



DENIM GROUP

**APPENDIX D TO DIR CONTRACT NO. DIR-SDD-1850
CUSTOMER SERVICES AGREEMENT**

DENIM GROUP, LTD. 3463 Magic Drive, Suite 315, San Antonio, Texas 78229 (210) 572-4400

This Customer Services Agreement (the "Agreement") is made effective on the Effective Date set forth below by and between Denim Group, Ltd., a Texas limited partnership ("Denim Group"), and the following Customer, and shall remain in effect until terminated in accordance with the terms hereof:

Effective Date: _____

Customer:

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Facsimile: _____

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the parties hereto agree as follows:

1.0 Services.

1.1 **Scope of Services.** Denim Group agrees to provide to Customer certain computer, programming, and/or system engineering services under the terms and conditions of this Agreement. Specific services shall be detailed in one or more written statements of work (each an "SOW"), which shall specify the scope of the work to be performed, deliverables, project schedule, and rates for such services. Services shall be performed on a time and materials basis or on a fixed fee basis, as described in the applicable SOW. SOWs shall become subject to and part of this Agreement when signed by both parties.

1.2 **Non-exclusivity.** This Agreement shall not preclude Denim Group from providing services to others which may result in computer programs techniques, products and documentation which are competitive, whether or not such materials are similar to materials developed by Denim Group pursuant to this Agreement.

1.3 **Time for Performance.** Customer understands that the nature of the services to be performed hereunder is such that the time required for performance cannot be determined in advance, and that all milestones and timetables regarding performance of the services are therefore only estimates.

2.0 Customer Responsibilities.

2.1 **Information Transfer.** Customer may access electronic on-line services to transfer data to Denim Group electronically and/or may authorize Denim Group to access Customer's computing environment via electronic means for the purpose of performing services under this Agreement. Customer shall not submit electronically or otherwise give Denim Group access to any documents, files, programs, or other data (collectively, "Customer Data") that are or are alleged to be confidential or proprietary to any third party, unless Customer first obtains all necessary licenses, consents, and permissions to do so. To the extent authorized by Texas law and constitution, Customer will indemnify and hold Denim Group harmless from any and all liability, damages, costs and expense, including settlement amounts and reasonable attorneys' fees, arising out of Customer's submission of Customer Data or Denim Group's reasonable use of any Customer Data to which Denim Group has been given access under this Agreement. CUSTOMER ACKNOWLEDGES THAT CUSTOMER DATA AND CUSTOMER'S SYSTEMS MAY BE ALTERED OR DAMAGED IN THE COURSE OF DENIM GROUP PROVIDING SERVICES, WHETHER ONSITE OR VIA REMOTE CONNECTION OR OTHERWISE, AND CUSTOMER AGREES TO TAKE ANY AND ALL APPROPRIATE MEASURES TO ISOLATE AND BACK UP THE NECESSARY SYSTEMS AND DATA ACCORDINGLY.

2.2 **Software Alterations.** Customer shall not make, attempt to make, or cause to be made any repairs, fixes or alterations to any Denim Group software product or Software Deliverables unless approved in advance and in writing by Denim Group.

2.3 **Customer Assistance.** Customer shall cooperate with and assist Denim Group in the performance of the services and shall fulfill its responsibilities as set forth in each SOW, as applicable, and will provide the resources, facilities and access necessary for Denim Group's performance of services as specified in the applicable SOW or as otherwise required.

2.4 **Premises.** Customer shall ensure that while Denim Group employees, agents, or subcontractors are on Customer's premises, all legal and other reasonable health and safety precautions are in place to protect such persons, and Customer shall indemnify Denim Group for any and all liability, damages, costs, and expenses, including settlement amounts

and to the extent authorized by Texas law and constitution, reasonable attorneys' fees, arising out of Customer's failure to take such precautions or out of the negligence or willful misconduct of Customer or its employees, agents, or subcontractors.

3.0 **Payment.** Payment shall be in accordance with Section 6.C. of Appendix A to DIR Contract No. DIR-SDD-1850.

4.0 **Control and Supervision.** With regard to tasks for which Denim Group assumes primary project responsibility, Denim Group shall be responsible for the control and supervision of its personnel. With regard to tasks in which Customer assumes primary project responsibility and Denim Group personnel assist Customer, Customer shall have project responsibility and shall be responsible for the direction of Denim Group personnel without creating an employer/employee relationship. For such tasks, Customer shall be responsible for the technical direction of Denim Group personnel and the overall quality and end result of such tasks. Nothing herein shall be construed to create an employer/employee relationship between any Denim Group personnel and Customer and visa versa. Denim Group shall at all times remain an independent contractor to Customer.

5.0 **Proprietary Rights.**

5.1 **Ownership.** Title and ownership of all work, inventions, know-how, trade secrets, discoveries, formulas, improvements, ideas, writings, computer programs, systems, data, expressions, patents, trademarks, copyrights, and all other intellectual property (collectively called "Works") developed or provided by Denim Group hereunder are and shall be the property of Customer, provided, however that Customer hereby grants Denim Group a perpetual, royalty-free license to copy and modify the Works as Denim Group deems appropriate, *provided that*, Customer shall not be identified in connection with Denim Group's use of the Works.

NOTHING IN THE FOREGOING IS INTENDED TO CONVEY ANY RIGHT, TITLE OR INTEREST IN OR TO ANY TOOLS OR PROPRIETARY ITEMS OF DENIM GROUP THAT WERE IN EXISTENCE ON OR PRIOR TO THE DATE OF THIS AGREEMENT. NOTHING IN THE FOREGOING IS INTENDED TO CONVEY ANY RIGHT, TITLE OR INTEREST IN OR TO ANY TOOLS OR PROPRIETARY ITEMS OF DENIM GROUP OR THAT ARE DEVELOPED BY DENIM GROUP DURING OR AFTER THE TERM OF THIS AGREEMENT UNLESS (AND THEN ONLY TO THE EXTENT) THE APPLICABLE SOW EXPRESSLY PROVIDES OTHERWISE.

5.2 **Residuals; Customer Information.** Notwithstanding anything in this Agreement to the contrary, Denim Group will be free to use Residuals (as defined below) for any purpose, including without limitation, use in development, manufacture, marketing and/or sale of its products and services; *provided*, that the foregoing right does not represent or otherwise grant any license under any of Customer's copyrights or patents. The term "Residuals" means information that is retained in the unaided memory of one or more of Denim Group's employees, consultants or subcontractors who have had access to Customer's confidential information pursuant to this Agreement. A person's memory is "unaided" if the person has not deliberately memorized such information for the purpose of retaining and later using or disclosing it. Customer grants to Denim Group the right to use technical information obtained in the course of providing services to Customer for purposes of problem resolution, internal troubleshooting, product functionality enhancements and fixes, and technical information documents (such as white papers), *provided that*, Denim Group will not identify Customer or publish any of Customer's confidential information in any such documents.

6.0 **Acceptance.** Upon final completion and delivery of any services that are implemented through a SOW, Customer will have thirty (30) days within which to notify Denim Group if the services fail to comply with the applicable SOW. If Denim Group is not notified of any problems within such period, the services will be deemed to have been accepted by Customer.

7.0 **Personnel.**

7.1 **Right to Assign Personnel.** Denim Group reserves the right to determine which of its personnel will be assigned to a particular project, to replace or reassign such personnel and/or subcontract to qualified third persons part or all of the performance of services hereunder with ___ days advance notice to Customer and timely replacement of such personnel with other personnel of equal experience and expertise. Customer hereby acknowledges that Denim Group personnel working on projects under this Agreement may perform similar services from time to time for others, and that this Agreement shall not prevent Denim Group from performing such similar services or restrict Denim Group from so assigning the personnel provided to Customer under this Agreement.

8.0 **Term and Termination.**

8.1 **Term.** This Agreement is effective upon the Effective Date listed above and shall remain in effect until terminated as provided herein.

8.2 **Termination** Termination shall be in accordance with Section 9.B. of Appendix A to DIR Contract No. DIR-SDD-1850.

8.4 **Limited Survival.** The provisions of Sections 3.0, 5.0, 6.0, 7.0, 8.0, 9.0, 10.0 and 11.0 shall survive any termination of this Agreement.

9.0 **Warranty and Disclaimers.** Denim Group warrants that Denim Group will perform the services in a professional manner and according to the description in the SOW. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9.0, DENIM GROUP MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO CUSTOMER OR TO ANY OTHER PERSON REGARDING ANY SERVICES, DELIVERABLES, RESOURCES, EQUIPMENT, SOFTWARE, OR OTHER ITEMS PROVIDED BY DENIM GROUP UNDER THIS AGREEMENT OR THE RESULTS TO BE DERIVED FROM THE USE THEREOF, AND DENIM GROUP EXPRESSLY DISCLAIMS ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE, OR COURSE OF PERFORMANCE, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR PARTICULAR PURPOSE AND WARRANTIES OF GOOD TITLE AND NON-INFRINGEMENT.

10.0 **Limitations of Liability.**

10.1 **Limited Time for Action.** No action, regardless of form, arising out of the services under this Agreement may be brought by either party more than four years after the cause of action as accrued, except that an action for nonpayment may be brought within one year of the date of last payment.

10.2 **Force Majeure.** Force Majeure shall be in accordance with Section 9C. of Appendix A to DIR Contract No. DIR-SDD-1850.

10.3 **Damages.** LIMITATION OF LIABILITY SHALL BE IN ACCORDANCE WITH SECTION 8.K OF DIR CONTRACT NO DIR-SDD-1850.

11.0 **Miscellaneous.**

11.1 **Notices.** Notices shall be in accordance with Section 10.A. of Appendix A to DIR Contract No. DIR-SDD-1850.

11.2 **Independent Contractor.** Under this Agreement, Denim Group shall be an independent contractor. This Agreement shall not be construed as creating a partnership, joint venture, agency or employment relationship, or as granting a franchise under federal or state law.

11.3 **Amendments and Waiver.** This Agreement may be amended or modified by, and only by, a written instrument executed by all the parties hereto. The terms of this Agreement may be waived by, and only by, a written instrument executed by the party against whom such waiver is sought to be enforced. No waiver of any term of this Agreement by either party shall be deemed to be a further or continuing waiver of any other term of this Agreement.

11.4 **Section and Other Headings.** The section and other headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement.

11.5 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

11.6 **Assignments and Parties in Interest; Subcontracting.** Assignments shall be in accordance with Section 3.D. of Appendix A to DIR Contract No. DIR-SDD-1850.

11.7 **No Implied Rights or Remedies.** Except as otherwise expressly provided herein, nothing herein expressed or implied is intended or shall be construed to confer upon or to give any person, firm, or corporation, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

11.8 **Entire Agreement.** DIR Contract No. DIR-SDD-1850 and this Agreement are the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements, whether oral or written, and all other communications between the parties relating to the subject matter of the Agreement. In the event of a conflict between this Agreement and DIR Contract No. DIR-SDD-1850660, the DIR Contract controls.

11.9 **Applicable Law.** This Agreement has been accepted and made performable in Travis County, Texas. This Agreement and the rights and obligations of the parties hereto shall be construed under and governed by the laws of the State of Texas, without giving effect to principles of conflict of laws. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

11.10 **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence good faith negotiations to remedy such invalidity.

11.11 **Dispute Resolution.** Dispute Resolution shall be in accordance with Section 9.A. of Appendix A to DIR Contract No. DIR-SDD-1850.

IN WITNESS WHEREOF, the parties hereto hereby warrant that they have the requisite authority to execute this Agreement and have executed this Agreement, as of the Effective Date.

CUSTOMER: _____

By: _____

Name: _____

Title: _____

DENIM GROUP, LTD.

By: DENIM GROUP MANAGEMENT, L.L.C.,
its general partner

By: _____

Name: _____

Title: _____