

**AGREEMENT FOR THE PURCHASE OF MICROSOFT PRODUCTS  
COMPUCOM SYSTEMS, INC.**

THIS AGREEMENT FOR THE PURCHASE OF GOODS AND SERVICES ("Agreement") is made \_\_\_\_\_, 2015, between **CompuCom Systems, Inc.**("Contractor"), whose address is **7171 Forest Lane, Dallas, Texas 75230**, and telephone number is **972-856-3600**, and the **City of Stockton**, a municipal corporation ("City"), leveraging the **County of Riverside Cooperative Purchasing agreement**.

In consideration of the mutual promises set forth in this Agreement, the parties agree as follows:

1. Goods to be provided. Contractor shall provide Microsoft product licensing.
2. Term of Agreement. The term of this Agreement shall begin on the Effective Date noted above and continue until terminated by either party by giving thirty (30) days' prior written notice to the other party. After termination of this Agreement, no further Product Orders may be placed under this Agreement. However any Product Orders received and accepted prior to termination of this Agreement shall continue to be binding orders; and such Product Orders shall, through completion, remain subject to the terms of this Agreement.
3. Termination. Either party may, upon written notice, terminate a Product Order if the other party (i) fails, after 15 days notice, to make a payment which is delinquent, (ii) fails to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, or avails itself of or becomes subject to any proceeding under any bankruptcy laws relating to insolvency or protection from creditors, or (iii) fails to cure any material breach of any of its other obligations, hereunder within thirty (30) days after receipt of written notice specifying the basis for the breach. Each party shall also retain all remedies for breach it may have against the other party, if at any time either party becomes bankrupt or insolvent, makes an assignment for the benefit of creditors.
4. Compensation. For the goods and services under this Agreement, City shall pay Contractor the sum not to exceed \$375,000 for the next three years.
5. Charges and Payment.
  - (a) Charges shall be set forth in the applicable Product Order. City agrees to provide Contractor with written notice of any disputed invoice items within fifteen (15) days of receipt of invoice and to pay all undisputed amounts under the invoice within thirty (30) days following date of invoice.
  - (b) If City fails to pay or dispute a balance within the above time period, City shall pay, on demand, interest at the lesser of one and one half percent (1.5%) per month (18% per annum), or the highest rate allowed by law on



such balance until paid. The assessment and acceptance, or any non-assessment, of any late charge shall not be construed as a waiver by Contractor of its rights with respect to the default giving rise to such payment and shall not affect any of Contractor's rights under this Agreement or its remedies at law. If Contractor reasonably determines City is an increased credit risk, Contractor reserves the right to adjust the amount of credit extended to City under this Agreement.

- (c) Except to the extent that City provides Contractor with a valid exemption certificate, City shall be invoiced for and agrees to pay all applicable sales, use, value-added, excise, withholding or similar taxes, whether assessed to City or Contractor, excluding any taxes based on Contractor's capital or net income.

6. Product Warranty and other Rights and Disclaimer

- (a) Notwithstanding anything to the contrary, as a reseller of Products, to the extent permitted by the Suppliers and applicable law, Contractor assigns and passes through to City any and all (a) end-user warranties provided by the Suppliers, (b) intellectual property indemnities, and (c) other liabilities of the Suppliers. Contractor does not provide any independent warranties, intellectual property indemnities or other product liability with respect to Products.
- (b) Certain parts/components identified by Suppliers as easily replaced by end users (e.g. keyboards and mice) are classified by Suppliers as "City Replaceable Units", ("**CRUs**"), or an equivalent classification. In the case of warranties for such items, the parts/components are shipped to City for installation by City.
- (c) Software Licenses. All software Products are subject to the license agreement of the applicable Supplier, as provided with the software packaging or in the software at time of shipment, or via electronic download.
- (d) Service Policies/Programs. Third party service Products are provided as a pass through in accordance with the applicable Supplier's service program.

EXCEPT AS PROVIDED IN THIS SECTION 6, CONTRACTOR DISCLAIMS ALL WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST CLAIMS OF PATENT INFRINGEMENT OR THE LIKE. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF IMPLIED WARRANTIES, IN WHICH CASE THE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY.

7. LIMITATION OF LIABILITY. CONTRACTOR'S ENTIRE LIABILITY FOR ANY CLAIM ARISING FROM PRODUCTS, REGARDLESS OF LEGAL THEORY, SHALL NOT



EXCEED THE FEES PAID FOR THE APPLICABLE PRODUCT(S). NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO THE OTHER FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Confidential Information. During the term of this Agreement, each party may be given access to certain proprietary and/or confidential information of the other party and/or its affiliates, including, but not limited to, technical, financial, marketing, staffing, business plans and information, strategic information, proposals, specifications, drawings, documentation, manuals, know-how, pricing information, procedures, processes, techniques, and software code and programs, which is labeled as “confidential” or “proprietary” (“**Confidential Information**”).

With respect to the Confidential Information of the other party, each party agrees for a period of five (5) years from receipt: (a) to use it solely in connection with the Products; (b) to disclose it solely to its employees, agents and advisors who have a need to know such information, provided that such employees, agents and advisors have signed a non-disclosure agreement which at minimum is equivalent to this Section; (c) to protect it in the same manner that the receiving party uses to protect the confidentiality of its own Confidential Information; and (d) to return or destroy it upon request.

9. Arbitration. If a dispute arises out of or relates to the Agreement, or the breach thereof, and if such dispute cannot be settled through direct discussions, the parties agree to first attempt to settle the dispute in an amicable manner by mediation pursuant to the American Arbitration Association under its Commercial Mediation Rules. Thereafter, any unresolved controversy or claim arising out of or relating to the Agreement or breach thereof, shall be settled by binding arbitration pursuant to the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment upon the decision or award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

10. General Provisions.

- (a) Contractor and City are entering into this Agreement as independent contractors and neither has the authority to bind the other to any third party or otherwise to act in any way as the representative of the other.
- (b) Excluding City’s payment obligations to Contractor under this Agreement, neither party shall be responsible for delays or failures to perform which are due to causes beyond its reasonable control.
- (c) Any notice under this Agreement shall be in writing, addressed to the address on the first page of this Agreement (or such other address of which the other party is notified), and shall be effective upon receipt. Notices shall be sent by registered or certified mail, return receipt requested, postage prepaid, or via a recognized overnight courier services where receipt is verified by the receiving party’s acknowledgment.



- (d) No action under this Agreement may be brought by either party more than 2 years after the cause of such action becomes known to the party.
- (e) The prevailing party in any arbitration or other action (including but not limited to collections) shall be entitled to reimbursement of its reasonable attorneys' fees and costs.
- (f) This Agreement (including but not limited to Schedules attached hereto and documents incorporated by reference) constitute, in each case, the entire agreement between the parties with respect to the subject matter thereof, and supersedes all prior agreements, representations, negotiations, requests for proposals or proposals or similar documents and any understandings with respect thereto, both written and oral.
- (g) All changes to this Agreement must be in writing and executed by authorized representatives of both parties.

11. Audit. City reserves the right, upon thirty (30) days' prior written notice, to periodically audit all charges for good and services provided by Contractor.

12. Ownership of Goods. All goods accepted by the City shall be the property of the City.

13. Changes to the Agreement. This Agreement may not be modified except in writing by both parties.

14. Applicable Law. This Agreement shall be governed by the laws of the State of California and venue for any action brought in state court shall be in the Superior Court, County of San Joaquin, Stockton Branch or, for actions brought in federal court, the United States District Court for the Eastern District of California, Sacramento Division.

15. Non-Assignability. Contractor shall not assign or transfer this Agreement or any interest or obligation in this Agreement without the prior written consent of the City and then only upon such terms and conditions as City may set forth in writing.

16. Notices. All notices herein required shall be in writing and shall be sent certified or registered mail, postage prepaid, addressed as follows:

To Contractor: Contractor Systems Inc. 7171 Forest Lane Dallas, TX 75230 Attn:	To City: IT Director City of Stockton 425 N. El Dorado St. Stockton, CA 95202
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.



CITY OF STOCKTON

CONTRACTOR

\_\_\_\_\_  
Kurt O. Wilson  
City Manager

By: \_\_\_\_\_

Signature

Print name

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

ATTEST:

\_\_\_\_\_  
Bonnie Bonnie Paige  
City Clerk

*[If Contractor is a corporation, signatures must  
comply with Corporations Code §313]*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_

Signature

Print name

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



## Schedule 1 Ordering Policies

### 1. Ordering and Delivery

City shall place orders for Products by written/electronically transmitted orders (a "**Product Order**"). A Product Order (i) must include the following information to be processed: purchase order number, the item(s) requested, or configuration of items, part number, quantity, price, delivery date, bill to information, and ship to information with shipping instructions, etc., and shall be subject to the terms and conditions of this Agreement. Special City requirements, if any, shall be specified in Schedule 2.

Contractor is dependent upon Supplier's availability of the Products and cannot guarantee any particular delivery dates, and shall not be liable for delay or any inability to ship Products due to availability or allocation, labor disputes or other causes beyond its reasonable control. If Contractor is unable to deliver Products on the delivery date requested in the Product Order, Contractor will notify City by telephone or electronic communication of the estimated delivery date. Unless City elects to cancel the Product Order within one (1) business day of receipt of such notice, such estimated delivery date shall become the scheduled delivery date.

### 2. Shipping

Title to the Products shall pass to City when the Products are delivered to the carrier. Title shall transfer to City free and clear of all third party liens and security interests. If using Contractor's carrier, Contractor will assume risk of loss to the Products while being shipped until the Products are delivered to City's dock at which time risk of loss shall pass to City. Shipping charges shall be invoiced to City. If using City's carrier, risk of loss to the Products shall pass to City when the Products are delivered to the carrier.

Until payment in full is received by Contractor, Contractor shall retain a purchase money security interest in the applicable Products.

### 3. Cancellation of Orders and Returns

Because of contractual arrangements with Supplier(s), orders may be subject to charges for cancellation or may not be cancelable. If Contractor is unable to cancel a Product Order with a Supplier prior to shipment, City may be able to return Products upon receipt, but only in accordance with Contractor's or the Supplier's then-current return procedures, as



applicable. Cancellation of a Product Order must be made by written/electronic transmitted notice. All returns are subject to the Return Material Authorization Policy in Schedule 1.

4 Purchase Orders

Any purchase order issued by City shall be deemed a convenient payment device only and any terms and conditions contained therein shall not be a part of this Agreement.



**Schedule 2**  
**Return Material Authorization (“RMA”) Policy**

**1. General Return Policy**

The Customer Service Team reviews requests for returns based on the following policy. The policy is subject to change based on the Supplier’s guidelines and requirements. Contractor reserves the right to reject any return that a Supplier will not accept.

**2. City Responsibilities**

All returns require a Return Material Authorization (“RMA”) number. Returns of any type will not be accepted without an RMA number. To request an RMA number, contact the Customer Service Team at 800.801.2059 or e-mail to: [customerservice@Contractor.com](mailto:customerservice@Contractor.com). The following information will be required: City name, City account number, original invoice number(s), City order number(s), part number(s), serial number(s), SKU(s), quantity, Product condition, whether the Product has been opened or is manufacturer sealed, and reason for the return request.

**3. Permissible Timeframe For Returns**

All requests for an RMA number must be made within twenty-one (21) days from the invoice date. RMA numbers issued by Contractor are valid for ten (10) days only. The Product must be returned to Contractor or Supplier within this timeframe. RMA numbers cannot be extended or reissued. RMA Product received with an expired RMA number will be refused and/or returned to City at City’s expense.

**4. Dead On Arrival Products**

Dead On Arrival (“DOA”) Products will be repaired, replaced, or credited according to the Supplier’s warranty and return policy. Certain Suppliers require DOA Products to be returned directly to them and City will need to contact the Supplier’s technical support for warranty service. Products returned as DOA may be tested. Products found not to be DOA may be returned to City at City’s expense.

**5. Defective Products**

Products which are not functioning according to the Supplier specifications may be defective. Defective return requests will be subject to the restrictions of the Supplier’s specific warranty or return policies. Certain Supplier’s require the City to contact technical support directly and open a service call

for warranty repair or replacement. Products which are inoperable or non-repairable under warranty will be considered for replacement or credit at Contractor's discretion.

**6. Notice of Damaged Shipments**

**6.1.** Contact the Customer Service team within two (2) days of the delivery date if damage has affected the contents of the boxes. Failure to follow these instructions within this time frame may result in freight claim denial or inability to file a claim, in which case City will be held responsible for its failure. Refer to Section 6 for the procedure for submitting a claim for damaged shipments.

**6.2** If a replacement order is required, City will need to contact their Enterprise Solutions Services Team at 800-597-0555 or designated City specific account telephone number to place a new order.

**7. Non-DOA/Defective Returns.**

Non-DOA/defective returns (returns for convenience) are accepted for credit or exchange according to the Supplier's specific warranty or return policies. Certain Suppliers have more restrictive policies and/or certain Suppliers do not accept open box returns, including, but not limited to, HP, Lenovo, and IBM. Supplier policies are subject to change without notice.

**8. Instructions for Returning Products**

**8.1** All original Supplier protective packaging (including electrostatic protection), manuals, software, documentation, cables or other accessories originally shipped with the Product, blank warranty cards, and original UPC codes on the box must be included in the return. Incomplete returns may be returned to City.

**8.2** City is responsible for all shipping charges and risk of loss on returned items. Contractor will provide prepaid shipping labels or credit City's one-way shipping charges for returns that are caused by Contractor error.

**8.3** THE ORIGINAL SUPPLIER'S BOX MUST NOT BE WRITTEN UPON. DO NOT PLACE SHIPPING LABELS OVER SERIAL NUMBERS.

**8.4** Approved Product returns must be shipped to the address provided by the Customer Service Team.

**9. Restrictions on Returns**



The following are examples of Products which may not be authorized for return:

- All Supplier's Build To Order ("BTO") or Configure To Order ("CTO") Product
- Opened software
- Software licenses (unless first authorized by the Supplier)
- Special order Product
- Discontinued or obsolete Product
- Consumable Product (printer toner, batteries, etc.)
- Product not purchased through Contractor
- Warranty upgrades

#### **10. Non-Compliant Returns**

Returns which do not comply with the requirements set forth in this Section 5, General Return Policy, are considered Non-compliant Returns. Non-Compliant Returns are subject to a restocking fee not to exceed 20% of the total amount of the order or item. Customer Service will be able to provide the fee assessed when the RMA is issued. Configuration fees or freight will not be credited on returns for City errors.

#### **11. Overgoods.**

Overgoods are: (1) Product returns that are received in Contractor's warehouse without an RMA number and cannot be identified, or (2) Product returns that are received in Contractor's warehouse with a valid RMA number, however additional unauthorized product was also shipped. Overgoods are unauthorized returns. In the event Overgoods are received, Contractor will make an attempt to contact the City to see if they want the Overgoods returned, and any such returns may be charged a \$50 processing fee, plus related freight charges. If City refuses the shipment of Overgoods from Contractor or returns the Overgoods to Contractor a second time without Contractor's prior authorization, City agrees to relinquish all right and title to and waives all claims against Contractor for credit related to such Overgoods.

#### **12. Procedures for Damaged Shipments, Shortages, Overages, and Missing Product**

**12.1 If using Contractor carrier.** If a shipment arrives with significant damage that is visible and has affected the contents of the boxes, the recommended method of handling it is to refuse delivery of the damaged boxes due to damage by the carrier and notify the Customer Service Team within two days of the delivery. Partial refusal of the shipment is acceptable. The carrier will be responsible for returning it to shipper. City must note the reason for refusal on the carrier's "attempted delivery" record and the number



of boxes damaged or refused. If the damaged shipment is not refused and is accepted, City must note all known and visible damage on the carrier's "delivery record" in order to file a damage claim.

**12.1.1 Damaged Shipments.** If the damaged shipment was not refused and was accepted, Contractor will be able to file a claim provided that: (i) City notes all known and visible damage on the carrier's "delivery record," including the number of boxes damaged, (ii) City saves the Product and all packing material, and (iii) City notifies the Customer Service Team promptly so a carrier inspection and pickup can be arranged. Contractor's carriers require any claims to be reported within two (2) days from the delivery date. Failure to follow these instructions within this time frame may result in Contractor's inability to file a claim, or denial of the claim.

**12.1.2 Shortages, Overages, & Missing Product.**

It is the City's responsibility to verify that the (1) correct number of boxes delivered matches the number of boxes on the carrier's delivery ticket, (2) the product item count matches the packing slip, and (3) product received is correct (together "Shipment"). If there is a discrepancy between the delivery receipt and the Shipment, City must note all discrepancies on the delivery receipt. City must notify Customer Service Team within two (2) days from the delivery date of any discrepancies. If the correct number of boxes is delivered, but the item quantity is not correct, City must retain packaging for Contractor and/or carrier inspection. Failure to follow these instructions within this time frame may result in Contractor's inability to file a claim, or denial of the claim.

**12.2 If using City carrier.** Risk of loss or damage to the Products passes to City upon delivery to the carrier. Contractor recommends that City obtain transit insurance in order to cover any damage or loss of the Product while in transit. City will need to file a claim with its carrier according to its carrier's instructions/

