



## APPENDIX F TO DIR CONTRACT NO. DIR-TSO-3665

### CDI SOFTWARE PRODUCT ASSURANCE AGREEMENT TERMS AND CONDITIONS

This Software Product Assurance Agreement ("Agreement"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between COMPU-DATA International, LLC, a Delaware corporation, having a principal place of business at 2203 Timberloch Place, Suite 100 The Woodlands, TX 77380, ("CDI"), and \_\_\_\_\_ having a principal place of business at - \_\_\_\_\_ ("Customer").

#### **RECITALS**

Customer has obtained a nonexclusive, nontransferable license to use certain CDI computer software in object code form and related user documentation (collectively the "Licensed Product").

Customer desires to subscribe to CDI's Software Assurance Program for the Licensed Product and CDI will enrolle Customer in such program subject to the terms and conditions of DIR Contract No. DIR-TSO-3665 and provided in this Agreement.

In consideration of the mutual covenants, conditions, representations, warranties, and promises hereinafter set forth the parties agree:

#### **AGREEMENT**

##### **1. DEFINITIONS**

- 1.1. "Software License Agreement" shall mean the written agreement between the parties under the terms of which Customer has obtained a license to use the Licensed Product.
- 1.2. "Licensed Product" shall mean the computer software described in Exhibit A hereto, including any extracts from such software, derivative works of such software, or collective works constituting such software (such as subsequent Releases) to the extent offered to Customer under this Agreement or the Software License Agreement.
- 1.3. "Agreement Term" shall mean an initial period of one (1) year, commencing on the earliest of the Effective Date of this Agreement or the beginning date of the Software Assurance Period as defined in Exhibit B attached hereto. Thereafter, the Agreement Term shall have three (3) one (1) year renewal options to be exercised by Customer providing Vendor thirty days written notice prior to the thn-expiration date. In no event, however, shall the Agreement Term extend beyond the prescribed term of the Software License Agreement.
- 1.4. "Error" shall mean any failure of the Licensed Product to conform in all material respects to the functional specifications for the Licensed Product published from time to time by CDI, the current version of which is attached as Exhibit A hereto. However, any nonconformity resulting from Customer's misuse or improper use of the Licensed Product or combining or merging the Licensed Product with any hardware or software not supplied by CDI, or not authorized to be so combined or merged by CDI, shall not be considered an Error.
- 1.5. "Error Correction" shall mean either a software modification or addition that, when made or added to the Licensed Product, establishes material conformity of the Licensed Product to the functional



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- specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Product, eliminates the practical adverse effect on Customer of such nonconformity.
- 1.6. "Enhancement" shall mean any modification or addition that, when made or added to the Licensed Product, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction.
  - 1.7. "Normal Working Hours" shall mean the hours between 8:00 a.m. and 5:00 p.m. CST on the days Monday through Friday, excluding regularly scheduled holidays of CDI.
  - 1.8. "Releases" shall mean new versions of the Licensed Product, which new versions may include both Error Corrections and Enhancements.

#### **2. SCOPE OF SOFTWARE ASSURANCE PROGRAM**

- 2.1. CDI Software Assurance Program. During the Agreement Term, CDI shall maintain active the following program for the Licensed Product, during Normal Working Hours, subject to the subscription fee set forth in Exhibit B hereto.
  - 2.1.1. CDI shall maintain a telephone number or email address to receive operator reports of irregularities in the Licensed Product. CDI shall maintain a trained staff capable of providing the technical information set forth in this Agreement.
  - 2.1.2. CDI shall be responsible for using all reasonable diligence in correcting verifiable and reproducible Errors when reported to CDI in accordance with CDI's standard reporting procedures. CDI shall, within a reasonable period of verifying that such an Error is present, initiate work in a diligent manner toward development of an Error Correction. Following completion of the Error Correction, CDI shall provide the Error Correction through a "temporary fix", if applicable, consisting of sufficient programming and operating instructions to implement the Error Correction, and CDI shall include the Error Correction in all subsequent Releases of the Licensed Product. CDI shall not be responsible for correcting Errors in any version of the Licensed Product other than the most recent Release of the Licensed Product.
  - 2.1.3. CDI may, from time to time, issue new Releases of the Licensed Product to its customers generally, containing Error Corrections and Enhancements. Customers enrolled in the Software Assurance Program shall be provided with one (1) copy of each new minor Release, at no additional charge. Major Releases may require additional upgrade costs as deemed by CDI at the time the new major Release is announced. CDI is not obligated to provide assistance to help Customer install and operate each new Release, however CDI at its own discretion may choose to provide limited assistance to customers who are current in their subscription to the Software Assurance Program. If assistance is required to be provided at Customer's facility, such assistance shall be approved in writing by the parties prior to implementation and subject to the supplemental charges set forth in Exhibit B.
  - 2.1.4. Customer shall be responsible for all re-runs, reconstructions, maintenance or support caused by errors of Customer, its personnel, the input data, modifications to the Licensed Product, or by hardware malfunction. Where support is requested of CDI by Customer and



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required for any reason, CDI's charges for such support will be at its most recent hourly billing rate and in accordance to Appendix C of DIR Contract No. DIR-TSO-3665..

- 2.2 Customer Inspection. Following the completion of any support services by CDI, Customer shall promptly and carefully inspect and review all printed reports by the Licensed Product and shall assume responsibility for identifying any additional or continuing errors in the Licensed Product.
- 2.3 Exclusions. Software Assurance does not cover: (i) modifications made to the standard Software application by Licensee or third parties, (ii) applications developed by Licensee or third parties, Products, services or functionality not provided by CDI, (iii) On-site support services at the physical location of the Error, (iv) products for which the customer has not maintained current certifications, (v) systems engineering services, programming and operations procedures of any sort, (vi) the use of an operating system or any software or hardware or networking system(s) not approved by CDI, (vii) interconnection or integration of the Programs with products not designated Certified or Supported by CDI, (viii) use of the Programs in a manner for which they were not designed.

### 3. SUBSCRIPTION FEES AND CHARGES

- 3.1. Subscription Fees. Customer shall pay CDI its fees based on the rate schedule set forth in Exhibit B hereto and in accordance to Appendix C of DIR Contract No. DIR-TXO-3665. CDI reserves the right to change its rate schedule from time to time upon DIR approval, provided that no such change will be effective until at least thirty (30) days after CDI has given Customer written notice of such change.
- 3.2. Payment Terms. CDI shall invoice Customer in advance for all fees as set forth on Exhibit B. All reimbursable expenses and costs, shall be invoiced after they are incurred. Customer shall pay all undisputed invoiced amounts in accordance to Appendix A, Section 8J of DIR Contract No. DIR-TSO-3665.
- 3.3. On-Site Charges. At Customer's request and CDI's sole discretion, support services may be provided by CDI at Customer's site. CDI shall be compensated in accordance to Appendix C of DIR Contract No. DIR-TSO-3665, for such services and Customer shall reimburse CDI for preapproved travel expenses (i.e., transportation, lodging, and meals) in accordance to the Texas Travel Management Guide as set forth by the Comptroller of Public Accounts..

### 4. PROPRIETARY RIGHTS

- 4.1 Customer Use of CDI Programs. To the extent that CDI may provide Customer with any Error Corrections or Enhancements or any other software including any new software programs or components, or any compilations or derivative works prepared by CDI (collectively, "CDI Programs") as part of this Software Assurance Program, Customer may: (a) install one (1) set of the CDI Programs, in the most current form provided by CDI, in Customer's own facility; (b) use such CDI Programs, in the most current form provided by CDI Programs in connection with the Licensed Product, and in a manner consistent with the requirements of the Software License Agreement, for purposes of serving Customer's internal business needs; and (c) make one (1) copy of the CDI Programs in machine-readable form for nonproductive backup purposes, only Customer may not use, copy, or modify the CDI Programs, or any copy, adaptation, transcription or merged



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portion thereof, except as expressly authorized by CDI in writing. Notwithstanding Section 7 hereof, Customer's rights under this subsection 4.1 shall remain in effect for so long as Customer is authorized to use the Licensed Product under the Software License Agreement. Subject to record retention laws and policies, upon termination of such Software License Agreement, Customer shall either return or destroy the Licensed Product and CDI Programs to CDI as requested by CDI.

- 4.2 Ownership of CDI Programs. The CDI Programs are and shall remain the sole property of CDI, regardless of whether Customer, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid CDI for the use of the work product. Customer shall from time to time take any further action and execute and deliver any further instrument, including documents of assignment, that CDI may reasonably request in order to establish and perfect its exclusive ownership rights in such works. Customer shall not assert any right, title, or interest in such works, except for the nonexclusive right of use granted to Customer at the time of the delivery or on-site development.

#### **5. DISCLAIMER OF WARRANTY**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CDI EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE LICENSED PROGRAM OR CDI PROGRAMS OR THE SERVICES TO BE RENDERED HEREUNDER WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **6. LIMITATIONS OF LIABILITY**

Limitation of Liability will be handled in accordance to Appendix A, Section 10K of DIR Contract No. DIR-TSO-3665.

#### **7. TERMINATION**

Termination will be handled in accordance to Appendix A, Section 11B of DIR Contract No. DIR-TSO-3665.

#### **8. CONFIDENTIALITY**

- 8.1 Definition. The parties acknowledge that during the term of this Agreement each of them may be provided with certain confidential information belonging to the other. For purposes of this Agreement the term "Confidential Information" shall include, but not be limited to, trade secrets, ideas, processes, programs source code, formulas, materials, substances, sources of supplies, technology, research, know-how, improvements, discoveries, developments, designs, inventions, techniques, marketing plans, strategies, forecasts, new products, unpublished financial statements, budgets, projections and customer lists.
- 8.2 Exclusion. Notwithstanding the provisions of subsection 8.1, the term "Confidential Information" as used herein shall not include any information or material that is: (a) already in the possession of the receiving party, its subsidiaries, employees or agents without prior restrictions; (b) independently developed by the receiving party, its subsidiaries, employees or agents; (c) publicly disclosed by the disclosing party or others; (d) made available by the disclosing party,



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its subsidiaries, employees or agents to others without restriction; or (e) required to be disclosed under applicable law, rule, or legal process.

- 8.3 Obligations. Each party agrees that during the term of this Agreement and for as long as the party has the other party's Confidential Information, it will not: (a) disclose Confidential Information of the other party except to its subsidiaries, employees and agents who require access thereto to perform their respective tasks, and/or (b) use any such Confidential Information except for the purposes expressly provided in this Agreement. The standard of care to be utilized by a party in its obligations of nondisclosure and restricted dissemination shall be the standard of care utilized by it in handling its own information of like sensitivity which is not intended for public disclosure or dissemination to third parties. After expiration or termination of this Agreement,

#### 9. GENERAL PROVISIONS

- 9.1 Notices. Notices will be handled in accordance to Appendix A, Section 12 of DIR Contract No. DIR-TSO-3665.
- 9.2 Governing Law. The validity of this Agreement and the rights, obligations and relations of the parties hereunder shall be construed and determined under and in accordance with the substantive laws of Texas, without regard to its principles of conflicts of law and the parties hereby submit to the jurisdiction of the appropriate state court located in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.
- 9.3 Assignment. Assignment will be handled in accordance to Appendix A, Section 4D of DIR Contract No. DIR-TSO-3665
- 9.4 Force Majeure. Force Majeure will be handled in accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-3665.
- 9.5 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or unenforceability of such provision in any other jurisdiction.
- 9.6 Entire Agreement. DIR Contract No. DIR-TSO-3665 and this Agreement, together with the contents of the attached Exhibits (which Exhibits are incorporated by reference herein), contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements relating thereto, written or oral, between the parties. Amendments to this Agreement must be in writing, signed by the duly authorized officers of the parties, specifically stating that such amendments are made pursuant to this subsection 9.8.



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IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, (“Effective Date”).

AGREED:

COMPU-DATA INTERNATIONAL, LLC:

CUSTOMER:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Exhibits to this Agreement:

Exhibit A - Description and Specifications of Licensed Product

Exhibit B – Software Assurance Subscription Fee and On-Site Support



COMPU-DATA INTERNATIONAL, LLC  
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EXHIBIT A

Description and Specifications of Licensed Program



COMPU-DATA INTERNATIONAL, LLC  
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EXHIBIT B

Exhibit B - Software Assurance Subscription Fee and On-Site Support Rates

Annual Subscription Fees:

Subscription Period: One year.

Payment Terms: In accordance with Appendix A, Section 8, to DIR Contract No. DIR-TSO-3665

On-Site Charges: Fees will be quoted upon request of such services in accordance with Appendix C to DIR Contract No. DIR-TSO-3665