

INDIRECT CHANNEL CUSTOMER AGREEMENT #06-WBC1106

Thank you for purchasing Hitachi Data Systems ("HDS") Products (meaning Equipment and licenses of Software) and Services (meaning Maintenance Service, Hi-Track® Service, Professional Services and any additional service performed for Customer by HDS). If you have any questions regarding this Agreement or any of our Products or Services please contact your HDS representative. This Indirect Channel Customer Agreement (the "Agreement") governs your use of Products and Services.

By signing below the parties have caused this Agreement to be duly executed by their respective authorized representatives.

Hitachi Data Systems Corporation

Agreed to:

Hitachi Data Systems Corporation
750 Central Expressway
Santa Clara, CA 95050-2627

By: Scott Gavin

Printed Name: **Scott Gavin**

Date: 11/08/06

Section 1. Software (Licensed Software and Other Software) Licenses

A. Generally: All Equipment shall include a fully paid-up personal and non-exclusive license to use the Equipment Software and Programs (collectively, "Licensed Software") accompanying or installed on any Equipment. All such licenses are granted subject to the terms and conditions hereunder. The license to use the Equipment Software is solely to enable the Equipment to function according to its specifications and for Customer's internal business purposes. Customer may use the Programs only for its internal business purposes and internal data processing.

B. Other Software: Customer's use of Other Software shall be governed by the related license including any restraint on transferability. Customer's recourse against HDS shall be limited to Other Software for which HDS is the licensor and to the extent provided for in the applicable license.

C. Transferability: Customer may transfer possession of Licensed Software to a third-party provided that: (1) Customer purges all copies of Licensed Software remaining in its possession after such transfer, and (2) the third-party transferee is furnished with a legible and complete copy of this Agreement. HDS will provide the third-party transferee with a license for Equipment Software upon its acceptance of the terms of this Agreement applicable to Equipment Software by its initial use of the Equipment Software. HDS will provide the third-party transferee with a license for Programs upon its acceptance of the terms of this Agreement

Customer

Agreed to:

City of Redlands
30 Cajon St
Redlands, CA 92373

By: Jon Harrison
JON HARRISON, MAYOR

ATTEST:

Lorrie Poyzer
LORRIE POYZER, CITY CLERK

Date: November 21, 2006
applicable to Programs and payment of the then standard license fees.

D. Termination: Any Licensed Software license granted hereunder will terminate upon: (1) the licensing to Customer by HDS of any upgrade, revision or replacement for that Licensed Software, (2) the receipt of one month's written notice of termination for the Licensed Software by HDS from Customer, or (3) when Customer is no longer in possession of the Equipment. Upon such termination, Customer shall purge all original versions and back-up copies of the affected software.

E. Back-up Copies: Customer may make a reasonable number of back-up copies of any Licensed Software to be used only as a necessary replacement of an original version so long as all proprietary and other notices are reproduced on the back-up copy as they exist on the original version. Customer shall maintain accurate records detailing the location of all original versions and back-up copies of Licensed Software.

Section 2. Services and Work Product

A. Maintenance Services: HDS or its Contractors shall provide Maintenance Services to Customer during the Warranty Period. Any parts removed from the Equipment in the course of any Maintenance Services belong to HDS.

B. Hi-Track® Services: Hi-Track Services, defined as remote diagnostic and monitoring services on an eligible item of Equipment, may be included as part of the Maintenance Service. As a condition to HDS providing Hi-Track Services, Customer

shall provide and maintain, at its expense, telecommunications line(s) and access as specified by HDS. Hi-Track Services will not access Customer's data and HDS will maintain a Customer provided password as confidential information. Hi-Track Material shall remain with the Equipment.

C. Professional Services:

(1) Professional Services will be provided by HDS or its Contractors as described in and pursuant to the terms of the relevant Statement of Work.

(2) Each Statement of Work shall include: (a) a detailed description of HDS' and Customer's respective responsibilities; (b) an estimated completion schedule including milestones if applicable to the Professional Services; (c) specific completion criteria that HDS is required to meet to fulfill its obligations under the Statement of Work; (d) payment terms; and (e) Identification of HDS and Customer contacts. The commencement date for Professional Services under any Statement of Work shall be specified in the applicable Statement of Work or, if no such date is set forth, the date on which HDS begins to perform Professional Services under the applicable Statement of Work. Any Statements of Work attached hereto or hereafter executed which are related to this Agreement are incorporated into and made a part of this Agreement.

(3) To the extent that any provisions of this Agreement and the Statement of Work conflict, the terms of the Statement of Work shall control unless the Statement of Work is a Customer purchase order (or other business form furnished by Customer), in which case, regardless of when executed, accepted and delivered, this Agreement shall control. None of the provisions of a Customer purchase order (or other business form furnished by Customer), regardless of when executed and delivered, shall be binding on the parties other than the description of the Professional Services, the schedule of rates or fees and the location where the Professional Services are to be performed.

D. Work Product: Customer acknowledges and agrees that HDS, its licensors, or its Contractors own all Work Product, except any Work Product identified in a Statement of Work as owned by Customer. To the extent that Customer and HDS own any Work Product, each hereby grants to the other a personal, nonexclusive and paid-up license to: (a) use the Work Product; (b) modify and prepare derivative works of the Work Product; and (c) reproduce, copy and display the Work Product; however, the Customer's license shall be limited to intra-company uses, modifications, derivations, distributions, reproductions, copying and displays for the sole benefit of Customer, its employees and representatives and solely for purposes of the Professional Services.

E. Customer's Responsibilities: Customer shall be responsible for the following items which are not included as Maintenance Services: (1) providing and maintaining a suitable environment for

the Products as specified by HDS; (2) performance of any electrical work external to an item of Equipment; (3) maintenance of accessories, attachments, and equipment; (4) painting, refinishing, or other refurbishment of Equipment; (5) repair of damage resulting from accident, transportation, non-HDS installed software or firmware, neglect, improper environmental conditions or any causes other than ordinary use; (6) movement or rearrangement of Equipment or cables, additional wiring, or repair to a previously prepared site or station to make it operational; (7) installation or removal of accessories, attachments or other devices, or the furnishing of supplies; (8) providing HDS or its Contractor with full, free, and safe access to Customer's sites and notifying HDS of any unsafe conditions or hazardous materials to which HDS personnel would or could be exposed to at Customer's site; and (9) obtaining certification of maintenance eligibility from the equipment manufacturer or authorized service agent if required by HDS. Upon Customer's request, HDS may elect to perform any of Customer's responsibilities at HDS' then current time and expense rate.

Section 3. Confidential and Proprietary Information

A. Generally:

(1) Customer hereby agrees that all information furnished by HDS hereunder in written, other tangible or electronic form and clearly marked as being confidential, or if orally or visually furnished, identified as being confidential in a writing submitted to Customer within thirty (30) days after such oral or visual disclosure, shall be considered by Customer to be HDS' confidential information. Customer further agrees to maintain such HDS confidential information received hereunder in confidence utilizing the same degree of care it uses to protect its own confidential information of a similar nature and to not disclose such HDS confidential information to any third party or to employees of the receiving party without a need to know.

(2) Hitachi IP constitutes work protected by state, federal and international laws applicable to proprietary rights and intellectual property rights. Customer agrees all such property is owned exclusively by HDS or its licensors and not to take any action that may jeopardize any right, title or interest that HDS or its licensors may have in the property including, but not limited to, the removal or defacing of any notice, statement or legend that appears on any Hitachi IP. Except as expressly provided in this Agreement, Customer shall not acquire any right, title or interest in or to any Hitachi IP and shall, upon request, promptly return any Diagnostic and Service Related Material plus any copies.

B. Restrictions: Except as expressly provided in this Agreement, without the prior written consent of HDS Customer shall not permit or engage in any activity related to the transfer (whether in whole or in part) or transformation including, but not limited to, decoding, reverse engineering, decompiling, translating, mirroring or creation of derivative works based on, developed from, or that incorporate portions of any Hitachi IP.

C. Equitable Remedies: Customer acknowledges that any breach by it of the provisions of this Section 3 or any other confidentiality or use restriction herein will cause irreparable damage to HDS or its licensors and that a remedy at law will be inadequate. Therefore, in addition to any and all other remedies, HDS and its licensors will be entitled to injunctive relief for such breach. Customer shall immediately notify HDS of such breach and take all steps reasonably available to cure and prevent any subsequent violation.

Section 4. Warranties

A. General: HDS warrants to Customer that: (1) unless otherwise stated, the Equipment and the related licensed internal code will be free from defects in materials and workmanship and conform to HDS' official published specifications for twelve (12) months; (2) it will provide all Services in a workmanlike manner; and (3) the Licensed Software will perform according to its written specifications for ninety (90) days from the date of installation. The Equipment may include used or re-manufactured components, which are warranted as new. Should any of the above not conform to their warranty, HDS will, provided that HDS is notified during the applicable Warranty Period, at its option and at no charge to Customer either repair or replace the Equipment or Licensed Software, or re-perform the Services.

B. Limitations: HDS warranties do not cover any Licensed Software or Equipment that has been damaged by accident, neglect, misuse, abuse, or natural disaster, subjected to an unsuitable physical operating environment, not properly maintained in accordance with the procedures recommended by its supplier, or modified without HDS' prior written consent.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO PRODUCTS OR SERVICES. HDS DISCLAIMS, AND CUSTOMER HEREBY WAIVES, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. HDS, ITS LICENSORS, VENDORS OR CONTRACTORS DO NOT WARRANT THAT PRODUCTS WILL OPERATE UNINTERRUPTED OR ERROR-FREE. EACH REMEDY FOR BREACH OF WARRANTY IN THIS SECTION SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND HDS' SOLE AND EXCLUSIVE LIABILITY.

Section 5. Infringement Indemnification

A. General: If Customer notifies HDS promptly in writing of any action, HDS will defend that action, at its own expense, and pay the costs and damages awarded against Customer in the action to the extent that it is based on a claim that an item of Equipment, Services or Hitachi IP infringes a valid US patent or copyright provided that HDS has sole control over the defense of any such action and all negotiations for its settlement or compromise and Customer provides all reasonable assistance requested by HDS.

Should any Hitachi IP, Services or Equipment become or, in HDS' opinion, likely become the subject of any infringement claim, HDS shall at its sole option and expense either procure for Customer the right to continue using or receiving the item, replace or modify it so it becomes non-infringing, or grant Customer a credit for the Hitachi IP, Services or Equipment as depreciated, on a five-year double declining balance schedule with no salvage value, and accept its return. This Section 5 states HDS' entire liability, and Customer's sole and exclusive remedy for intellectual property rights claims relating to or arising out of any Hitachi IP, Services or Equipment.

B. Limitations: HDS shall also have no obligation to Customer if the alleged infringement is based on: (1) any modification made to the subject Hitachi IP, Services or Equipment (other than by HDS or its Contractor); (2) the integration, application, operation or use of the Hitachi IP, Services or Equipment with any other equipment, services or software not furnished by HDS or its Contractor; or (3) a violation by Customer of Section 1, 2B, or 3 of this Agreement.

Section 6. Agreement Termination

A. Default: For the purposes of this Agreement, "Default" means: (1) a breach by Customer of any of its obligations in Section 1, 2B, or 3; (2) the failure of one party to cure a default under this Agreement (other than a default described in Section 6A(1), 6A(2) or 6A(3)) within 30 calendar days after delivery of a notice of default; (3) the insolvency of Customer; or (4) any action by Customer to wind-up, liquidate or otherwise cease doing business.

B. Remedies Upon Default: In the event of a Default, the non-defaulting party shall have the immediate right to terminate this Agreement including any license granted hereunder; refuse to provide or suspend any Service; and exercise any other rights or remedies provided hereunder and/or available at law or in equity consistent with this Agreement. In the event of a termination, Customer shall promptly purge or destroy all applicable Hitachi IP and updates, and return all other property belonging to HDS or its licensors in Customer's possession or control (other than any licensed internal code).

C. Survival: The provisions of this Agreement which by their nature would survive termination of this Agreement shall so survive.

Section 7. General

A. Assignment: This Agreement shall obligate and benefit the parties and their permitted successors and assigns; provided, that Section 3 shall also benefit the licensors of HDS. Except for a Service transaction or software license (which may not be assigned by Customer), Customer may assign this Agreement only with the prior written consent of HDS, which consent shall not be unreasonably withheld. Any attempt by Customer to

assign, transfer or delegate this Agreement or any rights or obligations under this Agreement in violation of this Section shall be void.

B. Limitation of Liability: Should Customer be entitled to recover damages from HDS based on one or more claims for breach of contract, negligence, misrepresentation, or other contract or tort claim, HDS shall be liable only for: (1) its obligations in Section 5; (2) damages for bodily injury (including death) and damage to real property or tangible personal property; and (3) the amount of any other actual direct damages or loss. In the case of clause (3), the maximum aggregate liability of HDS shall not exceed the lesser of (a) the total amount paid to HDS by Customer for the Product or Service subject to the claim, or (b) five hundred thousand dollars (\$500,000). Neither HDS nor its licensors or Contractors shall be liable for any special, indirect, incidental or consequential loss or damage of any kind or nature whatsoever, regardless of whether arising from breach of contract, warranty, tort, strict liability, or otherwise, even if advised of the possibility of the loss or damage or if the loss or damage could have been reasonably foreseen.

C. Limitation on Claims: No action arising hereunder may be brought more than one year after the cause of action has accrued.

D. Access: Upon request by HDS, Customer shall promptly provide HDS or its Contractor access to the location where any Hitachi IP is located and to all relevant books, records, officers, employees and representatives of Customer for the purpose of verifying compliance by Customer with this Agreement.

E. Equipment Relocation: Customer agrees to give HDS at least 30 days' prior written notice of any change in location or arrangement of the Equipment.

F. Notices: Any notice under this Agreement must be in writing and is deemed given and effective three business days after mailing first class, postage prepaid, when sent by facsimile and confirmed by first class mail, or when delivered by overnight express or other express delivery service, in each case to the parties at the address listed above.

G. U.S. Export Policy: Customer acknowledges that U.S. laws, regulations and requirements regulate the export of U.S. origin products/technology and prohibit use, sale or re-export if Customer knows, or has reason to know, that such products/technology are for use in connection with the design, development, production, stockpiling or use of nuclear, chemical or biological weapons or missiles.

H. Suspension of Obligations: The obligations hereunder shall be suspended to the extent that a party is hindered or prevented from performing them by acts of God, or any cause whatsoever not within its reasonable control.

I. Governing Law: This Agreement, its interpretation and enforcement will be governed by the laws of the State of New York, without regard to its conflicts of law principles.

J. Miscellaneous: This Agreement is the entire agreement of the parties, and supersedes all prior agreements and communications between the parties with respect to the subject matter of this Agreement, and represents the complete integration of the parties' agreement. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired. This Agreement may be modified only by a written agreement executed by authorized officers of both HDS and Customer. No delay or omission to exercise any right or remedy accruing to HDS upon any breach or default of Customer shall impair that right or remedy, or be construed to be a waiver of any breach or default. A waiver by HDS of any breach or default under this Agreement must be in writing and executed by an authorized officer of HDS.

Section 8. Glossary of Terms

Contractor means an individual or organization under contract with HDS that may provide Services.

Customer means the person or entity identified on the signature page hereto as Customer and each of its permitted successors and assigns.

Diagnostic and Service Related Material means software, hardware, manuals and other documentation of HDS used or held for use by HDS or a Contractor to perform diagnostic Services or Maintenance Services. Diagnostic and Service Related Material does not include any Licensed Software, Other Software or Hi-Track Material.

Equipment means any one or more of data processing equipment, features, and accessories (excluding Hitachi IP) purchased through an HDS authorized reseller.

Equipment Software means computer software including licensed internal code, included as standard with an item of Equipment (other than any Other Software, Hi-Track, or Diagnostic and Service Related Material) and the related licensed materials (including, without limitation, documentation in any form) and all copies.

Hitachi IP means Hi-Track Material, Licensed Software, and Diagnostic and Service Related Material.

Hi-Track Material means hardware, software and/or microcode installed or operating with an eligible item of Equipment necessary for Hi-Track Services.

Maintenance Service includes: (a) the control and installation of engineering changes that HDS determines to be applicable to the Equipment; (b) preventive maintenance including necessary

lubrication, adjustment, or replacement of unserviceable parts; and
(c) unscheduled maintenance including repair, adjustment, or replacement of unserviceable parts as deemed necessary by HDS.

Other Software means computer software included with an item of Equipment, whether or not separately ordered, which is separately licensed (including licensed via shrink-wrap or click-wrap).

Professional Services means specific assistance services for technical tasks, consulting and systems integration as described in and provided by HDS or one of its Contractors pursuant to a Statement of Work.

Program means separately ordered computer software, except Other Software, included with an item of Equipment and the related licensed materials (including, without limitation, documentation in any form) and all copies.

Statement of Work means sequentially numbered documents which document and constitute the description of Professional Services HDS will render to Customer. A Statement of Work shall include the information described in Section 2.C.

Work Product means works of authorship, programs, program listings, programming tools, documentation, reports, drawings and similar works that HDS or a Contractor may deliver or cause to be delivered to Customer in connection with the performance of Professional Services. The term Work Product does not include any licensed internal code, computer software licensed by HDS, shrink-wrap or click-wrap software, diagnostic or service related materials or any Hi-Track® material of HDS.