

OPERATIONS MANAGEMENT SERVICES AGREEMENT

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

BETWEEN:

PROVIDER
[address]
(the "Provider")

OF THE FIRST PART

- and -

CUSTOMER
[address]
(the "Customer")

OF THE SECOND PART

WHEREAS:

- A. 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. Customer wishes to contract for certain operations services from Provider whereby Provider will operate, manage and maintain Customer's Information Systems environment as described in Schedule "___", Description of Services, attached hereto and forming a part hereof;
- C. Provider is willing to perform these operations services for 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 Customer which will be used by Provider in performing the Operations Services under this Agreement as listed in Schedule "___", 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 Provider or third parties, or owned by Customer as listed in Schedule "___", which will be used by 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 Provider as described in Schedule "___".
- (h) "Provider Hardware" means the computer systems, peripherals, terminals, communications equipment and all related hardware products owned by Provider which will be used by Provider in performing the Operations Services under this Agreement as listed in Schedule "___", 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 Provider licenses or owns as listed in Schedule "___", which will be used by Provider in performing the Operations Services hereunder, but not including software licensed by Customer from Provider.
- (j) "Service Fees" means the fees payable by Customer as specified in Schedule "___".
- (k) "Service Level Objectives" means the predetermined, objective performance criteria for delivery of the Operations Services as described in Schedule "___".
- (l) "Subcontractor" means any person or party engaged by Provider to perform any of the Operations Services on behalf of Provider.

2. Operations Services to be Provided by Provider

2.1 Provider shall perform the Operations Services for Customer at the location(s) described in Schedule "___" using all reasonable efforts to meet the Service Level Objectives.

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

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

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

2.5 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 Customer Software or any part thereof by anyone other than Provider or without the prior written approval of Provider.

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

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

3. Hardware

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

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

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

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

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

3.6. Any Customer Hardware to be maintained directly by Provider under this Agreement will be governed by the terms and conditions of Schedule "____" attached hereto.

4. Customer Software

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

4.2. Customer grants Provider a non-exclusive licence at no charge to use Customer Software owned by Customer during the term of this Agreement and, if applicable during any holdover period after expiration or termination of the Agreement, solely for the purpose of delivering the Operations Services. This Customer software will be supported as described in Schedule "____".

4.3. Provider's obligation to perform the Operations Services under this Agreement is conditional upon Customer obtaining the right for Provider to use any Customer Software licensed from third parties ("Third Party Software"). Customer shall provide Provider with evidence that any Third Party Software vendors have consented to Customer's assignment of its software licence to Provider or to Provider's use of the Third Party Software on Customer's behalf under the terms of Customer's licence for the Third Party Software, which will include the right for Provider to change the location where Provider uses such Third Party Software.

4.4. In the event any claim is brought against Provider, its employees, agents or subcontractors alleging the disclosure to Provider or use by Provider of Customer Software (except software licensed from Provider) resulted in infringement of third party Intellectual Property Rights or breach of confidentiality or other contractual obligations owed by Customer to any third party, Customer hereby

agrees to indemnify, defend and save harmless Provider from all damages, costs, demands, liabilities, expenses and losses incurred by Provider in connection with such claim including reasonable solicitors' fees and court costs.

4.5. Customer will assign its maintenance agreements covering Third Party Software to Provider and shall obtain the necessary approvals and consents of the third party vendors permitting such assignment and permitting Provider to act as Customer's agent under the maintenance agreement(s). Customer shall remain responsible for payment of all maintenance fees and renewal of its maintenance agreements covering Third Party Software that has not been assigned to Provider.

4.6. In the case of Customer Software that is proprietary Provider software licensed by Customer from Provider, the same shall be used by Provider and continue to be licensed to Customer under the terms of the applicable Provider software licence, which shall remain in full force and effect.

4.7. Any Customer Software to be supported directly by Provider under this Agreement shall be governed by the terms and conditions of Schedule "___", attached hereto.

THIS IS AN 11-PAGE DOCUMENT.