



Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

APRISMA01

1

BLANKET RELEASE

00

CORRECT PURCHASE ORDER NUMBER
 MUST APPEAR ON ALL PACKAGE
 INVOICES, AND SHIPPING PAPERS.
 QUESTIONS CONCERNING THIS PUR-
 CHASE ORDER SHOULD BE DIRECTED
 TO THE BUYER AS NOTED BELOW

CHANGE ORDER

R & Ds COPY

SEE REVERSE SIDE FOR
 TERMS AND CONDITIONS

01 ^D 3
 R 443

VARIOUS AGENCY LOCALES
 AS INDICATED BELOW

ALL STATE AGENCIES
 AND POLITICAL SUBDIVISIONS
 VARIOUS LOCALES AS INDICATED
 BY ORDER

*201145002 703-736-9164
 APRISMA MANAGEMENT TECHNOLOGIE
 121 TECHNOLOGY DRIVE
 DURHAM NH 03824

DATE PRINTED	TERMS OF SALE	FEIN/SSN	FUND
03/06/2001	NET 30	020513811	MUL
SHIP VIA	F.O.B.	FREIGHT TERMS	ACCOUNT NUMBER
BEST WAY	DESTINATION	PREPAID	MUL-MUL -MUL

LINE	QUANTITY	UOP	VENDOR ITEM NO.	UNIT PRICE	AMOUNT
	DELIVERY DATE	CAT. NO.	ITEM NUMBER		
0001	03/01/2001	920-45	APRISMA SOFTWARE AND SUPPORT		
OPEN-END CONTRACT TO ESTABLISH A MASTER TERMS AND CONDITIONS CONTRACT FOR USE BY ALL WEST VIRGINIA STATE AGENCIES AND PARTICIPATING POLITICAL SUBDIVISIONS. EFFECTIVE MARCH 1, 2001 AND TO CONTINUE IN PERPETUITY OR UNTIL CANCELLED IN ACCORDANCE WITH THE ATTACHED AGREEMENT. ALL PRICING SHALL BE IN ACCORDANCE WITH THE ATTACHED STATE OF WEST VIRGINIA PRICELIST DATED JANUARY 31, 2001 REVISED PRICE LISTS MAY BE ADDED VIA CHANGE ORDER UPON WRITTEN REQUEST FROM APRISMA. PLEASE SEE ATTACHED FOR TERMS, CONDITIONS, PRICING AND ORDERING INSTRUCTIONS.					SWC
WV State Purchasing Division Administration Unit Certified Encumbered MAR 09 2001 <i>John H. Miller</i>					
RETURNED TO BUYER DATE: 3-7-01					

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE *3/6/01*

OPEN END

TOTAL

CHARLYN MILLER 304-558-2596

BY *H. C. Miller 3/6/01*
 PURCHASING DIVISION AUTHORIZED SIGNATURE

APPROVED FOR

ONE FISCAL YEAR

Dawn W. Harpold
 APPROVED AS TO FORM BY
 ASSISTANT ATTORNEY GENERAL

**GENERAL TERMS & CONDITIONS
PURCHASE ORDER/CONTRACT**

1. **ACCEPTANCE:** Seller shall be bound by this order and its terms and conditions upon receipt of this order.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **NON-FUNDING:** All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the terms of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
4. **COMPLIANCE:** Seller shall comply with all Federal, State and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the WV Division of Labor.
5. **MODIFICATIONS:** This writing is the parties final expression of intent. No modification of this order shall be binding unless agreed to in writing by the Buyer.
6. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder may be assigned by the Seller without the Buyer's consent.
7. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this Order will: [a] conform to the specifications, drawings, samples or other description furnished or specified by the Buyer; [b] be merchantable and fit for the purpose intended; and/or [c] be free from defect in material and workmanship.
8. **CANCELLATION:** The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the Seller.
9. **SHIPPING, BILLING & PRICES:** Prices are those stated in this order. No price increase will be accepted without written authority from the Buyer. All goods or services shall be shipped on or before the date specified in this Order.
10. **LATE PAYMENTS:** Payments may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the *West Virginia Code*.
11. **TAXES:** The State of West Virginia is exempt from Federal and State taxes and will not pay or reimburse such taxes.
12. **RENEWAL:** Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor / contractor files for bankruptcy protection, this contract is automatically null and void, and is terminated without further order.

APRISMA MASTER CONTRACT

This Master Contract covers software licenses and technical support and will be available for use by all State agencies and county and local entities.

Instructions on Use of Master Contract:

1. Aprisma Management Technologies, Inc. will provide the State entity with a Quote which is to be signed by Aprisma.
2. The State entity will prepare a Blanket Release Order showing the Aprisma components listed on the Quote and the price for each.

IF ORDERING DOCUMENT IS LESS THAN \$10,000:

The State entity will send the Blanket Release Order and a copy of the signed Quote directly to Aprisma Management Technologies, Inc.. The State entity will also be required to send a copy of the package to the attention of IS&C's Aprisma Master Contract Coordinator.

IF ORDERING DOCUMENT IS MORE THAN \$10,000:

State agencies will be required to send the Blanket Release Order and Aprisma Quote to IS&C's Consulting Services for review. IS&C will review the procurement and forward it on to the CTO's office for approval. The CTO will send the State agency an approval letter to be maintained in the agency's files and sent with the invoice to the State Auditor's Office. IS&C's Consulting Services is responsible for insuring that the Aprisma Master Contract Coordinator receives a copy of the package.

After approval is obtained from the CTO's Office, the State entity will send the Blanket Release Order and a copy of the signed Quote directly to Aprisma Management Technologies, Inc..

Note: County and local entities are not required to obtain CTO approval but should send a copy of any orders to IS&C's Aprisma Master Contract Coordinator.

APRISMA MANAGEMENT TECHNOLOGIES

State of West Virginia Pricelist

January 31, 2001

Part Number	Product Description	Retail List Price	State of West Virginia Cost	1 Year Software Maint.
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Bundles

SPEC-SITE-MGR	SPECTRUM Site Manager (250 devices, No Distributed Server Support)	40,000.00	30,000.00	8,000.00
SPEC-SITE-PUG	Site Manager Product Upgrade	40,000.00	30,000.00	8,000.00
SPEC-SITE-VUG	Site Manager Version Upgrade	24,000.00	18,000.00	4,800.00
SPEC-BR50-MGR	SPECTRUM Branch Manager 50	25,000.00	18,750.00	5,000.00
SPEC-BR50-PUG	Branch Office Manager 50 Product Upgrade	25,000.00	18,750.00	5,000.00
SPEC-BR50-VUG	Branch Office Manager 50 Version Upgrade	15,000.00	11,250.00	3,000.00
SPEC-BR100-MGR	SPECTRUM Branch Manager 100	40,000.00	30,000.00	8,000.00
SPEC-BR100-PUG	SPECTRUM Branch Manager 100 Product Upgrade	40,000.00	30,000.00	8,000.00
SPEC-BR100-VUG	Branch Office Manager 100 Version Upgrade	24,000.00	18,000.00	4,800.00
SPEC-BR250-MGR	SPECTRUM Branch Manager 250	70,000.00	52,500.00	14,000.00
SPEC-BR250-PUG	SPECTRUM Branch Manager 250 Product Upgrade	70,000.00	52,500.00	14,000.00
SPEC-BR250-VUG	Branch Office Manager 250 Version Upgrade	42,000.00	31,500.00	8,400.00
SPEC-SP-DCXP50	SPECTRUM Data Center Transport 50	50,000.00	37,500.00	10,000.00
SPEC-SP-DCXP50-PUG	Data Center Transport 50 Product Upgrade	50,000.00	37,500.00	10,000.00
SPEC-SP-DCXP50-VUG	Data Center Transport 50 Version Upgrade	30,000.00	22,500.00	6,000.00
SPEC-SP-DCXP100	SPECTRUM Data Center Transport 100	75,000.00	56,250.00	15,000.00
SPEC-SP-DCXP100-PUG	Data Center Transport 100 Product Upgrade	75,000.00	56,250.00	15,000.00
SPEC-SP-DCXP100-VUG	Data Center Transport 100 Version Upgrade	45,000.00	33,750.00	9,000.00
SPEC-SP-DCXP250	SPECTRUM Data Center Transport 250	110,000.00	82,500.00	22,000.00
SPEC-SP-DCXP250-PUG	Data Center Transport 250 Product Upgrade	110,000.00	82,500.00	22,000.00
SPEC-SP-DCXP250-VUG	Data Center Transport 250 Version Upgrade	66,000.00	49,500.00	13,200.00
SPEC-SP-NOC	SPECTRUM SP NOC Manager	175,000.00	131,250.00	35,000.00
SPEC-NOC-PUG	NOC Manager Product Upgrade	175,000.00	131,250.00	35,000.00
SPEC-NOC-VUG	NOC Manager Version Upgrade	105,000.00	78,750.00	21,000.00
SPEC-ENT-MGR	SPECTRUM Enterprise Manager	100,000.00	75,000.00	20,000.00
SPEC-ENT-PUG	Enterprise Manager Product Upgrade	100,000.00	75,000.00	20,000.00
SPEC-ENT-VUG	Enterprise Manager Version Upgrade	60,000.00	45,000.00	12,000.00
SPEC-SEC-MGR	SPECTRUM Security Manager	90,000.00	67,500.00	18,000.00

Non-Bundled Part #'s

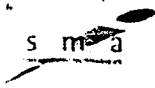
SA-CSI1000	SpectroSERVER	10,000.00	7,500.00	2,000.00
SA-CSI1001	SpectroGRAPH	5,000.00	3,750.00	1,000.00
SA-CSI1016	Spectrum Resolution Expert - Case-based reasoning tool	10,000.00	7,500.00	2,000.00
SA-CSI1020	SPECTRUM Alarm Notification Manager (SANM)	10,000.00	7,500.00	2,000.00
SA-CSI1021	Enterprise Configuration Manager (ECM)	10,000.00	7,500.00	2,000.00
SA-CSI1025	Web Operator Suite	10,000.00	7,500.00	2,000.00
SA-CSI1029	ATM Circuit Manager	10,000.00	7,500.00	2,000.00
SA-CSI1072	Spectrum Frame Relay Manager	10,000.00	7,500.00	2,000.00
SM-3CM1010	Spectrum US Robotics Modem Pool 8/16 MM	5,000.00	3,750.00	1,000.00
SM-ASC1000	Synchrony ST-1000 Mgmt Module	3,000.00	2,250.00	600.00
SM-ASD1000	Spectrum Ascend MAX Management Module	5,000.00	3,750.00	1,000.00
SM-CAT1009	Cisco Catalyst 3500 Management Module	3,000.00	2,250.00	600.00
SM-CIS1002	Light Stream 1010	5,000.00	3,750.00	1,000.00
SM-CIS1003	Cisco StrataCom Series	10,000.00	7,500.00	2,000.00
SM-CIS1004	Cisco Access Server Series	5,000.00	3,750.00	1,000.00
SM-CIS1005	Cisco MC3810 Multiservice Access Concentrator	5,000.00	3,750.00	1,000.00
SM-CIS1006	Cisco Voice Mgmt Module	10,000.00	7,500.00	2,000.00
SM-CIS1008	Cisco CMTS UBR Management Module	10,000.00	7,500.00	2,000.00

Part Number	Product Description	Retail List Price	State of West Virginia Cost	1 Year Software Maint.
SM-CIS1009	Arrow Point Management Module	5,000.00	3,750.00	1,000.00
SM-CPM1000	Copper Mountain DSLAM Management Module	5,000.00	3,750.00	1,000.00
SM-CSI1073	SS9000 Secure Fast SmartCell Switch	5,000.00	3,750.00	1,000.00
SM-CSI1077	CyberSWITCH Family (CSX)	5,000.00	3,750.00	1,000.00
SM-CSI1085	Cabletron ZX-250 Switch	5,000.00	3,750.00	1,000.00
SM-CSI1096	Cabletron SSR245/250 (flowpoint) MM	5,000.00	3,750.00	1,000.00
SM-CSI1097	Docsis Management Module	25,000.00	18,750.00	5,000.00
SM-ENT1000	Enterasys Matrix E7 Management Module	5,000.00	3,750.00	1,000.00
SM-ENT1001	Enterasys 6SSRM-02 Management Module	1,000.00	750.00	200.00
SM-ENT1002	Enterasys Roam About Management Module	3,000.00	2,250.00	600.00
SM-ERC1000	Ericsson MD 110 PBX	20,000.00	15,000.00	4,000.00
SM-EXT1000	Extreme Management Module	5,000.00	3,750.00	1,000.00
SM-F5N1000	F5 Networks Management Module	5,000.00	3,750.00	1,000.00
SM-FDR1000	Foundry Management Module	5,000.00	3,750.00	1,000.00
SM-FOR1000	Fore (Marconi) ATM Switch Module	5,000.00	3,750.00	1,000.00
SM-GHO1001	Host Sun Management Module	1,000.00	750.00	200.00
SM-GHO1002	Host SGI Management Module	1,000.00	750.00	200.00
SM-GHO1003	Host HP Management Module	1,000.00	750.00	200.00
SM-GHO1005	Host IBM Management Module	1,000.00	750.00	200.00
SM-GHO1006	Host DEC Management Module	1,000.00	750.00	200.00
SM-JPR1000	Juniper Management Module	10,000.00	7,500.00	2,000.00
SM-KEN1001	Kentrox DataSMART	5,000.00	3,750.00	1,000.00
SM-LCH1000	LANCityv210 Management Module	10,000.00	7,500.00	2,000.00
SM-LUC1001	Lucent Definity Management Module	20,000.00	15,000.00	4,000.00
SM-NTL1000	Nortel Passport 6400/7480 Module	10,000.00	7,500.00	2,000.00
SM-NOK1000	Nokia Management Module	5,000.00	3,750.00	1,000.00
SM-PKT1000	Packateer Management Module	5,000.00	3,750.00	1,000.00
SO-SEC-CONC	SPECTRUM Security Manager Concentrator	20,000.00	15,000.00	4,000.00
SO-SEC-HOST	SPECTRUM Security Manager Host Agents	1,000.00	750.00	200.00
SPEC-CTKT	Level I Toolkits	10,000.00	7,500.00	2,000.00

Third Party Products

SX-OPC-8M100	Opticom iView Branch Manager 100 Bundle	34,500.00	29,325.00	6,900.00
SX-OPC-8M250	Opticom iView Branch Manager 250 Bundle	55,000.00	46,750.00	11,000.00
SX-OPC-8M50	Opticom iView Branch Manager 50 Bundle	20,000.00	17,000.00	4,000.00
SX-OPC-EM1000	Opticom iView Enterprise Manager Bundle	66,000.00	56,100.00	13,200.00
SX-OPC-SM250	Opticom iView Site Manager 250 Bundle	34,500.00	29,325.00	6,900.00
SX-OPC-EIS002	Opticom iView Availability	10,000.00	8,500.00	2,000.00
SX-OPC-EIS003	Opticom iView Service	10,000.00	8,500.00	2,000.00
SX-OPC-EIS004	Opticom iView Asset and Systems	10,000.00	8,500.00	2,000.00
SX-OPC-EIS006	Opticom iView Capacity	10,000.00	8,500.00	2,000.00
SX-OPC-EIS009	Opticom iView Version Control Enterprise License	5,000.00	4,250.00	1,000.00
SX-OPC-EIS0011	Opticom iView Core Enterprise License	10,000.00	8,500.00	2,000.00
SX-OPC-EIS0012	Opticom iView Reporting Connection	5,000.00	4,250.00	1,000.00
SX-METWWSS	Metrix WinWatch for Sserver	10,000.00	8,500.00	2,000.00
SX-METWWAGT50	WinWatch 50 Clients in bundle	4,500.00	3,825.00	900.00
SX-METWWAGT100	WinWatch 100 Clients in bundle	9,000.00	7,650.00	1,800.00
SX-METWWAGT200	WinWatch 200 Clients in bundle	17,000.00	14,450.00	3,400.00
SX-METWWAGT500	WinWatch 500 Clients in bundle	40,000.00	34,000.00	8,000.00
SX-METWWAGT1000	WinWatch 1000 Clients in bundle	75,000.00	63,750.00	15,000.00
SX-METWWAGT2500	WinWatch 2500 Clients in bundle	175,000.00	148,750.00	35,000.00

Part Number	Product Description	Retail List Price	State of West Virginia Cost	1 Year Software Maint.
SX-METWWAGT5000	WinWatch 5000 Clients in bundle	325,000.00	276,250.00	65,000.00
SX-METWWAGTSL	WinWatch Client for site license (minimum 10,001 agents)	55.00 per agent	46.75 per agent	11.00 per agent
SX-METWWRC50	WinWatch Remote Control 50 Clients in bundle	2,500.00	2,125.00	500.00
SX-METWWRC100	WinWatch Remote Control 100 Clients in bundle	4,500.00	3,825.00	900.00
SX-METWWRC200	WinWatch Remote Control 200 Clients in bundle	8,000.00	6,800.00	1,600.00
SX-METWWRC500	WinWatch Remote Control 500 Clients in bundle	17,500.00	14,875.00	3,500.00
SX-METWWRC1000	WinWatch Remote Control 1000 Clients in bundle	30,000.00	25,500.00	6,000.00
SX-METWWRC2500	WinWatch Remote Control 2500 Clients in bundle	70,000.00	59,500.00	14,000.00
SX-METWWRC5000	WinWatch Remote Control 5000 Clients in bundle	125,000.00	106,250.00	25,000.00
SX-METWWRCSL	WinWatch Remote Control Client for site license (minimum 10,001 agents)	15.00 per agent	12.75 per agent	3.00 per agent
SX-METWWSV1	WinWatch 1 Server Client	370.00	314.50	74.00
SX-METWWSV2	WinWatch 2 Server Clients in bundle	730.00	620.50	146.00
SX-METWWSV5	WinWatch 5 Server Clients in bundle	1,800.00	1,530.00	360.00
SX-METWWSV10	WinWatch 10 Server Clients in bundle	3,550.00	3,017.50	710.00
SX-METWWSV20	WinWatch 20 Server Clients in bundle	7,000.00	5,950.00	1,400.00
SX-METWWSV50	WinWatch 50 Server Clients in bundle	17,000.00	14,450.00	3,400.00
SX-METWWSV100	WinWatch 100 Server Clients in bundle	33,000.00	28,050.00	6,600.00
SX-METWWSVSL	WinWatch Server Clients for site license (minimum of 201 server agents)	300.00 per agent	255.00 per agent	60.00 per agent
SX-METWWRCV1	WinWatch Remote Control 1 Server Client	70.00	59.50	14.00
SX-METWWRCV2	WinWatch Remote Control 2 Server Clients in bundle	140.00	119.00	28.00
SX-METWWRCV5	WinWatch Remote Control 5 Server Clients in bundle	325.00	276.25	65.00
SX-METWWRCV10	WinWatch Remote Control 10 Server Clients in bundle	600.00	510.00	120.00
SX-METWWRCV20	WinWatch Remote Control 20 Server Clients in bundle	1,100.00	935.00	220.00
SX-METWWRCV50	WinWatch Remote Control 50 Server Clients in bundle	2,500.00	2,125.00	500.00
SX-METWWRCV100	WinWatch Remote Control 100 Server Clients in bundle	4,500.00	3,825.00	900.00
SX-METWWRCVSL	WinWatch Remote Control Server Clients for site license (minimum of 201 RC Clients)	15.00 per RCClient	12.75 per agent	3.00 per agent
SX-METWEBCON	Metrix Web Console for Spectrum V2.1	10,000.00	8,500.00	2,000.00
SX-METWEB-BACK	Metrix Web Console for Spectrum backup	5,000.00	4,250.00	1,000.00



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IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, CONTACT APRISMA MANAGEMENT TECHNOLOGIES, INC (603) 332-9400. Attn: Legal Department.

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You agree to include any copyright or other proprietary notice set forth on the label of the media embodying the Licensed Software on any copy of the Licensed Software in any form, in whole or in part, or on any

modification of the Licensed Software or any such modular work containing the Licensed Software or any part thereof.

4. **TITLE AND PROPRIETARY RIGHTS**

The Licensed Materials are copyrighted works and are the sole and exclusive property of Aprisma, any company or a division thereof which Aprisma controls or is controlled by, or which may result from the merger or consolidation with Aprisma (its "Affiliates"), and/or their suppliers. This Agreement conveys a limited right to operate the Licensed Materials and shall not be construed to convey title to the Licensed Materials to You. There are no implied rights. You shall not sell, lease, transfer, sublicense, dispose of, or otherwise make available the Licensed Materials, or any portion thereof, to any other party.

You further acknowledge that in the event of a breach of this Agreement, Aprisma shall suffer severe and irreparable damages for which monetary compensation alone will be inadequate. You therefore agree that in the event of a breach of this Agreement, Aprisma shall be entitled to monetary damages and its reasonable attorneys fees and costs in enforcing this Agreement, as well as injunctive relief to restrain such breach, in addition to any other remedies available to Aprisma.

5. **PROTECTION AND SECURITY**

You agree not to deliver or otherwise make available the Licensed Materials or any part thereof, including without limitation the object or source code (if provided) of the Licensed Software, to any party other than Aprisma or its employees, except for purposes specifically related to your use of the Licensed Software on a single computer as expressly provided in this Agreement, without the prior written consent of Aprisma. You agree to use your best efforts and take all reasonable steps to safeguard the Licensed Materials to ensure that no unauthorized personnel shall have access thereto and that no unauthorized copy, publication, disclosure, or distribution, in whole or in part, in any form shall be made, and You agree to notify Aprisma of any unauthorized use thereof. You acknowledge that the Licensed Materials contain valuable confidential information and trade secrets, and that unauthorized use, copying and/or disclosure thereof are harmful to Aprisma or its Affiliates and/or its/their software suppliers.

6. **MAINTENANCE AND UPDATES**

Updates and certain maintenance and support services, if any, shall be provided to You pursuant to the terms of a Aprisma Service and Maintenance Agreement, if Aprisma and You enter into such an agreement. Except as specifically set forth in such agreement, Aprisma shall not be under any obligation to provide Software Updates, modifications, or enhancements, or Software maintenance and support services to You.

7. **DEFAULT AND TERMINATION**

In the event that You shall fail to keep, observe, or perform any obligation under this Agreement, including a failure to pay any sums due to Aprisma, Aprisma may, in addition to any other remedies it may have under law, terminate the License and any other agreements between Aprisma and You.

- (a) Immediately after termination of the Agreement or if You have for any reason discontinued use of Software, You shall return to Aprisma the original and any copies of the Licensed Materials and remove the Licensed Software from any modular works made pursuant to Section 3, and certify in writing that through your best efforts and to the best of your knowledge the original and all copies of the terminated or discontinued Licensed Materials have been returned to Aprisma.
- (b) Sections 4, 5, 7, 8, 9, 10, 11, and 12 shall survive termination of this Agreement for any reason.

8. **EXPORT REQUIREMENTS**

You understand that Aprisma and its Affiliates are subject to regulation by agencies of the U.S. Government, including the U.S. Department of Commerce, which prohibit export or diversion of certain technical products to certain countries, unless a license to export the product is obtained from the U.S. Government or an exception from obtaining such license may be relied upon by the exporting party.

If the Licensed Materials are exported from the United States pursuant to the License Exception CIV under the U.S. Export Administration Regulations, You agree that You are a civil end user of the Licensed Materials and agree that You will use the Licensed Materials for civil end uses only and not for military purposes.

If the Licensed Materials are exported from the United States pursuant to the License Exception TSR under the U.S. Export Administration Regulations, in addition to the restriction on transfer set forth in Section 4 of this Agreement, You agree not to (i) reexport or release the Licensed Software, the source code for the Licensed Software or technology to a national of a country in Country Groups D:1 or E:2 (Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Latvia, Libya, Lithuania, Moldova, North Korea, the People's Republic of China, Romania, Russia, Rwanda, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam, or such other countries as may be designated by the United States Government), (ii) export to Country Groups D:1 or E:2 (as defined herein) the direct product of the Licensed Software or the technology, if such foreign produced direct product is subject to national security controls as identified on the U.S. Commerce Control List, or (iii) if the direct product of the technology is a complete plant or any major component of a plant, export to Country Groups D:1 or E:2 the direct product of the plant or a major component thereof, if such foreign produced direct product is subject to national security controls as identified on the U.S. Commerce Control List or is subject to State Department controls under the U.S. Munitions List.

9. **UNITED STATES GOVERNMENT RESTRICTED RIGHTS**

The enclosed Product (i) was developed solely at private expense; (ii) contains "restricted computer software" submitted with restricted rights in accordance with section 52.227-19 (a) through (d) of the Commercial Computer Software-Restricted Rights Clause and its successors, and (iii) in all respects is proprietary data belonging to Aprisma and/or its suppliers. For Department of Defense units, the Product is considered commercial computer software in accordance with DFARS section 227.7202-3 and its successors, and use, duplication, or disclosure by the Government is subject to restrictions set forth herein.

10. **LIMITED WARRANTY AND LIMITATION OF LIABILITY**

The only warranty Aprisma makes to You in connection with this license of the Licensed Materials is that if the media on which the Licensed Software is recorded is defective, it will be replaced without charge, if Aprisma in good faith determines that the media and proof of payment of the license fee are returned to Aprisma or the dealer from whom it was obtained within ninety (90) days of the date of payment of the license fee.

NEITHER APRISMA NOR ITS AFFILIATES MAKE ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS, WHICH ARE LICENSED "AS IS". THE LIMITED WARRANTY AND REMEDY PROVIDED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED. AND STATEMENTS OR REPRESENTATIONS MADE BY ANY OTHER PERSON OR FIRM ARE VOID. ONLY TO THE EXTENT SUCH EXCLUSION OF ANY IMPLIED WARRANTY IS NOT PERMITTED BY LAW, THE DURATION OF SUCH IMPLIED WARRANTY IS LIMITED TO THE DURATION OF THE LIMITED WARRANTY SET FORTH ABOVE. YOU ASSUME ALL RISK AS TO THE QUALITY, FUNCTION AND PERFORMANCE OF THE LICENSED MATERIALS. IN NO EVENT WILL APRISMA OR ANY OTHER PARTY WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE LICENSED MATERIALS BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF DATA OR PROFITS OR FOR INABILITY TO USE THE LICENSED MATERIALS, TO ANY PARTY EVEN IF APRISMA OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL APRISMA OR SUCH OTHER PARTY'S LIABILITY FOR ANY DAMAGES OR LOSS TO YOU OR ANY OTHER PARTY EXCEED THE LICENSE FEE YOU PAID FOR THE LICENSED MATERIALS.

Some states do not allow limitations on how long an implied warranty lasts and some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation and exclusion may not apply to You. This limited warranty gives You specific legal rights, and You may also have other rights which vary from state to state.

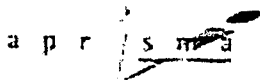
11. **JURISDICTION**

The rights and obligations of the parties to this Agreement shall be governed and construed in accordance with the laws and in the State and Federal courts of the State of New Hampshire, without regard to its rules with respect to choice of law. You waive any objections to the personal jurisdiction and venue of such courts.

12. GENERAL

- (a) This Agreement shall not be assignable by You without the express written consent of Aprisma. The rights of Aprisma and Your obligations under this Agreement shall inure to the benefit of Aprisma's assignees, licensors, and licensees.
- (b) Section headings are for convenience only and shall not be considered in the interpretation of this Agreement.
- (c) The provisions of the Agreement are severable and if any one or more of the provisions hereof are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions of this Agreement shall nevertheless be binding on and enforceable by and between the parties hereto.
- (d) Aprisma's waiver of any right shall not constitute waiver of that right in future. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and all prior agreements, representations, statements and undertakings, oral or written, are hereby expressly superseded and canceled. No purchase order shall supersede this Agreement.
- (e) Should You have any questions regarding this Agreement, You may contact Aprisma at the address set forth below. Any notice or other communication to be sent to Aprisma must be mailed by certified mail to the following address:

Aprisma Management Technologies, Inc.
121 Technology Drive
Durham, New Hampshire, 03824 U.S.A
Attn: Legal Department



APRISMA MANAGEMENT TECHNOLOGIES, INC
SERVICE AND MAINTENANCE AGREEMENT

Provided below are the terms and conditions of the Aprisma Management Technologies, Inc. Service and Maintenance Agreement. If you enter into a Service and Maintenance contract, the following terms and conditions apply.

1. **DEFINITIONS**

- 1.1 **Affiliates** shall mean an affiliate of or a party affiliated with, a specific party that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the party specified.
- 1.2 **Authorized Reseller** shall mean a value-added reseller that is authorized by Aprisma to market and distribute the Licensed Software to end-users.
- 1.3 **Customer(s)** shall mean end-users of the Licensed Software.
- 1.4 **End-User** shall mean a Customer that acquires the Licensed Software for its internal use.
- 1.5 **Exhibits** – The Exhibit(s) to this Agreement are incorporated herein by reference and consist of the following:
Exhibit A – Technical Support Guidelines
Exhibit B – Licensed Software List
- 1.6 **Parties** shall mean Customer and Aprisma, each of which may be referred as to a “Party.”
- 1.7 **Support Services** shall mean maintenance services for the Licensed Software provided in accordance with the terms and conditions of this Agreement.
- 1.8 **Licensed Software** means machine-readable object code version of software developed or marketed by Aprisma and licensed to Customer as described in Exhibit B, materials, together with related documentation and media, and any Updates. Unless included on Exhibit B hereto, Licensed Software does not include any Third Party Licensed Software Products.
- 1.9 **Third Party Licensed Software Product** means a computer software program and related documentation developed by a third party and not bearing the Aprisma trademark, such as an operating system or distributed application.
- 1.10 **Updates** shall mean have the meaning set forth in Section 7 hereof.

2. **SERVICE DESCRIPTION.**

Subject to the terms and conditions of this Agreement, Aprisma agrees to provide Support Services in accordance with the Technical Support Guidelines set forth in Exhibit A for the products listed in Exhibit B.

3. **INITIAL TERM AND EXTENSIONS.**

The initial term of this Agreement shall be for one (1) year commencing on the Effective Date set forth above. The Agreement shall automatically renew for one (1) year periods with the same terms and conditions as set forth herein, unless, on or before thirty (30) days prior to the expiration of the then current term, either of the Parties should notify the other in writing of its intent not to so renew. Aprisma may, in its discretion, change its Support Services fees payable hereunder upon notice to Customer thirty days (30) prior to the commencement of any subsequent one (1) year renewal period.

4. **CUSTOMER SITE MANAGER.**

Customer must identify at least one site manager (“Site Manager”) who shall be responsible for initiating Support Service requests. The Site Manager must perform all procedures specified by the Aprisma Technical Support Engineers and provide the results to Aprisma as required. The Site

Manager must possess the necessary technical expertise to interact with and assist the Aprisma Technical Support Engineers in both the diagnosis of the Licensed Software malfunctions and the successful replacement of the Licensed Software.

5. **PRE-REQUISITE.**

If Customer requires remote diagnosis and trouble-shooting, Customer will be required to provide an operational standards-based modem to facilitate dial-in diagnostics capability by Aprisma's Technical Assistance Centers ("ATAC"). In addition, the Customer shall provide Aprisma with all necessary authorizations for remote access by the ATAC to properly analyze and diagnose Licensed Software issues.

6. **SUPPORT SERVICES.**

Support Services shall be required and Support Service fees shall be due, for all Licensed Software with the same base part number, located at a given site, if Support Service has been ordered for such products bearing such base part numbers. Aprisma reserves the right to conduct an on-site audit, upon reasonable notice to Customer, to ensure compliance with this Section. In the event Aprisma's auditors determine that an additional Support Service fee is due, Customer agrees to make immediate payment thereof to Aprisma. The additional Support Service fee due shall be calculated for the current term, based upon Aprisma's standard rates at the time of the audit.

7. **SOFTWARE UPDATES.**

Aprisma will provide corrective patches, fixes, other error corrections, new versions and associated documentation ("Updates") for the Licensed Software identified in Exhibit B. All such Updates shall be deemed licensed to Customer pursuant to Aprisma's end user license agreement. Notification of Updates will be posted on Aprisma's support web page. Upon request, the ATAC will provide reasonable telephone assistance for the installation of Updates. To the extent practicable, and within a reasonable period of time, Aprisma shall endeavor to notify Customers via the Aprisma's support web page of any errors in the Licensed Software. If it is determined that the error is due to a defect in the related documentation, Aprisma reserves the right to correct the documentation and not to provide modification of the Licensed Software.

8. **SCOPE OF SERVICES.** Support Services purchased hereunder shall not include services made necessary by failures related to misuse, neglect, accident or willful or negligent acts, unauthorized maintenance or other unauthorized modifications of the Licensed Software by a person other than an authorized Aprisma representative. Aprisma agrees to use reasonable efforts to correct any failure caused by the foregoing circumstances provided that Customer pays additional fees in accordance with Aprisma's customary charges for all such services and replacement Licensed Software, as appropriate, and all related and necessary travel, lodging and per diem expenses for Aprisma maintenance personnel.

9. **PAYMENT TERMS.** The Support Service fee shall be set forth on Exhibit B hereto. Aprisma's payment terms are net thirty (30) days from date of invoice. Customer shall pay a one and one-half percent (1 ½%) per month finance charge, to the extent permitted by law, for all support services fees or other sums past due to Aprisma under this Agreement. All invoices and payments shall be in U.S. Dollars.

Customer assumes all responsibility for reimbursing Aprisma for collection and legal fees incurred by Aprisma as a result of Customer's late payment.

10. **TAXES.** Customer shall be liable for any taxes, public charges, tariffs and export and import duties, however designated, and any interest and penalties thereon, arising from this Agreement or on the Support Services or use of any Licensed Software, or any action taken hereunder, exclusive, however, of taxes based upon Aprisma's net or gross income. Any such charges shall be in addition to fees specified for Support Services hereunder.

11. **LIMITATIONS OF WARRANTY AND LIABILITY.** THE OBLIGATIONS AND LIABILITIES OF APRISMA AND ITS AFFILIATES AS SET FORTH HEREIN ARE EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER LIABILITIES, OBLIGATIONS OR REMEDIES,

EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY (COLLECTIVELY, "CLAIMS") IN CONTRACT OR TORT, WHETHER OR NOT ARISING FROM NEGLIGENCE OF APRISMA, ACTUAL OR IMPUTED. NO WARRANTIES (EITHER EXPRESS OR IMPLIED), REPRESENTATIONS, PROMISES OR STATEMENT HAVE BEEN MADE BY APRISMA OR ITS AFFILIATES UNLESS CONTAINED IN THIS AGREEMENT. NO WARRANTY, EXPRESS OR IMPLIED, IS MADE HEREIN THAT THE LICENSED SOFTWARE IS MERCHANTABILITY, OR FIT OR SUITABLE FOR THE PARTICULAR PURPOSES FOR WHICH IT MAY BE REQUIRED BY CUSTOMER.

IN NO EVENT SHALL APRISMA OR IT AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES, LOSS OF DATA, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF EQUIPMENT, OR OTHER DOWN TIME COSTS, WHETHER CLAIMED BY REASON OF BREACH OF WARRANTY OR OTHERWISE. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE TOTAL LIABILITY OF APRISMA AND ITS AFFILIATES UNDER THIS AGREEMENT IS LIMITED TO, AT APRISMA'S OPTION, APRISMA'S USE OF REASONABLE EFFORTS TO REPAIR OR REPLACE THE AFFECTED PRODUCT(S) OR PART THEREOF, OR THE REFUND OF A MAXIMUM OF ONE YEAR'S SUPPORT SERVICES FEE FOR THE AFFECTED PRODUCT(S).

12. TERMINATION.

- 12.1 This Agreement may be terminated by Aprisma at any time upon fourteen (14) calendar days' prior written notice if, in Aprisma's determination, Customer detrimentally affects Aprisma's ability to adequately support Customer by refusing or neglecting to implement Aprisma's recommendations for corrective action to resolve any on-going problem, or Customer refuses or neglects to cause installation of Updates. In such event, previously paid Support Services fees shall not be refunded.
- 12.2 This Agreement may be terminated by Aprisma, upon five (5) calendar days' prior written notice, in the event Customer does not pay applicable Support Services fees or any other monies due to Aprisma in full within (30) days of Aprisma's invoice.
- 12.3 In the event Customer has not paid the applicable Support Service fees or any other monies due to Aprisma, the Support Service coverage for the Licensed Software shall be suspended until such time as payment is received by Aprisma.

13. NOTICES.

All notices given pursuant to this Agreement shall be in writing sent by certified or register mail (return receipt requested), overnight express service, or by facsimile. All such notices shall be directed to Customer or Aprisma at the address set forth herein unless either Party notifies the other in writing of a new address.

If to APRISMA:

Aprisma Management Technologies, Inc.
121 Technology Drive
Durham, NH 03824
Attn: Legal Department

If to CUSTOMER:

[Insert Company Name and Address]

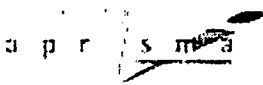
Attn:

14. GOVERNING LAW.

This Agreement shall be governed in accordance with the laws of the State of New Hampshire. Any legal action brought pursuant to this Agreement shall be brought only in the State or Federal courts of New Hampshire and shall be initiated within a period of one (1) year following the discovery by the Party bringing such action of the event giving rise to the cause of action. Both Parties waive any objection to the personal jurisdiction of such courts.

15. GENERAL.

- 15.1 Entire Agreement. This Agreement, its attachments, including all documents referred to in this Agreement which are incorporated by reference, constitute the entire and only understanding between the Parties. The terms and conditions of this Agreement are deemed to include the terms of any proposal Aprisma has submitted to Customer to the extent that they do not conflict with the terms and conditions of this Agreement. Unless otherwise provided herein, no modifications to this Agreement shall be binding on either party unless made in writing and signed by duly authorized representatives of the Parties with respect to the subject matter hereof. In the event of any conflict between this Agreement, and any Exhibits, or other attachments, the terms of this Agreement shall govern.
- 15.2 Assignment. Except as set forth below, any assignment of this Agreement shall be null and void. Assignment shall include any change in control of the Parties. This Agreement is not assignable or transferable in whole or in part by Customer without the prior written consent of Aprisma. Aprisma may assign this Agreement without Customer's consent, to any Affiliate, including a foreign sales corporation, or to any person or entity which acquires substantially all of the stock of Aprisma or the assets of Aprisma, or any applicable major division, unit, or subsidiary of Aprisma. Aprisma may subcontract its obligations under this Agreement provided that Aprisma shall remain ultimately liable for the performance of subcontractor.
- 15.3 No Amendment. No alteration, amendment, waiver, cancellation or any other change in any term or condition of this Agreement shall be valid or binding on either party unless the same shall have been mutually assented to in writing by both parties
- 15.4 Force Majeure. Neither Party shall be liable or deemed in default for any delay in performance under this Agreement resulting directly or indirectly from acts of God, war, insurrection, national emergency, fires, strikes, labor disputes or any other cause beyond the reasonable control of such Party.
- 15.5 No Waiver. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either Party to enforce each and every such provision thereafter. The express waiver by either Party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement
- 15.6 Severability. If certain provisions, in whole or in part, of this Agreement are considered or found to be unenforceable, this will not negate nor affect in any way the application and enforcement of the remainder of this Agreement.
- 15.7 Remedies. All rights and remedies conferred under this Agreement or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently.
- 15.8 Section Headings. The titles to the Sections in this Agreement have been inserted for reference only, do not form part of the Agreement, and shall not in any way affect the interpretation thereof.
- 15.9 Survival. Notwithstanding the expiration of the term of this Agreement or any renewal period hereof, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or earlier termination shall survive, including, without limitation, the following provisions: Article 9 (Payment); Article 10 (Taxes); Article 11 (Limitations of Warranty and Liability); Article 14 (Law).



APRISMA MANAGEMENT TECHNOLOGIES, INC
SERVICE AND MAINTENANCE AGREEMENT

EXHIBIT A

TECHNICAL SUPPORT GUIDELINES

The guidelines for technical support of the Licensed Software are as follows:

1. TECHNICAL SUPPORT

1.1 The levels of support shall be defined as follows:

- 1.1.1. First Level Support shall mean services responsive to the Customer's initial notification that a suspected Error exists with the Licensed Software, including call logging, validation, determining whether a solution is given in User Documentation or maintenance documentation, and a review of known resolutions for the reported Error.
- 1.1.2. Second Level Support shall mean services performed to attempt reproduction of the suspected Customer Error and correct it by means of a work-around or determine that the Error cannot be reproduced.
- 1.1.3. Third Level Support shall mean services provided to the Customer to resolve Errors that that cannot be resolved through First or Second Level Support.

- 1.2 Availability - Aprisma shall provide non-emergency Third Level Support via telephone, facsimile and electronic mail during the hours of 8:00 AM to 8:00 PM EST, Monday through Friday. In addition, Aprisma agrees to provide emergency technical support via telephone, facsimile, or pager access twenty-four hours (24) per day, seven (7) days per week in accordance with Section 4 below.
- 1.3 Response - Aprisma shall use reasonable efforts to attempt to resolve Customer support requirements for the Licensed Software in accordance with the guidelines set forth herein.

2. ERROR CORRECTION

2.1 Error Definitions - "Error" means a reproducible issue that causes the Licensed Software not to function substantially in conformance with its specifications. Errors are classified as follows:

Category 1: Customer's network management application is down or experiencing a consistent, measurable performance impact with no immediate resolution available.

Category 2: Customer is experiencing intermittent failure, performance degradation, or functionality of network or management applications.

Category 3: Issues that do not affect Customer's normal network or management application operation or questions concerning Licensed Software functionality or usage.

2.2 Non-Emergency Technical Support - For Errors not deemed by Customer to be an emergency, Aprisma will use reasonable efforts to address and resolve the Errors as quickly as practicable during business hours. If a particular Error is not resolved within two (2) business days following the initial call to the ATAC, technical support managers and engineers for each Party will discuss and work in good faith to devise and implement a satisfactory resolution. Errors regarded as non-emergencies include: (i) installation and operation Errors, i.e. routine questions that can be resolved by following documentation; and (ii) deviations from documentation, omissions and known workarounds, i.e. Errors that cannot be resolved by following the documentation or result from reasonable misinterpretation of the documentation.

2.3 Emergency Technical Support - Aprisma acknowledges that Category 1 and Category 2 Errors should be resolved quickly. During the applicable warranty period, Aprisma shall replace any defective media or correct Errors promptly following receipt of notice from Customer, not to exceed the following:

2.3.1 Aprisma shall provide an initial response to Errors reported by Customer during business hours within two (2) hours and Customer and Aprisma shall promptly agree in good faith to any additional information and documentation that may be required to permit Aprisma to resolve such Errors. The Error correction period begins after Customer has enough information to profile the Error and can recreate the Error or has access to a facility where the Error can be recreated.

2.3.2 Aprisma shall use reasonable efforts to resolve Category 1 Errors within two (2) working days of receipt of notice of such Error.



APRISMA MANAGEMENT TECHNOLOGIES, INC
SERVICE AND MAINTENANCE AGREEMENT

EXHIBIT A

TECHNICAL SUPPORT GUIDELINES

- 2.3.3 Aprisma shall use reasonable efforts to resolve Category 2 Errors within five (5) working days of receipt of notice of such Error.
- 2.3.4 Aprisma shall use reasonable efforts to resolve Category 3 Errors within fifteen (15) working days of receipt of notice of such Error.

The prescribed Error correction periods above may be extended by mutual written agreement of the Parties, e.g., if resolution of an Error requires hardware certification or test, or if resolution represents significant risk to the primary Licensed Software functions.

- 2.4 On-Site Support – In the unlikely event that remote technical support is not sufficient to allow a Customer to diagnose and correct an Error, an Aprisma technician will be available to travel to the Customer’s site(s) and resolve the Error.

2.4.1.1. If it is determined the Error is related to Aprisma, then there will be no additional cost for on-site support to the Customer. If the Error is not related to Aprisma, then the Customer will pay the then current rate and reasonable expenses for the on-site support.

- 3. PREMIUM TECHNICAL SUPPORT shall mean that an Aprisma Spectrum-certified senior level engineer will be assigned to the account and will be available for support Monday through Friday during the normal business hours of 8:00 AM to 5:00 PM EST. Customer must have in place standard Support Services in order to qualify to purchase Premium Technical Support.

4. ATAC CONTACT INFORMATION

Support Services are available to Customers on a twenty-four (24) hours per day, seven (7) days per week basis from the ATAC. Customer shall have available their license number, contract number, configuration number, serial number and revision information, site and contact information, description of the Error and the time the Error/issue occurred. All requests for Support Services shall be made to the following hotline telephone or via the Internet to the address indicated below. Aprisma may change the ATAC contact telephone number or Internet address from time to time.

Aprisma Technical Assistance Center

Telephone No. (877)-428-6324
Electronic Mail: Aprisma-support@aprisma.com

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **ARBITRATION** - Any references to arbitration contained in the agreement are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUNPENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages or limiting the Vendor's liability under a warranty to a certain dollar amount or to the amount of the agreement is hereby deleted. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:
STATE OF WEST VIRGINIA

Spending Unit: IS & C

Signed: Heather A. Connolly

Heather A. Connolly
Assistant General Counsel

Title: Assistant General Counsel

Date: February 23, 2001

La

VENDOR

Company Name: APRISMA MANAGEMENT TECHNOLOGI

Signed: Michael Skubisz

MICHAEL SKUBISZ, PRESIDENT

Date: JANUARY 23, 2001

JANUARY 23, 2001

