



The AEC Group

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Post-Project Help Desk Support Contract

for

Warren County School District

Contract ID:	HDC20110901-1
Create Date:	07/19/2011
Review Date:	07/19/2011 11:03 AM

Contract Initiation Date:	09/01/2011
Contract Term:	3 months

Contracted Sites:	1
Contract Monthly Rate:	\$1,500.00 per site

Contract Customer Hourly Rate:	\$125.00 per hour
Non-Business Hours Rate:	\$150.00 per hour

***Total Contract Amount: \$4,500.00**

** - Please note that the total contract amount does not include the price for any hourly field service other than what may have been specifically defined in this contract.*

By an authorized signature below, the parties agree that AEC Group will immediately begin action to deliver the requested services contained within this proposal. Upon executing the agreement below, the parties are subject to all terms and conditions set forth and made a part of this agreement.

Accepted and Approved by:

Authorized Signature: _____ **Date:** _____

Full Name (Print): _____

Title (Print): _____

If you wish to authorize this proposal, please fax a signed copy of this document and a copy of the deposit check to AEC Group at (412) 838-0110.

AEC Group

Help Desk Support Contract Initiative

Terms and Description

Due to our increasing customer base and an identified client need for “on going” post installation support and maintenance, the AEC Group’s Technology Solutions Group is pleased to offer the following technical support contract.

This support contract is designed to give our client’s end users and IT staff a resource to draw upon for general IT information, support requests, and Q&A support. Our intention is to deliver support that effectively augments any existing internal IT staff, while providing technical expertise and guidance at predefined service levels and costs.

All AEC Group Support Plans include the following standard benefits:

- 8:30am to 5:00pm, Monday thru Friday, help desk coverage
- Unlimited help desk incident submissions
- 8:30am to 5:00pm on-site or remote access support at fixed reduced rates
- Two (2) hour response to confirm logging of all queued requests
- A maximum of six hours of support for each submitted incident
- Access to Emergency/After Hours/Holiday response team
- Problem tracking and reporting
- Technical expertise and Knowledge base.

AEC reserves the right to suspend support during any period that has not been paid for prior to the start of the support period.

Definitions

“Normal Business Hours” will be from 8:30 AM to 5:00 PM on Monday, Tuesday, Wednesday, Thursday, and Friday.

“Non-Business Hours” will be prior to 8:30 AM or after 5:00 PM on weekdays. All weekends and holidays (as defined by the AEC Group holiday schedule) will be considered “Non-Business Hours”.

An “Incident” is defined as a single technical problem and the associated technical support required for resolution. A single support issue is a problem that cannot be broken down into subordinate problems. If a problem consists of subordinate problems, each subordinate problem shall be considered a separate incident. Every incident will have an associated ticket number in the AEC support tracking system.

A “Dispatch” is any situation during which a technical representative is required to leave their current location and report to another location with the intention of performing “on-site” or “remote” service on behalf of the customer. A technician’s movement from one supported customer facility to another supported customer facility during the process of problem resolution will NOT be considered separate “dispatches”. A technician’s movement during non-business hours from their home to the customer facility or to the AEC facility, for the purpose of addressing a specific incident, will be considered a “Dispatch”.

“On-Site Service” includes all problem resolution service that is performed at a customer owned (or managed) facility.

A “Remote Support Location” is any facility that is used to provide remote incident resolution service on behalf of the customer.

An incident will be considered “Normal Priority” if the problem resolution is not required immediately. “Normal Priority” incidents will only be supported during normal business hours.

An incident will be considered “Immediate Priority” if the problem resolution is required immediately. The customer must formally request “Immediate Priority” incident support. “Immediate Priority” support will initiate per the defined contract service levels and at the defined hourly rate.

“Immediate Prioritization” will be an act, by the customer, through which the customer requests priority support from a Level 2 or Level 3 technical representative for the resolution of a critical problem. Incidents can be given “Immediate Prioritization” at any time during the problem resolution efforts. At the time that “Immediate Prioritization” is requested and executed, support for that incident will be billed at the appropriate support rate and under all “Immediate Priority” terms and conditions. Customers can elect to use “Immediate Prioritization” for issues that they want addressed immediately by a more experienced technical representative.

Help Desk Support Contract Scope of Services

This proposal addresses the delivery of remote help desk services during normal business hours.

This proposal includes provisions for accessing the AEC Help Desk Support Team and the team's corresponding "knowledge base". This "knowledge base" does not refer to a specific online system, but includes a culmination of the experience of each team member, and access to the systems and processes that the team uses to answer questions and solve problems.

The customer will be able to submit support requests to the help desk team using various methods. The Help Desk Team will respond to acknowledge the incident submission, and then begin analysis of the problem. The goal of each support effort is to deliver a solution to the problem, or an answer to the submitted question.

The customer will be asked to commit to a contract term at the onset of the contract. The monthly fee and the corresponding term will define a total contract fee. The customer will be required to pay each contract fee in advance.

If the customer requires hourly on site support within normal business hours (8:30 AM to 5:00 PM), then the vendor will honor the defined ***Contract Customer Hourly Rate***. If the on site support is required before 8:30 AM, or after 5:00 PM, or during a weekend or holiday, then the ***Contract Customer Non-Business Hours Rate*** will be used. Each rate has been defined on the first page of this proposal.

Any dispatch that is required outside of normal business hours (as defined by the AEC Group holiday schedule) will result in a minimum bill for four (4) support hours. Dispatches that occur during normal business hours will be billed from portal to portal, but will not include any hourly minimum.

Scope of Services:

Coverage Specifics

- AEC Group will only be responsible to provide problem resolution support for applications and system configurations that are supported by the **Citrix/EMC/Data Domain/AppSense/Cisco/Symantec/HP/APC/Microsoft** OEM during the term of this contract.
- AEC Group will work with the customer's other key partners to resolve problems in a heterogeneous environment. When problem symptoms include both **Citrix/EMC/Data Domain/AppSense/Cisco/Symantec/HP/APC/Microsoft** products and products from other customer support teams, customer vendors or OEM organizations, AEC Group will work to collaborate with the customer's key partners to provide a solution.
- When problem symptoms include products that are supported under contracts with other vendors, AEC Group will work to collaborate with the appropriate contract providers in order to develop an acceptable solution.
- AEC Group will maintain a thorough understanding of the customer's systems.
- AEC Group will provide (upon request) "technology direction" recommendations for the duration of the support initiative.
- AppSense support will be delivered as an escalation service.

Support Plan Exclusions

The following list defines scenarios and services that are not included in the proposed contract price. These items will be treated as “out of the scope” of this support contract and handled on a case-by-case basis via change orders or separate agreements.

- This contract does not include travel costs for on-site maintenance and support, other than what has been specifically defined in this contract. AEC Group will perform any required on-site maintenance and support, but the services and travel expenses for site visits will be billed additionally.
- Support for Network migrations from the Netware operating system (or any other operating system) to Microsoft platforms is not included in this initiative.
- Support efforts for complete LAN deployments (including, but not limited to, hardware upgrades, server platform transitions and lab deployments) are not included in this initiative.
- Any “application, component or service” upgrades **that are not directly integrated with the customer’s Citrix/EMC/Data Domain/AppSense/Cisco/Symantec/HP/APC/Microsoft Solution** are not covered as part of this support contract.
- The intent of this support contract is to provide contracted support services to specified customer office locations and “applications, components and services” **that are directly integrated with the customer’s Citrix/EMC/Data Domain/AppSense/Cisco/Symantec/HP/APC/Microsoft Solution**. Additions to these items are not covered under this contract without written approval from representatives at AEC Group.
- **This initiative does not include any development work on software products that are not licensed or supported by the Citrix/EMC/Data Domain/AppSense/Cisco/Symantec/HP/APC/Microsoft OEM. Customer may request consulting and/or development work from AEC Group as a separate, billable service.**
- This initiative does not include any material provision or shipping expenses. All material purchases and shipping expenses will be the responsibility of the customer.
- This support contract does not cover any third party support expenses. Often support is required from original equipment and/or software manufactures, many of which charge on a per incident basis. **An example of which would be the engagement of the Citrix/EMC/Data Domain/AppSense/Cisco/Symantec/HP/APC/Microsoft product development teams for the creation of private “hotfix” code that resolves a specific problem.** Customer support expenses from OEM organizations will be the responsibility of the customer and will be billed accordingly.
- This initiative does not include any wiring support. However, limited wire troubleshooting support will be provided.
- There are no provisions for disaster recovery in the scope of this contract. This contract is intended to be a support and maintenance contract only. Individual

failed components will be replaced within the scope of this contract, but complete site restorations would occur under a separate agreement.

Support Plan Execution Details

- Incident reports from a client's offices will be directed to a pre-determined "lead" or "team" within the client's organization. The client's lead will be responsible for engaging the AEC support team for problem resolution.
- An "incident" is defined as a single technical problem and the associated technical support required for resolution. A single support issue is a problem that cannot be broken down into subordinate problems. If a problem consists of subordinate problems, each subordinate problem shall be considered a separate incident.
- Incident submissions that are duplicates of other unresolved incidents will be considered addendums to the existing incident and will be dealt with at the same support level as the existing incident.
- Before incident resolution commences, the customer and AEC must agree on the content of the problem, and what will be considered an acceptable resolution.
- The client can use various problem-reporting methods to provide information to the AEC support team.

- Phone submission (412) 838-0100
- Fax submission (412) 838-0110
- E-Mail submission helpdesk@aecgroup.com

- During incident resolution, the AEC support team must be able to speak directly to the "customer" and attempt to develop a remote resolution (via the telephone) to the problem. (The "customer" is the end user that reported the problem or a representative acting on behalf of the end user). The customer must be willing to provide "hands on site" support while the initial remote problem resolution efforts are attempted. **The customer may be asked by AEC Group to perform determination activities, which may include gathering network traces, capturing error messages and/or collecting configuration information. Customer may also be requested to perform problem resolution steps that include changing product configurations, installing new versions of software or components, or modifying processes.** Customer agrees to cooperate with such requests.
- Help desk support for each reported incident would be utilized for a maximum of six (6) hours prior to an escalation. If the customer and AEC agree to escalate prior to the first six hours of support, then the on site support team, or the senior remote support team may be engaged. If the customer and AEC agree to escalate to the on site team prior to the first six hours of help desk support, then a field service representative will be dispatched.
- The customer can request on site support for incident resolution (via a dispatch) at any time.
- On site support that is scheduled at a mutually agreeable time between the customer and AEC will proceed at the appropriate rate and under the appropriate conditions for when the site support is to be delivered.
- On site support that is required immediately (per the customer's request) must be preceded by the "Immediate Prioritization" of the applicable incident.

- The escalation from the help desk team the on site support team or to a senior remote support representative will cause the initiation of hourly billing. Consequently, after a maximum of six (6) hours of help desk incident support, hourly billing will initiate.
- Any on site service that falls outside the scope of this contract will be considered billable. Consequently, a site service request must be completed and approved by the customer prior to the delivery of any non-contractual site service. Invoices for any non-contractual site service will be generated at the completion of the site service and the corresponding customer approval form
- All incurred expenses for non-contractual site service will be the responsibility of the customer.
- Scheduling for all on site service will be coordinated between the customer and AEC.
- Any on site work will be documented in detail and sent to the client as part of the Service-Call Completion Process.
- AEC will not be held responsible or penalized for late on site arrivals that are due to “unforeseen circumstances” (i.e. Natural Disasters, Weather, Traffic, Accidents, etc.).
- AEC would require documentation of any “rules for site engagement” prior to the initiation of any contract. Any dress codes, hours of operation, contact names, contact methods, or other site requirements for an office must be on file at the AEC facility prior to the engagement of support for the client.
- AEC will utilize a ticket tracking system to manage the service of supported components at the client’s sites. This system will be utilized to keep accurate and up to date records on all supported “applications, components and services”.
- The Client will be responsible for keeping all 3rd party warranties active, and for providing all pertinent warranty information to AEC.
- AEC will provide, upon request, detailed logs of support activity that was engaged and completed under this contract.
- If AEC on-site support is requested, the customer understands that all travel expenses will be billable to the customer.
- If there are weather-related interruptions, on-site response cannot be guaranteed.

Hourly Service Rate Details

Any hourly billable service related to this contract agreement will be delivered for the duration of the contract agreement at the defined rates (see page one) and with the listed conditions.

- The contract service level will be defined as stipulated above for the duration of the contract agreement.
- Support billing will be calculated using 15-minute intervals (after all minimum billing requirements have been met).
- Each 15-minute interval will be priced based on one-fourth ($\frac{1}{4}$) of the applicable hourly rate for the type of support being provided.
- The minimum time billed for hourly service against a normal priority incident will be one half ($\frac{1}{2}$) of an hour (two “intervals”).
- The minimum time billed for an immediate priority incident will be two (2) hours (eight “intervals”).
- The minimum time billed for dispatch services (either “on site” or to a “remote support location”) during normal business hours will be two (2) hours (eight “intervals”).
- The minimum time billed for dispatch services (either “on site” or to a “remote support location”) during non-business hours will be four (4) hours (sixteen “intervals”).
- All time associated with the resolution of an incident will be billed to the customer. Incident resolution time will include, but not be limited to, discovery support, technical support, management support, time tracking support, travel portal to portal (including any travel related delays), problem detail reporting, Q&A, research, conference calls, OEM engagement, warranty processing and technical consultation.
- Incident support will be billed at the rate that is applicable to the time when the support was delivered. Non-business hour support that continues into business hours will be billed at the non-business hours rate for the applicable non-business hours, and the normal business hours rate for the applicable business hours. Normal business hours support will stop at the conclusion of the business day unless the customer requests immediate prioritization for the incident. At the time that the immediate prioritization is requested, the incident will become an immediate priority and will be subject to all immediate priority terms and conditions.
- Billable support for incident resolution will be invoiced immediately upon the closure of the support ticket. The customer will be expected to pay all invoices in a timely fashion.

Deliverables

This contract agreement will include the following deliverables to the customer from AEC.

- The provision of help desk incident resolution support per the defined service levels.
- The provision of remote incident resolution support per the defined service levels and at the defined rates.
- The provision of on site incident resolution support, via dispatch services, per the defined service levels and at the defined rates.
- The provision, upon request, of detailed logs for any support activity that was engaged and completed under this contract.

Terms and Conditions

THESE TERMS AND CONDITIONS (COLLECTIVELY, THE “**TERMS**”) ARE INTENDED TO ACCOMPANY THE PROFESSIONAL SERVICES PROPOSAL(S), PRODUCT AND PROFESSIONAL SERVICES PROPOSAL(S), SOLUTION PROPOSAL(S), OR SCOPE OF WORK DOCUMENT(S) (EACH, A “**PROPOSAL**”) TO WHICH THEY ARE ATTACHED. THESE TERMS, TOGETHER WITH THE PROPOSAL AND ALL ATTACHMENTS, SUPPLEMENTS, AND EXHIBITS ATTACHED HERETO, ARE HEREIN REFERRED TO AS THE “**AGREEMENT**”. **BY SIGNING THE ACCOMPANYING PROPOSAL(S), CLIENT AGREES TO BE BOUND BY THESE TERMS.**

SERVICES AND DELIVERABLES

Defined terms used herein which are not otherwise defined shall have the meanings ascribed to such terms in the Proposal(s) to which these Terms are attached.

Changes. Either AEC or Client (each a “**Party**” and collectively, the “**Parties**”) may request changes to the Services and/or Deliverables. Changes must be requested in writing with sufficient detail to enable the other Party to assess the impact of the requested change on the cost, timing or any other aspect of the Services and/or Deliverables. Both Parties agree to consider and, if appropriate, agree to any such requested changes (as each party may decide in its sole discretion). Any agreed upon changes to the Services must be in writing, which writing must be executed by both Parties prior to implementation of such change. Until a change is agreed to in writing, such change shall be of no force or effect.

Acceptance. Client shall be deemed to have accepted the Services and Deliverables upon the **first to occur** of: (a) the passage of sixty (60) working days following the date on which AEC notifies Client in writing that the Services have been substantially completed in accordance with the Agreement without AEC’s receipt of notice of non-acceptance by Client; (b) use by Client of the materials and project deliverables or outputs delivered by AEC pursuant to the Agreement (each a “**Deliverable**”); or (c) such time for acceptance noted in the Proposal. If Client elects not to accept a Deliverable, Client must provide written notice to AEC, which must specify in reasonable detail the reasons that Client believes that the Deliverable fails to meet the requirements in all material respects described in this Agreement. Upon receipt of such notice and confirmation by AEC of the Deliverable’s non-conformance with the requirements of this Agreement, AEC will correct the Deliverable and upon such correction will re-submit the Deliverable to Client for review and acceptance. Client will be deemed to have accepted the corrected Deliverables upon the **first to occur** of (a) the passage of **thirty (30) calendar days** following the date on which AEC notifies Client in writing that the Deliverable has been corrected without AEC’s receipt of notice of non-acceptance by Client; (b) use by Client of the corrected Deliverables or outputs; or (c) the same amount of time shown for acceptance noted in the Proposal, adjusted for delivery of the corrected Deliverable. Acceptance by Client will not be unreasonably withheld.

Ownership. As between Client and AEC, Client shall own, upon payment of the applicable fees due AEC hereunder, all right, title and interest in all Deliverables, including all intellectual property rights therein (subject, however, to ownership rights of third-party license holders and lessors, as applicable). All Deliverables shall, to the extent possible, be considered a work made for hire for Client within the meaning of 17 U.S.C. § 101. Subject to Client’s payment of fees due to AEC hereunder, AEC hereby assigns and agrees to assign to Client any right, title, or interest AEC may have in and to the Deliverables. Notwithstanding the foregoing, Client acknowledges that certain of the Deliverables may consist of a license to use software developed by a third party, in which instance, AEC shall grant to Client a sublicense to use such software. Client further acknowledges that part of the Deliverables may contain certain generic and reusable templates, tools, processes, methodologies or materials developed by AEC which have been and/or will be used by AEC for other customers (collectively, the “**AEC Tools**”). AEC retains title to all such AEC Tools and grants to Client a nonexclusive, royalty-free, perpetual license to use, reproduce, modify and prepare derivative works

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of such AEC Tools as such AEC Tools are embedded in or otherwise relate to the Deliverables under this Agreement. Client acknowledges and agrees that AEC is in the business of providing consulting services for a wide variety of clients and Client understands that AEC will continue these activities. Accordingly, nothing in this Agreement shall preclude or limit AEC from providing consulting services and/or developing software or materials for itself or other clients, irrespective of the possible similarity of materials, which might be delivered to the Client. Moreover, notwithstanding anything else herein to the contrary, any and all ideas, concepts, know-how, techniques, inventions, discoveries and improvements developed during the term of this Agreement by AEC personnel, alone or in conjunction with Client personnel, may be used by AEC in any way it deems appropriate, including, without limitation, by or for its clients and/or customers, without an obligation to account to Client for such use.

Confidentiality. Client acknowledges and agrees that the Proposal(s), technical data, know-how, future or proposed products, financial performance or projections, customers, employees, contracts, strategic relationships, marketing plans, business plans, engineering, research, services, products, markets, performance, costs, business pricing policies, programs, developments, inventions, discoveries, trade secrets, techniques, processes, drawings, designs, source code, unlinked object modules, computer programming techniques, proprietary software, tools, methodologies, and all record-bearing media containing or disclosing any of the foregoing, and any and all other business information of or related to AEC is deemed by AEC to be confidential (“**Confidential Information**”). Client shall not, directly or indirectly, disclose, publish or communicate the Confidential Information, or any portion thereof, to any third party, without the prior written consent of AEC. Client shall use the same degree of care as it uses to protect its own Confidential Information (but, in no event, less than reasonable care) to protect Confidential Information received from AEC. Client shall take reasonable steps to advise its employees (including all subcontractors), consultants and advisors of the confidential nature of the Confidential Information, and of the prohibitions on copying or revealing such Confidential Information. Client agrees to keep AEC’s Confidential Information in a secure location. Client shall immediately notify AEC if Client becomes aware that AEC’s Confidential Information is used, distributed or communicated in a manner not authorized by these Terms. “Confidential Information” shall not include information which: (A) prior to or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any direct or indirect action or inaction of Client; (B) is in the possession of Client without an obligation or confidentiality at the time of disclosure by AEC; (C) is developed by Client without any use of, reference, to, or access to the Confidential Information.

In the event that Client shall be compelled by law or legal or regulatory process to disclose Confidential Information, Client shall, unless legally prohibited from doing so, provide AEC with prompt notice of the required disclosure in order to permit AEC the opportunity to seek a protective order or other appropriate relief.

In the event that Client and AEC have executed a separate *Mutual Nondisclosure Agreement* (“**NDA**”), or any subsequent agreement that expressly replaces the NDA and a material term or provision in such NDA or subsequent agreement is inconsistent with the Confidentiality provisions of these Terms, the term or provision in such NDA or subsequent agreement that is inconsistent with the Confidentiality provisions of these Terms shall control, and this Confidentiality section of these Terms shall be deemed to be modified to the smallest extent necessary to make the confidentiality provisions of the NDA or subsequent agreement and this Confidentiality section consistent, without modification of the remainder of this Confidentiality section or the remainder of these Terms.

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CLIENT RESPONSIBILITIES

Client agrees to provide, at no cost to AEC, reasonable workspace, administrative support, computer facilities and other support, which are necessary for AEC's performance of the Services. Client agrees to perform its tasks in a timely fashion and to provide the personnel agreed to by the Parties. Client personnel assigned to work on matters related to this engagement shall be qualified for the tasks for which they are assigned. Client is responsible for the overall management and control of the Services and the results to be achieved from using the Services and any Deliverable. Client acknowledges and agrees that AEC's performance is dependent on Client carrying out its responsibilities as set out in this Agreement. Should Client fail to perform any of its obligations under this Agreement, AEC shall not be responsible for any delay or other consequences due to such failure. For purposes of this Client Responsibilities paragraph only, to the extent the Proposal to which these Terms are attached conflict with the provisions hereof, the Proposal shall control.

FEES AND PAYMENT

Client shall pay AEC the fees due to AEC as set forth in the Proposal and in any supplement, revision, or ancillary documents related thereto. Unless the Proposal states otherwise, all such fees are exclusive of expenses, governmental charges, duties, applicable taxes, or similar additions or deductions of any kind. Any special expense arrangements shall be mutually agreed to and set out in the Proposal. Client shall be responsible for paying any and all such expenses, governmental charges, duties, applicable taxes (such as applicable sales taxes, duties or goods and services taxes), or similar additions or deductions for which it is legally liable arising from this Agreement at the rate in force at the date the liability arises, but excluding all taxes on AEC's net income. In the event by operation of law or otherwise, such taxes, duties, governmental charges or other deductions are required to be deducted from any amounts paid by Client to AEC hereunder, the amounts due hereunder shall be increased to such amounts as may be necessary to yield AEC the amount it would otherwise have received had such payments been made without any such taxes, duties, governmental charges or other deductions. AEC's invoices shall be issued as set out in the Proposal. All invoices submitted by AEC shall be paid by Client, without offset, in United States Dollars, thirty (30) days from the date of invoice. AEC reserves the right to charge Client a late charge equal to the lesser of 1.5% per month or any partial month, or the highest applicable rate allowed by law, on undisputed accounts that are overdue by more than thirty (30) days. If any proceedings shall be instituted by AEC to collect any monies due AEC hereunder, Client shall pay AEC's reasonable attorneys' fees and other costs of collection.

TERM AND TERMINATION

Term of Agreement. This Agreement will apply from the commencement date stated in the Proposal, if any, or where no commencement date is specified therein, from the last date of signature by a Party. If AEC commences performance of the Services prior to the Parties' execution of this Agreement, this Agreement shall nonetheless cover the performance of such Services. This Agreement will remain effective through the expiration date noted in the accompanying Proposal(s). Services and Deliverables will be governed by the applicable agreement(s) executed by the Parties after Client accepts the Proposal(s) or, if none, by the Proposal executed by Client and AEC. Where the terms of such agreement are silent, the terms of this Agreement shall control. The following sections of this Agreement shall survive the expiration or earlier termination of this Agreement: (A) Confidentiality; (B) Ownership; (C) Limitation of Liability and Indemnification; (D) Limited Warranties and Disclaimer of Warranties; and (E) such other provisions of this Agreement which by their nature are intended to survive.

Termination. Either Party may terminate this Agreement prior to the commencement of any Services or Deliverables upon thirty (30) days' prior written notice to the other Party; provided, however, that if Client shall have accepted the Proposal(s) but subsequently terminates the Agreement: (a) if the Proposal is for a flat fee engagement, the project shall automatically be converted into a "time and materials" project, and Client shall be liable for any and all fees and expenses (subject to the provision above entitled *Fees and Payment*) incurred by or on behalf of AEC through the effective date of termination, including but not limited to all hours logged against the engagement by AEC in reliance upon Client's execution of the Proposal at the labor

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rates in effect as of the date of the Proposal and for the cost of all materials installed and/or purchased or ordered by AEC on a nonrefundable or nonreturnable basis; Client shall also be responsible for all third-party restocking fees and other costs of termination incurred by AEC; provided, however, that the maximum amount for which Client shall be responsible shall be the flat fee quoted in the Proposal; and (b) in all other cases, Client shall be liable for any and all fees and expenses (subject to the provision above entitled *Fees and Payment*) incurred by or on behalf of AEC through the effective date of termination, including but not limited to all hours logged against the engagement by AEC in reliance upon Client's execution of the Proposal and for the cost of all materials installed and/or purchased or ordered by AEC on a nonrefundable or nonreturnable basis; Client shall also be responsible for all third-party restocking fees and other costs of termination incurred by AEC. Subject to the foregoing and upon Client's payment of all fees and expenses due hereunder, AEC shall deliver all work in progress (including Deliverables) completed up to the date of termination. A termination of this Agreement shall not affect any other agreement between the Parties, including but not limited to purchase agreements, maintenance agreements, or any other agreement executed by the Parties, whether related to the same or similar Services and/or Deliverables as outlined in the Proposal(s) or otherwise, and whether executed prior to or subsequent to this Agreement. Notwithstanding anything to the contrary in this Agreement, no termination of this Agreement by Client due to an alleged default of AEC shall be effective unless, within fifteen (15) days after receipt by AEC of Client's written notice specifying such default, AEC shall have failed to initiate and pursue with due diligence the correction of such specified default.

LIMITED WARRANTIES AND DISCLAIMER OF WARRANTIES

Qualified Personnel. AEC represents and warrants that the Services will be performed and supervised by qualified personnel. In the event Client identifies any AEC employee that Client believes is not qualified to perform the Services, Client may request that such employee be replaced on the engagement.

Intellectual Property Infringement. AEC represents and warrants that the Deliverables provided hereunder will not infringe upon the proprietary rights of any third party. AEC shall, at its own expense, defend any suit or proceeding brought against Client and/or its agents or employees based on any allegation that the deliverables furnished or supplied by AEC hereunder, or any part thereof, constitutes an infringement of any claim of any patent, copyright, trade secret or other third party intellectual property right, and pay all damages and costs arising out of any such claim, provided that Client has given AEC prompt written notice of such claim, all necessary cooperation and assistance in the defense thereof, and the right to control all aspects of the defense thereof, including the right to settle or otherwise compromise the claim on behalf of Client. If any of the Deliverables becomes, or in the opinion of AEC is likely to become, the subject of a trade secret, patent or copyright infringement claim, AEC may, at its option and its own expense: (A) procure for Client the right to continue using said deliverable; (B) modify or replace it with a non-infringing deliverable; (C) with Client's assistance, modify the Deliverable so that it becomes non-infringing; or (D) remove the infringing Deliverable and refund to Client the portion of the fees allocable to such infringing Deliverable. AEC shall have no obligation hereunder and this provision shall not apply to: (i) any other deliverable, including Deliverables which have been modified or combined with other deliverables not provided by AEC; (ii) any Deliverable supplied according to a design, other than an AEC design, required by Client; (iii) any data generated by the Deliverables; (iv) use of the Deliverables in violation of this Agreement; or (v) any claim settled or otherwise compromised without the prior written consent of AEC. If Client fails to permit AEC to take any of the above-mentioned actions, AEC's obligations under this section shall immediately terminate and Client shall have no recourse against AEC for breach of any of the provisions contained in this section. To the extent that any Deliverable, or any part thereof, is modified by Client or combined by Client with equipment or processes not furnished pursuant to this Agreement (except to the extent that AEC is a contributory infringer), or said Deliverable or any part thereof is used by Client to perform a process not furnished hereunder by AEC, and by reason of said modification, combination, or performance an action is brought against AEC, Client shall defend and indemnify AEC in the same manner and to the same extent that AEC would be obligated to indemnify Client pursuant to this section.

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Manufacturers' Warranties. Deliverables supplied by AEC but manufactured by others are warranted only to the extent of such manufacturer's warranty, and the remedies, if any, provided by such manufacturer related thereto shall be Client's sole and exclusive remedies for such Deliverables.

DISCLAIMER OF WARRANTIES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, AEC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION, OR OTHERWISE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES STATED HEREIN CONSTITUTE CLIENT'S EXCLUSIVE REMEDIES AND AEC'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY. AEC DOES NOT WARRANT THAT THE SERVICES OR DELIVERABLES WILL OPERATE IN COMBINATIONS WHICH MAY BE SELECTED FOR USE BY CLIENT AND NOT APPROVED IN ADVANCE BY AEC OR THAT THE SERVICES OR DELIVERABLES WILL BE COMPATIBLE WITH CLIENT'S OTHER SYSTEMS OR SOFTWARE, NOR DOES AEC WARRANT AGAINST ANY DAMAGE, COMPATIBILITY ISSUE, OR OTHER LOSS RESULTING FROM OR RELATED TO CLIENT'S INSTALLATION OF ADDITIONAL SYSTEMS OR SOFTWARE OR MODIFICATION OF ANY AEC-SUPPLIED SYSTEM OR SOFTWARE OR OTHER MATTER OUTSIDE THE CONTROL OF AEC.

Indemnification. A Party shall indemnify, defend and hold harmless the other Party (including such Party's affiliates and their respective employees, directors, officers, and agents), from and against any and all third party claims, actions, damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) relating to bodily injury or death of any person, or damage to real and/or tangible personal property, directly caused by the negligence or willful misconduct of the indemnifying Party, its personnel or agents in the performance of any obligation of such Party under this Agreement. The other Party shall promptly notify the indemnifying Party in writing of any claim for which indemnification is sought. Upon receipt of such notice, the indemnifying Party shall, at the indemnifying Party's own expense, diligently defend the other Party against all such claims, actions, damages, liabilities, costs and expenses. If the indemnifying Party fails or refuses to defend the other Party, the other Party may defend itself at the indemnifying Party's expense and the indemnifying Party shall assist in such defense at its own expense. A Party may assist in any proceeding being defended against by the indemnifying Party at its own expense.

Limitation of Liability. Excluding: (A) breaches of the confidentiality obligations of Client under these Terms or the NDA, as applicable; and (B) the indemnification obligations of the Parties hereunder, in no event shall either Party be liable to the other Party, whether a claim be in tort, contract or otherwise: (i) for any amount in excess of the cumulative total fees and costs paid (or properly due and owing) by Client to AEC under this Agreement; or (ii) for any lost profits or revenues, loss or corruption of data, equipment or network downtime, toll fraud, or for any indirect, special, exemplary, incidental, punitive and/or consequential damages arising out of or related to this Agreement, including a Party's breach or performance hereof, or the performance and/or non-performance of the Services and/or Deliverables, in each instance even if the Party has been advised of the possibility thereof. All claims against AEC arising out of or relating to this Agreement or the breach or performance hereof shall expire unless brought within one (1) year from the time of the first discovery of the event leading to the claim.

INSURANCE

Unless otherwise specified by Client prior to AEC's commencement of work under this Agreement, AEC shall obtain, and shall be required to obtain only, prior to its commencement of work under this Agreement, the insurance coverages described below. AEC agrees to indemnify, defend and hold Client harmless from and against any and all claims, actions, damages, liabilities, costs and expenses arising out of its failure to comply with the requirements of this Section. AEC shall, on demand, deliver to Client a certificate of insurance evidencing the following coverages:

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- Workers' Compensation Insurance in compliance with the laws of the state where the work is to be performed with a liability limit of not less than \$1,000,000.
- Comprehensive General Liability Insurance of not less than \$1,000,000 per occurrence with respect to bodily injury and property damage.
- Comprehensive Automotive Liability Insurance, including property damage covering all owned or rented equipment used in connection with AEC's performance of the work hereunder in amounts not less than \$1,000,000 per person and \$2,000,000 per occurrence for bodily injury including death resulting at any time therefore, and \$1,000,000 per occurrence for property damage.

All insurance shall be non-cancelable during the term of this Agreement, and the certificate of insurance shall contain a provision waiving any rights of subrogation against Client based on any loss or liability insured against under such coverage.

GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL

This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to its conflicts of law principals or the Uniform Computer Information Transactions Act (UCITA). Any legal action or proceeding with respect to this Agreement shall be brought solely in the state or federal courts located in Allegheny County, Pennsylvania, and by execution and delivery of this Agreement, each Party hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of such court, and waives any claim that any action or proceeding arising out of or relating to this Agreement and commenced in the aforementioned courts lacks proper venue. Notwithstanding the foregoing, in the event that Client is sued or subjected to any other action or proceedings in any other state or forum, Client shall have the right to join AEC and prosecute its claims, or any one or more of them, against AEC in such other suit, action or proceeding. EACH PARTY HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN THE RESOLUTION OF ANY DISPUTE OR CLAIM, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THIS AGREEMENT.

ASSIGNMENT

This Agreement shall be binding upon and for the benefit of the Parties, their successors and assigns, provided that this Agreement may not be assigned without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the Parties with respect to the subject matter thereof and will supersede all previous and contemporaneous communications, representations or understandings, either oral or written, between the Parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between the Parties. Terms and conditions contained in any purchase order or other ordering document submitted by Client shall not be deemed to modify or supersede the terms and conditions of this Agreement.

MISCELLANEOUS

Each Party represents and warrants to the other Party that: (A) it has the corporate power and authority to execute and deliver this Agreement; and (B) the individual executing this Agreement on behalf of the Party is the duly authorized representative of the Party with full authority to execute this Agreement (including all exhibits and schedules to this Agreement, and all agreements contemplated in this Agreement) on such Party's behalf. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be eliminated to the extent that it is illegal, invalid or unenforceable without invalidating the remainder of such provision, or the remaining provisions of this Agreement. Any modifications of, or changes to, this Agreement shall be in writing and signed by both Parties. Unless otherwise provided in this Agreement, all notices required under this Agreement shall be in writing and shall be effective for all purposes upon receipt, including

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without limitation, in the case of: (A) personal delivery; (B) delivery by courier; (C) delivery by United States first class certified mail, postage prepaid; or (D) transmittal by facsimile or other electronic means, and shall be sent to the respective Party at the address set forth on the Proposal to which these Terms are attached. Any Party may change its address by written notice to the other Party in the manner set forth above. Receipt of communications by United States first class certified mail will be sufficiently evidenced by return receipt; receipt of communications transmitted by facsimile or other electronic means shall be deemed to have been received upon transmission, provided that such notice is also sent by overnight express courier for delivery on the following day; and receipt of communications by courier will be sufficiently evidenced by a courier receipt. Unless the other Party expressly authorizes in writing in advance, neither Party shall employ or procure a third party to employ any of the other Party's Personnel during their participation in the Services or during the twelve (12) months immediately following the conclusion of such Services. The foregoing shall not apply to Personnel who independently respond to indirect general solicitations for employment (such as general newspaper advertisements, employment agency referrals and Internet postings) not directly targeting such Personnel. For purposes of this Section, "**Personnel**" includes any individual or company a Party employs or has employed as a partner, employee or independent contractor and with which a Party comes into direct contact in the course of the Services (but excluding any such Personnel which a Party came into direct contact with respect to a matter outside of the Services hereunder and preceding the contact hereunder). Neither Party shall be liable to the other Party for any loss, damage, detention or delay, nor be deemed to be in default or breach of this Agreement, as a result of a Party's delay or failure to perform hereunder due to causes beyond such Party's reasonable control. In the event of delay due to any such cause, the date of delivery or performance shall be extended by a period equal to the delay plus a reasonable time to resume performance. The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. AEC, in furnishing services to Client, is an independent contractor of Client. AEC does not undertake to perform any regulatory or contractual obligation of Client or to assume any responsibility for Client's business or operations. Failure to enforce any provisions of this Agreement shall not constitute a waiver of any term hereof. No delay or omission by either Party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either Party of any of the covenants to be performed by the other Party, or any breach thereof, shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the Party against whom such waiver or discharge is sought to be enforced. Upon prior written consent by Client, AEC may make reference to having undertaken this project for Client, including a brief description of its objectives, in AEC newsletters and publications and discussions with third parties regarding work opportunities, subject also to AEC and Client mutually agreeing to wording for AEC to use in such future references. This Agreement and any amendments to this Agreement may be executed in counterparts, each of which shall be fully effective and all of which together shall constitute one and the same instrument. The Parties agree to accept signatures transmitted by facsimile or other electronic means as if they were original signatures, and all such signatures shall be fully binding upon the Parties.

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