

- Provide the Service Tag number and other information as requested to the analyst. Analyst will verify support level and any expiration of Services.
3. **Assist with Phone-based Troubleshooting**
- When requested, identify error messages received and when they occur; what activities preceded the error message; and what steps Customer has already taken to solve the problem.
 - Analyst will go through a series of troubleshooting steps to help diagnose the issue.
 - If an on-site dispatch is necessary, the analyst will provide Customer with additional instructions.

On-Site Support

On-site response options vary depending on the type of service purchased; Customer's invoice indicates Customer's type of on-site response. Provided all applicable terms and conditions set forth in this Service Description have been fulfilled, Dell will dispatch a service technician to the Customer's business location (indicated on Customer's invoice or Customer's applicable separately signed agreement with Dell) as necessary pursuant to the applicable on-site response table below:

Type of On-Site Response	On-site Response Time	Restrictions/Special Terms
2-Hour On-Site Response with 6-Hour Repair Service	Technician usually arrives on-site within 2 hours after completion of phone-based troubleshooting and repairs the hardware within 6 hours of dispatch.	<ul style="list-style-type: none"> • Available 7 days/week, 24 hours/day - including holidays. • Available within defined 2 hour response locations. • Select Dell PowerEdge and PowerVault models only. • Emergency dispatch in parallel with troubleshooting available for Severity Level 1 (see below).
4-Hour On-Site Service	Technician usually arrives on-site within 4 hours after completion of phone-based troubleshooting.	<ul style="list-style-type: none"> • Available 7 days/week, 24 hours/day - including holidays. • Available within defined 4 hour response locations. • Available on select Dell PowerEdge, PowerConnect, Dell/EMC and PowerVault models. • Emergency dispatch in parallel with troubleshooting available for Severity Level 1 (see below).
8-Hour On-Site Service	Technician usually arrives on-site within 8 hours after completion of phone-based troubleshooting.	<ul style="list-style-type: none"> • Available 7 days/week, 24 hours/day - including holidays. • Available within defined 8 hour response locations. • Available on select Dell EMC Storage products.
Next Business Day On-Site Response Service	Following phone-based troubleshooting, a technician can usually be dispatched to arrive on-site the next business day.	<ul style="list-style-type: none"> • Available 5 days/week, 10 hours/day - <i>excluding</i> holidays. • Limited to locations beyond 4 hour response locations. • Calls received by Dell EEC after 5:00 PM local Customer time (Monday - Friday) and/or dispatches made after that time may require an additional business day for service technician to arrive at Customer's location. • Select Dell PowerEdge and PowerVault models only.
Outside Continental United States ("OCONUS") Customers	Following phone-based troubleshooting, parts can be dispatched. On-site arrival times will depend on location and part availability.	<ul style="list-style-type: none"> • Limited to Dell-approved OCONUS customers. • Availability limited to select systems and locations. See www.dell.com/fed/international for details. • Federal customers should consult OCONUS Service Locations in Customer's applicable separately signed agreement with Dell.

Emergency Dispatch for Severity Level 1 issues: Systems with Gold 2-hour or Gold 4-hour on-site response service will have an on-site service technician dispatched, if necessary, in parallel with phone-based troubleshooting. Following completion of problem determination the analyst will determine if the issue requires parts to be dispatched. Critical or Severity Level 1 issues are defined as a complete loss of a core organizational or business process in which work

cannot reasonably continue, and requires Customer to provide appropriate staff and resources to sustain continuous 7 x 24 communications and work effort.

For all other severity levels and on-site response service options: Following completion of remote troubleshooting and problem determination, the analyst will determine if the issue requires an on-site service technician and/or parts to be dispatched or if the issue can be resolved remotely over the phone.

Missed Service Visit. If Customer or Customer's authorized representative is not at the location when the service technician arrives, the service technician cannot service the Supported System. The service technician will leave a card to let Customer know he or she was there. If this occurs, Customer may be charged an additional charge for a follow-up service call.

Software Troubleshooting

Gold Support includes software troubleshooting with Collaborative Support for select applications, operating systems, and firmware on Supported Systems (the "Covered Software Products") over the telephone, or by transmission of software and other information through electronic means, or by shipping software and/or other information to Customer. Covered Software Products include core operating systems (Microsoft®, Novell® or Red Hat®), core Dell|EMC software (such as Navisphere® Manager, Access Logic™, Navisphere Agent and PowerPath®), and key software applications.

Collaborative Support If a problem arises with certain third party products commonly utilized in conjunction with Customer's Supported System, Dell will provide a single point of contact, as set forth herein, until problems are isolated and escalated to the third party product vendor. Specifically, Dell will contact the third party vendor and create a problem incident on behalf of Customer, providing the necessary problem documentation. Once a vendor is engaged, Dell will monitor the problem resolution process and obtain status and resolution plans from the vendor until the vendor resolves the problem by either providing a resolution, steps towards a resolution, workaround, configuration changes, or escalation of a bug report. Upon the Customer's request, Dell will initiate management escalation procedures within Dell and/or the vendor organization.

To be eligible for Collaborative Support, Customer must have the appropriate active support agreements and entitlement with the respective third party vendor. Once isolated and reported, the third party vendor provides technical problem support and resolution for Customer's problem. **DELL WILL NOT BE RESPONSIBLE FOR THE PERFORMANCE OF OTHER VENDORS' PRODUCTS OR SERVICES.** Customer agrees to indemnify and hold Dell harmless for any claims related to those third party products and services.

View Covered Software Products and current Collaborative Support partners at <http://www.dell.com/EnterpriseSupport/>. Please note that Covered Software Products may change at any time without notice to Customers.

Software Troubleshooting Does Not Include:

- Any product version not currently supported by the manufacturer, vendor or partner;
- Configuration, installation or optimization assistance;
- Any on-site service;
- Remote or on-site training assistance;
- Remote administration of Dell systems;
- Scripting, programming, database design/implementation or Web development; or
- Recompiled kernels.

Limits on Software Troubleshooting Service. Dell does not warrant that any particular question will be resolved or that the Covered Software Product will produce any particular result. Situations giving rise to Customer's questions must be reproducible on a single system (i.e., one central processing unit with its workstation and other peripherals). Dell may conclude that a

question is sufficiently complex or that Customer's Supported System is of a nature that precludes effective analysis of the question through telephone discussions. Customer understands and accepts that Dell may be unable to resolve questions of this sort, and Customer understands and accepts that Customer will have to make independent arrangements for resolution of such questions.

Dell | EMC Core Software Updates

Gold Support includes the following software updates for core Dell | EMC software such as Navisphere® Manager, Access Logix™, Navisphere Agent, and PowerPath® (for the service period indicated on the invoice):

- Patches and Bug Fixes - minor changes made by EMC to the applicable Enterprise Storage Software for purposes of maintaining operating system compatibility and/or database compatibility, and any error corrections, workarounds and/or patches needed to maintain conformance to the documentation for the applicable Enterprise Storage Software);
- All new versions or releases of the applicable Enterprise Storage Software generally made available by EMC at no additional charge to other licensees for Enterprise Storage Software that is covered by an EMC warranty or under an annual maintenance contract between EMC and the licensee. These generally consist of releases that contain patches and bug fixes, changes that reflect an expansion or extension of existing features, and changes that include substantial new features, functions or capabilities.

May require additional purchase. Dell | EMC Core Software Updates may require the purchase of a separate Dell On-site Installation or Dell | EMC Maintenance Service as directed by Dell in order to keep the Support System(s) eligible for Gold Support.

Renewal. Customer may be entitled to renew for additional periods and/or purchase additional Dell | EMC Core Software Updates depending on the available options then in effect and in accordance with Dell's then-current rates, terms and conditions by submitting a purchase order to Dell. Dell may change its rates, terms, and conditions for providing support at any time. The fees for renewing Dell | EMC Core Software Updates are listed here:

Dell	 	EMC	Gold	Enterprise	Support	Renewal	Rates:
http://www.dell.com/downloads/global/services/con_pessTiersGold_ex-A.pdf							

Optional Services

This Service Description addresses standard Gold Support, but certain optional services may also be ordered with Gold Support for additional fees ("Optional Services"). Consult http://www.dell.com/service_contracts and/or Dell sales representative or TAM for additional information on these services. Optional Services include:

- **Dell/EMC Maintenance Service** - periodic health checks and software updates for Customer's SAN system, as well as phone-based assistance for installation and configuration of select SAN components.
- **Customer Owned On-Site Spare Parts** – several customized plans enabling a Customer to plan and manage its own inventory of spare parts at its own location; may include recommended spares lists ("RSLs") and assistance with parts management. Customers ordering optional Customer On-Site Spares Kit, agree to provide a safe and secure location for all parts, spares, equipment or materials which Dell places at Customer's site. Customer is responsible for buying any necessary spare parts and for warehousing, planning, ordering, and inventory for any necessary spare parts.
- **On-Site Technical Account Manager** - dedicated, highly skilled Dell TAM works on-site at Customer's location to provide high-level support by identifying areas for improving availability and on-site management of critical situations.
- **On-Site Engineer** - dedicated, highly skilled Dell-certified engineer works on-site at Customer's location, providing insight into Customer-specific environment with specialized knowledge of Dell processes and technology.

- **Security Clearance for On-Site Support** - supports security clearance requirements for on-site response technicians.
- **On-Site Troubleshooting** - Master Dell-certified system expert travels to Customer's location to help troubleshoot issues versus phone-based troubleshooting.
- **Keep Your Hard Drive** - Customer entitled to retain failed hard drive(s) being replaced under the Dell Limited Warranty.
- **Enterprise Assistance** – phone-based assistance with configuration, installation or optimization questions.

Important Additional Information

Customer Responsibilities:

- **Software/Data Backup.** It is the Customer's responsibility to complete a backup of all existing data, software, and programs on Supported Systems prior to Dell performing any Services. **DELL WILL NOT BE RESPONSIBLE FOR LOSS OF OR RECOVERY OF DATA, PROGRAMS, OR LOSS OF USE OF SYSTEM(S) OR NETWORK.**
- **Authority to Grant Access.** Customer represents and warrants that it has obtained permission for both Customer and Dell to access and use the Supported System, the data on it, and all hardware and software components included in it, for the purpose of providing these Services. If Customer does not already have that permission, it is Customer's responsibility to obtain it, at Customer's expense, before Customer asks Dell to perform these Services.
- **Cooperate with Phone Analyst and On-Site Technician.** Customer agrees to cooperate with and follow the instructions given by Dell phone analyst and its on-site technicians. Experience shows that most system problems and errors can be corrected over the phone as a result of close cooperation between the user and the analyst or technician. Listen carefully to the analyst or technician and follow their suggestions.
- **Supported Releases.** Customer must maintain software and Supported System(s) at Dell-specified minimum release levels or configurations as specified on PowerLink for Dell/EMC Storage or as specified on www.support.dell.com for PowerEdge, PowerEdge SC, PowerConnect and PowerVault systems. Customer must ensure installation of remedial replacement parts, patches, software updates or subsequent releases as directed by Dell in order to keep the Support System(s) eligible for Gold Support.
- **Third Party Warranties.** These Services may require Dell to access hardware or software that is not manufactured by Dell. Some manufacturers' warranties may become void if Dell or anyone else other than the manufacturer works on the hardware or software. It is Customer's responsibility to ensure that Dell's performance of Services will not affect such warranties or, if it does, that the effect will be acceptable to Customer. **DELL DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE DELL SERVICES MAY HAVE ON THOSE WARRANTIES.**
- **On-Site Obligations.** Where Services require on-site performance, Customer must provide free, safe and sufficient access to Customer's facilities and the Supported System(s). Sufficient access includes ample working space, electricity, and a local telephone line. A monitor or display, a mouse (or pointing device), and keyboard must also be provided (at **NO** cost to Dell), if the system does not already include these items.

Cisco. Dell has contracted with Cisco Systems, Inc. and is utilizing Cisco technical resources in delivering ongoing support for select Cisco products as part of Dell's overall services solution.

Assignment. Dell may assign these Services and/or Service Description to qualified third party service providers.

Whole Unit Replacement. If the analyst determines that the component of the defective Supported System is one that is easily disconnected and reconnected (such as a keyboard or monitor), or if the analyst determines that the Supported System is one that should be replaced as a whole unit, Dell reserves the right to send Customer a whole replacement unit. If a Dell technician delivers a replacement unit to Customer, Customer must relinquish the defective System or component thereof to the Dell technician,

unless Customer has purchased Keep Your Hard Drive for the affected system in which case Customer may retain the respective hard drive(s). If Customer does not relinquish the defective unit to the Dell technician as required above, or if (in the event the replacement unit was not delivered in person by a Dell technician) the defective unit is not returned within ten (10) days, Customer agrees to pay Dell for the replacement unit upon receipt of invoice. If Customer fails to pay such invoice within ten (10) days after receipt, in addition to any other legal rights and remedies available to Dell, Dell may terminate this Service Description upon notice.

Parts Ownership. All Dell service parts removed from the Supported System and returned to Dell become the property of Dell. Customer must pay Dell at the current retail price(s) for any service parts removed from the System and retained by Customer (except for hard drives from systems covered by Keep Your Hard Drive service) if Customer has received replacement parts from Dell. Dell uses new and reconditioned parts made by various manufacturers in performing warranty repairs.

Parts Stocked. Dell currently stock parts in various locations throughout the world. Selected parts may not be stocked in the location closest to a Customer's site. If a part that is needed to repair the Gold Supported System is not available from a Dell facility near Customer's location and must be transferred from another facility, it will be shipped using overnight delivery. 2-Hour and 4-Hour parts locations stock mission critical components of the system, as determined by Dell Product Groups. A mission-critical component is one, which upon failure, may prevent the core system from performing its basic functions. Parts deemed non-critical include, but are not limited to: Software, floppy drives, media drives, modems, speakers, sound cards, zip drives, monitors, keyboards, and mice. In order to receive 4 Hour or 2 Hour parts, the customer must be located within the coverage area previously determined by the Service Delivery Group.

Support Limitations. Dell is not liable for any failure or delay in performance due to any cause beyond its control. Service extends only to uses for which the Gold Supported System was designed.

Term and Renewal. Customer will receive Services for the term indicated on Customer's invoice. Prior to the expiration of the service term, Customer may be entitled to extend the term depending on available options then in effect and in accordance with Dell's then-current procedures.

In addition, Dell may, at its option, propose to renew Gold Support by sending Customer an invoice to renew the Services. Customer may, at its option, and only where permitted by law, agree to such renewal of the Services by paying such invoice by the due date. Payment of renewal invoices shall indicate Customer's agreement to extend the term of this Service for the periods covered by such invoice. If Customer elects not to pay a renewal invoice, Services will be discontinued as of the expiration date set forth on the original or last paid Customer invoice.

Relocation. The Gold Support Services will be delivered to the site(s) indicated on the Customer's invoice or Customer's applicable separately signed agreement with Dell. Customer agrees to give Dell at least thirty (30) days notice online at http://support.dell.com/support/topics/global.aspx/support/change_order/en/tag_transfer prior to relocating any Supported Systems. Gold Support Services are not available at all locations. Dell's obligation to supply Gold Support Services to relocated Supported Systems is subject to local availability and may be subject to additional fees, and to inspection and recertification of the relocated Supported Systems at Dell's then current time and materials consulting rates. Customer will provide Dell with sufficient, free, and safe access to Customer's facilities for Dell to fulfill these obligations. Gold Supported Service does not include support for damages resulting from moving the Gold Supported System from one geographic location to another or from one entity to another.

Cancellation. Customer may terminate this Service within thirty (30) days of Customer's receipt of the Gold Supported System by providing Dell with written notice of cancellation. If Customer cancels this Service within thirty (30) days of receipt of the Gold Supported Product, we will send Customer a full refund less the costs of support claims, if any, made under this Service Description. However, if more than thirty (30) days have transpired since Customer's receipt of the Gold Supported System, Customer may not cancel this Service except as provided by an applicable state/country/province law which may not be varied by agreement.

Dell may cancel this Service at any time during the Service term for any of the following reasons: Customer fails to pay the total price for Gold Support in accordance with the invoice terms; Customer makes a misrepresentation to Dell or its agents; Customer refuses to cooperate with or threatens in any manner the assisting analyst or on-site technician; Customer's repeated misuse of Gold Support for out of scope issues; or Customer otherwise breaches or fails to abide by all of the terms and conditions set forth in this Service Description. If Dell cancels this Service, we will send Customer written notice of cancellation at the address indicated in our records. The notice will include the reason for cancellation and the effective date of cancellation, which will be not less than ten (10) days from the date we send notice of cancellation to Customer, unless state law requires other cancellation provisions that may not be varied by agreement. IF DELL CANCELS THIS SERVICE PURSUANT TO THIS PARAGRAPH, CUSTOMER SHALL NOT BE ENTITLED TO ANY REFUND OF FEES PAID OR DUE TO DELL.

Dell may, at its discretion, terminate this Service Description on thirty (30) days notice to Customer, in which case Customer will be entitled to receive a pro-rated refund of any unearned support fees that Customer has paid. Any refund will be determined by Dell based on the passage of time and/or the number of support incidents at Dell's discretion.

Transfer of Service. Subject to the limitations set forth in this Service Description, Customer may transfer this Service to a third party who buys Customer's entire Supported System before the expiration of the then-current service term, provided Customer is the original purchaser of the Supported System and this Service Description, or Customer purchased the Supported System and this Service Description from its original owner (or a previous transferee) and complied with all the transfer procedures set forth in this Service Description (including relocation terms above) and online at http://support.dell.com/support/topics/global.aspx/support/change_order/en/tag_transfer. A transfer fee may apply.

Terms and Conditions. Dell is pleased to provide these Services, including Optional Services, in accordance with this Service Description and the terms and conditions of the Dell Customer Master Services Agreement at http://www.dell.com/service_contracts/, or Customer's applicable separate signed agreement with Dell.



Core Software Troubleshooting

Included in Platinum Plus, Gold and Silver Enterprise Support packages, core software troubleshooting offers phone-based assistance from expert technicians on PowerEdge™ servers, PowerVault™ storage, Dell/EMC™ storage and PowerConnect™ switches. It includes:

- Core operating system and application troubleshooting : phone-based troubleshooting
- Collaborative support with third-party vendors : Dell will collaborate with select third-party party vendors to resolve issues
- Exclusions from Coverage

Gold and Platinum Plus Enterprise Support customers may have their analyst quickly "warm transfer," or conference-in, a software or network specialist for critical¹ issues, so you don't have to wait to be called back at a later time by the specialist.

Silver Enterprise Support customers will be called back by a software or network specialist, typically within an hour, for critical¹ issues.

Basic Enterprise Support does not include software troubleshooting.

Core Operating System and Application Troubleshooting

Toll-free phone-based support for core applications, operating systems and firmware for the duration of the support contract on manufacture bugs and hot fixes. This service is available for Dell systems with versions of the following software purchased from Dell²:

Manufacturer	Software Supported
CommVault	CommVault® Galaxy™ ³ (Must have Gold Enterprise Support)
CommVault	Galaxy Express
Dell	Dell Server Assistant
Dell	OpenManage® Applications
Dell	OpenManage IT Assistant
Dell	OpenManage Server Agent/Administrator
Dell/EMC	Navisphere® Manager
Dell/EMC	Navisphere Agent
Dell/EMC	Navisphere Analyzer
Dell/EMC	PowerPath®
Dell/EMC	Access Logix™
Dell/EMC	SnapView™
Dell/EMC	MirrorView™
Dell/EMC	SAN Copy™
Dell/EMC	VisualSRM™

¹ Critical or Severity Level 1 issues are defined as a complete loss of a core organizational or business process where work cannot reasonably continue. Requires customer to provide appropriate staff and resources to sustain continuous 7x24 communications and work effort.

² Excludes software purchased from other vendors or through Dell Software and Peripherals.

Dell/EMC	Replication Manager™
Legato	Legato® NetWorker™ ³ (Must have Gold Enterprise Support)
Legato	Legato RepliStor®
Microsoft	Microsoft® Application Server
Microsoft	Microsoft® Windows Compute Cluster Server 2003
Microsoft	Microsoft Clustering Support
Microsoft	Microsoft Commerce Server
Microsoft	Microsoft Exchange Server
Microsoft	Microsoft Internet Information Server
Microsoft	MOM Workgroup Edition (Dell OEM)
Microsoft	Microsoft Small Business Server
Microsoft	Microsoft SQL Server
Microsoft	Microsoft Windows Advanced Server
Microsoft	Microsoft Windows PowerApp Web Appliance
Microsoft	Microsoft Windows Server™
Microsoft	Microsoft Windows Web Server
Novell	Novell® GroupWise®
Novell	Novell NetWare®
Novell	SUSE® LINUX Enterprise Server
Oracle	Oracle Oracle® 9i
Oracle	Oracle Application Server 10g
Red Hat	Red Hat® Enterprise Linux®
Symantec	Backup Exec®
VMware	ESX Server™
VMware	VMotion™
VMware	Virtual Center
Yosemite	TapeWare®

Collaborative Support with Third-Party Vendors

If the problem is determined to be a third-party vendor issue, Dell will collaborate with select hardware/software vendors to assist with the vendor-led resolution of the issue. Collaborative support does not replace a support contract with the third party-vendor; rather, it provides reasonable coordination and monitoring of the resolution by Dell. Third-party vendors include:

- ADIC
- Altiris
- Avamar Technologies, Inc.
- BMC Software, Inc.

³ Requires that the software is installed on Dell-supported servers that back up data to Dell-supported storage devices, and that the hardware (both server and storage device) have a minimum of Gold-level service contracts.

- BridgeHead Software
- Brocade Communications Systems
- CA (ARCserve®)
- Citrix Systems
- CommVault Systems
- Dynamic Imaging
- EMC
- EMC Legato
- Imation
- McDATA
- Mediatec
- Microsoft
- MySQL AB
- Novell
- NSI Software
- Oracle
- Plasmon
- PolyServe, Inc.
- QLogic Corporation
- Red Hat
- SAP
- StoneFly Networks
- Topspin Communications
- Symantec
- VMware
- Yosemite Technology

Exclusions from Coverage

Core software troubleshooting support does not include the following types of support:

- Any product version not currently supported by the manufacturer, vendor or partner
- Basic support contracts
- Configuration, optimization, or installation assistance
- Non-Dell hardware, or software applications not explicitly named herein
- Any on-site services
- Remote or on-site training assistance
- Remote administration of Dell systems
- Scripting, programming, database design/implementation or Web development
- Recompiled kernels
- New-release partner products where Dell may not have established expertise
- Custom applications, functions or assemblies created with Visual Studio or other development applications

Exhibit F

Software License

CommVault Systems, Inc. End User License and Limited Warranty Agreement Attached

CommVault Systems, Inc.

End User License and Limited Warranty Agreement

CommVault® Software Release 6.1.0

(including Microsoft® SQL Server™ 2000, SQL Server™ 2000 Desktop Edition and Windows Pre-Installation Environment)

End User License Agreement

IMPORTANT- READ CAREFULLY: THIS END USER LICENSE AGREEMENT ("EULA") IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AS A SINGLE INDIVIDUAL OR ENTITY) AND COMMVAULT SYSTEMS, INC. ("COMMVAULT") FOR THE SOFTWARE PRODUCT(S) IDENTIFIED HEREIN, WHICH INCLUDES COMPUTER SOFTWARE AND MAY INCLUDE ASSOCIATED MEDIA, AND "ONLINE" OR ELECTRONIC DOCUMENTATION ("SOFTWARE"). BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT INSTALL OR USE THE SOFTWARE. YOU SHALL INFORM ALL USERS OF THE SOFTWARE OF THE TERMS AND CONDITIONS OF THIS EULA.

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You may: (i) use the Software, with the same or lower version number identified herein, in numbers equal to the number of licenses purchased for all items; (ii) make copies of the Software, documentation or other user information accompanying the Software solely for back-up purposes, provided such back-up copies are only utilized as a replacement for the original copy on the same computer that the Software was previously installed; and, (iii) make a copy or print documentation provided in electronic form. You must incorporate all copyright and other notices included on the materials on any copies or partial copies that you make.

You may not: (i) make a copy of any of the Software for any purpose not explicitly permitted herein; (ii) provide commercial hosting services, sell, sublicense, rent, loan or lease the Software to another party, without the prior written consent of CommVault; (iii) except to the extent that such a prohibition is expressly prohibited by law, decompile, disassemble, reverse engineer or modify, in any manner, any of the Software; (iv) transfer or assign your rights to use the Software; (v) use the Software in violation of applicable local, federal or other laws or regulations; or, (vi) use the Software for any purpose other than as permitted in this EULA.

Any software CommVault and/or its licensors may provide you as part of support services are governed by this EULA, unless separate terms are provided. Except as specifically provided, this EULA does not obligate CommVault and/or its licensors to provide any support services or to support any software

provided as part of those services. You agree that CommVault and/or its licensors may, for business purposes, collect, process, and use technical information gathered as part of any product support services provided to you related to the Software and any other technical information you provide to CommVault provided that such information does not personally identify you.

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All rights not expressly granted hereunder are expressly reserved by CommVault.

Software Labeled "Not for Resale" or Provided for Beta, Demonstration, Test, or Evaluation Purposes

If the Software is provided to you for beta, demonstration, test or evaluation purposes or is labeled "Not for Resale," then, notwithstanding anything to the contrary in the EULA: (i) The licenses granted herein shall be for a term of thirty (30) days (the "Evaluation Period") unless otherwise agreed to in writing by CommVault, and CommVault reserves the right to terminate this EULA or any licenses granted hereunder immediately upon written notice at its convenience; (ii) Your use of the Software is limited to use for demonstration, test or evaluation purposes, and you may not resell or otherwise transfer the Software; (iii) You agree to keep confidential and not to disclose or otherwise make publicly available any information related to the Software, including, but not limited to test results, characteristics, and performance of the software; (iv) You agree not to copy the Software and not to provide a copy of the Software to any other party; (v) You agree not to use the Software in a production environment or for production data processing purposes, and that any use of the Software in a production environment or for production data processing purposes is at your sole risk to backup data and take other appropriate measures to protect your computer programs and data; and (vi) You agree to immediately, on or before the end of the Evaluation Period, promptly remove, destroy, and erase from computer memory and storage media any installed copy of the Software, and return the Software to CommVault together with all documentation and other materials provided by CommVault. Limited duration licenses, site licenses, beta, evaluation, test or demonstration Software products are delivered **"AS IS"** without a warranty of any kind. CommVault shall have no obligation to support, maintain, or provide other assistance regarding any limited duration licenses, site licenses, beta, evaluation, test, or demonstration Software products. **IF THE SOFTWARE IS PROVIDED TO YOU FOR BETA, DEMONSTRATION, TEST, OR EVALUATION PURPOSES OR IS LABELED "NOT FOR RESALE," IN NO EVENT WILL COMMVAULT BE LIABLE FOR ANY DAMAGES FOR ANY CAUSE OR FOR ANY CLAIM BY BORROWER OR FOR ANY THIRD PARTY CLAIM, INCLUDING BUT NOT LIMITED TO ANY DIRECT DAMAGES, ACTUAL DAMAGES, LOST PROFITS, LOST DATA, LOST SAVINGS, OR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF COMMVAULT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

Note on JAVA Support

THIS SOFTWARE PRODUCT MAY CONTAIN SUPPORT FOR PROGRAMS WRITTEN IN JAVA. JAVA TECHNOLOGY IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF JAVA TECHNOLOGY COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. Microsoft Corporation obligated CommVault to make this disclaimer.

Limited Warranty

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This Software is covered by US Patent Numbers 5,559,991; 5,642,496; 6,418,478; 6,542,972; 6,658,436; 6,760,723; and 6,721,767 and other patents and patents pending.

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Exhibit G

Business Associate Agreement/Amendment between Quantum and Lane County
HIPAA Privacy and Security Rules

Attached

Business Associate Agreement/Amendment
HIPAA Privacy and Security Rules

This agreement ("Agreement/Amendment") is entered into by Lane County, a political subdivision of the State of Oregon ("County") and _____ ("Contractor").

A. RECITALS

1. Contractor is providing services to a County program designated as a covered healthcare component and such services may require disclosure and use of Protected Health Information ("PHI"), including electronic PHI, as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
2. HIPAA Privacy and Security Rules require that covered entities obtain satisfactory assurances that its Business Associates will comply with the Business Associate requirements of the Privacy Rule set forth in 45 CFR 164.502(e) and 164.504(e), and the Security Rule set forth in 45 CFR 164.314, and Contractor desires to provide such business associate assurances with respect to the performance of its obligations.

B. DEFINITIONS

"Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and generally means the person who is the subject of protected health information. It also includes a person who qualifies as a personal representative pursuant to 45 CFR 164.502(g).

"Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, and as these may be amended from time to time.

"Protected Health Information" shall have the same meaning as the term "Protected Health Information" in 45 CFR 164.501, limited to the information created, received, or accessed by Contractor from or on behalf of the Agencies through performance under the Contract. Generally, it relates the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual and identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual.

"Required by law" shall have the same meaning as the term in 45 CFR 164.501.

"Secretary" shall mean the Secretary of the federal Department of Health and Human Services (HHS) and any other HHS officer or employee with delegated authority.

"Security Rule" shall mean the standards for security of PHI in "Subpart C - Security Standards for the Protection of Electronic Protected Health Information", beginning 45 CFR § 164.302, and particularly requirements for business associates in 45 CFR § 164.308(b) and 45 CFR § 164.314(a). The Security Rule is a subpart of the Privacy Rule.

"Service contract" shall mean the agreement between County and the Contractor obligating Contractor to perform certain services as described in the Statement of Work dated 10/17/2006 for a Regional Backup Solution.

Capitalized terms, other than those defined in this Agreement/Amendment, shall have the same meaning as those terms in the Privacy and Security Rules.

C. USES AND DISCLOSURES IN PERFORMING SERVICES

1. The parties agree that the following terms and conditions shall apply to Contractor's performance of obligations under the Service Contract to the extent Contractor accesses PHI.
2. Contractor is authorized to access, receive, use or disclose PHI for the express purpose of performing the services under the Contract. Except as otherwise expressly permitted and as limited in this Agreement/Amendment or as Required by Law, Contractor may use or disclose PHI to perform the functions, activities or services for, or on behalf of, the County, set forth in the Contract and provided that such use or disclosure would not violate the Privacy or Security Rules or the applicable minimum necessary policies of the County if done by the County. Contractor shall access, receive, transmit, use, or disclose only the minimum necessary PHI to fulfill its obligations to the County or as imposed by law. Further use or disclosure other than as permitted or required by the Contract or as Required by Law is prohibited.

D. ADDITIONAL BUSINESS ASSOCIATE OBLIGATIONS OF CONTRACTOR

1. Contractor shall implement reasonable administrative, physical and, technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI that it accesses, receives, or transmits on behalf of the County. Contractor agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement/Amendment.
2. Except as otherwise limited in this Agreement/Amendment, Contractor may use PHI for the proper management and administration of its business or to carry out its legal responsibilities.
3. Except as otherwise limited in this Agreement/Amendment, Contractor may disclose PHI for the proper management and administration of its business,

provided that disclosures are required by law, or Contractor obtains reasonable assurances from the recipient that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed, and the recipient will promptly notify the Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

4. Contractor may use PHI to report violations of HIPAA law to certain federal or state authorities subject to the conditions in 45 CFR §164.502(j)(1).

5. Contractor may not aggregate or compile PHI accessed or received under the Contract with the PHI of other entities unless this Agreement/Amendment permits Contractor to perform Data Aggregation services. Under no circumstances may Contractor disclose PHI of the County to another person, entity, or agency absent express authorization of the County.

6. Contractor agrees to report to the County any use or disclosure of PHI not provided for by this Agreement/Amendment of which it becomes aware, as soon as possible.

7. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor that violates the requirements of this Agreement/Amendment. Contractor agrees to report to the County, the remedial action taken or proposed to be taken with respect to such use or disclosure. Contractor agrees to cooperate with the County in any reasonable mitigation efforts County requests and deems appropriate.

8. Contractor agrees to ensure that any agent, including any subcontractor to whom it provides PHI or makes PHI available, executes an agreement with the same terms, conditions, and restrictions of the use and disclosure of PHI as contained in this Agreement/Amendment. This includes requiring that any agent, including subcontractor, agrees to implement reasonable and appropriate safeguards to protect electronic PHI.

9. The parties do not anticipate that, at any point in time, the County will be unable to access and control PHI or that any change to PHI required below would affect Contractor's performance under the Service Contract. However, in the event Contractor does have access and control of PHI:

a. At the request of the County and within five business days, and unless directed otherwise, Contractor shall provide access of their PHI to an Individual to meet the requirements under 45 CFR § 164.524.

b. Contractor shall make any amendment(s) to PHI that the County directs or agrees to pursuant to 45 CFR § 164.526 at the request of the County or an Individual.

c. Contractor shall document such disclosures of PHI and information related to such disclosures as are required for the relevant County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Contractor shall provide the accounting to the County or to an Individual as directed by the County, within five business days.

d. As to Contractor's obligations in 9. a., b., and c. above, Contractor shall document and retain for six years from the date of creation or date last in effect, whichever is later:

i. The titles of the person or offices responsible for receiving and processing requests for access, for amendments, and for accounting of disclosures; and

ii. The PHI that are subject to access by individuals under 45 CFR 164.524, subject to the County's direction otherwise;

iii. The written accounting that is provided to the individual;

iv. The information required to be included in the accounting in paragraph (c) above.

10. Contractor agrees to make internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by, or made available or accessed by Contractor on behalf of the County, available to the County or to the Secretary within five business days or within the time frame designated by the Secretary, for purposes of the Agencies or Secretary determining the County's compliance with the Privacy and Security Rules, or for audit purposes.

E. OBLIGATIONS OF AGENCIES

1. The County shall notify Contractor of any additional limitations, to the extent that the limitation may affect Contractor's access, receipt, use or disclosure of PHI of that County.

2. The County shall notify Contractor of any changes in, or revocation of, permission by Individual to access, receive, use or disclose PHI, to the extent that the changes may affect Contractor's use or disclosure of PHI.

3. The County shall notify Contractor of any restriction to the access or use or disclosure of PHI, that the County has agreed to in accordance with 45 CFR § 164.522, to the extent that the restriction may affect Contractor's access, receipt, use or disclosure of protected health information.

4. The County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rules if done by the County.

F. TERM AND TERMINATION

1. The term of this Agreement/Amendment shall begin the date the last party signs this Agreement/Amendment, and shall terminate when all of the PHI provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, and all ability to access such information is terminated, or if it is infeasible to return or destroy PHI, protections are extended to the information in accordance with the termination provisions in this Agreement/Amendment.

2. Upon any Agency's knowledge of a material breach by Contractor or violation of Contractor's obligations under this Agreement/Amendment, the County may:

a. Notify Contractor of the breach and specify a reasonable opportunity in this notice for Contractor to cure the breach or end the violation, and terminate this Agreement/Amendment if the Contractor does not cure the breach or end the violation within the time specified by the Agency. The Service Contract, including any amendments, would also be subject to termination; or

b. Immediately terminate this Agreement/Amendment, if the Contractor has breached a material term of this Agreement/Amendment and cure is not possible in the County's reasonable judgment. The Service Contract, including all amendments, would also be subject to immediate termination; or

c. If neither termination nor cure is feasible, the County shall report the violation to the Secretary;

d. The County's remedies under this Agreement/Amendment are cumulative and the exercise of any one remedy shall not preclude the exercise of any other.

3. This Agreement/Amendment terminates when the Service Contract terminates.

4. Except as provided in paragraph 5 or 6 of this section, upon termination of this Agreement/Amendment, for any reason, Contractor shall, at the County's reasonable option, return or destroy all PHI belonging to the County, or created or received by Contractor on behalf of the County if in Contractor's possession. This provision shall apply to PHI that is in the possession of subcontractors or

agents of Contractor. Contractor and subcontractors or agents shall not retain any copies of the PHI.

5. In the event that Contractor determines that returning or destroying PHI is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon written agreement by the County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Agreement/Amendment to such PHI and limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.

6. If it is infeasible for the Contractor to obtain any PHI in the possession of a subcontractor or agent, the Contractor shall provide the notification in 5 above within five business days upon learning of the infeasibility. The Contractor shall require the subcontractor or agent to agree to extend the protections as in 5 above.

G. MISCELLANEOUS

1. Nothing in this Agreement/Amendment shall be construed as requiring the County to comply with the Security Rule requirements for covered entities prior to the applicable federal compliance deadline.

2. Amendment; waiver.

a. The parties agree to take such action as is necessary to amend this Agreement/Amendment from time to time in order for the County to comply with the requirements of the HIPAA Privacy and Security Rules. The parties agree that any modifications to those laws shall modify the obligations of the parties to this Agreement/Amendment without the need for formal amendment of this Agreement/Amendment. Any other modifications, alterations, variations, or waivers of any provisions shall be valid only when then have been executed in writing by both parties.

b. No provision in this Agreement/Amendment shall be deemed waived unless in writing, and duly executed. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this Agreement/Amendment.

3. Survival. The respective rights and obligations of the parties under the following paragraphs shall survive the termination of this Agreement/Amendment:

a. Paragraph 9d of the section "ADDITIONAL BUSINESS ASSOCIATE OBLIGATIONS OF CONTRACTOR"

b. Paragraphs 4, 5, and 6 of the section "TERM AND TERMINATION"

c. Paragraphs 2b, 3, 4, 5, 7, 8, and 9 of the section "MISCELLANEOUS" shall survive the termination of this Agreement/Amendment.

4. Interpretation; order of precedence. Any ambiguity in this Agreement/Amendment shall be resolved to permit the County to comply with HIPAA and the regulations promulgated in support. The terms of this Agreement/Amendment supplement the terms of the Service Contract and, whenever possible, all terms and conditions of this Agreement/Amendment and the Service Contract are to be harmonized. In the event of a conflict between the terms of this Agreement/Amendment and the terms of the Service Contract, the terms of this Agreement/Amendment shall control, provided that this Agreement/Amendment shall not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the Service Contract as amended by this Agreement/Amendment and the Privacy or Security Rules, the Privacy and Security Rules shall control.

5. Indemnity. In addition to any other indemnification obligations of Contractor in the Contract, Contractor shall save, hold harmless, and indemnify the County and its Commissioners, officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from or arising out of Contractor's, or its agent's or subcontractor's performance or failure to perform under this Agreement/Amendment, including but not limited to, unauthorized use or disclosure of PHI.

6. Insurance. Contractor shall provide a certificate of insurance establishing coverage for Contractor's activities, if any, under this Agreement/Amendment.

7. Independent Contractor. Contractor will function as an independent contractor and shall not be considered an employee of the County for any purpose. Nothing in this Agreement/Amendment shall be interpreted as authorizing Contractor or its agents, subcontractors and/or employees to act as an agent or representative for or on behalf of the County.

8. Successors and Assigns. The provisions of this Agreement/Amendment and the Contract shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns, if any. Neither the obligations under this Agreement/Amendment, nor the responsibilities for providing services, shall be assigned or subcontracted by Contractor without the prior written consent of the County.

9. No Third-Party Beneficiaries. The County and Contractor are the only parties to this Agreement/Amendment and are the only parties entitled to enforce its

terms. Nothing in this Agreement/Amendment gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to any other third parties.

10. Notices. Any notices between the parties or notices to be given under this Agreement/Amendment shall be given in writing by personal or overnight courier delivery or by mailing by certified mail with return receipt requested, to Contractor or to the County, to the addresses given for each below or to the address either party gives to the other. Any notice so addressed and mailed shall be deemed given five days after mailing, or by facsimile. Any notice delivered by personal or overnight courier delivery shall be deemed given upon receipt. Any notice by facsimile shall be deemed given upon confirmation that notice was received.

Contractor:

County:

11. Except as Amended. Except as amended by this Agreement/Amendment, all terms and conditions of the Service Contract, including any prior amendments shall remain in full force and effect.

12. Signatures. By signing the Agreement/Amendment, the parties certify that they have read and understood this Agreement/Amendment and that they agree to be bound by the terms of this Agreement/Amendment.

13. This Agreement/Amendment may be executed in any number of counterparts, all of which taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this contract so executed shall constitute an original.

Contractor
Date:

County
Date:

Exhibit H
Quantum Hardware Support and Maintenance Agreement
and
Quantum Hardware Support and Maintenance Agreement Addendum 1

Quantum Hardware Support and Maintenance Agreement

This Hardware Support and Maintenance Agreement ("Agreement") is made and entered into this ____ day of _____ 2006 (the "Effective Date") between **Quantum Corporation ("Quantum")**, together with its worldwide subsidiaries, and _____, ("**Customer**"), and provides the terms and conditions of the support and maintenance following the purchase of a Scalar i2000 from Quantum, Serial No. _____. Throughout this Agreement, Quantum and Customer may be referred to collectively as the "Parties" or individually as a "Party."

1. MAINTENANCE SERVICES

1.1 Maintenance Services. Quantum will provide to Customer, or have a third party selected by Quantum under the terms of Section 1.2 provide to Customer, repair, adjustments and part replacements for the Quantum equipment set forth in the Service Quote ("Equipment") as Quantum or such third party deems necessary due to normal product usage ("Maintenance Services"). The Maintenance Services shall include: (a) Unscheduled, on-call Maintenance Services twenty-four hours a day, seven days a week excluding holidays ("Designated Working Hours"), on-call services to be provided within four hours after receipt of notice from Customer that Equipment is malfunctioning or otherwise appears to require maintenance, and after Quantum technical support has determined that an on-site visit is necessary; and (b) Scheduled, preventive Maintenance Services. Maintenance Service on additional equipment is not covered by this Agreement. Service on an Quantum recognized holiday (recognition of holidays is per custom in each country with lists of Quantum holidays available upon request from your local service representative) is limited to telephone technical support only. Preventive maintenance and other non-emergency services must be scheduled for non-holidays within normal business hours. Customers purchasing holiday service will receive such service based upon the service level purchased.

1.2 Selection of Provider. Quantum shall determine, in its sole and absolute discretion, whether Quantum will provide the Maintenance Services to Customer or whether Quantum will select a third party subcontractor to perform the Maintenance Services (in either case such party is referred to herein as "Provider"). Quantum shall provide Customer with written notice of any such third party Provider at least 15 days prior to such third party's provision of Maintenance Services hereunder. All requests for Maintenance Services or communication regarding status or maintenance of the Equipment shall be made to Quantum.

1.3 Part Replacement. Provider will replace or exchange Equipment parts where required. The Equipment or parts of Equipment that Provider removes or replaces will become property of Quantum.

1.4 Services Not Covered by This Agreement. If Customer requires or requests services for any of the following reasons, the services will be considered "Other Services" not covered by the Agreement: (a) installation or maintenance of any device not listed in the Service Quote, including but not limited to wiring, electrical conduits, peripherals, or accessories; (b) replacement of parts and/or services to repair damage resulting from accident caused by, or neglect or misuse on the part of a party other than Provider, or modification of Equipment not approved, authorized or directed by Provider; (c) replacement of parts and/or services to repair damage resulting from any act of God, including but not limited to storms, fires, floods, and earthquakes; (d) replacement of parts and/or services to repair damage caused by failure to provide or maintain adequate or appropriate electrical power, air conditioning, humidity controls, electrical surge protection, or other facilities or environmental conditions unless such failure is caused by the negligent act or omission of Provider; (e) replacement or reconditioning of Equipment which

Provider reasonably believes cannot be reliably maintained or repaired because of excessive wear or deterioration not resulting from any negligent act or omission on the part of Provider; (f) replacement of parts or repair required because Customer or third parties (excluding Provider), without the approval, authorization or direction of Quantum, performed services on, or modified or adjusted Equipment; (g) services in connection with removal, relocation or reinstallation of Equipment; (h) furnishing or replacing expendable supplies, including media such as cassettes, unless damaged by Provider; (i) services on Equipment which Customer has moved from the service location specified above without notifying Provider pursuant to Section 1.5; and (j) Maintenance Services performed outside of Designated Working Hours or after the term of this Agreement; provided, however, that if Provider begins to perform services which would otherwise be covered Maintenance Services less than two hours before the end of Designated Working Hours, the first two hours immediately following Designated Working Hours are considered covered by the Agreement.

1.5 Movement of Equipment. If Customer plans to move the Equipment, or delete any part of the Equipment from this Agreement, Customer must provide Quantum with 30 days prior written notice. If Customer requests that Provider dismantle, supervise, inspect, remove or reinstall the Equipment as part of any move, Quantum will invoice Customer at Quantum's standard published hourly rate for such services. If Customer's new location is beyond a 50-mile radius of Provider's location, then Quantum may, in its sole discretion: (i) continue performance of the Agreement with the condition that Customer is responsible for any additional mileage charges at Provider's then - prevailing rate; (ii) terminate the Agreement; or (iii) designate a different Provider. Absent written notice of Quantum's decision to select (ii) or (iii), Quantum shall be presumed to elect option (i) and Customer will be responsible for any additional mileage charges.

1.6 Escalation Procedures. Escalation for priority level tickets shall be determined by Quantum's standard operating procedures, based on the priority of the problem and the length of time the problem has existed.

2. CUSTOMER RESPONSIBILITIES. In addition to responsibilities for fees hereunder, Customer will be responsible for: (a) properly using and controlling access to the Equipment; (b) permitting Provider access to Customer's facilities consistent with Customer's security and operational requirements; (c) promptly notifying Quantum and Provider, if different, if Customer becomes aware of any unsafe conditions or hazardous materials to which Provider's personnel may be exposed at any of Customer's facilities; (d) complying with all applicable government laws and regulations; (e) providing prompt notice to Quantum of any malfunction or request for Maintenance Services or Other Services for the Equipment; and (f) providing full and accurate equipment and service installation descriptions as necessary to allow Quantum to fulfill its duties hereunder.

3. FEES AND CHARGES

3.1 Annual Fee. Quantum will invoice Customer, and Customer agrees to pay the quoted and agreed upon annual fee. Annual fees for subsequent years will be as set forth on Quantum's current price sheet or, if different, as agreed to by the parties in the initial quote or any subsequent writing.

3.2 One-Time Fees. Quantum will invoice Customer for any one-time fees and charges. These one-time fees and charges include, but are not limited to: (i) fees incurred if Customer requests Provider to perform Maintenance Services outside of Designated Working Hours; or (ii) fees incurred if Customer requests Provider to perform services not covered by this Agreement. Quantum will invoice Customer at Quantum's standard published hourly rates. All such charges will include actual travel time, waiting

- time, and Customer approved travel expenses (if any). Quantum may authorize Provider to bill Customer directly for one-time fees.

3.3 Payment Due. Payment for the full annual contract amount is due 30 days from the date of the invoice. If Customer does not pay an invoice when due Quantum may withhold further services and/or terminate this Agreement upon no less than 10 days' notice.

3.4 Taxes; Price Increases. Prices and fees listed above do not include taxes. Customer agrees to pay all municipal, state and federal taxes which apply to any transaction under this Agreement (except taxes based solely on Quantum's net income). Quantum may increase prices hereunder no more frequently than once per year upon no less than thirty days prior written notice, except to the extent that pricing for future years was expressly agreed to by the parties.

3.5 Firmware and Software. Changes to firmware and software which Quantum designates as bug fixes or as minor or incremental updates are covered under the terms of this Agreement. Firmware and software changes that Quantum designates as upgrades, and for which Quantum normally charges its customers, will be provided to Customer for the applicable fee. Quantum will provide Customer with information on any upgrade charges prior to installation of the upgrade. Quantum will provide Customer with access to non-billable library upgrades and bug fixes through Quantum's web site. Customer will have the ability to install this firmware itself, with technical assistance from Quantum's Technical Assistance Center (ATAC). Quantum will also be willing to perform the firmware upgrade when allowed remote access to the customer's system through the RMU. At Quantum's discretion and upon prior notice to Customer, an additional fee may be levied for firmware upgrades requiring an onsite visit (other than for normally scheduled maintenance services or unrelated break/fix service), either as a result of a library not having an RMU, or as a result of Customer's request.

4. PROPRIETARY INFORMATION Pursuant to this Agreement, each party (the "disclosing party") may occasionally provide the other (the "receiving party") with its confidential and/or proprietary information (e.g., equipment, services, components, instruction manuals or installation information, in the case of Quantum or Provider, and trade secrets, know-how, ideas, concepts and methodologies, customers, prices, operations and plans and data, in the case of both parties) (the "Proprietary Information"). The receiving party acknowledges that use or disclosure of Proprietary Information of the disclosing party in any unauthorized manner may destroy its value to the disclosing party. Unless the disclosing party agrees otherwise in writing, the receiving party (including its employees, agents and contractors) will not sell, disclose, copy or reproduce any Proprietary Information of the disclosing party. The receiving party agrees that it will only permit or allow access to Proprietary Information of the disclosing party to those employees or third parties who require such access in order to perform work on the disclosing party's behalf pursuant to this Agreement. The receiving party agrees to protect the Proprietary Information of the disclosing party as carefully as it would protect its own similar proprietary information. The receiving party agrees to be responsible for any unauthorized use or disclosure of Proprietary Information of the disclosing party by any of its employees, agents or contractors. The receiving party agrees to leave intact all copyright and similar notices in connection with the Proprietary Information of the disclosing party. The parties agree to return all Proprietary Information to the disclosing party upon the termination of this Agreement.

5. TERM AND TERMINATION

5.1 Term. The term of this Agreement is one (1) year, effective on the acceptance of this contract by Customer. This Agreement will automatically renew for subsequent one (1) year periods

unless terminated by either party at the close of any such period or terminated pursuant to Section 5.2 below. Either party may terminate this Agreement at the close of any year hereof without penalty.

5.2 Termination of Maintenance Services. Quantum or Customer may terminate Maintenance services by providing the other party at least sixty (60) days advance written notice. If either party breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of such breach (or 10 days as set forth in section 3.3), the other party shall have the right to terminate this Agreement immediately upon the conclusion of such notice period. Upon termination of this Agreement, Quantum shall promptly refund to Customer a prorated amount of the Annual Fee less any outstanding One-Time Fees.

6. LIMITED WARRANTY SUBJECT TO THE LIMITATIONS SET FORTH BELOW, Quantum warrants that the Maintenance Services provided under this Agreement will be free from defects in materials or workmanship for thirty [30] days from the date such services are rendered and will be performed by fully trained and competent personnel in accordance with industry standard technical and professional practices and procedures. The foregoing warranty shall be voided if the Equipment serviced by Provider is not properly installed, used, or modified after services are provided. Replacement parts will either be new or reconditioned. If a defect is found and reported to Provider within the thirty day period of this warranty, Quantum will, as its sole responsibility and liability and AS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY for breach of such warranty, use commercially reasonable means to correct such defect or refund to Customer the sums paid by Customer for the defective services. The limited warranty set forth in this paragraph is the only warranty made by Quantum or Provider with respect to the services to be provided under this Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE EQUIPMENT WARRANTY, QUANTUM EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES CONCERNING THE EQUIPMENT OR THE SERVICES TO BE RENDERED HEREUNDER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

7. LIMITATION ON LIABILITY Except for Quantum's or Provider's liability based upon gross negligence, willful misconduct and/or a violation of law, Quantum's or Provider's cumulative liability for any claims arising in connection with this Agreement may not exceed the most recent Annual Fee. This limitation on liability applies to any claims against Quantum, Provider, or both. QUANTUM AND PROVIDER SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY THIRD PARTY CLAIMS AGAINST CUSTOMER FOR LOSSES OR DAMAGES OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, DELAYS, LOSS OF DATA, LOST BUSINESS OPPORTUNITIES OR LOST PROFITS OR SAVINGS, ARISING OUT OF ANY BREACH OF ANY REPRESENTATION OR WARRANTY OR THE PERFORMANCE OR BREACH OF ITS AGREEMENT OR THE USE OR INABILITY TO USE THE EQUIPMENT, OR ANY PORTION THEREOF, EVEN IF QUANTUM OR PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE LIMITED REMEDIES SET FORTH HEREIN ARE FOUND TO FAIL IN THEIR ESSENTIAL PURPOSE, AND HOWEVER CAUSED (INCLUDING AS A RESULT OF NEGLIGENCE). Customer agrees to assume exclusive liability for, and settle or defend, and in any case indemnify and hold harmless Quantum and their subsidiaries, directors, officers, employees and providers from and against any and all actions, causes of action, liability, claims, suits, judgements, liens, awards or damages of any kind and nature whatsoever (hereinafter referred to as "Claims") for property damage, personal injury or death (including without limitation claims brought by and liabilities to employees of Customer or Quantum or Provider or to any

other persons) and expenses, costs of litigation and reasonable attorneys fees related thereto, to the extent such claims arise from any negligent act or omission or willful misconduct of Customer or any of Customer's employees, agents, buyers or contractors (except for Quantum, Provider, or both) arising out of or in any way relating to the presence on Customer's designated premises by Quantum or Provider for the purposes of providing maintenance or other support services hereunder. No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Agreement, may be brought by either party more than one (1) year after such cause of action accrued.

8. NOTICES All notices, demands and other communications called for or required by this Agreement shall be in writing and shall be addressed to the parties at their respective addresses listed above or to such other address as a party may subsequently designate by ten (10) days' advance written notice to the other party.

9. MISCELLANEOUS

9.1 Integration; Modifications. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that the Agreement is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings and agreements, whether oral or written, between the parties with respect to the subject matter hereof. Any provisions or conditions of any purchase order or other document submitted by Customer which are in any way inconsistent with or in addition to the terms and conditions set forth in this Agreement are hereby rejected and shall not be binding upon Quantum. No waiver or modification of this Agreement or of any provision contained herein shall be valid unless in writing and duly executed by Quantum and Customer.

9.2 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, USA without regard to any conflict of laws rules thereof. In the event of any dispute arising under this Agreement, the parties agree to the exclusive jurisdiction of the courts located in King County, Washington. The prevailing party will recover its reasonable attorneys' fees and costs from the losing party in any dispute arising hereunder.

9.3 Severability; Waiver. In the event that any provision of the Agreement is held to be invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permitted by applicable law and the remaining provisions shall continue in full force and effect. Failure or delay on the part of any party in exercising any rights, power or privileges under this Agreement shall not be deemed a waiver of any exercise of any right, power or privilege.

9.4 Force Majeure. Neither party will be liable hereunder for, or be considered to be in breach of or default under this Agreement on account of, any delay or failures to perform as required by this Agreement if such delay or failure is due in whole or substantial part to causes or conditions beyond such party's reasonable control which render timely performance hereunder commercially impracticable, including without limitation strikes, riots, wars, government regulations or acts, acts of God or the elements, fire, flood, material shortages or other causes. The existence of such causes of delay shall justify extension of the time of performance to the extent reasonably necessary to enable such party to satisfy its obligation hereunder after the cause of delay has been removed.

9.5 Assignment. Neither party may assign its benefits or delegate its obligations under this Agreement without the advance written consent of the other party unless in the context of a sale of all or

substantially all of the assigning parties' assets to another entity who is not a competitor to the non-assigning party and who has a reasonably acceptable credit rating.

By signing below, the undersigned representative of each party warrants and represents that he or she has full authority to execute this Agreement on behalf of their respective party and to bind their respective party to the terms hereof.

IN WITNESS WHEREOF the parties have by their duly authorized representatives executed this Agreement as of the date first above written.

QUANTUM

By _____
Name: _____
Title: _____
Date: _____

CUSTOMER

By _____
Name: _____
Title: _____
Date: _____

Addendum No. 1 to Quantum Support and Maintenance Agreement

This Addendum No. 1 is made to the Quantum Hardware Support and Maintenance Agreement by and between Quantum Corporation ("Quantum"), together with its worldwide subsidiaries, and Lane County, a political subdivision of the State of Oregon ("Customer").

Wherefore, in consideration of the mutual promises contained herein, the Quantum Hardware Support and Maintenance Agreement ("Agreement") is modified as follows:

1. Paragraph 3.1 is deleted in its entirety and replaced with the following:

3.1 Annual Fee. Quantum acknowledges that it authorized Dell Marketing, L.P. ("Dell") to submit an initial service quote to Customer for Quantum Maintenance Services (as set forth in this agreement) for 3 years as part of a Dell proposal to provide Quantum Tape Library the Scalar i2000 with 8 of LTO-3 drives. The Dell cost proposal excerpt is attached and incorporated by this reference. Quantum acknowledges that it authorized Dell to collect the payment from Customer for the 3 years of maintenance by Quantum. Quantum will not require Customer to pay any additional amount for the first three years of Maintenance Services other than the amount included in the attached Dell cost proposal and paid to Dell. Customer will be required to pay for Other Services during this same time period.

2. Paragraph 3.3, the second sentence is deleted in its entirety and replaced with the following:

If the parties agree to extend maintenance services beyond 3 years and Customer does not pay an invoice when due, Quantum may withhold further services and/or terminate this Agreement upon no less than 10 days' notice.

3. Paragraph 4, the fifth sentence is deleted in its entirety and replaced with the following:

Subject to Customer's obligations under Oregon Public Records law, the receiving party agrees to protect the Proprietary Information of the disclosing party as carefully as it would protect its own similar proprietary information.

4. Paragraph 4, the last sentence is deleted and replaced with the following:

The parties agree to destroy or return all Proprietary Information to the disclosing party upon the termination of this Agreement.

5. Paragraph 5.1 is deleted and replaced with the following:

5.1 Term. The term of this Agreement is 3 years, effective on the acceptance of this contract by Customer. This Agreement will automatically renew for subsequent one (1) year periods unless terminated by either party at the close of any such period or terminated pursuant to Section 5.2 below. Either party may terminate this Agreement at the close of the third year without penalty.

6. Paragraph 6., first line is deleted and replaced with the following:

After the 1 year equipment warranty period agreed to between Dell and Customer, and SUBJECT TO THE LIMITATIONS SET FORTH BELOW, Quantum

warrants that the Maintenance Services provided under this Agreement will be free from defects in materials or workmanship for thirty [30] days from the date such services are rendered and will be performed by fully trained and competent personnel in accordance with industry standard technical and professional practices and procedures.

7. Paragraph 7., the fourth sentence shall be deleted and replaced with:

Subject to the limitations of Article XI, Section 10 of the Oregon Constitution and of the Oregon Tort Claims Act, Customer agrees to assume exclusive liability for, and settle or defend, and in any case indemnify and hold harmless Quantum and their subsidiaries, directors, officers, employees and providers from and against any and all actions, causes of action, liability, claims, suits, judgements, liens, awards or damages of any kind and nature whatsoever (hereinafter referred to as "Claims") for property damage, personal injury or death (including without limitation claims brought by and liabilities to employees of Customer or Quantum or Provider or to any other persons) and expenses, costs of litigation and reasonable attorneys fees related thereto, to the extent such claims arise from any negligent act or omission or willful misconduct of Customer or any of Customer's employees, agents, buyers or contractors (except for Quantum, Provider, or both) arising out of or in any way relating to the presence on Customer's designated premises by Quantum or Provider for the purposes of providing maintenance or other support services hereunder.

8. Paragraph 9.1, the second sentence shall be deleted and replaced with:

The parties further agree that this Agreement, and the attached excerpt from the Agreement between Dell and Customer, paragraphs C-14 and C-36, are the complete and exclusive statements of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings and agreements, whether oral or written, between the parties with respect to the subject matter hereof.

9. Paragraph 9.2, the first and second sentences shall be deleted and replaced with:

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, USA without regard to any conflict of laws rules thereof. In the event of any dispute arising under this Agreement, the parties agree to the exclusive jurisdiction of the courts located in Lane County, Oregon.

10. A new Paragraph 9.6 should be added as follows:

The parties agree that paragraphs C-14, C-25, C-27 and C-36 of the Dell/County Purchase Contract (Purchase Contract) apply to Quantum for Quantum equipment, replacing Dell with Quantum. The attached LM 21.130 provisions and Business Associate Agreement are incorporated by reference into this Agreement.

Except as set forth above, the Quantum Hardware Support and Maintenance Agreement is unchanged.

ACCEPTED BY:

LANE COUNTY, OREGON

ACCEPTED BY:

QUANTUM CORPORATION

Authorized Signature

Authorized Signature

Printed Name and Title

Printed Name and Title

Exhibit I
County's Request for Proposal

LANE COUNTY RFP NO. IS2005-5-01

PROPOSAL AND SPECIFICATIONS

FOR

Regional Backup Solution

LANE COUNTY INFORMATION SERVICES

125 EAST EIGHTH AVE

EUGENE, OR 97401-2926

(541) 682-4583

John Baldwin, Senior System Network Analyst

CLOSING DATE: *April 21 2006*

LANE COUNTY RFP IS2005-5-01

REQUEST FOR PROPOSAL

Regional Backup Solution

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B	Regional Backup Service Definition
C	Business Associate Agreement

REQUEST FOR PROPOSAL LANE COUNTY - OREGON

Notice is hereby given that sealed responses for RFP IS2005-5-01 for: LANE COUNTY Regional Backup Solution shall be received by

*David Barbero, Administrative Analyst
125 East Eighth Avenue
Eugene, Oregon 97401
541-682-4032*

until 2:00pm PST, April 21, 2006, at which time all proposals received in proper form shall be publicly opened and recorded.

The scope of work includes purchasing a scalable enterprise backup solution. This is not a Public Work's project.

The outside of the sealed envelope shall be clearly marked with the Vendor's Name, Address, "RFP IS2005-5-01 for: *Regional Backup Solution, Date, Time*

After Monday February 15, 2006 the Request for Proposal Documents may be obtained electronically by download from the Lane County Internet web site at <http://www.lanecounty.org/is>, or they may be examined at the Lane County Public Service Building; Information Services; 125 E. Eighth Avenue; Eugene OR 97401-2926. Requests may be made in person, by mail, by e-mail to ***david.barbero@co.lane.or.us***, or on the web at <http://www.lanecounty.org/is>. The secured electronic copy of the RFP and its addenda maintained by Lane County shall be the master and controlling document.

Each proposal must be submitted in the requested format. All Vendors shall be required to comply with the provisions of ORS 656.017 regarding Workers' Compensation or be exempt under ORS 656.126. Each RFP must contain a statement as to whether the Vendor is a resident vendor, as defined in ORS 279A.120. All Vendors must be Equal Opportunity Employers.

Lane County may reject any proposal not in compliance with all prescribed public procedures and requirements, and may reject for good cause any or all proposals upon a finding by Lane County that it is in the public interest to do so.

Subject to changes based in part on Vendor's actions, it is intended that the following dates will govern this procurement.

ACTION	DATE	TIME
RFP ISSUE DATE	Monday February 20, 2006	2:00pm PST
PROPOSALS DUE AND PUBLIC PROPOSAL OPENING	Friday April 21, 2006	2:00pm PST

The anticipated schedule shown above expresses the present intent of Lane County. It is not a representation, agreement or promise that, in fact, any projected date will be met.

PART I

GENERAL INFORMATION

GENERAL INFORMATION

Lane County, by and through its Information Services department (hereinafter called COUNTY), reserves the right, for good and just cause, to reject any and all proposals received as a result of this Request for Proposals (RFP) when it is in the public interest to do so.

I-1 Modification or Withdrawal of Proposal: Any proposal may be modified or withdrawn at any time prior to the scheduled opening of proposals, provided that a telegraphic, electronic, facsimile or written request is received by the party receiving RFPs prior to the scheduled opening. The request shall not reveal any proposal details, but shall state only the modification, so that the proposal shall not be known until the proposal is opened. The withdrawal of a proposal shall not prejudice the right of a Vendor to submit a new proposal prior to the scheduled opening.

A proposal may not be modified, withdrawn, or canceled by the Vendor for one hundred eighty (180) days following the time and date designated for the opening of proposals and the Vendor so agrees in submitting the proposal. Should there be any reason why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the COUNTY and the Vendor.

I-2 Interpretation of Contract Documents: If the Vendor has any procedural or technical questions regarding this Request for Proposal, please contact the following:

*David Barbero
Administrative Analyst
125 East Eight Avenue
Eugene, Oregon 97401
541-682-4032
David.Barbero@co.lane.or.us*

If a Vendor finds discrepancies in or omissions from the RFP documents, or is in doubt as to their meaning, the Vendor shall notify COUNTY as described in *this PART, Section I-3, Protest of Requirements*.

Any changes to or interpretations of RFP documents shall be accomplished by Addenda which, if issued, will be posted to the Internet and may be read or downloaded from the Lane County web site, <http://www.lanecounty.org/is>. A copy of the addenda will also be available at the Lane County Public Service Building; Information Services; 125 E. Eighth Avenue; Eugene OR 97401-2926. It is the Vendor's full responsibility to obtain all addenda issued prior to the proposal submission deadline from the COUNTY. Addenda so issued are to be covered in the proposal and are part of the proposal documents. Failure to address matters contained in addenda could lead to rejection of entire proposal as non-responsive. Vendor or any third party interpretations, corrections or changes made in any other manner will not be binding, and Vendors shall not rely upon such interpretations, corrections, or changes. In case of doubt or differences of opinion as to the interpretation of provisions of the RFP, the decision of COUNTY shall be final and binding upon all parties.

I-3 Protest of Requirements: Protests of the specifications, technical requirements, contract or requests for non-substantive or procedural changes, shall be in writing and delivered to *David Barbero, Administrative Analyst, 125 East Eighth Avenue, Eugene OR 97401, 541-682-4032* at least fourteen (14) calendar days prior to closing date or as specified in the cover letter. Protests of specifications, technical, contractual or procedural requirements shall include a detailed statement of the legal and factual grounds for the protest, any proposed changes to the requirements and a description of the resulting prejudice to the Vendor.

The purpose of this requirement is to permit COUNTY to correct, prior to the opening of proposals, requirements that may be unlawful, or from COUNTY'S perspective may be improvident or which may unjustifiably restrict competition. This requirement, by permitting corrections prior to the opening of proposals, should eliminate the waste inherent in protests and in the possible rejection of all proposals. In order to have their complaints considered, Vendors must submit them within the time established in

this PART, Section I-3, *Protest of Requirements*. COUNTY may not at any subsequent time consider Vendors' objections to technical requirements or specifications. Vendors will have an opportunity to submit with their proposals certain proposed modifications to contract terms which may apply specifically to them, but are not modifications necessary to ensure lawfulness or open and fair competition overall.

I-4 Not Used.

I-5 Not Used

I-6 Vendor Demonstration: Vendors may be invited to present a demonstration and/or conduct a Live Test of the proposed software. The Vendor will be required to present this demonstration on site at the Lane County Public Service Building. All costs related to providing the demonstration will be the responsibility of the Vendor.

I-7 Proposal Preparation and Submission: An authorized representative of the company shall sign a master printed copy in ink. Six (6) additional printed copies and one (1) electronic copy shall be supplied. The electronic copy shall be provided in Microsoft Word and/or Excel format on CD-ROM media (preferred). The person signing the RFP shall initial alterations or erasures in ink on the master printed copy. The vendor is responsible for ensuring all such initialed changes have been made to the electronic copy submitted. At least one proposal submitted by Vendor must bear an original signature. In the event there are any discrepancies among the master printed copy and any other copies provided, the original signed master shall control and take precedence.

Proposals must be complete and include responses to all items/information requested. Proposals must be prepared in the exact format stated in *PART II, PROPOSAL FORMAT AND CONTENTS*, of this RFP. Proposals which are incomplete, fail to respond to all items requested, have unauthorized changes/modifications to the RFP solicitation document or Addenda terms, or are prepared in another format, may not be considered minor informalities under *Lane Manual, Chapter 21.105(9)*. Such errors may be deemed by COUNTY, in its sole discretion, as rendering the proposal non-responsive and subject to rejection.

Proposals must be submitted in sealed package(s) or envelope(s). To ensure proper identification and handling, all package(s) or envelope(s) must be clearly marked with "RFP IS2005-5-01 for: Regional Backup Solution, Opening Date: Friday April 21, 2006 at 2:00pm PST".

Lane County Information Services must receive proposals and pricing information prior to the scheduled RFP closing date and time. Late proposals and/or modifications will not be considered. Facsimile proposals or signatures shall not be accepted.

Proposals received in response to this RFP shall be opened at Lane County Public Service Building; Information Services; 125 East Eighth Avenue; Eugene, OR 97401-2926 (unless otherwise specified) at the scheduled closing time. Vendors who attend the opening will be informed only of the names of Vendors submitting proposals.

I-8 Alternate Responses: Vendors may submit more than one response. All such alternate responses must: 1) be submitted in the same envelope with the primary response, be clearly labeled as Alt 1, Alt 2, etc. and 2) comply with the requirements of the Request for Proposal except that additional responses may incorporate, by reference, repetitive information, which is provided in the primary response.

I-9 Budget: Total price for proposed solution shall not exceed \$600,000, excluding cost of features proposed as optional. This is further described in *PART V, 2.2.2*, and in *Appendix A, COST PROPOSAL*.

I-10 Price: All prices, delivery schedules, interest rates, and any other significant factors contained in the proposal (including any alternate proposals submitted) shall be valid for one hundred eighty (180) days from the proposal closing date, unless otherwise specified in the RFP. The COUNTY may request that Vendors extend this time in writing.

Deliveries shall be FOB destination with all transportation and handling charges included. Prices quoted shall include all costs for which the COUNTY shall be responsible, and unspecified costs shall be borne by the Vendor.

If quoted prices decrease prior to date of shipment, the COUNTY shall have the benefit of such lower price.

I-11 Evaluation of Proposals: A committee consisting of representatives of the COUNTY will evaluate Proposals.

The Evaluation Committee participants and process are explained in *PART VI, EVALUATION METHODOLOGY*.

In evaluating the proposals and selecting a Vendor, COUNTY reserves the following rights:

- a. To reject any and all proposals;
- b. To issue subsequent Requests for Proposals, if desired;
- c. Not to award a contract for the requested products and services;
- d. To waive any minor irregularities or informalities in any proposal pursuant to Lane Manual 21.105(8);
- e. To accept that proposal which COUNTY deems to be the most beneficial to the public and COUNTY;
- f. To negotiate with any Vendor to further amend, modify, refine or delineate its proposal, the contract price as it is affected by negotiating the scope of the purchase, and specific contract terms;
- g. To award a contract for all or part of the products, equipment and services proposed;
- h. To negotiate and accept, without re-advertising the Request for Proposal, the proposal of the next highest scoring Vendor in the event that a contract cannot be successfully negotiated with the selected Vendor. This process may continue with any other Vendor submitting proposals before the Evaluation Committee's final recommendation is forwarded for executive approval.

I-12 Right Of Appeal: Anyone responding to this Request for Proposal who is not recommended for award by the Evaluation Committee may appeal the recommendation to the decision-maker, the Board of County Commissioners.

- a. Any appeal must
 - be made in writing.
 - be received before the contract is awarded by the decision maker.
 - clearly state the grounds for the appeal and indicate what condition(s) resulted in the proposal not being recommended for award.
- Any appeal that does not comply with the applicable procedures may be rejected.
- b. Unless otherwise stated in the Request for Proposal, the appeal must be received by the Lane County Information Services, the department which issued the Request for Proposal, not later than seven (7) calendar days after notice of the Evaluation Committee's decision was mailed. Upon receipt of the appeal, the department shall notify the Vendor recommended for award, of the appeal. That Vendor shall have three (3) calendar days from the date the appeal was filed to respond to the appeal in writing.
 - c. When an appeal is filed, the department responsible for preparing the Request for Proposal shall prepare a written analysis of the appeal and make a recommendation to the Board of County Commissioners to appropriate action.
 - d. The appellant must demonstrate their proposal was not recommended for award due to the occurrence of one or more of the following:
 1. Differing criteria were used to evaluate different proposals.
 2. The Evaluation Committee unfairly applied the evaluation criteria to a proposal.
 3. A member or members of the Evaluation Committee had a relationship with a responder to the Request for Proposal that represented a conflict of interest.
 4. The criteria used to evaluate the proposals did not pertain to the services or products requested.
 5. A member or members of the Evaluation Committee demonstrated bias toward a proposal or responder.
 6. The County abused its discretion in rejecting the protestor's proposal as nonresponsive.
 7. The evaluation of the proposal is otherwise in violation of any applicable provision of ORS 279A

- e. Members of the Lane County Board of Commissioners shall present the issues. The appellant shall then have ten (10) minutes to specifically address the appeal criteria and the Evaluation Committee's recommendation, and the recommended Vendor shall have ten (10) minutes to respond.
- f. The decision maker will consider the Evaluation Committee's recommendations and the allegations of the appeal before rendering a final decision. It shall state the conclusions reached and reasons either in writing or on the record in a public meeting. Any decision to overturn the recommendation shall be based on a finding that one of the criteria of *Lane Manual 21.107(14)* occurred to the substantial prejudice of the appellant.
- g. The appeal procedures and limits set forth herein to be followed by the COUNTY are directory and not mandatory, and failure to follow or complete the action in the manner provided shall not invalidate the decision.

I-13 Travel: All travel expenses incurred by COUNTY employees related to this acquisition shall be the responsibility of the COUNTY.

I-14 Acceptance of Contractual Requirements: Failure of the selected Vendor to execute a contract within one hundred eighty (180) days after notification of award may result in cancellation of the award. This time period may be extended at the option of the COUNTY. The COUNTY may then offer/award contract to the next highest Vendor and continue the process to other Vendors as necessary.

I-15 News Release: News releases pertaining to this acquisition will be made only with the prior written consent of the COUNTY, and then only in coordination with the COUNTY.

I-16 Public Records: This RFP and one copy of each original proposal received in response to it, together with copies of all documents pertaining to the award of a contract, shall be kept by Lane County Information Services and made a part of a file or record, which shall be open to public inspection. If a proposal contains any information which a Proposer reasonably believes is a trade secret under ORS 192.501(2), each sheet of such information must be marked with the following legend:

"This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."

If Proposer reasonably believes there are any other grounds for exempting information from disclosure under Oregon Public Records law, they shall mark the information accordingly. Many exemptions are conditioned upon "unless the public interest requires disclosure in a particular interest" which may depend upon official or judicial determinations made pursuant to the Public Records Law. It shall be the Proposer's obligation to establish that the information is exempt from disclosure. Proposer shall defend, indemnify, and hold County harmless from any claim or administrative appeal, including costs, expenses, and any attorney fees, related to a request to disclose information which Proposer has labeled as confidential. The County shall be entitled to use information marked confidential, in whole or in part, for proposal evaluation, and may make copies for this purpose. If applicable, County may, in its discretion, include contract language covering procedures separating confidential information, if it is to be part of a resulting contract. Any restrictions related to information marked confidential do not apply, if the County has the right to or has obtained the information from another source.

Cost or price to be charged the County, and delivery information shall not be considered confidential and shall be open to public inspection.

I-17 Vendor Disqualification: The COUNTY has and reserves the right to refuse to enter into a contract if the COUNTY, based upon reasonable grounds, determines that the legitimate ends of government would not be served, or for reasons set forth in ORS 279B.130(2). After receiving notice of disqualification, the Vendor may appeal in accordance with ORS 279B.130(5) and 279B.425.

I-18 Investigation of References: COUNTY reserves the right to investigate the references and the past performance of any Vendor with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, and its

lawful payment of suppliers, sub-contractors, and workers. This investigation may occur throughout the evaluation process including up to final execution of any contract. COUNTY may postpone the award or execution of the contract after the announcement of the apparent successful Vendor in order to complete its investigation. COUNTY reserves its right to reject any proposal, any part of a proposal, to reject all proposals, and to cancel the award of any contract at any time prior to COUNTY'S execution of a contract.

I-19 Prior Acceptance of Defective Proposals: Due to the limited resources of COUNTY, COUNTY generally will not completely review or analyze proposals which on their faces fail to comply with the requirements of the RFP or which clearly are not the best proposals, nor will COUNTY generally investigate the references or qualifications of those who submit such proposals. Therefore, neither the release of a Vendor's bid bond, the return of a proposal, nor acknowledgment that the selection is complete shall operate as a representation by COUNTY that an unsuccessful proposal was complete, sufficient, or lawful in any respect.

PART II

PROPOSAL FORMAT AND CONTENTS

PROPOSAL FORMAT AND CONTENTS

Proposals must provide a concise description of the Vendor's ability to satisfy the requirements of the RFP with an emphasis on completeness and clarity of contents.

The COUNTY shall not be liable for any costs incurred in the preparation and presentation of proposals.

Proposals shall consist of the following items, in the order indicated:

- A. COVER LETTER AND PROPOSAL PAGES
- B. REQUIRED INFORMATION
- C. PROPOSED SOLUTION
- D. COST PROPOSAL
- E. TECHNICAL LITERATURE
- F. FORMS & ADDENDA

A. COVER LETTER AND PROPOSAL PAGES

The cover letter should introduce the Vendor and contain the Vendor's location and contact information for technical, pricing and contract information. It should also specify location and hours of operation for the Vendor's office that will assume responsibility for delivery and support of the proposed system. The cover letter should summarize key points of the proposal.

Proposal pages found in *PART III, PROPOSAL PAGES*, of this RFP shall be prepared completely and shall follow the cover letter.

B. REQUIRED INFORMATION

1. Executive Summary: The executive summary shall include, at a minimum:

- A brief statement demonstrating the Vendor's thorough understanding of the requirements presented in this RFP.
- A brief statement of the salient features of the proposal, including conclusions and recommendations.
- A brief statement of the expansion capability and/or enhancements that would allow increased functionality, improved performance or improved suitability to business processes.
- Any additional information the Vendor might wish to add which would allow the Evaluation Committee to more fully understand the contents of the proposal.
- A full description of policies regarding revisions, new releases, and/or withdrawal of support for installed application software. State minimum notice for making such changes.
- Identification of any features of the proposed software that has not been specifically addressed in the RFP but which positively distinguish the proposal.

2. Qualifications and References: The qualifications and references section of the proposal should include:

- Information stating the level of service and the location from which project management and technical personnel will be assigned to this project, as well as information stating location and description of the organization responsible for ongoing support of the proposed system.
- Client references for similar and recent work done by the Vendor are required. Vendors will be required to supply references for all clients for whom Vendor software or hardware was installed during the time period covering three years prior to date of this RFP, whether or not the software is currently installed.
- Discussion of the work that may be accomplished by Sub-Contractors, if applicable, and references for previous projects where the Vendor/Sub-Contractor was the same as that being proposed for this project. Finalists will be required to supply upon request client references for a three-year period as described for the prime Vendor.

Company financial documents are NOT required as a part of the proposal, but the COUNTY reserves the right to require this information of finalists.

- Financial information to describe the financial condition of the Vendor.
 - Finalists may be required to provide audited annual financial statements (including Balance Sheet, Statement of Income and Changes in Retained Earnings, Statement of Changes in Financial Position, and Footnotes) dated within the last fifteen (15) months, or a certified true copy of federal income tax return for the last fiscal year.
3. Contractual Acceptance: Vendor must certify by affirmative statement that they accept all terms and conditions in *PART IV, CONTRACT & INSURANCE REQUIREMENTS*, in substantial conformity as stated.

C. PROPOSED SOLUTION

1. Table of Contents: This should be a standard listing of proposal section number, section title, and page number. All numbered sections of the proposal should be included, not just major sections.
2. Table of Illustrations: All illustrations within each major proposal section should be labeled as Figures, given a chronological number within each section such as Figure 1-1, Figure 1-2, Figure 2-1, etc., and be listed in this table. The list should contain figure number, title, and page number.
3. Introduction: The Vendor should provide an opening section that briefly describes how the proposed solution will address the needs of Lane County, including:
- A general description of the system's functionality and user interface.
 - The system's attention to business process efficiency.
 - The integration proposed.
 - Special system considerations and/or features, if appropriate.

This opening description should be no longer than five pages.

4. Proposed Solution: It is mandatory that the Vendor provides complete technical description of how each requirement of the RFP will be satisfied. It is REQUIRED that the Vendor present a description of its total solution addressing topics according to the exact numbering scheme of PART V, TECHNICAL SPECIFICATIONS section of this RFP (excluding Part V, Section 1, "Background"), using the same order of topics, numbers and titles for sections and sub-items. It is expected that detail of how the Vendor intends to meet requirements will be found in the vendor's responses to numbered requirements and questions in the RFP and that the vendor will respond to each and every numbered requirement or question as described. It is particularly important that the Vendor fully describe alternatives to stated requirements in their responses. The RFP is structured to identify requirements as:
- "REQUIRED" - This indicates a requirement that is mandatory in the proposed system.
 - "PREFERRED" - This indicates a requirement that is preferred but not mandatory in the proposed system.
 - "DESIRED" - This indicates a requirement that would be nice to have but is not a priority.
 - "REQUESTED INFORMATION" - This indicates an item where information is being requested, and the Vendor should prepare information as requested.

Required responses to numbered requirements and questions should be prepared using the electronic copy of the RFP downloaded from the Lane County web site <http://www.lanecounty.org>.

The responses should be entered directly following the RFP's text, "Vendor Response:" each time this appears.

5. RFP Media: A downloadable electronic file has been provided which contains this RFP in Microsoft Word format. The entire proposal must be prepared electronically in Microsoft Word and Excel format to appropriately match the format of the downloaded file.
6. Appendices: Vendors may add Appendices, if desired, to present additional pertinent information. Documents that substantiate proposal claims such as an example Systems Design document, an example Training Plan, etc. may be attached as Appendices. References to information found in Appendices should be precise to the section, page number, etc.

D. COST PROPOSAL

1. Cost for the Proposed Solution

The cost response to RFP IS2005-5-01 REGIONAL BACKUP SOLUTION, shall be proposed as a firm fixed price for the complete offering and shall contain detail as described below and in the *RFP PART II, PROPOSAL FORMAT AND CONTENTS*, section *D. COST PROPOSAL*. The COUNTY expects to receive all pricing benefits possible. Prices are divided into categories to facilitate budget and payment schedules.

2. Payment Schedule

The payment schedule for delivery of the proposed solution shall become a part of the contract and is contained in this RFP in *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-5, Cost and Payments*. Deliverables are the basis for all payments to the Vendor except for the amount paid upon contract signing and the amount paid upon successful completion of the appropriate performance period for the proposed solution.

3. Cost Proposal Format

Specific formats for Cost Proposal preparation follow, and the proposed cost must be provided exactly as shown. The Vendor may electronically update the tables provided below in this Microsoft Word document. Additional detail may be provided as Appendices or attached documentation. Vendors must complete all sections of the Cost Proposal Form.

4. Budget

Lane County has imposed a requirement that the cost of the proposed solution not exceed \$600,000. See *PART I, Section I-9 Budget*, It is required that a full solution be proposed within this budget limitation.

5. Options

Options that are not integral to the solution may be priced separately, and are not subject to the budget requirement cited above. Such options could include functions or features that have been listed in the RFP as "DESIRABLE" or other functions or features the Vendor would like to offer that exceed the requirements stated in this RFP. All options should be itemized separately for cost and feature consideration that does not affect the basic solution proposed and its total cost.

6. Pricing

Prices requested for the backup solution should include all Vendor-provided and all third party software and hardware proposed. License fees for all software should be included in software pricing and should state specifically whether pricing is based on site, concurrent, or per-seat licensing. For site licensing, please provide the maximum number of clients supported, if applicable. For all administrative UI licensing, the Vendor should prepare separate pricing for "Backup Restore only" and "Full Administrative" seats if they are different. For backup client licensing, please state the license basis (e.g. per client, backup data volume, etc). For all licensing, please provide thresholds, pricing and other information relevant to expansion of the proposed system for additional backup clients or backup system capacity.

7. Ongoing Support Pricing

Ongoing costs should be provided for the entire solution. The cost proposal for ongoing support should be commensurate with the warranty schedule proposed. Prices for ongoing support costs should be

given for all elements of ongoing support starting when the warranty for the installed solution has expired. This should include maintenance for all proposed products, including those from partners or third party vendors, anticipated upgrade costs for this duration and any other support costs that would be incurred by COUNTY. Upgrades should be defined clearly in terms of which are accomplished as a part of maintenance and which are priced separately. The Vendor should include cost estimates at appropriate estimated frequency for insertion of COUNTY'S cost for implementing upgrades during the covered by this proposal.

The Vendor will provide all information necessary to fully explain its software and hardware pricing policies. In particular, basis for licensing fees, maintenance specifics and all standard or specialized price schedules should be provided. Policies for discounting and price changes should be described fully.

8. Pricing Format

Price information shall be supplied in the format described below and in **APPENDIX A, COST PROPOSAL**. All supporting documentation must be prepared for any alternatives to the primary proposed solution.

The cost proposal section of the Vendor's overall proposal provides in one place all the relevant information for cost of the system and the various options that are being proposed. The purpose of the "Cost Proposal" is to bring together all of the cost information. This part of the proposal must contain the following sections in the order indicated and in the format shown in **APPENDIX A, COST PROPOSAL**:

1. Price Summary
2. Pricing Detail for Proposed System
3. Detail Pricing for Options
4. Detail Pricing for Maintenance and Upgrades
5. Policies for Price Changes
6. Pricing Options for Capacity Growth

Prices quoted shall be deemed to include all costs for which the COUNTY shall be responsible. Unspecified costs will be borne by the Vendor.

All cost information shall be in U.S. dollars.

All Vendors shall assume and pay all applicable state, federal, and municipal taxes and contributions which are payable by virtue of development, delivery, and installation of the item(s) specified in their bid or changes. The COUNTY will provide certificates of tax exemption upon request.

Any discount stated or computed as a percentage of the general published price at the time of the proposal will be considered applicable to any subsequent price changes during the life of the contract.

The Vendor should describe financing options available in the form described in **APPENDIX A, COST PROPOSAL**.

E. TECHNICAL LITERATURE

1. Index: List all reference materials, manuals and other documents included with the Technical Proposal.
2. Technical Information: Submit a copy of all technical literature and/or published specifications that are referenced in the index and any other information that will verify responses to the required, preferred and desirable features.
3. User Documentation: Submit all existing User Documentation for the proposed solution. If the User Documentation will be prepared or substantially modified as a part of the proposed work, the Vendor must supply representative User Documentation for other software installed by the Vendor.

F. FORMS & ADDENDUM

1. Vendor Agreements - Maintenance/Software License/Etc.: It is COUNTY'S intent to agree to contract terms which are substantially similar to those in *PART IV, CONTRACT & INSURANCE REQUIREMENTS*. Vendors must agree to execute COUNTY'S form of purchase agreement. Vendors must certify by affirmative statement that they accept all contract terms and conditions in *PART IV, CONTRACT & INSURANCE REQUIREMENTS*, in substantial conformity as stated. If vendors wish to propose limited modifications to these terms and conditions, they should submit any other form or document with their proposal, clearly marking only those provisions they believe should be considered and which do not materially differ from those in *PART IV, CONTRACT & INSURANCE REQUIREMENTS*. Some of the provisions COUNTY specifically desires to remain as written include:
 - C-4 Contract Period
 - C-6 Performance Period - Acceptance Test
 - C-7 Vendor's Personnel
 - C-9 Confidential Information and Mutual Non-Disclosure Agreement
 - C-10 Patent & Copyright Infringement
 - C-15 Product Support
 - C-19 Worker's Compensation
 - C-20 Free From Tax Law and Discrimination Violations
 - C-23 Safety Requirements
 - C-24 Governing Law
 - C-25 Lane Manual
 - C-26 Prime Vendor Responsibilities
 - C-28 Indemnity
 - C-35 Award to Foreign Vendor
 - C-41 Termination
 - C-44 Notices

Terms and conditions substantially inconsistent with the terms in this RFP or not acceptable to the COUNTY'S Office of Legal Counsel could result in rejection of the Vendor's proposal. Generally, COUNTY also reserves the right to negotiate aspects of the proposed solution including but not limited to: the scope of work/performance, price, to the extent it is affected by change in scope of work/performance, manner in which services are to be performed, personnel to be committed to the contract, proposed options, licensing terms and counts, etc.

Vendors must submit with their proposals any maintenance contracts for equipment or software, software licensing agreements and any other forms, contracts or documents that are proposed to implement and administer the entire proposed solution. Any proposed maintenance contracts should be consistent with *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-36, Maintenance Services*, Mutual Non-Disclosure Agreement, and HIPAA Business Associate Agreement. The County has included a form software license agreement with accompanying Mutual Non-Disclosure Agreement. If Vendor wishes to propose limited modifications to the software license agreement, they shall clearly mark only those provisions they believe are not adequately covered by the County's proposed provisions. However, any vendor proposed software license agreement should be consistent with *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-13, License of Software*, and the Mutual Non-Disclosure Agreement.

Vendors must indicate in their proposal that they agree to execute an agreement with Lane County ensuring compliance with HIPAA Privacy and Security Rules. Terms of this agreement will be substantially similar to the sample *Purchase Contract* included in *PART IV, CONTRACT & INSURANCE REQUIREMENTS*.

2. Proposal & Attachments: Vendors must also include a notarized copy of the PROPOSAL TO LANE COUNTY form provided in *PART III, PROPOSAL PAGES*. The PROPOSAL TO LANE COUNTY form must be signed and notarized.

3. Company Profile: Vendors must complete the COMPANY PROFILE form provided in *PART III, PROPOSAL PAGES*.

PART III

PROPOSAL PAGES

PROPOSAL PAGES

Vendors shall use the attached PROPOSAL TO LANE COUNTY to prepare their proposals.

The proposal shall be completed, all required information provided, and the firm name and the signature of an authorized person shall be in the spaces provided. All proposals must be signed and notarized. Telephonic facsimile proposals or signatures will not be accepted. Proposal purchase price(s) is to exclude Federal Excise Tax. Federal exemption certificates will be furnished to successful Vendors. Proposal purchase price(s) shall be FOB Destination, unless otherwise noted.

Other information provided by Vendors shall be organized to correspond in a linear fashion with the specifications and is to include at least sub-item numbers and titles from the specifications as identification.

1. The following forms **MUST** be returned in order to qualify the bid for consideration:
 - PROPOSAL TO LANE COUNTY must be signed and notarized.
 - COMPANY PROFILE must be completed in its entirety.
2. The following **MAY** be required, as provided in this document. If required, they are to be submitted when the signed contract is returned to the COUNTY.

CERTIFICATE OF INSURANCE:

The successful bidder shall be required to submit a standard insurance certificate as evidence of compliance with **PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-27, Insurance.** This will be sent to the COUNTY with the agreement before execution by the COUNTY.

PROPOSAL TO LANE COUNTY

For furnishing and delivery of: Regional Backup Solution

The undersigned, as Vendor, declares that he/she has carefully examined the entire RFP Solicitation document, including all specifications, provisions, proposed instructions and all other conditions of the RFP and all addenda, and that Vendor proposes and agrees, if the proposal is accepted, that Vendor will contract with COUNTY to furnish the item(s) in the manner and time herein prescribed and according to all the requirements set forth.

A Vendor may withdraw the proposal at any time prior to the day of the proposal opening. However, all proposals shall be irrevocable for a period of one hundred and eighty (180) days from the day of the proposal opening.

The Vendor hereby certifies that he/she is a resident Vendor, as defined in ORS 279A.120, of the State of _____.

By initialing this space _____, Vendor hereby certifies that he/she has not discriminated against minority, women, or emerging small business enterprises in obtaining any required subcontracts.

By initialing this space _____, Vendor hereby certifies that it accepts, in substantial conformity, all contract terms and conditions in *PART IV, CONTRACT & INSURANCE REQUIREMENTS*.

By initialing this space _____, Vendor agree that in case of any discrepancies between the hard copy or the electronic copy of the RFP Solicitation document and Addenda, supplied as a part of the Vendor's proposal, the secured electronic copy of these documents maintained by the County shall control and take precedence.

By initialing this space _____, Vendor specifically acknowledges receipt of and agrees to be bound by Addenda numbered _____ through _____, inclusive.

By initialing this space _____, Vendor represents that it has not modified or changed terms of the RFP Solicitation document or Addenda, in either the hard copy or electronic version of its supplied proposal, except to provide proposal responses.

By initialing this space _____, Vendor acknowledges and agrees that in the event there is any discrepancy in the proposal between the notarized hard copy and electronic versions, the hard copy controls and supercedes.

The Vendor represents that the proposal is made without connection to any person, firm, or corporation making a proposal for the same materials, and is in all respects fair and without collusion.

The undersigned attests that he/she has the authority to represent the firm in executing this proposal, that the information provided is true and accurate to the best of his/her knowledge, and understands that any false or substantially incorrect statement may disqualify this proposal or be cause for termination of any resulting contract.

Firm's Name (Print or type name)

Signature

Address

Print or type name

Title

Telephone: _____

Business I.D. No _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public for the State of _____

My commission expires _____

COMPANY PROFILE

Vendors must provide a written response for each request in the blanks below.

1. Company Name: _____

2. Headquarters Location: _____

3. Location of Local Office/Supplier:

Name: _____

Phone: _____

Address: _____

4. Company Primary Business: _____

Years experience with the proposed backup software or similar systems and/or integrated environments: _____

Describe: _____

Years experience with proposed backup hardware, integration technology and systems: _____

Describe: _____

Total number of employees assigned to proposed technology: _____

5. Number of Customers with similar backup solutions currently installed: _____

8. Company Ownership: _____

9. Company's lawsuits/judgments for the last thirty-six (36) months: None ()

List: _____

10. User Support Group: Yes () No ()

Name and purpose or special interest of User Group: _____

Sponsored by: Vendor () Independent ()

Number of Member Organizations: _____

Meeting Location & Frequency: _____

Meetings open to Non-Owners: Yes () No ()

Participation Fee: _____

11. References (add more entries as needed) (See Part II, Section B. *REQUIRED INFORMATION, Item 2, Qualifications and References*):

Agency	Contact Name & Telephone Number	Date when System Installed

PART IV

CONTRACT & INSURANCE REQUIREMENTS

LANE COUNTY

PURCHASE CONTRACT No. _____

PLEASE PUT THIS NUMBER ON ALL INVOICES

In consideration of the covenants set forth below, _____, hereinafter referred to as Vendor, and Lane County, a political subdivision of the State of Oregon, hereinafter referred to as COUNTY, mutually contract as follows:

- C-1. **Agreement:** Vendor agrees and covenants with COUNTY to furnish: a Regional Backup Solution, including all requisite equipment, software, documentation and services, in accordance with the attached specifications identified as RFP No. IS2005-5-01 as modified by addenda and/or supporting Exhibits, and the Vendor's Proposal. All of the attached specifications together with this contract, *PART IV, INSURANCE COVERAGES REQUIRED*, and applicable provisions of *Lane Manual, Chapter 21.130, Standard Provisions*, constitute the contract documents.
- C-2. **Order of Precedence:** In the event of conflict or discrepancies among the contract documents, interpretations will be based on the following order of priority:
- HIPPA Business Associate Agreement;
 - The purchase contract, etc.;
 - PART IV, CONTRACT & INSURANCE REQUIREMENTS, INSURANCE COVERAGES REQUIRED*;
 - Mutual Non-Disclosure Agreement;
 - software license agreement;
 - maintenance agreement;
 - The COUNTY'S Request for Proposal;
 - The VENDORS'S Proposal in response to the Request for Proposal.
- C-3. **General:** The COUNTY certifies that it is purchasing this product for public agency use. The COUNTY certifies that the acquisition is not for remarketing, and that it will not assign the on-order product to any party other than Vendor or a Vendor affiliate without written consent of the Vendor, which shall not unreasonably be withheld. The COUNTY reserves the right to sign any agreement that is deemed to be beneficial to the COUNTY.
- C-4. **Contract Period:** Contract period shall be the date this Contract is signed to the last day of any applicable warranty period. For COUNTY's internal purposes only, the contract period shall be for three years from the contract execution date. However, Vendor shall agree to extend this period as necessary for completion of the entire implementation and all applicable warranty periods.
- C-5. **Cost and Payments:** The Vendor's payment is based on a firm fixed price as reflected in the cost section of the proposal.
- The contract payment schedule will be dependent upon approved completion and acceptance for firm fixed price deliverables. Invoices must be specific to defined deliverables, and must be submitted with backup that confirms the deliverable, its acceptance and its contract value.
- Regardless of the number of deliverables defined, COUNTY will apply a payment schedule such that
- Fifty percent (50%) of the contract amount is paid within 30 days of contract signing.
 - The remaining fifty percent (50%) balance will be paid when the system performance period is successfully completed.
- C-6. **Production Acceptance and Performance Period:** Following implementation and successful prerequisite acceptance testing (including pilot installation) and prior to final production

acceptance of *proposed solution*, a formal performance period will commence. Promptly, upon successful completion of the applicable production acceptance testing and performance period defined in Part V *Section 6.1* as may be modified by any mutual written agreement thereafter, COUNTY shall notify Vendor in writing of final production acceptance of the system and authorize Vendor to submit an invoice for payments according to contract terms.

If the production acceptance tests are not successfully completed within thirty (30) calendar days of the acceptance test start date, or the performance period is not completed within thirty (30) calendar days of the performance period start date, and failure is attributed to products or work completed by Vendor, COUNTY shall have the option of terminating the contract, as specified in *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-41B, Termination by COUNTY for Cause*, and retaining all contractual remedies against Vendor, or of authorizing Vendor in writing to continue the performance period, specifying the new deadline, or of authorizing Vendor to proceed with redefined responsibilities and associated renegotiated costs. The COUNTY'S option to terminate the contract shall remain in effect until such time as successful completion of the standard of performance is attained. Vendor shall be liable for all outbound preparation and shipping costs for contracted items returned under this clause.

- C-7. **Security and Vendor's Personnel:** Vendor shall exercise due care to choose and manage its personnel so that only suitably responsible and professionally competent representatives shall be operating in COUNTY areas. Any Vendor's personnel who could have access to sensitive information, whether or not they are working on COUNTY premises, shall successfully complete a criminal records check including fingerprint-based identification, conducted by COUNTY or its designee at the COUNTY'S sole expense. Vendor must supply biographical information if required or requested by the COUNTY for criminal records checks initially and throughout the entire contract, warranty, and maintenance periods, whether such person is engaged by the Vendor, any sub-contractor, or any supplier under the contract. Any project delay that is a direct result of COUNTY'S criminal records check task, provided that biographical and other information needed for the background check is delivered to COUNTY in a timely manner, shall not be considered the Vendor's responsibility. In addition, the COUNTY has internal security policies and procedures that may apply to the Vendor's personnel.

- C-8. **Right to Interface:** COUNTY shall have the right to connect the products for which it has contracted under this Agreement to any product or software developed internally, manufactured or supplied from other sources, including, but not limited to, computer software, peripheral equipment, other computers, communications equipment, mobile devices, and like equipment. The County's internal staff or other source supplying the other equipment or software mentioned above shall make or supervise the interconnection and supply any interface devices required.

The following Warranty exclusions may apply with issues involving COUNTY interfaces: (i) defects or damage resulting from use of the Vendor Software in other than its normal and customary manner; (ii) defects or damage occurring from misuse, accident, liquids, neglect, or acts of God; (iii) defects or damage occurring from testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided by the Vendor or contrary to express instructions provided in writing by the Vendor; (iv) defects or damage caused by COUNTY'S failure to comply with all applicable industry and OSHA standards.

COUNTY may request, but Vendor is not required to repair any damages caused by COUNTY'S actions under this section. This work will be quoted independently of any existing contract between the COUNTY and Vendor, but may be at the same time and material rates quoted in any existing maintenance contract or those rates then in effect.

Such alterations or attachments shall be removed and the product restored to the prior configuration at COUNTY expense before return of the product by COUNTY.

- C-9. **Confidential Information:** The parties' agreement concerning confidentiality applicable to this procurement contract shall be in substantial conformity with the terms of the attached Mutual

Non-Disclosure Agreement and confidentiality obligations of the attached Software License agreements.

- C-10. **Patent And Copyright Infringement:** Vendor will defend at its expense any suit brought against COUNTY to the extent that it is based on an Infringement Claim that the Vendor software infringes a United States patent or copyright. Vendor will indemnify COUNTY for those costs and damages finally awarded against the COUNTY for an Infringement Claim. Vendor's duties to defend and indemnify are conditioned upon: (i) COUNTY promptly notifying Vendor in writing of such Infringement Claim; (ii) Vendor having sole control of the defense of such suit and all negotiations for its settlement or compromise; (iii) COUNTY providing to Vendor cooperation and, if requested by Vendor, reasonable assistance in the defense of the Infringement Claim. If COUNTY reasonably concludes that its interests are not being properly protected, or principles of governmental or public law are involved, it may enter any action, at its own expense. Any settlement by the COUNTY with the party alleging such infringement shall not be binding on the Vendor and the Vendor shall be under no obligation to pay or indemnify the COUNTY.

If the Vendor software becomes, or in Vendor's opinion is likely to become, the subject of an Infringement Claim, Vendor may at its option and expense procure for COUNTY the right to continue using such Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant COUNTY a credit for returned software equal to the reasonable replacement costs of the software, such software as depreciated and accept its return. In addition, Vendor shall refund any license fees paid by COUNTY, on a pro rata basis, and refund any prepaid amounts for service or software not yet provided. The depreciation amount will be calculated based upon generally accepted accounting standards for such equipment and software. The COUNTY may also invoke additional remedy steps as specified in *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-41, Termination*.

Vendor will have no duty to defend or indemnify for any Infringement Claim that is based upon (i) the combination of the equipment or software with any software, apparatus or device not furnished by Vendor; (ii) the use of ancillary equipment or software not furnished by Vendor and that is attached to or used in connection with the equipment or software; (iii) any Equipment that is not Vendor's design or formula; (iv) a modification of the Vendor Software by another party without Vendor's approval; or (v) the failure by COUNTY to install an enhancement release to the Vendor Software that is intended to correct the claimed infringement. The foregoing states the entire liability of Vendor with respect to infringement of patents and copyrights by the Equipment and Vendor Software or any parts thereof.

- C-11. **Title and Risk of Loss:** Title to Software will not pass to COUNTY at any time. Risk of loss will pass to COUNTY upon delivery of the Software and Equipment to the COUNTY.
- C-12. **Preservation of Vendor's Proprietary Rights and County Rights to Media and Data:** Vendor owns and retains all of its Proprietary Rights to the software. The copyright owner of any Non-Vendor Software own and retain all of their Proprietary Rights. COUNTY owns title to the physical media for the software as well as all data entered into software. All intellectual property that is created or produced by Vendor under this Agreement is and shall remain the property of Vendor. Nothing in this Agreement is intended to restrict the Proprietary Rights of Vendor, any copyright owner of Non-Vendor Software, or any third party manufacturer of Equipment. This Agreement does not involve shared development rights of intellectual property or any Software that is a "work made for hire."

Except as explicitly provided in *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-13, License of Software*, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppels, or otherwise, any of Vendor's Proprietary Rights. Concerning both the Vendor Software and the Non-Vendor Software, COUNTY agrees not to modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, reproduce (except as provided in *PART IV, CONTRACT & INSURANCE REQUIREMENTS, Section C-14, Warranties*

and the Agreement for Maintenance Services), or export the Software, or permit or encourage any third party to do so.

C-13. **License of Software:** The parties' agreement concerning a software license agreement shall be in substantial conformity with the attached Software License Agreement.

C-14. **Warranties:** Vendor warrants that the products and equipment that are defined as Vendor's responsibilities, when installed will be in good working order and will conform to the Vendor's official published specifications and the technical specifications of *PART V, TECHNICAL SPECIFICATIONS*.

The start of the warranty period is upon final production acceptance after successful completion of the performance period.

The Vendor Software is warranted during the Warranty Period in accordance with the applicable limited warranties shown below. COUNTY must notify Vendor in writing if Vendor software or equipment does not conform to these warranties no later than one month after the expiration of the Warranty Period. Upon receipt of such notice, Vendor will respond to the warranty claim. If this response confirms a valid warranty claim, Vendor will (at its option and at no additional charge to COUNTY) repair the defective Vendor software or equipment, replace it with the same or equivalent, or refund the price of the defective Vendor software or equipment; and such action will be the full extent of Vendor's liability hereunder. Repaired or replaced product or equipment is warranted for the balance of the original applicable Warranty Period. All replaced products or parts will become the property of Vendor. Vendor shall also provide to COUNTY all available warranties for 3rd party products or equipment included in Vendor's Proposal.

Vendor software and equipment is warranted at no charge to the COUNTY for one year following completion of the performance period for production use in accordance with the terms of this section, C-14, Warranties. After the expiration of this period, COUNTY may obtain maintenance and support services. Maintenance charges, as defined in the contract shall not begin until the date of expiration of warranty period.

These warranties do not apply to: (i) defects or damage resulting from use of the Vendor software or equipment in other than its normal and customary manner; (ii) defects or damage occurring from misuse, accident, liquids, neglect, or acts of God; (iii) defects or damage occurring from testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Vendor; (iv) defects or damage caused by COUNTY'S failure to comply with all applicable industry and OSHA standards.

C-15. **Product Support:** Vendor guarantees availability of long-term product support (availability of equipment and software maintenance service and upgrades) for all equipment and software leased or acquired under this contract for a minimum period of three (3) years following the date the Vendor provides written notification to the COUNTY that the equipment or software is out of production.

C-16. **Source Code:** Vendor will release the source code of the system to COUNTY under the following conditions. However, title to the source code will not pass to the COUNTY at any time.

- a. Entry of an order for relief under Title 11 of the United States Code; an assignment by Vendor for the benefit of its creditors; the appointment of a receiver or trustee in bankruptcy of Vendor's business or property; or action initiated by Vendor or a third party under state law involving Vendor's insolvency or the protection of or from its creditors; and the same has not been rescinded, discharged or terminated within thirty (30) days unless there would be prejudice to the COUNTY'S rights or interests under this agreement allowing this grace

period. If there would be such prejudice, COUNTY shall be provided the source code immediately upon the occurrence of any of the above events.

- b. Vendor has ceased its business operations, or the sale, licensing, maintenance or other support of the software.
- c. Vendor shall provide written notice to COUNTY, within a reasonable time, if any of the events in parts (a.) or (b.) in this section has occurred.

C-17. **Independent Vendor:** The performance of this contract is at the Vendor's sole risk. The service or services to be rendered under this contract are those of an independent Vendor who is not an officer, employee or agent of the COUNTY as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, the Vendor is acting as and assumes liability of an independent contractor as to any claims between COUNTY and the Vendor. The Vendor is solely liable for any workers' compensation coverage; social security, unemployment insurance or retirement payments; and federal or state taxes due as a result of payments under this contract. Any subcontractor hired by the Vendor shall be similarly responsible.

The parties will be acting in their individual capacities and not as agents, employees, partners, joint-ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be employees or agents of the other party for any purpose whatsoever. Nothing in this Agreement shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

C-18. **Vendor not Federally Employed, Fair Charges:** Vendor is not currently employed by the Federal government, and the amounts charged will not exceed the normal charges for the type of services provided.

C-19. **Worker's Compensation:** The Vendor, its sub-contractors and agents, and all employers working under this contract are either subject employers under the Oregon Worker's Compensation law and shall cover all subject workers pursuant to ORS 656.017, or be exempt under ORS 656.126. As a covered employer, Vendor shall provide Worker's Compensation benefits to workers performing work under this contract in accordance with Oregon law. Vendor shall require its sub-contractors and agents to comply with this law.

C-20. **Free From Tax Law And Discrimination Violations:** By execution of this contract, Vendor certifies under penalty of perjury that:

- a. To the best of Vendor's knowledge, Vendor is not in violation of any tax laws described in ORS 305.380(4); and
- b. Vendor has not discriminated against minority, women, or small business enterprises in obtaining any required subcontract.

C-21. **Employment Taxes and Workers' Compensation Payments:** Vendor is an independent Vendor and shall be responsible for any and all taxes or Workers' Compensation payments due as a result of this contract. Any sub-contractor or agent hired by Vendor shall be similarly responsible.

C-22. **Taxes - Federal and Local:** COUNTY will not be responsible for any taxes coming due as a result of this agreement, whether federal, state, or local. It is agreed that the Vendor has anticipated these taxes and included them in the proposal.

C-23. **Safety Requirements:** Equipment, software and services shall comply with all Federal Occupational Safety and Health Administration (OSHA) and State of Oregon Electrical Safety

Code requirements. Vendor shall also comply with all other applicable state and local code requirements.

- C-24. **Governing Law:** The laws of the State of Oregon shall govern the validity, construction and enforcement of this Contract, as well as the interpretation of the parties' rights and duties without reference to conflicts of laws. The parties expressly agree that any action or proceeding involving the terms and conditions of this contract must be brought in the appropriate court of the State of Oregon for Lane County.

Each party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement.

The Vendor agrees that, during the performance of work under this contract, it will comply with all applicable provisions of the administrative rules, laws and constitution of the State of Oregon, and all applicable local rules, regulations, and ordinances of cities, counties, municipalities, and local taxing districts.

Vendor further agrees to comply with the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of the Department of Health and Human Services issued according to that Act, and provisions of Executive Order 11246, Equal Employment Opportunity, dated September 24, 1965, as amended. Vendor shall certify the existence of the Vendor's own equal employment opportunity programs in all non-exempt contracts between the Vendor and the COUNTY as provided in Title I, Part 60 of the Code of Federal Regulations.

- C-25. **Lane Manual:** The applicable provisions of the *Lane Manual* setting forth standard provisions for public contracts (*Lane Manual, Chapter 21.130, Standard Contract Provisions*) are hereby incorporated by this reference and as set forth *Lane Manual, Chapter 21.130, Standard Contract Provisions*.

- C-26. **Prime Vendor Responsibilities:** Unless otherwise stated in the RFP, Vendor shall assume responsibility for delivery, installation and configuration, (unless the item is usually customer installed, and COUNTY is so notified in the proposal), and warranty and maintenance service of all software, and support services offered in the proposal, regardless of whether Vendor is the Vendor or the manufacturer, producer, or supplier of the equipment, software, or support services. A contract will be awarded to the prime Vendor or Vendors. If the prime Vendor is not capable of providing all goods or services, it is the prime Vendor's sole responsibility to form alliances with other firms to meet the requirements of this RFP. The prime Vendor will be responsible for performance of all involved parties. The COUNTY reserves the right to approve subcontractors and any changes after the award of the contract.

- C-27. **Insurance:**

- a. Insurance and Bonding: Vendor shall provide all insurance as stipulated in *this PART, INSURANCE COVERAGES REQUIRED*.
- b. Certificate of Insurance: As evidence of the insurance coverage required by this contract, the Vendor shall furnish a certificate of insurance to:

LANE COUNTY
Information Services Department
125 E. 8th Avenue
Eugene, OR 97401

This certificate must specify as Additional Insured: State of Oregon, Lane County, its commissioners, agents, officers and employees with respect to the activities performed under this contract and must include a notice provision regarding cancellation. Insurance coverage required under this contract shall be obtained from insurance companies authorized to do