



Please return one signed copy to:

DRAFT

*SunGard Public Sector Pentamation Inc.
3 West Broad Street
Bethlehem, PA 18018*

Attn: David Madea, VP of Finance

In order to avoid delay in all correspondence issues, please provide billing and other pertinent information in the space below:

Address: _____

Billing Attn: _____

Other: _____

Thank you...

BETWEEN

SunGard Public Sector Pentamation Inc.

a Pennsylvania Corporation
with Headquarters at:
3 West Broad Street, Suite 1
Bethlehem, PA 18018
Phone #: (610) 691-3616
Fax #: (610) 954-8378

("SunGard")

AND

Denton Independent School District

1212 North Elm Street
Denton, Texas 76201
Phone #: (940) 369-0106
Fax #: (940) 369-4989
Contact: David Moor

("Customer")

By the signatures of their duly authorized representatives below, SunGard and Customer, intending to be legally bound, agree to all of the provisions of this Agreement and all Schedules, Appendices, Exhibits, and/or Addenda to this Agreement.

[SunGard]

[Customer]

BY: _____

BY: _____

PRINT NAME: Bronne J. Bruzgo

PRINT NAME: _____

PRINT TITLE: Vice President Sales & Marketing

PRINT TITLE: _____

DATE SIGNED: June 13, 2008

DATE SIGNED: _____

CONTENTS

DEFINITION OF TERMS	ii
SECTION 1 – LIMITED LICENSE	1
SECTION 2 - SOFTWARE INSTALLATION AND PROFESSIONAL SERVICES.....	1
SECTION 3 - EQUIPMENT AND EQUIPMENT INSTALLATION AND SUPPORT	1
SECTION 4 – SUNGARD'S OTHER OBLIGATIONS	3
SECTION 5 - CUSTOMER'S OTHER OBLIGATIONS	3
SECTION 6 – PAYMENT SCHEDULE.....	5
SECTION 7 - WARRANTIES AND LIMITATIONS	6
SECTION 8 - CONFIDENTIALITY, OWNERSHIP AND RESTRICTIVE COVENANT	8
SECTION 9 - TERMINATION	9
SECTION 10 - APPLICATION SOFTWARE MAINTENANCE AND SUPPORT	11
SECTION 11 - OFF-SITE HARDWARE MAINTENANCE SERVICE	13
SECTION 12 - EXTENDED HARDWARE MAINTENANCE SERVICE.....	14
SECTION 13 - OPERATING SYSTEM OR UTILITY SOFTWARE TELEPHONE SUPPORT SERVICES..	16
SECTION 14 - CUSTOM PROGRAMMING SERVICES.....	17
SECTION 15 - OTHER PROVISIONS.....	18
APPENDIX 1 – LICENSED SOFTWARE, TRAINING AND SUPPORT	
APPENDIX 2 – IMPLEMENTATION SERVICES	
APPENDIX 3 – HARDWARE EQUIPMENT/SERVICES	
APPENDIX 4 – MAXIMUM SUPPORT HOURS	
APPENDIX 5 – PAYMENT SCHEDULE	
APPENDIX 6 – REGULATORY SOFTWARE	
APPENDIX 7 – ADDITIONAL CUSTOMER RESPONSIBILITIES	
APPENDIX 8 – SUNGARD PUBLIC SECTOR PENTAMATION INC. INTERNET CONNECTIVITY AUTHORIZATION FORM	
APPENDIX 9 – OPEN SERIES / <i>StudentPLUS+</i> to <i>eSchoolPLUS+</i> MIGRATION	

DEFINITION OF TERMS

As used in this Agreement, the following terms have the following meanings:

1. **“Account”** means a single and unique combination of database and Software.
2. **“Affiliate,”** whether capitalized or not, means, with respect to a specified Person, any Person which directly or indirectly controls, is controlled by, or is under common control with the specified person as of the date of this Agreement, for as long as such relationship remains in effect.
3. **“Confidential Information”** means all business information disclosed by one party to the other in connection with this Agreement unless it is or later becomes publicly available through no fault of the other party or it was or later is rightfully developed or obtained by the other party from independent sources free from any duty of confidentiality. Without limiting the generality of the foregoing, Confidential Information shall include Customer’s data and shall include SunGard’s Proprietary Items. Confidential Information shall include the terms of this Agreement, but not the fact that this Agreement has been signed, the identity of the parties hereto or the identity of the products licensed hereunder.
4. **“Concurrent User”** means the highest total number of users making simultaneous use of the Software at any time during a calendar year period, whether use is via modem, direct connection, LAN connection, or intranet connection.
5. **“Copy,”** whether capitalized or not, means any paper, disk, tape, film, memory device, or other material or object on or in which any words, object code, or other symbols are written, recorded or encoded, whether permanent or transitory.
6. **“Documentation”** means SunGard’s standard user guides and manuals as delivered with the Software and Software Updates and on-line help, as updated and amended from time to time, provided by SunGard to assist Customer with the use of Software.
7. **“Execution Date”** means the latest date shown on the signature line of this Agreement.
8. **“Export Laws”** means all laws, administrative regulations, and executive orders of any Applicable Jurisdiction relating to the control of imports and exports of commodities and technical data, software and related property, use or remote use of software and related property, or registration of this Agreement, including the Export Administration Regulations of the U.S. Department of Commerce, and the International Traffic in Arms Regulations of the U.S. Department of State. “Applicable Jurisdiction” means the U.S., and any other jurisdiction where any Proprietary Items will be located or from where any Proprietary Items will be accessed under this Agreement.
9. **“Good Faith Dispute”** means a good faith dispute by Customer of certain amounts invoiced under this Agreement. A Good Faith Dispute will be deemed to exist only if (1) Customer has given written notice of the dispute to SunGard promptly after receiving the invoice and (2) the notice explains Customer’s position in reasonable detail. A Good Faith Dispute will not exist as to an invoice in its entirety merely because certain amounts on the invoice have been disputed.

10. **“Including”** means including but not limited to.
11. **“Initial Installation or Initial Software Installation”** means the first instance of Software installation or Software loading onto the computer system from which it will operate.
12. **“Latest Software Update”** means those Software Updates which SunGard has made generally available to its Customers within the preceding twelve months.
13. **“New Product”** means a set of functionality available to be licensed to Customer by SunGard which was not previously licensed to Customer either because the functionality was not available or Customer chose not to license it.
14. **“Person,”** whether capitalized or not, means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority, or other entity of any nature.
15. **“Proprietary Items”** means, collectively, the Software and Documentation, the object code and the source code for the Software, the visual expressions, screen formats, report formats and other design features of the Software, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Software or Documentation, all future modifications, revisions, updates, refinements, improvements and enhancements of the Software or Documentation, all derivative works (as such term is used in the U.S. copyright laws) based upon any of the foregoing, and all copies of the foregoing.
16. **“Software”** means SunGard’s proprietary application software identified in Appendix 1 of this Agreement, known as PLUS SERIES.
17. **“Software Update”** means Software revisions and updates to the Software which SunGard, in its sole discretion, incorporates into the Software as a Software Update per Section 10 – Application Software Maintenance and Support.

1. LIMITED LICENSE

1.1. **Grant.** SunGard grants to Customer a personal, non-transferable, non-exclusive, perpetual, license to use, in accordance with this Agreement, the Software identified on Appendix 1 and its related Documentation as the Software and Documentation may be revised and updated in accordance with this Agreement.

1.2 **Scope.** In consideration of Customer's payment of the associated fees as set forth in Section 6, Customer may use the Software and Documentation only in the ordinary course of its business operations and for its own business purposes, subject to the use restrictions as set forth in Section 8.3. Access to and use of the Software by Customer shall be limited to the Number of Concurrent Users and/or other parameters as specified, stated on Appendix 1 (collectively, "Scope of Use"), subject to increase by amendment(s) to such parameters. Customer may copy and use the Software for inactive back-up and disaster recovery purposes. Customer may copy the Documentation to the extent reasonably necessary for use of the Software under this Agreement.

2. SOFTWARE INSTALLATION AND PROFESSIONAL SERVICES

2.1. **Initial Software Installation.** SunGard shall deliver, F.O.B. SunGard's offices, to Customer the initial Copies of the Software and Documentation stated on Appendix 1. The date of such delivery shall be referred to as the "Delivery Date." SunGard, per installation services as set forth in Appendix 3, or Customer shall install the Software on or before 120 days following the execution date of this Agreement.

2.2 **Professional Services.** SunGard shall provide to Customer, Software training services for Customer personnel as set forth and for the charges listed on Appendix 1, the Implementation Services as set forth on Appendix 2, and the Software and Hardware installation and integration services as set forth on Appendix 3. In accordance with Section 2.3, SunGard shall provide to Customer additional Professional Services reasonably requested by Customer.

2.3 **Additional Professional Services.** At Customer's reasonable request and subject to the availability of SunGard's personnel, SunGard shall provide to Customer additional installation services, additional training, consulting services, custom modification programming, support services relating to custom modifications, assistance with data transfers, system restarts and reinstallations and other specialized support services. Such services will be offered at SunGard's then prevailing service rates. Custom programming services are provided in accordance with the terms and conditions as defined in Section 14.

3. EQUIPMENT AND EQUIPMENT INSTALLATION AND SUPPORT

3.1 **Equipment Prices.** SunGard hereby agrees to sell to Customer and Customer agrees to purchase the equipment identified in Appendix 3 ("Equipment") for the prices as set forth on Appendix 3.

3.2 Equipment Installation Services

3.2.1 Customer will acquire and install a SQL DB server (based upon SunGard provided specifications) that is attached to customer's SAN. Customer will install a Dell Blade

Server system server (based upon SunGard provided specifications) for the Task and Application servers and will:

- i. Have servers shipped to customer site.
- ii. Install the servers in customer racks and connect to the SAN and network.
- iii. Install Windows Server 2003 Enterprise, including setting up the SAN drives and network connections. The build of Windows and storage allocation on the SAN will be done based upon SunGard provided specifications.
- iv. Have SunGard install SQL Server 2005 Standard (customer will furnish the license) either remotely or on-site (SunGard's decision). If SunGard prefers Customer to install SQL Server in this case, instructions and settings from SunGard will be required.

SunGard will install all applications purchased in this contract either remotely or on-site.

3.2.2 If required and by mutual agreement and for the fees stated on Appendix 3, at least 25 days prior to installation of the Equipment, representatives from SunGard will visit the Customer's facilities on a mutually agreed date for the purpose of approving the locations for computer systems and principal components of the communications network and establishing plans for the installation of the Equipment and communications facilities. Travel costs associated with this visit are the responsibility of the Customer and will be billed as incurred.

3.2.3 SunGard or its designee shall perform the installation services, for the fees stated on Appendix 3, for the Equipment at the Initial Installation Location. Equipment installation shall be completed on a mutually agreed date, subject to the obligations of Customer to provide the operational environment for the equipment as provided below under "Customer Responsibilities" but no later than 10 days prior to the Scheduled Installation Date.

3.2.4 SunGard will provide the Customer with any manufacturer-provided reference documentation for operation of the Equipment by Customer's trained personnel.

3.3 Customer Responsibilities

3.3.1 The Customer acknowledges a need for and agrees to provide, at its cost, a suitable operating environment, appropriate power supplies and adequate workspace for the Equipment to be maintained in accordance with SunGard's recommendations. The Customer further acknowledges and agrees to provide access to Customer's hardware system(s) and/or operational system software where necessary for SunGard to provide its services hereunder. The Customer further acknowledges its responsibility to provide adequately trained personnel, adequate hardware and system software backups

3.3.2 The Customer is responsible for the cost of all cabling, phone equipment, services and facilities needed to attach servers, workstations, video terminals, terminal printers and the like to the Equipment. This includes installing the cables and the labor or installation fees associated with the preparation of terminal locations.

3.3.3 The Customer shall provide SunGard or its designee full and free access to the Equipment to provide the installation services. The Customer's personnel shall not attempt any repairs or adjustments to the Equipment at any time except under

direction of SunGard or its designee.

3.3.4 The Customer shall pay all costs of transportation and in-transit insurance for the Equipment to its facilities and all other related costs that may include special rigging, storage, packaging and similar charges. SunGard shall not be responsible for any loss or damage to the Equipment caused by the fault or negligence of Customer or its agents or employees, by non-SunGard alterations or servicing, by common carriers, force majeure, fire or other casualty.

3.4 **Warranty.** SunGard warrants that the Equipment will be installed in good working order ready for use according to the manufacturer's published specifications. SunGard will assign to Customer all manufacturer's warranties related to the Equipment. SunGard makes no expressed or implied warranties with regard to the Equipment. ALL WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

3.5 **Other Terms Applicable to Equipment Sales**

3.5.1 SunGard's installation personnel shall remain on Customer's site not more than one day in the event of Customer's failure to fulfill its site preparation obligations. Return trips, if necessary, shall be invoiced to Customer at SunGard's then prevailing service rates, plus expenses.

3.5.2 After installation services are completed, on-going maintenance and support services to the Equipment shall be provided as set forth in Sections 11, 12, and/or 13 and for the fees and type of service provided in Appendix 3.

4. SUNGARD'S OTHER OBLIGATIONS

4.1 Ongoing Maintenance and Support Services. Beginning with the month this Agreement is signed and in conjunction with Sections 10, 11, 12, and/or 13, SunGard shall provide maintenance and support services to Customer throughout the Initial Maintenance and Support Term and, if Customer elects to renew maintenance and support services, the Renewal Maintenance and Support Term as defined in Sections 10, 11, 12, and/or 13, at the rates set forth in Appendix 1 and 3.

4.2 Optional Products. Beginning upon the Execution Date of this Agreement, SunGard shall offer to Customer the opportunity to license New Products at SunGard's then prevailing fees. For any software products or services indicated as "Optional" in Appendix 1, 2 and/or 3, Customer must exercise this option in writing to SunGard within twelve months of Execution Date; if Customer wishes to exercise this option subsequent to twelve months after Execution Date, SunGard's then current rates shall apply.

5. CUSTOMER'S OTHER OBLIGATIONS

5.1 Procurement of Hardware and Other Third Party Items. Customer shall be responsible, at its expense, for procuring and maintaining (through SunGard, if applicable) the computer hardware, systems software and other third party software, data feeds, telecommunications, networks, peripherals and other items and services

(collectively referred to as "Third Party Products"). Customer shall contract for (through SunGard, if applicable) and maintain appropriate agreements for the use and maintenance of Third Party Products during the term of this Agreement. If Customer is authorized by SunGard to use the Software in an Internet environment, Customer shall be solely responsible for all aspects of Internet use, including any Third Party Products, and the installation and maintenance of its home page on the Internet. All required Third Party Products must be installed (by SunGard, if applicable) and operational prior to the Scheduled Installation Date stated on Appendix 3.

- 5.2 Data Security.** If the Software or data maintained by the Software is accessible through the Internet or other networked environment, Customer shall maintain, in connection with the Software, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication. To the extent that Customer's Affiliates or Customers have access to the Software through the Internet or other networked environment, Customer shall maintain agreements with such end-users that adequately protect the confidentiality and intellectual property rights of SunGard in the Software and Documentation, and disclaim any liability or responsibility of SunGard with respect to such end-users.
- 5.3 Access to Facilities and Employees.** Customer shall provide to SunGard access to the Customer's facilities, equipment and employees, and shall otherwise cooperate with SunGard, as reasonably necessary for SunGard to perform its installation, training, support and other obligations under this Agreement. Customer shall devote all equipment, facilities, personnel and other resources reasonably necessary to (a) install the Software, (b) be trained in the use of the Software and (c) begin using the Software in production on a timely basis as contemplated by this Agreement.
- 5.4 Remote Access.** Customer shall permit SunGard, at SunGard's option, to remotely access, per the method described in Section 10, the Software for the purpose of providing maintenance and support services to Customer under Section 4.1 and otherwise implementing the purposes of this Agreement.
- 5.5 Notices and Certifications.** Customer shall give written notice to SunGard whenever Customer intends to increase the Scope of Use. Customer shall promptly complete and return to SunGard periodic certifications which SunGard, in its sole discretion, may from time to time send to Customer, certifying the then current Scope of Use of the Software and that Customer has complied and is then in compliance with the provisions of this Agreement.
- 5.6 Customer Operation of Software.** Customer shall be exclusively responsible for the supervision, management, operation and control of its use of the Software, including but not limited to: (1) establishing adequate backup plans in the event of computer or Software malfunction or disaster, (2) implementing sufficient procedures and checkpoints to satisfy Customer's requirements for security and accuracy of input and output data as well as restart and recovery in the event of malfunction or disaster, (3) informed use of output data insofar as technical expertise or professional judgment is required, (4) security, maintenance and distribution of system passwords, and (5) other responsibilities as defined in Appendix 7.

- 5.7 Customer agrees to perform its responsibilities, as set forth in Appendix 7 of this Agreement, related to conversion and verification of data (for example, Transcripts and G.P.A. conversion) from Customer's previous system.

6. PAYMENTS

- 6.1 **License Fee.** Customer shall pay to SunGard an initial license fee in the amount stated on Appendix 1, in accordance with the payment schedule stated on Appendix 5. The Initial License fee shall entitle Customer to maintenance and support services for the Initial Maintenance and Support Term as defined in Section 10.
- 6.2 **Annual Maintenance and Support Fees.** The annual maintenance and support service for Software and Third Party Software listed in Appendix 1 shall be automatically renewed on each anniversary date of this Agreement unless Customer provides SunGard with ninety (90) days written notice prior to each annual anniversary date of its intent to terminate maintenance and support. Beginning on the first anniversary date of this Agreement, unless Customer has provided such notice then, Customer shall pay annual maintenance and support fees in the amount set forth on Appendix 1. SunGard reserves the right to increase such amounts in subsequent renewal terms by an amount not to exceed 10% per year. After the Renewal Maintenance and Support Term and in the event that SunGard desires to terminate maintenance and support services to Customer, SunGard shall provide Customer with one hundred eighty (180) days prior written notice of its intent to terminate.
- 6.3 **Service Fees.** Customer shall pay to SunGard the service fees stated on Appendix 1, Appendix 2 and Appendix 3 for all services specified in this Agreement. In the event that requested services are not specified in this Agreement, then the fees for such services shall be based upon SunGard's standard professional fee rates in effect at the time of the request.
- 6.4 **Expense Reimbursements.** Whenever any services are provided by SunGard at a Customer location or any other location requested by Customer other than one of SunGard's locations, Customer shall reimburse SunGard for reasonable travel, lodging, meal and related expenses incurred by SunGard personnel in providing such services.
- 6.5 **Taxes.** The fees and other amounts payable by Customer to SunGard under this Agreement do not include any taxes of any jurisdiction that may be assessed or imposed upon the copies of the Software and Documentation delivered to Customer, the license granted under this Agreement or the services provided under this Agreement, or otherwise assessed or imposed in connection with the transactions contemplated by this Agreement, including sales, use, excise, value added, personal property, export, import and withholding taxes, excluding only taxes based upon SunGard's net income. Customer shall directly pay any such taxes assessed against it, and Customer shall promptly reimburse SunGard for any such taxes payable or collectable by SunGard. If Customer has provided SunGard with proof of its tax exempt status, then, in the event that Customer's tax exempt status should become altered in any way throughout the term of this Agreement, Customer shall be obligated to notify SunGard immediately of any such modification of tax exempt status and Customer shall become liable for all taxes as set forth above. In the event Customer fails to notify SunGard of any such change, and penalties occur as a result of Customer's failure to notify SunGard in a timely manner, Customer shall be liable for payment of any penalties assessed against SunGard or Customer as a result thereof.

6.6 Payment Terms. Initial Software license fees and Third Party Product fees (if any) shall be invoiced by SunGard per the payment schedule in Appendix 5. Ongoing maintenance and support fees shall be invoiced by SunGard annually in advance and all other fees and all expense reimbursements shall be invoiced by SunGard as and when incurred. All invoices shall be sent to Customer's address for invoices as designated by Customer or, if not designated, then the address printed on this Agreement. Payments may be made by check to the SunGard address listed on the invoice. Customer's payments shall be past due thirty (30) days after receipt of invoice. Interest at the rate of eighteen percent (18%) per annum (or, if lower, the maximum rate permitted by applicable law) shall accrue on any amount not paid by Customer to SunGard when due under this Agreement, and shall be payable by Customer to SunGard on demand. Except as provided in Section 7.2.3, all fees and other amounts paid by Customer under this Agreement are non-refundable, including any fees paid for Third Party Products.

6.7 Currency. All dollar amounts referred to in this Agreement are in United States Dollars.

7. WARRANTIES AND LIMITATIONS

7.1 Performance. SunGard warrants to Customer that the Software, as and when delivered to Customer by SunGard and when properly used for the purpose and in the manner specifically authorized by this Agreement, will perform as described in the Documentation in all material respects. SunGard's only obligation under this warranty is to correct any failure to so perform in accordance with SunGard's obligations under the maintenance and support provisions of this Agreement. This warranty shall terminate at the end of Initial Maintenance and Support Term of this Agreement.

7.2 Right to License; No Infringement. SunGard warrants to Customer that it has the full legal right to grant to Customer the license granted under this Agreement, and that the Software and Documentation, as and when delivered to Customer by SunGard and when properly used for the purpose and in the manner specifically authorized by this Agreement, do not infringe upon any United States patent, copyright, trade secret or other proprietary right of any Person. SunGard shall defend and indemnify Customer against any third party claim to the extent attributable to a violation of the foregoing warranty. SunGard shall have no obligation under this Section 7.2 unless Customer promptly gives written notice to SunGard after any applicable infringement claim is initiated against Customer and allows SunGard to have sole control of the defense or settlement of the claim. The remedies provided in this Section 7.2 are the sole remedies for a breach of the warranty contained in this Section 7.2. If any applicable infringement claim is initiated, or in SunGard's sole opinion is likely to be initiated, then SunGard shall have the option, at its expense, to:

7.2.1 modify or replace all or the infringing part of the Software or Documentation so that it is no longer infringing, provided that the Software functionality does not change in any material adverse respect; or

7.2.2 procure for Customer the right to continue using the infringing part of the Software or Documentation; or

7.2.3 remove all or the infringing part of the Software or Documentation, and refund to Customer the corresponding portion of the initial license fee paid by Customer to SunGard under Section 6.1 with respect to the applicable Software, less a reasonable rental charge equal to one-sixtieth (1/60) of the initial license fee for each month of use, in which case the Agreement shall terminate with respect to the Software or part thereof removed.

- 7.3 Exclusion for Unauthorized Actions and Results of Use.** SunGard shall have no liability under any provision of this Agreement with respect to any performance problem, claim of infringement or other matter to the extent attributable to any unauthorized or improper use or modification of the Software, any unauthorized combination of the Software with other software, any use of any version of the Software other than the Latest Software Updates, any Third Party Product, any act or omission by Customer, its Affiliates or its customers, or any breach of this Agreement by Customer. Customer is solely responsible for the results obtained from the use of the Software.
- 7.4 Force Majeure.** Except with respect to Customer's payment obligations hereunder, neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment), power or other utility, labor problem, unavailability of supplies or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the non-performing party with reasonable care.
- 7.5 Disclaimer.** EXCEPT AS EXPRESSLY STATED IN SECTION 7.1 OF THIS AGREEMENT, THE SOFTWARE AND DOCUMENTATION IS PROVIDED "AS IS." WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, THE SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY OTHER MATTER PERTAINING TO THIS AGREEMENT AND EXCEPT AS EXPRESSLY STATED IN SECTION 7.1 OF THIS AGREEMENT, SUNGARD MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT. SUNGARD MAKES NO REPRESENTATIONS OR WARRANTIES, NOR SHALL SUNGARD HAVE ANY LIABILITY WITH RESPECT TO, ANY THIRD PARTY PRODUCTS OR SERVICES.
- 7.6 Limitations.** EXCEPT FOR A THIRD PARTY CLAIM UNDER SECTION 7.2 OF THIS AGREEMENT, SUNGARD'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED THE INITIAL SUNGARD SOFTWARE LICENSE FEES ACTUALLY PAID BY CUSTOMER TO SUNGARD UNDER THIS AGREEMENT.
- 7.7 Consequential Damage Exclusion.** UNDER NO CIRCUMSTANCES SHALL SUNGARD (OR ANY OF ITS AFFILIATES PROVIDING SOFTWARE OR SERVICES UNDER THIS AGREEMENT) BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, OR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING SUCH DAMAGES ARISING FROM ANY BREACH OF THIS AGREEMENT OR ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE AND WHETHER OR NOT FORESEEABLE, EVEN IF SUNGARD HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

7.8 Open Negotiation. CUSTOMER AND SUNGARD HAVE FREELY AND OPENLY NEGOTIATED THIS AGREEMENT, INCLUDING THE PRICING, WITH THE KNOWLEDGE THAT THE LIABILITY OF THE PARTIES IS TO BE LIMITED IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT.

7.9 Other Limitations. The warranties made by SunGard in this Agreement, and the obligations of SunGard under this Agreement, run only to Customer and not to its Affiliates, its customers or any other Persons. Under no circumstances shall any Affiliate or customer of Customer or any other Person be considered a third party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement, even if such Affiliates, customers or other Persons are provided access to the Software or data maintained in the Software via the Internet or other networked environment. Customer shall have no rights or remedies against SunGard except as specifically provided in this Agreement. No action or claim of any type relating to this Agreement may be brought or made by Customer more than one (1) year after Customer first has knowledge of the basis for the action or claim.

8. CONFIDENTIALITY, OWNERSHIP AND RESTRICTIVE COVENANT

8.1 Disclosure Restrictions. All Confidential Information of one party ("Disclosing Party") in the possession of the other ("Receiving Party"), whether or not authorized, shall be held in strict confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality thereof. The Disclosing Party's Confidential Information shall not be used or disclosed by the Receiving Party for any purpose except as necessary to implement or perform this Agreement, or except as required by law, provided that the other party is given a reasonable opportunity to obtain a protective order. The Receiving Party shall limit its use of and access to the Disclosing Party's Confidential Information to only those of its employees whose responsibilities require such use or access. The Receiving Party shall advise all such employees, before they receive access to or possession of any of the Disclosing Party's Confidential Information, of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. The Receiving Party shall be liable for any breach of this Agreement by any of its employees or any other Person who obtains access to or possession of any of the Disclosing Party's Confidential Information from or through the Receiving Party.

8.2 SunGard's Proprietary Items, Ownership Rights. The Proprietary Items are trade secrets and proprietary property of SunGard, having great commercial value to SunGard. All Proprietary Items provided to Customer under this Agreement are being provided on a strictly confidential and limited use basis. Customer shall not, directly or indirectly, communicate, publish, display, loan, give or otherwise disclose any Proprietary Item to any Person, or permit any Person to have access to or possession of any Proprietary Item. Title to all Proprietary Items and all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights shall be and remain exclusively with SunGard, even with respect to such items that were created by SunGard specifically for or on behalf of Customer. This Agreement is not an agreement of sale, and no title, patent, copyright, trademark, trade secret, intellectual property or other ownership rights to any Proprietary Items are transferred to Customer by virtue of this Agreement. All copies of Proprietary Items in Customer's possession shall remain the exclusive property of SunGard and shall be deemed to be on loan to Customer during the term of this Agreement.

- 8.3 Use Restrictions.** Customer shall not do, attempt to do, nor permit any other Person to do, any of the following:
- 8.3.1** use any Proprietary Item for any purpose, at any location or in any manner not specifically authorized by this Agreement; or
 - 8.3.2** make or retain any Copy of any Proprietary Item except as specifically authorized by this Agreement; or
 - 8.3.3** create or recreate the source code for the Software, or re-engineer, reverse engineer, decompile or disassemble the Software; or
 - 8.3.4** modify, adapt, translate or create derivative works based upon the Software or Documentation, or combine or merge any part of the Software or Documentation with or into any other software or documentation not as otherwise expressly provided by this Agreement; or
 - 8.3.5** refer to or otherwise use any Proprietary Item as part of any effort either (i) to develop a program having any functional attributes, visual expressions or other features similar to those of the Software, or (ii) to compete with SunGard; or
 - 8.3.6** remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any Proprietary Item, or fail to preserve all copyright and other proprietary notices in any Copy of any Proprietary Item made by Customer; or
 - 8.3.7** sell, market, license, sublicense, distribute or otherwise grant to any Person, including any outsourcer, vendor, consultant or partner, any right to use any Proprietary Item, whether on Customer's behalf or otherwise; or
 - 8.3.8** use the Software to conduct any type of service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any Person, whether on a fee basis or otherwise, unless otherwise expressly provided in this Agreement.
- 8.4 Notice and Remedy of Breaches.** Each party shall promptly give written notice to the other of any actual or suspected breach by it of any of the provisions of this Section 8, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach.
- 8.5 Enforcement.** Each party acknowledges that the restrictions in this Agreement are reasonable and necessary to protect the other's legitimate business interests. Each party acknowledges that any breach of any of the provisions of this Section 8 shall result in irreparable injury to the other for which money damages could not adequately compensate. If there is a breach, then the injured party shall be entitled, in addition to all other rights and remedies which it may have at law or in equity, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all Persons involved from continuing the breach. The existence of any claim or cause of action that a party or any other Person may have against the other party shall not constitute a defense or bar to the enforcement of any of the provisions of this Section 8.

9. TERMINATION

- 9.1 Termination by Customer.** Customer may immediately terminate this Agreement, by giving written notice of termination to SunGard, upon the occurrence of any of the following events:

- 9.1.1 SunGard breaches any of its material obligations under this Agreement and does not cure the breach within ninety (90) days (provided that the breach is susceptible to cure) (or such other time period as may be reasonable under the circumstances) after Customer gives written notice to SunGard describing the breach in reasonable detail.
 - 9.1.2 SunGard (or a surviving company in the event of a merger or sale of SunGard) dissolves or liquidates or otherwise discontinues all or a significant part of its business operations. Notwithstanding the foregoing, SunGard reserves the right to outsource professional services which will not be deemed grounds for Customer termination hereunder.
- 9.2 Termination by SunGard.** SunGard may immediately terminate this Agreement, by giving written notice of termination to Customer, upon the occurrence of any of the following events:
- 9.2.1 Except for Customer's failure to pay any amount payable with respect to Ongoing Maintenance and Support fees, Customer fails to pay to SunGard, within ten (10) days after SunGard makes written demand therefor, any past-due amount payable under this Agreement (including interest thereon) that is not the subject of a Good Faith Dispute, or
 - 9.2.2 Customer breaches any of its other material obligations under this Agreement and does not cure the breach within thirty (30) days (provided that the breach is susceptible to cure) (or such other time period as may be reasonable under the circumstances) after SunGard gives written notice to Customer describing the breach in reasonable detail, or
 - 9.2.3 Customer dissolves or liquidates or otherwise discontinues all or a significant part of its business operations.
- 9.3 Expiration of Term.** Unless otherwise stated on Appendix 1 of this Agreement, the Software specified on Appendix 1 shall have a perpetual term from the Delivery Date for such Software unless and until terminated in accordance with this Section 9.
- 9.4 Effect of Termination.**
- 9.4.1 Upon the effective date of a termination of the maintenance and support services by SunGard or Customer, or at anytime when Customer has failed to pay the annual maintenance and support fees required pursuant to Section 6.2 ("Ongoing Maintenance and Support Termination Date"), (a) SunGard shall discontinue providing all ongoing maintenance and support services, including SunGard's obligation under Section 4.1, (b) any SunGard warranties and indemnities under this Agreement shall cease to apply for the period after the Ongoing Maintenance and Support Termination Date, and (c) SunGard shall have no liability with respect to Customer's use of the Software or Services after the Ongoing Maintenance and Support Termination Date.
 - 9.4.2 Upon a termination or expiration of this Agreement, whether under this Section 9 or otherwise, Customer shall: (a) discontinue all use of all affected Software and Documentation, (b) promptly return to SunGard all copies of the affected Software and Documentation and any other affected Proprietary Items then in Customer's possession, and (c) give written notice to SunGard certifying that all copies of the affected Software and Documentation have been permanently

deleted from its computers. Customer shall remain liable for all payments due to SunGard with respect to the period ending on the date of termination. The provisions of Sections 6, 7 (except 7.1), 8 and 15 shall survive any termination of this Agreement, whether under this Section 9 or otherwise.

- 9.5 Certain Other Remedies for Nonpayment.** If Customer fails to pay to SunGard, within ten (10) days after SunGard makes written demand therefor, any past-due amount payable under this Agreement (including interest thereon) that is not the subject of a Good Faith Dispute, in addition to all other rights and remedies which SunGard may have at law or in equity, SunGard may, in its sole discretion and without further notice to Customer, suspend performance of any or all of its obligations under this Agreement (including its ongoing maintenance and support services under Section 4.1) until all past due amounts are paid in full.

10.0 APPLICATION SOFTWARE MAINTENANCE AND SUPPORT

- 10.1 INITIAL MAINTENANCE AND SUPPORT TERM:** The Initial Maintenance and Support Term shall be for a period of one year commencing with the month this Agreement is signed.

INITIAL MAINTENANCE AND SUPPORT TERM: For new applications licensed in this Agreement, the Initial Maintenance and Support Term shall be for a period of one year commencing upon execution of this Agreement. For all migrated applications (indicated by \$0 license fees in Appendix 1) the initial maintenance term shall be one year following the commencement of training.

- 10.2 RENEWAL MAINTENANCE AND SUPPORT TERM:** Upon conclusion of the Initial Maintenance and Support Term, SunGard shall continue to offer maintenance and support services to Customer, at the fees and for the terms specified in this Agreement, for one additional one-year period.

Upon conclusion of the Renewal Maintenance and Support Term, SunGard may offer maintenance and support services to Customer on a year to year basis, provided that SunGard shall give Customer one hundred eighty (180) days written notice if SunGard intends to terminate maintenance and support services.

- 10.3 Services to be Provided**

10.3.1 Provide standard product enhancements when and as the same are developed by SunGard; SunGard shall make available to Customer one copy of such product enhancements or corrected programs as soon as it is available. Customer shall be responsible for incorporating such enhancements in each copy of the applicable SunGard Software licensed by Customer.

10.3.2 Provide programming modifications and support for the regulatory software listed in Appendix 6. Modifications and updates will be provided and are limited to those which use data supported within the baseline application software and are required by regulatory changes.

10.3.3 Provide assistance to Customer in the use of the SunGard Application Software via telephone inquiries to SunGard's designated software support offices up to the maximum number of hours per application as listed in Appendix 4. Should the total number of Support hours be exceeded in any one year, additional Support Service may be provided at SunGard's then current

hourly rates. Telephone support services are available weekdays, excluding holidays, during normal business hours.

- 10.3.4 Investigate errors in the intended capabilities of SunGard Application Software upon receipt of notification from Customer and provide Customer with an alternate procedure or programming modifications to correct errors. SunGard shall distribute to Customer one copy of such product enhancements or corrected programs as soon as it is available. Customer shall be responsible for incorporating such enhancements in each copy of the applicable SunGard Software licensed by Customer.

All of the above services will be provided by Internet or telephone communication contact between SunGard and Customer. Customer will be responsible for all data line telephone charges involved in providing Application Software Maintenance and Support and SunGard will invoice Customer at cost.

10.4 Customer Responsibilities

- 10.4.1 Internet access is required for delivery of SunGard's support services and will be the primary connectivity medium for all support activities. The Customer will be responsible to provide reliable access to each server via the Internet utilizing a connectivity method listed on the SunGard Public Sector Pentamation Inc. Internet Connectivity Authorization Form (Appendix 8). At least one dedicated dial-up telephone line with a high speed (56K minimum) modem, capable of connection to each server, is strongly recommended as a backup means of communication in the event of Internet failure. A "superuser" system log-in account with privileges for SunGard's use in support of this Agreement is also required.
- 10.4.2 The Customer will be responsible to provide a CD which may be used to install new software releases, updates, enhancements, etc. A 4mm DAT, DLT, SDLT or LTO tape drive will be required to facilitate large file transfers for troubleshooting purposes.
- 10.4.3 Customer agrees that if the Customer has application software changes, screen changes or changes to SunGard tables within the database made by non-SunGard employees, this may affect SunGard's ability to perform its obligations hereunder or may result in extra charges by SunGard. Services necessitated by problems caused by unauthorized Customer changes, acts of God, or Customer's improper use of the systems or equipment, or other causes beyond SunGard's control may result in extra charges by SunGard.

Prohibited table changes include the addition of triggers – small programs in the database that run automatically when an INSERT, UPDATE, or DELETE statement is issued against the associated table and data element – to SunGard data elements.

- 10.4.4 Customer will designate, by name, a limited number of individuals for the purpose of logging calls with SunGard central support. Customer will appoint one of these individuals to serve as central liaison between SunGard technicians and other named callers or Customer end users.
- 10.4.5 The Customer is obligated to fulfill the responsibilities of system administrator as defined in Appendix 7. This may be accomplished as part of the central

liaison's job responsibilities or by contracting with SunGard for Remote System Administration Services.

- 10.4.6 Customer will be responsible for acquiring any necessary Microsoft Customer access licenses for its workstations used in conjunction with SunGard's application software products as listed in Appendix 1.

10.5 Exclusions

System Requirements. SunGard solutions are designed to function at optimum levels when integrated with *dedicated* hardware resources. The addition of non-SunGard provided software may adversely affect the performance or functionality of the SunGard provided applications. Accordingly, SunGard will not be responsible for system malfunctions or loss of functionality caused by the addition of non-SunGard provided applications or utility software. Applications that alter the basic architecture of the operating environment, such as VMWare, will not be supported. Corrective measures for malfunctions caused by such additions will be at the option of SunGard and will be billable at SunGard's then-current hourly rate.

The Application Software Maintenance and Support Fees do *not* cover:

1. Altered, damaged, or modified software;
2. Errors or problems in the software caused by negligence, abuse or misapplication of the software, by hardware malfunctions or by failure to adhere to the software utilization guidelines as specified in the SunGard-supplied User Documentation and/or as provided for during SunGard-supplied training;
3. Software errors arising from bugs, modifications, updates to the operating systems, database(s) or other software not furnished by SunGard; or
4. Software performance issues resulting from changes in the Customer's hardware or operating environment not supplied by or performed by SunGard.

11. **OFF-SITE HARDWARE MAINTENANCE SERVICE**

11.1 It is the Customer's responsibility to decide when the equipment needs service. Before requesting service, the Customer must perform problem determination procedures, which include running prescribed diagnostic software or procedures which will be supplied with the equipment and will be documented in the Operations Manual. Customer then calls SunGard for service and gives SunGard all information requested. If possible, remedial advice will be supplied over the phone (i.e., loose cable to be tightened, replace fuse) and Customer will administer remedial action.

11.2 In the event immediate remedial action cannot be taken via the phone, the following procedure will be followed:

11.2.1 SunGard will arrange for replacement equipment to be shipped via overnight package service. Replacement equipment will be new or reconditioned equipment. (A reconditioned machine is one which is in good working order, has been cleaned, lubricated, adjusted and tested, and which has had defective or excessively worn parts replaced with new or serviceable used parts.)

- 11.2.2 Customer will unpack the replacement equipment and replace the malfunctioning equipment with the replacement equipment.
 - 11.2.3 Customer will run diagnostic software or procedures and report results by calling SunGard's Engineering Help Desk.
 - 11.2.4 Customer will pack the malfunctioning equipment in the replacement equipment packing material and ship malfunctioning equipment back to SunGard's service center. Customer agrees to pay return shipping charges and incur the risk of loss or damage in transit. Customer further agrees to pay shipping charges associated with shipment of the replacement unit. Such charges will be added to the next Customer invoice. At the Customer's option, the Customer may specify that SunGard utilize less costly shipping methods than the standard overnight option in non-emergency situations.
 - 11.2.5 Malfunctioning equipment returned to SunGard, in the case of purchase or lease/purchase, will become the property of SunGard unless Customer elects repair, as outlined below.
 - 11.2.6 Customer may elect to have the original equipment repaired and returned, in which case Customer pays additional freight charges associated with the return shipment to the Customer of the original malfunctioning equipment and return the replacement equipment at Customer's expense as described above, when the original replacement was made.
- 11.3 The Off-Site Maintenance Charges (OMC) do **NOT** cover:
- 11.3.1 Maintenance, repairs or replacement parts required due to loss or damage to the equipment caused by the fault or negligence of Customer, alterations or service performed by other than SunGard or its designee, or by acts of God.
 - 11.3.2 Expendable items such as, but not limited to, ribbons, print elements, diskettes, CD's, removable disks, and tapes.
 - 11.3.3 Labor, travel time and travel expense for any maintenance activities performed on the Customer's premises.
 - 11.3.4 Labor, travel time and travel expense for services that are part of the Customer system administrator responsibilities (as defined in Appendix 7).
 - 11.3.5 Maintenance repairs or replacement parts required for service on SunGard maintained equipment caused by environment, building power, or other Customer controlled factors.
 - 11.3.6 Labor, travel time and travel expense for service on SunGard maintained equipment caused by environment, building power, or other Customer controlled factors.
- 11.4 Service provided by SunGard, caused by exclusions, will be added to the next Customer invoice at SunGard's then standard rates.

12. EXTENDED HARDWARE MAINTENANCE SERVICE

- 12.1 On-call remedial maintenance (maintenance performed by SunGard or its designee which is necessary due to equipment failure) between the hours of 8:00 a.m. and 5:00 p.m. local time, Monday through Friday, excluding holidays. For services performed outside these hours and items covered under Exclusions, the Customer shall pay the SunGard charges for travel time, labor time, plus travel expenses, at SunGard's then current rates.
- 12.2 Defined response to calls placed between 8:30 a.m. and 5:00 p.m. EST, Monday through Friday, excluding holidays, are determined by the Customer's proximity to a designated service location. Response time will be 4, 8 or 16 hours. Customers in close proximity to a designated service location will receive 4-hour response to calls. Customers more distant from a designated service location will receive either 8 or 16 hour response to calls. Response time is relative to the time the call for service is received within the 8:30 a.m. to 5:00 p.m. EST call window. For example, a 4-hour response time for a call placed at 4:00 p.m. EST would guarantee response by 11:30 a.m. the next day. A 4-hour response time call placed at 4:00 p.m. PST (7:00 p.m. EST) would guarantee a response by 9:30 a.m. PST (12:30 p.m. EST) the next day.
- 12.3 Scheduled preventive maintenance (maintenance performed by SunGard or its designee, if required by the original equipment manufacturer, which is designed to keep the equipment in good operating condition), will be provided between the hours of 8:00 a.m. and 5:00 p.m. local time, Monday through Friday, excluding holidays.
- 12.4 Parts will be replaced when necessary at SunGard expense with new or parts of equal quality, on an exchange basis.
- 12.5 Labor and parts required to implement engineering changes considered essential by SunGard or its designee to this operation of the equipment or for safety reasons will be provided.
- 12.6 Selective Line Item Cancellation - SunGard agrees that, with respect to any computer hardware no longer in use, the Customer may withdraw such equipment from this Agreement (and receive an appropriate reduction in the maintenance fee) upon two (2) months prior written notice to SunGard.
- 12.7 The Extended Maintenance Charges (EMC) do **NOT** cover:
- 12.7.1 Maintenance, repairs or replacement parts required due to loss or damage to the equipment caused by the fault or negligence of Customer, alterations or service performed by other than SunGard or its designee, or by acts of God.
 - 12.7.2 Expendable items such as, but not limited to, ribbons, print elements, diskettes, CD's, removable disks, and tapes.
 - 12.7.3 Labor, travel time and travel expense for the installation of expendable items.
 - 12.7.4 Labor, travel time and travel expense outside the hours provided for in this Extended Hardware Maintenance Service Agreement.
 - 12.7.5 Labor, travel time, travel expense and shipping expenses, if applicable, for the moving of equipment from one location to another.

- 12.7.6 Labor, travel time and travel expense for repairs to equipment caused by movement of equipment by non-SunGard personnel.
- 12.7.7 Labor, travel time and travel expense for installation, repair or diagnosis of non-SunGard maintained equipment, such as, but not limited to, phone company equipment.
- 12.7.8 Labor, travel time and travel expense for service on SunGard maintained equipment caused by environment, building power, or other Customer controlled factors.
- 12.7.9 Labor, travel time and travel expense for software or operator type problems such as, but not limited to, recreating data packs.
- 12.7.10 Labor, travel time and travel expense for services that are part of the Customer system administrator responsibilities (as defined in Appendix 7).
- 12.8 Service provided by SunGard, caused by exclusions, will be added to the next Customer invoice at SunGard's then standard rates.

13. OPERATING SYSTEM OR UTILITY SOFTWARE TELEPHONE SUPPORT SERVICES

- 13.1 Direct Telephone Support - Direct telephone access to SunGard's System Software Support personnel who provide timely answers to usage questions, assist Customer on installing updates and resolve occasional software problems. This service is available between the hours of 8:30 a.m. and 5:00 p.m. EST, Monday through Friday, excluding SunGard honored holidays.

The above services will be provided by Internet or telephone communication contact between SunGard and Customer. Customer will be responsible for all data line telephone charges involved in providing telephone support services and SunGard will invoice Customer at cost.

- 13.2 On-Site Support - Customer will have access to on-site support. On-site support will be provided at the current published per diem fee plus all travel expenses. All fees will be rounded off to the nearest half day. A day is defined as 8:00 a.m. to 5:00 p.m. local time, Monday through Friday, excluding SunGard honored holidays. All on-site support time outside these hours will be charged at SunGard's then current hourly rates for System Software.

13.3 Customer Responsibilities

- 13.3.1 Internet access is required for delivery of SunGard's support services and will be the primary connectivity medium for all support activities. The Customer will be responsible to provide reliable access to each server via the Internet utilizing a connectivity method listed on the SunGard Public Sector Pentamotion Inc. Internet Connectivity Authorization Form (Appendix 8). At least one dedicated dial-up telephone line with a high speed (56K minimum) modem, capable of connection to each server, is strongly recommended as a backup means of communication in the event of Internet failure. A "superuser" system log-in account with privileges for SunGard's use in support of this Agreement is also required.

- 13.3.2 The Customer will be responsible to provide a CD which may be used to install new software releases, updates, enhancements, etc. A 4mm DAT, DLT, SDLT or LTO tape drive will be required to facilitate large file transfers for troubleshooting purposes.
- 13.3.3 Customer will be responsible for the activities listed in the System Administrator responsibilities in Appendix 7.
- 13.3.4 Customer will be responsible for the costs of travel, lodging and related expenses for training and support provided by SunGard to personnel at Customer's location.
- 13.4 Services necessitated by problems caused by unauthorized Customer changes, acts of God, or Customer's improper use of the systems or equipment, or other causes beyond SunGard's control may result in extra charges by SunGard.

14. CUSTOM PROGRAMMING SERVICES

14.1 General

- 14.1.1 SunGard offers custom programming as an optional service to the Customer. When the Customer requests the service, SunGard will provide written specifications and a fixed cost estimate for the work to be performed. The Customer is granted a non-exclusive, non-transferable perpetual license to the customized software and source program code.
- 14.1.2 An annual maintenance and support service for custom software is provided at SunGard's current annual percentage of the standard charge for programming the custom software. This maintenance and support service provides on-going telephone support, bug fixes, and upward migration to new releases for custom software.
- 14.1.3 SunGard retains ownership of all custom-developed software and may, at its discretion, include the software in future releases of standard products.

14.2 SunGard Responsibilities

- 14.2.1 SunGard will provide a written cost estimate for the work to be performed subject to a not-to-exceed 10% variance. This estimate will be based on mutually agreed to specifications.
- 14.2.2 SunGard will install the software or provide instructions for Customer installation.
- 14.2.3 SunGard will provide telephone instruction in the use and features of the custom-developed software.
- 14.2.4 SunGard will provide standard programmer documentation.
- 14.2.5 SunGard will test all modifications for anticipated conditions using test data or data provided by the Customer.
- 14.2.6 SunGard will provide source code for all custom-developed programs.

14.2.7 SunGard will warrant software to perform as documented in the written specifications.

14.2.8 SunGard will provide phone and technical support as well as any additional programming to implement the custom-developed software in a minor release of a standard application software product.

14.3 Customer Responsibilities

14.3.1 Customer will review SunGard-provided specification documents for errors and omissions. After programming has started, project changes due to policy change, or incomplete, or erroneous specifications may increase the cost of the project.

14.3.2 Customer will test all custom-developed software after installation on the Customer's hardware before running in a "live" production environment.

14.3.3 Customer will reimburse SunGard for all reasonable travel and living expenses if a site visit is required.

14.3.4 Customer will retain a copy of the modified source code on the Customer's system in the event future modifications are required.

14.4 Acceptance and Payment - Customer shall have a 45-day period immediately following delivery of the custom programming project to test and verify that it functions in accordance with the specifications. Any defects identified by Customer shall be reported to SunGard for review and correction. If no defects are reported, payment is due at the end of the 45-day testing period. If defects are discovered and reported to SunGard, payment is due as soon as defect(s) are corrected.

15. OTHER PROVISIONS

15.1 Notice. All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt, the third business day after being mailed by first class certified air mail, or the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile, provided that a signed written original is sent by one of the foregoing methods within twenty-four (24) hours thereafter. Customer's address for notices is **Denton Independent School District, 1212 North Elm Street, Denton, TX 76201**, Attention: **David Moor**. SunGard's address for notices is **SunGard Public Sector Pentamation Inc., 3 West Broad Street, Bethlehem, PA 18018** Attention: **Contract Administration**. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section 15.1.

15.2 Parties in Interest.

15.2.1 This Agreement shall bind, benefit and be enforceable by and against SunGard and Customer and, to the extent permitted hereby, their respective successors and assigns.

15.2.2 Customer shall not assign this Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without SunGard's prior written

consent, except that such consent shall not be required in the case of an assignment to (i) a purchaser of or successor to substantially all of Customer's business (unless such purchaser or successor is a software, data processing or computer services vendor that is a competitor of SunGard, its parent company or any of its Affiliates) or (ii) an Affiliate of Customer, provided that the scope of each license granted under this Agreement does not change and Customer guarantees the obligations of the assignee. Any assignment by Customer in breach of this Section shall be void.

15.2.3 Any express assignment of this Agreement, any change in control of Customer, any acquisition of additional business by Customer (by asset acquisition, merger or otherwise by operation of law), and any assignment by merger or otherwise by operation of law, shall constitute an assignment of this Agreement by Customer for purposes of this Section 15.2 ("Customer Assignment"). Customer shall give written notice to SunGard at least thirty (30) days before a Customer Assignment certifying the expected use of the Software to process any additional business related to such Customer Assignment ("Additional Business"). If any Customer Assignment occurs, Customer may continue to process its business to the extent it existed before such Customer Assignment, but Customer may not use the Software to process any Additional Business until and unless Customer has paid to SunGard an Additional Business fee, to be negotiated at the time of the Customer Assignment. Any use of the Software to process any Additional Business before the payment of such fee shall be deemed a material breach of this Agreement. Customer shall promptly complete and return to SunGard periodic certifications which SunGard, in its sole discretion, may from time to time send to Customer, certifying the actual use of the Software to process any Additional Business.

15.3 **Export Laws and Use Outside of the United States.** Customer shall comply with the Export Laws. Customer shall not export or re-export directly or indirectly (including via remote access) any part of the Software or Confidential Information to any Applicable Jurisdiction to which a license is required under the Export Laws without first obtaining a license.

15.4 **Relationship.** The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint venturers or agents.

15.5 **Entire Understanding.** This Agreement, which includes and incorporates the Appendices, and any other schedules, exhibits and addenda hereto states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the parties with respect to the subject matter of this Agreement.

15.6 **Conflicts.** In the event of any conflict between this Agreement and the Appendices, the terms of the Appendices shall govern.

15.7 **Modification and Waiver.** No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. This Agreement may not be modified or amended by electronic means without written agreement of the parties with respect to formats and protocols. No waiver of any

breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.

- 15.8 Audit.** SunGard may, at its expense and by giving reasonable advance written notice to Customer, enter Customer locations during normal business hours and audit the number of copies of the Software and Documentation in Customer's possession, the Scope of Use and information pertaining to Customer's compliance with the provisions of Sections 1.1, 5.2, 8.2, 8.3 and 15.2. If SunGard discovers that there is an unauthorized Scope of Use or that Customer is not in compliance with the provisions of Sections 1.1, 5.2, 8.2, 8.3 and 15.2 in any material respect, then Customer shall reimburse SunGard for the expenses incurred by SunGard in conducting the audit.
- 15.9 Severability.** A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement.
- 15.10 Headings.** Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement.
- 15.11 Negotiated Terms.** The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Agreement.
- 15.12 Personnel.** Customer shall not, directly or through one or more subsidiaries or other controlled entities, hire or offer to hire any programmer, trainer or member of a data processing, customer support or conversion team of SunGard at any time when such Person is employed or engaged by SunGard or during the six (6) months after such SunGard employment or engagement ends. For purposes of this provision, "hire" means to employ as an employee or to engage as an independent contractor, whether on a full-time, part-time or temporary basis. This provision will remain in effect during the term of this Agreement and for a period of one (1) year after termination of this Agreement. In the event such activity occurs, Customer will pay to SunGard damages in the amount of \$50,000.
- 15.13 Jurisdiction and Process.** In any action relating to this Agreement, (a) each of the parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in the Commonwealth of Pennsylvania, (b) each of the parties irrevocably waives the right to trial by jury, (c) each of the parties irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which the party is to receive notice in accordance with Section 15.1, and (d) the prevailing party shall be entitled to recover its reasonable attorney's fees (including, if applicable, charges for in-house counsel), court costs and other legal expenses from the other party.
- 15.14 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. If this Agreement is executed via facsimile, each party hereto shall provide the other party with an original executed signature page within five (5) days following the Execution Date of this Agreement.
- 15.15 Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA EXCLUDING CHOICE OF LAW; PROVIDED, HOWEVER, THAT THE TERMS OF

ANY APPLICABLE LAW NOW OR HEREAFTER ENACTED THAT IS BASED ON OR SIMILAR TO THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT DRAFTED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS SHALL NOT APPLY.

15.16 Piggy Back Clause. Whereas Customer has conducted a competitive evaluation and has concluded such efforts with this negotiated Agreement; therefore this Agreement may serve as the basis for similar Agreements whereby other governmental entities may contract separately with SunGard.

