



Vision Solutions, Inc.
Software License Agreement

This Software License Agreement ("Agreement") is between Vision Solutions, Inc., a Delaware corporation, ("Vision") with a principal place of business at 17911 Von Karman, 5th Floor, Irvine, CA 92614, and City of College Station ("Licensee") a Texas Home Rule municipal corporation with a principal place of business at 1101 Texas Ave., College Station, TX 77840. Capitalized terms shall have the meaning defined in the Terms and Conditions.

Licensee wishes to obtain and Vision wishes to supply the Program Product and CustomerCare Services set forth below:

A. PROGRAM PRODUCT & LICENSE FEES. Program Product shall consist of the software listed below and all updates, enhancements and modifications thereof provided to Licensee through CustomerCare Services, in both type and quantity and shall be installed only on the System Model and number of CPUs listed below:

Table with 3 columns: SYSTEM, SOLUTION COMPONENT, AMOUNT. Rows include Orion Engine for OS/400, Orion Server Replicator, Orion Active Data, Subtotal License Fees (\$37,000.00), Discount (\$7,400.00), and Total Fees* (\$29,600.00).

*Plus applicable sales tax, if any. Licensee is a tax exempt entity and will provide Licensor its tax exemption ID.

Additional License Fees shall apply for additional Program Product, System Model upgrades or additional CPUS and may be obtained through a rider to this Agreement or Licensee's purchase order issued to Vision and referencing this Agreement.

B. CUSTOMERCARE. Vision shall provide Standard CustomerCare Services for an Initial Term of one (1) year beginning as of the Install Date for a fee of twenty percent (20%) of the current list price of \$29,600.00, an amount equal to \$5,920.00. Upon renewal of Licensee's CustomerCare Term, CustomerCare fees shall be based upon the previous term's annualized fees for the Program Product.

Additional CustomerCare Fees for additional Program Product, System Model upgrades and/or additional CPUs may apply and shall be pro-rated for the remaining term of the current CustomerCare Term and shall be due and payable within thirty (30) days of Vision's invoice date

C. AGREEMENT. This Agreement shall consist of this Cover Sheet, the attached Terms and Conditions and Schedules I and II. In the event of text or specifications conflict in any part of this Agreement, the following documents shall govern in the order shown: (i) the Cover Sheet of this Agreement, (ii) the Terms and Conditions, (iii) Schedule 1, (iv) any additional schedules and (v) any Attachments to Schedules.

THIS AGREEMENT SHALL NOT BE EFFECTIVE UNTIL EXECUTED BY VISION.

Accepted by Vision Solutions, Inc.

By execution, signer certifies that signer is authorized to execute this Agreement on behalf of Vision Solutions, Inc.

By: [Signature]
Name: TIM KEITHAHN
Title: CFO
Date: 12/9/2004

Accepted by Licensee

By execution, signer certifies that signer is authorized to execute this Agreement on behalf of Licensee.

By: [Signature]
Name: Thomas E. Brymer
Title: City Manager
Date: [Blank]

Approved:

APPROVED
CONTRACT MANAGEMENT
DEC 9 2004

[Signature]
City Attorney

Date:

Date:

Jeffrey Kersten
Finance & Strategic
Planning Director

TERMS AND CONDITIONS

1.0 DEFINITIONS

1.1 "Authorized Contact" shall mean Authorized Users who are authorized to contact Vision for CustomerCare Services and who Vision may contact regarding CustomerCare Services issues

1.2 "Authorized User" shall mean a person who is an employee of Licensee, or a contractor hired to assist Licensee in managing its business, provided that i) the use by contractors shall be for the sole purpose of assisting Licensee to manage Licensee's business, and not for such individuals' or entities' own use..

1.3 "Confidential Information" shall mean any information disclosed by one party to the other party under this Agreement that is identified in writing as confidential, or if orally or visually disclosed, is designated as confidential at the time of disclosure and in a written memorandum sent to the party receiving disclosure within one (1) month after disclosure summarizing the information sufficiently for identification. Notwithstanding the foregoing, the following shall be deemed to be Confidential Information unless specified in writing by the disclosing party as non-confidential: (a) the Program Product, (b) Documentation, (c) the terms and pricing of this Agreement, and (d) any program source code disclosed by a party any program product, documentation or agreements regarding other software or related information for software Licensee has on its system through agreements with other vendors. Confidential Information does not include information that: (i) is or becomes a matter of public knowledge through no fault of the receiving party; (ii) was rightfully received by the receiving party from a third party without restriction on subsequent disclosure or use; (iii) was known to the receiving party prior to its receipt from the disclosing party as evidenced by documentation in the receiving party's possession at the time of such disclosure; (iv) was independently developed by the receiving party, provided the receiving party can show that such development was accomplished by or for the receiving party without the use of or any reference to Confidential Information; or (v) is furnished by the disclosing party to a third party without a similar confidentiality restriction.

1.4 "Cover Sheet" shall mean the first page of this Agreement".

1.5 "CPUs" shall mean central processing unit.

1.6 "Current List Price" shall mean Vision's current published price for each individual component of the Licensed Software which is listed under subparagraph A on the cover sheet of this agreement..

1.7 "CustomerCare Services" shall mean the services set forth in Schedule I.

1.8 "CustomerCare Fees" shall mean the fees for CustomerCare Services set forth on the Cover Sheet.

1.9 "CustomerCare Term" shall mean the term for CustomerCare Services.

1.10 "Documentation" shall mean the most current edition of user guides, manuals, and associated technical documentation for each Program Product and/or component thereof.

1.11 "Effective Date" shall mean the date the Agreement is fully executed by both parties.

1.12 "Error" means any failure of the Program to conform in any material respect to their published specifications.

1.13 "Error Correction" means either a modification or addition that, when made or added to the Program(s) brings the Program(s) into material conformity with its or their published specifications, or a procedure or routing that, when observed in the regular operation of the Program, eliminates the practical adverse effect on City of such nonconformity.

1.14 "Export Restrictions" shall mean all export and re-export restrictions and regulations imposed by the government of the United States.

1.15 "Initial Term" shall mean the initial term for CustomerCare Services as set forth on the Cover Sheet.

1.16 "Install Date" shall mean the date that Licensed Software is installed on Licensee's hardware by Vision's representative or January 31, 2005, whichever is sooner.

1.17 "License Fees" shall mean the fees set forth in the Cover Sheet.

1.18 "Program Product" shall mean the software listed on the Cover Sheet and licensed to Licensee under this Agreement, in object code format, together with all new Releases of such Program Product that are provided to Licensee from time to time pursuant to this Agreement, together with third party software programs that are embedded in the Vision Program Product, or otherwise provided by Vision for use in connection with the Program Product, without any separate license agreement with the third party owner thereof.

1.19 "Renewal Term" shall mean the renewal period for CustomerCare Services.

1.20 "Solution Component" shall mean the individual components of the Program Product(s) licensed by Vision to Licensee in accordance with the terms and conditions of this Agreement.

1.21 "System Model" shall mean a cabinet containing one or more central processing units with common resources.

1.22 "Processor Feature Code" shall mean the type of CPU in use with the System Model.

1.23 "Warranty Period" shall mean the one (1) year period beginning as of the Install Date.

2.0 GRANT OF LICENSE

2.1 In consideration of the License Fees and subject to the terms and conditions of this Agreement, Vision hereby grants Licensee a perpetual, non-exclusive, non-transferable (except as provided herein) license for the Program Product to:

2.1.1 Install, use, and execute the Program Product and those features and functions of each Solution Component (as set forth on the Cover Sheet attached hereto and incorporated herein) by Licensee's internal or external Authorized Users; and

2.1.2 Use the Documentation for the Program Product in conjunction with the installation and use of the Program Product.

2.2 The license granted to Licensee hereunder shall be a license to use the machine-readable object code only, excluding any source code.

3.0 USE

3.1 Licensee agrees that Licensee's possession, use and operation of the Program Product are solely for internal use by

Authorized Users for the purposes described in the Documentation and that the Program Product shall be used only while subject to this Agreement and only on the system model, Processor Feature code, and number of CPUs specified in the Cover Sheet.

3.2 Licensee agrees that Licensee only has a right to possess, use and operate the features and functions of the Program Products as set forth in Documentation as well as pursuant to any limitations or restrictions set forth on Appendix "A" attached hereto and incorporated herein. Any use beyond the authorized use set forth in the terms and conditions of this Agreement and the Documentation shall be unauthorized and a breach of this Agreement.

3.3 At Vision's request, but not more frequently than annually, Licensee shall furnish Vision with a document signed by Licensee's authorized representative verifying Licensee's usage of the Program Products. Licensee will permit Vision to review Licensee's deployment and use of the Program Products for compliance with the terms of the license agreement at Vision's expense. Any reviews shall be scheduled at least 15 days in advance by mutual agreement, shall be conducted during normal business hours at Licensee's facilities, and shall not unreasonably interfere with Licensee's business activities and shall not exceed 2 days. If Licensee's use of the Program Products is found to be greater than contracted for, Licensee will be invoiced for the additional licenses or license upgrades (based on the applicable units of measure, e.g., servers, server tiers or users) and the unpaid license fees shall be payable in accordance with this Agreement.

4.0 OWNERSHIP

4.1 All right, title and interest in and to the Program Product, the ideas and expressions contained therein, all updates and enhancements, all physical forms, regardless of where resident, whether permanent or transient, including authorized and unauthorized copies, any and all modifications made by or on behalf of Licensee, the Documentation, and all copyrights, patents, trademarks, service marks or other intellectual property or proprietary rights relating to the above are, and shall remain with Vision. Licensee is granted only a limited right of use as set forth herein, which right of use is subject to termination in accordance with Section 17 of this Agreement.

4.2 Licensee shall not knowingly distribute, provide or make available, either directly or indirectly, to any person, organization or entity, any part of the Program Product, including but not limited to, the code and Documentation in any form, without the prior written consent of Vision, except as otherwise contemplated by this Agreement. This includes but is not limited to:

4.2.1 The copy or duplication of any of the Program Product to any medium, except that Licensee may make one (1) additional copy of the Program Product for back-up or archival purposes; and

4.2.2 The placement of any Program Product into the public domain.

4.3 Licensee shall advise all of its Authorized Users that they are prohibited from reproducing, distributing, transferring possession of, or otherwise making available copies of the Program Product. Licensee may make copies of the Documentation as needed.

5.0 CUSTOMERCARE

Vision shall provide the CustomerCare Services set forth in Schedule I at the level set forth on the Cover Sheet provided Licensee has paid the appropriate fees for such services.

6.0 VISION SUITE TECHNICAL EDUCATION

Technical Education classes are available at Vision Solutions University. Licensee should contact Vision's Education Department for class schedules and locations. Education fees do not include any travel and living expenses incurred by the student. Prepaid classes must be taken within one (1) year of Effective Date

7.0 DERIVATIVE WORKS; REVERSE ENGINEERING

Except as provided herein, Licensee shall not copy, alter, translate, decompile, disassemble, reverse engineer or create derivative works of the Program Product, including but not limited to, modifying the Program Product to make it operate on non-compatible hardware.

8.0 PROGRAM WARRANTY

8.1 Vision warrants to the original Licensee that for the Warranty Period the Program Product will perform in accordance with the most current edition of user Documentation. If the Program Product fails to so perform, Vision will correct any Program Product that does not perform in accordance with the Documentation, within a commercially reasonable time period, or if Vision is unable to do so, will at Licensee's option, either replace the Program Product with functionally equivalent Program Product or refund the License Fees paid.

8.2 Vision warrants to the original Licensee that for the Warranty Period the media on which the Program Product and Documentation are recorded shall be free from defects in material and workmanship under normal use.

8.3 Vision does not warrant that the functions contained in the Program Product will operate under conditions not depicted in the Documentation, or that the functions contained in the Program Product will meet the requirements of Licensee or that the operation of the Program Product will be uninterrupted or error-free.

8.4 The warranty shall not apply during the following circumstances:

8.4.1 If Licensee uses the Program Products in an operation environment other than specified in the Documentation; or

8.4.2 If performance problems arise because of accident, abuse, misuse, failure of electric power, hardware or software problems or any other problem outside of the control of Vision.

8.4.3 If the Program Product has been modified by or on behalf of Licensee by persons other than Vision without Vision's express consent; or

8.4.4 Any prerequisite Program Product as specified in the Documentation or this Agreement is missing.

8.5 THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.6 Only an authorized officer of Vision may make modifications to this warranty or additional warranties binding on Vision, which modifications or additional warranties must be in writing.

9.0 LIMITATION OF LIABILITY; REMEDIES

9.1 Vision's entire liability and Licensee's exclusive remedy for the breach of Vision's warranty obligations in this Agreement shall be:

9.1.1 In the case of defects in media, the replacement by Vision of any defective media or Documentation with media conforming to the specifications and that is nondefective; and

9.1.2 In the case of any non-conformity or defect in the Program Product for which Vision is responsible, Vision shall use commercially reasonable efforts to provide maintenance modifications or fixes with respect to any such error in a timely manner, or at its option replace such defective Program Product as applicable.

9.2 Except for Vision's obligations under Section 10 of this Agreement, the parties agree that each party's liability from any cause shall be limited to the total amount of the License Fees paid by Licensee for the use of the individual Program Product that caused the damage, or that is the subject matter of, or is directly related to the cause of action.

9.3 The above limitation applies, regardless of the form of action, including, but not limited to, breach of warranty, breach of contract, negligence, or strict liability in tort or any other legal theory.

9.4 In no event shall either party be liable for any damages caused by the other party's failure to perform its responsibilities, or which may arise during any testing period for non-performance of the Program Product.

9.5 IN NO EVENT SHALL EITHER PARTY VISION BE LIABLE TO , OR ANY OTHER PARTY, FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER DAMAGES (INCLUDING LOSS OF PROFITS) ARISING OUT OF THIS AGREEMENT FROM THE USE OR INABILITY TO USE THE PROGRAM PRODUCT OR FROM ANY BREACH OF WARRANTY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.6 Vision and Licensee acknowledge and affirm that the sections on limitation of liability, warranties, disclaimer of warranties and damage limitation in this Agreement allocate the risks between the parties. This allocation is reflected in the Agreement terms and is an essential element of the basis of the bargain between Vision and Licensee.

10.0 INDEMNIFICATION

10.1 Vision agrees, at its own expense, to indemnify defend and hold Licensee harmless from and against any and all damages and costs including reasonable attorney fees, costs of suit, expert fees and other related expenses or, at Vision's option settle, any claim, suit, or proceeding that the Program Product or Documentation used within the scope of this Agreement infringes any United States patent or copyright provided that Vision is:

10.1.1 Notified in writing promptly after Licensee receives notice of such claim of infringement; and

10.1.2 Provided with sole control of both the defense of any action on such claim and all negotiations for its settlement and compromise.

10.2 In the event that the Program Product is held by a court of competent jurisdiction to constitute an infringement or its use is enjoined, or in the opinion of Vision, the Program Product is likely to become the subject of such claim, Vision may at its option:

10.2.1 Procure for Licensee the right to continue using such Program Product; or

10.2.2 Replace such Program Product with other equivalent, non-infringing software or modify the Program Product to make it non-infringing; or

10.2.3 Terminate this Agreement and provide a credit for such Program Product in the amount of the License Fees actually paid prorated on a three (3) year, straight-line depreciation basis.

10.3 Vision shall have no obligation with respect to any claim based on Licensee's modification of the Program Product or their combination, operation or use with apparatus, data or programs not furnished by Vision or in other than the specified operating environment.

10.4 This Section 10 states Vision's entire obligation to Licensee regarding infringement.

11.0 PAYMENT

11.1 All payments shall be in United States dollars.

11.2 In consideration of the license granted in this Agreement, Licensee agrees to pay the License Fee set forth on the Cover Sheet. Licensee shall pay fifty percent (50%) of the total License Fees upon the delivery of the software and

equipment and the remaining fifty percent (50%) shall be due upon installation of the Program Product.

11.3 CustomerCare Fees for the Initial Term shall be due net thirty (30) days from the Install Date unless otherwise set forth on the Cover Sheet.

11.4 Except for items that are disputed by Licensee in writing regarding any invoice, and not withstanding anything to the contrary in these agreements, all Vision invoices are due and payable no later than 30 days from the invoice date. If Licensee contests invoice, Licensee shall provide written notice to Vision with complete, detailed and accurate description of reason for contesting the invoice.

11.5. All undisputed amounts payable under this Agreement that remain unpaid for more than thirty (30) days are subject to Tex. Gov't Code Section 2251.001 et. seq. as amended. If the dispute is resolved in favor of Vision, Vision reserves the right not to provide any Support when any undisputed invoice remains unpaid ten (10) days after the dispute is resolved.

12.0 TAXES

Licensee is a tax-exempt entity and will provide its tax exempt number to Vision..

13.0 CONFIDENTIALITY

13.1 A party receiving Confidential Information as defined herein agrees:

13.1.1 that it is claimed to be a trade secret of the other party,

13.1.2 not to disclose or use any of such Confidential Information for any purpose except as necessary and consistent with the terms of this Agreement,

13.1.3 to protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent unauthorized use, dissemination or publication of the Confidential Information as such party uses to protect its own confidential information of a like nature,

13.1.4 to limit the use of and access to such Confidential Information to such employees who have a need to know such Confidential Information, and

13.1.5 that it will promptly notify the other party in writing of any known unauthorized disclosures and/or use thereof. Such notice shall include a detailed description of the circumstances of the unauthorized disclosure or use and the parties involved therewith.

13.2 Without limiting the generality of the foregoing, Licensee shall limit access to all media containing the Program Product and Documentation to those employees and agents of the Licensee who have a need to know for the use of the Program Product, will store such media and Documentation in a secure place and will exercise all other reasonable precautions to prevent unauthorized direct or indirect access.

13.3 Neither party shall permit anyone to reproduce or copy any Confidential Information except as expressly authorized hereunder.

13.4 Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and the non-disclosing party

shall be entitled to receive from a court of competent jurisdiction, injunctive or other equitable relief.

13.5 The terms and provisions of this Section 13 shall survive termination of this Agreement.

14.0 NOTIFICATION OF UNAUTHORIZED USE

Each party agrees to notify the other party promptly upon discovery of any unauthorized possession, use, or knowledge of any part or form of the Program Product, or of any other Confidential Information made available to a party pursuant to this Agreement by anyone not authorized under this Agreement to have such possession, use, or knowledge, and will cooperate with the disclosing party in every reasonable way to assist the disclosing party to regain possession and prevent further unauthorized use.

15.0 EXPORT CONTROL.

Licensee acknowledges that any products, software, technical information, including, but not limited to, services and training, provided under this Agreement are subject to all export and re-export restrictions and regulations ("Export Restrictions") imposed by the government of the United States, and any use or transfer of such products, software and technical information must be authorized under those Export Restrictions. Licensee agrees that it shall not use, distribute, transfer, or transmit the products, software, or technical information except in compliance with all Export Restrictions.

16.0 BANKRUPTCY; INSOLVENCY

It is agreed by both parties that no act of bankruptcy or insolvency, no assignment for the benefit of creditors, no reorganization or composition of debts for the relief of creditors and no appointment of a trustee, receiver, or similar officer to take charge of the affected party's affairs, shall affect the rights and powers of either party under this Agreement.

17.0 TERM; BREACH AND TERMINATION

17.1 This Agreement shall commence upon the Effective Date and remain in full force and effect until terminated as provided herein.

17.2 Licensee may terminate this Agreement at any time, with or without cause, upon written notice to Vision.

17.3 If either party fails to comply with any provisions of this Agreement, each of which is considered to be the essence of this Agreement, the other party may serve written notice of breach and, unless such breach is fully cured within thirty (30) days from the date of receipt of notice by breaching party the non breaching party may, at it's option, terminate this Agreement.

17.4 Termination of the licenses granted hereunder shall be in addition to, and not in lieu of, any other remedies available.

17.5 In the event of termination of this Agreement, Licensee shall remain liable for the prorated amount of the License Fee, up to the date of termination which shall become immediately due and payable.

17.6 Licensee agrees that upon termination of this Agreement for any reason:

17.6.1 Licensee shall cease using the Program Product and any of its component programs and instructions;

17.6.2 Licensee shall erase all physical forms of the Program Product from internal and external storage media in each computer system in which the Program Product has been installed; and

17.6.3 Each party shall continue to maintain in confidence all confidential proprietary information gained pursuant to this Agreement.

17.7 Upon termination, Licensee shall, at Vision's option, either return, at Vision's cost, to Vision, or certify in writing by an officer of Licensee to Vision that Licensee has destroyed all physical forms of the Program Product and Documentation, including any and all modifications thereof.

17.8.1 The following portions of this Agreement shall survive termination of this Agreement and continue in full force and effect: 9 (Limitation of Liability; Remedies), 10 (Indemnification), 11 (Payment), 13 (Confidentiality), 19 (Severability; Limitation of Actions), 20 (Choice of Law), 21 (Waiver), 24 (Independent Contractor), 25 (Publicity), 26 (Notices), and 27 (Entire Agreement).

18.0 ASSIGNMENT

18.1 The right of Licensee to hold and use the Program Product pursuant to this Agreement is restricted solely to Licensee and shall not be assigned (by operation of law or otherwise), transferred, sublicensed, encumbered, or subject to any security interest of any other party, without the express written authorization of Vision; provided, however, that this Agreement, and the rights and obligations herein, may be assigned by Licensee without the consent of Vision to a purchaser of all or substantially all of the assets or outstanding capital stock of Licensee, or its parent corporation or other corporation controlled by its parent corporation, whether by merger, consolidation or otherwise provided such purchase is not a competitor of Vision or in litigation with Vision.

18.2 Licensee shall notify Vision in writing within thirty (30) days of any such transfer.

18.3 Any authorized transferee or assignee of the Program Product or this Agreement shall be bound by and subject to all of the terms and provisions of this Agreement. Any attempted assignment, transfer, sublicense, encumbrance, or security interest in breach of this clause shall be void and of no effect.

18.4 Other than expressly stated under this Section 18, no other assignment shall be permitted.

19.0 SEVERABILITY; LIMITATION OF ACTIONS

19.1 Should any clause, provision or portion of this Agreement be ruled invalid, void, illegal, or otherwise unenforceable by any court, magistrate, referee, arbitrator, or by any other process or in any other proceeding, it shall be deemed to be stricken and the remainder of this Agreement shall continue to be in effect and fully enforceable.

19.2 No action concerning, related to, or arising out of this Agreement or any breach of or default under this Agreement may be commenced more than two (2) years after the occurrence of any such breach or default. In the event that such breach or default was not discovered by the injured party at the time it occurred, no action may be commenced more than two (2) years after such breach or default could have been discovered by the injured party with the exercise of reasonable diligence, given the experience of the injured party.

20.0 CHOICE OF LAW; FORUM

20.1 This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Texas, excluding that body of law known as conflicts of law. Any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Texas.

20.2 The parties do hereby consent to jurisdiction and venue in a court of competent jurisdiction in Brazos County, Texas in any action, suit, arbitration or other proceeding arising out of or with respect to the subject matter of this Agreement.

21.0 WAIVER

The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver if any further right under this Agreement.

22.0 FORCE MAJEURE

Neither party to this Agreement is in default hereunder by reason of its delay in the performance of or failure to perform, in whole or in part, any of its obligations hereunder, if such delay or failure resulted from acts of God or other occurrences beyond its reasonable control and without its fault or negligence. Such acts or occurrences shall include, but not be limited to, earthquakes, flood, fire, power failures, communications failures, epidemics, strikes, lockouts, war, terrorist activity or government regulations which go into effect after the effective date of this Agreement.

23.0 COUNTERPARTS AND EXCHANGES BY FAX

This Agreement may be executed in counterparts, each of which shall be deemed an original and each of which together shall constitute a single instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by fax shall be sufficient to bind the parties to the terms and conditions of this Agreement. No other act, usage or custom shall be deemed to amend or modify this Agreement.

24.0 INDEPENDENT CONTRACTOR

The parties are independent contractors with respect to each other and not an agent of the other; nothing in this Agreement shall be construed to create a partnership or joint venture. No party shall have any authority to bind the other party in any manner whatsoever.

25.0 PUBLICITY

Licensee agrees that Vision may, upon execution of this Agreement, issue a press release subject to Licensee's approval indicating that Licensee and/or its parent company if applicable, has chosen Vision to provide Licensee's high availability solution. Further, Licensee shall permit Vision to acknowledge in the press release Licensee's customer relationship with Vision.

26.0 NOTICES

26.1 All notices required to be sent under this Agreement shall be sufficient only if sent in writing by (i) courier with delivery verification capabilities, or (ii) certified mail, return receipt requested, or (iii) personally delivered to a party. Notice shall be deemed to have been given upon receipt or refusal.

26.2 Notices shall be sent to Licensee to the address as set forth on the Cover Sheet. Notices to Vision shall be sent to:

Contract Management
Vision Solutions, Inc.
17911 Von Karman, 5th Floor

Irvine, CA 92614

26.3 The address and/or recipient for notices may be changed by notice given in accordance with the provisions of this section.

27.0 ENTIRE AGREEMENT

The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. No act, usage, or custom shall be deemed to amend or modify this agreement. No amendment, change or modification to this Agreement shall be effective or enforceable unless it is in writing and executed by the duly authorized representative of each party to this Agreement.

**SCHEDULE I
CUSTOMERCARE TERMS AND CONDITIONS**

Vision shall provide the following upon payment by Licensee of the CustomerCare Fees set forth on the Cover Sheet. Such CustomerCare Services shall be provided during the Initial Term or any Renewal Term only. The extent of Vision's duty to provide CustomerCare Services is expressly stated in this Agreement. Any service not specified herein is outside the scope of this Agreement and may be provided as available, in accordance with Vision's then current terms, conditions and charges.

1.0 CUSTOMERCARE SERVICE LEVELS

1.1 Standard CustomerCare Service

1.1.1 Vision shall provide telephone assistance and consultation to assist Licensee in resolving problems with the use of the Program Product including the verification, diagnosis and correction of material errors and defects in the Program Product. Such telephone assistance shall be provided twenty-four (24) hours per day, seven (7) days per week.

1.1.2 Licensee shall have access to Vision's Online CustomerCare Knowledgebase providing important product and support information.

1.1.3 Vision shall send to Licensee any corrections, enhancements, and improvements made to the Program Product promptly. Licensee shall not receive any products that could be used, marketed, or sold independently or separately from the Program Product.

1.1.4 Program Product Upgrades

1.1.4.1 Vision shall upgrade each Program Product then offered by Vision at no additional charge.

1.1.4.2 Licensee shall incorporate any and all new releases, corrections, enhancements, and improvements made to the Program Product delivered to Licensee promptly from the date Licensee is notified ("Notification Date") that new releases, corrections, enhancements, and improvements made to the Program Product are made available for implementation.

1.1.5 Licensee shall have access to Vision's eSupport Website.

1.2 Premier CustomerCare Services

1.2.1 Vision shall provide all of the services set forth in Section 1.1 Standard Customer Care Services and Licensee shall have all of the obligations set forth in Section 1.1.

1.2.2 Vision shall ship major Program Product releases on CD directly to Licensee promptly.

1.2.3 Vision shall provide to Licensee urgent product and customer news by email.

1.2.4 Vision shall provide priority access to an advanced CustomerCare professional for issues reported to Vision. In addition, such issues shall have priority over other issues reported by Vision customers with Basic CustomerCare Services or Standard CustomerCare Services.

1.2.5 Vision shall perform an annual high availability environmental review of Licensee's environment and provide recommendations for improvement if desired by Licensee.

1.2.6 Licensee shall have the opportunity to actively participate in the planning process for the Program Products.

1.2.7 Vision shall provide a quarterly case history report listing the CustomerCare calls from Licensee and the corresponding issue identification and resolution information within 14 business days from the end of each quarter.

1.2.8 Licensee may attend (1) education class annually at no additional charge. Licensee shall be responsible for any travel and living expenses incurred by Licensee to attend the class.

1.3 Basic CustomerCare Services

1.3.1 Vision shall provide prompt and commercially reasonable telephone assistance and consultation to assist Licensee in resolving problems with the use of the Program Product including the verification, diagnosis and correction of material errors and defects in the Program Product. Such telephone assistance shall be provided Monday through Friday from 6:00 a.m. to 6:00 p.m. Pacific Standard Time, excluding Vision observed holidays.

1.3.2 Licensee shall have access to Vision's Online CustomerCare Knowledgebase providing important product and support information.

1.3.3 Licensee shall receive access to downloadable Program Product updates and patches.

1.3.4 New Versions. Additional License Fees shall apply for new versions of the Program Product. Licensee shall receive a 15% discount off the retail price offered to non-licensees for new versions of the Program Product. Additional CustomerCare Fees shall be pro-rated for the remainder of the CustomerCare Term.

2.0 OTHER SERVICES

2.1 *On-Site Support.* On-Site Support is available to Licensee on a time and materials basis (including travel and expenses) at Vision's current service rates through a separate services agreement.

2.2 *Consulting Services.* Telephone and on-site support for non-defect related support services such as upgrade planning assistance and role swap planning and support are available at Vision's current services rate through a separate services agreement.

3.0 LICENSEE AUTHORIZED CONTACTS

3.1 Licensee shall name a minimum of (1) and up to two (2) employees ("Authorized Contacts") who shall be authorized to contact Vision for CustomerCare Services and whom Vision may contact regarding CustomerCare Services issues. Licensee understands that Vision recommends Licensee have two (2) Authorized Contacts.

3.2 The Authorized Contacts shall satisfactorily complete the technical education course for the Program Product within ninety (90) days of Program Product installation or within one hundred eighty days (180) of assignment as a new contact by Licensee to the Authorized Contact list. The Authorized Contacts shall be listed in Schedule II and may be changed by Licensee from time to time by written notice. Periodic recertification may be required.

3.3 In the event the employment of an Authorized Contact is terminated, Licensee shall name a replacement Authorized

Contact within thirty (30) days of such termination. The replacement Authorized Contact shall satisfactorily complete the technical education course within one hundred eighty (180) days of being named an Authorized Contact.

4.0 CUSTOMERCARE FEES

4.1 Vision may increase CustomerCare Fees upon renewal of the Initial Term or any Renewal Term.

4.2 CustomerCare Fees do not include any tax amounts, if applicable. Licensee is a tax-exempt entity and will provide its tax exempt number to Vision.

4.3 *Remote Dial-In Support.* Licensee shall provide Vision with remote/dial-in capabilities or mutually acceptable internet connectivity for diagnostic and troubleshooting purposes. If such remote/dial-in capabilities are not provided to Vision, an additional charge of twenty-five percent (25%) shall be added to the CustomerCare Fee.

5.0 TERM, TERMINATION AND REINSTATEMENT

5.1 The Initial Term shall become effective as of the date set forth on the Cover Sheet and shall continue in full force and effect for twelve (12) months unless designated otherwise by Licensee on the Cover Sheet.

5.2 Thereafter, CustomerCare Services shall automatically renew for additional twelve (12) month terms ("Renewal Term") unless terminated by either party in writing thirty (30) days prior to the end of the Initial Term or Renewal Term in accordance with the notice provisions set forth in the Terms and Conditions.

5.3 CustomerCare Services shall automatically terminate upon termination of the Agreement.

6.0 **GENERAL.** The extent of Vision's duty to provide CustomerCare Services is expressly stated in this Agreement. Any service not specified herein is outside the scope of this Agreement and may be provided as available, in accordance with Vision's then current terms, conditions and charges.

**SCHEDULE II
AUTHORIZED CONTACTS**

The following Authorized Contacts are approved by Licensee and Vision to contact Vision for CustomerCare and Support. Licensee must keep the Authorized contact current. Should an Authorized Contact leave Licensee's employ or is no longer an Authorized Contact, Licensee shall notify and provide the following information for the new Authorized Contact. Periodic recertification may be required for Authorized Contacts.

Authorized Contact #1	Roger A. Earwood	Authorized Contact #2	Erin Provazek
Name		Name	
Title	Systems Analyst	Title	Sr. Systems Analyst
Street Address	310 Krenek Tap Rd.	Street Address	310 Krenek Tap Rd.
City, State, Zip	College Station, Texas 77840	City, State, Zip	College Station, Texas 77840
Phone #	979 764-3755	Phone #	979 764-3482
Cell Phone #		Cell Phone #	
Pager #	979 696-9249 #3080	Pager #	979 696-9249 #1028
Email Address	rearwood@cstx.gov	Email Address	eprovarezek@cstx.gov

APPENDIX "A"

ORION PRODUCTS

Features, Limitations and Restrictions

ORION Express for OS/400

Orderable item: **ORION Server Replication – Express for OS/400**

- Node Pairs Only
- Remote Journaling Only
- No Clustering
- No IFS Support (ODS or OMS)
- No MQ Series Support
- No Active Data (CRC Syncheck or Re-Org While Active)
- Limit of 1 ODS sender on Source
- Limit of 2 OMS Links on Source
- No iASPs Support
- No Group Mode or Broadcast Mode

ORION Professional for OS/400

Orderable item: **ORION Server Replication – Professional for OS/400**

- Node Pairs Only
- No Clustering
- No MQ Series Support
- No Active Data (CRC Syncheck or Re-Org While Active)
- Limit of 2 ODS senders on Source
- Limit of 3 OMS Links on Source
- No iASPs Support
- No Group Mode or Broadcast Mode

ORION Enterprise for OS/400

Orderable item: **ORION Server Replication for OS/400**

- Roleswap Node Pairs Only
- Basic Clustering Only
- Single non-switchable iASPs support only

ORION Advanced Enterprise for OS/400

Orderable items:

ORION Server Replication for OS/400
ORION Advanced Enterprise Module for OS/400

- No limitations

ORION Switched Disk for OS/400

Orderable Item: **ORION Environment Replication for OS/400**

- Node Pairs Only
- No IFS replication (OMS or ODS)
- No Replication from iASPs
- No CRC Syncheck
- No Re-Org while active
- Limit of 1 ODS sender on Source
- No use of OMS/400