

## TERMS OF PURCHASE AGREEMENT

The following terms and conditions are part of the Purchase Agreement (the "Agreement") between MERRILL & ASSOCIATES and CUSTOMER, including any and all Attachments applicable to the Agreement, and are hereby incorporated into the Agreement.

### 1. DEFINITIONS

**Delivery Date** means the date on which MERRILL & ASSOCIATES delivers: (i) MERRILL & ASSOCIATES-installed Products to CUSTOMER's premises; or (ii) when other Products are delivered to CUSTOMER's premises via carrier requested by MERRILL & ASSOCIATES. In the case of software features that can be enabled by MERRILL & ASSOCIATES remotely or delivered via electronic means, Delivery Date means the date the features are enabled or the software is downloaded to the target processor.

**In-Service Date** means the date on which MERRILL & ASSOCIATES notifies CUSTOMER that the MERRILL & ASSOCIATES-installed Products are installed in good working order in accordance with applicable documentation and if applicable in accordance with any Acceptance criteria.

**Installation Start Date** means the date on which MERRILL & ASSOCIATES' personnel arrive at CUSTOMER's premises to install Products

**Documentation** means and include, products resold by MERRILL & ASSOCIATES' user manuals, reference manuals or operating guides in printed or electronic form and performance specifications that are generally made available to users of resold Products and delivered to CUSTOMER with the Products. Documentation includes mutually agreed upon statements of work delivered by MERRILL & ASSOCIATES to CUSTOMER with respect to Services. Documentation does not include marketing materials.

### 2. PRODUCT CHANGES

MERRILL & ASSOCIATES' suppliers may make changes to Products or modify the drawings and specifications relating to Products, or substitute Products of later design, provided that the changes do not adversely and materially impact Product form, fit or function and at no additional cost to CUSTOMER.

### 3. ORDERS

CUSTOMER may hereafter commission MERRILL & ASSOCIATES, and MERRILL & ASSOCIATES may accept such commission, to provide Product and Services as the parties hereinafter agree subject to the terms and conditions of this Agreement. Such commission shall not be effective until: (a) the parties have executed a written agreement, and (b) CUSTOMER has issued a purchase order ("P.O.") to MERRILL & ASSOCIATES with respect to the Products and Services. The parties acknowledge and agree that this Agreement shall apply in respect of any agreement unless this Agreement is expressly excluded from such commission by a written instrument signed by CUSTOMER and MERRILL & ASSOCIATES.

### 4. INSURANCE

MERRILL & ASSOCIATES, at its own expense, throughout the Term, shall continuously maintain in full force and effect all insurance as applicable law may call for, including: (a) statutory workers' compensation insurance and employer's liability insurance in an amount not less than \$1,000,000; and (b) a commercial general liability policy with aggregate limits of no less than \$2,000,000.

### 5. CHANGE CONTROL PROCEDURE

If CUSTOMER requests modifications that deviate in any material respect from the specifications in the Purchase Agreement, CUSTOMER shall submit to MERRILL & ASSOCIATES a written change order as follows: (a) such revisions in detail and (b) a request for a price quote for each change (collectively, the "Change Order"). MERRILL & ASSOCIATES shall evaluate the Change Order and submit to CUSTOMER a proposal for undertaking the applicable tasks including: (a) a price quote reflecting all associated fees, and (b) the timeframe and changes to any existing timeframe associated with CUSTOMER's Change Order. Changes will be valid only where agreed in writing by both parties and the Change Order, as supplemented and/or modified by MERRILL & ASSOCIATES' proposal, shall amend and become a part of this Agreement.

### 6. CUSTOMER OBLIGATIONS

CUSTOMER will cooperate with MERRILL & ASSOCIATES for MERRILL & ASSOCIATES' delivery of Products and performance of Services in a timely manner. CUSTOMER will provide MERRILL & ASSOCIATES with interface and other information regarding access to third party products in CUSTOMER's network and necessary third party consents and licenses to enable MERRILL & ASSOCIATES' performance under the Agreement. CUSTOMER is responsible for ensuring that its networks and systems are adequately secured against unauthorized intrusion or attack and regularly backing up its data and files in accordance with good computing practices. If CUSTOMER fails to meet its cooperation obligations under this Section, MERRILL & ASSOCIATES may delay or suspend its delivery of Products or performance of Services relating to CUSTOMER's failure.

### 7. SECURITY

For any Services that MERRILL & ASSOCIATES performs on-site at a CUSTOMER location, CUSTOMER'S Security department shall have the right upon MERRILL & ASSOCIATES' entry into the location, to perform a visual inspection of any equipment or materials that MERRILL & ASSOCIATES brings on-site.

### 8. FEES

#### 8.1 Rates and Normal Business Hours

Services shall be performed during normal business hours (8:00AM to 5:00PM – PST, Monday to Friday) excluding MERRILL & ASSOCIATES designated Holidays unless otherwise agreed to in advance. Any work which is required to be performed outside of normal business hours as requested by CUSTOMER and agreed to by MERRILL & ASSOCIATES, will be at MERRILL & ASSOCIATES' then current out-of-hours rates, which will be provided to CUSTOMER for review prior to any performance of work outside of normal business hours. Prices will be in U.S. dollars.

#### 8.2 Expenses

Subject to CUSTOMER's prior written approval and MERRILL & ASSOCIATES' then current standard travel and entertainment guidelines, CUSTOMER will reimburse MERRILL & ASSOCIATES for any reasonable, authorized travel, lodging, sustenance and other approved out-of-pocket expenses ("Expenses") incurred by Personnel in the course of performing hereunder, provided that MERRILL & ASSOCIATES furnishes CUSTOMER with specific documentation therefore.

### 9. INVOICES AND PAYMENTS

#### 9.1 Invoices

Standard Credit Terms are 30 days from date of invoice. Unless otherwise mutually agreed by CUSTOMER and MERRILL & ASSOCIATES, invoicing of CUSTOMER shall be as follows:

**Products:** 50% pre-payment before order is processed with the balance invoiced at time of shipment from manufacturer or distributor.

**Services:** invoicing will be as follows: (i) Fixed-Price projects and Installation Services upon completion of the installation; (ii) Time & Material Services will be invoiced upon completion of activity. (iii) Milestone/Phased Services according to a mutually agreed upon completion schedule or per a Statement of Work.

**Maintenance or Managed Services:** CUSTOMER will be invoiced in advance and upon signing a Maintenance Contract, unless another payment option is specified in the PO.

**Lease Transactions:** will require a 50% pre-payment before order is processed with balance due at the time of shipment from manufacturer or distributor. CUSTOMER is responsible for all moneys due if lease funding is not completed within 7 days.

#### 9.2 Payment

Unless otherwise agreed to, payment of invoices is due within 30 days from the date of MERRILL & ASSOCIATES' invoice. Overdue payments will be subject to a late payment charge of the lesser of 1.5% per month or the maximum rate allowed by applicable law.

#### 9.3 Taxes

Unless CUSTOMER provides MERRILL & ASSOCIATES with a tax exemption certificate, CUSTOMER is solely responsible for paying all legally required taxes, including without limitation any sales, excise or

other taxes and fees which may be levied upon the sale, transfer of ownership, license, installation or use of the Products, except for any income tax assessed upon MERRILL & ASSOCIATES.

### 10. ORDER CHANGES AND CANCELLATIONS

In the event of a permitted cancellation, all preliminary Products that have been delivered to CUSTOMER will be returned promptly to MERRILL & ASSOCIATES in the original, unopened packaging and in the same condition as delivered.

**Re-Stocking and Shipping Fees:** A twenty-percent (20%) re-stocking fee will be assessed for any equipment, products, or parts that are returned, unless otherwise agreed upon by MERRILL & ASSOCIATES and the CUSTOMER. Equipment that has been opened or installed will not be accepted. For Returns, CUSTOMER is responsible for any shipping fees between the CUSTOMER and MERRILL & ASSOCIATES and/or MERRILL & ASSOCIATES and the equipment manufacturer.

**Labor:** If CUSTOMER changes the Scope of Work, stops (delays) the project, or cancels the project, CUSTOMER will be responsible for all labor charges incurred up to the date of cancellation, and will be invoiced accordingly. In addition, CUSTOMER will be responsible for any labor charges associated with re-doing or undoing work that has been performed.

### 11. PRODUCT AND SERVICES ACCEPTANCE PROCEDURE

11.1 Time & Material Services (T&M)

**T&M Services are deemed accepted upon completion.**

#### 11.2 Purchase Orders without Acceptance Procedure

Where specific acceptance criteria and procedures have not been mutually agreed upon by CUSTOMER and MERRILL & ASSOCIATES, CUSTOMER shall have three (3) business days to accept the Implementation Services upon MERRILL & ASSOCIATES providing notice of completion to CUSTOMER. The Products and Services shall be deemed accepted upon the earlier of either: (i) the end of the third business day, unless MERRILL & ASSOCIATES has received from CUSTOMER a rejection notice indicating in reasonable detail the material failure of the Implementation Services to conform to the specifications ("Rejection Notice"); or (ii) production use of the Deliverable associated with the Implementation Services. If MERRILL & ASSOCIATES has received a timely Rejection Notice, then MERRILL & ASSOCIATES will re-perform the respective service and re-submit for acceptance. If requested by MERRILL & ASSOCIATES, CUSTOMER will sign and return a Customer Acceptance Certificate evidencing acceptance in accordance with this Section.

WHETHER OR NOT THERE ARE AGREED UPON ACCEPTANCE CRITERIA, IF CUSTOMER PUTS THE SOLUTION INTO PRODUCTION MODE USE, AND SUCH PRODUCTION MODE USE CONTINUES FOR 10 CONSECUTIVE DAYS, THEN PRODUCTS, SERVICES, AND DELIVERABLES ARE DEEMED FULLY ACCEPTED.

### 12. DISPUTES

In the event CUSTOMER disputes the amounts specified on any invoice received from MERRILL & ASSOCIATES, CUSTOMER will promptly, but in any case not later than twenty (20) days following the date of such invoice, notify MERRILL & ASSOCIATES in writing of the nature of the Billing Dispute. MERRILL & ASSOCIATES agrees that it shall promptly enter into good faith negotiations to resolve any discrepancy or misunderstanding associated with such amounts. MERRILL & ASSOCIATES will make commercially reasonable efforts to completely resolve the Billing Dispute within thirty (30) days following the date on which MERRILL & ASSOCIATES received CUSTOMER's initial billing inquiry.

### 13. SHIPPING; RISK OF LOSS; TITLE

Products will be shipped to the destination in the United States specified in the order. Shipping and handling costs will be reflected as a separate line item on the MERRILL & ASSOCIATES invoice. Risk of loss will pass to CUSTOMER on the Delivery Date. Title to MERRILL & ASSOCIATES-installed hardware will pass to CUSTOMER on the In-Service Date. Title to all other hardware will pass to CUSTOMER on the Delivery Date. Title to software provided under the Agreement will remain solely with licensors to MERRILL & ASSOCIATES, unless otherwise stated in the license agreement shipped with software. Subject to CUSTOMER's payment of fees for Products and Services, MERRILL & ASSOCIATES grants CUSTOMER a non-exclusive, non-transferable, perpetual, limited, non-sublicenseable license to use Deliverables created by MERRILL & ASSOCIATES and delivered to CUSTOMER as a part of Services.

### 14. WARRANTY AND LIMITATION OF LIABILITY

#### 14.1 Warranty

MERRILL & ASSOCIATES warrants to CUSTOMER that during the applicable warranty period, the Product will conform to and operate in accordance with the applicable documentation in all material respects.

#### 14.2 Warranty Period

The warranty periods for Products are generally as follows: (i) hardware: 12 months, beginning on the In-Service Date for MERRILL & ASSOCIATES-installed hardware and on the Delivery Date for all other hardware; (ii) software and software media: 90 days, beginning on the In-Service Date for MERRILL & ASSOCIATES-installed software and on the Delivery Date for all other software. The warranty period will always, without exception follow the length and conditions of the manufacturer. Some manufacturers will require software licenses agreements be reviewed and signed prior to delivery.

With respect to software that contains elements provided by third party suppliers, CUSTOMER may install and use the software in accordance with the terms and conditions of the applicable license agreements provided by MERRILL & ASSOCIATES from third party. Upon written request, MERRILL & ASSOCIATES shall make all reasonable efforts to supply CUSTOMER with a copy of the Third Party License in advance of the shipment of the related Product.

#### 14.3 Remedies

If a Product is not in conformance with the warranty above and MERRILL & ASSOCIATES receives from CUSTOMER (during the applicable warranty period) a written notice describing in reasonable detail how the Product failed to be in conformance, MERRILL & ASSOCIATES at its option will repair or replace the Product to achieve conformance and return the Product to CUSTOMER. For software warranty claims, CUSTOMER must provide MERRILL & ASSOCIATES with information in sufficient detail to enable MERRILL & ASSOCIATES to reproduce and analyze the failure and must provide limited remote/dial-in access to the affected Products to perform diagnostics and/or repair. Replacement hardware may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent and will be furnished only on an exchange basis. Returned hardware that has been replaced by MERRILL & ASSOCIATES will become MERRILL & ASSOCIATES' property. Replacement Products are warranted as above for the remainder of the original applicable Product warranty period. THESE REMEDIES WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST MERRILL & ASSOCIATES WITH RESPECT TO THE NONCONFORMANCE OF PRODUCTS.

#### 14.4 Warranty Procedures

Products subject to a warranty claim must be returned to MERRILL & ASSOCIATES in accordance with MERRILL & ASSOCIATES' instructions accompanied by evidence satisfactory to MERRILL & ASSOCIATES that the Products remain entitled to warranty protection.

#### 14.5 Costs

If a Product is returned within the applicable warranty period subject to a valid warranty claim, MERRILL & ASSOCIATES will not charge for any repair, replacement, error identification or correction, or return shipment of the non-conforming Product. If MERRILL & ASSOCIATES has determined that the Product was operating in conformance with its applicable warranty or if CUSTOMER requests MERRILL & ASSOCIATES to continue to troubleshoot after MERRILL & ASSOCIATES has advised CUSTOMER that the Product is operating in conformance with its applicable warranty, MERRILL & ASSOCIATES may charge CUSTOMER for error identification or correction efforts, repair, replacement and shipment costs at MERRILL & ASSOCIATES' then current rates.

### 15. LITIGATION

#### 15.1 Attorney's Fees

Should any litigation be commenced between parties to this Agreement concerning any provision of this Agreement or the rights and obligations of any party, the party prevailing in such litigation shall be

entitled, in addition to such other relief as may be granted, to that party's full attorney's fees and costs incurred in such litigation.

**15.2 Jurisdiction and Venue**

The parties agree that any legal action or proceeding with respect to this Agreement must be brought in the Superior Court of the State of California, in Orange County, California. By execution of this Agreement, the parties hereby submit to such venue, forum and jurisdiction and further hereby expressly waive whatever rights may correspond to it by reason of each party's present or future domicile.

**16. MISCELLANEOUS**

**16.1 Notices**

Any notice required or permitted to be given hereunder shall be in writing and may be served personally, or by mail, addressed to CUSTOMER at the address given for billing or to MERRILL & ASSOCIATES at its corporate office in Brea, California. Notice shall be effective upon personal delivery, or if given by mail, shall be effective two (2) days after deposit in the United States mail registered or certified, postage prepaid and addressed as specified above. Either party may by written notice to the other specify a different address for notice purposes.

**16.2 Assignment**

Neither Party shall assign this Agreement or its rights and obligations hereunder.

**16.3 No Modifications**

No addition to or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by both MERRILL & ASSOCIATES and CUSTOMER.

**16.4 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**16.5 No Waiver**

The waiver by one Party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.

**16.6 Entire Agreement**

This Agreement, together with any applicable Attachments, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes any and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral, written or electronic, including any letters of intent or memoranda of understanding.

**16.7 Counterparts**

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by the other Party. Counterparts may be delivered by fax provided that original executed counterparts are delivered to the recipients on the next business day following the fax transmission.