out in Appendix II, all EMC-Owned Software Items shall be considered as part of "Symmetrix" as that

term is used in Appendix II.

(5) Warranties for Maintenance Services for Software Items.

- (a) Contractor-Owned Software Item Maintenance Services. Contractor warrants that it shall perform maintenance services for Contractor-owned Software Items as set forth in Section III. E. (1) (a) of this Schedule in accordance with the warranty set forth in Section III. K. (3) of the Contract.
- (b) Maintenance of Microsoft / BEA-Owned Software Items. As Contractor is provide maintenance for the Microsoft / BEA-Owned Software Items set forth in Table II (as set forth in Section III. E. (1) (b) of this Schedule), Contractor warrants that its performance of such maintenance services shall be in accordance with the warranty set forth in Section III. K. (3) of the Contract.
- (c) Maintenance of Microsoft Software Items. As Contractor is provide maintenance for the Microsoft-Owned Software Items set forth in Table II (as set forth in Section III. E. (1) (c) of this Schedule), Contractor warrants that its performance of such maintenance services shall be in accordance with the warranty set forth in Section III. K. (3) of the Contract.
- (d) Maintenance of EMC Software Items. As Contractor is provide maintenance for the EMC-Owned Software Items set forth in Table II (as set forth in Section III. E. (1) (d) of this Schedule), Contractor warrants that its performance of such maintenance services shall be in accordance

with the warranty set forth in Section III. K. (3) of the Contract.

D. Patent, Copyright, and Trade Secret Indemnification for Software Items.

Each software item in Table I with the terms "EMC", "Microsoft / BEA", or "Microsoft" identified in the "SOFTWARE OWNED AND WARRANTED BY" column of Table II is a "Third-Party Produced or Developed Product" as that term is defined in Section III. P. (2) of the Contract, and each such software item is provided by the third-party vendor identified in the "SOFTWARE OWNED AND WARRANTED BY" column of Table II, and not by Contractor. Under Section III. P. (2) of the Contract, Contractor is to notify the Director in writing of the "Patent, Copyright, and Trade Secret Indemnification" provided by each vendor of such Third-Party Produced or Developed Products before such Products are provided under this Schedule. Therefore,

- (1) the "Patent, Copyright, and Trade Secret Indemnification" provided by EMC for the Third-Party Produced or Developed Products provided by EMC under this Schedule is as set out in Appendix IV,
- (2) the "Patent, Copyright, and Trade Secret Indemnification" provided by Microsoft / BEA for the Third-Party Produced or Developed Products provided by Microsoft / BEA under this Schedule is as set out in Appendix III, and
- (3) the "Patent, Copyright, and Trade Secret Indemnification" provided by Microsoft for the Third-Party Produced or Developed Products provided by Microsoft under this Schedule is as set out in Appendix III.

E. Maintenance Services.

- (1) Maintained Software Items. If a software item set forth in Table II has a dollar

amount specified in the "MONTHLY SOFTWARE ITEM MAINTENANCE FEE" column in Table II, then Contractor shall provide maintenance services for that software item under this Schedule (a "Maintained Software Item"). Such maintenance service is a "Equipment or Software Maintenance and Support Commodity Service", as that term is defined in the Contract. Contractor shall provide such maintenance services as follows:

- (a) If the Maintained Software Item is also a Contractor-Owned Software Item, then Contractor shall provide maintenance services for that Maintained Software Item upon the expiration of the Contractor Software Warranty Period for that Maintained Software Item.
- (b) If the Maintained Software Item is also a Microsoft / BEA-Owned Software Item then Contractor shall provide maintenance services for that Maintained Software Item upon the expiration of the warranty for that Maintained Software Item as set forth in Section III. C. (2) of this Schedule.
- (c) If the Maintained Software Item is also a Microsoft-Owned Software Item then Contractor shall provide maintenance services for that Maintained Software Item upon the expiration of the warranty for that Maintained Software Item as set forth in Section III. C. (3) of this Schedule.
- (d) If the Maintained Software Item is also an EMC-Owned Software Item then Contractor shall provide maintenance services for that Maintained Software Item upon the expiration of the warranty for that Maintained

Software Item as set forth in Section III. C. (4) of this Schedule.

- (e) Contractor's performance of software maintenance services for Contractor-Owned Software Items, Microsoft / BEA-Owned Software Items, Microsoft-Owned Software Items, and EMC-Owned Software Items under this Schedule shall be in accordance with Contractor's SURETY Comprehensive Gold Coverage maintenance, as set out in Appendix I.

(2) Software Items That Are Not Maintained. If a software item set forth in Table II has the term "NOT COVERED" specified in the "MONTHLY SOFTWARE ITEM MAINTENANCE FEE" column in Table II, then no maintenance services shall be provided for that software item under this Schedule.

(3) Software Maintenance Services Charges.

- (i) Contractor shall charge the City for all software item maintenance services obtained by the City under this Schedule by charging the City the Monthly Software Item Maintenance Fee associated with each software item.
- (ii) During the first 36 months of this Schedule, the Monthly Software Item Maintenance Fee for a software item shall equal the amount in the "MONTHLY SOFTWARE ITEM MAINTENANCE FEE" column that is associated with that software item as set forth in Table II.
- (iii) Following the expiration of the first 36 months of this Schedule, the Monthly Software Item Maintenance Fee associated with a software item may be increased by Contractor's provision of 30 days written advance notice of such an increase to the Director. However, the cumulative

increase in a Monthly Software Item Maintenance Fee shall not exceed 7% during each one-year period that follows the expiration of the first 36-months that this Schedule is in effect, and the Monthly Software Item Maintenance Fee for a software item shall never exceed Contractor's, EMC's, Microsoft's, Microsoft / BEA's, or EMC's then-published list price for that Monthly Software Item Maintenance Fee. The Director may terminate maintenance services for a software item under this Schedule rather than pay an increase in the price for such maintenance services.

- (v) Contractor shall be responsible for paying all amounts for maintenance services provided by a third party under this Schedule to the third party providing such maintenance services. Contractor shall indemnify and release the City for Contractor's failure to transmit any payments made by the City for third party-performed maintenance services to the third party that performed such maintenance services.

IV. SERVICES

- A. Provision of Services. Contractor shall provide all of the services identified in Table III using the hardware and software identified in Tables I and II. Such services shall be designated as "Commodity Services" as that term is defined in the Contract.

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B. Warranties. Contractor shall warrant its performance of the services identified in Table III as set forth in Section III. K. (3) of the Contract.

V. SCHEDULE TERM

This Schedule is effective on the date of countersignature by the City Controller and Contractor and shall remain in effect for five (5) years following the expiration of the last warranty on a hardware or software item set forth in this Schedule, unless sooner terminated under this Schedule or the Contract.

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VI. PAYMENTS

A. Hardware and Software Items

(.) Payment Terms for Hardware and Software Items. Despite the designation of the hardware and software items set forth in Tables I and II as Commodity Products as defined in the Contract, the designation of the enhanced warranty services, the hardware maintenance services, and the software maintenance services set forth in this Schedule as "Equipment or Software Maintenance and Support Commodity Services" as defined in the Contract, the parties agree that the payment provisions of the Contract applicable to such Commodity Products and Services (as set forth in Section IV. C. (1) of the Contract) are superseded by the following invoice and payment terms with respect to the hardware and software items, enhanced warranty services, hardware maintenance services, and software maintenance services set forth in this Schedule.

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- (2) Software Exchange Credits. Under a "Supplement No. 1" to another existing "Master Agreement for the Purchase of Hardware, License of Software and Provision of Services" between the City and Contractor, City Contract Number C34141, that is separate and distinct from the Contract under which the City and Contractor enter into this Schedule (the "Separate Contract"), the City prepaid (i) an amount of \$1,065,494.00 for a 60-month license to use certain Contractor software, and (ii) an amount of \$ 156,780.00 for Contractor's performance of SURETY Support Services for that Contractor-licensed software; such a 60-month license was to start on January 1, 1997 and last through December 31, 2001. However, as a result of the City's purchase of the software items set forth in this Schedule, the City will have no further need for the software licensed and the SURETY Support Services obtained under Supplement No. 1 to the Separate Contract. Therefore, Contractor shall provide a credit to the City for the unused portion of such software licenses and SURETY Support Services in an amount equal to \$353,438.00 as shown in the "Software Exchange Credit" row of Table II. This "Software Exchange Credit" shall be applied in Contractor's invoice for provision of the software items in Table II, as set forth in Section II. F. (3) of this Schedule.
- (3) Invoice for Hardware and Software Items.
- (a) Following Contractor's provision to the City of all hardware and software items set forth in Tables I and II, Contractor shall submit an invoice to the City for those hardware and software items. Each invoice shall include the following:
- (i) For each hardware item identified in Table I, the invoice shall identify the following:
- 24

- (A) the hardware item,
 - (B) any price Contractor charges for that hardware item as set forth in the "PRICE" column of Table I or, if the hardware item is provided at "NO CHARGE" as set forth in the "PRICE" column of Table I, then the hardware item shall be identified as having a price of \$0.00,
 - (C) if the hardware item is an Contractor Hardware Item with an associated charge in the "WARRANTY UPLIFT CHARGE" column of Table I (as set forth in Section II. B. (2) (a) of this Schedule), then the yearly "WARRANTY UPLIFT CHARGE" for that Contractor Hardware item, which shall equal the charge in the "WARRANTY UPLIFT CHARGE" column of Table I associated with that Contractor Hardware Item multiplied by twelve (12).
 - (D) The total amount charged by Contractor for each hardware item.
- (ii) For each software item identified in Table II, the invoice shall identify the following:
- (A) the software item,
 - (B) any price Contractor charges for that software item as set forth in the "PRICE" column of Table II or, if the software item is provided at "NO CHARGE" as set forth in the

"PRICE" column of Table II , then the software item shall be identified as having a price of \$0.00.

(C) The cumulative total of all amounts charged by Contractor under that invoice, less the "Software Exchange Credit" set forth in Section II. F. (2) of this Schedule.

(iii) The cumulative total of all amounts charged by Contractor under that invoice.

(b) In the event that the Police Chief and Contractor extend Contractor's and the City's completion of the installation of the hardware and software items to a date beyond the 21 day period set forth in Section I. B. (2) of this Schedule under an Extension Letter agreed to by the parties, Contractor shall rescind the original invoice for the hardware and software items set forth in Section VI. A. (3) (a) of this Section and will issue another invoice for such hardware and software items that includes a new payment due date that is at least 10 days beyond the new extended installation date documented in the Extension Letter. In the event that, due to no fault of the City, Contractor's and the City's installation of the hardware and software items as set forth in Section I. B. (2) of this Schedule cannot be completed within the original 21 day period or by any new extended installation date agreed to by the parties as documented in an Extension Letter, the City shall have no obligation to pay for the hardware and software items set forth in this Schedule, which shall be returned to

Contractor at no cost to the City.

- (4) Invoice to Continue Warranty Uplift for a Contractor Hardware Item. In the event that a Contractor Hardware Item has (a) an associated charge in the "WARRANTY UPLIFT CHARGE" column of Table I (as set forth in Section II. B. (2) (a) of this Schedule), and (b) a Contractor-provided Hardware Warranty Period that exceeds one year in length, then on each anniversary of the start of the Contractor-provided Hardware Warranty Period for that Contractor Hardware Item until the time that such Contractor-provided Hardware Warranty Period has expired, Contractor shall submit an invoice to the City so that the Contractor Hardware Item will continue to receive 24-hour-a-day, 7-days-a week warranty support for that Contractor Hardware Item during the subsequent one-year interval of its Contractor-provided Hardware Warranty Period that starts on the anniversary date of that Warranty Period. Such an invoice shall identify the Contractor Hardware Item and the yearly "Warranty Uplift Charge" for that hardware item, which shall equal the charge in the "WARRANTY UPLIFT CHARGE" column of Table I associated with that Contractor Hardware Item multiplied by twelve (12).
- (5) Invoice for Maintenance for Hardware and Software Items. On or after the date that maintenance services start for a hardware item identified in Table I (as set forth in Section II. D. (1) (a) of this Schedule) or for a software item identified in Table II (as set forth in Section III. E. (1) of this Schedule), and on or after the anniversary of that date, Contractor shall submit an invoice to the City in order for

the City to make one year's advance payment for the maintenance that Contractor or a third party is to provide for that hardware or software item during the subsequent one-year period. If the invoice is for hardware item maintenance, it shall identify the hardware item and Contractor's yearly price for such maintenance, which shall equal the Monthly Hardware Item Maintenance Fee for that hardware item determined in accordance with Section II. D. (3) of this Schedule multiplied by twelve (12). If the invoice is for software item maintenance, it shall identify the software item and Contractor's yearly price for such maintenance services, which shall equal the Monthly Software Item Maintenance Fee for that software item determined in accordance with Section III. E. (3) of this Schedule multiplied by twelve (12). Following the City's payment to Contractor for any maintenance that is to be provided by a third party under this Schedule, Contractor shall be responsible for paying that amount to the third party providing such maintenance. Contractor shall indemnify and release the City for Contractor's failure to transmit any payments made by the City for third party-performed maintenance to the third party that is to perform such maintenance.

B. Services. While the services set forth in Table III are Commodity Services, they are not "Equipment or Software Maintenance and Support Commodity Services" as that term is defined in the Contract. Therefore, Contractor shall invoice for such services in accordance with the procedures set forth in Section IV. C. (1) (b) (ii) of the Contract.

C. Invoices

(1) Payment of Invoices. The City shall, subject to the allocation of funds, pay the

above invoices within 30 days after the Director's receipt and approval of an invoice.

- (2) Consolidation of Invoices. The Director and Contractor may agree to consolidate Contractor's submission of invoices under this Schedule in order to most efficiently permit Contractor and the City to process such invoices, provided that such consolidation does not in any way modify the amounts Contractor is to charge under the invoices as set forth in this Schedule.

VII. MWBE COMPLIANCE

Contractor agrees to comply with the City's Minority and Women Business Enterprise programs as set out in Chapter 15, Article V of the City of Houston code of Ordinances insofar as such programs apply to this Contract. Contractor further agrees that it will make good faith efforts to award subcontracts or supply agreements in at least seventeen percent (17%) of the value of the annual software/hardware maintenance under this Schedule to Minority and Women-owned Business Enterprises certified by the City's Affirmative action division. In addition, Contractor acknowledges that it has reviewed the requirements for good faith efforts that are on file with the City's Affirmative Action division and Contractor acknowledges that it has reviewed and is familiar with such requirements and will comply with them.

Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "C" of the "Master Agreement for the Purchase of Hardware, License of Software and Provision of

Services" under which this Schedule is entered into by the parties. If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

VIII. SIGNATURES

The Parties have executed this Schedule in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):

UNISYS CORPORATION

By: _____
Name:
Title:

By: Mary B. Palma
Name: MARY B. PALMA
Title: CONTRACT MANAGER

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Wendell Russell

Signed by: Lee P. Brown
Christy Johnson

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Demetrius
City of Houston Chief Information
Officer

Kevin H. Garcia
Roe Evans
City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Scott Potts
Assistant City Attorney
L.D. File No.034-9900338-002

12/20/00

TABLE I - CLEARPATH IX6600 HARDWARE

QTY	STYLE	DESCRIPTION	PRICE	CITY SET UP?	WARRANTY	WARRANTY TERM	MONTHLY HARDWARE ITEM MAINTENANCE FEE	WARRANTY UPLIFT CHARGE
1	IX6602-P3	SYS: CLEARPATH6602-P3 3X2	\$665,372.00	NO	Contractor Warranty	12 Months	\$3,066.00	N/A
1	INI64-MW	MEM: 64MW INITIAL ORDER	NO CHARGE	NO	Contractor Warranty	12 Months	NOT COVERED	N/A
1	FTE5-6U	INSTL: 6U FEEDTHRU W/5 FT	\$2,439.00	NO	Contractor Warranty	12 Months	\$7.00	N/A
6	CA225-BMC	I/F: BLOCK MUX CHAN- 2CHAN	\$84,915.00	NO	Contractor Warranty	12 Months	\$258.00	N/A
2	RM5-CA4	INSTL: CHANNEL ADPTR MOD	\$28,305.00	NO	Contractor Warranty	12 Months	\$92.00	\$2.00
4	CBL8820-25	CABLE: 25' POWER NET	\$1,227.00	NO	No Warranty	NONE	NOT COVERED	N/A
2	CBL8820-2	CABLE: 2FT PCN/TB	\$377.00	NO	No Warranty	NONE	NOT COVERED	N/A
2	FTE5-3U	INSTL: 3U FEEDTHRU W/5 FT	\$3,680.00	NO	Contractor Warranty	12 Months	\$10.00	N/A
5	CA332-SCI	ADPTR: DIFF SCSI 2W ULTRA	\$47,175.00	NO	Contractor Warranty	12 Months	\$110.00	N/A
2	IX5000-NIO	INSTL: CSIOPN PCA	\$78,310.00	NO	Contractor Warranty	12 Months	\$240.00	N/A
1	CA3000-ETH	I/F: ETHERNET	\$10,850.00	NO	No Warranty	NONE	\$33.00	N/A
2	CA229000-000	CABLE: LAN TRUNK/LOBE 25	\$340.00	NO	No Warranty	NONE	NOT COVERED	N/A

TABLE I - CLEARPATH IX6600 HARDWARE

QTY	STYLE	DESCRIPTION	PRICE	CITY SET UP?	WARRANTY	WARRANTY TERM	MONTHLY HARDWARE ITEM MAINTENANCE FEE	WARRANTY UPLIFT CHARGE
2	2200-RMI	I/F:REMOTE MAINT I/F	NO CHARGE	NO	Contractor Warranty	12 Months	NOT COVERED	N/A
12	CBL225-8	CABLE:CSBMC DROP CBL 8FT	\$4,642.00	NO	No Warranty	NONE	NOT COVERED	N/A
1	IXX4000-2CC	CONSOLE:CONSOLIDAT-PARTI	NO CHARGE	NO	Contractor Warranty	12 Months	\$39.00	N/A
1	RMA36-AUX	CABINET:AUXILIARY ATTACH	\$7,076.00	NO	Contractor Warranty	12 Months	\$19.00	N/A
1	IX4010-CHC	CONSOLE:HDW CAB/W PWR	NO CHARGE	NO	Contractor Warranty	12 Months	NOT COVERED	N/A
1	IX4010-SPO	CONSOLE:SPO/HMP CONSOLID	\$12,856.00	NO	Contractor Warranty	12 Months	\$185.00	N/A
1	HMP5000-WS	WRKST:HMP WORKSTATION	\$3,680.00	NO	Contractor Warranty	12 Months	\$36.00	N/A
1	HMP5000-WS	WRKST:HMP WORKSTATION	\$3,680.00	NO	Contractor Warranty	12 Months	\$36.00	N/A
1	F8337-05	CABLE:25' PARALLEL I/F	\$80.00	NO	No Warranty	NONE	NOT COVERED	N/A
1	UDS2155-D11	UDS2155 PTR, 110V	\$1,505.00	NO	Contractor Warranty	12 Months	\$38.00	\$17.00
1	F8337-05	CABLE:25' PARALLEL I/F	\$80.00	NO	No Warranty	NONE	NOT COVERED	N/A
1	UDS2155-D11	UDS2155 PTR, 110V	\$1,505.00	NO	Contractor Warranty	12 Months	\$38.00	\$17.00

TABLE I - CLEARPATH IX6600 HARDWARE

QTY	STYLE	DESCRIPTION	PRICE	CITY SET UP?	WARRANTY	WARRANTY TERM	MONTHLY HARDWARE ITEM MAINTENANCE FEE	WARRANTY UPLIFT CHARGE
6	SCI12-68S	EMCDISK:C12M-68S CABLE	\$1,630.00	NO	EMC Warranty	24 Months	NOT COVERED	N/A
1	CAB8430-18	EMCDISK:SYM 5.0 ICDA 96 3.5" 18GB	\$133,941.00	NO	EMC Warranty	24 Months	\$180.00	N/A
8	DSK8031-18M	EMCDISK:17.9GB MIR 2 PHY DRIVES	\$196,447.00	NO	EMC Warranty	24 Months	\$640.00	N/A
1	MEM2048-3	EMCDISK:2048MB MEM SYM 5.0	\$91,154.00	NO	EMC Warranty	24 Months	\$750.00	N/A
2	DPC3-US4	EMCDISK:ULTRA SCSI 4 PORT DIR HV	\$49,112.00	NO	EMC Warranty	24 Months	\$100.00	N/A
5	OSM1000-PRC	INSTL:OSM IEC320 PWR CRD	\$61.00	NO	No Warranty	NONE	NOT COVERED	N/A
1	VX4000-CP3	ACC:MONITOR/KYB/MOU SE	\$547.00	NO	Contractor Warranty	12 Months	NOT COVERED	N/A
2	4125-ORT	TAPE:9TRK OPEN REEL	\$38,872.00	NO	Contractor Warranty	12 Months	\$402.00	N/A
1	CBL131-5	CABLE:5' SCSI I/O	\$71.00	NO	No Warranty	NONE	NOT COVERED	N/A
1	ESR508151-GZN	SVR:ES5085R BASE PKG NT	\$14,497.00	NO	Contractor Warranty	36 Months	\$148.00	\$66.00
1	IX5085-1FD	IX 1ST ES5085 NT COMP PK	NO CHARGE	NO	Contractor Warranty	12 Months	NOT COVERED	N/A
1	WI8003-CGS	ACC:COMP GOLD UPG W/ESR	\$2,281.00	NO	Contractor Warranty	36 Months	NOT COVERED	N/A

TABLE I - CLEARPATH IX6600 HARDWARE

QTY	STYLE	DESCRIPTION	PRICE	CITY SET UP?	WARRANTY	WARRANTY TERM	MONTHLY HARDWARE ITEM MAINTENANCE FEE	WARRANTY UPLIFT CHARGE
4	XEO35501-1MB	PROC:550/1MB XEON PIII	\$13,246.00	NO	Contractor Warranty	36 Months	\$224.00	\$100.00
1	PCI400-1UD	CTRL:1CHAN ULT SCSI DIFF	\$386.00	NO	Contractor Warranty	36 Months	\$7.00	\$4.00
2	DIM6168-512	MEM:512MB BUFF 6NS	\$2,060.00	NO	Contractor Warranty	36 Months	\$44.00	\$20.00
1	ESR508151-GZN	SVR:ES5085R BASE PKG NT	\$14,496.00	NO	Contractor Warranty	36 Months	\$148.00	\$66.00
1	IX5085-FD	IX ADDL ES5085 NT COMP P	\$5,298.00	NO	Contractor Warranty	12 Months	\$31.00	N/A
4	XEO35501-1MB	PROC:550/1MB XEON PIII	\$13,246.00	NO	Contractor Warranty	36 Months	\$224.00	\$100.00
2	DIM6168-512	MEM:512MB BUFF 6NS	\$2,060.00	NO	Contractor Warranty	36 Months	\$44.00	\$20.00
1	PCI400-1UD	CTRL:1CHAN ULT SCSI DIFF	\$386.00	NO	Contractor Warranty	36 Months	\$7.00	\$4.00
1	WI8003-CGS	ACC:COMP GOLD UPG W/ESR	\$2,281.00	NO	Contractor Warranty	36 Months	NOT COVERED	N/A
1	EXD221-SXR	ACC:2U/2DEVICE EXP DRAW	\$456.00	NO	Contractor Warranty	36 Months	\$6.00	\$2.00
1	OSM1000-PRC	INSTL.OSM IEC320 PWR CRD	\$10.00	NO	No Warranty	NONE	NOT COVERED	N/A

TABLE I - CLEARPATH IX6600 HARDWARE

QTY	STYLE	DESCRIPTION	PRICE	CITY SET UP?	WARRANTY	WARRANTY TERM	MONTHLY HARDWARE ITEM MAINTENANCE FEE	WARRANTY UPLIFT CHARGE
2	UPD30001-SXR	POWER:3000VA 2400WATT 3U	\$3,790.00	NO	Contractor Warranty	12 Months	\$80.00	\$36.00
2	USE1936-LC1	INSTL:PWR CORD DOMESTIC	\$118.00	NO	No Warranty	NONE	NOT COVERED	N/A
2	PCT12000-DAT	TAPE:12/24GB DDS3 SCSI	\$1,619.00	NO	Contractor Warranty	36 Months	\$46.00	\$20.00
2	CBL2204-OSM	CABLE:EXTNL SCSI 4FT 68	\$171.00	NO	No Warranty	NONE	NOT COVERED	N/A
2	CTS5236-SSA	TAPE:4SS36TRK W/ACLS	\$355,562.00	NO	Contractor Warranty	36 Months	\$2,828.00	\$366.00
4	CBL133-60	CABLE:60 FT SCSI-3 CABLE	\$1,449.00	NO	No Warranty	NONE	NOT COVERED	N/A
1	CTS5136-MOD	TAPE:REM.M/A CAPABILITY	\$1,271.00	NO	No Warranty	NONE	NOT COVERED	N/A
3	FTE20-6U	INSTL:6U FEEDTHRU W/20FT	\$7,739.00	NO	Contractor Warranty	12 Months	\$36.00	N/A
1	RSS2-RMI	I/F:REMOTE MAINT DCP I/F	NO CHARGE	NO	Contractor Warranty	12 Months	NOT COVERED	N/A
2	2200-MOD	COMM HW: 2200 MODEM	NO CHARGE	NO	Contractor Warranty	12 Months	NOT COVERED	N/A
1	CBL11120-50	CABLE:RS232 DIR CONN SYN	\$146.00	NO	No Warranty	NONE	NOT COVERED	N/A

TABLE I - CLEARPATH IX6600 HARDWARE

QTY	STYLE	DESCRIPTION	PRICE	CITY SET UP?	WARRANTY	WARRANTY TERM	MONTHLY HARDWARE ITEM MAINTENANCE FEE	WARRANTY UPLIFT CHARGE
1	DB3163-08	I/F:DUAL BUS RS232,1X	\$2,453.00	NO	Contractor Warranty	12 Months	\$7.00	\$2.00
1	DCP200-S1	SYS:DCP 200 - RACK MOUNT	\$16,983.00	NO	Contractor Warranty	12 Months	\$107.00	N/A
2	B25-LC	PWR CORD:LINE CORD	\$2.00	NO	No Warranty	NONE	NOT COVERED	N/A
2	F1947-07	I/F:DCP 200 BLOCK MUX	\$6,793.00	NO	Contractor Warranty	12 Months	\$39.00	N/A
1	DCP200-E1	I/F:DCP200 RM EXPANSION	\$14,624.00	NO	Contractor Warranty	12 Months	\$107.00	N/A
4	CBL60-15	CABLE:15' BMC FIPS-60	\$1,585.00	NO	No Warranty	NONE	NOT COVERED	N/A
4	CBL5048-IN	ADPTR:CABLE BMC I/F	\$1,461.00	NO	No Warranty	NONE	NOT COVERED	N/A
2	CBL50-TER	ADPTR:BMC TERMINATOR	\$226.00	NO	No Warranty	NONE	NOT COVERED	N/A
1	IX5000-FET	I/F:FAST ETHERNET PKG	\$46,231.00	NO	Contractor Warranty	12 Months	\$169.00	N/A
1	KBR8301-SXR	KEYBD:RACK MOUNT KYBD	\$94.00	NO	Contractor Warranty	36 Months	NOT COVERED	N/A
1	229000-PS2	FURN: PRNTR STAND CONSOL	\$802.00	NO	No Warranty	NONE	NOT COVERED	N/A
3	VX4000-XCR	COMM HW:TRANSCEIVER	\$962.00	NO	Contractor Warranty	12 Months	\$3.00	N/A

TABLE I - CLEARPATH IX6600 HARDWARE

QTY	STYLE	DESCRIPTION	PRICE	CITY SET UP?	WARRANTY	WARRANTY TERM	MONTHLY HARDWARE ITEM MAINTENANCE FEE	WARRANTY UPLIFT CHARGE
6	DSH600030-TBT	CABLE:TW PAR 10BAST,30M	\$1,359.00	NO	No Warranty	NONE	NOT COVERED	N/A
1	CBL133-40	CABLE:40 FT SCSI-3 CABLE	\$290.00	NO	No Warranty	NONE	NOT COVERED	N/A
1	UT200-1	UT200-1 TERMINAL DISPLAY	\$524.00	NO	Contractor Warranty	12 Months	\$15.00	\$10.00
1	KB30	KEYBOARD KB30 UTS 30 LAY	\$132.00	NO	Contractor Warranty	12 Months	NOT COVERED	N/A
2	UMS1500-STK	UMS1500-STK 1500LPM LINE	\$25,465.00	NO	Contractor Warranty	12 Months	\$428.00	\$56.00
2	UMS900-NT	UMS NET INTRF PRINT NET	\$934.00	NO	Contractor Warranty	12 Months	NOT COVERED	N/A
1	CBL6016-WN2	CABLE:SCSI WIDE NARROW 2	\$117.00	NO	No Warranty	NONE	NOT COVERED	N/A
2	UMS4740-HC3	UMS4740 REPORT PRINTER 40 PPM	\$26,843.00	YES	Contractor Warranty	12 Months	\$512.00	N/A
2	90-9900-250	EXT 10/100 BASE T w/2 PAR & 1 SER	\$718.00	YES	No Warranty	NONE	NOT COVERED	N/A
3	DB3163-08	MEDIUM SPEED DUAL BUSS LM	\$3,939.00	NO	Contractor Warranty	12 Months	\$21.00	\$6.00
1	EC1100-16B	EMCDISK:16 PORT FIBRE CH	\$26,400.00	NO	EMC Warranty	24 Months	\$275.00	N/A
4	FC5-M	EMCDISK:FC5M-50M	\$492.00	NO	EMC Warranty	24 Months	NOT COVERED	N/A

TABLE I - CLEARPATH IX6600 HARDWARE

QTY	STYLE	DESCRIPTION	PRICE	CITY SET UP?	WARRANTY	WARRANTY TERM	MONTHLY HARDWARE ITEM MAINTENANCE FEE	WARRANTY UPLIFT CHARGE
2	UPG8031-18M	EMCDISK:17.9GB MIRRORED	\$26,400.00	NO	EMC Warranty	24 Months	\$160.00	N/A
2	DPC3-FMS	EMCDISK:FIBRE CHANNEL DI	\$54,000.00	NO	EMC Warranty	24 Months	\$102.00	N/A
TOTAL CLEARPATH IX6600 HARDWARE:			\$2,172,326.00				\$12,097.00	\$914.00

TABLE II - SOFTWARE LICENSES

QTY	STYLE	DESCRIPTION	SOFTWARE OWNED AND WARRANTED BY	PRICE	PLAN	MONTHLY SOFTWARE ITEM MAINTENANCE FEE
1	IXS20805-AE	IOE:2000/CPIX-8 ENGL	MICROSOFT / BEA	NO CHARGE	OTC	\$117.00
1	IXS20805-AEU	IOE:2000/CPIX-8 ENGL ADD	MICROSOFT / BEA	\$11,199.00	OTC	\$117.00
1	ESS508020-N	SYS MGT:VALUE ADD S/W	UNISYS	\$500.00	OTC	\$6.00
1	ESS508020-N	SYS MGT:VALUE ADD S/W	UNISYS	\$500.00	OTC	\$6.00
1	UNX21-ASE	O/S:2.1.3 APP SVR 5U	UNISYS	\$1,295.00	OTC	\$24.00
1	UNX2-PK1	O/S:2.1.3 MEDIA & PSK	UNISYS	\$390.00	OTC	NOT COVERED
1	UW6000-ACD	COM SW: ASYNC UW DRIVER	UNISYS	NO CHARGE	OTC	NOT COVERED
1	PC1-XVE	WRKST SW:XVISION ECLIPSE	UNISYS	\$385.00	OTC	\$3.00
1	IXW40-NT	O/S:NT WRKST LOD	MICROSOFT	\$425.00	OTC	\$9.00
1	PC1-XVE	WRKST SW:XVISION ECLIPSE	UNISYS	\$385.00	OTC	\$3.00
1	IXW40-NT	O/S:NT WRKST LOD	MICROSOFT	\$425.00	OTC	\$9.00
1	IXP30-ASC	CMPLR:COBOL ASCII MX	UNISYS	\$64,611.00	OTC	\$282.00
1	IXP30-FOR	CMPLR:FORTTRAN ASCII MX	UNISYS	\$56,597.00	OTC	\$245.00
1	IXP30-PCC	PERIF SW:PERCON CNTRL AB	UNISYS	\$3,674.00	OTC	\$17.00
1	IXP30-PRE	PERIF SW:PERCON EXTND AB	UNISYS	\$16,243.00	OTC	\$70.00
1	IXP30-QLP	QUERY SW:QLP MX	UNISYS	\$43,626.00	OTC	\$190.00
1	IXP30-LA1	SYS MGT:LA MX	UNISYS	\$20,283.00	OTC	\$89.00
1	IXP30-OSM	SYS MGT:OSAM MX	UNISYS	\$25,199.00	OTC	\$109.00
1	IXS4000-SAU	SYS MGT:TQ SAUTILITIES	UNISYS	\$6,020.00	OTC	\$20.00
1	IXS4000-BLD	UTIL SW:BUILD CPX	UNISYS	\$100.00	OTC	NOT COVERED
1	IXU6602-13	SUBSCRN:NT/UNIX IX6602-P	UNISYS	\$265,460.00	ETP	NOT COVERED

TABLE II - SOFTWARE LICENSES

QTY	STYLE	DESCRIPTION	SOFTWARE OWNED AND WARRANTED BY	PRICE	PLAN	MONTHLY SOFTWARE ITEM MAINTENANCE FEE
5	IXD1-MPC	MAPPER:DEVIUSERCLRPTH LO	UNISYS	\$3,750.00	OTC	\$15.00
50	IXR1-MPC	MAPPER:R/TUSERCLRPTH LO	UNISYS	\$20,000.00	OTC	\$100.00
1	IXS4000-MAP	MAPPER:CPIX 2200/NT/UNWR	UNISYS	\$50,000.00	OTC	\$217.00
50	IXU1-MPC	SUBSCRN:MAP 1U-R/T LO	UNISYS	\$10,000.00	ETP	NOT COVERED
1	IXU4000-MAP	SUBSCRN:CPIX3.0 UPGRDSLO	UNISYS	\$25,000.00	ETP	NOT COVERED
5	IXU1-DEV	SUBSCRN:MAP 1U-DEV LO	UNISYS	\$1,875.00	ETP	NOT COVERED
1	IXP30-FTX	COM SW:CP FTP AND TAS	UNISYS	\$27,646.00	OTC	\$100.00
1	EMP1-REP	EMC SW:EMPREP-UNI	EMC	NO CHARGE	OTC	NOT COVERED
1	IXP30-PAR	SYS MGT:PAR MX	UNISYS	\$48,737.00	OTC	\$213.00
1	ONT1-BAS	EMC SW:OSM-BAS-NT	EMC	\$16,500.00	OTC	\$292.00
1	9634-01	COM SW:ENS PLATFORM	UNISYS	\$3,221.00	ETP	\$20.00
1	9837-40	SNA/NET:BASE	UNISYS	\$1,642.00	ETP	\$7.00
1	F9837-41	SNA/NET:TERMINAL CONNECT	UNISYS	\$2,122.00	ETP	\$10.00
1	F9837-42	SNA/NET:PUT2.0 IBF	UNISYS	\$1,355.00	ETP	\$6.00
1	6133-98	DATAMGT:DATA 1100	UNISYS	\$4,896.00	ETP	NOT COVERED
2	4125-SW2	PERIF SW:9TRK SW DRIVER	UNISYS	\$2,164.00	OTC	NOT COVERED
1	IXS66025-13	IOE:NT/UNIX IX6602-P3	UNISYS	\$1,557,364.00	OTC	\$3,344.00
1	SMS1000-CPS	SYS MGT:SPO ESE UPGR 6.0	UNISYS	\$36,400.00	OTC	\$266.00
1	IXP30-DME	DATAMGT:DMS W/LA ENT	UNISYS	\$109,442.00	OTC	\$1,031.00
1	DCP200-OSG	O/S:DCP200 OPERATING GRP	UNISYS	\$3,200.00	ETP	\$7.00
10	SMS6000-NCL	SYS MGT:SPO/ESE U6K NT I/F	UNISYS	\$4,000.00	OTC	\$30.00

TABLE II - SOFTWARE LICENSES

QTY	STYLE	DESCRIPTION	SOFTWARE OWNED AND WARRANTED BY	PRICE	PLAN	MONTHLY SOFTWARE ITEM MAINTENANCE FEE
5	SMS6000-U10	SYS MGT:SPO/ESE Univ I/F	UNISYS	\$25,000.00	OTC	\$210.00
1	VLG1000-T1	EMCSW:HUB/SWITCH VOLUME	EMC	\$12,750.00	OTC	\$250.00
1	ESP1000-T1	EMCSW:ESP SOFTWARE LICEN	EMC	\$19,550.00	OTC	\$300.00
		SOFTWARE EXCHANGE CREDITS		(\$353,438.00)		
TOTAL CLEARPATH IX6600 SOFTWARE:				\$2,150,493.00		\$7,734.00

FN

TABLE III - CLEARPATH UPGRADE SERVICES		
STYLE	DESCRIPTION	PRICE
INS1-SYM	EMC INSTALLATION SERVICE	\$3,300.00
PROF SERVICES	CLEARPATH STARTER SERVICE	\$26,500.00
PROF SERVICES	DEPCON STARTER SERVICE	\$6,700.00
INS1-VLS	EMC INSTALL : INSTALLATION	\$3,500.00
INS1-16B	EMCSW:PC PKG SVC 16PORT	\$23,000.00
TRAINING	HMP IX DIFFER & SPO TRAINING	\$10,000.00
PROF SERVICES	SPO SYS MGT GETTING STARTED	\$15,000.00
PROF SERVICES	DCP 200 INSTALLATION SERVICE	\$7,500.00
PROF SERVICES	SUPPORT INSTALLATION AND MIGRATION OF HARDWARE AND SOFTWARE.	\$200,000.00
TOTAL SERVICES		\$295,500.00

APPENDIX I

SURETY Comprehensive Gold Coverage

Under "SURETY Comprehensive Gold Coverage", Contractor shall provide a comprehensive suite of packaged support services for the Contractor-provided Equipment (including all Contractor Hardware Items) and Contractor-Owned Software Items identified in this Schedule.

Contractor's provision of SURETY Comprehensive Gold Coverage shall be during the Principal Period of Maintenance (PPM) which

- (1) for Contractor-Owned Software shall be Monday through Friday, 8:00 AM to 5:00 PM, client local time (excluding Contractor designated national holidays), and
- (2) for Contractor Hardware Items shall be twenty-four hours a day, seven days a week.

SURETY Support Services offers a menu of Service Levels that allow clients to select the support that best fits their needs. The content of these Service Levels varies by product.

SURETY Comprehensive Gold Coverage includes the following:

1. SURETY Partner Service

Under SURETY Partner Service Contractor shall provide Equipment maintenance and Software support services for the Contractor-provided Equipment (including all Contractor Hardware Items) and Contractor-Owned Software Items identified in this Schedule. SURETY Partner Service features a cooperative effort between Contractor and the City for service delivery. It is intended primarily for Desktop products and other products approved for mail-in methods of

service.

SURETY Partner Service includes Contractor's performance of

- (1) Central Support Services,**
- (2) Essential Engineering Changes,**
- (3) Software Maintenance Releases,**
- (4) Electronic Self Services,**
- (5) maintenance parts replacement for exchange and repair services,**
- (6) discounts on Contractor supplies, and**
- (7) preferred rates on other services performed by Contractor.**

All City service requests and requests for software support shall be provided by the Director either electronically or by voice under the guidelines of the Standard or Premium Service Access Options.

2. SURETY Performance Service

SURETY Performance Service includes all the features of SURETY Partner Service and equipment on-call remedial maintenance service. SURETY Performance Service may be on-site repair or exchange, whichever Contractor determines is the most effective means for equipment restoration. SURETY Performance Service also includes Contractor's provision of Electronic On-Site services, which may include error log report analysis, electronic software delivery, software emergency maintenance updates, or interim correction files. Contractor's provision of SURETY Performance Service also includes Preventive Maintenance services as indicated in the

product support plan.

3. SURETY Comprehensive Service

SURETY Comprehensive Service includes all of the features of SURETY Partner Service and of SURETY Performance Service, plus an annual Systems Operations Review, Software On call Support, Equipment On-call Remedial Maintenance and Unisys Client Support Center (CSC) service during the PPM.

Under SURETY Comprehensive Service, Contractor shall provide

- (a) the Comprehensive "Gold" class of SURETY Comprehensive Service. The Comprehensive "Gold" class of SURETY Comprehensive Service delivery consists of Contractor making every reasonable attempt to respond to the City's requests for on-site maintenance service within four (4) hours during the PPM.
- (b) Unisys Client Support Center (CSC) Software Support Services to the City for Contractor-Owned Software Items, which shall allow City personnel to:
 - 1. Ask questions related to the operational use of the Contractor-Owned Software Items.
 - 2. Receive assistance in identifying and verifying the cause of suspected malfunctions in Contractor-Owned Software Items.
 - 3. Receive assistance during system installation and system operation recovery (procedures/workarounds/failure localization).
 - 4. Receive information on malfunctions previously identified by the City and

reported to Contractor and detours or corrections to these, where available.

5. Generate and submit a User Communication Form (UCF) to report suspected malfunctions.

APPENDIX II

EMC: STATEMENT OF WARRANTY

In providing Maintenance and/or Warranty Services, EMC will use commercially reasonable efforts to provide a program fix or work around according to the Resolution times provided below.

Severity Level	Criteria	Response	Resolution
1	Severe problem preventing Customer workgroup or department from performing normal job functions.	Call back within 15 minutes	A patch, workaround or permanent solution within twenty-four (24) clock hours
2	Customer workgroup or department able to perform functions, but only at a degraded level of service or an individual customer is prevented from performing normal job functions	Call back within 2 hours	A patch, workaround or permanent solution within forty-eight (48) clock hours
3	Issue has affected Customer productivity, Workaround exists or issue is related to a non business critical task	Call back within 3 hours	A patch, workaround, or permanent solution within ten (10) working days

NOTES

- Whereupon a call is opened on Field Watch (either customer or Symmetrix initiated), the Customer Service Technician (CST) will immediately escalate the incident to Product Support Engineering (PSE) for analysis and assessment. Once referred, the CST will immediately page and notify the Primary CE of the ongoing activity. If the issue is

addressed by the PSE, the call will be updated and closed with status provided to the CE. If the issue is not readily addressable, the CE will be dispatched and shall arrive at Customer's site within the Level 2 time periods established above. Any and all events will be reported to immediate EMC management.

MAINTENANCE STRATEGY

Warranty Service

Symmetrix is sold with a warranty. During the warranty period, Customer will receive full hardware and software service and support seven days a week, twenty-four hours a day ("7x24"). Customer Service will employ remote and on-site service delivery options as required. Field upgrades do not modify the warranty period of the system. In the case of an upgrade, warranty service will be provided for the balance of the original warranty as calculated from the original date of installation. The remote service capability of Symmetrix is the most efficient and effective service delivery option available, and Customer is encouraged to take advantage of it. Dispatch of on-site support will be directed by the Worldwide Support Center (Hopkinton, MA) or as otherwise agreed to.

Post-Warranty Service

Standard post-warranty service is the same as warranty service. Customer will be notified in advance of warranty expiration regarding service contract renewal.

Software Support Strategy

Customer is entitled to free software (micro code) improvement upgrades as soon as they become available. EMC will not undertake a code upgrade at any Customer facility without first securing

your agreement and approval. In addition, EMC will not induce untested code into your operating environment. Our extensive Product Verification Testing Lab will be used in testing the proposed upgrade prior to release to Customer. Additionally, EMC will provide a Micro code release document that details the conditions addressed in the associated release of code. By following this procedure and working in tandem with Customer, it is our intention to manage the software change process proactively with your system support personnel.

Service Call Flow

Initial support efforts worldwide, are coordinated by the WSC (Worldwide Support Center; Hopkinton, MA). EMC has assigned a Primary and Secondary Customer Engineer for Customer. Where practical, your Primary CE will regularly visit and work from your account, assess system operation (present and historical), attend all systems performance meetings and generally work closely with Customer personnel in an effort to achieve quality service and optimal system performance.

APPENDIX III

MICROSOFT: SOFTWARE LICENSE AND WARRANTY PROVISIONS

END-USER LICENSE AGREEMENT SERVER LICENSE FOR
MICROSOFT WINDOWS 2000 SERVER PRODUCTS

IMPORTANT-READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and Microsoft Corporation for the Microsoft software product identified above, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation ("Product"). An amendment or addendum to this EULA may accompany the Product. **YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY INSTALLING, COPYING, OR OTHERWISE USING THE PRODUCT. IF YOU DO NOT AGREE, DO NOT INSTALL OR USE THE PRODUCT; YOU MAY RETURN IT TO YOUR PLACE OF PURCHASE FOR A FULL REFUND.**

The Product may contain the following software:

* "Server Software" provides services or functionality on your server (your computers capable of running the Server Software are "Servers");

* "Client Software" allows an electronic device ("Device") to access or utilize the Server Software.

1. GRANT OF LICENSE. Microsoft grants you the following rights provided you comply with all terms and conditions of this EULA:

a. Installation--Server Software. You may install one copy of the Server Software on a single Server. You may not separate component parts of the Server Software for use on more than one Server. A "License Pack" allows you to install additional copies of the Server Software on Servers up to the number of "Licensed Copies" specified above. Client Software. You may install the Client Software on any Devices.

b. Processor Limits. You may use the Server Software for Microsoft Windows 2000 Server with up to four CPUs of the Server at any one time. You may use the Server

Software for Microsoft Windows 2000 Advanced Server with up to eight CPUs of the Server at any one time.

c. Windows 2000 Server Client Access License ("CAL")

Requirements. You must acquire a separate CAL for each Device that is used by an "Authenticated User" or that uses "Windows 2000 Server Services" regardless of what software you use. Terminal Services. In addition to a CAL, you must acquire a Terminal Services Client Access License ("TS CAL") for each Device that uses "Terminal Services." You do not need to acquire a TS CAL to utilize Terminal Services for Devices running a licensed copy of Windows 2000 Professional. CALs and TS CALs that you acquire may be used only in conjunction with your Server Software.

Definitions.

* "Authenticated User" is a user who directly or indirectly utilizes the Windows 2000 Server Integrated Sign-On Service or receives credentials from the Windows 2000 Directory Services.

* "Windows 2000 Server Services" include File Services

(accessing or managing files or disk storage), Printing Services (printing to a printer managed by the Product), Remote Access Service (accessing the Server from a remote location through a communications link, including a virtual private network), and Terminal Services.

* "Terminal Services" means (i) using the terminal services feature of the Server Software to enable Devices to use software residing on the Server, or (ii) using other software in conjunction with the Server Software to provide similar services.

* Version Matching.

Any CAL or TS CAL must have the same or later version number than the corresponding version number of the Server Software being used. Administration. You do not need a CAL or TS CAL for administration of the Server Software (including remote administration), for up to two connections to the Server.

d. Deploying CALs. You may deploy Windows 2000 CALs in either "Per Seat" or "Per Server" mode. In "Per Seat," you need a separate CAL for each unique Device that accesses or

utilizes the Server Software, as described in Section 1.c. above. If you choose Per Seat, your choice is permanent. In "Per Server," the maximum number of Devices which may access or utilize the Server Software at a given point in time equals the number of CALs that you acquire and designate for use exclusively with that Server. You have the one-time right to change your use of the Server Software to Per Seat, and if you do so, you may apply any CALs you acquired for use in Per Server to an equal number of Devices for use in Per Seat. When using Terminal Services, the Product may not be used in Per Server.

e. Other Licenses. Your use of software applications installed on the Server, or accessed through the Server Software's IntelliMirror, Terminal Services, or application-sharing functionality may require additional licenses -- please consult the license agreement accompanying such software.

f. Downgrades. Instead of installing and using the Server Software, you may install and use one copy of an earlier version of the Server Software on a single Server, provided

that such earlier version is later than version 3.5, and that you completely remove such earlier version and install the original Server Software within a reasonable time. Your use of such earlier version shall be governed by this EULA, and your rights to use such earlier version shall terminate when you install the original Server Software.

g. **Reservation of Rights.** Microsoft reserves all rights not expressly granted to you in this EULA.

2. **UPGRADES.** To use a Product identified as an upgrade, you must first be licensed for the product identified by Microsoft as eligible for the upgrade. After upgrading, you may no longer use the product that formed the basis for your upgrade eligibility. Product upgrades for a component of Microsoft BackOffice Server or Microsoft BackOffice Small Business Server. When you install the Product, the Product replaces the component being upgraded, and you may use the Product in accordance with the terms of this EULA. The remaining components of BackOffice Server or Small Business Server may only be used in accordance with the terms of the Microsoft End User License Agreement that

accompanied the original product suite. After an upgrade of BackOffice Server, all products must run on the same Server on which the BackOffice Server is installed, unless the upgrade is an Enterprise or Commerce Edition, in which case you may use the Product as a stand-alone product in accordance with the terms of this EULA. After an upgrade of Small Business Server, the Fax and Modem Software is no longer subject to the connection limitation in the Small Business Server EULA.

3. **ADDITIONAL SOFTWARE.** This EULA applies to updates or supplements to the original Product provided by Microsoft, unless we provide other terms along with the update or supplement.

4. **"MULTIPLEXING."** Hardware or software that reduces the number of Devices directly accessing or using the Server Software does not reduce the number of CALs or TS CALs you need. The number you need is based on the number of distinct inputs to the hardware or software "front end."

5. **TRANSFER-Internal.** You may move the

Server Software to a different Server. You may also make a one-time transfer of a CAL or TS CAL from one of your Devices to another. Transfer to Third Party. The initial user of the Product may make a one-time transfer of the Product to another end user. The transfer has to include all component parts, media, printed materials, this EULA, and if applicable, the Certificate of Authenticity. The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the transferred Product must agree to all the EULA terms. No Rental. You may not rent, lease, or lend the Product.

6. LIMITATION ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY. You may not reverse engineer, decompile, or disassemble the Product, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation.

7. TERMINATION. Without prejudice to any other rights, Microsoft may cancel this EULA if you do not abide by the terms and conditions of this EULA, in which case you must destroy all copies of the Product and all of its component

parts.

8. **CONSENT TO USE OF DATA.** You agree that Microsoft and its affiliates may collect and use technical information you provide as a part of support services related to the Product. Microsoft agrees not to use this information in a form that personally identifies you.

9. **NOT FOR RESALE SOFTWARE.** Product identified as "Not for Resale" or "NFR," may not be resold, transferred or used for any purpose other than demonstration, test or evaluation.

10. **ACADEMIC EDITION SOFTWARE.** To use Product identified as "Academic Edition" or "AE," you must be a "Qualified Educational User." For qualification-related questions, please contact the Microsoft Sales Information Center/ One Microsoft Way/Redmond, WA 98052-6399 or the Microsoft subsidiary serving your country.

11. **EXPORT RESTRICTIONS.** Export-Restricted Encryption. If the Product is identified as "North America Only Version,"

the following terms apply: The Product contains strong encryption and cannot be exported outside of the United States (including Puerto Rico, Guam and all other territories, dependencies and possessions of the United States) or Canada without a U.S. Commerce Department export license or an applicable license exception. You agree that you will not directly or indirectly export or re-export the Product (or portions thereof), other than to Canada, without first obtaining an export license or determining that a license exception is applicable. For additional information see <<http://www.microsoft.com/exporting/>>.

Exportable Encryption. If the Product is not identified as "North America Only Version," the following terms apply: You agree that you will not export or re-export the Product (or portions thereof) to any country, person or entity subject to U.S. export restrictions. You specifically agree not to export or re-export the Product (or portions thereof): (i) to any country subject to a U.S. embargo or trade restriction; (ii) to any person or entity who you know or have reason to know will utilize the Product (or portions thereof) in the production of nuclear, chemical or

biological weapons; or (iii) to any person or entity who has been denied export privileges by the U.S. government. For additional information see

<<http://www.microsoft.com/exporting/>>.

12. LIMITED WARRANTY FOR SOFTWARE PRODUCTS ACQUIRED IN THE US AND CANADA. Microsoft warrants that the Product will perform substantially in accordance with the accompanying materials for a period of ninety days from the date of receipt. If an implied warranty or condition is created by your state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, you also have an implied warranty or condition, **BUT ONLY AS TO DEFECTS DISCOVERED DURING THE PERIOD OF THIS LIMITED WARRANTY (NINETY DAYS). AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY (90) DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND.** Some states/jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to you. Any supplements or updates to the Product, including without limitation, any (if any) service packs or hot fixes provided to you after

the expiration of the ninety day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory. **LIMITATION ON REMEDIES; NO CONSEQUENTIAL OR OTHER DAMAGES.** Your exclusive remedy for any breach of this Limited Warranty is as set forth below. Except for any refund elected by Microsoft, **YOU ARE NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES,** if the Product does not meet Microsoft's Limited Warranty, and, to the maximum extent allowed by applicable law, even if any remedy fails of its essential purpose. The terms of Section 14 below ("Exclusion of Incidental, Consequential and Certain Other Damages") are also incorporated into this Limited Warranty. Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. This Limited Warranty gives you specific legal rights. You may have others which vary from state/jurisdiction to state/jurisdiction. **YOUR EXCLUSIVE REMEDY.** Microsoft's and its suppliers' entire liability and your exclusive remedy shall be, at Microsoft's option from time to time exercised subject to applicable law, (a) return of the price paid (if

any) for the Product, or (b) repair or replacement of the Product, that does not meet this Limited Warranty and that is returned to Microsoft with a copy of your receipt. You will receive the remedy elected by Microsoft without charge, except that you are responsible for any expenses you may incur (e.g. cost of shipping the Product to Microsoft). This Limited Warranty is void if failure of the Product has resulted from accident, abuse, misapplication, abnormal use or a virus. Any replacement Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Outside the United States or Canada, neither these remedies nor any product support services offered by Microsoft are available without proof of purchase from an authorized international source. To exercise your remedy, contact: Microsoft, Attn. Microsoft Sales Information Center/One Microsoft Way/Redmond, WA 98052-6399, or the Microsoft subsidiary serving your country.

LIMITED WARRANTY FOR SOFTWARE PRODUCTS
ACQUIRED OUTSIDE THE US AND CANADA. FOR THE
LIMITED WARRANTIES AND SPECIAL PROVISIONS

PERTAINING TO YOUR PARTICULAR JURISDICTION,
PLEASE REFER TO YOUR WARRANTY BOOKLET
INCLUDED WITH THIS PACKAGE OR PROVIDED WITH
THE SOFTWARE PRODUCT PRINTED MATERIALS.

13. **DISCLAIMER OF WARRANTIES.** The Limited Warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties (if any) created by any documentation or packaging. Except for the Limited Warranty and to the maximum extent permitted by applicable law, Microsoft and its suppliers provide the Product and support services (if any) **AS IS AND WITH ALL FAULTS**, and hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Product, and the provision of or failure to provide support services. **ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET**

POSSESSION, CORRESPONDENCE TO DESCRIPTION OR
NON-INFRINGEMENT WITH REGARD TO THE PRODUCT.

14. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL
AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM
EXTENT PERMITTED BY APPLICABLE LAW, IN NO
EVENT SHALL MICROSOFT OR ITS SUPPLIERS BE
LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT,
OR CONSEQUENTIAL DAMAGES WHATSOEVER
(INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR
LOSS OF PROFITS OR CONFIDENTIAL OR OTHER
INFORMATION, FOR BUSINESS INTERRUPTION, FOR
PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR
FAILURE TO MEET ANY DUTY INCLUDING OF GOOD
FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE,
AND FOR ANY OTHER PECUNIARY OR OTHER LOSS
WHATSOEVER) ARISING OUT OF OR IN ANY WAY
RELATED TO THE USE OF OR INABILITY TO USE THE
PRODUCT, THE PROVISION OF OR FAILURE TO
PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER
OR IN CONNECTION WITH ANY PROVISION OF THIS
EULA, EVEN IN THE EVENT OF THE FAULT, TORT

(INCLUDING NEGLIGENCE), STRICT LIABILITY,
BREACH OF CONTRACT OR BREACH OF WARRANTY OF
MICROSOFT OR ANY SUPPLIER, AND EVEN IF
MICROSOFT OR ANY SUPPLIER HAS BEEN ADVISED OF
THE POSSIBILITY OF SUCH DAMAGES.

15. LIMITATION OF LIABILITY AND REMEDIES.

Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of Microsoft and any of its suppliers under any provision of this EULA and your exclusive remedy for all of the foregoing (except for any remedy of repair or replacement elected by Microsoft with respect to any breach of the Limited Warranty) shall be limited to the greater of the amount actually paid by you for the Product or U.S.\$5.00. The foregoing limitations, exclusions and disclaimers (including Sections 12, 13 and 14 above) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

16. NOTE ON JAVA SUPPORT. THE PRODUCT MAY

CONTAIN SUPPORT FOR PROGRAMS WRITTEN IN JAVA. JAVA TECHNOLOGY IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF JAVA TECHNOLOGY COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. Sun Microsystems, Inc. has contractually obligated Microsoft to make this disclaimer.

17. U.S. GOVERNMENT LICENSE RIGHTS. All Product provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein. All Product provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR

52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

18. **APPLICABLE LAW.** If you acquired this Product in the United States, this EULA is governed by the laws of the State of Washington. If you acquired this Product in Canada, unless expressly prohibited by local law, this EULA is governed by the laws in force in the Province of Ontario, Canada; and, in respect of any dispute which may arise hereunder, you consent to the jurisdiction of the federal and provincial courts sitting in Toronto, Ontario. If this Product was acquired outside the United States, then local law may apply.

19. **ENTIRE AGREEMENT.** This EULA (including any addendum or amendment to this EULA which is included with the Product) and the CAL or TS CAL (if applicable) are the entire agreement between you and Microsoft relating to the Product and the support services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Product or any other

subject matter covered by this EULA. To the extent the terms of any Microsoft policies or programs for support services conflict with the terms of this EULA, the terms of this EULA shall control.

20. The Product is protected by copyright and other intellectual property laws and treaties. Microsoft or its suppliers own the title, copyright, and other intellectual property rights in the Product. The Product is licensed, not sold.

APPENDIX IV

EMC LICENSE PROVISIONS AND PATENT AND COPYRIGHT PROVISIONS

EMC LICENSE PROVISIONS

- (A). Licenses: Each Designated EMC System purchased shall include a fully paid-up license to use the associated Core Software. Such license shall take effect upon delivery by EMC and shall continue as long as Customer continues to comply with the terms of this Agreement. Customer shall be licensed to use Enterprise Storage Software upon delivery by EMC as long as Customer has paid the associated one-time license fee and otherwise continues to comply with the terms of this Agreement. The foregoing licenses shall be non-exclusive, and non-transferable, and subject to the restriction that the Software be used solely in conjunction with the Designated EMC System or Host CPU, as applicable, for which it was licensed.
- (B). Third Party Access: Customer shall not, without EMC's prior written consent, provide, disclose or otherwise make available Software in any form to any person other than Customer's employees, independent contractors or consultants, who shall use the Software solely for Customer's internal business purposes in a manner consistent with this Agreement. Customer shall be fully responsible to EMC for the full compliance of its employees, independent contractors and consultants to the terms of this Agreement.
- (C). Archive Copy: Customer may make one copy of the Software for back-up and archival purposes for use only in the case of a malfunction of Software, EMC Designated System or Host CPU, as applicable.
- (D). Change of Location or System: Customer may change the location of a Designated EMC

System or Host CPU upon which the licensed Software is used, to a replacement location, only after written notice to EMC. Customer may move a licensed copy of the Software to a different Designated EMC System or Host CPU with a different model number than the originally Designated EMC System or Host CPU, only after written notice to EMC; provided Customer agrees to pay, if applicable, an upgrade fee. Beginning with the next support anniversary date, Customer shall pay applicable fees based upon the replacement model number. Customer acknowledges that any change of system location or move of Software to a different country shall be subject to EMC's prior written approval.

(E). Temporary Transfer: Enterprise Storage Software may be temporarily transferred to a replacement Designated EMC System or Host CPU, as applicable (and deleted from the original Designated EMC System or Host CPU) if the Designated EMC System or Host CPU is inoperable due to malfunction or initiation of a disaster recovery program, or is otherwise not able to use the Enterprise Storage Software.

(F). Ownership: No title to, or ownership of, the Software is transferred to Customer, and any use of the terms "sell", "sale", "purchase" or "acquire" in relation to the Products, with respect to the Software, shall be deemed to mean "license on the terms contained in this Agreement." Customer shall reproduce and include copyright and other proprietary notices on and in any copies, including but not limited to partial, physical or electronic copies, of the Software. Neither Customer nor any of its agents, independent contractors or consultants shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce to human readable form the Software without EMC's prior written consent. Customer shall report promptly to EMC any violation of this clause and shall take such further

steps as may be reasonably requested by EMC to remedy any such violation and to prevent future violations.

EMC PATENT AND COPYRIGHT PROVISIONS

(A). Infringement Defense: If Customer notifies EMC promptly in writing of any action (and all prior related claims) brought against Customer alleging that Customer's purchase, use or other disposition of any Equipment, or Customer's use of any Software, or Customer's receipt of any Service, infringes a valid United States patent or copyright, EMC will defend that action at its expense and will pay the costs and damages awarded against Customer in the action, provided: (i) EMC shall have sole control of the defense of any such action and all negotiations for its settlement or compromise; and, (ii) Customer provides all reasonable assistance requested by EMC. If a permanent injunction is obtained in such action against Customer's use or receipt of such Product, or if in EMC's opinion such Product is likely to become the subject of a permanent injunction, EMC shall at its option and expense : (i) procure for Customer the right to continue using or receiving such Product; (ii) replace or modify such Product so that it becomes non-infringing; or (iii) pay Customer a refund based on a straight line depreciation of the price of such Equipment and/or Software over five (5) years upon return of the Equipment and/or Software to EMC, and, if applicable, refund the amounts paid by Customer for the remaining portion of the Product Maintenance period.

(B). Exclusions: EMC shall have no infringement liability to Customer if the alleged infringement is based upon (i) use, sale or receipt of any of the Products in combination with other equipment, software or services not provided by EMC; (ii) use of any of the Products in a manner or for a

purpose for which they were not designed; (iii) use of the Software, when use of a Software Release which EMC has made commercially available would have avoided such infringement; (iv) any modification to any of the Products not made with EMC's written approval, or any modifications to any of the Products made by EMC pursuant to Customer's specific instructions; or (v) any intellectual property right owned or licensed by Customer.

(C). Entire Liability: THIS PATENT AND COPYRIGHT SECTION STATES EMC'S ENTIRE LIABILITY WITH RESPECT TO ALLEGED INFRINGEMENTS OF PATENTS, COPYRIGHTS AND OTHER INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS, OR ANY PART OF THEM, OR BY THEIR OPERATION, USE OR RECEIPT.

EXHIBIT "B"

EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "C"
MWBE SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled **"THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT"** and contain the following terms:

1. _____ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").
2. _____ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of subcontractor's books and records, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep its books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.
3. Within 5 business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given under Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.
4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract must, upon the written request of one party served upon the other or upon notice by the Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration must be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within 30 days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with the American Arbitration Association on file in the City's Affirmative Action Division Office.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

EXHIBIT "D"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT "E"

**CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.17 of Executive Order No. 1-31, that will be involved

in performing _____
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "F"

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

_____ (Contractor)
(Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 19____.

_____ A written Drug Free Workplace Policy has been implemented and employees notified.
Initials The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the Mayor's
Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
Initials performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

_____ From _____ to _____ the following test has occurred
Initials (Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

_____ Any employee who tested positive was immediately removed from the City worksite
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance with
Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)
EXHIBIT "G"

**ITEMS TO CONSIDER WHEN CREATING A SCHEDULE
UNDER THE UNISYS MASTER AGREEMENT**

- Does the Schedule include Reimbursable Expenses? (See Section III. C. (1) (a) (ii), (iii)) If yes, are any itemized listings, receipts, or other documents required to justify such Reimbursable Expenses?
- Does the Schedule need to include alternate provisions concerning the cancellation of maintenance services to be provided under this Schedule, as set out in Section III. C. (2)?
- Do the parties need to document in the Schedule that Contractor may provide a new and improved version of any of the Products set forth in the Schedule without first obtaining the City's written approval prior to acceptance under the circumstances set forth in Section III. D.?
- Does the Schedule identify any Equipment or other items are to be disposed of? If so, does the Schedule shall identify each party's responsibility to dispose of such Equipment or items? (See Section III. E. (2).)
- Does the Schedule identify who will install the Products and Software obtained by the City under that Schedule? (See Section III. E. (3)) In the event Contractor is to install such Products or Software:
 - ▶ does the Schedule identify all Contractor charges and conditions to perform such installation?
 - ▶ does the Schedule need to provide alternate periods during which Products to be installed by Contractor other than during Contractor normal working hours?
- Does the Schedule identify additional labor and rigging that is required for installation due to the City's special site requirements which the City is to pay (including costs to meet union or local law requirements)? If so, has City Council approved sufficient funds to pay for such services? (See Section III. E. (4))
- Is the City obtaining "Commodity Products and Services" under this Schedule, as set forth in Section III. F. (1)? If so, does the Schedule identify which of the Products or Services in that Schedule are Commodity Products and Services?
- In the event that "Tested Products or Services" are to be obtained by the City under the Schedule (i.e., Products and Services that are not Commodity Products and Services), has an acceptance test procedure meeting the requirements set forth in Section III. F. (2) been established for each such Tested Product and Service?
- If the City is obtaining Equipment (as defined in the Master Agreement) under the Schedule, has Contractor identified the warranty for each Equipment item in accordance with the provisions of Section III. K. (1)?
- If the City is obtaining Software and/or Software Maintenance Releases and Updates (as defined in the Master Agreement) under the Schedule, does the Schedule identify the warranty for each such item in accordance with the provisions of Section III. K. (2)?

- In the course of performing Services under the Schedule, is Contractor to furnish parts or goods in the course of performing such Services that are produced or developed by a third party? If so, has Contractor notified the Director in writing of the warranty for such parts and goods and has this warranty been documented in the Schedule? (See Section III. K. (3) (b) (ii))
- In the event that Contractor is to provide SURETY Support Services to the City under the Schedule, is the specific SURETY Service Plan selected by the City and the SURETY Support Service's Service Descriptions for that specific SURETY Service Plan identified in the Schedule as required by Section III. K. (3) (c) (i)?
- Under this Schedule, does the City requires a warranty for the Services provided by Contractor that exceeds the warranty set forth in Sections III. K. (3) (a), III. K. (3) (b), and III. K. (3) (c)? If so, has such a new warranty for such services been documented in the Schedule as required by Section III. K. (3) (d)?
- Under this Schedule, are alternate provisions required concerning the parties' respective responsibilities and liabilities for any loss or corruption of data, despite the default provisions set forth in Section III. M. (1)? (See Section III. M. (2)). If so, have such alternate provisions been documented in the Schedule?
- Is Contractor furnishing Products under the Schedule that are developed or produced by a third party and not by Contractor (i.e., "Third Party Produced or Developed Products")? If yes, then the Schedule must set out the Patent, Copyright, and Trade Secret Indemnification for the Third Party Produced or Developed Products that are provided by that third party. (See Section III. P. (2)).
- Under this Schedule, is Contractor required to comply with the City's MWBE programs? If so, is MWBE language included in the Schedule as set forth in Section III. R.?
- Does Contractor require certain working and storage space within one or more City locations in order to provide the Products and Services set out in this Schedule? If so, then Contractor's working and storage space requirements are to be defined and documented in the Schedule. (See Section IV. A. (4)).
- Under the master agreement, all "ideas, concepts, know-how, data-processing techniques, Software, documentation, diagrams, schematics or blueprints developed by Contractor personnel (alone or jointly with City) in connection with services provided to City " are the exclusive property of Contractor. However, if the parties agree to override this default and permit items identified in the Schedule to instead be City property, then the parties must document such alternate provisions in the Schedule. (See Section IV. B. (3)).
- If the City is to obtain Software and/or software maintenance releases or updates (collectively, "Software") under this Schedule, then Section V. A. states that the Schedule must specify:
 - ▶ whether the City is obtain ownership of such Software (i.e. whether the Software is "City-Owned Software") or a license to use such Software ((i.e. whether the Software is "Licensed Software") upon the City's payment of the Contractor invoice for such Software, and
 - ▶ in the event that the City is obtaining a license to use such Software, the Schedule shall include the terms and conditions of that Software license. Note that

- ◆ if the licensed Software is owned by Contractor, then the default license terms and conditions set forth in Section V. B. apply to the Software, unless the Schedule
 - includes all alternate license terms and conditions that will apply to the Software,
 - states that such alternate license terms and conditions apply to the Software, and
 - specifically states that such alternate terms and conditions supplant and supersede the default terms and conditions set forth in Section V. B. with respect to the licensed Software. (See Section V. B.)

- ◆ if the licensed Software is owned by a third party and not by Contractor, then the Schedule must set out the terms and conditions of the Software license provided by that third party. (See Section V. C.)