



MASTER PRODUCT AGREEMENT No.

Initial Order Description

HTE VAR, L.L.C. ("SELLER") agrees to supply equipment ("Machines") and software ("Programs") to the City of College Station, a Texas home-rule municipal corporation ("Purchaser") and to make available the manufacturer's software services subscriptions ("Subscriptions") to Purchaser under the terms of this Agreement. Collectively, Machines and Programs are referred to as "Products".

The Products and Subscriptions to be provided to Purchaser are specified in the initial product schedule below. The parties may enter into new product schedules from time to time which shall be governed by this Agreement, provided all such product schedules shall be in writing, shall be signed by both parties, shall be sequentially numbered (Product Schedule A-1, A-2, A-3, etc.), and shall reference this Agreement. Alternatively, Purchaser may provide SELLER with a purchase order for additional Products or Subscriptions, which is in Purchaser's standard form. However, Purchaser acknowledges and agrees that, notwithstanding anything in Purchaser's standard form purchase order to the contrary, the Additional Terms of this Agreement will govern all additional orders of Products or Subscriptions reflected on product schedules or purchase orders SELLER accepts from Purchaser after the date hereof.

The price for all Products is shown in Exhibit 1. PURCHASER agrees to pay the total price of all Products, shipping charges, and the price for the Subscriptions.

INITIAL PRODUCT SCHEDULE

Machine/Program	Description	Quantity	Unit Price	Amount
	SEE EXHIBIT 1			

Total Price Excluding Shipping Charges and Sales Taxes:	
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This Master Product Agreement, including the Additional Terms and Exhibits, form the complete Agreement (the "Agreement") regarding these Products and Subscriptions and replace and supercede any prior oral or written communication between us, including, without limitation, any purchase order that Purchaser issues for these Products or Subscriptions. By signing below, the parties agree to these terms.

Agreed to
HTE VAR, LLC.

Agreed to:
CITY OF COLLEGE STATION

BY: [Signature]
Printed Name: Bill Boyle *General Mgr*
Title: Sales Manager
Date: 12/5/04

BY: _____
Ron Silvia, Mayor
Date: _____

ATTEST:

Connie Hooks, City Secretary
Date: _____

APPROVED:

Thomas E. Brymer, City Manager

Date: _____

Roxanne Nemaik

City Attorney

Date: _____

Jeff Kersten, Finance & Strategic

Planning Director

Date: _____

STATE OF TEXAS)

COUNTY OF BRAZOS)

ACKNOWLEDGMENT

This instrument was acknowledged before me on the 5th day of December, 2004 by William Beyle in his/her capacity as General Mgr of HTRVAB, LLC, a corporation, on behalf of said corporation.

Lori B. Blum

Notary Public in and for

the State of ~~Texas~~ Georgia

12/9/04

LORI B BLAN
Notary Public, Gwinnett County, Georgia
My Commission Expires June 14, 2006

STATE OF TEXAS)

COUNTY OF BRAZOS)

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ___ day of _____, 200___, by _____, in his capacity as _____ of the **City of College Station**, a Texas home-rule municipality, on behalf of said municipality.

Notary Public in and for
the State of Texas

Order, Delivery and Installation

This is a custom order. If Purchaser cancels an order for Products within 10 business days prior to their shipment date, then Purchaser agrees to pay any costs SELLER incurs for such cancellation, including cancellation charges SELLER is assessed by its suppliers. However, Purchaser may not cancel an order after the Products have been shipped. Unless Purchaser requests otherwise and pays the corresponding charges, all Products are shipped via normal ground transportation. SELLER bears the risk of loss for each Product until it is delivered to Purchaser. Thereafter, Purchaser assumes the risk of loss. Purchaser must install all Programs and Machines designated as Customer-set-up by the manufacturer. The manufacturer will install all other Machines. Within 10 business days of their delivery, Purchaser may return any Products that are defective on arrival at SELLER's cost. Otherwise, if Purchaser wishes to return any Products which are not defective and have never been installed, then Purchaser must first obtain SELLER's written consent, which consent shall not be unreasonably withheld, and agree to pay any return charges SELLER is assessed by its suppliers. Some Products may not be returnable. Following their installation, Purchaser may only return the products under the provisions of the manufacturer's warranty. SELLER warrants that all equipment and parts delivered will be new and not reconditioned or previously used and will perform in accordance with manufacturer's specifications.

Payment and Assignment

Purchaser agrees to supply exemption documentation to SELLER. SELLER will submit Invoices in duplicate to the City of College Station, Accounting Dept., P.O. Box 9973, College Station, Texas 77842-0973. If invoices are subject to cash discount, discount period to be taken from the date of completion of order or date of receipt of invoice, whichever occurs last regardless of whether or not correct discount terms appear on invoice. All invoices to be paid in full within 30 days of invoice. Hardware shall be invoiced upon delivery to purchaser. High Availability software and services shall be invoiced upon successful installation and training.

Title and License

SELLER will transfer title to Machines to Purchaser when SELLER (a) receives the total Invoice Amount due and (b) Purchaser returns any removed parts that become our property during a feature or model update. The application, use and other aspects of the Programs and the Subscriptions are solely governed by the terms and conditions of the applicable agreement between Purchaser and the Owner of the Program. Purchaser does not receive title to any Program, but only the right to use the Program under the applicable agreement between Purchaser and the Owner of the Program.

If Purchaser fails to pay the undisputed Invoice Amount, including any applicable late payment charges authorized under Tex. Gov. Code 2251.001 et. seq., SELLER may request the manufacturer to cancel the licensed Programs.

Execution of this agreement is contingent on acceptance of the accompanying Software License Agreement between Vision Solutions, Inc., ("Vision") and City of College Station ("Purchaser").

Copyright Notices

SELLER and other third party software vendors shall have the unrestricted right to include copyright notices on all products provided by THE VAR L.L.C. Purchaser agrees to reproduce all copyright notices as provided by HTE VAR L.L.C. and other third party software vendors and agrees not to make any adjustment or alteration to such copyright notices.

Right to Use

Purchaser shall have use of the Licensed Program Materials on computer processing units as defined in the accompanying Software License Agreement.

Product Documentation

SELLER will provide Purchaser one copy each of detailed documentation for the use of Purchaser's product in both a searchable PDF document and a bound printed document. The documentation must be sufficiently intuitive that a competent iSeries System Operator can follow it and perform a system switch-over in case of an emergency.

WARRANTY

ALL WARRANTIES WITH REGARD TO THE PRODUCTS OR THE SUBSCRIPTIONS ARE PROVIDED DIRECTLY BY THE MANUFACTURER TO PURCHASER. SELLER WARRANTS ONLY THAT SELLER IS AUTHORIZED TO SUPPLY THE PRODUCTS AND THE SUBSCRIPTIONS TO PURCHASER AS SET FORTH HEREIN. THESE WARRANTIES ARE PURCHASER'S EXCLUSIVE WARRANTIES AND SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF ANY PRODUCT.

LIMITATION OF LIABILITY

IF EITHER PARTY IS ENTITLED TO RECOVER DAMAGES FROM THE OTHER, IN EACH INSTANCE, REGARDLESS OF THE BASIS ON WHICH DAMAGES CAN BE CLAIMED, SELLER IS LIABLE ONLY FOR ACTUAL DAMAGES OR THOSE CAUSED BY A PRODUCT IN AN AMOUNT NO GREATER THAN THE PRICE PURCHASER HAS PAID FOR THE PRODUCT THAT IS THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES IS SELLER RESPONSIBLE FOR (A) LOSS OF, OR DAMAGE TO, PURCHASER'S PROGRAMS, RECORDS OR DATA; OR (B) SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF WE ARE INFORMED OF THEIR POSSIBILITY.

Venue and Choice of Law

Laws of the State of Texas govern this Agreement. Venue shall lie in a court of competent jurisdiction in Brazos County, Texas.

Indemnification

It is further agreed that the Seller (separately and collectively the "Indemnatee") shall indemnify, hold harmless, and defend the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the hardware, services and software provided by the SELLER under this Contract. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City, any other party indemnified hereunder, the Contractor, or any third party.

Release

SELLER assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with the Seller's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, the Contractor, or any third party.

Severability

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

Term

This Agreement is effective from the date on which both parties execute this Agreement as set forth on the signature page hereto and shall remain in effect for the term provided herein.

Amendments

No amendment to this Agreement shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless waiver or consent to breach is in writing.

Insurance

Prior to the commencement of any work under this Contract, SELLER shall furnish an original completed Certificate(s) of Insurance to the City's Finance Department, Attention: Risk Manager, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the Purchaser. Purchaser shall have no duty to pay or perform under the Contract until such certificate shall have been delivered to the City's Finance Department. The City reserves the right to review the insurance requirements herein during the effective period of the Contract, including any extensions or renewal of the Contract, and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager, based upon changes in statutory law, court decisions, or circumstances surrounding the Contract. In no instance will the City allow modification whereupon the City may incur increased risk. Seller shall obtain and maintain in full force and effect, at the its sole cost and expense, for the duration of the Contract, including any extensions or renewal hereof, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to You, in the types and amounts shown in Exhibit 2.

Relation with HTE, Inc.

HTE VAR, L.L.C. and HTE, Inc., a Florida corporation, are independent contractors. Neither party is the agent of the other. Neither party is authorized to make any representations or create any obligation or liability on behalf of the other party.

Exhibit 1

Cost Summary Sheet

	Purchase Price Annual	Maint Cost
Production Server	\$62,995	
Licensed Software	N/A	
Hardware Migration Services	\$1,000	N/A
Data Migration Services	\$4,500	N//A
High Availability (HA) Software	\$14,800	\$3,700
Target Server	\$75,680	
Licensed Software	\$19,575	
Software Subscription P10 Group - 1 Year	\$3,640	
Data Migration Services	N/A	
High Availability (HA) Software	\$14,800	\$3,700
Installation of HA Software	\$10,200	
Training of HA Software	\$1,240	
Specify number of hours	74 Hours	
Switch-Over test of HA Software	\$4,030	
Estimate number of hours	26 Hours	
Travel and Living Expenses – to be billed as actual – Not to exceed this amount	\$2,750	
Total cost	\$215,210	\$7,400

Exhibit 2

INSURANCE REQUIREMENTS

During the term of this Agreement all of Contractor's insurance shall meet the following requirements:

1. Standard Insurance Policies Required:

- (a) Commercial General Liability Policy
- (b) Business Automobile Liability Policy
- (c) Workers' Compensation Policy

2. General Requirements Applicable to All Policies:

- (a) Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- (c) "Claims Made" policies will not be accepted.
- (d) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of College Station.
- (e) Upon request, certified copies of all insurance policies shall be furnished to the City of College Station.
- (f) The City of College Station, its officials, employees and volunteers, are to be added as "Additional Insured" to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

3. **Commercial General Liability**

- (a) General Liability insurance shall be written by a carrier with an B+:VII or better rating in accordance with the current Best Key Rating Guide.
- (b) Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed to be per Project.
- (c) Coverage shall be at least as broad as ISO form GC 00 01.
- (d) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (e) The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and, "Explosion, Collapse, and Underground" coverage.

4. **Business Automobile Liability**

- (a) Business Automobile Liability insurance shall be written by a carrier with an B+:VII or better rating in accordance with the current Best Key Rating Guide.

- (b) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (c) Coverage shall be at least as broad as Insurance Service's Office Number CA 00 01.
- (d) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- (e) The coverage shall include owned, leased or rented autos, non-owned autos, any autos and hired autos.
- (f) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00.

5. Those policies set forth in Paragraphs 3 and 4 shall contain an endorsement providing that the City is an additional insured and further providing that those policies shall be primary to any insurance policies procured by the City. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverages for subcontractors shall be subject to all of the requirements stated herein. **All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit 3, and approved by the City before work commences.**

6. Workers' Compensation Insurance

- (a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, **all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved TWCC form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.**
- (b) The worker's compensation insurance shall include the following terms:
 - (i) Employer's Liability limits of \$1,000,000.00 for each accident is required.
 - (ii) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - (iii) Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas

Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

"A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project.

"Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project.

"Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

*C. The Contractor must provide a certificate of coverage to the governmental entity **prior** to being awarded the contract.*

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or

personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a selfinsured, with the Commission's Division of Self-Insurance Regulation. Providing false

or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.”

7. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

- (a) The company is licensed and admitted to do business in the State of Texas.
- (b) The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
- (c) All endorsements and insurance coverages according to requirements and instructions contained herein.
- (d) The form of the notice of cancellation, termination, or change in coverage provisions to the City of College Station.
- (e) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.