

Appendix D to DIR-TSO-2650 Supply and Services Agreement

This SUPPLY & SERVICES AGREEMENT, together with any schedules and attachments (the "Agreement") is made and entered into by and between Alcatel-Lucent Enterprise USA Inc., a Delaware corporation, having a principle place of business at 26801 Agoura Road, Calabasas, CA 91301 ("Alcatel-Lucent"), and _____, ("Customer") (each a "Party" and collectively the "Parties"). This Agreement is effective as of _____ (the "Effective Date"). In consideration of the promises, the Parties agree as follows:

1. SCOPE

1.1. This Agreement provides for: (a) the sale by Alcatel-Lucent to Customer of new or refurbished standard equipment and components made available for sale by Alcatel-Lucent ("Equipment"), (b) the license by Alcatel-Lucent to Customer of standard software and firmware (including third-party software and firmware) made available for license by Alcatel-Lucent, regardless of the form or media on which it is delivered, but excluding source code ("Software"), (c) the license by Alcatel-Lucent to Customer of standard documentation relating to any Equipment or Software ("Documentation") and (d) the performance of services by Alcatel-Lucent ("Services"). The Parties shall enter into one or more addenda or statements of work ("Addenda") to supplement or modify this Agreement for specific Products or Services. All references to the "Agreement" include DIR Contract No. DIR-TSO-2650; this document and its schedules, and all Addenda and their attachments. The term "Product" refers to Equipment, Software and/or Documentation, and the term "Licensed Materials" refers to Software and Documentation. Under no circumstances under this Agreement may customer acquire software alone, but rather Customer is authorized to acquire Equipment and Software as a bundled offering only.

1.2. The initial term of this Agreement begins on the Effective Date and, unless otherwise earlier terminated in accordance with the provisions herein, continues for a period of one year with three one year renewal options.

1.3. All Products and Services furnished by Alcatel-Lucent to Customer are for Customer's own internal use in the United States. Customer represents and warrants that it has no intention of reselling any Equipment or sublicensing any Software or Documentation.

2. ORDERING PROCEDURE

2.1. Customer may purchase Equipment together with license Software as a bundle, or Documentation or engage Alcatel-Lucent to perform Services by delivering to Alcatel-Lucent a written order (an "Order"). Each Order is a firm offer and must identify: (i) the Customer by full name and address; (ii) the quantity, part number and description of the Equipment bundled with software that Customer desires to purchase, the Software or Documentation that Customer desires to license, and/or the Services that Customer desires to engage Alcatel-Lucent to perform; (iii) the price of them in accordance with this Agreement (the "Price"), (iv) the "bill-to" address, (v) the "ship-to" address, (vi) the requested delivery dates (and any shipping instructions) and/or performance dates, (viii) a contact name and telephone number, and (ix) reference to the Contract Number of this Agreement. Customer's "bill-to" and "ship-to" address must be located within the United States. All Orders are subject to review and written acceptance by Alcatel-Lucent. Each Order is subject only to the terms and conditions of DIR-TSO-2650, this Agreement and the applicable Quotation. Terms and conditions contained in an Order which are inconsistent with this Agreement and the applicable Quotation, including any pre-printed terms and conditions on such Order, are ineffective and void.

2.2. Upon acceptance of an Order, Alcatel-Lucent shall make reasonable efforts to deliver to Customer the requested Product or perform the requested Services on or prior to a mutually agreed date.

2.3. Customer may request in writing changes to an Order ("Change Request") that Alcatel-Lucent has previously accepted. In response to a Change Request, Alcatel-Lucent will provide written Quotations, including any changes to prices, license fees, shipment or completion dates. A Change Request is a separate Order subject to Alcatel-Lucent's change order process.

3. PRICES

3.1. The Price of a Product or Services is set forth in DIR-TSO-2650, Appendix C, Pricing Index and will be presented in a written quotation from Alcatel-Lucent (a "Quotation"). A Quotation is valid for 30 days after issuance, except as otherwise provided therein. All Quotations are deemed to incorporate DIR-TSO-2650 and this Agreement. If Customer submits an Order other than in response to a Quotation, then the Price of the requested Product or Services must be that set forth in the appropriate Addendum. Provided that the Quotation is signed by authorized representatives of Alcatel-Lucent and Customer, any provisions of a Quotation which conflict with this Agreement and DIR-TSO-2650, the DIR Contract, DIR-TSO-2650 will supersede the comparable provisions of this Agreement with respect to Products and/or Services described in such Quotation.

- 3.2. Taxes will be handled in accordance with Appendix A, Section 8.E of the DIR Contract DIR-TSO-2650.
- 3.3. Shipping and handling will be handled in accordance with Appendix A, Section 8. D of the DIR Contract DIR-TSO-2650.
- 3.4. To the extent allowable by DIR Contract DIR-TSO-2650, the Price also does not include, and Customer shall pay for, or reimburse Alcatel-Lucent if Alcatel-Lucent pays for, any and all costs or charges for or relating to (a) specific or special delivery requirements (e.g., street closure, parking fees, lift gates, cranes, heavy-lifting equipment and other similar charges), and (b) the performance of installation Services for any Product (e.g., obtaining power, telephone lines and other similar charges), except to the extent that those costs or charges have been specifically included in the related Quotation.
- 3.5. To the extent allowable by DIR Contract DIR-TSO-2650, the Price for a Service is based on the specific assumptions, requirements, Product quantities, configuration(s), and location(s) set forth in the Quotation, and the Price for Services is subject to adjustment in the event that any of the foregoing are changed, and/or a Service is renewed.
- 3.6. To the extent allowable by DIR Contract DIR-TSO-2650, in addition to the Price for Services, Customer shall also pay charges incurred under this Agreement, including charges for: (i) work undertaken by Alcatel-Lucent at Customer's request that is not included in the Quotation, (ii) time (including certain minimum charges), materials, and travel charges if Services are performed outside of the hours applicable to the Quotation, (iii) for support Services, a response by Alcatel-Lucent to a fault report or request for assistance where no problem is found to exist or when the problem reported is one not covered by the Service Quotation, and (iv) Services for which increased costs are the result of Customer's failure to comply with its obligations herein.
- 3.7. Travel Expense Reimbursement will be handled in accordance with Appendix A, Section 8.F of the DIR Contract DIR-TSO-2650.

4. PAYMENT TERMS

- 4.1. Payments will be handled in accordance with Appendix A, Section 8.J of the DIR Contract DIR-TSO-2650.
- 4.2. Billing disputes shall be governed by Chapter 2251, Texas Government Code.

5. DELIVERY, TITLE, AND RISK OF LOSS

- 5.1. Delivery is F.O.B. Customer location. Alcatel-Lucent shall pack each Product for shipment in accordance with Alcatel-Lucent's commercial standards, except as the Parties may otherwise agree in writing.
- 5.2. Title to Equipment only, and risk of loss and damage to any Product, passes to Customer upon delivery or acceptance. Alcatel-Lucent and its licensors retain title to all Licensed Materials, Alcatel-Lucent Confidential Information, and other data delivered to Customer under this Agreement and all copies of them.

6. ACCEPTANCE AND VERIFICATION TESTING

- 6.1. Products for which installation by Alcatel-Lucent is not required will be deemed accepted upon delivery to Customer.
- 6.2. Products for which installation by Alcatel-Lucent is required will be deemed accepted as follows: Upon Alcatel-Lucent's completion of installation Services, Alcatel-Lucent shall perform its standard verification tests. When Alcatel-Lucent has successfully completed its verification tests, then Alcatel-Lucent shall deliver to Customer an installation verification certificate. Upon the earlier of Customer's commercial use of a Product or receipt of a verification certificate: (a) the Product will be deemed to have been accepted by Customer, and (b) any failure by Alcatel-Lucent to perform the related installation Services in accordance with this Agreement will be deemed to have been waived.
- 6.3. Acceptance of Services will be deemed to occur as Services are completed.

7. GRANT OF LICENSE

- 7.1. Customer shall use all Licensed Materials in accordance with this Article. Upon delivery of any Licensed Material and subject to Customer's payment of the applicable fees for such Licensed Material and compliance with the other terms and conditions of this Agreement, Alcatel-Lucent grants to Customer, and Customer accepts, a nonexclusive, nontransferable license to use the portions of the Licensed Materials for which activation has been authorized by Alcatel-Lucent, solely on or with a single unit or arrangement of Equipment for which the Licensed Material was delivered, for Customer's internal use in the United States.
- 7.2. Customer acknowledges and agrees that: (a) Alcatel-Lucent may have encoded within the Software optional functionality, features and/or capacity, which may be accessed only through the purchase of the applicable license extension(s) from Alcatel-Lucent at additional cost; and (b) Customer may need to obtain a new or additional application key from Alcatel-Lucent to use such Software.

7.3. This Agreement applies to all updates, upgrades, maintenance releases, revisions and enhancements for the Licensed Materials which Alcatel-Lucent may supply to Customer from time to time. As stated in Section 8.A of the DIR contract, DIR-TSO-2650, there will be no custom development under this Agreement.

7.4. Customer may make one copy of any Licensed Material for backup and archival purposes if the copy contains all of the Alcatel-Lucent proprietary notices contained in the original Licensed Material. To the extent allowable by the Texas Public Information Act, all copies of all Licensed Materials are Alcatel-Lucent Confidential Information. All rights, title and interest in and to the Licensed Material, including all intellectual property rights, remain vested in Alcatel-Lucent, its suppliers or licensors, and Customer is granted only a limited license to use the Licensed Material in conjunction with the Equipment, as set out in this Article.

7.5. Customer shall not directly or indirectly: (a) modify, copy, transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any portion of the Software; (b) encumber, time-share, rent or lease the rights granted herein; (c) manufacture, adapt, create derivative works of, localize, port or otherwise modify any Licensed Material; (d) to the extent authorized by the Texas Public Information Act, disclose or otherwise make available the Licensed Material to any third party or (e) enable any Software features or capacity which Alcatel-Lucent licenses as separate products, without Alcatel-Lucent's prior written consent.

7.6. At Alcatel-Lucent's request and upon reasonable prior written notice, Alcatel-Lucent may inspect and audit Customer's compliance with this Article 7 during normal business hours. Customer shall cooperate with the audit and shall grant assistance and access to applicable records, materials, personnel, and Equipment. In addition, Customer shall provide remote access to its systems to Alcatel-Lucent to enable Alcatel-Lucent to electronically audit Customer's compliance with Article 7. If an audit reveals that Customer possesses or at any time possessed unlicensed copies of any Licensed Materials, or used of any Licensed Materials beyond the licensed features or capacity restrictions or beyond the terms stated herein, then Customer shall pay Alcatel-Lucent the applicable license fees (plus interest) and the costs incurred in the audit immediately upon request.

7.7. If the terms set forth in this Article differ from the terms of any license agreement packaged or otherwise provided with the Software ("Additional License"), the terms of the Additional License govern to the extent that terms of the Additional License are inconsistent with those in this Article. Alcatel-Lucent's licensors are third party beneficiaries of this Agreement with respect to their Licensed Materials.

7.8. If Customer's license is cancelled or terminated, or when Customer no longer uses the Licensed Materials, Customer shall return or destroy the Licensed Materials and all copies and certify to Alcatel-Lucent that it has done so, if allowed by applicable records retention laws and policies.

8. LIMITED WARRANTY

8.1. Alcatel-Lucent warrants to Customer that, for the applicable warranty period set forth in Section 8.2, (a) Equipment and Software media purchased hereunder and manufactured by Alcatel-Lucent (including those manufactured for Alcatel-Lucent by a contract manufacturer and based on Alcatel-Lucent's procurement specification), under normal use and service, will be free from defects in material and workmanship; (b) Equipment and Software will materially conform to Alcatel-Lucent's specifications in effect on the date of shipment; and (c) Services will be performed in accordance with Alcatel-Lucent standards, or in the absence of such standards, in a professional and workmanlike manner. However, Alcatel-Lucent makes no warranty that any Software will operate uninterrupted or error free. With respect to Products or partial assembly of Products furnished by Alcatel-Lucent but not manufactured by Alcatel-Lucent, Alcatel-Lucent hereby assigns, to the extent permitted, the warranties given to Alcatel-Lucent by its vendors of such items.

8.2. The warranty periods applicable to Alcatel-Lucent Equipment and Software are 12 months and 90 days, respectively. The warranty period for Equipment and Software begins on the date of shipment except if Alcatel-Lucent performs installation Services for any Equipment or Software, in which case the warranty period begins on the date of Acceptance as determined in accordance with Article 6. The warranty period for Services is 30 days from the date of completion.

8.3. If any Equipment is not as warranted in this Article, then (a) Customer shall obtain from Alcatel-Lucent a return authorization number, and return the Equipment at its expense, together with the authorization number and a detailed description of the problem, to Alcatel-Lucent's designated repair facility; and (b) Alcatel-Lucent shall repair or replace the Equipment and return it at Alcatel-Lucent's expense to Customer's point of shipment. Alcatel-Lucent shall assume the risk of loss or damage to any Equipment returned to Alcatel-Lucent for repair or replacement from receipt thereof until delivery to Customer's point of shipment. If any Software is not as warranted in this Article, then, upon notice from Customer, Alcatel-Lucent shall correct the Software by (c) electronic means or (d) delivery to Customer of suitable media chosen solely by Alcatel-Lucent. If Alcatel-Lucent ascertains that Equipment is not readily returnable for repair, then at its option, Alcatel-Lucent may elect to repair or replace the Equipment at Customer's site. In such instances, Customer, at its expense, shall make the Equipment accessible for repair or replacement and shall restore the site after Alcatel-Lucent has completed its repair or replacement. If, Alcatel-Lucent determines that it cannot, in a commercially reasonable manner, (i) repair or replace any Equipment, (ii) correct any Software, or (iii) correct any Services, then Alcatel-Lucent may, in its sole discretion, refund to Customer the Price of the Product or Services, less a

reasonable adjustment for beneficial use. In repairing or replacing any Equipment, part of Equipment, or Software medium under this warranty, Alcatel-Lucent may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Equipment, parts of Equipment, or Software medium. For any Equipment or parts thereof repaired, replaced or corrected under this Article, the warranty period applicable to the Equipment will continue for the longer of (iv) the remainder of the original warranty period or (v) 90 days after the date of shipment of the repaired or replaced Equipment. The warranty period for the corrected Software via fixes and/or patches will be the remaining period of the original warranty period.

8.4. Notwithstanding any provision of this Agreement to the contrary, Alcatel-Lucent has no obligation to repair or replace any Equipment, correct any Software, or correct any Services if (a) the Product or any Software has been modified, repaired or reworked by anyone other than Alcatel-Lucent; or (b) the defect is the result of (i) any improper storage, handling or use by anyone other than Alcatel-Lucent, (ii) failure to provide a suitable climatic environment, (iii) operator error, (iv) improper installation of Equipment by anyone other than Alcatel-Lucent, (v) use in a manner not in accordance with the Documentation, (vi) failure to implement any new releases or update to the Software, (vii) any use of the Product in conjunction with another non-Alcatel-Lucent product (except to the extent provided in the Documentation), (viii) consumable items, including fuses, light bulbs, motor brushes and the like, (ix) Products which have had their serial numbers or month and year of manufacture removed, altered, defaced, or deleted, or (x) any damage by power failure, fire, explosion or any act of God or other cause beyond Alcatel-Lucent's control. The warranties set forth in this Article are nontransferable.

8.5. Warranty does not include: Alcatel-Lucent assisting in diagnostic efforts; access to Alcatel-Lucent's technical support web sites, databases, or tools; Product integration; on-site assistance; or Documentation updates. These Services are available during and after the warranty period at Alcatel-Lucent's published prices.

8.6. EXCEPT AS PROVIDED IN EXHIBIT A "ENTERPRISE SOLUTIONS DIVISION PRODUCT WARRANTY", THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE FOR PRODUCTS AND SERVICES IS THE EXCLUSIVE WARRANTY. ALCATEL-LUCENT DISCLAIMS ALL OTHER WARRANTIES IMPLIED OR STATUTORY INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE REMEDY PROVIDED UNDER SECTION 8.3 IS CUSTOMER'S EXCLUSIVE REMEDY FOR FAILURE OF PRODUCTS OR SERVICES TO CONFORM TO THE WARRANTY.

9. CONFIDENTIAL INFORMATION

9.1. "Confidential Information" means: to the extent authorized by the Texas Public Information Act, (a) any nonpublic information disclosed by either Party (the "Discloser") to the other Party (the "Recipient") in any form, including written, electronic, photographic or other tangible form, or information provided orally or visually, and (b) notes and other records made from or about such information. Confidential Information disclosed in a tangible or electronic form may be marked or otherwise identified by Discloser with a legend as being confidential or proprietary, but the absence of such mark or identification will not affect Recipient's obligations to treat such information as Confidential Information.

9.2. Discloser grants Recipient the right to use the Confidential Information solely to exercise its rights and perform its obligations under this Agreement (the "Purpose"). To the extent authorized by the Texas Public Information Act, recipient shall hold the Confidential Information in confidence and shall not disclose the Confidential Information to any third party, except as expressly provided herein. Recipient may disclose Discloser's Confidential Information only to those of Recipient's and its affiliates' employees having both a need to know to accomplish the Purpose and an obligation to protect information as required by this Agreement. In addition, Recipient may disclose Confidential Information of Discloser to Recipient's subcontractors and agents who, in each case, have a need to know to accomplish the Purpose, have agreed in writing to maintain the confidentiality of the information and are not employees of any competitor of Alcatel-Lucent. Recipient shall provide Discloser with a copy of such writing at its request. An individual who has seen Discloser's Confidential Information under this Agreement is not precluded from working on projects for Recipient that relate to similar subject matters whether during or after the term of this Agreement, provided that the individual does not use or make reference to Discloser's Confidential Information.

9.3. The preceding obligations and restrictions do not apply to Confidential Information if, and then only to the extent that, it is: (a) known to Recipient before receipt from Discloser; (b) generally available to the public (or becomes so) without the fault or negligence of Recipient; (c) rightfully received by Recipient from a third party without a duty of confidentiality; or (d) independently developed by Recipient or its affiliates without any use of Discloser's Confidential Information; or (e) as required to be disclosed pursuant to the Texas Public Information Act..

9.4. Recipient may disclose the Confidential Information as required by law provided, however, that Recipient shall when permitted by law, give Discloser prompt written notice of a disclosure requirement.

9.5. To the extent authorized by the Texas Public Information Act, recipient shall promptly return or destroy (at Discloser's option) all copies and excerpts of the Confidential Information to Discloser when no longer needed or when requested to do so by Discloser.

9.6 Other than the limited right to use the Confidential Information to accomplish the Purpose, Discloser does not grant any right or license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret, or any other intellectual property right.

10. EXPORT CONTROL

The Parties acknowledge that Products, Licensed Materials and Confidential Information provided under this Agreement may be subject to the export laws and regulations of the United States and/or other countries (cumulatively, "Export Laws"). Customer agrees that it will not use, distribute, export, re-export, transfer, or transmit the Products, Licensed Materials or Confidential Information (even if incorporated into other items) in violation of the Export Laws. If requested by Alcatel-Lucent, Customer also agrees to sign written assurances and other export-related documents as may be required for Alcatel-Lucent to comply with the Export Laws.

11. INFRINGEMENT INDEMNITY

11.1 Indemnification will be handled in accordance with Appendix A, Section 10.A.3 of the DIR Contract DIR-TSO-2650.

11.2 The rights and remedies set forth in this Article are Customer's exclusive rights and remedies with respect to third party claims of infringement and misappropriation.

12. SERVICES

12.1 The term of performance for each Service will begin when specified in the Service Quotation or Addenda and will continue until the earlier of: (a) the expiry date specified therein; (b) the date the Services described therein have been accepted or completed, as the case may be, and all amounts owing with respect thereto have been paid; or (c) the date it is terminated in accordance with this Agreement.

12.2 Customer understands that Alcatel-Lucent is in the business of providing services drawing upon the knowledge, understanding and expertise Alcatel-Lucent has gained from working with many varied customers. Nothing in this Agreement will be deemed to assign rights to or limit Alcatel-Lucent's use of any information, know-how or knowledge to the extent it does not contain Customer's Confidential Information.

12.3 Customer hereby grants to Alcatel-Lucent a non-exclusive, personal, royalty-free and non-transferable license to make, have made, use, execute, perform, copy (as reasonably necessary), display, modify and make derivative works under any and all intellectual property rights owned by Customer to the extent necessary for furnishing Services and deliverables under this Agreement. Except as expressly set forth in this Agreement, no right or license is either granted or implied by either Party to the other with respect to any technical or business information, or with respect to rights in any patents, trademarks, copyrights, trade secrets, mask work protection rights, and other intellectual property. Subject to Customer's right, title and interest in Customer's Confidential Information, any and all inventions, derivative works, improvements, developments or innovations that Alcatel-Lucent (and its contractors or consultants, as the case may be) may make, conceive or devise in the course of performing Services under this Agreement, are the sole and exclusive property of Alcatel-Lucent, including all patents, copyrights, trademarks and trade secrets embodied in them.

12.4 Alcatel-Lucent will make reasonable efforts consistent with sound business practices to honor Customer's specific request regarding assignment of employees, but Alcatel-Lucent reserves the sole right to determine the assignment of its personnel to perform Services hereunder. Alcatel-Lucent personnel at all times are subject to the employment conditions of Alcatel-Lucent and not those of Customer.

12.5 During the term of this Agreement (including any extensions) and for one year after termination or expiration of this Agreement, Customer shall not, except with Alcatel-Lucent's prior written consent, solicit for employment Alcatel-Lucent employees performing Services under this Agreement. This shall not restrict Customer from placing employment advertising in trade or general media or from using recruiters provided that such advertising and recruiters do not target Alcatel-Lucent employees.

13. CUSTOMER'S RESPONSIBILITIES

13.1 At all times during the performance of any Services at Customer's site, Customer shall (a) ensure that all easements, rights-of-way and other permits necessary to permit the performance of the Services are in effect, (b) ensure that the site is reasonably safe and free from actual or potential hazards and equipped with reasonable heat, light, plumbing, working and staging space, electricity and ventilation, (c) provide sufficient on-site storage space for Alcatel-Lucent's equipment and materials, (d) ensure that Alcatel-Lucent's personnel have access to the site and to the applicable Products during the times necessary to perform the Services, and (e) timely comply with Alcatel-Lucent's reasonable requests for information necessary to permit Alcatel-Lucent to perform the Services properly. While performing Services, Alcatel-Lucent personnel shall comply with any and all site security rules provided and agreed to by Alcatel-Lucent in advance.

13.2. Customer shall cooperate with Alcatel-Lucent in the performance of Services hereunder, and perform Customer's responsibilities specified in each Service Quotation or Addendum. In addition, Customer shall: (a) provide experienced, qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent, timely fashion and assist Alcatel-Lucent in completing the Services; (b) promptly render all reviews, decisions and approvals so as not to delay or impede Alcatel-Lucent's performance of Services; (c) ensure that a Customer representative is available during regular business hours to provide information and assistance as Alcatel-Lucent may require in connection with the Services, (d) promptly notify Alcatel-Lucent of any issues or concerns, (e) regularly back up files and all data; (f) conduct any acceptance tests for Services, Licensed Materials and Equipment in accordance with the procedures in any Service Quotation or Addenda, or as agreed in writing; (g) unless site preparation is specified as a Service to be provided by Alcatel-Lucent, prepare its site for installation of any Products, providing a standard telecommunications environment in accordance with the applicable site and equipment specifications including the removal and proper disposal of all asbestos or other hazardous materials and (h) furnish to Alcatel-Lucent the appropriate interface specifications necessary to connect Equipment to Customer's network infrastructure. Customer shall ensure the accuracy and completeness of such interface specifications and Alcatel-Lucent shall not be responsible for any consequences resulting from inaccurate or incomplete interface specifications.

13.3. Customer understands that Alcatel-Lucent's performance is dependent on Customer's timely and effective satisfaction of Customer's responsibilities under this Agreement, including timely decisions and approvals. If Customer fails to meet its responsibilities set forth herein and any others stated in separate Addenda or Service Quotations, Alcatel-Lucent will be excused from performing its obligations until Customer provides what Alcatel-Lucent requires to perform.

14. LIMITATION OF LIABILITY

14.1. Alcatel-Lucent and Customer acknowledge that they have negotiated the Price (among other things) in consideration of their agreement to limit certain of Alcatel-Lucent's liabilities. In no event is Alcatel-Lucent or any of its suppliers or licensors liable for any indirect, special, exemplary, consequential or incidental damages (including lost profits, lost revenues and other economic losses), however caused and regardless of whether such damages are foreseeable or whether Alcatel-Lucent has been advised of their possibility.

14.2. Except for a claim for personal injury proximately caused by Alcatel-Lucent, Alcatel-Lucent's liability for any claim arising out of this Agreement will be limited to actual, provable damages not to exceed the Price of the Product or Service that is the subject of such claim. IN NO EVENT WILL ALCATEL-LUCENT'S CUMULATIVE LIABILITY FOR ALL CLAIMS, LOSSES, DAMAGES AND EXPENSES OF CUSTOMER ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED TEN PERCENT OF THE TOTAL PRICES PAID BY CUSTOMER UNDER THIS AGREEMENT.

15. TERMINATION

15.1. Termination will be handled in accordance with Appendix A, Section 11.B of the Contract, DIR-TSO-2650.

15.2. (a) Upon the occurrence of any one or more of the events set forth in subparagraphs (i), (ii), (iii) and (iv) below (each an "Event of Default"), Alcatel-Lucent shall have the right, by notice to Customer and in its sole discretion and without prejudice to any other rights or remedies which it may have under this Agreement or at law or in equity, to immediately terminate this Agreement in its entirety and to suspend performance, in whole or in part, hereunder (including suspension of performance of all outstanding Orders), without any further obligation or liability to Customer except with respect to Products or Licensed Materials already shipped and Services already performed:

(i) Customer breaches its obligation to, or otherwise fails to, make Payment of any amount when due to Alcatel-Lucent, whether such amount results from an invoice, fee or charge due under the terms of this Agreement, and whether or not a portion of the invoice is subject to a Dispute Notice and such breach or default continues for a period of ten days after Customer's receipt of notice thereof; or

(ii) Customer otherwise breaches of any of its obligations under this Agreement and such breach continues for a period of 30 days after Customer's receipt of notice thereof; or

(iii) Customer breaches of any term or condition of any Software license or its obligations under "Confidential Information" above and that breach continues for a period of ten days after receiving notice thereof; or

(iv) Customer breaches any of the terms of any other agreement, as such breach is defined by such agreement, between Customer and Alcatel-Lucent or any of its subsidiaries or affiliates.

(b) If Alcatel-Lucent breaches any of its obligations under this Agreement, and such breach continues for a period of 30 days after receiving Customer's notice thereof, then Customer shall have the right, upon written notice to Alcatel-Lucent, and in Customer's sole discretion and without prejudice to any other rights or remedies which it may have under this Agreement or at law or in equity, to immediately terminate this Agreement in its entirety and to suspend performance hereunder without any further obligation or liability to Alcatel-Lucent except with respect to Customer's

payment obligations respecting Orders for Products or Licensed Materials already shipped and Orders for Services already performed.

16.3. Upon termination or expiry of this Agreement, Sections 4, 7 - 11, 14, 15, and 16 survive, *provided, however*, that Customer's rights under Sections 7 and 9 do not survive if Customer's breach of either of those Sections gave rise to the termination.. Upon Customer's payment of all amounts owing to Alcatel-Lucent, Alcatel-Lucent will deliver all Licensed Materials and work in progress in Alcatel-Lucent's possession as of the date of termination.

16. GENERAL

16.1. Each Party giving any notice or making any request, demand or other communication pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery: (a) personal delivery, (b) certified first class mail, postage prepaid, return receipt requested, (c) facsimile transmission with confirmation copy by certified mail, return receipt requested, or (d) nationally recognized overnight courier, with all fees prepaid. A Party giving a notice shall address the notice to the appropriate person at the receiving Party (the "Addressee") at the address listed on the signature page of this Agreement or to another Addressee or another address as designated by a Party in a notice pursuant to this Section. A notice is effective only if the Party giving the notice has complied with this Section and if the Addressee has received the notice.

16.2. Force Majeure will be handled in accordance with Appendix A, Section 11.C of the DIR Contract, DIR-TSO-2650.

16.3. Except as otherwise provided in this Agreement, each Party shall bear any and all costs and expenses incurred by it in connection with the exercise of its rights and the performance of its obligations under this Agreement.

16.4. If either Party is audited by a taxing authority or other governmental entity, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in an appropriate and timely manner, so that the audit and any resulting controversy may be resolved expeditiously.

16.5. Any press release must be approved by Customer.

16.6. Assignments will be handled in accordance with Appendix A, Section 4.D of the DIR Contract. DIR-TSO-2650.

16.7. The Parties may amend, supplement, or rescind this Agreement only by a written agreement duly executed by authorized representatives of each Party. The Parties may not waive any provision of this Agreement, except pursuant to a writing duly executed by an authorized representative of the Party against whom any waiver is sought to be enforced. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the Parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose that it is given and is not to be construed as a waiver on any future occasion or against any other person. No single or partial exercise of any right or remedy under this Agreement precludes the simultaneous or subsequent exercise of any other right or remedy.

16.8. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force and effect, if the essential terms and conditions of this Agreement for both parties remain valid, legal and enforceable.

16.9. Choice of law will be handled in accordance with Appendix A, Section 4.F of the DIR Contract, No.DIR-TSO-2650.

16.10. As used in this Agreement, "include," "includes," and "including" and the words that follow them are intended to be, and should be construed as, inclusive and not exclusive.

16.11. The Parties have jointly participated in the negotiation and drafting of this Agreement. This Agreement is to be construed as if drafted jointly by Customer and Alcatel-Lucent, and no presumptions arise favoring any Party by virtue of the authorship of any provision of this Agreement. This Agreement does not and is not intended to confer any rights or remedies whatsoever upon any persons or entities other than the Parties.

16.12. DIR Contract No. DIR-TSO-2650 and this Agreement constitutes the final agreement between the Parties, and supersedes all prior oral or written negotiations and agreements between the Parties, on the matters contained in this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, nor agreement of the other Party except for those expressly contained in here. There are no conditions precedent to the effectiveness of this Agreement other than execution and delivery. In case of any conflict between a provision of this Agreement and DIR Contract No. DIR-TSO-2650 and that of any Addendum or attachment, the provision of the DIR Contract No. DIR-TSO-2650 shall control, and then the Addendum or attachment takes precedence.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

ALCATEL-LUCENT ENTERPRISE USA INC.	CUSTOMER
By:	By:
Name:	Name:
Title:	Title:
Alcatel-Lucent Enterprise USA Inc.	

Appendix D to DIR-TSO-2650

EXHIBIT A ENTERPRISE SOLUTIONS DIVISION PRODUCT WARRANTY

The following additional warranty terms apply to Enterprise Solutions Division Products (“ESD Products”).

1. The Customer must provide proof of purchase or the serial number of the failed or DOA Product when requesting a return authorization number.
2. Expedited Advanced Product Replacement is available for select ESD Products. The Customer may purchase this service for an additional fee. If Expedited Advance Product Replacement service is purchased by the Customer, replacement Products will be shipped to Customer the business day following the issuance of the Customer’s return authorization. If the defective Product is (i) not received at Alcatel-Lucent’s designated repair facility within 30 days of the shipment of the replacement Product, or (ii) subsequently determined by Alcatel-Lucent as not being covered by warranty, Customer will be charged the then-current list price for the returned Product. If subsequent testing by Alcatel-Lucent fails to find a failure of the returned Product, Alcatel-Lucent may charge the Customer a \$500 return and test charge.
3. Except when Expedited Advance Replacement service is purchased, replacement Products will be shipped within 14 business days following the receipt of the failed product at Alcatel-Lucent’s designated repair facility.
4. ESD products designated as having a Limited Lifetime Warranty (LLW ESD Products”) receive Advanced Replacement service. Advanced Replacement terms are the same as Expedited Advance Replacement services, provided, however, Alcatel-Lucent will ship the replacement Product via ground shipping within 5 days from the issuance of the return authorization. The warranty period applicable to LLW ESD Products is 5 years from the date Alcatel-Lucent announces the discontinuance of the LLW ESD Product. Customer may elect to purchase additional maintenance and support services (e.g. technical support, eservice web support, software updates, bug fixes, etc.).
5. Products that fail to substantially function in accordance with their published specifications due to defects in manufacturing or materials during the first 90 days from the date of purchase will be designated dead on arrival Products (“DOA Products”). Subject to the availability of replacement Products, DOA Products will receive Expedited Advance Product Replacement services at no additional charge.