

OPERATIONS MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT made effective as of the ____ day of _____, _____.

BETWEEN:

_____ (insert the name of provider)
(the "Provider")

OF THE FIRST PART

- and -

_____ (insert the name of customer)
(the "Customer")

OF THE SECOND PART

WHEREAS:

- A. The Provider offers a wide range of operations services, including but not limited to the manufacture, support and maintenance of computer systems, systems management for data center operations, systems management for distributed computing environments, network management, and desktop services (call management, help desk services, information reporting, web site design and implementation, planning and design, staging and distribution, common operations, environment services, maintenance, financing, asset management, migration, and user training);
- B. The Customer wishes to contract for certain operations services from the Provider whereby the Provider will operate, manage and maintain the Customer's Information Systems environment as described in Schedule "A", attached hereto and forming a part hereof;
- C. The Provider is willing to perform these operations services for the Customer pursuant to the terms and conditions set out herein.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

1. Definitions

- (a) "Agreement" means this Operations Services Management Agreement, together with all schedules and attachments hereto and replacements thereof or revisions thereto, and any amendments hereafter made as agreed to by both parties as hereinafter provided.
- (b) "Copy" means a reproduction of computer programs and other information onto any medium, whether electronically reproduced or otherwise.
- (c) "Customer Hardware" means the computer systems, peripherals, terminals, communications equipment and all related hardware products owned or leased by the Customer which will be used by the Provider in performing the Operations Services under this Agreement as listed in Schedule "B", attached hereto and forming a part hereof, and which may be modified and upgraded, from time to time.
- (d) "Customer Software" means the computer programs including documentation with respect thereto, all updates and new releases thereof, whether licensed from the Provider or third parties, or owned by the Customer as listed in Schedule "C", attached hereto and forming a part hereof, which will be used by the Provider in performing the Operations Services hereunder.

- (e) "Intellectual Property Rights" shall include all copyrights, patents, trade marks, service marks, design rights (whether registered or unregistered), semiconductor topography rights, trade secrets and other similar proprietary rights.
- (f) "Materials" means all tangible materials developed during the term of this Agreement including documents, records, and other copies including materials which embody computer programs.
- (g) "Operations Services" means the services to be performed by the Provider as described in Schedule "A" hereof.
- (h) "Provider Hardware" means the computer systems, peripherals, terminals, communications equipment and all related hardware products owned by the Provider which will be used by the Provider in performing the Operations Services under this Agreement as listed in Schedule "D", attached hereto and forming a part hereof, and which may be modified and upgraded, from time to time.
- (i) "Provider Software" means the computer programs including documentation with respect thereto, all updates and new releases thereof, which the Provider licenses or owns as listed in Schedule "E", attached hereto and forming a part hereof, which will be used by the Provider in performing the Operations Services hereunder, but not including software licensed by the Customer from the Provider.
- (j) "Service Fees" means the fees payable by the Customer as specified in Schedule "F", attached hereto and forming a part hereof.
- (k) "Service Level Objectives" means the predetermined, objective performance criteria for delivery of the Operations Services as described in Schedule "G", attached hereto and forming a part hereof.
- (l) "Subcontractor" means any person or party engaged by the Provider to perform any of the Operations Services on behalf of the Provider.

2. Operations Services to be Provided by the Provider

2.1 The Provider shall perform the Operations Services for the Customer at the location(s) described in Schedule "H", attached hereto and forming a part hereof, using all reasonable efforts to meet the Service Level Objectives.

2.2 The Provider's obligation to deliver the Operations Services shall commence upon the Customer's completion of the implementation tasks to be performed by the Customer as described in Schedule "I", attached hereto and forming a part hereof. Completion shall be deemed to have occurred upon the Provider's written notice to the Customer that the tasks are complete. However, the Provider reserves the right to temporarily discontinue its performance hereunder if the Provider discovers additional implementation tasks that must be completed by the Customer in order for the Provider to continue to deliver the Operations Services.

2.3 The Provider shall provide the Customer with periodic reports as described in Schedule "J", attached hereto and forming a part hereof, setting out a comparison of the Provider's performance to the Service Level Objectives. In the event the Provider does not meet the Service Level Objectives during the agreed-upon time period specified in Schedule "G" hereof, the Provider will follow the steps outlined in Schedule "K" hereof to improve its delivery of the Operations Services so that the Service Level Objectives are met.

2.4 The Provider shall not be liable to continue performance of the Operations Services where provision of the same would, in the sole opinion of the Provider, involve a safety, health or environmental hazard. Such discontinuance by the Provider shall not constitute a breach of this Agreement.

2.5. The Provider shall not be liable for failure to achieve the Service Level Objectives due to problems resulting from alterations made to the Customer Hardware or the Customer Software or any part thereof by anyone other than the Provider or without the prior written approval of the Provider.

2.6. The Provider reserves the right to change the location where the Provider uses the Customer Software and to move the Customer Software and data upon written notice to the Customer, so long as the Provider does not seek to change the Service Level Objectives.

2.7. The Provider's obligation to deliver the Operations Services is subject to and conditional upon the full performance and observance by the Customer of its obligations under this Agreement, including, but not limited to, the Customer responsibilities described in Section 6 hereof.

3. Hardware

3.1. The Provider will perform the Operations Services using the Customer Hardware. Subject to mutual agreement, the Provider may use the Provider Hardware instead of, or in addition to, the Customer Hardware.

3.2. In the event the parties agree that the Provider will purchase certain computer systems and other hardware products from the Customer prior to or after delivery of Operations Services, the terms and conditions for that purchase will be as set out in Schedule "L", attached hereto and forming a part hereof. Such purchased equipment will be added to Schedule "D" hereof and form part of the Provider Hardware if such purchased equipment is to be used by the Provider in performing the Operations Services.

3.3. Title to the Provider Hardware shall remain vested solely in the Provider, and the Customer shall have no rights thereto except as specifically permitted under this Agreement. When the Provider Hardware is installed at the Customer sites, the Customer shall be responsible for all physical loss and damage of such the Provider Hardware other than that caused directly and solely by the Provider. The Provider may upgrade and replace the Provider Hardware as the Provider in its sole discretion deems appropriate so long as the Provider does not seek to change the Service Level Objectives.

3.4. Title to the Customer Hardware shall remain vested solely in the Customer, and the Provider shall have no rights thereto except as specifically permitted under this Agreement. When the Customer Hardware is installed at the Provider sites, the Provider shall be responsible for all physical loss and damage of such the Customer Hardware other than that caused directly and solely by the Customer. When the Customer Hardware is installed at the Customer sites, the Customer shall be responsible for all physical loss and damage of such the Customer Hardware other than that caused directly and solely by the Provider.

3.5. The Customer shall assign its maintenance agreements, as listed in Schedule "M", attached hereto and forming a part hereof, covering the Customer Hardware to the Provider and shall obtain any required approvals and consents from the vendors permitting the Provider to act as the Customer's agent under such maintenance agreements. The Customer shall remain responsible for payment and renewal of maintenance agreements covering the Customer Hardware unless they have been assigned to the Provider.

3.6. Any of the Customer Hardware to be maintained directly by the Provider under this Agreement will be governed by the terms and conditions of Schedule "N", attached hereto and forming a part hereof.

4. Customer Software

4.1. The Provider will perform the Operations Services using the Customer Software and the Provider Software.