

System Agreement
Between

INCODE

5808 4th Street
Lubbock, Texas 79416
(800) 646-2633
(806) 797-4849 Fax

AND

North Richland Hills

6720 Northeast Loop
North Richland Hills, TX 76180
Phone: (817) 427-6708
Fax: (817) 427-6707

INCODE
tylerworks.

AGREEMENT

This agreement is entered into by and between Interactive Computer Designs, Inc., hereinafter referred to as INCODE, located at 5808 4th Street, Lubbock, Texas 79416; and; North Richland Hills, hereinafter referred to as Client on, _____, 2004.

INCODE and Client agree as follows:

1. INCODE shall furnish the products and services as described in this Agreement, and Client shall pay the prices set forth in this Agreement.
2. This Agreement consists of this Cover and the following Attachments and Exhibits:

Section A	Investment Summary (A-D)
Section B	INCODE Agreement Terms and Conditions
3. The License Fees set forth in the Investment Summary are based on defined category levels. Placement within a category is based on the size of the organization serviced and measured by such factors as operating budget, number of employees, number of utility accounts, number of sworn officers, population of the entity, etc.

IN WITNESS WHEREOF, persons having been duly authorized and empowered to enter into this Agreement hereunto executed this Agreement effective as of the date last set forth below.

Client: North Richland Hills

^{KS}
 By: [Signature]
 Signature
Managing Director
 Title
3/25/04
 Date

INCODE:

By: [Signature]
 Signature
Director of Sales and Marketing
 Title
3/3/04
 Issue Date

Section A - Investment Summary

Prepared for: <p style="text-align: center;">North Richland Hills</p>	Contract ID # : 2004-0069
Contact Person: Debbie Durko Address: 6720 Northeast Loop North Richland Hills, TX 76180	Issue Date: 3/3/04
Phone: (817) 427-6708 Fax: (817) 427-6707 Email: ddurko@nrhtx.com	Salesman: L.Midkiff/ R.Reeves
	Tax Exempt: Yes

	Fees	Maintenance
Total Applications Software <i>License Fees</i>	6,625	1,500
Total Investment Summary	6,625	1,500

Software License, Professional Services, and Maintenance Fees

Application Software	Quantity	License Fee	INCODE Services	Estimated On-Site Assistance Hours	Estimated On-Site Assistance Fees	Estimated Travel Expenses	Annual Maintenance Support Fee
Form Printing Solutions							
Forms Overlay (4 Overlays for Financials, 4 Overlays for Court, 5 Overlays for CRM)	1	3,500		N/A	N/A		875
Each Logo and Court Seal (scan and prepare for use)	2	250		N/A	N/A		
Secure Signatures	1	2,500		N/A	N/A		625
Each Signature (scan and prepare for use)	3	375		N/A	N/A		
Total		6,625					1,500

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General Payment Terms

1. Client will pay to INCODE an initial deposit upon execution of this Agreement that equals 25% of the total amount as specified in this Agreement, not including Annual Software Maintenance, Third Party Software Maintenance, and/or Hardware Maintenance fees;
2. Client will pay a second installment to INCODE upon delivery of the software products that equals 60% of the Application Software License Fees and 75% of the System Software License Fees; Delivery Attestment is included as Exhibit 1.
3. The remaining 15% balance of the total amount specified in this Agreement for all products and License fees shall be paid after (a) INCODE's verification of the software products, (b) Client's completion of its own validation process, or (c) Client's live processing. In no case, shall this period exceed thirty (30) days from live processing or one hundred-eighty (180) days from installation of the software.
4. Services shall be billed as delivered plus expenses and are due and payable net 30 days.

Software License Agreement

1) Software Product License.

a) Upon Client's payment for the software products listed on the cover of this Agreement, for the license fees set forth in the Investment Summary, INCODE shall grant to Client and Client shall accept from INCODE a non-exclusive, nontransferable, nonassignable license to use the software products and accompanying documentation for internal business purposes of Client, subject to the conditions and limitations in this Software License Agreement.

b) Ownership of the software products, accompanying documentation and related materials, and any modifications and enhancements to such software products and any related interfaces shall remain with INCODE.

c) The software products are not licensed to perform functions or processing for subdivisions or entities that were not considered by INCODE at the time INCODE issued this Agreement.

d) The right to transfer this license to a replacement hardware system is included in this Software License Agreement. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to Client. Advance written notice of any such transfer shall be provided to INCODE.

e) Client agrees that the software products, any modifications and enhancements and any related interfaces are proprietary to INCODE and have been developed as a trade secret at INCODE's expense. Client agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.

f) If Client has made modifications to the software products, INCODE will not support or correct errors in the modified software products, unless modifications were specifically authorized in writing by INCODE.

g) Client may make copies of the software products for archive purposes only. Client will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use.

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h) The term of the license granted by this Section shall be perpetual.

i) INCODE maintains an escrow agreement with an Escrow Services Company under which INCODE places the source code of each major release. At Client's request, INCODE will add Client as a beneficiary on its escrow account. Client will be invoiced the annual beneficiary fee by INCODE and is solely responsible for maintaining its status as a beneficiary.

2) License Fees.

a) Client agrees to pay INCODE, and INCODE agrees to accept from Client as payment in full for the license herein, the total sum of the INCODE license fees set forth in the Investment Summary.

b) The license fees listed in the Investment Summary do not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by Client and shall be paid over to the proper authorities by Client or reimbursed by Client to INCODE on demand in the event that INCODE is responsible or demand is made on INCODE for the payment thereof. If tax-exempt, Client must provide INCODE with Client's tax-exempt number or form.

c) In the event of any disputed invoice, Client shall provide written notice of such disputed invoice to Attention: INCODE Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to INCODE within fifteen (15) days. An additional fifteen (15) days is allowed for the Client to provide written clarification and details for the disputed invoice. INCODE shall provide a written response to Client that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action

plan that will outline the reasonable steps needed to be taken by INCODE and Client to resolve any issues presented in Client's notification to INCODE. Client may withhold payment of only the amount actually in dispute until INCODE provides the required written response, and full payment shall be remitted to INCODE upon INCODE's completion of all material action steps required to remedy the disputed manner. Notwithstanding the foregoing sentence, if INCODE is unable to complete all material action steps required to remedy the disputed manner because Client has not completed the action steps required of them, Client shall remit full payment of the invoice.

d) Any invoice not disputed as described above shall be deemed accepted by the Client. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, INCODE reserves the right to suspend delivery of all services under the Investment Summary, this Software License Agreement, the Professional Services Agreement, the Maintenance Agreement and, if applicable, the Third Party Product Agreement.

3) Verification of the Software Products.

a) At the Client's request, within thirty (30) days after the software products have been installed on Client's system, INCODE will test the software products in accordance with INCODE's standard verification test procedure. Demonstration shall constitute Client's verification that the software products substantially comply with INCODE's documentation for the most current version of the software products and functional descriptions of the software found in INCODE's written proposal to Client. Upon such verification, Client shall pay the remaining balance in accordance with the

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payment terms listed in Section General Payment Terms or amended in any attached addendum.

b) At its option, Client may perform Client's own defined internal validation process to test the software to substantially comply with INCODE's documentation for the most current version of the software products and functional descriptions of the software found in INCODE's written proposal to Client. Such validation test shall constitute Client's verification. Upon such validation, Client shall pay the remaining balance in accordance with the payment terms listed in Section General Payment Terms or amended in any attached addendum.

c) Notwithstanding anything contrary herein, Client's use of the software products for its intended purpose, shall constitute Client's verification of the software products, without exception and for all purposes.

d) Verification or validation that the software products substantially comply with INCODE's documentation for the most current version of the software products and functional descriptions of the software found in INCODE's written proposal to Client by Client shall be final and conclusive except for latent defect, fraud, and such gross mistakes that amount to fraud and the operation of any provision of this Agreement which specifically survives verification. In the event said verification becomes other than final, or becomes inconclusive, pursuant to this paragraph, Client's sole right and remedy against INCODE shall be to require INCODE to correct the cause thereof.

e) INCODE shall correct any functions of the software products which failed the standard verification testing or failed to comply with INCODE's documentation for the most current version of the software products and functional descriptions of

the software found in INCODE's written proposal to Client. If Client has made modifications to the software programs, INCODE will not make such corrections, unless such modifications were specifically authorized in writing by INCODE.

4) Schedule of Verification. INCODE will install the software products and cause the same to be verified within sixty (60) days after Client makes available to INCODE the equipment into which the software product is to be loaded. INCODE shall exercise reasonable efforts to cause the software products to be verified according to the schedule set forth in this paragraph, but INCODE shall not be liable for failure to meet said schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of INCODE.

5) Limited Warranty. INCODE warrants that the then current, unmodified version of the INCODE Software Products will substantially conform to the then current version of its published Documentation. If the Software Products do not perform as warranted, INCODE's obligation will be to use reasonable efforts, consistent with industry standards, to cure the defect. Should INCODE be unable to cure the defect or provide a replacement product, Client shall be entitled to a refund for the license fee paid for application. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED OR VERBAL, STATUTORY OR OTHERWISE, AND WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE

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IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6) Limitation of Liability.

(a) In the event that the software products are determined to infringe upon any existing United States patent copyright or trademark rights held by any other person or entity, INCODE shall defend and hold harmless Client and its officers, agents and employees from any claim or proceedings brought against Client and from any cost damages and expenses finally awarded against Client which arise as a result of any claim that is based on an assertion that Client's use of the software products under this Software License Agreement constitutes an infringement of any United States patent, copyright or trademark provided that Client notifies INCODE promptly of any such claim or proceeding and gives INCODE full and complete authority, information and assistance to defend such claim or proceeding and further provided that INCODE shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement provided that INCODE shall consult with Client regarding such defense. In the event that the software products are finally held to be infringing and its use by Client is enjoined, INCODE shall, at its election; (1) procure for Client the right to continue use of the software products; (2) modify or replace the software products so that it becomes non-infringing; or (3) if procurement of the right to use or modification or replacement can not be completed by INCODE, terminate the license for the infringing software product, and upon termination, refund the license fees paid for the infringing software product as depreciated on a straight-line basis over a period of seven (7) years with such depreciation to commence on the execution of

this Agreement. INCODE shall have no liability hereunder if Client modified the software products in any manner without the prior written consent of INCODE and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement or if the infringement would have been avoided by Client's use of the most current revision of the software products. The foregoing states INCODE's entire liability and Client's exclusive remedy with respect to any claims of infringement of any copyright, patent, trademark, or any property interest rights by the software products, any part thereof, or use thereof.

b) THE RIGHTS AND REMEDIES SET FORTH IN THIS SOFTWARE LICENSE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

c) In no event shall INCODE be liable for special, indirect, incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the software products. INCODE's liability for damages arising out of this Software License Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the INCODE license fees identified in the Investment Summary. The license fees set forth in the Investment Summary reflect and are set in reliance upon this

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allocation of risk and the exclusion of such damages as set forth in this Software License Agreement.

7) Dispute Resolution. In the event of a dispute between the parties under this Software License Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

8) No Intended Third Party Beneficiaries. This agreement is entered into solely for the benefit of INCODE and Client. No third party shall be deemed a beneficiary of this agreement, and no third party shall have the right to make any claim or assert any right under this agreement.

9) Governing Law. This Software License Agreement shall be governed by and construed in accordance with the laws of Client's state of domicile.

10) Entire Agreement.

a) This Software License Agreement, including Exhibit 1 and the functional description of the software products found in INCODE's written proposal to Client, represents the entire agreement of Client and INCODE with respect to the software products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Software License Agreement and the functional description of the software products found in INCODE's written proposal to Client.

b) If any term or provision of this Software License Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this

Software License Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Software License Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Software License Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) Client should return an executed copy of this Agreement to INCODE. If the Agreement is not returned to INCODE within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

11) Cancellation or Termination. In the event of cancellation or termination of this Software License Agreement, Client will make payment to INCODE for all software products, services and expenses delivered or incurred prior to the termination or cancellation of this Software License Agreement.

12) Approval of Governing Body. Client represents and warrants to INCODE that this Software License Agreement has been approved by its governing body and is a binding obligation upon Client.

Professional Services Agreement

1) Services Provided. INCODE shall provide some or all of the following services to Client:

- a) Installation as described in the Investment Summary;
- b) Conversion of Client's existing data as set forth in the Investment Summary. Client is responsible for reading and complying with INCODE's Conversion Statement.

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- c) Training/Implementation in the quantity set forth in the Investment Summary;
- d) Consulting/Analysis in the quantity set forth in the Investment Summary; and
- e) Verification Testing as described in the Software License Agreement.

2) Professional Services Fees.

a) Notwithstanding specific prices to the contrary identified in the Investment Summary, all services will be invoiced in hourly increments as delivered, plus travel and other expenses, plus a 10% processing fee. Client agrees to pay INCODE for the actual amount of training provided. The Investment Summary reflects the estimated cost for the training proposed to be furnished by INCODE.

b) Upon the completion of each service day, or group of days, INCODE will present a Daily Log. Client will sign the report indicating acceptance of the service day and its subsequent billing, or noting reasons for Client's non-acceptance of such. This acceptance is final.

c) Client is not charged for travel time to and from the Client's site. Only time spent on-site is billed as training time.; excluding those cases in which the Client requires the INCODE trainer(s) to travel on the weekend, in which case Client will be billed for weekend travel time at a rate of \$500 per weekend day.

d) Client agrees to pay all expenses related to transportation of Client's employees.

e) All requests for supporting documentation shall be made within thirty (30) calendar days of invoice delivery. f) The rates for Verification Testing shall be the same as the

Training/Implementation rates set forth in the Investment Summary.

g) The rates listed in the Investment Summary do not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by Client and shall be paid over to the proper authorities by Client or reimbursed by Client to INCODE on demand in the event that INCODE is responsible or demand is made on INCODE for the payment thereof. If tax-exempt, Client must provide INCODE with Client's tax-exempt number or form.

h) Payment is due within thirty (30) calendar days of invoice.

i) In the event of any disputed invoice, Client shall provide written notice of such disputed invoice to Attention: INCODE Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to INCODE within fifteen (15) calendar days of Client's receipt of the invoice. An additional fifteen (15) days is allowed for the Client to provide written clarification and details for the disputed invoice. INCODE shall provide a written response to Client that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by INCODE and Client to resolve any issues presented in Client's notification to INCODE. Client may withhold payment of only the amount actually in dispute until INCODE provides the required written response, and full payment shall be remitted to INCODE upon INCODE's completion of all material action steps required to remedy the disputed manner. Notwithstanding the foregoing sentence, if INCODE is unable to complete all material action steps required to remedy the disputed manner because Client

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has not completed the action steps required of them, Client shall remit full payment of the invoice.

j) Any invoice not disputed as described above shall be deemed accepted by the Client. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, INCODE reserves the right to suspend delivery of all services under the Investment Summary, the Software License Agreement, this Professional Services Agreement, the Maintenance Agreement and, if applicable, the Third Party Product Agreement.

3) Training Environment. If training is being conducted at the Client's site, the Client is responsible for providing a productive environment to conduct training. INCODE is not responsible for its inability to conduct training or for inadequate training arising due to interruptions and/or unavailability of Client personnel to be trained. Time spent on-site by INCODE that results in non-productive training time beyond INCODE's control will be billed as training time. INCODE will make reasonable efforts to schedule training on dates requested by the Client. Trainers will be on-site approximately noon Monday through noon Friday. This allows appropriate travel time to and from the Client's site.

4) Additional Services. Services utilized in excess of those set forth in the Investment Summary and additional related services not set forth in the Investment Summary will be billed at INCODE's then current market rate for the service as they are incurred.

5) Limitation of Liability. INCODE shall not be liable for inaccurate data in INCODE's application software which is the result of conversion of inaccurate data from the previous system. INCODE's liability for damages arising out of this

Professional Services Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the professional service fees identified in the Investment Summary. The client shall not in any event be entitled to, and INCODE shall not be liable for, indirect, special, incidental, consequential or exemplary damages of any nature. The professional service fees set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Professional Services Agreement.

6) Dispute Resolution. In the event of a dispute between the parties under this Professional Services Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

7) No Intended Third Party Beneficiaries. This Professional Services Agreement is entered into solely for the benefit of INCODE and Client. No third party shall be deemed a beneficiary of this Professional Services Agreement, and no third party shall have the right to make any claim or assert any right under this Professional Services Agreement.

8) Governing Law. This Professional Services Agreement shall be governed by and construed in accordance with the laws of Client's state of domicile.

9) Cancellation or Termination. In the event of cancellation or termination of this Professional Services Agreement, Client will make payment to INCODE for all services and expenses delivered or incurred prior to the termination or cancellation of this Professional Services Agreement.

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10) Entire Agreement.

a) This Professional Services Agreement represents the entire agreement of Client and INCODE with respect to the professional services and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Professional Services Agreement.

b) If any term or provision of this Professional Service Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Professional Services Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Professional Services Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Professional Services Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) Client should return an executed copy of this Agreement to INCODE. If the Agreement is not returned to INCODE within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

11) **Approval of Governing Body.** Client represents and warrants to INCODE that this Professional Services Agreement has been approved by its governing body and is a binding obligation upon Client.

Annual Software Maintenance Agreement

1) **Scope of Agreement.** The Client agrees to purchase and INCODE agrees to provide services for the software products listed on the cover of this Agreement in accordance with the following terms and conditions. Both parties acknowledge that this Annual Software Maintenance Agreement covers both Support for the software products listed on the cover of this Agreement and Licensing of updates of such installed software products.

2) **Term of Agreement.** This Annual Software Maintenance Agreement is effective on the date executed by an officer of INCODE and shall have a term beginning upon the first of the month six months after the installation of the INCODE Software and ending upon the last day of the month one year following that date.

a) This Annual Software Maintenance Agreement will automatically renew for subsequent one-year terms unless either party gives the other party at least thirty days prior written notice of its intent not to renew. Fees for subsequent years are subject to change.

b) If Client has not elected to participate in the INCODE Annual Software Maintenance Agreement, or elects not to renew the Agreement, the Client shall acquire Software maintenance in accordance to the Section entitled "Support Terms for Clients Not Participating in the Annual Software Maintenance Agreement".

3) Payment.

a) Client agrees to pay INCODE the amount identified in the Investment Summary for licensing and support services, as described below. The licensing fee of the INCODE Software includes six month's maintenance from the time the Software

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is installed. The annual amount identified in the Investment Summary will become due the first of the month following six months after the installation of the INCODE software. This payment is due and payable in accordance with Section General Payment Terms or amended in any attached addendum.

b) **Additional Charges.** Any maintenance performed by INCODE for the Client, which is not covered by this Annual Software Maintenance Agreement, will be charged at INCODE's then current market rates. All materials supplied in connection with such non-covered maintenance or support plus expenses will be charged to Client.

c) Support and services will be suspended whenever Client's account is thirty (30) calendar days overdue. Support and services will be reinstated when Client's account is made current.

4) Terms and Conditions for Licensing of Updates of the Installed Software Products.

a) Client is hereby granted the non-exclusive and nontransferable license and right to use the additional versions of the installed software products listed on the Cover of this Agreement which INCODE may release during the term of this Annual Software Maintenance Agreement. INCODE agrees to extend and Client agrees to accept a license subject to the terms and conditions contained herein for the installed software products.

b) The installed software products listed are licensed for use only for the benefit of Client listed on the cover of this Agreement. The software products are not licensed to perform functions or processing for subdivisions or entities that were

not considered by INCODE when INCODE placed Client in the categories listed on the cover of this Agreement.

c) As long as a current Annual Software Maintenance Agreement is in place, this License may be transferred to another hardware system used for the benefit of Client. Client agrees to notify INCODE prior to transferring the licensed products to any other system. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to the Client.

d) Client agrees that the software products are proprietary to INCODE and have been developed as a trade secret at INCODE's expense. Client agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.

e) If Client has made modifications to the software products, INCODE will not support the modified software products, unless modifications were specifically authorized in writing by INCODE.

f) Client may make copies of the licensed software products for archive purposes only. The Client will repeat any proprietary notice on the copy of the software products. The documentation accompanying the product may not be copied except for internal use.

g) For as long as a current Annual Software Maintenance Agreement is in place, INCODE shall promptly correct any functions of the software products which fail to substantially comply with INCODE's documentation for the most current version of the software products. If Client has made modifications to the software products, INCODE will not make

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such corrections, unless modifications were specifically authorized in writing by INCODE.

5) Terms and Conditions for Support.

a) INCODE shall provide software related Client support during standard support hours. Currently, regular support hours are from 8:00am to 5:00pm Central Standard Time, Monday thru Friday, excluding holidays. Extended support hours are from 7:00am to 8:00am CST and 5:00pm to 7:00pm CST, Monday thru Friday, excluding holidays. Incidents (problem calls) may be initiated via INCODE's toll free support line, via e-mail to INCODE's support group or via INCODE's support web-site during regular support hours. During extended support hours, incidents must be initiated via e-mail to INCODE's support group or via INCODE's support web-site. INCODE reserves the right to modify these support hours as INCODE sees fit in order to better serve it's Client. Assistance and support requests which require special assistance from INCODE's development group will be taken and directed by support personnel.

b) INCODE will maintain staff that is appropriately trained to be familiar with the software products in order to render assistance, should it be required.

c) INCODE will provide Client with all updates that INCODE may make to the then current version of the installed software products covered in this Agreement.

d) Client acknowledges that the updates/enhancements may not be compatible with Client's particular hardware configuration or operating system. Client acknowledges that additional hardware and software may be required at the Client's expense in order to utilize the updates/enhancements.

e) INCODE will make available appropriately trained personnel to provide Client additional training, program changes, analysis, consultation, recovery of data, conversion, non-coverage maintenance service, etc., billable at the current per diem rate plus expenses. *INCODE employs many CPAs but is not a board registered CPA firm.*

f) INCODE shall provide Client with on-line support through the use of communications modem and software.

6) Support Terms for Clients Not Participating in the Annual Software Maintenance Agreement. We have evaluated our annual software support fees and defined them as follows:

73% - Software Support (phone, email, e-incode), including bug fixes,

27% - Enhancements and Software Upgrades

The Software License Agreement includes six months free maintenance. If Client elects not to participate in the INCODE Annual Software Maintenance Agreement, Client shall receive support on a Time and Materials basis following six months after the INCODE Software is installed in accordance with the following terms:

a) Clients not on Software Support Maintenance will receive the lowest priority for Software Support.

b) Clients not on Software Support Maintenance will be required to purchase new releases of the Software. New Releases will include fixes, enhancements and updates, such as, Tax Tables, W/2 reporting formats, 1099 changes, etc.

c) Clients not on Software Support Maintenance will be charged \$175 per hour with a one-hour minimum for all software support calls.

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d) Clients not on Software Support Maintenance will not be granted access to INCODE's software support web-site.

e) Clients not on Software Support Maintenance are subject to higher rates for training and continuing education performed by INCODE employees. This is due to the fact that the Client may not be utilizing the most current version of our software.

f) INCODE will not guarantee a program fix to a documented bug for software versions that are not the currently released version. Since every Client is on Software Support Maintenance, often times, bug fixes are rolled into the latest release and then sites are upgraded to the latest release of the software.

g) If a Client decides to discontinue Software Support Maintenance and then wants to reinstate Software Support Maintenance, the Client must pay the 27% of the annual software support maintenance fees for the Enhancement and Software Updates, dating back to the date when the Client discontinued Software Support Maintenance.

Once again, INCODE feels any Client not on Software Support Maintenance will not be satisfied with the level of support they will receive, which in turn, makes a dissatisfied Client. INCODE prides itself on customer satisfaction, which is why we strongly encourage every Client to purchase Software Support Maintenance.

7) Additional Services. The Services listed below are not included in the INCODE Software Maintenance Agreement. These services shall be provided at INCODE's discretion and will be billed on a Time and Materials basis at INCODE's current rates.

- a) Changes to print programs.
- b) Software modifications.

c) Software Training.

d) Responding to problems caused by bad data.

e) Responding to problems caused by hardware.

f) Responding to problems caused by operator error.

g) Responding to problems caused by software that is not INCODE software.

h) Responding to problems resulting from misuse, accidents, Client neglect, fire, or any other cause not within INCODE's reasonable control.

i) Changes made to the INCODE Software by someone other than INCODE personnel.

j) Any other services performed by INCODE not otherwise specifically provided for in this Agreement, including but not limited to, bank reconciliation, reconciling out of balance reports, balancing segments of the system, etc.

8) Limitations and Exclusions. The support and services of this Maintenance Agreement do not include the following:

a) Support service does not include the installation of the software products, onsite support, application design, and other consulting services, support of an operating system or hardware, or any support requested outside of normal business hours.

b) Client shall be responsible for implementing at its expense, all changes to the current version. Client understands that changes furnished by INCODE for the current version are for implementation in the current installed software products version, as it exists without customization or client alteration.

9) Client Responsibilities.

a) Client shall provide, at no charge to INCODE, full and free access to the programs covered hereunder: working space; adequate facilities within a reasonable distance from the

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equipment; and use of machines, attachments, features, or other equipment necessary to provide the specified support and maintenance service. Such environment includes, but is not limited to, use of the appropriate operating system at the version and release levels specified by INCODE and additionally specifies that the environment for any INCODE software application requires the Client to have e-mail and Internet access. Client shall provide telephone lines, communications software specified by INCODE, and all equipment necessary to use INCODE's on-line support. Client will be responsible for all additional costs incurred to the extent such hardware and software does not conform to INCODE's specifications.

b) Client shall maintain a dialup, IP or VPN connection through pcAnywhere, Citrix or Microsoft Terminal Services. INCODE, at its option, shall use the connection to assist with problem diagnosis and resolution. This connection shall be dedicated for the use of INCODE and shall not be shared with fax or internet connection line.

c) Client must maintain an active e-mail address capable of receiving a 5 MB attachment. This e-mail account must be accessible from a PC connected to the server hosting the INCODE software applications.

d) Client must open firewall ports to enable access to INCODE's FTP server for program updates via Live Update.

10) Non-Assignability. The Client shall not have the right to assign or transfer its rights hereunder to any party.

11) Force Majeure. INCODE shall not be responsible for delays in servicing the products covered by this Annual Software Maintenance Agreement caused by strikes, lockouts,

riots, epidemic, war, government regulations, fire, power failure, acts of God, or other causes beyond its control.

12) Limitation of Liability. The liability of INCODE is hereby limited to a claim for a money judgment not exceeding the fees paid by the Client for services under this Annual Software Maintenance Agreement. The client shall not in any event be entitled to, and INCODE shall not be liable for, indirect, special, incidental, consequential or exemplary damages of any nature.

13) Governing Law. This Annual Software Maintenance Agreement shall be governed by and construed in accordance with the laws of Client's state of domicile.

14) Entire Agreement.

a) This Annual Software Maintenance Agreement represents the entire agreement of Client and INCODE with respect to the maintenance of the software products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Annual Software Maintenance Agreement.

b) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Annual Software Maintenance Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Annual Software Maintenance Agreement shall be valid and enforced to the fullest extent permitted by law.

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c) This Annual Software Maintenance Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) Client should return an executed copy of this Agreement to INCODE. If the Agreement is not returned to INCODE within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

Hardware and System Software Agreement

1) Agreement to License or Sell Hardware. For the price set forth in the Investment Summary (Hardware & System Software), INCODE agrees to license or sell and deliver to Client, and Client agrees to accept from INCODE the hardware and system software products set forth in the Investment Summary.

2) License of Hardware.

a) Upon Client's payment for the hardware listed in the Investment Summary, for the license fees set forth in the Investment Summary, INCODE shall grant to Client and Client shall accept from INCODE a non-exclusive, nontransferable, non-assignable license to the hardware and system software products and accompanying documentation and related materials for internal business purposes of Client, subject to the conditions and limitations in this section.

3) Price. Client agrees to pay INCODE and INCODE agrees to accept from Client as payment in full for the hardware and system software products, the price set forth in the Investment Summary at the following manner:

a) Twenty-five percent (25%) of the price of all hardware and system software products listed in the Investment Summary upon execution of this Agreement; and

b) The remaining balance of the price of each item delivered to Client upon delivery of each product.

c) In the event of any disputed invoice, Client shall provide written notice of such disputed invoice to Attention: INCODE Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to INCODE within fifteen (15) calendar days of Client's receipt of the invoice. An additional fifteen (15) days is allowed for the Client to provide written clarification and details for the disputed invoice. INCODE shall provide a written response to Client that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by INCODE and Client to resolve any issues presented in Client's notification to INCODE. Client may withhold payment of only the amount actually in dispute until INCODE provides the required written response, and full payment shall be remitted to INCODE upon INCODE's completion of all material action steps required to remedy the disputed manner. Notwithstanding the foregoing sentence, if INCODE is unable to complete all material action steps required to remedy the disputed manner because Client has not completed the action steps required of them, Client shall remit full payment of the invoice.

d) Any invoice not disputed as described above shall be deemed accepted by the Client. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, INCODE reserves the right to suspend delivery of all services under the Investment Summary, the Software License Agreement, the Professional Services Agreement, the Maintenance Agreement and this Hardware and System Software Agreement.

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4) Costs and Taxes.

a) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in transit for the hardware and system software products from the supplier's place of manufacture to Client's site.

b) The price listed in the Investment Summary does not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by Client and shall be paid over to the proper authorities by Client or reimbursed by Client to INCODE on demand in the event that INCODE is responsible or demand is made on INCODE for the payment thereof. If tax-exempt, Client must provide INCODE with Client's tax-exempt number or form.

5) F.O.B. Point. Delivery of each hardware and system software product shall be F.O.B. Client's site.

6) Schedule of Delivery. Delivery of each hardware and system software product shall take place according to mutually agreeable schedule, but INCODE shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of INCODE.

7) Client Delays. If any act or failure to act by the Client delays INCODE's performance, INCODE shall be excused from performance for an amount of time commensurate with the delay caused by Client. Client acknowledges that its delay may excuse INCODE from performance for an amount of time greater than the delay caused by Client. Such delays by Client that may cause INCODE to delay performance include, but are not limited to failure to have prepared any data in the form and format requested by INCODE, on or before the date specified by

INCODE or to have verified such data for accuracy, submission of erroneous data to INCODE or Client's failure to have completely prepared the Hardware's installation site prior to the Hardware's actual delivery including, but not limited to, failure to have all electrical work and cable installation completed.

8) Installation and Verification. If itemized in the Investment Summary, the price includes installation of the hardware and system software products. Upon the completion of installation, Client shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute Client's acceptance of the hardware and system software products. Such acceptance shall be final and conclusive except for latent defects, fraud, such gross mistakes as amount to fraud and rights and remedies available to Client under the paragraph hereof entitled Warranties.

9) Site Requirements. Client shall prepare the installation site prior to the delivery of the hardware and system software. Client is solely responsible for and will furnish all necessary labor and material to install all associated electrical lines, CRT cables, and telephone lines for communication modems. Client is responsible for installing all required cables.

10) Warranties.

ALL WARRANTIES RELATING TO THE HARDWARE AND SYSTEM SOFTWARE ARE PROVIDED DIRECTLY FROM THE HARDWARE MANUFACTURERS AND/OR SOFTWARE PUBLISHERS UNDER THE TERMS AND CONDITIONS OF THEIR RESPECTIVE WARRANTIES. THE WARRANTIES SET FORTH IN THIS HARDWARE AND SYSTEM SOFTWARE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES

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EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

11) Maintenance. There is no hardware maintenance provided pursuant to this Agreement. Hardware warranty and/or maintenance is typically provided by the manufacturer or a Third Party. In situations where INCODE and the Client agree that INCODE will provide hardware maintenance, such hardware maintenance shall be governed by the terms of INCODE's Annual Hardware Maintenance agreement.

12) Limitation of Liability. Client expressly assumes sole responsibility for the selection and use of the hardware and system software. In no event shall INCODE be liable for special, indirect, incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the hardware and system software products. INCODE's liability for damages arising out of this Hardware and System Software Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the price of the hardware and system software products set forth in the Investment Summary. The prices set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Hardware and System Software Agreement.

13) Dispute Resolution. In the event of a dispute between the parties under this Hardware and System Software Agreement pertaining to pecuniary damages or losses, the matter shall be

settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

14) Governing Law. This Hardware and System Software Agreement shall be governed by and construed in accordance with the laws of Client's state of domicile.

15) Cancellation or Termination. In the event of cancellation or termination of this Hardware and System Software Agreement, Client will make payment to INCODE for all products and related services and expenses delivered or incurred prior to the termination or cancellation of this Hardware and System Software Agreement. Client may also be responsible for restocking fees.

16) Entire Agreement.

a) This Hardware and System Software Agreement represents the entire agreement of Client and INCODE with respect to the hardware and system software products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Hardware and System Software Agreement.

b) If any term or provision of this Hardware and System Software Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Hardware and System Software Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Hardware and System Software

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Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Hardware and System Software Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) Client should return an executed copy of this Agreement to INCODE. If the Agreement is not returned to INCODE within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

17) Approval of Governing Body. Client represents and warrants to INCODE that this Hardware and System Software Agreement has been approved by its governing body and is a binding obligation upon Client.

Annual Hardware Maintenance Agreement

1) Scope of Agreement. For the prices set forth in the Investment Summary, Client requests to cover and INCODE agrees to cover the equipment specified on the cover of this agreement in accordance with the following terms and conditions. INCODE requires all like-kind hardware to be covered (i.e. ALL cash drawers, ALL receipt printers, etc.).

2) Price. The Client agrees to pay the Annual Hardware Maintenance fee specified in this Agreement. INCODE guarantees this fee for the term of the Annual Hardware Maintenance Agreement. However, fees for subsequent years are subject to change.

3) Payment. Client agrees to pay the Annual Hardware Maintenance Agreement fee in accordance with the following terms:

a) The Client will be invoiced 12 months after the initial installation of the hardware.

b) In order for equipment to be eligible to be covered under this Annual Hardware Maintenance Agreement, the equipment must be covered beginning 12 months after the installation date of the equipment and must remain under continuous coverage on the Annual Hardware Maintenance Agreement

4) Equipment Maintenance Program Terms. INCODE agrees to provide the maintenance on the equipment specified under this agreement in accordance to the following terms:

a) In the event of equipment failure, INCODE will repair the defective equipment and provide the Client with "like or near like" equipment while the defective equipment is being repaired.

b) Client shall notify INCODE of equipment failure. Upon notification, INCODE will ship via over-night service to the Client the appropriate loaner equipment. The Client shall package the defective equipment in its original container and ship the equipment to INCODE.

c) Once the equipment is repaired, it will be shipped to the Client. Upon receipt of the repaired equipment the Client shall ship the loaner equipment back to INCODE. The loaner equipment should be shipped back to INCODE within two days of receiving the repaired equipment. The Client agrees to pay daily rental fees to INCODE if the loaner equipment is not shipped back to INCODE within the time frame specified.

d) The Client is responsible for shipping cost related to shipping equipment to INCODE. INCODE is responsible for shipping cost related to shipping equipment to the Client.

5) Definitions. The following definitions apply to the terms of this Annual Hardware Maintenance Agreement:

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a) **Loaner Equipment.** Equipment loaned to the Client by INCODE for use while the Client's equipment is being repaired.

b) **Like or Near-Like Equipment.** Equipment compatible with the Client's computer system and capable of performing the tasks performed by the equipment being repaired.

6) **Limitation of Liability.** The liability of INCODE is hereby limited to that claim for the money judgment not exceeding the fees paid by the Client for services under this Annual Hardware Maintenance Agreement. The Client shall not in any event be entitled to, and INCODE shall not be liable for, indirect, special, incidental, consequential or exemplary damages of any nature.

7) **Governing Law.** This Annual Hardware Maintenance Agreement shall be governed by and construed in accordance with the laws of Client's state of domicile.

8) **Entire Agreement.**

a) This Annual Hardware Maintenance Agreement represents the entire agreement of Client and INCODE with respect to the maintenance of the hardware and system software products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Annual Hardware Maintenance Agreement.

b) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Annual Hardware Maintenance Agreement or the application of such term or provision to persons or circumstances other than those

as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Annual Hardware Maintenance Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Annual Hardware Maintenance Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) Client should return an executed copy of this Agreement to INCODE. If the Agreement is not returned to INCODE within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

Third Party Product Agreement

1) **Agreement to License or Sell Third Party Products.** For the price set forth in the Investment Summary (Hardware & System Software), INCODE agrees to license or sell and deliver to Client, and Client agrees to accept from INCODE the third party products set forth in the Investment Summary.

2) **License of Third Party Software Products.**

a) Upon Client's payment for the third party software products listed in the Investment Summary, for the license fees set forth in the Investment Summary, INCODE shall grant to Client and Client shall accept from INCODE a non-exclusive, nontransferable, non-assignable license to use the third party software products and accompanying documentation and related materials for internal business purposes of Client, subject to the conditions and limitations in this section.

b) Ownership of the third party software products, accompanying documentation and related materials, shall remain with the third party manufacturer or supplier.

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c) The right to transfer this license to a replacement hardware system is governed by the Third Party. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to Client. Advance written notice of any such transfer shall be provided to INCODE.

d) Client agrees that the third party software products are proprietary to the third party manufacturer or supplier and have been developed as a trade secret at the third-party's expense. Client agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the third party software products or accompanying documentation.

e) Client shall not perform decompilation, disassembly, translation or other reverse engineering on the software products.

f) Client may make copies of the software products for archive purposes only. Client will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use

3) Price. Client agrees to pay INCODE and INCODE agrees to accept from Client as payment in full for the third party products, the price set forth in the Investment Summary at the following manner:

a) Twenty-five percent (25%) of the price of all third party products listed in the Investment Summary upon execution of this Agreement; and

b) The remaining balance of the price of each item delivered to Client upon delivery of each product.

c) In the event of any disputed invoice, Client shall provide written notice of such disputed invoice to Attention: INCODE

Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to INCODE within fifteen (15) calendar days of Client's receipt of the invoice. An additional fifteen (15) days is allowed for the Client to provide written clarification and details for the disputed invoice. INCODE shall provide a written response to Client that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by INCODE and Client to resolve any issues presented in Client's notification to INCODE. Client may withhold payment of only the amount actually in dispute until INCODE provides the required written response, and full payment shall be remitted to INCODE upon INCODE's completion of all material action steps required to remedy the disputed manner. Notwithstanding the foregoing sentence, if INCODE is unable to complete all material action steps required to remedy the disputed manner because Client has not completed the action steps required of them, Client shall remit full payment of the invoice.

d) Any invoice not disputed as described above shall be deemed accepted by the Client. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, INCODE reserves the right to suspend delivery of all services under the Investment Summary, the Software License Agreement, the Professional Services Agreement, the Maintenance Agreement and this Third Party Product Agreement.

4) Costs and Taxes.

a) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in

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transit for the third party products from the supplier's place of manufacture to Client's site.

b) The price listed in the Investment Summary does not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax or excise tax shall be paid by Client and shall be paid over to the proper authorities by Client or reimbursed by Client to INCODE on demand in the event that INCODE is responsible or demand is made on INCODE for the payment thereof. If tax-exempt, Client must provide INCODE with Client's tax-exempt number or form.

5) F.O.B. Point. Delivery of each third party product shall be F.O.B. Client's site.

6) Schedule of Delivery. Delivery of each third party product shall take place according to mutually agreeable schedule, but INCODE shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of INCODE.

7) Installation and Verification.

a) If itemized in the Investment Summary, the price includes installation of the third party products. Upon the completion of installation, Client shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute Client's acceptance of the third party products. Such acceptance shall be final and conclusive except for latent defects, fraud, such gross mistakes as amount to fraud and rights and remedies available to Client under the paragraph hereof entitled Warranties.

8) Site Requirements. Client shall provide:

a) a suitable environment, location and space for the installation and operation of the third party products;

b) sufficient and adequate electrical circuits for the third party products; and

c) installation of all required cables.

9) Warranties.

a) INCODE is authorized by the manufacturer or supplier of all third party software products listed in the Investment Summary to grant licenses or sublicenses to such products.

b) Unless otherwise noted in any attached addendum, INCODE warrants that each third party product shall be new and unused, and if Client fully and faithfully performs each and every obligation required of it under the Third Party Product Agreement, Client's title or license to each third party product shall be free and clear of all liens and encumbrances arising through INCODE.

c) The parties understand and agree that INCODE is not the manufacturer of the third party products. As such, INCODE does not warrant or guarantee the condition of the third party products or the operation characteristics of the third party products. d) THE WARRANTIES SET FORTH IN THIS THIRD PARTY PRODUCT AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

10) Maintenance. It shall be the responsibility of Client to repair and maintain the third party products after acceptance. Support for Third Party Application Software is not provided by INCODE unless otherwise specified in this Agreement. INCODE's responsibility is limited to delivering the Third

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Party Application Software and installing the software if installation services are provided in this Agreement.

11) Limitation of Liability. Client expressly assumes sole responsibility for the selection and use of the Third Party Application Software. In no event shall INCODE be liable for special, indirect, incidental, consequential or exemplary damages, including without limitation any damages resulting from loss of use, loss of data, interruption of business activities or failure to realize savings arising out of or in connection with the use of the third party products. INCODE's liability for damages arising out of this Third Party Product Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the price of the third party products set forth in the Investment Summary. The prices set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Third Party Product Agreement.

12) Dispute Resolution. In the event of a dispute between the parties under this Third Party Product Agreement pertaining to pecuniary damages or losses, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

13) Governing Law. This Third Party Product Agreement shall be governed by and construed in accordance with the laws of Client's state of domicile.

14) Cancellation or Termination. In the event of cancellation or termination of this Third Party Product Agreement, Client will make payment to INCODE for all products and related services and expenses delivered or incurred prior to the

termination or cancellation of this Third Party Product Agreement.

15) Entire Agreement.

a) This Third Party Product Agreement represents the entire agreement of Client and INCODE with respect to the third party products and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this agreement it did not rely on any representations or warranties other than those explicitly set forth in this Third Party Product Agreement.

b) If any term or provision of this Third Party Product Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Third Party Product Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Third Party Product Agreement shall be valid and enforced to the fullest extent permitted by law.

c) This Third Party Product Agreement may only be amended, modified or changed by written instrument signed by both parties.

d) Client should return an executed copy of this Agreement to INCODE. If the Agreement is not returned to INCODE within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

16) Approval of Governing Body. Client represents and warrants to INCODE that this Third Party Product Agreement has been approved by its governing body and is a binding obligation upon Client.