

APPENDIX E to DIR Contract Number DIR-SDD-259

ADIC Hardware Support and Maintenance Agreement The DIR Contract Number DIR-SDD-259 and the Service Quote attached hereto provides the basis for an offer by Customer and is not an offer to sell. If Customer elects to respond to the Service Quote with a Purchase Order or other offer to buy, the following terms and conditions will be considered integrated therein. Any different, conflicting or additional terms in a Purchase Order or other ordering document from Customer are rejected unless expressly approved in writing by ADIC. Pricing set forth in the Service Quote is subject to the provisions of DIR Contract number DIR-SDD-259, Section 4 Pricing and will be valid for thirty (30) days unless a different term is set forth on the face of the Service Quote.

1. MAINTENANCE SERVICES

1.1 Maintenance Services. ADIC will provide to Customer, or have a third party selected by ADIC under the terms of Section 1.2, and subject to provisions of DIR Contract number DIR-SDD-259, Section 9,E. relating to the use of subcontractors, provide to Customer, repair, adjustments and part replacements for the ADIC equipment set forth in Attachment A hereto ("Equipment") as ADIC or such third party deems necessary due to normal product usage ("Maintenance Services"). The Maintenance Services shall include: (a) Unscheduled, on-call Maintenance Services during the hours specified in the Sales Quote or if, none is so specified therein then between 8:00 a.m. and 5:00 p.m. in the time zone where the Equipment is located, Monday through Friday ("Designated Working Hours"), on-call services to be provided after receipt of notice from Customer that Equipment is malfunctioning or otherwise appears to require maintenance and after ADIC technical support has determined that an on-site visit is necessary; and (b) Scheduled, preventive Maintenance Services. Maintenance Service on additional equipment is not covered by this Agreement. If holiday service is not specifically purchased, the standard ADIC Holiday Service Policy will apply as follows: Service on an ADIC recognized holiday (recognition of holidays is per custom in each country with lists of ADIC holidays available upon request from your local service representative) is limited to telephone technical support only. Preventive maintenance, and other non-emergency services must be scheduled for non-holidays within normal business hours. Customers purchasing holiday service will receive such service based upon the service level purchased.

1.2 Selection of Provider. ADIC shall determine, subject to provisions of DIR Contract number DIR-SDD-259, Appendix A, Section 9,E, Use of Subcontractors, whether ADIC will provide the Maintenance Services to Customer or whether ADIC will select a third party subcontractor to perform the Maintenance Services (in either case such party is referred to herein as "Provider"). ADIC shall provide Customer with written notice of any such third party Provider at least 15 days prior to such third party's provision of Maintenance Services hereunder. All requests for Maintenance Services or communication regarding status or maintenance of the Equipment shall be made to ADIC.

1.3 Part Replacement. Provider will replace or exchange Equipment parts where required. The Equipment or parts of Equipment that Provider removes or replaces will become property of ADIC.

1.4 Services Not Covered by This Agreement. If Customer requires or requests services for any of the following reasons, the services will be considered "Other Services" not covered by the Agreement: (a) installation or maintenance of any device not listed in Attachment A, including but not limited to wiring, electrical conduits, peripherals, or accessories; (b) replacement of parts and/or services to repair damage resulting from accident caused by, or neglect or misuse on the part of a party other than Provider, or modification of Equipment not approved, authorized or directed by Provider; (c) replacement of parts and/or services to repair damage resulting from any act of God, including but not limited to storms, fires, floods, and earthquakes; (d) replacement of parts and/or services to repair damage caused by failure to provide or maintain adequate or appropriate electrical power, air conditioning, humidity controls, electrical surge protection, or other facilities or environmental conditions unless such failure is caused by the negligent act or omission of Provider; (e) replacement or reconditioning of Equipment which Provider reasonably believes cannot be reliably maintained or repaired because of excessive wear or deterioration not resulting from any negligent act or omission on the part of Provider; (f) replacement of parts or repair required because Customer or third parties (excluding Provider), without the approval, authorization or direction of ADIC, performed services on, or modified or adjusted Equipment; (g) services in connection with removal, relocation or reinstallation of Equipment; (h) furnishing or replacing expendable supplies, including media such as cassettes, unless damaged by Provider; (i) services on Equipment which Customer has moved from the service location specified above without notifying Provider pursuant to Section 1.5; and (j) Maintenance Services performed outside of Designated Working Hours or after the term of this Agreement; provided, however, that if Provider begins to perform services which would otherwise be covered Maintenance Services less than two

hours before the end of Designated Working Hours, the first two hours immediately following Designated Working Hours are considered covered by the Agreement.

1.5 **Movement of Equipment.** If Customer plans to move the Equipment, or delete any part of the Equipment from this Agreement, Customer must provide ADIC with 30 days prior written notice. If Customer requests that Provider dismantle, supervise, inspect, remove or reinstall the Equipment as part of any move, ADIC will invoice Customer at ADIC's standard published hourly rate for such services. If Customer's new location is beyond a 50 mile radius of Provider's location, then ADIC may, in its sole discretion: (i) continue performance of the Agreement with the condition that Customer is responsible for any additional mileage charges at Provider's then - prevailing rate; (ii) terminate the Agreement; or (iii) designate a different Provider. Absent written notice of ADIC's decision to select (ii) or (iii), ADIC shall be presumed to elect option (i) and Customer will be responsible for any additional mileage charges.

2. **CUSTOMER RESPONSIBILITIES.** In addition to responsibilities for fees hereunder, Customer will be responsible for: (a) properly using and controlling access to the Equipment; (b) permitting Provider access to Customer's facilities consistent with Customer's security and operational requirements; (c) promptly notifying ADIC and Provider, if different, if Customer becomes aware of any unsafe conditions or hazardous materials to which Provider's personnel may be exposed at any of Customer's facilities; (d) complying with all applicable government laws and regulations; (e) providing prompt notice to ADIC of any malfunction or request for Maintenance Services or Other Services for the Equipment; and (f) providing full and accurate equipment and service installation descriptions as necessary to allow ADIC to fulfill its duties hereunder.

3. FEES AND CHARGES.

3.1 **Annual Fee.** ADIC will invoice Customer, and Customer agrees to pay the quoted and agreed upon annual fee subject to provisions of DIR Contract number DIR-SDD-259, Section 4, Pricing and Appendix C Pricing. Annual fees for subsequent years will be as set forth on ADIC's current price sheet or, if different, as agreed to by the parties in the initial quote or any subsequent writing.

3.2 **One-Time Fees.** ADIC will invoice Customer for any one-time fees and charges subject to provisions of DIR Contract number DIR-SDD-259, Section 4, Pricing and Appendix C, Pricing. These one-time fees and charges include, but are not limited to: (i) fees incurred if Customer requests Provider to perform Maintenance Services outside of Designated Working Hours; or (ii) fees Incurred if Customer requests Provider to perform services not covered by this Agreement. ADIC will invoice Customer at ADIC's standard published hourly rates. All such charges will include actual travel time, waiting time, and Customer approved travel expenses (if any) and subject to DIR Contract number DIR-SDD-259, Section 4,G Travel Expense Reimbursement. ADIC may authorize Provider to bill Customer directly for one-time fees.

3.3 **Payment Due.** Payments shall be made by Customer in accordance with Chapter 2251, Texas Government Code.

3.4 **Taxes; Price Increases.** Prices and fees listed above do not include taxes. DIR customers are tax exempt as defined by DIR Contract number DIR-SDD-259, Section 4, Subsection F. Tax-Exempt.

3.5 **Firmware and Software.** Changes to firmware and software which ADIC designates as bug fixes or as minor or incremental updates are covered under the terms of this Agreement. Firmware and software changes that ADIC designates as upgrades, and for which ADIC normally charges its customers, will be provided to Customer for the applicable fee subject to DIR Contract number DIR-SDD-259, Section 4, Pricing. ADIC will provide Customer with information on any upgrade charges prior to installation of the upgrade. ADIC will provide Customer with access to non-billable library upgrades and bug fixes through ADIC's web site. Customer will have the ability to install this firmware itself, with technical assistance from ADIC's Technical Assistance Center (ATAC). ADIC will also be willing to perform the firmware upgrade when allowed remote access to the customer's system through the RMU. At ADIC's discretion and upon prior notice to Customer, an additional fee may be levied for firmware upgrades requiring an onsite visit (other than for normally scheduled maintenance services or unrelated break/fix service), either as a result of a library not having an RMU, or as a result of Customer's request.

4. **PROPRIETARY INFORMATION.** Pursuant to this Agreement, and subject to the provisions of the Texas Public Information Act, each party (the "disclosing party") may occasionally provide the other (the "receiving party") with its confidential and/or proprietary information (e.g., equipment, services, components, instruction manuals or installation information, in the case of ADIC or Provider, and trade secrets, know-how, ideas, concepts and methodologies, customers, prices, operations and plans and data, in the case of both parties) (the "Proprietary Information"). The receiving party acknowledges that use or disclosure of Proprietary Information of the disclosing party in any unauthorized manner may destroy its value to the disclosing party. Unless the disclosing party agrees otherwise in writing, the receiving party (including its employees, agents and contractors) will not sell, disclose, copy or reproduce any Proprietary Information of the disclosing party. The receiving party agrees that it

will only permit or allow access to Proprietary Information of the disclosing party to those employees or third parties who require such access in order to perform work on the disclosing party's behalf pursuant to this Agreement. The receiving party agrees to protect the Proprietary Information of the disclosing party as carefully as it would protect its own similar proprietary information. The receiving party agrees to be responsible for any unauthorized use or disclosure of Proprietary Information of the disclosing party by any of its employees, agents or contractors. The receiving party agrees to leave intact all copyright and similar notices in connection with the Proprietary Information of the disclosing party. The parties agree to return all Proprietary Information to the disclosing party upon the termination of this Agreement.

5. TERM AND TERMINATION.

5.1 Term. The term of this Agreement is one (1) year, effective on the acceptance of this contract by Customer. This Agreement may renew for up to four (4) one year extensions unless terminated by either party at the close of any such period or terminated pursuant to Section 5.2 below. Either party may terminate this Agreement at the close of any year hereof without penalty prior to the anniversary date of the Agreement.

5.2 Termination of Maintenance Services. ADIC or Customer may terminate Maintenance services by providing the other party at least sixty (60) days advance written notice. If either party breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of such breach (or 10 days as set forth in section 3.3), the other party shall have the right to terminate this Agreement immediately upon the conclusion of such notice period. Upon termination of this Agreement, ADIC shall promptly refund to Customer a prorated amount of the Annual Fee less any outstanding One-Time Fees.

6. LIMITED WARRANTY. SUBJECT TO THE LIMITATIONS SET FORTH BELOW, ADIC warrants that the Maintenance Services provided under this Agreement will be free from defects in materials or workmanship for thirty [30] days from the date such services are rendered and will be performed by fully trained and competent personnel in accordance with industry standard technical and professional practices and procedures. The foregoing warranty shall be voided if the Equipment serviced by Provider is not properly installed, used, or modified after services are provided. Replacement parts will either be new or reconditioned. If a defect is found and reported to Provider within the thirty day period of this warranty, ADIC will, as its sole responsibility and liability and AS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY for breach of such warranty, use commercially reasonable means to correct such defect or refund to Customer the sums paid by Customer for the defective services. The limited warranty set forth in this paragraph is the only warranty made by ADIC or Provider with respect to the services to be provided under this Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE EQUIPMENT WARRANTY, ADIC EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES CONCERNING THE EQUIPMENT OR THE SERVICES TO BE RENDERED HEREUNDER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

7. LIMITATION ON LIABILITY. Except for ADIC's or Provider's liability based upon gross negligence, willful misconduct and/or a violation of law, ADIC's or Provider's cumulative liability for any claims arising in connection with this Agreement may not exceed the most recent Annual Fee. This limitation on liability applies to any claims against ADIC, Provider, or both. ADIC AND PROVIDER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY THIRD PARTY CLAIMS AGAINST CUSTOMER FOR LOSSES OR DAMAGES OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, DELAYS, LOSS OF DATA, LOST BUSINESS OPPORTUNITIES OR LOST PROFITS OR SAVINGS, ARISING OUT OF ANY BREACH OF ANY REPRESENTATION OR WARRANTY OR THE PERFORMANCE OR BREACH OF ITS AGREEMENT OR THE USE OR INABILITY TO USE THE EQUIPMENT, OR ANY PORTION THEREOF, EVEN IF ADIC OR PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE LIMITED REMEDIES SET FORTH HEREIN ARE FOUND TO FAIL IN THEIR ESSENTIAL PURPOSE, AND HOWEVER CAUSED (INCLUDING AS A RESULT OF NEGLIGENCE). Customer agrees to assume exclusive liability for, and settle or defend, and in any case indemnify and hold harmless ADIC and their subsidiaries, directors, officers, employees and providers from and against any and all actions, causes of action, liability, claims, suits, judgements, liens, awards or damages of any kind and nature whatsoever (hereinafter referred to as "Claims") for property damage, personal injury or death (including without limitation claims brought by and liabilities to employees of Customer or ADIC or Provider or to any other persons) and expenses, costs of litigation and reasonable attorneys fees related thereto, to the extent such claims arise from any negligent act or omission or willful misconduct of Customer or any of Customer's employees, agents, buyers or contractors (except

for ADIC, Provider, or both) arising out of or in any way relating to the presence on Customer's designated premises by ADIC or Provider for the purposes of providing maintenance or other support services hereunder. No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Agreement, may be brought by either party more than one (1) year after such cause of action accrued.

8. NOTICES. All notices, demands and other communications called for or required by this Agreement shall be in writing and shall be addressed to the parties at their respective addresses listed above or to such other address as a party may subsequently designate by ten (10) days' advance written notice to the other party.

9. MISCELLANEOUS

9.1 Integration; Modifications. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that the Agreement, including DIR Contract Number DIR-SDD-259, is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings and agreements, whether oral or written, between the parties with respect to the subject matter hereof. Any provisions or conditions of any purchase order or other document submitted by Customer which are in any way inconsistent with or in addition to the terms and conditions set forth in this Agreement are hereby rejected and shall not be binding upon ADIC. No waiver or modification of this Agreement or of any provision contained herein shall be valid unless in writing and duly executed by ADIC and Customer.

9.2 Choice of Law. Choice of Law is governed by DIR Contract number DIR-SDD-259, Appendix A, Section 4, Subsection F.

9.3 Severability. Severability is governed by DIR Contract number DIR-SDD-259, Appendix A, Section 4, Subsection C.

9.4 Force Majeure. Force Majeure is governed by DIR Contact number DIR-SDD-259, Appendix A, Section 10, Subsection C.

9.5 Assignment. Neither party may assign its benefits or delegate its obligations under this Agreement without the advance written consent of the other party unless in the context of a sale of all or substantially all of the assigning parties' assets to another entity who is not a competitor to the non-assigning party and who has a reasonably acceptable credit rating.