

## **Maintenance and Support Services Agreement Change Order**

### **I. Electronic Payment System.**

Collin County desires to procure an Electronic Payment System (EPS), which will be provided by Sonant, a Tyler business partner. This Change Order and its attachments include license and maintenance agreements to Sonant EPS software, the Tyler Sonant Connector, and services to implement the Electronic Payment System. The scope of the EPS and Collin County modifications is defined in Exhibit A.

In connection therewith, the County agrees to enter into the following agreements with Sonant Corporation, which agreement shall be the exclusive governing documents for the license, maintenance and support of the Electronic Payment System:

1. Sonant Corporation Software License Agreement, Attachment A.
2. Sonant Corporation Product Maintenance and Support Agreement, Attachment B.

### **II. License.**

Collin County is licensing:

1. Sonant's Electronic Payments Base System – production environment. The license will be for 1 department and 5 merchant accounts, utilizing a Microsoft SQL Express database. Client specific modifications to the connector will be covered under Section III Services, below. The license fee for this component is \$33,000.
2. Sonant's Electronic Payments Base System – test environment. The license will be for 1 department and 1 merchant account, utilizing a Microsoft SQL Express database. The license fee for this component is \$7,350.
3. Tyler's Sonant Connector. Tyler's Sonant Connector is a supported interface between Odyssey Case Manager and Sonant EPS. The Connector is a two-way, near-real-time interface providing and updating payment information between the two applications. Client specific modifications to the connector and Odyssey Case Manager will be covered under Section III Services, below. The license fee for this component is \$26,000.

### **III. Maintenance.**

First year maintenance for Sonant's EPS production version is included in the license fee. The maintenance for the second year will be \$12,500. This maintenance will be billed directly from Sonant.

First year maintenance for Sonant's EPS test environment is included in the license fee. The maintenance for the second year will be \$3,150. This maintenance will be billed directly from Sonant.

Maintenance for Tyler's Sonant Connector will be \$4,160 annually. This will be added to the regular annual maintenance invoice for Case Manager. This increase is effective May, 2009 and will be on the invoice generated in April, 2009.

### **IV. Services.**

As part of this Change Order, the following services are included:

1. Tyler Professional Services in support of:
  - a. Odyssey Case Manager and Connector software customization for Collin County Phase 1, described in Exhibit A, estimated at 200 hours.
  - b. Configuration, consulting and testing in support of the implementation of the EPS, estimated at 60 hours.

2. Sonant Professional Services to support:
  - a. Implementation of an EPS Test System.
  - b. Implementation of an EPS Production System.
  - c. EPS software customization for Collin County Phase 1, described in Exhibit A.
3. Sonant Professional Services are fixed price for the scope in this Change Order. Changes to scope may increase the cost.

Exhibit A contains the general overview of the EPS functionality and the Collin County Phase 1 Scope. Exhibit B contains further information on the services provided.

**V. Payment Terms.**

Exhibit B contains the summary of the project cost. The payment terms are outlined below.

Item	Milestone	Amount
Fixed Price Components – 50%	Change Order Signing	\$57,900
Fixed Price Components – 50%	Operational Use of EPS	\$57,900
Tyler Time & Materials Services	Monthly as utilized	\$38,740

Maintenance terms are outlined in section III.

Execution of this Change Order below constitutes a representation by each party that its respective Project Managers have the authority to enter into this Change Order on behalf of such party and that this Change Order shall be binding thereon. To the extent any of the provisions of this Change Order conflict with any provision of the Agreement or any prior executed Change Order, the provisions of this Change Order shall control.

**Approved:**

Collin County

By: Franklin Ybarbo  
Name: Franklin Ybarbo  
Title: Purchasing Agent  
Date: 2/23/09  
2009-092-02-02

Tyler Technologies, Inc.

By: Kevin T. Watson  
Name: Kevin T. Watson  
Title: RPM  
Date: 2-19-09

## **Exhibit A**

# **Collin County Court Budgetary Proposal For Sonant ClientCall Web Electronic Payment System**

## **Electronic Payment System (EPS)**

### **1. Introduction to EPS**

Sonant's Electronic Payment System (EPS) is a software product that processes and manages electronic payments from a variety of sources. Using its flexible configuration and licensing options, EPS can be applied in a wide range of applications. It can handle high-volume central payment processing for an enterprise, yet be cost-effective in low-volume, single-application configurations.

EPS has a multi-tier client-server architecture based on a SQL relational database. The EPS Server supports a variety of payment application clients including:

- Web payment applications using the EPS Payment Gateway
- Custom web payment applications using the EPS COM object
- Sonant's ClientCall Interactive Voice Response system
- Windows PC payment applications using the EPS COM object

EPS is administered using EPS Manager, a web application. This extends access of EPS Manager to the Internet, adds support for non-Windows clients, and simplifies technical support for EPS Manager Users.

EPS is licensed in two versions. The base version processes transactions for a single accounting department. The Enterprise EPS version supports multiple account departments and includes advanced security and reporting features.

### **2. EPS Architecture**

EPS is based on a multi-tier client-server architecture consisting of:

- Payment application
- One or more EPS Clients
- EPS Server
- EPS Database

Payment applications are typically used by the general public to make a payment for a set of items sometimes referred to as a shopping cart. The cart can contain items such as merchandise, tax payments, or traffic citations. The payment application can take many forms including websites, IVR applications, or desktop Windows applications. Although the payment application is an important part of the EPS architecture, it is not part of EPS licensed software because it is custom for each payment application. Sonant or other software developers may implement payment applications.

#### **EPS Clients**

The payment application uses an EPS client to initiate a payment transaction. Clients are responsible for securely sending payment data to the EPS Server and returning payment results to the payment application. Payment information is communicated to the EPS Server using the HTTPS protocol to protect confidential account information and to simplify firewall configuration. Generally speaking, the clients provide an interface to the EPS Server and perform as little data processing as possible.

To enable a wide variety of payment applications and support multiple application platforms, EPS has multiple client types.

## **EPS Server**

The EPS Server is the central EPS component. It receives requests for its clients, processes them, and returns results. It performs certain functions, such as batch settlements, autonomously.

The Server communicates with financial processors as required to process each transaction. EPS Server has been certified by variety of credit card and ACH processors.

## **EPS Database**

The EPS Database is used by the EPS Server for all persistent storage. This includes payment transactions, payment settlements, user accounts, and EPS configuration. The database is Microsoft SQL Express for small to medium sized payment systems and is normally hosted on the same server platform as EPS Server. For larger systems, the database may need to be Microsoft SQL, and can be configured on a separate dedicated platform. EPS is designed for database portability. The server uses no database-specific SQL or other features.

## **EPS Custom Libraries**

One of the strengths of EPS is its ability to integrate with your applications and financial systems. EPS uses custom department libraries to achieve this integration. Each library is a Windows DLL, a library of custom software that is easily installed on the EPS Server platform. There is one library per department allowing a variety of independent integrations.

The EPS Server calls the custom library at key points in the processing of each transaction and settlement, allowing the library to perform integration tasks as required. Integrations can be performed on a batch basis, as commonly required for mainframe applications, or in real-time RDBMS applications.

## **3. EPS Security**

EPS originates high-value financial transactions and processes confidential account information that can be a target for a wide range of illegal activity ranging from fraud to identity theft. Its connections to the Internet can also provide a source of security threats.

EPS is designed to operate securely in this environment. It meets current financial institution security recommendations.

EPS incorporates the following security features:

- All communications between platforms use HTTPS for data security
- EPS logs contain no sensitive financial information
- Financial information is encrypted using the RC2 block cipher prior to storage in the database. Session keys are stored in encrypted form using PKI encryption. PKI keys are stored in the operating system key containers and removed for backup purposes.
- EPS Manager controls user access by means of permissions issued at login. User information is encrypted in the database.
- EPS Manager maintains an audit trail to monitor user actions

## Collin County Court Customized Phase 1 Description

The proposed enhancement to the Collin County Odyssey web application for Collin County will allow the public to make credit card payments on traffic citations on a 7 x 24 basis. For Collin County the Tyler Public Access' Record of Actions page will be modified to include a "Make Payment" button that will transfer control, with the selected case number, to web payment pages supplied by Sonant. These pages will provide the following functions:

- Using a modified version of the Odyssey web service, retrieve the record(s) for the received case number
- Perform the special eligibility logic described below
- For citations that are eligible for payment, collect the credit card information
- Submit an Authorization Request to the TSYS credit card processing network
- Display a Receipt Page for transactions that are authorized
- Display a message if the transaction is not authorized.

The following Phase 1 special eligibility logic will be implemented.

- Will require the payer/defendant to enter their Plea when making an online payment. The plea will be populated to the Disposition tab in Odyssey. Only allow the payer/defendant the choice of "Nolo" (or "No Contest") or "Guilty." (Taking a plea of "Not Guilty" requires special handling and is outside the scope of the project.)
  - Alternate Approach –Simply default the Plea to "Nolo" or "No Contest" and do not present any options to the payer on the Public Access website.
- Defendant DOB must be equal to or greater than 21 years of age to allow payment. If DOB is missing in Odyssey, do not allow the payment.
- If current date is greater than the "Judgment" (Criminal Disposition) date on the case in Odyssey, do not allow payment.
  - Alternate Approach - Allow the payment and add the "Time Payment" fee of \$25 prior to processing the credit card transaction if this fee has not already been assessed on the case.
- Do not allow payments on NTTA cases (Failure to Pay Toll). These cases will be filed in Odyssey as a separate and unique case type.
- If payment is being made on a "Hot Check" case in Odyssey Case Manager, post a warning page that alerts the payer that if they pay restitution to the merchant and provide proof to the court that the fine would likely be reduced from the maximum currently assessed. Payer can bypass this warning page and pay the full amount of fine and court costs. These cases will be filed into Odyssey as a separate and unique case type.
- If court personnel add a special flag (Case Flag) to a case, do not allow payments on this case. Make this configurable by Case Flag.

Cases that satisfy the eligibility criteria will be presented with the amount of the payment and given the option of making a payment. The Payment page will collect the following credit card information:

- Card Holders Name
- Address
- City
- State
- Zip
- Card Number
- Expiration Date
- Card Verification Code
- Expiration Date.

These inputs will be subjected to edit checks and when successfully the payer will be allowed to submit the payment request (transaction authorization request) to the credit card processor.

If authorized, the payer will be presented with a receipt page summarizing the transaction.

**Exhibit B**

**Summary of Charges and Additional Services**

<i>Description</i>	<i>Amount</i>	<i>Hours</i>	<i>Rate</i>
<b>Sonant Electronic Payments System (EPS)</b>			
Software License	\$33,000		
<b>Sonant Professional Services</b>			
Standard EPS Traffic Court Application	\$12,000		
Customization for Collin Phase 1	\$27,000		
On-site System Installation, Testing, Training and Cutover	\$6,000		
<b>Sonant Services Subtotal</b>	<b>\$45,000</b>		
<b>Sonant EPS Test System</b>			
EPS Base Test System Software License	\$7,350		
EPS Traffic Court Test Application	\$3,000		
On-site Test System Installation	\$1,450		
<b>Sonant Services Subtotal</b>	<b>\$11,800</b>		
<b>Tyler Odyssey Connector</b>			
Software License	\$26,000		
<b>Total Fixed Price Components</b>	<b>\$115,800</b>		
<b>Tyler Professional Services (T&amp;M Estimate)</b>			
Odyssey Customization for Collin Phase 1	\$29,800	200	\$149
Configuration, Consulting and Testing	\$8,940	60	\$149
<b>Tyler Services Subtotal</b>	<b>\$38,740</b>		
<b>Total – Development, Test and Production Environments</b>	<b>\$154,540</b>		
<b>Annual Maintenance</b>			
<b>Sonant Maintenance</b>			
First year included	\$0		
Production Future Years	\$12,500		
Test Future Years	\$3,150		
<b>Tyler Maintenance</b>			
Each year	\$4,160		

# P081215-01 Budgetary Detail Pricing - Sonant

Qty	Part #	Description	Unit Cost	Total
		<b>Software Licenses</b>		
1	CC4000-EPSL	Electronic Payment Base System software license for 1 department and 5 merchant account and with Microsoft SQL Express database	\$33,000	\$33,000
		<b>Software License Subtotal</b>		<b>\$33,000</b>
		<b>Professional Services</b>		
1	CC4000-ASC	Standard EPS Traffic Court Application including Odyssey interface, project management, configuration, documentation, and delivery	\$12,000	\$12,000
1	CC4000-ASD	Customization of Standard EPS Application for Collin County Court Phase 1, including project management, functional specifications, software development and documentation.	\$27,000	\$27,000
1	CC4000-ITC	On-site System Installation, Testing, Training and Cutover Support, including travel expenses	\$6,000	\$6,000
		<b>Services Subtotal</b>		<b>\$45,000</b>
		<b>System Total</b>		<b>\$78,000</b>
		<b>EPS Test System Software</b>		
1	CC4000-EPSLT	Electronic Payment Base Test System software license for 1 department and 1 merchant account and with Microsoft SQL Express database	\$7,350	\$7,350
1	CC4000-ASC	EPS Traffic Court Test Application including Odyssey interface, project management, configuration, documentation, and delivery	\$3,000	\$3,000
1	CC4000-ITC	On-site Test System Installation and Testing, including travel expenses	\$1,450	\$1,450
		<b>Test System Total</b>		<b>\$11,800</b>
		<b>Optional Hardware</b>		
1	CC4071-PL01	ClientCall 4071 Rack Mount Server Platform including 3u chassis, RAID hot-swap hard disk drive array, and redundant power supplies	\$7,060	\$7,060
		<b>Optional Software</b>		
1	CC4000-EPSL1	Each Additional Merchant Account	\$3,000	\$3,000

# Sonant Corporation Payment Processing Software License Agreement

This is a license agreement ("License") and not an agreement for sale. Sonant Corporation. (Hereinafter referred to as "Sonant") owns, or has licensed from the owner, copyrights in the Software and provides the Software under the licensing terms as provided below. The term Software means the logical instructions to which this License refers and all such human or machine readable or translatable versions whether they be stored on physical or electronic media. The term Software is also meant to include such ancillary materials, any user instructions, design specifications or any other reference documentation supplied with the licensed Software. You assume responsibility for the selection of the Software to achieve your intended results, and use and results obtained from the Software.

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**4. LIMITATIONS OF LIABILITY** SONANT'S CUMULATIVE LIABILITY TO YOU OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS LICENSE SHALL NOT EXCEED THE VALUE OF ANY CONTRACT UNDER WHICH THIS SOFTWARE IS LICENSED. IN NO EVENT WILL SONANT BE LIABLE TO YOU, WHETHER IN CONTRACT OR IN TORT, FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH SOFTWARE, EVEN IF SONANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR WILL SONANT BE LIABLE FOR ANY CLAIM BY ANY OTHER PARTY.

**5. ARBITRATION** Any controversy or claim arising out of or relating to this License or the breach thereof shall be settled by arbitration in San Diego County, CA, in accordance with the Commercial Arbitration Rules of the American Arbitration Assn., and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**6. GENERAL** This License will be governed by the laws of the State of Texas. Should you have any questions concerning this License, you may contact Sonant by writing to Sonant Corporation, Contracts Dept., 6215 Ferris Square, Suite 220, San Diego, CA 92121.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS LICENSE, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE LICENSE AGREEMENT BETWEEN US WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS LICENSE AGREEMENT.

## AGREED AND ACCEPTED BY THE PARTIES HERETO:


Sonant Corporation

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

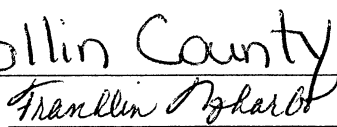
  
\_\_\_\_\_  
CHARLES W. SMITH  
\_\_\_\_\_  
PRESIDENT / CEO  
\_\_\_\_\_  
2/18/09  
\_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

  
\_\_\_\_\_  
Franklin Ybarbo  
\_\_\_\_\_  
Purchasing Agent  
\_\_\_\_\_  
2/20/09  
\_\_\_\_\_



# Sonant Corporation

## PRODUCT MAINTENANCE AND SUPPORT AGREEMENT

### STANDARD SYSTEM SERVICE

Customer Name: Collin County	Contract No.
Address:	Start Date:
City/State/Zip:	End Date:
Contact/Telephone:	
Authorized Customer Technical Contacts:	
1. _____	
2. _____	
3. _____	

This Product Maintenance and Support Agreement ("Agreement") will confirm the terms and conditions under which Sonant Corporation ("Sonant") will provide software and equipment maintenance and support services (collectively referred to as "Services") to the above stated party ("Customer") for the software and equipment identified on Exhibit A attached hereto (the "Equipment").

#### I. TERM AND TERMINATION:

The initial Term of this Agreement is for one (1) year. This Agreement shall commence on the "Start Date" shown above and shall remain in effect through the End Date shown above. This Agreement may be extended for additional one (1) year periods by mutual written agreement of the parties.

After the first year of Service, this Agreement may be terminated either (i) by Customer upon thirty (30) days' written notice to Sonant, (ii) by Sonant upon sixty days' written notice to Customer, or (iii) by either party upon a default of the other party, such default remaining uncured for thirty (30) days from the date of written notice from the non-defaulting party to the other specifying such default, or (iv) upon the bankruptcy or insolvency of Sonant.

#### II. PAYMENT:

As consideration for the Services, Customer shall pay Sonant an annual fee of \$\_\_\_\_\_ on or before the Start Date hereof and on the anniversary date for each subsequent renewal term. The payment terms for all other payments hereunder shall be Net 30 days from date of invoice.

**III. AVAILABILITY OF SERVICES:**

The Services to be provided by Sonant to Customer under this Agreement are available as follows:

Technical support hotline: 5:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, excluding Sonant standard holidays as published annually.

Note: Extended coverage, outside the above stated availability period, is not provided under this Agreement. Between the hours of 5:00 a.m. and 8:00 a.m. calls to the technical support hotline will be routed to a special voice mailbox that will immediately activate the duty beeper. The duty specialist will then retrieve the mailbox messages and respond accordingly.

Response Time: Sonant will make best efforts to acknowledge or reply to all requests for Services within 30 minutes of each request by Customer. Such response shall be provided during the time the technical support hotline is staffed.

Initiation of Services: All Services requested by Customer are to be requested through Sonant's technical support hotline: **1-800-364-5171**. Press "3" at the prompt in the greeting message to be connected with Customer Support. The technical support representative will log the call into the Sonant technical support system, and gather additional information about the reported problem.

On-site Services: On-site software support or maintenance Services shall be provided by Sonant under this Standard System Service Agreement only in the event that remote diagnostic efforts cannot resolve the designated problem.

**IV. MAINTENANCE AND SUPPORT SERVICES:**

During the Term hereof, Sonant will (i) maintain the Equipment identified on Exhibit A, attached hereto and made a part hereof by this reference, in good working order and will make all necessary repairs and adjustments, (ii) cause the software identified on Exhibit A hereto (the "Software") to operate according to the published specifications and without error and (iii) make available one copy of any updated release of the Software, or part thereof, to Customer without charge, which Customer may substitute for a prior release. In addition, Sonant will provide published bulletins describing new releases, maintenance releases, temporary problem resolutions and circumventions, support level changes and other information with respect to the Software, which updated releases Customer may obtain at no additional cost, except for Sonant's then-applicable mailing and media charges.

During the initial call from the Customer, Sonant will gather information and attempt to isolate a reported problem to a hardware or software failure. For hardware failures, it will be isolated to a Field Replaceable Unit (FRU). Any failed hardware will be replaced by Sonant in advance of receiving the Customer's defective hardware. Subject to availability of hardware and diagnosis of the problem, calls received by 2:00 p.m. Pacific Standard Time will have hardware shipped the same day by overnight priority service (for arrival the next morning). For calls received after 2:00 p.m., the hardware replacement will be shipped the next business day.

The Customer will be provided with a Return Material Authorization (RMA) number when replacement of the Customer's hardware is necessary. The Customer agrees to return, at their expense, the replaced hardware within thirty (30) calendar days in order to avoid being invoiced at full purchase price for the FRU. The Customer agrees to pay a restocking fee of 15% of the full purchase price if FRU is returned after the 30 day period. If Customer has paid full purchase price, Sonant will issue a credit of 85% of the purchase price upon receipt of FRU. Customer may

contact Sonant after the FRU arrives for technical assistance and/or verify resolution of the reported problem. Sonant will supply, at no additional cost, all replacement parts necessary to ensure proper functioning of the hardware. Replacements will be new or reconditioned to meet new specifications. All replacement parts will become the property of the Customer while all replaced parts will become the property of Sonant.

In the event that the shipped replacement parts do not resolve the reported failure within two (2) working days from the initial time of fault report, a specialist will be dispatched with additional spare hardware to the Customer site on the next working day.

For Software problems, Sonant will determine if the reported problem is a Software Defect, defined as Software that does not conform to current Sonant specifications or product documentation. Software Defects will be corrected using a variety of methods including but not limited to an operational "work-around", software "patch", or upgrade to a newer version of the Software. The Software Defect correction method will be determined by Sonant. All Software Defects will be written up by the Sonant representative and submitted to Sonant engineering for correction in the next regularly scheduled Software release. For reported problems that are determined not be a Software Defect, such as a need for a new or modified feature of the Software, Sonant will make a reasonable effort to provide an operational work-around to the Customer. Changes to the Software that are required due to changes in other devices not supplied by Sonant and connected to the Equipment are not Software Defects and are not covered under this Agreement. Reported Software problems that are resolved at the Customer's site and are not due to Sonant Software Defects will be billed to the Customer at Sonant's published Time and Material (T&M) rates plus travel expenses which include an 10% burden (abated G&A rate). As an example, problems in the Software that arise due to changes made by the Customer to the Software or changes in the Customer's host computer or telephone system would normally be billable.

## **V. SPECIAL TERMS AND LIMITATIONS:**

The following special terms and limitations for the maintenance and support are agreed upon by the parties:

1. The eligibility of the Customer's system(s) for this Standard System Service will be established by Sonant. Among other things, in order to be eligible for this Standard System Service the Customer's system(s) must be equipped with a remote secure VPN internet access or a diagnostic modem.
2. Sonant reserves the right to define the addition of a major function to the Software as a new product option and not as an update.
3. Sonant reserves the right to adjust its fee associated with this Product Maintenance and Support Agreement for any Renewal Term, provided it provides written notice to the Customer of the fee change a minimum of 30 days prior to the start of the Renewal Term.
4. Sonant will have no obligation to correct defects or difficulties due to Customer modifying the Equipment, changing its system or computer environment, using the Software on equipment not approved by Sonant, or other causes external to the Equipment. Sonant shall have no obligation to correct defects or difficulties due to an environment out of specification (i.e. temperature, humidity, etc.) or utility power transient.
5. In those situations where Sonant has not dispatched a representative to the Customer site but has furnished replacement hardware or software, the Customer agrees to install and remove, at its expense, those hardware or software replacements provided by Sonant under this Agreement. Subject to availability of Sonant personnel, Sonant may perform additional, Customer requested, on-site Services outside the terms of this Agreement at Sonant's then current Time and Material rates. Travel and other related expenses will be billed at actual cost plus an 10% burden.
6. If after having received notice from Sonant prior to expiration, the Customer should allow this Agreement to expire for more than 15 days, a reinstatement fee will be charged for a renewal of

this Agreement. Reinstatement is only available after an inspection, necessary repairs, and ECO's have been applied. Customer is responsible for all expenses associated with parts, labor, travel, etc. as required to qualify for reinstatement.

7. The Customer agrees to install any Sonant furnished Software updates within sixty (60) days of receipt.
8. The Customer agrees to provide a telephone line for a remote diagnostic modem connected to the supported system if requested by Sonant
9. Sonant may refuse renewal due to breach of Agreement by Customer or discontinued production of Equipment by Sonant.
10. Risk of loss or damage to replacement Equipment will pass to Customer upon delivery to Customer's premises. At the time of receipt of replacement Equipment, Customer agrees to provide reasonable inspection for shipping damage, and to notify carrier and Sonant of any damage found. Title to Software products or modifications thereto remains with Sonant.
11. No training will be provided by Sonant under this Agreement.
12. Unless specified herein, Sonant's prices do not include sales, use, excise or similar taxes. In addition to the price specified herein, the amount of any present or future sales, use, excise or other similar tax applicable to the Equipment or Services supplied hereunder shall be paid by the Customer, or in lieu thereof the Customer shall provide Sonant with appropriate tax-exemption evidence acceptable to the taxing authorities.

#### **VI. LIMITATION OF REMEDIES AND LIABILITY:**

THE REMEDIES PROVIDED HEREIN ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCTS, LOSS OF DATA, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF THE CUSTOMER FOR SUCH DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

Sonant's liability for property damage claims of any kind, whether based on contract, warranty, tort (including negligence) or otherwise and for any loss or damage arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any Services covered by or furnished under this Agreement shall in no case exceed the fee paid hereunder; provided however, that this limitation shall not apply to instances where Sonant or its agents or employees has acted with gross negligence or willful misconduct. Any action against Sonant must be brought within forty-eight (48) months after the cause of action accrues.

#### **VII. EXCUSABLE DELAYS:**

Sonant will notify Customer promptly of any material delay and will specify the revised delivery date as soon as practicable. Sonant shall not be liable for delays in delivery or performance or for failure to manufacture, deliver or perform due to: (a) causes beyond its reasonable control after the exercise of reasonable diligence by Sonant to avoid such delays, or (b) acts of God, acts or failures to act of Customer, acts of civil or military authority, or (c) government priorities, strikes or other labor disturbances, floods, earthquakes, epidemics, war, riot, delays in transportation or car shortages, or (d) inability on account of causes beyond the reasonable control of Sonant to obtain necessary materials, components, services or facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

#### **VIII. CONFIDENTIAL INFORMATION:**

All drawings, specifications or other information furnished by one party to the other party and identified as confidential or proprietary will be held in confidence by the recipient, will be used only for the purpose furnished, and may not be reproduced or further distributed without the written consent of the owner. These restrictions shall not apply to information (a) already known to the recipient, (b) generally known in the industry prior to receipt, (c) that is or becomes publicly known without any breach of this agreement by recipient, (d) is disclosed to third parties by owner without imposing at least the same obligation of confidence as placed on the recipient by this agreement, (e) that is independently developed by recipient, or (f) that is approved for release by written authorization of the owner. If disclosure is required by governmental authority or is required for the carrying on of the ordinary business of recipient, disclosure may be made provided owner is notified in writing and every reasonable effort is made to protect owner's proprietary interests in the information. If disclosure is required by government authority in the course of legal proceedings against the owner, disclosure may be made provided the owner is notified in writing at least 15 days prior to making the disclosure.

#### **IX. INTELLECTUAL PROPERTY RIGHTS INDEMNITY:**

Sonant shall defend, at its expense, any claim (including any suit) brought against Customer alleging that any Equipment furnished by Sonant hereunder infringes a United States patent, copyright, trade secret or other intellectual property right of a third party, and shall pay all costs and damages finally awarded, provided that Customer gives Sonant prompt written notice of such claim, and information, reasonable assistance and sole authority to defend or settle the claim. In the defense or settlement of the claim, Sonant may obtain for Customer the right to continue using the Equipment, replace or modify the Equipment so it becomes non-infringing, or, if such remedies are not reasonably available, grant Customer a refund for the Equipment as depreciated and accept their return.

Sonant shall not be liable for any costs or damages and Customer will indemnify, defend and hold Sonant harmless from any expenses, damages, costs or losses resulting from any suit or proceeding based upon a claim arising from (a) compliance with Customer's designs, specification or instructions; (b) a modification of the Equipment by a party other than Sonant after delivery by Sonant; (c) the use of the Equipment or any part thereof furnished by Sonant in combination with any other product not approved by Sonant; or (d) the direct or contributory infringement of any process patent using Equipment furnished by Sonant. Sale of the Equipment or any part thereof by Sonant does not confer upon the Customer any license under any patent rights.

#### **X. SOFTWARE PRODUCTS:**

Software products are copyrighted by and remain the property of Sonant. Sonant' Software products are protected by a software license agreement which accompanied the Software, or is attached hereto, and is incorporated herein by this reference. Any Software products or modifications thereto furnished hereunder to the U.S. Government shall be furnished with "Restricted Rights" in accordance with DFARS 252.227-7013.

With respect to those products which Sonant licenses and which are supplied hereunder, the word "purchase" or similar or derivative words are understood to mean "license" and "Customer" or similar or derivative words are understood to mean "Licensee." Title to Sonant Software shall remain with Sonant, notwithstanding anything to the contrary herein.

#### **XI. APPLICABLE LAW:**

This Agreement shall be governed by, subject to and construed according to the laws of the State of Texas.

**Sonant Corporation**

6215 Ferris Square, Suite 220, San Diego, CA 92121

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**XII. DISPUTES:**

In the event of any dispute concerning a question of law or fact, or both, arising under this Agreement which the parties are unable to resolve by mutual agreement, either party may pursue any right or remedy which it may have at law or in equity in any court of competent jurisdiction.

**XIII. COMPLETE AGREEMENT:**

No addition, modification, amendment, rescission, waiver or other change to these terms and conditions will be binding on either party unless assented to in writing by an authorized representative of such party.

The following exhibits are attached to this agreement and are made a part of the agreement:

Exhibit A        - Equipment List

**XIV. ASSIGNMENT:**

Neither party's obligations under this Agreement are assignable by one party without prior written approval of the other party.

**XV. MISCELLANEOUS:**

All rights and remedies conferred under this Agreement and by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any contract term shall not be deemed a waiver of future enforcement of that or any other term. The provisions of this Agreement are declared to be severable.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their respective authorized representatives effective as of the date set hereinabove.

**SONANT CORPORATION**

(Sonant)

By: 

(Signature)

Name: CHARLES W. SMITHTitle: PRESIDENT / CEODate: 2/18/09

(Customer)

By: 

(Signature)

Name: Franklin D. GharboTitle: Purchasing AgentDate: 2/23/09

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EXHIBIT A - Equipment List for \_\_\_\_\_

**Customer:**

<u>Qty</u>	<u>Description</u>
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