

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

Mark One

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2006

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number 1-496



HERCULES INCORPORATED

A DELAWARE CORPORATION
I.R.S. EMPLOYER IDENTIFICATION NO. 51-0023450
HERCULES PLAZA
1313 NORTH MARKET STREET
WILMINGTON, DELAWARE 19894-0001
TELEPHONE: 302-594-5000
www.herc.com

Securities registered pursuant to Section 12(b) of the Act
(Each class is registered on the New York Stock Exchange, Inc.)

Title of each class
Common Stock ($\$^{25}/_{48}$ Stated Value)
8% Convertible Subordinated Debentures due August 15, 2010

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes
No .

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act. Yes No .

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No .

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. Large accelerated filer Accelerated filer Non-accelerated filer .

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No .

The aggregate market value of registrant's common stock, $\$^{25}/_{48}$ stated value ("Common Stock") held by non-affiliates based on the closing price on the last business day of the Company's most recently completed second fiscal quarter, or June 30, 2006, was approximately \$1.7 billion.

As of February 23, 2007, the registrant had 116,417,693 shares of Common Stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for its 2007 Annual Meeting of Shareholders (the "Proxy Statement"), when filed, will be incorporated by reference in Part III of this report.

HERCULES INCORPORATED

FORM 10-K

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PART I

Forward-Looking Statements

This Annual Report on Form 10-K includes forward-looking statements, as defined in the Private Securities Litigation Reform Act of 1995, reflecting management's current analysis and expectations, based on what management believes to be reasonable assumptions. Forward-looking statements may involve known and unknown risks, uncertainties and other factors, which may cause the actual results to differ materially from those projected, stated or implied, depending on such factors as: ability to generate cash, changes resulting from ongoing reviews of tax liabilities, ability to raise capital, ability to refinance, ability to execute productivity improvements and reduce costs, ability to execute and integrate acquisitions, ability to increase prices, ability to execute divestitures, ability to achieve growth in earnings and cash flows, business climate, business performance, changes in tax laws or regulations and related liabilities, changes in tax rates, economic and competitive uncertainties, higher manufacturing costs, reduced level of customer orders, changes in strategies, risks in developing new products and technologies, risks in developing new market opportunities, environmental and safety regulations and clean-up costs, foreign exchange rates and exchange control regulations, foreign investment laws, the impact of changes in the value of pension fund assets and liabilities, changes in generally accepted accounting principles, legislative changes, adverse legal and regulatory developments, including increases in the number or financial exposures of claims, lawsuits, settlements or judgments, the financial capacity of settling insurers, the impact of increased accruals and reserves for such exposures, the outcome of litigation and appeals, including the inability to obtain judicial review of adverse litigation results, adverse changes in economic and political climates around the world, including terrorist activities, international hostilities, governmental instabilities and potential natural disasters. Accordingly, there can be no assurance that the Company will meet future results, performance or achievements expressed or implied by such forward-looking statements. As appropriate, additional factors are contained in other reports filed by the Company with the Securities and Exchange Commission. The words or phrases "will likely result," "are expected to," "will continue," "is anticipated," "estimate," "project" or similar expressions are among those which identify forward-looking statements. This paragraph is included to provide safe harbor for forward-looking statements, which are not generally required to be publicly revised as circumstances change, and which the Company does not intend to update except as may be required by law. See also [Risk Factors](#) included in Item 1A.

ITEM 1. BUSINESS

Hercules Incorporated ("Hercules" or the "Company") is a Delaware corporation formed in 1912. The Company is a leading manufacturer and marketer of specialty chemicals and related services for a broad range of business, consumer and industrial applications. The Company is focused on growing cash flow and earnings and delivering shareholder value by concentrating on growth in its core businesses, expanding in emerging markets, entering adjacent markets, continuous improvement in its operations and continuing to strengthen its financial profile. Hercules operates on a global scale, with significant operations in North America, Europe, Asia and Latin America. Product sales occur in over 135 countries with significant revenue streams generated on five continents.

The Company's principal products are chemicals used by the paper industry to increase paper and paperboard performance and enhance the manufacturing process; water-soluble polymers; and specialty resins. These products impart such qualities as durability, water-resistance and improved aesthetics for everyday consumer goods ranging from paper and packaging to toothpaste. The primary markets the Company serves include pulp and paper; paints and adhesives; construction materials; food, pharmaceutical and personal care; and industrial specialties, including oilfield and general industrial.

While the Company's products comprise a relatively minor component of its end customers' total product cost, they frequently possess characteristics important to the functionality and aesthetics of the finished product or the efficient operation of the manufacturing process. Examples of the Company's products in consumer end-uses include strength additives for tissue and toweling, sizing agents for milk and juice cartons, thickeners in products such as toothpaste, shampoos and water-based paints, and water control additives for building products such as tile cements, grouts, stuccos, plasters and joint compounds. The Company also offers products and related services that improve and reduce the cost of the paper manufacturing processes, including water management programs that are designed to protect and maintain equipment and reduce operating costs.

Although the performance and quality of its products and high quality service are important to the Company's competitive strategy, other important factors such as lower manufacturing costs and improved reliability are becoming increasingly important. The Company strives to continually improve its products and manufacturing processes by investing in technology. The Company has committed substantial resources to its research and development efforts, which enable the Company to consistently bring products to market that improve functional properties or that offer similar properties at a lower cost. Functional properties have become increasingly important, as customers have come to rely more on the Company to provide new solutions to improve their product offerings and processes. Additionally, the Company strives to make its products more cost-competitive by effectively managing production costs and advancing its application development with customers.

The Company's strategy is to focus on meeting customer's needs and adding value to their businesses; continuously improving to extend competitive advantages; maximizing cash flow; and investing in innovation, emerging market opportunities and bolt-on acquisitions to grow profitability and increase return on invested capital.

Reportable Segments

The Company currently operates through two reportable segments: Paper Technologies and Ventures ("PTV") and the Aqualon Group ("Aqualon"). A reporting segment is also maintained for FiberVisions for historical reporting purposes reflecting the Company's consolidation of this business through March 31, 2006. The financial information regarding these segments, which includes net sales, profit from operations, total assets and other financial information for each of the three years ended December 31, 2006, 2005 and 2004 is provided in [Note 27](#) to the Consolidated Financial Statements. An analysis of the segments' results of operations for these periods is provided herein under "Management's Discussion and Analysis of Financial Condition and Results of Operations".

Paper Technologies and Ventures

Products and services offered by PTV are designed to enhance customers' profitability by improving manufacturing processes, enhancing productivity and improving overall product quality as well as enabling customers to meet their environmental objectives and regulatory requirements.

Paper Technologies is one of the key global suppliers of functional and process chemicals for the paper industry, offering a wide and highly sophisticated range of technology and applications expertise with in-mill capabilities ranging from influent treatment through the paper making process to paper finishing.

The Ventures portion of the group consists of a portfolio of businesses each targeting a family of vertical markets with a distinct set of products. Current businesses within Ventures are pulp and biorefining, water treatment for the pulp and paper industry, aviation and refrigeration compressor synthetic lubricants, and building and converted products.

The principal products and primary markets of this segment are as follows:

| Principal Products | Primary Markets |
|---|---|
| <p><i>Paper Technologies: Functional performance chemicals</i></p> <p>Sizing (internal and surface), strength, tissue creping and coatings additives.</p> | <p>Large, multi-national manufacturers of tissue, paper towels, packaging, beverage containers, newsprint, corrugated medium, printing and writing paper and other stationery items such as labels and envelopes.</p> |
| <p><i>Paper Technologies: Process treatment chemicals</i></p> <p>Contaminant, microbiological and foam control, clarification, retention, drainage, felt conditioning, fiber recovery, and water closure.</p> | |
| <p><i>Ventures: Pulping chemicals</i></p> <p>Deposit and scale control, foam control, deinking, and clarification.</p> | <p>Large, multi-national manufacturers of pulp to ultimately produce paper. Locations are either stand alone or integrated with paper making.</p> |
| <p><i>Ventures: Water treatment chemicals</i></p> <p>Utility systems, cooling water and water clarification.</p> | <p>Large, multi-national manufacturers of pulp and/or paper with water utility operations including boilers, cooling water and influent/effluent water treatment.</p> |
| <p><i>Ventures: Lubricants</i></p> <p>Ester-based synthetic lubricants and pentaerythritol (PE).</p> | <p>Producers of aviation and refrigeration compressor fluids, automotive, and general industry.</p> |
| <p><i>Ventures: Building and Converted Products</i></p> <p>Adhesives, resin modifiers, coatings, hydrophobic and release chemistries, crosslinkers and binders, and foam control.</p> | <p>Producers of building products, textiles, electronics, paints and inks, and paper industry converting operations.</p> |

Aqualon Group

Products offered by Aqualon are designed to manage the properties of aqueous (water-based) systems. Most of the products are derived from renewable natural raw materials and are sold as key ingredients to other manufacturers where they are used as small-quantity additives to provide functionality such as thickening, water retention, film formation, emulsifying action and binding power. Major end uses for Aqualon products include personal care products, food additives, pharmaceutical products, construction materials, paints, coatings and oil and gas recovery, where polymers are used to modify viscosity, gel strength and/or fluid loss. Aqualon also manufactures wood and gum rosin resins and is the world's only producer of pale wood rosin derivatives. Product applications and markets include food and beverage, construction specialties, adhesives, and rubber and plastic modifiers.

The principal products and primary markets of this segment are as follows:

| Principal Products | Primary Markets |
|--|--|
| <p><i>Water-soluble polymers, ethylcellulose and rosin resins:</i></p> <p>Hydroxyethylcellulose (HEC), Carboxymethylcellulose (CMC), Methylcellulose (MC) and derivatives, Hydroxypropylcellulose (HPC), Guar and its derivatives, ethylcellulose (EC) and rosin resins.</p> | <p>Manufacturers of interior and exterior architectural paints, oilfield service companies for oil and gas drilling and recovery, paper mills, construction material manufacturers and makers of oral hygiene products, personal care products, food products and pharmaceuticals.</p> |

FiberVisions

The Company sold 51% of its interest in FiberVisions on March 31, 2006. While FiberVisions is no longer a core business of Hercules, the Company holds a minority interest and continues to maintain a reporting segment for historical reporting purposes for the periods during which FiberVisions' results of operations were consolidated. FiberVisions is one of the largest manufacturers of polyolefin staple fibers used in disposable products like diapers and wipes. FiberVisions produces monocomponent polypropylene fibers and bicomponent fibers comprised of a polypropylene core and a polyethylene sheath. FiberVisions also produces polyolefin fiber and yarn for the industrial and textile markets used in concrete and asphalt, wipes, upholstery and automotive fabrics, geotextile fabrics and filtration products.

Raw Materials and Energy Supply

Raw materials and supplies are purchased from a variety of industry sources, including the agricultural, forestry, mining, petroleum and chemical industries.

Important raw materials for PTV include polyacrylamides, biocides, surfactants, rosin, adipic acid, epichlorohydrin, stearic acid, diethylenetriamine, phosphorous trichloride, methanol, and acetaldehyde.

Raw materials important to Aqualon are cellulose pulp (derived from wood and cotton linters), guar splits, gum rosin, limonene and pine wood stumps, which are renewable resources. Other commodity and chemical inputs include ethylene oxide, caustic, methanol, ethyl chloride, propylene oxide, monochloroacetic acid, methyl chloride, and inorganic acids.

Major requirements for key raw materials and fuels are typically purchased pursuant to contracts. Supply and demand has caused the market to tighten for a number of key raw materials, however, the Company does not anticipate any availability issues. The Company is not dependent on any one supplier for a material amount of its raw material or fuel requirements. However, certain important raw materials, such as certain cellulose types and biocides, are obtained from a sole-source or a few major suppliers. On a consolidated basis, no single raw material accounts for more than 7% of total current year Cost of sales.

The price and availability of raw materials and fuels are subject to domestic and world market and political conditions and can also be directly or indirectly impacted by governmental action or regulations. The impact of any future raw material or energy shortages on the Company's business as a whole or in specific geographic regions cannot be accurately predicted. Operations and products may, at times, be adversely affected by governmental action, natural disasters, shortages or international or domestic events. In order to mitigate risks relating to raw materials and energy supply, the Company employs a variety of strategic sourcing techniques including minimizing the use of sole source suppliers, entering into contracts that limit the frequency or magnitude of price increases, using approved alternative raw materials, selectively hedging certain strategic commodities, identifying alternate suppliers in lower cost regions of the world, continually reassessing its value chain, and aggressively countering suppliers' attempts to increase costs.

Competition

The specialty chemicals industry is highly fragmented and its participants offer a broad array of product lines representing many different products designed to meet specific customer requirements. Individual product and portfolio offerings compete on a global, regional and/or local level subject to the nature of the businesses and products, as well as the end-markets and customers served. The industry has become increasingly global as participants focus on establishing and maintaining leadership positions outside of their home markets. Many of the Company's product lines face domestic and international competitive factors, including industry consolidation, pricing pressures and competing technologies. In Paper Technologies, customers and competitors are consolidating to enhance market positions and product offerings on a worldwide basis. Aqualon is facing competitive threats from emerging Asian producers. To address this threat, one element of Aqualon's strategy includes reducing costs in existing facilities and adding production capacity in the growing, low-cost Asian region. PTV and Aqualon's strategies are both focused on innovation - providing new products to our customers to extend our competitive advantage.

Patents and Trademarks

Patents covering a variety of products and processes have been issued to the Company and its subsidiaries. The Company holds licenses for certain other patents held by other parties covering its products and processes. The Company's rights under these patents and licenses constitute a valuable asset.

The Company and its wholly-owned subsidiaries also have many global trademarks covering their products. Some of the more significant trademarks include: AquaCat® clear cationic solution, Aquapel® sizing agent, Hercon® sizing emulsions, Aqualon® water-soluble polymers, Natrosol® hydroxyethylcellulose, Culminal® methylcellulose, Klucel® hydroxypropylcellulose, Natrosol FPS® fluidized polymer suspension, Aquarius™ coating systems, ChemVisions™ curing agent, Precis® sizing agent, Kymene® resin, Presstige® deposit control additives, Spectrum® microbiocides, Ultra-pHase® sizing agent, Hercobond® dry strength resin, Chromaset® surface size, ProSoft® tissue softeners and Zenix® contaminant control.

The Company does not consider any individual patent, license or trademark to be of material importance to Hercules taken as a whole.

Research and Development

The Company is focused on product innovation as one of its key strategies. Research and development efforts are directed toward the discovery and development of new products and processes, the improvement and refinement of existing products and processes, the development of new applications for existing products and cost improvement initiatives. The Company spent \$38.8 million on research and development activities in 2006, as compared to \$40.8 million in 2005 and \$42.7 million in 2004. The amounts prior to 2006 include a full year of costs attributable to FiberVisions.

PTV focuses its technology efforts on innovative high-value product development, incremental improvements to existing products and services, and cost reduction programs to meet diverse customer needs worldwide. During 2006, as part of the consolidation and rationalization of its research and development operations, PTV completed the closure of its Jacksonville, Florida facility. The centralization of research and development operations at the Company's Research Center in Wilmington, Delaware is expected to result in improved efficiency and effectiveness. This state-of-the-art facility includes large and sophisticated research and development laboratories with pilot paper making capabilities that simulate actual operating conditions in a customer's facilities. This allows an accurate assessment of the potential impact of new products on plant performance. The group's scientists conduct research and customer optimization studies focused on solving functional and process treatment challenges using sophisticated techniques and equipment to provide high level analytical testing and advanced technical service worldwide.

PTV has additional customer applications laboratories strategically located to have greater proximity to key customer activities and to take advantage of existing Company assets and infrastructure. Today, the European customer applications operation is located in Helsingborg, Sweden and the Americas customer applications center is located at the Wilmington Research Center in Wilmington, Delaware. Re-located from Jacksonville, Florida during 2006, the Americas facility houses the aforementioned pilot papermaking and paper testing activities. Finally, a new customer applications facility is currently planned for the Asia Pacific region and will be located in Shanghai, China with an anticipated 2007 start-up.

Aqualon focuses its research and development efforts on market-oriented product development, manufacturing process improvement and responsive technical service to customers. New product development is focused on products which manage the physical properties of water based systems, such as latex paint, construction mortars and personal care products, to meet customer demand for improved performance and efficiency. While the primary research and development site is the Research Center in Wilmington, Delaware, Aqualon has application and development laboratories in Europe, Asia and the Americas that provide technical service to customers. At these laboratories, teams work in a network to develop products, identify new applications and meet customer requirements.

Environmental Matters

The Company is subject to numerous environmental laws and regulations. The Company believes it is in compliance, in all material respects, with applicable federal, state and local environmental laws and regulations. Expenditures relating to environmental cleanup costs have not materially affected, and are not expected to materially affect, capital expenditures or competitive position. Additional information regarding environmental matters is provided in Notes [12](#) and [13](#) to the Consolidated Financial Statements.

Employees

As of December 31, 2006, the Company had approximately 4,430 employees worldwide including those of consolidated joint venture entities. Approximately half of the worldwide employees were located in the United States, of which approximately 28% were represented by various local or national unions. As of December 31, 2005, the Company had approximately 4,650 employees worldwide. In addition to restructuring actions, the decrease in 2006 is attributable to the disposition of a majority interest in FiberVisions.

International Operations

Net sales and Property, plant and equipment, net by geographic area for each of the three years ended December 31, 2006, 2005 and 2004 appear in [Note 27](#) to the Consolidated Financial Statements. Direct export sales from the United States to unaffiliated customers were \$106.1 million, \$131.7 million and \$118.7 million for 2006, 2005 and 2004, respectively. The Company's operations outside the United States are subject to the usual risks and limitations related to investments in foreign countries, such as fluctuations in currency values, exchange control regulations, wage and price controls, employment regulations, foreign investment laws, governmental instability (including expropriation or confiscation of assets) and other potentially detrimental domestic and foreign governmental policies affecting U.S.-based companies doing business abroad, including risks related to terrorism and international hostilities.

Available Information

Hercules files its annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to those reports with the Securities and Exchange Commission ("SEC"). Hercules provides access to its SEC filings via a hyperlink to the SEC's website (www.sec.gov) on its corporate website, www.herc.com. These filings may also be read and copied at SEC's Public Reference Room which is located at 100 F Street, N.E., Washington, DC 20549. Information about the operation of the Public Reference Room can be obtained by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC at www.sec.gov.

These documents are also available in print, without charge, to any shareholder who requests them in writing from Israel J. Floyd, Esq., Corporate Secretary, Hercules Incorporated, Hercules Plaza, 1313 North Market Street, Wilmington, Delaware 19894-0001.

ITEM 1A. RISK FACTORS

In addition to the factors discussed elsewhere, the following, which have not been sequenced in any particular order, are important factors that could cause actual results or events to differ materially from those contained in any forward-looking statements made by or on behalf of the Company.

The Company is subject to litigation.

The Company is a defendant in numerous lawsuits that arise out of, and are incidental to, the current and past conduct of the Company's business. These suits concern issues such as product liability, asbestos, environmental matters, contract disputes, labor-related matters, intellectual property, property damage and personal injury matters. While it is not feasible to predict the outcome of all pending suits and claims, the ultimate resolution of these matters could have a material effect upon the Company's financial position, operating results and cash flows. See [Note 13](#) to the Consolidated Financial Statements for a thorough discussion of the most significant legal matters.

The Company is subject to environmental liabilities.

The Company is subject to numerous foreign, federal, state and local environmental laws and regulations covering compliance matters or imposing liability for the costs of, and damages resulting from, cleaning up sites, past spills, disposals and other releases of hazardous substances. Changes in these laws and regulations, or the interpretation thereof, could have a material effect on the Company's financial position, results of operations and cash flows. Any failure by the Company to adequately comply with such laws and regulations could subject the Company to significant future liabilities, including fines and penalties.

The Company has been identified as a potentially responsible party by U.S. federal and state authorities, or by private parties seeking contribution, for the cost of environmental investigation and/or cleanup at numerous sites. Actual costs to resolve these matters will depend on numerous factors, including the number of parties found responsible at each environmental site and their ability to pay; the actual methods of remediation required or agreed to; outcomes of negotiations with regulatory authorities; outcomes of litigation; changes in environmental laws and regulations; technological developments; the discovery of new information not known at this time; and the years of remedial activity required, which could range from zero to 30 years or longer. The ultimate resolution of such matters could have a material effect upon the Company's financial position, operating results and cash flows. See [Notes 12 and 13](#) to the Consolidated Financial Statements for a thorough discussion of the most significant environmental matters.

The Company has significant leverage.

As of December 31, 2006, the Company's total debt was \$995.5 million, of which approximately 60% is fixed rate indebtedness. The Company's indebtedness has significant consequences. For example, it could: increase the Company's vulnerability to economic downturns and competitive pressures; require the Company to dedicate a substantial portion of its cash flow from operations to payments on its indebtedness, thereby reducing the availability of its cash flow to fund working capital, capital expenditures, research and development efforts and other general corporate purposes; limit the Company's flexibility in planning for, or reacting to, changes in its business and the industries in which it operates or in pursuing attractive business opportunities requiring debt financing; place the Company at a disadvantage to its competitors that have less debt; and limit the Company's ability to borrow additional funds due to restrictive covenants.

The Senior Credit Facility and the indentures governing the 11.125% senior notes due 2007 and the 6.75% senior subordinated notes due 2029, which together account for \$641.1 million of the Company's debt, contain numerous restrictive covenants, including, among other things, covenants that limit the Company's ability to: borrow money and incur contingent liabilities; make dividend or other restricted payments; use assets as security in other transactions; enter into transactions with affiliates; enter into new lines of business; issue and sell stock of restricted subsidiaries; sell assets or merge with or into other companies and make capital expenditures. In addition, the Senior Credit Facility requires the Company to meet financial ratios and tests, including maximum leverage and interest coverage levels. These restrictions could limit the Company's ability to plan for or react to market conditions or meet extraordinary capital needs and could otherwise restrict corporate activities. See [Note 8](#) to the Consolidated Financial Statements for a thorough discussion of the Company's indebtedness.

The Company has unfunded liabilities with respect to certain pension and postretirement benefit plans.

The projected benefit obligation of the Company's U.S. defined benefit pension plan and postretirement benefit plan and certain foreign plans exceeds the fair value of plan assets. In addition, the assets and liabilities associated with the Company's defined benefit pension and postretirement benefit plans are subject to interest rate and market risk. See [Note 10](#) to the Consolidated Financial Statements for a description and related financial disclosures for the defined benefit pension and postretirement plans.

The Company is subject to extensive competition.

The global specialty chemicals industry is highly competitive. Some of our competitors have greater financial, technical, marketing and other resources, which could provide them with a competitive advantage. Also, the Company's competitors have in the past caused, and could in the future cause, a reduction in prices for some of the Company's products as a result of intensified price competition. Additionally, although the Company does not compete primarily on the basis of price, the Company's customers are price sensitive. Accordingly, in periods where we are not able to pass on increased production costs, including those associated with the increasing prices of raw materials, gross margins may deteriorate.

The Company is subject to technological change and innovation.

Many of the Company's products could be affected by technological change and new product introductions and enhancements. Accordingly, product innovation and new product development are integral to the Company's strategy. Research and development efforts are directed towards the discovery and development of new products and processes, the improvement and refinement of existing products and processes, the development of new applications for existing products and cost improvement initiatives. There can be no assurance that product development efforts will be successful, that we will be able to cost-effectively manufacture these new products or that we will be able to successfully market such products or that our competitors will not develop new products or technologies that compete with or reduce the market for our products or services.

The Company is subject to supply constraints and price volatility with respect to raw material and energy.

The Company acquires raw materials and energy from its vendors under a variety of short- and long-term contracts and supply agreements, depending upon various economic and logistical factors. The purchase prices are generally related to prevailing market conditions and are linked, in some cases, to relevant market indices. Changes in raw material and energy costs have historically had a material impact on the Company's profit and cash from operations and are anticipated to continue to impact future periods similarly.

Some of the Company's customers are in cyclical industries.

Some of the Company's customers are in industries and businesses that are cyclical in nature and many are sensitive to changes in general economic conditions. The demand for our products depends, in part, upon the general economic conditions of the markets of our customers. Downward economic cycles in our customers' industries may reduce sales of our products.

The Company's international operations are affected by global and regional conditions.

The Company's international operations are subject to risks, such as currency exchange controls, labor unrest, regional economic uncertainty, political instability, restrictions on the transfer of funds into or out of a country, export duties and quotas, domestic and foreign customs and tariffs and current and changing regulatory environments. These events could have an adverse effect on our international operations in the future by reducing the demand for our products, increasing our costs or otherwise having an adverse effect on our results of operations.

Foreign exchange rate fluctuations impact the Company's financial performance.

Our products are sold throughout the world and, as a result, currency fluctuations impact our financial performance. Our revenues in foreign countries are largely generated in foreign currencies, while costs incurred to generate those revenues are only partly incurred in the same currencies. We sometimes enter into hedging transactions to reduce the Company's exposure to currency exchange risk, but such transactions cannot eliminate all of the risks associated with currency fluctuations. Because our financial statements are denominated in U.S. dollars, changes in currency exchange rates between the U.S. dollar and other currencies could have a material adverse effect on our results of operations.

The Company's production facilities are subject to operating hazards.

We are dependent on the continued operation of our production facilities. Such production facilities are subject to hazards associated with the manufacture, handling, storage and transportation of chemical materials and products, including pipeline leaks and ruptures, explosions, fires, inclement weather and natural disasters, mechanical failure, unscheduled downtime, labor difficulties, transportation interruptions, remediation complications, chemical spills, discharges or releases of toxic or hazardous substances or gases, storage tank leaks and other environmental risks. These hazards can cause personal injury and loss of life, severe damage to or destruction of property and equipment and environmental damage and could have a material adverse effect on our results of operations.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None

ITEM 2. PROPERTIES

The Company's corporate headquarters and major research center are located in Wilmington, Delaware. The Company also owns a number of plants and facilities in strategic locations worldwide. All of the Company's principal properties are owned by the Company, except for its corporate headquarters office building in Wilmington, Delaware, its European headquarters office building in Schaffhausen, Switzerland and its Asian headquarters in Shanghai, China, all of which are leased. The Company's plants and facilities are maintained in compliance with current laws and regulations and are generally considered to be in good condition, with adequate capacity for projected business operations. Certain of these properties are subject to liens under the Company's debt obligations (see [Note 8](#) to the Consolidated Financial Statements). The following are the locations of the Company's worldwide plants:

Paper Technologies and Ventures

Beringen, Belgium; Burlington, Ontario, Canada; Busnago, Italy; Chicopee, Massachusetts, U.S.; Franklin, Virginia, U.S.; Hattiesburg, Mississippi, U.S.; Helsingborg, Sweden; Kim Cheon, Korea; Louisiana, Missouri, U.S.; Macon, Georgia, U.S.; Mexico City, Mexico; Milwaukee, Wisconsin, U.S.; Nantou, Taiwan; Paulinia, Brazil; Portland, Oregon, U.S.; Savannah, Georgia, U.S.; Shanghai, China; Sobernheim, Germany; Tampere, Finland; Tarragona, Spain; Voreppe, France; and Zwijndrecht, The Netherlands.

The division also owns a manufacturing facility in Pilar, Argentina, that has been leased to a major U.S. company under a five-year lease. The Company purchases its products for sale in Argentina from this plant under a five-year supply and distribution agreement which ends in 2009.

Aqualon Group

Alizay, France; Doel, Belgium; Dalton, Georgia, U.S.; Hopewell, Virginia, U.S.; Jiangmen City, China; Kenedy, Texas, U.S.; Luzhou, China (40% joint venture interest); Nanjing, China (land acquired in 2006 for facility construction in 2007); Parlin, New Jersey, U.S.; Suzhou, China (40% joint venture interest); Zwijndrecht, The Netherlands; and Brunswick, Georgia, U.S.

ITEM 3. LEGAL PROCEEDINGS

Information regarding legal proceedings is included in [Note 13](#) to the Consolidated Financial Statements and is incorporated herein by reference.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matter was submitted to a vote of security holders during the fourth quarter of 2006 through the solicitations of proxies or otherwise.

PART II

ITEM 5. MARKET FOR HERCULES' COMMON STOCK AND RELATED STOCKHOLDER

MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

The Company's common stock is listed on the New York Stock Exchange (ticker symbol HPC) and the Swiss Stock Exchange. It is also traded on the Philadelphia, Midwest and Pacific Stock Exchanges.

The approximate number of holders of record of the Company's common stock (\$25/48 stated value) as of February 23, 2007 was 14,300.

The following table sets forth, for the periods indicated, the high and low closing price per share of the Company's common stock, as reported on the New York Stock Exchange:

| 2006 | High | Low |
|----------------|----------|----------|
| First Quarter | \$ 13.93 | \$ 11.03 |
| Second Quarter | \$ 16.02 | \$ 13.63 |
| Third Quarter | \$ 15.99 | \$ 13.68 |
| Fourth Quarter | \$ 19.52 | \$ 15.73 |
| 2005 | High | Low |
| First Quarter | \$ 15.24 | \$ 13.86 |
| Second Quarter | \$ 14.82 | \$ 13.00 |
| Third Quarter | \$ 14.69 | \$ 12.05 |
| Fourth Quarter | \$ 12.25 | \$ 10.20 |

On December 29, 2006, the closing price of the common stock was \$19.31.

The payment of quarterly dividends was suspended in the fourth quarter of 2000, subject to reconsideration by the Board of Directors in its discretion, when warranted under appropriate circumstances and subject to restrictions in the indentures governing the Company's 11.125% senior notes due 2007, the 6.75% senior subordinated notes due 2029 and the Senior Credit Facility.

During 2006, the Company did not purchase any shares of its outstanding common stock.

ITEM 6. SELECTED FINANCIAL DATA

A summary of the selected financial data for Hercules as of December 31 and for the years specified is set forth in the table below. Data for 2006 reflects the impact of the sale of a majority interest in FiberVisions. All periods presented reflect the terpenes specialties and BetzDearborn water treatment businesses as discontinued operations.

| | <i>(Dollars and shares in millions, except per share data)</i> | | | | |
|--|--|------------|------------|------------|------------|
| | 2006 | 2005 | 2004 | 2003 | 2002 |
| Statements of Operations Information: | | | | | |
| Net sales | \$ 2,035.3 | \$ 2,055.0 | \$ 1,984.3 | \$ 1,836.0 | \$ 1,693.7 |
| Cost of sales | 1,343.4 | 1,391.1 | 1,291.6 | 1,155.6 | 1,029.1 |
| Gross profit | \$ 691.9 | \$ 663.9 | \$ 692.7 | \$ 680.4 | \$ 664.6 |
| Research and development | \$ 38.8 | \$ 40.8 | \$ 42.7 | \$ 38.7 | \$ 42.0 |
| Profit from operations | \$ 248.6 | \$ 140.3 | \$ 232.9 | \$ 257.1 | \$ 219.9 |
| Net income (loss) from continuing operations before discontinued operations and cumulative effect of changes in accounting principle | \$ 190.8 | \$ (32.1) | \$ 30.7 | \$ 75.2 | \$ (47.1) |
| Net income (loss) on discontinued operations, net of tax | 47.0 | (6.5) | (2.6) | 3.5 | (197.7) |
| Net income (loss) before cumulative effect of changes in accounting principle | 237.8 | (38.6) | 28.1 | 78.7 | (244.8) |
| Cumulative effect of changes in accounting principle, net of tax | 0.9 | (2.5) | — | (33.3) | (368.0) |
| Net income (loss) | \$ 238.7 | \$ (41.1) | \$ 28.1 | \$ 45.4 | \$ (612.8) |
| Per Share Data and Other Share Information: | | | | | |
| Basic earnings (loss) per share | | | | | |
| Continuing operations | \$ 1.72 | \$ (0.30) | \$ 0.28 | \$ 0.71 | \$ (0.44) |
| Discontinued operations | 0.42 | (0.06) | (0.02) | 0.03 | (1.87) |
| Cumulative effect of changes in accounting principle | 0.01 | (0.02) | — | (0.31) | (3.47) |
| Net income (loss) | \$ 2.15 | \$ (0.38) | \$ 0.26 | \$ 0.43 | \$ (5.78) |
| Diluted earnings (loss) per share | | | | | |
| Continuing operations | \$ 1.71 | \$ (0.30) | \$ 0.28 | \$ 0.70 | \$ (0.44) |
| Discontinued operations | 0.42 | (0.06) | (0.02) | 0.03 | (1.87) |
| Cumulative effect of changes in accounting principle | 0.01 | (0.02) | — | (0.31) | (3.47) |
| Net income (loss) | \$ 2.14 | \$ (0.38) | \$ 0.26 | \$ 0.42 | \$ (5.78) |
| Average number of common shares outstanding | | | | | |
| Basic | 110.8 | 108.7 | 107.3 | 106.2 | 106.0 |
| Diluted | 111.3 | 110.4 | 109.0 | 107.2 | 106.2 |
| Actual number of common shares outstanding | 116.0 | 112.7 | 112.1 | 111.0 | 109.4 |
| Balance Sheet Data: | | | | | |
| Accounts receivable, net | \$ 326.6 | \$ 289.7 | \$ 344.9 | \$ 319.7 | \$ 393.9 |
| Inventories | 210.6 | 179.6 | 205.7 | 199.6 | 181.7 |
| Less: Accounts payable | (205.3) | (172.9) | (186.6) | (161.6) | (167.8) |
| Operating working capital, net | \$ 331.9 | \$ 296.4 | \$ 364.0 | \$ 357.7 | \$ 407.8 |
| Total assets | \$ 2,808.5 | \$ 2,568.8 | \$ 2,720.3 | \$ 2,721.8 | \$ 2,772.0 |
| Total debt | \$ 995.5 | \$ 1,109.0 | \$ 1,240.1 | \$ 1,347.8 | \$ 883.0 |
| Company-obligated preferred securities of subsidiary trusts | — | — | — | — | 624.0 |
| Total debt and preferred securities | \$ 995.5 | \$ 1,109.0 | \$ 1,240.1 | \$ 1,347.8 | \$ 1,507.0 |
| Other Data: | | | | | |
| Net cash provided by (used in) operating activities | \$ 172.9 | \$ 139.2 | \$ 120.5 | \$ 22.8 | \$ (215.2) |
| Capital expenditures | \$ 93.6 | \$ 67.5 | \$ 77.4 | \$ 48.0 | \$ 43.4 |
| Depreciation | \$ 70.7 | \$ 80.5 | \$ 74.9 | \$ 73.2 | \$ 70.7 |
| Amortization | \$ 24.6 | \$ 25.4 | \$ 26.3 | \$ 27.4 | \$ 29.0 |
| Employees | 4,430 | 4,650 | 4,950 | 5,116 | 5,095 |

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in connection with the information contained in the Consolidated Financial Statements and Notes thereto. All dollar amounts in the tables that follow are presented in millions.

Business Overview***Business Profile - Market and Geographic Concentration***

Hercules is a leading global manufacturer and marketer of specialty chemicals and related services for a broad range of business, consumer and industrial applications. The Company's principal products are chemicals used by the paper industry to improve performance and enhance the manufacturing process; water-soluble polymers; and specialty resins. The primary markets the Company serves include pulp and paper; paints and adhesives; construction materials; food, pharmaceutical and personal care; and industrial specialties, including oilfield and general industrial.

More than 50% of the Company's revenues are generated outside of North America. Net sales by region expressed as a percentage of total net sales for the years ended December 31, 2006 and 2005 were:

| | 2006 | 2005 |
|---------------|------|------|
| North America | 49% | 47% |
| Europe | 34% | 37% |
| Asia Pacific | 11% | 11% |
| Latin America | 6% | 5% |
| Consolidated | 100% | 100% |

Business Segments

The Company currently operates through two active reportable segments: Paper Technologies and Ventures ("PTV") and the Aqualon Group ("Aqualon"). PTV includes the following business units: Paper Technologies and the Ventures businesses-Pulping chemicals, Water Treatment chemicals, Lubricants and Building and Converted products. Aqualon includes the following business units: Coatings and Construction, Regulated Industries, and Energy and Specialty Solutions. A reporting segment is also maintained for FiberVisions for historical reporting purposes reflecting the Company's consolidation of this business through March 31, 2006. The Company currently holds a 49% ownership interest in the FiberVisions business. The results of operations for 2004, 2005 and the three months ended March 31, 2006 reflect the Company's 100% ownership of this business.

Net sales for the years ended December 31, 2006 and 2005 as a percent of total net sales, by segment, were:

| | 2006 | 2005 |
|---------------------------------|------|------|
| Paper Technologies and Ventures | 53% | 50% |
| Aqualon Group | 44% | 36% |
| FiberVisions | 3% | 14% |
| Consolidated | 100% | 100% |

Key Developments

During 2006, there were a number of strategic business and corporate actions and financial reporting developments that had an impact upon the Company's results of operations and financial position as well as the overall presentation of financial information. The most significant of these key developments (not in any order of relevant significance) were as follows: (1) realignment of the Company's reporting segments, (2) strategic business acquisitions, investments and alliances, (3) disposition of a majority interest in FiberVisions, (4) business and corporate restructuring actions, including actions initiated in prior years, (5) resolution of certain income tax matters, (6) substantial retirement of higher-cost debt, (7) actions regarding the Vertac litigation, (8) the adoption of Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans - an amendment of FASB Statements No. 87, 88, 106, and 132(R)" ("SFAS 158") and (9) the adoption of Statement of Financial Accounting Standards No. 123 (revised 2004), "Share-Based Payment" ("SFAS 123R"). A discussion of these developments follows.

Business Segment Realignment

Effective January 1, 2006, the Company realigned its business and reporting segments to provide greater market focus. Previously, the Company operated through the Performance Products (Pulp and Paper and Aqualon) and Engineered Materials and Additives (FiberVisions and Pinova) segments. The Company's new reporting structure includes three reporting segments: (1) Paper Technologies and Ventures (2) the Aqualon Group, and (3) FiberVisions. The Company's Pinova business has been integrated into the Aqualon Group and the synthetic lubricants business has been transferred from Aqualon to PTV.

FiberVisions will remain as a stand-alone segment for historical reporting purposes and its results of operations have been consolidated into the Company's Statement of Operations through March 31, 2006. As a result of the sale of the Company's 51% interest (see below and [Note 3](#) to the Consolidated Financial Statements), FiberVisions is reflected as an equity investment and the Company has included its proportionate share of earnings and losses using the equity method of accounting for periods beginning April 1, 2006.

In addition, the Company's terpenes specialties business, which was previously a component of Pinova, has been classified as a discontinued operation effective January 1, 2006. Sales and operating results for this business have been disaggregated from the former Pinova business and are excluded accordingly from the results of operations for Aqualon for 2006, 2005 and 2004, respectively.

Acquisitions, Investments and Alliances

Aqualon acquired the guar and guar derivative manufacturing division of Benchmark Polymer Products, L.P., ("Benchmark") a subsidiary of Benchmark Performance Group, Inc. ("BPG"), including a production facility, related working capital and intangible assets for a total of \$20.9 million plus a provisional earn-out. In addition, Aqualon signed a five year exclusive agreement to supply BPG with guar products for polymer slurries used in oil and gas fracturing applications.

The formation was completed for Aqualon's methylcellulose ("MC") joint venture, Hercules Tianpu Chemicals Company Limited ("Hercules Tianpu"), with \$3.2 million contributed by Aqualon in addition to the \$4.4 million previously contributed in 2005 in exchange for a 40% ownership interest. Hercules Tianpu combines Aqualon's advanced technology with the leading producers of MC in China enhancing Aqualon's global supplier position for MC products. Under the joint venture agreement, Aqualon has global marketing rights for the output of the joint venture. Hercules Tianpu is currently in the process of completing a significant capacity expansion for MC production which is expected to be operating during the first quarter 2007.

Hercules acquired the remaining 40% ownership interest in the Shanghai Hercules Chemicals Company, Ltd. joint venture for \$3.3 million, including transaction costs. By completing this transaction, PTV will be able to operate with greater flexibility in the region and expects to continue to implement its expansion plans, including the development of a regional technical and research center.

Additional information regarding these acquisitions and investments is provided in [Note 2](#) to the Consolidated Financial Statements.

During the second quarter of 2006, the Company entered into an alliance agreement with MeadWestvaco whereby Hercules will serve as the sole distributor for certain rosin-based sizing products currently produced by both parties and MeadWestvaco will assume all manufacturing of the underlying products upon the completion of related expansion projects at its existing facilities.

Sale of Interest in FiberVisions

On March 31, 2006, the Company sold a 51% interest in FiberVisions for \$27.0 million excluding transaction costs and post-closing adjustments. As a result of certain performance-based measures included in the transaction agreement, the Company was required to make contributions in the amount of \$4.5 million to FiberVisions subsequent to the sale and, based on current projections, an additional contribution of \$1.2 million is expected to be required during 2007. In summary, the Company recognized a loss of \$13.3 million on the sale of the investment during 2006. An impairment charge of \$52.9 million attributable to FiberVisions' goodwill asset was recorded during 2005 in connection with the initial commitment to dispose of a portion of the business. Additional information regarding the transaction is included in [Note 3](#) to the Consolidated Financial Statements.

Restructuring Actions

As the Company has undergone substantial transformation in its business focus during the past several years, there have been a number of distinct restructuring actions taken to reposition its physical and human resources in support of those initiatives. In addition, the Company consistently reviews its underlying cost structure from a competitive standpoint and has taken actions to increase the efficiency and cost-effectiveness of its operations and support infrastructure. These actions have collectively resulted in plans to close facilities and dispose of assets; relocate and centralize administrative, research and other business functions; reduce employee headcount and contract for the provision of certain support services with third-party providers. A number of actions commenced in 2006 and prior years impacted 2006 as the underlying programs were designed to be implemented over a number of years. The following summarizes those activities:

- Research and development consolidation -The Company completed the consolidation of its research and development activities from its Jacksonville, Florida facility to its Wilmington, Delaware research center (“WRC”). Costs incurred during 2006 that were attributable to this program included \$2.6 million in severance and termination benefits, other exit costs of \$1.2 million and accelerated depreciation of \$1.2 million. In 2005, the Company consolidated its Barneveld research activities into WRC and a European regional center.
- PTV manufacturing rationalization and alliance - The Company closed its Pendlebury manufacturing facility in the United Kingdom. As a result, charges incurred during 2006 with respect to this program included \$2.1 million of accelerated depreciation, \$0.4 million in severance and termination benefits and \$0.8 million in other exit costs. PTV entered into an alliance agreement whereby the manufacture of the underlying products is being phased to MeadWestvaco. As a result certain production lines at the Company’s manufacturing facilities in Savannah, Georgia, Hattiesburg, Mississippi and Portland, Oregon will be closed. During 2006, the Company incurred \$0.5 million in severance and termination benefits, \$0.2 million of other exit costs and \$0.6 million of accelerated depreciation in connection with this program. Additional charges are expected to continue into 2007 during the manufacturing phase-out period.
- Business segment realignment - In connection with the realignment of its business segments, the Company incurred \$9.8 million of severance and termination benefits and \$0.4 million of other exit costs, primarily to further de-layer management and streamline organizational structures.
- Business Infrastructure Projects - These projects were developed primarily as a result of efforts to reduce stranded corporate costs resulting from the FiberVisions transaction discussed above. The goal of the projects is to realign the Company’s support organization through both reorganization and selected outsourcing and offshoring service arrangements such that a substantial proportion of the underlying costs become more variable in nature, providing the Company with greater flexibility to scale the level of support services required in response to changing business demands, as well as to access larger service organizations that can provide a greater depth and breadth of services. The Company realized approximately \$10 million in annual savings due to the reorganization in 2006 and anticipates approximately \$7 million in annual cost reductions to be achieved by the end of 2007 as a result of the outsourcing and offshoring projects.

In connection with the Business Infrastructure Projects, the Company plans to eliminate a number of positions worldwide. Accordingly, the Company has estimated it will provide approximately \$14 million in severance and termination benefits as well as completion bonuses contingent upon the successful transition of job functions and responsibilities to the outsource and offshore service providers. A total of \$2.9 million of severance and termination benefits has been incurred through December 31, 2006. While the majority of actions and charges will take place during 2007 and 2008, certain actions and cash flows will continue into 2009.

A more thorough discussion and complete summary of these restructuring programs is provided in [Note 19](#) to the Consolidated Financial Statements.

Resolution of Income Tax Matters

During the fourth quarter of 2006, the Company settled substantially all issues related to Internal Revenue Service (“IRS”) audits for the years 1993 through 2003 resulting in the recognition of a \$90.7 million tax benefit and the reversal of \$48.7 million of tax reserves related to the divestiture of the former water treatment business which was previously classified as a discontinued operation. In addition, a tax benefit of \$102.7 million was recorded for the expected utilization of existing capital loss carryforwards.

Retirement of High-Cost Debt

In April 2006, the Company completed a Tender Offer for its 11.125% senior notes due 2007 (the “Notes”) whereby the Company repurchased \$102.9 million (book value) of the Notes for a total cash payment of \$116.4 million including \$4.5 million of accrued interest. Prior to the Tender Offer transaction, the Company had repurchased in the first quarter of 2006, \$11.0 million (book value) of the Notes. The retirement of substantially all of the Notes along with principal payment on other debt issues, partially offset by debt issued by Hercules Tianpu for its expansion, resulted in the Company decreasing its total debt outstanding to a level below \$1.0 billion at December 31, 2006.

Vertac Litigation

In July 2006, a panel of the U.S. Court of Appeals for the Eighth Circuit affirmed the Final Judgment of the District Court in connection with the lawsuit captioned [United States of America v. Vertac Chemical Corporation, et al.](#) (the “Vertac litigation”). The Company’s request for an *en banc* review of the panel’s determination was denied in September, 2006. In December 2006, the Company filed a petition for writ of certiorari, requesting review by the U.S. Supreme Court. In connection with the affirmation of the Final Judgment in July 2006, the Company recorded an additional charge of \$106.0 million over amounts previously accrued related to the Vertac litigation. As of December 31, 2006, the Company has an accrued liability of \$123.5 million, including interest. For a more thorough discussion of the Vertac litigation, see [Note 13](#) to the Consolidated Financial Statements.

Adoption of SFAS 158

The Company adopted SFAS 158 effective December 31, 2006 which requires the recognition of the funded status of its defined benefit pension and other postretirement benefit plans in the Consolidated Balance Sheet. The funded status represents the difference between the fair value of the plans' assets and the projected benefit obligation for pension plans and accumulated postretirement benefit obligation for other postretirement plans. As a result of the adoption of SFAS 158, the Company increased its pension and postretirement benefit obligations by \$139.8 million, decreased prepaid benefits costs by \$48.9 million, recorded deferred tax assets of \$62.2 million and recorded an after-tax charge of \$126.5 million to Accumulated other comprehensive losses included in Stockholders' equity. For a more thorough discussion regarding the adoption of SFAS 158, see [Notes 10](#) and [24](#) to the Consolidated Financial Statements.

Adoption of SFAS 123R

Effective January 1, 2006, the Company adopted SFAS 123R using the "modified prospective" method in which compensation cost is recognized for all awards granted to employees during 2006 as well as those awards granted prior to 2006 that remain unvested on the effective date. Upon the adoption of SFAS 123R, the Company recorded a \$0.9 million benefit, net of income taxes, as a cumulative effect of a change in accounting principle to reflect the required change in accounting policy for the recognition of forfeitures. See [Notes 14](#) and [24](#) to the Consolidated Financial Statements for additional disclosures.

Critical Accounting Estimates

The Company's Summary of Significant Accounting Policies is provided in Item 8. The Company's discussion and analysis of its financial condition and results of operations is based on its consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires Hercules to make estimates and assumptions that affect the amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. Hercules evaluates its estimates on a regular basis, including those related to impairments of goodwill, intangible and other long-lived assets, income taxes, contingencies, including those related to litigation, environmental issues, asset retirement obligations and asbestos lawsuits and claims, pension and other benefit obligations and stock-based compensation. Hercules bases its estimates on various factors including historical experience, consultation and advice from third party subject matter experts and various assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Management reviews significant estimates and related disclosures with the Audit Committee of the Board of Directors on a regular basis. Actual results may differ from these estimates.

Hercules believes that the following accounting estimates are critical due to the significant subjectivity and judgment necessary to account for the matters or the susceptibility of such matters to change and the effect of the estimates and assumptions on its consolidated financial statements.

Goodwill and Other Intangible Assets

The Company performs an annual assessment of its goodwill and intangible assets for impairment. In addition, the Company consistently considers factors including deterioration in future economic conditions, poor operating results in the reporting units, new or stronger competitors, or changes in technology that could indicate an inability to recover the carrying value of its goodwill and intangible assets, thereby requiring an impairment in the future. To assess impairment, the Company compares its reporting units' book values of net assets, including goodwill, to its fair value. Fair value is estimated using a combination of valuation approaches including the market value and income approaches.

Income valuation methodologies are based on estimates of future cash flows discounted using a credit-adjusted risk-free rate of return ("discount rate") that essentially represents the Company's cost of capital. The estimate of future cash flows inherently involves significant management judgment as it represents a forecast of future events. In addition, the discount rate is also subject to change from year-to-year based on the relative balance of debt and equity, actual rates of interest on outstanding debt and the Company's stock price. Any change in the discount rate could have a significant impact on the discounted cash flows underlying the Company's valuations.

Other Long-Lived Assets

The Company tests other long-lived assets, including property, plant and equipment, for impairment based on an assessment of factors including deterioration in future economic conditions, poor operating results in a business, the determination that the long-lived asset is unsuitable for one reason or another, new or stronger competitors, or changes in technology, that could indicate an inability to recover the carrying value of the asset, thereby requiring an impairment in the future. In some cases, the underlying assessment is subjective in nature and represents a significant degree of judgment.

Deferred Tax Asset Valuation Allowance

The Company records a valuation allowance to reduce its deferred tax assets to an amount that is more likely than not to be realized after consideration of future taxable income and reasonable tax planning strategies. In the event that Hercules were to determine that it would not be able to realize all or part of its deferred tax assets for which a valuation allowance had not been established, or is able to utilize capital and/or operating loss carryforwards for which a valuation allowance had been established, an adjustment to the deferred tax asset will be reflected in income in the period such determination is made.

Environmental Matters and Asset Retirement Obligations

Hercules establishes reserves for environmental matters and asset retirement obligations when a legal obligation exists and the fair value of the liability can be reasonably estimated. In addition, the Company recognizes a loss for environmental-related litigation and other contingencies when it is probable that a liability has been incurred and the amount of the loss is reasonably estimable. The actual costs will depend upon numerous factors, including: the estimated useful life of the Company's manufacturing facilities and significant component assets, changes in the nature or use of existing assets and facilities, the number of parties found responsible at each environmental site and their ability to pay, the actual methods of remediation required or agreed to, outcomes of negotiations with regulatory authorities, outcomes of litigation, changes in the timing of required remedial activities, changes in the discount rates used to determine the fair value of obligations, changes in environmental laws and regulations, technological developments, the years of remedial activity required and changes in the number or financial exposures of claims, lawsuits, settlements or judgments, or in the ability to reduce such financial exposures by collecting indemnity payments from insurers. Each factor is considered sensitive to variation which could impact estimates of the timing and amount of cash flows.

Asbestos-Related Contingencies

Hercules has established reserves for asbestos-related personal injury lawsuits and claims based upon the results of an annual actuarial study of its asbestos-related liabilities by a recognized expert at a major national university. This study is based on a number of assumptions including the number of future claims, the timing and amount of future payments, disease, venue, and the dynamic nature of asbestos litigation and other circumstances. While the expert noted above has applied his methodology in determining the Company's reasonably possible range of exposures for these liabilities on a consistent basis, other methods in practice exist which place a differing degree of emphasis on the underlying variables used to measure asbestos-related contingencies. Such other methods could yield significantly different ranges of reasonably possible exposures.

Pension and Other Postretirement Benefits

Pension and other postretirement benefit obligations and the related expense (income) are determined based upon actuarial assumptions regarding mortality, medical inflation rates, discount rates, long-term return on assets, salary increases, Medicare availability and other factors. Changes in these assumptions can result in changes to the recognized pension and other postretirement benefits expense and recorded liabilities.

The assets and liabilities associated with the Company's defined benefit plans are subject to interest rate and market risk. A 100-basis point decrease or increase in the discount rate has an unfavorable or favorable impact of approximately \$195 million on the U.S. defined benefit plan's projected benefit obligation. A 100-basis point decrease or increase in the assumed rate of return has an unfavorable or favorable impact of approximately \$13 million on the estimated expense for the U.S. pension and postretirement plans in 2007 (see Note 10 to the Consolidated Financial Statements).

Stock-Based Compensation

The Company uses the Black-Scholes option pricing model to determine the fair value of stock options issued as compensation. The model determines a fair value based on a number of key variables including the grant date price of Hercules common stock and the related exercise or strike price, estimated dividend yield, estimated term of the option prior to exercise, risk free rate of interest over the estimated term and a measure of the volatility of Hercules common stock over the estimated term. Certain of these variables encompass a degree of subjectivity whose variability could result in significantly different values for the grant date fair value of stock option awards. In addition, the charge for compensation cost associated with stock options as well as restricted stock is based upon the number of awards that are expected to vest. This measure implicitly includes an estimate for forfeitures based on employee turnover, reductions in force and other factors specific to the award recipient population. Accordingly, the Company has developed an estimate for forfeitures based on recent historical experience rates that incorporate the different forfeiture and exercise patterns of officers and all other employees.

Results of Operations - Consolidated Review

Net sales for the years ended December 31, 2006, 2005 and 2004 were as follows:

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|------------------|-------------------|-------------------|-------------------|------------------|----------------|
| Net sales | \$ 2,035.3 | \$ 2,055.0 | \$ 1,984.3 | \$ (19.7) | \$ 70.7 |

Net sales for 2006 decreased approximately 1% from 2005 primarily as a result of the Company's disposition of a majority interest in FiberVisions on March 31, 2006. FiberVisions' sales during 2006 were \$69.2 million whereas 2005 included a full year in the amount of \$282.7 million. Excluding the impact of FiberVisions, net sales for 2006 increased as a result of \$183.3 million, or 24%, higher volume, \$47.8 million, or 3%, attributable to higher pricing and \$8.1 million due to favorable rates of exchange partially offset by \$45.4 million, or 2%, lower product mix. The increase in volume was attributable to a combination of Aqualon's guar and guar derivatives sales to the energy industry and MC sales resulting from the consolidation of Hercules Tianpu as well as organic growth from PTV and Aqualon's other business units. In addition, the guar and guar derivatives and MC acquisitions have significantly changed the product mix profile of Aqualon when compared to the prior year period resulting in a lower-priced product mix. Pricing increases have been implemented throughout a number of product lines for both PTV and Aqualon in order to recover raw material, energy and transportation cost increases; however, pricing pressure continued in the MC construction markets. While the Euro continued to strengthen versus the U.S. Dollar during the latter part of 2006, the average was essentially flat compared to 2005.

Net sales for 2005 increased 4% from 2004 primarily as a result of \$59.4 million, or 3%, in higher pricing and \$31.0 million, or 2%, from higher rates of exchange offset by a \$16.9 million, or 1%, decrease in volume. There was also a slight decrease of \$2.8 million attributable to a broad change in product mix. PTV and Aqualon experienced volume increases of 1% and 3%, respectively. The overall decline in volume was primarily attributable to FiberVisions as a result of the continuing trend of product substitution in favor of spunbond technology for diaper coverstock. Additional volume declines related to efforts to shed unprofitable accounts for both FiberVisions and Aqualon.

The tables below reflect Net sales per region and the percentage change from the respective prior year periods as well as the percentage change excluding the impact of rates of exchange ("ROE"):

| Regions | 2006 | 2005 | % Change | % Change Excluding ROE |
|---------------|------------|------------|----------|------------------------------|
| North America | \$ 1,003.2 | \$ 967.9 | 4% | 3% |
| Europe | 696.0 | 747.7 | (7)% | (6)% |
| Asia Pacific | 227.4 | 233.7 | (3)% | (3)% |
| Latin America | 108.7 | 105.7 | 3% | (1)% |
| All regions | \$ 2,035.3 | \$ 2,055.0 | (1)% | (1)% |

| Regions | 2005 | 2004 | % Change | % Change Excluding ROE |
|---------------|------------|------------|----------|------------------------------|
| North America | \$ 967.9 | \$ 909.6 | 6% | 6% |
| Europe | 747.7 | 761.8 | (2)% | (4)% |
| Asia Pacific | 233.7 | 214.4 | 9% | 7% |
| Latin America | 105.7 | 98.5 | 7% | (1)% |
| All regions | \$ 2,055.0 | \$ 1,984.3 | 4% | 2% |

Excluding the impact of FiberVisions, sales increased in all regions on an aggregate basis as compared to 2005. Sales in the Americas were particularly strong for both PTV and Aqualon. Within Europe, Aqualon sales continued a strong recovery from the prior year, particularly in the coatings and construction markets, while PTV continued to experience softness due to excess capacity and regional market fragmentation, continuing the trend that began during 2005. Emerging markets in China and Eastern Europe continued to provide strong growth opportunities for both PTV and Aqualon while both segments experienced more modest growth in developing markets in the Latin American and Asia Pacific regions.

During 2005, Net sales increased in North America by 6% as compared to 2004. European markets were soft due to weakened demand, aggressive competition and industry overcapacity in certain product lines, all of which limited the ability to raise prices to recapture a portion of incrementally higher costs. Despite slower growth in the established economies, emerging markets were strong. On an annual basis, Asia Pacific, including China, was up 9%, Eastern Europe was up 14% and Brazil, for PTV in particular, was up 29%. Within Asia Pacific, China was especially strong with sales up 23% across all segments.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|----------------------|-------------------|-------------------|-------------------|------------------|----------------|
| Cost of sales | \$ 1,343.4 | \$ 1,391.1 | \$ 1,291.6 | \$ (47.7) | \$ 99.5 |

Cost of sales decreased \$47.7 million, or 3%, during 2006 as compared to 2005 primarily reflecting the absence of FiberVisions' costs subsequent to March 31, 2006. As a percent of sales, cost of sales decreased to 66% in 2006 as compared to 68% in 2005, also reflecting the absence of FiberVisions, which experienced significantly rising costs for polypropylene in the prior year period. Absent the effect of FiberVisions, overall costs for raw materials and utilities were higher during 2006 as compared to 2005. Price increases and surcharges have recovered a substantial portion, but not all of the related cost increases. In addition, improved fixed cost absorption, primarily attributable to Aqualon as production remained at capacity for a number of high demand products, as well as lower freight partially offset the higher costs. On an aggregate basis, raw material and energy costs increased \$55.7 million over 2005 levels. While the rate of increase in costs has moderated, the overall trend of increasing costs has continued from the second half of 2005, when spikes occurred primarily due to the Gulf Coast hurricanes and the related impact on the raw material suppliers and logistics infrastructure.

Cost of sales increased \$99.5 million, or 8%, during 2005 as compared to 2004. As a percent of sales, cost of sales increased to 68% in 2005 as compared to 65% in 2004, primarily reflecting the acceleration of raw material, freight and energy costs at rates more rapid than those which have or could be recovered through price increases and related surcharges. These increases included record highs for certain raw materials, including polypropylene. On an aggregate basis, raw material costs increased \$76.0 million over 2004 levels. A significant portion of this increase was attributable to the hurricanes in the United States' Gulf Coast region which severely impacted petroleum and related by-product refining capabilities and damaged the distribution infrastructure, further constraining supply. A number of key suppliers declared force majeure and placed the Company on an allocation basis for certain key raw materials and feedstock derivatives. In order to maintain production and commitments to customers, alternative supply sources were utilized resulting in significantly higher cost and transportation charges. In addition to increased raw material prices, energy costs were also adversely impacted by the storms as well as a general increase in global demand. Despite these significant challenges, the Company was able to lower overall manufacturing costs primarily due to restructuring efforts in the current and prior years.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|---|-----------------|-----------------|-----------------|------------------|----------------|
| Selling, general and administrative expenses | \$ 372.2 | \$ 382.5 | \$ 382.1 | \$ (10.3) | \$ 0.4 |

Selling, general and administrative expenses ("SG&A") decreased 3% during 2006 as compared to 2005 reflecting the lower wage and employee expense base attributable to lower overall headcount from current and prior period restructuring actions. In addition, 2006 SG&A reflected lower professional fees, including audit and tax consulting fees as well as legal fees resulting from the completion and settlement attributable to PTV's patent infringement litigation. The sale of FiberVisions also contributed to the decrease. These decreases were partially offset by higher postretirement benefits costs, higher incentive compensation charges attributable to improved performance and a higher number of awards outstanding, higher bad debt charges, higher average rates of exchange and indirect costs attributable to supporting growth in the Asia Pacific region including the new joint venture, Hercules Tianpu. As a percent of sales, SG&A costs were reduced to 18% in 2006 as compared to 19% during 2005. During the first quarter of 2007, the Company expects to accelerate the amortization for certain 2004 restricted stock awards based on the anticipated achievement of certain share-price benchmarks resulting in an incremental charge of approximately \$3 million.

Despite inflation, increased rates of exchange and rising employee benefits costs, restructuring and cost rationalization efforts during 2005 and prior years allowed the Company to maintain 2005 SG&A costs at levels comparable with 2004. In addition to lower personnel-related costs, including travel and entertainment, SG&A costs in 2005 reflected lower professional and consulting fees due to a normalization of compliance efforts for Sarbanes-Oxley, and lower bad debt expense and insurance costs. These decreases were somewhat offset by higher information technology costs and higher legal defense costs primarily attributable to PTV's patent infringement litigation. As a percent of sales, SG&A costs were essentially flat at 19% when comparing 2005 to 2004.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|---------------------------------|----------------|----------------|----------------|-----------------|-----------------|
| Research and development | \$ 38.8 | \$ 40.8 | \$ 42.7 | \$ (2.0) | \$ (1.9) |

Research and development charges decreased 5% and 4% during 2006 and 2005, respectively, primarily as a result of the FiberVisions transaction and the aforementioned consolidation efforts in 2006 as well as the impact of cost containment efforts particularly with respect to Corporate research. Research and development expenses remained relatively stable at 2% as a percentage of sales for all three periods.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|--------------------------------------|--------|--------|--------|----------------|----------------|
| Intangible asset amortization | \$ 7.2 | \$ 8.0 | \$ 8.1 | \$ (0.8) | \$ (0.1) |

Intangible asset amortization decreased during 2006 primarily as a result of the absence of amortization for FiberVisions' intangible assets partially offset by increases in amortization attributable to intangible assets recognized with the Benchmark acquisition and consolidation of Hercules Tianpu. Amortization is expected to be \$7.1 million for 2007, \$6.8 million for 2008, \$5.5 million for 2009, \$5.3 million for 2010 and \$4.4 million for 2011 as various amortization terms expire.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|--|------|---------|------|----------------|----------------|
| Impairment of FiberVisions goodwill | \$ — | \$ 52.9 | \$ — | \$ (52.9) | \$ 52.9 |

In connection with the initial commitment to sell a majority interest in FiberVisions, the Company was required to test the underlying goodwill asset recorded in that segment for recoverability. The test indicated that the carrying value of goodwill exceeded its fair value. Accordingly, the Company recorded an impairment charge of \$52.9 million effective as of December 31, 2005. The impairment charge was based on an estimate of the fair value for the entire division as determined by the negotiated sales price for the sale of a majority interest.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|-------------------------------------|---------|---------|---------|----------------|----------------|
| Other operating expense, net | \$ 25.1 | \$ 39.4 | \$ 26.9 | \$ (14.3) | \$ 12.5 |

Other operating expense, net for 2006 reflects \$21.1 million in severance benefits and other exit costs resulting from the scheduled termination of approximately 300 employees, accelerated depreciation and amortization of \$5.1 million as well as \$3.2 million of asset impairment charges primarily attributable to the Company's continued execution on several restructuring and rationalization programs that began during 2005 and new programs that were initiated during 2006 (see [Note 19](#) to the Consolidated Financial Statements). The 2006 programs include the Business Infrastructure Projects, a substantial effort to de-layer and reposition management in connection with the segment realignment as well as PTV's initiation of an alliance agreement for the manufacturing and marketing of certain rosin-based sizing products. A number of these actions result in severance and termination benefits being accrued over periods during which the affected employees are required to provide continuing services. Also included in 2006 is a charge related to the settlement of a product liability claim for \$1.3 million, net of recoveries from insurance, site dismantlement costs of \$1.6 million primarily attributable to the Wilmington Research Center revitalization project, \$0.8 million of environmental charges including asset retirement obligation accretion and \$1.5 million of other miscellaneous operating costs. These costs were partially offset by gains of \$6.2 million primarily related to the disposition of excess land at operating facilities in Parlin, New Jersey, Tarragona, Spain and Alizay, France and a \$3.3 million legal settlement, net of related costs, attributable to a favorable judgment in the Company's price fixing suit against certain raw materials suppliers.

During 2005, the Company executed a number of restructuring and rationalization programs and recorded total charges of \$37.3 million, including severance and other exit costs of \$31.8 million that resulted in headcount reduction of approximately 490 employees; asset impairments of \$0.5 million; accelerated depreciation charges of \$3.5 million; and inventory and spare parts write-downs of \$1.5 million. Other charges for 2005 include \$0.7 million related to legal settlements, \$0.2 million of accretion expense attributable to asset retirement obligations for active operating sites, losses on asset dispositions of \$0.1 million and \$1.1 million for all other miscellaneous charges.

During 2004, the Company incurred \$9.6 million attributable to severance and other exit costs that resulted from the termination of approximately 160 employees. In addition, asset impairment charges of \$7.3 million were recorded reflecting \$3.6 million attributable to a raw material production line at the Hopewell, Virginia manufacturing facility, \$2.9 million related to the closure of the former Kalamazoo, Michigan manufacturing facility and \$0.5 million and \$0.3 million for certain lines at the Pendlebury, UK and Savannah, Georgia manufacturing facilities, respectively. The Company also incurred \$6.5 million of shutdown costs related to the former Nitrocellulose facility at Parlin, New Jersey as well as \$1.6 million for a special executive pension adjustment. Other charges for 2004 include \$1.0 million attributable to losses on the disposition of operating assets, \$0.4 million of accretion expense attributable to asset retirement obligations and other remediation charges for active operating sites and \$0.5 million for all other miscellaneous charges.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|----------------------------------|---------|---------|----------|----------------|----------------|
| Interest and debt expense | \$ 71.2 | \$ 89.4 | \$ 108.7 | \$ (18.2) | \$ (19.3) |

Interest and debt expense for 2006 decreased \$18.2 million, or 20%, from 2005 as a result of lower outstanding debt balances, primarily reflecting the Company's repurchase of \$113.9 million of its 11.125% notes including a \$102.9 million repurchase in April 2006 associated with a tender offer. The resulting impact was a combined reduction of \$15.8 million in interest and amortization of issuance costs. Also contributing to the reduction was an offset to interest expense of \$7.1 million attributed to the cross-currency interest rate swaps, \$1.0 million attributable to lower outstanding balances on the 6.5% junior subordinated deferrable interest debentures, \$0.8 million attributable to the absence of FiberVisions debt and \$0.3 million of lower credit facility fees. These decreases were partially offset by increasing LIBOR-based interest rates on the Company's Term B loan resulting in \$6.4 million higher interest expense and \$0.4 million related to borrowings utilized to finance Hercules Tianpu's MC capacity expansion project in China. The three-month LIBOR rate has increased by 279 basis points since the beginning of 2005 and 82 basis points during 2006.

Interest and debt expense for 2005 decreased \$19.3 million, or 18%, from 2004 primarily as a result of lower outstanding debt balances. This primarily resulted from the Company's repurchase of \$96.0 million (principal) of the 11.125% notes during 2005. The impact of debt repurchases more than offset the unfavorable effect of increasing variable rates on the Company's Term B Loan. In addition, bank fees were lower during 2005 and the Company had lower amortization of deferred debt issuance costs primarily as a result of continuing debt repurchases.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|----------------------------------|----------|---------|------|----------------|----------------|
| Vertac litigation charges | \$ 108.5 | \$ 15.0 | \$ — | \$ 93.5 | \$ 15.0 |

As a result of a ruling in the Vertac litigation, the Company recorded a \$106.0 million incremental charge, including interest in the second quarter of 2006, to increase the accrual initially provided during 2005. Interest continues to accrue on the judgment while the Company seeks review by the United States Supreme Court (see [Note 13](#) to the Consolidated Financial Statements).

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|-------------------------------------|------|------|-----------|----------------|----------------|
| Gain on sale of CP Kelco ApS | \$ — | \$ — | \$ (27.0) | \$ — | \$ 27.0 |

During 2004, the Company sold its 28% minority ownership interest in CP Kelco ApS to a subsidiary of J.M. Huber Corporation for \$27.0 million. The book value of the investment was previously written down to zero during 2002, thereby resulting in a gain equivalent to the sales proceeds.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|---------------------------|---------|---------|----------|----------------|----------------|
| Other expense, net | \$ 65.7 | \$ 71.3 | \$ 116.7 | \$ (5.6) | \$ (45.4) |

During 2006, the Company incurred charges of \$29.0 million with respect to its asbestos-related liabilities including \$20.0 million to reestablish the reserve to the appropriate level as determined by the independent reserve study and \$9.9 million for asbestos-related legal expenses partially offset by \$0.9 million of accretion income from the asbestos-insurance trusts (see [Note 13](#) to the Consolidated Financial Statements). On March 31, 2006, the Company sold a majority interest in FiberVisions for \$27.0 million and realized a loss of \$13.3 million. The loss reflects transaction costs, income tax indemnifications, the assumption of certain obligations and other post-closing adjustments including \$5.7 million of additional contributions attributable to post-closing performance (see [Note 3](#) to the Consolidated Financial Statements).

Other expenses, net for 2006 also includes \$11.4 million of premiums and debt issuance cost write-offs primarily attributable to the repurchase of the 11.125% notes, \$9.2 million for legal expenses and settlements attributable to previously divested businesses and \$6.5 million of environmental-related expenses including \$0.6 million related to asset retirement obligation accretion and revisions for former operating sites, \$3.9 million for exposures at sites for which former businesses were identified as a potentially responsible party and \$2.0 million of continuing demolition and remediation at other former operating sites. Partially offsetting these charges are certain cost recoveries related to previously divested businesses, the realization of currency translation adjustments attributable to the liquidation of certain inactive legal entities, interest and other miscellaneous income. The combined amount of these offsetting items was \$2.3 million. The Company also realized a gain of \$1.4 million on the sale of its former operating facility in Addison, Illinois.

During 2005, the Company recorded a charge of \$37.5 million to reestablish and increase its asbestos-related reserves based on the annual reserve study. In addition, the Company incurred \$9.3 million for asbestos-related litigation costs which was partially offset by \$1.6 million of accretion income from the asbestos-insurance trusts and \$0.6 million in other related insurance and legal recoveries. The Company also incurred \$7.3 million in environmental charges attributable to non-operating sites or related activities associated with previously divested businesses. Of the total, \$3.4 million was attributable to revisions in the asset retirement obligations for two sites as a result of changes in the timing of projected net cash flows, \$1.7 million related to accretion expense attributable to asset retirement obligations and \$2.2 million was for other environmental-related charges. Other expenses, net for 2005 also included charges of \$18.9 million for the settlement of several cases relating to previously divested businesses, the most significant of which related to the former Composite Products division as well as premiums of \$14.3 million for repurchases of the Company's 11.125% notes and \$1.8 million for the write-off of related unamortized debt issuance costs, partially offset by a \$1.9 million gain related to the repurchase of CRESTS Units.

These items were partially offset by \$10.9 million of gains on the disposition of properties sold during 2005 in Langhorne, Pennsylvania and Burlington, New Jersey that were non-operating facilities associated with the previously divested water treatment and resins businesses, respectively. Approximately \$4.4 million of the total gain related to the transfer of an asset retirement obligation in connection with the sale of the Burlington property. In addition, the Company realized other miscellaneous income of \$2.9 million, net of all other miscellaneous expenses.

During 2004, the Company reached settlements with a number of its insurers regarding asbestos-related claims. The effect of those settlements as well as the annual adjustment to the asbestos reserves resulted in a net charge of \$31.2 million. Other asbestos-related charges reflected litigation costs and settlements of \$17.9 million partially offset by \$0.3 million of accretion income from the asbestos-insurance trusts established as a result of the settlements. Other expenses, net for 2004 also included legal settlements of \$19.2 million primarily due to the settlement of certain litigation related to the former Composite Products division as well as other litigation attributable to previously divested businesses and activities, \$14.1 million of debt issuance costs associated with its April 2004 debt refinancing, premiums of \$30.2 million and \$4.0 million of debt issuance costs write-offs associated with the repurchase of 11.125% senior notes throughout 2004. These costs were partially offset by a \$7.3 million gain related to the repurchase of CRESTS Units.

During 2004, the Company also incurred \$7.6 million in environmental charges attributable to non-operating sites or related activities associated with previously divested businesses including \$1.6 million of accretion expense, \$4.2 million attributable to revisions in asset retirement obligations and \$0.9 million for all other environmental-related charges including demolition work at various former operating sites. The Company also recorded an asset impairment charge of \$1.9 million for the former Langhorne, Pennsylvania site in connection with its reclassification as an asset held for sale. All other miscellaneous expense and income items aggregated to net other income of \$0.9 million.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|---|------------|----------|--------|----------------|----------------|
| (Benefit) provision for income taxes | \$ (192.2) | \$ (3.8) | \$ 3.8 | \$ (188.4) | \$ (7.6) |

The effective tax benefit rate for 2006 was not meaningful when compared to income before income taxes as it was primarily impacted by the resolution of substantially all issues related to Federal tax audits for the years 1993 through 2003 and the utilization of capital loss carryforwards. The settlement of IRS audits resulted in a reversal of \$44.1 million of income tax reserves as well as \$49.7 million of tax refunds and interest income. In addition, the provision reflects a tax benefit of \$102.7 million for the expected utilization of existing capital loss carryforwards. The change in valuation allowance for deferred tax assets reflects utilization of the aforementioned capital loss carryforwards, the basis difference in the carrying value of the Company's investment in FiberVisions and the increase in state deferred tax assets.

The effective tax benefit rate for 2005 was 11%, and was impacted by a \$10.0 million reversal of federal income tax reserves due to favorable resolutions of prior year tax issues and net interest income of \$2.9 million resulting from the refund of excess cash tax deposits. These favorable benefits were offset by a \$7.1 million increase to state tax expense relating to the filing of amended income tax returns to reflect IRS audit adjustments as well as a \$7.6 million charge related to previously undistributed foreign earnings triggered by the transaction to sell a majority interest in FiberVisions. The change in the valuation allowance on deferred tax assets reflects the utilization of capital loss carryforwards, the utilization and expiration of state net operating loss carryforwards, and the impairment charge on the carrying value of FiberVisions.

The effective tax rate in 2004 of 11% reflected the benefit of the CP Kelco ApS gain and the reduction of the valuation allowance related to capital losses partially offset by an increase in tax reserves.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|--|-------------|----------|----------|----------------|----------------|
| Minority interests in earnings of consolidated subsidiaries | \$ (1.4) | \$ (1.0) | \$ (0.9) | \$ (0.4) | \$ (0.1) |

Minority interests in earnings of consolidated subsidiaries during 2006 primarily reflect the impact of the consolidation of Hercules Tianpu effective April 1, 2006 while the prior year periods primarily reflect the impact of FiberVisions' bicomponent fibers marketing joint venture entities.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|--|-------------|--------|--------|----------------|----------------|
| Equity loss of affiliated companies, net of tax | \$ (3.2) | \$ 0.5 | \$ 0.9 | \$ (3.7) | \$ (0.4) |

The equity loss for 2006 primarily includes a loss of \$3.4 million attributable to the Company's 49% interest in FiberVisions reflecting continued raw material pricing challenges, partially offset by income from certain other relatively insignificant equity investments. These equity investments generated earnings during 2005 and 2004.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|---|-------------|----------|----------|----------------|----------------|
| Net income (loss) from discontinued operations, net of tax | \$ 47.0 | \$ (6.5) | \$ (2.6) | \$ 53.5 | \$ (3.9) |

Net income from discontinued operations for 2006 includes \$48.7 million attributable to the reversal of various income tax reserves with respect to the completion and settlement of IRS audits for 2002 and 2003. These reserves were established in connection with the Betz Dearborn water treatment business disposition which was classified as a discontinued operation effective 2001. In addition, discontinued operations reflect the results of operations from the Company's terpenes specialties business. Net sales included therein are \$2.5 million, \$13.7 million and \$12.4 million for 2006, 2005 and 2004, respectively. The terpenes specialties business generated operating losses of \$2.6 million, \$9.9 million and \$4.0 million for 2006, 2005 and 2004, respectively and includes restructuring charges and other exit costs as well as asset impairment charges of \$1.6 million and \$8.1 million for 2006 and 2005, respectively.

| | 2006 | 2005 | 2004 | 2006 Change | 2005 Change |
|---|-------------|----------|------|----------------|----------------|
| Cumulative effect of changes in accounting principle, net of tax | \$ 0.9 | \$ (2.5) | \$ — | \$ 3.4 | \$ (2.5) |

As a result of the adoption of SFAS 123R effective January 1, 2006, the Company recorded a \$0.9 million benefit, net of income taxes, as a cumulative effect of a change in accounting principle (see Notes [14](#) and [24](#) to the Consolidated Financial Statements).

Effective December 31, 2005, the Company adopted the provisions of FASB Interpretation No. 47, "Conditional Asset Retirement Obligations - an Interpretation of FASB Statement No. 143" ("FIN 47") and recognized a cumulative effect adjustment of \$2.5 million, net of tax (see Notes [12](#) and [24](#) to the Consolidated Financial Statements).

Results of Operations - Segment Review

The tables below reflect Net sales and Profit from operations for the comparative periods 2006 vs. 2005 and 2005 vs. 2004, respectively. Substantially all reconciling items have been allocated to the segments.

| | <u>2006</u> | <u>2005</u> | <u>Change</u> | <u>% Change</u> |
|---------------------------------|-------------------|-------------------|------------------|-----------------|
| Net sales: | | | | |
| Paper Technologies and Ventures | \$ 1,075.3 | \$ 1,017.3 | \$ 58.0 | 6% |
| Aqualon Group | 890.8 | 755.0 | 135.8 | 18% |
| FiberVisions | 69.2 | 282.7 | (213.5) | (76)% |
| Consolidated | <u>\$ 2,035.3</u> | <u>\$ 2,055.0</u> | <u>\$ (19.7)</u> | <u>(1)%</u> |
| Profit from operations: | | | | |
| Paper Technologies and Ventures | \$ 80.8 | \$ 61.4 | \$ 19.4 | 32% |
| Aqualon Group | 187.4 | 155.5 | 31.9 | 21% |
| FiberVisions | 0.5 | (64.9) | 65.4 | NM |
| Corporate Items | (20.1) | (11.7) | (8.4) | (72)% |
| Consolidated | <u>\$ 248.6</u> | <u>\$ 140.3</u> | <u>\$ 108.3</u> | <u>77%</u> |
| | <u>2005</u> | <u>2004</u> | <u>Change</u> | <u>% Change</u> |
| Net sales: | | | | |
| Paper Technologies and Ventures | \$ 1,017.3 | \$ 978.5 | \$ 38.8 | 4% |
| Aqualon Group | 755.0 | 724.6 | 30.4 | 4% |
| FiberVisions | 282.7 | 281.2 | 1.5 | 1% |
| Consolidated | <u>\$ 2,055.0</u> | <u>\$ 1,984.3</u> | <u>\$ 70.7</u> | <u>4%</u> |
| Profit from operations: | | | | |
| Paper Technologies and Ventures | \$ 61.4 | \$ 84.5 | \$ (23.1) | (27)% |
| Aqualon Group | 155.5 | 157.9 | (2.4) | (2)% |
| FiberVisions | (64.9) | (4.1) | (60.8) | NM |
| Corporate Items | (11.7) | (5.4) | (6.3) | NM |
| Consolidated | <u>\$ 140.3</u> | <u>\$ 232.9</u> | <u>\$ (92.6)</u> | <u>(40)%</u> |

NM = not meaningful

The tables below reflect Net sales percentage changes for the years ended December 31, 2006 and 2005 as compared to the same periods in 2005 and 2004, respectively.

| <u>2006</u> | <u>Net Sales Percentage Increase (Decrease) from 2005 Due To:</u> | | | | |
|---------------------------------|---|--------------------|--------------|--------------------------|--------------|
| | <u>Volume</u> | <u>Product Mix</u> | <u>Price</u> | <u>Rates of Exchange</u> | <u>Total</u> |
| Paper Technologies and Ventures | — | 1% | 4% | 1% | 6% |
| Aqualon Group | 24% | (7)% | 1% | — | 18% |
| FiberVisions | (76)% | — | — | — | (76)% |
| Consolidated | <u>(2)%</u> | <u>(2)%</u> | <u>3%</u> | <u>—</u> | <u>(1)%</u> |
| <u>2005</u> | <u>Net Sales Percentage Increase (Decrease) from 2004 Due To:</u> | | | | |
| | <u>Volume</u> | <u>Product Mix</u> | <u>Price</u> | <u>Rates of Exchange</u> | <u>Total</u> |
| Paper Technologies and Ventures | 1% | (1)% | 1% | 3% | 4% |
| Aqualon Group | 3% | — | — | 1% | 4% |
| FiberVisions | (13)% | — | 13% | 1% | 1% |
| Consolidated | <u>(1)%</u> | <u>—</u> | <u>3%</u> | <u>2%</u> | <u>4%</u> |

Paper Technologies and Ventures

The following table reflects PTV's sales revenues on a disaggregated basis:

| | 2006 | 2005 | 2004 |
|--------------------|-------------------|-------------------|-----------------|
| Paper Technologies | \$ 851.0 | \$ 810.7 | \$ 779.0 |
| Ventures | 224.3 | 206.6 | 199.5 |
| | <u>\$ 1,075.3</u> | <u>\$ 1,017.3</u> | <u>\$ 978.5</u> |

2006 compared to 2005

PTV's sales increased \$58.0 million, or 6%, to \$1,075.3 million during 2006 as compared to \$1,017.3 million during 2005. The increase was attributable to 4% higher average prices, 1% improved product mix and 1% higher rates of exchange. The impact of volume was relatively flat. Overall, improved performance in the Americas offset the continued challenging economic conditions in the Western European paper market. Volume growth was achieved in the Americas and in Asia offsetting declines in Europe. Increased pricing was achieved in all regions with higher increases in the Americas and Asia, as opposed to Europe where price increases were more modest. In addition, revenues in emerging markets including Brazil, China, the Middle East and Africa exceeded prior year levels. In the aggregate, price increases of \$37.9 million exceeded raw material cost increases of \$36.0 million, resulting in a recovery of 105% during 2006.

Paper Technologies sales increased 5% during 2006 as compared to 2005. The increase reflects higher volumes, increased pricing and favorable rates of exchange partially offset by an unfavorable product mix. Higher volumes are primarily attributable to the marketing and manufacturing alliance for rosin size products partially offset by the continuing impact of customer bankruptcies and mill closures, particularly in Southern Europe. Price increases have been achieved in all regions of the world with the largest increase attributable to the Americas. The unfavorable product mix reflects higher sales of lower-priced functional products in both North America and emerging Asia markets.

Venture sales increased 9% during 2006 as compared to 2005. The increase reflects improved product mix as well as higher pricing and favorable rates of exchange partially offset by lower volume. The improved mix reflects higher sales of water management, lubricants and adhesive products.

PTV's success with new product launches and increasing selling prices to reflect value in both the process and functional products families represents a continuing trend as the segment has commercialized an expanding portfolio of new products and applications, including many that are environmentally friendly and are therefore more highly valued in certain regions. Most of these products provide substantially higher margins. On an aggregated basis, revenues from new product introductions during 2006 increased approximately 76% over 2005. Overall, approximately 25% of PTV's total revenues were derived from products that are less than five years old.

Profit from operations increased \$19.4 million, or 32%, to \$80.8 million during 2006 as compared to \$61.4 million for 2005. The increase reflects higher volume and improved selling prices, which contributed to the recovery of higher raw material, transportation and energy costs. In addition, PTV incurred lower SG&A expenses primarily as a result of the significant restructuring actions taken during the current and prior year. Additionally, legal fees associated with patent defense costs were substantially lower than the prior year period as the patent infringement suit was settled during 2006. The disposal of excess land at the Tarragona, Spain facility resulted in a realized gain of \$2.9 million thereby contributing to the decrease in other operating costs. These decreases were partially offset by higher corporate support costs, primarily related to incentive compensation, as well as bad debt accruals.

Primarily as a result of the rapid escalation in costs experienced in the second half of 2005 and continuing into 2006, overall costs for raw materials, transportation and energy for 2006 increased \$36.8 million over 2005 levels. In addition to energy-related price pressure, supply for certain raw materials in certain regions remains constrained. In particular, crude tall oil rosin prices remain at high levels due to high demand and limited supply, particularly in Europe. Increased demand for gum rosin in the Asia Pacific region, particularly due to domestic consumption in China and certain weather events, resulted in higher costs during 2006. Additionally, pricing for adipic acid and epichlorohydrin continues to be stable at relatively high levels and prices for methanol have increased sharply due to outages and supplier force majeure actions.

With respect to restructuring actions, PTV recorded charges of \$10.5 million during 2006 for severance benefits and other exit costs primarily attributable to continuing efforts to de-layer management and streamline the sales and marketing organization in connection with the segment realignment as well as the manufacturing rationalization attributable to PTV's rosin-sizing product alliance transaction. These costs also include charges attributable to the closing of the research facility in Jacksonville, Florida and its related relocation to Wilmington, Delaware. PTV results reflect \$3.1 million of accelerated depreciation charges of which \$2.1 million is attributable to the closure of the Pendlebury, United Kingdom manufacturing facility during the three months ended March 31, 2006. The remaining \$1.0 million is related to the closing of the Jacksonville facility and the shut-down of certain production lines at manufacturing facilities in connection with the aforementioned alliance.

2005 compared to 2004

PTV's sales increased \$38.8 million, or 4%, to \$1,017.3 million in 2005 as compared to \$978.5 million in 2004. The increase was attributable to 3% higher average rates of exchange, 1% higher volume and 1% for the impact of higher prices partially offset by a 1% change in the product sales mix. Overall sales increased 3% excluding rates of exchange, reflecting price increases related to raw materials and energy cost recovery as well as contractual pricing increases and pricing for new products. The Americas paper and paperboard markets experienced relatively stable conditions during 2005. European conditions proved somewhat challenging particularly in the established western economies and were impacted by regional events including a countrywide lockout by paper producers in Finland, which shut down production for nearly two months during 2005. Competitive conditions due to slow demand in Europe as well as capacity additions in all market sectors of Asia Pacific challenged the ability to increase prices for various products including wet-strength and rosin-based products despite raw material cost increases.

Offsetting these challenges, PTV experienced success in expanding its presence in emerging markets and growing its business from new product and technology launches. When compared to 2004, sales to customers in Brazil, Eastern Europe and China increased 29%, 17% and 21%, respectively. During 2005, revenues from new product launches were approximately \$75 million, a 97% increase as compared to 2004. Overall, PTV derived approximately 25% of its total revenues from products that are less than 5 years old during 2005.

On a disaggregated basis, Paper Technologies sales increased 4% during 2005 as compared to 2004 while Venture sales increased 3% during the same period. Paper Technologies sales reflect the aggregate trends for PTV including organic growth across the broad product spectrum in emerging markets, with general stability in North America while Western Europe remained challenging. Venture sales increased primarily as a result of an expansion of a water treatment chemical supply agreement as well as growth in the sales of adhesives products, partially offset by declines in lubricants products including pentaerythritol.

Profit from operations for PTV decreased \$23.1 million, or 27%, to \$61.4 million in 2005 as compared to \$84.5 million in 2004. The decrease in profit from operations experienced during 2005 is largely attributable to the significant increase in raw materials, energy and transportation costs that continued from 2004 and was further exacerbated by hurricanes in the United States' Gulf Coast. Despite corresponding pricing increases where applicable and where the competitive environment allowed for such actions, PTV was only able to recover approximately 57% of the cost increases for these categories. The escalation of certain costs was not able to be recaptured through price increases as rapidly due to the term nature of certain contracts.

Key feedstock derivatives including adipic acid, caustic, epichlorohydrin, ethylene and propylene-based derivatives all experienced record high costs during the latter part of 2005. In addition, supply was constrained due to a number of supplier force majeure actions resulting from hurricanes. Supply for certain materials was constrained due to infrastructure damage in the Gulf coast region. Alternative supplies and logistics were obtained from other sources where possible, including overseas, resulting in surcharges and higher transportation and air freight costs. Costs for raw materials, including gum and tall oil rosins were also adversely impacted by growing global demand particularly in China. On an aggregate basis, raw material costs increased approximately \$22 million, or 5%, over 2004 levels.

The adverse impact of the storms was estimated at approximately \$5.3 million including \$3.7 million attributable to raw materials. The impact of the paper producer action in Finland was estimated at approximately \$1.3 million in lost profitability as PTV was unable to recover all of the lost volume in the periods subsequent to the resolution.

In addition to these issues, PTV recorded \$20.6 million of charges related to several broad restructuring programs. Of the total, \$4.9 million was attributable to the actions to consolidate the research and development functions into centralized locations, \$3.0 million related to manufacturing rationalizations including accelerated depreciation and severance charges associated with the closure of the Pandaan, Indonesia manufacturing facility and the scheduled closure of the Pendlebury, UK manufacturing facility and \$12.7 million was primarily for severance charges associated with global efforts to de-layer management and support and realign the marketing organization. PTV also experienced higher legal defense costs during 2005 primarily as a result of patent infringement litigation. The reduction of SG&A costs, resulting from current and prior year restructuring activities and work process improvements, partially offset these issues.

Aqualon Group

The following table reflects Aqualon's sales revenues on a disaggregated basis:

| | 2006 | 2005 | 2004 |
|---------------------------|-----------------|-----------------|-----------------|
| Coatings and Construction | \$ 398.3 | \$ 356.4 | \$ 346.8 |
| Regulated | 188.2 | 174.1 | 157.7 |
| Energy and Specialties | 304.3 | 224.5 | 220.1 |
| | <u>\$ 890.8</u> | <u>\$ 755.0</u> | <u>\$ 724.6</u> |

2006 compared to 2005

Aqualon's sales increased \$135.8 million, or 18%, to \$890.8 million during 2006 as compared to \$755.0 million during 2005. The increase is attributable to 24% higher volume and 1% higher average prices partially offset by 7% unfavorable product mix. Approximately 42% of the total increase was attributable to Aqualon's acquisition of the guar and guar derivatives business from Benchmark and the consolidation of Hercules Tianpu. Aqualon experienced increased sales in all of its business lines.

Coatings and Construction sales increased 12% during 2006 as compared to 2005 primarily due to higher volume and favorable rates of exchange, partially offset by unfavorable product mix and lower pricing. Sales were strong in most regions, including Europe, which recovered from the general softness experienced during 2005. Sales of Coatings products into the Middle East and Asia were especially strong during the 2006 while North American growth was lower. Sales of Construction products continue to be strong in Eastern European and other emerging markets. Pricing for Coatings products was up slightly during 2006, while pricing for Construction products was lower as a result of continued pricing challenges in the MC construction products markets. However, trends in construction pricing began to turn positive heading into 2007.

Regulated industry sales increased 8% during 2006 as compared to 2005 primarily due to improved product mix, higher average prices, favorable rates of exchange and slightly higher volume. The improved mix reflects a greater concentration of higher-priced products sold into the food and pharmaceutical markets. Price increases were achieved in food and pharmaceutical products, whereas personal care was lower. Volume increased in many end-markets and regions, including China, reflecting higher pharmaceutical and personal care product sales.

Energy and Specialties sales increased 36% during 2006 as compared to 2005. The increase was due to higher volume and improved product mix, higher average prices and favorable rates of exchange. The acquisition of the guar and guar derivatives business accounted for over half of the total sales increase. Demand in the natural gas and oil services sector continued to be strong and price increases were achieved in oilfield and many specialty product families.

Aqualon continued to introduce new products into the market and expects this trend to continue and improve further in 2007. Key among those expected to have an impact are products specifically designed for tinted paint products and guar-based products including cationic guar for personal care and fast-hydrating, high-viscosity guar for oilfield and other applications. Aqualon is currently in the process of introducing Aquarius™ coating systems, a new family of dry, fully-formulated film coatings with application in pharmaceutical and nutritional supplement products. Sales from new products and applications, less than five years old, increased to 18% of total sales in 2006 from 15% in 2005.

Profit from operations for Aqualon increased \$31.9 million, or 21%, to \$187.4 million during 2006 as compared to \$155.5 million during 2005. The increase is primarily attributable to the higher volume and prices and the associated contribution margin partially offset by higher raw material and energy costs. Raw material and energy costs increased \$17.2 million as compared to 2005, reflecting the increase in costs during the latter half of 2005 that continued into 2006. Of the total, \$14.5 million was attributable directly to raw materials. Specifically, raw materials including ethylene oxide, guar splits, methyl chloride, propylene oxide, caustic, gum rosin and limonene all experienced significant increases from the prior year. The remainder is attributable to energy costs of which the majority was related to higher energy prices in Europe as a result of the expiration of a long-term fixed price contract. Pricing increases have been able to capture approximately 69% of these costs. However, downward pricing pressure continued in the MC construction product lines throughout most of 2006. SG&A costs were higher compared to the prior year, primarily reflecting increased sales and marketing, business management, incentive compensation and technology costs incurred to support growth initiatives as well as the impact of the consolidation of Hercules Tianpu. Profit from operations during 2006 also reflects realized gains of \$3.6 million attributable to the sale of excess land at the Parlin, New Jersey and Alizay, France facilities.

Aqualon incurred \$3.7 million of restructuring charges, including severance, during 2006 that were attributable to headcount reductions designed to further delay the management and sales and marketing organizations consistent with the segment realignment. In addition, contract termination costs of \$0.4 million were incurred in connection with restructuring global distribution networks.

2005 compared to 2004

Aqualon's sales increased \$30.4 million, or 4%, to \$755.0 million during 2005 as compared to \$724.6 million during 2004. The increase was attributable to a 3% increase in volume as well as 1% attributable to higher rates of exchange. Overall volume growth approximated global GDP despite unfavorable market conditions experienced in the paint and coatings market, primarily attributable to slow economic conditions in Europe. Price increases were implemented for all product lines except MC to recover increasing raw materials, energy and transportation costs. Additional price increases were announced late in the year in response to dramatic increases in the cost of certain raw materials. Excluding the impact from the MC product line, price increases provided \$12.2 million in additional revenue during 2005. Compared with 2004, Aqualon experienced strong growth in its products for both pharmaceutical and oilfield applications consistent with global conditions in both of these industries.

Coatings and construction sales increased 3% during 2005 as compared to 2004 primarily due to 4% higher volume. Construction volume increased 9% with increases obtained in all regions of the world. Emerging markets in Asia and the Middle East were particularly strong. Coatings volume decreased 2% during 2005 as compared to 2004 reflecting lower demand in European markets and modest increases in North America.

Regulated industry sales increased 10% during 2005 as compared to 2004 primarily due to 14% higher volume. Food product sales increased 20% resulting from significantly higher volume attributable to the Jiangmen acquisition and strong growth in China. The North American markets also experienced strong sales growth. Sales of personal care products increased 2% reflecting growth in emerging markets offset by lower growth in Europe. Sales of products in pharmaceutical markets increased 14% with increased volume of 5%. All regions had increased sales with strong growth in emerging markets of China and the Middle East.

Energy and Specialties sales increased 2% during 2005 as compared to 2004. Sales into energy markets increased 14% with higher volume of 7% and improved product mix and pricing. Sales in the Middle East were particularly strong. Specialty product sales were comparable to 2004 primarily reflecting lower volume of Pinova specialty products in North America.

Consistent with the Company's overall objectives for introducing and capitalizing upon new opportunities through product innovation and technology, new product launches during 2005 and continued expansion of sales of recently introduced products provided approximately 15% of Aqualon's total revenues.

Profit from operations for Aqualon decreased \$2.4 million, or 2%, to \$155.5 million during 2005 as compared to \$157.9 million during 2004. Similar to PTV, Aqualon was adversely impacted by higher raw material, energy and transportation costs. Key feedstock derivatives including ethylene oxide, methanol, acetaldehyde and ethyl chloride and raw materials including guar splits all experienced significant price spikes, and in certain circumstances supplies were constrained. In addition, energy costs continued to exert pressure on profitability, particularly in Europe. Price increases were only able to recover approximately 19% of the cost increases for these issues during 2005 primarily as a result of the timing of certain cost spikes in relation to customer pricing changes. The aggregate impact of raw material cost increases over 2004 was approximately \$18 million or 10%.

In addition to these items, Aqualon recorded \$3.3 million of charges related to a broad range of restructuring programs. Of the total, \$0.2 million relates to severance charges associated with a reconfiguration of the powerhouse utility at the Parlin, New Jersey manufacturing facility, \$1.2 million relates to actions at the Brunswick, Georgia facility and certain distribution contract termination costs, while the remaining \$1.8 million is attributable to severance charges associated with a global marketing realignment. Asset impairment charges of \$0.5 million were recorded during 2005 with respect to the termination of production of certain Pinova products at the Hattiesburg, Mississippi facility.

FiberVisions

2006 compared to 2005

FiberVisions' results of operations for the three months ended March 31, 2006 are included in the Company's consolidated results of operations. During that period, FiberVisions had sales of \$69.2 million and Profit from operations of \$0.5 million. The prior year's sales and loss from operations were \$282.7 million and \$64.9 million, respectively, which reflect a full year of operations. Effective April 1, 2006, FiberVisions' results of operations are reported within the caption Equity (loss) income of affiliated companies, net of tax. During the nine months ended December 31, 2006, the Company recognized \$3.4 million of equity losses attributable to its 49% equity interest.

2005 compared to 2004

FiberVisions' sales increased \$1.5 million, or less than 1%, to \$282.7 million during 2005 as compared to \$281.2 million during 2004. The minimal increase was attributable to a 13% increase in prices and 1% related to higher rates of exchange offset by a 13% decrease in volume. Price increases provided \$36.1 million in additional net sales compared to 2004 of which approximately 60% is attributable to contractual provisions and agreements for a pass-through of the polymer-cost component. During the latter part of 2005, FiberVisions took actions to change the customer pricing mechanisms to allow pricing pass-through on a quicker and more fully recoverable basis as well as to implement energy surcharges. Volume gains in the disposable wipes market and growth in the bi-component fiber products including family and home care applications were 17% higher than the 2004 levels. In addition, during 2005 FiberVisions expanded its business in emerging Chinese markets by \$3.7 million over 2004. However, volume declines in the diaper coverstock markets of approximately 33% due to the continuing trend of product substitution related to spunbond technology more than offset nominal growth in those other applications and market expansions. In addition, planned reductions in certain low margin or otherwise unprofitable product markets further decreased net sales volume and capacity utilization.

Profit from operations for FiberVisions decreased \$60.8 million to a loss of \$64.9 million during 2005 as compared to a loss of \$4.1 million during 2004. Included in the loss from operations is a goodwill impairment charge of \$52.9 million recorded in connection with the commitment to sell a majority interest in the division in 2006. Also included is \$4.9 million of restructuring charges. Of the total, \$3.4 million is attributable to severance charges related to the idling of certain production lines at the Covington, Georgia manufacturing facility and \$1.5 million related to the write-off of obsolete inventory and spare parts associated with discontinued products as well as the closure of the technical facility at the Varde, Denmark manufacturing facility.

Despite pricing initiatives as discussed above, and lower manufacturing as well as SG&A costs, profitability declined due to lower fixed cost absorption from lower volume and sharply higher energy and raw material costs. The aggregate increase in raw material costs during 2005 as compared to 2004 was approximately \$33 million. The most significant portion of these increases is attributable to polypropylene and polyethylene resin costs. The exacerbating effect of the hurricanes drove the cost of these materials to unprecedented levels. In addition, certain suppliers declared force majeure thereby constraining supply and requiring FiberVisions to incur additional costs in order to maintain required production levels. The average price for polypropylene as published by CDI increased 20%, or \$0.11 per pound, to \$0.67 per pound during 2005. In Europe, the price as reported by Platts increased by 166 Euro per metric ton, or 19%, as compared to 2004. The prices for these raw materials spiked with a 17% increase from September to October. Accordingly, the timing of the recovery of these rapid cost increases had an adverse impact on 2005 profitability. Energy costs increased \$2.3 million over 2004 due to significantly higher gas and electricity costs at all global manufacturing facilities.

Corporate Items

The Company allocates substantially all of its corporate support costs to the business segments. These costs include those related to cash management, treasury, legal, accounting and audit, tax, safety, information technology and other corporate services. Allocations are based on either a direct cost pass-through for items directly identified as related to segment activities; a percentage allocation for such services provided based on factors such as headcount, sales, net assets or cost of sales; or a relative weighting of geographic activity. Based on their unique nature, certain charges and credits have not been allocated to the business segments and remain as stand-alone corporate items. The most significant of these items typically appear in Other operating expense, net, although portions are also reflected in Cost of sales and SG&A, respectively, depending upon the specific nature of the items.

The following table reflects the components of those unallocated Corporate items.

| | 2006 | 2005 | 2004 |
|--|----------------|----------------|---------------|
| Severance, restructuring and other exit costs | \$ 6.5 | \$ 7.5 | \$ — |
| Asset charges (impairments and accelerated depreciation) | 5.2 | 0.5 | — |
| Legal settlements | (3.1) | 0.1 | — |
| Special executive pension adjustment | — | — | 1.6 |
| Gains on asset dispositions | — | (0.3) | — |
| Nitrocellulose facility shutdown costs | — | — | 6.5 |
| Dismantlement costs | 1.5 | — | — |
| Stranded corporate costs | 7.9 | — | — |
| Other miscellaneous charges, net | 2.1 | 3.9 | (2.7) |
| Total Corporate items | <u>\$ 20.1</u> | <u>\$ 11.7</u> | <u>\$ 5.4</u> |

Severance, restructuring and other exit costs for 2006 reflect charges related to the Research and Development consolidation and Business Infrastructure Projects and includes severance charges attributable to the termination of approximately 220 employees, a substantial portion of which are required to continue to provide services through predetermined transition periods. Also included are relocation fees, restructuring and other exit costs associated with these programs. Total asset charges of \$5.2 million include accelerated depreciation on certain assets at the Wilmington, Delaware Research Center and accelerated depreciation and impairment of certain capitalized software costs in connection with the planned upgrade of the Company's primary information technology platform. Legal settlements primarily reflect a favorable judgment in the Company's price fixing suit against certain raw materials suppliers. Dismantlement costs are primarily attributable to the revitalization project at the Wilmington Research facility. As a result of the FiberVisions transaction, Corporate items include \$7.9 million of general administrative costs that would have otherwise been allocated to the FiberVisions reporting segment. As discussed previously, the Business Infrastructure Project reflects the ongoing efforts to eliminate these costs in 2007 and future years.

Severance, restructuring and other exit costs for 2005 reflect charges related to the Corporate Realignment and Research and Development consolidation restructuring programs and include severance charges attributable to the termination of 50 employees. Also included are relocation costs attributable to the European headquarters in Schaffhausen, Switzerland and accelerated depreciation charges related to the Wilmington research facility. Corporate items for 2005 also include professional fees incurred to resolve certain legacy business matters, miscellaneous legal settlements and gains on asset dispositions, among a number of other miscellaneous charges.

Corporate items for 2004 resulted in a net expense of \$5.4 million and included charges of \$6.5 million related to the shutdown of the former Nitrocellulose facility at Parlin, New Jersey and \$1.6 million for a special executive pension adjustment, as well as professional fees incurred to resolve certain legacy business matters partially offset by a reduction in insurance claims reserves and other miscellaneous charges.

Liquidity and Capital Resources

Analysis of Cash Flows

Operating Activities

| | 2006 | 2005 |
|--|----------|----------|
| Net income (loss), depreciation, amortization and all other non-cash charges and credits | \$ 194.3 | \$ 64.8 |
| Changes in working capital, net | (13.4) | 27.2 |
| All other sources and uses of cash | (8.0) | 47.2 |
| Net cash provided by operating activities | \$ 172.9 | \$ 139.2 |

Net cash provided by operating activities improved \$33.7 million during 2006 to \$172.9 million as compared to \$139.2 million for 2005. The increase is reflective of improved operating performance, lower legal settlements related to litigation associated with former or otherwise previously divested businesses, lower interest payments and lower pension plan funding payments. Cash paid for legal settlements decreased \$29.6 million during 2006 primarily due to substantial payments made during 2005, the largest of which were attributable to litigation involving the former composites business, as well as a settlement received during 2006 related to the Company's price fixing suit against certain raw materials suppliers. Due to the substantial series of prepayments of higher cost debt during 2006 and prior years, including a tender offer, as well as the beneficial impact of the cross-currency interest rate swaps, interest payments decreased \$15.5 million during 2006. During 2006, the Company provided voluntary funding of \$37.5 million to its pension plans reflecting a decrease of \$16.2 million from 2005.

Embedded within the improved cash flow from operations are a number of specific items that required higher cash outflows or resulted in lower net receipts during 2006. The most significant are as follows: (1) income tax payments, net of refunds received, were \$19.2 million higher in 2006 primarily as a result of refunds received during 2005, (2) amounts received from the asbestos settlement trusts in excess of settlement payments, were lower by \$9.5 million during 2006 as a result of timing issues reflecting the dynamic nature of settlements, (3) payments for severance and termination benefits and other exit costs increased \$5.4 million during 2006 as a result of the timing of the implementation of the various restructuring plans, some of which were initiated during the latter part of 2005 with payments beginning or continuing into 2006, (4) settlements of asset retirement obligations increased \$10.1 million primarily as a result of the timing with respect to various remediation and work plans. Also, 2006 reflects a higher use of working capital in support of the expansion of the businesses as well as a \$7.9 million net use of cash in connection with the operations of FiberVisions during the period prior to the disposition transaction primarily resulting from higher net working capital requirements.

Investing Activities

| | 2006 | 2005 |
|--|---------|---------|
| Capital expenditures | \$ 93.6 | \$ 67.5 |
| Acquisitions and investments, net | 29.4 | 4.4 |
| Proceeds from asset and investment dispositions and all other sources, net | (28.9) | (14.2) |
| Net cash used in investing activities | \$ 94.1 | \$ 57.7 |

Net cash used in investing activities increased \$36.4 million during 2006 to \$94.1 million as compared to \$57.7 million for 2005. Capital expenditures increased by \$26.1 million primarily as a result of the significant MC expansion at Hercules Tianpu's facility and CMC expansions at the Company's Jiangmen facility. During 2006, the Company acquired Benchmark's guar and guar derivatives manufacturing business for \$20.2 million, including transaction costs. In a related transaction, the Company provided a convertible loan of \$2.5 million to BPG. The Company also completed its required initial capital contribution to the Hercules Tianpu joint venture, as well as the acquisition of subscription rights for an additional 1% interest from one of the joint venture partners resulting in total payments of \$6.0 million including transaction costs, net of \$2.6 million in cash realized upon consolidation of the joint venture. During 2005, an initial investment of \$4.4 million was provided in the form of prepaid financing for certain equipment required by Hercules Tianpu. During 2006, the Company also acquired the remaining 40% ownership interest in Shanghai Hercules for \$3.3 million including transaction costs.

In connection with the sale of the Company's 51% interest in FiberVisions, a portion of the cash realized was provided by \$27.0 million in proceeds received directly from SPG. The Company has since paid \$9.2 million in transaction costs and other post-closing adjustments including \$4.5 million of performance guarantee subsidies. In addition to these items, the Company received net proceeds of \$11.3 million during 2006 primarily related to excess land sales at certain of the Company's existing manufacturing facilities as well as the sale of the Company's former manufacturing facility in Addison, Illinois. Similar asset dispositions took place during 2005 for which \$12.3 million was attributable to the sale of properties at former operating sites in Langhorne, Pennsylvania and Burlington, New Jersey.

| <u>Financing Activities</u> | <u>2006</u> | <u>2005</u> |
|--|----------------|-------------------|
| Long-term debt payments | \$ (142.5) | \$ (131.2) |
| Long-term debt proceeds and changes in short-term debt | 27.8 | 1.9 |
| Long-term debt issued by FiberVisions, net of issuance costs | 83.7 | — |
| Proceeds from the exercise of stock options and all other sources, net | 42.6 | 2.3 |
| Net cash provided by (used in) financing activities | <u>\$ 11.6</u> | <u>\$ (127.0)</u> |

Net cash provided by financing activities during 2006 was \$11.6 million as compared to a net use of \$127.0 million during 2005. During 2006, the Company made total debt principal payments of \$142.5 million, of which \$113.9 million was attributable to repurchases of the Company's 11.125% senior notes, \$18.0 million was paid on the Term B loan, \$6.8 million was paid for FiberVisions' variable rate term loans and \$3.8 million for the Company's 6.5% junior subordinated deferrable debentures due 2029 ("6.5% debentures") in connection with the open market purchase of 5,000 CRESTS units, which consists of 6.5% debentures and warrants to purchase the Company's common stock. Total debt payments made during 2005 were \$131.2 million, of which \$96.0 million was attributable to repurchases of the 11.125% senior notes and \$12.9 million was attributable to the repurchase of 6.5% debentures in connection with the acquisition of 17,000 CRESTS units.

A total of \$22.0 million of long-term debt was issued during 2006 which was primarily attributable to Hercules Tianpu's borrowings to finance the construction project to significantly expand the MC manufacturing capacity. The credit facility for this project was arranged with the Bank of China and Hercules has provided a guarantee for 55% of the total borrowings. In addition, net short-term borrowings of \$5.8 million were made by Hercules' subsidiaries under existing credit facilities primarily in Europe and Asia. Prior to the disposition transaction in 2006, FiberVisions issued \$90.0 million of debt, net of \$6.3 million of issuance costs. In connection with this transaction, FiberVisions distributed \$82.0 million to Hercules immediately prior to the transaction closing. The FiberVisions debt is non-recourse to Hercules. The distribution and proceeds from the FiberVisions transaction were the primary sources of cash used to fund the repayment of 11.125% senior notes.

Primarily as a result of significant stock price appreciation during the fourth quarter of 2006, a substantial number of stock options were exercised resulting in proceeds of \$37.0 million. In addition, cash provided by financing activities includes \$6.2 million attributable to the income tax benefit to be realized by the Company for stock-based compensation as required by SFAS 123R. An identical amount is included as an outflow in cash from operations. A total of \$2.7 million in proceeds from the exercise of stock options was received during 2005.

Sources of Liquidity

The Company projects that cash flow from operations and other available financial resources discussed below will be sufficient to meet its investing and financing requirements and enable the Company to comply with the covenants and other terms of the Senior Credit Facility and the indentures governing the senior notes.

As of December 31, 2006, the Company had a \$550 million Senior Credit Facility with a syndicate of banks. Under the Senior Credit Facility, the Company has a \$150 million revolving credit agreement, which permits certain additional borrowings. In addition, the Company has the option to borrow until April 8, 2007, an additional \$250 million in the form of a term note under the Senior Credit Facility. As of December 31, 2006, \$44.3 million of the \$150 million Revolving Facility was available for use as the Company had \$105.7 million of outstanding letters of credit associated with the Revolving Credit Facility. In addition, the Company had \$29.3 million of foreign lines of credit available and unused.

Approximately \$41.3 million of funds remaining in one of the trusts established in 2004 related to the settlement with insurers with respect to asbestos claims reverted to the Company effective January 4, 2007. These funds were included in Asbestos-related assets on the Consolidated Balance Sheet as of December 31, 2006 and were restricted for the reimbursement of costs to resolve asbestos claims through the earlier of January 3, 2007 or the passage of federal asbestos reform legislation. Those funds are no longer restricted and are available for general corporate purposes at the Company's discretion.

In connection with the comprehensive settlement of tax years 1993 through 2003, the Company anticipates the receipt of refunds and interest in the range of \$230 million during 2007 with approximately \$12 million expected to be received during the first quarter, \$147 million during the second quarter and the remainder during the third quarter.

The Company maintains ownership over a number of properties, including land and buildings, associated with businesses that have been exited, divested or otherwise curtailed. In addition, during the normal course of business, assets associated with current operations, including such items as surplus land and excess or fully depreciated equipment and buildings among others, become available for disposition. In order to maximize their value, the Company is actively engaged in an ongoing process of identifying alternative utilization strategies including leasing and outright sales of the underlying assets and properties. When specific actions progress to the point that “plan of sale” criteria have been met, impairments, to the extent they exist, are recognized and the underlying properties are reclassified as assets held for sale. During 2006, the Company realized proceeds of \$11.3 million, net of transaction costs, attributable to the disposition of such assets. Assets held for sale are included in the caption “Other current assets” on the Consolidated Balance Sheets. As of December 31, 2006, there were no assets or properties that met the “plan of sale” criteria. However, the Company is pursuing a number of dispositions that it expects will meet the recognition criteria or settle during the first half of 2007.

There are generally no material restrictions on the remittance of funds generated by the Company's operations outside the United States except in certain regions of Asia Pacific and Latin America.

Financial Condition

Total debt at December 31, 2006 was \$995.5 million, which decreased \$113.5 million from \$1,109.0 million at December 31, 2005 primarily as a result of the debt payments and repurchases discussed above. Cash balances increased to \$171.8 million at December 31, 2006 from \$77.3 million at December 31, 2005.

Working capital management represents a key performance measure for the Company. Total trade accounts receivable, inventories and accounts payable increased at year-end 2006 by \$36.9 million, \$31.0 million and \$32.4 million, respectively, over year-end 2005 levels primarily as a result of growth attributable to acquisitions and investments. Despite these absolute increases in working capital and excluding the impact of FiberVisions, days sales outstanding (“DSO”) improved by two days to 60 days and days sales in inventory (“DSI”) improved by four days to 57 days from year-end 2005. Days payable outstanding (“DPO”) increased by one day to 53 days from year-end 2005 levels. Overall, the Company's cash cycle time, or DSO plus DSI less DPO, improved by a total of five days to 64 days as of the end of 2006. The Company expects further, but more modest, improvements in the cash cycle time during 2007 as progress continues with ongoing working capital initiatives.

Commitments and Contractual Obligations

Capital Expenditures and Other Investing Commitments

Capital expenditures are projected to total approximately \$117 million during 2007. Of the total, approximately 29% will be attributable to PTV, 60% for Aqualon and 11% for Corporate purposes. Significant project commitments for 2007 include the development of a technical center in Shanghai, China for PTV, the continued expansion of Aqualon's CMC capacity at the Jiangmen, China facility as well as the construction of an Aqualon HEC plant in Nanjing, China and the initial phase of a comprehensive upgrade of the Company's primary information technology platform.

In connection with the Benchmark transaction, Aqualon is committed to providing an earn-out payment of \$1.4 million during 2007 based on Benchmark's 2006 performance. A similar commitment is in place for the next four years in the amount of \$1.8 million annually contingent upon the achievement of certain performance metrics. The Company is also committed to providing \$1.2 million to FiberVisions during 2007 in the form of an additional contribution in the event that certain financial benchmarks are not achieved. There are no further commitments to FiberVisions beyond 2007.

Pension Plan Funding

At the present time, the U.S. defined benefit pension plan is at a sufficient funding level as to not require ERISA mandated contributions. The Company has determined, however, that it is in the best interests of the Company and its pension plan participants to continue to make voluntary contributions to the plan. If the U.S. qualified pension plan performs in accordance with actuarial assumptions, the Company presently anticipates making voluntary cash contributions of \$40 million during 2007.

On August 17, 2006, the Pension Protection Act of 2006 (the “Act”) was signed into law. While there are a number of administrative implications to the U.S.-based pension plan as well as the Company's U.S.-based postretirement and defined contribution plans, the existing funding strategy for the pension plan is anticipated to meet or exceed the current requirements. Accordingly, the Act is not expected to have a material impact on the Company's cash requirements for pension plan funding.

As discussed in more detail in Note 13 to the Consolidated Financial Statements, the anticipated settlement of the class action suit Samuel J. Webster, et al. v. Hercules, Inc.; The Pension Plan of Hercules Inc.; The Hercules Inc. Finance Committee; and Edward V. Carrington, Hercules' Vice President Human Resources, (the "Pension litigation") is expected to result in an increase to the U.S. pension plans' projected benefit obligation of approximately \$18.2 million. However, the proposed settlement of the Pension litigation is not expected to have a material impact on the Company's anticipated pension funding requirements.

Funding for Litigation, Environmental and Asset Retirement Obligations

As referenced previously and as discussed in Note 13 to the Consolidated Financial Statements, the Company is seeking review of the Vertac litigation by the U.S. Supreme Court. The Company will continue to accrue interest on the recorded obligation amount until such time as the Final Judgment is either reversed or is paid. If the Company is ultimately required to pay such amount to the United States, an event which could occur in 2007 or thereafter, the payment of such amount could have a material adverse effect upon the Company's cash flows in such annual, quarterly or other period. While this matter has been under appeal and continuing through the current period, the Company has posted an appeal bond which is partially supported by letters of credit included in the amount of letters of credit outstanding as disclosed above.

As of December 31, 2006, the Company has recorded \$81.6 million for environmental and other asset retirement matters involving current and former operating sites, including those with identified asset retirement obligations as well as other locations where the Company may have a known liability, excluding the Vertac site. The annual costs required for remediation and similar asset retirement activities are generally funded from operations as well as proceeds from the disposition of assets. While such obligations are bound by legal, statutory or contractual provisions, the Company has a certain degree of discretion with respect to the timing and magnitude of cash expenditures within a given range of periods. However, unfavorable developments regarding legal, regulatory or operating matters with respect to any existing sites as well as unknown exposures could have a material adverse effect on cash requirements for any annual, quarterly or other period.

Debt Retirement

In December 2006, the Board of Directors authorized the Company, from time to time, subject to market conditions and provisions of the Company's credit agreements and indentures, to repurchase up to \$200 million of its outstanding indebtedness.

The 6.6% notes due 2027 may be put to the Company at the option of the bondholders at a redemption price equal to 100% of the principal amount or \$100.0 million on August 1, 2007 if the bond holders exercise this option. The Company intends to address this eventuality from available cash on hand.

Contractual Obligations

The Company's contractual obligations as of December 31, 2006 are summarized as follows:

| | Payments Due by Period ⁽¹⁾ | | | | |
|--|---------------------------------------|---------------------|-------------------|-------------------|------------------|
| | Total | Less than 1 year | 1 - 3 years | 3 - 5 years | After 5 years |
| Debt obligations | \$ 995.5 | \$ 35.8 | \$ 21.5 | \$ 374.1 | \$ 564.1 |
| Operating lease obligations | 101.0 | 18.9 | 44.6 | 22.8 | 14.7 |
| Purchase obligations ⁽²⁾ | 3,794.2 | 683.6 | 1,475.6 | 1,624.0 | 11.0 |
| Other liabilities reflected on the registrant's balance sheet under GAAP ⁽³⁾ | 667.4 | 224.2 | 72.9 | 53.8 | 316.5 |
| Total contractual cash obligations | \$ 5,558.1 | \$ 962.5 | \$ 1,614.6 | \$ 2,074.7 | \$ 906.3 |

⁽¹⁾Does not include the anticipated future interest payments to be made under the Company's current debt agreements; however, based upon current indebtedness and interest rates at December 31, 2006, such interest obligations are estimated to be approximately \$72.2 million in 2007, \$70.2 million in 2008, \$69.9 million in 2009, \$69.7 million in 2010, \$41.8 million in 2011 and \$730.1 million thereafter. A one percent increase or decrease in the LIBOR rate would have an impact of approximately plus or minus \$3.7 million on the Company's interest payments in years 2007 through 2011.

⁽²⁾Obligations relates primarily to raw material requirements and service contracts.

⁽³⁾Includes amounts pertaining to asbestos-related matters, asset retirement obligations, post-employment and post-retirement obligations and workers compensation claims. Due to the dynamic nature of asbestos litigation, it is impractical to determine the anticipated payments in any given year. Therefore, the non-current asbestos-related liability of \$233.6 million has been reflected in the after five years column.

Indemnifications

Reference is made to [Note 13](#) to the Consolidated Financial Statements for a thorough discussion of indemnifications.

Off-Balance Sheet Arrangements

The Company has no relationships with any unconsolidated, special-purpose entities or other legal entities established for the purpose of facilitating off-balance sheet financial arrangements.

Recent Accounting Pronouncements

Reference is made to the Summary of Significant Accounting Policies included in the Consolidated Financial Statements for a discussion and analysis of recently issued accounting pronouncements and their impact on the Company.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Fluctuations in interest and foreign currency exchange rates affect the Company's financial position and results of operations. The Company has used several strategies to actively hedge interest rate and foreign currency exposure and minimize the effect of such fluctuations on reported earnings and cash flow (see "Foreign Currency Translation" and "Derivative Instruments and Hedging" in the Summary of Significant Accounting Policies and [Note 28](#) to the Consolidated Financial Statements). Sensitivity of the Company's financial instruments to selected changes in market rates and prices, which are reasonably possible over a one-year period, are described below. The market values for foreign exchange and interest rate risk are calculated by the Company utilizing a third-party software package that employs standard pricing models to determine the present value of the instruments based on the market conditions as of the valuation date.

Foreign Exchange Rate Risk

Our financial instruments subject to foreign currency exchange risk consist of foreign currency forwards and options and represent a net liability position of \$0.1 million and \$0.2 million at December 31, 2006 and 2005, respectively. The following sensitivity analysis assumes an instantaneous 10% change in foreign currency exchange rates from year-end levels, with all other variables held constant. A 10% strengthening of the U.S. dollar versus other currencies at December 31, 2006 would result in a negligible change and a \$0.1 million increase for the year ended 2005 in the net position, while a 10% weakening of the dollar versus all currencies would result in a \$0.5 million and a \$0.1 million increase, respectively, in the net position.

The Company also utilizes cross currency interest rate swaps to hedge the foreign currency exposure associated with its net investment in certain foreign operations. At December 31, 2006, the net market value of the swaps was a liability of \$53.2 million. A 10% strengthening of the Euro versus the U.S. dollar at December 31, 2006 would result in a \$55.3 million increase in the liability, while a 10% weakening of the Euro versus the U.S. dollar would result in a \$55.3 million decrease in the liability. Changes in the underlying interest rates would have an insignificant impact.

Interest Rate Risk

The Company's derivative and other financial instruments subject to interest rate risk consist substantially of debt instruments (see [Note 28](#) to the Consolidated Financial Statements). At December 31, 2006 and 2005, net market value of these combined instruments was a liability of \$964.2 million and \$1,092.4 million, respectively. The sensitivity analysis assumes an instantaneous 100-basis point move in interest rates from their levels, with all other variables held constant. A 100-basis point increase in interest rates at December 31, 2006 and 2005 would result in a \$60.5 million and a \$59.1 million decrease, respectively, in the net market value of the liability. A 100-basis point decrease in interest rates at December 31, 2006 and 2005 would result in a \$62.7 million and a \$63.9 million increase, respectively, in the net market value of the liability.

Commodity Price Risk

The Company has in the past hedged a portion of its natural gas requirements up to one year into the future. During 2006, the Company recognized a loss of \$1.2 million as a component of Cost of sales in connection with the hedging of a portion of its domestic natural gas requirements. As of December 31, 2006, there were no natural gas hedges in place.

Derivative Financial Instruments

Foreign exchange forward and option contracts have been used to hedge the Company's firm and anticipated foreign currency cash flows. Thus, there is either an asset or cash flow exposure related to all the financial instruments in the above sensitivity analysis for which the impact of a movement in exchange rates would be in the opposite direction and substantially equal to the impact on the instruments in the analysis. With respect to commodity hedging, the Company has utilized derivative instruments including forward contracts.

Other than cross currency interest swaps to hedge the foreign currency exposure, the Company has not designated any derivative as a hedge instrument under Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133") and, accordingly, changes in the fair value of derivatives are recorded each period in earnings.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS AND
REQUIRED SUPPLEMENTARY DATA

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Management's Report on Internal Control Over Financial Reporting

The management of Hercules is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended. Hercules' internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Because of the inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Hercules' management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2006. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in *Internal Control-Integrated Framework*. Based on this assessment, management has concluded that, as of December 31, 2006, the Company's internal control over financial reporting was effective based on those criteria.

Management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2006 has been audited by BDO Seidman, LLP, the Company's independent registered public accounting firm, as stated in their report, which appears herein.

/s/ Craig A. Rogerson

President and Chief Executive Officer

February 28, 2007

/s/ Allen A. Spizzo

Vice President and Chief Financial Officer

February 28, 2007

Report of Independent Registered Public Accounting Firm

Board of Directors and Shareholders
Hercules Incorporated
Wilmington, Delaware

We have audited the accompanying consolidated balance sheets of Hercules Incorporated as of December 31, 2006 and 2005 and the related consolidated statements of operations and comprehensive income (loss), stockholders' equity (deficit), and cash flows for each of the two years in the period ended December 31, 2006. Our audits also included the financial statement schedule for the two years in the period ended December 31, 2006 as listed in Item 15(a). These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements and financial statement schedule are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements and financial statement schedule, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements and financial statement schedule. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Hercules Incorporated and its subsidiaries at December 31, 2006 and 2005 and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2006, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the financial statement schedule presents fairly, in all material respects, the information set forth therein.

We have also audited the adjustments to the 2004 financial statements to retrospectively apply the realignment of reporting segments as described in Note 1 and Note 27. Also, we audited the adjustments to the 2004 financial statements to reclassify the assets, liabilities and operating results of the terpenes specialties business as a discontinued operation as described in Note 23. In our opinion, such adjustments are appropriate and have been properly applied. We were not engaged to audit, review, or apply any procedures to the 2004 financial statements of the Company other than with respect to the adjustments and, accordingly, we do not express an opinion or any other form of assurance of the 2004 financial statements taken as a whole.

As discussed in Note 24 to the consolidated financial statements, Hercules Incorporated changed its method of accounting effective December 31, 2006 for defined benefit pension and other postretirement plans as a result of adopting SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans".

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Hercules Incorporated's internal control over financial reporting as of December 31, 2006, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated February 27, 2007 expressed an unqualified opinion thereon.

/s/ BDO Seidman, LLP
Bethesda, Maryland
February 27, 2007

**Report of Independent Registered Public Accounting Firm
on Internal Control over Financial Reporting**

Board of Directors and Shareholders
Hercules Incorporated
Wilmington, Delaware

We have audited management's assessment, included in the accompanying Management's Report on Internal Control over Financial Reporting, that Hercules Incorporated maintained effective internal control over financial reporting as of December 31, 2006, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Hercules Incorporated's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that Hercules Incorporated maintained effective internal control over financial reporting as of December 31, 2006, is fairly stated, in all material respects, based on the COSO criteria. Also in our opinion, Hercules Incorporated maintained, in all material respects, effective internal control over financial reporting as of December 31, 2006, based on the COSO criteria.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the accompanying consolidated balance sheets of Hercules Incorporated as of December 31, 2006 and 2005, and the related consolidated statements of operations and comprehensive income (loss), changes in stockholders equity (deficit) and cash flows for each of the two years in the period ended December 31, 2006 and our report dated February 27, 2007 expressed an unqualified opinion.

/s/ BDO Seidman, LLP
Bethesda, Maryland
February 27, 2007

Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors of Hercules Incorporated:

In our opinion, the consolidated statements of income and comprehensive income, of shareholders' equity and of cash flows for the period ended December 31, 2004, before the effects of the adjustments to retrospectively reflect discontinued operations and the change in the composition of reportable segments described in Notes 23 and 27, respectively, present fairly, in all material respects, the results of operations and cash flows of Hercules Incorporated and its subsidiaries for period ended December 31, 2004, in conformity with accounting principles generally accepted in the United States of America (the 2004 financial statements before the effects of the adjustments discussed in Notes 23 and 27 are not presented herein). In addition, in our opinion, the financial statement schedule, for the period ended December 31, 2004 presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audit. We conducted our audit, before the effects of the adjustments described above, of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

We were not engaged to audit, review, or apply any procedures to the adjustments to retrospectively reflect discontinued operations and the change in the composition of reportable segments described in Notes 23 and 27, respectively, and accordingly, we do not express an opinion or any other form of assurance about whether such adjustments are appropriate and have been properly applied. The audit of these adjustments was performed by other auditors.

/s/ PricewaterhouseCoopers LLP
Philadelphia, Pennsylvania
March 16, 2005

Hercules Incorporated
Consolidated Statements of Operations and Comprehensive Income (Loss)
(Dollars in millions, except per share data)

| | Year Ended December 31, | | |
|--|-------------------------|------------|------------|
| | 2006 | 2005 | 2004 |
| Net sales | \$ 2,035.3 | \$ 2,055.0 | \$ 1,984.3 |
| Cost of sales | 1,343.4 | 1,391.1 | 1,291.6 |
| Selling, general and administrative expenses | 372.2 | 382.5 | 382.1 |
| Research and development | 38.8 | 40.8 | 42.7 |
| Intangible asset amortization (Note 7) | 7.2 | 8.0 | 8.1 |
| Impairment of FiberVisions goodwill (Note 3) | — | 52.9 | — |
| Other operating expense, net (Note 20) | 25.1 | 39.4 | 26.9 |
| Profit from operations | 248.6 | 140.3 | 232.9 |
| Interest and debt expense (Note 21) | 71.2 | 89.4 | 108.7 |
| Vertac litigation charges (Note 13) | 108.5 | 15.0 | — |
| Gain on sale of CP Kelco ApS (Note 3) | — | — | (27.0) |
| Other expense, net (Notes 3 and 22) | 65.7 | 71.3 | 116.7 |
| Income (loss) before income taxes, minority interests and equity (loss) income | 3.2 | (35.4) | 34.5 |
| (Benefit) provision for income taxes (Note 9) | (192.2) | (3.8) | 3.8 |
| Income (loss) before minority interests and equity loss (income) | 195.4 | (31.6) | 30.7 |
| Minority interests in earnings of consolidated subsidiaries | (1.4) | (1.0) | (0.9) |
| Equity (loss) income of affiliated companies, net of tax | (3.2) | 0.5 | 0.9 |
| Net income (loss) from continuing operations before discontinued operations and cumulative effect of changes in accounting principle | 190.8 | (32.1) | 30.7 |
| Net income (loss) from discontinued operations, net of tax (Note 23) | 47.0 | (6.5) | (2.6) |
| Net income (loss) before cumulative effect of changes in accounting principle | 237.8 | (38.6) | 28.1 |
| Cumulative effect of changes in accounting principle, net of tax (Note 24) | 0.9 | (2.5) | — |
| Net income (loss) | \$ 238.7 | \$ (41.1) | \$ 28.1 |
| Earnings (loss) per share (Note 26): | | | |
| Basic earnings (loss) per share | | | |
| Continuing operations | \$ 1.72 | \$ (0.30) | \$ 0.28 |
| Discontinued operations | 0.42 | (0.06) | (0.02) |
| Cumulative effect of change in accounting principle | 0.01 | (0.02) | — |
| Net income (loss) | \$ 2.15 | \$ (0.38) | \$ 0.26 |
| Weighted average number of shares (millions) | 110.8 | 108.7 | 107.3 |
| Diluted earnings (loss) per share | | | |
| Continuing operations | \$ 1.71 | \$ (0.30) | \$ 0.28 |
| Discontinued operations | 0.42 | (0.06) | (0.02) |
| Cumulative effect of change in accounting principle | 0.01 | (0.02) | — |
| Net income (loss) | \$ 2.14 | \$ (0.38) | \$ 0.26 |
| Weighted average number of shares (millions) | 111.3 | 108.7 | 109.0 |
| Net income (loss) | \$ 238.7 | \$ (41.1) | \$ 28.1 |
| Foreign currency translation | 58.7 | (72.1) | 71.1 |
| Decrease (increase) in additional minimum pension liability, net of tax, due to | | | |
| Remeasurement adjustments | 85.0 | (44.3) | (28.2) |
| Foreign currency translation | (4.1) | 5.5 | (1.4) |
| Revaluation of hedges, net of tax | (34.6) | — | — |
| Other, net of tax | (0.5) | (0.3) | — |
| Comprehensive income (loss) | \$ 343.2 | \$ (152.3) | \$ 69.6 |

The accompanying accounting policies and notes are an integral part of the consolidated financial statements.

Hercules Incorporated
Consolidated Balance Sheets

(Dollars in millions)

| | December 31, | |
|---|-------------------|-------------------|
| | 2006 | 2005 |
| ASSETS | | |
| Current assets | | |
| Cash and cash equivalents | \$ 171.8 | \$ 77.3 |
| Accounts receivable, net (Note 5) | 326.6 | 289.7 |
| Inventories (Note 6) | 210.6 | 179.6 |
| Deferred income taxes (Note 9) | 70.2 | 39.3 |
| FiberVisions assets held for sale (Note 3) | — | 202.7 |
| Current assets of discontinued operations (Note 23) | 0.4 | 6.7 |
| Income taxes receivable (Note 9) | 170.8 | 12.6 |
| Other current assets | 34.1 | 35.5 |
| Total current assets | 984.5 | 843.4 |
| Property, plant and equipment, net (Note 18) | 600.4 | 535.4 |
| Intangible assets, net (Note 7) | 143.1 | 142.8 |
| Goodwill (Note 7) | 481.5 | 441.0 |
| Deferred income taxes (Note 9) | 374.6 | 240.4 |
| Asbestos-related assets (Note 13) | 87.5 | 120.7 |
| Deferred charges and other assets (Note 18) | 136.9 | 245.1 |
| Total assets | \$ 2,808.5 | \$ 2,568.8 |
| LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT) | | |
| Current liabilities | | |
| Accounts payable | \$ 205.3 | \$ 172.9 |
| FiberVisions liabilities held for sale (Note 3) | — | 66.6 |
| Asbestos-related liabilities (Note 13) | 36.4 | 36.4 |
| Current debt obligations (Note 8) | 35.8 | 16.7 |
| Vertac litigation liability (Note 13) | 123.5 | — |
| Accrued expenses (Note 18) | 228.6 | 217.0 |
| Current liabilities of discontinued operations (Note 23) | — | 2.8 |
| Total current liabilities | 629.6 | 512.4 |
| Long-term debt (Note 8) | 959.7 | 1,092.3 |
| Deferred income taxes (Note 9) | 69.7 | 75.8 |
| Pension obligations (Note 10) | 262.5 | 323.4 |
| Other postretirement benefit obligations (Note 10) | 142.2 | 65.5 |
| Deferred credits and other liabilities (Note 18) | 255.6 | 289.4 |
| Asbestos-related liabilities (Note 13) | 233.6 | 233.6 |
| Total liabilities | 2,552.9 | 2,592.4 |
| Commitments and contingencies (Note 13) | | |
| Minority interests | 12.7 | 1.1 |
| Stockholders' equity (deficit) | | |
| Series preferred stock (Note 15) | — | — |
| Common stock, \$25/48 stated value (Note 16) | | |
| (shares issued: 2006 - 159,997,929 and 2005 - 159,984,444) | 83.3 | 83.3 |
| Additional paid-in capital | 454.9 | 548.9 |
| Unearned compensation (Notes 11) | (42.1) | (65.7) |
| Accumulated other comprehensive losses (Note 17) | (409.6) | (387.6) |
| Retained earnings | 1,734.1 | 1,495.4 |
| | 1,820.6 | 1,674.3 |
| Reacquired stock, at cost (shares: 2006 - 43,969,769 and 2005 - 47,247,344) | (1,577.7) | (1,699.0) |
| Total stockholders' equity (deficit) | 242.9 | (24.7) |
| Total liabilities and stockholders' equity (deficit) | \$ 2,808.5 | \$ 2,568.8 |

The accompanying accounting policies and notes are an integral part of the consolidated financial statements.

Hercules Incorporated
Consolidated Statements of Cash Flows
(Dollars in millions)

| | Year Ended December 31, | | |
|--|-------------------------|----------------|-----------------|
| | 2006 | 2005 | 2004 |
| Cash Flow From Operating Activities: | | | |
| Net income (loss) | \$ 238.7 | \$ (41.1) | \$ 28.1 |
| Adjustments to reconcile net income (loss) to net cash provided by operations: | | | |
| Depreciation | 70.7 | 80.5 | 74.9 |
| Amortization | 24.6 | 25.4 | 26.3 |
| Deferred income tax provision | (157.8) | (54.9) | (18.7) |
| Gain on disposals | (9.0) | (11.8) | (28.0) |
| Impairment charges | 3.2 | 58.6 | 9.1 |
| Write-off of debt issuance costs | 1.5 | 1.8 | 18.0 |
| Loss on sale of 51% interest in FiberVisions | 13.3 | — | — |
| Minority interests in earnings of consolidated subsidiaries | 1.4 | 1.0 | 0.9 |
| Other non-cash charges and credits | 7.7 | 5.3 | 0.8 |
| Accruals and deferrals of cash receipts and payments (net of acquisitions and dispositions): | | | |
| Accounts receivable, net | (17.5) | 2.9 | (7.6) |
| Inventories | (8.7) | (3.3) | 4.0 |
| Asbestos-related assets and liabilities, net | 37.1 | 61.3 | 40.2 |
| Other current assets | 5.0 | (10.7) | 20.7 |
| Accounts payable and accrued expenses | 3.9 | 28.2 | 5.0 |
| Vertac litigation liability | 123.5 | — | — |
| Income taxes payable | (125.1) | 27.1 | (25.4) |
| Pension and postretirement benefits | (7.9) | (18.3) | (23.1) |
| Non-current assets and liabilities | (23.8) | (12.8) | (4.7) |
| FiberVisions net assets held for sale | (7.9) | — | — |
| Net cash provided by operating activities | <u>172.9</u> | <u>139.2</u> | <u>120.5</u> |
| Cash Flow From Investing Activities: | | | |
| Capital expenditures | (93.6) | (67.5) | (77.4) |
| Acquisitions and investments, net of cash recognized upon consolidation | (29.4) | (4.4) | — |
| Proceeds from sale of 51% interest in FiberVisions, net of transaction costs | 17.8 | — | — |
| Proceeds of fixed asset disposals | 11.3 | 16.6 | 1.4 |
| Proceeds from sale of minority interest in CP Kelco ApS | — | — | 27.0 |
| Other, net | (0.2) | (2.4) | (0.1) |
| Net cash used in investing activities | <u>(94.1)</u> | <u>(57.7)</u> | <u>(49.1)</u> |
| Cash Flow From Financing Activities: | | | |
| Long-term debt issued by FiberVisions, net of issuance costs | 83.7 | — | — |
| Long-term debt proceeds | 22.0 | — | 650.0 |
| Long-term debt payments | (142.5) | (131.2) | (729.5) |
| Change in short-term debt | 5.8 | 1.9 | 1.6 |
| Proceeds from the exercise of stock options | 37.0 | 2.7 | 5.5 |
| Payment of debt issuance costs and underwriting fees | — | — | (7.8) |
| Other, net | 5.6 | (0.4) | 6.1 |
| Net cash provided by (used in) financing activities | <u>11.6</u> | <u>(127.0)</u> | <u>(74.1)</u> |
| Effect of exchange rate changes on cash | 4.1 | (3.7) | 2.9 |
| Net increase (decrease) in cash and cash equivalents | 94.5 | (49.2) | 0.2 |
| Cash and cash equivalents at beginning of year | 77.3 | 126.5 | 126.3 |
| Cash and cash equivalents at end of year | <u>\$ 171.8</u> | <u>\$ 77.3</u> | <u>\$ 126.5</u> |

The accompanying accounting policies and notes are an integral part of the consolidated financial statements.

Hercules Incorporated
Consolidated Statements of Stockholders' Equity (Deficit)
(Dollars in millions)

| | Common Stock | Paid-in Capital | Unearned Compen- sation | Accumulated Other Comprehen- sive Losses | Retained Earnings | Reacquired Stock | Total |
|--|-----------------|--------------------|-------------------------------|---|----------------------|---------------------|-----------|
| Balances at January 1, 2004 | \$ 83.3 | \$ 603.4 | \$ (86.2) | \$ (317.9) | \$ 1,508.4 | \$ (1,765.6) | \$ 25.4 |
| <i>(Common shares: issued, 159,984,444; reacquired, 48,992,628)</i> | | | | | | | |
| Net income | — | — | — | — | 28.1 | — | 28.1 |
| Foreign currency translation adjustment | — | — | — | 69.7 | — | — | 69.7 |
| Release of shares held by ESOP trust | — | (5.0) | 13.3 | — | — | — | 8.3 |
| Increase in additional minimum pension liability, net of tax | — | — | — | (28.2) | — | — | (28.2) |
| Issuances of treasury stock, net of forfeitures | — | (29.2) | (8.0) | — | — | 42.8 | 5.6 |
| Amortization of unearned compensation | — | — | 3.0 | — | — | — | 3.0 |
| Balances at December 31, 2004 | \$ 83.3 | \$ 569.2 | \$ (77.9) | \$ (276.4) | \$ 1,536.5 | \$ (1,722.8) | \$ 111.9 |
| <i>(Common shares: issued, 159,984,444; reacquired, 47,842,836)</i> | | | | | | | |
| Net loss | — | — | — | — | (41.1) | — | (41.1) |
| Foreign currency translation adjustment | — | — | — | (66.6) | — | — | (66.6) |
| Release of shares held by ESOP trust | — | (5.0) | 12.8 | — | — | — | 7.8 |
| Repurchase of warrants | — | (2.0) | — | — | — | — | (2.0) |
| Increase in additional minimum pension liability, net of tax | — | — | — | (44.3) | — | — | (44.3) |
| Issuances of treasury stock, net of forfeitures | — | (13.3) | (8.5) | — | — | 23.8 | 2.0 |
| Amortization of unearned compensation | — | — | 7.9 | — | — | — | 7.9 |
| Other, net of tax | — | — | — | (0.3) | — | — | (0.3) |
| Balances at December 31, 2005 | \$ 83.3 | \$ 548.9 | \$ (65.7) | \$ (387.6) | \$ 1,495.4 | \$ (1,699.0) | \$ (24.7) |
| <i>(Common shares: issued, 159,984,444; reacquired, 47,247,344)</i> | | | | | | | |
| Net income | — | — | — | — | 238.7 | — | 238.7 |
| Foreign currency translation adjustment | — | — | — | 54.6 | — | — | 54.6 |
| Release of shares held by ESOP trust | — | (6.4) | 11.5 | — | — | — | 5.1 |
| Repurchase of warrants | — | (1.0) | — | — | — | — | (1.0) |
| Decrease in additional minimum pension liability, net of tax | — | — | — | 85.0 | — | — | 85.0 |
| Recognition of funded status of pension and postretirement benefit plans, net of tax | — | — | — | (126.5) | — | — | (126.5) |
| Issuances of treasury stock, net of forfeitures | — | (74.7) | — | — | — | 121.3 | 46.6 |
| Reclassification required by SFAS 123R | — | (12.1) | 12.1 | — | — | — | — |
| Conversion of debentures | — | 0.2 | — | — | — | — | 0.2 |
| Revaluation of hedges, net of tax | — | — | — | (34.6) | — | — | (34.6) |
| Other, net of tax | — | — | — | (0.5) | — | — | (0.5) |
| Balances at December 31, 2006 | \$ 83.3 | \$ 454.9 | \$ (42.1) | \$ (409.6) | \$ 1,734.1 | \$ (1,577.7) | \$ 242.9 |
| <i>(Common shares: issued, 159,997,929; reacquired, 43,969,769)</i> | | | | | | | |

The accompanying accounting policies and notes are an integral part of the consolidated financial statements.

Hercules Incorporated
Summary of Significant Accounting Policies
(Dollars in millions, except per share data)

Nature of Business

Hercules Incorporated (“Hercules” or the “Company”) was incorporated in 1912 under the laws of the State of Delaware and its shares are traded on the New York Stock Exchange under the symbol “HPC.” The Company is a leading manufacturer and marketer of specialty chemicals and related services for a broad range of business, consumer and industrial applications and has approximately 4,430 employees worldwide. The Company has a broad customer base, with no single customer representing greater than 3% of Net sales, and serves many different markets, the largest of which include: tissue and paper towel manufacturing; writing paper; interior and exterior paints; construction materials and energy services. To serve these markets the Company has global manufacturing operations which provide products to customers in more than 135 countries.

Principles of Consolidation

The Consolidated Financial Statements include the accounts of Hercules, all majority-owned subsidiaries where control exists, any other subsidiaries which it controls and variable interest entities (“VIEs”) in which Hercules is the primary beneficiary. All significant intercompany transactions and profits have been eliminated. Investments in affiliated companies, where Hercules has a 20% to 50% interest and where the entity is either not a VIE or Hercules is not the primary beneficiary, are accounted for using the equity method of accounting and, accordingly, consolidated income includes Hercules' share of their income or loss. Accordingly, these investments are included in Deferred charges and other assets on the Company's Consolidated Balance Sheets.

Use of Estimates

Preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the Consolidated Financial Statements and the accompanying Notes. Actual results could differ from these estimates.

Revenue Recognition

The Company recognizes revenue when the earnings process is complete. This generally occurs when products are shipped to the customer or services are performed in accordance with terms of the agreement, title and risk of loss have been transferred, collectibility is probable and pricing is fixed or determinable. Approximately 14%, 13% and 13% of the Company's revenues for the years ended December 31, 2006, 2005 and 2004, respectively, are from consignment inventory. For consignment inventory, title and risk of loss are transferred when the earnings process is considered complete, which generally occurs when the Company's products have been consumed or used in the customer's production process. Revenues exclude amounts for value-added, sales and similar taxes. Accruals are made for sales returns and other allowances based on the Company's experience. Shipping and handling costs are included in Cost of sales.

Allowance for Doubtful Accounts Receivable

The allowance for doubtful accounts represents an estimate of uncollectible accounts receivable. The recorded amount reflects various factors, including accounts receivable aging, customer-specific risk issues, country risk and historical write-off experience. It includes, but is not limited to, a formula driven calculation applied to the aging of trade accounts receivable balances. When a specific accounts receivable balance is deemed uncollectible, a charge is taken to this reserve. Recoveries of balances previously written off are also reflected in this reserve.

Research and Development Expenditures

Research and development expenditures are expensed as incurred.

Environmental Expenditures

The Company has ongoing expenditures for environmental related projects at current and former operating facilities. Accruals for environmental remediation matters are expensed when it is probable that a liability has been incurred and the amount of the liability is reasonably estimable. The Company capitalizes environmental expenditures for projects that extend the life, increase the capacity or improve the safety or efficiency of its facilities. In addition, the Company capitalizes asset retirement obligations relating to environmental remediation liabilities that result from the normal operation of Company facilities. The Company capitalized environmental related expenditures totaling \$8.8 million, \$3.6 million and \$2.6 million for the years ended December 31, 2006, 2005 and 2004, respectively.

Changes in Accounting Principle

Voluntary changes in accounting principles require retrospective application to the earliest fiscal period presented. However, the Consolidated Financial Statements reflect the specific transition requirements associated with new accounting pronouncements, which may not require retrospective application. [Note 24](#) provides a summary of the financial statement effects and required disclosures applicable to those accounting changes implemented during the periods presented.

Hercules Incorporated

Summary of Significant Accounting Policies

(Dollars in millions, except per share data)

Cash and Cash Equivalents

Cash equivalents include commercial paper and other securities with original maturities of 90 days or less at the time of purchase. Book value approximates fair value because of the short maturity of those instruments.

Inventories

Foreign and domestic inventories are stated at the lower of cost or market and are valued principally on the weighted-average-cost method. Elements of costs in inventories include raw materials, direct labor and manufacturing overhead.

Assets Held for Sale

When specific actions to dispose of assets progress to the point that “plan of sale” criteria have been met, impairments, to the extent they exist, are recognized in the Consolidated Statements of Operations and the underlying assets are reclassified as assets held for sale and included in the caption Other current assets or separately disclosed. Gains and losses on sales of assets associated with active business operations and sites are included in Other operating expense while those attributable to former businesses are included in Other expense, net.

Property, Plant and Equipment and Depreciation

Property, plant and equipment are stated at cost. The Company uses the straight line method of depreciation. The estimated useful lives of depreciable assets are as follows: buildings - 30 years; plant machinery and equipment - 15 years; other machinery and equipment - 3 to 15 years.

Maintenance, repairs and minor renewals are expensed as incurred; major renewals and improvements that extend the lives or increase the capacity of plant assets are capitalized. Upon normal retirement or replacement, the net book value of property (less proceeds of sale or salvage) is charged to income.

Intangible Assets and Goodwill

Intangible assets with finite lives are amortized on a straight-line basis over the estimated future periods to be benefited, generally 40 years for customer relationships, trademarks and tradenames and 3 to 50 years for other intangible assets. Goodwill is tested for impairment on an annual basis as of November 30 with any necessary adjustment charged to expense. The Company has identified its reporting units as Paper Technologies and Ventures and the Aqualon Group, for purposes of applying the impairment test.

Long-lived Assets

The Company reviews its long-lived assets for impairment on an exception basis whenever events or changes in circumstances indicate carrying amounts of the assets may not be recoverable through undiscounted future cash flows. If an impairment loss has occurred based on expected undiscounted future cash flows, the loss is recognized in the Consolidated Statements of Operations. The amount of the impairment loss is the excess of the carrying amount of the impaired asset over its fair value. The fair value represents expected future cash flows from the use of the assets, discounted at the rate used to evaluate potential investments.

Computer Software Development Costs

Capitalized computer software development costs are included in Deferred charges and other assets in the Company's Consolidated Balance Sheets and amortized over a period of 5 to 10 years.

Deferred Financing Costs

The Company capitalizes costs associated with the issuance of debt, including bank, legal, investment advisor and accounting fees and other expenses. Deferred financing costs are amortized over the term of the related financing transaction using the effective interest rate method and are included in Interest and debt expense in the Company's Consolidated Statements of Operations.

Income Taxes

The provision for income taxes has been determined using the asset and liability approach for accounting for income taxes. Under this approach, deferred taxes represent the future tax consequences expected to occur when the reported amounts of assets and liabilities are recovered or paid. The provision for income tax represents income taxes paid or payable for the current year plus the change in deferred taxes during the year. Deferred taxes result from differences between the financial and tax basis of the Company's assets and liabilities and are adjusted for changes in tax rates and tax laws when changes are enacted. Valuation allowances are recorded to reduce deferred tax assets when it is more likely than not that a tax benefit will not be realized.

Hercules Incorporated

Summary of Significant Accounting Policies

(Dollars in millions, except per share data)

Asset Retirement Obligations

The Company records a liability at fair value for legal obligations associated with the retirement of tangible long-lived assets that result from the acquisition, construction, development and/or normal operations of a long-lived asset. To the extent an obligation is conditional, an obligation is recognized if the fair value of the liability can be reasonably estimated. The Company's asset retirement obligations principally relate to environmental remediation liabilities associated with current and former operations that were incurred during the course of normal operations.

For the purposes of recognizing obligations requiring the dismantlement of facilities, owned properties, which have no fixed cessation date, are assumed to be in operation for 50 years, although it could be longer. The Company evaluates the status of its facilities on a periodic basis and makes any necessary adjustments to the obligations as required. Dismantlement of facilities at leased sites is assumed to occur upon lease termination unless it is likely that the Company is able to and plans to extend the term.

Foreign Currency Translation

The financial statements of Hercules' non-U.S. entities are translated into U.S. dollars in accordance with U.S. GAAP. Most of the Company's foreign subsidiaries use the local currency as their functional currency. The Company translates assets and liabilities of those entities into U.S. dollars using the appropriate period end rates of exchange. Net sales and expenses are translated using the average exchange rates for the reporting period. Translation gains and losses are recorded in Accumulated other comprehensive losses.

Derivative Instruments and Hedging

Under procedures and controls established by the Company's risk management policies, the Company strategically enters into contractual arrangements (derivatives) in the ordinary course of business to reduce the exposure to foreign currency rates, interest rates and commodity prices.

The Company's risk management policies establish several approved derivative instruments to be utilized in each risk management program and the level of exposure coverage based on the assessment of risk factors. Derivative instruments utilized include forwards, swaps and options. The Company uses forward exchange contracts and options, generally no greater than three months in term, to reduce its net currency exposure. The objective of this program is to maintain an overall balanced position in foreign currencies so that exchange gains and losses resulting from exchange rate changes are minimized. The Company has used interest rate swap agreements to manage interest costs and risks associated with changing rates. The Company has used forward contracts to hedge commodity price risk. The Company uses cross-currency interest rate swaps to hedge the foreign currency exposure associated with its net investment in certain foreign operations. Derivative instruments are recorded on the balance sheet at their fair values.

With the exception of the cross-currency interest rate swaps, the Company has not designated any derivatives as a formal hedge instrument and accordingly, changes in fair value are recorded each period in earnings as a component of Other expense, net (foreign currency exposures) and Cost of sales (commodity price exposures) consistent with the reporting of the items hedged. Changes in the fair value of the cross-currency interest rate swaps are recorded in the foreign currency translation adjustments component of Accumulated other comprehensive losses. Net interest payments or receipts from the cross-currency interest rate swaps are recorded as adjustments to Interest and debt expense, net in the Statement of Operations and are reflected in Net cash provided by operating activities in the Statement of Cash Flows.

Counterparties to all derivative contracts are major financial institutions. Credit loss from counterparty nonperformance is not anticipated.

Stock-based Compensation

Effective, January 1, 2006, the Company adopted Statement of Financial Accounting Standards No. 123 (revised 2004), "Share-Based Payment" ("SFAS 123R") (see [Note 14](#)). The Company had previously adopted, effective January 1, 2003, Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"), as amended by Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure" ("SFAS 148"). SFAS 148 amends SFAS 123 by providing alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation and requiring enhanced disclosure regarding stock-based compensation. The Company elected to apply the fair value recognition provisions of SFAS 123 on a prospective basis to all employee awards granted, modified or settled after January 1, 2003 through the date of adoption for SFAS 123R. Therefore, the cost related to stock-based employee compensation included in the determination of net income in 2005 and 2004 was less than that which would have been recognized if the fair value based method had been applied to all awards since the original effective date of SFAS 123.

Hercules Incorporated**Summary of Significant Accounting Policies***(Dollars in millions, except per share data)*

The following table presents the pro forma effect on net (loss) income and (loss) earnings per share assuming the Company had applied the fair value recognition provisions of SFAS 123 to all stock-based compensation on a retroactive basis.

| | Year Ended December 31, | |
|---|-------------------------|---------|
| | 2005 | 2004 |
| Net (loss) income, as reported | \$ (41.1) | \$ 28.1 |
| Add: Total stock-based compensation expense recognized in reported results, net of tax | 4.5 | 1.4 |
| Deduct: Total stock-based compensation expense determined under the fair value based method for all awards, net of tax* | 5.1 | 2.8 |
| Pro forma net (loss) income | \$ (41.7) | \$ 26.7 |
| (Loss) earnings per share: | | |
| Basic - as reported | \$ (0.38) | \$ 0.26 |
| Basic - pro forma | \$ (0.38) | \$ 0.25 |
| Diluted - as reported | \$ (0.38) | \$ 0.26 |
| Diluted - pro forma | \$ (0.38) | \$ 0.24 |

* For information regarding the weighted-average assumptions used in estimating fair value for 2005 and 2004 see Note 14.

Recent Accounting Pronouncements

In July 2006, the FASB issued FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109" ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in the financial statements and prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken in a tax return. The Company is currently evaluating the impact of FIN 48, which is to be adopted effective January 1, 2007, and does not anticipate it to have a material impact on its consolidated financial condition or results of operation.

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, "Fair Value Measurements" ("SFAS 157"). While SFAS 157 formally defines fair value, establishes a framework for measuring fair value and expands disclosure about fair value measurements, it does not require any new fair value measurements. SFAS 157 applies under other accounting pronouncements that require or permit fair value measurements. SFAS 157 is required to be adopted effective January 1, 2008 and the Company does not presently anticipate any significant impact on its consolidated financial position, results of operations or cash flows.

Reclassifications

Certain amounts in the 2005 and 2004 consolidated financial statements and notes have been reclassified to conform to the 2006 presentation. In addition, see [Note 1](#) regarding the Company's realignment of its reporting segments.

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

1. Realignment of Reporting Segments

Effective January 1, 2006, the Company realigned its reporting segments. Previously, the Company operated through the Performance Products (Pulp and Paper and Aqualon) and Engineered Materials and Additives (FiberVisions and Pinova) segments. The Company's new reporting structure includes three segments: (1) Paper Technologies and Ventures ("PTV"), (2) the Aqualon Group ("Aqualon") and (3) FiberVisions. The Company's synthetic lubricants business has been transferred from Aqualon to PTV. The Company's Pinova business has been integrated into the Aqualon Group. In addition, the Company's terpenes specialties business, which was previously a business unit of Pinova, has been classified as a discontinued operation effective January 1, 2006. As discussed further in [Note 23](#), the Consolidated Financial Statements have been reclassified to accommodate the reporting of this business as a discontinued operation. FiberVisions will remain as a stand-alone segment for historical reporting purposes.

Through the quarter ended March 31, 2006, FiberVisions' results of operations have been consolidated into the Company's Statement of Operations. As a result of the sale of the Company's 51% interest (see [Note 3](#)), FiberVisions is being treated as an equity investment and the Company includes its proportionate share of earnings and losses using the equity method of accounting for periods beginning April 1, 2006.

Prior period segment information included in [Note 27](#) has been adjusted for retrospective application of the aforementioned changes attributable to the segments.

2. Acquisitions and Investments

During 2006, the Company completed three strategic business investments for a total of \$29.4 million including transaction costs, net of cash acquired. These included (1) the acquisition of the guar and guar derivative manufacturing division of Benchmark Polymer Products, L.P. ("Benchmark"), a subsidiary of Benchmark Performance Group, Inc. ("BPG"), as well as a loan to BPG that is convertible into an equity position in BPG, (2) an investment for a 40% ownership interest in the joint venture, Hercules Tianpu Chemicals Company Limited ("Hercules Tianpu"), a manufacturer of methylcellulose ("MC") in China and (3) the acquisition of the 40% ownership interest not previously held by Hercules in the joint venture, Shanghai Hercules Chemicals Company, Ltd. ("Shanghai Hercules"), from its partner Shanghai Chlor-Alkali Chemical Co. Ltd.

Benchmark

In January 2006, the Company acquired the net assets of Benchmark for a total of \$20.2 million including transaction costs plus a provisional earn-out. In addition, the Company signed a five year exclusive agreement to supply BPG with guar products for polymer slurries used in oil and gas fracturing applications. Under the terms of the purchase agreement, the Company acquired Benchmark's Dalton, Georgia production facility, related working capital and an intangible asset related to the supply agreement. The acquired intangible asset of \$3.7 million has a five year life. The Company recorded goodwill in the amount of \$9.7 million which is deductible for tax purposes over a period of 15 years. In a related transaction, the Company loaned \$2.5 million to BPG. The loan, which is convertible into an equity position in BPG, is reflected on the Balance Sheet as a component of Deferred charges and other assets. The results of operations of Benchmark have been included in the Consolidated Financial Statements since the date of acquisition and have been integrated into the Aqualon business segment.

Hercules Tianpu

During the first quarter of 2006, the formation was completed for the Hercules Tianpu joint venture with the Company contributing a total of \$3.2 million in connection with its required subscription for a 40% ownership interest in addition to \$4.4 million previously contributed in 2005 during the preliminary formation stage. Prior to formation, the Company paid \$1.7 million for the subscription rights attributable to a 1% ownership interest of one of the other joint venture partners as well as \$1.1 million for transaction costs. Under the joint venture agreement, the Company has global marketing rights for the output of the joint venture and receives sales commissions as well as royalties for licensed technology. Operations for Hercules Tianpu began during the latter part of the first quarter of 2006 during which time the investment was accounted for as an equity affiliate. Effective April 1, 2006, Hercules Tianpu was consolidated into Hercules' results of operations, cash flows and balance sheet (see [Note 4](#)) and is included in the Aqualon business segment. Included in the net assets recognized upon consolidation was \$3.5 million of intangible assets related to land use rights with a useful life of 50 years as well as \$2.8 million of goodwill which is not deductible for tax purposes.

Hercules Incorporated**Notes to Consolidated Financial Statements***(Dollars in millions, except per share data)*Shanghai Hercules

During 2006, the Company acquired the remaining 40% ownership interest in Shanghai Hercules for \$3.3 million, including transaction costs of \$0.2 million. The transaction resulted in an increase to Goodwill in the amount of \$1.5 million, which is not deductible for tax purposes. As a result of this transaction, PTV will be able to operate with greater flexibility in the region and will be able to execute its expansion plans, including the development of a regional technical and research center. As a controlled, majority-owned subsidiary, the results of operations and net assets of Shanghai Hercules have been included in the Consolidated Financial Statements and those amounts attributable to non-controlling shareholders have been reflected as minority interests in the Statement of Operations and Balance Sheet, respectively. Effective upon completion of the transaction, the Company has reflected its full ownership of Shanghai Hercules and has included 100% of its net income in the Results of Operations.

The following table summarizes the fair values of the assets, liabilities and minority interests recognized as a result of the acquisitions and consolidation during 2006:

| Assets | | Liabilities and Minority Interests | |
|------------------------------------|---------|---|---------|
| Cash and cash equivalents | \$ 2.6 | Accounts payable | \$ 10.3 |
| Accounts receivable, net | 3.9 | Accrued expenses | 5.5 |
| Inventories | 10.1 | Minority interests | 9.6 |
| Other current assets | 0.1 | | |
| Property, plant and equipment, net | 21.2 | | |
| Intangible assets, net | 7.2 | | |
| Goodwill | 14.0 | | |
| Deferred charges and other assets | 2.7 | | |
| Total assets | \$ 61.8 | Total liabilities and minority interests | \$ 25.4 |

3. DivestituresFiberVisions

On March 31 2006, the Company completed the sale (the "Transaction" or "FiberVisions Transaction") of a 51% interest in its FiberVisions division to an affiliate of SPG Partners, LLC ("SPG"). In connection with the Transaction, FiberVisions issued long-term debt in the amount of \$90.0 million and simultaneously completed a distribution of \$82.0 million to the Company and its wholly-owned subsidiary, WSP Inc. ("WSP") in proportion to their respective ownership interests. FiberVisions incurred \$6.3 million of costs in connection with the debt issuance. Immediately thereafter, the Company received \$27.0 million from SPG in exchange for its 51% interest. The contribution agreement ("Agreement") provided SPG with an option to purchase an additional 14% interest in FiberVisions. However, the option subsequently expired unexercised on January 31, 2007 resulting in a benefit to income of \$0.2 million in 2007.

The Agreement also provided for a maximum of \$5.7 million of additional contributions to FiberVisions based on defined performance measures during 2006 and 2007. Based on FiberVisions' actual performance subsequent to the Transaction, the Company was required to provide \$4.5 million of additional contributions during 2006. Based on FiberVisions' performance projections for 2007, which continue to be challenged by raw material costs, the Company accrued its remaining commitment of \$1.2 million. This amount is expected to be paid during the first half of 2007.

As a result of the Transaction closing and certain post-closing adjustments, including \$5.7 million for the performance-based contributions, the Company has recognized a \$13.3 million loss on the transaction during 2006 as a component of Other expense, net reflecting the disposition of a non-operating asset held for sale. The loss also reflects a number of adjustments to the Company's investment including the realization of the currency translation adjustment associated with the disposed portion of the Company's investment, a curtailment benefit, net of special termination benefits, associated with FiberVisions' domestic employees that will no longer accrue service benefits under the Company's pension and postretirement benefit plans, certain indemnifications for income taxes, pension and severance obligations, the settlement of substantially all of FiberVisions third party debt obligations prior to closing, a provision for the valuation of SPG's option and other transaction costs. A total of \$8.4 million of transaction costs and post-closing adjustments was paid during 2006 and the Company has reflected \$1.3 million to be paid during 2007 as a component of Accrued expenses. As noted above, \$1.2 million relates to the 2007 additional contribution and the remaining \$0.1 is for other transaction costs.

The results of operations and cash flows for FiberVisions for the three months ended March 31, 2006 are included in the Consolidated Statement of Operations and Consolidated Statement of Cash Flows, respectively, as it was wholly-owned by the Company during that period. Effective April 1, 2006, the Company began recording its equity in the earnings of FiberVisions based on its 49% ownership interest. The Company's share of FiberVisions' net loss for the nine months ended December 31, 2006 was \$3.4 million. The Company's investment in FiberVisions, as represented by the 49% interest held by WSP, is included in Deferred charges and other assets for \$22.5 million, which represents its fair value based on the terms of the Transaction adjusted for equity losses during the nine months ended December 31, 2006.

Hercules Incorporated**Notes to Consolidated Financial Statements***(Dollars in millions, except per share data)*

In connection with its initial commitment to sell a majority interest in FiberVisions at the end of 2005, the Company was required to test FiberVisions' underlying goodwill asset for recoverability. The test indicated that the carrying value of goodwill exceeded its fair value. Accordingly, the Company recorded an impairment charge of \$52.9 million effective as of December 31, 2005. The impairment charge was based on an estimate of the fair value for the entire division as determined by the negotiated sales price for the aforementioned sale of a majority interest and its impact was reflected in Profit from operations as it represented an active and fully consolidated business during 2005.

As of December 31, 2005, the Company reclassified those assets and liabilities attributable to FiberVisions as held for sale consistent with the Agreement. The amounts included on the Consolidated Balance Sheet consist of the following:

| Assets | | Liabilities | |
|---|----------|--|---------|
| Cash and cash equivalents | \$ 2.6 | Accounts payable | \$ 29.9 |
| Accounts receivable, net | 34.4 | Accrued expenses | 7.1 |
| Inventories | 20.7 | Deferred income taxes | 29.2 |
| Other current assets | 9.2 | Long-term debt | 0.3 |
| Property, plant and equipment, net | 92.1 | Deferred credits and other liabilities | 0.1 |
| Intangible assets, net | 11.1 | | |
| Goodwill | 32.0 | | |
| Deferred charges and other assets | 0.6 | | |
| Total FiberVisions assets held for sale | \$ 202.7 | Total FiberVisions liabilities held for sale | \$ 66.6 |

CP Kelco

On February 12, 2004, a subsidiary of the Company completed the sale of its minority ownership in CP Kelco ApS to a subsidiary of J. M. Huber Corporation for \$27.0 million. The book value of the Company's investment in CP Kelco ApS had been written down to zero in 2002 as the result of an after-tax impairment charge of \$19.0 million. Net (loss) income for the month ended January 31, 2004 and the year ended December 31, 2003 was \$(2.2) million and \$59.3 million, respectively. At the time of disposal, the CP Kelco ApS balance sheet was comprised of total assets and total liabilities of \$932.1 million and \$816.3 million, respectively.

4. Variable Interest Entities

In accordance with the provisions of FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" (revised December 2003) ("FIN 46R"), the Company has identified Hercules Tianpu as a variable interest entity ("VIE") for which the Company was the primary beneficiary. The financial statements of the Company reflect the consolidation of Hercules Tianpu effective April 1, 2006. As of December 31, 2006, the fair value of the assets in Hercules Tianpu was \$52.3 million and the fair values of the associated liabilities and non-controlling interest were \$43.6 million. There are no assets of the Company that serve as collateral for Hercules Tianpu. However, the Company has provided guarantees to certain financial institutions that have provided credit to Hercules Tianpu. With respect to the credit facility established primarily to finance Hercules Tianpu's capacity expansion and working capital needs, the Company has provided a guarantee of 55% of the total borrowing. As of December 31, 2006, the total amount outstanding under this facility was \$28.1 million.

The Company maintains a 40% ownership interest in Hercules Tianpu and Aqualon has the global marketing rights for the joint venture's output and receives sales commissions as well as royalties for licensed technology. Hercules Tianpu's operations began during the latter part of the first quarter of 2006 as the contribution of cash and manufacturing assets was completed. As of December 31, 2006, the Company's total equity investment in Hercules Tianpu was \$11.4 million.

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5. Accounts Receivable, Net

Accounts Receivable, net includes trade accounts and notes receivable and amounts due from affiliates less an allowance for doubtful accounts. Changes in the allowance for doubtful accounts for the years ended December 31, 2006, 2005 and 2004 are as follows:

| | 2006 | 2005 | 2004 |
|-------------------------------|---------------|---------------|---------------|
| Balance at beginning of year | \$ 4.0 | \$ 4.7 | \$ 5.5 |
| Charged to costs and expenses | 3.2 | 2.3 | 5.4 |
| Deductions | (1.6) | (3.0) | (6.2) |
| Balance at end of year | <u>\$ 5.6</u> | <u>\$ 4.0</u> | <u>\$ 4.7</u> |

6. Inventories

The components of inventories as of December 31, 2006 and 2005 are as follows:

| | 2006 | 2005 |
|-----------------------------------|-----------------|-----------------|
| Finished products | \$ 115.4 | \$ 98.4 |
| Raw materials and work-in-process | 73.3 | 60.5 |
| Supplies | 21.9 | 20.7 |
| | <u>\$ 210.6</u> | <u>\$ 179.6</u> |

7. Intangible Assets and Goodwill

The following table provides information regarding the Company's intangible assets with finite lives.

| | 2006 | | | 2005 | | |
|---------------------------|-----------------|-----------------------------|-----------------|-----------------|-----------------------------|-----------------|
| | Gross | Accumulated Amortization | Net | Gross | Accumulated Amortization | Net |
| Customer relationships | \$ 90.0 | \$ 18.6 | \$ 71.4 | \$ 90.0 | \$ 16.4 | \$ 73.6 |
| Trademarks and tradenames | 73.9 | 15.6 | 58.3 | 73.9 | 13.5 | 60.4 |
| Other intangible assets | 32.2 | 18.8 | 13.4 | 24.8 | 16.0 | 8.8 |
| | <u>\$ 196.1</u> | <u>\$ 53.0</u> | <u>\$ 143.1</u> | <u>\$ 188.7</u> | <u>\$ 45.9</u> | <u>\$ 142.8</u> |

Total amortization expense for other intangible assets for the years ended December 31, 2006, 2005 and 2004 was \$7.2 million, \$8.0 million and \$8.1 million, respectively, which was included in Profit from operations. It is estimated that amortization expense will be \$7.1 million for 2007, \$6.8 million for 2008, \$5.5 million for 2009, \$5.3 million for 2010 and \$4.4 million for 2011.

The following table shows the activity and changes in the carrying amount of goodwill for the years ended December 31, 2006 and 2005, by operating segment:

| | Paper Technologies and Ventures | | Aqualon Group | | FiberVisions | | Total | |
|---|---------------------------------------|----------------|------------------|-----------------|--------------|-------------|-------------|-------------|
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| Balance at December 31, 2004 | 425.7 | 39.7 | 84.9 | 550.3 | — | — | — | — |
| Impairment | — | — | (52.9) | (52.9) | — | — | — | — |
| Reclassified to FiberVisions assets held for sale | — | — | (32.0) | (32.0) | — | — | — | — |
| Foreign currency translation | (23.1) | (1.3) | — | (24.4) | — | — | — | — |
| Balance at December 31, 2005 | <u>402.6</u> | <u>38.4</u> | <u>—</u> | <u>441.0</u> | <u>—</u> | <u>—</u> | <u>—</u> | <u>—</u> |
| Acquisitions and investments | 1.5 | 12.5 | — | 14.0 | — | — | — | — |
| Foreign currency translation | 25.4 | 1.1 | — | 26.5 | — | — | — | — |
| Balance at December 31, 2006 | <u>\$ 429.5</u> | <u>\$ 52.0</u> | <u>\$ —</u> | <u>\$ 481.5</u> | <u>\$ —</u> | <u>\$ —</u> | <u>\$ —</u> | <u>\$ —</u> |

Hercules Incorporated

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(Dollars in millions, except per share data)

8. Debt

A summary of debt follows:

| | 2006 | 2005 |
|---|----------|------------|
| Term B loan due 2010 (a) | \$ 375.0 | \$ 393.0 |
| 6.60% notes due 2027 (b) | 100.0 | 100.0 |
| Term notes at various rates from 5.00% to 7.16% due in varying amounts through 2006 (c) | — | 6.8 |
| 11.125% senior notes due 2007 (d) | 16.1 | 130.0 |
| 6.75% senior subordinated notes due 2029 (e) | 250.0 | 250.0 |
| 8% convertible subordinated debentures due 2010 (f) | 2.4 | 2.6 |
| 6.5% junior subordinated deferrable interest debentures due 2029 (g) | 214.1 | 217.0 |
| Term loans at rates ranging from 5.5575% to 5.814% due in varying amounts through 2011(h) | 28.1 | — |
| Other | 9.8 | 9.6 |
| | 995.5 | 1,109.0 |
| Less: Current debt obligations | 35.8 | 16.7 |
| Long term debt | \$ 959.7 | \$ 1,092.3 |

- (a) The term loan, a component of the Company's Senior Credit Facility, matures on October 8, 2010 and bears interest at LIBOR + 1.50%, with the Company holding the option to reset interest rates for one, two, three or six month periods. The weighted average rate was 6.87% as of December 31, 2006. The Senior Credit Facility is also comprised of a \$150 million committed revolving credit facility (the "Revolving Facility") which matures on April 8, 2009 and provides Hercules the ability, subject to lender approval, to borrow until April 8, 2007 an additional \$250 million in the form of an incremental term note. The Senior Credit Facility is secured by liens on the Company's assets (including real, personal and intellectual properties) and is guaranteed by substantially all of the Company's current and future wholly-owned domestic subsidiaries (see [Note 29](#)).

As of December 31, 2006, the Company had \$105.7 million of outstanding letters of credit under the Revolving Facility. The remaining \$44.3 million was available for use.

The Company's Senior Credit Facility requires quarterly compliance with certain financial covenants, including a debt/EBITDA ratio ("leverage ratio") and an interest coverage ratio, and established limitations on the permitted amount of capital expenditures.

- (b) 30-year debentures with a 10-year put option, exercisable August 1, 2007 by the bondholder at a redemption price equal to the principal amount.
- (c) Debt assumed in conjunction with the acquisition of FiberVisions L.L.C in 1998 and retained by Hercules prior to the FiberVisions Transaction.
- (d) The senior notes accrue interest at 11.125% per annum, payable semi-annually. The senior notes are guaranteed by each of Hercules' current and future wholly-owned domestic restricted subsidiaries and matures on November 15, 2007.
- (e) The Company completed a private placement of \$250 million aggregate principal amount of 6.75% senior subordinated notes due 2029 during April 2004. The senior subordinated notes are guaranteed by each of Hercules' current and future wholly-owned domestic restricted subsidiaries.
- (f) The convertible subordinated debentures are convertible into common stock at \$14.90 per share and are redeemable at the option of the Company at varying rates. The annual sinking fund requirement of \$5 million, beginning in 1996, has been satisfied through conversions of debentures.
- (g) The 6.5% junior subordinated deferrable interest debentures due 2029 (the "6.5% debentures") had an initial issue price of \$741.46 and have a redemption price of \$1,000. The 6.5% debentures were initially issued to Hercules Trust II ("Trust II"), a subsidiary trust established in 1999. Trust II had issued, in an underwritten public offering, 350,000 CRESTS Units, each consisting of a 6.5% preferred security of Trust II and a warrant (exercisable through 2029) to purchase 23.4192 shares of the Company's common stock. The preferred securities and the warrants were separable and were initially valued at \$741.46 and \$258.54, respectively. The Company and Trust II accreted the difference between the initial valuation of the 6.5% debentures and the preferred securities and the redemption value of \$1,000 over the term of the 6.5% debentures and the preferred securities. In connection with the Company's dissolution and liquidation of Trust II in December 2004, Trust II distributed the 6.5% debentures to the holders of the preferred securities and the preferred securities were cancelled. The CRESTS Units now consist of the 6.5% debentures and the warrants.
- (h) Includes loans issued by Hercules Tianpu secured by liens on Hercules Tianpu's fixed assets for which Hercules has provided a guarantee for 55% of the outstanding balances. The loans are denominated in renminbi and include a short-term loan payable due in 2007 for approximately \$5.9 million and a long-term loan payable due in 2011 for approximately \$22.2 million.

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During 2006, the Board of Directors authorized the Company, from time to time, subject to market conditions and the Company's credit agreements and indentures, to repurchase up to \$150 million of its outstanding indebtedness on the open market. Under this program the Company repurchased \$113.9 million (book value) of its 11.125% senior notes. In addition, the Company acquired 5,000 CRESTS Units for \$4.2 million in open market purchases. The market value of the 6.5% debentures and CRESTS Units repurchased were \$3.3 million and \$1.0 million, respectively. The accreted book value of the 6.5% debentures at the time of the purchase was \$3.8 million, resulting in the recognition of a \$0.5 million gain. The \$1.0 million associated with the warrants was recorded as a reduction of Additional paid-in capital. Also, \$18.0 million attributable to the Term B loan was paid during 2006, of which, \$14.0 million represents a prepayment. In December 2006, the Board of Directors approved a new authorization for the repurchase of up to \$200 million of debt.

At December 31, 2006, Hercules had available and unused foreign lines of credit totaling \$31.8 million and \$29.3 million, respectively.

Debt maturities are \$35.8 million in 2007, \$10.1 million in 2008, \$11.4 million in 2009, \$372.8 million in 2010, \$1.3 million in 2011 and \$564.1 million thereafter.

9. Income Taxes

The domestic and foreign components of income (loss) before income taxes, minority interests and equity (loss) income from continuing operations are listed below:

| | 2006 | 2005 | 2004 |
|--|---------------|------------------|----------------|
| Domestic | \$ (164.3) | \$ (46.9) | \$ (154.8) |
| Foreign | 167.5 | 11.5 | 189.3 |
| Income (loss) before income taxes, minority interests and equity (loss) income | <u>\$ 3.2</u> | <u>\$ (35.4)</u> | <u>\$ 34.5</u> |

The components of the tax provision from continuing operations are as follows:

| | 2006 | 2005 | 2004 |
|--------------------------------------|-------------------|-----------------|---------------|
| Currently payable | | | |
| U.S. federal | \$ (64.0) | \$ 1.4 | \$ (29.0) |
| Foreign | 29.6 | 40.9 | 38.1 |
| State | — | 8.8 | 13.4 |
| Deferred | | | |
| Domestic | (154.6) | (48.3) | (21.5) |
| Foreign | (3.2) | (6.6) | 2.8 |
| (Benefit) provision for income taxes | <u>\$ (192.2)</u> | <u>\$ (3.8)</u> | <u>\$ 3.8</u> |

On October 25, 2006, the Company reached an agreement with the IRS with respect to its audit of the 2002 and 2003 tax years. The effect of the agreement resulted in the reversal of certain tax reserves in the amount of \$48.7 million established with respect to the sale of the Company's former BetzDearborn Water Treatment business which has been reported as a discontinued operation. The provision for income taxes attributable to discontinued operations and cumulative effect of changes in accounting principle is:

| | 2006 | 2005 | 2004 |
|--|------------------|-----------------|-----------------|
| Benefit on loss from discontinued operations | \$ (49.6) | \$ (3.4) | \$ (1.4) |
| Cumulative effect of changes in accounting principle | 0.5 | (1.4) | — |
| | <u>\$ (49.1)</u> | <u>\$ (4.8)</u> | <u>\$ (1.4)</u> |

During the years ended December 31, 2006, 2005 and 2004 the Company recorded items related to the additional minimum liability of its defined benefit plans, the impact of the adoption of Statement of Financial Accounting Standards No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans - an amendment of FASB Statements No. 87, 88, 106 and 132(R)" ("SFAS 158") and hedging activities. The impact of the adjustments is posted, net of tax, directly to Accumulated other comprehensive losses (see [Note 17](#)). The tax benefit (expense) of these items was as follows:

| | 2006 | 2005 | 2004 |
|--------------------------------------|----------------|----------------|----------------|
| Additional minimum pension liability | \$ (44.7) | \$ 24.8 | \$ 14.5 |
| Impact of the adoption of SFAS 158 | 62.2 | — | — |
| Hedging activities | 18.6 | — | — |
| Other | 0.3 | 0.2 | — |
| | <u>\$ 36.4</u> | <u>\$ 25.0</u> | <u>\$ 14.5</u> |

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(Dollars in millions, except per share data)

The components of the net deferred tax assets (liabilities) as of December 31, are as follows:

| | 2006 | 2005 |
|---|-------------------|-------------------|
| Depreciation | \$ (82.8) | \$ (81.4) |
| Pension | (1.3) | (8.2) |
| Inventory | (3.1) | (4.1) |
| Investments | (19.3) | (174.3) |
| Goodwill | (45.0) | (48.4) |
| Accrued expenses | (2.9) | (3.1) |
| Other | (7.5) | (13.1) |
| Gross deferred tax liabilities | <u>\$ (161.9)</u> | <u>\$ (332.6)</u> |
| Postretirement benefits other than pensions | \$ 70.0 | \$ 45.5 |
| Pension | 87.3 | 113.4 |
| Goodwill | 8.4 | 7.1 |
| Accrued expenses | 242.1 | 216.1 |
| Loss carryforwards | 230.1 | 349.2 |
| Credit carryforwards | 131.4 | 126.9 |
| Investments | 77.5 | 21.5 |
| Other | 14.2 | 24.6 |
| Gross deferred tax assets | <u>861.0</u> | <u>904.3</u> |
| Valuation allowance | <u>(335.8)</u> | <u>(380.7)</u> |
| Net deferred tax assets | <u>\$ 363.3</u> | <u>\$ 191.0</u> |

The reconciliation of the U.S. statutory income tax rate to the effective rate from continuing operations is:

| | 2006 | 2005 | 2004 |
|--|-----------------|------------|------------|
| U.S. statutory income tax rate | 35% | 35% | 35% |
| Gain on sale of CP Kelco ApS | — | — | (27) |
| Valuation allowances | (3,137) | (66) | (66) |
| Tax rate differences on subsidiary earnings | (325) | (8) | (39) |
| U.S. tax on foreign dividends and undistributed earnings | 232 | 27 | 21 |
| State taxes | (1) | (15) | 30 |
| Reserves | (1,378) | 21 | 61 |
| Exempt export income | (36) | 5 | (6) |
| Tax refunds | (1,396) | 12 | — |
| Other | — | — | 2 |
| Effective tax rate | <u>(6,006)%</u> | <u>11%</u> | <u>11%</u> |

Loss carryforwards include both net operating loss carryforwards and capital loss carryforwards. At December 31, 2006, the tax effect of such carryforwards approximated \$230.1 million. Of this amount, \$130.2 million are domestic capital loss carryforwards that expire in 2007 for which full valuation allowances have been established and \$3.4 million are domestic net operating loss carryforwards that expire in 2023 for which no valuation allowance has been established. State net operating loss carryforwards approximate \$81.0 million, with expiration dates ranging from 2007 to 2026, for which full valuation allowances have been established. Foreign net operating loss carryforwards approximate \$15.5 million and are offset by valuation allowances of \$8.5 million. Some of these foreign net operating loss carryforwards expire as early as 2007 and others have expiration dates that are indefinite in nature. Deferred tax assets of \$77.5 million attributable to investments represents the basis difference in the carrying value of the Company's 49% investment in FiberVisions for which full valuation allowances have been established. The tax effect of the credit carryforwards approximated \$131.4 million at December 31, 2006, with expiration dates ranging from 2011 to 2026, for which no valuation allowances have been established.

The Company provides taxes on undistributed earnings of subsidiaries and affiliates to the extent such earnings are planned to be remitted and not permanently reinvested. The undistributed earnings of subsidiaries and affiliates on which no provision for foreign withholding or U.S. income taxes has been made amounted to approximately \$82.5 million and \$153.8 million at December 31, 2006 and 2005, respectively. U.S. and foreign income taxes that would be payable if such earnings were distributed may be lower than the amount computed at the U.S. statutory rate because of the availability of tax credits.

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10. Pension and Other Postretirement Benefits

The Company provides defined benefit pension plans and postretirement benefit plans to most U.S. employees and some foreign employees. The following table summarizes information about the Company's pension and postretirement benefit plans subsequent to the adoption SFAS 158. Certain of the disclosures required by SFAS 158 are not applicable ("N/A") to the 2005 presentation.

| | Pension Benefits | | | | Other Postretirement Benefits | |
|--|------------------|------------|------------|-----------|-------------------------------|------------|
| | 2006 | | 2005 | | 2006 | 2005 |
| | U.S. | Int'l. | U.S. | Int'l. | | |
| Change in benefit obligation: | | | | | | |
| Benefit obligation at January 1 | \$ 1,536.8 | \$ 340.6 | \$ 1,413.5 | \$ 325.7 | \$ 154.5 | \$ 181.0 |
| Service cost | 11.4 | 6.0 | 12.7 | 5.4 | 0.5 | 0.8 |
| Interest cost | 86.5 | 15.5 | 81.3 | 15.2 | 8.8 | 8.8 |
| Plan amendments | — | 0.3 | — | (4.5) | — | (32.4) |
| Foreign currency translation | — | 35.3 | — | (37.3) | — | 0.1 |
| Actuarial (gain) loss | (17.8) | (17.8) | 136.1 | 49.2 | 14.7 | 19.8 |
| Settlements/curtailments | (2.3) | (0.6) | — | — | — | — |
| Special termination benefits | 1.6 | — | — | — | 1.3 | — |
| Benefits paid from plan assets | (109.0) | (15.2) | (101.9) | (13.1) | — | — |
| Benefits paid from Company assets | (5.1) | — | (4.9) | — | (21.4) | (23.6) |
| Benefit obligation at December 31 | \$ 1,502.1 | \$ 364.1 | \$ 1,536.8 | \$ 340.6 | \$ 158.4 | \$ 154.5 |
| Change in plan assets: | | | | | | |
| Fair value of plan assets at January 1 | \$ 1,219.3 | \$ 256.4 | \$ 1,176.2 | \$ 245.7 | \$ — | \$ — |
| Actual return on plan assets | 165.7 | 17.1 | 105.0 | 20.9 | — | — |
| Actuarial (loss) gain | — | (0.5) | — | 14.7 | — | — |
| Company contributions | 30.0 | 7.5 | 40.0 | 13.7 | — | — |
| Participant contributions | — | 0.8 | — | 0.9 | — | — |
| Foreign currency translation | — | 27.5 | — | (27.7) | — | — |
| Benefits paid from plan assets | (109.0) | (13.8) | (101.9) | (11.8) | — | — |
| Fair value of plan assets at December 31 | \$ 1,306.0 | \$ 295.0 | \$ 1,219.3 | \$ 256.4 | \$ — | \$ — |
| Funded status of the plan | \$ (196.1) | \$ (69.1) | \$ (317.5) | \$ (84.2) | \$ (158.4) | \$ (154.5) |
| Unrecognized actuarial loss | — | — | 671.2 | 104.5 | — | 120.1 |
| Unrecognized prior service benefit | — | — | (22.0) | (2.7) | — | (55.4) |
| Accrued expenses | — | — | — | (0.2) | — | — |
| Unrecognized net transition obligation | — | — | — | 0.5 | — | 0.8 |
| Net amount recognized | \$ (196.1) | \$ (69.1) | \$ 331.7 | \$ 17.9 | \$ (158.4) | \$ (89.0) |
| Components of the above amounts: | | | | | | |
| Prepaid benefit cost | \$ — | \$ 2.2 | \$ 369.5 | \$ 53.3 | \$ — | \$ — |
| Accrued expenses | (4.9) | — | — | — | (16.2) | (23.5) |
| Accrued benefit liability (noncurrent) | (191.2) | (71.3) | (37.8) | (35.4) | (142.2) | (65.5) |
| Additional minimum liability | — | — | (588.6) | (48.2) | — | — |
| Intangible asset | — | — | — | 0.4 | — | — |
| Accumulated other comprehensive losses | — | — | 588.6 | 47.8 | — | — |
| Net amount recognized | \$ (196.1) | \$ (69.1) | \$ 331.7 | \$ 17.9 | \$ (158.4) | \$ (89.0) |
| Amounts included in Accumulated other comprehensive losses: | | | | | | |
| Actuarial (losses) gains | \$ (545.8) | \$ (106.6) | N/A | N/A | \$ (126.4) | N/A |
| Prior service credits | 18.2 | 17.2 | N/A | N/A | 43.0 | N/A |
| Transition obligations | — | (0.4) | N/A | N/A | (0.7) | N/A |
| Total | \$ (527.6) | \$ (89.8) | N/A | N/A | \$ (84.1) | N/A |
| Amortization expected to be recognized during next fiscal year: | | | | | | |
| Actuarial losses | \$ 39.1 | \$ 4.5 | N/A | N/A | \$ 8.9 | N/A |
| Prior service credits | (1.7) | (0.9) | N/A | N/A | (7.8) | N/A |
| Transition obligations | — | 0.1 | N/A | N/A | 0.1 | N/A |
| Total | \$ 37.4 | \$ 3.7 | N/A | N/A | \$ 1.2 | N/A |

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Weighted-average assumptions used to determine the benefit obligation at December 31, 2006 and 2005 were:

| | Pension Benefits | | | | Other Postretirement Benefits | |
|--------------------------------|------------------|--------|-------|--------|-------------------------------|-------|
| | 2006 | | 2005 | | 2006 | 2005 |
| | U.S. | Int'l. | U.S. | Int'l. | | |
| Weighted-average discount rate | 5.90% | 4.71% | 5.70% | 4.35% | 5.79% | 5.59% |
| Rate of compensation increase | 4.30% | 3.10% | 4.30% | 2.87% | 4.29% | 4.29% |

Net periodic benefit costs are summarized below:

| Net periodic benefit cost: | Pension Benefits | | | | | | Other Postretirement Benefits | | |
|---|------------------|--------|---------|--------|---------|--------|-------------------------------|--------|--------|
| | 2006 | | 2005 | | 2004 | | 2006 | 2005 | 2004 |
| | U.S. | Int'l. | U.S. | Int'l. | U.S. | Int'l. | | | |
| Service cost | \$ 11.4 | \$ 6.0 | \$ 12.7 | \$ 5.4 | \$ 13.3 | \$ 5.9 | \$ 0.5 | \$ 0.8 | \$ 0.8 |
| Interest cost | 86.5 | 15.5 | 81.3 | 15.2 | 82.3 | 15.4 | 8.8 | 8.8 | 10.3 |
| Expected return on plan assets | (100.4) | (17.3) | (95.4) | (14.9) | (96.5) | (14.6) | — | — | — |
| Amortization and deferrals | (1.8) | (0.4) | (1.9) | 0.2 | 1.3 | 0.6 | (8.0) | (7.3) | (8.5) |
| Participant contributions | — | (0.5) | — | (0.5) | — | (0.7) | — | — | — |
| Settlements/curtailments ⁽¹⁾ | (2.0) | — | — | — | — | (0.1) | (4.4) | — | — |
| Special benefits/terminations ⁽¹⁾ | 1.6 | — | — | — | 1.1 | — | 1.2 | — | — |
| Amortization of transition (asset) obligation | — | — | — | — | — | (0.1) | — | — | 0.1 |
| Actuarial losses recognized | 39.9 | 4.5 | 40.7 | 3.4 | 33.9 | 3.1 | 8.4 | 6.5 | 5.2 |
| Benefit cost | \$ 35.2 | \$ 7.8 | \$ 37.4 | \$ 8.8 | \$ 35.4 | \$ 9.5 | \$ 6.5 | \$ 8.8 | \$ 7.9 |

(1) During 2006, the impact of these items was directly attributable to the FiberVisions transaction and, accordingly, these items are reflected in the loss on the sale of a 51% interest in FiberVisions (see Notes 3 and 22).

Weighted-average assumptions used to determine net periodic benefit cost:

| | 2006 | | 2005 | | 2004 | | 2006 | 2005 | 2004 |
|--------------------------------|-------|--------|-------|--------|-------|--------|-------|-------|-------|
| | U.S. | Int'l. | U.S. | Int'l. | U.S. | Int'l. | | | |
| Weighted-average discount rate | 6.00% | 4.53% | 5.75% | 5.04% | 6.10% | 5.35% | 5.81% | 5.51% | 6.08% |
| Expected return on plan assets | 8.50% | 6.36% | 8.50% | 6.49% | 8.75% | 6.64% | N/A | N/A | N/A |
| Rate of compensation increase | 4.30% | 2.99% | 4.50% | 2.79% | 4.50% | 2.86% | 4.29% | 4.49% | 4.49% |

Defined Benefit Pension Plans

Assets of the Company's defined benefit pension plans are primarily invested in U.S. and international equity securities and U.S. and international fixed income securities. Both the assets and the projected benefit obligations ("PBO") of the United States defined benefit pension plan ("U.S. Plan") represent approximately 81% of the total plan assets and PBO for all defined benefit plans sponsored by the Company as of December 31, 2006. The Company uses a measurement date of December 31 for all material defined benefit pension and other postretirement benefit plans.

During 2006, the Company made contributions to its defined benefit plans totaling \$37.5 million, some of which were required by local funding requirements. The Company presently anticipates making voluntary cash contributions to the U.S. Plan of approximately \$40.0 million during 2007. Additionally, the Company anticipates making contributions of approximately \$21.0 million to its international defined benefit pension plans in 2007.

Other Postretirement Benefits

The non-pension postretirement benefit plans include group life insurance coverage and health care reimbursement for eligible employees/retirees in the U.S. and Canada. The benefit obligation of the U.S. other postretirement benefit plan constitutes more than 98% of the Company's consolidated benefit obligation at December 31, 2006 for non-pension postretirement benefits. The assumed participation rate in these plans for future eligible retirees was 50% for health care and 100% for life insurance. The health care plans are contributory with participants' contributions adjusted annually; the life insurance plans are non-contributory for most retirees. The postretirement health care plans include a limit on the Company's share of costs for recent and future retirees and the related accounting anticipates future cost-sharing changes to the written plans that are consistent with the increase in health care cost. Participant contributions are directly applied to claim payments and as such are not included as contributions to plan assets. New employees are ineligible for retiree life insurance or benefits supplemental to Medicare health care.

Hercules Incorporated**Notes to Consolidated Financial Statements***(Dollars in millions, except per share data)*

The assumed health care cost trend rate as of December 31, 2006 was an initial rate of 10% in 2007 reducing to 5.0% in 2009 and thereafter. A one-percentage point increase in the assumed health care cost trend rate would increase the postretirement benefit obligation by approximately \$3.9 million and the aggregate service and interest cost components by \$0.3 million, while a decrease of the same magnitude would decrease the postretirement benefit obligations by approximately \$4.3 million and the aggregate service and interest cost components by \$0.4 million.

U. S. Pension and Postretirement Benefit Plans

The Company provides both funded and unfunded non-contributory defined benefit pension plans to substantially all of its U.S. employees. During 2004, some terms of the U.S. Plan were amended, rendering new hires ineligible and changing the calculation formula to remaining participants from “final pay” to “modified career average pay,” effective January 1, 2005. New employees are ineligible for retiree life insurance or postretirement health care benefits.

The asset allocation for the U.S. Plan as of December 31, 2006 and 2005 and the target allocation for 2007, by asset category, is as follows:

| Asset category: | Target Allocation | Percentage of Plan Assets at December 31, | |
|-------------------|----------------------|--|------|
| | | 2006 | 2005 |
| Equity securities | 61% | 71% | 66% |
| Fixed income | 32% | 22% | 26% |
| Other | 7% | 7% | 8% |
| Totals | 100% | 100% | 100% |

Equity securities are invested in both U.S. and non-U.S. (international) companies. U.S. equity includes the common stock of large, medium, and small companies that are predominantly U.S. based. The plan did not own Hercules common stock as of December 31, 2006 or December 31, 2005. Non-U.S. equity represents equity securities issued by companies domiciled outside the U.S. Fixed income securities include U.S. and non-U.S. government obligations, mortgage-backed securities, collateralized mortgage obligations and corporate debt obligations. Other investments primarily include market neutral, long/short, and event driven-type hedge funds. Investment managers may employ limited use of derivatives, including futures contracts, options on futures, and interest rate swaps in place of direct investment in securities to gain efficient exposure to markets.

The expected long-term rate of return on plan assets was 8.5% for both 2006 and 2005. The overall expected long-term rate of return on assets assumption is a function of the target asset allocation for plan assets, the long-term equilibrium rate of return for the asset class, plus an incremental return attributable to the active management of plan assets.

In developing its investment strategy, the Company considered the following factors for its U.S. Plan: the nature and relative size of the liabilities, the allocation of such liabilities between active and retired members, net cash flows and funded position. The Company also considers the applicable investment horizon, historical and expected capital market return, and the benefits of investment diversification.

The Company manages plan assets with the primary objective of maximizing the long-term investment return given available market opportunities and moderate levels of risk consistent with the nature and purpose of the plan. Plan assets are invested using a combination of active and passive investment strategies. Active strategies employ multiple investment management firms. Managers within each asset class cover a range of investment styles and approaches and are combined in a way that controls market capitalization, style (growth, value, and core) and interest rate risk versus benchmark indices. Security selection is the primary means where value is added from active management. Risk is controlled through diversification among multiple asset classes, managers, styles, and securities. Risk is further controlled both at the manager and asset class level by monitoring performance against assigned return and variability targets.

Expected cash flows for the U.S. Plan and the Company’s other postretirement benefit plans, including the total anticipated contributions to be made by the Company in 2007 as well as the future benefit payments expected to be paid from plan or Company assets, are as follows:

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| | Pension Benefits | | | Other Postretirement Benefits |
|--|------------------|--------------------|-------|-------------------------------|
| | Qualified Plan | Non-qualified Plan | Total | |
| Expected employer contributions for 2007 | \$ 40 | \$ — | \$ 40 | \$ — |
| Expected benefit payments | | | | |
| 2007 | 88 | 5 | 93 | 16 |
| 2008 | 87 | 5 | 92 | 16 |
| 2009 | 88 | 5 | 93 | 15 |
| 2010 | 88 | 5 | 93 | 14 |
| 2011 | 89 | 5 | 94 | 13 |
| 2012-2016 | 476 | 25 | 501 | 55 |

International Pension Plans

The International Plans are Company provided defined benefit and contribution plans to eligible employees in Europe, Canada and Asia Pacific. The International defined benefit Plans provide benefits based on years of service and final average salary, except for the defined benefit pension plans in The Netherlands (“The Netherlands Plan”) and the United Kingdom (the “U.K. Plan”) which have both been amended to provide benefits based on a career average pay basis effective January 1, 2006.

The asset allocation for International Plans as of December 31, 2006 and 2005 and the target allocation for 2007, by asset category, is as follows:

| Asset category: | Target Allocation | Percentage of Plan Assets at December 31, | |
|-------------------|-------------------|---|------|
| | | 2006 | 2005 |
| Equity securities | 58% | 58% | 61% |
| Fixed income | 41% | 41% | 38% |
| Other | 1% | 1% | 1% |
| Totals | 100% | 100% | 100% |

The total assets held by The Netherlands Plan and the U.K. Plan account for approximately 90% of the total assets held by International Plans.

The Netherlands Plan's long-term target asset allocation is 58% global equity securities which are actively managed and 42% fixed income investments (debt and debt-like securities, including preferred securities). The fixed income securities are denominated in Euro and are issued and/or guaranteed by European Monetary Union governments (mainly Belgium, Germany, France, Italy and The Netherlands). The fixed income manager may invest on a tactical basis in investment grade corporate bonds denominated in Euro. Investment managers may employ limited use of derivatives, including futures contracts, options on futures, and interest rate swaps in place of direct investment in securities to gain efficient exposure to markets. Derivatives are not used to leverage portfolios.

The expected long-term rate of return on plan assets was 6.75% for 2006 and 6.8% for 2005, respectively. The overall expected long-term rate of return on assets assumption is a function of the target asset allocation for plan assets, the long-term equilibrium rate of return for the asset class, plus an incremental return attributable to the active management of plan assets.

In developing an investment strategy for The Netherlands Plan, the Company has considered the following factors: the nature of the plan's liabilities, the allocation of such liabilities between active members and retired members, the funded status of the plan, the net cash flow of the plan, the investment horizon of the plan, the size of the plan, historical and expected capital market returns and the benefits of investment diversification.

The target asset allocation for the U.K. Plan is 50% global equity securities and 50% fixed income investments (debt and debt-like securities, including preferred securities). The expected long-term rate of return on plan assets was 5.2% and 5.6% for 2006 and 2005, respectively. The overall expected long-term rate of return on assets assumption is a function of the target asset allocation for plan assets, the long-term equilibrium rate of return for the asset class, plus an incremental return attributable to the active management of plan assets.

The Company considers the following factors in the development of its U.K. Plan investment strategy: the nature and relative size of the liabilities, the allocation of such liabilities between active and retired members, net cash flows and funded positions, the applicable investment horizon, historical and expected capital market returns, and the benefits of investment diversification.

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The Company invests its U.K. Plan assets with a Manager of Managers, who invests them with a broad selection of investment managers, each specializing in a different asset class or market. This approach provides a diversified portfolio of managers in order to capitalize on the perceived strengths of each manager within this structure. The Company delegates responsibility for the selection and monitoring of the underlying investment managers to the Manager of Managers.

Expected cash flows for the International Plans, reflecting the total anticipated Company contributions to be made in 2007 and the total benefit payments expected to be paid from the plan assets or Company assets through the year 2016, are summarized in the table below:

| | Pension Plan Benefits |
|--|--------------------------|
| Expected employer contributions for 2007 | \$ 21 |
| Expected benefit payments: | |
| 2007 | 15 |
| 2008 | 15 |
| 2009 | 16 |
| 2010 | 16 |
| 2011 | 18 |
| 2012-2016 | 97 |

11. Savings and Investment Plans

The Hercules Incorporated Savings and Investment Plan (“SIP Plan”) allows employees to invest a portion of compensation in a defined contribution 401(k) plan. The Company’s matching contributions, made in the form of Hercules’ common stock contributed through an Employee Stock Ownership Plan Trust (“ESOP Trust”) are equal to 50% of the first 6% of the employee’s contributed compensation and vest immediately. Shares used to fulfill the Company’s matching contribution are released at the fair market value of those shares in the period in which they are allocated. The pre-tax difference between cost and fair market value of these allocated shares, which was \$6.4 million, \$7.3 million and \$8.2 million for the years ended December 31, 2006, 2005 and 2004, respectively, is recorded in Additional paid-in capital. Total shares allocated to fund these plan payments were 106,977 and 103,717 for the years ended December 31, 2006 and 2005, respectively. The unallocated shares held by the trust are reflected in Unearned compensation as a reduction in Stockholders’ (deficit) equity on the balance sheet of \$42.1 million and \$53.6 million at December 31, 2006 and 2005, respectively. The unallocated shares have a cost basis of \$31.625 per share.

At December 31, 2006 and 2005, the ESOP Trust had \$28.3 million and \$39.2 million in long-term debt outstanding, respectively, under its loan agreement with the Company; the Company has an offsetting receivable in each year, which is eliminated upon consolidation.

| | 2006 | 2005 |
|--|------------------|------------------|
| Allocated | 1,200,346 | 1,458,065 |
| Unallocated | 1,332,965 | 1,695,387 |
| Total shares held by ESOP Trust | 2,533,311 | 3,153,452 |

The Company’s SIP related expense was \$6.1 million, \$4.0 million and \$3.9 million for the years ended December 31, 2006, 2005 and 2004, respectively.

12. Asset Retirement Obligations

The Company has recorded asset retirement obligations (“ARO”) in order to recognize legal obligations associated with the retirement of tangible long-lived assets and for the remediation of environmental liabilities associated with current and former operations incurred during the course of normal operations. Other AROs are attributable to requirements to dismantle facilities and component assets upon their retirement as well as returning leased property to its original condition upon the expiration of their underlying lease terms.

The Company has a number of AROs that are conditional in nature including those triggered upon commitments by the Company to take certain actions, including demolition, renovation and other retirement-related activities as contemplated by FASB Interpretation No. 47, “Accounting for Conditional Asset Retirement Obligations - an interpretation of FASB Statement No. 143” (“FIN 47”). These actions include the preparation of certain properties for sale or for alternative uses as well as the requirement to dismantle the Company’s manufacturing facilities in certain countries upon their ultimate retirement or land lease expiration dates. There are also conditional requirements for asset component retirements in which the Company can reasonably estimate both the amount of the required settlement as well as the range of settlement dates.

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There are a number of remaining conditional AROs whereby the Company does not have sufficient information to estimate the fair value of the liabilities because the range of settlement dates has not been specified by others and/or cost estimates are not available to apply an expected present value technique. Most significant among these unrecognized conditional AROs are those attributable to the abatement of asbestos at manufacturing facilities, and environmental contamination. Asbestos is present in a substantial number of the Company's facilities. In general, regulations in the U.S. and other countries do not require removal or abatement unless the condition is hazardous or if the structure or component is disturbed through such activities as renovation or demolition.

With respect to environmental contamination, the Company operates within the requirements of numerous regulations at the local, state and U.S. Federal and foreign levels regarding issues such as the handling and disposal of hazardous chemicals, waste-water treatment and effluent and emissions limitations, among others. From a practical standpoint, certain environmental contamination cannot be reasonably determined until a facility or asset is retired or an event occurs that otherwise requires the facility to be tested and monitored. In the absence of such requirements to test for environmental contamination prior to an asset or facility retirement, the Company has concluded that it cannot reasonably estimate the cost associated with such environmental-related AROs. In addition, the Company anticipates operating its manufacturing facilities indefinitely into the future thereby rendering the potential range of settlement dates as indeterminate.

As of December 31, 2006, the Company has accrued a total of \$76.3 million with respect to AROs. Of this amount, approximately \$72.3 million is for environmental remediation associated with current and former operating sites. An amount of \$21.0 million is included in Accrued expenses representing amounts to be settled during 2007 and the remaining \$55.3 million is included in Deferred credits and other liabilities. The AROs have been recognized on a discounted basis using a credit-adjusted risk free rate. Accretion of the AROs is recorded in Other operating expense, net for active operating sites and facilities and Other expense, net for inactive sites associated with businesses that have been exited or divested.

The following table provides a reconciliation of changes in the AROs during the period:

| | Active Sites | Inactive Sites | Total |
|----------------------------------|-----------------------|-----------------------|-----------------------|
| Balance at January 1, 2005 | \$ 7.1 | \$ 89.2 | \$ 96.3 |
| Impact of the adoption of FIN 47 | 4.0 | — | 4.0 |
| Accretion | 0.2 | 1.8 | 2.0 |
| Settlement payments | (1.2) | (9.0) | (10.2) |
| Changes in estimated obligations | 0.3 | 3.2 | 3.5 |
| Transfers of obligations | — | (4.4) | (4.4) |
| Foreign currency translation | (0.2) | (0.7) | (0.9) |
| Balance at December 31, 2005 | <u>\$ 10.2</u> | <u>\$ 80.1</u> | <u>\$ 90.3</u> |
| Accretion | 0.8 | 1.4 | 2.2 |
| Settlement payments | (4.3) | (14.1) | (18.4) |
| Changes in estimated obligations | 3.2 | (1.6) | 1.6 |
| Foreign currency translation | 0.2 | 0.4 | 0.6 |
| Balance at December 31, 2006 | <u><u>\$ 10.1</u></u> | <u><u>\$ 66.2</u></u> | <u><u>\$ 76.3</u></u> |

While not reflected in the table above, the Company has recognized \$5.3 million for environmental contingencies whereby it is reasonably likely that the Company has incurred a liability for costs associated with environmental remediation or for the probable settlement of related litigation. Liabilities included in this amount are attributable to sites that the Company formerly owned as well as sites that the Company did not have an ownership interest therein, but was associated with activities at such sites, including landfills, waste sites and other similar properties.

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13. Commitments and Contingencies

Guarantees

In accordance with FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" ("FIN 45"), disclosures about each group of similar guarantees are provided below:

Indemnifications

In connection with the sale of the Company assets and businesses, the Company has indemnified respective buyers against certain liabilities that may arise in connection with the sales transactions and business activities prior to the ultimate closing of the sale. These indemnifications typically pertain to environmental, tax, employee and/or product related matters. If the indemnified party were to incur a liability or have a liability increase as a result of a successful claim, pursuant to the terms of the indemnification, the Company would be required to reimburse the buyer. These indemnifications are generally subject to threshold amounts, specified claim periods and/or other restrictions and limitations. The carrying amount recorded for indemnifications as of December 31, 2006 was \$41.2 million. Although it is reasonably possible that future payments may exceed amounts accrued, due to the nature of indemnified items, it is not possible to make a reasonable estimate of the maximum potential loss or range of loss. Generally, there are no specific recourse provisions.

In addition, the Company provides certain indemnifications in the ordinary course of business such as product, patent and performance warranties in connection with the manufacture, distribution and sale of its products and services. Due to the nature of these indemnities, it is not possible to make a reasonable estimate of the maximum potential loss or range of loss.

Debt and Other Obligations

The Company has directly guaranteed up to \$43.5 million of various obligations under agreements with third parties related to subsidiaries, VIEs and affiliates of which \$30.4 million is outstanding. The outstanding balance reflects guarantees of debt for terms of varying length as well as a guarantee related to a foreign-based pension plan with an indefinite term. The Company has also provided \$2.9 million in collateral in the form of a mortgage security for the aforementioned pension plan. Existing guarantees for subsidiaries and affiliates arose from liquidity needs in normal operations.

Intercompany Guarantees

The Company and its subsidiaries have authorized intercompany guarantees between and among themselves which aggregate \$191.5 million, of which \$179.6 million was outstanding as of December 31, 2006. These guarantees relate to intercompany loans used to facilitate normal business operations and have been eliminated from the Company's Consolidated Financial Statements.

Leases

Hercules has operating leases (including office space, transportation and data processing equipment) expiring at various dates. Lease expense of \$19.7 million, \$20.6 million and \$22.1 million in 2006, 2005 and 2004, respectively, is net of sub-lease income of \$5.1 million, \$5.2 million and \$5.4 million in 2006, 2005 and 2004, respectively.

At December 31, 2006, minimum rental payments under non-cancelable leases aggregated \$133.4 million with offsetting subleases of \$32.4 million. A significant portion of these payments relate to a long-term operating lease for corporate office facilities. The minimum payments over the next five years, net of minimum sublease receipts, are \$18.9 million in 2007, \$18.9 million in 2008, \$25.7 million in 2009, \$11.8 million in 2010, \$11.0 million in 2011 and \$14.7 million thereafter.

Environmental

In the ordinary course of its business, the Company is subject to numerous environmental laws and regulations covering compliance matters or imposing liability for the costs of, and damages resulting from, cleaning up sites, past spills, disposals and other releases of hazardous substances. Changes in these laws and regulations may have a material adverse effect on the Company's financial position and results of operations. Any failure by the Company to adequately comply with such laws and regulations could subject the Company to significant future liabilities.

The Company has been identified as a potentially responsible party ("PRP") by U.S. federal and state authorities, or by private parties seeking contribution, for the cost of environmental investigation and/or cleanup at numerous sites. The Company becomes aware of sites in which it may be named a PRP in investigatory and/or remedial activities through correspondence from the U.S. Environmental Protection Agency ("EPA") or other government agencies or from previously named PRPs, who either request information or notify the Company of its potential liability. The Company has established procedures for identifying environmental issues at its plant sites. In addition to environmental audit programs, the Company has environmental coordinators who are familiar with environmental laws and regulations and act as a resource for identifying environmental issues.

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While the Company is involved in numerous environmental matters, the following matters are described below because they are currently viewed by management as potentially material to the Company's consolidated financial position, results of operations and cash flows.

United States of America v. Vertac Chemical Corporation, et al., No. 4:80CV00109 (United States District Court, Eastern District of Arkansas, Western Division)

This case, a cost-recovery action based upon the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or the "Superfund statute"), as well as other statutes, has been in litigation since 1980, and involves liability for costs in connection with the investigation and remediation of the Vertac Chemical Corporation ("Vertac") site in Jacksonville, Arkansas. The Company owned and operated the site from December 1961 until 1971. The site was used for the manufacture of certain herbicides and, at the order of the United States, Agent Orange. In 1971, the site was leased to Vertac's predecessor. In 1976, the Company sold the site to Vertac. The site was abandoned by Vertac in 1987, and Vertac was subsequently placed into receivership. Both prior to and following the abandonment of the site, the EPA and the Arkansas Department of Pollution Control and Ecology were involved in the investigation and remediation of contamination at and around the site. Pursuant to several orders issued under CERCLA, the Company actively participated in many of those activities. The cleanup is essentially complete, except for certain on-going maintenance and monitoring activities. This litigation primarily concerns the responsibility and allocation of liability for the costs incurred in connection with the activities undertaken by the EPA.

The procedural history of this litigation is discussed in greater detail in reports previously filed by the Company with the SEC. In summary, in 1999, the District Court finalized a ruling holding the Company and Uniroyal jointly and severally liable for approximately \$100 million in costs incurred by the EPA, as well as costs to be incurred in the future. In 2000, the District Court allocated 2.6% of such amounts to Uniroyal and 97.4% of such amounts to the Company. Both the Company and Uniroyal appealed those rulings to the U.S. Court of Appeals for the Eighth Circuit (the "Court of Appeals"). In 2001, the Court of Appeals reversed the District Court's rulings as to joint and several liability and allocation, and remanded the case back to the District Court for several determinations, including a determination of whether the harms at the site giving rise to the EPA's claims were divisible. The trial on remand occurred in late 2001.

By Memorandum Opinion and Order dated March 30, 2005, the District Court largely affirmed its prior findings and prior judgment against the Company and Uniroyal, and the prior allocation with respect to the Company and Uniroyal, although the District Court did agree that the Company should not be liable for costs associated with a particular off-site landfill, and held that the judgment should be reduced accordingly. By Order dated June 6, 2005, the District Court entered a Final Judgment in favor of the United States and against the Company for \$119.3 million, of which amount Uniroyal has been held jointly and severally liable for \$110.4 million, with the Company alone liable for the difference. The Final Judgment also provided that both the Company and Uniroyal are responsible for any additional response costs incurred or to be incurred by the United States after June 1, 1998, as well as post-judgment interest running from the date of the Final Judgment. In addition, the District Court re-affirmed its prior holding which allocated 2.6% of the \$110.4 million in response costs for which Uniroyal is jointly and severally liable, or \$2.9 million, to Uniroyal. Finally, the Final Judgment found Uniroyal liable to the Company for 2.6% of the response costs incurred by the Company of approximately \$27.4 million, or \$0.7 million. Both the Company and Uniroyal appealed the Final Judgment to the Court of Appeals, asserting that the District Court had committed reversible error.

On July 13, 2006, a panel of the Court of Appeals affirmed the Final Judgment of the District Court. The Company requested that the panel's determination be reviewed *en banc*, but that request was denied by Order dated September 19, 2006. On December 14, 2006, the Company filed a Petition for a Writ of Certiorari with the United States Supreme Court, requesting that the Supreme Court review this matter. No action has yet been taken by the Supreme Court with respect to the Company's Petition. While the Company continues to believe that the Final Judgment should be reversed, the Supreme Court agrees to review very few matters, and it is therefore probable that the Company will not be successful in having the Supreme Court agree to review the July 13, 2006 decision which affirmed the Final Judgment. Accordingly, the Company has accrued its total net liability of \$123.5 million, including interest but not including amounts for which Uniroyal has been held liable, based on the Final Judgment, which is recorded as a current liability at December 31, 2006. The Company will continue to accrue interest on this amount until such time as the Final Judgment is either reversed or is paid. If the Company is ultimately required to pay such amount to the United States, an event which could occur in 2007 or thereafter, the payment of such amount could have a material adverse effect upon the Company's cash flows in such annual, quarterly or other period.

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Alleghany Ballistics Laboratory

The Alleghany Ballistics Laboratory (“ABL”) is a government-owned facility which was operated by the Company from 1945 to 1995 under contract with the United States Department of the Navy. The Navy and the Company have commenced discussions with respect to certain environmental liabilities which the Navy alleges are attributable to the Company’s past operations at ABL. During the course of discussions, the Navy has stated that, pursuant to CERCLA, it has spent and anticipates spending in the future a total of approximately \$76 million. The Company has conducted an investigation of the Navy’s allegations, including the basis of the Navy’s claims, and believes the contracts with the government pursuant to which the Company operated ABL may provide the Company with a defense from some or all of the amounts sought. The Company has exchanged information with the Navy and discussions with the Navy are continuing. At this time, however, the Company cannot reasonably estimate its liability, if any, with respect to ABL and, accordingly, has not included this site in the range of its environmental liabilities reported below.

Kim Stan Landfill

The Company is one of a limited number of industrial companies that have been identified by the EPA as a PRP at the Kim Stan Landfill, near Covington, Virginia. The EPA is seeking to have the PRPs undertake the remediation of the site at a currently estimated cost of \$12.0 million (including EPA oversight charges). Based on the investigation conducted to date, the Company believes that parties not named by the EPA as PRPs may be responsible for the majority of the costs that have been and will be incurred at the site and intends to seek contribution from those parties to the extent it is required to pay any monies in connection with the site. As a result of that investigation, the Company believes that it has defenses that would substantially reduce its exposure. The Company and two other PRPs are in negotiations with the EPA in an attempt to resolve this matter in an equitable manner. The Company believes it is probable that this matter will ultimately be amicably resolved, and the amount the Company reasonably estimates that it will pay is included in the accrued liability for environmental matters reported below.

Clean Air Act Notice of Violation

On December 23, 2005, EPA Region III issued a Notice of Violation (“NOV”) to the Company and to Eastman Company (“Eastman”) that alleges various violations of the Clean Air Act, primarily focused on the Act’s requirements governing emissions of volatile organic compounds, at a manufacturing facility located in West Elizabeth, Pennsylvania. (In the Matter of Eastman Company and Hercules Incorporated, EPA Region III, Docket No. CAA-III-06-011.) That facility was sold to Eastman as part of the Company’s divestiture of its Resins business in May 2001. The EPA has not specifically made a demand for monetary penalties upon the Company and Eastman. The Company is continuing to investigate the allegations set forth in the NOV, as well as any indemnification obligations that it may owe to Eastman pursuant to the terms of the purchase and sale agreement. At this time, however, the Company cannot reasonably estimate its liability, if any, with respect to this matter and, accordingly, has not included this site in the accrued liability for environmental matters reported below.

Range of Exposure

The reasonably possible share of costs for environmental matters involving current and former operating sites, including those with identified asset retirement obligations (see Note 12), the Vertac site and other locations where the Company may have a liability, is approximately \$205 million as of December 31, 2006. This accrued liability is evaluated at least quarterly based on currently available information, including the progress of remedial investigations at each site and the current status of negotiations with regulatory authorities regarding the method and extent of apportionment of costs among other PRPs. The actual costs for these matters will depend upon numerous factors, including the number of parties found responsible at each environmental site and their ability to pay; the actual methods of remediation required or agreed to; outcomes of negotiations with regulatory authorities; outcomes of litigation; changes in environmental laws and regulations; technological developments; and the years of remedial activity required, which could range from 0 to 30 or more years. While it is not feasible to predict the outcome of all pending environmental matters, the ultimate resolution of one or more of these environmental matters could have a material adverse effect upon the Company’s financial position, results of operations and/or cash flows for any annual, quarterly or other period.

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Litigation

The Company is involved in litigation arising out of or incidental to the conduct of its business. Such litigation typically falls within the following broad categories: environmental (discussed above); antitrust; commercial; intellectual property; labor and employment; personal injury; property damage; product liability; and toxic tort. These matters typically seek unspecified or large monetary damages or other relief, and may also seek punitive damages. While it is not feasible to predict the outcome of all pending matters, the ultimate resolution of one or more of these matters could have a material adverse effect upon the Company's financial position, results of operations and/or cash flows for any annual, quarterly or other period. While the Company is involved in numerous matters, certain matters are described below because they are currently viewed by management as potentially material. From time to time, management may determine (based on further analysis or additional information that becomes available through discovery or otherwise) that other matters are or have become potentially material to the Company. As appropriate, descriptions of such matters will be included in the periodic report following such determination. Occasionally, management may not determine that a matter is material until it has been settled or otherwise resolved. In such a situation, that matter may not have been described in the Company's periodic reports prior to such settlement or resolution, but the impact of such settlement or resolution would be reflected in the financial statements included in the periodic report following such settlement or resolution.

Asbestos

The Company is a defendant in numerous asbestos-related personal injury lawsuits and claims which typically arise from alleged exposure to asbestos fibers from resin encapsulated pipe and tank products which were sold by one of the Company's former subsidiaries to a limited industrial market ("products claims"). The Company is also a defendant in lawsuits alleging exposure to asbestos at facilities formerly or presently owned or operated by the Company ("premises claims"). Claims are received and settled or otherwise resolved on an on-going basis.

As of December 31, 2006, there were approximately 26,045 unresolved claims, of which approximately 980 were premises claims and the rest were products claims. There were also approximately 2,075 unpaid claims which have been settled or are subject to the terms of a settlement agreement. In addition, as of December 31, 2006, there were approximately 528 claims which have either been dismissed without payment or are in the process of being dismissed without payment, but with plaintiffs retaining the right to re-file should they be able to establish exposure to an asbestos-containing product for which the Company bears liability.

Between January 1, 2006 and December 31, 2006, the Company received approximately 2,665 new claims. During that same period, the Company spent approximately \$31.5 million to resolve and defend asbestos matters, including \$23.1 million in settlement payments and approximately \$8.4 million for defense costs.

The Company's primary and first level excess insurance policies that provided coverage for these asbestos-related matters exhausted their products limits at or before the end of July 2003. On November 27, 2002, the Company initiated litigation against the solvent excess insurance carriers that provided insurance coverage for asbestos-related liabilities in a matter captioned Hercules Incorporated v. OneBeacon, et al., Civil Action No. 02C-11-237 (SCD), Superior Court of Delaware, New Castle County. Beginning in August 2004 and continuing through October 2004, the Company entered into settlements with all of the insurers named in that lawsuit. As a result, the lawsuit was dismissed in early November 2004.

As discussed in greater detail in reports previously filed by the Company with the SEC, the Company entered into several settlements with its insurers in 2004. The first such settlement involved insurance policies issued by certain underwriters at Lloyd's, London, and reinsured by Equitas Limited and related entities ("Equitas") (the "First Settlement Agreement"). As part of that settlement, Equitas placed \$67.0 million into a trust (the "Equitas Trust") set up to reimburse the Company for a portion of the costs it incurred to defend and resolve certain asbestos claims. In exchange, the Company released the underwriters from past, present and future claims under those policies, agreed to the cancellation of those policies, and agreed to indemnify the underwriters from any claims asserted under those policies. In addition, the settlement provided that if federal asbestos reform legislation was not enacted into law on or prior to January 3, 2007, any funds remaining in the Equitas Trust would be available to the Company to pay asbestos-related liabilities or to use for other corporate purposes. Federal asbestos reform legislation was not enacted on or prior to January 3, 2007. As a result, on January 4, 2007, the Company received as a lump sum distribution approximately \$41.3 million, an amount representing a complete liquidation of the remaining balance of the Equitas Trust, including accrued interest, and the Equitas Trust has been terminated.

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In addition, effective October 8, 2004, the Company entered into a comprehensive confidential settlement agreement with respect to certain insurance policies issued by various insurance companies operating in the London insurance market, and by one insurance company located in the United States (the "Second Settlement Agreement"). Under the terms of the Second Settlement Agreement, the participating insurers agreed to place a total of approximately \$102.2 million into a trust (the "Second Trust"), with such amount to be paid over a four-year period commencing in January 2005 and ending in 2008. In exchange, the Company released the insurers from past, present and future claims under those policies, agreed to the cancellation of those policies, and agreed to indemnify the insurers from any claims asserted under those policies. The trust funds have been and are continuing to be used to reimburse the Company for costs it incurs to defend and resolve asbestos-related claims. Any funds remaining in the Second Trust subsequent to December 31, 2008 may be used by the Company to defend and resolve both asbestos-related claims and non-asbestos related claims. As of December 31, 2006, approximately \$66.1 million of the \$102.2 million had been placed into the Second Trust, and the Second Trust had a balance of approximately \$13.8 million. On or about January 31, 2007, an additional \$16.4 million was placed into the Second Trust.

The Company also reached settlement agreements with additional insurers whose level of participation in the Company's insurance program is substantially lower than the aggregate participation of the insurers referred to above (the "Other Settlement Agreements"). Pursuant to the Other Settlement Agreements, the Company has released or partially released its rights to coverage under insurance policies issued by such insurers. The Company has received all amounts due under the Other Settlement Agreements.

In addition, effective October 13, 2004, the Company reached a confidential settlement agreement with the balance of its solvent excess insurers whereby a significant portion of the costs incurred by the Company with respect to future asbestos product liability claims will be reimbursed, subject to those claims meeting certain qualifying criteria (the "Future Coverage Agreement"). That agreement is not expected to result in reimbursement to the Company, however, unless and until defense costs and settlement payments for qualifying asbestos products claims paid by the Company subsequent to the effective date of the agreement (with credit for certain amounts spent prior to the effective date of the agreement) aggregate to approximately \$330 million to \$370 million, with the foregoing approximation based on various assumptions, including that there are sufficient qualifying claims to require such payments, that for such qualifying claims the time periods of each claimant's alleged exposure to asbestos products falls within the time periods covered by the participating insurers' policies, and that each of the participating insurers remain solvent and honor their commitments under the terms of the Future Coverage Agreement. The Company expects that such amounts, if required to be paid, would be paid by the Company using monies from the above settlements and from other sources. If and when such amounts are paid by the Company, the insurers' obligations pursuant to the terms of the Future Coverage Agreement would be triggered, and the participating insurers would thereafter be required to pay their allocated share of defense costs and settlement payments for asbestos product liability claims that qualify for reimbursement subject to the limits of their insurance policies, which limits are believed to be sufficient to cover the insurers' allocated shares of an amount that exceeds the high end of the reasonably possible range of financial exposure described below. The Company will be responsible for the share of such costs and payments that are not reimbursed by the participating insurers pursuant to the terms of the Future Coverage Agreement, as well as for such costs and payments for those claims that do not qualify for reimbursement under the terms of the Future Coverage Agreement. Should asbestos reform legislation be passed, some or all of the obligations under the Future Coverage Agreement will be suspended for so long as such legislation remains in effect. As of December 31, 2006, defense costs and settlement payments for qualifying asbestos products claims of approximately \$132.4 million have been credited towards the range of \$330 million to \$370 million noted above.

As a result of the above settlements, the Company is expected to have available to it a combination of cash and trust fund monies which can be used to pay or reimburse the Company for a significant portion of the defense costs and settlement payments that may be incurred by the Company with respect to its asbestos-related liabilities. Upon exhaustion of the trust fund monies, the Company will be required to fund such liabilities itself until such time as the insurers' obligations under the Future Coverage Agreement are triggered. If and when those obligations are triggered, the Company and the insurers who are participants in the Future Coverage Agreement will share qualifying asbestos product liability claims defense costs and settlement payments at varying levels over time, with the Company typically bearing a slightly larger share than such participating insurers. Of note, as a result of the First Settlement Agreement, Second Settlement Agreement and Other Settlement Agreements, substantially all of the Company's insurance coverage applicable to asbestos products claims has been cancelled (except for obligations under the Future Coverage Agreement), and such insurance coverage will no longer be available to cover any such claims. In addition and as described above, as a result of the First Settlement Agreement, Second Settlement Agreement and Other Settlement Agreements, substantial amounts of insurance coverage that would have been available to cover insured claims other than asbestos products claims have been cancelled and will no longer be available to cover such claims.

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Based on the current number of claims pending, the amounts the Company anticipates paying to resolve those claims which are not dismissed or otherwise resolved without payment, and anticipated future claims, the Company believes that the total monetary recovery under the settlements noted above will provide coverage for a significant portion, but less than a majority, of the Company's monetary exposure going forward for its estimated asbestos-related liabilities. Since the settlements noted above were entered into, the Company's insurers have paid over \$207 million to the Company and to the Trusts referred to above. Some of those payments have been used to pay or reimburse the Company for asbestos-related liabilities, and some of those payments have been used by the Company for other corporate purposes. Based on the Company's current claims experience, it is possible that before the end of 2007, the Company will be responsible for payment of a portion of its asbestos-related liabilities without the ability to seek reimbursement from the Second Trust, and that by mid-2008, or earlier, it is likely that the Company will be responsible for payment of all such liabilities until such time as the obligations under the Future Coverage Agreement are triggered, at which point in time the Company is expected to share the cost of defending and settling qualifying asbestos product liability claims with the participating insurers, with it being anticipated that the Company will typically bear a slightly larger share than the participating insurers. In any period of time, however, including after obligations under the Future Coverage Agreement are triggered, the amounts paid by the Company in connection with the defense and settlement of asbestos claims versus the amounts funded and to be funded by settlement monies and amounts anticipated to be reimbursed by the Future Coverage Agreement are expected to vary significantly.

In early 2003, the Company commissioned a study of its asbestos-related liabilities by a recognized expert at a major national university, who is a member of the American Academy of Actuaries with broad experience in estimating such liabilities. Since that time, such study has been updated several times to take into account the then most current data concerning, among other factors, the Company's claims and payment experience. In January 2007, the study was updated again and, as a result, the reasonably possible exposure for these matters as of December 31, 2006 was revised to a range of \$270 million to \$770 million, which is the same as the previously established range at the lower end, and slightly lower than the previously established range at the high end. Due to inherent uncertainties in estimating the timing and amounts of future payments, the foregoing range does not include the effects of inflation and has not been discounted for the time value of money. In addition, the range of financial exposures set forth above does not include estimates for future legal costs. It is the Company's policy to expense these legal costs as incurred. Cash payments related to this exposure are expected to be made over an extended number of years and actual payments, when made, could be for amounts in excess of the range due to potential future changes in estimates as well as the effects of inflation.

The foregoing is based on the Company's assumption that the number of future claims filed per year and claim resolution payments will vary considerably from year-to-year and by plaintiff, disease, venue and other circumstances, but will, when taken as a whole, remain relatively consistent with the Company's experience to date and will decline as the population of potential future claimants expires due to non-asbestos-related causes. It is also based on the results of the updated study and the status of the Company's settlements with its insurers, as described above. However, the Company recognizes that the number of future claims filed per year and claim resolution payments could greatly exceed those reflected by its past experience and contemplated by the study referenced above, that the Company's belief of the range of its reasonably possible financial exposure could change as the study referenced above is periodically updated, and that its evaluation of the total payments to be received from its insurers may change depending upon numerous variables including potential legislation and the risk that one or more insurance carriers may refuse or be unable to meet their obligations to the Company. Moreover, while the expert noted above has applied his methodology in determining the Company's reasonably possible range of exposures for these liabilities on a consistent basis, other methods in practice exist which place a differing degree of emphasis on the underlying variables used to measure asbestos-related contingencies. Such other methods could yield significantly different ranges of reasonably possible exposures.

Due to the dynamic nature of asbestos litigation, the Company's estimates are inherently uncertain, and these matters may present significantly greater financial exposures than presently anticipated. In addition, the Company intends to periodically update the asbestos study referenced above, and further analysis combined with new data received in the future could result in a material modification of the range of reasonably possible financial exposure set forth above. As a result of all of the foregoing, the Company's liability with respect to asbestos-related matters could vary significantly from present estimates and may require a material change in the accrued liability for these matters within the next 12 months. If the Company's liability does exceed amounts recorded in the balance sheet sufficient to trigger the obligations under the Future Coverage Agreement, the Company presently believes that a significant portion of the liability it may reasonably anticipate will be reimbursed by monies to be received pursuant to the Future Coverage Agreement. However, there can be no assurance that such liabilities will be reimbursed.

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The findings of the updated study referenced above identified a range of the Company's reasonably possible financial exposure for these asbestos-related matters. The Company adjusted its accrual for present and future potential asbestos claims before anticipated insurance recoveries at December 31, 2006 to \$270.0 million, reflecting the low end of the range noted above in accordance with generally accepted accounting principles (since no amount within the range is a better estimate than any other amount).

The following table presents the beginning and ending balances and balance sheet activity for the Company's asbestos-related accounts for the year ended December 31, 2006.

| | Balance January 1, 2006 | Interest Income/ Additional Accruals | Insurance Recovered/ Liabilities Settled | Accretion/ Reclassifi- cation | Balance December 31, 2006 |
|---|----------------------------|--|--|-------------------------------------|------------------------------|
| Asbestos-related assets: | | | | | |
| Insurance receivable | \$ 65.2 | \$ — | \$ (33.3) | \$ 0.9 | \$ 32.8 |
| Restricted cash in trust | 55.5 | 3.0 | (3.8) | — | 54.7 |
| Asbestos-related assets | \$ 120.7 | \$ 3.0 | \$ (37.1) | \$ 0.9 | \$ 87.5 |
| Asbestos-related liabilities: | | | | | |
| Asbestos-related liabilities, current | \$ 36.4 | \$ — | \$ — | \$ — | \$ 36.4 |
| Asbestos-related liabilities, non-current | 233.6 | 23.1 | (23.1) | — | 233.6 |
| Total asbestos-related liabilities | \$ 270.0 | \$ 23.1 | \$ (23.1) | \$ — | \$ 270.0 |

The Company, in conjunction with outside advisors, will continue to study its asbestos-related matters, insurance recovery expectations and reserves on an ongoing basis, and make adjustments as appropriate.

Composite Products Antitrust and Qui Tam Matters

Commencing in 1999, the Company was one of several companies sued in a series of civil antitrust and related lawsuits concerning the pricing and sale of carbon fiber and carbon prepreg products (together referred to as "carbon fiber products"). These products were manufactured and sold by the Company's former Composite Products division, which division was sold to Hexcel Corporation in 1996. These lawsuits encompassed the following: (a) a federal class action brought on behalf of direct purchasers of carbon fiber products captioned Thomas & Thomas Rodmakers v. Newport Adhesives and Composites, Case No. CV-99-07796-GHK (CTx) (U.S. District Court, Central District of California); (b) a total of nine California state purported class actions brought on behalf of indirect purchasers of carbon fiber products, all consolidated under the caption Carbon Fiber Cases I, II, and III, Judicial Council Coordination Proceeding Nos. 4212, 4216 and 4222, Superior Court of California, County of San Francisco; (c) a Massachusetts state purported class action brought on behalf of indirect purchasers of carbon fiber products captioned Saul M. Ostroff, et al. v. Newport Adhesives, et al., Civil Action No. 02-2385, Superior Court of Middlesex County; and (d) a lawsuit brought by Horizon Sports Technologies, a company that had "opted out" of the federal class action lawsuit referred to above and captioned Horizon Sports Technologies, Inc. v. Newport Adhesives and Composites, Inc., et al., Case No. CV02-8126 FMC (RNEX), U.S. District Court, Central District of California, Western Division. In addition, the Company and the other defendants in the foregoing lawsuits were sued in a related "Qui Tam" action captioned Randall M. Beck, et al. v. Boeing Defense and Space Group, Inc., et al., (Civil Action No. 99 CV 1557 JM JAH), which lawsuit was originally filed under seal in 1999 pursuant to the False Claims Act, 31 U.S.C. Section 729 et seq. Throughout 2005, the Company entered into agreements to resolve each of the foregoing lawsuits, and the results of such settlements have been reflected in the Company's financial statements. At this time, all of the foregoing lawsuits have been resolved, and all payments have been made, without any admission of liability. Each of the settlements was entered into by the Company in order to avoid the risks, uncertainties and costs inherent in litigation. In addition to the foregoing, two of the Company's former customers have "opted-out" of the Federal and California state class actions referred to above. The Company believes it probable that the claims of these two former customers will ultimately be amicably resolved, and the amount that the Company reasonably estimates that it will pay is included in the accrued liability for non-asbestos litigation reported below. Furthermore, by letter dated January 30, 2007, one of the defendants in the foregoing lawsuits asserted a claim against the Company for damages as a result of the alleged anticompetitive activities alleged in the lawsuits described above, and requested that the Company enter into settlement discussions. The Company intends to investigate this claim, but currently believes it is without merit and legally defensible.

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In December 2004, the Company filed a lawsuit against Hexcel Corporation (Hercules Incorporated v. Hexcel Corporation, Supreme Court of the State of New York, County of New York, Index No.04/604098) seeking indemnification for the settlements described above. The lawsuit against Hexcel is based on the terms of the purchase and sale agreement by which the Company sold its Composite Products division to Hexcel in 1996. In response, Hexcel Corporation has denied liability and has filed a counter-claim also seeking indemnification. Both parties have filed motions for summary judgment, but no ruling has yet been issued by the Court. No date for trial has been set.

Agent Orange Litigation

Agent Orange is a defoliant that was manufactured by several companies, including the Company, at the direction of the U.S. Government, and used by the U.S. Government in military operations in both Korea and Vietnam from 1965 to 1970. In 1984, as part of a class action settlement, the Company and other defendants settled the claims of persons who were in the U.S., New Zealand and Australian Armed Forces who alleged injury due to exposure to Agent Orange. In Re “Agent Orange” Prod. Liab. Litig., 597 F. Supp. 740 (E.D.N.Y. 1984). Following that settlement, all claims for alleged injuries due to exposure to Agent Orange by persons who had served in the Armed Forces of those countries were treated as covered by that class action settlement.

On June 9, 2003, the United States Supreme Court affirmed the decision of the United States Court of Appeals for the Second Circuit in a case captioned Dow Chemical Company, et al. v. Daniel Raymond Stephenson, et al., 123 S. Ct. 2161 (2003), where plaintiffs Stephenson and Isaacson (in a separate but consolidated case) alleged that they were injured from exposure to Agent Orange and that such injury did not manifest until after exhaustion of the settlement fund created through the 1984 class action settlement. As a result of that decision, the claims of persons who allege injuries due to exposure to Agent Orange and whose injuries first manifest themselves after exhaustion of the settlement fund created through the 1984 class action settlement may no longer be barred by the 1984 class action settlement and such persons may now be able to pursue claims against the Company and the other former manufacturers of Agent Orange.

Currently, the Company is a defendant in approximately twenty-eight lawsuits (including two purported class actions) where plaintiffs allege that exposure to Agent Orange caused them to sustain various personal injuries. On February 9, 2004, the U.S. District Court for the Eastern District of New York issued a series of rulings granting several motions filed by defendants in the two cases that had been remanded to the U.S. District Court by the U.S. Court of Appeals for the Second Circuit on remand from the U.S. Supreme Court (In re: “Agent Orange” Product Liability Litigation: Joe Isaacson, et al v. Dow Chemical Company, et al. and Daniel Raymond Stephenson, et al. v. Dow Chemical Company, et al. (MDL 381, CV 98-6383 (JBW), CV 99-3056 (JBW))). In relevant part, those rulings held that plaintiffs’ claims against the defendant manufacturers of Agent Orange that were brought in the state courts are properly removable to federal court under the “federal officer removal statute” and that such claims are subject to dismissal by application of the “government contractor defense.” The Court then dismissed plaintiffs’ claims, but stayed its decision to allow plaintiffs to obtain additional discovery and to move for reconsideration of the Court’s decision. A hearing on the motion for reconsideration was held on February 28, 2005. By Orders dated March 2, 2005, the Court denied reconsideration, lifted the stay of the earlier decision, and dismissed plaintiffs’ claims in all of the lawsuits that were before the Court at that time. Plaintiffs have appealed those dismissals to the United States Court of Appeals for the Second Circuit.

In addition, in January 2004, the Company was sued in a purported class action filed in the United States District Court for the Eastern District of New York by The Vietnam Association for Victims of Agent Orange/Dioxin and several individuals who claim to represent between two and four million Vietnamese who allege that Agent Orange used by the United States during the Vietnam War caused them or their families to sustain personal injuries. (The Vietnam Association for Victims of Agent Orange/Dioxin, et al. v. The Dow Chemical Company, et al., Civil Action No. 04 CV 0400 (JBW)). That complaint alleges violations of international law and war crimes, as well as violations of the common law for products liability, negligence and international torts. The defendants moved to dismiss this case on several grounds, including failure to state a claim under the Alien Tort Claims Statute, lack of jurisdiction and justiciability, the bar of the statute of limitations, failure to state claims for violations of international law, and the “government contractor defense.” A hearing on these motions was held on February 28, 2005. By order dated March 10, 2005, the Court dismissed this lawsuit. Plaintiffs have appealed that dismissal to the United States Court of Appeals for the Second Circuit.

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In addition, in 1999, approximately 17,200 Korean veterans of the Vietnam War filed suit in the 13th Civil Department of the District Court in Seoul, Korea, against The Dow Chemical Company (“Dow”) and Monsanto Company (“Monsanto”) for their alleged injuries from exposure to Agent Orange. These lawsuits were filed under various captions, including Dong Jin Kim and 9 others, 99 Gahap 84123, Il Joo La and 9 others, 99 Gahap 84147, and Dae Jin Jang, 99 Gahap 84130. Following the commencement of those lawsuits, Dow and Monsanto petitioned the court to issue Notices of Pendency to each of the non-defendant manufacturers of Agent Orange, including the Company, in an attempt to bind those companies to factual and legal findings which may be made in the Korean courts if Dow and Monsanto are held liable to plaintiffs and sue those companies for contribution. Thereafter, the Company was served with such notices through diplomatic channels. In 2002, the District Court dismissed the plaintiffs’ claims, and the plaintiffs appealed. It has been reported that on January 26, 2006, the intermediate appellate court in Seoul reversed the District Court and awarded damages of \$65.2 million plus pre- and post-judgment interest to approximately 6,800 of the approximately 17,200 plaintiffs that filed these lawsuits. The Company has been informed that Dow and Monsanto have appealed. If Dow and Monsanto are not successful on appeal, it is possible that they might initiate an action seeking contribution from the non-defendant manufacturers of Agent Orange, including the Company. Further, if the intermediate appellate court’s decision is ultimately upheld, it is possible that new lawsuits could be brought in Korea against the Agent Orange manufacturers, including the Company, by other Korean veterans of the Vietnam War.

The Company believes that it has substantial meritorious defenses to all of the Agent Orange-related claims described above and those that may yet be brought. To that end, the Company denies any liability to plaintiffs, and will vigorously defend all actions now pending or that may be brought in the future.

Other Litigation

The Company is one of several defendants that had been sued by over 2,000 individuals in a series of lawsuits, including a purported class action lawsuit, captioned Jerry Oldham, et al. v. The State of Louisiana, et al., Civil Action No. 55,160, John Capone, et al. v. The State of Louisiana, et al., Civil Action No. 56,048C, and Georgenner Batton, et al. v. The State of Louisiana, et al., Civil Action No. 55,285, all brought in the 18th Judicial District Court, Parish of Iberville, Louisiana. The purported class members and plaintiffs, who claimed to have worked or lived at or around the Georgia Gulf facility in Iberville Parish, Louisiana, alleged injury and fear of future illness from the consumption of contaminated water and, specifically, elevated levels of arsenic in that water. As to the Company, plaintiffs alleged that the Company itself and as part of a joint venture operated a nearby plant and, as part of those operations, used a groundwater injection well to dispose of various wastes, and that those wastes contaminated the potable water supply at Georgia Gulf. In August 2005, the Company and several other defendants entered into an agreement to settle these matters with the Company agreeing to pay \$1,412,000, an amount which has since been paid. On May 4, 2006, the Court granted settlement class certification. This settlement, which was agreed to by the Company without any admission of liability, is pending final approval by the Court.

On May 7, 2004, Ciba Specialty Chemicals Corporation (“Ciba”) filed a Complaint against the Company and Cytec Industries, Inc. (“Cytec”) in the United States District Court for the District of Delaware alleging infringement of two patents owned by Ciba (Ciba Specialty Chemicals Corporation v. Hercules Incorporated and Cytec Industries, Inc., C.A. No. 04-293 (KAJ)). The two patents in question are U.S. Patent 5,167,766 (issued on December 1, 1992) entitled “Charged Organic Polymer Microbeads in Paper Making Process” and U.S. Patent 5,171,808 (issued on December 15, 1992) entitled “Cross-linked Anionic and Amphoteric Polymeric Microparticles.” The alleged conduct related to the manufacture, use, sale and offer to sell of certain products of the Company’s Paper Technologies and Ventures segment. Ciba sought to enjoin alleged continued infringement, obtain a judgment that the defendants infringed the patents, and obtain an award of damages and reasonable attorney’s fees. The Company agreed to indemnify Cytec with respect to Ciba’s patent infringement charges. On June 26, 2006, the Court issued a Memorandum Opinion in which the Court granted the Company’s and Cytec’s motions for summary judgment and denied Ciba’s motion for summary judgment. On July 27, 2006, the Court entered Judgment in favor of the Company and Cytec and against Ciba. On August 25, 2006, Ciba filed a Notice of Appeal to the United States Court of Appeals for the Federal Circuit. Settlement discussions with Ciba and Cytec followed and a confidential settlement was reached in December 2006. Ciba withdrew its appeal and, in January 2007, this matter was dismissed.

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In June 2004, a purported class action captioned Charles Stepnowski v. Hercules Inc.; The Pension Plan of Hercules Inc.; The Hercules Inc. Finance Committee; and Edward V. Carrington, Hercules' Vice President Human Resources, Civil Action No. 04-cv-2296, was filed in the United States District Court, Eastern District of Pennsylvania. The Stepnowski lawsuit sought the payment of benefits under the Pension Plan of Hercules Incorporated (the "Plan"), and alleged violations of the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. ("ERISA"). Under the Plan, eligible retirees of the Company may opt to receive a single cash payment of 51% of the present value of their accrued benefit (with the remaining 49% payable as a monthly annuity). In the Stepnowski lawsuit, it was alleged that the Company's adoption in 2002 of a new interest rate assumption used to determine the 51% cash payment constituted a breach of fiduciary duty and a violation of the anti-cutback requirements of ERISA, the Internal Revenue Code and the terms of the Plan, and that its communications to employees concerning the new interest rate assumption constituted a breach of fiduciary duty. The Stepnowski lawsuit sought, among other things, the payment of additional benefits under ERISA (as well as costs and attorneys fees), and to compel the Company to use an interest rate assumption that is more favorable to eligible retirees. In December 2005, a virtually identical purported class action lawsuit was filed in the same Court in a matter captioned Samuel J. Webster, et al. v. Hercules, Inc.; The Pension Plan of Hercules Inc.; The Hercules Inc. Finance Committee; and Edward V. Carrington, Hercules' Vice President Human Resources, Civil Action No. 05-6404. In January 2006, the Court consolidated the Stepnowski and Webster lawsuits for discovery and trial. In March 2006, the Court certified the Webster action as a class action. By Order dated April 20, 2006, the Court entered partial summary judgment in favor of plaintiffs, holding that while the interest rate change did not violate the anti-cutback provisions of ERISA, such change did violate provisions of the Plan, and ordered the Company to recalculate the lump sum pension benefit owed to class members by using the prior interest rate assumption (the "PBGC" rate, which was the rate used prior to the change to the new interest rate, as referenced above) to calculate benefits accrued through December 31, 2001, and the new interest rate (the "30-Year Treasury Bond" rate) for all benefits accrued after December 31, 2001. That Order also required the Company to make certain payments to Mr. Stepnowski and Mr. Webster, with such payments representing the additional lump sum benefit payable as a result of the adjusted lump sum calculation described in the preceding sentence, plus interest. On October 4, 2006, the parties entered into a settlement in principle to resolve both the Stepnowski lawsuit and Webster class action lawsuit. Preliminary approval of the settlement was granted by the Court on December 4, 2006. A hearing for final approval of the settlement is set for April 16, 2007. The main points of the settlement are: (1) each Class member's lump sum will be computed using the 30 Year Treasury Bond rate applied to all eligible service through December 31, 2004 as the "floor," plus 75% of the additional value gained, if any, by using the PBGC rate for that portion of eligible service accrued through December 31, 2001 (the Plan's actuaries have estimated that the "present value" of the total settlement award is approximately \$18.2 million, without consideration of additional interest payments); (2) each Class member who has already received a lump sum will also receive 3% interest, compounded annually, on his or her settlement award, from the date the original lump sum amount was paid until the settlement award has been paid; and (3) Defendants will pay \$0.3 million toward the fees and litigation costs of plaintiffs' counsel. In addition, plaintiffs and plaintiffs' counsel have agreed to petition the Court for an additional award which, if approved, will be credited against the present value of the aggregate settlement award and will reduce each Class member's settlement award by the same percentage. Of note, except for \$0.3 million, the payments to be made as a result of this lawsuit will be made by the Company's pension plan.

Acevedo, et al. v. Union Pacific Railroad Company, et al., Case No. C-4885-99-F. 332nd Judicial District Court, Hidalgo County, Texas (2001), and related lawsuits, are mass toxic tort lawsuits alleging pesticide exposure relating to operations at a former pesticide formulation facility in Mission, Texas. There are currently approximately 1,700 plaintiffs and approximately 30 defendants, including the Company. Plaintiffs include former workers at the pesticide formulation facility, and persons who currently reside, or in the past resided, near the facility. All plaintiffs allege personal injuries and some plaintiffs also allege property damage. The vast majority of the plaintiffs allege residential exposure to a variety of pesticide and chemical products as a result of leaks, spills, flooding, and airborne emissions from the pesticide formulation facility. It is alleged that certain of the Company's products were sold to or used by the pesticide formulation facility prior to its ceasing operations in 1967. In November 2004, Defendants filed a Petition for a Writ of Mandamus in the Texas Supreme Court seeking to set aside an order consolidating the claims of certain plaintiffs for trial, and seeking to require the plaintiffs to provide certain evidence of exposure and injury before being permitted to proceed in court. In response, the Texas Supreme Court issued a partial stay of the underlying litigation. In November 2005, oral argument with respect to Defendants' Petition for Writ of Mandamus was held before the Texas Supreme Court. No decision has yet been rendered with respect to that petition. The Company denies any liability to plaintiffs and intends to vigorously defend these matters.

The Company and others have been sued by approximately 520 former employees and employees of third-party contractors who allege hearing loss as a result of their having worked at plants located in or about Lake Charles, Louisiana. The Company formerly owned and operated a plant in Lake Charles. In July 2005, the Company and other defendants reached a settlement in principle with plaintiffs' lawyers which provides for the resolution of these claims over a period of approximately two years, and since that time, a portion of these claims have been resolved. The Company has accrued its remaining probable and reasonably estimable liability as a portion of the amount described in the paragraph below entitled "Amounts Accrued for Non-Asbestos Litigation." The lawsuits at issue are all pending in the 14th Judicial District Court of Calcasieu Parish, Louisiana, and are captioned as follows: James Allee, et al. v. Canadianoxy Offshore Production Co., et al., Case No. 2001-4085, James Hollingsworth, et al. v. Hercules Inc., Civil Action No. 2001-4064, Joseph Kelley, et al. v. Canadianoxy Offshore Production Co., et al., Civil Action No. 98-2802, Robert Corbin, et al. v. Canadianoxy Offshore Production Co., et al., Civil Action No. 98-1097, Carl Belaire, et al. v. Bridgestone Firestone Inc., et al., Civil Action No. 2005-004369, Darrell Comeaux, et al. v. Bridgestone/Firestone, Inc., et al., Civil Action No. 2006-2242, and Howard Dejean, et al. v. Bridgestone/Firestone, Inc., et al., Civil Action No. 2006-6276.

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Amounts Accrued for Non-Asbestos Litigation

During the period January 1, 2006 through December 31, 2006, the Company incurred charges totaling \$12.2 million and paid \$7.1 million in settlement payments including defense costs with respect to the settlement of non-asbestos and non-environmental litigation. The December 31, 2006 Consolidated Balance Sheet reflects a current liability of \$8.6 million for non-asbestos and non-environmental related litigation matters, representing management's best estimate of the probable and reasonably estimable losses for such matters. A separate liability is provided for the Vertac litigation. While it is not feasible to predict the outcome of all pending legal proceedings, it is reasonably possible that an exposure to loss exists in excess of the amounts accrued for these and other matters, and the ultimate resolution of one or more of these matters could have a material adverse effect upon the Company's financial position, results of operations and/or cash flows for any annual, quarterly or other period.

14. Stock-Based Compensation

Effective January 1, 2006 (the "effective date"), the Company adopted SFAS 123R as interpreted by SEC Staff Accounting Bulletin No. 107. The Company adopted SFAS 123R using the "modified prospective" method in which compensation cost is recognized beginning with the effective date based on (a) the requirements of SFAS 123R for all share-based payments granted after the effective date and (b) the requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS 123R that remain unvested on the effective date. The Company continues to use the Black-Scholes option-pricing model, which is an acceptable option valuation model in accordance with SFAS 123R, to estimate the value of stock options granted to employees.

The Company previously adopted SFAS 123 on a prospective basis for all employee and non-employee director awards granted, modified or settled after January 1, 2003. Excluding stock options issued to non-employee directors which vest immediately upon grant due to certain retirement-eligibility provisions, the Company did not issue any stock options to employees during 2003 and 2004. During 2005, the Company granted nonqualified stock options to its Chief Executive Officer ("CEO"). Those stock options have been accounted for in accordance with SFAS 123. Stock options issued to employees during years prior to 2003, which were accounted for in accordance with APB 25, had fully vested by December 31, 2005. Accordingly, there is no cost attributable to such options to be recorded subsequent to 2005. During 2006, the Company issued nonqualified stock options as well as restricted stock awards to the CEO and other management personnel. These awards have been accounted for in accordance with SFAS 123R.

The Company has in the past and continues to provide for the grant of stock options and the award of restricted common stock and other market-based units to key employees and non-employee directors under the following plans: (1) Hercules Incorporated Long Term Incentive Compensation Plan ("LTICP"), (2) Management Incentive Compensation Plan ("MICP"), and (3) Hercules Incorporated Omnibus Equity Compensation Plan for Non-Employee Directors ("Omnibus Plan") (collectively, the "Plans"). As of December 31, 2006, 8,546,964 shares were available for grant under the Plans as stock awards or stock option awards. A summary of the valuation and accounting for share-based awards granted under the Plans is described in further detail below.

The compensation cost attributable to the Plans during 2006, 2005 and 2004 was \$6.6 million, \$8.1 million and \$3.2 million, respectively, and was recognized as a component of Selling, general and administrative expenses. During 2006, \$0.4 million attributable to the acceleration of cost related to FiberVisions employees was included as a component of the loss on disposition. The total income tax benefit recognized in the Statement of Operations for share-based compensation arrangements was \$2.3 million, \$2.8 million and \$1.1 million for 2006, 2005 and 2004, respectively. In connection with the transition to SFAS 123R, the Company determined that it will account for the income tax effects of share-based compensation with a pool of windfall tax benefits (the "pool") set at zero upon the effective date. In addition, the Company recognized \$6.2 million of tax benefits in Additional paid-in capital resulting from the exercise of stock options and vesting of restricted stock during 2006.

Upon the adoption of SFAS 123R, the Company recorded a \$0.9 million benefit, net of income taxes, as a cumulative effect of a change in accounting principle to reflect the required change in accounting policy for recognition of forfeitures from occurrence-based to one whereby the recognition of cost is based upon an estimate of the total number of awards that are expected to vest over the requisite service period for all awards. The adjustment was based on the unvested portion of awards issued prior to 2006 that were outstanding upon the effective date.

The Company issues shares from treasury stock upon the exercise of stock options and the grant of restricted stock awards. During 2006, the Company issued 3,559,294 shares of stock from treasury, of which 2,966,552 were attributable to the exercise of stock options and 516,252 were attributable to the grant of restricted stock awards. In addition, 121,993 shares were returned to treasury stock as a result of forfeitures of restricted stock awards. Cash received from the exercise of stock options during 2006 was \$37.0 million.

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

Stock Options

Regular stock options are granted under the Plans at the market price on the date of grant or measurement date and are exercisable at various periods from one to nine years after date of grant. Performance accelerated stock options (“PASOs”) are also granted at the market price at the date of grant and are normally exercisable at nine and one-half years. Exercisability may be accelerated based upon the achievement of predetermined performance goals. Both regular stock options and PASOs expire ten years after the date of grant. These awards are forfeited and revert to the Company in the event of employment termination, except in the case of death, disability, retirement or other specified events. The Plans do not provide the award recipients the ability to require a cash settlement except in the case of a standard cashless exercise program.

The fair value of option awards granted during 2006, 2005 and 2004 is measured on the date of grant using the Black-Scholes option pricing model and the weighted-average assumptions in the following table:

| | 2006 | 2005 | 2004 |
|--------------------------|--------|--------|--------|
| Expected volatility | 30.10% | 28.65% | 31.22% |
| Expected dividend yield | 0.00% | 0.00% | 0.00% |
| Expected life (in years) | 6.0 | 6.0 | 6.0 |
| Risk-free interest rate | 4.60% | 4.08% | 3.73% |

A summary of outstanding stock option activity under the Plans during 2004, 2005 and 2006 is presented as follows:

| | Regular | | Performance Accelerated | |
|----------------------------------|------------------|------------------------|-------------------------|------------------------|
| | Number of Shares | Weighted-average Price | Number of Shares | Weighted-average Price |
| Outstanding at January 1, 2004 | 12,306,559 | \$ 24.47 | 4,779,700 | \$ 43.66 |
| Granted | 21,000 | 14.25 | — | — |
| Exercised | (402,855) | 11.48 | — | — |
| Forfeited | (886,820) | 33.19 | (963,725) | 38.25 |
| Outstanding at December 31, 2004 | 11,037,884 | \$ 24.22 | 3,815,975 | \$ 45.03 |
| Granted | 224,229 | 14.01 | — | — |
| Exercised | (200,752) | 11.53 | — | — |
| Forfeited | (2,679,349) | 33.45 | (2,473,860) | 45.87 |
| Outstanding at December 31, 2005 | 8,382,012 | \$ 21.31 | 1,342,115 | \$ 43.49 |
| Granted | 503,430 | 12.52 | — | — |
| Exercised | (2,966,552) | 12.29 | — | — |
| Forfeited | (1,241,595) | 32.12 | (621,125) | 46.67 |
| Outstanding at December 31, 2006 | 4,677,295 | \$ 23.22 | 720,990 | \$ 40.75 |

The weighted-average grant date fair value of options granted during 2006, 2005 and 2004 was \$4.86, \$5.13 and \$5.38 per option, respectively. These options vest over a period of three years with 40% vesting in each of the first two years and 20% in the third year. Accordingly, the Company amortizes compensation cost using the graded vesting method. The total intrinsic value of options exercised was \$17.1 million, \$0.6 million and \$1.0 million during 2006, 2005 and 2004, respectively. As of December 31, 2006, there was \$1.6 million of unrecognized compensation cost related to stock options granted under the Plans. That cost is expected to be recognized over a remaining weighted-average period of 1.9 years. The total fair value of option shares charged to compensation expense during 2006 was \$1.6 million.

Hercules Incorporated

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(Dollars in millions, except per share data)

Following is a summary of stock options outstanding and exercisable at December 31, 2006:

| | Outstanding Options | | | Exercisable Options | |
|--|---------------------|---|---------------------------------|---------------------|---------------------------------|
| | Number Outstanding | Weighted-average Remaining Contractual Life | Weighted-average Exercise Price | Number Exercisable | Weighted-average Exercise Price |
| Regular Stock Options | | | | | |
| \$8.50 - \$11.75 | 608,150 | 5.00 | \$ 11.13 | 608,150 | \$ 11.13 |
| \$11.76 - \$15.00 | 1,359,464 | 7.12 | \$ 12.46 | 772,746 | \$ 12.28 |
| \$15.01 - \$25.00 | 801,686 | 3.37 | \$ 17.21 | 776,210 | \$ 17.20 |
| \$25.00 - \$33.75 | 404,200 | 1.69 | \$ 25.70 | 404,200 | \$ 25.70 |
| \$33.76 - \$40.00 | 1,203,945 | 1.46 | \$ 38.54 | 1,203,945 | \$ 38.54 |
| \$40.01 - \$55.00 | 299,850 | 1.32 | \$ 47.79 | 299,850 | \$ 47.79 |
| | <u>4,677,295</u> | | | <u>4,065,101</u> | |
| Performance-Accelerated Stock Options | | | | | |
| \$25.00 - \$37.00 | 11,075 | 2.45 | \$ 31.16 | — | — |
| \$37.01 - \$45.00 | 511,405 | 1.75 | \$ 38.19 | 150,850 | \$ 39.50 |
| \$45.01 - \$50.00 | 197,185 | 1.33 | \$ 47.83 | 575 | \$ 47.25 |
| \$50.01 - \$61.00 | 1,325 | 0.65 | \$ 52.21 | — | — |
| | <u>720,990</u> | | | <u>151,425</u> | |

The intrinsic value of Regular stock options outstanding and exercisable as of December 31, 2006 was \$16.0 million and \$12.0 million, respectively. The Performance-Accelerated stock options did not have any intrinsic value as their exercise prices exceeded the market value of Hercules' stock.

Restricted Stock Awards

Restricted stock and other market based units are awarded with respect to certain programs in connection with the Plans. During the restriction period, award holders have the rights of stockholders, including the right to vote and receive cash dividends, if any, but cannot transfer ownership and nonvested shares are subject to forfeiture.

Restricted stock awards are recorded at the fair value of the Company's stock on the grant date (measurement date). These awards are forfeited and revert to the Company in the event of employment termination, except in the case of death, disability, retirement or other specified events.

A summary of restricted stock award activity under the Plans during 2006 is presented as follows:

| | Number of Shares | Weighted-Average Grant Date Fair Value |
|----------------------------------|------------------|--|
| Outstanding at January 1, 2006 | 2,093,631 | \$ 11.38 |
| Granted | 516,252 | 12.47 |
| Vested | (430,482) | 9.17 |
| Forfeited | (121,993) | 12.36 |
| Outstanding at December 31, 2006 | <u>2,057,408</u> | <u>\$ 12.05</u> |

The restricted stock awards granted during 2006 vest based on relative stock performance over a period of three to seven years from the date of grant. Vesting can be accelerated to as early as three years from the date of grant or delayed to seven years based upon share price fluctuation with a market-based benchmark. Currently, the 2006 awards are being amortized over a five year period. Restricted stock awards granted in periods prior to 2006 include awards which vest based on continuous service as well as those whose vesting can be accelerated upon the achievement of a market-based benchmark. The total number of restricted stock awards that are expected to vest is adjusted by estimated forfeiture rates. As of December 31, 2006, there was \$12.9 million of unrecognized compensation cost related to restricted stock awards granted under the Plans. That cost is expected to be recognized over a remaining weighted-average period of 3.5 years. The total fair value of shares charged to compensation expense during 2006, 2005 and 2004 was \$5.4 million, \$6.9 million and \$3.1 million, respectively.

Hercules Incorporated**Notes to Consolidated Financial Statements***(Dollars in millions, except per share data)*

Amortization of compensation cost for those awards issued prior to 2006 is based on a normal five-year vesting period. Consistent with prior periods, the Company will continue to amortize the cost of these awards based on this policy unless there is an acceleration or deceleration event or change in estimated forfeitures, upon which compensation cost will be adjusted accordingly.

15. Series Preferred Stock

There are 2,000,000 shares of series preferred stock without par value authorized for issuance, none of which have been issued.

16. Common Stock

Hercules common stock has a stated value of \$25/48, and 300,000,000 shares are authorized for issuance. At December 31, 2006, a total of 20,708,528 shares were reserved for issuance for the following purposes: 5,398,285 shares for the exercise of awards under the Stock Option Plan; 8,546,964 shares for awards under incentive compensation plans; 159,065 shares for conversion of debentures; and 6,604,214 shares for exercise of the warrant component of the CRESTS Units.

17. Accumulated Other Comprehensive Losses

The components of Accumulated other comprehensive losses are as follows:

| | December 31, | | |
|--|-------------------|-------------------|-------------------|
| | 2006 | 2005 | 2004 |
| Pension and postretirement benefit plan adjustments, net of tax ⁽¹⁾ | \$ (461.3) | \$ (415.7) | \$ (376.9) |
| Foreign currency translation adjustments, net of hedging activities and taxes | 52.5 | 28.4 | 100.5 |
| Other, net of tax | (0.8) | (0.3) | — |
| | <u>\$ (409.6)</u> | <u>\$ (387.6)</u> | <u>\$ (276.4)</u> |

(1) Includes the impact of the adoption of SFAS 158 effective December 31, 2006 and minimum pension liability adjustments prior to the adoption of SFAS 158.

The tax impact of charges to the above components of Accumulated other comprehensive losses for the years ended December 31, 2006, 2005 and 2004 is summarized in [Note 9](#).

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

18. Additional Balance Sheet Detail

| | 2006 | 2005 |
|---|-----------------|-----------------|
| Property, plant and equipment: | | |
| Land | \$ 16.4 | \$ 10.6 |
| Buildings and equipment | 1,643.0 | 1,613.6 |
| Construction in progress | 85.0 | 38.0 |
| Total | 1,744.4 | 1,662.2 |
| Accumulated depreciation | (1,144.0) | (1,126.8) |
| Property, plant and equipment, net | \$ 600.4 | \$ 535.4 |

| | 2006 | 2005 |
|---|-----------------|-----------------|
| Deferred charges and other assets: | | |
| Tax deposits | \$ 3.0 | \$ 66.1 |
| Capitalized software, net | 44.8 | 62.6 |
| Prepaid pension assets | 2.2 | 42.8 |
| Cash surrender value of life insurance policies | 22.3 | 21.4 |
| Unamortized debt issuance costs | 7.7 | 10.3 |
| Investment securities available for sale | 2.6 | 1.0 |
| Equity method investments | 25.6 | 2.6 |
| Other | 28.7 | 38.3 |
| | \$ 136.9 | \$ 245.1 |

| | 2006 | 2005 |
|---|-----------------|-----------------|
| Accrued expenses: | | |
| Compensation and benefits | \$ 53.0 | \$ 37.0 |
| Current portion of postretirement benefits | 16.2 | 23.5 |
| Current portion of asset retirement obligations | 21.0 | 21.6 |
| Severance and other exit costs | 10.5 | 16.6 |
| Income taxes payable | 24.5 | 14.5 |
| Interest payable | 14.6 | 12.9 |
| Current deferred income taxes | 11.8 | 12.9 |
| Sales rebate accrual | 10.9 | 9.3 |
| Current pension liability | 4.9 | 6.2 |
| Litigation accrual | 8.6 | 3.5 |
| Current portion of deferred rent | 3.3 | 3.0 |
| Other taxes payable | 2.8 | 2.3 |
| Other | 46.5 | 53.7 |
| | \$ 228.6 | \$ 217.0 |

| | 2006 | 2005 |
|--|-----------------|-----------------|
| Deferred credits and other liabilities: | | |
| Non-current income tax liabilities | \$ 41.7 | \$ 95.7 |
| Asset retirement obligations - noncurrent | 55.3 | 68.7 |
| Indemnifications | 40.0 | 40.0 |
| Deferred rent | 26.3 | 30.6 |
| Environmental contingencies | 5.3 | 17.6 |
| Fair value of cross-currency interest rate swaps | 53.2 | — |
| Workers compensation | 13.9 | 14.6 |
| Other | 19.9 | 22.2 |
| | \$ 255.6 | \$ 289.4 |

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

19. Restructuring Programs

2006

A summary of charges incurred during 2006 in connection with restructuring programs as well as an allocation to the reporting segments is provided as follows:

| | Severance | Other Exit Costs | Asset Charges ⁽¹⁾ | Total |
|---|----------------|------------------|------------------------------|----------------|
| Research and development consolidation | | | | |
| Jacksonville, FL | \$ 1.7 | \$ 0.3 | \$ 0.4 | \$ 2.4 |
| Wilmington, DE | 0.9 | 0.9 | 0.8 | 2.6 |
| | <u>2.6</u> | <u>1.2</u> | <u>1.2</u> | <u>5.0</u> |
| Manufacturing rationalization | | | | |
| Pendlebury, UK | 0.4 | 0.8 | 2.1 | 3.3 |
| Alliance-related rationalization ⁽²⁾ | 0.5 | 0.2 | 0.6 | 1.3 |
| | <u>0.9</u> | <u>1.0</u> | <u>2.7</u> | <u>4.6</u> |
| Business segment realignment | | | | |
| Paper Technologies and Ventures | 6.1 | — | — | 6.1 |
| Aqualon Group | 3.7 | 0.4 | — | 4.1 |
| | <u>9.8</u> | <u>0.4</u> | <u>—</u> | <u>10.2</u> |
| Business Infrastructure Projects | 2.9 | 2.3 | 4.4 | 9.6 |
| Total restructuring and asset charges | \$ 16.2 | \$ 4.9 | \$ 8.3 | \$ 29.4 |
| Paper Technologies and Ventures | | | | |
| | \$ 8.7 | \$ 1.8 | \$ 3.1 | \$ 13.6 |
| Aqualon Group | 3.7 | 0.4 | — | 4.1 |
| Corporate | 3.8 | 2.7 | 5.2 | 11.7 |
| Total by reporting segment | \$ 16.2 | \$ 4.9 | \$ 8.3 | \$ 29.4 |

(1) Includes accelerated depreciation and amortization of \$5.1 million, and an impairment of capitalized software of \$3.2 million.

(2) Impacts Savannah, GA, Hattiesburg, MS and Portland, OR.

Research and Development Consolidation

This program, which was initiated during 2004 in connection with efforts to centralize the Company's research and development activities into regional centers, reflects the transfer of activities from the Jacksonville, Florida facility to the Wilmington, Delaware research center ("WRC"). The severance charge of \$2.6 million reflects the termination of 59 employees at the Jacksonville and WRC sites, including those that were required to provide services through predetermined transition periods. The Company expects to incur additional charges of \$0.1 million during 2007 as certain transition activities continue.

In connection with this program, the Company substantially expanded and upgraded the WRC as well as its technical staff as this site will serve as the primary research and development facility for the Company in the Americas. The expansion and upgrade was partially funded by a grant received from the State of Delaware in the amount of \$2.3 million, of which \$1.8 million has been allocated as a reduction of capital additions and \$0.4 million has been allocated as a reduction of relocation expenses. The remaining \$0.1 million is expected to be allocated to capital additions in 2007. The Company incurred \$1.2 million in relocation and other exit costs attributable to the closure and transfer of activities and employees from the Jacksonville facility. Asset charges associated with the program include \$0.4 million of accelerated depreciation for the Jacksonville facility through its date of closure and \$0.8 million for certain assets at the WRC prior to their demolition or reconfiguration in connection with the upgrade and expansion project.

PTV Manufacturing and Alliance-related Rationalization

This program, which was initiated during 2005, resulted in the closure of the Company's manufacturing facility in Pendlebury, United Kingdom during 2006. While the majority of the workforce at Pendlebury was terminated at the end of 2005, the Company incurred a total of \$0.4 million in severance charges in connection with the termination of 7 additional employees that were retained through the date of closure in 2006. Other exit costs of \$0.8 million were incurred in connection with the closure and shut-down and transfer of certain component assets to other European PTV facilities. Accelerated depreciation charges of \$2.1 million were recorded during 2006 while the facility was still in operation.

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During 2006, PTV signed an alliance agreement with MeadWestvaco whereby Hercules will serve as the sole distributor for certain rosin-based sizing products currently produced by both Hercules and MeadWestvaco. Under the agreement, Hercules assumed MeadWestvaco's sales accounts and services all orders. MeadWestvaco acquired access to Hercules' technology and is assuming production of the products. The manufacturing transition will be phased in through 2007 and will result in the shut-down of certain production lines at the Company's Savannah, Georgia, Hattiesburg, Mississippi and Portland, Oregon manufacturing facilities. Accordingly, the Company has accelerated depreciation in the amount of \$0.6 million for certain of these facilities, which will continue through the transition period. During 2006, the Company incurred \$0.5 million in severance and termination benefits associated with 14 employees at these facilities. The Company anticipates \$0.2 million in additional severance and termination benefits to be incurred during 2007 as production is transitioned to MeadWestvaco.

Business Segment Realignment

In connection with the Company's realignment of its business segments, the Company eliminated 52 positions, primarily representing sales and marketing and related support functions, in an effort to further de-layer management and streamline the organizational structures. This resulted in charges for severance and termination benefits in the amount of \$9.8 million during 2006. The Company also incurred \$0.4 million in other exit costs, including contract terminations, attributable to this program.

Business Infrastructure Projects

The most significant program initiated during 2006 related to the Business Infrastructure Projects. These projects were developed primarily as a result of efforts to reduce stranded corporate costs resulting from the FiberVisions transaction. The reorganization component was essentially completed in 2006 yielding approximately \$10 million in annual savings. An additional objective of the projects is to realign the Company's support organization through selected outsourcing and offshoring service arrangements such that a substantial proportion of the underlying costs become more variable in nature. This should allow the Company greater flexibility to scale the level of support services required in response to changing business demands as well as provide access to larger service organizations that can provide a greater depth and breadth of services. The Company anticipates an additional \$7 million in annual cost reductions to be achieved by the end of 2007 as a result of these projects.

An ancillary action to the project is the Company's commitment to a significant technical and functional upgrade of its primary information technology platform ("IT upgrade"). As a result, the Company has begun the acceleration of amortization of certain of its capitalized software development cost assets as their remaining useful lives have been reduced to coincide with the implementation of the IT Upgrade. Total accelerated amortization to be recorded through 2008 is expected to be approximately \$19 million. In addition, \$3.2 million of software development costs previously capitalized have been written off as their utility has been nullified by the planned upgrade.

In connection with the Business Infrastructure Projects and the IT upgrade, the Company plans to eliminate approximately 220 positions worldwide resulting in a commitment to provide approximately \$14 million in severance and termination benefits as well as completion bonuses contingent upon the successful transition of job functions and responsibilities to the outsource and offshore service providers. The plans impact a number of business and corporate functional areas and contemplate individual targets, milestones and scheduling. A total of \$2.9 million of severance and termination benefits has been incurred through December 31, 2006 and the remainder will be incurred through individual dates of completion, at which time cash payments will begin. While the majority of such actions will take place during 2007 and 2008, certain actions and cash flows will continue into 2009.

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Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

2005

A summary of charges incurred during 2005 in connection with restructuring programs as well as an allocation to the reporting segments is provided as follows:

| | Severance | Other Exit Costs | Asset Charges ⁽¹⁾ | Total |
|--|----------------|------------------|------------------------------|----------------|
| Research and development consolidation | | | | |
| Barneveld, The Netherlands | \$ 2.9 | \$ 1.4 | \$ 1.8 | \$ 6.1 |
| Jacksonville, FL | 0.4 | — | 0.1 | 0.5 |
| Wilmington, DE | 0.5 | — | 0.5 | 1.0 |
| | <u>3.8</u> | <u>1.4</u> | <u>2.4</u> | <u>7.6</u> |
| Manufacturing rationalization | | | | |
| Paper Technologies and Ventures | 1.9 | — | 1.1 | 3.0 |
| Aqualon Group | 1.3 | 0.2 | 0.5 | 2.0 |
| FiberVisions | 3.4 | — | 1.5 | 4.9 |
| | <u>6.6</u> | <u>0.2</u> | <u>3.1</u> | <u>9.9</u> |
| Global marketing and management realignment | | | | |
| Paper Technologies and Ventures | 12.7 | — | — | 12.7 |
| Aqualon Group | 1.8 | — | — | 1.8 |
| | <u>14.5</u> | <u>—</u> | <u>—</u> | <u>14.5</u> |
| Corporate support realignment | | | | |
| | <u>4.8</u> | <u>0.5</u> | <u>—</u> | <u>5.3</u> |
| Sub-total for continuing operations | 29.7 | 2.1 | 5.5 | 37.3 |
| Terpenes specialties exit | 2.4 | — | 5.7 | 8.1 |
| Total restructuring and asset charges | <u>\$ 32.1</u> | <u>\$ 2.1</u> | <u>\$ 11.2</u> | <u>\$ 45.4</u> |
| | | | | |
| Paper Technologies and Ventures | \$ 17.5 | \$ 0.1 | \$ 3.0 | \$ 20.6 |
| Aqualon Group | 3.1 | 0.2 | 0.5 | 3.8 |
| FiberVisions | 3.4 | — | 1.5 | 4.9 |
| Corporate | 5.7 | 1.8 | 0.5 | 8.0 |
| Discontinued operations | 2.4 | — | 5.7 | 8.1 |
| Total by reporting segment | <u>\$ 32.1</u> | <u>\$ 2.1</u> | <u>\$ 11.2</u> | <u>\$ 45.4</u> |

(1) Includes accelerated depreciation of \$3.5 million, asset impairments of \$5.7 million (Brunswick, GA and Hattiesburg, MS) and inventory write-downs of \$2.0 million (Brunswick and Covington, GA).

Research and Development Consolidation

At the end of 2004, the Company initiated the first phase of its program to realign and consolidate research and development activities into regional centers in Europe and North America, respectively. In connection with that program, the Company closed its research facility in Barneveld, The Netherlands during 2005 and terminated 50 employees and relocated remaining employees to the Company's Helsingborg, Sweden site, which now serves as the primary center for PTV application activities in Europe. A total of \$2.9 million in severance charges and benefits, incurred ratably over the service period from the announcement date through the closure, was recognized as well as an additional \$1.4 million of other exit costs related to the closure of the facility.

The second phase of the program began during 2005 with the planned closure of the Jacksonville facility and concurrent transfer to and expansion of the WRC as discussed above. The Company began recognition of severance charges for the affected employees from Jacksonville as they began their transition service periods. In addition, certain functions at the WRC were realigned resulting in the termination of 10 employees and the recognition of \$0.5 million of severance charges. The Company also recorded accelerated depreciation charges for Barneveld, Jacksonville and certain assets at the WRC in connection with phased implementation of the plan.

Manufacturing Rationalization

PTV closed its Pandaan, Indonesia manufacturing facility concurrent with its strategic realignment in the Asia Pacific region. In connection with the closing, the Company terminated approximately 50 employees and recognized severance charges of \$0.6 million. PTV also announced its intention to close its Pendlebury, U.K. facility as part of its strategic realignment in Europe. As a result of this action, the Company recognized severance charges of \$1.3 million related to the termination of approximately 40 employees. In addition, PTV accelerated the depreciation of its Pandaan and Pendlebury facilities while they remained in operation.

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Aqualon terminated 7 employees in connection with a program at its Parlin, New Jersey manufacturing facility resulting in a charge of \$0.3 million recognized during the period in which certain energy-related assets were taken out of service. Aqualon also accrued \$1.0 million in connection with the termination of 18 employees at the Brunswick, Georgia manufacturing facility. Additionally, Aqualon recorded an impairment charge at the Hattiesburg, Mississippi manufacturing facility attributable to the termination of production of certain rosins which serve as an intermediate to other finished products, as well as \$0.2 million charged as incurred in connection with the termination of a product distribution agreement.

Primarily as a result of declining market demand for certain products, FiberVisions ceased production on certain lines at its facilities in North America and reduced headcount at its Varde, Denmark manufacturing facility resulting in the termination of approximately 80 employees and severance charges of \$3.4 million. FiberVisions also recorded write-downs in the value of certain inventories and spare parts at the Covington, Georgia manufacturing facility.

Global Marketing and Management Realignment

Throughout 2005, PTV and Aqualon engaged in significant actions designed to realign their global marketing infrastructure and de-layer management in connection with their strategic plans. Accordingly, approximately 80 positions were eliminated worldwide resulting in charges for severance and related benefits of \$14.5 million.

Corporate Support Realignment

In order to support the various initiatives to realign and restructure the Company's operations on a global basis, the Company initiated several corporate actions including the establishment of a centralized European headquarters facility in Schaffhausen, Switzerland. During 2005, the Company accrued \$0.5 million in relocation costs related to this move. In addition, the Company streamlined other support functions resulting in headcount reductions of approximately 40 employees in various functional departments including Information Management and Procurement. In connection with the reduction, the Company recorded \$4.8 million of severance and related benefits.

Terpenes Specialties Exit

Primarily as a result of the Company's decision to exit the Terpenes Specialties business during 2005, a total of 52 employees at the Brunswick, Georgia manufacturing facility were terminated resulting in severance charges of \$2.4 million. In addition, certain assets directly attributable to this business were impaired resulting in a charge of \$5.2 million and related spare parts inventories in the amount of \$0.5 million were written-down.

2004

Restructuring charges recorded during the year ended December 31, 2004 were primarily related to employee severance and related benefits in connection with various regional and functional restructuring and general headcount reduction programs. Severance charges amounted to \$9.6 million in 2004, including \$0.3 million of charges attributable to the initial actions at the Barneveld facility as discussed above. The total is attributable as follows: \$7.6 million to PTV, \$0.3 million to Aqualon, \$1.4 to FiberVisions and \$0.3 to Corporate.

The year ended December 31, 2004 also included asset impairment charges of \$9.2 million. Of the total, \$3.6 million was attributable to a raw material production line at the Hopewell, Virginia manufacturing facility, \$2.9 million related to the closure of the former Kalamazoo, Michigan manufacturing facility and \$0.5 million and \$0.3 million for certain lines at the Pendlebury, U.K. and Savannah, Georgia manufacturing facilities, respectively. These impairment charges are reflected in Other operating expense, net. The remaining \$1.9 million relates to a write-down to fair value of the Company's former operating facility at Langhorne, Pennsylvania prior to its classification as held for sale. This amount is reflected in Other expense, net. The total is attributable to the reporting segments as follows: \$3.7 million to PTV, \$3.6 million to Aqualon and \$1.9 million to Corporate.

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

All severance, other exit costs and asset charges for 2006, 2005 and 2004 are included in the Statement of Operations as a component of Other operating expenses except those related to the Terpenes Specialties exit incurred during 2005, which are included in the results of operations attributable to discontinued operations and the aforementioned Langhorne impairment which is included in Other expense, net.

A reconciliation of activity, including cash payments, with respect to the liabilities for these plans is as follows:

| | 2006 | 2005 | 2004 |
|--|----------------|----------------|---------------|
| Balance at beginning of the year | \$ 16.6 | \$ 5.8 | \$ 6.0 |
| Accrued charges for severance and related benefits | 16.2 | 32.1 | 9.6 |
| Accrued charges for other exit and restructuring costs | 3.8 | 0.5 | — |
| Cash payments | (26.9) | (21.4) | (9.9) |
| Other, including foreign currency translation | 0.8 | (0.4) | 0.1 |
| Balance at end of the year | <u>\$ 10.5</u> | <u>\$ 16.6</u> | <u>\$ 5.8</u> |

In addition, the Company made cash payments of \$1.5 million and \$1.6 million during 2006 and 2005, respectively, for certain exit costs that have been charged as incurred and are not included in the reconciliation above.

20. Other Operating Expense, Net

Other operating expense, net, consists of the following:

| | 2006 | 2005 | 2004 |
|--|----------------|----------------|----------------|
| Severance, restructuring and other exit costs, net | \$ 21.1 | \$ 31.8 | \$ 9.6 |
| Accelerated depreciation and amortization | 5.1 | 3.5 | — |
| Asset charges | 3.2 | 2.0 | 7.3 |
| Legal settlements | (2.0) | 0.7 | — |
| Environmental charges | 0.8 | 0.2 | 0.4 |
| Special executive pension adjustment | — | — | 1.6 |
| (Gains) losses on asset dispositions, net | (6.2) | 0.1 | 1.0 |
| Nitrocellulose facility shutdown costs | — | — | 6.5 |
| Dismantlement costs | 1.6 | — | — |
| Other miscellaneous charges | 1.5 | 1.1 | 0.5 |
| | <u>\$ 25.1</u> | <u>\$ 39.4</u> | <u>\$ 26.9</u> |

21. Interest and Debt Expense

Interest and debt costs are summarized as follows:

| | 2006 | 2005 | 2004 |
|--------------|----------------|----------------|-----------------|
| Incurred | \$ 71.5 | \$ 89.8 | \$ 109.8 |
| Capitalized | (0.3) | (0.4) | (1.1) |
| Net expensed | <u>\$ 71.2</u> | <u>\$ 89.4</u> | <u>\$ 108.7</u> |

22. Other Expense, Net

Other expense, net, consists of the following:

| | 2006 | 2005 | 2004 |
|--|----------------|----------------|-----------------|
| Asbestos-related costs, net | \$ 29.0 | \$ 44.6 | \$ 48.8 |
| Loss on sale of 51% interest in FiberVisions (see Note 3) | 13.3 | — | — |
| Loss on repurchases of debt | 11.4 | 14.2 | 41.0 |
| Environmental charges | 6.5 | 7.3 | 6.7 |
| Litigation settlements and accruals | 9.2 | 19.0 | 19.2 |
| Gains on dispositions of assets, net | (1.4) | (10.9) | — |
| Asset impairment charges | — | — | 1.9 |
| Other, net | (2.3) | (2.9) | (0.9) |
| | <u>\$ 65.7</u> | <u>\$ 71.3</u> | <u>\$ 116.7</u> |

Hercules Incorporated**Notes to Consolidated Financial Statements***(Dollars in millions, except per share data)***23. Discontinued Operations**Terpenes Specialties

In December 2005, the Company announced its intention to exit the unprofitable terpenes specialties business. The results of operations for the terpenes specialties business are reported as a discontinued operation for 2006, 2005 and 2004, and accordingly, the consolidated financial statements have been reclassified to separately report the assets, liabilities and operating results of this business.

The following are the summarized results of operations for the terpenes specialties business:

| | 2006 | 2005 | 2004 |
|---|-----------------|-----------------|-----------------|
| Net sales | \$ 2.5 | \$ 13.7 | \$ 12.4 |
| Loss from operations before income taxes | \$ (2.6) | \$ (9.9) | \$ (4.0) |
| Income tax benefit on operations | 0.9 | 3.4 | 1.4 |
| Net loss from discontinued operations, net of tax | <u>\$ (1.7)</u> | <u>\$ (6.5)</u> | <u>\$ (2.6)</u> |

The major classes of assets and liabilities of the discontinued operation in the Balance Sheet are as follows:

| | 2006 | 2005 |
|---|---------------|---------------|
| Accounts receivable, net | \$ 0.2 | \$ 1.3 |
| Inventories | 0.2 | 5.4 |
| Current assets of discontinued operations | <u>\$ 0.4</u> | <u>\$ 6.7</u> |
| Accounts payable | \$ — | \$ 0.5 |
| Accrued expenses | — | 2.3 |
| Current liabilities of discontinued operation | <u>\$ —</u> | <u>\$ 2.8</u> |

BetzDearborn Water Treatment Business

During 2006, the Company reversed certain tax reserves in the amount of \$48.7 million established with respect to the sale of the Company's former BetzDearborn Water Treatment business which has been reported as a discontinued operation (see [Note 9](#)).

24. Changes in Accounting PrincipleSFAS 123R

Effective January 1, 2006, the Company adopted SFAS 123R using the "modified prospective" method in which compensation cost is recognized for all awards granted to employees during 2006 as well as those awards granted prior to 2006 that remain unvested on the effective date. Upon the adoption of SFAS 123R, the Company recorded a \$0.9 million benefit, net of income taxes, as a cumulative effect of a change in accounting principle to reflect the required change in accounting policy for the recognition of forfeitures.

SFAS 158

The Company adopted SFAS 158 effective December 31, 2006 which required the recognition of the funded status of its defined benefit pension and other postretirement benefit plans in the Consolidated Balance Sheet. While the adoption of SFAS 158 did not have an impact on the 2006 Statement of Operations, the Company was required to increase its pension and postretirement benefit obligations, provide for deferred tax assets and record an after-tax charge to Accumulated other comprehensive losses included in Stockholders' equity.

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

The following table illustrates the adjustments made to the relevant items included in the Company's balance sheet on December 31, 2006.

| | Before Application of SFAS 158 | Adjustments | After Application of SFAS 158 |
|--|--------------------------------------|----------------|-------------------------------------|
| Deferred income taxes | \$ 312.4 | \$ 62.2 | \$ 374.6 |
| Deferred charges and other assets | 185.8 | (48.9) | 136.9 |
| Total assets | 2,795.2 | 13.3 | 2,808.5 |
| Pension obligations | 206.8 | 55.7 | 262.5 |
| Other postretirement benefit obligations | 58.1 | 84.1 | 142.2 |
| Total liabilities | 2,413.1 | 139.8 | 2,552.9 |
| Accumulated other comprehensive losses | (283.1) | (126.5) | (409.6) |
| Total stockholders' equity | 369.4 | (126.5) | 242.9 |

FIN 47

Effective December 31, 2005, the Company recorded a \$2.5 million cumulative effect adjustment, net of tax in accordance with the provisions of FIN 47. The cumulative effect adjustment includes the recognition of approximately \$4.0 million in AROs and the capitalization of approximately \$0.2 million in related asset retirement costs offset by accumulated depreciation on those assets of \$0.1 million.

The following table reflects the pro forma effect of FIN 47 on net (loss) income and net (loss) earnings per share as if the provisions had been in effect for the periods presented.

| | 2005 | 2004 |
|---|------------------|----------------|
| Net (loss) income before cumulative effect of changes in accounting principle: | | |
| As reported | \$ (38.6) | \$ 28.1 |
| Accretion and depreciation | — | (0.1) |
| Adjusted net (loss) income before cumulative effect of changes in accounting principle | \$ (38.6) | \$ 28.0 |
| Basic and diluted (loss) earnings per share before cumulative effect of changes in accounting principle: | | |
| As reported | \$ (0.36) | \$ 0.26 |
| Adjusted | \$ (0.36) | \$ 0.26 |
| Net (loss) income: | | |
| As reported | \$ (41.1) | \$ 28.1 |
| Accretion and depreciation | — | (0.1) |
| Adjusted net income (loss) | \$ (41.1) | \$ 28.0 |
| Basic and diluted (loss) earnings per share: | | |
| As reported | \$ (0.38) | \$ 0.26 |
| Adjusted | \$ (0.38) | \$ 0.26 |

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

25. Supplemental Disclosure of Statement of Operations and Cash Flows Data

| | 2006 | 2005 | 2004 |
|--|----------------|----------------|----------------|
| Depreciation: | | | |
| Included in Cost of sales and Selling, general and administrative expenses | \$ 66.8 | \$ 76.6 | \$ 74.5 |
| Accelerated depreciation included in Other operating expense, net | 3.9 | 3.5 | — |
| Included in Net loss from discontinued operations | — | 0.4 | 0.4 |
| | <u>\$ 70.7</u> | <u>\$ 80.5</u> | <u>\$ 74.9</u> |
| Amortization: | | | |
| Intangible assets | \$ 7.2 | \$ 8.0 | \$ 8.1 |
| Capitalized software (normal basis) | 15.2 | 15.3 | 15.0 |
| Accelerated amortization of capitalized software | 1.1 | — | — |
| Deferred financing costs | 1.1 | 2.1 | 3.2 |
| | <u>\$ 24.6</u> | <u>\$ 25.4</u> | <u>\$ 26.3</u> |
| Cash paid during the period for: | | | |
| Interest | \$ 70.9 | \$ 86.4 | \$ 97.1 |
| Income taxes, net of refunds received | 37.6 | 18.4 | 40.7 |
| Non-cash investing and financing activities: | | | |
| Increase in Property, plant and equipment, net related to the consolidation of Hercules Tianpu | \$ 19.0 | \$ — | \$ — |
| Increase in Intangible assets, net related to the consolidation of Hercules Tianpu | 3.5 | — | — |
| De-consolidation of debt issued by FiberVisions | 90.0 | — | — |
| De-consolidation of FiberVisions capitalized debt issuance costs | (6.3) | — | — |
| Incentive and other share-based compensation plan issuances | 13.9 | 13.4 | 15.7 |
| Elimination of 6.5% junior subordinated deferrable interest debentures due 2029 | — | — | (34.6) |
| Elimination of investment in Hercules Trust II upon its dissolution | — | — | 27.4 |

26. Earnings (Loss) Per Share

The following table shows the weighted-average number of common shares (in millions) used in computing basic and diluted earnings (loss) per share:

| | 2006 | 2005 | 2004 |
|--|--------------|--------------|--------------|
| Weighted-average number of common shares outstanding - Basic | 110.8 | 108.7 | 107.3 |
| Dilutive effect of: | | | |
| Convertible debentures | 0.2 | 0.2 | 0.2 |
| Share-based compensation plans | 0.3 | 1.5 | 1.5 |
| Weighted-average number of common shares outstanding - Diluted | <u>111.3</u> | <u>110.4</u> | <u>109.0</u> |

The effect of convertible debentures and share-based compensation plans for 2005 was anti-dilutive as a result of the loss incurred during that period. Accordingly, 108.7 million weighted-average shares were used to determine both basic and diluted earnings per share. The related interest on the convertible subordinated debentures has an immaterial impact on earnings per share calculations.

The following table shows the number of options and warrants (in millions) that have been excluded from the computation of diluted earnings per share as their exercise price exceeded their current market value:

| | 2006 | 2005 | 2004 |
|-----------------------------------|------|------|------|
| Options to purchase common stock | 3.4 | 5.8 | 10.6 |
| Warrants to purchase common stock | 6.6 | 6.7 | 7.1 |

27. Reporting Segment and Geographic Data

The Company operates through two active reporting segments, Paper Technologies and Ventures and the Aqualon Group. A reporting segment is maintained for historical reporting purposes for FiberVisions, of which a majority interest was sold during 2006 (see Notes [1](#) and [3](#)).

Paper Technologies and Ventures Group: Products and services offered by PTV are designed to enhance customers' profitability by improving manufacturing processes, enhancing productivity and improving overall product quality as well as enabling customers to meet their environmental objectives and regulatory requirements.

PTV is one of the key global suppliers of functional and process chemicals for the paper industry offering a wide and highly sophisticated range of technology and applications expertise with in-mill capabilities which run from influent treatment through the paper making process to paper finishing.

The Ventures portion of the group consists of a portfolio of businesses each targeting a family of vertical markets with a distinct set of products. Current businesses within Ventures are pulp and biorefining, water treatment for the pulp and paper industry, aviation and refrigeration compressor synthetic lubricants, and building and converted products.

Aqualon Group: Products offered by Aqualon are designed to manage the properties of aqueous (water-based) systems. Most of the products are derived from renewable natural raw materials and are sold as key ingredients to other manufacturers where they are used as small-quantity additives to provide functionality such as thickening, water retention, film formation, emulsifying action and binding power. Major end uses for Aqualon products include personal care products, food additives, pharmaceutical products, construction materials, paints, coatings and oil and gas recovery, where polymers are used to modify viscosity, gel strength and/or fluid loss. Aqualon also manufactures wood and gum rosin resins and is the world's only producer of pale wood rosin derivatives. Product applications and markets include food and beverage, construction specialties, adhesives, and rubber and plastic modifiers.

FiberVisions: FiberVisions is one of the largest manufacturers of polyolefin staple fibers used in disposable products like diapers and wipes. FiberVisions produces monocomponent polypropylene fibers and bicomponent fibers comprised of a polypropylene core and a polyethylene sheath. FiberVisions also produces polyolefin fiber and yarn for the industrial and textile markets used in concrete and asphalt, wipes, upholstery and automotive fabrics, geotextile fabrics and filtration products.

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

A summary of reporting segment data is provided as follows:

| | Paper Technologies and Ventures | Aqualon Group | FiberVisions | Corporate | Consolidated |
|-------------------------------|--|--------------------------|---------------------|------------------|---------------------|
| 2006 | | | | | |
| Net sales | \$ 1,075.3 | \$ 890.8 | \$ 69.2 | \$ — | \$ 2,035.3 |
| Profit (loss) from operations | 80.8 | 187.4 | 0.5 | (20.1) | 248.6 |
| Depreciation | 29.3 | 35.1 | — | 6.3 | 70.7 (1) |
| Amortization | 14.2 | 8.2 | — | 2.2 | 24.6 (2) |
| Research and development | 19.1 | 18.6 | 0.4 | 0.7 | 38.8 |
| Total assets | 976.1 | 756.5 | — | 1,075.9 | 2,808.5 (3) |
| Capital expenditures | 25.1 | 59.1 | — | 9.4 | 93.6 |
| 2005 | | | | | |
| Net sales | \$ 1,017.3 | \$ 755.0 | \$ 282.7 | \$ — | \$ 2,055.0 |
| Profit (loss) from operations | 61.4 | 155.5 | (64.9) | (11.7) | 140.3 |
| Depreciation | 29.6 | 33.0 | 10.9 | 7.0 | 80.5 (1) |
| Amortization | 14.3 | 7.5 | 1.5 | 2.1 | 25.4 (2) |
| Research and development | 18.6 | 18.4 | 2.8 | 1.0 | 40.8 |
| Total assets | 903.6 | 638.1 | 202.7 | 824.4 | 2,568.8 (3) |
| Capital expenditures | 18.7 | 37.1 | 4.2 | 7.5 | 67.5 |
| 2004 | | | | | |
| Net sales | \$ 978.5 | \$ 724.6 | \$ 281.2 | \$ — | \$ 1,984.3 |
| Profit (loss) from operations | 84.5 | 157.9 | (4.1) | (5.4) | 232.9 |
| Depreciation | 25.4 | 30.8 | 11.6 | 7.1 | 74.9 (1) |
| Amortization | 13.8 | 7.7 | 1.6 | 3.2 | 26.3 (2) |
| Research and development | 19.4 | 18.0 | 2.9 | 2.4 | 42.7 |
| Total assets | 1,029.2 | 676.2 | 286.0 | 728.9 | 2,720.3 (3) |
| Capital expenditures | 26.6 | 41.3 | 4.0 | 5.5 | 77.4 |

(1) Depreciation for Corporate is allocated to the business segments in the determination of Profit from operations.

(2) Corporate includes accelerated amortization of capitalized software and deferred financing costs.

(3) Corporate assets include cash and cash equivalents, income taxes receivable, deferred tax assets, asbestos-related assets, investments, assets of discontinued operations and certain other assets not directly attributable to the business segments.

A reconciliation of totals provided by reporting segment to the applicable line captions included in the Consolidated Statement of Operations is provided as follows:

| | 2006 | 2005 | 2004 |
|--|----------|-----------|----------|
| Profit from operations from the reporting segments | \$ 248.6 | \$ 140.3 | \$ 232.9 |
| Interest and debt expense | 71.2 | 89.4 | 108.7 |
| Vertac litigation charges | 108.5 | 15.0 | — |
| Gain on sale of CP Kelco ApS | — | — | (27.0) |
| Other expense, net | 65.7 | 71.3 | 116.7 |
| Income (loss) before income taxes, minority interests and equity (loss) income | \$ 3.2 | \$ (35.4) | \$ 34.5 |

Hercules Incorporated**Notes to Consolidated Financial Statements***(Dollars in millions, except per share data)***Geographic Reporting**

For geographic reporting purposes, no single country, outside the United States, is material for separate disclosure. However, because the Company has significant foreign operations, Net sales and Property, plant and equipment, net are disclosed by geographic region.

Net sales are reported on a "customer basis," meaning that they are included in the geographic area in which the customer is located. Property, plant and equipment, net is included in the geographic areas in which the producing entities are located.

| Geographic Areas | United States | Europe | Americas | Asia Pacific | Total |
|------------------------------------|----------------------|---------------|-----------------|---------------------|--------------|
| 2006 | | | | | |
| Net Sales | \$ 897.2 | \$ 696.0 | \$ 214.7 | \$ 227.4 | \$ 2,035.3 |
| Property, plant and equipment, net | 272.1 | 242.6 | 17.0 | 68.7 | 600.4 |
| 2005 | | | | | |
| Net Sales | \$ 871.9 | \$ 747.7 | \$ 201.7 | \$ 233.7 | \$ 2,055.0 |
| Property, plant and equipment, net | 262.1 | 233.8 | 15.7 | 23.8 | 535.4 |
| 2004 | | | | | |
| Net Sales | \$ 824.1 | \$ 761.8 | \$ 184.0 | \$ 214.4 | \$ 1,984.3 |
| Property, plant and equipment, net | 325.2 | 331.4 | 16.2 | 22.6 | 695.4 |

28. Financial Instruments and Risk Management, Including Derivatives

The fair value of cash and cash equivalents, accounts receivable, net and accounts payable approximate their carrying values primarily due to their short-term nature. The Company's investment securities that are available for sale include certain relatively insignificant debt and equity securities. Changes in the fair value of these securities are recognized in Accumulated other comprehensive losses. Fair value measurements for these investments are generally based on third party quotes or the present value of expected future cash flows. The fair values of the Company's debt securities is determined based on the present value of expected cash flows related to existing borrowings discounted at rates currently available to the Company for long-term borrowings with similar terms and remaining maturities. The fair values of the Company's derivative instruments, including foreign exchange contracts and cross-currency interest rate swaps, are based on exchange and interest rates in effect at year-end.

The Company has selectively used foreign currency forward contracts and currency swaps to offset the effects of foreign currency exchange rate changes on reported earnings, cash flow and net asset positions. The primary exposures are denominated in the Euro, Swedish kroner, Danish kroner and British pound sterling. Some of the contracts involve the exchange of two foreign currencies, according to local needs in foreign subsidiaries. The term of the currency derivatives is rarely more than three months. The Company had net outstanding external forward-exchange contracts to sell foreign currencies aggregating \$14.6 million and \$12.8 million at December 31, 2006 and 2005, respectively. Net cross-currency trades entered into by non-U.S. dollar denominated entities aggregated \$14.5 million and \$25.8 million at December 31, 2006 and 2005, respectively. The foreign exchange contracts outstanding at December 31, 2006 matured on or before January 28, 2007. During 2006, \$1.8 million was recorded as a component of Other expense, net representing the net loss due to underlying foreign currency exposures net of the impact of foreign currency contracts. The notional amounts of the contracts referenced above do not represent the amounts exchanged by the parties involved and thus, are not a measure of the Company's exposure to various risks through its use of derivatives.

The Company also uses cross-currency interest rate swaps and during February and March of 2006, entered into a series of floating rate cross-currency interest rate swap agreements (the "Swaps") and designated them as a hedge of the Company's foreign currency exposure associated with its net investment in certain foreign operations that utilize the Euro as their functional currency. The combined notional amounts of the Swaps is for \$500.0 million/€420.2 million and requires the Company to receive three month LIBOR + 1.50% and pay three month EURIBOR plus an average margin at 1.59% on a quarterly basis for a five year term. The Swaps have been recorded at fair value, with changes in value attributable to changes in foreign exchange rates recorded in Accumulated other comprehensive losses. During 2006, a credit of \$7.1 million was recorded as an adjustment to Interest and debt expense representing the net amount received from the Swaps in excess of amounts paid.

Hercules Incorporated**Notes to Consolidated Financial Statements***(Dollars in millions, except per share data)*

The following table presents the net carrying amounts and fair values of the Company's financial instruments, including derivatives and excluding those instruments of a short-term nature as referenced above, as well as the balance sheet caption in which they are included at December 31, 2006 and 2005:

| | 2006 | | 2005 | |
|--|----------------|------------|----------------|------------|
| | Carrying Value | Fair Value | Carrying Value | Fair Value |
| Deferred charges and other assets | | | | |
| Investment securities available for sale | \$ 2.6 | \$ 2.6 | \$ 1.0 | \$ 1.0 |
| Foreign exchange contracts, net | (0.1) | (0.1) | (0.2) | (0.2) |
| Current and long-term debt obligations | 995.5 | 964.2 | 1,109.0 | 1,092.1 |
| Deferred credits and other liabilities | | | | |
| Cross currency interest rate swaps | 53.2 | 53.2 | — | — |

Fair values of the above financial instruments are indicative of cash that would have been received or required had settlement been made at December 31, 2006 and 2005.

29. Condensed Consolidating Financial Information of Guarantor Subsidiaries

The 11.125% senior notes due 2007 are guaranteed by substantially all of the Company's current and future wholly-owned domestic restricted subsidiaries (the "guarantor subsidiaries"). The Senior Credit Facility entered into in April 2004 also provides for a guarantee by each guarantor subsidiary. The guarantees by each guarantor subsidiary are full and unconditional and joint and several. The indenture under which the Company's 6.60% notes due 2027 were issued requires such notes to be guaranteed or secured on the same basis as any other subsequently issued debt that is guaranteed or secured. As a result, at December 31, 2006, the following wholly-owned domestic restricted subsidiaries fully and unconditionally and jointly and severally guarantee the Senior Credit Facility, the 6.60% notes due 2027, the 11.125% notes due 2007 and the 6.75% notes due 2029.

| | |
|--------------------------------|-------------------------------------|
| Aqualon Company | Hercules Flavor, Inc. |
| East Bay Realty Services, Inc. | Hercules Hydrocarbon Holdings, Inc. |
| Hercules Euro Holdings, LLC | Hercules Paper Holdings, Inc. |
| Hercules Finance Company | WSP, Inc. |

The non-guarantor subsidiaries include all of the Company's foreign subsidiaries and certain domestic subsidiaries. The Company conducts much of its business through and derives much of its income from its subsidiaries. Therefore, the Company's ability to make required payments with respect to its indebtedness and other obligations depends on the financial results and condition of its subsidiaries and its ability to receive funds from its subsidiaries. There are no restrictions on the ability of any of the guarantor subsidiaries to transfer funds to the Company; however, there may be such restrictions for certain foreign non-guarantor subsidiaries.

The following condensed consolidating financial information for the Company presents the financial information of Hercules, the guarantor subsidiaries and the non-guarantor subsidiaries based on the Company's understanding of the Securities and Exchange Commission's interpretation and application of Rule 3-10 under the Securities and Exchange Commission's Regulation S-X. The financial information may not necessarily be indicative of results of operations or financial position had the guarantor subsidiaries or non-guarantor subsidiaries operated as independent entities.

In this presentation, Hercules consists of parent company operations. Guarantor subsidiaries and non-guarantor subsidiaries of Hercules are reported on an equity basis. Additionally, prior year information has been reclassified to conform to the presentation in the Consolidated Financial Statements.

Hercules Incorporated**Notes to Consolidated Financial Statements***(Dollars in millions, except per share data)*

Condensed Consolidating Statement of Operations

Year Ended December 31, 2006

| | Unconsolidated | | | Eliminations and Adjustments | Consolidated |
|--|----------------|---------------------------|-----------------------------------|------------------------------------|--------------|
| | Parent | Guarantor Subsidiaries | Non- Guarantor Subsidiaries | | |
| Net sales | \$ 596.7 | \$ 478.2 | \$ 1,124.6 | \$ (164.2) | \$ 2,035.3 |
| Cost of sales | 417.5 | 345.7 | 744.6 | (164.4) | 1,343.4 |
| Selling, general and administrative expenses | 101.0 | 121.3 | 150.7 | (0.8) | 372.2 |
| Research and development | 19.7 | 16.9 | 2.2 | — | 38.8 |
| Intangible asset amortization | 5.9 | 0.7 | 0.6 | — | 7.2 |
| Other operating expense, net | 15.5 | (1.8) | 11.4 | — | 25.1 |
| Profit (loss) from operations | 37.1 | (4.6) | 215.1 | 1.0 | 248.6 |
| Interest and debt expense (income), net | 173.2 | (103.7) | 1.7 | — | 71.2 |
| Vertac litigation charges | 108.5 | — | — | — | 108.5 |
| Other expense, net | 58.7 | 6.5 | 0.5 | — | 65.7 |
| Income (loss) before income taxes, minority interests and equity (loss) income | (303.3) | 92.6 | 212.9 | 1.0 | 3.2 |
| (Benefit) provision for income taxes | (230.3) | (4.6) | 42.3 | 0.4 | (192.2) |
| Income (loss) before minority interests and equity (loss) income | (73.0) | 97.2 | 170.6 | 0.6 | 195.4 |
| Minority interests in earnings of consolidated subsidiaries | — | — | (1.4) | — | (1.4) |
| Equity (loss) income of affiliated companies | — | (3.5) | 1.6 | (1.3) | (3.2) |
| Equity income (loss) from consolidated subsidiaries | 263.8 | 0.5 | (0.8) | (263.5) | — |
| Net income from continuing operations before discontinued operations and cumulative effect of change in accounting principle | 190.8 | 94.2 | 170.0 | (264.2) | 190.8 |
| Net income from discontinued operations, net of tax | 47.0 | — | — | — | 47.0 |
| Net income before cumulative effect of change in accounting principle | 237.8 | 94.2 | 170.0 | (264.2) | 237.8 |
| Cumulative effect of change in accounting principle, net of tax | 0.9 | — | — | — | 0.9 |
| Net income (loss) | \$ 238.7 | \$ 94.2 | \$ 170.0 | \$ (264.2) | \$ 238.7 |

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

Condensed Consolidating Statement of Operations
Year Ended December 31, 2005

| | Unconsolidated | | | | |
|---|----------------|---------------------------|-------------------------------|---------------------------------|--------------|
| | Parent | Guarantor Subsidiaries | Non-Guarantor Subsidiaries | Eliminations and Adjustments | Consolidated |
| Net sales | \$ 548.9 | \$ 491.2 | \$ 1,175.2 | \$ (160.3) | \$ 2,055.0 |
| Cost of sales | 386.2 | 382.7 | 794.7 | (172.5) | 1,391.1 |
| Selling, general, and administrative expenses | 103.7 | 130.0 | 148.8 | — | 382.5 |
| Research and development | 19.2 | 18.4 | 3.2 | — | 40.8 |
| Intangible asset amortization | 6.0 | 1.5 | 0.5 | — | 8.0 |
| Impairment of FiberVisions' goodwill | - | 52.9 | — | — | 52.9 |
| Other operating expenses, net | 8.0 | 9.0 | 22.4 | — | 39.4 |
| Profit (loss) from operations | 25.8 | (103.3) | 205.6 | 12.2 | 140.3 |
| Interest and debt expense (income), net | 173.1 | (71.6) | (12.1) | — | 89.4 |
| Vertac litigation charges | 15.0 | — | — | — | 15.0 |
| Other expense (income), net | 72.3 | 2.4 | (3.4) | — | 71.3 |
| (Loss) income before income taxes, minority interests and equity income (loss) | (234.6) | (34.1) | 221.1 | 12.2 | (35.4) |
| (Benefit) provision for income taxes | (100.3) | 20.0 | 72.2 | 4.3 | (3.8) |
| Income (loss) before minority interests and equity income (loss) | (134.3) | (54.1) | 148.9 | 7.9 | (31.6) |
| Minority interests in earnings of consolidated subsidiaries | — | — | (1.0) | — | (1.0) |
| Equity income (loss) of affiliated companies | — | (1.1) | 1.5 | 0.1 | 0.5 |
| Equity income (loss) from consolidated subsidiaries | 102.2 | 10.0 | (3.2) | (109.0) | — |
| Net (loss) income from continuing operations before discontinued operations and cumulative effect of change in accounting principle | (32.1) | (45.2) | 146.2 | (101.0) | (32.1) |
| Net loss from discontinued operations, net of tax | (6.5) | — | — | — | (6.5) |
| Net (loss) income before cumulative effect of changes in accounting principle, net of tax | (38.6) | (45.2) | 146.2 | (101.0) | (38.6) |
| Cumulative effect of change in accounting principle, net of tax | (2.5) | — | — | — | (2.5) |
| Net (loss) income | \$ (41.1) | \$ (45.2) | \$ 146.2 | \$ (101.0) | \$ (41.1) |

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

Condensed Consolidating Statement of Operations
Year Ended December 31, 2004

| | Unconsolidated | | | | Consolidated |
|---|----------------|---------------------------|-------------------------------|---------------------------------|--------------|
| | Parent | Guarantor Subsidiaries | Non-Guarantor Subsidiaries | Eliminations and Adjustments | |
| Net sales | \$ 528.4 | \$ 474.8 | \$ 1,131.9 | \$ (150.8) | \$ 1,984.3 |
| Cost of sales | 358.8 | 352.5 | 731.1 | (150.8) | 1,291.6 |
| Selling, general, and administrative expenses | 100.8 | 126.0 | 155.3 | — | 382.1 |
| Research and development | 19.7 | 17.4 | 5.6 | — | 42.7 |
| Goodwill and intangible asset amortization | 6.1 | 1.5 | 0.5 | — | 8.1 |
| Other operating expenses, net | 4.8 | 12.9 | 9.2 | — | 26.9 |
| Profit (loss) from operations | 38.2 | (35.5) | 230.2 | — | 232.9 |
| Interest and debt expense (income), net | 177.6 | (59.7) | (9.2) | — | 108.7 |
| Gain on sale of CP Kelco ApS | — | — | (27.0) | — | (27.0) |
| Other expense (income), net | 256.6 | 3.9 | (143.8) | — | 116.7 |
| Income (loss) before income taxes, minority interest and equity income (loss) | (396.0) | 20.3 | 410.2 | — | 34.5 |
| Provision (benefit) for income taxes | (86.8) | 38.1 | 52.5 | — | 3.8 |
| Income (loss) before minority interests and equity income (loss) | (309.2) | (17.8) | 357.7 | — | 30.7 |
| Minority interests in earnings of consolidated subsidiaries | — | — | (0.9) | — | (0.9) |
| Equity income (loss) of affiliated companies | — | (0.7) | 1.8 | (0.2) | 0.9 |
| Equity income (loss) from consolidated subsidiaries | 339.9 | 6.0 | (1.6) | (344.3) | — |
| Net income (loss) from continuing operations before discontinued operations | 30.7 | (12.5) | 357.0 | (344.5) | 30.7 |
| Net loss from discontinued operations, net of tax | (2.6) | — | — | — | (2.6) |
| Net income (loss) | \$ 28.1 | \$ (12.5) | \$ 357.0 | \$ (344.5) | \$ 28.1 |

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

Condensed Consolidating Balance Sheet

Year ended December 31, 2006

| Assets | Unconsolidated | | | Eliminations and Adjustments | Consolidated |
|---|-------------------|---------------------------|-------------------------------|------------------------------------|-------------------|
| | Parent | Guarantor Subsidiaries | Non-Guarantor Subsidiaries | | |
| Current assets | | | | | |
| Cash and cash equivalents | \$ 89.7 | \$ 0.5 | \$ 81.6 | \$ — | \$ 171.8 |
| Accounts receivable, net | 69.9 | 45.6 | 211.1 | — | 326.6 |
| Intercompany receivables | 68.0 | 9.8 | (6.4) | (71.4) | — |
| Inventories | 56.2 | 68.9 | 87.0 | (1.5) | 210.6 |
| Deferred income taxes | 57.6 | 3.2 | 9.4 | — | 70.2 |
| Current assets of discontinued operations | 0.4 | — | — | — | 0.4 |
| Income taxes receivable | 170.8 | — | — | — | 170.8 |
| Other current assets | 12.3 | 2.4 | 19.4 | — | 34.1 |
| Total current assets | 524.9 | 130.4 | 402.1 | (72.9) | 984.5 |
| Property, plant and equipment, net | 139.9 | 132.2 | 328.3 | — | 600.4 |
| Investments in subsidiaries and advances, net | 2,569.7 | 85.2 | 44.9 | (2,699.8) | — |
| Intangible assets, net | 131.8 | 2.9 | 8.4 | — | 143.1 |
| Goodwill | 58.7 | 37.6 | 385.2 | — | 481.5 |
| Deferred income taxes | 357.1 | — | 19.5 | (2.0) | 374.6 |
| Asbestos-related assets | 87.5 | — | — | — | 87.5 |
| Deferred charges and other assets | 87.7 | 27.7 | 21.5 | — | 136.9 |
| Total assets | \$ 3,957.3 | \$ 416.0 | \$ 1,209.9 | \$ (2,774.7) | \$ 2,808.5 |
| Liabilities and Stockholders' Equity | | | | | |
| Current liabilities | | | | | |
| Accounts payable | \$ 63.2 | \$ 35.0 | \$ 107.1 | \$ — | \$ 205.3 |
| Intercompany payables | 2.0 | 43.4 | 26.1 | (71.5) | — |
| Asbestos-related liabilities | 36.4 | — | — | — | 36.4 |
| Current debt obligations | 20.0 | — | 15.8 | — | 35.8 |
| Vertac litigation liability | 123.5 | — | — | — | 123.5 |
| Accrued expenses | 119.8 | 68.3 | 82.4 | (41.9) | 228.6 |
| Total current liabilities | 364.9 | 146.7 | 231.4 | (113.4) | 629.6 |
| Long-term debt | 937.5 | — | 22.2 | — | 959.7 |
| Deferred income taxes | — | 2.0 | 69.7 | (2.0) | 69.7 |
| Pension obligations | 191.2 | — | 71.3 | — | 262.5 |
| Other postretirement benefit obligations | 139.9 | 2.1 | 0.2 | — | 142.2 |
| Deferred credits and other liabilities | 220.8 | 14.1 | 20.7 | — | 255.6 |
| Asbestos-related liabilities | 233.6 | — | — | — | 233.6 |
| Intercompany notes payable (receivable) | 1,626.5 | (1,413.5) | (255.0) | 42.0 | — |
| Minority interests | — | — | 12.7 | — | 12.7 |
| Total stockholders' equity | 242.9 | 1,664.6 | 1,036.7 | (2,701.3) | 242.9 |
| Total liabilities and stockholders' equity | \$ 3,957.3 | \$ 416.0 | \$ 1,209.9 | \$ (2,774.7) | \$ 2,808.5 |

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

Condensed Consolidating Balance Sheet

December 31, 2005

| Assets | Unconsolidated | | | Eliminations and Adjustments | Consolidated |
|---|----------------|---------------------------|-------------------------------|------------------------------------|--------------|
| | Parent | Guarantor Subsidiaries | Non-Guarantor Subsidiaries | | |
| Current assets | | | | | |
| Cash and cash equivalents | \$ 9.1 | \$ 1.0 | \$ 67.2 | \$ — | \$ 77.3 |
| Accounts receivable, net | 62.1 | 35.8 | 191.6 | 0.2 | 289.7 |
| Intercompany receivable | 68.7 | 17.5 | 21.4 | (107.6) | — |
| Inventories | 52.7 | 52.4 | 76.6 | (2.1) | 179.6 |
| Deferred income taxes | 24.0 | 2.9 | 12.4 | — | 39.3 |
| FiberVisions assets held for sale | — | 138.8 | 63.9 | — | 202.7 |
| Current assets of discontinued operations | 6.7 | — | — | — | 6.7 |
| Income taxes receivable | 12.6 | — | — | — | 12.6 |
| Other current assets | 12.8 | 1.8 | 20.7 | 0.2 | 35.5 |
| Total current assets | 248.7 | 250.2 | 453.8 | (109.3) | 843.4 |
| Property, plant and equipment, net | 145.6 | 107.2 | 282.6 | — | 535.4 |
| Investments in subsidiaries and advances, net | 2,461.4 | 88.3 | 44.9 | (2,594.6) | — |
| Intangible assets, net | 137.7 | — | 5.1 | — | 142.8 |
| Goodwill | 58.7 | 27.9 | 354.4 | — | 441.0 |
| Deferred income taxes | 361.7 | — | 18.3 | (139.6) | 240.4 |
| Asbestos-related assets | 120.7 | — | — | — | 120.7 |
| Deferred charges and other assets | 171.6 | 13.7 | 59.8 | — | 245.1 |
| Total assets | \$ 3,706.1 | \$ 487.3 | \$ 1,218.9 | \$ (2,843.5) | \$ 2,568.8 |
| Liabilities and Stockholders' (Deficit) Equity | | | | | |
| Current liabilities | | | | | |
| Accounts payable | \$ 51.5 | \$ 16.7 | \$ 104.5 | \$ 0.2 | \$ 172.9 |
| FiberVisions liabilities held for sale | — | 51.2 | 15.4 | — | 66.6 |
| Asbestos-related liabilities | 36.4 | — | — | — | 36.4 |
| Intercompany payable | 1.5 | 60.7 | 42.0 | (104.2) | — |
| Current debt obligations | 4.0 | — | 12.7 | — | 16.7 |
| Accrued expenses | 76.2 | 60.5 | 80.3 | — | 217.0 |
| Current liabilities of discontinued operations | 2.8 | — | — | — | 2.8 |
| Total current liabilities | 172.4 | 189.1 | 254.9 | (104.0) | 512.4 |
| Long-term debt | 1,088.6 | — | 3.7 | — | 1,092.3 |
| Deferred income taxes | — | 142.6 | 72.2 | (139.0) | 75.8 |
| Pension obligations | 251.7 | — | 71.7 | — | 323.4 |
| Other postretirement benefit obligation | 63.1 | 2.1 | 0.3 | — | 65.5 |
| Deferred credits and other liabilities | 254.2 | 18.8 | 16.4 | — | 289.4 |
| Asbestos-related liabilities | 233.6 | — | — | — | 233.6 |
| Intercompany notes payable (receivable) | 1,667.2 | (1,208.7) | (458.5) | — | — |
| Minority interests | — | — | 1.1 | — | 1.1 |
| Total stockholders' (deficit) equity | (24.7) | 1,343.4 | 1,257.1 | (2,600.5) | (24.7) |
| Total liabilities and stockholders' (deficit) equity | \$ 3,706.1 | \$ 487.3 | \$ 1,218.9 | \$ (2,843.5) | \$ 2,568.8 |

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

Condensed Consolidating Statement of Cash Flows
Year Ended December 31, 2006

| | Unconsolidated | | | | Consolidated |
|--|----------------|---------------------------|-----------------------------------|------------------------------------|--------------|
| | Parent | Guarantor Subsidiaries | Non- Guarantor Subsidiaries | Eliminations and Adjustments | |
| Net Cash Provided By (Used In) Operating Activities | \$ 166.7 | \$ (1.2) | \$ 482.1 | \$ (474.7) | \$ 172.9 |
| Cash Flow From Investing Activities: | | | | | |
| Capital expenditures | (21.3) | (21.0) | (51.3) | — | (93.6) |
| Acquisitions and investments, net of cash, recognized upon consolidation | — | (22.7) | (6.7) | — | (29.4) |
| Proceeds from sale of 51% interest in FiberVisions, net | 17.8 | — | — | — | 17.8 |
| Proceeds of fixed asset disposals | 1.1 | 5.9 | 4.3 | — | 11.3 |
| Other, net | (0.2) | — | — | — | (0.2) |
| Net cash used in investing activities | (2.6) | (37.8) | (53.7) | — | (94.1) |
| Cash Flow From Financing Activities: | | | | | |
| Long-term debt issued by FiberVisions, net of issuance costs | 83.7 | — | — | — | 83.7 |
| Long-term debt proceeds | — | — | 22.0 | — | 22.0 |
| Long-term debt payments | (135.7) | — | (6.8) | — | (142.5) |
| Change in short-term debt | — | — | 5.8 | — | 5.8 |
| Change in intercompany advances | (71.5) | 38.5 | (388.7) | 421.7 | — |
| Proceeds from the exercise of stock options | 37.0 | — | — | — | 37.0 |
| Dividends paid | — | — | (53.0) | 53.0 | — |
| Other, net | 5.6 | — | — | — | 5.6 |
| Net cash provided by (used in) financing activities | (80.9) | 38.5 | (420.7) | 474.7 | 11.6 |
| Effect of exchange rate changes on cash | — | — | 4.1 | — | 4.1 |
| Net increase (decrease) in cash and cash equivalents | 83.2 | (0.5) | 11.8 | — | 94.5 |
| Cash and cash equivalents at beginning of year | 6.5 | 1.0 | 69.8 | — | 77.3 |
| Cash and cash equivalents at end of year | \$ 89.7 | \$ 0.5 | \$ 81.6 | \$ — | \$ 171.8 |

Hercules Incorporated**Notes to Consolidated Financial Statements***(Dollars in millions, except per share data)*Condensed Consolidating Statement of Cash Flows
Year Ended December 31, 2005

| | Unconsolidated | | | | Consolidated |
|--|----------------|---------------------------|-----------------------------------|------------------------------------|--------------|
| | Parent | Guarantor Subsidiaries | Non- Guarantor Subsidiaries | Eliminations and Adjustments | |
| Net Cash Provided By (Used In) Operating Activities | \$ (4.6) | \$ 29.1 | \$ (81.2) | \$ 195.9 | \$ 139.2 |
| Cash Flow From Investing Activities: | | | | | |
| Capital expenditures | (16.7) | (26.7) | (24.1) | — | (67.5) |
| Investments | — | — | (4.4) | — | (4.4) |
| Proceeds of fixed asset disposals | 13.3 | — | 3.3 | — | 16.6 |
| Other, net | — | — | (2.4) | — | (2.4) |
| Net cash used in investing activities | (3.4) | (26.7) | (27.6) | — | (57.7) |
| Cash Flow From Financing Activities: | | | | | |
| Long-term debt payments | (112.8) | — | (18.4) | — | (131.2) |
| Change in short-term debt | — | — | 1.9 | — | 1.9 |
| Change in intercompany advances | 82.2 | (2.3) | 159.2 | (239.1) | — |
| Proceeds from the exercise of stock options | 2.7 | — | — | — | 2.7 |
| Dividends paid | — | — | (43.2) | 43.2 | — |
| Other, net | (0.4) | — | — | — | (0.4) |
| Net cash (used in) provided by financing activities | (28.3) | (2.3) | 99.5 | (195.9) | (127.0) |
| Effect of exchange rate changes on cash | — | — | (3.7) | — | (3.7) |
| Net (decrease) increase in cash and cash equivalents | (36.3) | 0.1 | (13.0) | — | (49.2) |
| Cash and cash equivalents at beginning of year | 42.8 | 0.9 | 82.8 | — | 126.5 |
| Cash and cash equivalents at end of year | \$ 6.5 | \$ 1.0 | \$ 69.8 | \$ — | \$ 77.3 |

Hercules Incorporated**Notes to Consolidated Financial Statements***(Dollars in millions, except per share data)*Condensed Consolidating Statement of Cash Flows
Year Ended December 31, 2004

| | Unconsolidated | | | | Consolidated |
|--|----------------|---------------------------|-----------------------------------|------------------------------------|--------------|
| | Parent | Guarantor Subsidiaries | Non- Guarantor Subsidiaries | Eliminations and Adjustments | |
| Net Cash Provided By Operating Activities | \$ 155.4 | \$ 40.9 | \$ 490.0 | \$ (565.8) | \$ 120.5 |
| Cash Flow From Investing Activities: | | | | | |
| Capital expenditures | (22.5) | (15.4) | (39.4) | (0.1) | (77.4) |
| Proceeds of fixed asset disposals | 0.8 | — | 0.6 | — | 1.4 |
| Proceeds from sale of minority interest in | | | | | |
| CP Kelco ApS | 27.0 | — | — | — | 27.0 |
| Other, net | 0.8 | (1.5) | 0.7 | (0.1) | (0.1) |
| Net cash (used in) provided by investing activities | 6.1 | (16.9) | (38.1) | (0.2) | (49.1) |
| Cash Flow From Financing Activities: | | | | | |
| Long-term debt proceeds | 650.0 | — | — | — | 650.0 |
| Long-term debt payments | (713.2) | — | (16.3) | — | (729.5) |
| Change in short-term debt | — | — | 1.6 | — | 1.6 |
| Change in intercompany advances | (68.4) | (25.2) | (262.2) | 355.8 | — |
| Proceeds from the exercise of stock options | 5.5 | — | — | — | 5.5 |
| Payment of debt issuance costs and underwriting fees | (7.8) | — | — | — | (7.8) |
| Dividends paid | — | — | (210.2) | 210.2 | — |
| Other, net | 6.1 | — | — | — | 6.1 |
| Net cash used in financing activities | (127.8) | (25.2) | (487.1) | 566.0 | (74.1) |
| Effect of exchange rate changes on cash | — | — | 2.9 | — | 2.9 |
| Net increase (decrease) in cash and cash equivalents | 33.7 | (1.2) | (32.3) | — | 0.2 |
| Cash and cash equivalents at beginning of year | 9.1 | 2.1 | 115.1 | — | 126.3 |
| Cash and cash equivalents at end of year | \$ 42.8 | \$ 0.9 | \$ 82.8 | \$ — | \$ 126.5 |

Hercules Incorporated

Notes to Consolidated Financial Statements

(Dollars in millions, except per share data)

30. Summary of Quarterly Results (Unaudited)

| | 1st Quarter | | 2nd Quarter | | 3rd Quarter | | 4th Quarter | | Year | |
|--|-------------|----------|-------------|----------|-------------|----------|-------------|-----------|------------|------------|
| | 2006 | 2005 | 2006 | 2005 | 2006 | 2005 | 2006 | 2005 | 2006 | 2005 |
| Net sales | \$ 527.3 | \$ 501.9 | \$ 501.0 | \$ 534.7 | \$ 513.1 | \$ 519.6 | \$ 493.9 | \$ 498.8 | \$ 2,035.3 | \$ 2,055.0 |
| Cost of sales | 360.7 | 337.6 | 324.7 | 351.2 | 332.2 | 353.7 | 325.8 | 348.6 | 1,343.4 | 1,391.1 |
| Selling, general and administrative expenses | 91.3 | 99.7 | 90.7 | 99.9 | 92.8 | 92.7 | 97.4 | 90.2 | 372.2 | 382.5 |
| Research and development | 9.6 | 10.3 | 9.4 | 10.0 | 9.3 | 10.1 | 10.5 | 10.4 | 38.8 | 40.8 |
| Intangible asset amortization | 1.6 | 2.0 | 2.0 | 2.0 | 1.8 | 2.0 | 1.8 | 2.0 | 7.2 | 8.0 |
| Impairment of FiberVisions goodwill | — | — | — | — | — | — | — | 52.9 | — | 52.9 |
| Other operating expense, net | 7.2 | 9.7 | 8.6 | 10.4 | 4.6 | 11.1 | 4.7 | 8.2 | 25.1 | 39.4 |
| Profit (loss) from operations | 56.9 | 42.6 | 65.6 | 61.2 | 72.4 | 50.0 | 53.7 | (13.5) | 248.6 | 140.3 |
| Interest and debt expense | 20.7 | 22.2 | 16.7 | 22.8 | 16.7 | 22.5 | 17.1 | 21.9 | 71.2 | 89.4 |
| Vertac litigation charges | — | 14.8 | 106.0 | 0.1 | 1.0 | 0.1 | 1.5 | — | 108.5 | 15.0 |
| Other expense, net | 10.6 | 6.4 | 21.1 | 25.6 | 4.6 | 0.1 | 29.4 | 39.2 | 65.7 | 71.3 |
| Income (loss) before income taxes, minority interests and equity loss | 25.6 | (0.8) | (78.2) | 12.7 | 50.1 | 27.3 | 5.7 | (74.6) | 3.2 | (35.4) |
| (Benefit) provision for income taxes | 10.7 | (6.5) | (27.5) | 3.1 | 14.1 | 2.8 | (189.5) | (3.2) | (192.2) | (3.8) |
| Income (loss) before minority interests and equity loss | 14.9 | 5.7 | (50.7) | 9.6 | 36.0 | 24.5 | 195.2 | (71.4) | 195.4 | (31.6) |
| Minority interests in earnings of consolidated subsidiaries | (0.1) | (0.4) | (0.3) | (0.2) | (0.4) | (0.3) | (0.6) | (0.1) | (1.4) | (1.0) |
| Equity loss of affiliated companies, net of tax | (0.4) | 0.3 | (0.6) | — | (1.1) | 0.2 | (1.1) | — | (3.2) | 0.5 |
| Net income (loss) from continuing operations before discontinued operations and cumulative effect of changes in accounting principle | 14.4 | 5.6 | (51.6) | 9.4 | 34.5 | 24.4 | 193.5 | (71.5) | 190.8 | (32.1) |
| Net income (loss) from discontinued operations, net of tax | (0.6) | (0.7) | (0.7) | (0.2) | (0.3) | (0.4) | 48.6 | (5.2) | 47.0 | (6.5) |
| Net income (loss) before cumulative effect of changes in accounting principle | 13.8 | 4.9 | (52.3) | 9.2 | 34.2 | 24.0 | 242.1 | (76.7) | 237.8 | (38.6) |
| Cumulative effect of changes in accounting principle | 0.9 | — | — | — | — | — | — | (2.5) | 0.9 | (2.5) |
| Net income (loss) | \$ 14.7 | \$ 4.9 | \$ (52.3) | \$ 9.2 | \$ 34.2 | \$ 24.0 | \$ 242.1 | \$ (79.2) | \$ 238.7 | \$ (41.1) |
| Basic earnings (loss) per share: | | | | | | | | | | |
| Continuing operations | \$ 0.13 | \$ 0.06 | \$ (0.46) | \$ 0.09 | \$ 0.31 | \$ 0.22 | \$ 1.72 | \$ (0.66) | \$ 1.72 | \$ (0.30) |
| Discontinued operations | (0.01) | (0.01) | (0.01) | (0.01) | — | — | 0.43 | (0.05) | 0.42 | (0.06) |
| Cumulative effect of changes in accounting principle | 0.01 | — | — | — | — | — | — | (0.02) | 0.01 | (0.02) |
| Net income (loss) | \$ 0.13 | \$ 0.05 | \$ (0.47) | \$ 0.08 | \$ 0.31 | \$ 0.22 | \$ 2.15 | \$ (0.73) | \$ 2.15 | \$ (0.38) |
| Diluted earnings (loss) per share: | | | | | | | | | | |
| Continuing operations | \$ 0.13 | \$ 0.05 | \$ (0.46) | \$ 0.08 | \$ 0.31 | \$ 0.22 | \$ 1.71 | \$ (0.66) | \$ 1.71 | \$ (0.30) |
| Discontinued operations | (0.01) | (0.01) | (0.01) | — | — | — | 0.43 | (0.05) | 0.42 | (0.06) |
| Cumulative effect of changes in accounting principle | 0.01 | — | — | — | — | — | — | (0.02) | 0.01 | (0.02) |
| Net income (loss) | \$ 0.13 | \$ 0.04 | \$ (0.47) | \$ 0.08 | \$ 0.31 | \$ 0.22 | \$ 2.14 | \$ (0.73) | \$ 2.14 | \$ (0.38) |

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Information regarding the Company's change in accountants during 2005 is incorporated herein by reference to the Forms 8-K and 8-K/A filed on April 22, 2005 and May 12, 2005, respectively. There were no disagreements related to the change in accountants.

ITEM 9A. CONTROLS AND PROCEDURES

The Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's President and Chief Executive Officer and the Company's Vice President and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures pursuant to Exchange Act Rule 13a-15 as of December 31, 2006. Based upon that evaluation, the Company's President and Chief Executive Officer and the Company's Vice President and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective. Disclosure controls and procedures are controls and procedures that are designed to ensure that information required to be disclosed in Company reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms.

There have been no significant changes in the Company's internal controls over financial reporting that occurred during the Company's fourth fiscal quarter, that have materially affected, or are reasonably likely to materially affect the registrant's internal control over financial reporting.

Management's Report on Internal Control Over Financial Reporting is on page 36 of this Form 10-K.

The certifications of the Company's President and Chief Executive Officer and the Company's Vice President and Chief Financial Officer required by Section 302 of the Sarbanes-Oxley Act of 2002 are filed as Exhibits 31.1 and 31.2 to this Annual Report on Form 10-K. Additionally, as required by Section 303A.12(a) of the New York Stock Exchange ("NYSE") Listed Company Manual, the Company's President and Chief Executive Officer filed a certification with the NYSE on May 9, 2006 reporting that he was not aware of any violation by us of the NYSE's Corporate Governance listing standards.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

BOARD OF DIRECTORS

Information regarding directors and nominees for directors of Hercules will be included in the Company's Proxy Statement and is incorporated herein by reference.

EXECUTIVE OFFICERS OF THE REGISTRANT

The name, age and current position of each executive officer of Hercules as of February 28, 2007 is listed below. There are no family relationships among the executive officers.

| Name | Age | Current Position |
|----------------------|------------|---|
| Craig A. Rogerson | 50 | President, Chief Executive Officer and Director |
| Fred G. Aanonsen | 59 | Vice President and Controller |
| Edward V. Carrington | 64 | Vice President, Human Resources |
| Richard G. Dahlen | 67 | Chief Legal Officer |
| Israel J. Floyd | 60 | Corporate Secretary and General Counsel |
| Vincenzo M. Romano | 53 | Vice President, Taxes |
| Stuart C. Shears | 56 | Vice President and Treasurer |
| Allen A. Spizzo | 49 | Vice President and Chief Financial Officer |

Craig A. Rogerson joined Hercules in 1979 and has held his current position since December 2003. He had been Vice President and General Manager, FiberVisions and Pinova since April 2002. Prior to that, he had been Vice President and General Manager of BetzDearborn since August 2000 and Vice President of Business Operations for BetzDearborn Division since May 2000.

Fred G. Aanonsen joined Hercules in July 2001. Prior to joining Hercules, he spent 25 years at Union Carbide Corporation, where most recently he had been the Director of Accounting and Financial Processing since 1998 and Business Director for the Finance SAP Design and Implementation Team from 1995 to 1998. Mr. Aanonsen is a Certified Public Accountant and a member of the American Institute of Certified Public Accountants, the New York State Society of Certified Public Accountants and Financial Executives International.

Edward V. Carrington originally joined Hercules when it acquired Radiant Color in 1969 and assumed his current position in June 2001. Prior to that, he had served in a consulting role since October 2000. From 1997 until 2000, he was Vice President of Buttonwood Cottages, Inc., a vacation resort complex, and President of Rentals in Paradise, Inc., a vacation home rental business. Mr. Carrington is a trustee of Christiana Care.

Richard G. Dahlen originally joined Hercules in 1996. Mr. Dahlen assumed his current position in June 2001. Prior to that, he had served in a consulting role since October 2000.

Israel J. Floyd joined Hercules in 1973 and has held his current position since 2001. He had been Vice President, Secretary and General Counsel since 1999.

Vincenzo M. Romano joined Hercules in March 2003 as Director, Federal Tax and has held his current position since July 2004. He was self-employed as a tax consultant from September 2001 until March 2003. Prior to that, he was a Tax Director for PricewaterhouseCoopers from January 1999 to August 2001.

Stuart C. Shears joined Hercules in 1978 and has held his current position since 1999.

Allen A. Spizzo joined Hercules in 1979 and has held his current position since March 2004. He had been Vice President, Corporate Affairs, Strategic Planning and Corporate Development from July 2002 to March 2004. Prior to that, Mr. Spizzo had been Vice President, Investor Relations and Strategic Planning since 2000.

ITEM 11. EXECUTIVE COMPENSATION

Information regarding compensation of Hercules' directors and executive officers will be included in the Company's Proxy Statement and is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Information regarding beneficial ownership of Hercules common stock by certain beneficial owners and by directors and executive officers of Hercules will be included in the Company's Proxy Statement and is incorporated herein by reference.

Equity Compensation Plan Information

The following table provides information as of December 31, 2006 concerning the number of shares of common stock to be issued upon the exercise of outstanding options, warrants and rights issued under all of the Company's existing equity compensation plans, including the Hercules Incorporated Long-Term Incentive Compensation Plan, the Hercules Incorporated Non-Employee Director Stock Accumulation Plan, and the Hercules Incorporated Omnibus Equity Compensation Plan for Non-employee Directors; the weighted-average exercise price of such options, warrants and rights and the number of securities remaining available for future issuance under such plans. All of the Company's equity compensation plans have been approved by the Company's shareholders.

| Plan category | Number of securities to be issued upon exercise of outstanding options, warrants and rights | | Weighted-average exercise price of outstanding options, warrants and rights | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) |
|--|---|---------|--|--|
| | (a) | | (b) | (c) |
| Equity compensation plans approved by security holders | 5,398,285 | (1) (2) | \$ 25.56 | 8,546,964 |
| Equity compensation plans not approved by security holders | — | | — | — |
| Total | 5,398,285 | | \$ 25.56 | 8,546,964 |

(1) Includes 2,234,710 options with exercise prices in excess of the weighted average price of \$25.56.

(2) Includes options to purchase 1,181,759 shares that were not vested at December 31, 2006.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Information regarding relationships or transactions between directors and officers and the Company will be included in the Company's Proxy Statement and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information regarding principal accountant fees and services will be included in the Company's Proxy Statement and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Documents filed as part of this Report:

1. Consolidated Financial Statements

| | Page |
|--|------|
| Management's Report on Internal Control over Financial Reporting | 36 |
| Reports of Independent Registered Public Accounting Firm | 37 |
| Consolidated Statements of Operations and Comprehensive Income (Loss) for the Years Ended December 31, 2006, 2005 and 2004 | 40 |
| Consolidated Balance Sheets as of December 31, 2006 and 2005 | 41 |
| Consolidated Statements of Cash Flows for the Years Ended December 31, 2006, 2005 and 2004 | 42 |
| Consolidated Statements of Stockholders' Equity (Deficit) for the Years Ended December 31, 2006, 2005 and 2004 | 43 |
| Summary of Significant Accounting Policies and Notes to Consolidated Financial Statements | 44 |

2. Financial Statement Schedules:

Schedule II - Valuation and Qualifying Accounts

(Dollars in millions)

| Description | Balance at beginning of period | Charged to costs and expenses | Charged to other accounts | Deductions | Balance at end of period |
|-------------------------|--------------------------------------|-------------------------------------|---------------------------------|------------|--------------------------------|
| <u>Year 2006</u> | | | | | |
| Tax valuation allowance | \$ 380.7 | \$ (100.4) | \$ 55.5 | \$ — | \$ 335.8 |
| <u>Year 2005</u> | | | | | |
| Tax valuation allowance | \$ 391.8 | \$ 23.1 | \$ (34.2) | \$ — | \$ 380.7 |
| <u>Year 2004</u> | | | | | |
| Tax valuation allowance | \$ 399.8 | \$ (22.9) | \$ 14.9 | \$ — | \$ 391.8 |

All other schedules are omitted because they are not applicable, not required or the information required is either presented in the Notes to the Consolidated Financial Statements or has not changed materially from that previously reported.

3. Exhibits:

A complete listing of exhibits is included in the Exhibit Index that precedes the exhibits filed with this Report.

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on February 28, 2007.

HERCULES INCORPORATED
By: /s/ Craig A. Rogerson
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant in the capacities indicated on February 28, 2007.

Principal Executive Officer and Director:
President and Chief Executive Officer
/s/ Craig A. Rogerson
Craig A. Rogerson

Principal Financial Officer:
Vice President and Chief Financial Officer
/s/ Allen A. Spizzo
Allen A. Spizzo

Principal Accounting Officer:
Vice President and Controller
/s/ Fred G. Aanonsen
Fred G. Aanonsen

Directors:
/s/ John K. Wulff
John K. Wulff, Chairman of the Board
/s/ Burton M. Joyce
Burton M. Joyce

/s/ Anna Cheng Catalano
Anna Cheng Catalano
/s/ Robert D. Kennedy
Robert D. Kennedy

/s/ Thomas P. Gerrity
Thomas P. Gerrity
/s/ Jeffrey M. Lipton
Jeffrey M. Lipton

/s/ John C. Hunter, III
John C. Hunter, III
/s/ Joe B. Wyatt
Joe B. Wyatt

EXHIBIT INDEX

| Number | Description | Incorporated by Reference to |
|---------------|---|---|
| 2.1 | Agreement and Plan of Merger among Hercules, Water Acquisition Company and BetzDearborn Inc., dated July 30, 1998 | Exhibit 2.1, BetzDearborn Inc. Current Report on Form 8-K, filed July 30, 1998 |
| 3.1 | Restated Certificate of Incorporation of Hercules, as revised and amended July 6, 1988 | Exhibit 3-A, Annual Report on Form 10-K filed March 26, 1993 |
| 3.2 | Certificate of Amendment dated October 24, 1995, to Hercules' Restated Certificate of Incorporation as revised and amended July 5, 1998 | Exhibit 4.1a, Registration Statement on Form S-3, filed September 15, 1998 |
| 3.3 | By-Laws of Hercules, as revised and amended as of July 15, 2003 | Exhibit 3.1, Quarterly Report on Form 10-Q filed August 7, 2003 |
| 4.1 | Officers' Certificate, dated as of July 27, 1999, pursuant to the Junior Subordinated Debentures Indenture between Hercules and Chase, dated as of November 12, 1998 | Exhibit 4.1, Current Report on Form 8-K, dated July 27, 1999 |
| 4.2 | Unit Agreement, dated July 27, 1999, among Hercules, Hercules Trust II and The Chase Manhattan Bank, as unit agent | Exhibit 4.3, Current Report on Form 8-K, dated July 27, 1999 |
| 4.3 | Warrant Agreement, dated July 27, 1999, between Hercules and The Chase Manhattan Bank, as warrant agent | Exhibit 4.4, Current Report on Form 8-K, dated July 27, 1999 |
| 4.4 | Form of Series A Junior Subordinated Deferrable Interest Debentures | Exhibit 4.5, Current Report on Form 8-K, dated July 27, 1999 |
| 4.5 | Form of CRESTS Unit | Exhibit 4.7, Current Report on Form 8-K, dated July 27, 1999 |
| 4.6 | Form of Warrant | Exhibit 4.8, Current Report on Form 8-K, dated July 27, 1999 |
| 4.7 | Rights Agreement, dated as of August 24, 2000, between Hercules Incorporated and Chase Mellon Shareholder Services, L.L.C. | Exhibit 4.1 to Hercules Registration of Certain Classes of Securities on Form 8-A filed August 10, 2000 |
| 4.8 | Indenture, dated as of November 14, 2000, between Hercules Incorporated, as issuer and Wells Fargo Bank Minnesota, N.A., as trustee (including the form of 11.125% senior notes due 2007 included as Exhibit A thereto). | Exhibit 4-A, Quarterly Report on Form 10-Q, filed November 14, 2000 |
| 4.9 | Registration Rights Agreement, dated as of November 14, 2000, among Hercules Incorporated and all of its domestic subsidiaries and Donaldson, Lufkin & Jenrette Securities Corporation and Credit Suisse First Boston Corporation, as the initial purchasers. | Exhibit 4-B Quarterly Report on Form 10-Q, filed November 14, 2000 |
| 4.10 | Amendment No. 1 to the Hercules Incorporated Rights Agreement, dated as of June 5, 2003 | Exhibit 4.2, Registration Statement on Form 8-A, filed June 5, 2003 |
| 4.11 | Amendment No. 2 to the Hercules Incorporated Rights Agreement, dated as of August 21, 2003 | Exhibit 4.1, Current Report on Form 8-K, filed September 22, 2003 |
| 4.12 | Indenture, dated as of April 8, 2004, between Hercules Incorporated and each of the Guarantors party thereto and Wells Fargo Bank, National Association | Exhibit 4.1, Quarterly Report on Form 10-Q filed May 10, 2004 |

| | | |
|-------|--|---|
| 4.13 | Registration Rights Agreement, dated April 8, 2004, between Hercules Incorporated and the Guarantors listed on Schedule A thereto and Credit Suisse First Boston LLC, Wachovia Capital Markets, LLC, Scotia Capital (USA) Inc. and Deutsche Bank Securities Inc. | Exhibit 4.2, Quarterly Report on Form 10-Q, filed May 10, 2004 |
| 10.1 | Hercules Executive Survivor Benefit Plan | Exhibit 10-D, Annual Report on Form 10-K, filed March 27, 1981 |
| 10.2 | Hercules 1993 Non-Employee Director Stock Accumulation and Deferred Compensation Plan | Exhibit 4.1, Registration Statement on Form S-8, filed July 16, 1993 |
| 10.3 | Hercules Employee Pension Restoration Plan | Exhibit 10-L, Annual Report on Form 10-K, filed March 26, 1993 |
| 10.4 | Hercules Amended and Restated Long Term Incentive Compensation Plan | Exhibit 10-K, Annual Report on Form 10-K, filed March 29, 2000 |
| 10.5 | CRESTS Units Underwriting Agreement, dated July 21, 1999, among Hercules, Hercules Trust II and the Underwriters named therein | Exhibit 1.1, Current Report on Form 8-K, dated July 27, 1999 |
| 10.6 | Common Stock Underwriting Agreement, dated July 21, 1999, among Hercules and the Underwriters named therein | Exhibit 1.2, Current Report on Form 8-K, dated July 27, 1999 |
| 10.7 | Form of Change-of-Control Employment Agreements entered into as of August 24, 2000 by Hercules Incorporated and each of Robert C. Flexon and Craig A. Rogerson | Exhibit 10-19, Registration Statement S-4, filed August 9, 2001 |
| 10.8 | Form of Change-of-Control Employment Agreements entered into as of June 15, 2001 by Hercules Incorporated and Richard G. Dahlen | Exhibit 10-25, Registration Statement S-4, filed August 9, 2001 |
| 10.9 | Change-of-Control Employment Agreement, dated as of July 2, 2001, by and between Hercules Incorporated and Fred G. Aanonsen | Exhibit 10-28, Registration Statement on Form S-4, filed August 9, 2001 |
| 10.10 | Stock and Asset Purchase Agreement, dated as of February 12, 2002, by and among Hercules Incorporated, General Electric Company and Falcon Acquisition Corp. | Exhibit 10.1, Current Report on Form 8-K, dated February 12, 2002 |
| 10.11 | Amendment 2002-1 to Amended and Restated Long Term Incentive Compensation Plan | Exhibit I, Proxy Statement, dated May 15, 2002 |
| 10.12 | Amendment 2002-1 to Non-Employee Director Stock Accumulation Plan | Exhibit II, Proxy Statement, dated May 15, 2002 |
| 10.13 | Hercules Incorporated Compensation Benefits Grantor Trust Agreement for Management Employees | Exhibit 10-Ee, Annual Report on Form 10-K/A, filed May 1, 2003 |
| 10.14 | Hercules Incorporated Compensation Benefits Grantor Trust Agreement for Non-Employee Directors | Exhibit 10-Ff, Annual Report on Form 10-K/A, filed May 1, 2003 |
| 10.15 | Amended and Restated Hercules Incorporated Management Incentive Compensation Plan, dated February 21, 2003 | Exhibit 10-Gg Annual Report on Form 10-K/A, filed May 1, 2003 |
| 10.16 | Hercules Deferred Compensation Plan, restated December 1995 | Exhibit 10-B, Quarterly Report on Form 10-Q, filed May 15, 2003 |

[Table of Contents](#)

| | | |
|--------|--|--|
| 10.17 | Employment Offer Letter - Fred G. Aanonsen, dated June 27, 2001 | Exhibit 10-C, Quarterly Report on Form 10-Q, filed May 15, 2003 |
| 10.18 | Hercules Executive Survivor Benefit Plan II dated January 1, 1987 - benefit structure is only applicable to one executive officer | Exhibit 10-E, Quarterly Report on Form 10-Q, filed May 15, 2003 |
| 10.19 | Omnibus Equity Compensation Plan for Non-Employee Directors | Appendix II, Proxy Statement dated June 20, 2003 |
| 10.20 | Amended and Restated Credit Agreement, dated as of April 8, 2004, between Hercules Incorporated and the Guarantors listed on Schedule A thereto and Credit Suisse First Boston LLC, Wachovia Capital Markets, LLC, Scotia Capital (USA) Inc. and Deutsche Bank Securities Inc. | Exhibit 10.1, Quarterly Report on Form 10-Q, filed May 10, 2004 |
| 10.21 | First Amendment to Amended and Restated Credit Agreement dated as of August 12, 2004, among Hercules Incorporated and the Guarantors listed on Schedule A thereto and Credit Suisse First Boston LLC and Wachovia Bank, National Association | Exhibit 10.1, Quarterly Report on Form 10-Q, filed November 15, 2004 |
| 10.22 | Employment Agreement between Hercules Incorporated and Israel J. Floyd, dated August 24, 2000 | Exhibit 10.27, Annual Report on Form 10-K, filed March 16, 2005 |
| 10.23 | First Amendment to the Employment Agreement between Hercules Incorporated and Israel J. Floyd, dated August 24, 2000 | Exhibit 10.28, Annual Report on Form 10-K, filed March 16, 2005 |
| 10.24 | Employment Agreement between Hercules Incorporated and Allen A. Spizzo, dated August 24, 2000 | Exhibit 10.29, Annual Report on Form 10-K, filed March 16, 2005 |
| 10.25 | First Amendment to the Employment Agreement between Hercules Incorporated and Allen A. Spizzo, dated August 24, 2000 | Exhibit 10.30, Annual Report on Form 10-K, filed March 16, 2005 |
| 10.26 | First Amendment to the Employment Agreement between Hercules Incorporated and Craig A. Rogerson, dated August 24, 2000 | Exhibit 10.31, Annual Report on Form 10-K, filed March 16, 2005 |
| 10.27 | Employment Offer Letter - Paul C. Raymond III, dated December 28, 2004 | Exhibit 10.34, Annual Report on Form 10-K, filed March 16, 2005 |
| 10.28 | Special Pension Agreement between Hercules Incorporated and William H. Joyce, approved August 21, 2003 | Exhibit 10.35, Annual Report on Form 10-K, filed March 16, 2005 |
| 10.29 | General Terms of Employment between Hercules Incorporated and Certain Executive Officers | Exhibit 10.36, Annual Report on Form 10-K, filed March 16, 2005 |
| 10.30 | Employment Offer Letter - John E. Panichella, dated December 15, 2005 | Exhibit 10.1, Current Report on Form 8-K/A, dated December 15, 2005 |
| 10.31 | Contribution Agreement between Hercules Incorporated, WSP, Inc., SPG/FV Investor LLC and Fibervisions Delaware Corporation dated January 31, 2006 | Exhibit 10.33, Annual Report on Form 10-K, filed March 3, 2006 |
| 10.32* | Agreement between Hercules Incorporated and Genpact International dated January 16, 2007 | |

| | | |
|--------|--|---|
| 10.33* | Agreement between Hercules Incorporated and HCL America Inc. and HCL Technologies Limited dated January 16, 2007 | |
| 14 | Directors Code of Business Conduct and Ethics | Appendix VII, Proxy Statement dated June 20, 2003 |
| 18.1 | Letter Regarding Change in Accounting Principle | Exhibit 18.1, Annual report on Form 10-K, filed March 3, 2006 |
| 21.1* | Principal Consolidated Subsidiaries as of December 31, 2006 | |
| 23.1* | Consent of BDO Seidman, LLP | |
| 23.2* | Consent of PricewaterhouseCooper, LLP | |
| 31.1* | Certification of President and Chief Executive Officer Pursuant to Exchange Act Rule 13a-14(a)/15d-14(a) | |
| 31.2* | Certification of Vice President and Chief Financial Officer Pursuant to Exchange Act Rule 13a-14(a)/15d-14(a) | |
| 32.1* | Section 1350 Certification of President and Chief Executive Officer | |
| 32.2* | Section 1350 Certification of Vice President and Chief Financial Officer | |

*Filed herewith

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

MASTER PROFESSIONAL SERVICES AGREEMENT

This Master Professional Services Agreement (this “**Agreement**”) is entered into effective January 15, 2007 (the “**Effective Date**”) by and between Hercules Incorporated, a Delaware corporation having a principal place of business at 1313 North Market Street, Wilmington, Delaware (“**Hercules**”), and Genpact International, a Luxembourg corporation acting through its Hungarian Branch, having a principal place of business in Duna Plaza Offices, 4th Floor, H-1138, Budapest Vaci ut 178, Hungary (“**Supplier**”).

WHEREAS, Hercules and Supplier have engaged in extensive negotiations, discussions and due diligence that have culminated in the formation of the contractual relationship described in this Agreement; and

WHEREAS, Hercules desires to procure from Supplier, and Supplier desires to provide to Hercules and the Eligible Recipients, certain finance, accounting, customer service, IT infrastructure, application development and maintenance and other business process and information technology products and services described in this Agreement and in the Companion Agreement(s) (defined below), on the terms and conditions specified herein;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and of other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, Hercules and Supplier (collectively, the “**Parties**” and each, a “**Party**”) hereby agree as follows:

1 INTRODUCTION

1.1 Performance and Management by Supplier.

Hercules desires that certain finance, accounting, customer service, SAP upgrade, application development and maintenance and other business process and information technology products and services (such descriptive terms herein collectively referenced as, “**BPO/ADM**”) presently performed and managed by or for Hercules and the Eligible Recipients, as each is described in this Agreement and the Schedules and Attachments hereto, be performed and managed by Supplier. Supplier has carefully reviewed Hercules' requirements, has performed (except as otherwise provided in Schedule J) all due diligence it deems necessary, and desires to perform and manage such business process products and services for Hercules and the Eligible Recipients.

1.2 Definitions.

Except as otherwise expressly provided in this Agreement, all capitalized terms used in this Agreement shall have the meanings set forth in Schedule A.

1.3 Other Terms

The terms defined in this Article 1 and Schedule A include the plural as well as the singular and the derivatives of such terms. Unless otherwise expressly stated, the words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection or other subdivision. Article, Section, Subsection and Attachment references refer to articles, sections and subsections of, and attachments to, this Agreement. The words “include” and “including” shall not be construed as terms of limitation. The words “day,” “month,” and “year” mean, respectively, calendar day, calendar month and calendar year. As stated in Section 21.3, the word “notice” and “notification” and their derivatives means notice or notification in writing. Other terms used in this Agreement are defined in the context in which they are used and have the meanings there indicated.

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

2 CONTRACT DOCUMENTS

2.1 Associated Contract Documents.

This Agreement includes each of the following schedules and their attached exhibits, all of which are attached to this Agreement and incorporated into this Agreement by this reference. Unless otherwise expressly stated, references to specific Schedules include all numbered subsidiary Schedules and attachments (e.g., references to **Schedule E** include not only **Schedule E**, but also **Schedules E.1, E.2, E.3** etc.).

- A Glossary of Terms
- B Software
- C Key Supplier Personnel
- D Subcontractors
- E Statement of Work
 - E.1 Global Procurement
 - E.2 Material Master
 - E.3 Accounts Payable
 - E.4 Order to Invoice
 - E.5 Invoice to Cash
 - E.6 General Accounting
 - E.7 Business Analysis
 - E.8 Sarbanes Oxley
 - E.9 Applications Development and Maintenance
 - E.10 Business Continuity
 - E.11 Savinon
 - E.12 SAP Upgrade
- F Reserved
- G Service Levels
 - G.1 Service Levels and Service Level Credits
 - G.2 Service Levels Definitions
 - G.3 Critical Deliverables and Deliverable Credits
- H Transition Plan
 - H.1 Transition Milestones, Criteria and Deliverable Credits
 - H.2 Detailed Transition Plan
- I Termination Assistance Services
- J Supplier Charges
 - J.1 Financial Responsibility/Asset Allocation Matrix
- K Hercules Base Case
- L Reserved
- M Staffing Plan
- N Termination Charges
- O.1 Hercules Facilities
- O.2 Supplier Facilities
- O.3 Hercules Provided Equipment
- P.1 Direct Hercules Competitors
- P.2 Direct Supplier Competitors
- Q Satisfaction Survey
- R Reports
- S Governance Model
 - T.1 Hercules Rules
 - T.2 Hercules IT, Security and Related Standards
 - T.3 Hercules Business Practices Policy
- U Termination/Expiration Rights

Exhibit 1: Form of Non-Disclosure Agreement

Exhibit 2: Form of Invoice

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [***] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.**

Exhibit 3: Form of Companion Agreement

Exhibit 4: Parent Guaranty

3 TERM

3.1 Initial Term.

The initial Term of this Agreement shall commence as of 12:00:01 a.m., Greenwich Mean Time on the Effective Date and continue until 11:59:59 p.m., Greenwich Mean Time, on December 31, 2012, unless this Agreement is terminated as provided herein or extended as provided in **Section 3.2** or **4.3(a)(2)**, in which case the Term shall end at 11:59:59 p.m., Greenwich Mean Time, on the effective date of such termination or the date to which this Agreement is extended.

3.2 Extension.

By giving notice to Supplier no less than ninety (90) days prior to the expiration date of the initial Term or any extension period, Hercules shall have the right to extend the Term for up to two extension periods of up to one (1) year (each, a “**Renewal Term**” and together with the Initial Term, the “**Term**”), each on the same terms conditions and pricing set forth in this Agreement, including the economic change adjustment set forth in Section 7 of **Schedule J**. Notwithstanding the foregoing, the time period between the delivery of Hercules’ non-renewal notice to Supplier and Supplier’s cessation of Termination Assistance Services shall not be shorter than one hundred eighty (180) days. No Termination Charges shall be applicable to any termination on or after the expiration of the Initial Term, except as otherwise expressly provided in an approved New Services proposal.

4 SERVICES

4.1 Overview.

- (a) **Services.** Commencing on the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan), Supplier shall provide the Services to Hercules, and, upon Hercules’ request, to Eligible Recipients and Authorized Users designated by Hercules. The Services shall consist of the following, as they may evolve during the Term of this Agreement or be supplemented, enhanced, modified or replaced:
- (i) The services, functions and responsibilities described in this Agreement and its Schedules and attachments, which include the Technology and Business Process Evolution and the following:
 - (1) Transition Services, as described in **Sections 4.2** and **Schedules H**;
 - (2) Services, as further described in **Schedule E**;
 - (3) Projects, as further described in **Section 4.5**;
 - (4) New Services, as further described in **Section 4.4**; and
 - (5) Termination Assistance Services, as described in **Section 4.3** and **Schedule I**.
 - (ii) The BPO/ADM related services, functions and responsibilities performed during the twelve (12) months preceding the Commencement Date by Hercules Personnel who were displaced or whose functions were displaced as a result of this Agreement, even if the service, function, or responsibility is not specifically described in this Agreement (unless and to the extent such service, function, or responsibility meets the New Services definition, and provided that, in the event of a direct conflict between **Schedule E** and the scope of services as described in this **Section 4.1(a)(ii)**, this **Section 4.1(a)(ii)** shall not be construed as altering and/or superseding **Schedule E**); and
-

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

- (iii) The BPO/ADM related services, functions and responsibilities reflected in those categories of the Hercules Base Case which Supplier is assuming pursuant to this Agreement (provided, however, in the event of a direct conflict between Schedule E and the scope of services as described in this Section 4.1(a)(iii), this Section 4.1(a)(iii) shall not be construed as altering and/or superseding Schedule E).
- (b) **Included Services.** If any services, functions or responsibilities not specifically described in this Agreement are an inherent, necessary or customary part of the Services or are required for proper performance or provision of the Services in accordance with this Agreement, they shall be deemed to be included within the scope of the Services to be delivered for the Charges, as if such services, functions or responsibilities were specifically described in this Agreement.
- (c) **Required Resources.** Except as otherwise expressly provided in this Agreement, Supplier shall be responsible for providing the facilities, personnel, Equipment, Software, technical knowledge, expertise and other resources necessary to provide the Services.
- (d) **Supplier Responsibility.** Supplier shall be responsible for the provision of the Services in accordance with this Agreement even if such Services are actually performed or dependent upon services performed by Subcontractors.
- (e) **Electronic Delivery.** To the maximum extent possible, and except as otherwise directed by Hercules or expressly provided in this Agreement, Supplier shall deliver all Software, documentation, reports and other contract deliverables to Hercules and the Eligible Recipients at the designated Hercules Site by electronic transmission or by load and leave (where no tangible storage media is physically transferred to Hercules or the Eligible Recipients).

4.2 Transition Services.

- (a) **Transition.** During the Transition Period, Supplier shall perform the Transition Services and provide the deliverables described in the Transition Plan, which is attached to this Agreement as Schedule H. If any services, functions or responsibilities not specifically described in the Transition Plan are an inherent, necessary or customary part of the Transition Services or are required for the proper performance of the Transition Services in accordance with this Agreement, they shall be deemed to be included within the scope of the Transition Services to be delivered for no additional charge, as if such services, functions or responsibilities were specifically described in the Transition Plan. During the Transition Period, Hercules will perform those tasks which are designated to be Hercules' responsibility in the Transition Plan, provided that, Hercules shall not be obligated to perform any tasks during the Transition Period that are not set forth in such Transition Plan. Unless otherwise agreed, Hercules shall not incur any charges, fees or expenses payable to Supplier or third parties in connection with the Transition Services, other than those charges, fees and expenses specified in Schedule J and those incurred by Hercules in connection with its performance of tasks designated in the Transition Plan as Hercules' responsibility.
 - (b) **Transition Plan.** Schedule H.1 is an outline of the Transition Plan that identifies (i) the transition activities to be performed by Supplier, (ii) the date(s) by which each such activity or deliverable is to be completed ("Transition Milestones"), and (iii) the Deliverable Credits associated with the failure to meet specific Transition Milestones. Within thirty (30) days after the Effective Date, Supplier shall deliver to Hercules a detailed Transition Plan for Hercules' review, comment and approval. The proposed detailed Transition Plan shall describe in greater detail the specific transition activities to be performed by Supplier, but, unless otherwise agreed by Hercules, shall be consistent in all material respects with the initial Transition Plan, including the activities, deliverables, Transition Milestones and Deliverable Credits described therein. The detailed Transition Plan shall identify and describe, among other things, (i) the transition activities to be performed by Supplier and the significant components and subcomponents of each such activity, (ii) the deliverables to be completed by Supplier, (iii) the Transition Milestone for each such activity or deliverable, (iv) a process and set of standards acceptable to Hercules to which Supplier will adhere in the performance of the Transition Services and that will enable Hercules to determine whether Supplier has successfully completed the transition and the activities and deliverables associated with each Transition Milestone, in
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accordance with the Acceptance criteria specified in the Transition Plan, (v) the contingency or risk mitigation strategies to be employed by Supplier in the event of disruption or delay, (vi) any transition responsibilities to be performed or transition resources to be provided by Hercules or the Eligible Recipients and (vii) a detailed work plan identifying the specific transition activities to be performed by individual Supplier Personnel on a weekly basis during the Transition Period. The detailed Transition Plan also shall identify any related documents contemplated by the Agreement and/or required to effectuate the transition to be executed by the Parties. Upon approval by Hercules, the detailed Transition Plan shall be appended to the Agreement as **Schedule H.2**.

- (c) **Performance.** Supplier shall perform the Transition Services described in the Transition Plan in accordance with the timetable and the Transition Milestones set forth in the Transition Plan. Supplier shall provide all cooperation and assistance reasonably required or requested by Hercules in connection with Hercules' evaluation or testing of the deliverables set forth in the Transition Plan. Supplier shall perform the Transition Services in a manner that will not (i) unnecessarily disrupt or have an unnecessary adverse impact on the business or operations of Hercules or the Eligible Recipients, (ii) degrade the Services then being received by Hercules or the Eligible Recipients, or (iii) disrupt or interfere with the ability of Hercules or the Eligible Recipients to obtain the full benefit of the Services, except as may be otherwise provided in the Transition Plan. Prior to undertaking any transition activity, Supplier shall discuss with Hercules all known Hercules-specific material risks and shall not proceed with such activity until Hercules is reasonably satisfied with the plans with regard to such risks (provided that, neither Supplier's disclosure of any such risks to Hercules, nor Hercules' acquiescence to Supplier's plans, shall operate or be construed as limiting Supplier's responsibilities under this Agreement). Supplier shall identify and resolve, with Hercules' reasonable assistance, any problems that may impede or delay the timely completion of each task in the Transition Plan that is Supplier's responsibility and shall use all commercially reasonable efforts to assist Hercules with the resolution of any problems that may impede or delay the timely completion of each task in the Transition Plan that is Hercules' responsibility.
 - (d) **Meetings; Reports.** Supplier shall meet at least weekly with Hercules to report on its progress in performing its responsibilities and meeting the timetable set forth in the Transition Plan. Supplier shall include Supplier Personnel in such meetings as and to the extent appropriate or requested by Hercules. Supplier also shall provide written reports to Hercules at least weekly regarding such matters, and shall provide oral reports more frequently if reasonably requested by Hercules. Promptly upon receiving any information indicating that Supplier may not perform its responsibilities or meet the timetable set forth in the Transition Plan, Supplier shall notify Hercules in writing of material delays and shall identify for Hercules' consideration and approval specific measures to address such delay and mitigate the risks associated therewith.
 - (e) **Suspension or Delay of Transition Activities.** Hercules reserves the right, in its sole discretion, to suspend or delay the performance of the Transition Services and/or the transition of all or any part of the Transition Services. If Hercules elects to exercise such right and Hercules' decision is based on Supplier's failure to perform its obligations under this Agreement, Hercules shall not incur any additional Charges, Termination Charges, or reimbursable expenses in connection with such decision. If Hercules' decision is not based on Supplier's failure to perform its obligations under this Agreement, Hercules shall reimburse Supplier for any additional costs reasonably incurred by Supplier as a result of such decision (provided that Supplier notifies Hercules in advance of such costs, obtains Hercules' approval prior to incurring such costs, and uses commercially reasonable efforts to minimize such costs).
 - (f) **Failure to Meet Transition Milestones.**
 - (i) The Parties acknowledge and agree that the Transition Plan specifies various Transition Milestones by which Transition activities and/or deliverables are to be completed. If Supplier fails to meet a Transition Milestone, Supplier shall pay Hercules the Deliverable Credits specified in **Schedules G** and **H** for such Transition Milestone.
 - (ii) Neither the Transition Services nor the activities and deliverables associated with individual Transition Milestones will be deemed complete until Hercules' Acceptance of such activities and deliverables.
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THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [***] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.**

- (g) **Termination for Cause.** Notwithstanding the foregoing, and in addition to any other termination right Hercules may have under this Agreement, Hercules may terminate this Agreement in whole or in part for cause if (i) Supplier fails to comply with its material obligations with respect to the provision of Transition Services and such failure causes or will cause a material disruption to or otherwise has or will have a material adverse impact on the operations or businesses of Hercules or the Eligible Recipients, (ii) Supplier materially breaches its obligations with respect to the provision of Transition Services and fails to cure such breach within twenty (20) days after its receipt of notice, or (iii) Supplier fails to meet a Transition Milestone and such failure constitutes a material breach of this Agreement and Supplier fails to cure such breach within twenty (20) days after its receipt of notice. In addition, unless otherwise agreed, if Supplier fails to meet the Transition Milestone for the completion of the transition of all Services to Supplier by more than twenty (20) days, Hercules may terminate this Agreement for cause without requirement of notice or opportunity to cure. In all such events, subject to Section 18.3, Hercules may recover the damages suffered by Hercules or the Eligible Recipients in connection with such a termination, provided that, if such termination is based on Supplier's failure to meet a Transition Milestone, Supplier shall be entitled to set-off against such damages any Deliverable Credits Supplier has paid for the failure to meet such Transition Milestone.

4.3 Termination Assistance Services.

- (a) **Availability.** As part of the Services, and for the Charges set forth in Sections 4.3(b)(8) and 4.3(b)(9) and Schedule J, Supplier shall provide to Hercules, the Eligible Recipients and/or their designee(s) the Termination Assistance Services described in Section 4.3(b) and Schedule I.
- (1) **Period of Provision.** Supplier shall provide such Termination Assistance Services to Hercules and any Eligible Recipient, or their designee(s), (i) commencing upon notice from Hercules up to six (6) months prior to the expiration of the Term or on such earlier date as Hercules may request and continuing for up to twelve (12) months following the effective date of the expiration of the Term (as such Term may be extended pursuant to Section 3.2), (ii) commencing upon any notice of termination (including termination for cause by Hercules or Supplier or termination for convenience by Hercules) of the Term with respect to all or any part of the Services, and continuing for up to twelve (12) months following the effective date of such termination of all or part of the Services, or (iii) commencing upon notice of termination of all or part of the Services to an Eligible Recipient and continuing for up to twelve (12) months following the effective date of such termination.
- (2) **Extension of Services.** Hercules may elect, upon thirty (30) days prior notice, to extend the period following the effective date of any expiration/termination for the performance of Termination Assistance Services, provided that the period between the effective date and the completion of all Termination Assistance Services is not greater than twelve (12) months. If Hercules provides less than thirty (30) days prior notice of an extension, Supplier shall nonetheless use commercially reasonable efforts to comply with Hercules' request and provide the requested Services and/or Termination Assistance Services.
- (3) **Firm Commitment.** Supplier shall provide Termination Assistance Services to Hercules and any Eligible Recipients, or their designee(s), regardless of the reason for the expiration or termination of the Term; provided, if the Agreement is terminated by Supplier under Section 20.1(b) for failure to pay undisputed amounts, Supplier may require payment in advance for Termination Assistance Services to be provided or performed under this Section 4.3 and payment of all undisputed Charges not previously paid as required under this Agreement. At Hercules' request, Supplier shall provide
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Termination Assistance Services directly to an Eligible Recipient or an Entity acquiring Control of an Eligible Recipient; provided that, unless otherwise agreed by the Parties, all such Termination Assistance Services shall be performed subject to and in accordance with the terms and conditions of this Agreement.

- (4) **Performance.** All Termination Assistance Services shall be provided subject to and in accordance with the terms and conditions of this Agreement. Supplier shall perform the Termination Assistance Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as it provided and was required to provide the same or similar Services during the Term. The quality and level of performance of the Termination Assistance Services provided by Supplier following the expiration or termination of the Term as to all or part of the Services or Supplier's receipt of a notice of termination or non-renewal shall continue to meet or exceed the applicable Service Levels and shall not be degraded or deficient in any respect. Accordingly, unless otherwise agreed in the applicable transition plan, Service Level Credits shall be assessed for any failure to meet applicable Service Levels during the Termination Assistance Services period; provided, that, during the period following the expiration/termination date, (i) Service Level Credits shall be assessed only with respect to a failure to meet the applicable Minimum Service Level, (ii) the Parties shall use commercially reasonable efforts to agree upon the Minimum Service Levels to be applied during such period, and (iii) to the extent the Parties are unable to agree, the original Minimum Service Level, without the continuous improvement adjustments described in Section 12 of **Schedule G**, shall be applied. Notwithstanding the foregoing, if Hercules requests less than all of the Services being performed by Supplier prior to the expiration/termination date and the failure to request any interdependent Service causes Supplier to be unable to perform the Services in accordance with the Service Levels, Supplier shall be relieved of responsibility for any resulting Service Level default, but only if Supplier (i) promptly notifies Hercules of its inability to perform under such circumstances, (ii) cooperates with Hercules to address the resulting problem and thereby avoid any non-performance, (iii) identifies and pursues commercially reasonable means to avoid or mitigate the impact of Hercules' failure to request such Service, and (iv) uses commercially reasonable efforts to perform notwithstanding the failure to request such Service. Supplier Personnel (including all Key Supplier Personnel) reasonably considered by Hercules to be critical to the performance of the Services and Termination Assistance Services shall be retained on the Hercules account through the completion of all relevant Termination Assistance Services.
- (5) **Advance Payment.** If Hercules is obligated to pay in advance for Termination Assistance Services, Supplier shall present an invoice for the estimated Charges for such Termination Assistance Services at least fifteen (15) days prior to the beginning of the month in which such Services are to be provided. Subject to **Section 12.4**, Hercules shall then pay such Charges on or before the first day of such month. The estimated Charges shall then be reconciled with the actual Charges for Termination Assistance Services provided in such month, and any additional Charges or credits will be reflected on the next invoice delivered after the end of such month.
- (b) **Scope of Termination Assistance Service.** As part of the Termination Assistance Services, Supplier shall timely transfer the control and responsibility for all Services previously performed by or for Supplier to Hercules, the Eligible Recipients and/or their designee(s) and shall execute any documents reasonably necessary to effect such transfers. Additionally, Supplier shall provide any and all information and assistance requested by Hercules to allow:
- (i) the Systems and processes associated with the Services to operate efficiently;
 - (ii) the Services to continue without interruption or adverse effect; and
 - (iii) the orderly transfer of the Services to Hercules, the Eligible Recipients and/or their designee(s).
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The Termination Assistance Services shall include, as requested by Hercules, the Services, functions and responsibilities set forth on Schedule I. In addition, in connection with such termination or expiration, Supplier shall provide the following assistance and Services at Hercules' direction:

- (1) **General Support.** Supplier shall (i) assist Hercules, an Eligible Recipient and/or their designee(s) in developing a written transition plan for the transition of the Services to Hercules, such Eligible Recipient, or their designee(s), which plan shall include (as requested by Hercules) capacity planning, business process planning, facilities planning, human resources planning, technology planning, telecommunications planning and other planning necessary to effect the transition, (ii) perform programming and consulting services as requested to assist in implementing the transition plan, (iii) train personnel designated by Hercules, an Eligible Recipient or their designee(s) in the use of any business processes, work instructions and work procedures and any Equipment, Software, Systems, Materials and tools used in connection with the provision of the Services, (iv) catalog all business processes, work instructions, work procedures, Software, Hercules Data, Equipment, Materials, Third Party Contracts and tools used to provide the Services, (v) provide machine readable and printed listings and associated documentation for source code for Software owned by Hercules and source code to which Hercules is entitled under this Agreement and assist in its re-configuration, (vi) analyze and report on the space required for the Hercules Data and the Software needed to provide the Services, (vii) assist in the execution of a parallel operation, data migration and testing process until the successful completion of the transition to Hercules, an Eligible Recipient or their designee(s), (viii) create and provide copies of the Hercules Data in the format and on the media reasonably requested by Hercules, an Eligible Recipient or their designee(s), (ix) provide a complete and up-to-date, electronic copy of the Policy and Procedures Manual and applicable work instructions and work procedures in the format and on the media reasonably requested by Hercules, an Eligible Recipient or their designee(s) and (x) provide other technical assistance as requested by Hercules, an Eligible Recipient or their designee(s).

 - (2) **Hiring.**
 - (i) Hercules, the Eligible Recipients and/or their designee(s) shall be permitted to undertake, without interference from Supplier, Supplier Subcontractors (subject to Section 4.3(b)(2)(ii) below) or Supplier Affiliates (including counter-offers), to make offers of employment, effective after the later of the expiration or termination of the Term or completion of any Termination Assistance Services requested under Section 4.3(b)(8), to any (i) Supplier Personnel assigned to the performance of Services at Hercules Facility(ies) during the twelve (12) months preceding the expiration or termination date, or (ii) other Supplier Personnel assigned to the performance of Services during the twelve (12) months preceding the expiration or termination date that Supplier intends to terminate in connection with such expiration or termination. Supplier shall waive, and shall cause its Subcontractors (as contemplated in Section 4.3(b)(2)(ii) below) and Affiliates to waive, their rights, if any, under contracts with such personnel restricting the ability of such personnel to be recruited or hired by Hercules, the Eligible Recipients and/or their designee(s). Supplier shall provide Hercules, the Eligible Recipients and/or their designee(s) with reasonable assistance in their efforts to hire such Supplier Personnel, and shall give Hercules, the Eligible Recipients and/or their designee(s) reasonable access to such Supplier Personnel for interviews, evaluations and recruitment. Hercules shall endeavor to conduct the above-described hiring activity in a manner that is not unnecessarily disruptive of the performance by Supplier of its obligations under this Agreement.

 - (ii) With respect to Subcontractors that are not Supplier Affiliates, Supplier shall use all commercially reasonable efforts to (A) obtain for Hercules, the Eligible Recipients and their designee(s) the rights specified in Section 4.3(b)(2)(i), and (B) ensure that such rights are not subject to subsequent Subcontractor approval or the payment by Hercules, an Eligible Recipient or their designee(s) of any fees. If Supplier is unable to obtain any such
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rights with respect to a Subcontractor, it shall notify Hercules in advance and shall not use such Subcontractor without Hercules' approval (and absent such approval, Supplier's use of any such Subcontractor shall obligate Supplier to obtain or arrange, at no additional cost to Hercules, the rights specified in **Section 4.3(b)(2)(i)**, for Hercules, the Eligible Recipients and their designee(s) upon expiration or termination). If Hercules consents to Supplier's use of specific Subcontractors under these circumstances, such Subcontractors shall be so identified on **Schedule D**

- (iii) Within thirty (30) days after receiving from Hercules pursuant to **Section 4.3(a)(1)**, Supplier shall provide to Hercules a list, organized by location, of the Supplier Personnel who are eligible for solicitation for employment pursuant to this **Section 4.3(b)(2)**, including those Supplier intends to terminate in connection with such expiration or termination. Subject to applicable Privacy Laws, such list shall specify each such Supplier Personnel's job title, annual total compensation, leave status and years of service.
 - (3) **Software.** As provided in **Section 14.6**, and subject to **Section 6.4(c)**, Supplier shall provide, and hereby grants to Hercules (with a right to sublicense to the Eligible Recipients and/or Hercules' designee), certain license, sublicense and/or other rights to certain Software and other Materials used by Supplier, Supplier Affiliates or Subcontractors in performing the Services.
 - (4) **Equipment.** Subject to **Section 6.4(c)**, Hercules, the Eligible Recipients and/or their designee(s) shall have the right (but not the obligation) to purchase, or assume the lease for, any Equipment owned or leased by Supplier that is used on a dedicated basis by Supplier or Supplier Affiliates to perform the Services. Such Equipment shall be transferred in good working condition, reasonable wear and tear excepted, as of the expiration or termination date or the completion of any Services requiring such Equipment requested by Hercules under **Section 4.3(b)(8)**, whichever is later. Supplier shall, at no additional charge to Hercules, maintain such Equipment through the date of transfer so as to be eligible for the applicable manufacturer's maintenance program at no additional charge to Hercules. In the case of Supplier-owned Equipment, Supplier shall grant to Hercules, the Eligible Recipients and/or their designee(s) a warranty of title and a warranty that such Equipment is free and clear of all liens and encumbrances. Such conveyance by Supplier to Hercules, the Eligible Recipients and/or their designee(s) shall be at net book value (calculated in accordance with generally acceptable accounting principles applicable in the country in which such Equipment is located). Unless otherwise agreed, Hercules shall pay any sales tax and/or duties associated with such conveyance, as well as any Out-of-Pocket Expenses to transport such Equipment to the location designated by Hercules. At Hercules' request, the Parties shall negotiate in good faith and agree upon the form and structure of the purchase. In the case of leased Equipment, Supplier shall (i) represent and warrant that the lessee is not in default under the lease, (ii) represent and warrant that all payments thereunder have been made through the date of transfer, and (iii) notify Hercules of any lessor defaults of which it is aware at the time.
 - (5) **Hercules Facilities, Equipment and Software.** Supplier shall vacate the Hercules Facilities and return to Hercules, if not previously returned, any Hercules owned Equipment, Hercules leased Equipment, Hercules Owned Software, Hercules licensed Software and Hercules Owned Materials, in condition at least as good as the condition when made available to Supplier, ordinary wear and tear excepted. Such Hercules Facilities, Equipment, Software and Materials shall be vacated and returned at the expiration or termination date or the completion of any Services requiring such Hercules Facilities, Equipment, Software and Materials requested by Hercules under **Section 4.3(b)(8)**, whichever is later.
 - (6) **Supplier Subcontracts and Third Party Contracts.** Supplier shall inform Hercules of all subcontracts or Third Party Contracts primarily used by Supplier, Supplier Subcontractors or Supplier Affiliates to perform the Services. Subject to **Sections 6.4(c)**, Supplier shall, at Hercules's request, cause any such Subcontractors (excluding Shared Subcontractors), Supplier Affiliates or third party contractors to permit Hercules, the Eligible Recipients and/or their designee(s) to assume prospectively any or all such contracts or to enter into new contracts with Hercules, the Eligible
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Recipients or their designees on substantially the same terms and conditions, including price. Supplier shall so assign the designated subcontracts and Third Party Contracts to Hercules, the Eligible Recipients and/or their designee(s) as of the expiration or termination date or the completion of any Termination Assistance Services requiring such subcontracts or Third Party Contracts requested by Hercules under **Section 4.3(b)(8)**, whichever is later. There shall be no charge or fee imposed on Hercules, the Eligible Recipients and/or their designee(s) by Supplier or its Subcontractors, Affiliates or third party contractors for such assignment. Supplier shall (i) represent and warrant that it is not in default under such subcontracts and Third Party Contracts, (ii) represent and warrant that all payments thereunder through the date of assignment are current, and (iii) notify Hercules of any Subcontractor's or third party contractor's default with respect to such subcontracts and Third Party Contracts of which it is aware at the time.

- (7) **Other Subcontracts and Third Party Contracts.** In addition to its obligations under **Section 4.3(b)(6)**, Supplier shall use commercially reasonable efforts to make available to Hercules, the Eligible Recipients and/or their designee(s), pursuant to reasonable terms and conditions, any Subcontractor or third party services then being utilized by Supplier in the performance of the Services. Supplier shall retain the right to utilize any such Subcontractor or third party services in connection with the performance of services for any other Supplier customer. Hercules and the Eligible Recipients shall retain the right to contract directly with any Subcontractor or third party previously utilized by Supplier to perform any Services.
- (8) **Extension of Services.** As part of the Termination Assistance Services, for a period of up to twelve (12) months following the expiration or termination date, Supplier shall provide to the Eligible Recipient(s), under the terms and conditions of this Agreement, at Hercules' request, any or all of the Services being performed by Supplier prior to the expiration or termination date, including those Services described in **Article 4** and **Schedule E**. To the extent Hercules requests such Services, Hercules will pay Supplier the Charges specified in **Schedule J** that Hercules would have been obligated to pay Supplier for such Services if this Agreement had not yet expired or been terminated. To the extent Hercules requests a portion (but not all) of the Services included in a particular Charge, the amount to be paid by Hercules will be equitably adjusted in proportion to the portion of the Services included in the applicable Charge that Supplier will not be providing or performing.
- (9) **Rates and Charges.** Except as provided below and in **Section 4.3(b)(8)**, the Parties anticipate that the Termination Assistance Services requested by Hercules will be provided by Supplier, at no additional charge to Hercules, using Supplier Personnel already assigned to Hercules and without adversely affecting Supplier's ability to meet its performance obligations. If material Termination Assistance Services requested by Hercules cannot be provided by Supplier using Supplier Personnel then assigned to Hercules without adversely affecting Supplier's ability to meet its performance obligations, Hercules, in its sole discretion, may forego or delay any work activities or temporarily or permanently adjust the work to be performed by Supplier, the schedules associated therewith or the Service Levels to permit the performance of such Termination Assistance Services using such personnel. To the extent Hercules authorizes Supplier to use additional Supplier Personnel to perform material Termination Assistance Services requested by Hercules, Hercules shall pay Supplier the rates and charges specified in **Schedule J**, or, if no such rates and charges are specified in **Schedule J**, a negotiated fee which shall be no less favorable to Hercules than the lower of the most favorable rates available under then-current Hercules/Supplier contracts for comparable services or Supplier's then current commercially available rates, for the additional Supplier Personnel required to perform such Termination Assistance Services (but only if Supplier notifies Hercules in advance of such Charges, obtains Hercules' approval prior to incurring such Charges, and uses commercially reasonable efforts to minimize such Charges).
- (c) **Resources.** Supplier shall ensure that, at all times during the Term, on thirty (30) days notice, it is able to deploy all necessary resources to perform Termination Assistance Services in accordance with this **Section 4.3**.
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- (d) **Survival of Terms.** This Section 4.3 shall survive termination/expiration of the Term.

4.4 New Services.

- (a) **Procedures.** If Hercules requests that Supplier perform any New Services reasonably related to the Services or other services generally provided by Supplier, Supplier shall promptly prepare a New Services proposal for Hercules' consideration. Unless otherwise agreed by the Parties, Supplier shall prepare such New Services proposal at no additional charge to Hercules and shall deliver such proposal to Hercules within ten (10) business days of its receipt of Hercules' request; provided, that Supplier shall use all commercially reasonable efforts to respond more quickly in the case of a pressing business need or an emergency situation. Hercules shall provide such information as Supplier reasonably requests in order to prepare such New Service proposal. Such New Services proposal shall include, among other things, the following at a level of detail sufficient to permit Hercules to make an informed business decision: (i) a project plan and fixed price or price estimate for the New Service; (ii) a breakdown of such price or estimate, (iii) a description of the service levels to be associated with such New Service, (iv) a schedule for commencing and completing the New Service, (v) a description of the new hardware or software to be provided by Supplier in connection with the New Service, (vi) a description of the software, hardware and other resources, including Resource Unit utilization, necessary to provide the New Service, (vii) any additional facilities or labor resources to be provided by Hercules or the Eligible Recipients in connection with the proposed New Service, (viii) any risks associated with the New Service and/or the integration of the New Service into the existing environment, and (ix) in the case of any Developed Materials to be created through the provision of the proposed New Services, any ownership rights therein that differ from the provisions of Section 14.2. Hercules may accept or reject any New Services proposal in its sole discretion and Supplier shall not be obligated to perform any New Services to the extent the applicable proposal is rejected. Unless the Parties otherwise agree, if Hercules accepts Supplier's proposal, Supplier will perform the New Services and be paid in accordance with the proposal submitted by Supplier and the provisions of this Agreement. Upon Hercules' acceptance of a Supplier proposal for New Services, the scope of the Services will be expanded and this Agreement will be modified to include such New Services. Notwithstanding any provision to the contrary, (i) Supplier shall act reasonably and in good faith in formulating such pricing proposal, (ii) Supplier shall use commercially reasonable efforts to identify potential means of reducing the cost to Hercules, including utilizing Subcontractors as and to the extent appropriate, (iii) such pricing proposal shall be no less favorable to Hercules than the pricing and labor rates set forth herein for the same or substantially similar job classifications and/or skill sets in the same geographic area and the same or substantially similar technology infrastructure, and (iv) such pricing proposal shall take into account the existing and future volume of business between Hercules and Supplier.
- (b) **Use of Third Parties.** Hercules may elect to solicit and receive bids from third parties to perform any New Services. If Hercules elects to use third parties to perform New Services, (i) such New Services shall not be deemed "Services" under the provisions of this Agreement, and (ii) Supplier shall cooperate with such third parties as provided in Section 4.6.
- (c) **Services Evolution and Modification.** The Parties anticipate that the Services will evolve and be supplemented, modified, enhanced or replaced over time to keep pace with technological advancements and improvements in the methods of delivering Services and changes in the businesses of Hercules and the Eligible Recipients. The Parties acknowledge and agree that these changes will modify the Services and will not be deemed to result in New Services unless the changed services meet the definition of New Services.
- (d) **Authorized User and Eligible Recipient Requests.** Supplier shall promptly inform the Hercules Relationship Manager or his or her designee of requests for New Services from Authorized Users or Eligible Recipients, and shall submit any proposals for New Services to the Hercules Relationship Manager or his or her designee. Supplier shall not agree to provide New Services to any Authorized Users or Eligible Recipients without the prior written approval of the Hercules Relationship Manager or his or her designee.
- (e) **Efforts to Reduce Costs and Charges.** From time to time, Hercules may request that the Parties work together to identify ways to achieve reductions in the cost of service delivery and corresponding reductions in the Charges to be paid by Hercules by modifying or reducing the nature or scope of the Services to be
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performed by Supplier, the applicable Service Levels or other contract requirements. If requested by Hercules, Supplier shall promptly prepare a proposal at a level of detail sufficient to permit Hercules to make an informed business decision identifying all viable means of achieving the desired reductions without adversely impacting business objectives or requirements identified by Hercules. In preparing such a proposal, Supplier shall give due consideration to any means of achieving such reductions proposed by Hercules. Supplier shall negotiate in good faith with Hercules about each requested reduction in Charges and, without disclosing the actual cost of providing the Services, shall identify for Hercules if and to what extent the cost of service delivery may be reduced by implementing various changes in the contract requirements. Hercules shall not be obligated to accept or implement any proposal; and Supplier shall not be obligated to implement any change that affects the terms of this Agreement unless and until such change is reflected in a written amendment to this Agreement.

4.5 Billable Projects.

- (a) **Procedures and Performance.** Supplier shall perform Projects requested and approved by Hercules as part of the Services. A “**Project**” is a discrete unit of non-recurring work that is not an inherent, necessary or customary part of the day-to-day Services, and is not required to be performed by Supplier to meet the existing Service Levels (other than Service Levels related to Project performance). A Project may consist of or include work that would otherwise be treated as New Services. The Supplier Personnel assigned to perform such Projects shall possess the training, education, experience, competence and skill to perform such work. The Hercules Relationship Manager or his or her designee shall request, define and set the priority for such Projects.
- (b) **Additional Work or Reprioritization.** The Hercules Project Executive or his or her designee may identify new or additional work activities to be performed by Supplier Personnel (including work activities that would otherwise be treated as a Project or New Services) or reprioritize or reset the schedule for existing work activities to be performed by such Supplier Personnel. To the extent the work activities requested by Hercules can be provided by Supplier using personnel already assigned to Hercules without impacting the established schedule for other tasks or the performance of the Services in accordance with the Service Levels, there will be no additional charge to Hercules for such work. If the work activities requested by Hercules cannot be provided by Supplier using personnel then assigned to Hercules without impacting the Service Levels, Hercules, in its sole discretion, may forego or delay any work activities or temporarily or permanently adjust the work to be performed by Supplier, the schedules associated therewith or the Service Levels to permit the performance of such work using personnel already assigned to perform the Services.

4.6 Right to In-Source or Use Third Parties; Cooperation.

- (a) **Right of Use.** Subject to Section 2.7 of Schedule J, this Agreement shall not be construed as a requirements contract, and notwithstanding anything to the contrary contained herein, shall not be interpreted to prevent Hercules or the Eligible Recipients from obtaining from third parties (each, a “**Hercules Third Party Contractor**”), or providing to themselves, any or all of the Services or any other services. In addition, subject to Section 2.7 of Schedule J, nothing in this Agreement shall be construed or interpreted as limiting Hercules' right or ability during the Term to add or delete Eligible Recipients or to increase or decrease its demand for Services. Nor shall anything in this Agreement be construed or interpreted as limiting Hercules' right or ability during the Term to change the requirements of Hercules or the Eligible Recipients with respect to any Service, change Service volumes and/or, subject to Section 2.7 of Schedule J, move parts of any Service in or out of scope. To the extent Hercules or an Eligible Recipient obtains from a Hercules Third Party Contractor, or provides to itself, any of the Services, the amount to be paid to Supplier by Hercules shall be equitably adjusted downward in accordance with Schedule J and in proportion to the portion of the Services that Supplier will no longer be providing or performing. Similarly, to the extent Hercules adds or deletes Eligible Recipients or increases or decreases its demand for Services, the amount to be paid to Supplier by Hercules shall be adjusted in accordance with Schedule J and the rates specified therein.
 - (b) **Supplier Cooperation.** Supplier shall fully cooperate with and work in good faith with Hercules, the Eligible Recipients or Hercules Third Party Contractors as described in Schedule E or requested by Hercules and at no additional charge to Hercules. Such cooperation may include: (A) timely providing access to any
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facilities being used to provide the Services, as necessary for Hercules personnel or Hercules Third Party Contractors to perform the work assigned to them (including to install and manage third party software and equipment to provide services to Hercules or Eligible Recipients); (B) timely providing reasonable electronic and physical access to the business processes and associated Equipment, Software and/or Systems to the extent necessary and appropriate for Hercules, the Eligible Recipients or Hercules Third Party Contractors to perform the work assigned to them; (C) timely providing written requirements, standards, policies or other documentation for the business processes and associated Equipment, Software or Systems procured, operated, supported or used by Supplier in connection with the Services; (D) ensuring that there is no degradation in the provision of the Services caused by the adjustments made by Supplier in transferring Services to a third party, Hercules or an Eligible Recipient; (E) at Hercules' request, providing access to Hercules Data to the Eligible Recipients and/or Hercules Third Party Contractors in the same manner and to the same extent access to such data is provided to Hercules, (F) timely providing cooperation and assistance in accordance with **Section 4.3** to facilitate the orderly transfer of terminated Services from Supplier to Hercules, the Eligible Recipients and/or Hercules Third Party Contractors or (G) any other cooperation or assistance reasonably necessary for Hercules, the Eligible Recipients and/or Hercules Third Party Contractors to perform the work in question. Notwithstanding subsection (B) above, it is understood and agreed that Supplier shall not be obligated to grant Hercules Third Party Contractors physical access to Supplier Facilities as part of such cooperation, as long as Supplier is able to provide such Hercules Third Party Contractors with physical access at or from a neutral site to the business processes and associated Equipment, Software and/or Systems used to perform the Services to the extent necessary and appropriate for such Hercules Third Party Contractors to perform the work assigned to them (and provided that, unless otherwise agreed, the cost of such neutral site shall be borne by Supplier unless and to the extent the need for such access is attributable to the termination or non-renewal of the Agreement with respect to the applicable Service for reasons other than Supplier's comply with its obligations under this Agreement, and provided that, in the latter event, Supplier notifies Hercules of such additional costs, obtains Hercules' approval prior to incurring such costs, and uses commercially reasonable efforts to minimize any costs to be borne by Hercules.). Hercules personnel and Hercules Third Party Contractors shall comply with Supplier's reasonable security and confidentiality requirements, and shall, to the extent performing work on Software, Equipment or Systems for which Supplier has operational responsibility, comply with Supplier's reasonable standards, methodologies, and procedures (and Hercules shall be responsible to Supplier for any breaches of such standards, methodologies, and procedures by Hercules personnel and /or Hercules Third Party Contractors.

- (c) **Notice by Supplier.** Supplier shall immediately notify Hercules when it becomes aware that an act or omission of a Hercules Third Party Contractor will cause, or has caused, a problem or delay in providing the Services, and shall use commercially reasonable efforts to work with Hercules, the Eligible Recipients and the Hercules Third Party Contractor to prevent or circumvent such problem or delay. Supplier shall cooperate with Hercules, the Eligible Recipients and Hercules Third Party Contractors to resolve differences and conflicts arising between the Services and other activities undertaken by Hercules, the Eligible Recipients or Hercules Third Party Contractors. Any notification provided by Supplier in accordance with this **Section 4.6(c)** shall not excuse Supplier from the performance of any of its obligations under this Agreement.

4.7 Companion Agreements

- (a) At Hercules' request, the terms of this Master Agreement shall be incorporated by reference into individual Companion Agreements, which shall be executed by Genpact International or an Affiliate of Genpact International and Hercules Incorporated or an Eligible Recipient. All Services shall be provided by Genpact International or the applicable Affiliate of Genpact International pursuant to this Master Agreement or an executed Companion Agreement. Unless and to the extent an individual Companion Agreement expressly provides otherwise, each Companion Agreement shall incorporate by reference the terms and conditions of this Master Agreement and shall not be construed as altering or superseding the rights and obligations of the Parties under this Master Agreement. Unless and to the extent otherwise agreed, the form of the Companion Agreement shall be as set forth in **Exhibit 3**.
 - (b) Notwithstanding the foregoing, Genpact International shall be responsible for any failure by an Affiliate of Genpact International to perform in accordance with a Companion Agreement executed by such Affiliate or
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to comply with such Affiliate's duties or obligations under such Companion Agreement to the same extent as if such failure to perform or comply was committed by Genpact International, including, subject to **Section 18.3**, any damages incurred by Hercules or an Eligible Recipient as a result of any such failure to perform or comply.

- (c) The Supplier Account Manager (and his or her designees(s)) shall remain responsible for the administration of this Master Agreement and the individual Companion Agreements on a day-to-day basis on behalf of Supplier (including decisions, consents, notices, acceptances and approvals) and only the Supplier Account Manager (and his or her designees(s)) shall be authorized to act on behalf of Supplier or to amend, modify, change, waive or discharge their rights and obligations under this Master Agreement or such Companion Agreements.
- (d) The Hercules Relationship Manager (and his or her designees(s)) shall remain responsible for the administration of this Master Agreement and the individual Companion Agreements on a day-to-day basis on behalf of Hercules and the Eligible Recipients (including decisions, consents, notices, acceptances and approvals) and only the Hercules Relationship Manager (and his or her designees(s)) shall be authorized to act on behalf of Hercules and the Eligible Recipients or to amend, modify, change, waive or discharge their rights and obligations under this Master Agreement or such Companion Agreements.

4.8 Guaranty.

As a material condition to the effectiveness of this Agreement, Supplier shall cause the Guaranty to be executed by Guarantor and delivered to Hercules on the Effective Date.

5 REQUIRED CONSENTS

5.1 Supplier Responsibility.

At Hercules' request, Supplier shall reasonably cooperate with Hercules (and/or a Hercules Third Party Contractor) in obtaining Required Consents. Supplier shall assist Hercules in minimizing or eliminating any fees or expenses associated with obtaining such Required Consents.

5.2 Financial Responsibility.

Hercules shall pay any transfer, re-licensing or termination fees or expenses associated with obtaining any Required Consents.

6 FACILITIES, SOFTWARE, EQUIPMENT, CONTRACTS AND ASSETS ASSOCIATED WITH THE PROVISION OF SERVICES

6.1 Service Facilities.

- (a) **Service Facilities.** Supplier and its Affiliates and Subcontractors shall provide the Services at or from (i) the Hercules Facilities described on **Schedule O.1**, (ii) the Supplier Facilities described on **Schedule O.2**, each of which shall be approved in advance by Hercules, or (iii) any other service location approved by Supplier and Hercules. Supplier shall obtain Hercules' prior approval for any proposed relocation by Supplier, its Affiliates or Subcontractors of the provision of a Service to a new or different Supplier Facility. Hercules acknowledges and has approved the Supplier Facilities set forth on **Schedule O.2** as of the Effective Date for the provision of the Services and scope thereof described therein. Supplier shall be financially responsible for all additional costs, taxes or expenses related to or resulting from any Supplier-initiated relocation to a new or different Supplier Facility, including any costs or expenses incurred or experienced by Hercules or any Eligible Recipient as a result of such relocation.
 - (b) **Supplier's Responsibilities.** Except as provided in **Sections 6.1(a), 6.2(a)** and **(b)** and **Section 6.4(e)**, Supplier shall be responsible for providing all furniture, fixtures, Equipment, space and other facilities required to perform the Services and all upgrades, improvements, replacements and additions to such furniture, fixtures, Equipment, space and facilities. Without limiting the foregoing, Supplier shall provide (i)
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all maintenance, site management, site administration and similar services for the Supplier Facilities, (ii) uninterrupted power supply services for the Supplier Facilities.

6.2 Hercules Facilities.

- (a) **Hercules Facilities.** Hercules shall provide Supplier with the use of and access to the Hercules Facilities (or equivalent space) described in **Schedule O.1** for the periods specified therein solely as necessary for Supplier to perform its obligations under this Agreement. All Hercules owned or leased assets provided for the use of Supplier under this Agreement shall remain in Hercules Facilities unless Hercules otherwise agrees. In addition, all improvements or modifications to Hercules Facilities requested by Supplier shall be (i) subject to review and approval in advance by Hercules, (ii) in strict compliance with Hercules' then-current policies, standards, rules and procedures, and (iii) performed by and through Hercules at Supplier's expense. Supplier acknowledges and agrees that the facilities to be provided by Hercules are sufficient for performing the Services and for satisfying Supplier's responsibilities under this Agreement. THE HERCULES FACILITIES ARE PROVIDED BY HERCULES TO SUPPLIER ON AN AS-IS, WHERE-IS BASIS. HERCULES EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE HERCULES FACILITIES, OR THEIR CONDITION OR SUITABILITY FOR USE BY SUPPLIER.
- (b) **Furniture, Fixtures and Equipment.** At the Hercules Facilities described in **Schedule O.1**, Hercules shall provide office space and office furniture for the number of Supplier Personnel and for such periods specified in **Schedule O.1**. The office space and office furniture provided by Hercules for the use of Supplier Personnel will be generally comparable to the office space and office furniture provided to (i) the Hercules Personnel prior to the Commencement Date; or (ii) the then-standard office space and office furniture provided to similarly situated Hercules employees. Supplier Personnel using the office facilities provided by Hercules will be accorded reasonable access to the communications wiring in such facilities (including fiber, copper and wall jacks, subject to **Section 6.2(c)**) and the use of certain shared office equipment and services, such as photocopiers, local and long distance telephone service for Hercules-related calls, telephone handsets, mail service, office support service (e.g., janitorial), heat, light, and air conditioning; provided that such access and usage shall be solely for and in connection with the provision of Services by such Supplier Personnel, and provided further that Supplier shall reimburse Hercules for the additional incremental costs incurred by Hercules or the Eligible Recipients if and to the extent Supplier's technology solution, service delivery model and/or inefficiency cause its usage or consumption of such resources to exceed historical levels. Supplier shall be financially responsible for providing all other office space, office furniture, fixtures or office related equipment or services needed by Supplier or Supplier Personnel assigned to Hercules Facilities, and for all upgrades, replacements and additions to such office furniture, fixtures or equipment; provided that such office furniture, fixtures and equipment must be approved in advance by Hercules and meet Hercules' then-current standards, and provided further that Supplier shall use commercially reasonable efforts to purchase and use surplus Hercules furniture, fixtures and equipment to the extent available.
- (c) **Supplier's Responsibilities Regarding Hercules' Network.**
- (i) To the extent Supplier Personnel working on an ongoing basis at a Hercules Facility are, with Hercules' approval, connected directly to the network (s) of Hercules or an Eligible Recipient, the Equipment (and all Software installed thereon) used by such personnel shall be (i) subject to **Section 6.4 (e)**, provided to the applicable Supplier Personnel by Hercules at Hercules' expense, (ii) maintained and supported by or through Hercules (including by Supplier as and to the extent provided in **Schedule E**), at Hercules' expense, and (iii) shall be and remain in strict compliance with Hercules' then-current security policies, architectures, requirements, standards, rules and procedures, unless and to the extent deviations are approved in advance by Hercules. Hercules shall load the Software image on such Equipment and Supplier shall not install or permit the installation of any other software on such Equipment without Hercules' prior approval.
- (ii) To the extent Supplier Personnel working on an ongoing basis from a Supplier Facility are, with Hercules' approval, connected directly to the network(s) of Hercules or an Eligible Recipient, the Equipment (and all Software installed thereon) used by such personnel shall be (i) provided to the applicable Supplier Personnel by Supplier at Supplier's expense, (ii) maintained and supported by or
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through Supplier, at Supplier's expense, and (iii) shall be and remain in strict compliance with Hercules' then-current security policies, architectures, requirements, standards, rules and procedures, unless and to the extent deviations are approved in advance by Hercules.

- (d) **Hercules Rules and Compliance.** In performing the Services and using the Hercules Facilities, Supplier shall observe and comply with all Hercules policies, rules, and regulations (including those governing business practices, smoking, harassment, weapons, safety, security, drugs and alcohol) applicable to Hercules Facilities or the provision of the Services which have been communicated to Supplier or Supplier Personnel in advance by such means as are generally used by Hercules to disseminate such information to its employees or contractors, including those set forth on **Schedules T.1** and **T.3** and those applicable to specific Hercules Sites (collectively, "**Hercules Rules**"). The Parties acknowledge and agree that, as of the Commencement Date, Supplier is fully informed as to the Hercules Rules. Supplier shall be responsible for the promulgation and distribution of Hercules Rules to Supplier Personnel as and to the extent necessary and appropriate. In addition, Supplier and Supplier Personnel shall be responsible for familiarizing themselves with the premises and operations at each Hercules Site or Hercules Facility at, to or from which Services are rendered and the Hercules Rules applicable to each such Site or Facility. Additions or modifications to the Hercules Rules may be (i) communicated orally by Hercules or an Eligible Recipient directly to Supplier and Supplier Personnel, (ii) disclosed to Supplier and Supplier Personnel in writing, (iii) conspicuously posted at a Hercules Facility, (iv) electronically posted, or (v) communicated to Supplier or Supplier Personnel by means generally used by Hercules to disseminate such information to its employees or contractors. Supplier and Supplier Personnel shall observe and comply with such additional or modified Hercules Rules.
- (e) **Physical Security at Hercules Facilities.** Hercules is responsible for the physical security of the Hercules Facilities; provided, that Supplier shall be responsible for the safety and physical access and control of the areas that Supplier is using in performing the Services and Supplier shall not permit any person to have access to, or control of, any such area unless such access or control is permitted in accordance with control procedures approved by Hercules or any higher standard agreed to by Hercules and Supplier. Supplier shall be solely responsible for compliance by Supplier Personnel with such control procedures, including obtaining advance approval to the extent required.
- (f) **Use of Hercules Facilities.**
- (i) Unless Supplier obtains Hercules' prior written agreement, which Hercules may withhold in its sole discretion, Supplier shall use the Hercules Facilities, and the Equipment and Software located therein, only to provide the Services to Hercules and the Eligible Recipients.
- (ii) Hercules reserves the right to relocate any Hercules Facility from which the Services are then being provided by Supplier to another geographic location; provided that, in such event, Hercules will provide Supplier with comparable office space in the new geographic location. In such event, Hercules shall pay the applicable labor rate(s) for additional personnel reasonably required by Supplier and for the incremental Out-of-Pocket Expenses reasonably incurred by Supplier in physically relocating to such new geographic location; provided that such relocation is not expressly contemplated in this Agreement, and that Supplier notifies Hercules of such additional required personnel and incremental Out-of-Pocket Expenses, obtains Hercules' approval prior to using such personnel or incurring such expenses, and uses commercially reasonable efforts to minimize such personnel and expenses.
- (iii) Hercules also reserves the right to direct Supplier to cease using all or part of the space in any Hercules Facility from which the Services are then being provided by Supplier and to thereafter use such space for its own purposes. In such event, Hercules shall reimburse Supplier for any reasonable incremental Out-of-Pocket Expenses incurred by Supplier in leasing substitute space and physically relocating to such space; provided that such relocation is not expressly contemplated in this Agreement and that Supplier notifies Hercules of such incremental Out-of-Pocket Expenses, obtains Hercules' approval prior to incurring such expenses; and uses commercially reasonable efforts to minimize such expenses.
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- (g) **Conditions for Return.** When the Hercules Facilities are no longer to be used by Supplier as contemplated by Section 6.2 or are otherwise no longer required for performance of the Services, Supplier shall notify Hercules as soon as practicable and shall vacate and return such Hercules Facilities (including any improvements to such facilities made by or at the request of Supplier) to Hercules in substantially the same condition as when such facilities were first provided to Supplier, subject to reasonable wear and tear.
- (h) **No Violation of Laws.** Supplier shall (i) treat, use and maintain the Hercules Facilities in a reasonable manner, and (ii) ensure that neither Supplier nor any of its Subcontractors commits, and use all reasonable efforts to ensure that no business visitor or invitee commits, any act in violation of any Laws in such Supplier occupied Hercules Facility or any act in violation of Hercules' insurance policies or in breach of Hercules' obligations under the applicable real estate leases in such Supplier occupied Hercules Facilities (in each case, to the extent Supplier has received notice of such insurance policies or real estate leases or should reasonably be expected to know of such obligations or limitations).

6.3 Supplier Facilities.

During the Term, Supplier shall provide to Hercules, at no charge, (i) reasonable access to and use of Supplier Facilities from which the Services are being performed, (ii) access to reasonable work/conference space at such Supplier Facilities for the conduct of Hercules' business. In addition, at Hercules' request, Supplier shall provide reasonable access to and use of such Supplier Facilities by Hercules, the Eligible Recipients or Hercules Third Party Contractors as and to the extent provided in **Section 4.6**.

6.4 Software, Equipment and Third Party Contracts.

- (a) **Financial Responsibility.** Supplier shall be responsible for any third party fees or expenses on or after the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan) associated with Software, Equipment, Equipment leases and Third Party Contracts for which Supplier is financially responsible under **Schedule E** or **J.1**. Hercules shall be responsible for third party fees or expenses incurred on or after the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan) associated with Software, Equipment, Equipment leases and Third Party Contracts for which Hercules is financially responsible under **Schedule E** or **J.1**. Unless otherwise expressly provided, each Party also shall be responsible for any third party fees or expenses on or after the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan) associated with new, substitute or replacement Software, Equipment, Equipment leases or Third Party Contracts (including Upgrades, enhancements, new versions or new releases of such Software or Equipment) for which such Party is financially responsible under **Schedule E** or **J.1**.
 - (b) **Operational Responsibility.** With respect to Software, Equipment, Equipment leases and related Third Party Contracts for which Supplier is operationally responsible under **Schedule E** or **J.1**, Supplier shall be responsible for (i) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of such Software, Equipment, Equipment leases and Third Party Contracts; (ii) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of new, substitute or replacement Software, Equipment, Equipment leases and Third Party Contracts (including Upgrades, enhancements, new versions or new releases of such Software); (iii) the performance, availability, reliability, compatibility and interoperability of such Software, Equipment and Third Party Contracts, each in accordance with this Agreement, including the Service Levels and Change Control Procedures; (iv) compliance with and performance of all operational, administrative and contractual obligations specified in the applicable Software licenses, Equipment leases and Third Party Contracts; (v) the administration and exercise as appropriate of all rights available under such licenses, leases and contracts; and (vi) the payment of any fees, penalties, charges, interest or other expenses due and owing under or with respect to such licenses, leases and contracts that are incurred, caused by or result from Supplier's failure to comply with or perform its obligations under this **Section 6.4(b)**
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(except to the extent that such failure directly results from a breach by Hercules of its obligations under this Agreement).

- (c) **Rights Upon Expiration/Termination.** With respect to all Third Party Software licenses, Equipment leases and Third Party Contracts (excluding Shared Subcontractors) for which Supplier is financially responsible under Schedule E or J.1, Supplier shall use all commercially reasonable efforts to (i) obtain for Hercules, the Eligible Recipients and/or their designee(s) the license, sublicense, assignment and other rights specified in Sections 4.3(b) and 14.6, (ii) ensure that the granting of such license, sublicense, assignment and other rights is not subject to subsequent third party approval or the payment by Hercules, the Eligible Recipients or their designee(s) of license, assignment or transfer fees, (iii) ensure that the terms, conditions and prices applicable to Hercules, the Eligible Recipients and/or their designee(s) following expiration or termination are no less favorable than those otherwise applicable to Supplier, and at least sufficient for the continuation of the activities comprising the Services, and (iv) ensure that neither the expiration/termination of this Agreement nor the assignment of the license, lease or contract will trigger less favorable terms, conditions or pricing. If Supplier is unable to obtain any such rights and assurances, it shall notify Hercules in advance and shall not use such Third Party Software license, Equipment lease or Third Party Contract without Hercules' approval (and absent such approval, Supplier's use of any such Third Party Software license, Equipment lease or Third Party Contract shall obligate Supplier to obtain or arrange, at no additional cost to Hercules, for such license, sublicense, assignment or other right for Hercules, the Eligible Recipients and their designee(s) upon expiration or termination). If Hercules consents to Supplier's use of specific Third Party Software licenses, Equipment leases or Third Party Contracts under these circumstances, such consent shall be deemed to be conditioned on Supplier's commitment to use all commercially reasonable efforts to cause such third party to agree at expiration or termination of this Agreement or the completion of Termination Assistance Services to permit Hercules, the Eligible Recipients and/or their designee(s) to assume prospectively the license, lease or contract in question or to enter into a new license, lease or contract with Hercules, the Eligible Recipients and/or their designee(s) on substantially the same terms and conditions, including price. If Hercules consents to Supplier's use of specific Third Party Software licenses, Equipment leases or Third Party Contracts under these circumstances, such Third Party Software licenses, Equipment leases or Third Party Contracts shall be added to Schedule U.
- (d) **Evaluation of Third Party Software, Equipment.** In addition to its obligations under Section 6.4(a) and (b) and in order to facilitate Hercules' control of architecture, standards and plans pursuant to Section 9.5, Supplier shall use all commercially reasonable efforts to evaluate any Third Party Software and Equipment selected by or for Hercules or an Eligible Recipient to determine whether such Software and Equipment will adversely affect Hercules' environment, Hercules' ability to interface with and use the Software, Equipment and Systems and/or Supplier's ability to provide the Services. Supplier shall complete and report the results of such evaluation to Hercules within fifteen (15) days of its receipt of Hercules' request; provided, that Supplier shall use all commercially reasonable efforts to respond more quickly in the case of a pressing business need or an emergency situation.
- (e) **Hercules Provided Equipment.** Hercules shall provide Supplier with the use of the Hercules owned and leased Equipment identified on Schedule O.3 (collectively, the "**Hercules Provided Equipment**") for the periods specified in such Schedule solely for and in connection with the provision of the Services. Upon the expiration of the period specified in Schedule O.3 for each item of Hercules Provided Equipment (or when such Hercules Provided Equipment is no longer required by Supplier for the performance of the Services), Supplier shall promptly return such Hercules Provided Equipment in accordance with Section 6.4(f). THE HERCULES PROVIDED EQUIPMENT IS PROVIDED BY HERCULES TO SUPPLIER ON AN AS-IS, WHERE-IS BASIS. HERCULES EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE HERCULES PROVIDED EQUIPMENT, OR ITS CONDITION OR SUITABILITY FOR USE BY SUPPLIER TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
- (f) **Notice of Decommissioning.** Supplier agrees to notify Hercules promptly if and to the extent any Hercules or Eligible Recipient owned Equipment or Hercules or Eligible Recipient leased Equipment will no longer be used to provide the Services. The notification will include the identification of the Equipment, and the date it will no longer be needed by Supplier, along with the reason for decommissioning. Upon receipt of any such
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notice, Hercules may (or may cause the applicable Eligible Recipient to), in its sole discretion, terminate the Equipment lease for such leased Equipment as of the date specified in such notice and sell or otherwise dispose of or redeploy such Hercules or Eligible Recipient owned Equipment that is the subject of such a notice as of the date specified in such notice. Upon Supplier ceasing to use any Equipment (or, in the case of leased Equipment, upon the last day Hercules or Eligible Recipient is obligated to make such leased Equipment available to Supplier, if earlier), Supplier shall return the same to Hercules, the Eligible Recipients and/or their designee(s) in condition at least as good as the condition thereof on the Commencement Date, ordinary wear and tear excepted. Supplier shall, at Supplier's expense, deliver such Equipment to the location designated by Hercules, the Eligible Recipients and/or their designee(s).

6.5 Notice of Defaults.

Hercules and Supplier shall promptly inform the other Party in writing of any breach of, or misuse or fraud in connection with, any Third Party Contract, Equipment lease or Third Party Software license used in connection with the Services of which it becomes aware and shall cooperate with the other Party to prevent or stay any such breach, misuse or fraud.

7 SERVICE LEVELS

7.1 General.

- (a) **General Performance Standards.** Beginning on the Commencement Date (or, if later, the date on which Supplier assumes **responsibility** for the Services in question in accordance with the Transition Plan), Supplier shall perform each Service at levels of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency that are at least equal to the documented or verifiable levels received by Hercules or the Eligible Recipients prior to such date. In addition, Supplier shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness, resource efficiency and productivity that are equal to or higher than the accepted industry standards of leading providers of BPO/ADM services.
- (b) **Service Level Performance Standards.** Beginning on the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan) Supplier shall perform the Services so as to meet or exceed the Service Levels set forth in **Schedule G**. To the extent the Parties have established a Service Level for a specific Service, the obligations described in **Section 7.1(a)** shall not be construed to alter, expand or supersede such Service Level.
- (c) **Multiple Service Levels.** If more than one Service Level applies to any particular obligation of Supplier, Supplier shall perform in accordance with the most stringent of such Service Levels.
- (d) **Responsibility.** Supplier shall be responsible for meeting or exceeding the applicable Service Levels even where doing so is dependent on the provision of Services by Subcontractors or non-Supplier Personnel.

7.2 Service Level Credits; Deliverable Credits.

- (a) **Service Level Credits.** Supplier recognizes that Hercules is paying Supplier to deliver certain Services at specified Service Levels. If Supplier fails to meet such Service Levels, then, in addition to other remedies available to Hercules, Supplier shall pay or credit to Hercules the performance credits specified in **Schedule G** ("**Service Level Credits**") in recognition of the diminished value of the Services resulting from Supplier's failure to meet the agreed upon level of performance, and not as a penalty. Under no circumstances shall the imposition of Service Level Credits be construed as Hercules' sole or exclusive remedy for any failure to meet the Service Levels. However, if Hercules recovers monetary damages from Supplier as a result of Supplier's failure to meet a Service Level, Supplier shall be entitled to set-off against such damages any Service Level Credits paid for the failure giving rise to such recovery. Service Level Credits are not counted toward and are not subject to the overall cap on Supplier's liability. For avoidance of doubt, unless otherwise specified in **Schedule G**, Supplier's performance under the Master Agreement and all Companion Agreements shall be measured and reported in the aggregate for purposes of determining Supplier's compliance with applicable Service Levels and calculating and assessing any resulting Service Level Credits.
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- (b) **Deliverable Credits.** Supplier recognizes that Hercules is paying Supplier to provide certain Critical Deliverables by the time and in the manner agreed by the Parties. If Supplier fails to meet its obligations with respect to such Critical Deliverables, then, in addition to other remedies available to Hercules, Supplier shall pay or credit to Hercules the Deliverable Credits specified in **Schedules G, H and/or H.1** or established by Hercules as part of the project approval process on a case by case basis in recognition of the diminished value of the Services resulting from Supplier's failure to meet the agreed upon level of performance, and not as a penalty. If Hercules recovers monetary damages from Supplier as a result of Supplier's failure to meet its obligations with respect to one (1) or more Critical Deliverables, Supplier shall be entitled to set-off against such damages any Deliverable Credits paid for the failure(s) giving rise to such recovery. Deliverable Credits are not counted toward and are not subject to the overall cap on Supplier's liability and are in addition to Service Level Credits.

7.3 Problem Analysis.

If Supplier fails to provide Services in accordance with the Service Levels and/or the terms of this Agreement, Supplier shall (after restoring service or otherwise resolving any immediate problem) (i) promptly investigate and report on the causes of the problem; (ii) provide a Root Cause Analysis of such failure as soon as practicable after such failure or at Hercules' request (iii) correct the problem as soon as practicable (regardless of cause or fault) or coordinate the correction of the problem if Supplier does not have responsibility for the cause of the problem; (iv) advise Hercules of the status of remedial efforts being undertaken with respect to such problem; (v) demonstrate to Hercules' reasonable satisfaction that the causes of such problem have been or will be corrected on a permanent basis; and (vi) take all commercially reasonable action to prevent any recurrence of such problem. Supplier shall use all commercially reasonable efforts to complete the Root Cause Analysis within fifteen (15) days of a failure; provided that, if it is not capable of being completed within fifteen (15) days using reasonable diligence, Supplier shall complete such Root Cause Analysis as quickly as possible and shall notify Hercules prior to the end of the initial fifteen (15) day period as to the status of the Root Cause Analysis and the estimated completion date.

7.4 Continuous Improvement Reviews.

- (a) **Improvement of Service Quality.** Supplier acknowledges that the quality of the Services provided in certain Service areas can and will be improved during the Term and agrees that the Service Levels in such Service areas will be enhanced periodically in recognition of the anticipated improvement in service quality. Supplier will improve the quality of the Services provided in such areas to meet or exceed the enhanced Service Levels and shall do so at no additional charge to Hercules.
- (b) **Increase of Service Levels.** In addition to the foregoing, Hercules and Supplier shall periodically review the Service Levels and the performance data collected and reported by Supplier in accordance with **Schedule G**, and relevant industry data and trends on an annual basis (or more frequently if requested by Hercules). Supplier shall give Hercules any assistance it reasonably requires to review and verify such data. As part of such review process, the Parties shall, at no additional cost to Hercules, improve the Service Levels to reflect the higher performance levels actually attained or attainable by Supplier in accordance with **Schedule G**. In addition, subject to **Section 4.4** and **Schedule G**, the Parties shall agree, to the extent reasonable and appropriate, to (i) improve the Service Levels to reflect improved performance capabilities associated with advances in the proven processes, technologies and methods available to perform the Services; (ii) add new Service Levels to permit further measurement or monitoring of the accuracy, quality, completeness, timeliness, responsiveness, cost-effectiveness, or productivity of the Services; (iii) modify or increase the Service Levels to reflect changes in the processes, architecture, standards, strategies, needs or objectives defined by Hercules; and (iv) modify or increase the Service Levels to reflect agreed upon changes in the manner in which the Services are performed by Supplier.

7.5 Measurement and Monitoring.

On or before the Commencement Date or as otherwise provided in **Schedule G**, Supplier shall implement measurement and monitoring tools and metrics as well as standard reporting procedures, all acceptable to Hercules, to measure and report Supplier's performance of the Services at a level of detail sufficient, as determined by Hercules, to verify Supplier's compliance with the applicable Service Levels. Hercules or its designee shall have the right to audit

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all such measurement and reporting tools, performance metrics and reporting procedures. Supplier shall provide Hercules with on-line access to up-to-date problem management data and other data regarding the status of service problems, service requests and user inquiries. Supplier also shall provide Hercules with access to the data used by Supplier to calculate its performance against the Service Levels and the measurement and monitoring tools and procedures utilized by Supplier to generate such data for purposes of audit and verification. Hercules shall not be required to pay any amount in addition to the Charges for such measurement and monitoring tools or the resource utilization associated with their use.

7.6 Satisfaction Surveys.

- (a) **General.** At specified intervals, Supplier and/or independent third parties engaged by Supplier shall conduct the satisfaction surveys described in **Schedule Q** in accordance with the survey protocols and procedures specified therein. To the extent Supplier engages an independent third party to perform all or any part of any satisfaction survey, such third party shall be approved in advance by Hercules. Supplier shall be responsible for the expenses of all such surveys conducted pursuant to this **Section 7.6(a)** and **Schedule Q**.
- (b) **Hercules Conducted Surveys.** In addition to the satisfaction surveys to be conducted pursuant to **Section 7.6(a)**, Hercules may survey satisfaction with Supplier's performance in connection with and as part of broader satisfaction surveys periodically conducted by Hercules and/or independent third parties engaged by Hercules. At Hercules' request, Supplier shall cooperate and assist Hercules with the formulation of the survey questions, protocols and procedures and the execution and review of such surveys. At Hercules' request, Supplier shall provide data to Hercules or such third party to enable such surveys.
- (c) **Survey Follow-up.** If the results of any satisfaction survey conducted pursuant to **Section 7.6(a)** or **(b)** indicate that the level of satisfaction with Supplier's performance is less than the target level specified by Hercules in **Schedule Q**, Supplier shall promptly: (i) analyze and report on the root cause of such dissatisfaction; (ii) develop an action plan to address and improve the level of satisfaction; (iii) present such plan to Hercules for its review, comment and approval; and (iv) take action in accordance with the approved plan and as necessary to improve the level of satisfaction. Hercules and Supplier shall establish a schedule for completion of a root cause analysis and the preparation and approval of the action plan which shall be reasonable and consistent with the severity and materiality of the problem; provided, that the time for completion of such tasks shall not exceed thirty (30) days from the date such user survey results are finalized and reported. Supplier's action plan developed hereunder shall specify the specific measures to be taken by Supplier and the dates by which each such action shall be completed. Following completion of the measures described in such action plan, Supplier shall conduct follow-up surveys with the affected Hercules management and/or Authorized Users to confirm that the cause of any dissatisfaction has been addressed and that the level of satisfaction has improved. If Supplier fails to take the actions set forth in the action plan by the agreed upon dates, then, in addition to any other remedies available to Hercules under this Agreement, at law or in equity, Supplier shall pay to Hercules the applicable Deliverable Credits, if any, agreed to in the applicable action plan.

7.7 Notice of Adverse Impact.

If Supplier becomes aware of any failure by Supplier to comply with its obligations under this Agreement or any other situation (i) that has impacted or reasonably could impact the maintenance of Hercules' or any Eligible Recipient's financial integrity or internal controls, the accuracy of Hercules' or any Eligible Recipient's financial, accounting, safety, security, manufacturing/production quality or human resources records and reports, or compliance with Hercules Standards or applicable Laws, or (ii) that has had or reasonably could have any other material adverse impact on the Services in question or the impacted business operations of Hercules or the Eligible Recipients, then, Supplier shall immediately inform Hercules in writing of such situation and the impact or expected impact and Supplier and Hercules shall meet to formulate an action plan to minimize or eliminate the impact of such situation.

8 PROJECT PERSONNEL

8.1 Key Supplier Personnel.

(a) **Approval of Key Supplier Personnel.**

- (i) The positions to be held by Key Supplier Personnel are listed in **Schedule C**. Before assigning an individual to a Key Supplier Personnel position, whether as an initial assignment or a subsequent assignment, Supplier shall notify Hercules of the proposed assignment, shall introduce the individual to appropriate Hercules representatives, shall provide reasonable opportunity for Hercules representatives to interview the individual, and shall provide Hercules with a resume and such other information about the individual as may be reasonably requested by Hercules. If Hercules in good faith objects to the proposed assignment, the Parties shall attempt to resolve Hercules' concerns on a mutually agreeable basis. If the Parties have not been able to resolve Hercules' concerns within five (5) business days of Hercules communicating its concerns, Supplier shall not assign the individual to that position and shall propose to Hercules the assignment of another individual of suitable ability and qualifications.
- (ii) Hercules may, from time to time, change the positions designated as Key Supplier Personnel positions with Supplier's approval which shall not be unreasonably withheld. In addition, the number of Key Supplier Personnel positions shall be increased in the event of New Services, expanded scope, corporate acquisitions, increased Service volumes, or other such circumstances to maintain a ratio of Key Supplier Personnel to Supplier Personnel that is no less than the ratio existing as of the Commencement Date.

- (b) **Continuity of Key Supplier Personnel.** Supplier shall cause each of the Key Supplier Personnel to devote full time and effort to the provision of Services under this Agreement for, at a minimum, the period specified in **Schedule C** from the date he or she assumes the position in question (provided that, in the case of Key Supplier Personnel assigned prior to the Commencement Date, the minimum period shall be the period specified in **Schedule C** from the Commencement Date). Supplier shall not transfer, reassign or remove any of the Key Supplier Personnel (except as a result of voluntary resignation, involuntary termination for cause, illness, disability, or death) or announce its intention to do so during the specified period without Hercules' prior approval, which Hercules may withhold in its sole discretion. In the event of the voluntary resignation, involuntary termination for cause, illness, disability or death of one of its Key Supplier Personnel during or after the specified period, Supplier shall (i) give Hercules as much notice as reasonably possible of such development, and (ii) expeditiously identify and obtain Hercules' approval of a suitable replacement. In addition, even after the period specified in **Schedule C**, Supplier shall transfer, reassign or remove its Key Supplier Personnel only after (i) giving Hercules reasonable prior notice of such action, (ii) identifying and obtaining Hercules' approval of a suitable replacement at least thirty (30) days prior to such transfer, reassignment or removal, (iii) providing Hercules with a plan describing the steps and knowledge transfer necessary to transition responsibility to the replacement, and (iv) demonstrating to Hercules' reasonable satisfaction that such action will not have an adverse impact on Supplier's performance of its obligations under this Agreement. Unless otherwise agreed, Supplier shall not transfer, reassign or remove more than twenty percent (20%) of the Key Supplier Personnel in any six (6) month period.

- (c) **Retention and Succession.** Supplier shall implement and maintain a retention strategy designed to retain Key Supplier Personnel on the Hercules account for the prescribed period. Supplier shall also maintain active succession plans for each of the Key Supplier Personnel positions.

8.2 Supplier Account Manager.

Supplier shall designate a "**Supplier Account Manager**" for this Hercules engagement. The Supplier Account Manager shall (i) be one of the Key Supplier Personnel; (ii) be a full time employee of Supplier; (iii) devote his or her full time and effort to managing the Services; (iv) remain in this position for a minimum period of two (2) years from the initial assignment (except as a result of voluntary resignation, involuntary termination for cause, illness, disability, or death); (v) serve as the single point of accountability for the Services, (vi) be the single point of contact to whom all

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Hercules communications concerning this Agreement may be addressed; (vii) have authority to act on behalf of Supplier in all day-to-day matters pertaining to this Agreement; (vi) have day-to-day responsibility for service delivery, billing and relationship management; and (viii) have day-to-day responsibility for customer satisfaction and Service Levels attainment.

8.3 Supplier Personnel Are Not Hercules Employees.

Except as otherwise expressly set forth in this Agreement, the Parties intend to create an independent contractor relationship and nothing in this Agreement shall operate or be construed as making Hercules (or the Eligible Recipients) and Supplier partners, joint venturers, principals, joint employers, agents or employees of or with the other. No officer, director, employee, agent, Affiliate, contractor or subcontractor retained by Supplier to perform work on Hercules' behalf hereunder shall be deemed to be an officer, director, employee, agent, Affiliate, contractor or subcontractor of Hercules or the Eligible Recipients for any purpose. Supplier, not Hercules or the Eligible Recipients, has the right, power, authority and duty to supervise and direct the activities of the Supplier Personnel and to compensate such Supplier Personnel for any work performed by them on the behalf of Hercules or the Eligible Recipients pursuant to this Agreement. Supplier, and not Hercules or the Eligible Recipients, shall be responsible and therefore solely liable for all acts and omissions of Supplier Personnel, including acts and omissions constituting negligence, willful misconduct and/or fraud.

8.4 Replacement, Qualifications, and Retention of Supplier Personnel.

- (a) **Sufficiency and Suitability of Personnel.** Supplier shall assign (or cause to be assigned) sufficient Supplier Personnel to provide the Services in accordance with this Agreement and such Supplier Personnel shall possess suitable competence, ability and qualifications and shall be properly educated and trained for the Services they are to perform.
 - (b) **Requested Replacement.** In the event that Hercules determines lawfully and in good faith that the continued assignment to Hercules of any individual Supplier Personnel (including Key Supplier Personnel) is not in the best interests of Hercules or the Eligible Recipients, then Hercules shall give Supplier notice to that effect requesting that such Supplier Personnel be replaced. Supplier shall have ten (10) days following Hercules' request for removal of such Supplier Personnel in which to investigate the matters forming the basis of such request, correct any deficient performance and provide Hercules with assurances that such deficient performance shall not recur (provided that, if requested to do so by Hercules for actual or suspected violations of Hercules Rules, Supplier shall immediately remove (or cause to be removed) the individual in question from all Hercules Facilities and Hercules Sites pending completion of Supplier's investigation and discussions with Hercules). If, following such ten (10) day period, Hercules is not reasonably satisfied with the results of Supplier's efforts to correct the deficient performance and/or to ensure its non-recurrence, Supplier shall, as soon as possible, permanently remove and replace such Supplier Personnel with an individual of suitable ability and qualifications, without cost to Hercules. Nothing in this provision shall operate or be construed to limit Supplier's responsibility for the acts or omission of the Supplier Personnel, or be construed as joint employment.
 - (c) **Turnover Rate and Data.** Supplier shall use commercially reasonable efforts to keep the turnover rate of Supplier Personnel to a level comparable to or better than the industry average for well-managed service companies in the applicable country performing services similar to the Services. If Hercules believes that the turnover rate of Supplier Personnel is excessive and so notifies Supplier, Supplier shall within ten (10) business days (i) provide Hercules with data concerning Supplier's turnover rate, (ii) meet with Hercules to discuss the reasons for the turnover rate, (iii) submit a proposal for reducing the turnover rate for Hercules' review and approval, and (iv) agree to a program for reducing the turnover rate at no additional cost to Hercules. Notwithstanding any transfer or turnover of Supplier Personnel, Supplier shall remain obligated to perform the Services without degradation and in accordance with the Service Levels.
 - (d) **Restrictions on Performing Services to Competitors.** Neither Supplier nor any Subcontractor shall cause or permit Key Supplier Personnel, Supplier Personnel performing business analytics or other Supplier Personnel listed on Attachment C.2 to perform services directly or indirectly for a Direct Hercules Competitor either while engaged in the provision of Services or during the twelve (12) months immediately
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following the termination of his or her involvement in the provision of such Services without Hercules' prior written consent.

- (e) **Background Check/Drug Screening.** Supplier shall ensure that Supplier Personnel are authorized to work in any country in which they are assigned to perform Services. In addition, Supplier shall use all commercially reasonable efforts to verify that Supplier Personnel have not been convicted of or accepted responsibility for a felony or a misdemeanor involving a dishonest act, do not use illegal drugs, and are not otherwise disqualified from performing the assigned work under applicable Laws. To the extent permitted under applicable Law and administratively possible in the jurisdiction in which such Supplier Personnel are employed, Supplier shall perform or have performed a reasonable background check on all Supplier Personnel assigned to work hereunder, provided that, if a satisfactory background check was completed in connection with the hiring of such Supplier Personnel, it need not be repeated.
- (f) **Notice by Supplier.** Supplier shall provide Hercules not less than ninety (90) days notice of the expiration of any collective bargaining agreement with unionized Supplier Personnel if the expiration of such agreement or any resulting labor dispute could potentially interfere with or disrupt the business or operations of Hercules or an Eligible Recipient or impact Supplier's ability to timely perform its duties and obligations under this Agreement.

8.5 Staffing Plan: Restrictions on Changes in Supplier Staffing/Facilities.

- (a) **Staffing Plan.** Set forth in **Schedule M** is a staffing plan showing the planned staffing and deployment of Supplier Personnel by Functional Service Area, job classification and location (the "**Staffing Plan**"). During the thirty (30) months immediately following the Effective Date Supplier shall comply with the Staffing Plan, and shall not make any material changes to the planned staffing and deployment without Hercules' prior approval. For purposes of this provision, a material change is considered to be a change of five percent (5%) or more in any number in the personnel projection matrix in the Staffing Plan. The Parties acknowledge and agree that such review and approval of the Staffing Plan and changes in the Staffing Plan shall not constitute joint employment.
- (b) Supplier shall not move Services in a Functional Service Area or sub-Functional Service Area (e.g., Procurement, Accounts Payable, Human Resources, Payroll) provided from an approved Supplier Facility and country to a Supplier Facility and country from which such Services had not previously been provided by Supplier without Hercules' prior approval.
- (c) To the extent Services in the same Functional Service Area or sub-Functional Service Area are provided by Supplier Personnel from Supplier Facilities in different countries, Supplier shall not change the extent to which such Services are provided by Supplier Personnel from each such Supplier Facility and country, as specified in **Schedule O.2**, without Hercules' prior approval. For avoidance of doubt, changes attributable solely to changes in service volumes are not subject to the limits described in this **Section 8.5(b)**.

8.6 Conduct of Supplier Personnel.

- (a) **Conduct and Compliance.** While at Hercules Facilities and Hercules Sites, Supplier Personnel shall (i) subject to **Section 6.2(d)**, comply with the Hercules Rules and other rules and regulations regarding personal and professional conduct, (ii) comply with reasonable requests of Hercules or the Eligible Recipients personnel pertaining to personal and professional conduct, (iii) attend workplace training offered by Hercules and/or the Eligible Recipients at Hercules' request, and (iv) otherwise conduct themselves in a businesslike manner.
 - (b) **Identification of Supplier Personnel.** Except as specifically authorized by Hercules, Supplier Personnel shall clearly identify themselves as Supplier Personnel and not as employees or representatives of Hercules and/or the Eligible Recipients. This shall include any and all communications, whether oral, written or electronic, unless and to the extent authorized by Hercules in connection with the performance of specific Services. Each Supplier Personnel shall wear a badge indicating that he or she is employed by Supplier or its Subcontractors when at a Hercules Facility or Hercules Site.
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- (c) **Restriction on Marketing Activity.** Except for marketing representatives designated in writing by Supplier to Hercules, none of the Supplier Personnel shall conduct any marketing activities to Hercules or Eligible Recipient employees at Hercules Facilities or Hercules Sites (including marketing of any New Services), other than reporting potential marketing opportunities to Supplier's designated marketing representatives.

8.7 Substance Abuse.

- (a) **Employee Removal.** To the extent permitted by applicable Laws, Supplier shall immediately remove (or cause to be removed) any Supplier Personnel who is known to be or reasonably suspected of engaging in substance abuse while at Hercules Facility or Hercules Site, in a Hercules vehicle or while performing Services. In the case of reasonable suspicion, such removal shall be pending completion of the applicable investigation. Substance abuse includes the sale, attempted sale, possession or use of illegal drugs, drug paraphernalia, or, to the extent not permitted on at Hercules Facilities or Hercules Sites, alcohol, or the misuse of prescription or non-prescription drugs.
- (b) **Substance Abuse Policy.** Supplier represents and warrants that it has and will maintain substance abuse policies, in each case in conformance with applicable Laws, and Supplier Personnel will be subject to such policies. Supplier represents and warrants that it shall require its Subcontractors and Affiliates providing Services to have and maintain such policy in conformance with applicable Law and to adhere to this provision.

8.8 EC Acquired Rights Directive.

- (a) **EC Acquired Rights Directive.** The rights and obligations of the Parties with respect to Hercules Personnel employed as of the Effective Date or, if later, the Commencement Date in jurisdictions in which the EC Acquired Rights Directive is applicable shall be set forth in the Companion Agreement(s) for such jurisdictions. Supplier shall not communicate orally or in writing with such Hercules Personnel without Hercules' prior approval.
- (b) **Validity.** Hercules may be obligated under applicable Law to undertake consultation with certain employees in certain European countries through relevant recognized trade unions, works councils, other appointed employee representatives and/or with employees directly as to the proposal to outsource certain Services as provided in this Master Agreement. Accordingly, Hercules and Supplier agree that the provisions of this Master Agreement relating to the Services to be provided to Eligible Recipients in such countries shall not be effective as of the Effective Date. Such provisions shall become effective only if Hercules notifies Supplier in writing that the consultations have been completed or the applicable statutory periods have expired and the Parties thereafter execute a Companion Agreement with respect to Eligible Recipients in such country. If such written notice is given, it will designate whether all or only a portion of the Services are to be provided for the country in question.

9 SUPPLIER RESPONSIBILITIES

9.1 Policy and Procedures Manual

- (a) **Delivery and Contents.** As part of the Services, and at no additional cost to Hercules, Supplier shall deliver to Hercules a reasonably complete draft of the Policy and Procedures Manual(s) with respect to the Services to be transitioned to Supplier on the Commencement Date, for Hercules' review, comment and approval, at least thirty (30) days prior to the Commencement Date. Thereafter, as part of the Services, and at no additional cost to Hercules, Supplier shall deliver to Hercules a reasonably complete draft of the Policy and Procedures Manual with respect to each remaining Service (or, if such Policy and Procedures Manual already exists, any additional portions of such Policy and Procedures Manual pertaining to such Service), for Hercules' review, comment and approval, at least thirty (30) days prior to the Transition Milestone date for the transition of each such Service to Supplier. In each case, Hercules shall have at least fifteen (15) days to review the draft Policy and Procedures Manual and provide Supplier with comments and revisions. Supplier shall then incorporate such comments and revisions into the Policy and Procedures Manual and shall deliver
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a final version to Hercules at least five (5) business days prior to the scheduled transition date for the applicable Service for Hercules' final approval.

At a minimum, each Policy and Procedures Manual shall address the subjects specified in **Schedule S** (to the extent applicable) and shall include the following:

- (i) a detailed description of the Services and the manner in which each will be performed by Supplier, including (A) the Equipment, Software, and Systems to be procured, operated, supported or used; (B) Suppliers standard operating practices (to the extent applicable and as uniquely adopted to the Services); (C) documentation (including operations manuals, user guides, specifications, policies/procedures and disaster recovery/business continuity plans) providing further details regarding such Services; (D) the specific activities to be undertaken by Supplier in connection with each Service, including, where appropriate, the direction, supervision, monitoring, staffing, reporting, planning and oversight activities to be performed by Supplier under this Agreement; (E) the checkpoint reviews, testing, acceptance, controls and other procedures to be implemented and used to assure service quality; and (F) subject to **Section 15.7**, the processes, methodologies and controls to be implemented and used by Supplier to ensure compliance with applicable Laws;
- (ii) the procedures for Hercules/Supplier interaction and communication, including (A) call lists; (B) procedures for and limits on direct communication by Supplier with Hercules personnel; (C) problem management and escalation procedures; (D) priority and project procedures; (E) Acceptance testing and procedures; (F) Quality Assurance procedures and internal controls (G) the Project formation process and implementation methodology; and (H) annual and quarterly financial objectives, budgets, and performance goals; and
- (iii) practices and procedures addressing such other issues and matters as Hercules shall require.

Supplier shall incorporate Hercules' then current policies and procedures in the Policy and Procedures Manual to the extent it is directed to do so by Hercules. In addition, as to the extent directed by Hercules, Supplier shall incorporate any policies and procedures set forth in the ITO supplier's policy and procedure manual and integrate Supplier's processes and procedures relating to the Services with the applicable ITO supplier's services.

- (b) **Compliance.** Supplier shall perform the Services in accordance with applicable Laws and Hercules' then current policies and procedures until the Policy and Procedures Manual is finalized and agreed upon by the Parties. Thereafter, Supplier shall perform the Services in accordance with the Policy and Procedures Manual. In the event of a conflict between the provisions of this Agreement and the Policy and Procedures Manual, the provisions of this Agreement shall control unless the Parties expressly agree otherwise and such agreement is set forth in the relevant portion of the Policy and Procedures Manual.
 - (c) **Maintenance, Modification and Updating.** Supplier shall maintain the Policy and Procedures Manual so as to be accessible electronically to Hercules management and Authorized Users via a secure web site in a manner consistent with Hercules' security policies. Supplier shall promptly modify and update the Policy and Procedures Manual monthly to reflect changes in the operations or procedures described therein and to comply with Hercules Standards, the Technology and Business Process Plan and Strategic Plans as described in **Section 9.5**. Supplier shall provide the proposed changes in the manual to Hercules for review, comment and approval. To the extent such change could (i) increase Hercules' total costs of receiving the Services; (ii) have adverse impact or require changes as described in **Section 9.6(c)**, or (iii) violate or be inconsistent with the Hercules Standards, the Technology and Business Process Plan or Strategic Plans, Supplier shall not implement such change without first obtaining Hercules' approval, which Hercules may withhold in its sole discretion. For avoidance of doubt, Supplier shall prepare and maintain a single Policy and Procedures Manual for this Master Agreement and all Companion Agreements, rather than a separate Policy and Procedures Manual for each Master Agreement and Companion Agreement.
 - (d) **Annual Review.** The Parties shall meet to perform a formal annual review of the Policy and Procedures Manual on each anniversary of the Commencement Date.
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9.2 Reports.

- (a) **Reports.** Supplier shall provide Hercules with reports pertaining to the performance of the Services and Supplier's other obligations under this Agreement sufficient to permit Hercules to monitor and manage Supplier's performance ("**Reports**"). The Reports to be provided by Supplier shall include those described in **Schedule R** in the format and at the frequencies provided therein, as well as those provided by Hercules prior to the Commencement Date. In addition, from time to time, Hercules may identify additional Reports to be generated by Supplier and delivered to Hercules on an ad hoc or periodic basis. All Reports shall be provided to Hercules as part of the Services and at no additional charge to Hercules. The Reports described in **Schedule R** and, to the extent reasonably possible, all other Reports shall be provided to Hercules in a network accessible format with ability for data to be downloaded to Hercules' current standard spreadsheet application.
- (b) **Back-Up Documentation.** As part of the Services, Supplier shall provide Hercules with such documentation and other information available to Supplier as may be reasonably requested by Hercules from time to time in order to verify the accuracy of the Reports provided by Supplier. In addition, Supplier shall provide Hercules with all documentation and other information reasonably requested by Hercules from time to time to verify that Supplier's performance of the Services is in compliance with the Service Levels and this Agreement.
- (c) **Correction of Errors.** As part of the Services and at no additional charge to Hercules, Supplier shall promptly correct any errors or inaccuracies in or with respect to the Reports, the information or data contained in such Reports, or other contract deliverables delivered by Supplier or its agents, Subcontractors, or other third party product or service providers to the extent provided in **Schedule E**.

9.3 Governance Model; Meetings.

- (a) **Governance.** The governance model to be employed by the Parties in connection with this Agreement is set forth in **Schedule S**.
- (b) **Meetings.** During the Term, representatives of the Parties shall meet periodically or as requested by Hercules to discuss matters arising under this Agreement, including any such meetings provided for in this Agreement, the Transition Plan, the Policy and Procedures Manual or **Schedule S**. Each Party shall bear its own costs in connection with the attendance and participation of such Party's representatives in such meetings.
- (c) **Agenda and Minutes.** For each such meeting, upon Hercules request, Supplier shall prepare and distribute an agenda, which will incorporate the topics designated by Hercules. Supplier shall distribute such agenda in advance of each meeting so that the meeting participants may prepare for the meeting. In addition, upon Hercules request, Supplier shall record and promptly distribute minutes for every meeting for review and approval by Hercules.
- (d) **Authorized User and Eligible Recipient Meetings.** Supplier shall notify the Hercules Relationship Manager or his or her designee(s) in advance of scheduled meetings with Authorized Users or Eligible Recipients (other than meetings pertaining to the provision of specific Services on a day-to-day basis) and shall invite the Hercules Relationship Manager or his or her designee(s) to attend such meetings or to designate a representative to do so.

9.4 Quality Assurance and Internal Controls.

- (a) Supplier shall develop and implement Quality Assurance and internal control (e.g., financial and accounting controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) processes and procedures, including implementing tools and methodologies, to ensure that the Services are performed in an accurate and timely manner, in accordance with (i) the Service Levels and other requirements of this Agreement, (ii) generally accepted accounting principles, (iii) accepted industry standards of leading providers of BPO/ADM services, (iv) the Laws applicable to Hercules, the Eligible Recipients and/or the Services, and (v) the industry standards described
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- in **Section 9.4(d)** applicable to Hercules and the Eligible Recipients and the performance of the Services. Such processes, procedures and controls shall include verification, checkpoint reviews, testing, acceptance, and other procedures for Hercules to assure the quality and timeliness of Supplier's performance.
- (b) Without limiting the foregoing, the processes, procedures and controls developed and implemented by Supplier shall require Supplier to:
- (i) Maintain a strong control environment in day-to-day operations, to assure that the following fundamental control objectives are met: (1) financial and operational information is valid, complete and accurate; (2) operations are performed efficiently and achieve effective results, consistent with the requirements of this Agreement; (3) assets are safeguarded; and (4) actions and decisions of the organization are in compliance with Laws;
 - (ii) Build the following basic control activities into its work processes: (1) accountability clearly defined and understood; (2) access properly controlled; (3) adequate supervision; (4) transactions properly authorized; (5) transactions properly recorded; (6) transactions recorded in proper accounting period; (7) policies, procedures, and responsibilities documented; (8) adequate training and education; (9) adequate separation of duties; and (10) recorded assets compared with existing assets;
 - (iii) Develop and execute a process to ensure periodic control self-assessments are performed with respect to all Services (such self-assessments to be performed at least quarterly unless and until Hercules approves less frequent self-assessments);
 - (iv) Maintain an internal audit function sufficient to monitor the processes and Systems used to provide the Services (i.e., perform audits, track control measures, communicate status to management, drive corrective action, etc.);
 - (v) Conduct investigations of suspected fraudulent activities within Supplier's organization that impact or could impact Hercules or the Eligible Recipients. Supplier shall promptly notify Hercules of any such suspected fraudulent activity and the results of any such investigation as they relate to Hercules or the Eligible Recipients. At Supplier's request, Hercules shall provide reasonable assistance to Supplier in connection with any such investigation;
 - (vi) Comply with **Schedule E.8**;
 - (vii) Comply with all applicable requirements and guidelines established by Hercules in order to assist Hercules to meet the requirements of the Sarbanes-Oxley Act of 2002 and implementing regulations promulgated by the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board;
 - (viii) Comply with the Hercules Business Practices Policy; and
 - (ix) Recommend and, with Hercules' prior approval, implement revisions to the Sarbanes-Oxley compliance measures.
- (c) Supplier shall submit such processes, procedures and controls to Hercules for its review, comment and approval within thirty (30) days prior to the Commencement Date and shall use commercially reasonable efforts to finalize such processes, procedures and controls and obtain Hercules' final approval on or before the Commencement Date. Upon Hercules' approval, such processes and procedures shall be included in the Policy and Procedures Manual. Prior to the approval of such processes and procedures by Hercules, Supplier shall adhere strictly to Hercules' then current policies, procedures and controls. No failure or inability of the quality assurance procedures to disclose any errors or problems with the Services shall excuse Supplier's failure to comply with the Service Levels and other terms of this Agreement.
- (d) **Industry Standards, Certifications and Compliance.** Supplier has achieved or will achieve and, to the extent relevant, will thereafter maintain certification compliance with the following industry standards:
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- (i) **Type I SAS 70:** The Supplier Facilities in Kolkata, India, and Bucharest Romania (**Schedule O.2**) will be certified as Type I SAS 70 compliant beginning in the second quarter of 2007;
- (ii) **Type II SAS 70:** The Supplier Facilities in Kolkata, India, Bucharest Romania, and Juarez, Mexico (**Schedule O.2**) will be certified as Type II SAS 70 compliant beginning in the fourth quarter of 2007;
- (iii) **Sarbanes Oxley:** The finance and accounting processes employed at the Supplier Facilities in Kolkata, India, Bucharest Romania, and Juarez, Mexico (**Schedule O.2**) will be certified in 2007 as compliant with the Sarbanes-Oxley Act of 2002 and implementing regulations promulgated by the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board.
- (iv) **ISO 9001:2000:** The business continuity planning functions performed at the Supplier Facility in Kolkata, India (**Schedule O.2**) are certified as ISO 9001:2000 compliant.
- (v) **Operating Leader Standard Certification (Customer Operations Performance Centre Inc., USA. ("COPC")):** As of the Effective Date, Supplier is undergoing the Operating Leader Standard Certification from COPC.
- (vi) **CMMi:** The Supplier Facilities in Kolkata, India, Bucharest Romania, and Juarez, Mexico (**Schedule O.2**) are certified as compliant with the Software Engineering Institute Capability Maturity Model Integration (CMMi) Level 5 requirements.
- (vii) **BS7799:** The Supplier Facility in Kolkata, India (**Schedule O.2**) is BS 7799 certified. The Supplier Facilities in Bucharest Romania, and Juarez, Mexico (**Schedule O.2**) will obtain BS 7799 certification in 2007.
- (viii) **Six Sigma:** The Supplier Facilities in Kolkata, India, Bucharest Romania, and Juarez, Mexico (**Schedule O.2**) are certified through the Six-Sigma Academy.

Supplier shall provide Hercules information regarding the foregoing certifications as reasonably requested by Hercules. If Supplier fails to maintain any of the certifications above or any assessment, audit, or re-certification report determines that Supplier is no longer meeting the requirements necessary to achieve such certifications, then Supplier shall inform Hercules of such circumstance within thirty (30) days of such failure or report being issued and promptly prepare, for Hercules' review and approval, a plan to be implemented at Supplier's expense for ensuring compliance thereafter.

9.5 Processes, Procedures, Architecture, Standards and Planning.

- (a) **Supplier Support.** As requested by Hercules, Supplier shall assist Hercules on an ongoing basis in defining: (A) the standards, policies, practices, processes, procedures and controls to be adhered to and enforced by Supplier in the performance of the Services; and (B) the associated technologies, architectures, standards, products and systems to be provided, operated, managed, supported and/or used by Supplier in connection therewith (collectively, the "**Hercules Standards**"). Supplier also shall assist Hercules in preparing annual Strategic Plans and short-term implementation plans on an annual basis and in modifying and updating such Strategic Plans and implementation plans on a periodic basis as appropriate. The assistance to be provided by Supplier shall include: (i) active participation with Hercules representatives on permanent and ad-hoc committees and working groups addressing such issues; (ii) assessments of the then-current Hercules Standards; (iii) analyses of the appropriate direction for such Hercules Standards in light of business priorities, business strategies, competitive market forces, and changes in technology; (iv) the provision of information to Hercules regarding Supplier's technology, business processes and telecommunications strategies for its own business; and (v) recommendations regarding standards, processes, procedures and controls and associated technology architectures, standards, products and systems. With respect to each recommendation, Supplier shall provide the following at a level of detail sufficient to permit Hercules to
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make an informed business decision: (i) the projected cost to Hercules and the Eligible Recipients and cost/benefit analyses; (ii) the changes, if any, in the personnel and other resources Supplier, Hercules and/or the Eligible Recipients will require to operate and support the changed environment; (iii) the resulting impact on the total costs of Hercules and the Eligible Recipients; (iv) the expected performance, quality, responsiveness, efficiency, reliability, security risks and other service levels; and (v) general plans and projected time schedules for development and implementation. Any assistance provided by Supplier under **Sections 9.5** shall be at no additional Charge beyond the Charges specified in **Schedule J** for the Services, unless an additional Charge has been approved by Hercules.

- (b) **Hercules Authority and Supplier Compliance.** Hercules shall have final authority to promulgate Hercules Standards and Strategic Plans and to modify or grant waivers from such Hercules Standards and Strategic Plans. Supplier shall (i) comply with and implement the Hercules Standards and Strategic Plans in providing the Services, (ii) work with Hercules to enforce the Hercules Standards and Strategic Plans, (iii) modify the Services as and to the extent necessary to conform to such Hercules Standards and Strategic Plans, and (iv) obtain Hercules' prior written approval for any deviations from such Hercules Standards and Strategic Plans.
- (c) **Financial, Forecasting and Budgeting Support.** To support Hercules' forecasting and budgeting processes, Supplier shall provide the following information regarding the costs to be incurred by Hercules and/or the Eligible Recipients in connection with the Services and the cost/benefit to Hercules and/or the Eligible Recipients associated therewith: (i) actual and forecasted utilization of Resource Units; (ii) actual and forecasted changes in the total cost or resource utilization of Hercules and the Eligible Recipients associated with changes to the environment; and (iii) opportunities to modify or improve the Services, to reduce the Charges, Pass-Through Expenses or retained expenses incurred by Hercules. Such information shall be provided at Hercules' request, and at no additional charge to Hercules, in accordance with the schedule reasonably established by Hercules.
- (d) **Technology and Business Process Plan.** Supplier shall develop and implement a technology and business process plan that is consistent with the Hercules Standards and Strategic Plan and that shows how Supplier shall provide the Services to enable Hercules to achieve the Strategic Plan objectives and to implement and support Hercules' BPO/ADM objectives and strategies ("**Technology and Business Process Plan**"). The development of the Technology and Business Process Plan will be an iterative process that Supplier shall carry out in consultation with Hercules. The timetable for finalization of the Technology and Business Process Plan shall be set each year having regard to the timetable for the Strategic Plan. Following approval by Hercules, the Technology and Business Process Plan will replace the previous plan. All the changes to the Services emerging out of the Technology and Business Process Plan shall be governed by the Change Control Procedures.

Supplier's proposed Technology and Business Process Plan shall, among other things, include plans for: (A) refreshing Equipment and Software (consistent with the refresh cycles defined in **Section 9.14**); (B) adopting new technologies and business processes as part of the Technology and Business Process Evolution of the Services, as defined in this Agreement; and (C) maintaining flexibility as described in **Section 9.14**. In the Technology and Business Process Plan, Supplier shall also present implementation plans for the achievement of the Strategic Plan and Hercules Standards.

Supplier shall comply with the Technology and Business Process Plan at all times, unless Hercules agrees to depart from the Technology and Business Process Plan.

9.6 Change Control.

- (a) **Compliance with Change Control Procedures.** In making any change in the human resources, payroll, procurement, accounts payable or other standards, processes, procedures and controls or associated IT technologies, architectures, standards, products, Software, Equipment, Systems, Services or Materials provided, operated, managed, supported or used in connection with the Services or any other change that may impact the provision of the Services, each Party shall comply with the change control procedures specified in the Policy and Procedures Manual ("**Change Control Procedures**").
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- (b) **Financial responsibility for Changes.** Unless otherwise set forth in this Agreement, including specified in **Schedule E**, or approved in advance in accordance with **Sections 4.5, 9.6(c)** or otherwise, Supplier shall bear all charges, fees and costs associated with any change desired by Supplier, including all charges, fees and costs associated with (i) the design, installation, implementation, testing and rollout of such change, (ii) any modification or enhancement to, or substitution for, any impacted business process or associated Software, Equipment, System, Services or Materials, (iii) any increase in the cost to Hercules or the Eligible Recipients of operating, maintaining or supporting any impacted business process or associated Software, Equipment, System, Services or Materials, and (iv) any increase in Resource Unit usage resulting from such change.
 - (c) **Hercules Approval - Cost, Adverse Impact.** Supplier shall make no change which may (i) increase Hercules' total cost of receiving the Services; (ii) require material changes to, or have an adverse impact on, Hercules' or an Eligible Recipient's businesses, operations, environments, facilities, business processes, systems, software, utilities, tools or equipment (including those provided, managed, operated, supported and/or used on their behalf by Hercules Third Party Contractors); (iii) require Supplier, Hercules, the Eligible Recipients or Supplier to install a new version, release, upgrade of, or replacement for, any Software or Equipment or to modify any Software or Equipment, (iv) have a material adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality or resource efficiency of the Services; (v) have an adverse impact on the cost, either actual or planned, to Hercules of terminating all or any part of the Services or exercising its right to in-source or use third parties; (vi) requires changes to or have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost or resource efficiency of Hercules' Retained Systems and Business Processes or (vii) violate or be inconsistent with Hercules Standards or Strategic Plans as specified in **Section 9.5**, without first obtaining Hercules' approval, which approval Hercules may withhold in its sole discretion. If Supplier desires to make such a change, it shall provide to Hercules a written proposal describing in detail the extent to which the desired change may affect the functionality, performance, price or resource efficiency of the Services and any benefits, savings or risks to Hercules or the Eligible Recipients associated with such change.
 - (d) **Hercules Legal Approval - IVR/VRU Solution.** In addition to the foregoing, Supplier shall not implement or use in performing the Services an IVR or VRU solution having one or more of the following characteristics without first obtaining the approval of Hercules Chief Patent Counsel or his or her designee: (i) the entry by callers of distinct customer verification data that is compared to information stored in a database to determine if the caller is qualified to continue using the system; (ii) the IVR system provides the caller with computer generated confirmation numbers; (iii) the use by callers of temporary PINs with the ability to change the PIN; or (iv) the generation of automatic screen pops at the operator terminal based on caller-specific information entered by the caller.
 - (e) **Information for Exercise of Strategic Authority.** In order to facilitate Hercules' strategic control pursuant to **Section 9.5**, Supplier shall provide Hercules with such information as Hercules shall reasonably require prior to making any proposed change. Such information shall include, at a minimum, a description of the proposed rights of Hercules and the Eligible Recipients with respect to ownership and licensing (including any related restrictions) relating to such Software, Equipment or other technology or Materials. Such description shall include the license fees, maintenance fees and/or purchase or lease terms (if any) for use of such Software, Equipment, Systems, Services or Materials by Hercules, the Eligible Recipients and their respective third party contractors upon termination or expiration of the Term and any limitations or conditions on such use.
 - (f) **Temporary Emergency Changes.** Notwithstanding the foregoing, Supplier may make temporary changes required by an emergency if it has been unable to contact the Hercules Relationship Manager or his or her designee to obtain approval after making reasonable efforts. Supplier shall document and report such emergency changes to Hercules not later than the next business day after the change is made. Such changes shall not be implemented on a permanent basis unless and until approved by Hercules.
 - (g) **Implementation of Changes.** Supplier shall schedule and implement all changes so as not to (i) disrupt or adversely impact the business or operations of Hercules or the Eligible Recipients, (ii) degrade the Services then being received by them, or (iii) interfere with their ability to obtain the full benefit of the Services.
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- (h) **Planning and Tracking.** On a monthly basis, Supplier shall prepare, with Hercules' participation and approval, a rolling quarterly "look ahead" schedule for ongoing and planned changes for the next three (3) months. The status of changes shall be monitored and tracked by Supplier against the applicable schedule.

9.7 Software Currency.

- (a) **Currency of Supplier Owned Software.** Subject to and in accordance with Sections 6.4, 9.5, 9.6, 9.7(c), and 9.13 and Schedule J, Supplier shall maintain reasonable currency for Supplier Owned Software and provide maintenance and support for new releases and versions of such Software. At Hercules' direction, Supplier shall operate multiple releases or versions of Supplier Owned Software on a temporary basis for a reasonable period of time during a technology or business transition (e.g., a software upgrade or an acquisition) and, subject to Sections 4.4 and 11.1(f)(ii), shall do so without any increase in the Charges. For purposes of this Section, "reasonable currency" shall mean that, unless otherwise directed by Hercules, (i) Supplier shall maintain Supplier Owned Software at the then current Major Release, and (ii) Supplier shall install Minor Releases promptly or earlier, if requested by Hercules.
- (b) **Currency of Third Party Software.** Subject to and in accordance with Sections 6.4, 9.5, 9.6, 9.7(c), and 9.13 and Schedule J, Supplier shall maintain reasonable currency for Third Party Software for which it is financially responsible under this Agreement and provide maintenance and support for new releases and versions of Third Party Software for which it is operationally responsible. At Hercules' direction, Supplier shall operate multiple releases or versions of Third Party Software on a temporary basis for a reasonable period of time during a technology or business transition (e.g., a software upgrade or an acquisition) and, subject to Section 4.4 and 11.1(f)(ii), shall do so without any increase in the Charges. In addition, unless otherwise directed by Hercules, Supplier shall keep Third Party Software within release levels supported by the appropriate third party vendor to ensure compatibility with other Software or Equipment components of the Systems. For purposes of this Section, "reasonable currency" shall mean that, unless otherwise directed by Hercules, (i) Supplier shall maintain Third Party Software within one Major Release of the then current Major Release, and (ii) Supplier shall install Minor Releases promptly or earlier, if requested by Hercules.
- (c) **Evaluation and Testing.** Prior to installing a new Major Release or Minor Release, Supplier shall evaluate and test such Release to verify that it will perform in accordance with this Agreement and the Hercules Standards and Strategic Plans and that it will not (i) increase Hercules total cost of receiving the Services; (ii) have an adverse impact or require changes as described in Section 9.6(c); or (iii) violate or be inconsistent with Hercules Standards, Strategic Plans, the Technology and Business Process Plan or applicable Laws. The evaluation and testing performed by Supplier shall be at least consistent with the reasonable and accepted industry norms applicable to the performance of such Services and shall be at least as rigorous and comprehensive as the evaluation and testing usually performed by highly qualified service providers under such circumstances.
- (d) **Approval by Hercules.** Notwithstanding Section 9.7(a) and (b), Supplier shall confer with Hercules prior to installing any Major Release or Minor Release, shall provide Hercules with the results of its testing and evaluation of such Release and a detailed implementation plan and shall not install such Release if directed not to do so by Hercules. Where specified by Hercules, Supplier shall not install new Software releases or make other Software changes until Hercules has completed and provided formal signoff on successful user acceptance testing.
- (e) **Updates by Hercules.** Hercules and the Eligible Recipients shall have the right, but not the obligation, to install new releases of, replace, or make other changes to Applications Software or other Software for which Hercules is financially responsible under this Agreement.

9.8 Maintenance.

- (a) **Supplier Responsibility.** To the extent Supplier has operational responsibility under this Agreement, it shall maintain Equipment and Software so that they operate substantially in accordance with the Service Levels and their Specifications, including (i) maintaining Equipment in good operating condition, subject to normal wear and tear, (ii) undertaking repairs and preventive maintenance on Equipment in accordance with the
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applicable Equipment manufacturer's recommendations and requirements, and (iii) performing Software maintenance in accordance with the applicable Software supplier's documentation, recommendations and requirements.

- (b) **Out of Support Third Party Equipment and Software.** For Third Party Equipment and Software no longer supported by the licensor or manufacturer for which Supplier has operational responsibility under this Agreement, Supplier shall use all commercially reasonable efforts to perform maintenance for such Equipment or Software as required to meet its obligations under this Agreement.

9.9 Efficiency and Cost Effectiveness.

Supplier shall use commercially reasonable efforts to provide the Services in the most cost-effective and efficient manner consistent with the required level of quality and performance. Without limiting the generality of the foregoing, such actions shall include:

- (a) **Timing of Actions.** Making adjustments in the timing of actions (consistent with Hercules priorities and schedules for the Services and Supplier's obligation to meet the Service Levels).
- (b) **Timing of Functions.** Delaying or accelerating, as appropriate, the performance of non-critical functions within limits acceptable to Hercules.
- (c) **Systems Optimization.** Tuning or optimizing the Systems (including memory), Applications Software, databases and/or business processes to optimize performance and minimize costs.
- (d) **Usage Scheduling.** Controlling its use of the System and/or the Hercules data network by scheduling usage, where possible, to low utilization periods.
- (e) **Alternative Technologies.** Subject to Section 9.5, using alternative technologies to perform the Services.
- (f) **Efficiency.** Efficiently using resources for which Hercules is charged hereunder, consistent with industry norms, and compiling data concerning such efficient use in segregated and auditable form whenever possible.

9.10 Malicious Code.

Each Party shall cooperate with the other Party and shall take commercially reasonable actions and precautions consistent with Schedule E to prevent the introduction and proliferation of Malicious Code into Hercules' or an Eligible Recipient's environment or any System used by Supplier to provide the Services. Without limiting Supplier's other obligations under this Agreement, if Malicious Code is found in Equipment, Software or Systems provided, managed or supported by Supplier, Supplier shall, at no additional charge to Hercules, eliminate and reduce the effects of such Malicious Code and, if the Malicious Code causes a loss of operational efficiency or loss of data, to mitigate such losses and restore such data with generally accepted data restoration techniques.

9.11 Access to Specialized Supplier Skills and Resources.

Upon Hercules' request, Supplier shall provide Hercules and the Eligible Recipients with prompt access to Supplier's specialized services, personnel and resources pertaining to BPO/ADM standards, processes and procedures and associated software, equipment and systems on an expedited basis taking into account the relevant circumstances (the "**Specialized Services**"). The Parties acknowledge that the provision of such Specialized Services may, in some cases, constitute New Services for which Supplier is entitled to additional compensation, but in no event shall Supplier be entitled to any additional compensation for New Services under this subsection unless the Hercules Relationship Manager and Supplier Account Manager, or their authorized designees, expressly agree upon such additional compensation or Supplier's entitlement to additional compensation is established through the dispute resolution process. If Hercules authorizes Supplier to proceed but the Parties disagree as to whether the authorized work constitutes New Services and Hercules reasonably believes that such work is material and is required on an urgent basis, Supplier shall proceed with such work if directed by Hercules for up to sixty (60) FTE days or until such dispute is resolved. Any Charges claimed by Supplier for such work shall be subject to dispute and withholding under Section 12.4, and any disagreement with respect to such Charges shall be submitted to dispute resolution pursuant to Article 19.

9.12 Audit Rights.

- (a) **Contract Records.** Supplier shall, and shall cause its Affiliates and, subject to Section 9.12(e)(v), its Subcontractors to, maintain complete and accurate records of and supporting documentation for all Charges, all Hercules Data and all transactions, authorizations, changes, implementations, soft document accesses, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Supplier in the performance of its obligations under this Agreement (“**Contract Records**”). Supplier shall maintain such Contract Records in accordance with applicable Laws. Supplier shall retain Contract Records in accordance with Hercules' record retention policy (as such policy may be modified from time to time and provided to Supplier in writing) during the Term and any Termination Assistance Services period and thereafter through the end of the second full calendar year after the calendar year in which Supplier stopped performing Services (including Termination Assistance Services requested by Hercules under Section 4.3(b)(8)) (the “**Audit Period**”).
- (b) **Operational Audits.** During the Audit Period (as defined in Section 9.12(a)), Supplier shall, and shall cause its Affiliates and, subject to Section 9.12(e)(v), its Subcontractors to, provide to Hercules (and internal and external auditors, inspectors, regulators and other representatives that Hercules may designate from time to time), including customers, vendors, licensees and other third parties to the extent Hercules or the Eligible Recipients are legally or contractually obligated to submit to audits by such entities) access at reasonable hours to Supplier Personnel, to the facilities at or from which Services are then being provided and to Supplier records and other pertinent information, all to the extent relevant to the Services and Supplier's obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections to (i) verify the integrity of Hercules Data, (ii) examine the systems that process, store, support and transmit that data, (iii) examine the internal controls (e.g., financial controls, human resource controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and the security, disaster recovery and back-up practices and procedures; (iv) examine Supplier's performance of the Services; (v) verify Supplier's reported performance against the applicable Service Levels; (vi) examine Supplier's measurement, monitoring and management tools; and (vii) enable Hercules and the Eligible Recipients to meet applicable legal, regulatory and contractual requirements (including those associated with the Sarbanes-Oxley Act of 2002 and the implementing regulations promulgated by the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board), in each case to the extent applicable to the Services. Supplier shall (i) provide any assistance reasonably requested by Hercules or its designee in conducting any such audit, including installing and operating audit software, (ii) make requested personnel, records and information available to Hercules or its designee, and (iii) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit.
- (c) **Financial Audits.** During the Audit Period (as defined in Section 9.12(a)), Supplier shall, and shall cause its Affiliates and, subject to Section 9.12(e)(v), its Subcontractors to, provide to Hercules (and internal and external auditors, inspectors, regulators and other representatives that Hercules may designate from time to time, including customers, vendors, licensees and other third parties to the extent Hercules or the Eligible Recipients are legally or contractually obligated to submit to audits by such entities) access at reasonable hours to Supplier Personnel and to Contract Records and other pertinent information to conduct financial audits, all to the extent relevant to the performance of Supplier's obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections to (i) verify the accuracy and completeness of Contract Records, (ii) verify the accuracy and completeness of Charges and any Pass-Through Expenses and Out-of-Pocket Expenses, (iii) examine the financial controls, processes and procedures utilized by Supplier in performing the Services, and (iv) enable Hercules and the Eligible Recipients to meet applicable legal, regulatory and contractual requirements, in each case to the extent applicable to the Services and/or the Charges for such Services. Supplier shall (i) provide any assistance reasonably requested by Hercules or its designee in conducting any such audit, (ii) make requested personnel, records and information available to Hercules or its designee, and (iii) in all cases, provide such assistance,
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personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If any such audit reveals an overcharge by Supplier, and Supplier does not successfully dispute the amount questioned by such audit in accordance with **Article 19**, Supplier shall promptly pay to Hercules the amount of such overcharge, together with interest from the date of Supplier's receipt of such overcharge at the lesser of annual USD LIBOR plus one and one-half percent (1.5%) per annum or the maximum rate allowed by applicable Law

- (d) **Audit Assistance.** Hercules and certain Eligible Recipients may be subject to regulation and audit by governmental bodies, standards organizations, other regulatory authorities, customers or other parties to contracts with Hercules or an Eligible Recipient under applicable Laws, rules, regulations, standards or contract provisions. If any such Entity exercises its right to examine or audit Hercules' or an Eligible Recipient's books, records, documents or accounting practices and procedures pursuant to such Laws, rules, regulations, standards or contract provisions, Supplier shall provide all assistance requested by Hercules or the Eligible Recipient in responding to such audits or requests for information and shall do so in an expeditious manner to facilitate the prompt closure of such audit or request.

In addition, Hercules and certain Eligible Recipients will be subject to periodic financial and internal controls audits by independent registered public accounting firms. Supplier shall provide all assistance requested by Hercules, the Eligible Recipient and/or such accounting firms in responding to such audits or requests for information and shall do so in an expeditious manner to facilitate the prompt closure of such audit or request.

- (e) **General Procedures.**

- (i) Notwithstanding the intended breadth of Hercules' audit rights, Hercules shall not be given access to (A) the Confidential Information of other Supplier customers, (B) Supplier locations that are not related to Hercules, the Eligible Recipients or the Services, or (C) Supplier's internal costs, except to the extent such costs are the basis upon which Hercules is charged (e.g., reimbursable expenses, Out-of-Pocket Costs, Pass-Through Expenses or cost-plus Charges) and/or are necessary to calculate the applicable variable Charges.
- (ii) In performing audits, Hercules shall endeavor to avoid unnecessary disruption of Supplier's operations and unnecessary interference with Supplier's ability to perform the Services in accordance with the Service Levels.
- (iii) Following any audit, Hercules shall conduct (in the case of an internal audit), or request its external auditors or examiners to conduct, an exit conference with Supplier to obtain factual concurrence with issues identified in the review.
- (iv) Hercules shall be given adequate private workspace in which to perform an audit, plus access to photocopiers, telephones, facsimile machines, computer hook-ups, and any other facilities or equipment needed for the performance of the audit.
- (v) If, with respect to any Subcontractor (other than a Shared Subcontractor), Supplier is unable to obtain the audit and other rights described in this **Section 9.12**, it shall so notify Hercules as part of the approval process described in **Section 9.13(a)**, and shall not use such Subcontractor without Hercules' approval. If Hercules consents to Supplier's use of any such Subcontractor under these circumstances, the Subcontractor shall be so identified on **Schedule D**.

- (f) **Supplier Internal Audit.** If Supplier determines as a result of its own internal audit that it has overcharged Hercules, then Supplier shall promptly pay to Hercules the amount of such overcharge, together with interest from the date of Supplier's receipt of such overcharge at the lesser of annual USD LIBOR plus one and one-half percent (1.5%) per annum or the maximum rate allowed by applicable Law.

- (g) **Supplier Response.** Supplier and Hercules shall meet promptly upon the completion of an audit conducted pursuant to this **Section 9.12** (i.e., an exit interview) and/or the issuance of an interim or final report to Supplier and Hercules following such an audit. Supplier will respond to each exit interview and/or audit
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report in writing within thirty (30) days, unless a shorter response time is specified in such report. Supplier and Hercules shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or recommendations identified in such exit interview or audit report and Supplier, at its own expense, shall undertake remedial action in accordance with such action plan and the dates specified therein to the extent necessary to comply with Supplier's obligations under this Agreement.

- (h) **Supplier Response to Government Audits.** If an audit by a governmental body, standards organization or regulatory authority having jurisdiction over Hercules, an Eligible Recipient or Supplier results in a finding that Supplier is not in compliance with any applicable Law or standard, including any generally accepted accounting principle, or any other audit requirement relating to the performance of its obligations under this Agreement, Supplier shall, within the time period specified by such auditor, address and resolve the deficiency(ies) identified by such governmental body, standards organization or regulatory authority, in the manner approved by Hercules. Supplier shall do so at its own expense if and to the extent such audit deficiency or finding of non-compliance results from Supplier's failure to comply with its obligation under this Agreement.
- (i) **SAS70 Audit.** In addition to its other obligations under this Section 9.12, Supplier shall cause a Type II Statement of Auditing Standards ("SAS") 70 audit (or equivalent audit) to be conducted by an independent auditor on an annual basis for each Supplier facility at, from or through which Services are provided to Hercules and/or the Eligible Recipients or Hercules Data is transmitted or stored. During the planning of each such audit, Supplier shall provide Hercules with reasonable information as to the anticipated scope and timing of such audit, shall accord Hercules a reasonable opportunity to communicate any reasonable concerns it may have regarding such matters and shall give due consideration to such concerns in finalizing the plans for such audit. Unless otherwise agreed by the Parties, such audit shall be conducted so as to result in a final audit report dated September 1 or later each calendar year. Supplier shall provide Hercules with a report from each SAS 70 to facilitate periodic compliance reporting by Hercules and the Eligible Recipients under the Sarbanes-Oxley Act of 2002 (and implementing regulations promulgated by the United States Securities and Exchange Commission and Public Company Accounting Oversight Board) and comparable Laws in other jurisdictions. To the extent the resulting audit report is relevant to Hercules and/or the Eligible Recipients, Supplier shall provide a copy of such report to Hercules and its independent auditors for review and comment as soon as reasonably possible and in all events within thirty (30) days of completion. Supplier shall respond to such report in accordance with Section 9.12(g).

To the extent Hercules requests that, in addition to the Type II SAS 70 audit described above, Supplier conduct a Hercules-specific Type II SAS 70 audit, Supplier shall do so at Hercules' expense (provided, Supplier notifies Hercules of such expense, obtains Hercules' approval, and uses commercially reasonable efforts to minimize such expense). If, however, Supplier undertakes additional or different Type II SAS 70 audits (or equivalent audits) of Supplier Facilities at, from or through which Services are provided to Hercules and/or the Eligible Recipients (other than customer-specific audits requested and paid for by other Supplier customers), Supplier shall accord Hercules the rights described in the preceding paragraph with respect to such audits.

(j) **Audit Costs.**

- (i) Except as provided in Section 9.12(j)(ii) below, Supplier, its Affiliates and, subject to Section 9.12(e)(v), its Subcontractors shall provide the Services described in this Section 9.12 as part of the Monthly Base Charges and at no additional Charge to Hercules.
 - (ii) As part of the Monthly Base Charges, Supplier shall provide, at Hercules' request, up to six hundred (600) FTE hours of audit assistance for audits initiated by Hercules in any Contract Year ("Baseline Audit FTEs"). The Hercules Contract Manager or his or her designee shall request, define and set the priority for such audit assistance. Supplier shall report monthly on the level of effort expended by Supplier in the performance of such audit assistance and shall not exceed the Baseline Audit FTEs without Hercules' prior approval. Subject to Sections 9.12(j)(iii), (iv) and (v), if Hercules authorizes Supplier to exceed the Baseline Audit FTEs in any Contract Year, Hercules shall either
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pay Supplier for such additional FTE hours at the rates specified in Schedule J or apply such additional FTE hours against the Baseline Project FTEs described in Section 11.8(a).

- (iii) Notwithstanding Section 9.12(j)(ii), to the extent the level of audit assistance requested by Hercules and provided by Supplier Personnel in connection with any audit initiated by Hercules is, in the aggregate, eight (8) FTE hours or less, there shall be no additional Charge to Hercules for such assistance and such FTE hours shall not be counted against the Baseline Audit FTE pool described in Section 9.12(j)(ii) above.
- (iv) Notwithstanding Section 9.12(j)(ii), to the extent the audit assistance requested by Hercules can be provided by Supplier using personnel already assigned to Hercules hereunder without impacting Service Levels, there will be no additional charge to Hercules for such audit assistance. If the audit assistance requested by Hercules cannot be provided by Supplier using such personnel then assigned to Hercules without impacting Service Levels, Hercules, in its sole discretion, may forego or delay any work activities or temporarily or permanently adjust the work to be performed by Supplier, the schedules associated therewith or the Service Levels to permit the performance of such audit assistance using personnel already assigned to perform the Services.
- (v) Notwithstanding Section 9.12(j)(ii), there will be no additional charge to Hercules for audit assistance if, in performing such an audit, Hercules uncovers evidence that Supplier has breached any material obligation(s) under this Agreement.

9.13 Subcontractors.

- (a) **Use of Subcontractors.** In subcontracting any of its responsibilities under this Agreement, Supplier shall comply strictly with this Section 9.13. Prior to entering into a subcontract with respect to the Services, Supplier shall (i) at Hercules' request, forward to Hercules a copy of the proposed subcontract, or (in Hercules' reasonable discretion) a detailed description of the scope and material terms (other than pricing terms) of the proposed subcontract; (ii) give Hercules reasonable prior notice of the subcontract, specifying the components of the Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed Subcontractor, the reasons for subcontracting the work in question, the location of the Subcontractor facilities from which the Services will be provided, the extent to which the subcontract will be dedicated, and the Subcontractor's willingness to grant the rights described in Section 6.4(c) upon expiration or termination; and (iii) obtain Hercules' prior approval of the proposed Subcontractor, other than Subcontractors that qualify as Shared Subcontractors in accordance with Section 9.13(c) below.
 - (b) **Right to Revoke Approval.** Hercules also shall have the right during the Term to revoke its prior approval of a Subcontractor and direct Supplier to promptly replace such Subcontractor, at no additional cost to Hercules, if the Subcontractor's performance is materially deficient or if there are other reasonable grounds for removal. If directed to do so, Supplier shall remove and replace such Subcontractor as soon as possible. Supplier shall continue to perform its obligations under the Agreement, notwithstanding the removal of the Subcontractor. Hercules shall have no responsibility for any termination charges or cancellation fees that Supplier may be obligated to pay to a Subcontractor as a result of the removal of such Subcontractor at Hercules' request or the withdrawal or cancellation of the Services then performed by such Subcontractor as permitted under this Agreement.
 - (c) **Shared Subcontractors.** Notwithstanding Sections 9.13(a) and (b), Supplier may, in the ordinary course of business, enter into subcontracts with total estimated annual revenue of less than \$250,000 per subcontract or \$500,000 in the aggregate (i) for third party services or products that are not a material portion of the Services, that are not exclusively dedicated to Hercules and that do not include regular direct contact with Hercules or Eligible Recipient personnel or the performance of services at Hercules Sites, or (ii) with temporary contract labor, including temporary personnel firms providing such labor (collectively, "**Shared Subcontractors**"); provided, that such Shared Subcontractors possess the training and experience, competence and skill to perform the work in a skilled and professional manner. Supplier shall not be required to obtain Hercules' prior approval of Shared Subcontractors. If, however, Hercules expresses dissatisfaction with the services or products of a Shared Subcontractor, Supplier shall work in good faith to
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resolve Hercules' concerns on a mutually acceptable basis and, at Hercules request, replace such Shared Subcontractor at no additional cost to Hercules.

- (d) **Supplier Responsibility.** Unless otherwise approved by Hercules, the terms of any subcontract must be consistent with this Agreement. Notwithstanding the terms of the applicable subcontract, the approval of such Subcontractor by Hercules or the availability or unavailability of Subcontractor insurance, Supplier shall be and remain responsible and liable for any failure by any Subcontractor or Subcontractor personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Supplier under this Agreement to the same extent as if such failure to perform or comply was committed by Supplier or Supplier employees.

9.14 Technology and Business Process Evolution.

- (a) **Obligation to Evolve.** Supplier acknowledges and agrees that its current technologies and business processes shall continue to evolve and change over time, and at a minimum, shall remain consistent with the best practices of leading providers of BPO/ADM services and the business and BPO/ADM objectives and competitive needs of Hercules and the Eligible Recipients. Subject to **Section 9.5**, Supplier shall provide the Services using current technologies and business processes that will enable Hercules and the Eligible Recipients to take advantage of advances in the industry and support their efforts to maintain competitiveness in the markets in which it competes. The impact of any such technology transformation shall be jointly accessed by the Parties through the Change Control Procedures.
 - (b) **Annual Technology and Business Process Audit.** Hercules may elect to conduct an annual technology and business process audit to benchmark Supplier's then current technologies and business processes against the best practices of leading providers of BPO/ADM services. If any such audit reveals that the technologies and business processes then utilized by Supplier are not at the level of "industry best practice," then Hercules and the Supplier shall review the results of the audit and promptly establish and implement a plan to implement identified best practices.
 - (c) **Obligation to Propose Technology and Business Process Evolutions.** Supplier shall identify and propose the implementation of Technology and Business Process Evolutions that are likely to: (i) improve the efficiency and effectiveness of the Services (including cost savings); (ii) improve the efficiency and effectiveness of the BPO/ADM services and functions performed by or for Hercules and the Eligible Recipients at or from Hercules facilities; (iii) result in cost savings or revenue increases to Hercules and the Eligible Recipients in areas of their business outside the Services; (iv) enhance the ability of Hercules and the Eligible Recipients to conduct their businesses and serve their customers; and (v) achieve the objectives of Hercules and the Eligible Recipients faster and/or more efficiently than the then current strategies. Subject to its non-disclosure obligation under other customer contracts, Supplier shall obtain information regarding Technology and Business Process Evolutions from other customer engagements and shall communicate such information to Hercules on an ongoing basis.
 - (d) **Supplier Briefings and Technology and Business Process Monitoring.** Supplier shall routinely and regularly monitor and analyze Technology and Business Process Evolutions of possible interest or applicability to Hercules and the Eligible Recipients. At least semi-annually, Supplier shall meet with Hercules to formally brief Hercules regarding such Technology and Business Process Evolutions. Such briefing shall include Supplier's assessment of the business impact, performance improvements and cost savings associated with such Technology and Business Process Evolutions. Where requested by Hercules, Supplier shall develop and present to Hercules proposals for: (i) implementing Technology and Business Process Evolutions or (ii) changing the direction of Hercules' then current strategy.
 - (e) **Supplier Developed Advances.** If Supplier develops technological advances in or changes to the BPO/ADM business processes and services and associated technologies used to provide the same or substantially similar services to other Supplier customers or Supplier develops new or enhanced processes, services, software, tools, products or methodologies to be offered to such customers (collectively, "New Advances"), Supplier shall, subject to **Section 4.4** and to the extent applicable, (i) offer Hercules the opportunity to serve as a pilot customer in connection with the implementation of such New Advances; and
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- (ii) if Hercules declines such opportunity, offer Hercules access to such New Advances and the opportunity to be an early adaptor of such New Advances.
- (f) **Flexibility.** Supplier shall make commercially reasonable efforts to ensure that the technologies and business process strategies it employs to provide the Services meet industry standards and are flexible enough to allow integration with new technologies or business processes, or significant changes in Hercules' or an Eligible Recipient's business, BPO/ADM and information technology objectives and strategies. For example, Equipment must have sufficient scalability and be sufficiently modular to allow integration of new technologies without the need to replace whole, or significant parts of, systems or business processes (e.g., made to be a one-to-many model) to enable Hercules' and/or the Eligible Recipients' business to become more scalable and flexible.
- (g) **Equipment Implementation and Refresh.** Supplier shall be fully responsible for the implementation of new Equipment in the ordinary course of Technology and Business Process Evolution. Supplier shall refresh all Equipment in accordance with the defined refresh strategies, as set out in the Technology and Business Process Plan, and as necessary to provide the Services in accordance with the Service Levels and satisfy its other obligations under this Agreement. If Supplier is aware that these strategies differ from generally accepted practice (or there are any other areas of concern in relation to such strategies) it shall provide Hercules with notice of that fact and, upon request, provide Hercules with further information as to how to more closely align the strategies with generally accepted practice.
- (h) **Software Implementation and Refresh.** Supplier shall be fully responsible for the implementation of new or changed Software, tools and methodologies in the ordinary course of Technology and Business Process Evolution. Supplier shall: (i) refresh Software in accordance with **Section 9.7** of this Agreement and the Technology and Business Process Plan; and (ii) provide training to Hercules personnel regarding the use of any new or changed Software, tools and methodologies.
- (i) **Included in Charges.** Supplier shall deploy, implement and support Technology and Business Process Evolution and New Advances throughout the Term and shall be included in the Monthly Base Charges except as provided below:
 - (i) Supplier shall be financially responsible for the capital cost associated with Technology and Business Process Evolution and New Advances only for categories of Equipment, Software and other assets as to which such responsibility is allocated to Supplier in **Schedule J.1**. Hercules shall be financially responsible for the capital cost associated with Technology and Business Process Evolution and New Advances for categories of Equipment, Software and other assets as to which such responsibility is allocated to Hercules in **Schedule J.1**;
 - (ii) The effort associated with the implementation of Technology and Business Process Evolution and New Advances shall be included in the Monthly Base Charges unless and to the extent (A) the Technology and Business Process Evolution or New Advance is considered a New Service pursuant to **Section 4.4**, or (B) Hercules requests that it be implemented more quickly than the established refresh schedule, and in each case, only if and to the extent additional Supplier Personnel and resources are required to do so in the desired timeframe; and
 - (iii) The Parties acknowledge and agree that Supplier shall be entitled to charge for New Advances to the extent they constitute a standalone service offering or software product that is marketed as such to commercial customers generally (provided Supplier notifies Hercules of such additional charge and obtains Hercules approval before implementing the New Advance, and provided further that the price for such New Advance is no higher than the price it is offered generally to other preferred commercial customers).

9.15 Network Configuration Data.

Supplier (i) shall provide Hercules (and Hercules Third Party Contractors) with network configuration data with respect to the network provided and used by Supplier to provide Services to Hercules and/or the Eligible Recipients;

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and (ii) hereby grants Hercules (and Hercules Third Party Contractors) the right to use such data in connection with the performance of ancillary services (e.g., security reviews or audits) or the exercise of Hercules' other rights under this Agreement.

10 HERCULES RESPONSIBILITIES

10.1 Responsibilities.

In addition to Hercules' responsibilities as expressly set forth elsewhere in this Agreement, Hercules shall be responsible for the following:

- (a) **Hercules Relationship Manager.** Hercules shall designate one (1) individual to whom all Supplier communications concerning this Agreement may be addressed (the "**Hercules Relationship Manager**"), who shall have the authority to act on behalf of Hercules and the Eligible Recipients in all day-to-day matters pertaining to this Agreement. Hercules may change the designated Hercules Relationship Manager from time to time by providing notice to Supplier. Additionally, Hercules will have the option, but will not be obligated, to designate additional representatives who will be authorized to make certain decisions (e.g., regarding emergency maintenance) if the Hercules Relationship Manager is not available.
- (b) **Cooperation.** Hercules shall cooperate with Supplier by, among other things, making available, as reasonably requested by Supplier, management decisions, information, approvals and acceptances so that Supplier may accomplish its obligations and responsibilities hereunder.
- (c) **Requirement of Writing.** To the extent Supplier is required under this Agreement to obtain Hercules' approval, consent or agreement, such approval, consent or agreement shall be in writing and shall be signed by or directly transmitted by electronic mail from the Hercules Relationship Manager or an authorized Hercules representative. Notwithstanding the preceding sentence, the Hercules Relationship Manager may agree in advance in writing that as to certain specific matters oral approval, consent or agreement will be sufficient.

10.2 Savings Clause.

Supplier's failure to perform its responsibilities under this Agreement or to meet the Service Levels shall be excused if and to the extent such Supplier non-performance is caused by (i) the wrongful or tortious actions of Hercules, an Eligible Recipient or a Hercules Third Party Contractor performing obligations on behalf of Hercules under this Agreement (unless and to the extent, as to Hercules Third Party Contractors, such failure is attributable to Supplier's failure to properly manage such Hercules Third Party Contractor), or (ii) the failure of Hercules, an Eligible Recipient or such a Hercules Third Party Contractor to perform Hercules' expressly specified obligations under this Agreement, but only if (A) Supplier immediately notifies Hercules of such wrongful or tortious action or failure to perform and its inability to perform under such circumstances, (B) Supplier provides Hercules with every reasonable opportunity to correct such wrongful or tortious action or failure to perform and thereby avoid such Supplier non-performance, (C) Supplier identifies and pursues all commercially reasonable means to avoid or mitigate the impact of such wrongful or tortious action or failure to perform, (D) Supplier uses commercially reasonable efforts to perform notwithstanding such wrongful or tortious action or failure to perform, and (E) Supplier conducts a Root Cause Analysis and thereby demonstrates that such wrongful or tortious action or failure to perform is the cause of Supplier's non-performance. Supplier acknowledges and agrees that the circumstances described in this **Section 10.2**, together with those described in **Section 4.3** and **Section 18.2** of this Agreement and **Section 17** of **Schedule G**, are the only circumstances in which its failure to perform its responsibilities under this Agreement will be excused and that Supplier will not assert any other act or omission of Hercules or the Eligible Recipients as excusing any such failure on Supplier's part.

11 CHARGES

11.1 General.

- (a) **Payment of Charges.** In consideration of Supplier's performance of the Services, Hercules agrees to pay Supplier the applicable Charges set forth in **Schedule J** beginning as of the Commencement Date or, if later,
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the date on which Supplier assumes responsibility for the applicable Services. Supplier shall continually seek to identify methods of reducing such Charges and will notify Hercules of such methods and the estimated potential savings associated with each such method.

- (b) **No Additional Charges.** The Charges for the Services are set forth in **Schedule J** and there are no separate or additional charges for such Services. Any costs incurred by Supplier prior to the Commencement Date are included in the Charges as set forth in **Schedule J** and are not to be separately paid or reimbursed by Hercules.
 - (c) **Incidental Expenses.** Supplier acknowledges that, except as expressly provided otherwise in this Agreement, expenses that Supplier incurs in performing the Services (including management, travel and lodging, document reproduction and shipping, desktop Equipment and other office Equipment required by Supplier Personnel, and long-distance telephone) are included in Supplier's charges and rates set forth in this Agreement. Accordingly, such Supplier expenses are not separately reimbursable by Hercules unless Hercules has agreed in advance and in writing to reimburse Supplier for the expense.
 - (d) **Proration.** Periodic charges under this Agreement are to be computed on a calendar month basis, and shall be prorated for any partial month on a calendar day basis.
 - (e) **Charges for Contract Changes.** Unless otherwise agreed, changes in the Services (including changes in the Hercules Standards, Strategic Plans, Technology and Business Process Plans, business process, Software, Equipment and Systems) and changes in the rights or obligations of the Parties under this Agreement (collectively, "**Contract Changes**") shall result in changes in the applicable Charges only if and to the extent (i) the Agreement expressly provides for a change in the Supplier Charges in such circumstances; (ii) the agreed upon Charges or pricing methodology expressly provides for a price change in such circumstances (for example, **Schedule J** specifies the number of FTEs or hours of coverage to be provided for the quoted price, or defines a Resource Unit rate for increased or decreased usage above or below the applicable Resource Baseline); or (iii) the Contract Change meets the definition of Billable Project or New Services and additional Charges are applicable in accordance therewith. Notwithstanding the foregoing, if a Contract Change causes a material increase or decrease in the number of billable Resource Units without a commensurate increase or decrease in the level of effort, resources or expense associated with the performance of the applicable Service, the Parties will discuss in good faith appropriate adjustments to the Resource Baselines and associated ARC and RRC rates as necessary to reflect the change in the number of Resource Units, but the Monthly Base Charges and ARC and RRC rates will be modified in connection therewith only if and to the extent such Contract Change results in a material change in the level of effort, resources or expense required to perform such Service.
 - (f) **Eligible Recipient Services.**
 - (i) **Eligible Recipients.** Supplier shall provide the Services to Eligible Recipients designated by Hercules. To the extent a designated Eligible Recipient will receive less than all of the Services, Hercules shall identify the categories of Services to be provided by Supplier to such Eligible Recipient.
 - (ii) **New Eligible Recipients.** From time to time Hercules may request that Supplier provide Services to Eligible Recipients not previously receiving such Services (provided that, if the new Eligible Recipient is a Direct Supplier Competitor, the Parties shall confer in good faith regarding Supplier's competitive concerns and possible means of addressing such concerns, including the possibility of unwinding the relationship). Except as provided in **Section 4.4** or otherwise agreed by the Parties, such Services shall be performed in accordance with the terms, conditions and prices (excluding any non-recurring transition or start-up activities specific to such Eligible Recipients) then applicable to the provisions of the same Services to existing Eligible Recipients.
 - (iii) **Existing Supplier Customer.** To the extent Hercules or an Eligible Recipient acquires an Entity such that it is also an Eligible Recipient and such Entity has an existing contract with Supplier for BPO/ADM services, Hercules may, in its discretion, designate such Entity as an Eligible Recipient
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under this Agreement and terminate the other contract for convenience or terminate this Agreement and the applicable Work Statements for convenience and roll the Service then being provided hereunder under the other contract. In either event, Supplier shall reduce and/or rollover to the extent possible the applicable termination charges and/or wind-down expenses Hercules would otherwise be obligated to pay in connection with such a termination. Supplier shall require Hercules to pay only unavoidable wind-down expenses (as defined in Section 2(a) or (b) of Schedule N and unamortized balance sheet items or other miscellaneous termination charges (as defined in Section 2(c) of Schedule N, unless and to the extent such items are rolled into the applicable termination charges under the surviving contract.

- (iv) **Election Procedure.** Within ninety (90) days after the consummation of a transaction described in clause (c) or (d) within the definition of Eligible Recipients in Schedule A, Hercules shall elect, on behalf of the Eligible Recipient in question, either (i) that such Eligible Recipient shall continue to obtain some or all of the Services subject to and in accordance with the terms and conditions of this Agreement and the applicable Work Statement (s) for up to twenty-four (24) months and shall thereafter be entitled to Termination Assistance Services pursuant to Section 4.3, or (ii) that the Term shall be terminated as to such Eligible Recipient with respect to some or all the Services as of a specified date, subject to its receipt of Termination Assistance Service pursuant to Section 4.3. If no election is made within such ninety (90) day period, the Term shall be terminated as to such Eligible Recipient with respect to all Services, subject to its receipt of Termination Assistance Services pursuant to Section 4.3

11.2 Pass-Through Expenses.

- (a) **Procedures and Payment.** Unless otherwise agreed by the Parties, Hercules shall pay all Pass-Through Expenses directly to the applicable vendors following review, validation and approval of such Pass-Through Expenses by Supplier. No new Pass-Through Expenses may be added without Hercules' prior consent, which it may withhold in its sole discretion. Before submitting any Pass-Through Expenses for payment, Supplier shall (i) review and validate the invoiced charges, (ii) identify any errors or omissions, and (iii) communicate with the applicable vendor to correct any errors or omissions, resolve any questions or issues and obtain any applicable credits, rebates, discounts or other incentives for Hercules. Supplier shall deliver to Hercules the original vendor invoice, together with any documentation supporting such invoice and a statement that Supplier has reviewed and validated the invoiced charges, within fifteen (15) days after Supplier's receipt thereof; provided that, if earlier, Supplier shall use commercially reasonable efforts to deliver such invoice, documentation and statement at least five (5) business days prior to the date on which payment is due; and provided further that, if it is not possible to deliver such invoice, documentation and statement at least five (5) business days prior to the due date, Supplier shall promptly notify Hercules and, at Hercules' option, either request additional time for review and validation or submit the invoice for payment subject to subsequent review and validation. If the vendor offers a discount for payment prior to a specified date, Supplier shall use commercially reasonable efforts to deliver such invoice and associated documentation to Hercules at least five (5) days prior to such date. In addition, during the last month of each calendar quarter, Supplier shall use commercially reasonable efforts to deliver all such invoices and associated documentation to Hercules by the end of the month and, to the extent that is not possible, Supplier shall provide Hercules with information sufficient to accrue the applicable expenses on or before the end of such month. To the extent Supplier fails to comply with its obligations hereunder, it shall be financially responsible for any discounts lost or any late fees or interest charges incurred by Hercules and/or the Eligible Recipients.
- (b) **Efforts to Minimize.** Supplier will continually seek to identify methods of reducing and minimizing Hercules' retained and Pass-Through Expenses and will notify Hercules of such methods and the estimated potential savings associated with each such method.
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11.3 Reserved

11.4 Taxes.

The Parties' respective responsibilities for taxes arising under or in connection with this Agreement shall be as follows:

- (a) **Income Taxes.** Each Party shall be responsible for its own Income Taxes.
 - (b) **Sales, Use and Property Taxes.** Each Party shall be responsible for any sales, lease, use, personal property, stamp, duty or other such taxes on Equipment, Software or property it owns or leases from a third party, including any lease assigned pursuant to this Agreement, and/or for which it is financially responsible under this Agreement.
 - (c) **Reserved.**
 - (d) **Taxes on Goods or Services Used by Supplier.** Supplier shall be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption, and other taxes and duties, including VAT, payable by Supplier on any goods or services used or consumed by Supplier in providing the Services (including services obtained from Subcontractors) where the tax is imposed on Supplier's acquisition or use of such goods or services and the amount of tax is measured by Supplier's costs in acquiring or procuring such goods or services and not by Hercules' cost of acquiring such goods or services from Supplier.
 - (e) **Service Taxes.**
 - (i) Hercules shall be financially responsible for all Service Taxes existing as of the Effective Date assessed against either Party on the Services as a whole, or on any particular Service, by a Tax Authority in a jurisdiction in which Hercules and/or the Eligible Recipients are physically located and receive the Services ("**Hercules Service Taxes**"). If new or higher Hercules Service Taxes become applicable to the Services as a result of either Party moving all or part of its operations to a different jurisdiction (e.g., Hercules opening a new office, Supplier relocating performance of Services to a shared service center on its initiative and not at the direction of Hercules or either Party assigning this Agreement to an Affiliate) the Party initiating such move shall be financially responsible for such new or higher Hercules Service Taxes, unless otherwise mutually agreed. If new or higher Hercules Service Taxes become applicable to such Services after the Effective Date for any other reason (e.g., tax law changes, but not volume changes) and such Service Taxes are not fully recoverable by Hercules, the Parties shall negotiate in good faith and diligently seek to agree upon legally permissible means of avoiding or minimizing such new or higher Hercules Service Taxes and/or an allocation or sharing of financial responsibility for such additional Hercules Service Taxes. If the Parties are unable to agree upon such measures within thirty (30) days, and the cumulative monthly impact of all new or higher Service Taxes for which Hercules is financially responsible will, in the aggregate, exceed three percent (3%) of the monthly Charges, Hercules may elect to terminate the Agreement in its entirety, or to terminate any portions impacted by such new or additional Service Taxes. If Hercules elects to terminate on this basis, Hercules shall pay a Termination Charge equal to fifty percent (50%) of the Termination Charge it would have been obligated to pay under **Schedule N** if it had terminated for convenience under **Section 20.2**.
 - (ii) Supplier shall be financially responsible for all Service Taxes assessed against either Party on the provision of the Services as a whole, or on any particular Service, by a Tax Authority in a jurisdiction from which such Services are provided by Supplier, provided such Service Taxes are not assessed as a result of the presence in such jurisdiction of the Hercules Site(s) to which such Services are provided, and only to the extent such Service Taxes are not fully recoverable by Hercules ("**Supplier Service Taxes**").
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- (iii) If required under applicable Laws, Supplier shall invoice Hercules for the full amount of the Service Taxes and then credit or reimburse Hercules for that portion of such Service Taxes for which Supplier is financially responsible under this provision.
 - (f) **Withholding.**
 - (i) Any withholding tax or other tax of any kind that Hercules is required by applicable Law to withhold and pay on behalf of Supplier with respect to amounts payable to Supplier under this Agreement shall be deducted from said amount prior to remittance to Supplier. Hercules will provide to Supplier reasonable assistance, which shall include the provision of documentation as required by revenue authorities, to enable Supplier to claim exemption from or obtain a repayment of such withheld taxes and will, upon request, provide Supplier with a copy of the withholding tax certificate.
 - (ii) Supplier represents and warrants that Hercules is not required to withhold under the Laws of any of the applicable jurisdictions and/or that Supplier possesses an exemption from such withholding and will timely provide Hercules with documentation evidencing such exemption, including any form or other documentation upon which Hercules is required to obtain or upon which it is entitled to rely in order not to be required to withhold in any such jurisdiction. If and to the extent the failure to withhold is challenged by an applicable Tax Authority or otherwise determined to be incorrect, Supplier shall indemnify Hercules and its Affiliates and the Eligible Recipients (and their respective officers, directors, employees, agents, representatives, successors, and assigns) in accordance with **Section 17.1(f)** and shall be financially responsible for all such withholding taxes, interest and penalties that in such circumstances shall be applicable.
 - (g) **Telecommunication Surcharges or User Fees.** To the extent Hercules is responsible under **Schedule J** for telecommunication surcharges or user fees imposed by government authorities and associated with the Services and the allocation of such fees or surcharges is within Supplier's or its Subcontractors' discretion, Supplier and its Subcontractors shall act fairly and equitably in allocating such fees and surcharges to Hercules, and Hercules and the Eligible Recipients shall not receive more than a proportionate share of such fees and surcharges. In addition, in the event any such fee or surcharge for which Hercules or an Eligible Recipient is responsible is subsequently reduced or vacated by the appropriate regulatory authority or court of competent jurisdiction, Supplier shall seek on behalf of Hercules a refund of any overpayment of such fee or surcharge by Hercules or the Eligible Recipient.
 - (h) **Notice of New Taxes and Charges.** Supplier shall promptly notify Hercules when it becomes aware of any new taxes or other charges (including changes to existing taxes or charges) to be passed through and/or collected by Hercules under this Section. Such notification (which may be separate from the first invoice reflecting such taxes or other charges) shall contain a detailed explanation of such taxes or charges, including the effective date of each new tax or charge.
 - (i) **Efforts to Minimize Taxes.** Supplier shall cooperate fully with Hercules to enable Hercules to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible. Supplier's invoices shall separately state the Charges that are subject to taxation and the amount of taxes included therein. Each Party will provide and make available to the other any resale certificates, information regarding out-of-state or out-of-country sales or use of equipment, materials, or services, and other exemption certificates or information reasonably requested by either Party. At Hercules' request, Supplier shall provide Hercules with (i) written confirmation that Supplier has filed all required tax forms and returns required in connection with any Service Taxes collected from Hercules, and has collected and remitted all applicable Service Taxes, and (ii) such other information pertaining to applicable Taxes as Hercules may reasonably request.
 - (j) **Tax Audits or Proceedings.** Each Party shall promptly notify the other Party of, and coordinate with the other Party, the response to and settlement of, any claim for taxes asserted by applicable taxing authorities for which the other Party is financially responsible hereunder. With respect to any claim arising out of a form or return signed by a Party to this Agreement, such Party shall have the right to elect to control the response to
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and settlement of the claim, but the other Party shall have the right to participate in the responses and settlements to the extent appropriate given its potential responsibilities or liabilities. Each Party also shall have the right to challenge the imposition of any tax liability for which it is financially responsible under this Agreement or, if necessary, to direct the other Party to challenge the imposition of any such tax liability. If either Party requests the other to challenge the imposition of any tax liability, such other Party shall do so (unless and to the extent it assumes financial responsibility for the tax liability in question), and, the requesting Party shall reimburse the other for all fines, penalties, interest, additions to taxes or similar liabilities imposed in connection therewith, plus the reasonable legal, accounting and other professional fees and expenses it incurs. Each Party shall be entitled to any tax refunds or rebates obtained with respect to the taxes for which such Party is financially responsible under this Agreement.

- (k) **Tax Filings.** Each Party represents, warrants and covenants that it will file appropriate tax returns, and pay applicable taxes owed by such Party arising from or related to the provision of the Services in applicable jurisdictions. Supplier represents, warrants and covenants that it is registered to and will collect and remit Service Taxes in all jurisdictions in which it is legally required to do so.

11.5 Extraordinary Events.

- (a) **Definition.** As used in this Agreement, an “**Extraordinary Event**” shall mean a circumstance in which an event or discrete set of events has occurred or is planned with respect to the business of Hercules or the Eligible Recipients that results or will result in a change in the scope, nature or volume of the Services that Hercules and the Eligible Recipients will require from Supplier, and which is expected to cause the estimated average monthly usage of any chargeable Resource Unit to increase or decrease by twenty percent (20%) or more from the actual average monthly usage for the preceding twelve (12) months (or, if less, the number of months for which such data is available), provided that such increase or decrease is not temporary or seasonal and that such decrease is not due to Hercules resuming the provision of Services itself or transferring the provision of the Services to another services provider. Examples of the kinds of events that might cause such substantial increases or decreases include the following:
- (i) changes in locations where the Eligible Recipients operate;
 - (ii) mergers, acquisitions, divestitures or reorganizations of the Eligible Recipients;
 - (iii) changes in the applicable regulatory environment; or
 - (iv) changes in the business units being serviced by Supplier.
- (b) **Consequence.** If an Extraordinary Event occurs, Hercules may, at its option, request more favorable pricing with respect to applicable Charges specified in Schedule J in accordance with the following:
- (1) Supplier and Hercules shall mutually determine on a reasonable basis the efficiencies, economies, savings and resource utilization reductions resulting from such Extraordinary Event and, upon Hercules' approval, Supplier shall then proceed to implement such efficiencies, economies, savings and resource utilization reductions as quickly as practicable and in accordance with the agreed upon schedule. As the efficiencies, economies, savings or resource utilization reductions are realized, the Charges specified on Schedule J and any affected Resource Baselines shall be promptly and equitably adjusted to pass through to Hercules the full benefit of such efficiencies, economies, savings and resource utilization reductions; provided, that Hercules shall reimburse Supplier for any net costs or expenses incurred to realize such efficiencies, economies, savings or resource utilization reductions if and to the extent Supplier (i) notifies Hercules of such additional costs and obtains Hercules' approval prior to incurring such costs, (ii) uses commercially reasonable efforts to identify and consider practical alternatives, and reasonably determines that there is no other more practical or cost effective way to obtain such savings without incurring such expenses, and (iii) uses commercially reasonable efforts to minimize the additional costs to be reimbursed by Hercules.
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- (2) Subject to Section 4.4, an Extraordinary Event shall not result in Charges to Hercules being higher than such Charges would have been if the rates and charges specified in Schedule J had been applied. Hercules may, at its sole option, elect, for each Extraordinary Event, at any time to forego its rights under this Section 11.5 and instead, apply the rates and charges (e.g., ARCs and RRCs) specified in Schedule J to adjust the Charges.

11.6 Reserved.

11.7 Refundable Items.

- (a) **Prepaid Amounts.** Where Hercules and/or the Eligible Recipients have prepaid for a service or function for which Supplier is assuming financial responsibility under this Agreement, Supplier shall promptly refund to Hercules or such Eligible Recipient, upon either Party identifying the prepayment, that portion of such prepaid expense which is attributable to periods on and after the Commencement Date.
- (b) **Refunds and Credits.** If Supplier should receive a refund, credit, discount or other rebate for goods or services paid for by Hercules and/or the Eligible Recipients on a Pass-Through Expense, Retained Expense, cost-plus or cost-reimbursement basis, then Supplier shall (i) notify Hercules of such refund, credit, discount or rebate and (ii) promptly pay the full amount of such refund, credit, discount or rebate to Hercules or such Eligible Recipient.

11.8 Hercules Benchmarking Reviews.

- (a) **Benchmarking Review.** From time to time during the Term, Hercules may, at its expense and subject to this Section 11.8, engage the services of an independent third party (a "**Benchmarker**") to compare the quality and cost of all or any portion of the Services against the quality and charges of other well managed service providers performing similar services to ensure that Hercules is receiving from Supplier pricing and levels of service that are competitive with market rates, prices and service levels, given the nature, volume and type of Services provided by Supplier hereunder ("**Benchmarking**"). In making this comparison, the Benchmarker shall consider the following factors and adjust the prices as and to the extent appropriate: (i) whether supplier transition charges are paid by the customer as incurred or amortized over the term of this Agreement; (ii) the extent to which supplier pricing includes the purchase of the customer's existing assets; (iii) the extent to which supplier pricing includes the cost of acquiring future assets; (iv) the extent to which this Agreement calls for supplier to provide and comply with unique Hercules requirements or requirements that are unique to Hercules' industry; (v) the countries from which the services are provided by supplier, and (vi) whether Service Taxes are included in such pricing or stated separately in supplier invoices. Hercules shall not initiate more than one Benchmarking in any eighteen (18) month period, provided that such Benchmarking may include all or any number of the Services. Notwithstanding the preceding sentence, if a Benchmarking reveals an unfavorable pricing variance, Hercules may, at its option, initiate a second Benchmarking of some or all of the remaining Services during such eighteen (18) month period.
- (b) **General.** The Benchmarker engaged by Hercules shall be an impartial, nationally recognized firm with experience in benchmarking similar services (e.g., Gartner Group or Compass). Prior to selecting the Benchmarker, Hercules shall confer in good faith with Supplier as to the Benchmarker and methodology to be employed, but shall not be obligated to proceed in accordance with Supplier's views and recommendations. The Benchmarker shall not be a Direct Supplier Competitor and shall execute a non-disclosure agreement substantially in the form attached hereto as Exhibit 1. Supplier shall cooperate fully with Hercules and the Benchmarker during the Benchmarking, and shall (i) provide the Benchmarker reasonable access to any premises, equipment, personnel or documents; and (ii) provide any assistance required by the Benchmarker to conduct the Benchmarking, all at Supplier's cost and expense. Notwithstanding the preceding sentence, Supplier shall not be obligated to provide the Benchmarker with access to (A) the Confidential Information of other Supplier customers, (B) Supplier locations that are not related to Hercules, the Eligible Recipients or the Services, or (C) Supplier's internal costs, except to the extent such costs are the basis upon which Hercules is charged (e.g., reimbursable expenses, Out-of-Pocket Costs, Pass-Through Expenses or cost-plus Charges) and/or are necessary to calculate the applicable variable
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Charges. The Benchmarking shall be conducted so as not to unreasonably disrupt Supplier's operations under this Agreement.

- (c) **Supplier Review and Dispute.** Hercules shall provide Supplier with a copy of the Benchmarker's report and Supplier shall have ten (10) days to review such report and contest the Benchmarker's findings. If the Parties are unable to agree upon the validity of such findings, the matter shall be resolved pursuant to the dispute resolution procedures set forth in Article 19.
- (d) **Result of Benchmarking.** If the Benchmarker finds that the Charges paid by Hercules for all Services or for any service element are greater than the median of the prices charged by other well managed service providers for work of a similar nature, type or volume, (the "**Benchmark Standard**"), the Parties shall meet and negotiate in good faith as to reductions in the Charges to eliminate any unfavorable variance. Reductions in Supplier's Charges, if any, shall be implemented effective as of the date the Benchmarker's report was first provided to Supplier. If the Parties are unable to agree upon such reductions, Hercules may, at its option, terminate the Services in whole or in part. If Hercules elects to terminate on this basis, Hercules shall pay a Termination Charge equal to fifty percent (50%) of the Termination Charge it would have been obligated to pay under Schedule N if it had terminated such Services for convenience under Section 20.2. If the Services are terminated in part, Supplier's Charges shall be equitably adjusted to reflect the Services no longer performed by Supplier.

12 INVOICING AND PAYMENT

12.1 Invoicing.

- (a) **Invoice.** Within fifteen (15) days after the beginning of each month, Supplier shall present Hercules with an invoice for any Charges due and owing for the preceding month (the "**Monthly Invoice**"), including Monthly Base Charges, Transition Services Charges and ARCs and RRCs. At Hercules' request, Supplier shall provide separate Monthly Invoices for each Eligible Recipient then receiving Services, with the Charges allocated among such Eligible Recipients based on the chargeback data generated by Supplier and/or the allocation formula provided by Hercules. The Monthly Invoice shall be delivered to Hercules, at its request, at the address(es) listed in Section 21.3, and/or electronically. Supplier shall not invoice Hercules for any advance or concurrent charges or other amounts.
- (b) **Form and Data.** Each invoice shall be in the form specified in Exhibit 2 and shall (i) comply with all applicable legal, regulatory and accounting requirements, (ii) allow Hercules to validate volumes and fees, (iii) comply with the chargeback and other billing requirements defined in Exhibit 2, and (iv) meet Hercules' and the Eligible Recipient's business, accounting and billing requirements. Each invoice shall include the pricing calculations and related data utilized to establish the Charges and sufficient information to validate the service volumes and associated Charges. The data underlying each invoice shall be delivered to Hercules electronically in a form and format compatible with Hercules' accounting systems.
- (c) **Credits.** To the extent a credit may be due to Hercules pursuant to this Agreement, Supplier shall provide Hercules with an appropriate credit against amounts then due and owing; if no further payments are due to Supplier, Supplier shall pay such amounts to Hercules within fifteen (15) days.
- (d) **Time Limitation.** If Supplier fails to provide an invoice to Hercules for any amount within one hundred and twenty (120) days after the month in which the Services in question are rendered or the expense incurred, Supplier shall waive any right it may otherwise have to invoice for and collect such amount.

12.2 Payment Due.

Subject to the other provisions of this Article 12, each Monthly Invoice provided for under Section 12.1 shall be due and payable within sixty (60) days after receipt by Hercules of such Monthly Invoice, unless the amount in question is disputed in accordance with Section 12.4. Any undisputed amount due under this Agreement for which a time for payment is not otherwise specified also shall be due and payable within sixty (60) days.

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If either Party fails to make any undisputed payment on or before the payment due date, the Party to whom payment is owed may thereafter assess interest on the unpaid balance to and until the date of payment at the lesser of annual USD LIBOR plus one and one-half percent (1.5%) per annum or the maximum rate allowed by applicable Law. For avoidance of doubt, interest will not be assessed on amounts disputed pursuant to **Section 12.4**.

12.3 Reserved. .

12.4 Disputed Charges.

Hercules may withhold payment of particular Charges that Hercules reasonably disputes in good faith subject to the following:

- (a) **Notice of Dispute.** If Supplier's invoice includes sufficient detail and supporting documentation to enable Hercules to reasonably determine whether Supplier's Charges are in accordance with this Agreement, Hercules shall notify Supplier on or before the payment due date of such invoice if it disputes any of the Charges in such invoice.
 - (b) **Notice of Insufficient Detail, Documentation and Dispute.** If Supplier's invoice does not include sufficient detail and supporting documentation to enable Hercules to reasonably determine whether Supplier's Charges are in accordance with this Agreement, Hercules shall so notify Supplier within thirty (30) days of its receipt of the invoice. Supplier shall promptly provide such reasonable detail and supporting documentation, and Hercules shall notify Supplier within ten (10) business days after receipt thereof by the Hercules Relationship Manager or his or her designee whether it disputes any of the Charges in Supplier's invoice.
 - (c) **Description and Explanation, Expedited Dispute Resolution.** If Hercules disputes any Supplier Charges, Hercules shall so notify Supplier and provide a description of the particular Charges in dispute and an explanation of the reason why Hercules disputes such Charges. The Parties shall use commercially reasonable efforts to resolve any such dispute expeditiously.
 - (d) **Monthly Ceiling.** While Hercules may ultimately withhold the entire disputed amount, the amount withheld in any single month shall not exceed twenty percent (20%) of the total Charges for such month. If the disputed amount exceeds this monthly ceiling, Hercules may withhold the excess in subsequent months, subject to the same monthly ceiling, until the entire disputed amount is withheld.
 - (e) **Escrow.** To the extent the disputed Charges exceed, in the aggregate, an amount equal to the average total monthly Charges for the preceding six (6) months (i.e., the total Charges for the preceding six (6) months, divided by six), the excess disputed Charges shall be paid or deposited by Hercules in an interest bearing escrow account for the benefit of both Parties, at a United States financial institution reasonably acceptable to Supplier, until such dispute has been resolved. Upon resolution of such dispute, such escrowed amounts and interest earned on such escrowed amounts shall be allocated to each Party to the extent a Party prevails.
 - (f) **Continued Performance.** Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved unless and until such obligations are terminated by the termination or expiration of this Agreement.
 - (g) **No Waiver.** Neither the failure to dispute any Charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right Hercules may otherwise have to dispute any Charge or amount or recover any amount previously paid.
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13 HERCULES DATA AND OTHER CONFIDENTIAL INFORMATION

13.1 Confidential Information.

Nothing in this Section 13.1 is intended to limit the obligations of Supplier under Sections 13.2 and 13.3 of this Agreement with respect to the Hercules Data addressed in such Sections and, to the extent the provisions of Sections 13.2 or 13.3 conflict with the provisions of this Section 13.1 as they pertain to Hercules Data, the provisions of Sections 13.2 or 13.3 shall control over the provisions of Section 13.1, as applicable.

- (a) **Confidential Information.** Supplier and Hercules each acknowledge that the other possesses and will continue to possess information that has been developed or received by it, has commercial value in its or its customers' business and is not generally available to the public. Except as otherwise specifically agreed in writing by the Parties, "**Confidential Information**" means (i) this Agreement and the terms hereof and thereof, (ii) all information marked confidential, restricted or proprietary by either Party, and (iii) any other information that is treated as confidential by the disclosing Party and would reasonably be understood to be confidential, whether or not so marked. In the case of Hercules and the Eligible Recipients, Confidential Information also shall include Software provided to Supplier by Hercules or an Eligible Recipient, Hercules Owned Materials, Hercules Data, Hercules Personal Data, Authorized User information, attorney-client privileged materials, attorney work product, customer lists, customer contracts, customer information, rates and pricing, information with respect to competitors, strategic plans, account information, research information, information that contains trade secrets, financial/accounting information (including assets, expenditures, mergers, acquisitions, divestitures, billings collections, revenues, finances, forecasts and budgets), human resources and personnel information, marketing/sales information, information regarding businesses, plans, operations, mergers, acquisitions, divestitures, third party contracts, licenses, internal or external audits, law suits, regulatory compliance or other information or data of Hercules, an Eligible Recipient, an Authorized User or a Hercules Third Party Contractor obtained, received, transmitted, processed, stored, archived, or maintained by Supplier under this Agreement. In the case of Supplier, Confidential Information also shall include Software provided to Hercules by Supplier, Supplier Owned Materials, attorney-client privileged materials, attorney work product, information regarding other Supplier customers, financial information relating to Supplier's business or operation, information regarding Supplier's business plans and other like information or data or Supplier or its Subcontractors or Affiliates received by Hercules pursuant to this Agreement.

(b) **Disclosure of Confidential Information.**

- (i) The Disclosing Party represents and warrants that it has the right to disclose its Confidential Information to the Receiving Party, subject to the confidentiality obligations contained in this Section 13.1.
- (ii) During the term of this Agreement and at all times thereafter as specified in Section 13.5, each Receiving Party (A) shall hold Confidential Information received from a Disclosing Party in confidence and shall use such Information only for the purposes of fulfilling its obligations or exercising its rights under this Agreement and for no other purposes, and (B) shall not disclose, provide, disseminate or otherwise make available any Confidential Information of the Disclosing Party to any third party without the express written permission of the Disclosing Party, unless expressly permitted by Sections 13.1(b)(iii) and 13.1(b)(iv) below or elsewhere in this Agreement. Each Receiving Party shall use at least the same degree of care to safeguard and to prevent disclosure and misuse of the Disclosing Party's Confidential Information to third parties as the Receiving Party employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care.
- (iii) A Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, directors, attorneys, financial advisors, contractors and agents provided that (A) such person or entity has a need to know the Confidential Information for purposes of performing his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such person's
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scope of responsibility, (B) such disclosure is made pursuant to an obligation of confidentiality upon such person or entity that is no less stringent than that set forth in this **Section 13.1**, and (C) such disclosure is not in violation of Law. The Receiving Party assumes full responsibility for the acts or omissions of any person or entity to whom it discloses Confidential Information of the Disclosing Party regarding their use of such Confidential Information and must take commercially reasonable measures to protect the Confidential Information from disclosure or use in contravention of this Agreement.

- (iv) A Receiving Party may disclose Confidential Information of a Disclosing Party as required to satisfy any legal requirement of a competent government body, provided that, promptly upon receiving any such request, the Receiving Party, to the extent it may legally do so, gives notice to the Disclosing Party of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to the making such disclosure in order that the Disclosing Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information. The Receiving Party shall use commercially reasonable efforts to cooperate with the Disclosing Party in its efforts to seek a protective order or other appropriate remedy or, in the event such protective order or other remedy is not obtained, to obtain assurance that confidential treatment will be accorded such Confidential Information.
 - (v) Unless expressly permitted by this Agreement, neither Party shall (A) make any use or copies of the Confidential Information of the other Party except as expressly contemplated by this Agreement, (B) possess or acquire any right in or assert any lien against the Confidential Information of the other Party, (C) sell, assign, transfer, lease, encumber, or otherwise dispose of or disclose the Confidential Information of the other Party to third parties or commercially exploit, or permit a third party to commercially exploit, such Information, or (D) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party's Confidential Information (including any copies thereof) to the other Party if requested to do so.
 - (vi) Notwithstanding the foregoing, Hercules may disclose Confidential Information relating to the financial or operational terms of this Agreement in connection with a benchmarking under **Section 11.8**. In addition, Hercules may disclose Confidential Information relating to descriptions of the Services provided by Supplier, the applicable Service Levels and/or measurements of Supplier's performance with respect to such Service Levels in connection with the solicitation of proposals for or the procurement of the same or similar services from prospective Hercules Third Party Contractors; provided, however, Hercules may not divulge the Master Professional Services Agreement (as opposed to the pertinent Schedules) or Supplier's pricing for the Services provided hereunder in connection with any such solicitation or procurement.
 - (vii) Each Party shall take all necessary steps to cause its employees comply with these confidentiality provisions.
- (c) **Exclusions.** Notwithstanding the above, **Section 13.1(b)** shall not apply to any particular information which the receiving Party can demonstrate (i) is, at the time of disclosure to it, generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations; (ii) after disclosure to it, is published by the Disclosing Party or otherwise becomes generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations; (iii) was lawfully in the possession of the Receiving Party immediately prior to the time of disclosure to it; (iv) is received from a third party having a lawful right to disclose such information; or (v) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.
- (d) **Loss of Confidential Information.** Each Party shall (i) immediately notify the other Party of any possession, use, knowledge, disclosure, or loss of such other Party's Confidential Information in contravention of this Agreement, (ii) promptly furnish to the other Party all known details and assist such other Party in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss, (iii) cooperate with the other Party in any investigation or litigation deemed necessary by such other Party to protect its rights, and (iv) promptly use all commercially reasonable efforts to prevent
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further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this Agreement. Each Party shall bear any costs it incurs in complying with this Section 13.1(d).

- (e) **No Implied Rights** Nothing contained in this Section 13.1 shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to any Confidential Information of the other Party.
- (f) **Return or Destruction of Confidential Information.** Each Party shall securely store the other Party's Confidential Information until such Confidential Information is returned or destroyed as described in this Section. Except as provided below with respect to contract records, each Party shall destroy all documentation in any medium that contains, refers to, or relates to the other Party's Confidential Information (or the portion of such Confidential Information specified by the other Party) or shall return such documentation to the other Party or its designee, in the format and on the media prescribed by the other Party, (i) within thirty (30) days of the expiration or termination of this Agreement and completion of each Party's obligations hereunder, including, with respect to Supplier, all periods of Termination Assistance Services requested by Hercules, and (ii) with respect to Hercules Confidential Information, at any time Hercules requests such Information or, with respect to particular Confidential Information, within thirty (30) days of the date that such Confidential Information is no longer required by Supplier to perform its obligations under this Agreement. Such documentation shall include all copies of a Party's Confidential Information in the other Party's possession or under the other Party's control. The Party returning or destroying the other Party's Confidential Information shall deliver to the other Party written certification of its compliance with this paragraph signed by an authorized representative of such Party.

Notwithstanding the foregoing, either Party may retain one copy of the other Party's Confidential Information in its legal department as and to the extent required to comply with applicable Laws or enforce its rights under this Agreement; provided that such Confidential Information shall be returned or destroyed in accordance with this provision upon the expiration of the period specified in the applicable Law, the expiration of the applicable statute of limitations and the final resolution of any pending dispute.

Subject to the preceding paragraph, Contract Records shall be retained by Supplier for the audit period specified in Section 9.12(a) unless and to the extent Supplier is directed by Hercules to deliver such Contract Records to Hercules prior to the expiration of such Audit Period.

In no event shall a party withhold any Confidential Information of the other party as a means of resolving any dispute.

13.2 Hercules Data.

Nothing in this Section 13.2 is intended to limit the obligations of Supplier under Sections 13.1 and 13.3 of this Agreement with respect to the Confidential Information addressed in such Sections. To the extent that the provisions of Section 13.1 pertaining to Hercules Data conflict with the provisions of this Section 13.2, the provisions of Section 13.2 shall control over the provisions of Section 13.1. To the extent that the provisions of Section 13.3 pertaining to Personal Data conflict with the provisions of this Section 13.2, the provisions of Section 13.3 shall control over the provisions of Section 13.2.

- (a) **Ownership of Hercules Data.** Hercules Data shall be and remain, as between the Parties, the property of Hercules and/or the relevant Eligible Recipient regardless of whether Supplier or Hercules is in possession of the Hercules Data. Supplier shall not possess or assert any lien or other right against or to Hercules Data. Supplier shall not sell, assign, lease, or encumber Hercules Data. Supplier shall not disclose to or allow access by third parties to Hercules Data, unless expressly provided for in this Agreement. Supplier shall not commercially exploit, or permit a third party to commercially exploit, Hercules Data on behalf of Supplier or any other person or entity.

Hercules Data shall be made available to Hercules, upon its request, in the form and format as reasonably requested by Hercules.

(b) Safeguarding of Hercules Data.

- (i) Supplier and Subcontractors to whom Hercules Data is provided shall maintain a comprehensive data security program, which shall include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of Hercules Data in the possession of Supplier or such Subcontractors, and which shall be (i) no less rigorous than those maintained by Hercules as of the Commencement Date (or implemented by Hercules in the future to the extent deemed necessary by Hercules), (ii) no less rigorous than those maintained by Supplier for its own information of a similar nature, (iii) no less rigorous than accepted security standards in the industry, and (iv) adequate to meet the requirements of Hercules' privacy, security and records retention policies.

The data security program and associated technical, organizational and security measures shall comply in all material respects with the following:

- (A) Subject to Section 15.7, all applicable Laws;
- (B) Hercules policies specified in Schedule T.2;
- (C) Hercules Standards, including information technology, security, privacy and record retention policies, standards, protocols, requirements and specifications, including Hercules' requirements for Supplier's utilization of secure infrastructure and data encryption methods;
- (D) ISO 17799, as it may be modified or replaced from time to time.

The content and implementation of the data security program and associated technical, organizational and security measures shall be fully documented in writing by Supplier. Supplier shall permit Hercules to review such documentation and/or to inspect Supplier's compliance with such program in accordance with Section 9.12.

- (ii) Under no circumstances shall Supplier make any changes that materially weaken any technical, organizational or security measures in place to safeguard Hercules Data, or result in Supplier's failure to meet any of the minimum standards set forth above without Hercules' prior approval. Under no circumstances shall Supplier or Supplier Personnel attempt to access or allow access to Hercules Data that is not required for the performance of Supplier's obligations or otherwise permitted under this Agreement.
- (iii) Subject to any restriction in contracts with Supplier's other customers, Supplier shall regularly advise Hercules of data security practices, procedures and safeguards in effect for other Supplier customers that, in Supplier's reasonable judgment, are (1) relevant to the Services being provided under the Agreement and (2) exceed relevant industry standards pertaining to human resources, payroll, procurement, accounts payable and other in-scope services. If requested by Hercules, Supplier shall, to the extent reasonably practicable and subject to the Change Control Procedures, implement such enhanced practices, procedures, and safeguards with respect to its provision of Services to Hercules hereunder.
- (iv) Hercules shall have the right to establish backup security for any Hercules Data and to keep backup and files for such Data in its possession if it chooses. Supplier shall provide Hercules with downloads of Hercules Data, as requested by Hercules, to enable Hercules to maintain such backup copies.
- (v) In the event Supplier discovers or is notified of a breach or potential breach of security relating to Hercules Data in the possession or control of Supplier or its Subcontractors or Affiliates, Supplier shall, in addition to its obligations pursuant to Sections 6.2(c), expeditiously (i) notify Hercules of
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such breach or potential breach, (ii) investigate (with Hercules' participation if so desired by Hercules) such breach or potential breach and perform a risk assessment, Root Cause Analysis and corrective action plan thereon, (iii) provide a written report to Hercules of such risk assessment, Root Cause Analysis and action plan, (iv) remediate such breach or potential breach of security to the extent within Supplier's or its Subcontractor's or Affiliate's areas of control, (v) take commercially reasonable actions to prevent the recurrence of such breach or potential breach of security, and (vi) to the extent such breach or potential breach is within Supplier's or its Subcontractor's or Affiliate's areas of control, provide Hercules with reasonable assurances that such breach or potential breach will not recur.

- (vi) To the extent Supplier removes Hercules Data from any media that is taken out of service that is under Supplier's control, Supplier shall destroy or securely erase such media in accordance with the Policy and Procedures Manual. Under no circumstances shall Supplier use or re-use media on which Hercules Data has been stored to store data of any other customer of Supplier or to deliver data to a third party, including another Supplier customer, unless such Hercules Data has been securely erased in accordance with the Policy and Procedures Manual.
- (vii) To the extent Supplier has access to cardholder payment card information including acct #, expiration date and 3 digit code on systems that the Supplier controls, Supplier shall comply with the Payment Card Industry ("PCI") security standard dated June 30, 2005 and any later promulgated changes to such standard.

13.3 Personal Data.

In addition to the provisions of **Sections 13.1** and **13.2**, the following privacy and data protection provisions shall apply to Personal Data. To the extent any of the provisions of this **Article 13** purporting to apply to Personal Data conflict with provisions of this **Section 13.3**, the provisions of **Section 13.3** shall control over such other provisions.

- (a) Supplier shall hold any Personal Data that it receives in confidence and in compliance with (1) Supplier's obligations under this Agreement, the Schedules and Attachments hereto and the Policy and Procedures Manual, and (2) subject to **Section 15.7**, all Laws regarding its use of and access to such Personal Data.
 - (i) Supplier shall process and store all Personal Data in (1) the United States, (2) the jurisdiction in which the data subject resides (or, in the case of a data subject residing in the European Economic Area ("EEA"), in the EEA) or (3) the jurisdictions set forth in the Policy and Procedures Manual and shall not transfer, process, or maintain Hercules Data in any other jurisdiction without the prior consent of Hercules.
 - (ii) Supplier shall not transfer Personal Data from a country within the European Economic Area to countries deemed by the European Union not to have adequate protection without first ensuring that the standard contractual clauses approved by the European Commission in Commission Decision as the standard contractual clauses for the transfer of personal data to processors in third countries under Directive 95/46/EC, 2002 O.J. L6/52 are in place between the Hercules Affiliate that is the Data Exporter and the Data Importer.
 - (iii) Supplier shall maintain technical, organizational and security measures to protect the confidentiality of Personal Data processed in the EU consistent with the security measures contained in this section.
 - (iv) The Parties acknowledge that, for purposes of the European Data Protection Legislation, Supplier will act as a Data Processor in relation to all Personal Data it accesses under this Agreement, that Hercules is the Data Controller with respect to such Personal Data, and that Supplier will act in accordance with Hercules' instructions in relation to such Personal Data.
 - (b) Supplier agrees that Supplier and Supplier Personnel will not use any Personal Data for any purpose other than the fulfillment of the terms and conditions of this Agreement. Supplier as well as its employees, agents and Subcontractors shall not process or disseminate Personal Data to any third party or transfer Personal Data
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without the approval of Hercules unless expressly provided for in this Agreement. Supplier shall take appropriate action to cause:

(i) Any Supplier Personnel who have access to Personal Data pursuant to this Agreement to be advised of, and comply with, the terms and conditions of this Section 13.3; and

(ii) Any Supplier Personnel who have access to Personal Data to be trained regarding their handling of such Personal Data.

Supplier shall be responsible for any failure of Supplier Personnel to comply with the terms and conditions regarding Personal Data set forth in this Section 13.3.

(c) When interfacing with Hercules or the applicable Eligible Recipient regarding Personal Data, Supplier shall only disclose or transmit Personal Data to those Hercules or Eligible Recipient employees and Hercules Third Party Contractors authorized by the Hercules Relationship Manager or his or her designee or identified in the Policy and Procedures Manual.

(d) Hercules shall notify Supplier of any:

(i) Limitation in any privacy notice used by Hercules to the extent that such limitation may affect Supplier's use or disclosure of Personal Data; and

(ii) Restriction on the use or disclosure of Personal Data to which Hercules agreed to the extent that such restriction may affect Supplier's use or disclosure of such Personal Data.

Supplier agrees to promptly implement any such limitation or restriction as directed by Hercules.

(e) If Supplier has knowledge of any unauthorized disclosure of or access to Personal Data, Supplier shall:

(i) Expeditiously report such unauthorized disclosure or access to Hercules,

(ii) Mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to Supplier or its agents, and

(iii) Cooperate with Hercules in providing any notices regarding impermissible disclosures caused by such disclosure or access which Hercules deems appropriate.

To the extent such unauthorized disclosure or access is attributable to a breach by Supplier or Supplier Personnel of Supplier's obligations under this Agreement with respect to Personal Data, Supplier shall bear (A) the costs incurred by Supplier in complying with its legal obligations relating to such breach, and (B) in addition to any other damages for which Supplier may be liable for under this Agreement, the following costs incurred by Hercules or the Eligible Recipient in responding to such breach, to the extent applicable, (1) the cost of providing notice to affected individuals, (2) the cost of providing notice to government agencies, credit bureaus, and/or other required entities, (3) the cost of providing affected individuals with credit monitoring services for a specific period not to exceed twelve (12) months, to the extent the disclosure of the affected individual's Personal Data could lead to a compromise of the data subject's credit or credit standing, (4) call center support for such affected individuals for a specific period not to exceed thirty (30) days, (5) the cost of any other measures required under applicable Law, and (6) any other Losses for which Supplier would be liable under this Agreement.

13.4 File Access.

Hercules shall have secure access to, and the right to review and retain the entirety of, all Hercules Confidential Information in the possession or control of Supplier or its Affiliates and Subcontractors. Such access shall be provided to Hercules in real time and by the means and in the format reasonably requested by Hercules. At no time

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shall Hercules' Confidential Information be stored or held by Supplier in a form or manner not readily accessible to Hercules in this manner.

13.5 Hercules Data -- Correction and Restoration

- (a) **Corrections.** The correction of any errors or inaccuracies in or with respect to Hercules Data shall be performed by the Party that has operational responsibility for inputting such Hercules Data into the applicable System. To the extent (i) Supplier is operationally responsible for inputting such data, or (ii) such errors or inaccuracies are attributable to the failure of Supplier or Supplier Personnel to comply with Supplier's obligations under this Agreement, Supplier shall bear the cost of correcting such errors or inaccuracies.
- (b) **Re-running of Corrected Data.** If the correction of errors or inaccuracies as described above necessitates the re-running of corrected Hercules Data and thereby results in the usage of additional Resource Units, Hercules shall pay the applicable Resource Unit charge as set forth in **Schedule J**, unless the underlying errors or inaccuracies are attributable to the failure of Supplier or Supplier Personnel to comply with Supplier's obligations under this Agreement (including the failure of Supplier or Supplier Personnel to adhere to applicable processes and controls that, if adhered to, would have enabled Supplier or Supplier Personnel to identify and timely correct such errors or inaccuracies, even if caused by Hercules), in which case Supplier shall be financially responsible for any additional Resource Units usage resulting from the re-running of corrected data.
- (c) **Restoration of Data.** The restoration of any destroyed, lost or altered Hercules Data shall be performed by the Party that has operational responsibility for maintaining the System on which such Hercules Data resides and for creating and maintaining backup copies of such Hercules Data. To the extent (i) Supplier is operationally responsible for performing such restoration or (ii) such destruction, loss or alteration is attributable to the failure of Supplier or Supplier Personnel to comply with Supplier's obligations under this Agreement, Supplier shall bear the cost of restoring such data.

13.6 Survival

Supplier's obligations under this Article with respect to Personal Data shall survive the expiration or termination of this Agreement and shall be perpetual. The Parties' obligations under this Article with respect to all other Confidential Information shall survive the expiration or termination of this Agreement for a period of eight (8) years from the later of (i) the expiration or termination of this Agreement (including all periods of Termination Assistance Services), or (ii) the return or destruction of Confidential Information in accordance with **Sections 13.1** (but not including accounting information pertaining to this Agreement that Supplier is required to maintain pursuant to applicable Laws); provided, however, that the passage of this eight (8) year period shall not absolve either Party of responsibility for any breach of this **Article 13** occurring prior to the expiration of such eight (8) year period.

14 OWNERSHIP OF MATERIALS

14.1 Hercules Owned Materials.

- (a) **Ownership of Hercules Owned Materials.** For purposes of this Agreement, Hercules shall be the sole and exclusive owner of (i) all intellectual property, Software and other Materials owned by Hercules or the Eligible Recipients as of the Effective Date, including Hercules Owned Software and other Materials owned by Hercules and the Eligible Recipients, (ii) all enhancements and Derivative Works of such intellectual property, Software and Materials, including all United States and foreign patent, copyright and other intellectual property rights in such Materials, and (iii) certain Developed Materials, as provided in **Section 14.2** (collectively, "**Hercules Owned Materials**").
 - (b) **License to Hercules Owned Materials.** As of the Commencement Date, Hercules hereby grants Supplier and, to the extent necessary for Supplier to provide the Services, to Subcontractors designated by Supplier that sign a written agreement to be bound by all of the terms contained herein applicable to such Materials
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(such agreement shall be agreed to by the Parties and shall include the terms specified in this Section as well as those pertaining to the ownership of such Materials and any Derivative Works developed by the Parties, the scope and term of the license, the restrictions on the use of such Materials, the obligations of confidentiality, etc.) a non-exclusive, non-transferable, royalty-free limited right and license during the Term (and thereafter to the extent necessary to perform any Termination Assistance Services requested by Hercules) to access, use, execute, reproduce, display, perform, modify and distribute the Hercules Owned Materials for the express and sole purpose of providing the Services. Supplier and its Subcontractors shall have no right to the source code to such Hercules Owned Materials unless and to the extent approved in advance by Hercules. Hercules Owned Materials shall remain the property of Hercules. Supplier and its Subcontractors shall not (i) use any Hercules Owned Materials for the benefit of any person or Entity other than Hercules or the Eligible Recipients, (ii) separate or uncouple any portions of the Hercules Owned Materials, in whole or in part, from any other portions thereof, or (iii) reverse assemble, reverse engineer, translate, disassemble, decompile or otherwise attempt to create or discover any source or human readable code, underlying algorithms, ideas, file formats or programming interfaces of the Hercules Owned Materials by any means whatsoever, without the prior approval of Hercules, which may be withheld at Hercules' sole discretion. Except as otherwise requested or approved by Hercules, Supplier and its Subcontractors shall cease all use of Hercules Owned Materials upon the end of the Term and the completion of any Termination Assistance Services requested by Hercules pursuant to **Section 4.3(b)(8)** and shall certify such cessation to Hercules in a notice signed by an officer of Supplier and each applicable Subcontractor. THE HERCULES OWNED MATERIALS ARE PROVIDED BY HERCULES TO SUPPLIER AND ITS SUBCONTRACTORS ON AN AS-IS, WHERE-IS BASIS. HERCULES EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO SUCH HERCULES OWNED MATERIALS, OR THE CONDITION OR SUITABILITY OF SUCH MATERIALS FOR USE BY SUPPLIER OR ITS SUBCONTRACTORS TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- (c) **License to Hercules Third Party Materials.** Subject to Supplier having obtained any Required Consents, Hercules hereby grants to Supplier, for the sole purpose of performing the Services and solely to the extent of Hercules' underlying rights, the same rights of access and use as Hercules possesses under the applicable software licenses with respect to Hercules licensed Third Party Materials. Hercules also shall grant such rights to Subcontractors designated by Supplier if and to the extent necessary for Supplier to provide the Services; provided that, Supplier shall pay all fees, costs and expenses associated with the granting of such rights to such Subcontractors. Supplier and its Subcontractors shall comply with the duties, including use restrictions and nondisclosure obligations, imposed on Hercules by such licenses. In addition, each Subcontractor shall sign a written agreement to be bound by terms consistent with the terms contained herein applicable to such Third Party Materials and shall include the terms specified in this Section as well as those pertaining to the ownership of such Materials and any Developed Materials, the scope and term of the license, the restrictions on the use of such Materials, and the obligations of confidentiality. Except as otherwise requested or approved by Hercules (or the relevant licensor), Supplier and its Subcontractors shall cease all use of such Third Party Materials upon the end of the Term and the completion of any Termination Assistance Services requested by Hercules pursuant to **Section 4.3(b)(8)**. THE HERCULES LICENSED THIRD PARTY MATERIALS ARE PROVIDED BY HERCULES TO SUPPLIER AND ITS SUBCONTRACTORS ON AN AS-IS, WHERE-IS BASIS. HERCULES EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, AS TO SUCH HERCULES LICENSED THIRD PARTY MATERIALS, OR THE CONDITION OR SUITABILITY OF SUCH MATERIALS FOR USE BY SUPPLIER OR ITS SUBCONTRACTORS TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (PROVIDED THAT, HERCULES SHALL PASS THROUGH, OR OTHERWISE PROVIDE, TO SUPPLIER THE REPRESENTATIONS AND WARRANTIES MADE BY THE MANUFACTURERS AND/OR PROVIDERS OF SUCH HERCULES LICENSED THIRD PARTY MATERIALS TO THE EXTENT IT IS PERMITTED TO DO SO UNDER THE APPLICABLE THIRD PARTY CONTRACTS).

14.2 Developed Materials.

- (a) **Ownership by Hercules.** Unless otherwise agreed by the Parties and except as provided in **Section 14.2(c)**, all Developed Materials shall be owned solely by Hercules and considered to be works made for hire (as that



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term is used in Section 101 of the United States Copyright Act, 17 U.S.C. § 101, or in analogous provisions of other applicable Laws) and owned by Hercules. If any such Developed Materials may not be considered a work made for hire under applicable Law, Supplier hereby irrevocably assigns, and shall assign, to Hercules in perpetuity without further consideration, all of Supplier's worldwide rights, title and interest in and to such Developed Materials, including United States and foreign intellectual property rights. Supplier acknowledges that Hercules and the successors and assigns of Hercules shall have the right to obtain and hold in their own name any intellectual property rights in and to such Developed Materials. Supplier agrees to execute any documents and take any other actions reasonably requested by Hercules to effectuate the purposes of this **Section 14.2(a)**. Hercules hereby grants to Supplier a license to such Developed Materials on the same terms as described in **Section 14.1(b)**. Hercules may, in its sole discretion and upon such terms and at such financial arrangement as Hercules and Supplier may agree, grant Supplier a license to use the Developed Materials for other purposes and to sublicense such Developed Materials.

- (b) **Source Code and Documentation.** Supplier shall, promptly as it is developed by Supplier, provide Hercules with the source code and object code and documentation for all Hercules owned Developed Materials and any other Hercules-specific Materials used by Supplier. Such source code and documentation shall be sufficient to allow a reasonably knowledgeable and experienced programmer to maintain and support such Materials and the user documentation for such Materials shall accurately describe in terms understandable by a typical end user the functions and features of such Materials and the procedures for exercising such functions and features.
 - (c) **Supplier Owned Developed Materials.** Notwithstanding **Section 14.2(a)**, Developed Materials that are Derivative Works of Supplier Owned Materials shall be owned by Supplier, including Derivative Works of Supplier Owned Materials made by Hercules, Hercules Affiliates, Eligible Recipients, or their designees. Supplier hereby grants to Hercules a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up license, with the right to grant sublicenses, to use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of such Supplier owned Developed Materials during the Term and any Termination Assistance Services period for the benefit and use of Hercules, Hercules Affiliates and the Eligible Recipients. The rights and obligations of Hercules and the Eligible Recipients with respect to such Supplier Owned Materials following the expiration or termination of the Agreement or termination of any Service are set forth in **Section 14.6**.
 - (d) **Third Party Materials.** The ownership of Derivative Works of Third Party Materials created in connection with the Services shall, as between Supplier and Hercules, be considered Developed Materials owned by the Party that is the licensee of such Third Party Materials. For purposes of the foregoing, Supplier shall be deemed the licensee of Third Party Materials licensed by its Subcontractors or Affiliates and Hercules shall be deemed the licensee of Third Party Materials licensed by Hercules Affiliates or any Eligible Recipient. Each Party acknowledges and agrees that its ownership of such Derivative Works may be subject to or limited by the terms of the underlying agreement with the owner of the underlying Third Party Materials; provided, that if a Derivative Work is to be made of Third Party Materials provided by Supplier, Supplier shall notify Hercules in advance and obtain Hercules' consent prior to proceeding with such Derivative Work if the terms of any such agreement will preclude or limit, as applicable, Hercules' license rights in and to such Derivative Work as contemplated in **Sections 14.3** and **14.6**.
 - (e) **Disclosure by Supplier of Developed Materials.** Supplier shall promptly disclose in writing to Hercules each Developed Material that is developed in connection with the Services. With respect to each disclosure, Supplier shall indicate the features or concepts that it believes to be new or different.
 - (f) **Waiver of Moral Rights.** To the extent permitted by law, Supplier hereby waives any moral rights in the Hercules owned Developed Materials, such as the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation, whether arising under the Berne Convention or otherwise.
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14.3 Supplier Owned Materials.

- (a) **Ownership of Supplier Owned Materials.** Supplier shall be the sole and exclusive owner of the (i) intellectual property, Software and Materials lawfully owned by it prior to the Commencement Date, (ii) intellectual property, Software and Materials acquired by Supplier on or after the Commencement Date, other than acquisitions for Hercules or an Eligible Recipient in connection with the performance of the Services, (iii) Developed Materials that are Derivative Works of Supplier owned intellectual property, Software and Materials created by or for Supplier as provided in Section 14.2(c), (iv) intellectual property, Software and Materials developed by or on behalf of Supplier other than in the course of the performance of its obligations under this Agreement or in connection with the use of any Hercules Data or Hercules Owned Materials, including all United States and intellectual property rights in such Materials (“Supplier Owned Materials”).
 - (b) **License to Supplier Owned Materials.** As of the Commencement Date, Supplier hereby grants to Hercules and the Eligible Recipients (and at Hercules' request and subject to Section 13.1, Hercules Third Party Contractors that sign a written agreement with Hercules to be bound by terms at least as protective as the terms contained herein applicable to such Materials), at no additional charge, a world-wide non-exclusive, royalty-free right and license, with the right to grant sublicenses, to access, use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of the Supplier Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto) during the Term and any Termination Assistance Services period, for the benefit of Hercules, the Eligible Recipients and their respective Affiliates, to (i) receive the full benefit of the Services provided by Supplier, (ii) monitor, access, interface with or use the Materials and Software then being used by Supplier, (iii) perform or have performed ancillary services and functions, including related information technology services and functions, in each case related to the Services provided by Supplier, and (iv) perform or have performed services that are the same as or similar to the Services to the extent such Supplier Owned Material is necessary to maintain, support, enhance or further develop Hercules Owned Materials, Hercules licensed Third Party Materials or other Materials as to which Hercules holds a license under this Agreement. Supplier Owned Materials shall remain the property of Supplier. The rights and obligations of Hercules and the Eligible Recipients with respect to such Supplier Owned Materials following the expiration or termination of the Agreement or termination of any Service are set forth in Section 14.6.
 - (c) **Embedded Materials.** To the extent that Supplier Owned Materials are embedded in any Developed Materials owned by Hercules pursuant to Section 14.2(a) and (b), Supplier shall not be deemed to have assigned its intellectual property rights in such Supplier Owned Materials to Hercules, but Supplier hereby grants to Hercules and the Eligible Recipients a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up license, with the right to grant sublicenses, to use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of such Supplier Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto) for the benefit of Hercules, the Eligible Recipients and their respective Affiliates for so long as such Supplier Owned Materials remain embedded in such Developed Materials and are not separately commercially exploited. Following the expiration or termination of the Term and the termination of the Service(s) for which such Materials were used, Supplier shall, at Hercules' request, provide Upgrades, maintenance, support and other services for such embedded Supplier Owned Materials in accordance with Sections 14.6(b).
 - (d) **License to Supplier Third Party Materials.** As of the Commencement Date and subject to Supplier having obtained any Required Consents, Supplier hereby grants to Hercules and the Eligible Recipients, at no additional charge, a non-exclusive, royalty-free right and license, with the right to grant sublicenses, to access and/or use the Third Party Materials as to which Supplier holds the license or for which Supplier is financially responsible under this Agreement (including all modifications, substitutions, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto), during the Term and any Termination Assistance Services period, for the benefit and use of Hercules, the Eligible Recipients and their respective Affiliates, (i) receive the full benefit of the Services provided by Supplier, (ii) perform or have performed ADM/BPO services, (iii) monitor, access, interface with or use the Materials and Software then being used by Supplier and (iv) perform or have performed ancillary services and functions, including related information technology services and functions. Notwithstanding the foregoing, Supplier shall not be
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obligated to grant such license and other rights if and to the extent Hercules agrees to forego some or all such rights prior to Supplier's first use of such Third Party Material in the performance of the Services and such agreement is memorialized in **Schedule B**. The rights and obligations of Hercules, the Eligible Recipients and Hercules Third Party Contractors with respect to such Supplier licensed Third Party Materials following the expiration or termination of the Agreement or termination of any Service are set forth in **Section 14.6**.

14.4 Other Materials.

This Agreement shall not confer upon either Party intellectual property rights in Materials of the other Party (to the extent not covered by this **Article 14**) unless otherwise so provided elsewhere in this Agreement.

14.5 General Rights.

- (a) **Copyright Legends.** Each Party agrees to reproduce copyright legends which appear on any portion of the Materials which may be owned by the other Party or third parties.
- (b) **Residuals.** Nothing in this Agreement shall restrict any employee or representative of a Party from using ideas, concepts, practices, learning or know-how relating generally to the performance of BPO/ADM services that are retained in the unaided memory of such employee or representative after performing the obligations of such Party under this Agreement, except to the extent that such use infringes upon any patent, copyright or other intellectual property right of a Party or its Affiliates (or, in the case of Supplier, any Eligible Recipient); provided, however, that this **Section 14.5(b)** shall not (i) be deemed to limit either Party's obligations under this Agreement with respect to the disclosure or use of Confidential Information, or (ii) operate or be construed as permitting an employee or representative of Supplier to disclose, publish, disseminate or use (a) the source of any Confidential Information of Hercules or an Eligible Recipient, (b) any financial, statistical or personnel information of Hercules or an Eligible Recipient, or (c) the business plans of Hercules or the Eligible Recipients. An individual's memory is unaided if the individual has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it and does not identify the information as Confidential Information upon recollection. For avoidance of doubt, the foregoing would not permit Supplier Personnel to use Confidential Information of Hercules or an Eligible Recipient (other than ideas, concepts, practices, learning and know-how relating generally to the performance of BPO/ADM services) for any purpose other than the provision of Services under this Agreement.
- (c) **No Implied Licenses.** Except as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to one Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Materials owned by the other Party or any Affiliate of the other Party (or, in the case of Supplier, any Eligible Recipient).
- (d) **Incorporated Materials.** Should either Party incorporate into Developed Materials any intellectual property subject to third party patent, copyright or license rights, any ownership or license rights granted herein with respect to such Materials shall be limited by and subject to any such patents, copyrights or license rights; provided that, prior to incorporating any such intellectual property in any Materials, the Party incorporating such intellectual property in the Materials has disclosed this fact and obtained the prior approval of the other Party.

14.6 Hercules Rights Upon Expiration or Termination of Agreement.

As part of the Termination Assistance Services, Supplier shall provide the following to Hercules, Hercules Affiliates and the Eligible Recipients with respect to Materials and Software:

- (a) **Hercules Owned Materials and Developed Materials.** With respect to Hercules Owned Materials (including Hercules owned Developed Materials), Supplier shall, at no cost to Hercules:
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- (i) Deliver to Hercules all Hercules Owned Materials and all copies thereof in the format and medium in use by Supplier in connection with the Services as of the date of such expiration or termination; and
 - (ii) Following confirmation by Hercules that the copies of the Hercules Owned Materials delivered by Supplier are acceptable and the completion by Supplier of any Termination Assistance Services for which such Materials are required, destroy or securely erase all other copies of such Materials then in Supplier's possession and cease using such Materials and any information contained therein for any purpose.
- (b) **Commercially Available Supplier Owned Materials.** Subject to the final paragraph of this **Section 14.6(b)**, with respect to Materials owned by Supplier, Supplier Affiliates or, (subject to **Section 6.4(c)**), Subcontractors that are generally commercially available and used by them to provide the Services (and any modifications, enhancements, Upgrades, methodologies, tools, documentation, materials and media related thereto):
- (i) Supplier hereby grants to Hercules and the Eligible Recipients (and at Hercules' request and subject to **Section 13.1**, Hercules Third Party Contractors that sign a written agreement with Hercules to be bound by terms at least as protective as the terms contained herein applicable to such Materials) a license on standard terms and conditions no less favorable than those offered generally by Supplier to other commercial customers to use such Materials following the expiration or termination of the Term or termination of the Service(s) for which such Materials were used; provided that, in all events, such terms and conditions must be at least broad enough to permit Hercules and the Eligible Recipients (or, at Hercules' direction, their designee) to use such Materials to provide for Hercules and the Eligible Recipients, or have provided for them by third party contractors, services similar to the Services, and for Hercules and the Eligible Recipients to receive such services;
 - (ii) Supplier shall deliver to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) (A) a copy of such Supplier Owned Materials and related documentation, and (B) the source code and object code for such Supplier Owned Materials to the extent such Supplier Owned Materials include source code or object code and such code is customarily provided to commercial customers licensing such Materials and
 - (iii) Supplier shall offer to provide to Hercules and the Eligible Recipients (and at Hercules' request and subject to **Section 13.1**, Hercules Third Party Contractors that sign a written agreement with Hercules to be bound by terms at least as protective as the terms contained herein applicable to such Materials) Upgrades, maintenance, support and other services for such Materials on Supplier's then-current standard terms and conditions for such services.

Unless Hercules otherwise agrees prior to Supplier's first use of such Supplier Owned Material in the performance of the Services, Hercules and the Eligible Recipients (and, to the extent applicable, Hercules' designee(s)) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses and other rights above. Hercules shall be responsible for any periodic or other license fees attributable to periods after Hercules' first use of such Supplier Owned Material pursuant to this provision, provided such fees are no less favorable than those offered generally by Supplier to other commercial customers using such Materials.

Supplier shall not use any generally commercially available Supplier Owned Materials for which it is unwilling or unable to grant some or all of the license or other rights described above unless and to the extent Hercules agrees to forego such rights prior to Supplier's first use of such Third Party Material in the performance of the Services and such agreement is memorialized in **Schedule E.1**. In seeking Hercules' approval, Supplier may propose alternative terms, such as a fee for such license, a limitation on the use of such Materials by a Hercules Third Party Contractor, and/or the substitution of a functionally equivalent product.

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- (c) **Non-Commercially Available Supplier Owned Materials.** Subject to the final paragraph of this **Section 14.6(b)**, with respect to Materials owned by Supplier or Supplier Affiliates or Subcontractors and used by them to provide the Services that are not generally commercially available (and any modifications, enhancements, Upgrades, methodologies, tools, documentation, materials and media related thereto):
- (i) Supplier hereby grants to Hercules and the Eligible Recipients (and at Hercules' request and subject to **Section 13.1**, Hercules Third Party Contractors that sign a written agreement with Hercules to be bound by terms at least as protective as the terms contained herein applicable to such Materials) a worldwide, perpetual, irrevocable, non-exclusive, non-transferable, fully paid-up license, to use, execute, reproduce, display, perform, and distribute such non-commercially available Supplier Owned Materials following the expiration or termination of the Term or termination of the Service(s) for which such Materials were used. Such license shall be limited to the use of such Supplier Owned Materials by Hercules and the Eligible Recipients (or, at Hercules' direction, their designee) to provide for Hercules and the Eligible Recipients, or have provided for them by a Third Party Contractor, services similar to the Services and for Hercules and the Eligible Recipients to receive such services;
 - (ii) Supplier shall deliver to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) (A) a copy of such Supplier Owned Materials and related documentation, and (B) the source code and object code for such Supplier Owned Materials to the extent such Supplier Owned Materials include source code or object code and such code is customarily provided to commercial customers licensing such Materials and
 - (iii) At Hercules' request, Supplier shall provide to Hercules and the Eligible Recipients (and at Hercules' request and subject to **Section 13.1**, Hercules Third Party Contractors that sign a written agreement with Hercules to be bound by terms at least as protective as the terms contained herein applicable to such Materials) Upgrades, maintenance, support and other services for such Supplier Owned Materials on reasonable commercial terms and conditions, which shall include pricing no less favorable than the pricing customarily charged to other commercial customers receiving equivalent services. If Supplier fails to offer or provide Upgrades, maintenance, support or other services, Supplier shall deliver source code and object code for such Supplier Owned Materials to the extent such Materials include source code, together with the right to modify, enhance and create derivative works of such Materials.

Unless Hercules otherwise agrees prior to Supplier's first use of such non-commercially available Supplier Owned Material in the performance of the Services, Hercules and the Eligible Recipients (and, to the extent applicable, Hercules' designee(s)) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses and other rights above.

Supplier shall not use any non-commercially available Supplier Owned Materials for which it is unwilling or unable to grant some or all of the license or other rights described above unless and to the extent Hercules agrees to forego such rights prior to Supplier's first use of such Third Party Material in the performance of the Services and such agreement is memorialized in **Schedule E.1**. In seeking Hercules' approval, Supplier may propose alternative terms, such as a fee for such license, a limitation on the use of such Materials by a Hercules Third Party Contractor, and/or the substitution of a functionally equivalent product.

- (d) **Third Party Materials.** Unless Hercules otherwise agrees in advance in accordance with **Section 6.4(c)**, with respect to Third Party Materials licensed by Supplier or Supplier Affiliates or Subcontractors and used by them to provide the Services, Supplier hereby grants to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) a sublicense (with the right to grant sublicenses) offering the same rights and warranties with respect to such Third Party Materials available to Supplier (or Supplier Affiliates or Subcontractors), on the same terms and conditions, for the benefit and use of Hercules, Hercules Affiliates and the Eligible Recipients upon the expiration or termination of the Term; provided that, during the Termination Assistance Services period, Supplier may, with Hercules' approval, substitute one of the following for such sublicense:
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- (i) the assignment to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) of the underlying license for such Third Party Materials;
- (ii) the procurement for Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) of a new license (with terms at least as favorable as those in the license held by Supplier or its Affiliates or Subcontractors and with the right to grant sublicenses) to such Third Party Materials for the benefit or use of Hercules, Hercules Affiliates and the Eligible Recipients; or
- (iii) the procurement for Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) of a substitute license for Third Party Materials sufficient to perform, without additional cost, support or resources and at the levels of performance and efficiency required by this Agreement, the functions of the Third Party Materials necessary to enable Hercules or its designee to provide the Services after the expiration or termination of the Term.

In addition, Supplier shall deliver to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) a copy of such Third Party Materials (including source code, to the extent it has been available to Supplier) and related documentation and shall cause maintenance, support and other services to continue to be available to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) to the extent it has been available to Supplier. Unless Hercules has otherwise agreed in advance in accordance with **Section 6.4(c)**, Hercules and the Eligible Recipients (and, to the extent applicable, Hercules' designee(s)) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses, sublicenses and other rights specified in this **Section 14.6(c)**. Supplier shall not use any Third Party Materials for which it is unable to offer such license, sublicense or other rights without Hercules' prior approval (and absent such approval, Supplier's use of any such Third Party Materials shall obligate Supplier to provide, at no additional cost, such licenses, sublicenses and other rights). Hercules, however, shall be obligated to make monthly or annual payments attributable to periods after the expiration or termination of the Term with respect to the Services for which such Third Party Materials were used for the right to use and receive maintenance or support related thereto, but only to the extent Supplier would have been obligated to make such payments if it had continued to hold the licenses in question or Hercules has agreed in advance to make such payments.

To the extent Hercules has agreed in advance to pay any fees in connection with its receipt of such licenses, sublicenses or other rights, Supplier shall, at Hercules' request, identify the licensing and sublicensing options available to Hercules and the Eligible Recipients and the license or transfer fees associated with each. Supplier shall use commercially reasonable efforts to obtain the most favorable options and the lowest possible transfer, license, relicense, assignment or termination fees for Third Party Materials. Supplier shall not commit Hercules or the Eligible Recipients to paying any such fees or expenses without Hercules' prior approval. If the licensor offers more than one form of license, Hercules (not Supplier) shall select the form of license to be received by Hercules, the Eligible Recipients or their designee(s).

15 REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Work Standards.

Supplier represents, warrants and covenants that: (i) the Services shall be rendered with promptness, due care, skill and diligence; (ii) the Services shall be executed in a workmanlike manner, in accordance with the best practices of leading providers of BPO/ADM services and the Service Levels; (iii) Supplier shall use adequate numbers of qualified individuals with suitable training, education, experience, know-how, competence and skill to perform the Services; (iv) Supplier shall provide such individuals with training as to new products and services prior to the implementation of such products and services in the Hercules/Eligible Recipients environment; and (v) Supplier shall have the resources, capacity, expertise and ability in terms of Equipment, Software, know-how and personnel to provide the Services.

15.2 Software.

- (a) **Ownership and Use.** Supplier represents, warrants and covenants that it is either the owner of, or authorized to use, any and all Software provided and used by Supplier in providing the Services. As to any such Software that Supplier does not own but is authorized to use, Supplier shall advise Hercules as to the ownership and extent of Supplier's rights with regard to such Software to the extent any limitation in such rights would impair Supplier's performance of its obligations under this Agreement.
- (b) **Performance.** Supplier represents, warrants and covenants that any Supplier Owned Software will perform in conformance with its Specifications and will provide the functions and features and operate in the manner described therein.
- (c) **Developed Materials Compliance.** Supplier warrants and covenants that Developed Materials will be free from material errors in operation and performance, will Comply with the applicable documentation and the Specifications in all material respects, including any applicable Year 2000 Compliance requirements, and will provide the functions and features and operate in the manner described in this Agreement or otherwise agreed by the Parties. Supplier shall correct any failure to Comply at no additional charge to Hercules and shall use commercially reasonable efforts to do so as expeditiously as possible. In the event that Supplier fails or is unable to repair or replace such nonconforming Developed Material, Hercules shall, in addition to any and all other remedies available to it hereunder, be entitled to obtain from Supplier a copy of the source code and/or object code to such Developed Material.
- (d) **Nonconformity of Supplier Owned Software.** In the event that Supplier Owned Software (excluding Supplier owned Developed Materials, which are addressed in **Section 15.2(c)**) does not conform to the Specifications and criteria set forth in this Agreement, and/or materially adversely affects the Services provided hereunder, Supplier shall expeditiously repair such Software or replace such Software with conforming Software.

15.3 Non-Infringement.

- (a) **Performance of Responsibilities.** Except as otherwise provided in this Agreement, each Party represents, warrants and covenants that it shall perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other proprietary or privacy rights of any third party; provided, however, that the performing Party shall not have any obligation or liability to the extent any infringement or misappropriation is caused by (i) modifications made by the other Party or its contractors or subcontractors, without the knowledge or approval of the performing Party, (ii) the other Party's combination of the performing Party's work product or Materials with items not furnished, specified or reasonably anticipated by the performing Party or contemplated by this Agreement, (iii) a breach of this Agreement by the other Party, (iv) the failure of the other Party to use corrections or modifications provided by the performing Party offering equivalent features and functionality, or (v) Third Party Software, except to the extent that such infringement or misappropriation arises from the failure of the performing Party to obtain the necessary licenses or Required Consents or to abide by the limitations of the applicable Third Party Software licenses. Each Party further represents, warrants and covenants that it will not use or create materials in connection with the Services which are libelous, defamatory or obscene.
 - (b) **Third Party Software Indemnification.**
 - (i) With respect to Third Party Software provided by a Party pursuant to this Agreement, such Party covenants that it shall (i) obtain intellectual property indemnification from the third party supplier of such Software for the other Party and, where relevant, the Eligible Recipients to the extent such indemnification is legally permissible and available from such third party supplier on a commercially reasonable basis, and (ii) enforce the intellectual property indemnification rights obtained from the third party supplier of such Software on behalf of the other Party, and, where relevant, the Eligible Recipients, to the extent such enforcement is legally and contractually permissible. Notwithstanding the foregoing, Hercules shall not be obligated to renegotiate the terms
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of its existing Third Party Software licenses to obtain intellectual property indemnification or to modify the terms of such licenses with respect to such indemnification.

- (ii) If a third party intellectual property infringement claim is asserted against a Party (or, where relevant, an Eligible Recipient) based on its use of such Third Party Software, the Party providing such Third Party Software shall tender such claim to the third party supplier of such Software and invoke its right to indemnification with respect to such claim. If the Party providing such Third Party Software does not possess such indemnification rights or the right to enforce them on behalf of the other Party (or, where relevant, the Eligible Recipient), the Party against whom the claim is asserted may cease using such Third Party Software. Subject to Section 15.3(b)(iv), the Party providing such Third Party Software shall have no obligation to indemnify the other Party in such circumstances and shall have no responsibility for Losses incurred by such other Party as a result of its past or continued use of such Third Party Software, except as provided in Section 15.3(b)(iv).
- (iii) Subject to Section 15.3(b)(iv), if Supplier ceases its use of Third Party Software provided by Hercules under the circumstances described in Section 15.3(b)(iii) and, as a direct result, Supplier is unable to perform certain Services or meet certain Service Levels, Supplier shall be relieved of responsibility for such Services and/or Service Level, but only if and to the extent Supplier (A) expeditiously notifies Hercules of its inability to perform under such circumstances, (B) cooperates with Hercules to address the resulting problem and thereby avoid any non-performance, and (C) uses commercially reasonable efforts to perform notwithstanding the unavailability of such Third Party Software. In addition, Hercules shall pay the applicable labor rate(s) for additional Supplier Personnel reasonably required by Supplier to perform under such circumstances and for the incremental Out-of-Pocket Expenses reasonably incurred by Supplier in doing so; provided that Supplier notifies Hercules of such additional required personnel and incremental Out-of-Pocket Expenses, obtains Hercules' approval prior to using such personnel or incurring such expenses, and uses commercially reasonable efforts to minimize such personnel and expenses. Supplier shall resume normal performance if and when the Parties obtain the right for Supplier to continue using such Third Party Software product, modify the item in question or its use so that it is no longer infringing, or replace such item with a non-infringing functional equivalent product.
- (iv) Notwithstanding Sections 15.3(b)(ii) and (iii), Hercules reserves the right to direct Supplier to continue using a Hercules provided Third Party Software product despite the assertion of a third party intellectual property infringement claim against Supplier with respect to such product. If Hercules elects to do so, Hercules shall indemnify, defend and hold Supplier harmless from any Losses resulting from Supplier's prior or continued use of such Third Party Software product, all in accordance with Sections 17.2(e) and 17.5.

15.4 Authorization.

Each Party represents, warrants and covenants to the other that:

- (a) **Corporate Existence.** It is a corporation duly incorporated, validly existing and in good standing under the Laws of its State of incorporation;
 - (b) **Corporate Power and Authority.** It has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
 - (c) **Legal Authority.** It has obtained all licenses, authorizations, approvals, consents or permits required to perform its obligations under this Agreement under all applicable federal, state or local laws and under all applicable rules and regulations of all authorities having jurisdiction over the Services, except to the extent the failure to obtain any such license, authorizations, approvals, consents or permits is, in the aggregate, immaterial;
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- (d) **Due Authorization.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party; and
- (e) **No Violation or Conflict.** The execution, delivery, and performance of this Agreement shall not constitute a violation of any judgment, order, or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default.

15.5 Inducements; Hercules Business Practices Policy.

- (a) **Inducements.** Supplier represents, warrants and covenants that it has not given and will not give commissions, payments, kickbacks, lavish or extensive entertainment, or other inducements of more than minimal value (as defined in the Hercules Business Practices Policy) to any employee or agent of Hercules in connection with this Agreement. Supplier also represents, warrants and covenants that, to the best of its knowledge, no officer, director, employee, agent or representative of Supplier has given any such payments, gifts, entertainment or other thing of value to any employee or agent of Hercules. Supplier also acknowledges that the giving of any such payments, gifts, entertainment, or other thing of value is strictly in violation of Hercules policy on conflicts of interest, and may result in the cancellation of this Agreement and other existing and future contracts between the Parties.
- (b) **Hercules Business Practices Policy.** Supplier represents, warrants and covenants that, in the performance of the Services and its other contractual obligations hereunder, it shall comply with the Hercules Business Practices Policy, as set forth in **Attachment T.3**, as such Business Practices Policy may be reasonably modified from time to time.

15.6 Disabling Code.

Supplier represents, warrants and covenants that, without the prior written consent of Hercules, Supplier shall not insert into the Software any code that could be invoked to disable or otherwise shut down all or any portion of the Services. Supplier further represents, warrants and covenants that, with respect to any disabling code that may be part of the Software, Supplier shall not invoke or cause to be invoked such disabling code at any time, including upon expiration or termination of this Agreement for any reason, without Hercules' prior written consent. Supplier also represents, warrants and covenants that it shall not intentionally use Third Party Software containing disabling code without the prior approval of Hercules. For purposes of this provision, code that serves the function of ensuring software license compliance (including passwords) shall not be deemed disabling code, provided that Supplier notifies Hercules in advance of all such code and obtains Hercules' approval prior to installing such code in any Software, Equipment or System.

15.7 Compliance with Laws.

- (a) **Compliance by Supplier.** Subject to **Section 15.7(b), (e), (f)** and **(g)**, Supplier represents, warrants and covenants that, with respect to the provision of the Services and the performance of any of its other legal and contractual obligations hereunder, it is and shall be in compliance with all applicable Laws on the Commencement Date and shall remain in compliance with such Laws for the Term and any Termination Assistance Services period, including identifying and procuring applicable permits, certificates, approvals and inspections required under such Laws. If a charge of non-compliance by Supplier with any such Laws occurs, Supplier shall promptly notify Hercules of such charge.
 - (b) **Compliance by Hercules.** Subject to **Section 15.7(a), (e)** and **(f)**, Hercules represents and warrants that, with respect to the performance by Hercules and the Eligible Recipients of Hercules' legal and contractual obligations under this Agreement, it is and shall be in compliance in all material respects with all applicable Laws for the entire Term of the Agreement. If a written charge of non-compliance by Hercules with any such Laws occurs, Hercules shall promptly notify Supplier of such charge.
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- (c) **Compliance Data and Reports.** At no additional charge, Supplier shall provide Hercules with data and reports in Supplier's possession necessary for Hercules to comply with all Laws applicable to the Services. At Supplier's request, Hercules shall provide Supplier with data and reports in Hercules' possession necessary for Supplier to comply with any Laws specifically applicable to Supplier and its performance of the Services.
- (d) **Software, Equipment, Systems and Materials Compliance.** Supplier covenants that the Software, Equipment, Systems and Materials owned, provided or used by Supplier in providing the Services are in compliance with all applicable Laws on the Commencement Date and shall remain in compliance with such Laws for the Term and any Termination Assistance Services period.
- (e) **Notice of Laws.** Supplier shall notify Hercules of any Laws and changes in Laws applicable to Supplier as a provider of BPO/ADM services and other in-scope services, including those Laws applicable to the employment of Supplier Personnel and the provision of Services from jurisdictions in which Supplier Facilities are located ("**Supplier Laws**"). The definition of Supplier Laws also shall include Laws applicable to (i) the technical, organizational and security measures associated with safeguarding Personal Data to be implemented and maintained by Supplier and at Supplier Facilities, and (ii) restrictions or prohibitions on the use or disclosure of Personal Data made available to Supplier under this Agreement. Hercules shall notify Supplier of any other Laws and any changes in such other Laws applicable to the provision or receipt of the Services (collectively, "**Hercules Laws**").

During the Transition Period, the Parties shall identify any additional Laws or areas of Law (i) as to which the displaced Hercules Personnel were responsible for keeping Hercules apprised prior to the Commencement Date, or (ii) for which Supplier can readily assume such responsibility. If such Laws or areas of Law are identified, the Parties shall confer in good faith as to the addition of such Laws or areas of Law to the definition of Supplier Laws and shall use commercially reasonable efforts to avoid or minimize to the extent practicable any increase in the applicable Charges.

Supplier shall, through the Supplier Personnel, maintain general familiarity with Hercules Laws, and shall bring additional or changed requirements that Supplier is aware of to Hercules' attention. Subject to its non-disclosure obligation under other customer contracts, Supplier also shall make commercially reasonable efforts to obtain information regarding such requirements from other outsourcing customer engagements and to communicate such information to Hercules in a timely manner. Each Party shall use commercially reasonable efforts to advise the other of Laws and changes in Laws about which such Party becomes aware in the other Party's area of responsibility, but without assuming an affirmative obligation of inquiry, except as otherwise provided herein, and without relieving the other Party of its obligations hereunder. At Hercules' request, Supplier Personnel shall participate in Hercules provided compliance training programs.

- (f) **Interpretation of Laws or Changes in Laws.** Hercules shall be responsible, with Supplier's cooperation and assistance, for interpreting Hercules Laws or changes in Hercules Laws and for identifying the impact of such Hercules Laws or changes in Hercules Laws on Supplier's performance and Hercules' and/or the Eligible Recipients' receipt and use of the Services. Supplier shall be responsible, with Hercules' cooperation and assistance, for interpreting Supplier Laws or changes in Supplier Laws and for identifying the impact of such Supplier Laws or changes in Supplier Laws on Supplier's performance and Hercules' and/or the Eligible Recipients' receipt and use of the Services. To the extent the impact of any Supplier Law or change in Supplier Law cannot be readily identified by Supplier, the Parties shall cooperate in interpreting such Law or change in Law and shall seek in good faith to identify and agree upon the impact on Supplier's performance and Hercules' and/or the Eligible Recipients' receipt and use of the Services. If the Parties are unable to agree upon such impact, Hercules shall retain the right, in its sole discretion, to interpret such Supplier Law or change in Supplier Law and determine its impact. In addition, if Supplier reasonably concludes, after due inquiry, that the compliance obligations associated with any Supplier Law or change in Supplier Law are unclear or that there is more than one reasonable approach to achieving compliance, Supplier may escalate the issue to Hercules for a final decision.
 - (g) **Implementation of Changes in Laws.** In the event of any changes in Laws (including Hercules Laws to the extent Supplier receives notice of such Hercules Laws from Hercules or as otherwise provided in Section
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15.7(e), Supplier shall implement any necessary modifications to the Services prior to the deadline imposed by the regulatory or governmental body having jurisdiction for such requirement or change. Supplier shall bear the costs associated with compliance with such changes in Laws applicable to the Services, unless such change meets the definition of New Service, in which case it shall be treated as a Project (and provided that, to the extent the benefits of such a Project are to be made available to one or more other Supplier customers, the Charges and/or number of FTE hours associated with such Project shall be allocated on a pro rata basis to Hercules and such other Supplier customer(s)). At Hercules' request, Supplier Personnel shall participate in Hercules provided regulatory compliance training programs.

- (h) **Export Control.** The Parties acknowledge that certain Software and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the laws and regulations of the United States, the European Union, the United Nations and other jurisdictions. No Party shall export or re-export any such items or any direct product thereof or undertake any transaction or service in violation of any such laws or regulations. To the extent within Supplier's control, Supplier shall be responsible for, and shall coordinate and oversee, compliance with such export laws in respect of such items exported or imported hereunder.
- (i) **Responsibility.** Subject to **Section 15.7(e)**, Supplier shall be responsible for any Losses imposed on Supplier, Hercules or the Eligible Recipients resulting from any failure of Supplier or its Subcontractors or third party product or service providers to comply with applicable Laws or respond in a timely manner to changes in such Laws, unless and to the extent such failure directly results from the sole acts or omissions of Hercules, an Eligible Recipient or a Hercules Third Party Contractor in contravention of Hercules' obligations under this Agreement, including Hercules' obligation under **Sections 15.7(e)** to notify Supplier of Hercules Laws and changes in such Laws.
- (j) **Assistance to Hercules.** As part of the Services and on an ongoing basis, Supplier shall assist Hercules and the Eligible Recipients as they may reasonably require in their efforts to comply with applicable Laws (including any changes to Laws) not applicable to Supplier or related to the Services.

15.8 Interoperability; Currency.

- (a) **Interoperability.** Subject to **Section 9.6** and the applicable Change Control Procedures, Supplier covenants that the Software, Equipment and Systems used by Supplier to provide the Services are fully compatible and interoperable with the Retained Systems and Business Processes (including the software, equipment and systems used by Hercules or the Eligible Recipients to provide the same or similar services and/or which may deliver records to, receive records from, or otherwise interact with the Software, Equipment and Systems used by Supplier to receive the Services) as of the Commencement Date and remain compatible and interoperable with such Retained Systems and Business Processes during the Term and any Termination Assistance Services period.
 - (b) **Monetary Currencies.** Supplier represents, warrants and covenants that the Software, Equipment, Systems and Services provided and/or used by Supplier will be able to receive, transmit, process, store, archive, maintain and support all applicable monetary currencies, including the currencies of all countries specified in **Exhibit 2**.
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15.9 Disclaimer.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES TO THE OTHER PARTY, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE .

16 INSURANCE AND RISK OF LOSS

16.1 Insurance.

- (a) **Requirements.** Supplier agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance with the specified minimum limits of liability during the term of this Agreement:
- (i) Workers' Compensation, Employer's Liability covering employees for occupational illnesses and injuries in full compliance with the applicable Laws of the state and/or country in which the work is to be performed or the country of hire (whichever is applicable).
 - (i) The limits of liability of Workers' Compensation, Employers' Liability shall be not less than the limits required by applicable Law.
 - (ii) In addition, in the United States the limits of liability of Employer's Liability Insurance shall be minimum limits of \$1 million per employee by accident/\$1 million per employee by disease (or, if higher, the limits required by applicable Law).
 - (ii) Commercial General Liability Insurance (including coverage for Contractual Liability assumed by Supplier under this Agreement, Premises-Operations, Completed Operations—Products, and Independent Contractors) providing coverage for bodily injury and property damage with limits of not less than \$5 million per occurrence and \$5 million in annual aggregate. This insurance coverage may be provided through any combination of Supplier's primary and Umbrella /Excess Liability Insurance policies, all of which comply with the requirements stated in **Sections 16.1(b)** and **(c)**.
 - (iii) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, leased, and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than \$5 million per occurrence. This insurance coverage may be provided through any combination of Supplier's primary and Umbrella /Excess Liability Insurance policies, all of which comply with the requirements stated in **Sections 16.1(b)** and **(c)**. If Services are performed outside the United States, Supplier shall maintain required compulsory insurance.
 - (iv) Professional Liability (also known as Errors and Omissions Liability) Insurance, including omissions coverage, covering acts, errors and omissions arising out of Supplier's operations or Services in an amount not less than \$10 million per occurrence and \$10 million in the annual aggregate. Supplier shall continue to purchase such coverage for a period of at least two (2) years from the termination or expiration of this Agreement.
 - (v) Comprehensive Crime Insurance, including employee dishonesty and computer fraud coverage and a third party extension, covering losses arising out of or in connection with any fraudulent or dishonest acts committed by Supplier employees, acting alone or with others, in an amount not less than \$10 million per occurrence and in annual aggregate.
 - (vi) All Risk Property Damage covering all assets owned by Supplier, for the replacement value of such assets.
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The above stated insurance coverage may be provided through any combination of Supplier's primary and excess insurance policies, all of which shall comply with the requirements stated in Sections 16.1(b) and (c).

- (b) **Approved Companies.** All such insurance shall be procured with reputable insurance companies and in such form as is usual and customary to Supplier's business. Such insurance companies shall maintain a rating at least "A-" and be at least a Financial Size Category VII as both criteria are defined in the most current publication of Best's Policyholder Guide.
- (c) **Endorsements.** Supplier's insurance policies as required herein under Section 16.1(a)(ii), including any umbrella/excess liability policies, shall name Hercules as Additional Insureds for any and all liability arising at any time in connection with Supplier's or Supplier Personnel's performance under this Agreement. All insurance required under this Section 16.1 shall be primary and non-contributing insurance and any other valid insurance existing for Hercules' benefit shall be excess of such primary insurance.
- (d) **Certificates.** Supplier shall provide Hercules with certificates of insurance evidencing compliance with this Article 16 (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect. Each certificate of insurance shall provide for notice of such cancellation, reduction or adverse material alteration has been provided at least thirty (30) days in advance to Hercules in accordance with Section 21.3(a).
- (e) **No Implied Limitation.** The obligation of Supplier and its Affiliates to provide the insurance specified herein shall not limit in any way any obligation or liability of Supplier provided elsewhere in this Agreement. The rights of Hercules and its subsidiaries, Affiliates and Eligible Recipients to insurance coverage under policies issued to or for the benefit of one or more of them are independent of this Agreement and shall not be limited by this Agreement.
- (f) **Insurance Subrogation.** With respect to insurance coverage to be provided by Supplier pursuant to this Section 16.1(a) (i), (ii), (iii) and (vi), the insurance policies shall provide that the insurance companies waive all rights of subrogation against Supplier, Hercules, the Eligible Recipients and their respective Affiliates, officers, directors and employees.

16.2 Risk of Loss.

- (a) **General.** Supplier and Hercules each shall be responsible for any damage, destruction, loss or theft of their respective tangible property or real property (whether owned or leased) and each Party agrees to look only to its own insuring arrangements (if any) with respect to such damage, destruction, loss or theft. Each Party shall promptly notify the other Party of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of such other Party's tangible property or real property (whether owned or leased) and cooperate with such other Party in seeking to recover for such damage or loss.
- (b) **Waiver.** Supplier and Hercules hereby waive, on behalf of themselves and shall cause their respective insurers to issue appropriate waivers of subrogation rights for, any claims that either may have against the other for loss or damage resulting from perils covered by the All Risk Property Damage. It is understood that this waiver is intended to extend to all such loss or damage whether or not the same is caused by the fault or neglect of either Supplier or Hercules and whether or not insurance is in force.

17 INDEMNITIES

17.1 Indemnity by Supplier.

Supplier agrees to indemnify, defend and hold harmless Hercules and its Affiliates and the Eligible Recipients and their respective officers, directors, employees, agents, representatives, successors, and assigns from any and all Losses and threatened Losses due to non-party claims arising from or in connection with any of the following:

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- (a) **Representations, Warranties and Covenants.** Supplier's breach of any of the representations, warranties and covenants set forth herein.
 - (b) **Reserved.**
 - (c) **Licenses, Leases and Contracts.** Supplier's failure to observe or perform any duties or obligations to be observed or performed on or after the Commencement Date by Supplier under Third Party Software licenses, Equipment leases or Third Party Contracts used by Supplier to provide the Services.
 - (d) **Hercules Data or Confidential Information.** Supplier's breach of its obligations with respect to Hercules Data, Hercules Personal Data or Hercules Confidential Information.
 - (e) **Infringement.** Infringement or misappropriation or alleged infringement or alleged misappropriation of a patent, trade secret, copyright or other proprietary rights in contravention of Supplier's representations, warranties and covenants in Sections 15.2 and 15.3.
 - (f) **Compliance with Laws.** Losses, including government fines, penalties, sanctions, interest or other remedies resulting from Supplier's failure to perform its responsibilities under this Agreement.
 - (g) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of Supplier under Section 11.4.
 - (h) **Shared Facility Services.** Services, products or systems provided by Supplier to a third party from any shared Supplier facility or using any shared Supplier resources and not constituting Services provided to an Eligible Recipient pursuant to this Agreement.
 - (i) **Affiliate, Subcontractor or Assignee Claims.** Any claim, other than an indemnification claim under this Agreement, initiated by (i) a Supplier Affiliate or Subcontractor asserting rights under this Agreement against an indemnified party or (ii) any entity to which Supplier assigned, transferred, pledged, hypothecated or otherwise encumbered its rights to receive payments from Hercules under this Agreement.
 - (j) **Supplier Personnel Injury Claims.** Any claim by Supplier Personnel for death, bodily injury, or illness, except to the extent caused by Hercules' gross negligence or willful misconduct.
 - (k) **Employment Claims.** Any claim relating to any (i) violation by Supplier, Supplier Affiliates or Subcontractors, or their respective officers, directors, employees, representatives or agents, of any Laws or any common law protecting persons or members of protected classes or categories, including Laws prohibiting discrimination or harassment on the basis of a protected characteristic; (ii) liability arising or resulting from the employment of Supplier Personnel by Supplier, Supplier Affiliates or Subcontractors (including liability for any social security or other employment taxes, workers' compensation claims and premium payments, and contributions applicable to the wages and salaries of such Supplier Personnel); (iii) payment or failure to pay any salary, wages or other cash compensation due and owing to any Supplier Personnel, (iv) employee pension or other benefits of any Supplier Personnel accruing from and after their Employment Effective Date, and/or (v) other aspects of the employment relationship of Supplier Personnel with Supplier, Supplier Affiliates or Subcontractors or the termination of such relationship, including claims for wrongful discharge, claims for breach of express or implied employment contract and claims of co-employment or joint employment (unless and to the extent such claims of joint employment are based in material part on acts of Hercules or the Eligible Recipients inconsistent with Hercules' rights and obligations under this Agreement and Supplier's status as an independent contractor), except, in each case, to the extent resulting from the wrongful actions of Hercules, the Eligible Recipients, or Hercules Third Party Contractors, errors or inaccuracies in the information provided by Hercules and faithfully communicated by Supplier or the failure of Hercules, the Eligible Recipients, or Hercules Third Party Contractors to comply with Hercules' responsibilities under this Agreement.
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17.2 Indemnity by Hercules.

Hercules agrees to indemnify, defend and hold harmless Supplier and its officers, directors, employees, agents, representatives, successors, and assigns, from any Losses and threatened Losses due to non-party claims arising from or in connection with any of the following:

- (a) **Representations, Warranties and Covenants.** Hercules breach of any of the representations, warranties and covenants set forth herein.
- (b) **Licenses, Leases or Contracts.** Hercules' failure to observe or perform any duties or obligations to be observed or performed by Hercules under any of the applicable Third Party Software licenses, Equipment Leases or Third Party Contracts to the extent Hercules is financially or operationally responsible under this Agreement.
- (c) **Reserved.**
- (d) **Supplier's Confidential Information.** Hercules breach of its obligations with respect to Supplier's Confidential Information.
- (e) **Infringement.** Infringement or misappropriation or alleged infringement or alleged misappropriation of a patent, trade secret, copyright or other proprietary rights in contravention of Hercules' representations, warranties and covenants in Section 15.3 (including Section 15.3(b)(iv)).
- (f) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of Hercules under Section 11.4.
- (g) **Hercules Affiliate, Eligible Recipient or Third Party Contractor Claims.** Any claim, other than an indemnification claim or insurance claim under this Agreement, initiated by a Hercules Affiliate, an Eligible Recipient (other than Hercules) or a Hercules Third Party Contractor asserting rights under this Agreement against an indemnified party.
- (h) **Employment Claims.** Any claim relating to any: violation by Hercules, its Affiliates or Eligible Recipients, or their respective officers, directors, employees, representatives or agents, of any Laws or any common law protecting persons or members of protected classes or categories, including Laws prohibiting discrimination or harassment on the basis of a protected characteristic, except to the extent resulting from the wrongful actions of Supplier, Supplier Affiliates or Subcontractors (or their respective officers, directors, employees, representatives or agents), errors or inaccuracies in the information provided by Supplier and faithfully communicated by Hercules, or the failure of Supplier, Supplier Affiliates or Subcontractors (or their respective officers, directors, employees, representatives or agents) to comply with Supplier's responsibilities under this Agreement.

17.3 Additional Indemnities.

Supplier and Hercules each agree to indemnify, defend and hold harmless the other, and the Eligible Recipients and their respective Affiliates, officers, directors, employees, agents, representatives, successors, and assigns, from any and all Losses and threatened Losses to the extent they arise from or in connection with any of the following: (a) except as otherwise provided in Section 17.1(j), the death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by the negligence or other tortious conduct of the indemnitor or the failure of the indemnitor to comply with its obligations under this Agreement; and (b) except as otherwise provided in Section 16.2, the damage, loss or destruction of any real or tangible personal property caused by the negligence or other tortious conduct of the indemnitor or the failure of the indemnitor to comply with its obligations under this Agreement.

17.4 Infringement.

In the event that (1) any Software, Equipment, Materials, or Services provided by Supplier or its Affiliates or Subcontractors pursuant to this Agreement or used by them in the performance of the Services are found, or in

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Hercules' reasonable opinion are likely to be found, to infringe upon the patent, copyright, trademark, trade secrets, intellectual property or proprietary rights of any third party in any country in which Services are to be performed or received under this Agreement, or (2) the continued use of such Software, Equipment or Materials are enjoined, Supplier shall, in addition to defending, indemnifying and holding harmless Hercules as provided in **Section 17.1(e)** and to the other rights Hercules may have under this Agreement, promptly and at its own cost and expense and in such a manner as to minimize the disturbance to Hercules' and the Eligible Recipients' business activities do one of the following:

- (a) **Obtain Rights.** Obtain for Hercules and the Eligible Recipients the right to continue using such Software, Equipment or Materials.
- (b) **Modification.** Modify the item(s) in question so that it is no longer infringing (provided that such modification does not degrade the performance or quality of the Services or adversely affect Hercules' and the Eligible Recipients' intended use as contemplated by this Agreement).
- (c) **Replacement.** Replace such item(s) with a non-infringing functional equivalent acceptable to Hercules.

17.5 Indemnification Procedures.

With respect to non-Party claims which are subject to indemnification under this Agreement (other than as provided in **Section 17.6** with respect to claims covered by **Section 17.1(f)**), the following procedures shall apply:

- (a) **Notice.** Promptly after receipt by any entity entitled to indemnification under this Agreement of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee will seek indemnification hereunder, the indemnitee shall notify the indemnitor of such claim. No delay or failure to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that such indemnitor has suffered actual prejudice by such delay or failure. Within fifteen (15) days following receipt of notice from the indemnitee relating to any claim, but no later than five (5) days before the date on which any response to a complaint or summons is due, the indemnitor shall notify the indemnitee that the indemnitor elects to assume control of the defense and settlement of that claim (a "**Notice of Election**").
 - (b) **Procedure Following Notice of Election.** If the indemnitor delivers a Notice of Election within the required notice period, the indemnitor shall assume sole control over the defense and settlement of the claim; provided, however, that (i) the indemnitor shall keep the indemnitee fully apprised at all times as to the status of the defense, and (ii) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such claim asserting any liability against the indemnitee or imposing any obligations or restrictions on the indemnitee or ceasing to defend against such claim. The indemnitor shall not be liable for any legal fees or expenses incurred by the indemnitee following the delivery of a Notice of Election; provided, however, that (i) the indemnitee shall be entitled to employ counsel at its own expense to participate in the handling of the claim, and (ii) the indemnitor shall pay the fees and expenses associated with such counsel if there is a conflict of interest with respect to such claim which is not otherwise resolved or if the indemnitor has requested the assistance of the indemnitee in the defense of the claim or the indemnitor has failed to defend the claim diligently and the indemnitee is prejudiced or likely to be prejudiced by such failure. The indemnitor shall not be obligated to indemnify the indemnitee for any amount paid or payable by such indemnitee in the settlement of any claim if (i) the indemnitor has delivered a timely Notice of Election and such amount was agreed to without the written consent of the indemnitor, (ii) the indemnitee has not provided the indemnitor with notice of such claim and a reasonable opportunity to respond thereto, or (iii) the time period within which to deliver a Notice of Election has not yet expired.
 - (c) **Procedure Where No Notice of Election Is Delivered.** If the indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the indemnitee shall have the right to defend the claim in such manner as it may deem appropriate. The indemnitor shall promptly reimburse the indemnitee for all such reasonable costs and expenses incurred by the indemnitee, including reasonable attorneys' fees.
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17.6 Indemnification Procedures - Governmental Claims.

With respect to claims covered by Section 17.1(f), the following procedures shall apply:

- (a) **Notice.** Promptly after receipt by Hercules of notice of the commencement or threatened commencement of any action or proceeding involving a claim in respect of which the indemnitee will seek indemnification pursuant to Section 17.1(f), Hercules shall notify Supplier of such claim. No delay or failure to so notify Supplier shall relieve Supplier of its obligations under this Agreement except to the extent that Supplier has suffered actual prejudice by such delay or failure.
- (b) **Procedure for Defense.** Hercules shall be entitled, at its option, to have the claim handled pursuant to Section 17.5 or to retain sole control over the defense and settlement of such claim; provided that, in the latter case, Hercules shall (i) consult with Supplier on a regular basis regarding claim processing (including actual and anticipated costs and expenses) and litigation strategy, (ii) reasonably consider any Supplier settlement proposals or suggestions, and (iii) use commercially reasonable efforts to minimize any amounts payable or reimbursable by Supplier.

17.7 Subrogation.

Except as otherwise provided in Sections 16.1, in the event that an indemnitor shall be obligated to indemnify an indemnitee pursuant to any provision of this Agreement, the indemnitor shall, upon payment of such indemnity in full, be subrogated to all rights of the indemnitee with respect to the claims to which such indemnification relates.

18 LIABILITY

18.1 General Intent.

Subject to the specific provisions and limitations of this Article 18, it is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred by the non-breaching Party as a result of the breaching Party's failure to perform its obligations in the manner required by this Agreement.

18.2 Force Majeure.

- (a) **General.** Subject to Section 18.2(d), no Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God; wars, terrorist acts, site-specific terrorist threats, riots, civil disorders, rebellions or revolutions; strikes, lockouts or labor disputes; or any other cause beyond the reasonable control of such Party; except to the extent that the non-performing Party is at fault in failing to prevent or causing such default or delay, and provided that such default or delay can not reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute by Supplier Personnel shall not excuse Supplier from its obligations hereunder. In addition, the refusal of Supplier Personnel to enter a facility that is the subject of a labor dispute shall excuse Supplier from its obligations hereunder only if and to the extent such refusal is based upon a clear and present danger of physical harm.
 - (b) **Duration and Notification.** In the event of a force majeure event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so prevented, hindered or delayed in its performance shall, as quickly as practicable under the circumstances, notify the Party to whom performance is due by telephone (to be confirmed in writing within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the force majeure event, the steps being taken to address such force majeure event, and the expected duration of such force majeure event.
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- (c) **Substitute Services; Termination.** If any event described in **Section 18.2(a)** has substantially prevented, hindered or delayed or is reasonably expected to substantially prevent, hinder or delay the performance by Supplier or one of its Subcontractors of Services necessary for the performance of critical Hercules or Eligible Recipient functions for longer than the recovery period specified in the applicable disaster recovery plan, or if there is no such recovery period, seventy two (72) hours, Supplier shall, unless and until otherwise directed by Hercules, use commercially reasonable efforts to procure such Services from an alternate source, at Supplier's expense for so long as the delay in performance shall continue, up to the Charges actually paid to Supplier for the Services with respect to the period of non-performance. If Supplier is unable to procure such substitute services on an expedited basis or Hercules elects to contract directly for such services, Hercules may procure such Services from an alternate source at Hercules' expense. In addition, if any event described in **Section 18.2(a)** substantially prevents, hinders or delays the performance by Supplier or one of its Subcontractors of Services necessary for the performance of critical Hercules functions (i) for more than five (5) days, Hercules, at its option, may terminate any portion of this Agreement so affected without payment of Termination Charges and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) for more than ten (10) days, Hercules, at its option, may terminate this Agreement in whole or part without payment of Termination Charges (provided that, in each case, Hercules shall confer in good faith with Supplier prior to exercising such termination right). Supplier shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Supplier's ability to perform.
- (d) **Disaster Recovery / Business Continuity.** Upon the occurrence of a force majeure event that constitutes a disaster under the applicable disaster recovery/business continuity plan, Supplier shall implement promptly, as appropriate, such disaster recovery/business continuity plan and provide disaster recovery and business continuity services as described in such plan and in **Schedule E**. The occurrence of a force majeure event shall not relieve Supplier of its obligation to implement the applicable disaster recovery/business continuity plan and provide disaster recovery and business continuity services, unless and to the extent such force majeure event prevents Supplier from implementing such plan or providing such services.
- (e) **Payment Obligation.** If Supplier fails to provide Services in accordance with this Agreement due to the occurrence of a force majeure event, all amounts payable to Supplier hereunder shall be equitably adjusted in a manner such that Hercules is not required to pay any amounts for Services that it is not receiving whether from Supplier or from an alternate source at Supplier's expense pursuant to **Section 18.2(c)** (provided that, if Supplier is ready and able to provide the Services and a force majeure event prevents Hercules from receiving such Services for more than twenty (20) days, the Parties shall confer in good faith and agree upon staffing, charges and other matters going forward and the Charges and other contract obligations will be adjusted accordingly).
- (f) **Allocation of Resources.** Without limiting Supplier's obligations under this Agreement, whenever a force majeure event or disaster causes Supplier to allocate limited resources between or among Supplier's customers and Affiliates, Hercules and the Eligible Recipients shall receive at least the same treatment as comparable Supplier customers. In no event will Supplier re-deploy or re-assign any Key Supplier Personnel to another customer or account in the event of the occurrence of a force majeure event.

18.3 Limitation of Liability.

- (a) **Exclusions from Limitations.** EXCEPT AS PROVIDED IN THIS **SECTION 18.3**, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, COLLATERAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 - (b) **Liability Cap.** Additionally, except as provided below, the total aggregate liability of either Party, for claims asserted by the other Party under or in connection with this Agreement, regardless of the form of the action or the theory of recovery, shall be limited to the total Charges payable to Supplier during the twelve (12) month period preceding the last act or omission giving rise to such liability; provided that, for the period beginning on the Effective Date and ending on the last day of the first Contract Year, the total aggregate
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liability of either Party shall be limited to the greater of \$7,000,000 or the total actual Charges payable to Supplier for the preceding twelve (12) months. For avoidance of doubt, this liability cap is an aggregate liability cap for the Master Agreement and all Companion Agreements.

- (c) **Exceptions to Limitations of Liability.** The limitations of liability set forth in Sections 18.3(a) and (b) shall not apply with respect to:
- (i) Losses occasioned by the fraud, willful misconduct, or gross negligence of a Party.
 - (ii) Losses that are the subject of indemnification under this Agreement (provided that a Party's liability for indemnification under Sections 17.1(a), (b) and (c) and 17.2(a), (b) and (c) shall be limited to an amount equal to the liability cap specified in Section 18.3(b), and a Party's liability for indemnification under Sections 17.1(d) and 17.2(d) shall be limited to an expanded liability cap equal to two times the liability cap specified in Section 18.3(b)).
 - (iii) Losses occasioned by Supplier's refusal to provide Services or Termination Assistance Services (for purposes of this provision, "refusal" shall mean the intentional cessation by Supplier, in a manner impermissible under this Agreement, of the performance of all or a material portion of the Services or Termination Assistance Services then required to be provided by Supplier under this Agreement).
 - (iv) Amounts paid under Section 17.3 with respect to death or bodily injury of an agent, employee, customer, business invitee, business visitor or other person or damage, loss or destruction of real or tangible personal property.
 - (v) Losses occasioned by any breach of a Party's obligations under Article 13 (excluding Losses attributable to non-Party claims, which are addressed in Sections 17.1(d) and 17.2(d))
- (d) **Items Not Considered Damages.** The following shall not be considered damages subject to, and shall not be counted toward the liability exclusion or cap specified in, Section 18.3(a) or (b):
- (i) Service Level Credits or Deliverable Credits assessed against Supplier pursuant to Schedule G.
 - (ii) Amounts withheld by Hercules in accordance with this Agreement due either to incorrect Charges by Supplier or non-conforming Services.
 - (iii) Amounts paid by Hercules but subsequently recovered from Supplier due either to incorrect Charges by Supplier or non-conforming Services.
 - (iv) Invoiced Charges and other amounts that are due and owing to Supplier for Services under this Agreement.
- (e) **Waiver of Liability Cap.** If, at any time, the total aggregate liability of one Party for claims asserted by the other Party under or in connection with this Agreement exceeds eighty percent (80%) of the liability cap specified in Section 18.3(a) and, upon the request of the other Party, the Party incurring such liability refuses to waive such cap and/or increase the available cap to an amount equal to equal to at least fifty percent (50%) of the original liability cap, then the other Party may terminate this Agreement without payment of Termination Charges.
- (f) **Acknowledged Direct Damages.** The following shall be considered direct damages and neither Party shall assert that they are indirect, incidental, collateral, consequential or special damages or lost profits to the extent they result from either Party's failure to perform in accordance with this Agreement:
- (i) Costs and expenses of recreating or reloading any lost, stolen or damaged Hercules Data.
 - (ii) Costs and expenses of implementing a work-around in respect of a failure to provide the Services or any part thereof.
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- (iii) Costs and expenses of replacing lost, stolen or damaged Equipment, Software, and Materials.
- (iv) Cover damages, including the costs and expenses incurred to procure the Services or corrected Services from an alternate source, to the extent in excess of Supplier's Charges under this Agreement.
- (v) Straight time, overtime or related expenses incurred by either Party, including overhead allocations for employees, wages and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges and similar charges.
- (vi) Costs and expenses incurred to bring the Services in-house or to contract to obtain the Services from an alternate source, including the costs and expenses associated with the retention of external consultants and legal counsel to assist with any re-sourcing.
- (vii) Damages of a Hercules Affiliate or an Eligible Recipient which would be direct damages if they had instead been suffered by Hercules (including being so considered under this Section 18.3(f)).
- (viii) Payments, fines, penalties, interest, sanctions, or other remedies imposed by a governmental body or regulatory agency or required by an applicable Law for failure to comply with legal requirements or deadlines.
- (ix) Damages, fines, penalties, interest or other monetary remedies awarded to non-government claimants by a court or in final settlement of a claim for failure to comply with applicable Laws.
- (x) Service Level Credits or Deliverable Credits assessed against Supplier pursuant to Schedules G, H or H.1 or other agreement of the Parties.
- (xi) Lost funds (including interest on such lost funds) resulting from Supplier's failure to make payments in accordance with the instructions of Hercules, the Eligible Recipients or the applicable Authorized Users or in compliance with applicable Laws.
- (xii) Lost funds (including interest on such lost funds) resulting from Supplier's extension of credit in violation of the policy or instructions of Hercules and/or the Eligible Recipients.
- (xiii) Lost funds (including interest on such lost funds) resulting from Supplier's failure to provide correct instructions for funds transfers, or failure to properly execute funds transfers.
- (xiv) Lost discounts, late fees and/or interest charges incurred by Hercules and the Eligible Recipients.

19 DISPUTE RESOLUTION

19.1 Informal Dispute Resolution.

Prior to the initiation of formal dispute resolution procedures with respect to any dispute, other than as provided in Section 19.1(d) and (e), the Parties shall first attempt to resolve such dispute informally, as follows:

- (a) **Initial Effort.** The Parties agree that the Hercules Relationship Manager and the Supplier Account Manager shall attempt in good faith to resolve all disputes (other than those described in Section 19.1(d)). The Parties also agree that to the extent provided in Schedule S or the Policy and Procedures Manual, the Executive Steering Committee shall attempt in good faith to resolve disputes (other than those described in Section 19.1(d)) between the Parties. In the event a dispute cannot be resolved in accordance with the foregoing in an amount of time that either Party deems reasonable under the circumstances, such Party may refer the dispute for resolution to the senior corporate executives specified in Section 19.1(b) below upon written notice to the other Party.
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- (b) **Escalation.** Within five (5) business days of a notice under Section 19.1(a) above referring a dispute for resolution by senior corporate executives, the Hercules Relationship Manager and the Supplier Account Manager will each prepare and provide to the Supplier Vice president - Global Sales and Marketing and the Hercules General Counsel, respectively, summaries of the non-privileged relevant information and background of the dispute, along with any appropriate non-privileged supporting documentation, for their review. The designated senior corporate executives will confer as often as they deem reasonably necessary in order to gather and furnish to the other all non-privileged information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The designated senior corporate executives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions will be left to the discretion of the designated senior corporate executives, but may include the preparation of agreed-upon statements of fact or written statements of position.
- (c) **Provision of Information.** During the course of negotiations under Section 19.1(a) or (b) above, all reasonable requests made by one Party to another for non-privileged information, reasonably related to the dispute, will be honored in order that each of the parties may be fully advised of the other's position. All negotiation shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for these proceedings shall not be used as evidence by the other Party in any subsequent arbitration or litigation; provided, however, the underlying facts supporting such materials may be subject to discovery.
- (d) **Prerequisite to Formal Proceedings.** Formal proceedings for the resolution of a dispute may not be commenced until the earlier of:
 - (i) the designated senior corporate executives under Section 19.1(b) above concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or
 - (ii) thirty (30) days after the notice under Section 19.1(a) above referring the dispute to senior corporate executives.
- (e) **Equitable Remedies.** The provisions and time periods specified in this Section 19.1 shall not be construed to prevent a Party from instituting, and a Party is authorized to institute, formal proceedings earlier to (A) avoid the expiration of any applicable limitations period, (B) preserve a superior position with respect to other creditors, (C) address a claim arising out of the breach of a Party's obligations under Article 13, or (D) address a claim arising out of the breach or attempted or threatened breach of the obligations described in the next paragraph.

Supplier acknowledges that, in the event it breaches (or attempts or threatens to breach) (i) its obligation to provide Services or Termination Assistance Services in accordance with this Agreement, its obligation respecting continued performance in accordance with Section 19.4, (ii) its obligations with respect to Hercules Confidential Information, Hercules Data and/or Hercules intellectual property rights in accordance with Articles 13 and 14, or (iii) its obligation to provide access to Hercules Data in accordance with Section 13.4, Hercules and/or the Eligible Recipients will be irreparably harmed. In such a circumstance, Hercules may proceed directly to court.

19.2 Arbitration.

- (a) **Arbitration.** Except for claims arising out of the breach of a Party's obligations under Article 13 or disputes subject to Sections 19.1(e), any controversy or claim arising out of or relating to this Agreement, or any breach thereof, which cannot be resolved using the procedures set forth above in Section 19.1 shall be finally resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association then in effect; provided, however, that without limiting any rights at law or in equity a Party may have because of an improper termination of this Agreement by the other Party, nothing contained in this Agreement shall limit either Party's right to terminate this Agreement pursuant to Article 20.
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- (b) **Location and Decision.** The Arbitration shall take place in Wilmington, Delaware, and shall apply the governing law of this Agreement. The decision of the arbitrators shall be final and binding and judgment on the award may be entered in any court of competent jurisdiction, notwithstanding the exclusive jurisdiction requirement in **Section 19.3**. The arbitrators shall be instructed to state the reasons for their decisions, including findings of fact and law. The language of the arbitration will be English. The arbitrators shall be bound by the warranties, limitations of liability and other provisions of this Agreement. Except with respect to the provisions of this Agreement which provide for injunctive relief rights, such arbitration shall be a precondition to any application by either Party to any court of competent jurisdiction.
- (c) **Selection and Qualification of Arbitrators.** Within ten (10) days after delivery of written notice (“**Notice of Dispute**”) by one Party to the other in accordance with this Section, the Parties each shall use good faith efforts to mutually agree upon one (1) arbitrator. If the Parties are not able to agree upon one (1) arbitrator within such period of time, the Parties each shall within ten (10) days: (i) appoint one (1) arbitrator who has at no time ever represented or acted on behalf of either of the Parties, and is not otherwise affiliated with or interested in either of the Parties and (ii) deliver written notice of the identity of such arbitrator and a copy of his or her written acceptance of such appointment to the other Party. If either Party fails or refuses to appoint an arbitrator within such ten (10) day period, the single arbitrator appointed by the other Party shall decide alone the issues set out in the Notice of Dispute. Within ten (10) days after such appointment and notice, such arbitrators shall appoint a third neutral and independent arbitrator who at no time ever represented or acted on behalf of either of the Parties, and is not otherwise affiliated with or interested in either of the Parties. In the event that the two (2) arbitrators fail to appoint a third arbitrator within ten (10) days of the appointment of the second arbitrator, either arbitrator or either Party may apply for the appointment of a third arbitrator to the American Arbitration Association.
- (d) **General.** All arbitrators selected pursuant to this Section shall possess at least five (5) years of relevant experience in technology, finance and/or law applicable to the Services or similar services or transactions. Any such appointment shall be binding upon the Parties. The Parties shall use best efforts to set the arbitration within sixty (60) days after selection of the arbitrator or arbitrators, as applicable, but in no event shall the arbitration be set more than ninety (90) days after selection of the arbitrator or arbitrators, as applicable. Discovery as permitted by the Federal Rules of Civil Procedure then in effect will be allowed in connection with arbitration to the extent consistent with the purpose of the arbitration and as allowed by the arbitrator or arbitrators, as applicable. The decision or award of the arbitrator or the majority of the three arbitrators, as applicable, shall be rendered within fifteen (15) days after the conclusion of the hearing, shall be in writing, shall set forth the basis therefore, and shall be final, binding and non-appealable upon the Parties. Notwithstanding the exclusive jurisdiction requirement in **Section 19.3**, the decision or award of the arbitrator or the majority of the three arbitrators, as applicable, may be enforced and executed upon in any court or other body having jurisdiction over the Party against whom the enforcement of such decision or award is sought. Each Party shall bear its own arbitration costs and expenses and all other costs and expenses of the arbitration shall be divided equally between the Parties; provided, however, the arbitrator or arbitrators, as applicable, may modify the allocation of fees, costs and expenses in the award in those cases where fairness dictates other than such allocation between the Parties.

19.3 Jurisdiction.

Subject to **Section 19.2**, each Party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in Wilmington, Delaware, and each Party irrevocably submits to the sole and exclusive jurisdiction of the courts in Delaware in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party. Notwithstanding the foregoing, Hercules may seek injunctive or other equitable relief or seek to enforce a judgment in any court of competent jurisdiction.

19.4 Continued Performance.

- (a) **General.** Each Party agrees that it shall, unless otherwise directed by the other Party, continue performing its obligations under this Agreement while any dispute is being resolved; provided, that this provision shall not operate or be construed as extending the Term of this Agreement or prohibiting or delaying a Party’s
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exercise of any right it may have to terminate the Term as to all or any part of the Services. For purposes of clarification, Hercules Data may not be withheld by Supplier pending the resolution of any dispute.

- (b) **Non-Interruption of Service.** Supplier acknowledges and agrees that any interruption to the Service will cause irreparable harm to Hercules and/or the Eligible Recipients, in which case an adequate remedy at law would not be available. Supplier expressly acknowledges and agrees that, pending resolution of any dispute or controversy, it shall not deny, withdraw, or restrict Supplier's provision of the Services to Hercules and/or the Eligible Recipients under this Agreement, except as specifically and expressly agreed in writing by Hercules and Supplier.

19.5 Governing Law.

This Agreement and performance under it shall be governed by and construed in accordance with the applicable laws of the State of Delaware, without giving effect to the principles thereof relating to conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

20 TERMINATION

20.1 Termination for Cause.

- (a) **By Hercules.** If Supplier:
- (i) commits a material breach of its obligations with respect to Transition Services as provided in **Section 4.2(f)**, which breach is not cured within the period specified in **Section 4.2(f)**;
 - (ii) commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of the breach from Hercules;
 - (iii) commits a material breach of this Agreement which is not capable of being cured within the period specified pursuant to **Section 20.1(a)(ii)**;
 - (iv) commits numerous breaches of its duties or obligations which collectively constitute a material breach of this Agreement;
 - (v) becomes liable for or incurs Service Level Credits under this Agreement that, in the aggregate, exceed fifty percent (50%) of the cumulative At Risk Amount during any rolling six (6) month period; or
 - (vi) fails to perform in accordance with the Minimum Service Level for same Critical Service Level for three (3) consecutive months or during four (4) of any six (6) consecutive month period;

then Hercules may, by giving notice to Supplier, terminate the Term with respect to all or any part of the Services, in whole or in part, as of a date specified in the notice of termination. Supplier shall not be entitled to any Termination Charges in connection with such a termination for cause. If Hercules chooses to terminate this Agreement in part, the Charges payable under this Agreement will be adjusted in accordance with the pricing by charge component, as set forth in **Schedule J**, to reflect such partial termination. For avoidance of doubt, the Parties acknowledge and agree that a material breach under this Master Agreement or any Companion Agreement shall be deemed a material breach under this Master Agreement and all Companion Agreements for purposes of this provision.

The express acknowledgment that a certain amount of Service Level Credits or number of Service Level defaults constitutes grounds for termination under **Section 20.1(a)(v)** and **(vi)** does not imply that a lesser amount or number cannot constitute a material breach of this Agreement and therefore grounds for termination under other subsections, and no Party shall contend otherwise in any dispute or controversy between the Parties.

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- (b) **By Supplier.** In the event that Hercules fails to pay Supplier undisputed Charges exceeding in the aggregate two (2) months of Monthly Base Charges by the specified due date and fails to cure such default within thirty (30) days of notice from Supplier of its intention to terminate for failure to make such payment, Supplier may, by notice to Hercules, terminate the Term. Supplier acknowledges and agrees that this Section 20.1(b) describes Supplier's sole right to terminate this Agreement and Supplier hereby waives any other rights it may have to terminate this Agreement.

20.2 Termination for Convenience.

Hercules may terminate the Term with respect to all Services or any Functional Service Area(s) for convenience and without cause at any time. If Hercules elects to terminate all Services provided under this Master Agreement and all Companion Agreements on this basis, Hercules shall give Supplier at least six (6) months prior notice designating the termination date. If Hercules elects to terminate less than all Functional Service Areas and/or less than all Companion Agreements, Hercules shall give Supplier at least ninety (90) days prior notice designating the termination date. In either event, Hercules shall pay to Supplier a Termination Charge calculated in accordance with Schedule N. In the event that a purported termination for cause by Hercules under Section 20.1 is determined by a competent authority not to be properly a termination for cause, then such termination by Hercules shall be deemed to be a termination for convenience under this Section 20.2.

20.3 Termination Upon Supplier Change of Control.

In the event of a change in Control of Supplier (or that portion of Supplier providing all or any material of the Services under this Agreement) or the Entity that Controls Supplier (if any), where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of Supplier (or that portion of Supplier providing all or any material of the Services under this Agreement) are acquired by any entity, or Supplier (or that portion of Supplier providing all or any material of the Services under this Agreement) is merged with or into another entity to form a new entity, then at any time within twelve (12) months after the last to occur of such events, Hercules may at its option terminate the Term by giving Supplier at least ninety (90) days prior notice and designating a date upon which such termination shall be effective; provided, however, if such change in Control of Supplier involves a Direct Hercules Competitor, Hercules may terminate the Term by giving Supplier at least thirty (30) days prior notice, and such Direct Hercules Competitor shall be prohibited from any contact with Hercules Data, Hercules Confidential Information and any and all other information about the Hercules account, including discussions with Supplier Personnel regarding specifics relating to the Services. Supplier shall not be entitled to any Termination Charges in connection with a termination on this basis. For avoidance of doubt, an initial public offering or secondary offering by Supplier shall not be deemed to be a Change of Control of Supplier and shall not trigger the right to terminate for convenience pursuant to this Section 20.3.

20.4 Termination Upon Hercules Acquisition or Merger.

In the event that, in a single transaction or series of transactions, Hercules acquires or is acquired by any other Entity (by stock sale, asset sale or otherwise) or merges with any other Entity, then, at any time within twelve (12) months after the last to occur of such events, Hercules may at its option terminate the Term by giving Supplier at least one hundred eighty (180) days prior notice and designating a date upon which such termination shall be effective. If Hercules elects to terminate on this basis, Hercules shall pay a Termination Charge equal to the greater of (i) seventy-five percent (75%) of the Termination Charge it would have been obligated to pay under Schedule N if it had terminated for convenience under Section 20.2, or (ii) an amount equal to the wind-down expenses (as defined in Section 2 (a) or (b) of Schedule N and unamortized balance sheet items (as defined in Section 2(c) of Schedule N reasonably incurred by Supplier.

20.5 Termination for Insolvency.

In the event that any Party (i) files for bankruptcy, (ii) becomes or is declared insolvent, or is the subject of any bona fide proceedings related to its liquidation, administration, provisional liquidation, insolvency or the appointment of a receiver or similar officer for it, (iii) passes a resolution for its voluntary liquidation, (iv) has a receiver or manager

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appointed over all or substantially all of its assets, (v) makes an assignment for the benefit of all or substantially all of its creditors, (vi) enters into an agreement or arrangement for the composition, extension, or readjustment of substantially all of its obligations or any class of such obligations, (vii) fails or become incapable of paying its debts as they become due or is otherwise in default under material contracts and fails to promptly cure such defaults, or (viii) experiences an event analogous to any of the foregoing in any jurisdiction in which any of its assets are situated, then the other Party may terminate this Agreement as of a date specified in a termination notice; provided, however, that Supplier will not have the right to exercise such termination under this Section so long as Hercules pays for the Services to be received hereunder in advance on a month-to-month basis. If any Party elects to terminate this Agreement due to the insolvency of the other Party, such termination will be deemed to be a termination for cause hereunder.

20.6 Hercules Rights Upon Supplier's Bankruptcy.

- (a) **General Rights.** In the event of Supplier's bankruptcy or other formal procedure referenced in Section 20.5 or of the filing of any petition under bankruptcy laws affecting the rights of Supplier which is not stayed or dismissed within thirty (30) days of filing, in addition to the other rights and remedies set forth herein, to the maximum extent permitted by Law, Hercules will have the immediate right to retain and take possession for safekeeping all Hercules Data, Hercules Confidential Information, Hercules licensed Third Party Software, Hercules owned Equipment, Hercules owned Materials, Hercules owned Developed Materials, and all other Software, Equipment, Systems or Materials to which Hercules and/or the Eligible Recipients are or would be entitled during the Term or upon the expiration or termination of this Agreement. Supplier shall cooperate fully with Hercules and the Eligible Recipients and assist Hercules and the Eligible Recipients in identifying and taking possession of the items listed in the preceding sentence. Hercules will have the right to hold such Hercules Data, Confidential Information, Software, Equipment, Systems and Materials until such time as the trustee or receiver in bankruptcy or other appropriate insolvency office holder can provide adequate assurances and evidence to Hercules that they will be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material or filing. Supplier and Hercules agree that without this material provision, Hercules would not have entered into this Agreement or provided any right to the possession or use of Hercules Data, Hercules Confidential Information, or Hercules Software covered by this Agreement.
- (b) **Hercules Rights in Event of Bankruptcy Rejection.** Notwithstanding any other provision of this Agreement to the contrary, in the event that Supplier becomes a debtor under the United States Bankruptcy Code (11 U.S.C. §101 et. seq. or any similar Law in any other country (the "**Bankruptcy Code**")) and rejects this Agreement pursuant to Section 365 of the Bankruptcy Code (a "**Bankruptcy Rejection**"), (i) any and all of the licensee and sublicensee rights of Hercules and the Eligible Recipients arising under or otherwise set forth in this Agreement, including without limitation the rights of Hercules and/or the Eligible Recipients referred to in Section 14.6, shall be deemed fully retained by and vested in Hercules and/or the Eligible Recipients as protected intellectual property rights under Section 365(n)(1)(B) of the Bankruptcy Code and further shall be deemed to exist immediately before the commencement of the bankruptcy case in which Supplier is the debtor; (ii) Hercules shall have all of the rights afforded to non-debtor licensees and sublicensees under Section 365 (n) of the Bankruptcy Code; and (iii) to the extent any rights of Hercules and/or the Eligible Recipients under this Agreement which arise after the termination or expiration of this Agreement are determined by a bankruptcy court not to be "intellectual property rights" for purposes of Section 365(n), all of such rights shall remain vested in and fully retained by Hercules and/or the Eligible Recipients after any Bankruptcy Rejection as though this Agreement were terminated or expired. Hercules shall under no circumstances be required to terminate this Agreement after a Bankruptcy Rejection in order to enjoy or acquire any of its rights under this Agreement, including without limitation any of the rights of Hercules referenced in Section 14.6.

20.7 Termination for Supplier Degraded Financial Condition.

If Supplier has a reduction in its long term credit rating as determined by Moody's Investors Service to "Ba" or below, then Hercules may, in its sole discretion, terminate this Agreement without payment of Termination Charges by giving Supplier at least ninety (90) days prior notice.

21 GENERAL

21.1 Binding Nature, Assignment.

- (a) **Binding Nature.** This Agreement will be binding on the Parties and their respective successors and permitted assigns.
- (b) **Assignment.** Neither Party may, or will have the power to, assign this Agreement without the prior written consent of the other, except in the following circumstances:
 - (i) Hercules may assign its rights or obligations under this Agreement, without approval of Supplier, to an Affiliate which expressly assumes Hercules' obligations and responsibilities hereunder, provided Hercules remains fully liable for and is not relieved from the full performance of its obligations under this Agreement; and
 - (ii) Hercules may assign its rights and obligations under this Agreement without the approval of Supplier to an Entity acquiring, directly or indirectly, Control of Hercules, an Entity into which Hercules is merged, or an Entity acquiring all or substantially all of Hercules' assets, provided the acquirer or surviving Entity agrees in writing to be bound by the terms and conditions of this Agreement (provided that, if the Entity by which Hercules is acquired or into which Hercules is merged is a Direct Supplier Competitor, the Parties shall confer in good faith regarding Supplier's competitive concerns and possible means of addressing such concerns, including the possibility of unwinding the relationship).
- (c) **Impermissible Assignment.** Any attempted assignment that does not comply with the terms of this Section shall be null and void.

21.2 Entire Agreement; Amendment.

This Agreement, including any Schedules and Exhibits referred to herein and attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertaking, whether written or oral, with respect to the subject matter contained in this Agreement. No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, modification, change, waiver, or discharge is sought to be enforced.

21.3 Notices.

- (a) **Primary Notices.** Any notice, notification, request, demand or determination provided by a Party pursuant to the following:

Section 4.3 (Termination Assistance Services);
Section 4.6(a) (Use of Third Parties - Right of Use);
Section 6.7 (Notice of Defaults);
Section 7.7 (Notice of Adverse Impact);
Section 11.5 (Extraordinary Events);
Section 13.1(d) (Loss of Confidential Information);
Section 16.1(d) (Cancellation, Expiration or Alteration of Insurance);
Sections 17.5 (Indemnification Procedures);
Section 17.6 (Indemnification Procedures - Government Claims);
Section 18.2 (Force Majeure);
Section 18.3(e) (Waiver of Liability Cap);
Section 19.1 (Informal Dispute Resolution);
Article 20 (Termination); and

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Section 21.1 (Binding Nature, Assignment);

shall be in writing and shall be delivered in hard copy using one of the following methods and shall be deemed delivered upon receipt: (i) by hand, (ii) by an express courier with a reliable system for tracking delivery, or (iii) by registered or certified mail, return receipt requested, postage prepaid. Unless otherwise notified, the foregoing notices shall be delivered as follows:

In the case of Hercules:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: Chief Financial Officer

With a copy to:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: General Counsel

and

In the case of Supplier:

Genpact International
Duna Plaza Offices, 4th Floor
H-1138 Budapest Vaci út 178
Hungary
Attention: Board of Managers
Facsimile: +361-330-8910

With a copy to:

Genpact International
DLF City-Phase V
Sector 53, Gurgaon - 122002
Haryana State, India
Attention: General Counsel
Facsimile: +91 124 402 2205

- (b) **Other Notices.** All notices, notifications, requests, demands or determinations required or provided pursuant to this Agreement, other than those specified in **Section 21.3(a)**, may be sent in hard copy in the manner specified in **Section 21.3(a)**, or by e-mail transmission (where receipt is acknowledged by the recipient) or facsimile transmission (with acknowledgment of receipt from the recipient's facsimile machine) to the addresses set forth below:

In the case of Hercules:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: Stephen F. Werbe
E-mail Address: swerbe@herc.com
Facsimile: 302-594-7200

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and

In the case of Supplier:

Genpact International
DLF IT Park
Tower 1, 7th Floor
8 Major Arterial Road
New Town, Rajarhat
Kolkata 700156
Attention: Subrata Mukherjee - Hercules Global Operating Leader
E-mail Address: Subrata.Mukherjee@genpact.com
Facsimile: +91 33 2324 2004

- (c) **Service of Process.** Notwithstanding the above, for the purpose of service of legal process and receipt of notice or pleadings in judicial proceedings before the federal or state courts of Delaware, as selected by the Parties under **Section 19.2** of the Agreement, both Parties to this Agreement and all parties to all Companion Agreements irrevocably appoint the company below as their agent for service of process and receipt of such notice or notification, and further elect domicile at the address of said company in Delaware, as follows:

In the case of Hercules:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: General Counsel

With a copy to:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: Chief Financial Officer

and

In the case of Supplier:

Genpact International
c/o National Corporate Research, Ltd.
615 South DuPont Highway
Dover, DE19901

With a copy to:

Genpact International
DLF City-Phase V
Sector 53, Gurgaon - 122002
Haryana State, India
Attention: General Counsel
Facsimile: +91 124 402 2205

- (d) **Notice of Change.** A Party may from time to time change its address or designee for notification purposes by giving the other prior notice of the new address or designee and the date upon which it shall become effective.
-

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21.4 Counterparts.

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

21.5 Headings.

The article and section headings and the table of contents used herein are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

21.6 Relationship of Parties.

Supplier, in furnishing services to Hercules and the Eligible Recipients hereunder, is acting as an independent contractor, and Supplier has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Supplier under this Agreement. The relationship of the Parties under this Agreement shall not constitute a partnership or joint venture for any purpose. Except as expressly provided in this Agreement, Supplier is not an agent of Hercules or the Eligible Recipients and has no right, power or authority, expressly or impliedly, to represent or bind Hercules or the Eligible Recipients as to any matters, except as expressly authorized in this Agreement.

21.7 Severability.

In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable to the full extent permitted by law.

21.8 Consents and Approval.

Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, confirmation, notice or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

21.9 Waiver of Default; Cumulative Remedies.

- (a) **Waiver of Default.** A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the Party waiving its rights.
- (b) **Cumulative Remedies.** All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise. The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party shall not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract or otherwise.

21.10 Survival.

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force

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and effect. Additionally, all provisions of this Agreement will survive the expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.

21.11 Publicity.

Neither Party shall use the other Party's name or mark or refer to the other Party directly or indirectly in any media release, public announcement, or public disclosure relating to this Agreement, including in any promotional or marketing materials, customer lists or business presentations without the prior written consent of the other Party prior to each such use or release. Neither Party shall make any public statements about this Agreement, the Services or the relationship contemplated hereunder without the other Party's prior approval.

21.12 Service Marks.

Each Party agrees that it shall not, without the other Party's prior consent, use any of the names, service marks or trademarks of such Party or where relevant, the Eligible Recipients in any of its advertising or marketing materials.

21.13 Third Party Beneficiaries.

Except as expressly provided herein, this Agreement is entered into solely between, and may be enforced only by, Hercules and Supplier. This Agreement shall not be deemed to create any rights or causes of action in or on behalf of any third parties, including without limitation employees, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

21.14 Covenant Against Pledging.

To the extent Supplier assigns, transfers, pledges, hypothecates or otherwise encumbers its rights to receive payments from Hercules under this Agreement, Supplier shall continue to be Hercules' sole point of contact with respect to this Agreement, including with respect to payment. The person or Entity to which such rights are assigned, transferred, pledged, hypothecated or otherwise encumbered shall not be considered a third party beneficiary under this Agreement and shall not have any rights or causes of action against Hercules.

21.15 Order of Precedence.

In the event of a conflict, this Agreement shall take precedence over the Schedules attached hereto, and the Schedules shall take precedence over any attached Exhibits.

21.16 Hiring of Employees.

- (a) **Solicitation and Hiring.** During the Term and for a period of twelve (12) months thereafter, Supplier will not solicit for employment directly or indirectly, nor employ, any employees of Hercules or an Eligible Recipient or individual Hercules Third Party Contractors without the prior approval of Hercules. Except as expressly set forth in **Section 4.3(b)(2)** during the Term and for a period of twelve (12) months thereafter, Hercules will not solicit for employment directly or indirectly, nor employ, any employee of Supplier involved in the performance of Supplier's obligations under this Agreement without the prior consent of Supplier. In each case, the prohibition on solicitation and hiring shall extend ninety (90) days after the termination of the employee's employment. This provision shall not operate or be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association.
 - (b) **Publications.** Neither the publication of classified advertisements in newspapers, periodicals, Internet bulletin boards, or other publications of general availability or circulation nor the consideration and hiring of persons responding to such advertisements shall be deemed a breach of this **Section 21.16**, unless the advertisement and solicitation is undertaken as a means to circumvent or conceal a violation of this provision and/or the hiring party acts with knowledge of this hiring prohibition.
-

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21.17 Further Assurances.

Each Party covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

21.18 Liens.

Supplier shall not file, or by its action or inaction permit, any liens to be filed on or against property or realty of Hercules or any Eligible Recipient. In the event that any such liens arise as a result of Supplier's action or inaction, Supplier shall obtain a bond to fully satisfy such liens or otherwise remove such liens at its sole cost and expense within ten (10) business days.

21.19 Covenant of Good Faith.

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

21.20 Acknowledgment.

The Parties each acknowledge that the terms and conditions of this Agreement have been the subject of active and complete negotiations, and that such terms and conditions should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

21.21 References.

Unless otherwise directed by Hercules, beginning twelve (12) months after the Effective Date, Supplier shall use Hercules as a reference at least once during the first six (6) months and once during the last six (6) month of each calendar year for prospective Supplier customers interested in purchasing services that include the same or substantially similar services to the Services. In conjunction with the foregoing, the Hercules Relationship Manager (or equivalent level of Hercules management), shall serve as the contact point for such prospective Supplier customers and shall respond to all inquiries in a timely manner. Notwithstanding Section 13.3, Supplier acknowledges and agrees that the Hercules Relationship Manager (or equivalent level of Hercules management) may freely discuss all aspects of Supplier's performance and Hercules' satisfaction with such performance with prospective Supplier customers. Supplier shall provide such prospective Supplier customers with appropriate Hercules contact information. The identity of such prospective Supplier customers and all information related thereto shall be considered Supplier Confidential Information.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

Hercules Incorporated

Genpact International SARI

| | | | |
|--------|------------------------------|--------|---------------------------------|
| By: | <u>/s/ Craig A. Rogerson</u> | By: | <u>/s/ V. N. Tyagarajan</u> |
| Title: | <u>President & CEO</u> | Title: | <u>Executive Vice President</u> |
| Date: | <u>January 16, 2007</u> | Date: | <u>January 15, 2007</u> |

End of TOC - Do not delete this paragraph!

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Hercules

Schedule A

Glossary

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Schedule A

Glossary

This is Schedule A to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”).

The following terms, when used in the Agreement or any Schedule or Attachment to the Agreement, shall have the meanings specified below.

- (1) “**Acceptance**” means the determination, in Hercules’ reasonable discretion, following implementation, installation, testing and execution in the production environment for a mutually agreed upon number of business cycles (of not less than one (1) cycle) that Software, Equipment, Systems and/or other contract deliverables are in Compliance in all material respects with the Specifications. Notwithstanding the foregoing, if (i) Hercules fails to provide Supplier notice of non-Acceptance within thirty (30) days following the completion of the agreed upon number of business cycles, (ii) Supplier notifies Hercules of such failure to provide written notice of non-Acceptance as described above, and (iii) Hercules thereafter fails to provide notice of non-Acceptance within five (5) days of such notice describing Hercules’ failure, then Acceptance shall be deemed to occur with respect to that Software, Equipment, Systems and/or other contract deliverables.
 - (2) “**Additional Resource Charge**” or “**ARC**” is the charge per Resource Unit that is applicable whenever the actual consumption of a defined Resource Unit by Hercules and the Eligible Recipients exceeds the Resource Baseline for such Resource Unit set forth in Schedule J. The total additional charges will be calculated by multiplying the Additional Resource Charge by the number of Resource Units in excess of the Resource Baseline actually consumed by Hercules and the Eligible Recipients as further described in Schedule J.
 - (3) “**Affiliate**” means with respect to any Entity, any other Entity that is directly or indirectly Controls, is Controlled by or under common Control with such Entity at the time in question.
 - (4) “**Agreement**” has the meaning given in the preamble to the Agreement.
 - (5) “**Allocation of Pool Percentage**” means the portion of the Pool Percentage Available for Allocation that is specified for a Performance Category. The total of all Allocation of Pool Percentages shall not exceed the Pool Percentage Available for Allocation.
 - (6) “**Applications Software**” or “**Applications**” means those software application programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) used to support day-to-day business operations and accomplish specific business objectives to the extent a Party has financial or operational responsibility for such programs or programming under Schedule E or Schedule J.1. Applications Software shall include all such programs or programming in use or required to be used as of the Commencement Date, including those set forth in Attachment E.9A to Schedule E and those as to which Supplier received reasonable notice and/or access prior to the Commencement Date. Applications Software also shall include all such programs or programming developed and/or introduced by or for Hercules or the Eligible Recipients on or after the Commencement Date to the extent a Party has financial or operational responsibility for such programs or programming under Schedule E or Schedule J.1.
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- (7) “**At Risk Amount**” means, for any month during the Term, an amount, expressed as a percentage of the Monthly Base Charges, which is the maximum amount that the Supplier will have at risk for Service Level Credits. The At Risk Amount shall be the percentage of the Monthly Base Charges set forth in **Schedule G** (i.e., 10%).
 - (8) “**Authorized User(s)**” means, individually and collectively, the employees, business units, contractors, subcontractors, customers, agents, representatives, and joint ventures of Hercules and the Eligible Recipients (other than Supplier and its Subcontractors) (i) mutually agreed upon by the Parties to receive or use the Systems or Services provided by Supplier, (ii) designated by Hercules or an Eligible Recipient to receive or use the Systems or Services provided by Supplier during the Transition Period, or (iii) that have master records in the applicable Systems or Applications (e.g., the SAP Application).
 - (9) “**Baseline Project FTEs**” has the meaning given in **Section 4.5(a)** of the Agreement.
 - (10) “**Benchmark Standard**” has the meaning given in **Section 11.8(c)** of the Agreement.
 - (11) “**Benchmarker**” has the meaning given in **Section 11.8(a)** of the Agreement.
 - (12) “**Benchmarking**” has the meaning given in **Section 11.8(a)** of the Agreement.
 - (13) “**BPO/ADM**” has the meaning given in **Section 1.1** of the Agreement.
 - (14) “**Charges**” means the amounts set forth in **Article 11** and **Schedule J** (or otherwise set forth in the Agreement) as charges due to the Supplier in return for providing the Services.
 - (15) “**Change Control Procedures**” has the meaning given in **Section 9.6(a)** of the Agreement.
 - (16) “**Commencement Date**” means April 1, 2007, or such other date as the Parties may agree upon in writing as the date on which Supplier shall assume full responsibility for the Services identified in the Agreement.
 - (17) “**Compliance**” and “**Comply**” means, with respect to outsourced business process(es), Software, Equipment, Systems or other contract deliverables to be implemented, designed, developed, delivered, integrated, installed and/or tested by Supplier, in compliance in all material respects with the Specifications.
 - (18) “**Confidential Information**” has the meaning given in **Section 13.1(a)** of the Agreement.
 - (19) “**Contract Changes**” has the meaning given in **Section 11.1(e)** of the Agreement.
 - (20) “**Contract Year**” means, for the first Contract Year, a period commencing on the Commencement Date and ending on December 31, 2006 and, for each ensuing Contract Year, a twelve (12) month period commencing on January 1 and ending on December 31. If any Contract Year is less than twelve (12) months, the rights and obligations under this Agreement that are calculated on a Contract Year basis will be proportionately adjusted for such shorter period.
 - (21) “**Control**” and its derivatives means: (a) the legal, beneficial, or equitable ownership, directly or indirectly, of (i) at least forty-five percent (45%) of the aggregate of all voting equity interests in an Entity, or (ii) equity interests having the right to at least forty-five percent (45%) of the profits
-

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of an Entity or, in the event of dissolution, to at least forty-five percent (45%) of the assets of an Entity; or (b) in the case of a partnership, the holding by an Entity (or one of its Affiliates) of the position of sole general partner.

- (22) “**Critical Deliverables**” means those deliverables performed on a one-time or periodic basis, for which a Deliverable Credit may be payable in accordance with **Schedule G** and described in **Attachment G.1**. Critical Deliverables are not Critical Service Levels.
 - (23) “**Critical Service Levels**” means those Service Levels established under **Schedule G** for which a Service Level Credit may be payable. Critical Service Levels are identified and defined in **Attachment G.1**. Each Critical Service Level has an Expected Service Level and a Minimum Service Level associated with it unless otherwise specified. It is the intent of the Parties that all Critical Service Levels shall be quantifiable, measurable and objective.
 - (24) “**Deliverable Credits**” means the monetary amount(s) that Supplier shall pay to Hercules (or apply against monthly Charges) in the event of a failure to achieve a Critical Deliverable as set forth in **Schedules G** and **H** or otherwise agreed by the Parties.
 - (25) “**Derivative Work**” means a work based on one or more preexisting works, including a condensation, transformation, translation, modification, expansion, or adaptation, that, if prepared without authorization of the owner of the copyright of such preexisting work, would constitute a copyright infringement under applicable Law, but excluding the preexisting work.
 - (26) “**Developed Materials**” means any Materials (including Software), or any modifications, enhancements or Derivative Works thereof, developed by or on behalf of Supplier for Hercules or the Eligible Recipients in connection with or as part of the Services.
 - (27) “**Direct Hercules Competitor**” means the Entities identified in **Schedule P.1** as such list of Entities may be modified by Hercules from time to time.
 - (28) “**Direct Supplier Competitor**” means the Entities identified in **Schedule P.2**.
 - (29) “**Earnback**” means the methodology used to determine the potential return of a Service Level Credit as described in Section 6 of **Schedule G**.
 - (30) “**Effective Date**” has the meaning given in the preamble to the Agreement.
 - (31) “**Eligible Recipients**” means, collectively, and to the extent such Entity is receiving Services under this Agreement, the following:
 - (a) Hercules;
 - (b) any Entity that is an Affiliate of Hercules on the Commencement Date, or thereafter becomes an Affiliate of Hercules;
 - (c) any Entity that purchases after the Commencement Date from Hercules or any Affiliate of Hercules, all or substantially all of the assets of Hercules or such Affiliate, or of any division, marketing unit, business unit, administrative unit, or manufacturing, research or development facility thereof, provided that such Entity agrees in writing to be bound by the terms and conditions of this Agreement;
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- (d) Intentionally blank;
 - (e) any Entity into which Hercules or any Affiliate of Hercules merges or consolidates, provided that such Entity has assumed Hercules' obligations under this Agreement, and provided further that such Entity agrees in writing to be bound by the terms and conditions of this Agreement;
 - (f) any Entity which merges into or consolidates with Hercules or any Affiliate of Hercules;
 - (g) Intentionally blank;
 - (h) Intentionally blank;
 - (i) any customer of an Eligible Recipient identified in clauses (a) through (h) above, or an Entity to which such an Eligible Recipient is a subcontractor, but only in connection with the provision of products or services by such Eligible Recipient to such customer;
 - (j) any person or Entity engaged in the provision of products or services to Hercules or an Eligible Recipient identified in clauses (a) through (h) above, but only in connection with the provision of such products or services to Hercules or such Eligible Recipient; and
 - (k) other entities to which the Parties agree.
- (32) “**Entity**” means a corporation, partnership, joint venture, trust, limited liability company, limited liability partnership, association or other organization or entity.
- (33) “**Equipment**” means all computing, networking, communications and related computing equipment (hardware and firmware) procured, provided, operated, supported, or used by Hercules, Supplier or Authorized Users in connection with the Services, including (i) mainframe, midrange, server and distributed computing equipment and associated attachments, features, accessories, peripheral devices, and cabling, (ii) personal computers, laptop computers, terminals, workstations and associated attachments, features, accessories, printers, multi-functional printers, peripheral devices, and cabling, and (iii) voice, data, video and wireless telecommunications and network and monitoring equipment and associated attachments, features, accessories, cell phones, peripheral devices, and cabling.
- (34) “**Expected Service Level**” means the level of performance designated as such for a Service Level, as set forth in Attachment G.1, below which an Expected Service Level Default shall be deemed to occur.
- (35) “**Expected Service Level Default**” means the Supplier's level of performance for a particular Service Level fails to meet the applicable Expected Service Level (but does not fail to meet the applicable Minimum Service Level) as specified in Attachment G.1, and has already failed to meet such Expected Service Level three (3) or more months in any rolling twelve (12) month period.
- (36) “**Extraordinary Event**” has the meaning given in Section 11.6(a) of the Agreement.
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- (37) “**Full Time Equivalent**” or “**FTE**” means a level of effort, excluding vacation, holidays, training, administrative and other non-productive time (but including a reasonable amount of additional work outside normal business hours), equivalent to that which would be provided by one person working full time for one year. Unless otherwise agreed, one FTE is assumed to be at least 1840 hours as described above per Contract Year for Services other than ADM Services and at least 2080 hours per Contract Year for ADM Services. Without Hercules’ prior written approval, one (1) dedicated individual’s total work effort cannot amount to more than one FTE.
- (38) “**Functional Service Area**” means each of the substantive areas defined in **Schedule E** in which Supplier shall provide Services (e.g., Global Procurement, Material Master, Accounts Payable, Order to Invoice, Invoice to Cash, General Accounting, Business Analysis, Applications Development and Maintenance).
- (39) “**Hercules Base Case**” means the summary financial base case attached hereto as **Schedule K**, as well as the detailed financial and budget information underlying such summary base case.
- (40) “**Hercules Data**” means any data or information of Hercules, an Eligible Recipient or an Authorized User that is provided to or obtained by Supplier in connection with the negotiation and execution of this Agreement or the performance of Supplier’s obligations under this Agreement, including data and information with respect to the businesses, customer, operations, facilities, products, rates, regulatory compliance, competitors, consumer markets, assets, expenditures, mergers, acquisitions, divestitures, billings, collections, revenues and finances of Hercules, any Eligible Recipient or an Authorized User. Hercules Data also means any data or information (i) created, generated, collected or processed by Supplier in the performance of its obligations under this Agreement, including data processing input and output, service level measurements, asset information, Reports, third party service and product agreements, contract charges, and retained expense and Pass-Through Expenses or (ii) that resides in or is accessed through Software, Equipment or Systems provided, operated, supported, or used by Supplier in connection with the Services, as well as information derived from this data and information.
- (41) “**Hercules Facilities**” means the facilities listed in **Schedule O.1** that are provided by Hercules or the Eligible Recipient for the use of Supplier to provide the Services.
- (42) “**Hercules Owned Materials**” has the meaning given in **Section 14.1** of the Agreement.
- (43) “**Hercules Owned Software**” means Software owned by Hercules, a Hercules Affiliate or an Eligible Recipient and used, operated, maintained or supported by or on behalf of Supplier under or in connection with this Agreement.
- (44) “**Hercules Personal Data**” or “**Personal Data**” means that portion of Hercules Data that is subject to any Privacy Laws.
- (45) “**Hercules Personnel**” means the employees, agents, contractors or representatives of Hercules or its Affiliates or Eligible Recipients who performed any of the Services to be provided by Supplier during the twelve (12) months preceding the Commencement Date.
- (46) “**Hercules Provided Equipment**” means the Equipment provided pursuant to **Schedule O.3**.
- (47) “**Hercules Relationship Manager**” has the meaning given in **Section 10.1** of the Agreement.
- (48) “**Hercules Rules**” has the meaning given in **Section 6.2(d)** of the Agreement.
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- (49) “**Hercules Service Taxes**” has the meaning given in Section 11.4(e) of the Agreement.
 - (50) “**Hercules Standards**” has the meaning given in Section 9.5(a) of the Agreement.
 - (51) “**Hercules Third Party Contractors**” has the meaning given in Section 4.6.
 - (52) “**Income Tax**” means any tax on or measured by the net income of a Party (including taxes on capital or net worth that are imposed as an alternative to a tax based on net or gross income), or tax which is in the nature of an excess profits tax, minimum tax on tax preferences, alternative minimum tax, accumulated earnings tax, personal holding company tax, capital gains tax or franchise tax for the privilege of doing business.
 - (53) “**Key Measurements**” means those Service Levels set forth in Attachment G.1 for which no Service Level Credit is payable, but which are meaningful to Hercules’ business.
 - (54) “**Key Supplier Personnel**” means the Supplier Personnel filling the positions designated in Schedule C.1 as Key Supplier Personnel.
 - (55) “**Laws**” means all federal, state, provincial, regional, territorial, local and other laws, statutes, ordinances, regulations, rules, executive orders, and other official releases of or by any government, or any authority, department or agency thereof, in any jurisdiction in which the Services are provided or received, including the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board. The definition of Laws shall include Privacy Laws. For purposes of this Agreement, Laws also shall include all generally accepted accounting principles (“**GAAP**”), as such principles and standards may be modified during the Term by the Public Company Accounting Oversight Board or other applicable authorities.
 - (56) “**Losses**” means all losses, liabilities, damages, fines, penalties, interest and claims (including taxes), and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, experts, and settlement).
 - (57) “**Major Release**” means a new version of Software that includes changes to the architecture and/or adds new features and functionality in addition to the original functional characteristics of the preceding Software release. These releases are usually identified by full integer changes in the numbering, such as from “7.0” to “8.0,” but may be identified by the industry as a major release without the accompanying integer change.
 - (58) “**Malicious Code**” means (i) any code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or interfere with the operation of the Software, code, program, or sub-program, itself, including time bombs, viruses, software locks, drop dead devices, malicious logic, worms, Trojan horses, defector trap doors, or (ii) any device, method, or token that permits any person to circumvent the normal security of the Software or the system containing the code.
 - (59) “**Materials**” means, collectively, Software, literary works, other works of authorship, specifications, designs, analyses, processes, methodologies, concepts, inventions, know-how, programs, program listings, programming tools, documentation, user materials, reports, drawings, databases, spreadsheets, machine-readable text and files, financial models and work product, whether tangible or intangible.
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- (60) “**Measurement Window**” means the time during, or frequency by, which a Service Level shall be measured. The Measurement Window will exclude Hercules approved scheduled maintenance.
 - (61) “**Minimum Service Level Default**” means the Supplier's level of performance for a particular Service Level fails to meet the applicable Minimum Service Level at any time.
 - (62) “**Minimum Service Level(s)**” means the minimum level of performance set forth in Attachment G.1.
 - (63) “**Minor Release**” means a scheduled release containing small functionality updates and/or accumulated resolutions to defects or non-conformances made available since the immediately preceding release (whether Major Release or Minor Release). Minor Releases shall include “Maintenance Releases” which are supplemental to and made available between Major Releases and other Minor Releases, issued and provided under specific vendor service level or maintenance obligations and contain only accumulated resolutions or mandated changes. These releases are usually identified by a change in the decimal numbering of a release, such as “7.12” to “7.13.”
 - (64) “**Monthly Base Charge**” means the Supplier Charges for Services associated with a specific Functional Services Area for a given month at the number of Resource Units included within the Resource Baseline(s) for the applicable month.
 - (65) “**New Advances**” has the meaning given in Section 9.14(e) of the Agreement.
 - (66) “**Monthly Invoice**” has the meaning given in Section 12.1 of the Agreement.
 - (67) “**New Services**” means new services that are materially different than the existing Services or non-trivial changes to the existing Services that, in each case, (i) are requested by Hercules, mandated by applicable Law, or required by changes to Hercules policies, procedures or technology infrastructure, and (ii) require materially different levels of effort, resources or expense from Supplier for which there is no current Resource Baseline or charging methodology.
 - (68) “**Notice of Election**” has the meaning given in Section 17.5(a) of the Agreement.
 - (69) “**Notice of Dispute**” has the meaning given in Section 19.2(c) of the Agreement.
 - (70) “**Out-of-Pocket Expenses**” means reasonable, demonstrable and actual out-of-pocket expenses due and payable to a third party by Supplier that are approved in advance by Hercules and for which Supplier is entitled to be reimbursed by Hercules under this Agreement. Out-of-Pocket Expenses shall not include Supplier's overhead costs (or allocations thereof), general and/or administrative expenses or other mark-ups. Out-of-Pocket Expenses shall be calculated at Supplier's actual incremental expense and shall be net of all rebates and allowances.
 - (71) “**Party**” or “**Parties**” means Hercules and Supplier.
 - (72) “**Pass-Through Expenses**” means the expenses, if any, listed in Schedule J, as such list may be amended by the Parties from time to time, for which Hercules has agreed in advance to be financially responsible, in accordance with Section 11.2 of this Agreement, following processing and review of the third party invoice by Supplier. Supplier shall not charge any handling or administrative charge in connection with its processing or review of such invoices.
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- (73) “**Performance Category**” means a grouping of Service Levels as set forth in Attachment G.1. Critical Deliverables do not constitute a Performance Category.
- (74) “**Policy and Procedures Manual**” has the meaning given in Section 9.1(a) of the Agreement.
- (75) “**Pool Percentage Available for Allocation**” means the total amount that may be allocated for Service Level Credits among the Critical Service Levels. The Pool Percentage Available for Allocation shall be as set forth in Schedule G.
- (76) “**Privacy Laws**” means Laws relating to data privacy, trans-border data flow or data protection (e.g., the implementing legislation and regulations of the European Union member states under the European Union Directive 95/46/EC), including, subject to Sections 9.16 and 15.7, any rules, regulations, directives, principles and policies of Hercules or an Eligible Recipient or any self-regulatory organizations to which Hercules or an Eligible Recipient belongs.
- (77) “**Projects**” has the meaning given in Section 4.5(a) of the Agreement.
- (78) “**Quality Assurance**” means the actions, planned and performed, to provide confidence that all business processes, Systems, Equipment, Software and components that influence the quality of the Services are working as expected individually and collectively.
- (79) “**Reduced Resource Credit**” or “**RRC**” means the credit per Resource Unit that is applicable whenever the actual consumption of a defined Resource Unit by the Eligible Recipients falls below the Resource Baseline for utilization of such Resource Unit set forth in Schedule J. The total credit will be calculated by multiplying the Reduced Resource Credit by the number of Resource Units below the Resource Baseline actually consumed by the Eligible Recipients as further described in Schedule J.
- (80) “**Reports**” has the meaning set forth in Section 9.2(a) of the Agreement.
- (81) “**Required Consents**” means the consents (if any) required to be obtained: (i) to assign or transfer to Supplier Hercules licensed Third Party Software, Third Party Contracts or Acquired Assets (including related warranties); (ii) to grant Supplier the right to use and/or access the Hercules licensed Third Party Software in connection with providing the Services; (iii) to grant Hercules and the Eligible Recipients the right to use and/or access the Supplier Owned Software, Third Party Software and Equipment acquired, operated, supported or used by Supplier in connection with providing the Services; (iv) to assign or transfer to Hercules, the Eligible Recipients or their designee(s) any Developed Materials, (v) to assign or transfer to Hercules, the Eligible Recipients or their designee(s) Supplier Owned Software, Third Party Software, Third Party Contracts, Equipment leases or other rights following the Term to the extent provided in this Agreement; and (vi) all other consents required from third parties in connection with Supplier’s provision of the Services or performance of its obligations hereunder.
- (82) “**Resource Baselines**” means the estimated number of Resource Units to be required and/or consumed by Hercules and the Eligible Recipients during a defined period of time and included in the Monthly Base Charges. The Resource Baselines as of the Commencement Date are set forth in Schedule J.
- (83) “**Resource Unit**” or “**RU**” means a measurable device, unit of consumption, staffing level, or other resource that is associated with the Services, as described in Schedule J, that is measured to determine Hercules’ and the Eligible Recipients’ actual utilization of such resource compared to
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the applicable Resource Baseline for purposes of calculating Additional Resource Charges and Reduced Resource Credits as described in Schedule J.

- (84) “**Retained Systems and Business Processes**” means those systems and business processes of Hercules or an Eligible Recipient for which Supplier has not assumed responsibility under this Agreement (including those provided, managed, operated, supported and/or used on their behalf by Hercules Third Party Contractors). Retained Systems and Business Processes include equipment and software associated with such systems and business processes that is not Supplier equipment or software.
- (85) “**Root Cause Analysis**” means the formal process to be used by Supplier to diagnose the underlying cause of problems at the lowest reasonable level so that corrective action can be taken that will eliminate repeat failures. Supplier shall implement a Root Cause Analysis as specified in Section 7.3 or as reasonably requested by Hercules.
- (86) “**Service Level Credit Allocation Percentage**” means, for a particular Critical Service Level, the portion of Allocation of Pool Percentage allocated to a Critical Service Level within a Performance Category and used to calculate the Service Level Credit payable to Hercules in the event of a Service Level Default in such Critical Service Level. In no event shall the sum of all Service Level Credit Allocation Percentages in any Performance Category exceed one hundred percent (100%).
- (87) “**Service Level Credits**” has the meaning given in Section 7.2 of the Agreement and Schedule G.
- (88) “**Service Level Default**” means a Minimum Service Level Default or an Expected Service Level Default.
- (89) “**Service Level(s)**” means, individually and collectively, the quantitative performance standards for the Services set forth in Schedule G.
- (90) “**Service Taxes**” means all sales, service, value-added, use, excise and other similar taxes that are assessed against either Party on the provision of the Services as a whole, or on any particular Service received by Hercules or an Eligible Recipient from Supplier, excluding Income Taxes.
- (91) “**Services**” means, collectively: (i) the services, functions and responsibilities described in Article 4 and elsewhere in this Agreement (including Transition Services, Transformation Services and Termination Assistance Services) as they may be supplemented, enhanced, modified or replaced during the Term in accordance with this Agreement; (ii) ongoing Projects and new Projects, upon Hercules’ acceptance of Supplier’s proposals for such Projects in accordance with Section 4.5 and the other provisions of this Agreement; and (iii) any New Services, upon Hercules’ acceptance of Supplier’s proposal for such New Services in accordance with Section 4.4 and the other provisions of this Agreement.
- (92) “**Software**” means all software programs and programming for which a Party is financially or operationally responsible under Schedule E or Schedule J.1 (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto), including Applications, development tools set forth in Attachment E.9A, and Systems Software.
- (93) “**Specialized Services**” has the meaning given in Section 9.11 of the Agreement.
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- (94) “**Specifications**” means, with respect to business processes, Software, Equipment, Systems or other contract deliverables to be designed, developed, delivered, integrated, installed and/or tested by Supplier, the technical, design and/or functional specifications set forth in **Schedule E** or **H**, in applicable third party vendor documentation made available to Supplier, in a New Services or Project description requested and/or approved by Hercules, or otherwise agreed upon in writing by the Parties. The Parties acknowledge and agree that such third party vendor documentation does not include marketing and sales materials, unless the applicable third party vendor provides a warranty with respect to such marketing and sales materials.
- (95) “**Staffing Plan**” has the meaning given in **Section 8.5(a)** of the Agreement.
- (96) “**Strategic Plan**” means the plans that may be periodically developed by Hercules that set forth Hercules’ key business objectives and requirements and outline its strategies for achieving such objectives and requirements. Hercules may revise the Strategic Plan from time to time. The Strategic Plan is likely to include both annual and multi-year strategies, objectives and requirements.
- (97) “**Subcontractors**” means subcontractors (of any tier) of Supplier, including Shared Subcontractors (as defined in **Section 9.13(c)**). The initial list of Subcontractors is set forth on **Schedule D**, each of which has been approved by Hercules to the extent such approval is required and described thereon. **Schedule D.1** may be amended during the Term in accordance with **Section 9.13**.
- (98) “**Supplier Account Manager**” has the meaning given in **Section 8.2** of the Agreement.
- (99) “**Supplier Facilities**” means, individually and collectively, the facilities owned or leased by Supplier (or its Affiliates or Subcontractors) from which Supplier (or its Affiliates or Subcontractors) provides any Services. Supplier Facilities are listed on **Schedule O.2** of the Agreement.
- (100) “**Supplier Laws**” has the meaning given in **Section 15.7(e)** of the Agreement.
- (101) “**Supplier Owned Materials**” has the meaning given in **Section 14.3(a)** of the Agreement.
- (102) “**Supplier Owned Software**” means any Software owned by Supplier and used to provide the Services.
- (103) “**Supplier Personnel**” means those employees, representatives, contractors, subcontractors and agents of Supplier, Subcontractors and Supplier Affiliates who perform any Services under this Agreement.
- (104) “**Supplier Service Taxes**” has the meaning given in **Section 11.4(e)** of the Agreement.
- (105) “**System**” means an interconnected grouping of manual or electronic processes, including Equipment, Software and associated attachments, features, accessories, peripherals and cabling, and all additions, modifications, substitutions, Upgrades or enhancements to such System, to the extent a Party has financial or operational responsibility for such System or System components under **Schedules E** or **J.1**. System shall include all Systems in use or required to be used as of the Commencement Date, all additions, modifications, substitutions, Upgrades or enhancements to such Systems and all Systems installed or developed by or for Hercules, the Eligible Recipients or Supplier following the Commencement Date.
-

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- (106) “**Systems Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that perform tasks basic to the functioning of the Equipment and are required to operate the Applications Software or otherwise support the provision of Services by Supplier, including operating systems, systems utilities, data security software, compilers, performance monitoring and testing tools and database managers, to the extent a Party has financial or operational responsibility for such programs or programming under Schedule E or Schedule J.1. Systems Software shall include all such programs or programming in use or required to be used as of the Commencement Date, including those set forth in Attachment E.9A to Schedule E, and those as to which Supplier received reasonable notice and/or access prior to the Commencement Date. Systems Software also shall include all such programs or programming developed and/or introduced by or for Hercules, the Eligible Recipients or Supplier after the Commencement Date to the extent a Party has financial or operational responsibility for such programs or programming under Schedule E or Schedule J.1.
- (107) “**Tax Authority**” means any federal, state, provincial, regional, territorial, local or other fiscal, revenue, customs or excise authority, body or official competent to impose, collect or assess tax.
- (108) “**Technology and Business Process Evolution**” means any improvement, upgrade, addition, modification, replacement, or enhancement to the standards, policies, practices, processes, procedures, methods, controls, scripts, product information, technologies, architectures, standards, Applications, Equipment, Software, Systems, tools, products, transport systems, interfaces and personnel skills associated with the performance of the in-scope business process products and services in line with the best practices of leading providers of such products and services. Supplier’s obligations with respect to Technology and Business Process Evolution apply not only to the Services performed by Supplier, but also to its support of the finance, accounting, customer service and related business processes and functions performed by or for Hercules and the Eligible Recipients. Technology and Business Process Evolution includes: (i) higher capacity, further scaling and commercializing of business processes, more efficient and scalable business processes, new versions and types of applications and systems/network software, new business or IT processes, and new types of hardware and communications equipment that will enable Supplier to perform the Services more efficiently and effectively as well as enable Hercules and the Eligible Recipients to meet and support their business requirements and strategies and (ii) any change to the Equipment, Software or methodologies used to provide the Services that is necessary to bring that function, Equipment or Software or those methodologies into line with the current industry standards.
- (109) “**Technology and Business Process Plan**” has the meaning given in Section 9.5(d) of the Agreement.
- (110) “**Term**” has the meaning given in Article 3.
- (111) “**Termination Assistance Services**” means the termination/expiration assistance requested by Hercules to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to Hercules or its designee, as such assistance is described in Section 4.3 and Schedule I.
- (112) “**Termination Charge**” means the termination charges payable by Hercules upon termination pursuant to Section 20.2 of the Agreement, as set forth in Schedule N.
-

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- (113) **“Third Party Contracts”** means all agreements between third parties and Hercules, an Eligible Recipient or Supplier (or Supplier’s Subcontractors or Affiliates) that have been or will be used to provide the Services to the extent a Party has financial or operational responsibility for such contracts under Schedule E or Schedule J.1. Third Party Contracts shall include all such agreements in effect as of the Commencement Date, and those as to which Supplier received reasonable notice and/or reasonable access prior to the Commencement Date. Third Party Contracts also shall include those third party agreements entered into by or for Hercules, an Eligible Recipient or Supplier (or Supplier’s Subcontractors or Affiliates) after the Commencement Date to the extent a Party has financial or operational responsibility for such Third Party Contracts under Schedule E or Schedule J.1.
- (114) **“Third Party Materials”** means intellectual property, Third Party Software or other Materials that are owned by third parties and provided under license to Supplier (or its Affiliates or Subcontractors) or Hercules (or the Eligible Recipients) and that have been or will be used to provide or receive the Services.
- (115) **“Third Party Software”** means all Software products (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are provided under license or lease to Supplier or Hercules or an Eligible Recipient that have been or will be used to provide or receive the Services to the extent a Party has financial or operational responsibility for such Software products under Schedule E or Schedule J.1. Third Party Software shall include all such programs or programming in use or required to be used as of the Commencement Date, including those set forth in Attachment E.9A, and those as to which Supplier received reasonable notice and/or access prior to the Commencement Date. Third Party Software also shall include all such programs or programming licensed and/or leased after the Commencement Date to the extent a Party has financial or operational responsibility for such Third Party Software under Schedule E or Schedule J.1.
- (116) **“Transition Milestone”** has the meaning given in Section 4.2(b) of the Agreement.
- (117) **“Transition Period”** means the period that commences on the Effective Date and expires 11:59:59 p.m., Eastern Time, on the date specified for the completion of the Transition Services as specified in the Transition Plan, unless extended in accordance with Section 4.2 of the Agreement.
- (118) **“Transition Plan”** means the outline set forth in Schedule H and the detailed plan developed pursuant to Section 4.2 of the Agreement.
- (119) **“Transition Services”** means the services, functions and responsibilities described in Section 4.2 of the Agreement and the Transition Plan to be performed by Supplier during the Transition Period.
- (120) **“Upgrade”** and its derivatives means the updates, renovations, enhancements, additions and/or new versions or releases of Software or Equipment by Supplier. Unless otherwise agreed, financial responsibility for the costs, fees and expenses associated with an Upgrade of Software or Equipment shall be allocated between the Parties in accordance with Section 6.4 and Schedule J.
- (121) **“Yearly Performance Weighted Average”** means, with respect to each Critical Service Level for which there was a Service Level Default during the preceding Contract Year, the average of the Supplier’s average monthly performances in the Critical Service Level during the preceding Contract Year.
-

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Hercules

Schedule C

Key Supplier Personnel

and

Competitive Restrictions

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SCHEDULE C.1

KEY SUPPLIER PERSONNEL

This is **Schedule C.1** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

In accordance with **Section 8.1** of the Agreement, Key Supplier Personnel shall hold the following positions and the Key Supplier Personnel listed for each such position are approved as of the Effective Date.

| Position | Key Supplier Personnel | Committed Period | Location |
|--|--|----------------------------------|----------|
| Relationship Manager | William K Childress | 2 years* | USA |
| Supplier Account Manager / Operations Leader | Subrata Mukherjee | 2 years | India |
| Service Delivery Leader | Jorge Lopez | 2 years | Mexico |
| Service Delivery Leader | Andrei Romanescu | 2 years | Europe |
| Applications Development and Maintenance (including production support) On-Site Project Manager | Karthikeyan Natarajan (subject to final Hercules approval) | 2 years | USA |
| Applications Development and Maintenance (including production support) Offshore Project Manager | TBD | 2 years | India |
| Transition Leader | Satish Mokkalpati | For applicable Transition Period | India |
| Transition Leader | Laura Trevizo | For applicable Transition Period | Mexico |
| Transition Leader | Nico Verhelst | For applicable Transition Period | Europe |
| ADM Transition Leader | TBD (may be the same as the ADM on-site project manager) | For applicable Transition Period | USA |

* Notwithstanding anything to the contrary in **Section 8.1** of the Agreement, the Relationship Manager shall not be obligated to provide full time and effort to Hercules.

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SCHEDULE C.2

COMPETITIVE RESTRICTIONS

This is **Schedule C.2** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

The following positions are subject to the restrictions described in **Section 8.4(d)**:

| Position |
|---|
| All positions relating to Key Supplier Personnel (other than the Relationship Manager, Bill Childress as of the Effective Date) |
| Supplier Personnel performing business analytical Services, unless otherwise mutually agreed |
| Other Supplier Personnel as mutually agreed |

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Hercules

Schedule D

Subcontractors

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SCHEDULE D

SUBCONTRACTORS

This is **Schedule D** to the Master Professional Services Agreement between Hercules and Supplier (the “**Agreement**”). Unless otherwise expressly defined herein, all capitalized terms used herein shall have the meaning assigned to them in the Agreement.

The Supplier may utilize the following Subcontractors to perform the services described below in accordance with **Section 9.13** of the Agreement:

| Subcontractor | Functional Service Area | Description/Scope of Services | Audit Rights Per Section 9.10 | Assignment Rights Per Section 6.4(c) | Post Termination Rights Per Section 4.3(b)(2)(ii) |
|---|--|--|-------------------------------|--------------------------------------|---|
| Runway International | Service Center | Runway provides high quality outsourced multi-lingual services (with a specific focus on Nordic languages: Swedish, Finnish). The scope of activities include IT Helpdesk, Order Management and Customer Service. | Yes | No | No |
| Xerox Global Services, Docuguard, Iron Mountain | Scanning, Imaging, Archiving and Printing services | Scanning, Imaging, Archiving and Printing services of documents in Europe. | No | No | No |
| Bharti, BSNL, Reliance, TAT teleservices, VSNL AT&T, BT Global services, C&W, Energies, MCI, Sprint Telstra, VSNL | Telecommunications, Datalines, etc | Electronic telecommunications and data transfer | No | No | No |
| Apara, CMS, Data craft, E&Y Gartner, GTL, HP, KPMG, MIEL e Security, Price Waterhouse Coopers, Wipro | Various consulting and maintenance requirements | Training of Supplier Personnel, Supplier internal information technology, maintenance, consulting and business process support. For the avoidance of doubt, these Subcontractors are not approved hereunder for providing Supplier Personnel that are FTE Resource Units. | No | No | No |

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Hercules
SCHEDULE E

STATEMENT OF WORK

SCHEDULE E

Statement of Work

This is **Schedule E** to the Master Professional Services Agreement by and between Hercules and Supplier. All capitalized terms and acronyms used but not defined in this **Schedule E** will have the meanings given them in the Agreement, and if not defined therein, their meaning in the information technology and business process industries or the SAP Software and related process, as applicable.

I. General

Supplier shall provide to Hercules the quantity of Supplier Personnel as set forth in **Schedules J** and **M** and as otherwise required under the Agreement or requested by Hercules. Such Supplier Personnel shall have the skills and experiences (the “**Profiles**”) described below in **Section II** to this **Schedule E** and be qualified to perform the services, functions and responsibilities described in **Schedules E.1** through **E.12**, as well as any additional services, functions and responsibilities that Supplier is obligated to perform under the Agreement. Supplier shall perform such Services pursuant to the Agreement (including the Staffing Assurances set forth in **Schedule J**) and subject to the following:

1. To the extent Services are characterized to be provided to Hercules, such Services will also be provided to the Eligible Recipients. References to Hercules will be deemed to also be references to Eligible Recipients.
2. The specific Services described in each Statement of Work Schedule attached to this **Schedule E** (e.g., **Schedules E.1**, and **E.2**) are indicative of certain Services Hercules may require and Supplier shall perform under the Agreement. During the Transition Period, the Parties intend to revise and refine the specific Statements of Work set forth in this **Schedule E** as mutually agreed.
3. The Hercules Relationship Manager (or his or her designee) may prioritize Services and identify other new or additional work activities that could be performed by Supplier Personnel with the skills and experiences described herein or as otherwise required under the Agreement, subject to the other provisions of the Agreement.
4. Supplier shall provide the Services as necessary in order to satisfy the Service Levels and in accordance with the Policy and Procedures Manual, the then current Hercules Standards as described in **Section 9.5** in the Agreement, applicable Laws (in accordance with **Section 15.7** of the Agreement), and as directed by Hercules from time to time. Supplier shall manage and perform the Services in a tightly integrated manner and fully cooperate with any Hercules Third Party Contractor providing information technology infrastructure Services. The foregoing includes using Hercules’ Remedy System and related tools and infrastructure, including the help desk.
5. Supplier shall provide the Services as they may evolve and be supplemented and enhanced during the Term of the Agreement due to changes in applicable Laws, technologies and Hercules’ business needs.
6. Nothing herein shall limit Supplier’s obligations to meet the Staffing Assurances described in **Schedule J**.

II. Supplier Profiles

Supplier shall provide FTE Supplier Personnel with the following minimum Profiles for the applicable Services. The Profiles below shall be revised and refined during the Transition Period based on Hercules’ requirements and Supplier shall seek to provide Supplier Personnel meeting

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such requirements using commercially reasonable efforts and by prioritizing the Hercules account. From time-to-time thereafter, the Parties may mutually agree to revise and refine such Profiles based on Hercules' then-current requirements.

References in the Profiles to experience mean relevant experience. References to a "Commerce" degree or background mean a business, finance or accounting degree or background.

Before assigning any proposed Supplier Personnel to perform the Services, whether as an initial assignment or a subsequent assignment, Supplier shall (i) verify that such Supplier Personnel meets the requirements of the Profile, (ii) notify Hercules of the proposed assignment, (iii) provide reasonable opportunity for Hercules representatives to interview (in-person or through a conference call) the individual, and (iv) provide Hercules with a resume and such other information about the individual as may be reasonably requested by Hercules.

If Hercules in good faith objects to any proposed assignment or the proposed individual does not meet the applicable Profile, the Parties shall attempt to resolve that situation on a mutually agreeable basis. If the Parties have not been able to resolve that situation within five (5) business days of Hercules communicating its concerns to Supplier, Supplier shall not assign the individual to that position and shall propose to Hercules the assignment of another individual meeting the applicable Profile in accordance with the Agreement.

1. Global Procurement

| | Purchasing Indirect (Non Repetitive) | Purchase Data Maintenance and Material Master Maintenance (SAP) |
|---------------------------------|--|---|
| Skill Set/Qualifications | Basic college degree in Engineering / Science / Commerce | Basic college degree or equivalent |
| | Good reading / writing capabilities: English, Spanish, Italian, French, German, Swedish, Finnish throughout the team (alternatively, ability to use translation tools or support from other labor pools) | |
| | Good spoken/verbal communication skills - English | Good spoken/verbal communication skills - English |
| | Experience - 0 to 3 years in commerce or engineering | Experience - 0 to 3 years |
| | At least 1 or 2 Supplier Personnel will have practical experience. | |



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Supervisor-

- o Graduate/ post graduate degree
- o Strong leadership and team handling skills
- o Relevant purchase-to-pay team lead experience
- o Good understanding of the business and an analytical background

2. Accounts Payable

| | Accounts Payable |
|--------------------------|--|
| Skill Set/Qualifications | Basic college degree with Commerce/Non-commerce background |
| | Good reading / write capability: English, Spanish, Italian, French, German, Swedish, Finnish throughout the team (alternatively, ability to use translation tools or support from other labor pools) |
| | Good spoken/verbal communication skills - English |
| | Experience - 0 to 2 years |
| | At least 1 or 2 Supplier Personnel will have practical experience. |

Supervisor-

- o Graduate/ post graduate commerce degree
 - o Strong leadership and team handling skills
 - o Relevant accounts payable and/or invoice-to-pay team leader experience and transaction processing experience
 - o Good understanding of the business and an analytical background
-

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3. Order To Invoice

| | Customer Service Representative |
|---------------------------------|--|
| Skill Set/Qualifications | High school diploma; actively pursuing a college degree, desired |
| | 2 or more years of experience in a traditional customer service environment or related service situation |
| | SAP or equivalent application experience |
| | Other attributes: |
| | <ul style="list-style-type: none"> • Customer focused • Action oriented • Ability to make timely decisions • Ability to learn on the fly • Excellent interpersonal skills • Effective listening skills • Demonstrated technical learning • SAP knowledge - sales order to invoice • Personal computer skills, including skills with Excel, Word and Lotus Notes |
| | Language skills - English and others as applicable |

| | Business Support / Internal Sales |
|---------------------------------|---|
| Skill Set/Qualifications | Commercial or technical education; bachelors degree, preferred |
| | 5 or more years of experience in sales or customer service |
| | Other attributes and skills: |
| | <ul style="list-style-type: none"> • SAP or other ERP knowledge, desirable • Lotus Notes (or other email) and MS Office knowledge (basic Excel skills) • Team player • Communication • Initiative • Attention to detail • Business acumen • Action oriented • Customer focus • Negotiation skills |
| | Knowledgeable in English (spoken, verbal, writing skills); second international language as described below, subject to Hercules requirements |

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| Supervisor | |
|---|--|
| Skill Set/Qualifications | • B.S. or B.A. degree (technical degree, preferred) |
| | • 5 or more years of experience in business management, supply chain, sales, and/or related fields |
| | • Background in sales, business management, and/or supply chain, preferred. |
| | • Proven leadership skills and the willingness to work in a changing environment with flexibility and adaptability |
| | • Computer literate, preferably familiar with SAP |
| Other attributes: | |
| • Customer focused | |
| • Action oriented | |
| • Experience directing others | |
| • Command skills | |
| • Negotiating skills | |
| • Good ethics and values; integrity and trust | |
| • Excellent communication skills; Informing | |
| • Conflict management | |
| • Ability to build effective teams | |
| • Caring about direct reports | |
| • Developing direct reports | |
| • Organizational agility | |

| Language Skills | |
|-----------------|--|
| PTV Europe | Dutch, French, English, Swedish, Finnish, German, Spanish, Portuguese, Italian |
| Aqualon Europe | Dutch, French, English, German, Spanish, Turkish, Italian, Russian |

4. Invoice To Cash (North America)

| Skill Set/Qualifications | Accounts Receivables | Credit & Collections |
|--------------------------|---|---|
| | Basic college degree | Basic college degree |
| | Good communication skills - verbal and written | Good communication skills - verbal and written |
| | Good spoken/verbal communication skills - English | Good spoken/verbal communication skills - English |
| | Experience - 0 to 3 years | Experience - 0 to 3 years |

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Supplier shall also provide supervisors and managers with the following qualifications -

Supervisor -

- o Graduate/ Post Graduate degree
- o 2-3 years of team handling experience
- o Good understanding of the business and an analytical bent of mind

Manager -

- o Graduate/ Post Graduate degree
- o Strong leadership and team handling skills
- o Ability to lead and execute projects
- o 4-5 years of relevant experience in handling accounts receivable or financial portfolios

5. Invoice To Cash (Europe)

| | Accounts Receivables | Credit & Collections |
|---------------------------------|------------------------------------|---|
| Skill Set/Qualifications | Basic college degree | Basic college degree |
| | Good communication skills | Good communication skills - verbal/written |
| | Language (spoken/verbal) - English | Language (spoken/verbal) - English / French / Italian/ Spanish/ German/ Dutch |
| | Experience - 0 to 3 years | Experience - 0 to 3 years |

Supervisor -

- o Graduate/ post graduate degree
- o 2-3 years of team handling experience
- o Good understanding of the business and an analytical bent of mind

Manager -

- o Graduate/ post graduate degree
- o Strong leadership and team handling skills
- o Ability to lead and execute projects
- o 4-5 years of relevant experience in handling accounts receivable or financial portfolios

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6. General Account (Record to Report)

| | Record to Report |
|---------------------------------|--|
| Skill Set/Qualifications | Basic college degree with Commerce background |
| | Good communication skills -verbal/written |
| | Language - English |
| | <ul style="list-style-type: none"> • Experience - 2 to 3 years • Familiarity with SAP (preferred, other ERP application experience may also be acceptable), MS Office, and reporting • Hyperion or Unison experience, desirable |
| | |

Supplier shall also provide one manager who is common to the business analysis and record to report Services. This individual shall be a qualified accountant with 3-4 years of relevant work experience and report into the Service delivery leader for all finance and accounting related processes. This manager would be responsible for doing the initial review at Supplier and providing regular updates and dashboard calls with Hercules.

Manager:

- o Graduate/ post graduate degree with commerce background
- o Strong leadership and team handling skills
- o Ability to lead and execute projects.
- o 4-5 years of relevant experience

7. Global Business Analysis

| | Global Business Analysis |
|---------------------------------|--|
| Skill Set/Qualifications | Basic College Degree with Commerce background |
| | Good communication skills -verbal/written |
| | Language - English |
| | <ul style="list-style-type: none"> • Experience - 3 to 5 years • Familiarity with SAP (preferred, other ERP application experience may also be acceptable), MS Office, and reporting • Hyperion or Unison experience, desirable |
| | |

9. Other

Other Profiles are set forth in the applicable Statement of Work.

III. Other Requirements and Services



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The ratios of Supplier Personnel shall be no less advantageous to Hercules than the following: (i) 1:15 supervisors to associates, and (ii) 1:60 operations leaders to associates, except for Services performed in Europe where five (5) team leaders shall exist per 56 FTEs.

Supplier shall also provide at no Charge: (i) one (1) dedicated full time operation leader in India (whereas in Romania and Mexico the operation leaders shall be shared), (ii) supervisors and operations leaders (at the ratios described above), and (iii) two (2) FTE man-months of high analytics support Services per Contract Year as requested by Hercules. The Parties acknowledge and agree that such FTEs are in addition to and not set forth in **Schedule J**.

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HERCULES

Schedule E.1

Global Procurement



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1.0 INTRODUCTION

This Schedule details certain Global Procurement services that the Supplier will provide as of the Commencement Date.

2.0 PURCHASING - INDIRECT (NON-REPETITIVE)

| Task | Hercules | Supplier |
|---|----------|----------|
| Clear (technical) specification of the goods or service to be provided. | X | |
| Requested quantity, unit of measure and delivery date or period. | X | |
| Cost center and cost element (general ledger account) to be charged or for capitalized projects a SAP project number and WBS element number. | X | |
| Three qualified suppliers or a letter justifying a single source (to be send to responsible Hercules buyer). | X | |
| Receive and review requisitions/requests for goods/services for completeness, accuracy, and policy and procedure compliance. | | X |
| Create SAP requisitions for all requests received outside of SAP. | | X |
| Reroute or return incomplete requisitions/requests to the requestor for clarification of requirements. | | X |
| Follow-up in obtaining appropriate spend approval per the Hercules Purchase Requisition Release Strategy. | | X |
| Convert released purchase requisitions that are sourced to preferred vendors into purchase orders. | | X |
| Insure price, taxes, freight and other applicable commercial terms relating to the order are correct and comply with Hercules policies and applicable supplier contract(s). | | X |
| Follow-up with responsible Hercules buyers to obtain appropriate purchase approval per Hercules PO Release Strategy. | | X |
| Forward purchase requisitions that must be sourced to responsible buyer. | | X |
| Issue authorized purchase orders to the supplier (if not via auto fax). | | X |
| Obtain and maintain order acknowledgement. | | X |

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3.0 PURCHASE MASTER DATA MAINTENANCE (SAP)

| Task | Hercules | Supplier |
|--|----------|----------|
| Source, negotiate and contract with suppliers for the delivery of goods and services that meet Hercules' requirement. | X | |
| Agreed price, term and conditions will be sent to the Supplier in order to create and maintain supplier agreements in SAP. | X | |
| Create and maintain necessary outline agreements as may be required by the buyer for raw materials, packaging and other goods and/or services. | | X |
| Create and maintain info records as may be required by the buyer for third party direct shipments. | | X |
| Create and maintain info records as may be required by the buyer for goods and services, including to stores and spares materials. | | X |
| Create and maintain info records as may be required by responsible Hercules personnel for inter-company orders. | | X |
| Create and maintain source lists as may be required by the buyer and/or upon request. | | X |
| Create and maintain quota arrangements in SAP as appropriate. | | X |
| Create and maintain standard text fields. | | X |
| Perform updates to SAP purchase master data as required based on input received from the responsible Hercules personnel. | | X |
| Review and update open purchase orders as may be required based on revised purchase master data. | | X |
| Insure all SAP purchase data is compliant with corresponding supplier agreements as approved by Hercules. | | X |
| Validate correct and timely update of supplier agreements in SAP. | | X |
| Communicate and confirm availability of supplier agreements in SAP to Authorized Users. | | X |

4.0 INTENTIONALLY BLANK.

5.0 PURCHASED MATERIAL MASTER DATA

| Task | Hercules | Supplier |
|--|----------|----------|
| Clearly define the technical specification of all raw materials and finish products to be purchased, produced and sold by Hercules. | X | |
| Introduce new raw material and finish products following the new product introduction ("NPI") and/or request for trail ("RFT") and/or request for commercialization ("RFC") processes. | X | |
| Customer service and/or buyer can request via lotus notes database to extend an existing material to another plant in SAP. | X | |
| Check that all required purchased material master record(s) for a new product have been set-up correctly and completely in SAP based on input received from the NPI process. | | X |
| Submit necessary requests to create and/or extend materials in SAP to the material master group. The actual creation or extension must be done by Supplier through a separate material master group due to Hercules' segregation of duty requirements. | | X |
| Inform the responsible Buyer to source a new material for a specific plant. | | X |

6.0 VENDOR MASTER DATA (see AP SOW)

Vendor master data tasks are performed through the Accounts Payable Statement of Work set forth in Schedule E.3.

7.0 PROBLEM RESOLUTION

| Task | Hercules | Supplier |
|--|----------|----------|
| Investigate and resolve blocked invoices - i.e., quantity differences. | X | |
| Manually release blocked invoices for payment in SAP if and when the auto release function does not work. | X | |
| Investigate and resolve all customer and supplier related complaints that could involve a potential financial claim and/or legal action. | X | |
| Address and resolve all supplier related issues that have been escalated by the Supplier. | X | |
| Investigate and resolve blocked invoices - i.e., price differences. | | X |
| Investigate and resolve parked invoices. | | X |
| Request and follow-up with suppliers regarding credit memos. | | X |
| Act as first point of contact to address any supplier questions or issues raised by Accounts Payable personnel (Reminder & Queries group). Escalate any issues, as appropriate, to the responsible buyer for further resolution. | | X |
| Expedite late deliveries based on requests received from Authorized Users and/or delivery due report. | | X |

| | | |
|--|--|---|
| Follow-up on open supplier complaints with responsible buyer and/or supplier. Update supplier complaint database as appropriate. | | X |
| Submit information technology security tickets as requested. All security approvals will remain internal to Hercules (or its IT outsourcing vendor). | | X |
| Submit IT break-fix tickets as required. | | X |

8.0 E-AUCTION | REVERSE AUCTION

| Task | Hercules | Supplier |
|---|----------|----------|
| Determine what goods and services are eligible for reverse auction. | X | |
| Determine which suppliers should be invited to participate. | X | |
| Clearly defined technical specification and requirements of the goods and services to be auctioned. | X | |
| Final allocation of the Hercules business. | X | |
| Gather spend data and potential supplier data as requested by the buyer. | | X |
| Support buyers in the set-up and coordination of reverse auctions, including creation of suppliers in the e-auction database and insuring suppliers have confirmed participation in the upcoming event. | | X |
| Monitor and provide support before, during, and after the reverse auction, including insuring that all suppliers have logged on and facilitating. | | X |
| Resolution of any technical problems that may develop during the execution of an auction. | | X |
| Assist with the implementation of the reverse auction results, including changing the source in SAP, updating SAP supplier agreements, and communicating the changes to the Authorized Users. | | X |
| Maintain auditable records of all auction activities. | | X |

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9.0 OTHER SUPPORT

| Task | Hercules | Supplier |
|--|----------|----------|
| Clearly define the required business support, including the scope, frequency and timeline. | X | |
| Request product data including but not limited to MSDS and product steward forms from suppliers on behalf of SHERA or the business managers. | | X |
| Create and maintain procurement related data on Hercules intranet website as requested e.g., freight codes (US only), harmonized tariffs, etc. | | X |
| Provide support for SAP system tests as may be required for new design and/or configuration changes. | | X |

10.0 PURCHASE CARD

| Task | Hercules | Supplier |
|--|----------|----------|
| Submit a request for a new or replacement purchase card. | X | |
| Management approval of all purchase card requests in accordance with the assigned legal delegation of authority. | X | |
| Management approval of monthly purchase card spends by P-card holder and, as appropriate, re-allocation of cost to a different cost center. | X | |
| Process new purchase card requests confirming valid approvals and delegation of authorities to insure compliance with Hercules policies and procedures | | X |
| Cancel cards as and when appropriate | | X |
| Create and maintain card holder details in purchase card platform (currently GE SAM system as of the Effective Date) | | X |
| Maintain commercial data, including to transactional limits and merchant commodity codes in the purchase card platform as requested and as approved by responsible Hercules personnel in compliance with Hercules policies and procedures. | | X |
| Prepare monthly activity reports of purchase transactions and forward to identifies Hercules personnel. | | X |
| Provide support on the purchase card program including training. | | X |
| Prepare and review monthly payment run (currently applicable to North America only). Identify and correct as required and approved to insure successful upload of payment run into SAP. | | X |

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HERCULES

Schedule E.2

Material Master

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1.0 INTRODUCTION

This Schedule details certain Material Management services that the Supplier will provide as of the Commencement Date.

The Parties acknowledge and agree that this Schedule E.2 may be substantially revised during the Transition Period.

2.0 MATERIAL MASTER

| Task | Hercules | Supplier |
|---|-----------------|-----------------|
| 1. Create new raw material masters (PURC's). | X | |
| 2. Extend existing raw material masters. | X | |
| 3. Create new LEER material masters (i.e., Returnable bins). | X | |
| 4. Extend existing LEER material masters. | X | |
| 5. Create new Aqualon material masters. | X | |
| 6. Extend existing Aqualon material masters. | X | |
| 7. Create new functional paper material masters. | X | |
| 8. Extend existing functional paper material masters. | X | |
| 9. Perform master data cleansing. | X | |
| 11. Project implementations. | | X |
| 12. Process Remedy tickets (Troubleshooting) | | X |
| 13. Create new process chemical material masters | | X |
| 14. Extend existing process chemical material masters. | | X |
| 15. Maintain product hierarchy table; assign hierarchy to new material masters. | | X |
| 16. Perform master data cleansing as designated by Hercules. | | X |
| 17. Provide Reporting Services. | | X |
| 18. Training and ongoing support of offshore resources | | X |

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HERCULES

Schedule E.3

Accounts Payable

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1.0 INTRODUCTION

This Schedule details certain Accounts Payable Services that the Supplier will provide as of the Commencement Date.

2.0 GENERAL REQUIREMENTS

| | | Supplier | Hercules |
|--|----|---|----------|
| | 1 | Understand all Hercules accounts payable (“AP”) policies and how current processes and systems map against those policies. | X |
| | | Communicate any AP issues back to Hercules according to escalation procedures for Hercules resolution. | X |
| | | Respond to Supplier on escalated AP related issues. | X |
| | 2 | Provide input to Hercules on AP policy change opportunities, proposed policy changes, industry direction, and how policy changes will impact then-current work processes and systems. | X |
| | 3 | Ensure that existing and new Hercules AP policies are incorporated into the systems and processes and desktop procedures. | X |
| | 4 | Ensure that Hercules AP established policy guidelines are followed and report policy exceptions within 24 hours to Hercules. | X |
| | | Respond to policy exception. | X |
| | 5 | Identify and resolve issues related to AP work processes. | X |
| | | 5.1 Provide guidance and advice to HERCULES on then-current AP work processes design and potential implications. | X |
| | | Approve any AP work process changes. | X |
| | 6 | Comply with Hercules AP processes and systems security and access policies. | X |
| | | Granting of system access. | X |
| | 7 | Drive continuous improvement of the work processes, documentation, and Services. | X |
| | | Review and approve any significant process changes. | X |
| | 8 | Support Hercules internal audit and third-party audits to ensure compliance with existing Hercules and US GAAP rules and requirements in accordance with Section 9.4 and 15.7 of the Agreement. | X |
| | 9 | Prepare and maintain the process and testing documentation, as well as providing testing required by the Sarbanes-Oxley Act 2002, in accordance with the methodologies established by HERCULES. | X |
| | 10 | Provide support processing capabilities in the following languages: North American only English, with some French. Europe: English, French, German, Spanish, Italian, Dutch, Russian, Swedish, Finnish. | X |
| | 11 | Provide support processing capabilities for the following hours of operations: North America ► AP Processing - anytime; problem resolution 8am-5pm EST. Europe ► AP Processing - anytime; problem resolution 9am-6pm Central European time. | X |
| | 12 | Provide support process capabilities in accordance with the monthly closing schedule. | X |
| | | Approve accounts payable accrual and transmit to appropriate party for posting. | X |

3.0 ACCOUNTS PAYABLE PROCESSING

| | | | |
|--|------------|--|---|
| | 3.1 | Manage Document Receipt and Scanning | |
| | 1. | Receive and process vendor invoices, source documents, EDI payment files and electronic files. | X |
| | 2. | Open vendor related documents, record receipt, and sort based on process requirements. | X |
| | | -Take action on non-invoice documents (i.e., statements, address change notifications). | X |
| | 3. | Perform required audit and review functions to verify adequacy of source document prior to processing. | X |
| | | -Check Purchase order quoted on invoice, remit to address, ship to address and sold to address are readable. | X |
| | | -Resolve unreadable documents | X |
| | | -Check VAT registration number | X |
| | | -VAT charged correctly | X |
| | 4. | Return documents not meeting requirements within 2 business days to appropriate parties, providing details of policy non-compliance. | X |
| | 5. | Park and scan returned documents | X |
| | 6. | Send invoices to country of origin (if required by Law). | X |
| | 7. | Present non-purchase order documents for processing and authorization. | X |

| | | | |
|--|--|---|---|
| | 8. Establish controls for verification of all documents scanned. | X | |
| | 9. Coordinate storage, filing, and retrieval of source document in accordance with Hercules policies. | X | |
| | 10. Provide original source documents to Hercules within 2 business days upon request. | X | |
| | 3.2 Verify and Process Invoices | | |
| | 1. Process invoice transactions in accordance with Hercules policy guidelines, including the approved purchase order to invoice matching technique (e.g., two- or three-way match). | X | |
| | DOA approval process for non-purchase order invoices (North America). | X | |
| | Maintain direct posting database (EUR) as pre-approval of Non-purchase order invoices (i.e., Regional buyers). | | X |
| | Processing of Non-purchase order invoices, in accordance with DPD. | X | |
| | 2. Manage process to request the check to be printed and mailed, including requests for immediate checks and special handling (i.e., overnight requirements, return to vendor/field etc.). | X | |
| | 3. Develop vendor-specific rules in accordance with Hercules policy guidelines. | X | |
| | 4. Set up/maintain recurring transactions for processing (for example: rent and utility payments, consolidated invoice uploads etc.). | X | |
| | 5. Resolve un-invoiced receipts. | X | |
| | 6. Process all immediate check requests in accordance with Hercules Check Request and Expedited Payment Policies. | X | |
| | 7. Audit, correct, add, and process garnishment transactions. | X | |
| | 8. Park invoices which cannot be posted. | X | |
| | 9. Follow-up on parked / blocked invoices after five (5) working days + Update IXOS (i.e., the scanning system) | X | |
| | 3.3 Resolve Exceptions | | |
| | 1. Present to Hercules resolution authorities and invoice exceptions in accordance with Hercules policies. | X | |
| | 2. Research, resolve, and correct EDI file and all other electronic payment method exceptions immediately. | X | |
| | 3. Work with Hercules third-party payment processor if required to resolve exception items. | X | |
| | 4. Perform exception resolution on invoices and payments within one (1) business day. | X | |
| | 5. Track all invoice and payment exceptions through resolution. | X | |
| | 5A. Return parked documents not meeting requirements, providing details of non-compliance within 2 business days to Hercules | X | |
| | 6. Return parked invoices to internal / external vendors with cover letter identifying the issues for resolution. | | X |
| | 7. Resolve un-invoiced direct debits, by contacting the vendors and requesting copies of invoices. | X | |
| | 8. Process the approved parked documents, provided that the work item is returned to the AP representative. | X | |
| | 9. Workflow administrator activities : a. Monitor all work items in SAP Inboxes, b. Forward work items on request to other inboxes c. Retrieve original invoices on request of AP representatives in order to return it to the vendors and delete work items accordingly. d. Check the validity of the work items to be deleted e. Report all work items to be deleted and allocate it to categories. | X | |
| | 3.4 Process Payments (Disbursements) | | |
| | 1. Perform pre-disbursement review as required by Hercules policies (e.g., audit of processed documents). | X | |
| | 2. Prepare payment proposal file according to Hercules policies. | X | |
| | 2A Approves payment proposal. | | X |
| | 2C Prepare payment settlement. | X | |
| | 2D Approve payment settlement and transmit to bank. | | X |
| | 2E Complete foreign draft payment process | | X |
| | 2f Complete manual check process | | X |
| | 3. Audit high-dollar transactions as defined by Hercules policy. This shall be completed prior to execution of settlement. | | X |
| | 4. Audit, track, and resolve duplicate payments in accordance with Hercules policies. | X | |
| | 5. Manage all other disbursement-related activity, including returned checks. | | X |
| | 6. Process all customer refund checks in accordance with Hercules policies. | X | |
| | 7. Reconcile settlement totals to file transmission totals. | | X |
| | 8. Reconcile all checks and accounts as required by Hercules. | X | |
| | 9. Maintain a schedule of unpaid items and report items that should be adjusted to Hercules. | X | |

| | | | |
|--|--|---|---|
| | 10. Hercules owns payment parameters | | X |
| | 3.5 Set up and Monitor Vendor Master File | | |
| | 1. Create and maintain vendor master data in SAP including general data, accounting data (including 1099 designation) and purchasing data according to Hercules policies. | X | |
| | For all new vendor master files, create a W9 | X | |
| | 2. Complete vendor set-up/change maintenance. | | |
| | 3. Follow up with vendor to obtain missing information or bank details. | X | |
| | 3. Perform client daily vendor master audit. | X | |
| | 4. Provide support for issues involving vendor liens and/or other legal issues. | X | |
| | 5. Utilize current or comparable automated authorization programs to set up vendor master including, the financial and procurement material master view. | X | |
| | 6. Adhere to Hercules policy as it relates to vendor master set-up. | X | |
| | 7. Contact buyer for clarification on payment terms if needed. | X | |
| | 8. Verify vendors (including new vendors and, when requested by Hercules, existing vendors) are in compliance with applicable Law, including country specific legal requirements such as Denial Vendor List as applicable for the U.S. | X | |
| | 3.6 Respond To Inquiries | | |
| | 1. Receive, track, research, and resolve (action and/or escalate) inquiries (internal and external) within 1 business day. | X | |
| | 2. Track escalated inquiries through resolution. | X | |
| | 2A Respond to escalated inquiries sent to Hercules | | X |
| | 3. Monitor all received reminders & queries. Record all reminders and queries in the R&Q database for later reference and analysis. | X | |
| | 3. Provide inquiry tools. | X | |
| | 4. Support Hercules initiatives concerning inquiry tool utilization and process change during the Term. | X | |

4.0 AP - OTHER PROCESSING

| | | | |
|--|---|---|---|
| | 4.1 Month-End Closing | | |
| | 1. Prepare journal entries (including, accruals and missing entries). | X | |
| | 1A. Approve journal entries | | X |
| | 2. Prepare and maintain audit schedules. | X | |
| | 3. Reconcile associated accounts (e.g., accruals, payables, and general ledger accounts). | | X |
| | 4. Analyze variances in accordance with Hercules policy guidelines. | | X |
| | 5. Research and resolve balance sheet/income statement issues. | | X |
| | 6. Receive, track, and resolve inquiries. | | X |
| | 7. Complete month-end close procedures in accordance with Hercules policy guidelines. | | X |
| | 8. Provide Hercules an overview of the parked documents per balance key date, including reasons of the parking as well as advising the A&R if an accrual is to be built up. | X | |
| | 9. Provide Hercules an overview of the debit balances on vendor accounts, including advising the A&R to build up an accrual. | X | |
| | 10. Check PO's created with allocation to multiple cost centers, for which the invoice receipt ("IR") is missing (goods receipt ("GR") is done with no value) and advice A&R to set-up an accrual if necessary. | X | |
| | 4.2 Bank Account Reconciliations. | | |
| | 1. Analyze and resolve variances in accordance with Hercules policies (includes clearing items in contra-account). | X | |
| | 2. Track unclaimed property (e.g., vendor checks not cashed). | X | |
| | 3. Provide cleared check copies as requested. | X | |
| | 4. Issue stop payments and voids. | X | |
| | 5. Check positive pay on daily basis. | X | |
| | 4.3 Accounts Payable - Miscellaneous (N.A. + EUROPE) | | |
| | 1. Reconcile and distribute suspense account items in accordance with Hercules policy. | X | |
| | 2. Reconcile accounts payable sub-ledger to general ledger balances. | X | |
| | 4.4 AP System Table Maintenance (N.A. + EUROPE) | | |
| | 1. Maintain (SAP and Lotus Notes) system tables providing processing tolerances and guidelines for invoice processing, invoice matching, EDI processing, print processing, etc. | | X |
| | 4.5 Signatory File Management (N.A. + EUROPE) | | |
| | 1. Develop schedules and perform monthly audit of signatory file additions, deletions, and changes. | | X |

| | | | |
|-------------|--|------------------------------------|---|
| | 2. Research and resolve audit findings. | | X |
| 4.6 | Procurement Card Processing | | |
| | 1. Upload P-Card distributions to the general ledger. | As described throughout Schedule E | |
| | 2. Balance general ledger, accounts payable, and other system input/export interface files. | As described throughout Schedule E | |
| 4.8 | Debit Balances Management (N.A. + Europe) | | |
| | 1. Identify debit balances by vendor. | X | |
| | 2. Collect debit balances in accordance with Hercules policies. | X | |
| | 3. Negotiate alternative payment plans with vendors in accordance with Hercules policy. Obtain Hercules approval. | | X |
| | 4. Prepare source documentation for Hercules legal review. | X | |
| | 5. Research and resolve issues and inquiries regarding collection payments. | X | |
| | 6. Prepare and submit collection adjustments. | X | |
| | 7. Review and approve any collection adjustments | | X |
| 4.9 | Statement Auditing (N.A. + Europe) | | |
| | 1. Request statements from vendors. | X | |
| | 2. Research outstanding credits. | X | |
| | 3. Perform reclamation procedures for outstanding credits. | X | |
| | 4. Support post payment audit vendor. | X | |
| 4.11 | Escheatment Function | | |
| | 1. Research, take action upon, and/or escalate aged accounts payable transaction issues in preparation for escheat processing. | X | |
| | 2. Determine potential (e.g., unclaimed) property to be reported in accordance with Hercules policy. | X | |
| | 3. Research and determine property owner. | X | |
| | 4. Contact unclaimed property owners. | X | |
| | 5. Determine whether amounts due have been paid or whether unclaimed property can be returned to owner. | X | |
| | 6. Create and maintain a database of owners contact information. | X | |
| | 7. Determine legal escheat reporting requirements and deadlines for remitting unclaimed property. | X | |
| | 8. Prepare escheatment schedules. | X | |
| | 9. Prepare a reconciliation of the unclaimed property liability account to determine adjustments needed to the account. | X | |
| | Hercules will approve the checks to be escheated. Hercules will file the escheatment return. | | X |
| 4.12 | Accounts Payable Weekly Cash Forecast (N.A. + Europe) | | |
| | 1. Notify treasury of any large (e.g. greater than 500,000) unusual payments. | X | |

5.0 EUROPEAN AP PROCESSING

| | | | |
|------------|--|---|--|
| 5.1 | VAT and Other Special Processes | | |
| | 1. Accounts payable to identify the need of a new VAT tax rate. This is then forwarded to the VAT/Intrastat group to follow-up (e.g., setup and enter VAT ID (if new vendor) and VAT tax rates). | X | |
| | 2. Follow EU Directive and other applicable Law for invoice requirements provided by VAT/Intrastat group (for applicable countries). | X | |

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6.0 REPORTING AND RECORDS RETENTION: (N.A. + EUROPE)

| | | | |
|--|---|---|--|
| | 6.1 Reporting | | |
| | 1. Perform standard reporting requirements as defined in Attachment A. | X | |
| | 2. Provide ad hoc reports as requested by Hercules. | X | |
| | 6.2 Records Retention | | |
| | 1. Retain source documentation and reports: hard copies, CD ROM, Fiche, Film, and Imaging, in accordance with Hercules policies and procedures. | X | |
| | 2. Provide scanned document images for source documentation through an electronic imaging system. | X | |
| | 3. Retrieve archived reports and documentation as requested by Hercules. | X | |
| | 4. Maintain documentation in accordance with Hercules policies and procedures. | X | |
| | 5. Dispose of documentation in accordance with Hercules policies and procedures. | X | |

7.0 PERFORMANCE MEASUREMENT & EFFECTIVENESS (N.A. + EUROPE)

| | | | |
|--|---|---|--|
| | 1. Provide consistent metrics and AP process performance information as defined in this document, including reports identified in Schedule R. | X | |
| | 2. Provide explanations relative to performance levels, root-cause analyses, corrective measures planned, etc. as requested by HERCULES. | X | |
| | 3. Monitor and report performance and service levels, using agreed-upon measurement processes, tools, and methodologies. | X | |
| | 4. Review existing processes to evaluate accounts payable process performance and work with Hercules management to develop action plans to improve upon current performance levels. | X | |

8.0 MONITOR / COMMUNICATE SERVICE COMPLIANCE (N.A. + EUROPE)

| | | | |
|--|---|---|--|
| | 1. Continuously audit the adherence to Hercules accounts payable accounting rules and requirements. | X | |
| | 2. Facilitate Hercules audit of accounts payable processes, including compliance with defined rules and requirements. | X | |



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Schedule E.4A

**Order to Invoice (OTI)
North America**

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I. INTRODUCTION

This Schedule sets forth the North America Order To Invoice (OTI) Business Process Services that the Supplier will provide, as of the Commencement Date unless otherwise specified. The Statements of Work defined in this Schedule were developed to include all in-scope activities performed by affected employees within the HERCULES Order To Invoice (OTI) function for North America Aqualon and PTV. The Supplier will be responsible for all functions performed by employees affected by the proposed outsourcing of services.

II. GENERAL REQUIREMENTS

The Suppliers responsibilities include, but are not limited to the following:

1. Understand all HERCULES OTI policies and how current processes and systems map against those policies. Additionally, the Supplier will communicate any issues back to HERCULES and retain the responsibility of resolving all issues.
 2. Provide input to HERCULES on policy change opportunities, proposed policy changes, industry direction, and how the policy changes will impact then-current work processes and Systems.
 3. Ensure that existing and new HERCULES policies are incorporated into the systems and processes.
 4. Ensure that HERCULES established policy guidelines are followed and report policy exceptions promptly to HERCULES.
 5. Identify and resolve issues related to OTI work processes. Provide guidance and advice to HERCULES on then-current work process design and potential implications.
 6. Comply with HERCULES processes and Systems security and access policies.
 7. Drive continuous improvement of the work processes, documentation and Services.
 8. Support HERCULES internal audit and Third-Party audit to ensure compliance with existing HERCULES and US GAAP rules and requirements in accordance with Section XX of the Agreement.
 9. Prepare and maintain the process and testing documentation and testing required by the Sarbanes-Oxley Act 2002, (US Centric) in accordance with the methodologies established by HERCULES.
-

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10. Provide support processing capabilities in the following languages: English, French, German, Spanish, Chinese, etc.

11. Provide support processing capabilities for the following hours of operations: XX to XX

12. Provide support process capabilities in accordance with the monthly closing schedule. (for each country included in the scope. (For example, USA, UK, Central Europe, Australia, Asia Pacific)

III. AQUALON DIVISION

1.0 DOMESTIC ORDER ENTRY (Customer Already Exists)

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order via fax, EDI, phone, mail, electronic order (XIGN) or EZ order
2. Review order for completeness: P.O. Number, product, quantity, requested delivery date, ship to
3. Calculate correct requested ship date using Odyssey webtool
4. Verify if lead time policy is being adhered to; if not obtain approval from Supply Chain Manager
5. Pull applicable zpro
6. Enter order into SAP
7. Print_order acknowledgement
8. Review order details including verification of price
9. Mail order acknowledgement

1.1 Consignment Accounts

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
-

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2. Verify if customer is a consignment account
3. Review order for completeness: P. O. number, product, quantity, requested delivery date
4. Calculate requested ship date using Odyssey webtool
5. Pull zpro
6. Verify if lead time policy is being adhered to, if not obtain approval from Supply Chain Manager
7. Enter replenishment order (KB) into SAP
8. Print order acknowledgement
9. Review order details
10. Mail order acknowledgement
- 1.2 Distributors (U.S. and Canada)

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
 2. Verify there is a signed legal agreement in place
 3. Review order for completeness; P. O. number, requested delivery date, product, quantity, ship to
 4. Calculate requested ship date using Odyssey webtool
 5. Verify if lead time policy is being adhered to; if not obtain approval from Supply Chain Manager
 6. Verify quantity ordered meets guidelines in agreement
 7. Pull zpro
 8. Enter order into SAP; bill block order
 9. Print order acknowledgement
 10. Review order details; verify discount rate and all pricing
-

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11. Mail order acknowledgement

1.3 Preship Sample Process

(Samples sent to Customer for testing; track through SAP)

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
2. Review CSR Header Notes for pertinent details
3. Request made to send pre-ship sample prior to shipment
4. Verify request with Supply Chain Manager
5. Receive approval to do pre-ship
6. Advise plant
7. Ship material for approval by customer

1.4 Co-ship Process

(Samples, separately packaged and sent to Customer together with shipment of product for Customer Q.A. testing)

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
2. Review CSR Header Notes for pertinent details
3. Request made to ship co-ship with order at time of shipment
4. Verify request with Supply Chain Manager
5. Receive approval to co-ship material
6. Contact plant/warehouse and advise of requirement
7. Enter instruction on order to ship 1 pound co-ship with shipment

1.5 Expedited Freight - Hercules Pays Freight

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The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
 2. Request made to expedite order
 3. Obtain approval from Supply Chain Manager
 4. Contact Odyssey and plant with requirement
 5. Place order
- 1.6 Air Freight Policy - Hercules Pays Freight

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
 2. Request made to send order via air freight
 3. Obtain approval from Supply Chain Manager
 4. Contact plant with requirement
 5. Place order
- 1.7 No Charge Order Policy

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
 2. Request made to ship order at no charge
 3. Obtain approval from Supply Chain Manager
 4. Calculate requested ship date using Odyssey webtool
 5. Enter No Charge Order type (TANN order) into SAP
- 1.8 Processing of Returns

The Suppliers responsibilities include, but are not limited to the following:

1. Receive notification from customer to return material
-

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2. Determine if an approved complaint report is available; if so advise customer to return material in accordance with complaint report
3. Enter return order in SAP notating product and quantity to be returned
4. Output return order to receiving location (plant or warehouse)
5. Receiving location physically receives the material
6. Receiving location enters return delivery and post goods issue into SAP
7. Wilmington reviews approved complaint report against the return delivery
8. Wilmington releases the credit invoice to the customer
9. Print the invoice
10. Review the invoice for accuracy
11. Mail the invoice when required

2.0 EXPORT ORDER ENTRY

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order via e-mail, fax or EZ order
 2. Review order for completeness; P. O. number, product, quantity, price, requested delivery date, ship to, INCO terms
 3. Determine if letter of credit will be used
 4. Determine if trading company will be utilized
 5. Calculate requested shipping date using Odyssey web tool
 6. Validate order quantity if containerized
 7. Validate if shipping full pallets
 8. Pull zpro
-

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9. Enter order into SAP; manually enter price

10. Print order acknowledgement

11. Review order details including price verification

12. Courier order acknowledgement weekly to agent servicing customer

2.1 Shipment from Tianpu, China

The Suppliers responsibilities include, but are not limited to the following:

1. Review order

2. Review order for completeness: P. O. number, product, quantity, price, requested delivery date, how to consign ocean bills of lading, INCO terms

3. E-mail order details to Hercules Singapore office

4. Facilitation of order handled between Hercules Singapore and Tianpu, China plant

2.2 Shipments to Lenosur Warehouse in Uruguay

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order

2. Verify signed legal agreement in place

3. Review order for completeness: product, quantity, requested delivery date

4. Calculate requested shipping date using Odyssey webtool

5. Pull zpro

6. Enter order into SAP

7. Print order acknowledgement

8. Review order details

9. Courier order acknowledgement

2.3 Shipment from Europe to South America

The Suppliers responsibilities include, but are not limited to the following:

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1. Receive order
2. Review order for completeness: P. O. number, product, quantity, requested delivery date, price, INCO terms
3. Pull zpro
4. Enter order into SAP selling to customer
5. System auto creates purchase order to Hercules Europe
6. Print order acknowledgement
7. Review order details
8. Courier order acknowledgement
- 2.4 Customer Handling Orders

(Sold to/ship to: U.S. customer but material is exported by customer)

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
 2. Review for completeness: P. O. number, product quantity, ship to, INCO terms, end use, country ultimately being exported to, pricing
 3. Calculate requested ship date using Odyssey webtool
 4. Verify lead time policy is being adhered to; if not contact Supply Chain Manager
 5. Pull zpro
 6. Enter order into SAP
 7. Insert special clausung to avoid fines and penalties
 8. Print order acknowledgement
 9. Review order acknowledgement
 10. Mail order acknowledgement to customer
-

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2.5 Preparation of Canada Customs Papers for Shipment out of U.S. Field Warehouses

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
2. Review order for completeness: P. O. number, product, quantity, ship to, INCO terms, pricing
3. Pull zpro
4. Enter order into SAP
5. Advise warehouse staff of pending order
6. Advise warehouse staff how to fill out paperwork
7. Print order acknowledgement
8. Review order details
9. Courier order acknowledgement to customer

2.6 Odyssey Guidelines for Handling Export Orders

The Suppliers responsibilities include, but are not limited to the following:

1. Provide data to Odyssey that Product is available to ship
2. Output planned ship date message to Odyssey
3. Issuance of booking from Odyssey received within 48 hours
4. Shipment made from shipping point in conjunction with booking (if from warehouses, CSR coordinates notification for accuracy review, etc)
5. Sailing confirmation received from Odyssey within 48 hours after vessel sailing
6. Receive copies of all shipping documents for accuracy review

3.0 INTER-COMPANY ORDER ENTRY

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
-

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2. Review order for completeness: P. O. number, product, quantity, requested delivery date, ship to
3. Calculate requested ship date using Odyssey webtool
4. Verify if lead time policy is being adhered to; if not obtain approval from Supply Chain Manager
5. Pull applicable zpro
6. Enter order into SAP
7. Verify P.O. number and sales order are linked
8. Print order acknowledgement
9. Review order acknowledgement
- 3.1 Import Material for U.S. Accounts

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
2. Review order for completeness: P. O. number, product, quantity, requested delivery, INCO terms, special requests, U.S. port of entry, pricing
3. Pull zpro
4. Enter order into SAP; bill block order
5. Auto create a purchase order to Hercules Europe
6. Verify sales order and purchase order are linked
7. Print order acknowledgement
8. Review order details
9. Mail order acknowledgement to customer

4.0 INVOICING

The Suppliers responsibilities include, but are not limited to the following:

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4.1 Consignment

1. Receive monthly usage report
2. Enter Consignment (“KE”) order into SAP
3. Allocate specific lots used in SAP
4. Enter PGI (Post Goods Issue) - Allocation Specialist
5. Print invoice
6. Review invoice
7. Mail invoice to customer

4.2 Distributor Discounts

The Suppliers responsibilities include, but are not limited to the following:

1. Enter PGI
2. Review invoice details in SAP
3. Remove bill block
4. Print invoice
5. Review invoice
6. Mail invoice

4.3 Orders Shipped/Not Billed

The Suppliers responsibilities include, but are not limited to the following:

1. Review SAP report (RV60SBT1)
2. Investigate each order on report
3. Contact respective customer service representative to take action needed to finalize invoice
4. Print invoice

4.4 Orders Billed not Released to Accounting

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The Suppliers responsibilities include, but are not limited to the following:

1. Review SAP report (AQSD01W3)
 2. Investigate each order on report
 3. Contact respective customer service representative to take action needed to finalize invoice
 4. Print invoice
 5. Mail invoice
- 4.5 Imported Materials

The Suppliers responsibilities include, but are not limited to the following:

1. Contact Odyssey to determine if material has cleared customs
 2. Remove bill block
 3. Print invoice
 4. Review invoice
 5. Mail invoice
- 4.6 Agent Commissions (Create Master Data File)

The Suppliers responsibilities include, but are not limited to the following:

1. Legal agreement in place, provides products covered, rate % of commission to be issued and on what basis
 2. Create agent number in SAP
 3. Enter % discount in pricing conditions
 4. Partner agent number to respective zpro
- 4.7 Shipments from Lenosur Warehouse

The Suppliers responsibilities include, but are not limited to the following:

1. Receive B/L from warehouse
-

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2. Enter PGI (Post Goods Issue) into SAP

3. Print Invoice

4. Review Invoice

5. Courier invoice to customer

4.8 Intentionally Blank

4.9 Draft Preparation for Shipments out of Europe to Latin America

The Suppliers responsibilities include, but are not limited to the following:

1. Receive documents from Europe

2. Prepare draft

3. Mail draft and documents to customer

4.10 Manual Invoice - Credit Memo Issuance

The Suppliers responsibilities include, but are not limited to the following:

1. Review request for credit memo to be issued

2. Review all documentation for approvals

3. Enter credit requests into SAP

4. Approve credit request in SAP

5. Print credit invoice

6. Review credit invoice

7. Mail credit invoice to customer

4.11 Evaluated Receipt Settlement

The Suppliers responsibilities include, but are not limited to the following:

1. Receive request from customer to pay via electronic receipt settlement

2. Advise credit representative

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4.12 Rebates

The Suppliers responsibilities include, but are not limited to the following:

1. Receive RRF (Rebate Request Form) from sales representative via email
2. Request sales and business management approval
3. Create rebate in SAP
4. Created after beginning validity, do accruals for time between beginning validity and rebate creating
5. If rebate is not direct (through distributor, agent, or entity not on SAP), do monthly accruals
6. After ending validity, check rebate and request agreement of sales representative to settle rebate for specific amount.
7. Upon agreement of sales representative, request approval of sales and business management to settle rebate
8. Settle rebate and send rebate credit to customer or request Credit to send wire transfer or check
9. Price supports are not rebates, but are done utilizing the rebate process. They are simpler as there is no RRF and price supports are created and settled together. Below is the price support process.
 - a. Receive sales and business management approval to pay price support monthly for entire year
 - b. Monthly receive distributor request for price support, for sales for preceding month, with sales representative approval
 - c. By 28th of each month, create and settle price support, mail price support credit invoices to distributors

4.13 Update and Maintain Tax Code by Customer & Sales Record for GST/VAT

Tasks to include; for European version

The Suppliers responsibilities include, but are not limited to the following:

1.

4.14 Review / Reconcile Printed Order Acknowledgement / Invoices Against SAP Report

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The Suppliers responsibilities include, but are not limited to the following:

1. Execute SAP report on a daily basis
2. Verify receipt of invoices/order acknowledgement against report
3. Mail Invoices

5.0 ELECTRONIC DATA INTERCHANGE - EDI

The Suppliers responsibilities include, but are not limited to the following:

1. Receive request from customer
2. Contact IT liaison
3. Establish criteria in SAP
4. Receive order thru EDI
5. Run daily report for orders with delivery block
6. Review Orders
7. Remove delivery block
8. Print order acknowledge
9. Review order acknowledgement
10. Mail order acknowledgement
11. Billing goes out through EDI along with hard copy mailed to customer

6.0 PRICING

6.1 List Pricing

The Suppliers responsibilities include, but are not limited to the following:

1. Receive new price lists from Industry Manager
 2. Enter new pricing directly into SAP
 3. Validate what has been entered into SAP against new price lists
-

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6.2 Competitive Prices (CPI - off list pricing)

The Suppliers responsibilities include, but are not limited to the following:

1. Receive CPI from sales via lotus notes
2. Enter CPI directly into SAP
3. One (1) or two (2) approvals are required depending on the business for price to be accepted in the system
4. Notify Hercules when CPI's are available for approval
5. Review exception report to monitor timeliness of approval process
6. Escalate delinquent approvals
7. Notify Customer Service to update new prices on existing and new orders
8. Update and maintain non-off list pricing spreadsheets
9. Interfaces with sales support to resolve any pricing issues

6.3 Transfer Pricing

The Suppliers responsibilities include, but are not limited to the following:

1. Receive order
2. Calculation done at time of order entry using Excel spreadsheet
3. Enter calculated price into SAP sales order

6.4 Distributor Price Supports

(Currently 4 Distributors)

The Suppliers responsibilities include, but are not limited to the following:

1. Receive approved documentation to support request for credit
 2. Enter credit request into SAP
 3. Review and approve credit request
-

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4. Print credit invoice

5. Mail credit invoice

6.5 Special Pricing - Latin America/Far East

The Suppliers responsibilities include, but are not limited to the following:

1. Price lists by country are prepared by local Aqualon representatives
2. Price lists are forwarded to Industry Managers for approval
3. Once approved, Industry Manager forwards approved price lists to customer service representative
4. No information is entered into SAP
5. Export CSR's receive copies of approved country pricing

6.6 Price Over-ride Process

The Suppliers responsibilities include, but are not limited to the following:

1. Orders on books, already priced, confirmed to customer for future shipment
 2. New list prices received from Industry Manager
 3. Enter new pricing into SAP
 4. Advise all CSRs to go into SAP and bill block all orders that have pending price increases
 5. Review each order individually to determine who receives new pricing and who does not
 6. Remove bill block as required
 7. Over-ride prices where necessary and provide reason
 8. Print invoice
 9. Review Invoice
 10. Mail invoice
-

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7.0 TRANSPORTATION

7.1 Tracking/Tracing Shipments

The Suppliers responsibilities include, but are not limited to the following:

1. Domestic shipments via truck or rail, Customer Service Representative (CSR) contact Odyssey Logistics to track. If urgent, CSR uses bill of lading number and truck lines to track using truck lines website in internet or a phone call is made
2. Domestic/Export shipments using UPS or Federal Express tracking done using carriers website via internet
3. Export ocean, CSR contacts Odyssey International
4. Export air, CSR contacts EGL
5. Import orders, CSR contacts Odyssey Logistics import group
6. Europe shipments to Latin America, CSR contact Europe CSR and Europe CSR gets information from DeRijke

7.2 Expediting Process-Approval

The Suppliers responsibilities include, but are not limited to the following:

1. If customer is paying for freight costs no approval is necessary
2. If Hercules is to pay the freight costs CSR obtains freight costs and gets approval from industry manager

7.3 Payment of Land and Sea Bills

The Suppliers responsibilities include, but are not limited to the following:

1. Export air, EGL pays carrier and sends freight bills to CSR. CSR codes bills and sends to AP department for payment to EGL
 2. Investigates freight bills from Odyssey which require review before payment.
 3. Determine appropriate coding for freight invoices and forwards to AP department for payment
 4. Accrue freight bills as required.
-

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5. Mexico, BDP Interamerica pays carrier. BDP bills Hercules, sends bill to CSR to code and send to AP Department

7.4 How to Request a Freight Quote

The Suppliers responsibilities include, but are not limited to the following:

1. Domestic/Canada/Mexico, truck and rail request done within Odyssey Logistics website
2. Domestic/Canada/Mexico, Federal Express/UPS, CSR contacts carrier for quote
3. Export ocean, CSR requests quote via e-mail to Odyssey International
4. Export air, CSR requests quote from Odyssey Logistics, Pat Ward

7.5 Interface with Odyssey Land and Sea

The Suppliers responsibilities include, but are not limited to the following:

1. Domestic/Canada truck and rail, CSR contact Odyssey Logistics with any problems, trucking/delivery issues or if expedited freight is needed
 2. Export ocean, CSR sends orders via SAP printer to Odyssey International
 3. Odyssey sends booking details to CSR, plant or warehouse and overseas agent or sales office
 4. Odyssey sends delays/confirmation of sailings to CSR and overseas agent or sales office
 5. Odyssey sends documents to overseas location as required and copy to CSR
 6. Air shipment, CSR send order via fax to EGL
 7. EGL (air forwarder) works with plant/warehouse for pickup instructions
 8. EGL sends proposed/confirmed flight details to CSR and overseas agent or sales office
 9. EGL sends documents via instructions on order to overseas locations
 10. EGL sends copy of documents to CSR
 11. Mexico, CSR sends copy of order to BDP via fax
 12. CSR sends invoice to BDP Interamerica
 13. BDP works with Mexico customer broker to clear goods at border
-

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7.6 Interface with Eagle Global Logistics (EGL)-Air

The Suppliers responsibilities include, but are not limited to the following:

1. Fax SAP sales order to EGL
2. EGL contacts plant/warehouse for pickup instructions
3. EGL sends proposed/confirmed flight details to CSR and overseas agent
4. EGL sends documents via instructions on order
5. EGL sends copy of documents to CSR

7.7 Interface with BDP Interamerica-Mexico

The Suppliers responsibilities include, but are not limited to the following:

1. CSR sends copy of order to BDP via fax
2. CSR sends invoice to BDP via fax
3. BDP coordinates with Mexican broker to clear goods at border

8.0 CUSTOMER COMPLAINT PROCESS

8.1 Preparation of a Customer Complaint/Resolution

The Suppliers responsibilities include, but are not limited to the following:

1. CSR enters complaint into lotus notes complaint database
2. If return is required, CSR enters return order into SAP
3. If material is to be replaced, CSR enters new order in SAP to be sent to customer
4. If material is to be destroyed, CSR advises customer once approved CCA is approved in database by Industry Manager

8.2 How to Handle Damaged and Carrier Complaints

The Suppliers responsibilities include, but are not limited to the following:

1. CSR enters complaint into lotus notes complaint database
-

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2. If return is required CSR enters return order into SAP

3. If material is to be replaced, CSR enters new order in SAP to be sent to customer

4. If material is to be destroyed, CSR advises customer once approved CCA is approved in database by Industry Manager

8.3 How to File a Claim with a Carrier

The Suppliers responsibilities include, but are not limited to the following:

1. Claims are filed by Customer Service Manager based on outcome of complaint entered into complaint database

9.0 CUSTOMER MASTER DATA

9.1 Request for Tax Exemption Certificate

The Suppliers responsibilities include, but are not limited to the following:

1. Determine if a new customer is tax exempt

2. Set master data at -0- "tax exempt"

3. Send letter to the customer requesting their tax exemption certificate

4. Receive signed tax exemption certificate from customer

5. File in customer file

9.2 Process for Creating a Sold to/Ship to

The Suppliers responsibilities include, but are not limited to the following:

1. Receive an order from a new customer with sold to and ship to information

2. Create the address(s) in SAP master data using the information provided by the customer filling in the data on the appropriate screens

3. Partner sold to, ship to and payer numbers to the sold to party in SAP

9.3 Salesman Number Changes

The Suppliers responsibilities include, but are not limited to the following:

1. Receive new salesman assignments

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2. Partner new salesman number to "Customer Sold To"

3. Update appropriate ZPRO(s) at the item partner level and makes the change

10.0 HANDLING OF SMALL ACCOUNTS (Inside Sales)

10.1 Inside Sales

The Suppliers responsibilities include, but are not limited to the following:

1. Receive all incoming calls requesting technical information, product information and pricing requests from small accounts not assigned to a field salesperson

2. Resolve all issues surrounding their account base

III. PTV Division

1.0 THIRD PARTY ORDERS

The Suppliers responsibilities include, but are not limited to the following:

1. Post Goods Receipts for third party purchase orders

2. Investigate IDOC failures with GE

3. Follow up with third party vendors on missing Bills of Lading

4. Monitor invoices which fail to release to accounting

5. Check on suspect bills of lading

6. Processes " Manual Invoice Maintenance " invoices

7. Obtain Proof of Delivery from carriers

8. Generates late invoicing report and follows up with vendors on any delayed shipment items

9. Approve rebate spreadsheets

10. Enter rebates on SAP on quarterly basis

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2.0 CONTRACT ADMINISTRATION

The Suppliers responsibilities include, but are not limited to the following:

1. Receive reports from sales for monthly billing.
2. Create debit invoices for contracts
- 3 Receive inventory documentation from sales on a daily basis
4. Process inventory adjustments for contract products
5. Receives approvals for any changes to be preformed on contracts.
6. Perform additions, modifications, deletions on contracts on a daily basis
7. Interface with credit to resolve issues
8. Interacts with Sales Reps for inventory and pricing issues

3.0 Competitive Prices (CPI - off list pricing)

The Suppliers responsibilities include, but are not limited to the following:

1. Receive CPI from sales via lotus notes
 2. Enter CPI directly into SAP
 3. One (1) or two (2) approvals are required depending on the business for price to be accepted in the system
 4. Notify Hercules when CPI's are available for approval
 5. Review exception report to monitor timeliness of approval process
 6. Escalate delinquent approvals
 7. Notify Customer Service to update new prices on existing and new orders
 8. Update and maintain non-off list pricing spreadsheets
 9. Interfaces with sales support to resolve any pricing issues
- ## 4.0 Payment of Land and Sea Bills

The Suppliers responsibilities include, but are not limited to the following:

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1. Export air, EGL pays carrier and sends freight bills to CSR. CSR codes bills and sends to AP department for payment to EGL
 2. Investigates freight bills from Odyssey which require review before payment.
 3. Determine appropriate coding for freight invoices and forwards to AP department for payment
 4. Accrue freight bills as required.
 5. Mexico, BDP Interamerica pays carrier. BDP bills Hercules, sends bill to CSR to code and send to AP Department
- 5.0 Deferred Billing

The Suppliers responsibilities include, but are not limited to the following:

Deferred Billing

IV. REPORTING AND RECORDS RETENTION

1. REPORTING

The Suppliers responsibilities include, but are not limited to the following:

1. Perform standard reporting requirements as defined
2. Provide Ad Hoc reports as requested

2. Record Retention

The Suppliers responsibilities include, but are not limited to the following:

1. Retain source documentation and reports
2. Provide scanned document images for source documentation and reports - hard copies, CD Rom, Fiche, Film and imaging - in accordance with Hercules policies and procedures
3. Retrieve archived reports and documentation as requested by Hercules
4. Maintain documentation in accordance with Hercules policies and procedures
5. Dispose of documentation in accordance with Hercules policies and procedures

V. PERFORMANCE MEASUREMENT AND EFFECTIVENESS

The Suppliers responsibilities include, but are not limited to the following:

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1. Provide consistent metrics and process performance information as defined in this document
2. Provide explanations relative to performance levels, root-cause analyses, corrective measures planned, etc. as requested by Hercules
3. Monitor and report performance and service levels, using agreed upon measurement processes, tools and methodologies
4. Review existing processes to evaluate process performance and work with Hercules management to develop action plans to improve upon current performance levels

VI. MONITOR AND COMMUNICATE SERVICE COMPLIANCE

The Suppliers responsibilities include, but are not limited to the following:

1. Continuously audit adherence to Hercules accounting rules and requirements
 2. Facilitate Hercules audit of processes, including compliance with defined rules and requirements
-

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HERCULES

Schedule E.4B

Order to Invoice (OTI)

Europe

Aqualon

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I. INTRODUCTION

This Schedule sets forth the North America Order To Invoice (OTI) Business Process Services that the Supplier will provide, as of the Commencement Date unless otherwise specified. The Statements of Work defined in this Schedule were developed to include all in-scope activities performed by affected employees within the HERCULES Order To Invoice (OTI) function for Aqualon Europe. The Supplier will be responsible for all functions performed by employees affected by the proposed outsourcing of services.

II. GENERAL REQUIREMENTS

The Supplier's responsibilities include, but are not limited to the following:

1. Understand all HERCULES OTI policies and how current processes and systems map against those policies. Additionally, the Supplier will communicate any issues back to HERCULES and retain the responsibility of resolving all issues.
 2. Provide input to HERCULES on policy change opportunities, proposed policy changes, industry direction, and how the policy changes will impact then-current work processes and Systems.
 3. Ensure that existing and new HERCULES policies are incorporated into the systems and processes.
 4. Ensure that HERCULES established policy guidelines are followed and report policy exceptions promptly to HERCULES.
 5. Identify and resolve issues related to OTI work processes. Provide guidance and advice to HERCULES on then-current work process design and potential implications.
 6. Comply with HERCULES processes and Systems security and access policies.
 7. Drive continuous improvement of the work processes, documentation and Services.

 8. Support HERCULES internal audit and Third-Party audit to ensure compliance with existing HERCULES and US GAAP rules and requirements in accordance with the Agreement.
 9. Prepare and maintain the process and testing documentation and testing required by the Sarbanes-Oxley Act 2002, (US Centric) in accordance with the methodologies established by HERCULES.
-

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10. Provide support processing capabilities in the following languages: English, French, German, Spanish, Chinese, Italian, Turkish, Russian, etc. [Note: This is deal specific and needs to be customized to the languages of the countries that are in scope.]

11. Provide support processing capabilities the hours of operations as determined during the Transition Period.

12. Provide support process capabilities in accordance with the monthly closing schedule. (for each country included in the scope. (For example, USA, UK, Central Europe, Australia, Asia Pacific)

III AQUALON DIVISION - Customer Care Europe

I. Strategic Accounts

1.1. EU ORDER ENTRY - Direct order process

(Customer Already Exists / Masterdata / Zpro correct)

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order via fax, phone, mail

Use logistic definition procedure for steps 2, 3, 4

2. Review order for completeness: P.O. Number, product, quantity, requested delivery date, ship to, price, inco term, payment condition, sold to, SCR, etc

3. Calculate correct requested ship date using DeRijke leadtimes + internal order handling lead - time

4. Verify if lead time policy is being adhered to; if not obtain approval from Demand Mngt Team

5. Pull applicable zpro

6. Enter order into SAP

7. Print order acknowledgement

8. Review order details including verification of price

9. Have order reviewed on 11 point check by supervisor

10. Mail order acknowledgement / communicate expected availability if possible with availability information received from Mat. Mngt

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11 If delivery or psdn information from material management not yet received mail order acknowledgement. Inform customer in 2nd step when material is expected to be available - complete order status report with order status remarks

12. In case of non / late availability follow order escalation process / expedited freight policy subject to (respect) of agreed upon - leadtime.

13 a - All Material allocated follow step 14

If Partial allocation

- a. inform stakeholders (Sales / Customer)
- b. subject to feedback arrange partial shipment, wait for complete order or start escalation process
- c. follow steps 14 a + b

14. Material allocated in full

- a. send edi to DeRijke warehouse or Alizay + seperate edi to de rijke forwarding
- b Certificates of Analysis printed by MM and dropped on CS printer(s).

15 Confirmation from DeRijke warehouse / Alizay material has been loaded

16. PGI done by CSR for derijke warehouse - for alizay shipments done by warehouse themselves

17. Invoicing and release invoice to accounting

18. Send invoice as hard copy to customer
or electronic invoicing for specific accounts
deferred billing for number of accounts

19 . Complete and archive file

1.2 EXPORT ORDER ENTRY Strategic Accounts

order process via Singapore office

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order via SAP (processed by Singapore office) on local CS printer

2. Check payment condition

Where applicable (LC,s) check content and arrange amendments with Deutsche Bank and customer (bank). Upon receipt of complete / approved LC (from ESSC) allocation process will start (step 7).

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- 3.. Upon receipt verify if lead time policy is being adhered to; if not obtain approval from Demand Mngt Team.
 4. Order is recorded for SOX purposes (VBAK completeness check)
 5. Order dropped on MM printer
 6. Send PSDN to Singapore office
 - 7 If delivery or psdn information from material management not yet received mail order acknowledgement. Inform S'pore in 2nd step when material is expected to be available - complete order status report with order status remarks
 8. In case of non / late availability follow order escalation process / expedited freight policy subject to (respect) of agreed upon - leadtime.
 - 9 a - All Material allocated follow step 10
Partial allocation
 - a. inform internal stakeholders (sinapore office)
 - b. subject to feedback arrange partial shipment, wait for complete order or start escalation process
 - c. follow steps listed under 10
 - 10 Material allocated
 - a. drop delivery at S'pore office
 - b. send booking request by email to DeRijke
 - c. booking confirmation received
 - if not compliant revert with request for improved booking
 - d. send edi to DeRijke warehouse or Alizay + seperate edi to de rijke forwarding
 - e Certificates of Analysis printed by MM and dropped on CS printer(s).
 11. Where applicable arrange inspection with inspection cie;s
 12. Confirmation from DeRijke warehouse / Alizay material has been loaded
 13. PGI done by CSR for derijke warehouse - for alizay shipments done by warehouse themselves
 14. Invoicing and release invoice to accounting
 15. As agreed during the Transition Period, prepare set of documents
-

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Receipt BL

Check BL content (express / manual BL)

create direct collection by deutsche bank

prepare documents - certificates of origin, legalized invoices,

export licenses, inspection reports, insurance documents

send documents to customer / bank etc

scanned documents to Singapore office + copy to agent

16. As agreed during the Transition Period, send documents as hard copy to customer

17. Issue commission credit memo in case agent is involved

18. Complete and archive file

1.3 EXPORT ORDER ENTRY Strategic Accounts

Order process for non EU locations (and not via S'pore)

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order via mail, fax, phone

Use logistic definition procedure for steps 2, 3, 4

2. Review order for completeness: P.O. Number, product, quantity, requested delivery date, ship to, price, inco term, payment condition, sold to, SCR, etc

3. Check payment condition

Where applicable (LC,s) check content and arrange amendments with Deutsche Bank and customer (bank). Upon receipt of complete / approved LC (from ESSC) allocation process will start (step).

4. Calculate correct requested ship date using DeRijke leadtimes + internal order handling lead - time

5. Verify if lead time policy is being adhered to; if not obtain approval from Demand Mngt Team

6. Pull applicable zpro

7. Enter order into SAP

8. Print_order acknowledgement

9. Review order details including verification of price

10. Have order reviewed on 11 point check by supervisor

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11. Mail order acknowledgement / communicate expected availability if possible with availability information received from Mat. Mngt

12 If delivery or psdn information from material management not yet received mail order acknowledgement. Inform customer in 2nd step when material is expected to be available
- complete order status report with order status remarks

13. In case of non / late availability follow order escalation process / expedited freight policy subject to (respect) of agreed upon - leadtime.

14 a - All Material allocated follow step 15

If Partial allocation

- a. inform stakeholders (Sales/ Customer)
- b. subject to feedback arrange partial shipment, wait for complete order or start escalation process
- c. follow step 15

15. Material allocated

- a. send booking request by email to DeRijke for sea shipments
- b. booking confirmation received
 - if not compliant revert with request for improved booking
- c. send edi to DeRijke warehouse or Alizay + seperate edi to de rijke forwarding
- d Certificates of Analysis printed by MM and dropped on CS printer(s).

Where applicable arrange inspection with inspection cie;s

16 Confirmation from DeRijke warehouse / Alizay material has been loaded

17. PGI done by CSR for derijke warehouse - for alizay shipments done by warehouse themselves

18. Invoicing and release invoice to accounting

19. As agreed during the Transition Period, prepare set of documents

Receipt BL

Check BL content (express / manual BL)

create direct collection by deutsche bank

prepare documents - certificates of origin, legalized invoices,
export licenses, inspection reports, insurance documents

send documents to customer / bank etc

20. As agreed during the Transition Period, send documents as hard copy to customer

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21 . Complete and archive file

1.4 EXPORT ORDER ENTRY Strategic Accounts

Orders via Moscow office

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order via email

Use logistic definition procedure for steps 2, 3, 4

2. Review order for completeness: P.O. Number, product, quantity, requested delivery date, ship to, price, inco term, payment condition, sold to, SCR, etc

3.. Upon receipt verify if lead time policy is being adhered to; if not obtain approval from Demand Mngt Team.

4. Calculate correct requested ship date using DeRijke leadtimes + internal order handling lead - time (subject to Inco term)

5. Verify if lead time policy is being adhered to; if not obtain approval from Demand Mngt Team

6. Pull applicable zpro

7. Enter order into SAP

8. Print_order acknowledgement

9. Review order details including verification of price

10. Have order reviewed on 11 point check by supervisor

11. Mail order acknowledgement / communicate expected availability if possible with availability information received from Mat. Mngt to Moscow office

12 If delivery or psdn information from material management not yet received mail order acknowledgement. Inform Moscow in 2nd step when material is expected to be available - complete order status report with order status remarks

13. In case of non / late availability follow order escalation process / expedited freight policy subject to (respect) of agreed upon - leadtime.

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14 a - All Material allocated follow step 15

If Partial allocation

- a. inform stakeholders (Sales/ Moscow)
- b. subject to feedback arrange partial shipment, wait for complete order or start escalation process
- c. follow step 15

15. Material allocated

- a. send booking request by email to DeRijke for sea shipments
- b. booking confirmation received
 - if not compliant revert with request for improved booking
- c. send edi to DeRijke warehouse or Alizay + separate edi to de rijke forwarding
- d Certificates of Analysis printed by MM and dropped on CS printer(s).

16 Confirmation from DeRijke warehouse / Alizay material has been loaded

17. PGI done by CSR for derijke warehouse - for alizay shipments done by warehouse themselves

18. Invoicing and release invoice to accounting

19. As agreed during the Transition Period, prepare set of documents subject to Inco Term / Payment term

Receipt BL

Check BL content (express / manual BL)

create direct collection by deutsche bank

prepare documents - certificates of origin, EX1

export licenses, inspection reports, insurance documents

send documents to customer / bank etc

20. As agreed during the Transition Period, send documents as hard copy to customer

21 . Complete and archive file

1.5 Shipment from Tianpu, China - Strategic Accounts

The Supplier's responsibilities include, but are not limited to the following:

1. Review order
 2. Review order for completeness: P. O. number, product, quantity, price, requested delivery date, how to consign ocean bills of lading, INCO terms
 3. E-mail order details to Hercules Singapore office
-

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4. Facilitation of order handled between Hercules Singapore and Tianpu, China plant

5. If Inco term is DDU or DDP inform Hercules Material Management with request to place a SAP purchase order on Tianpu for physical shipment via Antwerp. Customer Service to place a SAP sales order (standard SAP process).

1.6 Consignment Accounts - Strategic Accounts

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order

2. Verify if customer is a consignment account

3. Review order for completeness: P. O. number, product, quantity, requested delivery date, price, inco term, payment condition, sold to, etc.

4. Calculate requested ship date using DeRijke lead times

5. Pull zpro

6. Verify if lead time policy is being adhered to, if not obtain approval from Demand Mngt Team

7. Enter replenishment order (KB) into SAP

8. Print order acknowledgement

9. Review order details

10. Have order reviewed on 11 point check by supervisor

11. Mail order acknowledgement / communicate expected availability

12. If delivery or psdn information from material management not yet received mail order acknowledgement. Inform customer in 2nd step when material is expected to be available - complete order status report with order status remarks

13. In case of non / late availability follow order escalation process / expedited freight policy subject to (respect) of agreed upon - leadtime.

14 a - All Material allocated follow step 15

If Partial allocation

a. inform stakeholders (Sales/ Customer)

b. subject to feedback arrange partial shipment, wait for complete order or start escalation process

c. follow step 15

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15. Material allocated

- a. send booking request by email to DeRijke for sea shipments
- b. booking confirmation received
 - if not compliant revert with request for improved booking
- c. send edi to DeRijke warehouse or Alizay + separate edi to de rijke forwarding
- d Certificates of Analysis printed by MM and dropped on CS printer(s).

Where applicable arrange inspection with inspection cie;s

16 Confirmation from DeRijke warehouse / Alizay material has been loaded

17. PGI done by CSR for derijke warehouse - for alizay shipments done by warehouse themselves

18. Create KE order (consignment issue) to start invoicing process
Invoicing and release invoice to accounting subject to agreement with customer (monthend invoicing for example)

19. Send invoice as hard copy to customer
or electronic invoicing for specific accounts

20. Issue commission credit memo in case agent is involved

21. Reconciliation process SOX to ensure SAP inventory is in line with customer inventory (customer audits where need)

22. Complete and archive file

1.7 EU ORDER ENTRY

Handling of strategic accounts via agents (EU)

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order via fax, phone, mail from agent or customer
2. Check if agent is entitled to receive commission / handle account as per contract

Use logistic definition procedure for steps 2, 3, 4

3. Review order for completeness: P.O. Number, product, quantity, requested delivery date, ship to, price, inco term, payment condition, sold to, SCR, etc

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4. Calculate correct requested ship date using DeRijke leadtimes + internal order handling lead - time
 5. Verify if lead time policy is being adhered to; if not obtain approval from Demand Mngt Team
 6. Pull applicable zpro
 7. Enter order into SAP
 8. Print order acknowledgement
 9. Review order details including verification of price
 10. Have order reviewed on 11 point check by supervisor
 11. Mail order acknowledgement / communicate expected availability if possible with availability information received from Mat. Mngt to agent and / or customer
 12. If delivery or psdn information from material management not yet received mail order acknowledgement. Inform customer in 2nd step when material is expected to be available - complete order status report with order status remarks
 13. In case of non / late availability follow order escalation process / expedited freight policy subject to (respect) of agreed upon - leadtime.
 - 14 a - All Material allocated follow step 15
If Partial allocation
 - a. inform stakeholders (Sales/ Customer)
 - b. subject to feedback arrange partial shipment, wait for complete order or start escalation process
 - c. follow steps 14 a + b
 15. Material allocated
 - a. send edi to DeRijke warehouse or Alizay + seperate edi to de rijke forwarding
 - b. Certificates of Analysis printed by MM and dropped on CS printer(s).
 16. Confirmation from DeRijke warehouse / Alizay material has been loaded
 17. PGI done by CSR for derijke warehouse - for alizay shipments done by warehouse themselves
 18. Invoicing and release invoice to accounting
 19. Send invoice as hard copy to customer or electronic invoicing for specific accounts deferred billing for number of accounts
-

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20 Issue commission credit memo

21. Complete and archive file

1.8 Handling of strategic accounts via agents (NON EU)

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order via mail, fax from agent / customer
2. Check if agent is entitled to receive commission / handle account as per contract

Use logistic definition procedure for steps 2, 3, 4

3. Review order for completeness: P.O. Number, product, quantity, requested delivery date, ship to, price, inco term, payment condition, sold to, SCR, etc

4. Check payment condition

Where applicable (LC,s) check content and arrange amendments with Deutsche Bank and customer (bank). Upon receipt of complete / approved LC (from ESSC) allocation process will start (step).

5. Calculate correct requested ship date using DeRijke leadtimes + internal order handling lead - time

6. Verify if lead time policy is being adhered to; if not obtain approval from Demand Mngt Team

7. Pull applicable zpro

8. Enter order into SAP

9. Print_order acknowledgement

10. Review order details including verification of price

11. Have order reviewed on 11 point check by supervisor

12. Mail order acknowledgement / communicate expected availability if possible with availability information received from Mat. Mngt

13 If delivery or psdn information from material management not yet received mail order acknowledgement. Inform customer in 2nd step when material is expected to be available - complete order status report with order status remarks

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14. In case of non / late availability follow order escalation process / expedited freight policy subject to (respect) of agreed upon - leadtime.

15 a - All Material allocated follow step 16

If Partial allocation

- a. inform stakeholders (Sales/ Customer)
- b. subject to feedback arrange partial shipment, wait for complete order or start escalation process
- c. follow step 16

16. Material allocated

- a. send booking request by email to DeRijke for sea shipments
- b. booking confirmation received
 - if not compliant revert with request for improved booking
- c. send edi to DeRijke warehouse or Alizay + separate edi to de rijke forwarding
- d Certificates of Analysis printed by MM and dropped on CS printer(s).

Where applicable arrange inspection with inspection cie:s

17 Confirmation from DeRijke warehouse / Alizay material has been loaded

18. PGI done by CSR for derijke warehouse - for alizay shipments done by warehouse themselves

19. Invoicing and release invoice to accounting

20 Prepare set of documents

Receipt BL

Check BL content (express / manual BL)

create direct collection by deutsche bank

prepare documents - certificates of origin, legalized invoices,

export licenses, inspection reports, insurance documents

send documents to customer / bank etc

21. Send documents as hard copy to customer

22. Issue commission credit memo

23 . Complete and archive file

1.9. Handling of orders strategic accounts via local warehouses Europe + STO process

2.1 Local Material Mgt. - calculate re-order quantity

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- Customer Care Supervisor (CC Spv) resp. Customer Service Rep (CSR) in charge of local Material Mgt. periodically (Bologna, Duesseldorf, Tarragona: bi-weekly / Alizay once per month) reviews current inventory levels and calculates re-order quantities per product type using Excel program for stock replenishment. It takes into consideration average sales per type, sales forecast, inventory targets and minimum order quantities.

2.2 Local Material Mgt. - purchase order entry

- Combines the products needed into one purchase order (PO) per storage location (Antwerp/Alizay).
- Enters purchase order into the SAP system specifying relevant details on:
 - supplier (CMC: Aqualon France; all other SBU's: Hercules Doel)
 - production plant
 - storage location
 - ship-to address
 - product (material no.)
 - quantity
 - delivery date
 - special product specifications - if applicable
 - transfer price (based on transfer price list issued by Business Mgt.)

- Every STO that has been entered automatically receives a unique SAP reference # that is referred to in the further execution of the purchase order.
- when saving/printing the STO it is automatically dropped-off on the printer of the Customer Service Dept. in Rijswijk to start processing an intercompany sales order.

Specifics per location:

| | |
|------------------|--|
| Bologna + | STO print is checked by CC Spv and then CSR submits STO to MM in Rijswijk. |
| Tarragona | |
| Alizay | PO is created by CS Spv. |

2.3 CS Rep. Rijswijk office - purchase order review

- CSR located in Rijswijk office being in charge of handling intercompany orders reviews the STO vs. Customer Master Data, i.e. product, special specifications, transfer price. Special attention is given to the requested date of delivery as indicated by the sister company.

2.4 CS Rep. Rijswijk office - order entry in SAP

- A sales order is entered into the SAP system using the "Order Master" (ZPRO) of the respective sister company containing all relevant standard order details that are completed by variable specific order details.
-

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- In case an "Order Master"(ZPRO) is not available or a product is missing in an existing ZPRO, it has to be created/extended (ref. ZPRO/Master Data Maintenance procedure).
- Every order that has been entered automatically receives a unique SAP reference # that is referred to in the further execution of the order.
- After order entry:
 - a) an order confirmation is printed on the sister company's printer.
 - b) an internal copy of the order confirmation is printed locally.
 - c) order data are automatically submitted to the Material Management Department for availability check and material allocation.

2.5 Local Material Mgt. - check order confirmation

- checks if order confirmation is compliant with PO and signs it off for correctness. Checks the COA for material that has a product specification related SCS. Clears any difference with CSR in Rijswijk.

2.6 Material Management Department (MM) - make material available

- Verifies product availability in line with the requested shipdate:
 - a) if product is available, prints Delivery Note on local printer. Certificates of Analysis are printed both on local printer and on the sister company's printer.
 - b) if product is not available, MM gives indication to CSR on when material is expected to become available (via print "notification of planned shipdate") for follow-up with sister company.

2.7 CS Rep. Local office - instruct warehouse

- Submits to the warehouse the order data, including all necessary instructions for preparation of consignment for shipment. At the same time prints the delivery note on the sister company's printer.

2.8 CS Rep. Local office - instruct forwarder

- Instructs the forwarder for execution of physical transportation of the consignment.

2.9 Local Material Mgt. - notify local warehouse

- Upon receipt of the delivery note notifies the local warehouse on the details of the upcoming delivery.

2.10 CS - automatic inventory booking

- Upon creation of the "Notification of Dispatch" material is automatically booked into local inventory.

Specifics per location:

Alizay material is booked in "In transit 9999"

2.11 CS Mgt. - check Goods receipt of local warehouse

- checks if the confirmation from the local warehouse on material received is compliant with the delivery note (products/lot numbers/quantities). In case of deviations clears differences with local warehouse and/or CS Rep. in Rijswijk.

Specifics per location:

Alizay a transfer posting has to be done before allocation of material

2.12 Filing

CS: Archives all STO' orders when completed.

1.10 Handling of 3rd party orders strategic accounts Europe

2.2 Customer Service Rep. - receipt of order

- Receives customer orders via letter, fax message, e-mail, phone or via Sales Force.

- Orders placed by phone have to be documented in written form.

2.2 Customer Service Rep. - order review

- Reviews the orders vs. Customer Master Data, i.e. product, special specifications, price, delivery and payment terms. Special attention is given to the requested date of delivery as indicated by the customer.

2.13 Customer Service Rep. - order review / deviations

- Any deviation from standard conditions has to be addressed to Sales in order to get approval or instructions on how to proceed (for ex. initiate the SCR procedure).
- Customers have to be informed accordingly.

2.14 Customer Service Rep. - order entry in SAP

- The order is to be entered within 24 hours after order receipt into the SAP system on basis of an "Order Master" (ZPRO) containing all relevant standard order details that are completed by variable specific order details. For each delivery date separate orders have to be entered in SAP system. Special attention is to be given to the application code (PAC) assigned to the ordered materials.
 - In case an "Order Master" is not available, it has to be created/extended (ref. ZPRO/Master Data Maintenance procedure).
 - Every order that has been entered automatically receives a unique SAP reference # that is referred to in the further execution of the order.
-

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- The SAP system automatically checks every newly entered order and blocks it in case of overdue payments or exceeding customer's credit limit.
- The Customer Service Rep. follows blocked orders in respect of timely delivery to the customers in close contact with the Credit Control Department and/or Sales.
- Upon release of the order by the Credit Control Department, the SAP system generates a "Notification of Credit Release" and the Customer Service Rep. can proceed with the order processing.
- After order entry an internal Order Confirmation is printed. This document includes text fields with the instructions for correct order processing.

2.15 Customer Service Rep. - Purchase Order creation

- After order entry a Purchase Order (PO) is automatically created by the SAP system. In case of credit hold, P.O. is created only after credit release.
- Customer Service Rep. completes the Purchase Order by adding variable specific Purchase Order details such as delivery date and request of CoA.

2.16 CC Supervisor or oth. CC team member - 2nd order and PO check

- The Order is double-checked by a second person (Supervisor or other responsible person within Customer Care team). Order is to be checked line by line and to be signed-off on the order confirmation (internal copy) for correctness.
- The Purchase Order is checked by the Customer Service Rep. and initialled for correctness. It is then double checked either by the Customer Care Supervisor or other responsible person within Customer Care team.

2.17 Customer Service Rep. - order confirmation

- An external copy of the order confirmation is sent to the customer only upon request or if needed either immediately after order approval or after confirmation of material availability (see item 2.9).

2.18 Customer Service Rep. - PO submission

- CSR sends the PO to the third party supplier or to mother company.

2.19 Customer Service Rep. - PO confirmation

- Receives from the third party supplier/mother company a written confirmation of the PO, can either be an order confirmation or the delivery note (see 2.10a).
- Checks the confirmation and signs it off for correctness.

2.20 Customer Service Rep. - material availability follow up

- CSR verifies product availability as mentioned on the supplier's confirmation:
 - a) if product is available, receives the Delivery Note and Certificate of Analysis (the latter only upon request) from the third party supplier;



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- b) if product is not available, informs the customer and/or Sales on when material is expected to become available and follows up availability with third party supplier.

2.21 Third Party Supplier / Customer Service Rep. - arrangement of shipment

- The shipment of the goods is arranged by the third party supplier, except when differently agreed. In the latter case, CSR instructs the forwarder for execution of physical transportation of the consignment. CSR prepares any specific documents necessary for customs clearance and/or to be sent to the customer.
- For consignments ex mother company, material has to be customs cleared upon arrival. All documentation for customs clearance is prepared by mother company, whereas local CSR contacts the customs clearance service company to follow up customs clearance. If needed by local law, CSR sends a manual delivery document to customs clearance service company to accompany material during delivery to final customer.
- In case the order includes material that has a product specification related SCS , a COA check needs to be done prior to sending it - where applicable.
- CS SPV notifies local area controller to create proper accrual for SOX

2.22 Customer Service Rep. - invoicing

- **PO placed to third party suppliers:** Upon receipt of the confirmation of the shipment from the third party supplier, starts the invoicing procedure:
 - a) posts Goods Receipt;
 - b) creates invoice;
 - c) sends invoice to customer.
- **Intercompany PO placed to mother company:** after customs clearance, starts invoicing procedure (Goods Receipt is posted by mother company):
 - a) creates invoice;
 - b) sends invoice to customer.
- Third party suppliers send their invoices directly to the European Shared Services Center (ESSC) in Rijswijk for checking and payment. In case invoices are not compliant with POs, ESSC blocks/parks them and sends them to the local office for investigation and/or approval.

2.23 Customer Service Rep. - filing

- Archives all orders and POs when completed.
-

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1.11 Pricing Strategic Accounts EMA

List Pricing

The Supplier's responsibilities include, but are not limited to the following:

1. European pricing coordinator receives excel form with all price and customer information and processes this information into SAP as list price
2. EPC validates what has been entered into SAP against actual price lists

Competitive Prices (CPI - off list pricing)

The Supplier's responsibilities include, but are not limited to the following:

1. EPC receive CPI form from sales or business support as excel form via lotus notes
2. Enter CPI directly into SAP
3. Two approvals are required for price to be accepted in the system
4. Notify Hercules when CPI's are available for approval
5. Review exception reports to monitor timeliness / rejections etc in approval process
6. Escalate delinquent approvals
7. Notify Customer Service to update new prices on existing and new orders
8. Interfaces with sales or business support to resolve any pricing issues

Price Over-ride Process

The Supplier's responsibilities include, but are not limited to the following:

1. Orders on books, already priced, confirmed to customer for future shipment, no price shows up in SAP during order processing, disconnect between PO and SAP aut. price
 2. Revert to Industry Manager / Sales Mngr / Sales Repr with issue to check conditions before further order processing
 4. receive confirmation by email (CPI process started meanwhile for future orders)
 5. Advise all CSRs to go into SAP and bill block all orders that have pending price increases / other issues mentioned.
 6. Remove bill block as required
-

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7. Over-ride prices where necessary and provide reason

8. Continue with order process as described

1.12 SCR process - service related SCR's

1. CSR receives special customer service related request from Sales or external source (distributor / customer)

2. Following internal discussion, decision will be taken to process the request via SCR database to seek formal approval by authorized approvers.

II Handling of agents / distributor orders

2.1 Handling of agents / distributor orders (EU)

For all processes see also sections 1.1 -> 1.14 Strategic Accounts.

Differences are described below. If not described processes are identical to processes as described under Strategic Accounts.

2. Verify if agent / distributor is on authorized list representing Aqualon + check if commission levels (generic and exceptions) are authorized by Distribution Manager.

4. Verify if lead time policy is being adhered to; if not record non compliance in distributor sheet for distributor stock orders. Same for other order discrepancies, order adjustments, etc

5. Calculate requested ship date using lead time as formally agreed with Distribution Manager for stock orders

6. Verify quantity ordered for distributor stock meets guidelines in agreement with Distribution Manager

Others steps see 1.1 strategic accounts

2.2 EXPORT ORDER ENTRY

Distributors / Agents via Singapore office

Same steps as handling of strategic accounts via Singapore office

2.3 Handling of agents / distributor orders (Non EU)

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Same steps as handling of strategic accounts for EMA (Non EU) except for steps below. See Section 1.3.

1. Order source is distributor, agent or customer
2. Verify if agent / distributor is on authorized list representing Aqualon + check if commission levels (generic and exceptions) are authorized by Distribution Manager.
4. Verify if lead time policy is being adhered to; if not record non compliance in distributor sheet for distributor stock orders. Same for other order discrepancies, order adjustments, etc
5. Calculate requested ship date using lead time as formally agreed with Distribution Manager for stock orders
6. Verify quantity ordered for distributor stock meets guidelines in agreement with Distribution Manager

2.4 Handling of agents / distributor orders via Moscow office

Same steps as handling of strategic accounts via Moscow office except for steps below. See Section 1.4.

15a. Liaise with Moscow team with respect to truck loading to ensure pallets fit in the truck / appropriate material is collected ex warehouse by Russian forwarder.

2.5 Handling of agents / distributor Tianpu

Same steps as handling of strategic accounts via Moscow office.
See Section 1.5.

2.6 Handling of consignment accounts agents / distributor

In principal not applicable otherwise section 1.6 applies

2.6 Handling of orders ex local stock agents / distributor

Same steps as handling of strategic accounts via local stock.
See Section 1.9

2.7 Handling of 3rd party orders agents / distributor

Same steps as handling 3rd party orders via local stock.
See Section 1.10

2.8 Pricing Agents / Distributors

Current process Customer Service (pricing project in process)

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Pricing

1. Local Customer Service receives new market prices and validity criteria from sales, business support or transfer prices from distribution manager. Prices are maintained by local CSR in SAP via automatic pricing.

2. CSR validates what has been entered into SAP matches input

3. CSR processes orders against adjusted prices

2.9 Price Over-ride Process

The Supplier's responsibilities include, but are not limited to the following:

1. If price in SAP does not match price, inco terms, etc in SAP or manually (current process) maintained distributor price list on AQ CC drive in distributor subfolder then CSR consults Business Support, Sales, Distribution Manager to verify / receive price confirmation before prices in order can be confirmed to agent / distributors

2. CSR will put billing block at order subject to price verification.

3. Following above confirmation prices in order will be updated / order confirmation will be send.

4. Remove bill block as required and continue with order process

5. Adjusted prices will be updated in SAP by CSR

2.10 SCR process - service related SCR's

1. CSR receives special customer service related request from Sales or external source (distributor)

2. Following internal discussion, decision will be taken to process the request via SCR database to seek formal approval by authorized approvers.

III Handling of other direct accounts orders

Where applicable all processes / steps are identical to whole section strategic accounts with the exception of sections 1.7 and 1.8 which donot apply to other direct accounts.

IV Handling of other export orders

(all orders except for strategic accounts)

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4.1 Orders via Singapore office

All processes / steps are identical to section strategic accounts (section 1.2) albeit that these orders are handled by the export CSR whereas orders for strategic accounts are passed to CSR handling strategic accounts

4.2. Orders via BDP warehouse

1. Receive B/L from warehouse
2. Create delivery
3. Enter PGI (Post Goods Issue) into SAP
4. Print Invoice
5. Review Invoice
6. Courier invoice to customer

4.3. Intercie orders Wilmington - Shipment from Europe to South America, or USA

The Supplier's responsibilities include, but are not limited to the following:

1. Receive intercie purchase order in SAP
 2. Review order for completeness: P. O. number, product, quantity, requested delivery date, ship to, etc
 3. Calculate requested ship date using DeRijke website
 4. Pull applicable zpro
 5. Enter Sales order into SAP
 6. Verify P.O. number and sales order are linked
 7. perform 11 point check (same as before) by gatekeeper
 8. Print order acknowledgement on US + MM printer
 - 9 In case of non / late availability follow order escalation process / expedited freight policy subject to (respect) of agreed upon - leadtime.
-

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10 a - All Material allocated follow step 11

If Partial allocation

- a. inform stakeholders (Sales/ Customer)
- b. subject to feedback arrange partial shipment, wait for complete order or start escalation process
- c. follow step 11

11. Material allocated

- a. send booking request by email to DeRijke for sea shipments
- b. booking confirmation received
 - if not compliant revert with request for improved booking
- c. send edi to DeRijke warehouse or Alizay + separate edi to de rijke forwarding
- d Certificates of Analysis printed by MM and dropped on CS printer(s).

Where applicable arrange inspection with inspection cie;s

16 Confirmation from DeRijke warehouse / Alizay material has been loaded

17. PGI done by CSR for derijke warehouse - for alizay shipments done by warehouse themselves

18. Invoicing and release invoice to accounting

19. Prepare set of documents

Receipt BL

Check BL content (express BL)

create direct collection by deutsche bank

prepare documents - certificates of origin, legalized invoices,
export licenses, inspection reports, insurance documents

send documents to customer / bank etc

20. Send documents as hard copy to customer

21 . Complete and archive file

4.4. Pricing

Orders are placed via Purchase orders with prices approved via upfront processes managed by issuing office (both Singapore and Wilmington)

4.5. SCR' s

Are created by issuing office

V Tasks of Business Support Europe

5.1 Business Support Industry

5.1.1 - Handle Industry specific questions other than Supply Chain (Shera, samples, quality questionnaires, literature, pricing, availability before order is submitted, etc.)

Business, Support Repr. receives inquiry from Customer, Distributor / Agent or Sales.

Based on expertise / knowledge next step will be taken either direct or after consultation with internal parties like Sales, Industry Mngt, CC Spv / Mngt, etc.

1. Sample requests will be submitted to European Sample Coordinators
2. SHERA inquiries
 - a. Appropriate position paper(s) will be send to customer etc subject to enquiry
 - b. Questionnaires will be discussed / filled together with other functions like SHERA Mngt., Industry Mngt, Sales, etc subject to customer criticality, level of detail, etc
3. Literature request will be submitted to literature room or internet reference will be made
4. Pricing (all steps within expected leadtime)
 - a. Receives price inquiry from agent / distributor (mainly MEA)
 - b. Checks target price list in LN teamroom
 - c. Adds freight cost based on DeRijke website
 - d. Determines together with Sales / Sales Mngt and based on input from Agent / Distr if price is competitive subject to parameters like industry / regional / country pricing, competition, necessity to pick up additional business, track records with customer, etc
 - e. If yes then offer will be issued following standard procedure
 - f. If no then CPI will be issued to get approval from Sales Mngt / Industry Manager based on excel form
 - g. Following approval offer will be issued
 - h. Repr. ensures follow up take place with agent / distributor where need in close cooperation with Sales
5. Availability prior to order placement
 - a. Receives request to check if material is available
 - b. Checks with Mat Mngt team
 - c. Reverts to customer, agent / distr and informs on availability, lead time and request for order placement
 - d. Keeps Customer Service informed where need

Business, Support Repr. receives inquiry from Customer, Distributor/ Agent or Sales.

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5.1.2. - Payment - Issues agents / customers

1. receives notification from Sales / ESSC / AR / DM regarding customer or agent which does not respect payment condition after standard dunning procedure
2. contacts customer / agent subject to agreement with sales to ensure payment will be effected
3. notifies ESSC about status

5.1.3. - Payment new / adjusted Credit Applications agents / customers

1. Issues Credit Application form for new customers / adjusted payment conditions
2. Send form to ESSC for approval (cc to Sales)
3. Upon approval from ESSC inform customer, agent, sales and Customer Service (to adjust SAP Masterdata / Zpro)

5.1.4 - Coordinate / issue technical service work requests for Sales

1. Sales requests Bus Support Representative to launch technical Service work request in Lotus Notes Database
2. Repr. issues request in database
3. Coordinates process incl respect of timelines by either party
4. Receives feedback from A&D Lab.
5. Subject to criticality / distributor / agent to be informed either Sales or Bus. Support Repr.informs requesting party

5.1.5 - Coordinate technical complaint for Sales (see also complaint handling process in Lotus Notes)

- 1.. Sales requests Bus Support Representative to launch technical (product specification, application failure) complaint in Lotus Notes Database
2. Repr. issues request in database
- 3 Coordinates process incl respect of timelines by either party
- 4 Receives feedback from Internal Investigator.
5. Subject to criticality / distributor / agent to be informed either Sales or Bus. Support Repr.informs external party

5.1.6 - Coordinate / issue technical special customer request for Sales

1. Sales requests Bus Support Representative to launch technical Special Customer Request in Lotus Notes Database
- 2., Repr. issues request in database
3. Coordinates process incl respect of timelines by either party
4. Receives feedback from final approver
5. Subject to criticality / distributor / agent to be informed either Sales or Bus. Support Repr.informs requesting party

5.1.6 - Handle Internet request

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1. receives internet request in business email box
2. subject to request will handle themselves or seek advice from sales
3. internal steps like sample request, literature request, etc
4. informs customer / sales about actions taken

5.1.7. - Exhibitions Activities (e.g., providing data)

1. Customer Care Manager receives request for participation
2. Upon approval Business Support Representatives will support
3. Coordinate action forms / follow up where appropriate / requested by Sales

5.1.8. - Coordinate communication process of product / specification changes towards distributor / agents including sampling, literature updates, collection of feedback, etc applying to one industry

1. Receives input from internal functions (Sales, CCM, IM, etc)
2. Ensures that agent / distributor mailing list is actual (lotus notes address database or alternative)
3. Sends mailing to agents / distributors in scope
4. Collects feedback and informs relevant internal parties (Sales, IM, etc)

5.1.9. - Maintain address database (agents / distributors and where applicable direct customers)

1. receives input from different sources (sales, agent / distributor, customer, etc)
2. updates lotus address database to ensure future mailings will be send to appropriate contact persons

5.1.10. Pricing - present process (pricing project in place)

1. Receive or request input from Sales / Ind Mngt regarding prices
2. Inform agents / distributor about price increase for specific industry
3. Maintain / Review industry content distributor / agent price lists to ensure orders are processed at appropriate prices
4. Liaise with Customer Service in case of questions about pricing
5. Send agents / distributors industry price lists (where applicable)

5.1.11 - Commissions (current process)

1. Inform CSR in case commission percentage has changed following approval by Distr Mngt and / or other stakeholders
2. Send payable commission lists (S. Europe) to agents

5.1.12 - Rebate process

1. Following agreement made between sales and customer send complete Rebate opening form to CS person handling rebates
 2. During annual process be involved / inform CS rebate person about
-

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- a. discrepancies in rebates
- b. completeness of total number of rebates in SAP versus agreed
- c. progress made versus plan / accrual
- d. be involved in informing CS to adjust / close rebate before critical milestones (quarter / year end) to ensure profits are pulled into appropriate period

3. Support Sales with rebate closure process by issuing complete Rebate closure form to CS person handling rebates following to close rebate

5.1.13 - KPI analysis

1. Receive agent KPI's from reporting team
2. Analyze KPI's (leadtime, size or order, a.o)
3. Come up with recommendations towards different stakeholders to improve / optimize business structure

5.1.14 - Prepare bi annual Agent performance reviews

1. see under section Business Support Generic

5.1.15 - Reporting / Analysis / Business Follow up / Maintenance of competitive data

1. Issue (mid)month reports with Now Looks, open orders (subject to demand)
2. Issue overview status of offers issued
3. Compare Sales results todate with previous year,
4. Submit comments to Sales Manager subject to Industry demands)
5. Issue Now Looks + Sales Plan together with industry sales (where applicable / agreed with sales)
6. Follow if indent customers place orders
7. Sample follow up (content)
8. Competitive data maintenance (volumes, prices, etc) subject to industry

Business Support Generic - Distributors

5.2.1. - Forecasting for distributors

1. Receive forecast sheets from demand planners for distributors in scope
2. Pass sheets to distributors
3. Ensure sheets are returned timely by Distributors
4. Check content of forecast sheets and identify / discuss / adjust gaps
5. Send final sheet to demand planner

5.2.2. Maintain Lotus Notes address contact database

1. see process Business Support Industry above - BSG maintains generic contact info.

5.2.3. - Mailings to distributors

1. Business Support Generic receives input from different stakeholders (IM, DM, CCM, SCM) regarding generic themes (price increase, packaging changes, etc)
 2. BSG sends generic email / attachment to agents / distributors
-

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5.2.4 - Payment - Issues distributors

1. Receives notification from Sales / ESSC / AR / DM regarding customer or agent which does not respect payment condition after standard dunning procedure
2. contacts customer / agent subject to agreement with DM to ensure payment will be effected
3. Notifies ESSC / DM about status

5.2.5 - Payment new / adjusted Credit Applications distributors

1. Issues Credit Application form for new distributors / adjusted payment conditions
2. Send form to ESSC for approval (cc to DM)
3. Upon approval from ESSC inform distributor, DM, sales and Customer Service (to adjust SAP Masterdata / Zpro)

5.2.6 - Performance ratings bi-annually

1. BSG assembles input / data from various angles (Sales, CS, ESSC, distributors, KPI reports, etc)
2. Based on input bi-annually a distributor performance rating sheet will be issued for all distributors /agents.
3. Upon completion form will be submitted to Distribution Manager for review with distributor
4. Final performance sheets are posted on shared drive

5.2.7 - KPI analysis distributors

1. Receive distributor KPI's from reporting team
2. Analyze KPI's (leadtime, size or order, a.o)
3. Come up with recommendations towards different stakeholders to improve / optimize business structure

5.2.8 - Coordinate Quarterly settlement process

1. Receive monthly ex stock sales from all distributors in scope
2. Compare above sales with sales in business warehouse
3. Based on minimum volumes propose to sales managers to make restatements to industries to reflect "true" industry sales
4. Receive approvals or remarks from Sales Mngrs
5. Adjust restatements if need
6. Request CS to identify SAP order lines which can be restated
7. Submit data to DM Team to make restatements etc.

5.2.9.- Follow up on distributor stock sales and other reports

1. Ensure that all distributors submit agreed upon reports to appropriate contacts within expected time frames (monthly sales reports, quarterly reports, etc)
-

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5.2.10.- Maintain distributor price lists (current process - part of pricing project to identify improvements)

1. Manually maintain all distributor price lists based on input from different angles (sales, DM, CCM, Bus Support Industry, etc)
2. Ensure updated price lists are posted on shared drive for overall access and order processing by CS
3. Ensure price lists are send out to distributors which are entitled to receive price lists

5.2.11- Communicate generic price increases to distributors / maintain price lists

1. Receive input from CCM / DM / Ind Mngt / Sales regarding price increase
2. Inform agents / distributor about price increase for specific industry
3. Maintain / Review industry content distributor price lists to ensure orders are processed at appropriate prices
4. Liaise with Customer Service in case of questions about pricing
5. Send distributors price lists for all industries (where applicable)

5.2.12 - Coordinate price support Distributors

1. Distributors have special prices to retain specific agreed upon customers
2. Distributors are charged at normal standard transfer price
3. Business Support receives on monthly / quarterly basis overview from Distributor with customers sales (price - volume)
4. Business Support matches info with prices agreed upon / volumes sold to Distributor stock
5. Business Support submits file to Distribution Manager for approval
6. Upon approval informs CSR to issue Credit Note

VI Other generic Customer Service processes

1. Preship Sample Process, Inspections , Import licenses

(Samples sent to Customer for testing; track through SAP)

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order
 2. Review CSR Header Notes or instructions in intercie purchase orders for pertinent details
 3. Request made to send pre-ship sample prior to shipment after consultation with stakeholders
 4. Notify Mat. Mngt to allocate batches involved via SAP process
-

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5. a. For import licenses wait for importlicense number
. upon receipt book order etc with DeRijke + standard order process

5. b. pre sample
Delivery to warehouse - instruction to send out turn sample to customer
Batches allocated by MM
Upon approval from customer follow order process
If not approved - cancel delivery
New sample selection etc

5. c inspection
Delivery made
Schedule appointment with Inspection office
Warehouse notified via EDI
Goods prepared for inspection
Inspection performed
If ok follow order process

2. Expedited Freight - Hercules Pays Freight

The Supplier's responsibilities include, but are not limited to the following:

If customer is paying for freight costs no approval is necessary
If Hercules pays freight :

1. Receive order
2. Request made to expedite order
3. Check rates for expedited freight / delivery performance levels with DeRijke
4. Obtain approval via escalation procedure subject to amount / DOA agreed
5. Contact DeRijke and warehouse / plant with requirement

6. Place order

3. Air Freight Policy - Hercules Pays Freight

The Supplier's responsibilities include, but are not limited to the following:

If customer is paying for freight costs no approval is necessary
If Hercules pays freight :

1. Receive order
-

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2. Request made to expedite order
3. Check rates for expedited freight / delivery performance levels with DeRijke
4. Obtain approval via escalation procedure subject to amount / DOA agreed
5. Contact DeRijke and warehouse / plant with requirement
6. Place order

4. No Charge Order Policy

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order
2. Request made to ship order at no charge
3. Obtain approval from Industry Manager / Sales Manager
4. Calculate requested ship date using DeRijke leadtimes
5. Enter No Charge Order type (TANN order) into SAP
5. Orders Shipped/Not Billed

The Supplier's responsibilities include, but are not limited to the following:

1. Review SAP report (ZVDEL / ZFSAS)
2. Investigate each order on report
3. Contact respective customer service representative to take action needed to finalize invoice
4. Print invoice
6. Orders Billed not Released to Accounting

The Supplier's responsibilities include, but are not limited to the following:

1. Review SAP report (AQSD01W3)
 2. Investigate each order on report
-

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3. Contact respective customer service representative to take action needed to finalize invoice
4. Print invoice
5. Mail invoice
7. Manual Invoice - Credit Memo Issuance

The Supplier's responsibilities include, but are not limited to the following:

1. Review request for credit memo to be issued
2. Review all documentation for approvals
3. Enter credit requests into SAP
4. Approve credit request in SAP by supervisor
5. Print credit invoice
6. Review credit invoice
7. Mail credit invoice to customer
8. How to Request a Freight Quote / leadtime

The Supplier's responsibilities include, but are not limited to the following:

1. Check DeRijke website
2. If not on website approach DeRijke for any rate / leadtime

9. CUSTOMER COMPLAINT PROCESS

(present European process - adjustments in progress)

A. Preparation of a Customer Complaint/Resolution

The Supplier's responsibilities include, but are not limited to the following:

1. CSR enters complaint into lotus notes complaint database or Non Conformity form
 2. If return is required, CSR enters return order into SAP
 3. If material is to be replaced, CSR enters new order in SAP to be sent to customer
-

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4. If material is to be destroyed, CSR advises customer once approved CCA is approved in database by Industry Manager

B. How to Handle Damaged and Carrier Complaints

The Supplier's responsibilities include, but are not limited to the following:

1. CSR enters complaint into Non Conformity sheet
2. NC is send to European coordinator
3. Upon revision EC sends NC to DeRijke for review / corrective actions
4. Feedback received from DeRijke and submitted to CSR
5. EC maintains status, liabilities etc in overview incl KPI's for monthly performance review with DeRijke
6. If return is required CSR enters return order into SAP
7. If material is to be replaced, CSR enters new order in SAP to be sent to customer
8. If material is to be destroyed, CSR advises customer once approved by Management

C. Processing of Returns (not only for complaints)

The Supplier's responsibilities include, but are not limited to the following:

1. Receive notification from customer to return material
 2. Determine if an approved complaint report is available; if so advise customer to return material in accordance with complaint report
 3. Enter return order in SAP notating product and quantity to be returned
 4. Fill Return sheet with relevant information to be approved by CC Supervisor and Mat Mngt
 5. Issue EDI to notify forwarder to pick up material
 6. Send form to receiving location (plant or warehouse) to notify
 7. Receiving location physically receives the material
 8. Notification from warehouses that material has been received
-

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9. Receiving location enters return delivery and post goods issue into SAP (Alizay does GR - Antwerp GR by MM)

10. CSR releases the credit invoice to the customer

11. Release Credit note by Supervisor

11. Print the invoice

12. Review the invoice for accuracy

13. Mail the invoice when required

VII. CUSTOMER MASTER DATA

All masterdata changes are archived in file for SOX compliance

A. Request for Tax Exemption Certificate

The Supplier's responsibilities include, but are not limited to the following:

1. Determine if a new customer is tax exempt
 2. Set master data at -0- "tax exempt"
 3. Send letter to the customer requesting their tax exemption certificate
 4. Receive signed tax exemption certificate from customer
 5. File in customer file
- B. Update and Maintain Tax Code by Customer & Sales Record for GST/VAT

The Supplier's responsibilities include, but are not limited to the following:

1. Receive input from TAX dept.
 2. Maintain Zpro either manual or DLSP table
- C. Agent Commissions (Create Master Data File)

The Supplier's responsibilities include, but are not limited to the following:

1. Legal agreement in place, provides products covered, rate % of commission to be issued and on what basis
 2. Create agent number in SAP
-

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3. Enter % discount in pricing conditions

4. Partner agent number to respective zpro

D. Process for Creating a Sold to/Ship to

The Supplier's responsibilities include, but are not limited to the following:

1. Receive an order from a new customer with sold to and ship to information
2. Create the address(s) in SAP master data using the information provided by the customer filling in the data on the appropriate screens
3. Partner sold to, ship to and payer numbers to the sold to party in SAP

E. Process for Creating / adjusting a payment condition in SAP

1. Receive approved credit application form from ESSC
2. Process request in SAP

F. Salesman Number Changes

The Supplier's responsibilities include, but are not limited to the following:

1. Receive new salesman assignments
2. Partner new salesman number to "Customer Sold To"
3. Update appropriate ZPRO(s) at the item partner level and makes the change

G. IPC Changes

The Supplier's responsibilities include, but are not limited to the following:

1. Receive new IPC assignments
2. Partner new IPC to "Customer Sold To" / Ship to location
3. Update appropriate ZPRO(s) at the IPC code level and makes the change

H. Extend Materials in SAP

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The Supplier's responsibilities include, but are not limited to the following:

- a. existing materials to be extended to new sales org / plant
 CS Masterdata contact liaises with different contacts (procurement, Quality, plant) to ensure set up in SAP is complete for order processing
- b. new materials
 . CS masterdata contact submits request via lotus notes database

I. Synchronize SAP Zpro and Masterdata

On intermittent basis compare ZPRO / Masterdata with appropriate reports Make adjustments where need.

VIII REBATE PROCESS

The Supplier's responsibilities include, but are not limited to the following:

1. Receive RRF (Rebate Request Form) from sales representative / business support industry repr. via email
 2. Request sales mngt and business management approval
 3. Create rebate in SAP
 4. Created after beginning validity, do accruals for time between beginning validity and rebate creating
 5. If need (late receipt of rebates a.o.) make make manual accruals for previous months
 6. If rebate is not direct (through distributor, agent, or entity not on SAP), do monthly accruals
 7. After ending validity, check rebate and request agreement of sales representative to settle rebate for specific amount.
 8. Upon agreement of sales representative, request approval of sales mngt and business management to settle rebate
-

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9. Settle rebate and send rebate credit or order as FOC material to Customer Service / Customer

10. Liaise with CSR that FOC order has been shipped / invoiced

11. Close rebate

VIII SAMPLE PROCESS

DIRECT CUSTOMERS AND AGENTS

- Customer/Agent places sample order with Sales Representative
- Sales Representative completes standard sample order form and sends to Sample Administrator
- Sample Administrator coordinates the shipment of the sample with the Sample Room in Zwijndrecht, AWT Duesseldorf or Alizay
- Sample Room confirms the shipment to the original requester of the sample and to the Sample Administrator
- On a monthly basis excel file with pivot table options will be made available (for all sales representatives and business support) in a team room

DISTRIBUTORS

- Distributors will place sample orders in standard format directly with the Sample Administrator, and will send a copy of the sample request to the appropriate Sales Representative/Business Support (see notes below)
- Sample Administrator coordinates the shipment of the sample with the Sample Room in Zwijndrecht, AWT Duesseldorf or Alizay
- Sample Room confirms the shipment to the original requester of the sample and to the Sample Administrator

On a monthly basis excel file with pivot table options will be made available (for all sales representatives and business support) in a team room

X REPORTING AND RECORDS RETENTION

1. REPORTING

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The Supplier's responsibilities include, but are not limited to the following:

1. Perform standard reporting requirements as defined
2. Provide Ad Hoc reports as requested
2. Record Retention

The Supplier's responsibilities include, but are not limited to the following:

1. Retain source documentation and reports
 2. Provide scanned document images for source documentation and reports - hard copies, CD Rom, Fiche, Film and imaging - in accordance with Hercules policies and procedures
 3. Retrieve archived reports and documentation as requested by Hercules
 4. Maintain documentation in accordance with Hercules policies and procedures
 5. Dispose of documentation in accordance with Hercules policies and procedures
- XI PERFORMANCE MEASUREMENT AND EFFECTIVENESS

The Supplier's responsibilities include, but are not limited to the following:

1. Provide consistent metrics and process performance information as defined in this document
2. Provide explanations relative to performance levels, root-cause analyses, corrective measures planned, etc. as requested by Hercules
3. Monitor and report performance and service levels, using agreed upon measurement processes, tools and methodologies
4. Review existing processes to evaluate process performance and work with Hercules management to develop action plans to improve upon current performance levels

XII MONITOR AND COMMUNICATE SERVICE COMPLIANCE

The Supplier's responsibilities include, but are not limited to the following:

1. Continuously audit adherence to Hercules accounting rules and requirements
 2. Facilitate Hercules audit of processes, including compliance with defined rules and requirements
-

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HERCULES

Schedule E.4C

Order to Invoice (OTI)

Europe PTV (Paper)

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I. INTRODUCTION

This Schedule sets forth the EU Order To Invoice (OTI) Business Process Services that the Supplier will provide, as of the Commencement Date unless otherwise specified. The Statements of Work defined in this Schedule were developed to include all in-scope activities performed by affected employees within the HERCULES Order To Invoice (OTI) function for EU PTV. The Supplier will be responsible for all functions performed by employees affected by the proposed outsourcing of services.

II. GENERAL REQUIREMENTS

The Supplier's responsibilities include, but are not limited to the following:

1. Understand all HERCULES OTI policies and how current processes and systems map against those policies. Additionally, the Supplier will communicate any issues back to HERCULES and retain the responsibility of resolving all issues.
 2. Provide input to HERCULES on policy change opportunities, proposed policy changes, industry direction, and how the policy changes will impact then-current work processes and Systems.
 3. Ensure that existing and new HERCULES policies are incorporated into the systems and processes.
 4. Ensure that HERCULES established policy guidelines are followed and report policy exceptions promptly to HERCULES.
 5. Identify and resolve issues related to OTI work processes. Provide guidance and advice to HERCULES on then-current work process design and potential implications.
 6. Comply with HERCULES processes and Systems security and access policies.
 7. Drive continuous improvement of the work processes, documentation and Services.
 8. Support HERCULES internal audit and Third-Party audit to ensure compliance with existing HERCULES and US GAAP rules and requirements in accordance with Section XX of the Agreement.
 9. Prepare and maintain the process and testing documentation and testing required by the Sarbanes-Oxley Act 2002, (US Centric) in accordance with the methodologies established by HERCULES.
-

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10. Provide support processing capabilities in the following languages: English, French, German, Spanish, Swedish, Finnish, Italian, Portuguese, Dutch.
11. Provide support processing capabilities for the following hours of operations: 6:00am to 6:00pm Central European Time.
12. Provide support process capabilities in accordance with the monthly closing schedule for each country in scope.

III. PT&V Division

1.0 ORDER ENTRY

1.1(Customer already exists, including distributors)

The Supplier's responsibilities include, but are not limited to the following:

1. create / maintain customer masterdata (sold-to, ship-to, ZPRO, partner functions)
 2. Receive order via fax, phone, mail,
 3. Review order for completeness: P.O. Number, product, quantity, requested delivery date, ship to, (11 check points in total)
 4. Pull applicable zpro
 5. Enter order into SAP
 6. Print order acknowledgement
 7. Review order details including verification of price (check all orders for accuracy and pricing (SOX key controls)
 8. Mail order acknowledgement
 9. process equipment sales based on ERF database
 10. send purchase orders to 3rd party suppliers and progress the orders
 11. produce delivery documents for own production materials and resale stock from warehouses
 12. prepare and print shipping papers, including trem cards, COA, packing list
 13. liaison with transport companies regarding collection dates and availability
-

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14. process return orders / transfers

1.2 Goods receipt on THIRD PARTY ORDERS

The Supplier's responsibilities include, but are not limited to the following:

1. Create Post Goods Receipts for (third party) Purchase Orders
2. Follow up with third party vendors on missing copies of invoices (as Proof of Delivery)
3. Monitor invoices which fail to release to accounting.
4. Obtain Proof of Delivery from carriers
5. Generates late invoicing report and follows up with vendors on any delayed shipment items

1.3 Consignment Accounts

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order
2. Verify if customer is a consignment account
3. Review order for completeness: P. O. number, product, quantity, requested delivery date
4. Pull zpro
5. Create a PO in case product is 3rd party vendor
6. Enter replenishment order (KB) into SAP
7. Print order acknowledgement
8. Review order details (check all orders for accuracy and pricing (SOX key controls)

9. Mail order acknowledgement

1.4 EXPORT (outside EU) ORDER ENTRY

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order via e-mail, fax
-

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2. Review order for completeness; P. O. number, product, quantity, price, requested delivery date, ship to, INCO terms

3. Determine if letter of credit will be used
4. Determine if trading company will be utilized
5. Validate order quantity if containerized
6. Pull zpro
7. Enter order into SAP; manually enter price and freight costs (obtained from Logistics partner)
8. Print order acknowledgement
9. Review order details including price verification
10. Create and courier export documents for customs clearance to shipping location

1.5 Stock Transfer Orders (INTER-COMPANY ORDER ENTRY)

1. Create a Stock Transport Purchase Order
 1. Complete the Item Overview Screen
 2. Enter Header Text if needed
 2. Create output to print STO for the supplying and receiving locations
 3. Update the source list to add the supplying plant.
 4. Update PO acknowledgement date and quantity in STO.
 5. Display Delivery Due List and Create Delivery Document
 6. Check partners in the delivery
 7. Create a Zero quantity delivery for PT&V going to Logistic partner DeRijke
 8. Complete the batch selection and picking process
 9. Automatic Update to STO with valuation type.
 10. Change delivery to print shipping papers
 11. Post Goods Issue - when shipment has departed
-

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12. Partial delivery on STO when batch valuation type on 2nd delivery is not the same as 1st delivery.

1.6 Import Material for PT&V EU. Accounts

The Supplier's responsibilities include, but are not limited to the following:

1. Receive order
2. Review order for completeness: P. O. number, product, quantity, requested delivery, INCO terms, special requests, U.S. port of entry, pricing
3. Pull zpro
4. Enter order into SAP; bill block order
5. Auto create a purchase order to Hercules Inc.
6. Verify sales order and purchase order are linked
7. Print order acknowledgement
8. Review order details
9. Mail order acknowledgement to customer

2.0 CONTRACT ADMINISTRATION

The Supplier's responsibilities include, but are not limited to the following:

Receive (monthly usage) reports from sales for monthly billing.

1. Create debit invoices for contracts
 2. Process inventory adjustments for contract products
 3. Enter Consignment ("KE") order into SAP
 4. Create KE delivery note
 5. Create and print invoice
 6. Review invoice
-

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7. Mail invoice to customer
8. Receives approvals for any changes to be preformed on contracts.
9. Perform additions, modifications, deletions on contracts on a daily basis
10. Interface with credit to resolve issues
11. Interacts with Sales Reps for inventory and pricing issues

3.0 Distributor Discounts

The Supplier's responsibilities include, but are not limited to the following:

1. Enter PGI
2. Review invoice details in SAP
3. Remove bill block
4. Print invoice
5. Review invoice
6. Mail invoice

4.0 Agent Commissions (Create Master Data File)

The Supplier's responsibilities include, but are not limited to the following:

1. Legal agreement in place, provides products covered, rate % of commission to be issued and on what basis
 2. Create agent number in SAP
 3. Enter % discount in pricing conditions
 4. Partner agent number to respective zpro
 5. Run report ZVPRI202 and get validation of correctness from agent and distribution mgr.
-

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5.0 PRICING AND FREIGHT ACCRUAL ADMINISTRATION

The Supplier's responsibilities include, but are not limited to the following:

5.1 Pricing Administration:

1. Notified on Price request from sales via lotus notes
2. Notify Customer / Material master administrator in CSR when material need to be extended
3. One (1) or two (2) approvals are required depending on the business for price to be accepted in the system
4. Enter Price request directly into SAP pricing conditions
5. Review exception report to monitor timeliness of approval process
6. Escalate delinquent approvals
7. Notify Customer Service to update new prices on existing and new orders
8. Maintain price list based on input from SBU management in price list Lotus Notes database
9. Maintain corporate pricing in price list Lotus Notes database
10. Interfaces with sales to resolve any pricing issues
11. Run and review price override report and take appropriate action to correct pricing conditions in SAP

5.2 Freight accrual Administration:

1. Update freight condition records in SAP based on input from European Freight manager.
2. Review manual freight accrual input on orders and invoices and make corrections.
3. Check the freight bill from the logistic partner. Investigate freight bills that require scrutiny , interface with Herc. logistic / CSR / ...logistics partner to resolve issues.

6.0 REBATE ADMINISTRATION

The Supplier's responsibilities include, but are not limited to the following:

1. Receives info on rebate agreement with customer from Herc. Sales department.
-

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2. Set up rebate agreement in SAP
3. Run rebate report and send out to sales management on quarterly basis for review
4. Correct on a monthly basis the accrual amount and payment amount to be equal.
5. Adjust the rebate agreement based on info from sales (manually adjust retroactive)
6. Settle rebate agreement at end of agreement period based on info from sales.

7.0 WAREHOUSE REPLENISHMENT (finished goods).

The Supplier's responsibilities include, but are not limited to the following:

1. Set up and maintain MRP data in SAP based on info from and communication with Inventory manager.
 - a. Liaison with suppliers and sister companies re production volumes, forecasts and availability
 - b. Liason with sales on sales forecast
2. Create Purchase Order (PO or STO) for stock replenishment of resale inventories at plants or warehouses.
3. Where applicable, review data on pre loaded tanker shedule from logistic partner.
4. Maintain spreadsheet to keep track of expire date.

8.0 CUSTOMER COMPLAINT PROCESS

8.1 Preparation of a Customer Complaint/Resolution

The Supplier's responsibilities include, but are not limited to the following:

1. CSR enters complaint into lotus notes complaint database
 2. If return is required as requested by sales in product return database PT&V EU, CSR enters return order into SAP
 3. If material is to be replaced as requested by sales in product return database PT&V EU, CSR enters new order in SAP to be sent to customer
-

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4. If material is to be destroyed as requested by sales in product return database PT&V EU,, CSR contacts master requisitioner to create PO

8.2 How to Handle Damaged and Carrier Complaints

The Supplier's responsibilities include, but are not limited to the following:

1. CSR enters complaint into lotus notes complaint database
2. If return is required as requested by sales in product return database PT&V EU, CSR enters return order into SAP
3. If material is to be replaced as requested by sales in product return database PT&V EU, CSR enters new order in SAP to be sent to customer
4. If material is to be destroyed as requested by sales in product return database PT&V EU,, CSR contacts master requisitioner to create PO

8.3 Processing of Product Returns

The Supplier's responsibilities include, but are not limited to the following:

1. Receive notification from customer or sales to return material
 2. Determine if an approved complaint report is available in the PT&V EU Product Return Lotus Notes database; if so advise customer to return material in accordance with complaint report
 3. Enter return order in SAP notating product and quantity to be returned
 4. Communication by mail to receiving location (plant ,warehouse or 3rd party vendor location)
 5. Organizing transport with logistic partner
 6. Receiving location physically receives the material
 7. Receiving Herc. location enters return delivery and post goods issue into SAP
 8. Receiving 3rd party vendor location informs Herc. CSR that goods are received and send (credit) invoice if applicable.
 9. CSR releases the credit invoice to the customer (as instructed in product return database)
 10. Print the invoice
-

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11. Review the invoice for accuracy

12. Mail the credit invoice to the customer when required

9.0 CUSTOMER MASTER DATA

9.1 Request for Tax Exemption Certificate

The Supplier's responsibilities include, but are not limited to the following:

1. Determine if a new customer is tax exempt
2. Set master data at -0- "tax exempt"
3. Send letter to the customer requesting their tax exemption certificate
4. Receive signed tax exemption certificate from customer
5. File in customer file

9.2 Process for Creating a Sold to/Ship to

The Supplier's responsibilities include, but are not limited to the following:

1. Receive an order from a new customer with sold to and ship to information
2. Create the address(s) in SAP master data using the information provided by the customer filling in the data on the appropriate screens
3. Partner sold to, ship to and payer numbers to the sold to party in SAP

9.3 Salesman Number Changes

The Supplier's responsibilities include, but are not limited to the following:

1. Receive new salesman assignments
2. Partner new salesman number to "Customer Sold To"
3. Update appropriate ZPRO(s) at the item partner level and makes the change

10.0 Invoicing and crediting

1. review of the automatic freight accruals in sap, advise deviations
-

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2. review of the automatic freight accruals in sap, advise deviations
3. run billing due list (SOX key controls)

10.1 Orders Shipped/Not Billed

The Supplier's responsibilities include, but are not limited to the following:

1. Review SAP report (ZFSAS100)
2. Investigate each order on report
3. Contact respective customer service representative to take action needed to finalize invoice
4. Print invoice

10.2 Orders Billed not Released to Accounting

The Supplier's responsibilities include, but are not limited to the following:

1. Review SAP report (ZFSAR100)
2. Investigate each order on report
3. Contact respective customer service representative to take action needed to finalize invoice
4. Print invoice
5. Mail invoice

11.0 Request extension of material /some master data maintenance

1. request new product / pack codes or the extension of existing material codes
2. liaison with process technology and procurement re source of supply and other masterdata
3. update source list on STO, ZPRO and all sales order partner functions

IV. REPORTING AND RECORDS RETENTION

1. REPORTING

The Supplier's responsibilities include, but are not limited to the following:

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1. Perform standard reporting requirements as defined

2. Provide Ad Hoc reports as requested

2. Record Retention

The Supplier's responsibilities include, but are not limited to the following:

1. Retain source documentation and reports

2. Provide scanned document images for source documentation and reports - hard copies, CD Rom, Fiche, Film and imaging - in accordance with Hercules policies and procedures

3. Retrieve archived reports and documentation as requested by Hercules

4. Maintain documentation in accordance with Hercules policies and procedures

5. Dispose of documentation in accordance with Hercules policies and procedures

V. PERFORMANCE MEASUREMENT AND EFFECTIVENESS

The Supplier's responsibilities include, but are not limited to the following:

1. Provide consistent metrics and process performance information as defined in the Service Level Schedule

2. Provide explanations relative to performance levels, root-cause analyses, corrective measures planned, etc. as requested by Hercules

3. Monitor and report performance and service levels, using agreed upon measurement processes, tools and methodologies

4. Review existing processes to evaluate process performance and work with Hercules management to develop action plans to improve upon current performance levels

VI. MONITOR AND COMMUNICATE SERVICE COMPLIANCE

The Supplier's responsibilities include, but are not limited to the following:

1. Continuously audit adherence to Hercules accounting rules and requirements

2. Facilitate Hercules audit of processes, including compliance with defined rules and requirements

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Hercules

Schedule E.5

INVOICE TO CASH (ITC)

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1.0 INTRODUCTION

The invoice to cash (“ITC”) business process Services include the Services described in this Schedule. Supplier will provide such Services as of the Commencement Date.

2.0 GENERAL REQUIREMENTS (N.A. AND EUROPE)

| Task | Supplier | Hercules |
|--|----------|----------|
| 1. Understand all Hercules ITC policies and how current processes and systems map against those policies. | X | |
| 1.1 Communicate any escalated issues back to Hercules for resolution. | X | |
| 1.2 Respond to Supplier regarding such escalated issues. | | X |
| 2. Provide input to Hercules on policy change opportunities, proposed policy changes, industry direction, and how the policy changes will impact then-current work processes and Systems. | X | |
| 3. Ensure that existing and new Hercules policies are incorporated into the systems and processes. | X | |
| 3A. Communicate new policies and procedures to Supplier. | | X |
| 4. Ensure that Hercules established policy guidelines are followed and report policy exceptions to Hercules within 1 business day of occurrence. | X | |
| 4A. Respond to Policy exceptions. | | X |
| 5. Identify and resolve issues related to ITC work processes. Provide guidance and advice to Hercules on the-current work process design and potential implications. | X | |
| 5A. Approve any ITC work process change. | | X |
| 6. Comply with Hercules processes and Systems security and access policies. | X | |
| 6A. Grant appropriate System access | | X |
| 7. Drive continuous improvement of the work processes, documentation, and Services. | X | |
| 7A. Review and approve any significant process changes. | | X |
| 8. Support Hercules internal audit and third-party audit to ensure compliance with existing Hercules and US GAAP rules and requirements in accordance with Sections 9.4 and 15.7 of the Agreement. | X | |
| 9. Prepare and maintain the process and testing documentation and testing required by the Sarbanes-Oxley Act 2002, in accordance with the methodologies established by Hercules. | X | |
| 10. Provide support processing capabilities in the following languages: North America only English with some French; Europe: English, French, German, Spanish, Italian, Dutch, Russian, Swedish, Finnish. | X | |
| 11. Provide support processing capabilities for the following hours of operations: North America: 8 AM - 6 PM EST for Customer Contact; Anytime for non-customer contact; Europe: 8 AM - 6 PM CET for Customer Contact; anytime for non-customer contacts. | X | |
| 12. Provide support process capabilities in accordance with the monthly closing schedule. | X | |

3.0 ACCOUNTS RECEIVABLE (N.A.)

| Task | Supplier | Hercules |
|--|----------|----------|
| 3.1 Process Manual Customer Payments | | |
| 1. Forward all checks received locally to appropriate lockbox. | | X |
| 3.2 Process Lockbox Payments | | |
| 1. Receive electronic payment information from bank, prepare, batch, log, and update entries and apply cash to customer invoices. | X | |
| 2. Receive image of check from lockbox provider. | X | |
| 3. Audit and balance each electronic file transmission and resolve exceptions. | X | |
| 4. Process electronic payments. | X | |
| 3.3 Reconcile Unapplied Payments | | |
| 1. Create schedule of charge-backs and unapplied cash exceptions; review within Supplier’s tolerance limits; escalate to Hercules if outside of Supplier tolerance limits. | X | |
| 2. Assist Hercules management in review and approval of chargeback and unapplied cash exceptions. | X | |
| 2A. Review and approve exceptions outside of Supplier tolerance limits | | X |
| 3. Provide weekly chargeback and unapplied cash exceptions file to Hercules. | X | |
| 4. Resolve and process unapplied cash based upon research, collaboration with collections, and approved management decisions. | X | |
| 3.5 Other Payment Processing Activities | | |
| 1. Complete or assist in daily reconciliation of cash not applied. | X | |
| 2. Analyze and clear payments against multiple accounts for a single customer. | X | |
| 3. Enter approved debit and credit memo tax adjustments to customer accounts. | X | |
| 4. Analyze and clear payments offset by customer credit notes and/or vendor debit notes. | X | |
| Inform Hercules of provision for reversals of doubtful debt. | X | |
| 4A. Provide direction for the provision for the reversal of the doubtful debt. | | X |
| 5. Clear payments according to Hercules directions for provision for reversals of doubtful debt. | X | |

| | | |
|--|---|---|
| 6. Research and provide resolution recommendation for Hercules approval of short payments and overpayments greater than tolerance levels. | X | |
| 6A. Hercules to review and notify regarding approval of short payments and overpayments greater than tolerance levels. | | X |
| 7. Process non-trade accounts receivable cash receipts in accordance with Hercules policies. | X | |
| 8. Respond to inquiries relating to customer account reconciliations. | X | |
| 9. Escalate written customer communication according to Hercules policy guidelines. | X | |
| 9A. Hercules to respond to Supplier or customer as appropriate. | | X |
| 10. Prepare and send customer statements based on customer or Hercules request. | X | |
| 11. Reconcile customer account per Hercules policies and procedures. | X | |
| 12. Prepare write-off journal entries and clear payments over/under that are within Hercules write-off tolerance levels. | X | |
| 12A. Hercules to approve journal entries over write-off tolerance levels | | X |
| 13. Create correcting journal entry and clear payment for short payment due to rebates. | X | |
| 14. By month end all cash in treasury / cash not applied accounts must be applied; all amounts remaining require an explanation. | X | |
| 3.6Aged Accounts Receivable | | |
| 1. Generate aging reports and complete analysis, per Hercules policies. | X | |
| 2. Review reports and analysis with Hercules. | X | |
| 3. Respond to Hercules inquiries related to aging analysis. | X | |
| 3.7Payment of Commissions to Agents | | |
| 1. Prepare and review weekly commission due proposal Report. | X | |
| 2. Submit proposed due commissions to Hercules for approval. | X | |
| 2A. Hercules to review and advise of approval decision | | X |
| 3. Submit approved commissions proposal to accounts payable to incorporate in their payment proposal. | X | |
| 4. Resolve any commission payment issues or escalate as appropriate. | X | |
| 3.8Reimbursement of credit balances to Customers | | |
| 1. Prepare supporting documentation for customer refunds, such as credit and rebate notes. | X | |
| 2. Review and process customer refunds under Supplier authority limits. | X | |
| 3. Provide recommendations and supporting documentation for refunds above Supplier authority limits to Hercules for approval. | X | |
| 4. Hercules reviews and communicates decision of customer refunds above Supplier authority limits. | | X |
| 5. Submit the request to accounts receivable processor to mark outstanding credit note for reimbursement. | X | |
| 6. Prepare and review weekly credit memo Report. | X | |
| 7. Submit proposed credit memo reimbursement Report to Hercules for approval. | X | |
| 8. Hercules to review and advise of approval decision. | | X |
| 9. Submit approved credit memo reimbursement proposal to accounts payable to incorporate in their payment proposal. | X | |
| 10. Resolve any commission payment issues. | X | |
| 3.9Management of ERS (self billing) customers | | |
| 1. Sales or customer notifies Supplier of change to ERS billing and Supplier updates customer profile appropriately. | X | |
| 2. Verify that customers ERS invoice (self bill) equals Hercules invoice. | X | |
| 3. If customer's ERS invoice (self bill) differs from Hercules invoice, take appropriate action to have the ERS invoice (self bill) corrected by customer or contact customer service to have invoice corrected. | X | |
| 4. Once payment is received, reconcile any differences within 1 business day of receipt. | X | |
| 3.0 ACCOUNTS RECEIVABLE (Europe) | | |

| #Task | Supplier | Hercules |
|---|----------|----------|
| 3.1Process Manual Customer Payments: | | |
| Cash in Transit - Cheques mainly apply for UK, France, Germany. | X | |
| 1. Hercules will forward all locally received checks to the bank. | | |
| 2. Cash will be processed per Hercules standard cash application process. | X | |
| 3. A quarterly reconciliation is required to identify that all checks sent to bank are posted. | X | |
| 3.2Process Cash allocation to invoices | | |
| 1. Receive electronic payment information from bank, prepare, batch, log, and update entries and apply cash to customer invoices. | X | |
| 3. Audit and balance each electronic file transmission and resolve exceptions. | X | |
| 4. Process electronic payments according to rules defined for each customer profile. | X | |
| 5. Allocate amounts paid and open on the treasury clearing account relating to vendor's SAP accounts. | X | |
| 6. Allocate amounts paid/received and open on the treasury clearing account relating to the general ledger accounts. | X | |
| 7. Obtain bank cost specification for documentary and LC payments and correctly book reclaimable VAT. | X | |
| 3.3Reconcile Unapplied Payments, Prepayments and partial payments | | |
| 1. Create schedule of charge-backs and unapplied cash exceptions; Supplier to review within its tolerance limits; inform Hercules to review items outside of Supplier's tolerance limits. | X | |
| 2. Assist Hercules management in review and approval of chargeback and unapplied cash exceptions. | X | |
| 3. Provide weekly chargeback and unapplied cash exceptions file to Hercules. | X | |

| | | |
|--|---|---|
| 4. Resolve and process unapplied cash based upon research and collaboration with collections. | X | |
| 5. Book prepayments with reference pre-payment on the customer payer account and inform the credit representative by e-mail, so that blocked orders waiting for prepayment can be released. | X | |
| 3.5 Other Payment Processing Activities | | |
| 1. Complete or assist in daily reconciliation of cash not applied. | X | |
| 2. Analyze and clear payments against multiple accounts for a single customer. | X | |
| 3. Enter approved debit and credit memo adjustments to customer accounts. | X | |
| 4. Analyze and clear payments offset by customer credit notes and/or vendor debit notes. | X | |
| 5. Clear payments according to Hercules directions for provision for reversals of doubtful debt. | X | |
| Inform Hercules of provision for reversals of doubtful debt. | X | |
| Hercules to provide direction for the provision for the reversal of the doubtful. | | X |
| 6. Research and provide resolution recommendation for Hercules approval of short payments and overpayments greater than tolerance levels. | X | |
| Hercules to review and notify Supplier regarding approval of short payments and overpayments greater than tolerance levels. | | X |
| 7. Process non-accounts receivable cash receipts in accordance with Hercules policies. | X | |
| 8. Respond to inquiries relating to customer account reconciliations. | X | |
| 9. Escalate written customer communication according to Hercules policy guidelines. | X | |
| Hercules to respond to Supplier or customer, as appropriate | | X |
| 10. Prepare and send customer statements based on customer or Hercules request. | X | |
| 11. Reconcile customer account per Hercules policies and procedures. | X | |
| 12. Prepare write-off or recovery journal entries and clear payments over/under that are within Hercules write-off tolerance levels. | X | |
| 13. Create correcting journal entry and clear payment for short payment due to rebates. | X | |
| 14. Germany - Direct Debit process: Run payment proposal list and submit to credit representative for review and input the direct debit list in bank Internet program for Hercules GmbH. Supply direct debit documentation to Hercules management and request approval to submit file to bank for collection and process the amounts received. Take action on direct debits rejected and inform Hercules management. | X | |
| 16. Italy - Riba process: Run payment proposal list and submit to credit representative for review for Hercules Italy, taking into account local payment culture. Create electronic file to be sent to financial institution in Italy. Obtain Hercules approval. Take action on rejected Ribas, inform Hercules on rejections and update SAP and obtain wire payments instead. | X | |
| 17. Spain - Remessa process: Run payment proposal list and submit to credit representative for review for Hercules Quimica Spain. Create electronic file to be sent to the local Hercules Spain entity for further processing with financial institution. Obtain Hercules approval. Take action on rejected Remessas, i.e., update SAP and obtain wire payments instead. | X | |
| 18. France - BOR/LCR process: process French Bills of Exchange received via dedicated PC and send to bank via bank software in order to debit customers accounts. This process is only done for Bills of Exchange as sent by the customers. | X | |
| Take action on rejected BOR/LCR, i.e. update SAP and obtain wire payments instead. | X | |
| 19. By month end all cash in treasury / cash not applied accounts must be applied; all amounts remaining require an explanation. | X | |
| 3.6 Aged Accounts Receivable | | |
| 1. Generate aging Reports and complete analysis, per Hercules policy. | X | |
| 2. Review reports and analysis with Hercules. | X | |
| 3.7 Commission Payments to Agents | | |
| 1. Review each quarter which commissions are due for agents. | X | |
| 2. Request agent to send a debit invoice depending on legal requirements or pay out commission credit notes. Obtain Hercules approval before pay out. | X | |
| Hercules to review and advise of approval decision | | X |
| 3. Receive and check correctness of commission debit note sent by the agent. | X | |
| Resolve any commission payment issues or escalate as appropriate. | X | |
| 4. Book agents debit invoice on a suspense account and clear commission items in the receivable books - report to accounts payable the commission notes to be booked on the vendor account with clearance to the suspense account. | X | |
| 5. Handle agent's requests why occasionally commission notes are reversed. | X | |
| 6. Block commissions for agents who are also distributors and have overdue invoices to Hercules. | X | |
| 7. Keep agent's original debit note for audit purposes and send to the European entity for local storage if applicable. | X | |
| 8. Ensure commission is not paid or paid back when Hercules is not paid by the final customer. | X | |
| 3.8 Reimbursement of credit balances to Customers | | |
| 1. Prepare supporting documentation for customer refunds, such as credit and rebate notes. | X | |
| 2. Review and process customer refunds under Supplier authority limits | X | |
| 3. Provide recommendations and supporting documentation for refunds above Supplier authority limits to Hercules for approval. | X | |
| 4. Hercules reviews and communicates decision of customer refunds above Supplier authority limits. | | X |
| 5. Submit the request to accounts receivable processor to mark outstanding credit note for reimbursement. | X | |
| 6. Review weekly credit memo Report. | X | |
| 7. Submit proposed due credit memo reimbursement Report to Hercules for approval. | X | |

- 8. Hercules to review and advise of approval decision. X
- 9. Submit approved credit memo reimbursement proposal to accounts payable to incorporate in their payment proposal. X
- 10. Resolve any commission payment issues. X

3.9 Management of ERS (self billing) customers

- 1. Sales or customer notifies Supplier of change to ERS billing and Supplier updates customer profile appropriately. X
- 2. Verify that customers ERS invoice (self bill) equals Hercules invoice. X
- 3. If customer's ERS invoice (self bill) differs from Hercules invoice, take appropriate action to have the ERS invoice (self bill) corrected by customer or contact customer service to have invoice corrected. X
- 4. Once payment is received reconcile any differences within 1 business day of receipt. X

4.0 REVENUE ACCOUNTING (N.A. & Eur)

| #Task | Supplier | Hercules |
|---|----------|----------|
| 4.1 Reconciliations | | |
| 1. Prepare balance sheet reconciliations for accounts receivable accounts. | X | |
| 2. Research and resolve reconciling differences. | X | |
| 3. Review and approve accounts receivable account reconciliations in accordance with Supplier-approval thresholds. | X | |
| Enter confirmation of review in database (current-state is a Lotus Notes database). | X | |
| 4. Provide accounts receivable account reconciliations that exceed Supplier -approval threshold to Hercules for approval. | X | |
| Hercules review and advises of approval decision for accounts reconciliations that exceed Supplier thresholds. | | X |
| Enter confirmation of review in database (current-state is Lotus Notes database). | | X |
| 5. Reconcile the accounts receivable sub-ledgers to the general ledger. | X | |
| 6. Reconcile commissions payable. | X | |
| 4.2 Period Close | | |
| 1. Produce variance analysis Reports to support the close process and in accordance with the Service Levels. | X | |
| 2. Prepare detailed account analysis as needed for Hercules management reviews. | X | |
| 3. Create month end reporting from downloaded SAP data into excel as prescribed by Hercules. | X | |
| 4. Verify and allocate correct business area to open accounts receivable and communicate to the area controller for correct Hyperion receivable reporting | X | |
| 5. Review aged accounts receivable and calculate bad debt reserve in accordance with Hercules guidelines, securing that the calculation is not mis-stated by cash on account or cash not applied. | X | |
| Hercules to review results of calculation and approve any adjustments to the reserve. | | X |
| Supplier to communicate to Hercules business area and advise Hercules credit if business manager does not approve bad debt reserve entry. | X | |
| Upon approval from Hercules (both Hercules credit and business area), post entries as and if necessary. | X | |
| 6. Restate commissions to accounts payables from accounts receivables per Hercules guidelines. | X | |

5.0 CREDIT PROCESSING (N.A. & Eur)

| #Task | Supplier | Hercules |
|--|----------|----------|
| 5.1 Establish Credit Limits | | |
| 1. Assist Hercules in the development of credit ratings, credit limits, and related policies and procedures. | X | |
| 2. Receive credit requests / applications and forward to Supplier. | | X |
| 3. Obtain information necessary for analysis per Hercules guidelines (e.g., up-to-date sales forecast from Hercules sales, credit rating(s) from agency reports, etc). | X | |
| 3. Supplier to consult with Hercules on how to obtain missing information. | X | |
| Hercules to respond to Supplier request for information Supplier is unable to obtain. | | X |
| 4. Perform and provide the analysis to support the approval for credit requests / applications. | X | |
| 5. Approve customer credit limits for amounts within Supplier threshold. | X | |
| 6. Provide credit limit recommendations for amounts above Supplier threshold to Hercules for approval. | X | |
| Hercules to review and advise of approval decision for credit limits above Supplier thresholds. | | X |
| 7. Configure credit risk profile and credit limits in system(s). | X | |
| 9. Review if payment term is secure and/or appropriate for the geographical area depending on Hercules policy. | | X |
| If extended payment terms are requested, ensure necessary approvals per Hercules guidelines. | X | |
| Hercules to approve all extended terms per guidelines. | | X |
| 10. Communicate on credit line/payment term decision to Hercules. | X | |
| 5.2 Maintain Credit Limits | | |
| 1. Re-evaluate credit limits for customers according to Hercules guidelines or as requested by Hercules. | X | |
| 2. Obtain required credit rating information and perform credit analysis. | X | |
| 9. Consult Hercules sales for up to date sales forecasts and new credit applications information, if required. | X | |
| Hercules sales to respond to Supplier request for sales forecast. | | X |
| 3. Determine upgrade/downgrade to credit limits for those within Supplier-approval threshold. | X | |
| 4. Approve upgrades/downgrades to credit limits within Supplier-approval thresholds. | X | |
| 5. Recommend upgrade/downgrade to credit limits to Hercules for approval of credit limits outside of Supplier-approval threshold. | X | |
| Hercules will review and advise of approval decision for those customers outside of Supplier approval threshold. | | X |

- | | | |
|--|---|---|
| 6. Update credit limits in system(s) upon approval by Hercules and for those within Supplier-approval threshold. | X | |
| 7. Recommend options for reducing Hercules risk exposure. | X | |
| Respond to recommendation for exposure reduction. | | X |
| 8. Provide credit analysis reporting as required by Hercules. | X | |
| 10. Secure proper signature of credit limit in line with authority level. | X | |

5.3 Manage Credit Limits

- | | | |
|---|---|---|
| 1. Identify customers who have exceeded established credit limits. | X | |
| 2. Take action on customers exceeding established credit limits according to Hercules policy guidelines. | X | |
| 3. Recommend accounts where credit facilities should be suspended (e.g., stop shipments and/or services) as the result of unsuccessful collection action and in consultation with Hercules. | X | |
| Hercules to respond to suspended recommendation. Hercules responsible for approving stop shipments and/or services. | | X |
| 4. Provide recommendations on changes to selling terms, required security interests, letters of credit, etc. to minimize Hercules loss from customers. | X | |
| Hercules to respond to recommendations. Hercules responsible for approving changes to selling terms, required security interests, letters of credit, etc. | | X |
| 5. Implement approved recommendations. | X | |
| 6. Document issues for customers whose financial stability is in question for potential use in litigation in a bankruptcy action. | X | |
| 7. Provide supporting documentation for a bankruptcy action. | X | |
| Hercules to file proof of claim for bankruptcy. | | X |

5.4 Other Credit Activities

- | | | |
|---|---|--|
| 1. Document and communicate to Hercules internal Hercules policy issues and process defects which cause customer credit issues. | X | |
| 2. Participate as requested by Hercules on process improvement teams and new product or service offering teams. | X | |
| 3. Ensure that no bank account information is entered in the customer master without approval from management. | X | |
| 4. Ensure that credit masters are up to date at all times to avoid risk. | X | |

6.0 COLLECTIONS (N.A. + Europe)

| #Task | Supplier | Hercules |
|---|----------|----------|
| 6.1 Collect Past Due Accounts | | |
| 1. Contact customers to initiate collection activity. | X | |
| 2. Coordinate collaborative collection efforts requiring support from other Hercules departments. | X | |
| 3. Categorize new accounts (for example: high, medium, low risk). Provide guidance as necessary for categorization of new accounts. | X | |
| 4. Document external and internal discussions regarding collections matters. | X | |
| 5. Escalate issues requiring resolution to Hercules within 1 business day. Hercules to respond to escalated issues and identify action plan. | X | X |
| 6. Communicate customer dissatisfaction/complaints (e.g., billing errors, service problems, etc.) to Hercules within 1 business day. Hercules to respond with appropriate action plan. | X | X |
| 7. Manage collection of delinquent accounts for assigned accounts as defined by Hercules. | X | |
| 8. Produce and send collection notices (dunning letters) and demand letters in accordance with Hercules policy guidelines. | X | |
| 9. Invoke and revoke automatic system distribution of collection notices and demand letters per Hercules approval. Hercules to approve invoke and revoke of automatic system distribution. | X | X |
| 10. Prepare electronic collections files and forms for transfer to Hercules legal department and outside collections contractors. Hercules to approve transfer to Hercules legal or outside collections contractors. Transfer Hercules approved electronic collections files and forms. | X | X |
| 11. Track, research, resolve, and document issues and inquiries regarding collections payments. | X | |
| 12. Make collections calls to customers in applicable languages in accordance with the timing and frequency defined by Hercules. | X | |
| 13. Communicate to Hercules (regional/ branch offices, etc.) customer balances and accounts receivable information per request. | X | |
| 14. Resolve customer claims and disputes according to Hercules policy guidelines. | X | |
| 15. Abide by local regulations concerning allowable times and methods of making collection calls, lien placement, account cancellation process, and other local collection laws in accordance with Section 15.7 of the Agreement. | X | |
| 16. In the event of continued non-contact, escalate to appropriate party within customer and / or Hercules to expedite response. | X | |
| 17. Discuss Customer payments plans with Hercules management. Hercules to review and respond with recommended action regarding payment plan. | X | X |
| 18. Communicate with customers on payments received without specification (non-allocatable amounts). | X | |
| 19. Communicate with Hercules on customers not abiding to set payment terms. Hercules to review and respond with recommended action regarding customers not abiding to set payment terms. | X | X |
| 20. Identify root cause resolution for non-paid invoices and communicate with Hercules as appropriate. | X | |
| 21. Resolve issues with outstanding credit and debit memos according to Hercules policy. | X | |
| 6.2 Customer Inquiry and Dispute Management | | |
| 1. Receive incoming calls. | X | |

| | | |
|---|---|---|
| 2. Determine type of call (such as billing, complaint). | X | |
| 3. Update customer file in System with call information. | X | |
| 4. Provide information to the appropriate person to work/resolve the issue within 1 business day. | X | |
| 5. Receive customer communication about a dispute. | X | |
| 6. Document dispute in Collections system. | X | |
| 7. Stop Dunning Letters on disputed accounts. | X | |
| 8. Monitor disputes to ensure action is being taken on each disputed item. | X | |
| 9. Escalate disputed items to Hercules within 1 business day. | X | |
| Respond to escalation of disputed item. | | X |
| 10. Code disputed item according to Hercules guideline. | X | |
| 11. Provide schedule to Hercules for review weekly. | X | |
| 12. Resolve standard disputes using frequently asked questions (FAQs) and other approved tools provided by Hercules. | X | |
| 13. Escalate non-standard disputes to Hercules within 1 business day of dispute. | X | |
| 14. Work with Hercules to resolve non-standard disputes. | X | |
| Work with Supplier to resolve non-standard disputes. | | X |
| 15. Meet with Hercules as requested to review dispute issues. | X | |
| 16. Manage all disputes to resolution. | X | |
| 17. Produce reports of disputes as required by Hercules | X | |
| 6.3 Collections - Litigation and Collection Agencies | | |
| 1. Create electronic file on overdue accounts. | X | |
| 2. Send file with recommendations to Hercules to determine placement. | X | |
| Review, identify and communicate accounts for placement. | | X |
| 3. Notify sales that the account is being placed with an outside collection agency. | | X |
| 4. Monitor, track, and report the status of collection accounts that have been transferred to agent(s) in customer file. | X | |
| 5. Send electronic claim forms to agent(s) when Hercules' approval has been obtained. | X | |
| 6. Monitor, track, and report the status of collection accounts where electronic claim forms have been provided to agent(s). | X | |
| 7. Receive and process recoveries received by third-party agent(s). | X | |
| 8. Update customer master appropriately. | X | |
| 9. Communicate recovery to Hercules. Obtain approval from Hercules for agency charges and provide supporting documentation as requested. | X | |
| Hercules to approve any agency charges. | | X |
| Process the approved transaction. | X | |
| 10. When the debt is recovered the person responsible for changing the information in the credit and master maintenance database is advised to change to the appropriate risk code. | X | |
| 11. If the customer requests to do business with Hercules again, Supplier to advise of procedure based on Hercules policy. | X | |
| 6.4 Collection Accounting | | |
| 1. Submit collections adjustments and backup documentation to Hercules per policy. | X | |
| 2. Conduct collections meeting with Hercules monthly. | X | |
| 3. Analyze customer aging accounts and prepare recommendation and supporting documentation for bad debt or uneconomical to pursue debtors write offs. | X | |
| 4. Review bad debt write off recommendation with Hercules on a monthly basis. | X | |
| 5. Prepare bad debt write off journal entry for Hercules approval on a monthly basis. | X | |
| Approve bad debt write off entries. | | X |
| 6. Reconcile and analyze customers' open accounts to secure payment, determine liability, and/or clear outstanding items. | X | |
| 7. Prepare, raise, and submit credit adjustments recommendation to Hercules for approval. | X | |
| Approve credit adjustments | | X |
| 6.5 Other Collection Activities | | |
| 1. Monitor and report collection amounts versus budgets. | X | |
| 2. Provide Hercules with best practices and procedures regarding collection management and modify to fit Hercules specific requirements. | X | |
| 3. File liens in accordance with Hercules policy guidelines. | X | |
| 4. Work with Hercules legal to handle disposition of lien filings. | X | |
| 5. Update System(s) for change of account information requests (for example: name changes, incorrect addresses, phone number changes). | X | |
| 6. Research credits balances and initiate refunds of credit balances according to Hercules policy. | X | |
| 7. Ensure compliance with payment arrangements outside stated terms (such as promissory notes) and advise Hercules as appropriate. | X | |
| 6.6 Deduction Management | | |
| 1. Receive and scan deduction customer short payments/documents. | X | |
| 2. Audit deduction to ensure accuracy (e.g., correct remittance information, correct account information, amount correct, and only one item per deduction). | X | |
| 3. Process corrections identified from audit of deduction. | X | |
| 4. Analyze backup to determine if deduction is valid and within Supplier's authority. | X | |

| | | |
|--|---|---|
| 5. Provide to Hercules for approval if deduction is valid and dollar amount is above Supplier authority. | X | |
| Review and advise of approval decision of deduction if above Supplier authority. | | X |
| 6. Respond to customer on those deductions determined to be invalid. | X | |
| Perform customer account maintenance related to the deduction as necessary. | X | |
| 7. File supporting documentation for processed deductions. | X | |

6.7 Letters of Credit and documentary collections

| | | |
|---|---|---|
| 1. Review credit letters for credit security purposes on predefined points by Hercules. | X | |
| 2. Update Hercules control file and excel sheet with copies of letters of credits received. | X | |
| 3. Communicate with CS on letters of credit received and approved; request amendments to letters of credits. | X | |
| 4. Release orders for which the letter of credit is received and approved. | | X |
| 5. Follow up with the bank on non-paid letters of credits and documentary collections. | X | |
| 6. Intentionally blank. | | |
| 7. Research non-receipt of letter of credit. | X | |
| 8. Resolve unpaid documentary collections. | X | |
| 9. Secure bank charges for letters of credit and documentary collections are in line with Hercules agreements with the banks. | X | |

7.0 CUSTOMER MAINTENANCE ACTIVITIES (N.A. and EUROPE)

| Task | Hercules | Supplier |
|--|----------|----------|
| 1. Receive a request from the customer service representative (“CSR”) to open a payer in SAP; enter all information provided, including name of company, address, contact name and phone number. | X | |
| 2. Set up customer in system, including electronic banking/payment information. | X | |
| 3. Enter partner payer number to sold-to-party in SAP. | X | |
| 4. Audit customer master record per Hercules policy. | X | |

8.0 ESCHEATMENT (UNCLAIMED PROPERTY) (N.A. only)

| Task | Supplier | Hercules |
|---|----------|----------|
| 1. Determine annual escheatment dates for each state and develop deliverable time line. | X | |
| 2. Analyze and document revenues/funds to be escheated to each state and provide to Hercules. | X | |
| 2A. Hercules to approve items to be escheated | | X |
| 3. Prepare and post journal entries for revenue/funds to be escheated. | X | |
| 4. Obtain approval for release of check for escheated revenue/funds and release to state. | X | |

9.0 BANKRUPTCY (N.A.)

| Task | Supplier | Hercules |
|---|----------|----------|
| 1. Receive bankruptcy court order. | X | |
| 2. Based on the bankruptcy date, adjust the Customer’s billing to pre-bankruptcy and post-bankruptcy amounts. | X | |
| 3. Provide the pre-bankruptcy billing and accounts receivable balance to Hercules for their filing with the courts. | X | |
| Hercules to file proof of claim for bankruptcy. | | X |
| 4. Prepare write off forms for appropriate signatures. | X | |
| Hercules to review, approve and sign write off forms | | X |
| Clear receivables falling under bankruptcy | X | |
| 5. Update customer master data. | X | |

9.0 BANKRUPTCY (Europe)

| Task | Supplier | Hercules |
|---|----------|----------|
| 1. Receive bankruptcy court order. | X | |
| 2. Based on the bankruptcy date, adjust the customer’s billing to pre-bankruptcy and post-bankruptcy amounts. | X | |
| Hercules to file proof of claim for bankruptcy. | | X |
| 3. Provide the pre-bankruptcy billing and accounts receivable balance to Hercules for their filing with the courts. | X | |
| Clear receivables falling under bankruptcy. | X | |
| 4. Secure VAT is claimed back for bankrupt customers respecting different legislation in each European country. | | X |
| 5. Prepare write off forms for appropriate signatures and clear receivables falling under bankruptcy. | X | |
| 6. Update customer master data. | X | |

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0.0 OTHER ITC ACTIVITIES (N.A. + EUROPE)

| Task | Hercules | Supplier |
|---|----------|----------|
| 1. Provide or make available ITC technical and process guidance and direction to Supplier, business units, shared services departments, and corporate groups as required. | X | |
| 2. Receive, track, and resolve inquiries from any requesting authorized internal departments or third parties. | X | |

12.0 REPORTING & RECORDS RETENTION (N.A.+ EUROPE)

| Task | Supplier | Hercules |
|---|----------|----------|
| 12.1 Reporting | | |
| 1. Perform standard reporting requirements as set forth in Schedule R. | X | |
| 2. Provide ad hoc reports as requested. | X | |
| 12.2 Record Retention | | |
| 1. Retain source documentation and reports-hard copies, CD ROM, Fiche, Film, and Imaging-in accordance with Hercules policies and procedures. | X | |
| 2. Provide scanned document images for source documentation through an electronic imaging system. | X | |
| 3. Retrieve archived reports and documentation as requested by Hercules. | X | |
| 4. Maintain documentation in accordance with Hercules policies and procedures. | X | |
| 5. Dispose of documentation in accordance with Hercules policies and procedures. | X | |

13.0 PERFORMANCE MEASUREMENT (N.A.+ EUROPE)

| Task | Supplier | Hercules |
|--|----------|----------|
| 1. Provide consistent metrics and accounts receivable process performance information as set forth in Schedules E, G and R. | X | |
| 2. Provide explanations relative to performance levels, root-cause analyses, corrective measures planned, etc. as requested by Hercules. | X | |
| 3. Monitor and report performance and Service Levels, using agreed-upon measurement processes, tools, and methodologies. | X | |
| 4. Review existing processes to evaluate ITC process performance and work with Hercules management to develop action plans to improve upon current performance levels. | X | |

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4.0 MONITOR AND COMMUNICATE SERVICE COMPLIANCE (N.A.+ EUROPE)

| Task | Supplier | Hercules |
|--|----------|----------|
| 1. Continuously audit adherence to Hercules ITC accounting rules and requirements. | X | |
| 2. Facilitate Hercules audit of ITC processes, including compliance with defined rules and requirements. | X | |

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HERCULES

Schedule E.6

General Accounting

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1.0 INTRODUCTION (North America)

The general accounting business process Services include the Services set forth below. Supplier shall provide such Services as of the Commencement Date.

2.0 MONTHLY PROCESSING

| # | Task | Hercules | Supplier |
|-----|--|----------|----------|
| 1. | Create month end checklist, including standard journals, accruals, and other closing responsibilities. | X | |
| 2. | Follow established month end checklist, including standard journals, accruals, cycles, assessments, reports, etc. Document steps completed for control purposes (including Sarbanes Oxley related control purposes). | | X |
| 3. | Prepare journal entries ("JE's"), including JEs for legal, freight, relocation, debt, interest, bank fees, prepaid insurance, amortization of real estate commissions, interest on the benchmark loan, Florida Power and Light credits, debt issuance, intangibles, accounts payable, GE variance sharing, GR/IR clearing, South Africa, inter-company and others. | | X |
| 4. | Approve standard journal entries and journal entries less than a pre-determined threshold set by Hercules. | | X |
| 5. | Approval of journal entries greater than a pre-determined threshold (to be defined during the Transition Period), in accordance with Hercules approval hierarchy. Identify any issues/errors. | X | |
| 6. | Correct issues/errors identified above. Resubmit for approval. | | X |
| 7. | Post journal entries, including processing of journal entries prepared/submitted by non-controller departments, using approval process described above. | | X |
| 8. | Validate recurring entry job runs or scheduled on the 28th calendar day of each month, and make corrections as necessary. Manually post as necessary. | | X |
| 9. | File journal entries with supporting documentation. | | X |
| 10. | Provide journal entry and supporting documentation to Hercules in electronic format. | | X |
| 11. | Perform all applicable Sarbanes Oxley related controls, as specified by Hercules. | | X |

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3.0 INTER-COMPANY ACCOUNTING

| # | Task | Hercules | Supplier |
|----|--|----------|----------|
| 1. | Book monthly accruals for intercompany services (e.g., management group fee, know how, service fees). | | X |
| 2. | Reconcile inter-company receivables and payables and verify eliminations on a consolidated basis in accordance with verification procedures pre-defined by Hercules. | | X |
| 3. | Provide via email a report showing explanations for large dollar reconciling variances per Hercules-defined thresholds to Hercules in accordance with pre-defined quantitative analysis rules, the monthly checklist and policy guidelines established by Hercules for this purpose. | | X |
| 4. | Reconcile inter-company accounts assigned to the U.S. group as defined in the account reconciliation process. | | X |

4.0 INTANGIBLES

| # | Intangibles | Hercules | Supplier |
|----|---|----------|----------|
| 1. | Maintain detailed schedules for patents, licenses, trademarks, trade names, etc. | | X |
| 2. | Record amortization and any impairment as required. | | X |
| 3. | Approve amortization and any impairment entries required. | X | |
| 4. | Record amortization and any impairment as required for amounts above established approval thresholds (to be defined during the Transition Period) or retained responsibilities. | X | |
| 5. | Reconcile intangible accounts, including accumulated amortization, as defined in the account reconciliation process set forth in the Policy and Procedures Manual. | | X |

5.0 PERIOD CLOSING

| # | Period Closing | Hercules | Supplier |
|-----|--|----------|----------|
| 1. | Develop accounting period-end timetables. | X | |
| 2. | Run assessments / distribution and order settlement jobs. Investigate and correct any non-allocated costs, with Hercules approval using approval process described above, within the period-end timetable. | | X |
| 3. | Verify that all cost centers and orders have cleared or settled (i.e., zeroed out) and resolve all issues before the end of the third workday, with Hercules approval using approval process described herein. | | X |
| 4. | Run SAP reconciliation ledger. Investigate and correct any errors before the end of the third workday, with Hercules approval using the approval process described herein. | | X |
| 5. | After the reconciliation ledger has completed, input tax computations to the general ledger. | | X |
| 6. | On the morning of the fourth workday, run profit center accounting ("PCA") reports to ensure all accounts have been properly allocated across businesses. | | X |
| 7. | Verify all PCA cycles have been settled. | | X |
| 8. | Check all profit centers are allocated and resolve any issues, with Hercules approval using approval process described herein. | | X |
| 9. | Any closing issues identified after the SAP closing on the third work night, which requires SAP system to be reopened for that period, to be escalated to Hercules for resolution. | | X |
| 10. | Hercules to reopen the period, if necessary | X | |
| 11. | Provide assistance with any closing issues after the third workday that required the period to be reopened (e.g., posting journal entries, re-running cycles, etc.) | | X |
| 12. | Prepare miscellaneous deferred charges report and divested entity accrual report on the fourth workday and submit to the manager of general ledger accounting. | | X |
| 13. | Perform all applicable controls, as specified by Hercules or required under Sections 9.4 of 15.7 of the Agreement. | | X |

6.0 ACCOUNT RECONCILIATION

| # | Task | Hercules | Supplier |
|----|---|----------|----------|
| 1. | Prepare list of account reconciliations. | X | |
| 2. | Reconcile assigned accounts, providing analysis of the account activity, which should include explanations and support for the activity. Identify any reconciling differences. Reconciliations should include screen shots of the SAP balance being reconciled, and any third party report being reconciled to SAP. | | X |
| 3. | Provide explanations for all reconciling variances in accordance with Hercules policy guidelines. | | X |

| | | | |
|----|---|---|---|
| 4. | Submit reconciliations with related explanations and support to Hercules for approval. | | X |
| 5. | Propose and obtain approval for any correcting journal entries. | | X |
| 6. | Satisfy auditor requests for account fluxes for responsible accounts. | | X |
| 7. | Update account reconciliation database for any new general ledger accounts or statistical orders as master data is updated. | | X |
| 8. | Quarterly, review the account reconciliation database for completeness. | | X |
| 9. | Prepare quarterly KPI report. | X | |

7.0 Reimbursable Expenses

| # | Reimbursable Expenses | Hercules | Supplier |
|----|--|----------|----------|
| 1. | Analyze and gather requisite supporting documentation and prepare third party and inter-company invoices and journal entries, including those related to South Africa. | | X |
| 2. | Approve inter-company invoices and journal entries in accordance with Hercules approval hierarchy and greater than a predetermined threshold. | X | |
| 3. | Distribute approved invoices with supporting documentation to receiving company. | | X |

8.0 HELP TICKETS / MASTER FILE MAINTENANCE

| # | Help Tickets / Master File Maintenance | Hercules | Supplier |
|----|---|----------|----------|
| 1. | Receive all requests (add, change, block/unblock) via the Remedy help ticket database for updates to the SAP master data (e.g., G/L accounts, Cost Elements, Cost Centers, Profit Centers, Orders, Applicable groups, Cycles, etc), as well as other requests which include help with GRIR clearing, mass changes to the account reconciliation database, updating recurring entries, and others. | | X |
| 2. | Submit requests for master file updates to Hercules for approval in accordance with Hercules approval hierarchy. | | X |
| 3. | Approve requests for master file updates to Hercules for approval in accordance with Hercules approval hierarchy. | X | |
| 4. | Update account reconciliation database for any new general ledger accounts or statistical orders, as master data is updated. | | X |
| 5. | Maintain SAP master data (add, changes, blocks) relative to SAP's FI/CO modules. | | X |

9.0 FIXED ASSETS

As part of the Transition Services, the Parties will address local statutory accounting requirements for the tasks below, subject to Section 15.7 of the Agreement.

| # | Task | Hercules | Supplier |
|-----|---|----------|----------|
| 1. | Open approved capital spending requests in 3.1 Project System module in SAP ("PJS"). | | |
| 2. | Approve capital project or short form projects ("SFP") in appropriations database. | X | |
| 3. | Approve customer equipment request ("CER") for PTV customer equipment. | X | |
| 4. | Create WBS elements consistent with proper asset class stratification for final assets when capital appropriation or CER is approved. | | X |
| 5. | Review appropriation request to determine compliance with capital vs. expense policy. If not in compliance, project manager is notified that the project (or portions thereof) cannot be capitalized. | | X |
| 6. | Notify project manager and manager of AR&C, that a project has been opened in SAP along with its project number. | | X |
| 7. | Maintain KPI of opening within 48 hours of approval (unless there are legitimate reasons for taking longer). | | X |
| 8. | SAP Master Data Maintenance | | |
| 9. | Schedule dates for settling project system, running depreciation, and performing annual system rollover. | X | |
| 10. | "Settle" Project System monthly and notify Manager-AR&C of completion. | | X |
| 11. | "Run" depreciation monthly and notify Manager-AR&C of completion. | | X |
| 12. | Post transaction for using 900 general ledgers. | | X |
| 13. | Perform annual fixed asset system rollover and notify Manager-AR&C of completion. | | X |
| 14. | Asset Retirements in 3.1 Fixed Asset System | | |
| 15. | Retirement requests communicated to Supplier in various formats. | X | |
| 16. | Assets are retired upon receipt of an asset listing (approved by Manager-AR&C) for physical verifications, scrapped assets, or other asset removals. Retirement transactions are noted with a proper text description. Activity is reported back to the requestor and Manager-AR&C. | | X |

| | | | |
|-----|---|---|---|
| 17. | Assets are retired on scheduled date based upon receipt of Sheet 17 of an Appropriation Request or Sheet 21 of an SFP. Retirement transactions are noted with proper text description. Activity is reported to requestor and Manager-AR&C and is filed in project folder. | | X |
| 18. | Assets are retired upon receipt of a request from Manager-AR&C for assets that are sold. Retirement transactions are noted with proper text description. Activity is reported to Manager-AR&C. | | X |
| 19. | Monitor and correct, if necessary, activity in gain/loss account to reflect proper profit centers and notify Manager-AR&C of completion. | | X |
| 20. | Asset Transfers in 3.1 Fixed Asset System | | |
| 21. | Transfer requests communicated to Supplier. | X | |
| 22. | Assets are transferred upon receipt of a request from Manager-AR&C between 3.1 companies. Activity is reported to Manager-AR&C. Depreciation lives need to be adjusted for receiving company assets. | | X |
| 23. | Assets are transferred upon receipt of a request from Manager-AR&C between a 3.1 company and a non-3.1 company. Activity is reported to Manager-AR&C. Depreciation lives need to be adjusted for receiving company assets | | X |
| 24. | Assets are transferred upon receipt of a request from Manager-AR&C between plants within a 3.1 company. Activity is reported to requestor and Manager-AR&C. | | X |
| 25. | Cost centers and/or locations are changed for assets within a plant based on request from local controller. Activity is reported to requestor and Manager-AR&C. | | X |
| 26. | Pre-Project Expenses -- Global in \$US | | |
| 27. | Open internal orders for pre-project expenses. | X | |
| 28. | Approve pre-project expenditures for materials. | X | |
| 29. | Issue monthly report for pre-project expenses (SAP 3.1 and 4.6 corps) to distribution list supplied by Manager-AR&C.. | | X |
| 30. | Monitor policy compliance and follow-up on acts of non-compliance. | | X |
| 31. | CAPEX Reporting -- Global in \$US | | |
| 32. | Supply criteria for level of detail required, e.g. location, business, major project. | X | |
| 33. | Perform assets acquisition reconciliation (reconciles PJS to FXA). | | X |
| 34. | Convert data for 3.1 companies from PJS to \$US. | | X |
| 35. | Collect data for 4.6 companies and Mexico from local sources and Hyperion in \$US. | | X |
| 36. | Forward data (collected above) to person responsible for publishing report. | | X |
| 37. | Close Capital Projects in 3.1 Project System | | |
| 38. | Issue closing notice. | X | |
| 39. | Detail assets with proper descriptions, values, and asset classes and "settle" to Fixed Asset System ("FXA") when closing notice is received. Activity is reported back to project manager and Manager-AR&C. | | X |
| 40. | Determine if tax basis is different from book basis and local GAAP (statutory). | | X |
| 41. | Determine if depreciation rate or method is different from default, book and tax and local GAAP (statutory). | | X |
| 42. | Maintain current KPI of closing within 1 month of closing notice receipt. | | X |
| 43. | Monitor status of open projects to ensure closing notices are not delinquent. | | X |
| 44. | Accounting for Corporate Engineering | | |
| 45. | Establish annual budget and cost centers. | X | |
| 46. | "Settle" Corporate Engineering cost centers at month end. | | X |
| 47. | Monitor Deferred Engineering costs during year for possible adjustment. | | X |
| 48. | Report results to management. | | X |
| 49. | Lease vs. Buy - Monitor Lease Policy | | |
| 50. | Lease request data communicated to Supplier and Treasury. | X | |
| 51. | Supplier determines if capital or operating lease. | | X |
| 52. | Treasury determines economics of buy vs. lease. | X | |
| 53. | If capital lease, needs approval by controller. | X | |
| 54. | Acquisitions in 3.1 Fixed Asset System | | |
| 55. | List of asset descriptions, depreciation lives, and values supplied to Supplier. | X | |
| 56. | Assets set-up in Fixed Asset System. | | X |
| 57. | Insurance Replacement Values in 3.1 Fixed Asset System | | |
| 58. | Inflation factors supplied to Supplier. | X | |
| 59. | Book 95 values updated in Fixed Asset System. | | X |
| 60. | Specialized Fixed Asset Accounting | | |
| 61. | Provide specific direction, and/or amortization schedules, to Supplier so that specific and/or recurring journal entries can be made by Supplier. | X | |
| 62. | Provide fixed asset data to Supplier for mass changes requiring a DLSM for retirements, post- | | X |

| | | | |
|---|--|---|---|
| | capitalizations, etc. | | |
| 63. | Prepare journals for shared assets with third parties to reflect HPC costs and deferred liabilities. | | X |
| 64. | Prepare journals to reflect reclassification of fixed assets to assets held for sale. | | X |
| 65. | Prepare journals to reflect impact of deferred customer equipment sales. | | X |
| 66. | Prepare journals to adjust system depreciation for assets that are no longer to be depreciated. | | X |
| 67. | Post capitalized interest to proper WBS in Project System. | | X |
| 68. | Report all overrides of depreciation default for new or existing assets to Manager-AR&C. | | X |
| 69. | Prepare journals for tenant improvement allowances and deferred rent adjustments. | | X |
| 70. | Prepare journals for Microsoft Enterprise Agreement. | | X |
| 71. | Prepare and post DLSP's for mass data changes to fixed asset records. | | X |
| 72. | Maintenance of Customer Data in Customer Equipment Assets | | |
| 73. | Provide changes in customer data. | X | |
| 74. | Make customer data changes in Fixed Assets System with notification to Manager-AR&C. | | X |
| 75. A Hercules representative currently doing this work is located in Jacksonville in the PTV Business Analysis/Sales Reporting function and will be replaced by Supplier under this Agreement. Such individual's activities will be deemed part of the Services. Parties to create a Statement of Work further describing such individuals activities during the transition. | | | |

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HERCULES

Schedule E.7

Business Analysis

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1.0 Introduction - Global Business Analysis

Business analysis activities include preparation of budgets, actual vs. budget tracking, monthly re-forecasts and compilation of cost center budgeting. This also includes report generation for various business units within the organization and report analysis.

2.0 General Requirements

| S No. | Business Analysis Services (Tasks) | Hercules | Supplier |
|-------|---|----------|----------|
| 1. | Formulate basic planning guidelines | X | |
| 2. | Develop the reporting pattern for planning cycles | X | |
| 3. | Develop the data collation and reporting package | X | |
| 4. | Roll out the package and instructions across businesses | X | |
| 5. | Collate the data | | X |
| 6. | Prepare draft budget package | | X |
| 7. | Review the data | X | |
| 8. | Approve the budget | X | |
| 9. | Roll out the budget to the businesses | X | |
| 10. | Compare actuals, budgets and forecast | | X |
| 11. | Report out the variances identified | | X |

3.0 Corporate Indirect Expense Analysis and Budgeting

| S No. | Business Analysis Services (Tasks) | Hercules | Supplier |
|-------|---|----------|----------|
| 12. | Prepare pre close report (Flash Report) | | X |
| 13. | Prepare accruals / deferrals of expenses | | X |
| 14. | Final report for the month | | X |
| 15. | Prepare expense bridges vs. plan and prior year | | X |
| 16. | Research questions received from department heads / Authorized Users- Prepare adhoc reports as needed | | X |
| 17. | Agree reports to control totals (Hyperion system) | | X |
| 18. | Maintain cost center hierarchies for reporting basis -- ensure the mapping and the reporting is correct | | X |
| 19. | Develop/maintain templates for capturing budgets (annual process) | X | |
| 20. | Load budgets into SAP | | X |
| 21. | Load budgets into Hyperion as requested | | X |

4.0 Line of Sight Reporting, Analysis and Budgeting

| S No. | Business Analysis Services (Tasks) | Hercules | Supplier |
|-------|---|----------|----------|
| 22. | Prepare final report for the month (regional summary) | | X |
| 23. | Research questions received from department heads / Authorized Users - Prepare adhoc reports as needed | | X |
| 24. | Agree reports to control totals (Hyperion system) | | X |
| 25. | Maintain Cost center hierarchies for reporting basis -- ensure the mapping and the reporting is correct | | X |
| 26. | Develop/maintain templates for capturing budgets (annual process) | X | |
| 27. | Load budgets into SAP | | X |
| 28. | Load budgets into Hyperion as requested | | X |
| 29. | Load budgets into Excel reporting models | | X |

5.0 Business Indirect Expense Reporting, Analysis & Budgeting

| S No. | Business Analysis Services (Tasks) | Hercules | Supplier |
|-------|---|----------|----------|
| 30. | Prepare pre close report (flash Report) | | X |
| 31. | Prepare accruals / deferrals of expenses - sales incentives | | X |
| 32. | Final report for the month | | X |
| 33. | Prepare expense bridges vs. plan and prior year - Qtrly | | X |

| | | | |
|-----|---|---|---|
| 34. | Research questions received from department heads / Authorized Users | | X |
| 35. | Agree reports to control totals (Hyperion system) | | X |
| 36. | Maintain cost center hierarchies for reporting basis -- ensure the mapping and the reporting is correct | | X |
| 37. | Develop/maintain templates for capturing budgets (annual process) | X | |
| 38. | Load budgets into SAP | | X |
| 39. | Load budgets into Hyperion as requested | | X |
| 40. | Load budgets into Excel reporting models | | X |

6.0 Working Capital Reporting & Analysis

| S No. | Business Analysis Services (Tasks) | Hercules | Supplier |
|-------|---|----------|----------|
| 41. | Prepare accounts receivable, inventory & payables cash generated reports | | X |
| 42. | Prepare ratio reports for above categories | | X |
| 43. | Research questions received from department heads / Authorized Users - prepare ad-hoc reports as needed | | X |
| 44. | Agree reports to control totals (Hyperion system) | | X |
| 45. | Maintain hierarchies for reporting basis | | X |
| 46. | Develop/maintain templates for capturing budgets (annual process) | X | |
| 47. | Track budgets along with actual results | | X |

7.0 Sales Reporting, Analysis and Budgeting

| S No. | Business Analysis Services (Tasks) | Hercules | Supplier |
|-------|---|----------|----------|
| 48. | Prepare sales and profitability reports - sales incentive tracking, end market reporting, product line reporting, new product launches, others. | | X |
| 49. | Research questions received from department heads / Authorized Users - prepare adhoc reports as needed | | X |
| 50. | Agree reports to control totals (Hyperion system) | | X |
| 51. | Maintain customer / market segment hierarchies for reporting basis | | X |
| 52. | Develop/maintain templates for capturing budgets (annual process) | X | |
| 53. | Load budgets into SAP | | X |
| 54. | Load budgets into Hyperion as requested | | X |
| 55. | Maintain equipment asset listings | | X |
| 56. | Restate sales data in the business warehouse (BW) | | X |

8.0 SHERA Line of Sight expense

| S No. | Business Analysis Services (Tasks) | Hercules | Supplier |
|-------|---|----------|----------|
| 57. | Run and download SAP reports | | X |
| 58. | Research questions received from department heads / Authorized Users- prepare adhoc reports as needed | | X |
| 59. | Agree reports to control totals (Hyperion system) | | X |
| 60. | Maintain cost center hierarchies for reporting basis | | X |
| 61. | Develop/maintain templates for capturing budgets (annual process) | X | |
| 62. | Load budgets into SAP | | X |
| 63. | Load budgets into Hyperion as requested | | X |

9.0 Finance Line of Sight expense

| S No. | Business Analysis Services (Tasks) | Hercules | Supplier |
|-------|---|----------|----------|
| 64. | Run SAP reports and download for distribution | | X |
| 65. | Research questions received from department heads / Authorized Users- prepare adhoc reports as needed | | X |
| 66. | Agree reports to control totals (Hyperion system) | | X |
| 67. | Maintain cost center hierarchies for reporting basis | | X |
| 68. | Develop/maintain templates for capturing budgets (annual process) | X | |
| 69. | Load budgets into SAP | | X |
| 70. | Load budgets into Hyperion as requested | | X |

10.0 Environmental Expense Reporting, Analysis & Budgeting

| S No. | Business Analysis Services (Tasks) | Hercules | Supplier |
|-------|---|----------|----------|
| 71. | Run SAP reports and download for distribution | | X |
| 72. | Develop maintain worldwide balance sheet rollforward of accounts | | X |
| 73. | Research questions received from department heads / Authorized Users- prepare adhoc reports as needed | | X |
| 74. | Agree reports to control totals (Hyperion system) | | X |
| 75. | Develop/maintain templates for capturing budgets (annual process) | X | |
| 76. | Load budgets into SAP | | X |
| 77. | Load budgets into Hyperion as requested | | X |
| 78. | Load budgets/ forecasts into Excel reporting models | | X |

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1.0Raw material/ Procurement Reporting, Analysis & Budgeting

| S No. | Business Analysis Services (Tasks) | Hercules | Supplier |
|-------|--|----------|----------|
| 79. | Run and Distribute SAP BW reports for spending by major raw material, spending by SBU, by plant, by owner. | | X |
| 80. | Research questions received from department heads / Authorized Users- prepare adhoc reports as needed | | X |
| 81. | Develop/maintain templates for capturing budgets (annual process) | X | |
| 82. | Load budgets / forecasts into SAP | | X |
| 83. | Load budgets / forecasts into Hyperion as requested | | X |
| 84. | Load budgets / forecasts into excel reporting model | | X |

12.Reports

Supplier shall provide the business analysis related deliverable and Reports set forth in Attachment E.7A and as described in that Attachment.

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Hercules

Schedule E.8

Sarbanes Oxley

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- 7.0 SAS 70 Type II Audits**
- 8.0 Ongoing Sarbanes-Oxley Support**
- 9.0 Representations**
- 10.0 General**

| Hercules Requirements | Hercules Responsibility | Supplier Responsibility |
|--|-------------------------|-------------------------|
| 1.0 Introduction | | |
| This Schedule sets forth the control framework and related Sarbanes Oxley (“SOX”) compliance activities that govern all Services to be provided by the Supplier. This Schedule sets forth the responsibilities of Supplier in delivering all Services in a SOX-compliant manner. Supplier will be responsible for the functions noted in the Supplier Responsibility column. | | |
| 2.0 Policies and Procedures | | |
| Hercules' and Supplier's responsibilities include the following: | | |
| 1. Develop accounting policies, procedures, and instructions (including record retention) and communicate to Supplier. | X | |
| 2. Deliver services, record transactions, etc. based on Hercules accounting policies, procedures, and instructions to the extent applicable to Supplier's areas of responsibility. | | X |
| 3. Maintain updated documentation (e.g., process narratives, process flows, control objectives, control activities) related to the controls and services performed. | | X |
| 4. Approve changes and revisions to documentation. | X | |
| 5. Address issues and perform required actions as a result of Hercules internal control policy changes. | | X |
| 6. Review potential control issues, audit results and recommendations as a part of the regularly scheduled monthly governance meeting. Any meetings required to address specific issues and their resolution will be scheduled as per Hercules request. | | X |
| 3.0 Initial Transfer of In-Scope Processes | | |
| Hercules' and Supplier's responsibilities include the following: | | |
| 1. Provide existing process documentation, including control objectives and control activities, to Supplier during knowledge transfer. | X | |
| 2. Work with Supplier to verify that Supplier understands the processes, control objectives, activities, and testing requirements. | X | |
| 3. Work with Hercules to verify understanding of Hercules processes, control objectives, activities, and testing requirements. | | X |

| | | |
|---|---|---|
| 4. In consultation with Hercules personnel, revise/update existing, or as required prepare new, documentation (process flows, narratives, etc) to support the control activities and services to be executed by Supplier. | | X |
| 5. Review and approve all revisions/updates to and/or new documentation for the control activities to be executed by the Supplier. | X | |
| 6. Assist Hercules to manage the transition from the current state (where Hercules is responsible for designing, implementing, and reporting on internal controls over the activities within scope) to the proposed state (where Hercules is responsible for the design of controls but Supplier implements and reports on such controls). | | X |
| 7. Intentionally blank. | | |
| 8. Design key controls for the Services. | X | |
| 9. Implement, with Hercules approval, and appropriate support from Hercules' auditors, changes to procedures that incorporate Hercules required control changes. | | X |
| 4.0 Business Level Risk Identification and Assessment | | |
| Hercules' and Supplier's responsibilities include the following: | | |
| 1. Manage/coordinate overall business risk assessment process for Hercules' business environment. | X | |
| 2. Participate in the business risk assessment process as required by Hercules. | | X |
| 3. Evaluate business level risks. | X | |
| 4. Support and execute remediation of business level risks as requested or authorized by Hercules within a timeframe agreed to by Hercules and Supplier. For any material and significant control risks and/or key control deficiencies identified, remediate intra-quarter to the extent possible or identify mitigating / compensating controls to address the risks. | | X |
| 5. Provide data requested by Hercules to support enterprise risk assessment memo. | | X |
| 6. Prepare, at transition and then annually, an enterprise risk assessment memo. | X | |
| 5.0 Controls Assessment | | |
| Hercules' and Supplier's responsibilities include the following: | | |
| 1. Define and communicate instructions to Supplier regarding its role in supporting the controls risk assessment. | X | |
| 2. Provide timelines, standards, and requirements for controls assessment support. | X | |
| 3. Complete Hercules management controls and review controls assessment checklist as instructed by Hercules using the Hercules specified compliance tool. Update the assessment as necessary in response to changes in the control environment and communicate identified risks to Hercules as soon as identified. | | X |
| 4. Work with Supplier to assess the design effectiveness of the key financial control points / processes. | X | |
| 4.1. Recommend options for corrective actions for any operating or design deficiencies identified relative to Services and control activities performed/executed by Supplier. | | X |
| 5. Review and approve corrective actions to operating or design deficiencies identified relative to Services and control activities performed/executed by Supplier. | X | |
| 6. Provide support for Hercules assessment of the design effectiveness of the key financial control points/processes. | | X |
| 7. Evaluate control risks. | X | X |
| 8. Update assessment for changes in the control environment. | | X |
| 9. Communicate identified risks/deficiencies to Hercules. | | X |
| 10. Recommend corrective actions for deficiencies. | | X |
| 11. Review and approve corrective action plans and related process changes. | X | |
| 12. Support and execute remediation of control risks as requested/authorized by Hercules within the timeframe agreed upon with Hercules. | | X |
| 13. Update documentation and maintain appropriate audit trails. | | X |
| 6.0 Sarbanes-Oxley Testing | | |
| Hercules' and Supplier's responsibilities include the following: | | |
| 1. Establish timelines, standards, sample sizes, and criteria for testing controls and retesting following remediation if applicable. | X | |
| 2. Perform control assessment testing per criteria provided by Hercules; this testing shall be performed at a minimum, three times per year by Supplier. | | X |
| 3. Provide support and participate in testing performed by third parties. | | X |
| 4. Evaluate testing results and approve satisfactory areas. | X | |
| 5. Recommend appropriate corrective actions to remediate weaknesses identified by management testing and/or auditors and implement Hercules approved corrective actions. | | X |
| 6. Approve appropriate corrective actions to remediate weaknesses identified by management testing and/or auditors. | X | |

| | | |
|--|---|---|
| 7. Implement Hercules approved corrective action plans. | | X |
| 8. Remediate exceptions found in testing of key SOX controls. | | X |
| 9. Retest key control areas that had testing exceptions. | | X |
| 10. Repeat remediation/retesting cycle until key control areas are free of testing exceptions. | | X |
| 11. Support Hercules designated auditors and their audit, documentation and other requirements as instructed by Hercules. | | X |
| 7.0 SAS 70 Type II Audits | | |
| Subject to Section 9.12(i) of the Agreement, Hercules' and Supplier's responsibilities include: | | |
| 1. Contract with auditor for the conduct of the SAS 70 audit. | | X |
| 2. Schedule SAS 70 Type II review at Supplier Facilities. | | X |
| 3. Coordinate with Hercules to plan the scope and timing of each SAS 70 Type II review in accordance with Section 9.12 of the Agreement. At a minimum the SAS 70 Type II audit will include the following general control objectives: | | X |
| 3.1. Security management | | X |
| 3.2. Asset classification and management / data security | | X |
| 3.3. Personnel security | | X |
| 3.4. Physical and environmental security | | X |
| 3.5. Operations management | | X |
| 3.6. System access management and network security | | X |
| 3.7. Communications security | | X |
| 3.8. Application development, maintenance, and implementation event journaling | | X |
| 4. Maintain appropriate control environment over the computer processing and input/output controls, including updated documentation (process narratives, process flows, control objectives, control activities) in a format that facilitates SAS 70 Type II reviews. | | X |
| 5. Coordinate the reviews so they are completed in a timely manner in accordance with the Section 9.12 of the Agreement. | | X |
| 6. Work with the auditor to resolve issues and queries during the review. | | X |
| 7. Remediate exceptions found during the audit. | | X |
| 8. Provide SAS 70 Type II report to Hercules as set forth in the Section 9.12(i) of the Agreement. | | X |
| 9. Proactively/affirmatively advise Hercules of all input/output and monitoring controls Hercules is required to implement and perform in conjunction with the Services. | | X |
| 10. Comply with changes in reporting requirements issued by the PCAOB, SEC, or other regulatory bodies in accordance with Section 15.7 of the Agreement. | | X |
| 11. Review SAS 70 Type II final report and subsequent events report. Evaluate whether controls are adequate. | X | |
| 8.0 Ongoing Sarbanes-Oxley and Other Regulatory Support | | |
| Supplier's responsibilities include the following: | | |
| 1. Cooperate with and assist Hercules in maintaining effective internal controls over financial reporting. | | X |
| 2. Cooperate with and assist Hercules in meeting Hercules obligations under Sections 302, 404 and 906 of the Sarbanes Oxley Act of 2002. | | X |
| 3. Assist in the preparation and maintenance of the process and testing documentation and testing required by the Sarbanes-Oxley Act of 2002, in accordance with the methodologies established by Hercules. | | X |
| 4. Comply with changes in control and reporting requirements issued by the PCAOB, SEC, or other regulatory bodies. | | X |
| 9.0 Representations | | |
| Supplier's responsibilities include the following: | | |
| 1. Provide Hercules with a quarterly management representation letter that represents that the Supplier has communicated any adverse internal control issues if applicable to Hercules and certifies that: | | X |
| 1.1. Supplier is not aware of any fraud or irregularities. | | X |
| 1.2. Supplier has notified Hercules of all known material liabilities. | | X |
| 1.3. All internal process and procedures have been followed. | | X |
| 1.4. All financial records and related data in the possession and control of Supplier has been made available upon request to the Hercules designated auditors for review and examination. | | X |
| 1.5. There have been no material changes to the control environment. | | X |
| 10.0 General | | |
| Hercules and Suppliers responsibilities include the following: | | |
| 1. Define escalation process with Hercules for Supplier to obtain clarification of internal control issues and questions. | X | |
| 2. Communicate material issues to Hercules as they arise via the issues management process. Perform Root | | X |

| | | |
|--|--|---|
| Cause Analysis of such issues, and identify and implement required remediation. For any material and significant control risks and/or key control deficiencies identified, remediate intra-quarter to the extent possible or identify mitigating / compensating controls to address the risks. | | |
| 3. As requested by Hercules, participate in quarterly financial reporting and controls committee meetings with a focus on control and financial reporting activities, as per the agreed Communications Plan | | X |
| 4. Record and update all open controls issues in the Hercules-designated tracking tool. | | X |
| 5. Provide personnel to participate, as reasonably requested by Hercules, in internal control workshops/ assessment activities, with costs (if any) to be borne by Hercules. | | X |

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HERCULES

Schedule E.9

**Applications Development
and
Maintenance**

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11.0 GENERAL

As of the Commencement Date, the Supplier will be responsible for providing Application development and maintenance (ADM) Services required in this Statement of Work. The Supplier will provide ADM Services for the Applications Software and technologies described in Attachment E.9A. The Supplier will be initially responsible for providing ADM Services for the Hercules Applications and technologies existing as of the Commencement Date. Both Parties agree that the Applications and technologies in the Hercules portfolio will change over time, including changes to existing Applications, retirement of existing Applications, and development and implementation of new Applications.

If Hercules (or a Hercules Third Party Contractor) (i) develops or implements an extension or change to any of the Applications or technologies set forth in Attachment E.9A, or (ii) adds new technologies or Applications to Hercules' information technology environment that is similar to the existing technologies or Software set forth in Attachment E.9A, Attachment E.9A shall be accordingly amended to incorporate such extension, change, or new technology or Application.

The Supplier shall interact with the Hercules Third Party Contractor who is responsible for the delivery of IT infrastructure services and the management of certain IT operational processes. As such, some of the interactions defined in this Statement of Work between the Supplier and Hercules may actually be interactions with the Hercules Third Party Contractors. The Supplier will interact with that such Hercules Third Party Contractors in the same manner as they would with Hercules pursuant to Section 4.6 of the Agreement.

12.0 RESOURCES.

The Supplier's responsibilities include:

1. Providing dedicated resources in accordance with Schedule M:

For purposes of further definition, the resources set forth in Schedule M shall have competencies relating to the following:

SAP Financials: modules FI-GL/AP/AR/AM, CO-CCA/PA, EC-PCA, IO, PS, Cash Management along with all integration to satellite systems and outside parties (e.g. banks.) Treasury / In-house Cash modules may be added to this portfolio as part of the planned technical upgrade.

SAP Supply Chain Management: MM,WM, PP, PM, QM, EH&S, IM, Barcode software along with all integration to satellite systems and outside parties (e.g. Odyssey, Barcode systems, etc.)

SAP Sales and Distribution: SD, MM along with all integration to satellite systems and outside parties (e.g. Odyssey, Aspentech, etc.)

Business Intelligence: SAP BW and QlikTech

These competencies may evolve over time to include other SAP modules, other Applications, or other technologies.

2. Providing pooled production support and project / enhancement support hours for requests directed to the Supplier for the non-SAP technologies listed in Attachment E.9A (Hercules Applications and Technologies Portfolio). The level of support for this work will be the equivalent of (or better than) the current output from 2.5 Hercules FTEs (2.5x2080 hours). The mix and level of resources assigned to the pool of hours should be defined by the Supplier and it will be managed with input from Hercules.
3. Balancing the assignment and flexibility of staff between application productions systems support and enhancement/project work to insure that all Service Levels and Critical Deliverables are provided in accordance with the Agreement.
-

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4. Insuring that the staff meet the following minimum experience and qualification requirements:

| Role | Minimum Experience | Minimum Qualifications |
|-------------------------|--|---|
| Senior Expert | <ul style="list-style-type: none"> • 7-10 years configuration experience on particular modules required • Experience on Version 3.1 or higher • Experience on mySAP ERP • 7-10 years of experience working with business users and related business processes | <ul style="list-style-type: none"> • BS Degree in Computer Science from an accredited University. • SAP Training in Version 3.1 and 4.0 or higher. • Excellent command of English language. • Excellent communication skills, both oral and written. • Excellent understanding of related business processes • Excellent understanding of integration with other business processes |
| Expert | <ul style="list-style-type: none"> • 5 yrs configuration experience on particular modules required • Experience on Version 4.6 or higher • Experience on mySAP ERP • At least 5 years of experience working with business users and related business processes | <ul style="list-style-type: none"> • BS Degree in Computer Science from an accredited University • SAP Training in Version 4.0 or higher • Excellent command of English language. • Excellent communication skills, both oral and written. • Excellent understanding of related business processes • Excellent understanding of integration with other business processes |
| Consultant | <p>Minimum Experience</p> <ul style="list-style-type: none"> • 2 to 4 years of configuration experience on particular modules required • Experience on Version 4.6 or higher • 2 years of experience working with business users and related business processes | <p>Minimum Qualification</p> <ul style="list-style-type: none"> • BS Degree from an accredited University • Excellent command of English language • Excellent communication skills, both oral and written • Good understanding of the specific module • Good understanding of related business processes • Good understanding of integration with other business processes |
| Non-SAP Resources | <ul style="list-style-type: none"> • Minimum of four years of design and development experience with key technologies in the Hercules architecture including : <ul style="list-style-type: none"> • Lotus Notes experience with formula language, workflow, security, agents, outlines, framesets, pages and LotusScript coding language. • Experience with multi-database application architecture, and Web-enabled applications: <ul style="list-style-type: none"> • Visual Studio • Visual Basic • QlikTech • Microsoft Office • XML • SQL Server • Oracle • FrontPage • Crystal Reports • Etc. | <ul style="list-style-type: none"> • BS degree in Computer Science or related field. • Excellent command of English language. • Excellent communication skills, both oral and written. • Excellent understanding of related business processes • Excellent understanding of integration with other business processes |
| SAP Technical Developer | <ul style="list-style-type: none"> • 4+ years of ABAP development in multiple environments • 7+ years of Applications development in diverse technologies • Advanced to expert level knowledge and understanding of SAP architecture, applications systems design and integration • Experience and knowledge of Organization Management in support of Workflow implementation • 2+ years of SAP experience in Workflow development | <ul style="list-style-type: none"> • BS degree in Computer Science or related field. • Introductory Project Management Training • SAP Partner Certified in ABAP Development and / or Workflow highly desired. |

5. Committing to Hercules that the ADM resources will be productive, will meet the experience requirements and be well trained, and will meet the delivery projections and Service Level commitments in support of Hercules's Applications, as such Applications may be changed, supplemented or replaced over the Term of the Agreement. This commitment applies to ensuring that projects or enhancement work as approved by Hercules is completed on a timely basis, in accordance to corresponding agreed upon project plans.

6. Committing to Hercules that the ADM resources will meet the agreed delivery projections and approved Service Level commitments in support of Hercules's Applications, as such Applications may be changed, supplemented or replaced over the Term of the Agreement.

 7. Managing the ADM staff so that any individual's unavailability due to any type of absence (including job vacancy or attrition) will not degrade Supplier's ability to meet applicable Service Levels and commitments. Supplier will ensure that: (i) work is not slowed down, (ii) Service Levels are not degraded by the unavailability of an employee, (iii) Supplier shall accomplish the amount of work that the individual would have been able to accomplish had the absence not occurred.
-

13.0 METHODOLOGIES, STANDARDS and ARCHITECTURE

13.1 Application Methodologies, Tools and Practices

Supplier's responsibilities include:

1. Conforming to Hercules Application development and support methodologies.
2. Using Hercules change management and support methodologies.
3. Verifying conformance to Hercules requirements and programming standards.
4. Complying with Hercules SOX 404 methodologies and controls.

13.2 Application Standards

Supplier's responsibilities include:

1. Conforming to Hercules' existing user interface, machine interface, and programming standards (for example, GUI, EDI and IP) for the development, enhancement, and maintenance activities. These standards will be documented by Supplier in the Policy and Procedure Manual in accordance with Section 9.1 of the Agreement.
2. Highlighting to Hercules the financial and operational impacts of Application standards on third party software products and tools. Hercules will have the right, after discussion with Supplier, to waive the approved standards if Hercules deems such waiver appropriate.
3. Develop Supplier specific processes and procedures to meet Applications standards after the Application standards have been documented and agreed to by both Hercules and Supplier.
4. Ensuring compliance with Hercules' enterprise architecture as reviewed by both Hercules and Supplier, and approved by Hercules.
5. Highlighting to Hercules the impacts of Application architecture related to any new / changes to third party software products and tools.

13.3 Application Architecture

Supplier's responsibilities include:

1. Participating in the development of, distributing, communicating, using and complying with Hercules' approved Applications architecture and design guidelines.
2. Certifying and maintaining audit compliance with design guidelines.

14.0 APPLICATION PRODUCTION SYSTEMS SUPPORT

Supplier's responsibilities include:



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1. Providing answers to inquiries not answered by the help desk and passed to the Application production Systems support group as a help ticket
2. Performing Application production systems Services associated with help tickets related to the following:
 - Escalated / reassigned issues referred by Hercules IT resources (including Hercules Third Party Contractors)
 - Severity 1 and 2 tickets that need to be addressed during non-US working hours
 - All Severity 3 and 4 tickets
3. Such Services include the resolution of problems (e.g., by modifying databases, application code, data and/or other operational modifications).Analyzing the severity level on each assigned ticket; requesting changes in severity levels and implementing such changes only after consultation and concurrence with Hercules’ designated representative (e.g., the original requestor or a Hercules IT or ADM representative).
4. The responsibilities as described below:

| Task | Hercules | | Supplier | | | | |
|---|----------|------------|----------------|---------|------|----------------|---------------|
| | Director | IT Experts | Business Users | On-Site | PMPM | Off-shore Team | Offshore Team |
| Application Production Systems Support | A | | | | | | |
| Responding to Help Desk Tickets (Severity 1 & Severity 2) received during 5pm to 8am EST and any time during weekends and holidays. | | | | | | | |
| At all times, making available necessary Supplier Personnel to assist Hercules in resolving Severity 1 and 2 tickets. | A | C | C | I | I | | R |
| Managing help desk queues, including analysis of severity levels | A | C | C | I | I | | R |
| Management of work assignment | A | | R | C | C | | |
| Coordinating with other IT groups any work needed to respond / resolve assigned tickets | A | C | | R | R | | R |
| Responding to all Help Desk Tickets for Severity 3 & 4 | A | I | | | | | R |
| Following communication procedures acknowledging the receipt of tickets | A | I | | | | | R |
| Problem Analysis - for all assigned tickets | A | C | | I,C | I | I | R |
| Problem Resolution for all assigned tickets, including: | | | | | | | |
| - gathering required diagnosis data from Hercules, ISV, infrastructure teams, etc. | | | | | | | |
| - taking the actions necessary to reinstate both the Application and the Services to Hercules, including coordination with IT infrastructure operations to restart or amend production schedules and/or fixing the problem and/or invalid data in the appropriate environment | | | | | | | |
| - testing the correction | | | | | | | |
| - coordinating and scheduling the installation of the correction(s) into production | | | | | | | |
| - submitting the change to production via production change management procedures | | | | | | | |
| - monitoring the running of the corrected software, schedule and/or data until the problem is acknowledged to have been corrected by the ticket originator | A | C | | I,C | I | I | R |
| Ticket Updates - for assigned tickets | A | C | | I | I | I | R |
| Communication with Business User on assigned ticket resolution; following Hercules problem and incident management procedures in communicating status of problem resolution | A | R | | I | | | R |
| Verification of solution and approving ticket closure | A | I | | R | | | I |
| Manage Offshore Support Team | I | I | | | A | R | |
| Update User Procedures / technical documentation / other relevant documentation for assigned tickets | I | I | | | A | A | R |
| Review Firefighter Reports | A | R | | | C | C | C |
| Review and fix issues using Firefighter access | A | C | | | R | R | |
| Manage and limit the use of Firefighter access | A | R | | | C | | |

| | | | | | | |
|---|---|-----|-----|-----|-----|-----|
| Coordination of production changes with Hercules and other Resources / Regions | I | I,C | | A | A | R |
| Supporting interface processing / resolving assigned issues | | I,C | C | A | A | R |
| Identifying integration, application and/or database problems with third party software, and working with other IT and third party resources to resolve problems | I | C | C | A | A | R |
| Perform Root Cause Analysis for any assigned Severity 1 and 2 issues | I | C | C | A | A | R |
| Assessing opportunities to reduce (or avoid) costs associated with Application support and operations, regardless of platform | I | I | | A | A | R |
| Define security and authorization changes required and work with other groups to implement them, including testing. | I | C | I | A | A | R |
| Identifying and reporting to Hercules opportunities that may increase user satisfaction and decrease problems/trouble reports and provide any Supplier financial or planning data required | I | I | | R | R | C |
| Responding to ad hoc user inquiries and providing user assistance. | I | I | C | A | A | R |
| Performance Analysis | | | | | | |
| - - Analyzing application performance and trends and making recommendations for application tuning, code restructuring and any other opportunities to reduce maintenance requirements. For the avoidance of doubt, this is not performance monitoring related to Basis support. | I | I,C | | A | A | R |
| Service Level compliance for all assigned tickets | I | I | | A | A | R |
| Communicating and coordinating the priorities for the completion of all application production systems support work; balancing user satisfaction versus development and support productivity in responding to users and reporting on possible training needs. | I | A | | R | R | I |
| Establishing priorities for all assigned Severity 3 and 4 work, including prioritization of staff assignments between Application production systems support and enhancement/project activities | A | R | I,C | C | C | C |
| Follow and respond to audit requirements (ad-hoc requests) | I | A | | R | R | R |
| Implement and follow all Hercules processes and procedures | A | R | | I,C | I,C | I,C |

Key:

A = Manage

C = Consulted

I = Informed

R = Responsible

15.0 ADM Project/Enhancement Work

ADM project and enhancement work is aimed at enhancing current Software capabilities and/or creating new Software to provide new capabilities.

Prior to the Effective Date, Hercules resources performed both production support work (e.g., correction of existing functionality and answering inquiries regarding existing functionality) and project / enhancement work. During 2006, statistics demonstrated that Hercules resources spent 45% to 50% of their time performing production support work and the remaining time on project and enhancement work.

Supplier resources assigned to the Hercules account shall perform both production support and project and enhancement work.

Hercules distinguishes ADM project work from enhancement work as described in this paragraph. ADM project work means any Application or a System change that (i) is not production support (e.g., business as usual or a break-fix), and (ii) is not an enhancement (e.g., it takes more than 40 hours of work). These hours are measured as

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time to be spent by IT and business users (e.g., to perform Blueprint, testing, go-live prep, work) to implement the requirement. An enhancement is any change that will require less than 40 hours of work and is not business as usual or a break fix. The approval and management process for projects requires further steps than the approval and management process for enhancements. Such steps shall be further described in the Policy and Procedures Manual.

Supplier's responsibilities include:

| Task | Hercules | | | Supplier | | | |
|--|----------|------------|----------------|--------------|-----------|---------------|---|
| | Director | IT Experts | Business Users | On-Site PMPM | Off-shore | Offshore Team | |
| Project / Enhancement Work | | | | | | | |
| Assist Hercules representatives in prioritizing project/enhancement requests | A | R | I | R | I | | |
| Obtaining authorization through the Change Control Process | | | | | | | |
| Project High Level Analysis | A | R | C | C | C | C | |
| Review requests from Business Users | A | R | C | I | | | |
| Assign request to design/development teams | A | R | | R | C | I | |
| Provide Project Effort and Timeline Estimates for Offshore work | | | C | I | R | R | |
| Blueprinting Documentation | A | R | | I | I | C | |
| Review of Blueprint Documentation | | | I | A | A | R | |
| Create Functional and Technical Design Specifications | | | C | A | A | R | |
| Configuration & Technical Development | | | C | A | A | R | |
| Review Configuration & Technical Development | A | R | | I | I | C | |
| Issues / Clarifications | A | R | | A | A | R | |
| Preparation of User Acceptance Test Plan | | | C | C,R | A | A | R |
| Preparation of Unit Test Scripts | | | C | | A | A | R |
| Preparation of Integration and User Acceptance Test Scripts | | | C | C,R | A | A | R |
| Unit Testing | | | C | | A | A | R |
| Integration Testing / User Acceptance Testing / Systems Test | | | C | R | A | A | A |
| Defect fixing | | | C | | A | A | R |
| Coordination of User Acceptance Testing (may be done with Hercules and/or Supplier Business groups) | A | R | R | I | I | C | |
| User Training for Project work (As part of User Acceptance Test) | A | R | R | I | I | C | |
| User training for enhancement work | | | R,I | A | A | R | |
| Supplier production support resource training on project / enhancement changes to related configuration, process, data or programs | | | I | | A | A | R |
| Project Documentation | | | I | | A | A | R |
| Managing timeline for offshore tasks | | | | A | R | | |
| Managing timeline for Hercules tasks | A | R | | | | | |
| Update Project Portfolio | A | R | | C | C | | |
| Update Application Portfolio | A | R | | C | C | | |
| Participate in ITBT preparation | A | R | | R | R | | |
| Participate in ITBT meetings | A | R | | R | R | | |
| Implement support packs and / or Hercules refresh (excluding Basis work, including coordination with other IT groups) | | | C | | A | A | R |
| Manage Project Partner resources | A | | | R | R | I,C | |
| Enter master data for projects upon approval and agreement with Hercules | | | | A | A | R | |
| Prepare and provide detailed project plans for offshore tasks | | | | A | A | R | |
| Prepare and provide detailed project plans for Hercules tasks | A | R | | | | | |
| Consolidate project plans for project work | | | A | | R | | |
| Help determine if project will result in SOX issues | I | A | I,C | I | I | R | |
| Establishing access controls related to the new enhancements / projects and work with other groups to implement the related access controls. | I | I | C | A | A | R | |

Key:

A = Manage

C = Consulted

I = Informed

R = Responsible

16.0 Non-SAP Production Support/Projects/Enhancements

For the technologies listed in Attachment E.9A and identified as non-SAP Hercules Technologies & Applications the Supplier will act as a support resource for applications either developed in IT, in the user community, by third parties contracted by the user community or by the Supplier under the project/enhancement category.

Supplier will be responsible for all tasks related to these technologies for all types of work (e.g., production support, projects and enhancements). These tasks include but are not limited to requirement gathering, analysis, blueprint, realization, all types of testing, go-live preparation, user training, data conversion preparation and loading, go-live and steady state support, help desk issue resolution at all levels, etc.

Supplier's responsibilities include:

1. Following all procedures for production support and project/enhancement activities for all requests received against the non-SAP technologies.
2. Tracking and reporting hours expended by support ticket in order to substantiate the productivity of the team supporting these technologies. At a minimum the volume of closed tickets will be comparable to the volume of closed tickets performed by Hercules staff prior to the Commencement Date.
3. Providing 2.5x2080 hours per year of support for this activity (the equivalent of the baseline resource hours)

17.0 Intentionally blank

18.0 Schedule

Offshore resources shall be available for support and project / enhancement work from 2:30am to 11:30am EST; provided, however, the Parties acknowledge that any Hercules requested change that does not (i) increase total number of hours and (ii) alter the start and stop times above by more than 2 hours is not a New Service. . As needed and depending on specifics related to project and enhancement work, specific resources may be required to be available during other hours. .

19.0 PERFORMANCE REPORTING

19.1 Reports

Subject to **Schedules G and R**, beginning no later than thirty days after the first full calendar month of Service following the date of the end of transition and monthly thereafter, Supplier will provide Hercules with a report of the performance level attained against the Service Levels, reports relating to the performance measures below and other reports additional to the current performance measures agreed to between Supplier and Hercules.

Tickets/Escalations/Levels:

- Resolution duration (by severity, system, module)
- Resolution rate by support level
- Backlog by severity (aged unresolved tickets) by system/module
- Average time to respond (by severity/system/module)
- Breakdown of tickets opened by severity (monthly report)
- Breakdown of tickets closed by severity (monthly report)
- Breakdown of tickets opened by category (monthly report)
- Resolution time
- Response time

Enhancements and project work will be measured by reports including:

- A report of project/enhancement milestones and the hours expended and progress made against the milestones
- A report of the quality of all project/enhancement implementations. The quality of deliverables is measured by recording any production releases rejected for implementation by the infrastructure operations team, any releases to production that result in the generation of production support tickets and pre-production quality/readiness reviews conducted by Hercules IT experts

Overall productivity increases.

Supplier shall increase the percentage of work spent on projects / enhancements and reduce the percentage of work spent on production support. The split shall change from the current 50% project/enhancement work and 50% production support / administrative work to 70% project / enhancement work and 30% production support / administrative work. The split described in the preceding sentence shall be achieved 6 months after the SAP technical upgrade is completed.

19.2 Reviews

The Suppliers responsibilities include:

1. Supplier's Project Managers will conduct status and planning meetings and conference calls with Hercules according to the schedule below, or as agreed with Hercules' Director - Global Business Solutions, to discuss SLA's, performance reports, support volumes, and outstanding issues. The parties involved in the review sessions include: Hercules Director - Global Business Solutions, Hercules IT SME's, Supplier's On-site Project Manager, Supplier Offshore Project Manager, and relevant third party Representatives if needed.
 2. Participating in daily calls (as needed or requested by Hercules) and weekly pre-scheduled meetings/conference calls (or such other period as requested by Hercules).
-

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3. Beginning with the first month after transition, participating in the Information Technology Business Team meeting (“ITBT”) and all other meetings as required in Schedule S. Project/Enhancements Services: Application Project Management

The Supplier’s responsibilities include:

6. Upon receipt of a request for a project or enhancement Service, preparing and delivering a proposal to Hercules within ten (10) business days of receipt of such request; provided, that Supplier shall use all commercially reasonable efforts to respond more quickly in the case of a pressing business need or an emergency situation; such proposal shall include the following:

- 6.1. A project plan describing the approach and project timeline.

- 6.2. Cost and resource estimates for each phase of the development or enhancement (e.g., blueprint, design, realization, integration / user acceptance testing, training, implementation).

- 6.3. Cost estimates for the ongoing maintenance and support resource requirements and costs for the Application(s) post-implementation.

7. Utilizing Hercules standard methodologies and tools to plan, monitor and control projects throughout the development lifecycle.

8. Utilizing project management principles that meet the following requirements:

- 8.1. Using Hercules’s approved project management tools (currently Microsoft Project).

- 8.2. Recommending, maintaining and updating a list of the Supplier’s work activities and projects.

- 8.3. Developing, maintaining and updating project schedules.

- 8.4. Monitoring, tracking and reporting actual results versus forecasted results.

- 8.5. Monitoring and reporting progress, and instituting corrective action against the plan.

- 8.6. Holding status update meetings according to the project plan.

- 8.7. Establishing a critical business resource list required for each project.

- 8.8. Providing necessary resources for Application Software support and projects.

- 8.9. Assessing technology or operational risks.

9. Developing and providing to Hercules a project scorecard summarized for all projects. The scorecard will at a minimum contain a project description, red-yellow-green indication for project schedule, project cost to date, and overall project status.

20.0 Change Management

The Supplier’s responsibilities include:

10. Receiving, monitoring and reporting change requests from Authorized Users.

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11. Maintaining a change log for all change requests, to include current status of change request using the agreed upon tools.
12. Estimating time and costs for changes.
13. Identifying and communicating proposed changes to Hercules through change management procedures approved by Hercules.
14. Performing changes after receiving approval from Hercules.
15. Hercules may pre-approve routine, minor, or emergency changes through the change management and Change Control Procedures.
16. Conducting reviews of changes with Hercules after implementing the changes.
17. Complying with SOX requirements related to change management.

21.0 Application Release Control

The Supplier's responsibilities include:

18. Supporting Hercules' process for priority setting, planning and scheduling of releases.
19. Complying with or, with Hercules approval, improving Hercules' Service delivery and release management processes in accordance with the existing Hercules business planning, work authorization, and release management processes.
20. Monitoring the release schedule and reporting all schedule exceptions to Hercules as required by the release management process.
21. Maintaining source code and version control.
22. Complying with SOX controls related to application releases.

22.0 Existing or New Application Integration

The Supplier's responsibilities include:

23. Supporting the integration of existing and new Applications with Supplier, Hercules or other third party provided Applications.
24. Providing input to Hercules to evaluate compatibility, benefits and risks.
25. Integrating new or modified Applications in testing procedures.
26. Resolving compatibility issues.
27. Tracking compatibility issues resolution.

28. Making local modifications to tables and reference data for integration into the local environment.

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29. Localizing Software as required to conform to local language, currency, numeric punctuation etc.
30. Ensuring compatibility with current end user computing (EUC) Applications.
31. Providing expertise, training, benefits/risks and advisory services to Hercules on new Applications technologies.

23.0 Application Disaster Recovery AND Business Continuity

The Supplier's responsibilities include:

32. Providing disaster recovery and business continuity support as required under the Agreement.
33. Provide input to other Hercules groups to develop and maintaining Application recovery plans as the Application or business needs change.
34. Following corresponding Application recovery plan testing as defined in the corresponding policies and procedures.
35. Implementing the disaster recovery and business continuity plan upon the occurrence of a disaster or disruption.

24.0 OTHER Technology support

With respect to any change, development, implementation or addition of any Applications or technologies, the Supplier's responsibilities include:

36. Conducting quality assurance reviews for compliance with Hercules' standards and methodology.
 37. Subject to Hercules' prior written consent, supplying interface requirements including Application source code.
 38. Assisting with interface testing.
 39. Reviewing and coordinating implementation of such Application or technologies.
 40. Providing deficiency reports and production sign-offs.
 41. Supporting and maintaining such Application or technology as part of the Services as required under the Agreement.
-

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HERCULES

Attachment E.9A

Hercules ADM Technology Portfolio

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Hercules ADM Technologies Portfolio:

The following technologies are included in the scope of technologies to be supported by the ADM Supplier.

| Hercules Technologies | IN SCOPE NORTH AMERICA AND EUROPE | IN SCOPE ASIA PACIFIC AND LATIN AMERICA | NOT IN SCOPE |
|--|---|--|--------------|
| <hr/> | | | |
| SAP R/3 | | | |
| Master Data Maintenance | | | X |
| Master Data Advice | X | X | |
| Finance - General Ledger (FI-GL) | X | X | |
| Finance - Accounts Receivable (FI-AR) | X | X | |
| Finance - Accounts Payable (FI-AP) | X | X | |
| Cash Management | X | X | |
| Controlling (CO) | X | X | |
| Profit Center Accounting (PCA) | X | X | |
| Internal Orders | X | X | |
| Project Systems (PS) | X | X | |
| Profitability Accounting | X | X | |
| Human Resources (HR) - Integration / Mini Master | X | X | |
| Materials Management (MM) | X | X | |
| Production Planning (PP) | X | X | |
| Plant Maintenance (PM) | X | X | |
| Production Planning (PP) | X | X | |
| Quality Management (QM) | X | X | |
| Sales and Distribution (SD) | X | X | |
| Material Ledger | | X | |
| Warehouse Management (WM) | X | X | |
| ABAP | X | X | |
| CROSS-TECHNOLOGY | X | X | |
| Business Warehouse (BW) | X | X | |
| Lotus Notes Technologies | X | X | |
| Integration to Core ERP system. | X | X | |
| <hr/> | | | |
| <hr/> | | | |

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Technologies Detailed Scope

| HERCULES TECHNOLOGIES | IN SCOPE NORTH AMERICA AND EUROPE | IN SCOPE ASIA PACIFIC AND LATIN AMERICA | NOT IN SCOPE |
|--|-----------------------------------|---|--------------|
| SAP R/3 | | | |
| Master Data Maintenance | | | X |
| Finance - General Ledger (FI-GL) | X | X | |
| Finance - Accounts Receivable (FI-AR) | X | X | |
| Finance - Accounts Payable (FI-AP) | X | X | |
| Cash Management | X | | |
| Controlling (CO) | X | X | |
| Profit Center Accounting (PCA) | X | X | |
| Internal Orders | X | X | |
| Project Systems (PS) | X | X | |
| Profitability Accounting | X | X | |
| Human Resources (HR) - Integration / Mini Master | X | X | |
| Materials Management (MM) | X | X | |
| Production Planning (PP) | X | X | |
| Plant Maintenance (PM) | X | X | |
| Production Planning (PP) | X | X | |
| Quality Management (QM) | X | X | |
| Sales and Distribution (SD) | X | X | |
| Material Ledger | | X | |
| Warehouse Management (WM) | X | X | |
| ABAP | X | X | |
| ABAP/4 Workbench | X | X | |
| ABAP/4 Dictionary | X | X | |
| ABAP/4 Query | X | X | |
| • SAPscript | X | X | |
| • SmartForms | X | X | |
| • Jetforms | X | X | |
| CROSS-TECHNOLOGY | | | |
| Workflow Management | X | X | |
| Scripts to send / receive files for EDI and Interfaces | X | X | |
| EDI / IDOC's | X | X | |
| Business Warehouse (BW) | X | X | |
| Lotus Notes | X | X | |
| Integration to Core ERP system: | | | |
| Freight outsourcers | X | X | |
| Aspentech | X | | |
| Salesview | X | | |
| Taxware | X | | |
| T&E systems | X | X | |
| GE Capital | X | X | |
| IXOS | X | X | |
| Golden Tax | | X | |
| GE Betz | X | X | |
| PNC | X | X | |
| Bank Interfaces | X | X | |
| Hyperion | X | X | |
| AMEX | X | X | |
| Topcall | X | X | |
| eZorder | X | | |
| HR Payroll Processing Providers | X | X | |
| MSDGen | X | | |
| TremCard | X | X | |
| Drum Label Production | X | X | |
| IT/2 | X | X | |
| TaxFactory | X | | |
| Pinnacle | X | X | |

| | | |
|-----------------|---|---|
| DBDirect | X | X |
| Datapass | X | X |
| RMS | X | X |
| MK Technologies | X | X |
| LabelMatrix | X | X |
| DMI | X | X |
| BarTender | X | X |
| SmartLabel | X | X |
| DART | X | X |
| D&B | X | X |
| Tymetrix | X | X |
| Analyste | X | X |
| Elster | X | |
| Insource | X | X |
| Told and SKAT | X | X |
| API | X | X |
| CMS | X | X |
| Spanish VAT | X | |
| Odyssey | X | |
| DeRijke | | X |

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Hercules ADM Technology Portfolio:

Supported Technologies

The following technologies are supported by the non-SAP Application Development and Support Teams:

| HERCULES TECHNOLOGIES | IN SCOPE NORTH AMERICA AND EUROPE | IN SCOPE ASIA PACIFIC AND LATIN AMERICA | NOT IN SCOPE |
|---------------------------|-----------------------------------|---|--------------|
| Other Technologies | | | |
| Lotus Notes | X | X | |
| Visual Studio | X | X | |
| Visual Basic | X | X | |
| QlikTech | X | X | |
| Microsoft Office | X | X | |
| ASupplier' | X | X | |
| XML | X | X | |
| SQL Server | X | X | |
| Oracle | X | X | |
| FrontPage | X | X | |
| Crystal Reports | X | X | |

Partial List of Non-SAP Technologies (not including Lotus Notes)

The technologies listed below are a partial list of the technologies that are supported within each technology.

Hercules Technology Development Support
(Non-SAP & Non-Lotus Notes)

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| Platform | Tool | Function | Class | Version | Comments | Technologies / Support |
|----------|--------------------|-------------------------|------------------|---------|---|--|
| UNIX | UNIX Scripting | Application Development | Server | | | <ol style="list-style-type: none"> 1. ODS Jobs 2. LabWare Links 3. Cost Calculator US |
| Windows | Visual Studio | Application Development | Desktop / Server | .Net | It is not backward compatible with version 6.0 since .NET is a complete rewrite of the environment and libraries. Some new features includes easier deployment via Xcopy. ASP's are compiled not interpreted. Can make Web Services etc. Technology deployment will require new libraries/frameworks to be loaded onto PC's or servers depending on how it is deployed. | Upgraded to VS (.NET). Currently the new standard for applicable technology development. |
| Windows | MS Visual InterDev | Application Development | Desktop | 6 | Web app development tool. Used standalone or as a part of the V Studio bundle. Used by most HPC app developers for writing ASP's, code that FrontPage cannot do, and for debugging purposes. | <ol style="list-style-type: none"> 1. Appropriations Request Application 2. Bulletin Boards 3. SOX Cat Reports 4. Classifieds 5. Hercules Learning Center 6. Job Posting System 7. Latin America Website 8. Manufacturing Excellence Best Practices 9. Manufacturing Excellence Documents 10. Plant Energy Champions' Resources 11. SOX SOD Reports |
| Windows | MS Visual Basic | Application Development | Desktop / Server | 3 | Old Gold Code in VB 3. Sometimes required to match the Gold Code and DLL's. Sales Force Engineering apps for support reasons. | <p>Still support technologies developed in this version. These tend to be standalone technologies that reside on the desktop. No easy way to scan for them to determine a list of who, where and how many.</p> <p>(eg. BioDeg)</p> |
| Windows | MS Visual Basic | Application Development | Desktop / Server | 4 | Old Gold Code in VB 3. Sometimes required to match the Gold Code and DLL's. Sales Force Engineering apps for support reasons. | <p>Still support technologies developed in this version. These tend to be standalone technologies that reside on the desktop. No easy way to scan for them to determine a list of who, where and how many.</p> <p>Eg.,</p> <ol style="list-style-type: none"> 1. Golden Nuggets 2. Atlas Calculator |
| Windows | MS Visual Basic | Application Development | Desktop / Server | 6 | | <p>Version prior to current standard of .NET. Technologies to be supported in this version until such time they can be upgraded. Generally, upgrade requires a re-write.</p> <ol style="list-style-type: none"> 1. Nantou Label Printing; 2. Nantou VAT Reporting; 3. Nantou Invoice Reporting; 4. BioDeg; 5. Hercules Drawing Database; 6. Hplot2K; 7. VPF; 8. Jacksonville Waste Management Db; 9. Engineering Timecard ; 10. Doel Reporting; 11. Boiler Calc; 12. Cold Lime; 13. Econ Calc; 14. Units Conversion; 15. Sludge Dewatering; 16. Cool Calc; 17. Hot Lime; 18. Poly Mix; 19. Condensate Rec; 20. Price Calculator; 21. Activated Sludge; <p>... and likely others ...</p> |
| | | | | | MS C++ was used as a point solution left | |

| | | | | | | |
|---------|-------------------|-------------------------|------------------|---------|--|--|
| Windows | MS C++ | Application Development | Server | 6 and 7 | behind after the BDD transaction. It is used to perform an audit routine comparing the data load from the SAP/ABAP extracts to what is loaded in the SalesView system. | 1. Audit Procedures for ODS Control |
| | Java Visual Caffe | Application Development | Desktop / Server | 1.1 | Used on both the client and server side. Ties into Domino, the Notes client, ASP and Front Page. | 1. PPD WebWorks |
| | Java Bean Machine | Application Development | Desktop / Server | | | 1. PPD WebWorks |
| | PERL | Application Development | Server | | Uses a product from ActiveState for PERL script development on web servers. | Several IntraNet technologies utilizing this technology. |
| | PerlScripts | Application Development | Server | | Uses a product from ActiveState for PERL script development on web servers. The PERL Script is a lighter version of the PERL language. | Several IntraNet technologies utilize this technology. |
| Windows | MS FrontPage | Web-Page Design | Desktop | 2002 | New users get this version. The FP 2002 extensions are not loaded on servers though. Therefore that functionality cannot be used. | Standard for website development. There are many of these on our IntraNet and InterNet sites. |
| | ASPMail | WebTools | Server | 3 | ActiveX component for sending email from a web-page | Still in use. Utilized in many other applications as a component of those technologies. |
| | SAFileUpload | WebTools | Server | 3.3 | ActiveX Component for sending files to a server. | Still in use. Utilized in some other applications as a component of those technologies. |
| Windows | MS Access | Database | Desktop | 97 | Current standard. Comes with Office 97 Pro. Not compatible with Access 2000, so apps need work be to re-deployed. Can we move to using the JET Engine rather than deploying Access with IT developed apps? | 1. Appropriations Request Application; 2. Engineering Drawing Database; 3. AU Database; 4. Engineering Newsgroup ; 5. Plant Energy Champion's Resource ; 6. VPF ; 7. Jacksonville Waste Management Db; 8. Hercules Learning Center Website; 9. Engineering Timecard ; 10. SOX SOD ; 11. SOX CAT ; 12. Doel Reporting; ... and likely others to be determined during the Transition Period... |
| | Notrix | Database Tool | Server | 5.3 | Notrix allows relational data from Oracle etc. to be used in Lotus Notes. Used heavily to provide sales force data to the field. | Used in support of the ODS technologies such as Sales View. |
| | Oracle Client | Database Tool | Desktop | 7 | For looking up Oracle PL/SQL procedures, functions, views, etc. The SQL+ tool in it allows you to send SQL statements to the DB and review the results. | 1. ODS Jobs; 2. LabWare Links; 3. Cost Calculator US |
| | TrueDB Grid | Database Tool | Desktop | 7 | TrueDBGrid is an ActiveX component that is used in VB to show data from a database in a spreadsheet-like display. It is essentially a data entry/data display control | 1. Herc Drawing; 2. Hplot; 3. Hercules VPF; 4. Jax Waste Mgt; 5. Engeneering Time Data System; ... and likely others ... |
| | MS SQL Server | Database | Server | 6.5 | Running on IT managed servers. | 1. Bulletin Boards; |
| | MS SQL Server | Database | Server | 2000 | Does seem to have some use in PPD. Investigating where/how it is being used. | 1. SOX CAT Technology; 2. Global Business Intelligence System; |
| | QlikTech | BI Tool | Server | | Business Intelligence (Analytics) platform | TBD |
| | JavaScript | Application Development | Server | | Programming language used inside of web pages. | Many InterNet/ItraNet site utilize this technology that we support. Too many to mention. |

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List of Critical non-SAP Technologies

The technologies below are critical for Hercules.

| Lotus Notes Database Name | High Maintenance | Mission Critical | Detailed Documentation? | Number of Users | Ticket Volumes | Database Size | Business Process Area | Other Comments |
|-------------------------------------|------------------|------------------|-------------------------|-------------------------|---|---|---------------------------|---|
| Account Assignments Database | YES | YES | No | 600 | 15/yr | 46 MB | PPD | Business handles most of the data maintenance |
| Aqualon Reference | NO | YES | | | | | | |
| Cost Calculator US | YES | YES | No | 300 | Avg.1 Ticket/Help Call per Day Complexity may vary (Cross Platform , Cross server system, Transaction system) | 100 MB | Sales Force North America | |
| Europe Account Assignments Database | YES | YES | No | 200 | 10/yr | 11 MB | PPD | Business handles most of the data maintenance |
| Europe Audit Database | YES | | No | 900 | Avg.1 Ticket/Help Call per Day Complexity may vary (Cross Platform , Cross server system, Transaction system) | 50 MB | Corporate Europe | |
| Fonebook R5 (Hercules Phonebook) | | YES | | | | | | |
| GIR | YES | YES | No | all of Hercules (~5000) | 20/yr | 254 MB for 1 year of data (holds up to 5 years) | SHERA | Business handles most of the data maintenance |
| Global Consumption Report (PPD BI) | YES | YES | No | 1000 | Avg.3 Ticket/Help Call per Day Complexity may vary (Cross Platform , Cross server system, Transaction system) | 1000 MB | Global Sales Force | |
| Hercules Plaza-CSD Room Scheduling | | YES | | | | | | |
| PCN (Personnel Change Notification) | YES | YES | | | | | | |
| PPD ATLAS | YES | YES | no | 1500 | Avg.4 Ticket/Help Call per Day Complexity may vary(Cross Platform , Cross server system, Transaction system) | 2000 MB | Global Sales Force | |
| PPD SalesView | YES | YES | No | 600 | 15/yr | 2 GB | PPD | |
| | | | | | Avg.4 Ticket/Help Call per Day | | | |

| | | | | | | | | |
|-------------------------|-----|-----|----|------|---|---------|---------------------------|--|
| SalesView | YES | YES | No | 1000 | Complexity may vary(Cross Platform , Cross server system, Transaction system) | 2615 MB | Global Sales Force | |
| Europe PPD SalesView | YES | YES | No | 200 | 10/yr | 632 MB | PPD | |
| SalesView Europe | YES | YES | No | 400 | Avg.2 Ticket/Help Call per Day Complexity may vary (Cross Platform , Cross server system, Transaction system) | 550 MB | Sales Force Europe | |
| SalesView North America | YES | YES | No | 600 | Avg.2 Ticket/Help Call per Day Complexity may vary (Cross Platform , Cross server system, Transaction system) | 2011 MB | Sales Force North America | |
| US Vendor Master | YES | YES | | | | | | |

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Hercules

Schedule E.10

Disaster Recovery and Business Continuity

SCHEDULE E.10

DISASTER RECOVERY AND BUSINESS CONTINUITY

Introduction

This is **Schedule E.10** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

As part of the Transition Services the Parties shall develop a business continuity solution for the Services. As requested by Hercules, such business continuity solution may include components of the draft solution proposed by Supplier below in this **Schedule E.10**, including certain business continuity seats. To the extent that Hercules elects to receive such business continuity seats, **Attachment J.6** to **Schedule J** shall be amended to include the Charges for such seats as described below (including both one-time capital Charges and per seat Charges described below).

DRAFT BUSINESS CONTINUITY SOLUTION

Proposed Business Continuity Overview

Supplier will offer a comprehensive business continuity solution for Hercules processes in Supplier’s delivery centers. This Schedule covers the business continuity plan at a high level and the emergency service (“ESL”) assumptions which have been made based on Supplier’s experience of handling similar processes. Supplier, with the assistance of Hercules, will conduct a detailed assessment of each process under scope at the solution identification stage and validate the ESLs and recovery time objectives of each process considering the following:

- Legal impact of the process
- Customer servicing impact
- Financial Impact

Recovery Sites

Supplier proposal includes Inter country, natural business continuity plan (“BCP”) and Intra city BCP for Supplier Facilities in India, Romania and Mexico with 25 % of the Supplier Personnel associated with such Supplier Facilities. The details have been given below:

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THE FOLLOWING TABLE HAS BEEN REDACTED

Following are the assumptions to the BCP pricing proposal:

Pricing Assumptions for Mexico BCP

- *****
- *****
- *****
- *****
- *****
- *****
- *****
- *****
- *****

Pricing Assumptions for Kolkata BCP

- *****
 - *****
 - *****
 - *****
-

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- Hercules would be responsible for provisioning and managing the voice T1's and the toll free numbers and routing the calls to India.
- No call recording option included in this pricing
- Since no call volume is available, T1 sizing cannot be done as of the Effective Date
- One file server pricing is included
- One BCP hot test and three cold tests to be performed in a year.
- Pricing may subject to change after the requirement analysis captured during the IT design workshop being held in Wilmington , DE on 22nd January

The intra-city BCP for the OTC processes in Romania has been suggested because of the fact that the other two sites (Juarez and Kolkata) do not have the language capability to support emergency service recovery.

Inter Country BCP Solution

Here is a brief synopsis of the setup of the recovery site

- The Hercules network/ IT Infrastructure would already exist at the recovery country.
- The specific BCP seats marked for Hercules would be pre-identified, marked and documented in the BCP detailed plan for Hercules. These BCP seats would be used from the already -in-production seats of Hercules at the recovery country, whose processes would also be brought down to the extent of coping with the emergency Services of the outage site.

Notes/ Assumptions

- There could be a need to hire employees keeping in mind that proper levels of cross training would be imparted to handle other processes at an emergency level of processing in the event of a BCP situation. This might entail an additional cost for cross training to the extent that emergency services are required to be processed.
 - There might be additional third party vendor IT costs for switching processes across Supplier locations. This would be assessed during the strategic assessment stage.
 - Synergies should exist between activities performed across poles
 - Softwares would be available or downloadable at all sites
 - Adequate cross training between poles for performance of activities
 - 100% redundant network on all critical components
 - Displaced process would work on a revised/ downgraded Service Levels during a Force Majeure event
-

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- Critical activities (in processes like General Accounting, Business Analysis) which can be performed by Hercules retained organization to be scoped out.

Intra City BCP Solution

In the event of a crisis, the Supplier associates would move from the primary site to the intracity BCP recovery site.

The recovery time is dependent on the nature of disaster and constrained by the movement of people to the recovery site and not by the infrastructure setup. Supplier expects the recovery time between 8 - 12 hours from the time the BCP is invoked.

Non Dedicated BCP Seats in the Intra City BCP Solution

Supplier proposal includes leveraging non-production seats (e.g. Training rooms and conference rooms) in the recovery site. Here is a brief synopsis of the setup of the recovery site

- The Hercules network is extended to the BCP recovery site and is monitored 24*7.
 - The specific seats marked for Hercules would be pre-identified, marked and documented in the BCP detailed plan for Hercules
 - The non dedicated seats have spare LAN ports that are patched to the Hercules network in the data center of the recovery site building.
 - Though the Hercules network is always live in the recovery site, but the extension of the network to the shared BCP seats is not activated.
 - We also store desktops with pre-configured software for Hercules in a secure location in the recovery site.
 - At the time of disaster these desktops are taken out, the network activated through an emergency change request and the setup is ready to go.
 - Supplier will provide additional security guards to control the physical access to these BCP seats to the extent these seats are not in the Hercules access controlled area.
 - Supplier also has a monthly process of updating the patches and virus definitions of the stored laptops.
-

Inter City BCP Solution

In the event of a crisis, the Supplier associates would travel from the primary site to the inter-city BCP recovery site.

The recovery time is dependent on the nature of disaster and constrained by the travel of people to the recovery site and not by the infrastructure setup. Supplier expects the recovery time between **1 - 5 days** from the time the BCP is invoked.

Non Dedicated BCP Seats in the Inter City BCP Solution

Supplier proposal includes leveraging non-production seats (e.g. Training rooms and conference rooms) in the recovery site. Here is a brief synopsis of the setup of the recovery site

- The Hercules network is extended to the BCP recovery site and is monitored 24*7.
 - The specific seats marked for Hercules would be pre-identified, marked and documented in the BCP detailed plan for Hercules
 - The non dedicated seats have spare LAN ports that are patched to the Hercules network in the data center of the recovery site building.
 - Though the Hercules network is always live in the recovery site, but the extension of the network to the shared BCP seats is not activated.
 - Supplier shall store desktops with pre-configured software for Hercules in a secure location in the recovery site.
 - At the time of disaster these desktops are taken out, the network activated through an emergency change request and the setup is ready to go.
 - Supplier shall provide additional security guards to control the physical access to these BCP seats to the extent these seats are not in the Hercules access controlled area.
 - Supplier also has a monthly process of updating the patches and virus definitions of the stored laptops.
-

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BCP Sustenance -Testing model

Supplier has a rigorous process to ensure the sustainability of BCP and recommends the following testing strategy for BCP.

Cold Test:

The objective of cold test is to conduct an end-to-end IT readiness check of each process configured under BCP plan. The cold test is a non-intrusive test and no production business is transacted from the BCP site. This test is conducted once every three months. This test is owned by Supplier process owners and all test results are documented. The testing gaps, if any, are documented and closed within 48 hours of completion of the cold test.

Hot Test:

The objective of hot test is to perform real business transactions for each process configured under BCP plan. The business transactions are performed from the BCP site. This test is conducted once every year. All test results are documented and the testing gaps, if any, are closed within 48 hours of completion of the test.

BCP Invocation

Supplier's Crisis Management Team (CMT) will take a decision to invoke BCP for identified mission critical processes and to transfer ESL (Emergency Service) employees from disaster site to recovery site (intra-city or inter-city). It will also manage the availability of critical data, human capital, telecom connectivity and all other mission critical requirements.

BCP Communication

Supplier has defined communication plan for each of its customers. The communication plan for each process would be finalized as part of the detailed BCP plan for each process. At the minimum following communication plan would be followed.

- Notice to Hercules process owners would be provided within 2 hours of crisis.
 - The conference call bridge would be opened and will stay active during the entire duration of crisis.
 - A report containing details of the crisis, its cause(s), impact analysis and the Supplier action plan would be published within 1 week of the incident.
-

European Scanning Solution Overview

Schedule E.11

European Scanning Solution Overview

Supplier's scanning solution provides an off-site managed service to receive, prepare, scan, index and release different Hercules documents as part of the Services. The key requirements for the core services are summarised as follows:

Supplier's Subcontractor will carry out the Service from its 'Global Imaging and Hosting Services Centre' in accordance with the Agreement. The mailroom setup requirement is volume driven and in the case of Hercules, will be based in the Netherlands.

All documents received by mail, or equivalent services by 09:30 am hours local time will be processed on a 'same business day' turn around basis and uploaded to Supplier's server via secure FTP. Upload will occur on two separate occasions as a minimum with the final upload no later than 18.00 hours. If the documents are received by the subcontractor after 09:30 am. The Subcontractor will notify Supplier (and Supplier will notify Hercules) no later than 10:00am and mutually agree how the documents will be processed. Supplier shall cause the Subcontractor to make all reasonable endeavours to process documents delivered after 9:30am on the same day.

Electronic document tagging will be automated via processing Software (i.e. as a minimum each document will be tagged with batch ID, number of images, category, sub-category and date). In addition to the foregoing, if there is any additional field that needs to be documented, that field will need to be discussed and costed separately by the Parties pursuant to the Change Control Process and subject to Section 4.4 of the Agreement.

Images and data will be delivered via the Subcontractor owned and managed Internet based VPN using minimum IP security protocol (IPsec) with triple data encryption standard (3DES). The images would be loaded for processing into a Savvion workflow database. The workflow solution will be used to process the transactions.

The Savvion workflow solution server will have direct feeds from SAP relating to the approver email information, EDI rejects and grant of authorities. Processors will be able to access SAP functionality required to undertake their work and will also have accessibility to the Savvion workflow tool based on defined profiles and user ids. Hercules users who need to access the Savvion system for approval purposes will be sent URL links for the Savvion workflow System. All approvals would be actioned within the Savvion System and the approvers would be challenged for profile and password information, before they are allowed access to the Savvion System. Genpact processors will embed the URL for viewing images on either Savvion or the FileNet server into the invoice record for SAP. Archiving of the processed images will be done using FileNet document repositories.

IMAGES EXCLUDED

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Hard copy documents will be re-collated and boxed for archival and retrieval purposes for an agreed period from processing date of documents. After this period documents will either be securely destroyed or returned;

Hercules is expected to provide the relevant volume information as follows (this is based on 250 working days per year).

| | Volume of Documents | | | Average Number of Documents |
|-------|---------------------|--|---------|-----------------------------|
| | | | Average | |
| Month | | | 6,000 | |

The Subcontractor shall process up to an additional 10% volumes the same day. In instances where volume exceeds the volume above plus 10%, the Subcontractor will make all reasonable endeavours to process them in same order as they have been received prioritizing between the daily volumes and the backlogs

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For each Application the following document profile is required.

| | |
|---|---|
| Document name/description | AP and AR documents |
| Percentage A4 equivalent/other sizes | 90 % A4, 8% A5, 2% till receipts |
| Percentage simplex/duplex | 100% simplex |
| Percentage black and white/colour | 100% black and white |
| General condition of documents for scanning | 98% bulk scanning, 2% flat bed/manual process, assuming good quality. |

Any page sizes that are too large to be processed through the bulk scanner is to be highlighted and a processing decision to be agreed by both Parties. Documents too large to process will be treated as an exception, and the Parties would agree to charges that would be applicable to such documents; provided, however, such charges shall not exceed Supplier's Out-of-Pocket Expenses relating to the Subcontractor.

The documents will be directly received by the Subcontractor via a Mail PO Box Number or courier to the imaging production facility.

Guidelines for mail sorting/opening/forwarding/notification will be refined and updated on a regular basis as agreed between the Subcontractor and Supplier in order to enhance the operational efficiencies, subject to Hercules' reasonable review and approval.

Document separator and batch header sheets will be added by the Subcontractor.

The documents will be bulk-scanned at a resolution of no more than 300 dpi Black and White (not greyscale or colour) using industry standard bulk scanning Equipment. All documents will be scanned in batch mode in monochrome and as multipage images - i.e., 1 invoice containing 2 pages to be scanned as 1 PDF and/or TIFF image.

Images will be captured as either PDF image only and /or TIFF Group - IV

The Subcontractor will apply a random sample quality control check of 100% for the first week, and a standard image quality control check of 20% (one in every 5 images) thereafter, to assess general image quality of the full image (but not content) plus skew and orientation.

As a minimum each document name will be tagged with batch ID, no. of images, category, sub-category and scan date.

Following scanning, the Subcontractor will place the documents in to appropriate storage boxes, by batch and label the boxes with date and batch number range (to facilitate retrievals for re-scans). The Subcontractor will store the documents in a temporary storage facility for an agreed period of up to 90 days. At the end of the agreed period the documents can be returned to the Hercules or securely destroyed as directed by Hercules.

Charges: The Services described in this Schedule shall be charged in accordance with Attachment J.6 to Schedule J.

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HERCULES

Schedule E.12

SAP Upgrade

Statement of Work

October 9, 2006

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I. GENERAL

SAP R/3 3.1i to MySAP ERP 2005 (ECC 6.0)

Finance - General Ledger (FI-GL)

Finance - Accounts Receivable (FI-AR)

Finance - Accounts Payable (FI-AP)

Cash Management

Controlling (CO)

Profit Center Accounting (PCA)

Internal Orders

Project Systems (PS)

Profitability Accounting (PA)

Human Resources (HR) - Integration / Mini Master

Materials Management (MM)

Production Planning (PP)

Plant Maintenance (PM)

Production Planning (PP)

Quality Management (QM)

Sales and Distribution (SD)

Warehouse Management (WM)

Environmental Health and Safety (EH&S)

Business Process Redefinition

SAP Configuration

Basis / Operations Work

III. APPROACH & DELIVERABLES

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I. GENERAL

Hercules has used SAP 3.1i version since 1996 for the European and North America Regions. A SAP 4.6c version was implemented for Asia Pacific and Latin America in 2003. There are approximately 2200 users active in SAP 3.1i and approximately 200 users active in SAP 4.6c.

Hercules' goal is to upgrade its current system to MySAP ERP 2005 as quickly and efficiently as possible, along with optimal sequencing with the Services (e.g., business process outsourcing Services set forth in this Schedule E) and other IT processes.

Two phases have been defined for this project:

- Phase I - SAP 3.1i technical upgrade.
- Phase II - Functional upgrade plus consolidation / upgrade of SAP 4.6c into MySAP ERP 2005.

Supplier will be responsible to provide certain SAP systems upgrade services in support of the Phase I - SAP R/3 3.1i Technical Upgrade to MySAP ERP 2005. Hercules has selected the ValueSAP (ASAP) Methodology to manage the evolution of the deliverables throughout the project lifecycle, all specifications and requirements concerning deliverables and timeframes for deliverables will be based upon this methodology. Specific deliverables and responsibilities during Phase I - Technical Upgrade (the "Technical Upgrade") are defined in Section III - Approach and Deliverables. Any additional requirements or deliverables requested from Hercules will be specified in writing and agreed to by Supplier through the Change Control Procedures.

The Parties intend to perform the Technical Upgrade using a joint team with the Supplier, such team will include Hercules' resources with Hercules' business process and prior configuration experience. Supplier will provide the upgrade methodology, version functionality knowledge, configuration expertise and QA assurance services and will train Hercules resources (e.g., IT, business users, and the Hercules Third Party Contractor providing infrastructure/operations services) on the selected SAP version.

II. SCOPE

Only Phase I - SAP 3.1i Technical Upgrade is addressed in this SOW. As part of this phase, no added functionalities within the modules already implemented will be addressed, unless such added functionalities are embedded, inherent, or necessary in connection with the Technical Upgrade, agreed in a Blueprint, or described below.

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- Hercules has decided to complete the EH&S Blueprint in advance of the start of the technical upgrade. Supplier is expected to take the information recorded on the EH&S Blueprint and perform the remaining phases of the implementation (e.g., Realization, Final Preparation, and Go-Live) as part of the scope of the Technical Upgrade, taking into account all of the internal SAP integration along with the integration of any other tools required for the EH&S implementation (for example, phrase libraries).

The scope of the Technical Upgrade should cover existing functionality in the following modules:

SAP R/3 3.1i to MySAP ERP 2005 (ECC 6.0)

Finance - General Ledger (FI-GL)

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Finance - Accounts Receivable (FI-AR)

Finance - Accounts Payable (FI-AP)

Cash Management

Controlling (CO)

Profit Center Accounting (PCA)

Internal Orders

Project Systems (PS)

Profitability Accounting (PA)

Human Resources (HR) - Integration / Mini Master

Materials Management (MM)

Production Planning (PP)

Plant Maintenance (PM)

Production Planning (PP)

Quality Management (QM)

Sales and Distribution (SD)

Warehouse Management (WM)

Environmental Health and Safety (EH&S)

Supplier will provide services required to complete the upgrade of the current SAP 3.1i environment to version MySAP ERP 2005 according to the deliverables stated below.

Hercules' and Supplier's project managers will jointly direct the overall management of the Technical Upgrade and will seek to agree promptly on those decisions that either Party considers significant in completing the deliverables included in this Schedule E.12; provided, however, Supplier shall: (i) manage the progress and completion of all activities and deliverables relating to the Technical Upgrade to enable the timely completion of such activities and deliverables and any dependent activities and deliverables in accordance with this Schedule E.12, and (ii) identify, manage and reasonably assist with the resolution of any issues that may impede or delay the

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timely completion of any activity or deliverable, even if any such activity or deliverable is Hercules' (or a Hercules Third Party Contractor's) responsibility. Such assistance described in subsection (ii) may only be Chargeable if it relates to a Hercules (or Hercules Third Party Contractor) responsibility and it is a New Service.

The Parties will create a SAP upgrade Steering Committee consisting of Hercules business and information technology representatives and designated Key Supplier Personnel. The executive steering committee will meet at least once a month (in person or by teleconference) or as otherwise agreed.

Business Process Redefinition

Although Hercules is not advocating a full-scale re-engineering of its business processes, some process changes are expected due to the advantage of the availability of related best practices enabled by MySAP ERP 2005 and due to embedded, inherent, or necessary functionality in the new release related to functionality currently used by Hercules. These changes to business processes and additional functionality should only be related to the Technical Upgrade. Overall the Supplier will be required to:

- Analyze Hercules' business processes affected by the Technical Upgrade.
- Compare Hercules' processes to the corresponding processes in the SAP version to be implemented.
- Recommend improved business processes that should be changed that take full advantage of SAP's best practices and newly available functionality.
- Document and implement all business process changes as approved by Hercules.

SAP Configuration

The joint Hercules and Supplier project team will identify all of the items in SAP that need to be configured to support the Technical Upgrade as part of the Blueprint deliverables. Supplier is expected to work with Hercules' resources to perform the configuration changes necessary to meet the Blueprint requirements and perform unit, integration and user acceptance testing.

SAP Development

The joint Hercules and Supplier project team will identify all of the programs that need to be changed, redesigned or developed to meet the Blueprint requirements. It is expected that the

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Supplier will remediate and test any programs needed, including interfaces, reports, forms, user exits, IDOCS or any technical object.

Basis / Operations Work

Business and operations work shall include (i) working with Hercules personnel and Hercules Third Party Contractors and (ii) performing all basis and operations tasks related to the Technical Upgrade, including the following:

- Upgrading of SAP software, including database.
- Carry out test upgrade and review subsequent upgrades
- Review technical project plan
- Advise Hercules on delta Basis functions
- Unicode conversion necessary to achieve EH&S implementation
- Identifying modifications and developments
- Reapplying modifications
- Applying necessary patches
- Transports of changes from the development system to the test system and to the production system, as applicable, and in accordance with the Change Control Procedures
- Basis support during the Technical Upgrade, including security authorization support for the project team, copying of databases, setting up of new environments
- Systems administration & backup
- Assisting the functional team with integration testing by providing support required for a successful sign-off of the tests
- Performing performance and stress testing and resolving any issues

III. APPROACH & DELIVERABLES

Supplier is required to follow the ValueSAP methodology to implement the Technical Upgrade. The following provides a summary of the key deliverables to be provided by the indicated Party. Supplier shall perform the Services described in Section II above and as otherwise necessary to deliver the deliverables it is responsible for below.

| | Hercules | Supplier |
|--|----------|----------|
| Pre-Upgrade | | |
| Prepare Sandbox Environment upgrading of SAP software, including database. | C | R |
| Provide expertise on upgrade methodology, on new / changed functionality and / or changes / new configuration required | I | R |
| | | |
| Project Preparation | | |
| Complete the Project Charter | R | R |
| Form steering and executive committees specific to this project (i.e., distinct from the committees described in Schedule S) | R | C, I |
| Communication of project structure and roles and responsibilities to all members of the project team and extended team members | R | R |
| Form Project Team, subject to Section IV below | R | R |
| Develop a detailed Draft Project Plan. This Project Plan will include necessary timelines, required resources and ramp-up plan, logistical requirements, and planned deadlines. Identification and initial schedule for extended team members' participation in Blueprint. | A,C | R |
| Project Kick-Off with all team members and the steering committee and executive sponsors | R | R |
| Hercules Core team training | R | |
| Blueprint | | |
| Provide SAP expertise in corresponding areas | I,C | R |
| Identify changes between releases, document and advise Hercules of impact and use of new functionality | I,C | R |
| Business Functionality (Business Processes and Master Data) to be included in the scope (Scope Outline) | I,C | R |
| Updated time & resources necessary to complete the Technical Upgrade | I,C | R |
| Definition of Scope that cannot be addressed in Technical Upgrade due to delivery constraints, business priorities, criticality, and special needs. | I,C | R |
| Definition of interfaces, data conversions, enhancements, forms and reports needing changes due to Technical Upgrade | I,C | R |
| Identification of the policies, procedures and business practices requiring change management support and training. | R | I,C |
| Creation of a project plan for Realization (detailed) & subsequent stages (high level) | I,C | R |
| Definition of Master Data changes required | I,C | R |
| Validation of Technical Environment; validation of the same with the Hercules Third Party Contractor providing infrastructure services. | I,C | R |

| | | |
|--|------|-----|
| Identification of any Systems Administration Policies & Procedures changes; validation of same with the Hercules Third Party Contractor providing infrastructure services. | I,C | R |
| Identification of Key Impacts to the Hercules organizations as a result of implementing any new business processes | R | I,C |
| Development of a training strategy, plan and recommended approach for Hercules. | I,C | R |
| Identification of any changes to existing applications due to Technical Upgrade. | I,C | R |
| Delivery of the Business Blueprint Document which includes: Executive Summary (Project Charter, Goals & Objectives, Key Business Changes and Benefits, Organizational Impact, Project Scope, Critical Success Factors, KPIs, Project Risks, Assumptions, Staffing, Timeline and Cost) Business Process Requirements for any processes identified as changed or new due to Technical Upgrade (Process Team Summaries and Detailed Process Flow documents) Master Data Changes Reporting Changes Configuration Changes Interfaces, Data Conversions and Enhancement Definition and Changes Project Plan for Realization, Final Prep and Go-Live stages with Staffing Plan | I,C | R |
| Adjustments to Landscape Strategy; validation of such adjustments with the Hercules Third Party Contractor providing infrastructure services. | I,C | R |
| Knowledge Transfer Plan from upgrade resources to ADM and infrastructure production support resources | I,C | R |
| Security / Authorization Profile Strategy; validation of the same with the Hercules Third Party Contractor providing infrastructure services. | I,C | R |
| Issue Management | I,C | R |
| | | |
| Configuration and Unit Testing (Realization - first phase) | | |
| Detailed Refinement of Business Processes from Blueprint completed | I,C | R |
| Development of the SAP GUI client necessary for the upgrade | I, C | R |
| Coordination of the deployment of the SAP GUI client with the Hercules Third Party Contractor providing infrastructure services. | I, C | R |
| Design, development and unit testing of all SAP interfaces, conversions, enhancements, forms and reports | I,C | R |
| Baseline Configuration (80% of basic SAP processes) configured and operational per the Business Blueprint | I,C | R |
| Baseline Configuration Playbacks (conference room demos for Super Users) and Hercules validation and approval | R | I,C |
| Final Configuration (remaining 20% of processes) configured and operational per the Business Blueprint | I,C | R |
| Final Configuration Playbacks (Cycles 1-4) and Client validation and approval | R | I,C |
| R/3 QA Clients setup; validation of the same with the Hercules Third Party Contractor providing infrastructure services. | I,C | R |
| Issue Management & Resolution | I,C | R |
| Security Profile creation, changes, and testing | I,C | R |
| Unit test scenarios for Cycle Testing | I,C | R |
| Integration Test / System Test Scenarios Creation | I | R |
| Modifications to existing applications to support new SAP system. Only applications being supported as of the Effective Date are included. | I,C | R |
| Transports of changes from the development system to the test system only on the upgrade landscape. | I,C | R |
| Reapplying modifications | I,C | R |
| Applying necessary patches | I,C | R |
| Basis Support during the project, including authorization support for the project team, copying of databases, setting up of new environments | I,C | R |
| Request systems administration & backup for the Upgrade Landscape for the upgrade landscape | I,C | R |
| | | |
| Integration Testing (Realization - second phase) | | |
| Integration Test / System Test Coordination | R | I,C |
| Final Integration Testing | R | I,C |
| Configuration documentation | I,C | R |
| Identify changes to the IT ADM support organization and to handoffs or procedures post upgrade | I,C | R |
| Final Data Conversion Strategy in place | I,C | R |
| Knowledge Transfer from upgrade resources to ADM and infrastructure production support resources | I,C | R |
| Security Profile changes, and testing | I,C | R |
| Development of end-user training materials per recommended strategy | I,C | R |
| Development and deployment of risk mitigation strategy for major project risks as identified during | R | I,C |

| | | |
|---|---------|-----|
| blueprint | | |
| Cutover strategy and plan complete | I,C | R |
| Deployment of Communication plan | R | I,C |
| Reapplying modifications | I,C | R |
| Applying necessary patches | I,C | R |
| Transports of changes from the development system to the test system only on the upgrade landscape. | I,C | R |
| Basis Support during the project, including authorization support for the project team, copying of databases, setting up of new environments | I,C | R |
| Request systems administration & backup for the Upgrade Landscape for the upgrade landscape | I,C | R |
| Assisting with integration testing | I,C | R |
| Issue Management & Resolution | I,C | R |
| | | |
| Final Preparation | | |
| Go-Live plan complete | I,C | R |
| Coordination of the deployment of the SAP GUI client with the Hercules Third Party Contractor providing infrastructure services. | I, C | R |
| Cut-over to Production Environment | I,C | R |
| Integration of new systems into the data center monitoring tool in conjunction with Hercules Third Party Contractor | I, C | R |
| Coordination of cutover to production environment as needed with the Hercules Third Party Contractor with the infrastructure provider | I, C | R |
| Post Production Support Plan | I,C | R |
| Production System ready and approved | I,C | R |
| End-user training materials updated and approved according to recommended strategy | I,C | R |
| Final communication strategy | R | I,C |
| Change Management “lessons learned” activities | R | R |
| User training according to strategy | I, C, R | R |
| Volume and Stress Testing | I,C | R |
| Establish a temporary help desk to handle upgrade specific issues | I,C | R |
| End to End Upgrade Landscape finalized and stable; validation of the same with the Hercules Third Party Contractor providing infrastructure services. | I,C | R |
| | | |
| Go-Live and Support | | |
| Provide ongoing production support through the support organization | I,C | R |
| Monitor and validate live business results in the production system | I,C | R |
| Resolve any problems that come up with the production system | I,C | R |
| Fine tune and optimize system performance and use with the Hercules Third Party Contractor providing infrastructure services | I,C | R |
| Follow-up end user training | I,C | R |
| Complete the Knowledge Transfer to the ADM and infrastructure production support teams | I,C | R |
| Conduct user satisfaction survey | R | C |

Key:

C = Consulted

I = Informed

R = Responsible

IV. Hercules Resource Requirements for the Joint-Project Team

Notwithstanding anything to the contrary, Hercules shall not be obligated to provide (i) more than 14 full time equivalent information technology personnel (Hercules employees or Hercules Third Party Contractors) during any month, or (ii) more than seventeen (17) full time equivalent business personnel in average for the duration of the project, or (iii) any such resources beyond the month in which the project should have been completed pursuant to the mutually agreed project plan.

V. Reallocated Supplier Personnel Performing ADM Services

No more than six (6) FTEs from the ADM Services shall be reallocated to the Upgrade Project. The Charges for the ADM Services include such 6 FTEs.

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Hercules

Schedule G

Service Levels Methodology

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1. GENERAL

This is **Schedule G** to the Master Professional Services Agreement between Hercules and Supplier (the “**Agreement**”). It sets forth certain quantitative Critical Service Levels, Key Measurements and Critical Deliverables against which Supplier’s performance is measured.

2. ATTACHMENTS

The following Attachments are attached to this **Schedule G** and incorporated herein by reference:

Attachment G.1: Service Level and Deliverable Credit Matrix. This Attachment sets forth the (i) definition of Service Levels and Key Measurements, (ii) the quantitative measurements that Supplier shall meet or exceed for each such Service Level and Key Measurement, and Measurement tools. **Attachment G.1** also sets forth certain Critical Deliverables.

3. REPORTING, INVESTIGATION AND CORRECTION

Unless otherwise specified in **Attachment G.1**, each Critical Service Level and Key Measurement shall be measured and reported on a monthly basis beginning on the Commencement Date or, if later the date specified in **Attachment G.1**. Supplier shall provide to Hercules, as part of Supplier’s monthly performance reports, a set of hard- and soft-copy reports to verify Supplier’s performance and compliance with the Critical Service Levels, Key Measurements and Critical Deliverables (until all Critical Deliverables are received and approved by Hercules).

Supplier shall provide detailed supporting information for each report to Hercules in machine-readable form suitable for use on a personal computer. The data and detailed supporting information shall be Hercules’ Confidential Information, and Supplier shall provide Hercules access to such information on-line and in real-time at any time during the Term.

Supplier will also be responsible for promptly investigating and correcting failures to meet the Service Levels by:

1. Promptly initiating problem investigations, including Root Cause Analyses conducted in accordance with the Agreement;
2. Promptly reporting problems to Hercules in accordance with the escalation process set forth in the Policy and Procedures Manual;
3. Using all commercially reasonable efforts to correct problems and to begin meeting or restoring Service Levels as soon as practicable;
4. Advising Hercules of the root cause of problems and the status of remedial efforts being undertaken with respect to such problems;
5. Providing reasonable evidence to Hercules that the causes of such problems have been or will be corrected; and
6. Making written recommendations to Hercules for improvement in procedures.

Supplier will identify root causes, correct problems and minimize recurrences of missed Service Levels for which Supplier is responsible and which cause or contribute to Supplier not meeting the Service Levels.

4. NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS AND MODIFICATIONS

Hercules may send written notice to Supplier at least ninety (90) days prior to the date that any of the following shall be effective, provided that Hercules may send only one such notice (which notice may contain multiple changes) each calendar quarter.

1. New Performance Categories or additions or deletions to Performance Categories;
2. Additions, deletions or modifications to Service Levels (which include Critical Service Levels and Key Measurements);
3. Movement of Critical Service Levels to Key Measurements and Key Measurements to Critical Service Levels;
4. Modifications to Service Level Credit Allocation Percentages for any Critical Service Levels; or
5. Modifications to Allocation of Pool Percentage for Performance Categories.

5. SERVICE LEVEL CREDITS

In the event of a Service Level Default for a Critical Service Level, Supplier shall provide Hercules credits as defined below:

1. **Attachment G.1** sets forth the information required to calculate the Service Level Credits Supplier shall pay to Hercules (or apply against monthly Charges in the event of a Service Level Default). For each Service Level Default, Supplier shall pay to Hercules, subject to **Section 6** below, a Service Level Credit will be computed in accordance with the following formula:

$$\text{Service Level Credit} = A \times B \times C$$

Where:

A = The Allocation of the Pool Percentage specified for the Performance Category in which the Service Level Default occurred as shown in **Attachment G.1**.

B = The Service Level Credit Allocation Percentage for which the Service Level Default occurred as shown in **Attachment G.1**.

C = At Risk Amount

For example, assume that Supplier fails to meet the Minimum Service Level for a Critical Service Level, that the total monthly Charges for all Services for the month in which the Service Level Default occurred were \$***** and that the At Risk Amount was *****% of such monthly Charges.

Additionally, assume that the Allocation of Pool Percentage for the Performance Category of such Critical Service Level (as set forth on **Attachment G.1**) is *****% and that the Service Level Credit Allocation Percentage for such Service Level Default (as set forth on **Attachment G.1**) is *****%. The Service Level Credit due to Hercules for such Service Level Default would be computed as follows:

A = *****% (the Allocation of Pool Percentage)

multiplied by

B = *****% (the Service Level Credit Allocation Percentage)

multiplied by

C = \$***** (***** percent (*****%) of \$*****, Supplier's total monthly Charge for all Services for the month during which the Service Level Default occurred).

= \$***** (the amount of the Service Level Credit)

2. If more than one Service Level Default has occurred in a single month, the sum of the corresponding Service Level Credits shall be credited to Hercules.
3. In no event shall the aggregate amount of Service Level Credits credited to Hercules with respect to all Service Level Defaults occurring in a single month exceed, in total, the At Risk Amount for such month.
4. Supplier shall notify Hercules in writing if Hercules becomes entitled to a Service Level Credit, which notice shall be included in the standard reporting for Critical Service Levels and Key Measurements as described in **Section 3** and shall describe the Service Level Defaults for the month that is the subject of the monthly Critical Service Level report. The monthly reports shall also describe any failure to meet Key Measurements for the month reported on.
5. The total amount of Service Level Credits that Supplier will be obligated to pay to Hercules, with respect to Service Level Defaults occurring each month (subject to Supplier's Earnback rights described in **Section 6**), shall be reflected and credited to Hercules on the invoice that contains charges for the month during which the Service Level Default(s) giving rise to such credit(s) occurred. For example, the amount of Service Level Credits payable (subject to Supplier's Earnback rights described in **Section 6**) with respect to Service Level Defaults occurring in August shall be set forth in and credited against the invoice for the August Monthly Charges issued in September.
6. Supplier acknowledges and agrees that the Service Level Credits shall not be deemed or construed to be liquidated damages or a sole and exclusive remedy or in derogation of any other rights and remedies Hercules has under the Agreement.
7. If a Minimum Service Level Failure recurs in three or more consecutive months for the same Critical Service Level, the amount of the applicable Service Level Credit payable to Hercules shall be doubled for such third and each subsequent failure. For the avoidance of doubt, the Service Level Credit shall be doubled one time, such doubled amount shall be payable for all successive consecutive Service Level Failures for the subject Minimum Service Level. Such doubled amount shall not be subject to Earnback.

6. EARNBACK

Supplier shall have Earnback opportunities with respect to each Service Level Credit as follows:

1. Within thirty (30) days after the end of each Contract Year, Supplier shall provide a report to Hercules that will include, with respect to each Critical Service Level for which there was a Service Level Default during the preceding Contract Year, the following:
 - 1.1. Statistics on Supplier's average monthly performance in that Critical Service Level during the preceding Contract Year (the "Yearly Performance Average").

- 1.2. The total amount of Service Level Credits imposed for Service Level Defaults in that Critical Service Level.
2. If, during the preceding Contract Year, Supplier achieved a Yearly Performance Average in a Critical Service Level that was equal to or greater than the Expected Service Level in effect for such Critical Service Level during the preceding year, Supplier shall be entitled to receive an earnback credit ("Earnback Credit") equal to all Service Level Credits (except doubled Service Level Credits calculated in accordance with [Section 5.7](#) above) assessed during the preceding Contract Year for such Critical Service Level. In no event will: (i) the total amount of Earnback Credits for any Contract Year exceed the total amount of Service Level Credits assessed and credited to Hercules for Service Level Defaults in the applicable Critical Service Levels for that Contract Year; or (ii) any Earnback Credit carry forward to subsequent Contract Years or back to previous Contract Years.
3. If, during the preceding Contract Year, Hercules deletes a Critical Service Level, the Supplier shall be relieved from paying Service-Level Credits assessed during the preceding Contract Year for Service-Level Defaults in that Critical Service Level.
4. The Earnback Credits shall be invoiced by Supplier to Hercules on the first monthly invoice reflecting charges for the first month of the Contract Year immediately following the Contract Year in which such Earnback Credit occurred. If there will be no further invoices, the Supplier will promptly invoice Hercules in accordance with the Agreement for the Earnback Credit. Hercules will pay the Earnback Credit to Supplier in accordance with [Section 12](#) of the Agreement.
5. If the Critical Service Level was in effect for less than the entire Contract Year, the foregoing process shall be undertaken only with respect to the portion of the Contract Year during which the Critical Service Level was in effect. If the Agreement (or any portion thereof) is terminated prior to the end of the Contract Year, the foregoing process shall be undertaken only with respect to the portion of the Contract Year during which the Agreement (or applicable portion) was in effect.
6. The provision for Earnback shall only affect Supplier's right to receive return of Service Level Credits provided to Hercules and shall have no effect on any other rights or remedies of Hercules under the Agreement, including rights of termination.

7. ADDITIONS AND DELETIONS OF PERFORMANCE CATEGORIES

Hercules may add or delete Performance Categories by sending written notice as described in [Section 4](#). Such change notice shall include changes necessary to accommodate the addition of new Performance Categories. In no event may (i) the sum of the Allocations of Pool Percentage for all the Performance Categories exceed the Pool Percentage Available for Allocation, or (ii) the sum of the Service Level Credit Allocation Percentages for all Critical Service Levels within a Performance Category exceed ***** percent (*****).

8. ADDITIONS AND DELETIONS OF SERVICE LEVELS

Hercules may add, delete or modify Critical Service Levels or Key Measurements as follows by sending written notice in accordance with [Section 4](#).

8.1 Additions of New Service Levels

Hercules may add Service Levels in accordance with this [Section 8.1](#) and by providing written notice in accordance with [Section 4](#). Expected Service Level and Minimum Service Level commitments associated with added Service Levels will be computed as follows:

1. Where at least six (6) consecutive months of Supplier provided service measurements exist for a particular Service that is being provided by Supplier, the Parties agree that the Expected Service Level shall be defined as the average of such service measurements for the six-month measurement period and the Minimum Service Level shall be defined as the second lowest ¹Both Parties understand that certain Service Levels may not be measured against an objective of ***** (*****), for example, Time (days, hours, etc.), defects, etc. where ***** (*****) hours/days and ***** percent (*****), respectively, are the appropriate objectives. The calculations in this Schedule G will be modified as appropriate to reflect these objectives. For example, if the Service Level involved defects in lines of code where ***** percent (*****) is the objective, low changed to highest in [Section 8.1](#), highest would be changed to lowest in [Section 8.1.3.2.1](#) and ***** percent (*****) would be changed to ***** percent (*****) in [Section 8.1.3.2.1](#).

service measurement achieved during the six-month measurement period, or

2. Where no measurements exist for a particular Service that is being provided by Supplier, the Parties shall attempt in good faith to agree on an Expected Service Level and a Minimum Service Level commitment using (i) industry standard measures or (ii) third party advisory firms that are not Direct Competitors (for example, Gartner Group, Yankee Group, etc.), or
3. Where less than six (6) months or no measurements exist for a particular Service that is being provided by Supplier, and the Parties fail to agree on an Expected Service Level and a Minimum Service Level commitment using industry standard measures as described in [Section 8.1.2](#) above, the Parties shall do the following:
 - 3.1. Supplier shall begin providing monthly measurements within thirty (30) days after Supplier's receipt of Hercules' written request and agreement on such measurements in accordance with the Change Control Procedures.
 - 3.2. After six (6) or more actual service level attainments have been measured (or should have been measured per [Section 8.1.3.1](#) above and measured; constructed as described in [Section 8.1.3.2.1](#) below), Hercules may at any time in writing request that [Section 8.1.1](#) above be amended to establish the Expected Service Level and Minimum Service Level commitments:
 - 3.2.1 If Supplier is responsible for measuring actual service level attainments for six (6) consecutive months and fails to provide one (1) or more measurements during the six-month measurement period such that six (6) consecutive measurements are not available, the missing measurement(s) shall be constructed according to the following (unless otherwise agreed): (i) if one measurement is missing, the missing measurement shall be constructed by using the highest of the other actual measurements.

8.2 Deletions, Demotions and Promotions

Hercules may delete Critical Service Levels or Key Measurements by sending written notice in accordance with [Section 4](#).

Hercules also may demote existing Critical Service Levels to Key Measurements and promote existing Key Measurements to Critical Service Levels by sending written notice in accordance with [Section 4](#).

8.3 Impact of Additions and Deletions of Critical Service Levels on Service Level Credit Allocation Percentages

When adding or deleting a Critical Service Level, promoting a Key Measurement to Critical Service Level or demoting a Critical Service Level to Key Measurement, Hercules shall modify the Service Level Credit Allocation Percentages for the other Critical Service Levels within the Performance Category such that the total Service Level Credit Allocation Percentages for all Critical Service Levels within the Performance Category equals ***** percent (*****%); provided, however, in no event may the Service Level Credit Allocation Percentage for any Critical Service Level exceed ***** percent (*****%) unless it does so on the Effective Date.

If Hercules adds a Critical Service Level in accordance with [Section 8.1](#) or [8.2.2](#) above, but does not modify the Service Level Credit Allocation Percentages for the other Critical Service Levels within the applicable Performance Category under this [Section 8.3](#), then, until such time as Hercules so modifies such Service Level Credit Allocation Percentages, the Service Level Credit Allocation Percentage for such added Critical Service Level shall be zero.

8.4 Modifications of Allocation of Pool Percentages and Service Level Credit Allocation Percentages for Critical Service Levels

1. Allocation of Pool Percentages

Hercules may modify the Allocation of Pool Percentage for any Performance Category by sending written notice to Supplier in accordance with [Section 4](#). When modifying the Allocation of Pool Percentage for a Performance Category Hercules shall modify the Allocation of Pool Percentages for one or more other Performance Categories such that the total of the Allocation of Pool Percentages for all Performance Categories does not exceed the Pool Percentage Available for Allocation.

2. Service Level Credit Allocation Percentages

Hercules may modify the Service Level Credit Allocation Percentages for two or more of the Critical Service Levels within a Performance Category by sending written notice to Supplier in accordance with [Section 4](#). In no event may the total Service Level Credit Allocation Percentages for all Critical Service Levels within the Performance Category exceed *****percent (*****%). In no event may the Service Level Credit Allocation Percentage for any Critical Service Level exceed ***** percent (%).

9. CRITICAL DELIVERABLES - AFTER EFFECTIVE DATE

Certain of Supplier's obligations under the Agreement are one-time or periodic obligations to deliver Critical Deliverables. [Schedule H](#) and [Attachment G.1](#) set forth the Deliverable Credits that shall be payable by Supplier to Hercules in the event Supplier fails to deliver any of the Critical Deliverables within the time period relative to the Effective Date, specified in [Schedule H](#) or [Attachment G.1](#). Imposition of Deliverable Credits for failure to meet the Critical Deliverables obligations shall not be included in the calculation related to the At Risk Amount previously described in [Section 5.3](#). The total amount of Deliverable Credits that Supplier will be obligated to pay to Hercules shall be reflected and credited on the invoice that contains charges for the month during which the Critical Deliverable failure occurred (for example, the amount of Deliverable Credits payable for failure to deliver any Critical Deliverable(s) in August shall be set forth in and credited against the invoice for August charges issued in September). Unlike Service Level Credits, Deliverable Credits will only be subject to Earnback as expressly described in [Schedule H](#).

10. COMMENCEMENT OF OBLIGATIONS

The obligations set forth herein shall commence on the Service Commencement Date or as otherwise specified in [Attachment G.1](#) referencing the column "SCD + mos*". The numbers used in the column "SCD +mos*" are in the format X where "X" represents the number of months after the Service Commencement Date (the "Grace Period") when Supplier will be responsible to meet the Service Level and provide measurement data in support of the Service Level, but Service Level Credits shall not be applicable until the month immediately following the Grace Period. If the notation in column "SCD + Mos*" is "SCD" the obligation will commence on the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan).

During the Transition Period and any Grace Period relating to a Service Level, the Parties shall gather and review historical performance data and baselines relating to each Service Level. As requested by either Party, the other Party shall discuss in good faith such data and baselines for the purpose of determining whether the Service Levels set forth in [Attachment G.1](#) should be adjusted (e.g., because historical performance has been dramatically different for an extended period of time and cannot be improved by Supplier through leading practices). As mutually agreed in writing (such agreement not to be unreasonably withheld), the Parties shall revise Service Levels during the Transition Period and any applicable Grace Period. If the Parties fail to mutually agree on any revisions to the Services Levels, (i) either Party may escalate such dispute in accordance with the Agreement, and (ii) the Service Levels set forth in [Attachment G.1](#) (or a mutually agreed amended version thereof) shall apply as described in this [Schedule G](#); provided, however, the (I) Expected Service Level shall be set to the Minimum Service Level until such dispute is resolved, and (II) any Service Level Credits to be paid to Hercules with respect to any such disputed Service Level shall apply, unless Supplier:

(A) previously identified such Service Level as a Questionable Measurement (defined below) in accordance with this Section, and

(B) previously provided Hercules documented data that reasonably demonstrates that such Service Level had not been previously met by Hercules for six (6) or more months or that no reasonably verifiable data exists concerning Hercules' prior performance relating to such Service Level.

A “**Questionable Measurement**” means a Service Level identified as such in writing by Supplier to Hercules during the applicable solution identification phase in the Transition Plan. Supplier may only identify up to ten (10) Questionable Measurements. Service Levels that the Parties mutually agree to revise shall not be counted as a Questionable Measurement.

11. COOPERATION

The achievement of the Service Levels by Supplier may require the coordinated, collaborative effort of Supplier with other Hercules third party contractors. Supplier will provide a single point of contact for the prompt resolution of all Service Level Defaults and all failures to provide Services to Hercules in accordance with the Agreement.

12. CONTINUOUS IMPROVEMENT - SERVICE LEVELS

The Parties agree to the concept of continuous improvement and that the Critical Service Levels and Key Measurements should be modified during the Agreement to reflect this concept. To accomplish this, Critical Service Levels and Key Measurements will be modified at the end of each Contract Year during the Term as described below:

1. Each Expected Service Level will be reset to the average of the four highest monthly actual results (for example, *****% is higher than *****% above the Expected Service Levels achieved during the preceding twelve months; provided that, if fewer than four monthly actual results exceed Expected Service Level, the Expected Service Level will be reset by taking the four (4) highest monthly actual results, replacing each such actual result below the Expected Service Level with the Expected Service Level, and dividing the sum of the resulting four (4) numbers by four (4).

For example, if the Expected Service Level being adjusted were *****%, and there were three actual results that were higher and none equal (e.g., *****%, *****%, and *****%), the calculation would be $((*****\% + *****\% + *****\% + *****\%) / *****) = *****\%$ with the subsequent reset governed by Section 12.2 below.

2. Notwithstanding Section 12.1 above, in no event shall any single increase in an Expected Service Level pursuant to Section 12.1 above exceed percent (*****%) of the difference between ***** percent (*****%) and the then-current Expected Service Level.

For example, if the Expected Service Level being adjusted were *****%, the maximum increase for that reset would be *****% (i.e. from *****% to *****%).

3. Each Minimum Service Level will be reset by adding to the Minimum Service Level being adjusted a sum equal to ***** percent (*****% difference between one-hundred percent (100%) and the then-current Minimum Service Level.

For example, if the Minimum Service Level being adjusted were *****%, the increase would be *****% (i.e., from *****% to *****%).

13. IMPROVEMENT PLAN FOR KEY MEASUREMENTS

If Supplier fails to satisfy any Key Measurement, Supplier shall provide Hercules with a written plan for improving Supplier’s performance to satisfy the Key Measurement within thirty (30) days of the failure to meet the Expected Service Level or the Minimum Service Level for the Key Measurement, which plan shall be subject to Hercules’ approval, not to be unreasonably withheld. Supplier shall promptly implement such plan once it has been approved by Hercules.

14. MEASURING TOOLS

As of the Effective Date, the measuring tools and methodologies set forth in **Attachment G.1** represent acceptable measuring tools and methodologies for the Critical Service Levels and Key Measurements designated. Such measuring tools and methodologies will be further refined during the Transition Period.

If there are any Service Levels for which (i) the measuring tools and methodologies have not been agreed upon by Hercules and Supplier and not been included in the Agreement and (ii) Supplier fails to propose a measuring tool for such Critical Service Level or Key Measurement that is acceptable to Hercules prior to the date upon which Supplier shall be responsible for measuring Service Level performance and Service Level Credits due for Service Level Default, then such event shall be deemed a Minimum Service Level Default for that Critical Service Level or Key Measurement until one full month after Supplier proposes and implements such acceptable measuring tool; provided, however, if Hercules unreasonably refuses to implement a measurement tool proposed by Supplier and no alternatives tools exist, then a Minimum Service Level Default shall not be deemed to occur.

Tools for new Service Levels will be implemented according to the Change Control Procedures.

If, after the Effective Date or the implementation of tools for new Service Levels, Supplier desires to use a different measuring tool for a Critical Service Level or Key Measurement, Supplier shall provide written notice to Hercules. If Hercules approves such tool, the Parties will reasonably adjust the measurements as necessary to account for any increased or decreased sensitivity in the new measuring tools. Unless and until such tool is approved, Supplier will continue to use the measurement tool that had been initially approved by Hercules.

It is not anticipated that changes in the measurement tools will drive changes in Service Levels; rather, the need to collect and accurately reflect the performance data should drive the development or change in performance measurement tools.

15. TIMES

Unless otherwise set forth herein, all references in this **Schedule G** shall refer to Eastern Standard Time or Eastern Daylight Time, as applicable.

16. SINGLE INCIDENT/MULTIPLE DEFAULTS

If a single incident results in the failure of Supplier to meet more than one Minimum Service Level, Hercules shall have the right to select any one of such multiple Minimum Service Level Defaults for which it will be entitled to receive a Service Level Credit. Hercules shall not be entitled to a Service Level Credit for each of such Minimum Service Level Defaults.

17. EXCEPTIONS

Supplier will be relieved of responsibility for failure to meet a Service Level and associated Service Level Credits to the extent provided in the Agreement and to the extent Supplier's failure to meet the Service Level(s) is directly attributable to any of the following:

1. Problems resulting from components (hardware, software, network, maintenance) for which Hercules (or Hercules Third Party Contractors) are operationally responsible.
 2. Hercules' reprioritization of tasks to be performed by Supplier where Supplier has notified Hercules in advance that such reprioritization will cause Supplier to miss such Service Level.
 3. Circumstances that excuse performance as specified in **Section 18.2** of the Agreement.
 4. Service or resource reductions requested or approved by Hercules and agreed to by the Parties through the Change Control Procedures; provided that Supplier has previously notified Hercules in writing as part of such Change Control Procedures that the implementation of such request would result in a failure to meet the Service Level.
-

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SCHEDULE G.1

THE FOLLOWING 3 TABLES HAVE BEEN REDACTED

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Hercules

Schedule H

Transition

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Schedule H

Transition

This is **Schedule H** to the Master Professional Services Agreement between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

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[3. TRANSITION DELIVERABLE CREDITS AND EARNBACK2](#)

Schedule H.1: Critical Transition Milestones and Related Deliverable Credits

Schedule H.2: Initial Transition Plan

1. Transition Milestones.

The initial transition project plan, attached hereto as **Schedule H.2**, reflects the Services to be transitioned to Supplier by Functional Service Area as set forth in **Schedule H.2** (transition of each Functional Service Area to be referred to as a “**Transition Stream**”). The Transition Milestones associated with each Transition Stream are described in **Schedule H.2**. The Transition Deliverable Credits associated with certain critical Transition Milestones (“**Critical Transition Milestones**”) are described in the **Schedule H.1 (and Attachment J.5)**. During the Transition Period, Supplier shall deliver to Hercules an updated, refined, and more detailed Transition Plan for Hercules’s review, comment and approval in accordance with **Section 4.2** of the Agreement.

2. Acceptance Procedure.

- (a) Supplier’s final performance and/or delivery of the Transition Services and deliverables associated with individual Transition Milestones shall be subject to Hercules’s Acceptance. This Section sets forth the procedures that shall apply to Hercules’s Acceptance of such Transition Services and deliverables.
- (b) Before submitting the Transition Service and/or deliverables associated with a Transition Milestone to Hercules for Acceptance, Supplier shall successfully complete all quality assurance and testing activities with respect to such activities and deliverables. Supplier shall then submit to Hercules notification (each such notification, a “**Transition Milestone Submission Notice**”) seeking Hercules’s Acceptance that the applicable Transition Service or deliverable has been successfully completed in accordance with the Transition Milestone.

- (c) Upon receipt of each Transition Milestone Submission Notice, Hercules shall review the applicable Transition Service or deliverable and shall advise Supplier in writing within three (3) business days of receipt (each such Hercules response, a “**Transition Milestone Submission Response**”) whether, in Hercules’s *reasonable* discretion, the Transition Service or deliverable has been completed in accordance with the Transition Milestone (each such approval a
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“**Transition Milestone Final Approval**”, and each such failure, a “**Nonconformity**”). In the event that Hercules fails to provide a Transition Milestone Submission Response within three (3) business days of receipt, Supplier shall notify Hercules of such failure. If Hercules fails to thereafter provide a Transition Milestone Submission Response within an additional two (2) business days of such notice, then the Transition Milestone shall be deemed to be Transition Milestone Final Approval as if the applicable Transition Milestone Final Approval was sent to Supplier.

- (d) In the event of a Nonconformity, Hercules shall deliver written notice to Supplier (within the Transition Milestone Submission Response period) specifying the nature of the failure in reasonable detail. Supplier shall then set a date for remedying the Nonconformity and resubmitting the Transition Service or deliverable.
- (e) At no additional charge to Hercules, Supplier shall: (1) correct the Nonconformity so that the Transition Service or deliverable meets the Transition Milestone on or before the rescheduled date; and (2) submit a new Transition Milestone Submission Notice for such Transition Milestone. The Parties shall thereafter follow the same procedures as set forth in subsections above.

3. **Transition Deliverable Credits and Earnback.**

- (a) **Transition Milestones by Transition Streams.** Schedule H.1 identifies Transition Milestones at the Transition Stream level that Supplier must complete in accordance with the Transition Plan and applicable provisions of the Agreement.
- (b) **Transition Deliverable Credits.** Subject to Section 10.2 of the Agreement and Section 3(e) below, if Supplier fails to obtain Transition Milestone Final Approval on or before the applicable Critical Transition Milestone for a particular Transition Service for which there is an associated Transition Deliverable Credit, Supplier shall accrue liability for the Deliverable Credit identified in Schedule H.1 (each a “**Transition Deliverable Credit**”) in accordance with the following:
 - (i) ***** percent (*****%) of the Transition Deliverable Credit if Supplier fails to obtain Transition Milestone Final Approval on or before the seventh day after the applicable Critical Transition Milestone;
 - (ii) The remaining ***** percent (*****%) of the Transition Deliverable Credit if Supplier fails to obtain Transition Milestone Final Approval on or before the twenty second day after the applicable Critical Transition Milestone;

Supplier shall pay Hercules any accrued portion of the applicable Transition Deliverable Credit in accordance with Section 12.1 of the Agreement.

- (b) **At Risk Amount for Transition Services.** In no event shall the aggregate amount of Transition Deliverable Credits paid to Hercules with respect to all failures to meet Critical Transition Milestones exceed, in total, the percentage set forth in Attachment J.5 to Schedule J of the total Transition Charges (“**At Risk Amount for Transition Services**”).
- (c) **Allocation Pool.** Transition Deliverable Credits are allocated to Critical Transition Milestones in accordance with Attachment J.5.
- (d) **Earnback.** Supplier may earn back Transition Deliverable Credits with respect to its failure to meet an interim Critical Transition Milestone for a Transition

Stream, provided that Supplier meets the associated final Critical Transition Milestone for that Transition Stream on or before the date specified in **Schedule H.2**, in which case Supplier will be entitled to the return of all

Transition Deliverable Credits paid in connection with its prior failure to meet said interim Critical Transition Milestone.

(e) **Other Transition Milestone Relief.** Supplier will be relieved of responsibility for failure to meet a Critical Transition Milestone and associated Transition Deliverable Credits to the extent provided in the Agreement and to the extent Supplier's failure to meet the Service Level(s) is directly attributable to any of the following:

1. Problems resulting from components (hardware, software, network, maintenance) for which Hercules (or Hercules Third Party Contractors) are operationally responsible.
 2. Hercules' reprioritization of tasks to be performed by Supplier where Supplier has notified Hercules in advance that such reprioritization will cause Supplier to miss such Service Level.
 3. Circumstances that excuse performance as specified in **Section 18.2** of the Agreement.
 4. Service or resource reductions requested or approved by Hercules and agreed to by the Parties through the Change Control Procedures; provided that Supplier has previously notified Hercules in writing as part of such Change Control Procedures that the implementation of such request would result in such failure to meet the Service Level.
-

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SCHEDULE H.1

CRITICAL TRANSITION MILESTONES AND RELATED DELIVERABLE CREDITS

Attachment J.5 to Schedule J sets forth the Critical Transition Milestones and related Critical Deliverable Credits and is hereby incorporated by reference.

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Hercules

Schedule I

Termination Assistance Services

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Schedule I

Termination Assistance Services

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SCHEDULE I TERMINATION ASSISTANCE SERVICES

GENERAL

This is **Schedule I** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

As part of the Termination Assistance Services, Supplier shall transfer control and responsibility for the Services to Hercules, an Eligible Recipient and/or their designee(s). Supplier shall perform, as requested by Hercules, the Services, functions and responsibilities set forth in this **Schedule I**, as well as those set forth in **Section 4.3** of the Agreement in a manner that will not unreasonably interfere with the ability of Hercules and the Eligible Recipients to obtain the Services.

TERMINATION ASSISTANCE PLAN

Supplier will assist Hercules in the development of a plan for the transition of the Services from Supplier to Hercules or its designee(s) in accordance with the provisions of **Section 4.3(b)(1)(i)** of the Agreement.

SPECIFIC TERMINATION ASSISTANCE SERVICES

General Support

As directed by Hercules, Supplier shall perform general support and other activities as set forth in **Section 4.3(b)** of the Agreement.

Knowledge Transfer

Supplier will provide for a transfer of knowledge regarding the Services and related topics so as to reasonably facilitate the provision of the Services by Hercules, and Eligible Recipient and/or their designee(s). This knowledge transfer shall include:

Supplying information regarding the Services as reasonably necessary to implement the termination assistance plan, and providing such information regarding Services as reasonably necessary for Hercules, an Eligible Recipient or their designee(s) to assume responsibility for continued performance of Services in an orderly manner so as to minimize disruption in the operations of Hercules and the Eligible Recipients, including (i) relevant documentation (to the extent that Hercules is entitled to such documentation under the Agreement); and (ii) key support contacts (names, business phone numbers, fax numbers, e-mail addresses and business postal addresses) of Hercules, third party personnel and Supplier

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Personnel during the transition from Supplier to Hercules and Eligible Recipient and/or their designee(s);

Supplying information concerning Equipment, Software (consistent with the provisions of **Section 14.6** of the Agreement), types and skills of personnel, third parties, and other resources used by Supplier to provide Services to Hercules under this Agreement, as may be reasonably necessary for Hercules, an Eligible Recipient and/or their designee(s) to assume responsibility for the Services;

Explaining the Change Control Procedures, change management process, problem management process, Policy and Procedures Manual, Reports and other standards and procedures to Hercules', and Eligible Recipients' and/or their designee(s)'s operations staff;

Providing reasonable access, in person and by telephone, to Supplier Personnel through the end of Supplier's provision of Termination Assistance Services (including any Supplier Personnel involved in performing the Services during the twelve (12) months preceding Supplier's receipt of the notice of termination or non-renewal to the extent that (i) such individuals are then employed by Supplier, and (ii) such information is not otherwise available from the Supplier Personnel then assigned to Hercules); and

Explaining the extent and nature of the impact on the Services of Supplier Laws to the extent such Supplier Laws relate to the providing of the Services (as opposed to Supplier generally).

Transfer of Resources

Supplier shall provide reasonable assistance to transfer resources (e.g., Materials, Equipment, Third Party Contracts) to Hercules, an Eligible Recipient and/or their designee(s) to which Hercules is entitled under the Agreement. Such assistance shall include:

Identifying any third party services which are required by Hercules, and Eligible Recipient and/or their designee(s) to perform the Services, and to which Hercules is entitled under **Section 4.3** of the Agreement;

Providing a list of assets for Equipment and Software owned or licensed by Supplier, its Subcontractors, or Supplier Affiliates which are required by Hercules or its designee(s) to perform the Services and to which Hercules is entitled under **Sections 4.3** and **14.6** of the Agreement;

Reasonably working with Hercules, and Eligible Recipient and/or its designee(s) to minimize or eliminate any potential taxes that might be incurred as a result of any transfers to the extent permissible by applicable Law; and

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Performing functions required under the Agreement required to effect the assignment of Equipment, Materials and Third Party Contracts, which are required by Hercules, and Eligible Recipient and/or their designee(s) to perform the Services, and to which Hercules is entitled under **Section 4.3** of the Agreement, including transferring billing and executing legal documents.

Operational Transfer

Supplier shall perform all activities described in **Section 4.3** of the Agreement to effect a smooth transfer of operational responsibility for the Services. Such activities may include:

Providing to Hercules, an Eligible Recipient and/or their designee(s), machine-readable source and object code along with run documentation and job control listing for the Systems Software (to the extent Hercules is entitled to such code, documentation and job control listing under the Agreement);

To the extent used to provide the Services, documenting and delivering source materials, object libraries and reference files (to the extent Hercules is entitled to such materials, object libraries and reference files under the Agreement);

To the extent applicable and available, delivering support profiles, enhancement logs, problem tracking/resolution documentation, and status reports associated with the Services;

Providing any Authorized User information collected or maintained which details the information in the reports set forth in **Schedule R** or as otherwise required under the Agreement as such exists as of the effective date of termination or expiration;

Providing reasonable assistance in identifying alternate sources of resources, including skilled labor and spare equipment parts.

Providing for the orderly hand-off of ongoing Projects, including a listing of current and planned Projects, as well as all Equipment ordered or in process, and eligible to be purchased by Hercules or the Eligible Recipients in accordance with **Section 4.3** of the Agreement. With respect to each Project, document current status, stabilize for continuity during transfer, and provide reasonable training to achieve transfer of responsibility;

Providing Materials in accordance with **Section 14.6** of the Agreement;

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Documenting and delivering Hercules Data and data bases maintained by Supplier specific to the Services;

Transferring physical and logical security processes and tools (to the extent required under the Agreement), including cataloging and tendering any badges and keys for Hercules Facilities or Hercules Sites held by Supplier Personnel, documenting ownership and access levels for all passwords maintained by Supplier or in Supplier's possession, and, if applicable, instructing Hercules or its designee(s) in the use and operation of security controls;

Assisting with physical de-installation and transportation (not to include packing and transport to be conducted by a third party designated by Supplier and approved by Hercules) of Equipment owned by or to be conveyed to Hercules from the Supplier Facilities;

Providing and coordinating reasonable assistance to Hercules in notifying relevant third parties of the procedures to be followed prior to, during, and after the transition;

Returning to Hercules any remaining property of Hercules or the Eligible Recipients in Supplier's possession or under Supplier's control, including any remaining Reports, Hercules Data, Hercules Owned Materials, Materials in which Hercules otherwise has rights under this Agreement beyond the Term or the period of provision of Services under Section 4.3 of the Agreement and other Confidential Information of Hercules and the Eligible Recipients;

Reasonably cooperating with Hercules' test plans, back out procedures, and contingency plans as part of the migration of Services and maintaining the capability to cut back to Supplier in case of a service failure or service problem for up to thirty (30) days following the transition of the Service then being transitioned; provided, however, that the capacity and resources required to provide such Services have not been transitioned or sold to Hercules and that Hercules pays a reasonable fee for such thirty (30) day period, which shall be negotiated in good faith and agreed to by the Parties during the Termination Assistance Services period.

In conjunction with Hercules, conducting a rehearsal of the migration prior to cutover;

After the migration, providing additional assistance as reasonably requested by Hercules to assure continuity of operations, so long as such assistance is within the period of Supplier's provision of

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Termination Assistance Services specified within the Agreement; and

Freezing all System changes unless otherwise requested by Hercules; as long as such freezing of System changes does not affect Supplier's provision of the Services at the Service Levels, in which case either Hercules shall relieve Supplier of the obligation to freeze such changes or Supplier shall be relieved from such Service Level.

Organizational Transfer

Supplier shall provide reasonable assistance in connection with Hercules' efforts at hiring, as contemplated in Section 4.3(b)(2) of the Agreement. Such reasonable assistance will include for eligible Supplier Personnel that Hercules may hire as contemplated in Section 4.3(b)(2):

Providing a listing of the then-current positions and the approximate amount of time (i.e., FTEs) spent to provide the Services; and

Identifying any then-current or anticipated personnel resource requirements.

TERMINATION ASSISTANCE SERVICES RATES

The rates applicable to the performance of Termination Assistance Services shall be as described in Sections 4.3(b)(9) of the Agreement.

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Hercules

Schedule J

Supplier Charges

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SCHEDULE J

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SCHEDULE J

Supplier Charges

1 INTRODUCTION

(a) This is **Schedule J** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

(b) The Charges for the Services shall consist of the Monthly Base Charge (which is derived from the Annual Services Charge described in **Section 2** below for the applicable Contract Year), as adjusted in accordance with this Schedule, and any other Charges or adjustments described herein. The Parties acknowledge and agree that the Charges described in this **Schedule J** fully compensate Supplier for provision of the applicable Services and the performance of its other obligations under this Agreement.

(c) This **Schedule J** also describes the variable charging structure, the methodology for measuring and tracking Resource Unit utilization and the methodology for converting to a transaction based pricing structure.

(d) Supplier shall be responsible for the accuracy and completeness of the operational and financial assumptions and dependencies underlying its pricing, and if such assumptions are incorrect or incomplete, Supplier shall not be entitled to adjust the Charges or any other items or terms of the Agreement; provided, however, (i) if the Parties agree that if the Services in **Schedules E.1** or **E.3** are required to be performed from Supplier Facilities outside of India, then the Charges for such Services shall be equitably adjusted, (ii) if the Services (other than the Services described in **Schedules E.4, E.5, E.9, and E.12**) require on average more than thirty minutes a day of inbound or outbound voice telephony, then the Charges for such Services shall be equitably adjusted based on any additional Out-of-Pocket Expenses incurred by Supplier relating to additional telecommunications, (iii) if the Services require on average more than 20 KBPS per Supplier FTE, then the Charges for the Services shall be equitably adjusted based on any additional Out-of-Pocket Expenses incurred by Supplier relating to additional bandwidth, or (iv) if Hercules’ requirements regarding accounts payable workflow are not consistent with standard workflow procedures or supported by standard functionality in the Savvion Software, then the implementation of such requirement shall be a New Service.

2 SERVICES CHARGES

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2.1 Transition Charges

The fixed Charges for Transition Services are set forth in Attachment J.5.

Each of the fixed Transition Charges are allocated to the achievement by Supplier of a specific Transition Milestone described in the Transition Plan set forth in Schedule H. Supplier shall invoice Hercules for each such Transition Charge in the month immediately following the month in which Supplier achieves such Transition Milestone. If Supplier fails to achieve the Transition Milestone, then Supplier shall not invoice Hercules for such Transition Charge until such Transition Milestone is met.

There are no separate or additional Charges or other expenses for the Transition Services. For the avoidance of doubt, the fixed Charges for Transition Services include all Out-of-Pocket Expenses incurred by Supplier (or Supplier Personnel) in connection with the performance of such Transition Services, including Out-of-Pocket Expenses associated with travel and lodging.

2.2 Base Service Charge

(a) **General.** The “Annual Services Charge” or “ASC” for each Contract Year is set forth in Attachment J.2, and is the firm fixed Charge to Hercules for Supplier’s provision of the Services with the applicable Resource Baseline for FTEs specified in Attachment J.2 (the “Baseline FTEs”) after the applicable Commencement Date, subject to the Staffing Assurances and provisions of this Schedule J.

(b) **FTEs.** The number of Baseline FTEs may be revised from time to time in accordance with the Agreement and this Schedule J. In such event, the Annual Service Charge will be adjusted accordingly based on the FTE rates set forth in Attachment J.3 and the Staffing Assurances set forth below.

(c) **Monthly Invoice.** In accordance with Section 12 of the Agreement, Supplier shall invoice Hercules on a monthly basis for a pro rata portion of the Annual Services Charge, which shall be calculated by dividing the ASC specified in Attachment J.1 for the applicable Contract Year by the number of calendar months in that Contract Year.

2.3 Staffing Assurances

(a) **General.** Supplier will perform the Services and provide FTEs in accordance with the throughput per FTE, on-site:off-site ratios, and other assurances described in this Section (“Staffing Assurances”).

(b) **Throughput and Productivity Related Assurances Regarding FTEs.**

(i) **Additional FTEs.** If Supplier requires more than the number of Baseline FTEs for any particular Service to meet its performance obligations, Supplier shall provide such additional FTEs at no additional Charge, unless the actual volume of non-FTE Resource Units relating to such Service is ***** percent (*****%) or more of the non-FTE Resource Baseline Volume set forth in Attachment J.4 for such Resource Unit for three (3) or more consecutive months. Additional chargeable FTEs will only be provided as mutually agreed by the Parties and the ASC shall be accordingly adjusted based on the FTE rates set forth in Attachment J.3. Each Additional Chargeable FTE will be as productive as the Baseline FTEs (e.g., the number of non-FTE Baseline Resource Units divided by Baseline FTEs for a particular Service will not be diminished). Supplier is responsible for any additional amounts incurred or resources as a result of inefficiencies of such FTEs. To the extent that Supplier can realize shift utilization levels greater than ***** shift per seat (or ***** shifts per seat in the case of Accounts Payable Services) at a Supplier Facility the Charges for each additional FTE shall be equitably reduced so that the Parties equally share in the savings associated with the reduced overhead for such additional FTE.

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(ii) **Reduced FTES.** If the actual volume of non-FTE Resource Units is ***** percent (*****%) or less of the non-FTE Resource Baseline Volume set forth in **Attachment J.4** for such Resource Unit, Supplier shall so notify Hercules and the Parties will discuss, in good faith, appropriate reductions in the number of FTES and a corresponding reduction in the ASC if such actual non-FTE Resource Unit volumes are expected to be below the Resource Baseline for three (3) or more consecutive months.

(iii) **Other Productivity Improvements.** Supplier shall realize and demonstrate productivity improvements each Contract Year. Such improvement can be demonstrated by either (i) reducing the number of FTES performing certain Services (e.g., the number of FTES required to perform Services in a Functional Service Area), (ii) by increasing FTE throughput (e.g., the volume of non-FTE Resource Units divided by the number of FTES performing a Service - 10,000 PO's processed / 10 FTES), or (iii) other objective criteria.

(c) **Onsite:Offsite Ratio Assurances.** Supplier shall perform the Services using a ratio of FTES that are primarily assigned to a Hercules Facility and Supplier Facility that is no less advantageous to Hercules than the ratio contemplated under **Attachment J.1, Attachment J.2** and **Schedule M**. Supplier is responsible for any additional amounts incurred as a result of a less advantageous ratio of such FTES (e.g., a higher ratio of on-site FTES), unless otherwise requested by Hercules.

(d) **Optimization.** Supplier shall optimize FTE productivity, the mix of FTE resources (e.g., the number of highly experienced Supplier Personnel to lesser experienced Supplier Personnel), and on-site:off-site ratios to minimize the Charges and other amounts payable to Supplier, unless otherwise directed by Hercules.

2.4 Resource Units

(a) **General.** The Resource Units associated with the Services are defined in **Attachment J.3** and **J.4**; as of the Effective Date, the Resource Units in J.4 are only used in connection with the Staffing Assurances. Supplier shall measure Resource Unit volumes (including FTE utilization and non-FTE Resource Unit volumes) each month. Such Resource Units can be used to determine Supplier's performance (e.g., business output per FTE) and Hercules's and the Eligible Recipients' actual usage of certain Services. This information can be used to determine, for example, (i) Supplier's compliance with the Staffing Assurances described above, or (ii) a transaction based charge, an additional resource charge (ARC), or reduced resource charge (RRC), if Hercules elects to execute a Pricing Conversion utilizing such methodology(ies).

(b) **Measurement and Tracking.** Beginning no later than the Commencement Date, Supplier shall measure and track Hercules' and the Eligible Recipients' usage of Resource Units using the processes and procedures described in the Policy and Procedures Manual. Supplier shall report such usage to Hercules on a periodic basis, no less frequent than monthly.

(c) **New or Additional Resource Units.** New Resource Units may be added from time to time by mutual agreement of the Parties. New or existing Resource Units may be changed from time to time by mutual agreement of the Parties. Appropriate adjustments will then be made to the new or existing Resource Baselines as applicable and mutually agreed, to reflect advancements or changes in technology, business processes, and productivity.

2.5 FTE to Transaction Unit Conversion

As of the Effective Date, the Services are being charged in accordance with this **Schedule J** on an FTE basis for a variety of reasons, including the lack of (i) adequate metrics and other information, and/or (ii) standardized activities or processes. As requested by Hercules with respect to all or certain Services, Supplier shall (i) gather and provide Hercules metrics and other information, (ii) re-engineer or revise activities and processes relating to such Services, or (iii) take other actions for the purpose of converting the FTE based pricing under this **Schedule J** to another appropriate basis (e.g., fixed price, business transactions, number of customer master records, number of vendor master records) (each an actual or potential "**Pricing Conversion**"). Pricing Conversions will leverage the non-FTE Resource Units set forth in **Attachment J.4** and other applicable metrics agreed by the Parties. ARCs and RRCs shall be computed in accordance with **Section 2.6** and the Parties shall agree upon an appropriate deadband for such non-FTE Resource Units. No Pricing Conversion will be effective without each Party's prior written approval, subject to the following:

(a) Supplier shall prepare and provide Hercules an analysis of the advantages and risks associated with any potential Pricing Conversion. As reasonably requested by Hercules, Supplier shall provide Hercules proposals and offers regarding each potential Pricing Conversion. Supplier's Pricing Conversion proposals shall include appropriate productivity and process improvements. Pricing Conversions shall be at least as favorable to Hercules as the FTE-based Charges associated with the applicable Services. As requested by Hercules, Supplier shall negotiate in good faith with Hercules the potential terms, conditions, and Charges relating to any potential Pricing Conversion before it becomes effective.

(b) Prior to implementing any Pricing Conversion, Hercules may request that Supplier (i) continue to Charge the applicable Services that are potentially subject to a Pricing Conversion on a FTE basis, and (ii) report to Hercules what the Charges would be if the Pricing Conversion were actually implemented.

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2.6 ARCs/RRCs for Non-FTE Resource Unit Usage

To the extent the Charges for any Service are based upon actual usage of non-FTE Resource Units as a result of a Pricing Conversion, the Resource Baseline for such Resource Unit and the applicable Additional Resource Charge ("ARC") and Reduced Resource Credit ("RRC") shall be set forth in Attachment J.3, subject to Section 2.5. In such event, Supplier shall calculate ARCs and RRCs by comparing the total actual usage of each such Resource Unit during the preceding month ("Actual RUs") with the aggregate Resource Baseline specified in Attachment J.4 for such month and shall reflect such ARCs and RRCs on the monthly invoice in accordance with Article 12 of the Agreement.

(a) **Additional Resource Charges.** If the total number of Actual RUs exceeds the aggregate Resource Baseline for such month by more than any applicable deadband, Supplier shall invoice Hercules for an Additional Resource Charge equal to the difference between the Actual RUs and the Resource Baseline, multiplied by the specific ARC Rate for the applicable Resource Unit category for the applicable Contract Year set forth in Attachment J.3 (i.e., $ARC = [(Actual\ RUs - Resource\ Baseline) \times ARC\ Rate]$).

(b) **Reduced Resource Credits.** If the total number of Actual RUs is less than the aggregate Resource Baseline for such month by more than any applicable deadband, Supplier shall credit Hercules a Reduced Resource Credit equal to the difference between the Resource Baseline and the Actual RUs for that Resource Unit, multiplied by the specific RRC Rate for the applicable Resource Unit category for the applicable Contract Year set forth in Attachment J.3 (i.e., $RRC = [(Resource\ Baseline - Actual\ RUs) \times RRC\ Rate]$).

2.7 Rate Validity

The Charges shall be valid to *****% above and *****% below the Resource Baseline established for each FTE or non-FTE Resource Unit category. If, during any three consecutive months, (i) the total Resource Unit utilization for any FTE or non-FTE Resource Unit category is, in the aggregate, either *****% above or *****% below the applicable aggregate Resource Baseline, and (ii) such volumes are reasonably expected to remain at such levels, the Parties shall examine the impact of such change on Supplier's variable pricing and shall, if appropriate, negotiate in good faith and agree upon an equitable adjustment to the Monthly Base Charge and/or to some or all of the applicable FTE rates and/or ARC/RRC Rates.

In the case of ARCs, Hercules shall pay for Actual RUs (which may exceed the *****% level) at the then current ARC Rate for up to sixty (60) days following the events triggering such negotiations. If agreement is not reached during such sixty (60) day period, Hercules shall continue to pay on such basis pending the conclusion of such negotiations; provided that, following agreement, the actual Charges for such period will be computed at the agreed upon rates and reconciled with the Charges actually paid by Hercules during such period.

In the case of RRCs, Hercules shall pay at the *****% level (even if the Actual RUs fall below such *****% level) for up to sixty (60) days following the events triggering such negotiations. If agreement is not reached during such sixty (60) day period, Hercules shall pay for the Actual RUs and thereafter deposit the disputed amount (i.e., the difference between the Charges that would be payable at *****% of the then-current Resource Baseline and those that would be payable at the Actual RU level applying the then-current RRC Rate) into an interest bearing escrow account for the benefit of both Parties at a financial institution reasonably acceptable to Supplier. Upon agreement, the actual Charges for the escrow period will be computed at the agreed upon rates. The difference between that amount and the amount actually paid to Supplier for such period, together with associated interest, will then be paid to Supplier from the escrow account. The remaining amount in escrow will then be returned to Hercules.

The Parties acknowledge and agree that, in the event actual Resource Unit utilization is more than 50% above the Resource Baseline, the ARC Rate for additional Resource Units and the implied unit rate for all Resource Units will be equal to or lower than the rates and charges reflected in this Schedule J. The Parties also acknowledge and agree that, in the event actual Resource Unit utilization is more than 50% below the Resource Baseline, the RRC Rate will be equal to or lower than and the implied unit rate for all Resource Units will be equal to or higher than the rates and charges reflected in Schedule J.

Notwithstanding the foregoing, if Hercules eliminates an entire Functional Service Area, it will be treated as a termination for convenience to which Termination Charges may be applicable, and not as a subject of negotiation pursuant to this provision.

3 PROJECTS

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3.1 Project Pool

(a) **General.** Supplier shall perform Projects requested and approved by Hercules as part of the Services and as part of the ASC in accordance with Section 4.5 of the Agreement and this Section 3 without adversely impacting the Staffing Assurances. The Parties expressly acknowledge and agree that the ADM Services set forth in Schedule E.9 are dedicated to performing Projects and this Section 3.2 shall not apply to that Functional Service Area.

(b) **“Business-As-Usual” Work.** Supplier’s performance of project-type work that is an inherent, necessary or customary part of the day-to-day Services is included in the Monthly Base Charges to the extent such level of effort is reasonably consistent with the level of work that Hercules performed prior to the Commencement Date. Such project-type work shall include: Projects that are required to sustain operations, relate to user testing, maintain Supplier Personnel skills, or have a timeline for implementation that does not adversely impact the Services.

(c) (d) **Intentionally Blank.**

(e) **Project Management Reporting.** Supplier shall report monthly on Projects in accordance with Schedule R. Such reports shall specify, among other things, the Supplier Charges, FTEs, resources and expenses for each Project for the applicable month and Contract Year and any other pertinent information requested by Hercules.

(f) **Projects Pricing: Additional Hours or Fixed Price.** At Hercules’ request, Supplier shall provide fixed pricing for Projects. In such instances, the fixed price proposed by Supplier shall be no less favorable to Hercules than the price obtained by multiplying the FTE rates specified in Attachment J.8 by the projected level of effort to the extent such rates are applicable.

(g) **Project Requirements.** Supplier shall scope, price and perform each Project in accordance with the Project formation process and Project implementation methodology set forth in the Policy and Procedures Manual. Before beginning work on any Project, Supplier shall obtain Hercules’ approval and follow the Project formation process. Projects performed without such approval shall be at Supplier’s sole expense.

(h) **Project Proposals/Reporting.** The hours expended by Supplier in preparing proposals or plans or reporting on the status of Projects shall be included in the Monthly Base Charges and shall not be otherwise chargeable.

(i) **Shared Projects.** It is understood and agreed that, to the extent a Project is requested by Hercules and one or more other Supplier customers, the Charges and/or number of FTE hours associated with such Project shall be allocated on a pro rata basis to Hercules and such other Supplier customer(s). In addition, to the extent the benefits of a Project are to be made available to Hercules and Supplier and/or one or more other Supplier customers, the Charges and/or number of FTE hours associated with such Project shall be allocated on a pro rata basis to Hercules, Supplier and/or such other Supplier customer(s).

Supplier shall use commercially reasonable efforts to identify Project opportunities that could be pursued jointly by Hercules and Supplier or one or more other Supplier customers, to notify Hercules of such joint Project opportunities and to facilitate communications with Supplier or such other Supplier customers regarding such Project opportunities

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3.2 SAP Upgrade Project

Supplier shall perform the SAP technical upgrade project described in Schedule E.12 for the Charges set forth in Attachment J.1.

Such Charges are allocated to the achievement by Supplier of specific milestones that shall be further defined in the SAP technical upgrade project plan. Supplier shall invoice Hercules for each such Charge in the month immediately following the month in which Supplier achieves such milestone. If Supplier fails to achieve the milestone, then Supplier shall not invoice Hercules for such Charge until such milestone is met.

There are no separate or additional Charges or other expenses for the SAP technical upgrade project. For the avoidance of doubt, the fixed Charges for these Services include all Out-of-Pocket Expenses incurred by Supplier (or Supplier Personnel) in connection with the performance of such Services, including Out-of-Pocket Expenses associated with travel and lodging.

4 NEW SERVICES

If Hercules requests Supplier to perform New Services pursuant to Section 4.4 of the Agreement, the Charges (and Attachments to this Schedule J) shall be adjusted as provided therein.

5 OUT-OF-POCKET EXPENSES.

Supplier shall be entitled to reimbursement of travel and living expenses in connection with Projects and New Services only if and to the extent reimbursement of travel and living expenses is expressly approved in advance by the Hercules Relationship Manager on a case by case basis. To the extent Supplier is entitled to reimbursement for travel and living expenses, such expenses must be incurred and submitted in accordance with the more stringent of (i) Supplier's then-current travel and living expenses and (ii) Hercules' then-current Travel and Living Policy.

Supplier acknowledges and agrees that, except as provided in the preceding paragraph, the expenses Supplier incurs in performing the Services (including management, travel and lodging, printing/document reproduction and shipping) are included in Supplier's Charges and that there are no other Out-of-Pocket Expenses to be reimbursed by Hercules.

6 PASS-THROUGH EXPENSES

Supplier shall process and administer (including validate) the Pass-Through Expense invoices in accordance with Section 11.2 of the Agreement and pursuant to the applicable procedures in the Policy and Procedures Manual. No new Pass-Through Expenses may be added without Hercules prior consent, which it may withhold in its sole discretion. As of the Commencement Date, the Pass-Through Expenses consist solely of the specific items set forth in Attachment J.6. The administration/processing of Pass-Through Expenses by Supplier is included in the Annual Service Charge.

7 ECONOMIC CHANGE ADJUSTMENT ("ECA")

On January 1, 2008 and each January 1 thereafter, the Annual Service Charge and rates set forth in Attachment J.1, J.2, J.3 and J.8 shall be increased by four (4) percent per year.

8 TAXES

Each Party shall be financially responsible for taxes as provided in Section 11.4 of the Agreement.

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9 CURRENCY; INVOICING; PAYMENT

Except as expressly stated otherwise, all Charges in the Attachments to this **Schedule J** are set forth in United States Dollars. Supplier shall invoice Hercules in accordance with **Section 12.1** of the Agreement in (i) United States Dollars or (ii) the currency for the applicable Service and geographical Eligible Recipients identified in Attachment J.1 (e.g., certain Services shall be invoiced in Euros). Charges shall be paid in such currency in accordance with **Section 12.2** of the Agreement. Notwithstanding anything to the contrary, Supplier shall bear all risks associated with fluctuations in currencies after the Effective Date and any amounts set forth in USD that are to be charged and invoiced in Euros to a Hercules Eligible Recipient in Europe shall be converted from United States Dollars to Euros, if necessary, at the then current spot rate.

10 MISCELLANEOUS CHARGES AND OTHER PROVISIONS

10.1 Schedule

Schedule J.1 sets forth certain financial responsibilities of the Parties and is hereby incorporated into this **Schedule J**.

10.2 Telecommunications

Supplier shall provide all connectivity and secured redundant data and voice telecommunications equipment, services, and bandwidth necessary to connect each Supplier Facility with Supplier points of presence (each a "POP"). Supplier shall provide and be financially responsible for the Supplier network and for all data and voice connections from each POP and among Supplier Facilities. Supplier shall be financially responsible for long distance calls made by Supplier Personnel and, to the extent applicable, Hercules representatives from Supplier Facilities. Long distance calls from Hercules and third parties (e.g., Hercules customers and vendors) shall be routed by Supplier from POPs to other Supplier Facilities. Hercules shall be financially responsible for "last mile" telecommunications services between Hercules Facilities and Supplier POPs.

10.3 Other Charges

Attachment J.6 sets forth certain other Charges that may arise during the Term.

10.4 Call Recording

The Charges include recording ten percent (10%) of the total inbound and outbound call volume and retaining such recorded calls for thirty days (30) during the Term. During the initial twelve (12) months following the Service Commencement Dates relating to the Services in **Schedules E.4** and **E.5**, recording ninety eight percent (98%) of all inbound and outbound calls and retaining such recorded call for ninety days.

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ATTACHMENTS J.1 - J.8

THE FOLLOWING 6 TABLES HAVE BEEN REDACTED

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SCHEDULE J.1

THE FOLLOWING 1 TABLE HAS BEEN REDACTED

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SCHEDULE K

THE FOLLOWING 1 TABLE HAS BEEN REDACTED

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SCHEDULE M

THE FOLLOWING 1 TABLE HASE BEEN REDACTED

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Hercules

Schedule N

Termination Charges

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SCHEDULE N

TERMINATION CHARGES

1. Introduction

This is Schedule N to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

2. Actual Costs.

Subject to the cap described in Section 3 below, “**Termination Charges**” shall be calculated in accordance with Section 2 and shall consist of the actual direct costs or amounts described in Sections 2(a), (b) and (c). Supplier shall prepare an itemized calculation of the potential Termination Charges and deliver it to Hercules within thirty (30) days after Supplier’s receipt of the notice of termination. Such calculation shall contain such documentation as is reasonably necessary to validate the potential Termination Charges. Hercules shall be entitled to audit the Termination Charges in accordance with Section 9.12 of the Agreement to the extent necessary to validate the Termination Charges (e.g., limited to Eligible Supplier Personnel and the applicable time periods noted below in Section 2(a) and the net book value of Equipment described in Section 2(b)). For the avoidance of doubt, the foregoing does not provide Hercules the right to audit wages and fringe benefits of all Supplier employees or for purposes not specifically relating to variable Termination Charges.

The Termination Charges shall consist of the following as reasonably incurred by Supplier as a direct result of the early termination of the Agreement:

- (a) **Supplier Employees.** With respect to Supplier employees dedicated to the provision of Services to Hercules as of the termination date or, if later, the date on which such employees cease to perform Services or Termination Assistance Services requested by Hercules under the Agreement, whichever is later (“**Eligible Supplier Employees**”), the Termination Charges shall consist of the severance and redeployment described below and reasonably incurred by Supplier. Eligible Supplier Employees shall not include Supplier employees who are assigned following the notice of termination to replace reassigned or terminating Supplier Personnel and/or to perform Termination Assistance Services (other than planned reassignments executed in the ordinary course and not related to the termination). Supplier shall invoice Hercules for amounts under this Section 2(a) as they are incurred by Supplier and such invoice shall be due and payable in accordance with Section 12 of the Agreement.
 - (i) **Redeployment of Eligible Supplier Employees at Supplier Facilities.** The actual wages (and fringe benefits) paid to Eligible Supplier Employees primarily working at Supplier Facilities who are not severed by Supplier and are awaiting redeployment; provided that, (A) such reimbursement will terminate upon the redeployment of such employee for any other purpose, and (B) the total period of such reimbursement shall not exceed ninety (90) days;
 - (ii) **Redeployment of Eligible Supplier Employees at Hercules Facilities.** The actual wages (and fringe benefits) paid to Eligible Supplier Employees primarily working at Hercules Facilities who are not severed by Supplier and are awaiting redeployment; provided that, (A) such reimbursement will terminate upon the redeployment of such employee for any other purpose, and (B) the total period of such reimbursement shall not exceed ninety (90) days;
 - (iii) **Severance.** ***** percent (*****%) of the actual severance payments made to Eligible Supplier Employees pursuant to the then current Supplier severance policy; provided that: (A) severance occurs within ninety (90) days after each such employee ceases to perform the Services, (B) the severance payments made to such employees do not exceed those available to similarly situated employees under the Supplier severance policy in place as of the Effective Date, and (C) the average severance payment to all terminated Eligible Supplier Employees does not exceed *****weeks salary.
 - (iv) **Qualifications.** The Termination Charges under this Section 2(a) above shall be further qualified as follows:
 - (1) Termination Charges shall not include any severance or redeployment expenses with respect to Eligible Supplier Employees who are transferred directly to Hercules or its designee or who are offered and accept employment with Hercules or its designee;
 - (2) Termination Charges shall not include any severance with respect to Eligible Supplier Employees who are offered employment with Hercules or its designee at equal or higher compensation in accordance with Section 4.3(b)(2) of the Agreement, but who have the opportunity to remain with Supplier and elect to do so;
 - (3) Termination Charges shall not include both redeployment and severance with respect to the same Eligible Supplier Employee; and
 - (4) Supplier shall use commercially reasonable efforts to minimize the severance and redeployment costs that are part of the Termination Charges.

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(b) **Third Party Software, Equipment and Third Party Contracts.** With respect to Third Party Software licenses, Equipment leases and Third Party Contracts that are primarily used by Supplier, Supplier Subcontractors, or Supplier Affiliates to provide the Services, the Termination Charges shall consist of (i) any termination or cancellation fees that Supplier is contractually required to pay to a third party in connection with the early termination of such license, lease, or contract, and (ii) subject to the succeeding paragraphs, any non-cancelable charges that Supplier is contractually required to pay to a third party during the remaining term of such license, lease, or contract. With respect to Equipment owned by Supplier or a Supplier Affiliate that is dedicated to the provision of the Services, if Hercules (or its designee) elects not to purchase such Equipment and Supplier is not able to redeploy (e.g., to Supplier's other customers) within sixty (60) days, the Termination Charges shall consist of (1) the net book value of such Equipment (calculated using the same methodology as described in **Section 4.3(b)(4)** of the Agreement) as of the termination date or, provided and to the extent such Equipment is utilized in the provision of such Termination Assistance Services, the substantial cessation of any Termination Assistance Services requested by Hercules under the Agreement, whichever is later, minus (2) the fair market value of such Equipment as of such date. Supplier shall invoice Hercules for amounts under this **Section 2(b)** as they are incurred by Supplier and such invoice shall be due and payable in accordance with **Section 12** of the Agreement.

In each case, Supplier shall use commercially reasonable efforts to avoid incurring such costs, minimize the costs incurred, and/or recover amounts previously paid. The commercially reasonable efforts to be performed by Supplier shall include, to the extent applicable, (i) providing Hercules with a list of all applicable licenses, leases, contracts and/or Equipment and the costs associated with each within thirty (30) days after Supplier's receipt of the notice of termination, (ii) working with Hercules to identify all commercially reasonable means to avoid or minimize such costs, (iii) subject to **Section 6.4(c)** of the Agreement, offering to make the Third Party Software licenses, Equipment leases, Supplier owned Equipment and Third Party Contracts available to Hercules or its designee in accordance with **Section 4.3** of the Agreement, (iv) redeploying any remaining Third Party Software, Equipment and Third Party Contracts within Supplier's organization if, and as soon as, commercially reasonable, (v) negotiating with the applicable third party to eliminate or reduce the fees or charges to be incurred, and/or (vi) subject to any limitations contained in the applicable licenses, leases or contracts, selling, canceling or otherwise disposing of any Third Party Software licenses, Equipment leases, Supplier owned Equipment and Third Party Contracts that cannot be redeployed. The costs to be reimbursed by Hercules shall cease to accrue following the redeployment or use of such Third Party Software, Equipment and Third Party Contract for any other purpose and shall be reduced by the net proceeds received from any sale or other disposition.

In addition, Supplier shall use commercially reasonable efforts to avoid agreeing in any of its subcontracts, Third Party Software licenses, Equipment leases or other Third Party Contracts (excluding Third Party Software licenses, Equipment leases and Third Party Contracts assigned to Supplier by Hercules pursuant to this Agreement) to termination or cancellation fees or non-cancelable charges and, to the extent it is unable to avoid agreeing to such terms, Supplier shall fully disclose such terms to Hercules in seeking Hercules's approval of such Subcontractor pursuant to **Section 9.13** of the Agreement and/or in seeking approval of such Third Party Software licenses, Equipment leases or other Third Party Contracts pursuant to **Section 6.4** of the Agreement.

Notwithstanding the foregoing, Hercules shall not be obligated to pay any Termination Charges with respect to Third Party Software, Equipment and Third Party Contracts to the extent (i) Hercules or its designee purchases any Supplier owned Equipment or assumes any Supplier held Third Party Software licenses, Equipment leases or Third Party Contracts, or (ii) Supplier is unable to offer Hercules or its designees the right to purchase such Equipment or assume such licenses, leases or contracts; provided that, unless otherwise agreed, Hercules shall be obligated to pay Termination Charges with respect to Third Party Software, Equipment Leases and Third Party Contracts under (ii) above if and to the extent such licenses, leases or contracts, such licenses, leases or contracts that were assigned to Supplier by Hercules pursuant to the Agreement, or Hercules has agreed in advance pursuant to **Section 6.4(c)** of the Agreement to pay such amount as required under this **Schedule N**.

(c) **Miscellaneous Termination Charges.** Supplier also shall recover as Termination Charges the amounts specified in the table below.

THE FOLLOWING TABLE HAS BEEN REDACTED

The Termination Charges to be paid by Hercules pursuant to **Section 2(c)** shall be calculated as of the termination date. The amounts specified above represent the Termination Charges to be paid by Hercules pursuant to **Section 2(c)** as of the Effective Date and last day of each Contract Year. To the extent such Termination Charges are calculated as of a date during any Contract Year, it shall be adjusted on a pro rata basis as follows: (Termination Charges as of the end of the preceding Contract Year) minus (the difference between the Termination Charges as of the end of such Contract Year and the end of the then current Contract Year, divided by 365, and then multiplied by the number of days passed in the then current Contract Year as of the effective date of such calculation).

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3. Termination Charges Cap

Notwithstanding the foregoing, the total Termination Charges under Section 2 above shall not exceed the amount set forth in Table 2 below:

THE FOLLOWING TABLE HAS BEEN REDACTED

The cap on the total Termination Charges shall be calculated as of the termination date. The amounts specified in the table above represent the Termination Charges cap as of the Effective Date and the last day of each Contract Year. To the extent the Termination Charges cap is calculated as of a date during any Contract Year, it shall be adjusted on a pro rata basis as follows: (Termination Charges cap as of the end of the preceding Contract Year) minus (the difference between the Termination Charges cap as of the end of such Contract Year and end of the then current Contract Year, divided by 365, and then multiplied by the number of days passed in the then current Contract Year as of the effective date of such calculation).

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Hercules

Schedule O.1

Hercules Facilities

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SCHEDULE O.1

HERCULES FACILITIES

This is **Schedule O.1** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

In accordance with **Section 6.2** of the Agreement, Hercules shall provide Supplier with office space and office furniture in the following Hercules Facilities, as more fully described below.

United States Locations

WILMINGTON, DELAWARE

(Plaza and Research Center)

| No. of Supplier Personnel | Description | Duration |
|---|---|---|
| <i>ADM and SAP Upgrade</i> | | |
| 01 | Office space and office furniture for Supplier Personnel (for on-site project manager) | Term |
| 15 (Peak) | Cubicle space and furniture for Supplier Personnel (during ADM Transition Services) | Transition Period |
| 07 | Cubicle space and furniture for Supplier Personnel (during SAP Technical Upgrade) | SAP upgrade period |
| 03 | Conference Rooms | As & when required during the engagement duration to the extent available |
| | Internet access (without internet e-mail access), LAN/WAN etc. for on-site Supplier Personnel set forth in Schedule M or otherwise agreed | Term |
| <i>SOL ID Requirements</i> | | |
| 4 | Office space and furniture / training room. Shared phone/extension. The desktops would be needed more for demonstrating the process to the Sol Id team | Per the Transition Plan |
| <i>On the Job Training Requirements</i> | | |
| 17 | Office space, furniture and shared phones/extensions (Phase NA 0) | Up to 8 weeks (some space would not be required for the entire duration) |
| 14 | Office space, furniture and shared phones/extensions (Phase NA1) | Up to 6 weeks (some space would not be required for the entire duration) |
| 4 | Office space, furniture and shared phones/extensions (Phase NA2) | 4 weeks |
| <i>Governance Requirements</i> | | |
| 4 | Office space, furniture and shared phones/extensions (Phase NA 0) | Up to 8 weeks (some space would not be required for the entire duration) |
| 3 | Office space, furniture and shared phones/extensions (Phase NA 1) | Up to 6 weeks (some space would not be required for the entire duration) |
| 1 | Office space, furniture and shared phones/extensions (Phase NA 2) | 4 weeks |

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International Locations

1. RIJSWIJK

Veraartlaan 8
2288 GM Rijswijk
The Netherlands

| No. of Supplier Personnel | Description | Duration |
|---|--|--|
| <i>SOL ID Requirements</i> | | |
| 2 | Office space and furniture / training room. Shared phone/extension to be provided; The desktops would be needed more for demonstrating the process to the Sol Id team | 3 weeks + 4 weeks at two separate times |
| 6 | Office space and furniture / training room. Shared phone/extension to be provided; The desktops would be needed more for demonstrating the process to the Sol Id team | 4 weeks |
| <i>On the Job Training Requirements</i> | | |
| 13 | Office space, furniture and shared phones/extensions (Phase -EU 0) | Up to 8 weeks (some space would not be required for the entire duration) |
| 22 | Office space, furniture and shared phones/extensions (Phase -EU 1) | 5 weeks |
| 23 | Office space, furniture and shared phones/extensions (Phase -EU2) | 5 weeks |
| <i>Governance Requirements</i> | | |
| 2 | Office space, furniture / training room and shared phones/extensions (Phase -EU 0) | 6 weeks |
| 6 | Office space, furniture / training room and shared phones/extensions (Phase -EU 1) | 5 weeks |
| 4 | Office space, furniture / training room and shared phones/extensions (Phase -EU 2) | 5 weeks |

Other Miscellaneous Provisions regarding Hercules Facilities:

- On-the-job-training (“OJT”) will cover the US and European locations described above (i.e., Wilmington and Riswijk). If some space is required for 1-2 people in the various other Hercules Facilities in Europe for 1-2 weeks, Hercules will provide the same or similar space as reasonably available.

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- Network connectivity for the OJT team shall be provided by Hercules within the Hercules Facility
 - Supplier Governance team would carry their own laptops
 - The Supplier Sol-Id team would be carrying their own laptops
-

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Hercules

Schedule O.2

Supplier Facilities

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**SCHEDULE O.2
SUPPLIER FACILITIES**

This is **Schedule O.2** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

Supplier Facilities

| | Street Address | Scope of Services Provided | City | State | Country |
|---|--|--|-------------|--------------|----------------|
| 1 | Genpact DLF IT Park Tower 1, 7th Floor 8 Major Arterial Road New Town, Rajarhat Calcutta | Account Payable, Master Data Maintenance, General Ledger Accounting, Fixed Assets Accounting, Financial Consolidation/External Reporting, Corporate Analysis, Business Analysis, Sales Analysis, Procurement Spend Analysis, SAP Production Support and Projects, Non-SAP Production Support and Projects. | Calcutta | West Bengal | India |
| 2 | Dimitrie Pompei Blvd. 9-9A, IRIDE Business Park Building 14 Sector- 2 Bucharest | Customer Support/Business Support and Accounts Receivable. | Bucharest | | Romania |
| 3 | 251 Avenida Lerdo Norte Cd. Juarez, Chihuahua Mexico CP32000 | Customer Support/Business Support and Accounts Receivable. | Juarez | - | Mexico |

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Hercules

Schedule O.3

Hercules Provided Equipment

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**SCHEDULE O.3
HERCULES PROVIDED EQUIPMENT**

This is **Schedule O.3** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

In accordance with **Section 6.4(e)** of the Agreement, Hercules shall provide Supplier with the following Equipment for the specified period.

| Hercules Facility Location | Quantity | Description of Hercules Provided Equipment | Duration |
|---|-----------------|---|--|
| <i>ADM and SAP Upgrade</i> | | | |
| Wilmington DE, USA | 1 | LCD projector | As & when required and available during the engagement lifecycle (ADM & SAP technical upgrade) |
| | 15 | Workstations (during ADM Transition Period) | 5.5 Months |
| | 07 | Workstations (during SAP Technical Upgrade) | 9 Months |
| | 01 | Telephone (for on-site project manager) | 5.5 Years |
| | | Access to telephone(s) (for on-site teams) | During ADM Transition & SAP Tech. Upgrade |
| | | Access to fax (for on-site project manager & for on-site teams during ADM Transition & SAP Technical Upgrade) | 5.5 Years |
| <i>BPO - SOL ID Requirements</i> | | | |
| Wilmington DE, USA | 2 | Workstations | 3 weeks |
| Rijswijk, The Netherlands | 1 | Workstations | 3 weeks |
| | 2 | Workstations | 4 weeks |
| <i>On the Job Training Requirements</i> | | | |
| Wilmington DE, USA | 17 | Workstations (Phase NA 0) | 8 weeks (some Workstations would be required for a lesser period) |
| | 14 | Workstations (Phase NA1) | 4 weeks (some Workstations would be required for a lesser period) |
| | 4 | Workstations (Phase NA2) | 4 weeks (some Workstations would be required for a lesser period) |
| Rijswijk, The Netherlands | 12 | Workstations (Phase -EU 0) | 8 weeks (some Workstations would be required for a lesser period) |
| | 22 | Workstations (Phase -EU 1) | 5 weeks |
| | 23 | Workstations (Phase -EU2) | 5 weeks |
| <i>SOL ID Requirements</i> | | | |
| Wilmington DE, USA | 2 | Workstations | 3 weeks |
| Rijswijk, The Netherlands | 1 | Workstations | 3 weeks |
| | 2 | Workstations | 4 weeks |

Other Miscellaneous Provisions and Clarifications:

:

- BPO - SOL ID Requirements - these Workstations would be needed in the conference room for the Supplier Personnel solely for demonstrations and deep dives into Hercules processes; the Supplier Personnel would carry their own laptops from Supplier for other purposes.
- OJT will cover only 1 location each in the US and Europe (i.e., Wilmington and Rijswijk). If some space is required for 1-2 people in the various other locations of Hercules Facilities in Europe for 1-2 weeks, Hercules will provide the same or similar space as reasonably available and described in this Schedule. Workstation
- Network connectivity for the OJT team would be provided by Hercules
- Governance team would carry their own laptops
- The Supplier Sol-Id team would be carrying their own laptops

Hercules

Schedule P

Direct Hercules Competitors

and

Direct Supplier Competitors

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SCHEDULE P.1 DIRECT HERCULES COMPETITORS

This is **Schedule P.1** to the Master Professional Services Agreement by and between Hercules and Supplier (the "**Agreement**"). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

Akzo Nobel
Amazon
BASF
Bayer
Buckman
Ciba
Colorcon
Dow Chemical Co.
Eka
GP
Hexion
Huber
Kemira (includes Lanxess acquisition)
Nalco Holding Company
Nippon Soda Company
Perstorp and
Rhodia
Rohm & Haas
Samsung (including Samsung Fine Chemicals)
SE Tylose (part of Shinetsu)
Wolff

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SCHEDULE P.2 DIRECT SUPPLIER COMPETITORS

This is **Schedule P.2** to the Master Professional Services Agreement by and between Hercules and Supplier (the "**Agreement**"). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

WNS Global Services
HP
Infosys (Progeon)
Accenture
IBM
Wipro
HCL
TCS
EXL Services
Cap Gemini
Convergys
Hewitt Associates
Vertex
Intelenet

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Hercules

Schedule Q

Satisfaction Survey

SCHEDULE Q
SATISFACTION SURVEY

This is **Schedule Q** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

At Supplier, customer centricity drives the day-to-day working of processes. Customer satisfaction and quality of services delivered is extremely important for Supplier and this is reflected through the Voice of Customer (VoC) survey, conducted at regular intervals during the course of an engagement, to determine customer satisfaction. The aim of the VOC is to receive inputs on our progress in the partnership over the last period. Though the Operations manager will communicate with Hercules on a regular basis, this is a formal channel of capturing Hercules’ assessment of the prior months (duration to be determined during the Transition Period) that gives the Parties a statistical barometer of change in performance perception across various aspects of their relationship.

Features:

The VOC survey is a web based survey and is referred to as eVOC. The main features of the eVOC are enumerated as follows:

- It is a standard means to compare Hercules’ satisfaction levels across businesses / processes

- Proactive method of identifying potential concern areas

- Helps capture feedback from across the cross section of process owners

- Portrays one comprehensive picture of the health parameters of the process from Hercules stand point

Methodology:

The survey will be based on questions around the following:

- Operational Excellence
 - o Measurement of Metric and Meeting the defined Operational Metric
 - o Team’s understanding and responsiveness to Business Need
 - o Consistency and Reliability of Performance
 - o Proactive Problem Solving Approach
 - o Specify Areas of Concerns and Changes Expected
- Effectiveness of People Management,
 - o Staffing -- Quality of New Recruits

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- o Hiring -- Span of Hiring New Resource
- o Training of New Resources -- Coming up the Learning curve
- o Knowledge Retention -- Check turnover with Knowledge Retention
- o Motivation Levels -- Spirit of the team
- o Attrition/Movement -- People Planning and Management
- Effectiveness of Communication
 - o Conference Calls -- Clarity of Voice and thought
 - o Resolution of Queries/ Issues-- promptness in communicating status of queries/requests
 - o Update on Process Changes & Issue -- Keeping customer in the loop
 - o Ease of Communication (Voice/Mail)-- Frequency/mode
- Process Improvement and Productivity
 - o Six Sigma Initiative & Lean -- Are the areas of improvement identified and executed
 - o Improvements required in Metric -- Do metric reflect customer need
 - o Productivity Benefits
- Overall Satisfaction and Willingness to recommend.
 - o Suggestions to improve
 - o Technology & Telecom

There are 7 questions, each with a comment box and a rating scale of 1 to 10 (1-6 are detractors, 7-8 passive and 9,10 are promoters). Once the applicable Hercules representative has taken the survey, Supplier and Hercules will discuss the rating, where Supplier provides suggestions to improve the various aspects of Service delivery. This has been elaborated in the flowchart below:

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MISSING GRAPHIC

Once the recommended actions are agreed upon, they are tracked with timelines and closure on the VOC tool. Action items will be closed only after completion and discussion with Hercules, as shown below.

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MISSING GRAPHIC

The Supplier is committed to continuously improving our ability to meet or exceed Hercules's expectations of quality in the Services and products we provide.

Any satisfaction deficiencies will be addressed by a combination of the following methods:

- Supplier governance model ensures engagement, transparency, and control during the transition and through steady state operations. It will also ensure compliance, controllership, benchmarking and delivery on Service Levels. Any satisfaction deficiencies will be addressed by mutual discussion.
 - Supplier has a well-structured Quality Organization that will work closely in tandem with Hercules' Operations Teams. Root-Cause Analysis will be done for any performance deficiencies and a detailed time bound action plan will be drawn. There will be continuous monitoring of the performance until the issue is resolved.
-

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HERCULES

SCHEDULE R

REPORTS

SCHEDULE R

REPORTS

This is **Schedule R** to the Master Professional Services Agreement by and between Hercules and Supplier (the "**Agreement**"). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

25.0 Introduction

In accordance with **Section 9.2** of the Agreement, Supplier shall provide Hercules the Service management Reports specified in this **Schedule R** and **Attachment R-1**. In addition, Supplier shall provide Hercules (i) Service Level management reports as required under **Schedule G** and (ii) business and other reports (e.g., reports in the SAP Software) as part of the Services.

26.0 Reports

Supplier's responsibilities include:

4. Providing Hercules all reports provided by or for Hercules during the twelve (12) month period immediately prior to the Effective Date.

 42. Delivering all reports according to the format, content, and frequency specified in **Attachment R-1** or, if there is no such specification, provided by or for Hercules during the twelve (12) month period immediately prior to the Effective Date.

 43. Modifying the format, content, and frequency of any report as requested by Hercules.
-

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ATTACHMENT R-1

Description of Service management Reports

This **Attachment R-1** to **Schedule R** contains a summary description of the format, content and frequency of key reports required by Hercules. This Attachment may not include all reports provided by or for Hercules during the twelve (12) month period immediately prior to the Effective Date or otherwise requested by Hercules or required as part of the Agreement. However, Supplier is required to provide any and all such reports regardless of their inclusion in this Schedule.

1.0 SERVICE MANAGEMENT and other Reports

| Functional Service Area | Report Name | Description | Frequency | Recipient | Media* |
|--|--|---|----------------------------|---|--------------------------------|
| ADM | Delivery Status Report | Request status, On-hold Request status, Risk List | Weekly | Hercules Delivery Manager | E Mail |
| | Issue Log Report | Issue details, Ageing status, Resolution details | Weekly | Hercules Delivery Manager | E Mail |
| | Performance Status Report | Effort Variance, Time Variance, Forecasting Accuracy, Service Level Calculation | Monthly | Program Manager Delivery Manager | E Mail |
| | Progress Report | Status of projects and enhancements | Weekly | Hercules Delivery Manager | E Mail |
| SAP Tech.Upgrade | Delivery Status Report | Weekly status, on-hold request (Custom Development, Configuration, Testing, Data, Learning & Training) | Weekly | Respective Service Leads or Project Manager | E Mail |
| | Issue Log | Issue details, Ageing, Resolution details | Weekly | Respective Service Leads or Project Manager | E Mail |
| | Executive Dash Board | Management Planning & Tracking Report | Monthly | Program Mgr | E Mail |
| | Performance Status Report | Quality Tracking, Schedule Adherence, Effort variance, SLO or SLA if any | Monthly | Program Mgr | E Mail |
| General Accounting and Business Analysis | Genpact Monthly Review | Dashboards on India's team performance | Monthly | Hercules and Genpact leadership | E mail / Conference Call |
| | Intercompany Reconciliation Report | Shows interco differences at month-end prior to adjustments, then adjustments, then interco differences after adjustments | Monthly | Consolidation & Control | Excel file |
| | US Statement of intercompany accounts | Detail of US receivables and payables due to/from non US locations | Monthly | Foreign financial accountants responsible for intercompany accounting | SAP report downloaded to Excel |
| | Foreign intercompany difference report | A file for each non US location that shows the net intercompany difference between each entity and all other trading partners | Monthly | Foreign financial accountants responsible for intercompany accounting | Excel File |
| | Misc. Deferred Charge analysis | Excel report which details balances by SAP statistical order for accounts 1282910000 and 1282912100, | Monthly on the 4th workday | | Excel |

| | | | | | |
|-----|--|---|----------------------------|---|---|
| | | for Corps 0106 and 0255. Fluxes current period with previous period. | | | |
| | Post Disposition Accruals & Related Monthly Activity | Excel report which details the balances by SAP statistical order for multiple accounts for the month. Currently just for Corp 0106. | Monthly on the 4th workday | | Excel |
| AP | Turn Around Time | Metric will represent the TAT agreed per the SLA | Monthly | Hercules AP Process owner | E Mail |
| | Accuracy | Metric will represent accuracy of transactions agreed per the SLA | Monthly | Hercules AP Process owner | E Mail |
| | Debit Balance | Report for Debit Balances with aging | Monthly | Hercules AP Process owner | E Mail |
| | GR/IR | Report for GR/IR with aging | Monthly | Hercules AP Process owner | E Mail |
| | First Pass Yield / Hit Rate | Metric on invoices processed for payment in the 1st instance without any query | Monthly | Hercules AP Process owner | E Mail |
| | Service Desk | Metric will represent service desk data | Monthly | Hercules AP Process owner | E Mail |
| OTI | Call Volume | Inbound call volumes per interval of 15 min | weekly reporting | Hercules Process owners Hercules BPO project team Genpact Operational management team | Dashboard links to an intranet web page at Genpact accessible by Hercules |
| | Fax, email order entry volumes | Inbound volumes per day | weekly reporting | Hercules Process owners Hercules BPO project team Genpact Operational management team | Dashboard links to an intranet web page at Genpact accessible by Hercules |
| | Average speed of answer | Average time a call is being picked up from the time it hits the PBX in Romania | weekly reporting | Hercules Process owners Hercules BPO project team Genpact Operational management team | Dashboard links to an intranet web page at Genpact accessible by Hercules |
| | Abandoned calls %-age | %-age of calls which are disconnected before being picked up by an agent | weekly reporting | Hercules Process owners Hercules BPO project team Genpact Operational management team | Dashboard links to an intranet web page at Genpact accessible by Hercules |
| | Incoming orders before cut off time | Incoming orders before a certain time in the day for which you would still expect treatment in the same day | weekly reporting | Hercules Process owners Hercules BPO project team Genpact Operational management team | Dashboard links to an intranet web page at Genpact accessible by Hercules |
| | Incoming orders after cut off time | Incoming orders after a certain time in the day for which you would expect treatment on the next day | weekly reporting | Hercules Process owners Hercules BPO project team Genpact Operational management team | Dashboard links to an intranet web page at Genpact accessible by Hercules |
| | % of orders processed same day | %-age of orders coming in which are processed same day | weekly reporting | Hercules Process owners Hercules BPO project team Genpact Operational management team | Dashboard links to an intranet web page at Genpact accessible by Hercules |
| | | | | | Hercules Process owners |

| | | | | | |
|-------------------------|---|--|------------------|---|---|
| | % of orders processed in 24 hours | All orders received and processed within the same day | weekly reporting | Hercules BPO project team Genpact Operational management team | Intranet web page at Genpact accessible by Hercules |
| | Av Order processing TAT | Av cycle time between receiving the Order and complete entry in system | weekly reporting | Hercules Process owners Hercules BPO project team Genpact Operational management team | Dashboard links to an intranet web page at Genpact accessible by Hercules |
| | Accuracy (X opportunities per order line items) | Different opportunities per order and per line items to be picked on a random sample and % of defects shown on the overall # opportunities | weekly reporting | Hercules Process owners Hercules BPO project team Genpact Operational management team | Dashboard links to an intranet web page at Genpact accessible by Hercules |
| | Credit/Debit Memo report | Report that lists all credit and debit memos and the reason for their creation | Weekly reporting | Hercules Process owners Hercules BPO project team Genpact Operational management team | Dashboard links to an intranet web page at Genpact accessible by Hercules |
| ITC | Cash Report | | Weekly | Hercules ITC Process Pwner | E Mail |
| | Shortage Report | Report of the short payments | Weekly | Hercules ITC Process Pwner | E Mail |
| | Evaluation of Customer Credit Limits | This provides the list of customers whose credit limit is evaluated | Weekly | Hercules ITC Process Pwner | E Mail |
| | A/R Snapshot | Summary of A/R metrics | Monthly | Hercules ITC Process Pwner | E Mail |
| | A/R Analysis | Analysis of the A/R metrics for forecasting and evaluation | Monthly | Hercules ITC Process Pwner | E Mail |
| | Bad Debt | List of invoices / customers / amount that have been identified as bad debt | Monthly | Hercules ITC Process Pwner | E Mail |
| | Global A/R | | Monthly | Hercules ITC Process Pwner | E Mail |
| | Global GE Report | | Monthly | Hercules ITC Process Pwner | E Mail |
| | Aging LOC Term 1 | | Monthly | Hercules ITC Process Pwner | E Mail |
| | Aging by Rep Code | This gives a portfolio ageing (bucket wise) broken by collector | Monthly | Hercules ITC Process Pwner | E Mail |
| | NCCA data export | | Monthly | Hercules ITC Process Pwner | E Mail |
| | Preliminary Bad Debt Report | Proposal of amounts to be written off as bad debt | Monthly | Hercules ITC Process Pwner | E Mail |
| | Credit Control Limit 1 | Break up of credit control limit by customer | Quarterly | Hercules ITC Process Pwner | E Mail |
| | Aging COM term 1 | | Quarterly | Hercules ITC Process Pwner | E Mail |
| | A/R Credit Balance 1 | List of customers with a credit balance and amounts | Quarterly | Hercules ITC Process Pwner | E Mail |
| Master Requisitions | Requisition to PO TAT | % of approved requisitions converted and issued to the supplier within x hours of receipt | Weekly | Buyer | E-Mail |
| | PO Creation Accuracy | % accuracy of the PO's created | Monthly | Buyer/ Sourcing leader | E-Mail |
| | PO Amendment TAT | % of amendment requests processed within X hours of receiving the same | Monthly | Buyer/ Sourcing leader | E-Mail |
| | Open PO Report | Status/ Trend of all open PO's created by the resource | Weekly | Buyer | E-Mail |
| | PO Cycle time by business | Trend report on the PO lead times by business | Monthly | Sourcing leader | E-Mail |
| Procurement Master Data | TAT on creation & maintenance of outline | % of requests received and worked upon within x hours of receipt | Monthly | Sourcing Leader | E-Mail |

| | | | | | |
|--|--|--|---------|-----------------|--------|
| * All the weekly reports will be presented to the recipient in MS-Excel and monthly reports in MS-PowerPoint | agreements | | | | |
| | Accuracy on creation & maintenance of outline agreements | % accuracy of the outline agreements created and maintained | Monthly | Sourcing leader | E-Mail |
| | TAT on creation & maintenance of info records | % of requests received and worked upon within x hours of receipt | Monthly | Sourcing leader | E-Mail |
| | Accuracy on creation & maintenance of info records | % accuracy of the info records created and maintained | Monthly | Sourcing leader | E-Mail |
| | TAT on creation & maintenance of supplier source lists | % of requests received and worked upon within x hours of receipt | Monthly | Sourcing leader | E-Mail |
| | Accuracy on creation & maintenance of supplier source lists | % accuracy of the source lists created and maintained | Monthly | Sourcing leader | E-Mail |
| | TAT on open PO's updated as may be required based on revised Purchase Master Data | % of open PO's updated within x hours of receipt | Monthly | Sourcing leader | E-Mail |
| | Accuracy on open PO's updated as may be required based on revised Purchase Master Data | % of open PO's updated based on revised purchase master data | Monthly | Sourcing leader | E-Mail |

- Other agreed media or technology (e.g., a network drive accessible by Hercules)

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SCHEDULE S GOVERNANCE

2.0 Introduction

This is **Schedule S** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

During the Transition Period the Parties will develop a governance model. Such model will include the committees described in this Schedule.

3.0 Committees and Teams

3.1 Executive Steering Committee

The Parties will establish an executive steering committee. The executive steering committee will have executive management responsibility for the Agreement and for the relationship between the Parties. The executive steering committee will meet quarterly (in person or by teleconference) or as otherwise agreed.

3.2 Management Team

The Parties will establish a management team. The names and/or titles of the initial representatives serving on the management team shall be determined during the Transition Period.

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Hercules

Schedule T

Hercules Rules, Hercules IT, Security, and Related Standards, and Hercules Business Practices Policy

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SCHEDULE T

Hercules Rules, Hercules IT, Security, and Related Standards, and Hercules Business Practices Policy

This is **Schedule T** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

Hercules Rules, Hercules IT, Security, and Related Standards, and Hercules Business Practices Policy to be made available to Supplier after the Effective Date and from time-t time thereafter as requested by Supplier and is hereby incorporated by reference.

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Hercules

Schedule U

Termination / Expiration Rights

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SCHEDULE U

TERMINATION / EXPIRATION RIGHTS

This is **Schedule U** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

In accordance with **Section 6.4(c)** of the Agreement, Hercules consents to Supplier’s use of the following Third Party Software licenses, Equipment leases or Third Party Contracts for Supplier’s provision of the Services, notwithstanding Supplier’s inability to obtain the rights and assurances specified below that are otherwise required by **Section 6.4(c)** of the Agreement.

Software:

- Savvion Licences - licenses for the workflow
- Rightfax Licences - for the fax server

Services:

- Runway International Services - whose services Supplier would utilize for Nordic language dependent process activities
 - Toll free / local numbers requested by Supplier from any telecom service provider in the case of re-routing of faxes / calls
 - The Xerox European scanning contract
-

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Hercules

Exhibit 1

Form of Non-Disclosure Agreement

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

FORM OF NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“NDA”) is made as of this ___ day of _____, 200__, by and between _____, (“Supplier”), and _____ (“Receiving Party”), a third party retained by _____ (“Hercules”).

WHEREAS, Supplier and Hercules are parties to the Master Professional Services Agreement, dated _____ (the “Contract”);

WHEREAS, Supplier is the owner and licensor of certain Confidential Information (as defined below); and

WHEREAS, Hercules wishes to disclose, or have Supplier disclose, to Receiving Party, and Receiving Party wishes to receive, under the terms and conditions of this NDA, Confidential Information;

NOW, THEREFORE, in consideration of the promises hereinafter set forth, Receiving Party and Supplier acknowledge and agree as follows:

1. **Confidential Information.**

a. “Confidential Information” shall mean information marked by Supplier as “Proprietary”, “Confidential”, or with a similar legend, or otherwise identified in writing promptly after disclosure as proprietary or confidential.

b. Confidential Information shall not include information Receiving Party can demonstrate (i) is, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of Receiving Party; (iii) is in the possession of Receiving Party at the time of disclosure to it without obligation of confidentiality; (iv) is received without obligation of confidentiality from a third party having a lawful right to disclose such information; or (v) is independently developed by Receiving Party without reference to Confidential Information.

2. **Receiving Party's Duties.**

a. During the term of this NDA and at all times thereafter, Receiving Party shall not disclose, and shall maintain the confidentiality of, all Confidential Information. Receiving Party shall use at least the same degree of care to safeguard and to prevent disclosing to third parties Confidential Information as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care. Receiving Party may disclose Confidential Information to its employees as and to the extent such disclosure is necessary for the performance of such person's or entity's obligations or otherwise naturally occurs in such person's or entity's scope of responsibility. Receiving Party assumes full responsibility for the acts or omissions of such person or entity and must take all reasonable measures to ensure that Confidential Information is not disclosed or used in contravention of this NDA.

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b. Receiving Party shall not (i) make any use or copies of Confidential Information except as contemplated by this NDA; (ii) acquire any right in or assert any lien against Confidential Information; (iii) sell, assign, transfer, lease, or otherwise dispose of Confidential Information to third parties or commercially exploit such information, including through derivative works; or (iv) refuse for any reason to promptly provide Confidential Information (including copies thereof) to Supplier if requested to do so.

c. Receiving Party shall not be considered to have breached its obligations under this NDA for disclosing Confidential Information as required to satisfy any legal, accounting, or regulatory requirement of a competent government body, provided that, promptly upon receiving any such request and to the extent that it may legally do so, Receiving Party advises Supplier of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to making such disclosure in order that Supplier may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

d. Receiving Party shall: (i) promptly notify Supplier of any known possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this NDA; (ii) promptly furnish to Supplier all known details and assist Supplier in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss; (iii) reasonably cooperate with Supplier in any investigation or litigation deemed necessary by Supplier to protect its rights; and (iv) promptly use commercially reasonable efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this NDA. Receiving Party shall bear its own costs in complying with this subsection.

3. **Termination.**

a. Upon completion of Receiving Party's assignment for Hercules, Receiving Party shall return or destroy, as Supplier may direct, all Confidential Information, and retain no copies; provided that auditors and benchmarkers performing audit and benchmarking functions may retain their work papers.

b. The obligations to maintain confidentiality, the restrictions on use, disclosure, duplication, protection, and security of Confidential Information and indemnification for breach thereof by Receiving Party shall survive the rescission, termination, or completion of this NDA, and remain in full force and effect until such Confidential Information, through no fault of Receiving Party, becomes part of the public domain.

4. **General Provisions.**

a. This NDA shall be governed by and construed, and the legal relations between the parties shall be determined, in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of laws.

b. This NDA supersedes all prior understandings and negotiations, oral and written, and constitutes the entire understanding between the parties on this subject.

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c. No waiver, modification, or amendment to this NDA shall be binding upon the parties unless it is in writing signed by an authorized representative of the party against whom enforcement is sought.

d. Nothing in this NDA nor any disclosure made hereunder shall be deemed to grant to Receiving Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Confidential Information.

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IN WITNESS WHEREOF, the parties have caused this Non-Disclosure Agreement to be signed by their Authorized Representatives on the date and year first above written.

[_____] (“Supplier”)

[Receiving Party] (“Receiving Party”)

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

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Hercules

Exhibit 2

Form of Invoice

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EXHIBIT 2

FORM OF INVOICES

To be determined by Hercules within thirty (30) days of the Effective Date. U.S. and European invoice forms may vary.

Exhibit 3

COMPANION AGREEMENT

[Local Country Name]

This Companion Agreement - [local country name] (this "Companion Agreement") is entered into effective as of _____, 200_ (the "Agreement Date"), by and between [Name of Hercules local country Eligible Recipient], with an office at [_____] ("Hercules"), and [Name of Supplier local country affiliate] ("Supplier"), with an office at [_____].

RECITALS

- A. Hercules Incorporated, a Delaware corporation having a principal place of business in Wilmington, Delaware, and [Name of Supplier], a [____] corporation having a principal place of business in [____] entered into the Master Professional Services Agreement dated as of January 15, 2007 (the "Master Agreement"). The Master Agreement is attached hereto as **Exhibit A**.
- B. The Master Agreement contemplates the provision of certain services in various countries outside the United States, including [name of local country]. The Master Agreement also contemplates that an Eligible Recipient designated by Hercules Incorporated and an Affiliate of [____], respectively, will enter into a Companion Agreement for the provision of such products and services in each such country.
- C. The purpose of this Agreement is to set forth the terms and conditions for Supplier's provision of such services to certain Eligible Recipients in [name of local country].

NOW, THEREFORE, in consideration of the promises contained in this Companion Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hercules and Supplier agree as follows:

- 1. Incorporation of Master Agreement. This Companion Agreement is entered into under the provisions of the Master Agreement, and except as provided below, all of the terms and provisions of the Master Agreement are incorporated into this Companion Agreement by this reference as if fully set forth herein. The following provisions of the Master Agreement do not apply to this Companion Agreement and are not incorporated into this Companion Agreement: [list provisions of the Master Agreement that should not apply to the local country agreement due to legal restrictions (if any)]. In the event of any inconsistency between the terms of this Companion Agreement and the Master Agreement, this Companion Agreement shall control as to the subject matter of this Companion Agreement. Capitalized terms used in this Companion Agreement, to the extent not otherwise defined in this Companion Agreement, shall have the same meanings as in the Master Agreement.
 - 2. Term. The term of this Companion Agreement will commence on _____, 200_ (the "Agreement Date"), and will continue thereafter until the expiration or termination of the Master Agreement, unless this Companion Agreement is terminated earlier in accordance with the terms of the Master Agreement.
 - 3. Local Services. During the term of this Companion Agreement, Supplier shall provide the Services described in the Master Agreement to the Eligible Recipients in [name of local country] listed in Attachment __, subject to Section 4.7 of the Master Agreement. Supplier shall provide such Services in the manner and in accordance with the Service Levels set forth in the Master Agreement. Supplier also shall timely perform or cause to be performed the obligations of [_____] specified in the Master Agreement with respect to such Services, subject to Section 4.7 of the Master Agreement.
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4. Local Hercules Obligations. Subject to Section 4.7 of the Master Agreement, Hercules shall timely perform or cause to be performed the obligations of Hercules Incorporated specified in the Master Agreement with respect to the Services provided by Supplier to the Eligible Recipients in *[name of local country]*.
5. Supplier Charges.
 - (a) Supplier Charges. The Charges for the Services to be provided by Supplier under this Companion Agreement are set forth in **Schedule J** to the Master Agreement.
 - (b) Taxes. Unless otherwise specified in this Companion Agreement, the responsibilities of each Party for taxes arising under or in connection with this Companion Agreement shall be as set forth in Section 11.4 of the Master Agreement.
 - (c) Invoicing and Payment Terms. Unless otherwise specified in this Companion Agreement, the responsibilities of each Party for invoicing and payment for Services provided under this Companion Agreement shall be as set forth in Article 12 and **Schedule J** of the Master Agreement.
6. Additional Provisions.
 - (a) The Parties acknowledge that in certain jurisdictions local applicable Employment laws may apply to this Companion Agreement or the arrangements contemplated hereunder. The Parties further acknowledge that, as a consequence thereof, they have agreed to address the impact of such laws in accordance with the applicable provision of a [Specific Country EUARD Agreement in a mutually agreed upon format]
 - (b) **The Parties agree, save as may otherwise be agreed in the [Specific Country EUARD Agreement], they will fully cooperate with each other in good faith to:**
 - (i) comply with all applicable laws, constitutions, treaties, directives, statutes, secondary legislation, order code of practice, binding case law, contractual obligations and other common law or other relevant authority relating to the employment or dismissal of employees in the relevant country including the Acquired Rights Directive in those countries where it is applicable;
 - (ii) inform and/or consult singularly or jointly, as required, with any recognized trade union, works council, or other appointed employee representative before implementing the terms of this Companion Agreement and to contest any claim by any person resulting from or in connection with this Companion Agreement;
 - (iii) modify the terms of the Companion Agreement in order to comply with sections (i) and (ii) to achieve the original objectives of the Parties.
 - (c) Supplier shall, save as may otherwise be agreed in the [Specific Country EUARD Agreement]:
 - (i) in addition to Article 17, indemnify, defend and hold harmless Hercules and the Eligible Recipients and their respective officers, directors, employees, agents, representatives, successors, and assigns against any Losses and threatened Losses in connection with any of the following (unless and to the extent the claim for such Losses or threatened Losses is based upon the acts or omissions of Hercules or an Eligible Recipient):
 - a. any act or omission of Supplier, a Supplier Affiliate or Subcontractor relating to the employment by Supplier or termination of the employment of any EU Supplier Personnel by Supplier;
 - b. any claim by a recognized trade union, works council, staff association or other representative, person or body in respect of EU Supplier Personnel;

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- c. upon expiration or termination of the Master Agreement, this Companion Agreement or any part of the Services claimed employment relationship between Hercules or such Eligible Recipient or Hercules Third Party Contractor and any such EU Supplier Personnel under the EC Acquired Rights Directive or other similar applicable Law [to include]:
 - 1. a claimed employment relationship between Hercules or such Eligible Recipient or Hercules Third Party Contractor and any such EU Supplier Personnel under the EC Acquired Rights Directive or other similar applicable Law;
 - 2. the termination by Supplier or a Supplier Affiliate or Subcontractor of the employment of any EU Supplier Personnel in connection with the cessation or termination of any Services previously performed by Supplier or a Supplier Affiliate or Subcontractor; or
 - 3. any claim by a trade union, works council, staff association, worker representative or employee in respect of all or any of the EU Supplier Personnel arising out of a failure or alleged failure by Supplier or a Supplier Affiliate or Subcontractor to comply with their legal obligations to consult, notify and/or perform under the EC Acquired Rights Directive or other similar applicable Law.
 - (d) Hercules shall, save as may otherwise be agreed in the [Specific Country EUARD Agreement], in addition to Article 17 of the Master Agreement, indemnify, defend and hold harmless Supplier and its Affiliates and Subcontractors and their respective officers, directors, employees, agents, representatives, successors, and assigns against any Losses and threatened Losses in connection with any of the following (unless and to the extent the claim for such Losses or threatened Losses is based upon the acts or omissions of Supplier or a Supplier Affiliate or Subcontractor (for the avoidance of doubt an act or omission in this regard shall not include the non employment or dismissal by Supplier of EU Hercules Personnel) against all actions, proceedings, costs (including legal costs), losses, damages, fines, penalties, compensation, awards, demands, orders, expenses and liabilities connected with or arising from any law, constitution, treaty, directive, statutes, secondary legislation, order, code of practice, binding case law, contractual obligation, and other common law right, relating to or connected with the employment and dismissal of employees which the Supplier may suffer or incur in relation to the termination of employment of EU Hercules Personnel and/or, the employment of the EU Hercules Personnel arising from the arrangements anticipated by this Companion Agreement, Master Agreement or any Associated Agreement up to the date of that termination of employment by Hercules.
 - 7. Disputes and Jurisdiction. For avoidance of doubt, any dispute arising under this Companion Agreement shall be resolved in accordance with the provisions of Article 19 of the Master Agreement.
 - 8. Governing Law. Except as otherwise provided in this Companion Agreement, this Companion Agreement and performance under it shall be governed by and construed in accordance with the applicable Laws of the State of Delaware, USA, without giving effect to the principles thereof relating to conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. The election of Delaware Law for this purpose shall not operate or be construed to result in the extra-territorial application of any Laws of the State of Delaware or the United States of America unrelated to the interpretation of contracts.
 - 9. Service of Legal Process. For the sole purpose of service of legal process, receipt of any notice or notification of writ or other judicial proceedings before the courts of Wilmington, Delaware, as selected by the Parties under Section 19.3 of the Master Agreement, the Parties to this Companion Agreement irrevocably appoint the companies below as their agents for service of process and receipt of such notice or
-

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notification, and further elect domicile at the address of said company in Wilmington, Delaware, as follows:

In the case of Hercules:

With a copy to:

and

In the case of Supplier:

With a copy to:

10. Counterparts. This Companion Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.
11. Severability. In the event that any provision of this Companion Agreement conflicts with the Law under which this Companion Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable Law. The remaining provisions of this Companion Agreement and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable to the full extent permitted by Law.
12. Language. The Parties have requested that this Companion Agreement and all documents contemplated hereby or relating thereto be drawn up in the English language. This document shall be translated into an official language of *[name of country]*, if required by Law, but in the event of inconsistencies or conflicts the English version shall prevail.
13. Entire Agreement. Together with the Master Agreement and the documents identified in Section 2.2 of the Master Agreement, as each may be amended, this Companion Agreement and the Schedules, Exhibits and Attachments thereto constitute the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein and therein. This Companion Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertaking, whether written or oral, with respect to the subject matter contained in this Companion Agreement. No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, modification, change, waiver, or discharge is sought to be enforced (except, however, that amendments to the Master Agreement shall be applicable to and, by reference, incorporated in this Agreement).

IN WITNESS WHEREOF, Hercules and Supplier have each caused this Companion Agreement to be executed by their respective duly authorized representatives on the dates set forth below to be effective as of the Agreement Date.

[Hercules name] [Supplier name]

By: By:

Title: Title:

Date: Date:

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Hercules

Exhibit 4

Parent Guaranty

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PARENT GUARANTY

PARENT GUARANTY (this "Guaranty") dated as of January 15, 2007 from Genpact Global Holdings SICAR S.à r.l., a Luxembourg investment company in risk capital in the form of a private limited liability company (*société d'investissement en capital à risque sous forme de société à responsabilité limitée*), with its registered office at 65, boulevard Grande-Duchesse Charlotte, L-1331 Luxembourg, registered with the Luxembourg Trade and Companies Register under the number B 104 548, in favor of Hercules Incorporated ("**Hercules**"), a Delaware corporation having offices at 1313 North Market Street, Wilmington, DE 19894.

WHEREAS

- (G) Hercules is willing to enter into a Master Professional Services Agreement (and to cause various Hercules Affiliates to enter into country-specific Companion Agreements) for certain finance, accounting, customer service, IT infrastructure, application development and maintenance and other business process and information technology services (the Master Professional Services Agreement, the Schedules, Exhibits and Attachments appended thereto and the Companion Agreements executed thereunder are hereinafter referred to collectively as the "**Services Agreement**"), with Genpact International, a Luxembourg private limited liability company (*société à responsabilité limitée*), acting through its Hungarian Branch, having a principal place of business in Duna Plaza Offices, 4th Floor, H-1138, Budapest Vacı ut 178 ("**Supplier**"). For the avoidance of doubt, the Parties acknowledge and agree that the Master Professional Services Agreement and all country-specific Companion Agreements will be executed by Genpact International.
- (H) Supplier will be providing the above-described services to Hercules and designated Eligible Recipients (as defined in the Services Agreement) under the terms and conditions set forth in the Services Agreement.
- (I) The Services Agreement provides for possible payments and indemnifications by Supplier in favor of Hercules and the Eligible Recipients and for the possible recovery of Losses (as that term is defined in the Services Agreement) from Supplier by Hercules and the Eligible Recipients (collectively "**Supplier Financial Obligations**").
- (J) Supplier is a wholly owned subsidiary of Guarantor.
- (K) In furtherance of Hercules' requirements under and in connection with the Services Agreement and in accordance with a request made by Supplier, Guarantor has agreed to enter into this guaranty, upon the following terms and conditions (hereinafter the "**Guaranty**").
- (L) The execution and delivery of this Guaranty by Guarantor is a material inducement to Hercules to enter into the Services Agreement.

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees with Hercules as follows:

1. Guarantor, unconditionally and irrevocably, guarantees that Supplier shall pay all amounts and satisfy other Supplier Financial Obligations in accordance with the provisions of the Services Agreement. This Guaranty is irrevocable, unconditional and absolute, and if for any reason any such payments or Supplier Financial Obligations are not paid or otherwise satisfied, as the case may be, by Supplier when due, then, Guarantor will pay or otherwise satisfy the same or cause the same promptly to be paid or satisfied. Guarantor and Hercules (the "**Parties**") agree that all limitations of liability and exclusions of damages contemplated under the Services Agreement shall at all times apply to Guarantor's obligations under this Agreement, and any amounts paid to Hercules by Supplier (or by any of its subsidiaries, affiliates or insurers) in the form of a settlement or award under the Services Agreement will be included in any calculation of damages or other amounts awarded or settled upon between Guarantor or Hercules for the purposes of determining maximum amounts awardable and other limitations of damages.

For the avoidance of doubt, the Parties acknowledge and agree that this Guaranty extends to a failure to pay or satisfy Supplier Financial Obligations arising under any Companion Agreement, as well as to such a failure impacting an Eligible Recipient other than Hercules. Hercules is expressly authorized to make demands under this Guaranty, institute enforcement actions and obtain recoveries in such circumstances and on behalf of such Eligible Recipients.

For the avoidance of doubt, the Parties acknowledge and agree that Genpact International may assign the Master Professional Services Agreement and/or one or more Companion Agreements to another Affiliate of Guarantor in accordance with Section 21.1 of the Services Agreement and that, in certain circumstances, a Companion Agreement may, by mutual agreement, be executed by another Affiliate of Guarantor (e.g., where Genpact International is prohibited by law from executing the applicable Companion Agreement). It is expressly understood and agreed that, should this occur, this Guaranty shall extend to such other Affiliates of Guarantor and that, for purposes of this Guaranty, the definition of "Supplier" shall be deemed to include such other Affiliates of Guarantor.

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2. Any and all payment or other demands made by Hercules under or in connection with this Guaranty shall be made in writing in accordance with Section 15 below (the "Demand").

3. Subject to any defenses Supplier may have under the Services Agreement and any defenses Guarantor may have under this Guaranty, any and all payments claimed by Hercules under or in connection with this Guaranty shall be paid by Guarantor within ten (10) business days of receipt of the demand by Guarantor by wire transfer to the designated account of Hercules as specified to Guarantor in the Demand.

4. For the avoidance of doubt, Hercules may make Demands on one or several occasions, provided that (i) the aggregate amount payable by Guarantor under this Guaranty shall not exceed the obligations undertaken by the Supplier under the Services Agreement, (ii) the Demand shall be subject to any applicable limitations of liability set forth in Section 18.3 of the Services Agreement, and (iii) there shall be no duplication of sums paid by Supplier under the Services Agreement and sums paid by Guarantor under this Guaranty.

5. The obligations, covenants, agreements and duties of Guarantor under this Guaranty shall in no way be affected or impaired by reason of the happening from time to time of any of the following: (i) any permitted assignment or subcontracting of any of Supplier's interests under the Services Agreement; or (ii) to the extent permitted by applicable law, the voluntary or involuntary liquidation, dissolution, or sale of all or substantially all of the assets, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization of, or other similar proceeding affecting Guarantor or Supplier or any of their respective assets. Guarantor hereby expressly waives notice of nonpayment, nonperformance and any other notice rights.

6. Notice of acceptance of this Guaranty and notice of any obligations or liabilities contracted or incurred by Supplier is hereby waived by Guarantor. The liabilities and obligations of Guarantor hereunder are primary and enforceable either simultaneously with, or after proceeding against Supplier. This Guaranty will remain in full force and effect as to any renewal, modification or extension of the Services Agreement, and will survive the termination or expiration of the Services Agreement.

7. This Guaranty shall terminate automatically on the later of (i) the date on which all of the obligations of Supplier under the Services Agreement have been satisfied, or (ii) the date on which no actions or claims may as a matter of law or contract be brought against Supplier under the Services Agreement.

8. Guarantor represents and warrants to Hercules that:

(f) It is a company validly incorporated and existing under the laws of Luxembourg;

(g) It has the power and the authority to grant this Guaranty;

(h) All necessary corporate action to authorise its entry into and performance of the Guaranty have been taken;

(i) Its entry into and performance of the Guaranty do not conflict with its constitutional documents or any material agreement to which it is a party or otherwise binding upon it; and

(j) The obligations of Guarantor under or in connection with the Guaranty constitute its legal, valid and binding obligations and are enforceable against it in accordance with their terms.

9. This Guaranty and performance under it shall be governed by and construed in accordance with the applicable laws of the State of Delaware, without giving effect to the principles thereof relating to conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Each Party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Guaranty must be brought solely and exclusively in Wilmington, Delaware, and each Party irrevocably submits to the sole and exclusive jurisdiction of the courts in Delaware in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party. Notwithstanding the foregoing, Hercules may seek injunctive or other equitable relief or seek to enforce a judgment in any court of competent jurisdiction.

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [***] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.**

10. This Guaranty may not be modified or amended except by a written agreement duly executed by Guarantor and Hercules. This Guaranty shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

11. Terms defined in the Services Agreement shall have the same meaning in this Guaranty unless otherwise defined in this Guaranty or unless the context requires otherwise.

12. Neither Hercules nor Guarantor may transfer or otherwise assign in any manner all or part of its rights and obligations under this Guaranty without the prior written consent of the other Party hereto, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Hercules may assign its rights and obligations under this Guaranty without such consent as and to the extent it assigns its rights and obligations under the Services Agreement in accordance with Section 21.1 of the Services Agreement

13. In the event any provision of this Guaranty conflicts with the law under which this Guaranty is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Guaranty and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable to the full extent permitted by law.

14. This Guaranty may be executed in any number of counterparts, which constitute together one and the same document.

15. All notices and communications between the Parties shall be in writing, shall be delivered in hard copy using one of the following methods and shall be deemed delivered upon receipt: (i) by hand, (ii) by an express courier with a reliable system for tracking delivery, or (iii) by registered or certified mail, return receipt requested, postage prepaid. Such notices and communications shall be delivered as follows:, unless and until different or additional addresses are substituted:

In the case of Hercules:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: Chief Financial Officer

With a copy to:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: General Counsel

and

In the case of Supplier:

Genpact Global Holdings
Duna Plaza Offices, 4th Floor
H-1138 Budapest Vaci út 178
Hungary
Attention: Board of Managers
Fax: +361-330-8910

With a copy to:

Genpact Global Holdings
DLF City-Phase V
Sector 53, Gurgaon - 122002
Haryana State, India
Attention: General Counsel
Facsimile: +91 124 402 2205

16. Notwithstanding the above, for the purpose of service of legal process and receipt of notice or pleadings in judicial proceedings before the federal or state courts of Delaware, the Parties irrevocably appoint the company below as their agent, and further elect domicile at the address of said company in Delaware, as follows:

In the case of Hercules:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: General Counsel

and

In the case of Supplier:

Genpact
c/o National Corporate Research, Ltd.
615 South DuPont Highway
Dover, DE19901

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [***] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.**

IN WITNESS WHEREOF, Guarantor and Hercules has caused this Guaranty to be executed as of the date first set forth above.

GUARANTOR:

HERCULES:

Genpact Global Holdings SICAR S.à r.l.

Hercules Incorporated

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

HERCULES HCL TECHNOLOGIES

MASTER PROFESSIONAL SERVICES AGREEMENT

This Master Professional Services Agreement (this "**Agreement**") is entered into effective January 12 2007 (the "**Effective Date**") by and between Hercules Incorporated, a Delaware corporation having a principal place of business in Wilmington, Delaware ("**Hercules**"), and HCL America, Inc. , a California corporation having a principal place of business in 330 Potrero Avenue, Sunnyvale, California -94085 and HCL Technologies Limited, an Indian public limited company having its registered office at 806 Siddharth, 96, Nehru Place, New Delhi 110 019 (individually and collectively "**Supplier**").

By executing this Agreement, HCL Technologies Limited agrees to be bound by, and subject to, the terms and conditions of this Agreement. HCL Technologies Limited also agrees to be responsible for any failure by HCL America, Inc. or Supplier Personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Supplier under this Agreement to the same extent as if such failure to perform or comply was committed by HCL Technologies Limited.

WHEREAS, Hercules and Supplier have engaged in extensive negotiations, discussions and due diligence that have culminated in the formation of the contractual relationship described in this Agreement; and

WHEREAS, Hercules desires to procure from Supplier, and Supplier desires to provide to Hercules and the Eligible Recipients, certain IT infrastructure and other information technology products and services described in this Agreement and in the Companion Agreement(s) (defined below), on the terms and conditions specified herein;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and of other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, Hercules and Supplier (collectively, the "**Parties**" and each, a "**Party**") hereby agree as follows:

1 INTRODUCTION

1.1 Performance and Management by Supplier.

Hercules desires that certain IT infrastructure and other information technology products and services (such descriptive terms herein collectively referenced as, "**I/O**") presently performed and managed by or for Hercules and the Eligible Recipients, as each is described in this Agreement and the Schedules and Attachments hereto, be performed and managed by Supplier. Supplier has carefully reviewed Hercules' requirements, has performed all due diligence it deems necessary, and desires to perform and manage such business process products and services for Hercules and the Eligible Recipients.

1.2 Definitions.

Except as otherwise expressly provided in this Agreement, all capitalized terms used in this Agreement shall have the meanings set forth in Schedule A.

1.3 Other Terms

The terms defined in this Article 1 and Schedule A include the plural as well as the singular and the derivatives of such terms. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection or other subdivision. Article, Section, Subsection and Attachment references refer to articles, sections and subsections of, and attachments to, this Agreement. The words "include" and "including" shall not be construed as terms of limitation. The words "day," "month," and "year" mean, respectively, calendar day, calendar month and calendar year. As stated in Section 21.3, the word "notice" and "notification" and their derivatives means notice or notification in writing. Other terms used in this Agreement are defined in the context in which they are used and have the meanings there indicated.

2 CONTRACT DOCUMENTS

2.1 Associated Contract Documents.

This Agreement includes each of the following schedules and their attached exhibits, all of which are attached to this Agreement and incorporated into this Agreement by this reference. Unless otherwise expressly stated, references to specific Schedules include all numbered subsidiary Schedules and attachments (e.g., references to Schedule E include not only Schedule E, but also Schedules J.1, E.1, E.3, E.3 and E.5).

- A Glossary of Terms
 - B Software
 - C Key Supplier Personnel and Competitive Restrictions
 - C.1 Key Supplier Personnel
 - C.2 Competitive Restrictions
 - D Subcontractors and Managed Third Parties
 - D.1 Subcontractors
 - D.2 Managed Third Parties
 - E Statement of Work
 - E.1 IT Infrastructure
 - F Reserved
 - G Service Levels
 - G.1 Service Levels, Key Measures, and Deliverable Credits
 - H Transition
 - H.1 Critical Transition Milestones and Related Deliverable Credits
 - H.2 Detailed Transition Methodology and Plan
 - I Termination Assistance Services
 - J Supplier Charges
 - J.1 Responsibility Matrix
 - K Hercules Base Case
 - L Reserved
 - M Staffing Plan
 - N Termination Charges
 - O Facilities and Equipment
 - O.1 Hercules Facilities
 - O.2 Supplier Facilities
 - O.3 Hercules Provided Equipment
 - P Direct Hercules Competitors
 - Q Satisfaction Survey
 - R Reports
 - S Governance Model
 - T Hercules Rules, Standards, and Policies
 - T.1 Hercules Rules
 - T.2 Hercules IT, Security and Related Standards
 - T.3 Hercules Business Practices Policy
 - U Termination/Expiration Rights
 - V Affected Employees
- Exhibit 1: Form of Non-Disclosure Agreement
Exhibit 2: Form of Invoice
Exhibit 3: Form of Companion Agreement

3 TERM

3.1 Initial Term.

The initial Term of this Agreement shall commence as of 12:00:01 a.m., Greenwich Mean Time on the Effective Date and continue until 11:59:59 p.m., Greenwich Mean Time, on December 31, 2012, unless this Agreement is terminated

as provided herein or extended as provided in **Section 3.2** or **4.3(a)(2)**, in which case the Term shall end at 11:59:59 p.m., Greenwich Mean Time, on the effective date of such termination or the date to which this Agreement is extended.

3.2 Extension.

By giving notice to Supplier no less than ninety (90) days prior to the expiration date of the initial Term or any extension, Hercules shall have the right to extend the Term for up to two (2) years on the same rates, charges and terms and conditions set forth in this Agreement, including the economic change adjustment set forth in Section [] of **Schedule J**. No Termination Charges shall be applicable to any termination on or after the expiration of the initial Term.

4 SERVICES

4.1 Overview.

(a) **Services.** Commencing on the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan), Supplier shall provide the Services to Hercules, and, upon Hercules' request, to Eligible Recipients and Authorized Users designated by Hercules. The Services shall consist of the following, as they may evolve during the Term of this Agreement or be supplemented, enhanced, modified or replaced:

- (i) The services, functions and responsibilities described in this Agreement and its Schedules and attachments, which include the Technology and Business Process Evolution and the following:
 - (1) Transition Services, as described in **Sections 4.2** and **Schedules H**;
 - (2) Services, as further described in **Schedule E**;
 - (3) Projects, as further described in **Section 4.5**;
 - (4) New Services, as further described in **Section 4.4**; and
 - (5) Termination Assistance Services, as described in **Section 4.3** and **Schedule I**.
- (ii) The ITO related services, functions and responsibilities performed during the twelve (12) months preceding the Commencement Date by Hercules Personnel who were displaced or whose functions were displaced as a result of this Agreement, even if the service, function, or responsibility is not specifically described in this Agreement, provided that, (A) in the event of a direct conflict between **Schedule E** and the scope of services as described in this **Section 4.1(a)(ii)**, this **Section 4.1(a)(ii)** shall not be construed as altering and/or superseding **Schedule E**, and (B) the scope of services as described in this **Section 4.1(a)(ii)** shall not be construed as extending to New Services or Retained Functions.
- (iii) The ITO related services, functions and responsibilities reflected in those categories of the Hercules Base Case which Supplier is assuming pursuant to this Agreement, provided, however, (A) in the event of a direct conflict between **Schedule E** and the scope of services as described in this **Section 4.1(a)(iii)**, this **Section 4.1(a)(iii)** shall not be construed as altering and/or superseding **Schedule E**, and (B) the scope of services as described in this **Section 4.1(a)(iii)** shall not be construed as extending to New Services or Retained Functions.

For purposes of **Section 4.1(a)(ii) and (iii) and Section 4.2(b)**, "Retained Functions" shall mean services, functions and responsibilities performed during the twelve (12) months preceding the Commencement Date by Hercules Personnel who were displaced or whose functions were displaced as a result of this Agreement, but which are designated as retained services, functions and responsibilities to be performed by Hercules or its Affiliates or Eligible Recipients.

- (b) **Included Services.** If any services, functions or responsibilities not specifically described in this Agreement are an inherent, necessary or customary part of the Services or are required for proper performance or provision of the Services in accordance with this Agreement, they shall be deemed to be included within the scope of the Services to be delivered for the Charges, as if such services, functions or responsibilities were specifically described in this Agreement, provided, however, (A) in the event of a direct conflict between Schedule E and the scope of services as described in this Section 4.1(b), this Section 4.1(b) shall not be construed as altering and/or superseding Schedule E, and (B) the scope of services as described in this Section 4.1(b) shall not be construed as extending to New Services or Retained Functions.
- (c) **Required Resources.** Except as otherwise expressly provided in this Agreement, Supplier shall be responsible for providing the facilities, personnel, technical knowledge, expertise and other resources necessary to provide the Services. In addition, except as otherwise expressly provided in this Agreement, Supplier shall be responsible for providing Equipment and Software at Supplier Facilities as necessary to provide the Services from such Supplier Facilities. In all such cases, the Equipment, Software, facilities, personnel and other resources provided by Supplier shall be subject to and in accordance with the applicable terms of this Agreement.
- (d) **Supplier Responsibility.** Supplier shall be responsible for the provision of the Services in accordance with this Agreement even if such Services are actually performed or dependent upon services performed by (i) Subcontractors, , or (ii) Managed Third Parties, to the extent provided in Schedules E and D.2.
- (e) **Electronic Delivery.** To the maximum extent possible, and except as otherwise directed by Hercules or expressly provided in this Agreement, Supplier shall deliver all Software, documentation, reports and other contract deliverables to Hercules and the Eligible Recipients at the designated Hercules Site by electronic transmission or by load and leave (where no tangible storage media is physically transferred to Hercules or the Eligible Recipients).

4.2 Transition Services.

- (a) **Transition.** During the Transition Period, Supplier shall perform the Transition Services and provide the deliverables described in the Transition Plan, which is attached to this Agreement as Schedule H. If any services, functions or responsibilities not specifically described in the Transition Plan are an inherent, necessary or customary part of the Transition Services or are required for the proper performance of the Transition Services in accordance with this Agreement, they shall be deemed to be included within the scope of the Transition Services to be delivered for no additional charge, as if such services, functions or responsibilities were specifically described in the Transition Plan. During the Transition Period, Hercules will perform those tasks which are designated to be Hercules' responsibility in the Transition Plan, provided that, Hercules shall not be obligated to perform any tasks during the Transition Period that are not set forth in such Transition Plan. If any services, functions or responsibilities not specifically described in the Transition Plan are an inherent or necessary part of the Hercules transition responsibilities or are required for proper performance or provision of such responsibilities, they shall be deemed to be included within the scope of the Hercules transition responsibilities as if such services, functions or responsibilities were specifically described as such in the Transition Plan. Unless otherwise agreed, Hercules shall not incur any charges, fees or expenses payable to Supplier or third parties in connection with the Transition Services, other than those charges, fees and expenses specified in Schedule J and those incurred by Hercules in connection with its performance of tasks designated in the Transition Plan as Hercules' responsibility.
 - (b) **Transition Plan.** Schedule H.1 is an outline of the Transition Plan that identifies (i) the transition activities to be performed by Supplier, (ii) the date(s) by which each such activity or deliverable is to be completed ("**Transition Milestones**"), and (iii) the Deliverable Credits associated with the failure to meet specific Transition Milestones. Within thirty (30) days after the Effective Date, Supplier shall deliver to Hercules a detailed Transition Plan for Hercules' review, comment and approval. The proposed detailed Transition Plan shall describe in greater detail the specific transition activities to be performed by Supplier, but, unless
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otherwise agreed by Hercules, shall be consistent in all material respects with the initial Transition Plan, including the activities, deliverables, Transition Milestones and Deliverable Credits described therein. The detailed Transition Plan shall identify and describe, among other things, (i) the transition activities to be performed by Supplier and the significant components and subcomponents of each such activity, (ii) the deliverables to be completed by Supplier, (iii) the Transition Milestone for each such activity or deliverable, (iv) a process and set of standards acceptable to Hercules to which Supplier will adhere in the performance of the Transition Services and that will enable Hercules to determine whether Supplier has successfully completed the transition and the activities and deliverables associated with each Transition Milestone, in accordance with the Acceptance criteria specified in the Transition Plan, (v) the contingency or risk mitigation strategies to be employed by Supplier in the event of disruption or delay, (vi) any transition responsibilities to be performed or transition resources to be provided by Hercules or the Eligible Recipients or Hercules Third Party Contractors, and (vii) a detailed work plan identifying the specific transition activities to be performed by individual Supplier Personnel on a weekly basis during the Transition Period. The detailed Transition Plan also shall identify any related documents contemplated by the Agreement and/or required to effectuate the transition to be executed by the Parties. Upon approval by Hercules, the detailed Transition Plan shall be appended to the Agreement as Schedule H.2.

- (c) **Performance.** Supplier shall perform the Transition Services described in the Transition Plan in accordance with the timetable and the Transition Milestones set forth in the Transition Plan. Supplier shall provide all cooperation and assistance reasonably required or requested by Hercules in connection with Hercules' evaluation or testing of the deliverables set forth in the Transition Plan. Supplier shall perform the Transition Services in a manner that will not (i) disrupt or have an unnecessary adverse impact on the business or operations of Hercules or the Eligible Recipients, (ii) degrade the Services then being received by Hercules or the Eligible Recipients, or (iii) disrupt or interfere with the ability of Hercules or the Eligible Recipients to obtain the full benefit of the Services, except as may be otherwise provided in the Transition Plan. Prior to undertaking any transition activity, Supplier shall discuss with Hercules all known Hercules-specific material risks and shall not proceed with such activity until Hercules is reasonably satisfied with the plans with regard to such risks (provided that, neither Supplier's disclosure of any such risks to Hercules, nor Hercules' acquiescence in Supplier's plans, shall operate or be construed as limiting Supplier' responsibilities under this Agreement). Supplier shall identify and resolve, with Hercules' reasonable assistance, any problems that may impede or delay the timely completion of each task in the Transition Plan that is Supplier's responsibility and shall use all commercially reasonable efforts to assist Hercules with the resolution of any problems that may impede or delay the timely completion of each task in the Transition Plan that is Hercules' responsibility.
 - (d) **Meetings; Reports.** Supplier shall meet at least weekly with Hercules to report on its progress in performing its responsibilities and meeting the timetable set forth in the Transition Plan. Supplier shall include Supplier Personnel in such meetings as and to the extent appropriate or requested by Hercules. Supplier also shall provide written reports to Hercules at least weekly regarding such matters, and shall provide oral reports more frequently if reasonably requested by Hercules. Promptly upon receiving any information indicating that Supplier may not perform its responsibilities or meet the timetable set forth in the Transition Plan, Supplier shall notify Hercules in writing of material delays and shall identify for Hercules' consideration and approval specific measures to address such delay and mitigate the risks associated therewith.
 - (e) **Suspension or Delay of Transition Activities.** Hercules reserves the right, in its sole discretion, to suspend or delay the performance of the Transition Services and/or the transition of all or any part of the Transition Services. If Hercules elects to exercise such right and Hercules' decision is based on Supplier's failure to perform its obligations under this Agreement, Hercules shall not incur any additional Charges, Termination Charges, or reimbursable expenses in connection with such decision. If Hercules' decision is not based on Supplier's failure to perform its obligations under this Agreement, Hercules shall reimburse Supplier for any additional costs reasonably incurred by Supplier as a result of such decision, provided that Supplier notifies Hercules in advance of such costs, obtains Hercules' approval prior to incurring such costs, and uses commercially reasonable efforts to minimize such costs.
 - (f) **Failure to Meet Transition Milestones.**
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- (i) The Parties acknowledge and agree that the Transition Plan specifies various Transition Milestones by which Transition activities and/or deliverables are to be completed. Subject to **Section 10.2**, if Supplier fails to meet a Transition Milestone, Supplier shall pay Hercules the Deliverable Credits specified in **Schedule H** and **Attachment G.3** for such Transition Milestone.
 - (ii) Neither the Transition Services nor the activities and deliverables associated with individual Transition Milestones will be deemed complete until Hercules' Acceptance of such activities and deliverables.
- (g) **Termination for Cause.** Notwithstanding the foregoing, and in addition to any other termination right Hercules may have under this Agreement, Hercules may terminate this Agreement in whole or in part for cause if (i) Supplier fails to comply with its obligations with respect to the provision of Transition Services and such failure causes or will cause a material disruption to or otherwise has or will have a material adverse impact on the operations or businesses of Hercules or the Eligible Recipients, (ii) Supplier materially breaches its obligations with respect to the provision of Transition Services and fails to cure such breach within fifteen (15) days after its receipt of notice, or (iii) Supplier fails to meet a Transition Milestone and such failure constitutes a material breach of this Agreement and Supplier fails to cure such breach within fifteen (15) days after its receipt of notice. In addition, unless otherwise agreed, if Supplier fails to meet the Transition Milestone for the completion of the transition of all Services to Supplier by more than fifteen (15) days, Hercules may terminate this Agreement for cause without requirement of notice or opportunity to cure. In all such events, subject to **Section 18.3**, Hercules may recover the damages suffered by Hercules or the Eligible Recipients in connection with such a termination, provided that, if such termination is based on Supplier's failure to meet a Transition Milestone, Supplier shall be entitled to set-off against such damages any Deliverable Credits Supplier has paid for the failure to meet such Transition Milestone. Nothing herein shall operate or be construed as limiting Hercules' obligation to pay undisputed Charges for Transition Services delivered prior to the effective date of any such termination in accordance with and subject to **Section 12** of the Agreement.

4.3 Termination Assistance Services.

- (a) **Availability.** As part of the Services, and for the Charges set forth in **Sections 4.3(b)(8)** and **4.3(b)(9)** and **Schedule J**, Supplier shall provide to Hercules, the Eligible Recipients and/or their designee(s) the Termination Assistance Services described in **Section 4.3(b)** and **Schedule I**.
 - (1) **Period of Provision.** Supplier shall provide such Termination Assistance Services to Hercules and any Eligible Recipient, or their designee(s), (i) commencing upon notice from Hercules up to six (6) months prior to the expiration of the Term or on such earlier date as Hercules may request and continuing for up to twelve (12) months following the effective date of the expiration of the Term (as such Term may be extended pursuant to **Section 3.2**), (ii) commencing upon any notice of termination (including termination for cause by Hercules or Supplier or termination for convenience by Hercules) of the Term with respect to all or any part of the Services, and continuing for up to twelve (12) months following the effective date of such termination of all or part of the Services, or (iii) commencing upon notice of termination of all or part of the Services to an Eligible Recipient and continuing for up to twelve (12) months following the effective date of such termination.
 - (2) **Extension of Services.** Hercules may elect, upon thirty (30) days prior notice, to extend the period following the effective date of any expiration/termination for the performance of Termination Assistance Services, provided that the period between the effective date and the completion of all Termination Assistance Services is not greater than twelve (12) months. If Hercules provides less than thirty (30) days prior notice of an extension, Supplier shall nonetheless use commercially reasonable efforts to comply with Hercules' request and provide the requested Services and/or Termination Assistance Services.
 - (3) **Firm Commitment.** Supplier shall provide Termination Assistance Services to Hercules and any Eligible Recipients, or their designee(s), regardless of the reason for the expiration or termination of
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the Term; provided, however, if the Agreement is terminated by Supplier under **Section 20.1(b)(i)**, Supplier may require Hercules to pay Supplier in advance in accordance with **Section 4.3(a)(5)** for Termination Assistance Services to be provided or performed under this **Section 4.3**. At Hercules' request, Supplier shall provide Termination Assistance Services directly to an Eligible Recipient or an Entity acquiring Control of an Eligible Recipient; provided that, unless otherwise agreed by the Parties, all such Termination Assistance Services shall be performed subject to and in accordance with the terms and conditions of this Agreement.

- (4) **Performance.** All Termination Assistance Services shall be provided subject to and in accordance with the terms and conditions of this Agreement. Supplier shall perform the Termination Assistance Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as it provided and was required to provide the same or similar Services during the Term. The quality and level of performance of the Termination Assistance Services provided by Supplier following the expiration or termination of the Term as to all or part of the Services or Supplier's receipt of a notice of termination or non-renewal shall continue to meet or exceed the Service Levels and shall not be degraded or deficient in any respect, unless and to the extent Hercules reprioritizes the work activities of assigned Supplier Personnel and/or modifies the applicable work requirements or performance standards in accordance with **Section 4.3(b)(9)**. Accordingly, subject to **Section 4.3(b)(9)**, Service Level Credits shall be assessed for any failure to meet Service Levels during the period Termination Assistance Services are provided. Supplier Personnel (including all Key Supplier Personnel) reasonably considered by Hercules to be critical to the performance of the Services and Termination Assistance Services shall be retained on the Hercules account through the completion of all relevant Termination Assistance Services.
- (5) **Advance Payment.** If Hercules is obligated to pay in advance for Termination Assistance Services, Supplier shall present an invoice for the estimated Charges for such Termination Assistance Services at least fifteen (15) days prior to the beginning of the month in which such Services are to be provided. Subject to **Section 12.4**, Hercules shall then pay such Charges on or before the first day of such month. The estimated Charges shall then be reconciled with the actual Charges for Termination Assistance Services provided in such month, and any additional Charges or credits will be reflected on the next invoice delivered after the end of such month.
- (b) **Scope of Termination Assistance Service.** As part of the Termination Assistance Services, Supplier shall timely transfer the control and responsibility for all Services previously performed by or for Supplier to Hercules, the Eligible Recipients and/or their designee(s) and shall execute any documents reasonably necessary to effect such transfers. Additionally, Supplier shall provide any and all applicable information and assistance requested by Hercules to allow:
- (i) the Systems and processes associated with the Services to operate efficiently;
 - (ii) the Services to continue without interruption or adverse effect; and
 - (iii) the orderly transfer of the Services to Hercules, the Eligible Recipients and/or their designee(s).

The Termination Assistance Services shall include, as requested by Hercules, the Services, functions and responsibilities set forth on **Schedule I**. In addition, in connection with such termination or expiration, Supplier shall provide the following assistance and Services at Hercules' direction:

- (1) **General Support.** Supplier shall, to the extent applicable, (i) assist Hercules, an Eligible Recipient and/or their designee(s) in developing a written transition plan for the transition of the Services to Hercules, such Eligible Recipient, or their designee(s), which plan shall include (as requested by Hercules) capacity planning, business process planning, facilities planning, human resources planning, technology planning, telecommunications planning and other planning necessary to effect the transition, (ii) perform programming and consulting services as requested to assist in implementing the transition plan, (iii) train personnel designated by Hercules, an Eligible Recipient or their designee(s) in the use of any business processes, work instructions and work procedures and
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any Equipment, Software, Systems, Materials and tools used in connection with the provision of the Services, (iv) catalog all business processes, work instructions, work procedures, Software, Hercules Data, Equipment, Materials, Third Party Contracts and tools used to provide the Services, (v) provide machine readable and printed listings and associated documentation for source code for Software owned by Hercules and source code to which Hercules is entitled under this Agreement and assist in its re-configuration, (vi) analyze and report on the space required for the Hercules Data and the Software needed to provide the Services, (vii) assist in the execution of a parallel operation, data migration and testing process until the successful completion of the transition to Hercules, an Eligible Recipient or their designee(s), (viii) create and provide copies of the Hercules Data in the format and on the media reasonably requested by Hercules, an Eligible Recipient or their designee(s), (ix) provide a complete and up-to-date, electronic copy of the Policy and Procedures Manual and applicable work instructions and work procedures in the format and on the media reasonably requested by Hercules, an Eligible Recipient or their designee(s) and (x) provide other technical assistance as requested by Hercules, an Eligible Recipient or their designee(s).

(2) **Hiring.**

- (i) Hercules, the Eligible Recipients and/or their designee(s) shall be permitted to undertake, without interference from Supplier, Supplier Subcontractors (subject to **Section 4.3(b)(2)(ii)** below) or Supplier Affiliates (including counter-offers), to hire, effective after the later of the expiration or termination of the Term or completion of any Termination Assistance Services requested under **Section 4.3(b)(8)**, any (i) Supplier Personnel assigned to the performance of Services at Hercules Facility(ies) during the twelve (12) months preceding the expiration or termination date, (ii) Supplier Personnel assigned to the performance of Services at Supplier Facility(ies) in the United States or European Union during the twelve (12) months preceding the expiration or termination date or (iii) other Supplier Personnel assigned to the performance of Services during the twelve (12) months preceding the expiration or termination date whom Supplier intends to terminate in connection with such expiration or termination. Supplier shall waive, and shall cause its Subcontractors (as contemplated in **Section 4.3(b)(2)(ii)** below) and Affiliates to waive, their rights, if any, under contracts with such personnel restricting the ability of such personnel to be recruited or hired by Hercules, the Eligible Recipients and/or their designee(s). Supplier shall provide Hercules, the Eligible Recipients and/or their designee(s) with reasonable assistance in their efforts to hire such Supplier Personnel, and shall give Hercules, the Eligible Recipients and/or their designee(s) reasonable access to such Supplier Personnel for interviews, evaluations and recruitment. Hercules shall endeavor to conduct the above-described hiring activity in a manner that is not unnecessarily disruptive of the performance by Supplier of its obligations under this Agreement.
- (ii) With respect to Subcontractors that are not Supplier Affiliates, Supplier shall use all commercially reasonable efforts to (A) obtain for Hercules, the Eligible Recipients and their designee(s) the rights specified in **Section 4.3(b)(2)(i)**, and (B) ensure that such rights are not subject to subsequent Subcontractor approval or the payment by Hercules, an Eligible Recipient or their designee(s) of any fees. If Supplier is unable to obtain any such rights with respect to a Subcontractor, it shall notify Hercules in advance and shall not use such Subcontractor without Hercules' approval (and absent such approval, Supplier's use of any such Subcontractor shall obligate Supplier to obtain or arrange, at no additional cost to Hercules, the rights specified in **Section 4.3(b)(2)(i)**, for Hercules, the Eligible Recipients and their designee(s) upon expiration or termination).

Promptly upon Hercules providing notice for provision of Termination Assistance Services pursuant to **Section 4.3(a)(1)**, Supplier shall provide to Hercules a list, organized by location, of the Supplier Personnel who are eligible for solicitation for employment pursuant to this **Section 4.3(b)(2)**. Subject to applicable Privacy Laws, such list shall specify each such Supplier Personnel's job title, annual total compensation, leave status and years of service.

- (3) **Software.** As provided in **Section 14.6**, and subject to **Section 6.4(c)**, Supplier shall provide, and hereby grants to Hercules (with a right to sublicense to the Eligible Recipients and/or Hercules' designee), certain license, sublicense and/or other rights to certain Software and other Materials used by Supplier, Supplier Affiliates or Subcontractors in performing the Services.
- (4) **Equipment.** Subject to **Section 6.4(c)**, Hercules, the Eligible Recipients and/or their designee(s) shall have the right (but not the obligation) to purchase, or assume the lease for, any Equipment owned or leased by Supplier that is substantially dedicated by Supplier, Supplier Subcontractors or Supplier Affiliates to the performance of the Services. Such Equipment shall be transferred in good working condition, reasonable wear and tear excepted, as of the expiration or termination date or the completion of any Services requiring such Equipment requested by Hercules under **Section 4.3(b)(8)**, whichever is later. Supplier shall, at no additional charge to Hercules, maintain such Equipment through the date of transfer so as to be eligible for the applicable manufacturer's maintenance program at no additional charge to Hercules. In the case of Supplier-owned Equipment, Supplier shall grant to Hercules, the Eligible Recipients and/or their designee(s) a warranty of title and a warranty that such Equipment is free and clear of all liens and encumbrances. Such conveyance of Supplier-owned Equipment by Supplier to Hercules, the Eligible Recipients and/or their designee(s) shall be at net book value (calculated in accordance with generally acceptable accounting principles applicable in the country in which such Equipment is located). Unless otherwise agreed, Hercules shall pay any sales tax or duties associated with such conveyance. At Hercules' request, the Parties shall negotiate in good faith and agree upon the form and structure of the purchase. In the case of leased Equipment, Supplier shall (i) represent and warrant that the lessee is not in default under the lease, (ii) represent and warrant that all payments thereunder have been made through the date of transfer, and (iii) notify Hercules of any lessor defaults of which it is aware at the time. EXCEPT AS PROVIDED ABOVE, AND WITHOUT LIMITING SUPPLIER'S OTHER OBLIGATIONS UNDER THIS AGREEMENT, SUPPLIER DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PERFORMANCE OF SUPPLIER OWNED OR LEASED EQUIPMENT FOLLOWING THE CONVEYANCE OF SUCH EQUIPMENT PURSUANT TO THIS SECTION.
- (5) **Hercules Facilities, Equipment and Software.** Supplier shall vacate the Hercules Facilities and return to Hercules, if not previously returned, any Hercules owned Equipment, Hercules leased Equipment, Hercules Owned Software, Hercules licensed Software and Hercules Owned Materials, in condition at least as good as the condition when made available to Supplier, ordinary wear and tear excepted. Such Hercules Facilities, Equipment, Software and Materials shall be vacated and returned at the expiration or termination date or the completion of any Services requiring such Hercules Facilities, Equipment, Software and Materials requested by Hercules under **Section 4.3(b)(8)**, whichever is later.
- (6) **Supplier Subcontracts and Third Party Contracts.** Supplier shall inform Hercules of all subcontracts or Third Party Contracts (between third parties and either Supplier, Supplier Subcontractors, or Supplier Affiliates) used by Supplier, Supplier Subcontractors or Supplier Affiliates to perform the Services. Subject to **Sections 6.4(c)**, Supplier shall, at Hercules' request, cause any such Subcontractors, Supplier Affiliates or third party contractors to permit Hercules, the Eligible Recipients and/or their designee(s) to assume prospectively any or all such contracts or to enter into new contracts with Hercules, the Eligible Recipients or their designees on substantially the same terms and conditions, including price. Supplier shall so assign the designated subcontracts and Third Party Contracts to Hercules, the Eligible Recipients and/or their designee(s) as of the expiration or termination date or the completion of any Termination Assistance Services requiring such subcontracts or Third Party Contracts requested by Hercules under **Section 4.3(b)(8)**, whichever is later. There shall be no charge or fee imposed on Hercules, the Eligible Recipients and/or their designee(s) by Supplier or its Subcontractors, Affiliates or third party contractors for such assignment. Supplier shall (i) represent and warrant that it is not in default under such subcontracts and Third Party Contracts, (ii) represent and warrant that all payments thereunder through the date of assignment are current, and (iii) notify Hercules of any Subcontractor's or third
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party contractor's default with respect to such subcontracts and Third Party Contracts of which it is aware at the time.

- (7) **Intentionally blank.**
- (8) **Extension of Services.** As part of the Termination Assistance Services, for a period of twelve (12) months following the expiration or termination date, Supplier shall provide to the Eligible Recipient(s), under the terms and conditions of this Agreement, at Hercules' request, any or all of the Services being performed by Supplier prior to the expiration or termination date, including those Services described in Article 4 and Schedule E. To the extent Hercules requests such Services, Hercules will pay Supplier the Charges specified in Schedule J that Hercules would have been obligated to pay Supplier for such Services if this Agreement had not yet expired or been terminated. To the extent Hercules requests a portion (but not all) of the Services included in a particular Charge, the amount to be paid by Hercules will be equitably adjusted in proportion to the portion of the Services included in the applicable Charge that Supplier will not be providing or performing.
- (9) **Rates and Charges.** Except as provided below and in Section 4.3(b)(8), the Parties anticipate that the Termination Assistance Services requested by Hercules will be provided by Supplier, at no additional charge to Hercules, using Supplier Personnel already assigned to Hercules and without adversely affecting Supplier's ability to meet its performance obligations. If material Termination Assistance Services requested by Hercules cannot be provided by Supplier using Supplier Personnel then assigned to Hercules without adversely affecting Supplier's ability to meet its performance obligations, Hercules, in its sole discretion, may forego or delay any work activities or temporarily or permanently adjust the work to be performed by Supplier, the schedules associated therewith or the Service Levels to permit the performance of such Termination Assistance Services using such personnel. To the extent Hercules authorizes Supplier to use additional Supplier Personnel to perform material Termination Assistance Services requested by Hercules, Hercules shall pay Supplier the rates and charges specified in Schedule J, or, if no such rates and charges are specified in Schedule J, a negotiated fee which shall be no less favorable to Hercules than the lower of the most favorable rates available under then-current Hercules/Supplier contracts for comparable services or Supplier's then current commercially available rates, for the additional Supplier Personnel required to perform such Termination Assistance Services (but only if Supplier notifies Hercules in advance of such Charges, obtains Hercules' approval prior to incurring such Charges, and uses commercially reasonable efforts to minimize such Charges).
- (c) **Resources.** Supplier shall ensure that, at all times during the Term, on thirty (30) days notice, it is able to deploy all necessary resources to perform Termination Assistance Services in accordance with this Section 4.3.
- (d) **Survival of Terms.** This Section 4.3 shall survive termination/expiration of the Term.

4.4 New Services.

- (a) **Procedures.** If Hercules requests that Supplier perform any New Services reasonably related to the Services or other services generally provided by Supplier, Supplier shall promptly prepare a New Services proposal for Hercules' consideration. Unless otherwise agreed by the Parties, Supplier shall prepare such New Services proposal at no additional charge to Hercules and shall deliver such proposal to Hercules within ten (10) business days of its receipt of Hercules' request; provided, that Supplier shall use all commercially reasonable efforts to respond more quickly in the case of a pressing business need or an emergency situation. Hercules shall provide such information as Supplier reasonably requests in order to prepare such New Service proposal. Such New Services proposal shall include, among other things, the following at a level of detail sufficient to permit Hercules to make an informed business decision: (i) a project plan and fixed price or price estimate for the New Service; (ii) a breakdown of such price or estimate, (iii) a description of the service levels to be associated with such New Service, (iv) a schedule for commencing and completing the New Service, (v) a description of the new hardware or software to be provided by Supplier in connection with the New Service, (vi) a description of the software, hardware and other resources, including Resource
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Unit utilization, necessary to provide the New Service, (vii) any additional facilities or labor resources to be provided by Hercules or the Eligible Recipients in connection with the proposed New Service, (viii) any risks associated with the New Service and/or the integration of the New Service into the existing environment, and (ix) in the case of any Developed Materials to be created through the provision of the proposed New Services, any ownership rights therein that differ from the provisions of **Section 14.2**. Hercules may accept or reject any New Services proposal in its sole discretion and Supplier shall not be obligated to perform any New Services to the extent the applicable proposal is rejected. Unless the Parties otherwise agree, if Hercules accepts Supplier's proposal, Supplier will perform the New Services and be paid in accordance with the proposal submitted by Supplier and the provisions of this Agreement. Upon Hercules' acceptance of a Supplier proposal for New Services, the scope of the Services will be expanded and this Agreement will be modified to include such New Services. Notwithstanding any provision to the contrary, (i) Supplier shall act reasonably and in good faith in formulating such pricing proposal, (ii) Supplier shall use commercially reasonable efforts to identify potential means of reducing the cost to Hercules, including utilizing Subcontractors as and to the extent appropriate, (iii) such pricing proposal shall be no less favorable to Hercules than the pricing and labor rates set forth herein for comparable Services, and (iv) such pricing proposal shall take into account the existing and future volume of business between Hercules and Supplier.

- (b) **Use of Third Parties.** Hercules may elect to solicit and receive bids from third parties to perform any New Services. If Hercules elects to use third parties to perform New Services, (i) such New Services shall not be deemed "Services" under the provisions of this Agreement, and (ii) Supplier shall cooperate with such third parties as provided in **Section 4.6**.
- (c) **Services Evolution and Modification.** The Parties anticipate that the Services will evolve and be supplemented, modified, enhanced or replaced over time to keep pace with technological advancements and improvements in the methods of delivering Services and changes in the businesses of Hercules and the Eligible Recipients. The Parties acknowledge and agree that these changes will modify the Services and will not be deemed to result in New Services unless the changed services meet the definition of New Services.
- (d) **Authorized User and Eligible Recipient Requests.** Supplier shall promptly inform the Hercules Relationship Manager or his or her designee of requests for New Services from Authorized Users or Eligible Recipients, and shall submit any proposals for New Services to the Hercules Relationship Manager or his or her designee. Supplier shall not agree to provide New Services to any Authorized Users or Eligible Recipients without the prior written approval of the Hercules Relationship Manager or his or her designee. If Supplier fails to comply strictly with this **Section 4.4(d)**, it shall receive no compensation for any services rendered to any person or entity in violation of such provision.
- (e) **Efforts to Reduce Costs and Charges.** From time to time, Hercules may request that the Parties work together to identify ways to achieve reductions in the cost of service delivery and corresponding reductions in the Charges to be paid by Hercules by modifying or reducing the nature or scope of the Services to be performed by Supplier, the applicable Service Levels or other contract requirements. If requested by Hercules, Supplier shall promptly prepare a proposal at a level of detail sufficient to permit Hercules to make an informed business decision identifying all viable means of achieving the desired reductions without adversely impacting business objectives or requirements identified by Hercules. In preparing such a proposal, Supplier shall give due consideration to any means of achieving such reductions proposed by Hercules. Supplier shall negotiate in good faith with Hercules about each requested reduction in Charges and, without disclosing the actual cost of providing the Services, shall identify for Hercules if and to what extent the cost of service delivery may be reduced by implementing various changes in the contract requirements, including the applicable Service Levels. Hercules shall not be obligated to accept or implement any proposal; and Supplier shall not be obligated to implement any change that affects the terms of this Agreement unless and until such change is reflected in a written amendment to this Agreement.

4.5 Billable Projects.

- (a) **Procedures and Performance.** Supplier shall perform Projects requested and approved by Hercules as part of the Services. A "Project" is a discrete unit of non-recurring work that is not an inherent, necessary or customary part of the day-to-day Services, and is not required to be performed by Supplier to meet the existing Service Levels (other than Service Levels related to Project performance). A Project may consist of
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or include work that would otherwise be treated as New Services. The Supplier Personnel assigned to perform such Projects shall possess the training, education, experience, competence and skill to perform such work. The Hercules Relationship Manager or his or her designee shall request, define and set the priority for such Projects.

- (b) **Additional Work or Reprioritization.** The Hercules Project Executive or his or her designee may identify new or additional work activities to be performed by Supplier Personnel (including work activities that would otherwise be treated as a Project or New Services) or reprioritize or reset the schedule for existing work activities to be performed by such Supplier Personnel. To the extent the work activities requested by Hercules can be provided by Supplier using personnel already assigned to Hercules without impacting the established schedule for other tasks or the performance of the Services in accordance with the Service Levels, there will be no additional charge to Hercules for such work. If the work activities requested by Hercules cannot be provided by Supplier using personnel then assigned to Hercules without impacting the Service Levels, Hercules, in its sole discretion, may forego or delay any work activities or temporarily or permanently adjust the work to be performed by Supplier, the schedules associated therewith or the Service Levels to permit the performance of such work using personnel already assigned to perform the Services.

4.6 Right to In-Source or Use Third Parties; Cooperation.

- (a) **Right of Use.** Subject to **Section 2.7 of Schedule J**, this Agreement shall not be construed as a requirements contract, and notwithstanding anything to the contrary contained herein, shall not be interpreted to prevent Hercules or the Eligible Recipients from obtaining from third parties (each, an “**Hercules Third Party Contractor**”), or providing to themselves, any or all of the Services or any other services. In addition, subject to **Section 2.7 of Schedule J**, nothing in this Agreement shall be construed or interpreted as limiting Hercules' right or ability during the Term to add or delete Eligible Recipients or to increase or decrease its demand for Services. Nor shall anything in this Agreement be construed or interpreted as limiting Hercules' right or ability during the Term to change the requirements of Hercules or the Eligible Recipients with respect to any Service, change Service volumes and/or, subject to **Section 2.7 of Schedule J**, move parts of any Service in or out of scope. To the extent Hercules or an Eligible Recipient obtains from a Hercules Third Party Contractor, or provides to itself, any of the Services, the amount to be paid to Supplier by Hercules shall be equitably adjusted downward in accordance with **Schedule J** and in proportion to the portion of the Services that Supplier will no longer be providing or performing. Similarly, to the extent Hercules adds or deletes Eligible Recipients or increases or decreases its demand for Services, the amount to be paid to Supplier by Hercules shall be adjusted in accordance with **Schedule J** and the rates specified therein.
 - (b) **Supplier Cooperation.**
 - (i) Supplier shall fully cooperate with and work in good faith with Hercules, the Eligible Recipients or Hercules Third Party Contractors as described in **Schedule E** or requested by Hercules and at no additional charge to Hercules, except as otherwise stated below in this **Section 4.6(b)**. Such cooperation may include: (A) timely providing access to any facilities being used to provide the Services, as necessary for Hercules personnel or Hercules Third Party Contractors to perform the work assigned to them (including to install and manage third party software and equipment to provide services to Hercules or Eligible Recipients); (B) timely providing reasonable electronic and physical access to the business processes and associated Equipment, Software and/or Systems to the extent necessary and appropriate for Hercules, the Eligible Recipients or Hercules Third Party Contractors to perform the work assigned to them; (C) timely providing written requirements, standards, policies or other documentation for the business processes and associated Equipment, Software or Systems procured, operated, supported or used by Supplier in connection with the Services; (D) ensuring that there is no degradation in the provision of the Services caused by the adjustments made by Supplier in transferring Services to a third party, Hercules or an Eligible Recipient; (E) at Hercules' request, providing access to Hercules Data to the Eligible Recipients and/or Hercules Third Party Contractors in the same manner and to the same extent access to such data is provided to Hercules, (F) timely providing cooperation and assistance in accordance with **Section 4.3** to facilitate the orderly transfer of terminated Services from Supplier to Hercules, the Eligible Recipients and/or Hercules Third Party Contractors or (G) any other cooperation or assistance reasonably necessary for Hercules, the Eligible Recipients and/or Hercules Third Party
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Contractors to perform the work in question. Hercules personnel and Hercules Third Party Contractors shall comply with Supplier's reasonable security and confidentiality requirements, and shall, to the extent performing work on Software, Equipment or Systems for which Supplier has operational responsibility, comply with Supplier's reasonable standards, methodologies, and procedures.

- (ii) If Supplier's cooperation with Hercules or any Hercules Third Party Contractor goes beyond the reasonable amount of cooperation specified in **Schedule E** and causes Supplier to expend a materially greater level of effort, resources or expense than it would otherwise have expended in providing the Services, Hercules shall pay the applicable labor rate(s) for additional required personnel (or apply the applicable FTE hours against the Project Pool described in **Schedule J**) and reimburse Supplier for the additional Out-of-Pocket Expenses reasonably incurred by Supplier and directly attributable to such additional cooperation, provided that, (i) Supplier notifies Hercules of such additional amounts and obtains Hercules' approval prior to incurring them; and (ii) Supplier uses commercially reasonable efforts to minimize the amounts to be paid or reimbursed by Hercules. Notwithstanding the foregoing, Hercules shall incur no additional Charges or expenses if and to the extent such additional cooperation can be reasonably provided by Supplier's program management personnel or other Supplier Personnel then assigned to the engagement for whom Hercules is not obligated to pay an additional Charge. If such cooperation cannot be provided by Supplier using such Supplier Personnel without impacting Supplier's ability to meet the Service Levels and/or its other obligations under the Agreement, Supplier shall so advise Hercules and Hercules, in its sole discretion, may forego or delay any work activities or temporarily or permanently adjust the work to be performed by Supplier, the schedules associated therewith or the Service Levels to permit the provision of such cooperation using such personnel.
- (c) **Notice by Supplier.** Supplier shall immediately notify Hercules when it becomes aware that an act or omission of a Hercules Third Party Contractor will cause, or has caused, a problem or delay in providing the Services, and shall use commercially reasonable efforts to work with Hercules, the Eligible Recipients and the Hercules Third Party Contractor to prevent or circumvent such problem or delay. Supplier shall cooperate with Hercules, the Eligible Recipients and Hercules Third Party Contractors to resolve differences and conflicts arising between the Services and other activities undertaken by Hercules, the Eligible Recipients or Hercules Third Party Contractors. Subject to Section 10.2, any notification provided by Supplier in accordance with this **Section 4.6(c)** shall not excuse Supplier from the performance of any of its obligations under this Agreement.

4.7 Companion Agreements

- (a) At Hercules' request, the terms of this Master Agreement shall be incorporated by reference into individual Companion Agreements, which shall be executed by -----HCL America, Inc. or an Affiliate of -----HCL America, Inc. and Hercules Incorporated or an Eligible Recipient. All Services shall be provided by - -----HCL America, Inc. or the applicable Affiliate of -----HCL America, Inc. pursuant to this Master Agreement or an executed Companion Agreement. Unless and to the extent an individual Companion Agreement expressly provides otherwise, each Companion Agreement shall incorporate by reference the terms and conditions of this Master Agreement and shall not be construed as altering or superseding the rights and obligations of the Parties under this Master Agreement. Unless and to the extent otherwise agreed, the form of the Companion Agreement shall be as set forth in **Exhibit 3**.
 - (b) Notwithstanding the foregoing, -----HCL America, Inc. shall be responsible for any failure by an Affiliate of -----HCL America, Inc. to perform in accordance with a Companion Agreement executed by such Affiliate or to comply with such Affiliate's duties or obligations under such Companion Agreement to the same extent as if such failure to perform or comply was committed by -----HCL America, Inc., including, subject to **Section 18.3**, any damages incurred by Hercules or an Eligible Recipient as a result of any such failure to perform or comply.
 - (c) The Supplier Account Manager (and his or her designees(s)) shall remain responsible for the administration of this Master Agreement and the individual Companion Agreements on a day-to-day basis on behalf of Supplier (including decisions, consents, notices, acceptances and approvals) and only the Supplier Account Manager (and his or her designees(s)) shall be authorized to act on behalf of Supplier or to amend, modify,
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change, waive or discharge their rights and obligations under this Master Agreement or such Companion Agreements.

- (d) The Hercules Relationship Manager (and his or her designees(s)) shall remain responsible for the administration of this Master Agreement and the individual Companion Agreements on a day-to-day basis on behalf of Hercules and the Eligible Recipients (including decisions, consents, notices, acceptances and approvals) and only the Hercules Relationship Manager (and his or her designees(s)) shall be authorized to act on behalf of Hercules and the Eligible Recipients or to amend, modify, change, waive or discharge their rights and obligations under this Master Agreement or such Companion Agreements.

5 REQUIRED CONSENTS

5.1 Supplier Responsibility.

At no additional cost to Hercules other than as expressly described in this **Section 5**, Supplier shall lead and undertake all administrative activities necessary to obtain all Required Consents. At Supplier's reasonable request, Hercules will cooperate with Supplier in obtaining the Required Consents by executing appropriate Hercules approved written communications and other documents prepared or provided by Supplier. Hercules shall be responsible for providing Hercules' letterhead, envelopes, postage and signatures to obtain such Required Consents. With Hercules' approval, Supplier shall exercise for the benefit of Hercules and the Eligible Recipients any rights Supplier has to utilize or transfer license rights or other applicable rights under Supplier's existing third party licenses, leases or contracts, and the Parties shall cooperate in minimizing or eliminating any costs associated therewith.

5.2 Financial Responsibility.

Supplier shall pay thirty percent (30%) of all transfer, re-licensing or termination fees or expenses associated with obtaining any Required Consents or terminating any licenses or agreements as to which Supplier is unable to obtain such Required Consents. Hercules shall pay the remaining seventy percent (70%) of such transfer, re-licensing or termination fees or expenses.

5.3 Contingent Arrangements.

If, despite using all commercially reasonable efforts, Supplier is unable to obtain a Required Consent with respect to Hercules licensed Third Party Software, Supplier shall, at Hercules' option and with Hercules' consent, (i) replace the Hercules license for such Third Party Software with a Supplier license; (ii) replace such Third Party Software with other Software offering equivalent features and functionality, or (iii) secure the right to manage the Hercules licensed Third Party Software on behalf of Hercules. If, despite using all commercially reasonable efforts, Supplier is unable to obtain a Required Consent with respect to any other Hercules Third Party Contract, then, unless and until such Required Consent is obtained, Supplier shall manage such Third Party Contract on Hercules' behalf and perform all obligations and enforce all rights under such Third Party Contract as if Supplier were a party to the agreement in Hercules' place. If, despite using all commercially reasonable efforts, management of such Third Party Contract is not legally or contractually possible or Supplier is unable to obtain any other Required Consent, Supplier shall use all commercially reasonable efforts to determine and adopt, subject to Hercules' prior approval, such alternative approaches as are necessary and sufficient to provide the Services without such Required Consent. If such alternative approaches are required for a period longer than ninety (90) days following the Commencement Date, the Parties shall equitably adjust the terms and reduce the prices specified in this Agreement to reflect any additional costs being incurred by Hercules and any Services not being received by Hercules and the Eligible Recipients. Except as otherwise expressly provided herein, the failure to obtain any Required Consent shall not relieve Supplier of its obligations under this Agreement and Supplier shall not be entitled to any additional compensation or reimbursement amounts in connection with obtaining or failing to obtain any Required Consent or implementing any alternative approach.

6 FACILITIES, SOFTWARE, EQUIPMENT, CONTRACTS AND ASSETS ASSOCIATED WITH THE PROVISION OF SERVICES

6.1 Service Facilities.

- (a) **Service Facilities.** Supplier and its Affiliates and Subcontractors shall provide the Services at or from (i) the Hercules Facilities described on Schedule O.1, (ii) the Supplier Facilities described on Schedule O.2, each of which shall be approved in advance by Hercules, or (iii) any other service location approved by Supplier and Hercules. Supplier shall obtain Hercules' prior approval for any proposed relocation by Supplier, its Affiliates or Subcontractors of the provision of a Service to a new or different Supplier Facility. Hercules acknowledges and has approved the Supplier Facilities set forth on Schedule O.2 as of the Effective Date for the provision of the Services and scope thereof described therein. Supplier shall be financially responsible for all additional costs, taxes or expenses related to or resulting from any Supplier-initiated relocation to a new or different Supplier Facility, including any costs or expenses incurred or experienced by Hercules or any Eligible Recipient as a result of such relocation.
- (b) **Supplier's Responsibilities.** Except as provided in Sections 6.1(a), 6.2(a) and (b) and Section 6.4(e), Supplier shall be responsible for providing all furniture, fixtures, Equipment, space and other facilities required to perform the Services and all upgrades, improvements, replacements and additions to such furniture, fixtures, Equipment, space and facilities. Without limiting the foregoing, Supplier shall provide (i) all maintenance, site management, site administration and similar services for the Supplier Facilities, (ii) uninterrupted power supply services for the Supplier Facilities. Supplier shall provide the foregoing in strict compliance with Hercules' then-current security policies, architecture requirements, standards, rules and procedures, unless and to the extent deviations are approved in advance by Hercules.

6.2 Hercules Facilities.

- (a) **Hercules Facilities.** Hercules shall provide Supplier with the use of and access to the Hercules Facilities (or equivalent space) described in Schedule O.1 for the periods specified therein solely as necessary for Supplier to perform its obligations under this Agreement. All Hercules owned or leased assets provided for the use of Supplier under this Agreement shall remain in Hercules Facilities unless Hercules otherwise agrees. In addition, all improvements or modifications to Hercules Facilities requested by Supplier shall be (i) subject to review and approval in advance by Hercules, (ii) in strict compliance with Hercules' then-current policies, standards, rules and procedures, and (iii) performed by and through Hercules at Supplier's expense. Supplier acknowledges and agrees that the facilities to be provided by Hercules are sufficient for performing the Services and for satisfying Supplier's responsibilities under this Agreement. THE HERCULES FACILITIES ARE PROVIDED BY HERCULES TO SUPPLIER ON AN AS-IS, WHERE-IS BASIS. HERCULES EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE HERCULES FACILITIES, OR THEIR CONDITION OR SUITABILITY FOR USE BY SUPPLIER.
 - (b) **Furniture, Fixtures and Equipment.** At the Hercules Facilities described in Schedule O.1, Hercules shall provide office space and office furniture for the number of Supplier Personnel and for such periods specified in Schedule O.1. The office space and office furniture provided by Hercules for the use of Supplier Personnel will be generally comparable to the office space and office furniture provided to (i) the Hercules Personnel prior to the Commencement Date; or (ii) the then-standard office space and office furniture provided to similarly situated Hercules employees. Supplier Personnel using the office facilities provided by Hercules will be accorded reasonable access to the communications wiring in such facilities (including fiber, copper and wall jacks, subject to Section 6.2(c)) and the use of certain shared office equipment and services, such as photocopiers, local and long distance telephone service for Hercules-related calls, telephone handsets, mail service, office support service (e.g., janitorial), heat, light, and air conditioning; provided that such access and usage shall be solely for and in connection with the provision of Services by such Supplier Personnel, and provided further that Supplier shall reimburse Hercules for the additional incremental costs incurred by Hercules or the Eligible Recipients if and to the extent Supplier's technology solution, service delivery model and/or inefficiency cause its usage or consumption of such resources to exceed historical levels. Supplier shall be financially responsible for providing all other office space, office furniture, fixtures
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or office related equipment or services needed by Supplier or Supplier Personnel assigned to Hercules Facilities, and for all upgrades, replacements and additions to such office furniture, fixtures or equipment; provided that such office furniture, fixtures and equipment must be approved in advance by Hercules and meet Hercules' then-current standards, and provided further that Supplier shall use commercially reasonable efforts to purchase and use surplus Hercules furniture, fixtures and equipment to the extent available.

(c) **Supplier's Responsibilities Regarding Hercules' Network.**

(i) To the extent Supplier Personnel working on an ongoing basis at a Hercules Facility are, with Hercules' approval, connected directly to the network (s) of Hercules or an Eligible Recipient, the Equipment (and all Software installed thereon) used by such personnel shall be (i) subject to **Section 6.4 (e)**, provided to the applicable Supplier Personnel by Hercules at Hercules' expense, (ii) maintained and supported by or through Hercules (including by Supplier as and to the extent provided in **Schedule E**), at Hercules' expense, and (iii) shall be and remain in strict compliance with Hercules' then-current security policies, architectures, requirements, standards, rules and procedures, unless and to the extent deviations are approved in advance by Hercules. Hercules shall load the Software image on such Equipment and Supplier shall not install or permit the installation of any other software on such Equipment without Hercules' prior approval.

(ii) To the extent Supplier Personnel working on an ongoing basis from a Supplier Facility are, with Hercules' approval, connected directly to the network(s) of Hercules or an Eligible Recipient, the Equipment (and all Software installed thereon) used by such personnel shall be (i) provided to the applicable Supplier Personnel by Supplier at Supplier's expense, (ii) maintained and supported by or through Supplier, at Supplier's expense, and (iii) shall be and remain in strict compliance with Hercules' then-current security policies, architectures, requirements, standards, rules and procedures, unless and to the extent deviations are approved in advance by Hercules.

(d) **Security Breaches.** Supplier shall promptly investigate any security breach of Hercules' networks or Systems associated with Supplier Personnel or the performance of the Services. Supplier shall notify Hercules and permit Hercules to participate in the audit or investigation of any such security breach. Supplier shall promptly (i) report the findings of any such audit or investigation to Hercules, (ii) provide Hercules with a copy of any written report prepared in connection therewith, and (iii) to the extent in Supplier's areas of responsibility and control, prepare and (following Hercules approval) implement a remediation plan to remediate the effects of the security breach and prevent its recurrence.

(e) **Hercules Rules and Compliance.** In performing the Services and using the Hercules Facilities, Supplier shall observe and comply with all Hercules policies, rules, and regulations (including those governing business practices, smoking, harassment, weapons, safety, security, drugs and alcohol) applicable to Hercules Facilities or the provision of the Services which have been communicated to Supplier or Supplier Personnel in advance by such means as are generally used by Hercules to disseminate such information to its employees or contractors, including those set forth on **Schedules T.1** and **T.3** and those applicable to specific Hercules Sites (collectively, "**Hercules Rules**"). The Parties acknowledge and agree that, as of the Commencement Date, Supplier is fully informed as to the Hercules Rules. Supplier shall be responsible for the promulgation and distribution of Hercules Rules to Supplier Personnel as and to the extent necessary and appropriate. In addition, Supplier and Supplier Personnel shall be responsible for familiarizing themselves with the premises and operations at each Hercules Site or Hercules Facility at, to or from which Services are rendered and the Hercules Rules applicable to each such Site or Facility. Additions or modifications to the Hercules Rules may be (i) communicated orally by Hercules or an Eligible Recipient directly to Supplier and Supplier Personnel, (ii) disclosed to Supplier and Supplier Personnel in writing, (iii) conspicuously posted at a Hercules Facility, (iv) electronically posted, or (v) communicated to Supplier or Supplier Personnel by means generally used by Hercules to disseminate such information to its employees or contractors. Supplier and Supplier Personnel shall observe and comply with such additional or modified Hercules Rules.

(f) **Physical Security at Hercules Facilities.** Hercules is responsible for the physical security of the Hercules Facilities; provided, that Supplier shall be responsible for the safety and physical access and control of the areas that Supplier is using in performing the Services and Supplier shall not permit any person to have access to, or control of, any such area unless such access or control is permitted in accordance with control

procedures approved by Hercules or any higher standard agreed to by Hercules and Supplier. Supplier shall be solely responsible for compliance by Supplier Personnel with such control procedures, including obtaining advance approval to the extent required.

(g) **Use of Hercules Facilities.**

- (i) Unless Supplier obtains Hercules' prior written agreement, which Hercules may withhold in its sole discretion, Supplier shall use the Hercules Facilities, and the Equipment and Software located therein, only to provide the Services to Hercules and the Eligible Recipients.
 - (ii) Hercules reserves the right to relocate any Hercules Facility from which the Services are then being provided by Supplier to another geographic location; provided that, in such event, Hercules will provide Supplier with comparable office space in the new geographic location. In such event, Hercules shall pay the applicable labor rate(s) for additional personnel reasonably required by Supplier and for the incremental Out-of-Pocket Expenses reasonably incurred by Supplier in physically relocating to such new geographic location; provided that such relocation is not expressly contemplated in this Agreement, and that Supplier notifies Hercules of such additional required personnel and incremental Out-of-Pocket Expenses, obtains Hercules' approval prior to using such personnel or incurring such expenses, and uses commercially reasonable efforts to minimize such personnel and expenses.
 - (iii) Hercules also reserves the right to direct Supplier to cease using all or part of the space in any Hercules Facility from which the Services are then being provided by Supplier and to thereafter use such space for its own purposes. In such event, Hercules shall reimburse Supplier for any reasonable incremental Out-of-Pocket Expenses incurred by Supplier in leasing substitute space and physically relocating to such space; provided that such relocation is not expressly contemplated in this Agreement and that Supplier notifies Hercules of such incremental Out-of-Pocket Expenses, obtains Hercules' approval prior to incurring such expenses; and uses commercially reasonable efforts to minimize such expenses.
- (h) **Conditions for Return.** When the Hercules Facilities are no longer to be used by Supplier as contemplated by Section 6.2 or are otherwise no longer required for performance of the Services, Supplier shall notify Hercules as soon as practicable and shall vacate and return such Hercules Facilities (including any improvements to such facilities made by or at the request of Supplier) to Hercules in substantially the same condition as when such facilities were first provided to Supplier, subject to reasonable wear and tear.
- (i) **No Violation of Laws.** Supplier shall (i) treat, use and maintain the Hercules Facilities in a reasonable manner, and (ii) ensure that neither Supplier nor any of its Subcontractors commits, and use all reasonable efforts to ensure that no business visitor or invitee commits, any act in violation of any Laws in such Supplier occupied Hercules Facility or any act in violation of Hercules' insurance policies or in breach of Hercules' obligations under the applicable real estate leases in such Supplier occupied Hercules Facilities (in each case, to the extent Supplier has received notice of such insurance policies or real estate leases or should reasonably be expected to know of such obligations or limitations).

6.3 Supplier Facilities.

During the Term, Supplier shall provide to Hercules, at no charge and upon reasonable advance notice, (i) reasonable access to and use of the Supplier Facilities from which the Services are being performed, and (ii) access to reasonable work/conference space at such Supplier Facilities for the conduct of Hercules' business relating to the Services. In addition, at Hercules' request, Supplier shall provide reasonable access to and use of such Supplier Facilities by Hercules, the Eligible Recipients or Hercules Third Party Contractors as and to the extent provided in Section 4.6.

6.4 Software, Equipment and Third Party Contracts.

- (a) **Financial Responsibility.** Supplier shall be responsible for any third party fees or expenses on or after the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in
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question in accordance with the Transition Plan) associated with Software, Equipment, Equipment leases and Third Party Contracts for which Supplier is financially responsible under Schedule E or J.1. Hercules shall be responsible for third party fees or expenses incurred on or after the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan) associated with Software, Equipment, Equipment leases and Third Party Contracts for which Hercules is financially responsible under Schedule E or J.1. Unless otherwise expressly provided, each Party also shall be responsible for any third party fees or expenses on or after the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan) associated with new, substitute or replacement Software, Equipment, Equipment leases or Third Party Contracts (including Upgrades, enhancements, new versions or new releases of such Software or Equipment) for which such Party is financially responsible under Schedule E or J.1.

- (b) **Operational Responsibility.** With respect to Software, Equipment, Equipment leases and related Third Party Contracts for which Supplier is operationally responsible under Schedule E or J.1, Supplier shall be responsible for (i) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of such Software, Equipment, Equipment leases and Third Party Contracts, as and to the extent provided in Schedule E (including the “Vendor Management” Section of Schedule E.1); (ii) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of new, substitute or replacement Software, Equipment, Equipment leases and Third Party Contracts (including Upgrades, enhancements, new versions or new releases of such Software), as and to the extent provided in Schedule E (including the “Vendor Management” Section of Schedule E.1); (iii) the performance, availability, reliability, compatibility and interoperability of such Software, Equipment and Third Party Contracts, each in accordance with this Agreement, including the Service Levels and Change Control Procedures; (iv) compliance with and performance of all operational, administrative and contractual obligations specified in the applicable Software licenses, Equipment leases and Third Party Contracts; (v) the administration and exercise as appropriate of all rights available under such licenses, leases and contracts; and (vi) the payment of any fees, penalties, charges, interest or other expenses due and owing under or with respect to such licenses, leases and contracts that are incurred, caused by or result from Supplier’s failure to comply with or perform its obligations under this Section 6.4(b) (except to the extent that such failure directly results from a breach by Hercules of its obligations under this Agreement).
- (c) **Rights Upon Expiration/Termination.** With respect to all Third Party Software licenses, Equipment leases and Third Party Contracts for which Supplier is financially responsible under Schedule E or J.1, Supplier shall use all commercially reasonable efforts to (i) obtain for Hercules, the Eligible Recipients and/or their designee(s) the license, sublicense, assignment and other rights specified in Sections 4.3(b) and 14.6, (ii) ensure that the granting of such license, sublicense, assignment and other rights is not subject to subsequent third party approval or the payment by Hercules, the Eligible Recipients or their designee(s) of license, assignment or transfer fees, (iii) ensure that the terms, conditions and prices applicable to Hercules, the Eligible Recipients and/or their designee(s) following expiration or termination are no less favorable than those otherwise applicable to Supplier, and at least sufficient for the continuation of the activities comprising the Services, and (iv) ensure that neither the expiration/termination of this Agreement nor the assignment of the license, lease or contract will trigger less favorable terms, conditions or pricing. If Supplier is unable to obtain any such rights and assurances, it shall notify Hercules in advance and shall not use such Third Party Software license, Equipment lease or Third Party Contract without Hercules’ approval (and absent such approval, Supplier’s use of any such Third Party Software license, Equipment lease or Third Party Contract shall obligate Supplier to obtain or arrange, at no additional cost to Hercules, for such license, sublicense, assignment or other right for Hercules, the Eligible Recipients and their designee(s) upon expiration or termination). If Hercules consents to Supplier’s use of specific Third Party Software licenses, Equipment leases or Third Party Contracts under these circumstances, such consent shall be deemed to be conditioned on Supplier’s commitment to use all commercially reasonable efforts to cause such third party to agree at expiration or termination of this Agreement or the completion of Termination Assistance Services to permit Hercules, the Eligible Recipients and/or their designee(s) to assume prospectively the license, lease or contract in question or to enter into a new license, lease or contract with Hercules, the Eligible Recipients and/or their designee(s) on substantially the same terms and conditions, including price. If Hercules consents to Supplier’s use of specific Third Party Software licenses, Equipment leases or Third Party Contracts under
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these circumstances, such Third Party Software licenses, Equipment leases or Third Party Contracts shall be added to Schedule U.

- (d) **Evaluation of Third Party Software, Equipment.** In addition to its obligations under Section 6.4(a) and (b) and in order to facilitate Hercules' control of architecture, standards and plans pursuant to Section 9.5, Supplier shall use all commercially reasonable efforts to evaluate any Third Party Software and Equipment selected by or for Hercules or an Eligible Recipient to determine whether such Software and Equipment will adversely affect Hercules' environment, Hercules' ability to interface with and use the Software, Equipment and Systems and/or Supplier's ability to provide the Services. Supplier shall complete and report the results of such evaluation to Hercules within fifteen (15) days of its receipt of Hercules' request; provided, that Supplier shall use all commercially reasonable efforts to respond more quickly in the case of a pressing business need or an emergency situation.
 - (e) **Hercules Provided Equipment.** Hercules shall provide Supplier with the Hercules owned and leased Equipment identified on Schedule O.3 (collectively, the "Hercules Provided Equipment") for the periods specified in such Schedule for use by Supplier and Supplier Personnel in performing the Services. Upon the expiration of the period specified in Schedule O.3 for each item of Hercules Provided Equipment (or when such Hercules Provided Equipment is no longer required by Supplier for the performance of the Services), Supplier shall promptly return such Hercules Provided Equipment in accordance with Section 6.4 (f). THE HERCULES PROVIDED EQUIPMENT IS PROVIDED BY HERCULES TO SUPPLIER ON AN AS-IS, WHERE-IS BASIS. HERCULES EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE HERCULES PROVIDED EQUIPMENT, OR ITS CONDITION OR SUITABILITY FOR USE BY SUPPLIER TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
 - (f) **Notice of Decommissioning.** Supplier agrees to notify Hercules promptly if and to the extent any Hercules or Eligible Recipient owned Equipment or Hercules or Eligible Recipient leased Equipment will no longer be used to provide the Services. The notification will include the identification of the Equipment, and the date it will no longer be needed by Supplier, along with the reason for decommissioning. Upon receipt of any such notice, Hercules may (or may cause the applicable Eligible Recipient to), in its sole discretion, terminate the Equipment lease for such leased Equipment as of the date specified in such notice and sell or otherwise dispose of or redeploy such Hercules or Eligible Recipient owned Equipment that is the subject of such a notice as of the date specified in such notice. Upon Supplier ceasing to use any Equipment (or, in the case of leased Equipment, upon the last day Hercules or Eligible Recipient is obligated to make such leased Equipment available to Supplier, if earlier), Supplier shall return the same to Hercules, the Eligible Recipients and/or their designee(s) in condition at least as good as the condition thereof on the Commencement Date, ordinary wear and tear excepted. Supplier shall deliver such Equipment to the location designated by Hercules, the Eligible Recipients and/or their designee(s) and Hercules shall be responsible for any Out-of-Pocket Expenses reasonably incurred by Supplier in transporting such Equipment to such location.
 - (g) **Surplus Equipment.** Supplier shall manage the disposal of any surplus Equipment owned by Hercules and shall use commercially reasonable efforts to optimize the Net Disposal Value of such surplus Equipment for the benefit of Hercules. The "Net Disposal Value" shall mean the (i) amount received from the disposal of Hercules owned Equipment, less (ii) the Out-of-Pocket Expenses reasonably incurred by Supplier in connection with such disposal. The Net Disposal Value of any surplus Equipment disposed of pursuant to this provision shall be credited to Hercules if (i) is greater than (ii) or charged to Hercules if (ii) is greater than (i) on the invoice immediately following the date of such disposal.. Supplier shall obtain Hercules' consent to dispose of any Hercules-owned Equipment before disposing of such Equipment. Supplier shall maintain reasonable documentation regarding the disposition of such surplus Equipment, including the costs of and revenues from disposal, and shall make such documentation available to Hercules upon Hercules' request.
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6.5 Reserved.

6.6 Managed Third Parties.

- (a) **Fully Managed Third Parties.** With respect to Managed Third Parties designated on Schedule D.2 as “**Fully Managed Third Parties**” and any substitute or replacement therefor (each a “**Fully Managed Third Party**”), Supplier shall ensure that such Fully Managed Third Parties perform in accordance with this Agreement, including Service Levels, and comply with all applicable duties and obligations imposed on Supplier under this Agreement. Unless otherwise specified in Schedule D.2 or agreed in writing by the Parties, the performance of such Fully Managed Third Parties shall be included in determining Supplier’s compliance with applicable Service Levels in Schedule G and Supplier shall be responsible for any Service Level Credits incurred as a result of any failure by such Fully Managed Third Parties or their personnel to perform in accordance with such Service Levels. Supplier shall manage each such Fully Managed Third Party and administer each such Third Party Contract as described in Section 6.6(b)(i)-(x) below. Upon the expiration or termination for cause or convenience of a Fully Managed Third Party contract, Supplier shall be responsible for the continued performance of the services in accordance with this Agreement and shall either provide such services itself or enter into a contract for such services with a replacement Fully Managed Third Party.
- (b) **General Managed Third Parties.** With respect to Managed Third Parties identified on Schedule D.2 as “**General Managed Third Parties**,” and any substitute or replacement therefor (each a “**General Managed Third Party**”), Supplier shall perform the following activities with respect to the management and administration of Third Party Contracts between Hercules (and/or the Eligible Recipients) and such General Managed Third Parties, except as modified in Schedule D.2:
- (i) manage the Managed Third Parties, including monitoring operational day-to-day service delivery, monitoring performance, escalating problems for resolution, and maintaining technical support relationships;
 - (ii) as requested by Hercules, work with Hercules to manage new and existing contractual relationships between Hercules and Managed Third Parties as needed to provide the Services;
 - (iii) oversee Managed Third Party delivery of services and compliance with the Service Levels and the performance standards contained in Hercules’ agreement with the Managed Third Party;
 - (iv) notify Hercules and the Managed Third Party of each Managed Third Party failure to perform in accordance with the Service Levels contained in Schedule G or the performance standards or other terms and conditions contained in Hercules’ agreement with the Managed Third Party;
 - (v) escalate Managed Third Party performance failures to Managed Third Party management as necessary to achieve timely resolution;
 - (vi) monitor and manage the Managed Third Party’s efforts to remedy a failure of performance;
 - (vii) communicate to Hercules the status of the Managed Third Party’s efforts to remedy a failure of performance;
 - (viii) recommend retention, replacement, modification, or termination of the Managed Third Party based on the performance or cost benefits to Hercules as tracked by Supplier; and
 - (ix) participate and assist in the re-sourcing (e.g., extension, renegotiation or replacement) of such Managed Third Parties as and to the extent described in Schedule D.2.
- (c) **Financial Responsibility.** Unless otherwise specified in Schedule D.2 or Schedule J.1 or agreed in writing by the Parties, the invoiced charges of Managed Third Parties shall be treated as a Pass-Through Expense.
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6.7 Notice of Defaults.

Hercules and Supplier shall promptly inform the other Party in writing of any breach of, or misuse or fraud in connection with, any Third Party Contract, Equipment lease or Third Party Software license used in connection with the Services of which it becomes aware and shall cooperate with the other Party to prevent or stay any such breach, misuse or fraud.

7 SERVICE LEVELS

7.1 General.

General Performance Standards. Beginning on the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan), Supplier shall perform each Service at levels of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency that are at least equal to those received by Hercules or the Eligible Recipients prior to such date. In addition, Supplier shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness, resource efficiency and productivity that are equal to or higher than the accepted industry standards of leading providers of ITO services.

- (a) **Service Level Performance Standards.** Beginning on the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan) Supplier shall perform the Services so as to meet or exceed the Service Levels set forth in **Schedule G**. To the extent the Parties have established a Service Level for a specific Service, the obligations described in **Section 7.1(a)** shall not be construed to alter, expand or supersede such Service Level.
- (b) **Multiple Service Levels.** If more than one Service Level applies to any particular obligation of Supplier, Supplier shall perform in accordance with the most stringent of such Service Levels.
- (c) **Responsibility.** Supplier shall be responsible for meeting or exceeding the applicable Service Levels even where doing so is dependent on the provision of Services by (i) Subcontractors or (ii) Managed Third Parties, to the extent provided in **Schedule D.2 or E**.

7.2 Service Level Credits; Deliverable Credits.

- (a) **Service Level Credits.** Supplier recognizes that Hercules is paying Supplier to deliver certain Services at specified Service Levels. If Supplier fails to meet such Service Levels, then, in addition to other remedies available to Hercules, Supplier shall pay or credit to Hercules the performance credits specified in **Schedule G** ("Service Level Credits") in recognition of the diminished value of the Services resulting from Supplier's failure to meet the agreed upon level of performance, and not as a penalty. Under no circumstances shall the imposition of Service Level Credits be construed as Hercules' sole or exclusive remedy for any failure to meet the Service Levels. However, if Hercules recovers monetary damages from Supplier as a result of Supplier's failure to meet a Service Level, Supplier shall be entitled to set-off against such damages any Service Level Credits paid for the failure giving rise to such recovery. Service Level Credits are not counted toward and are not subject to the overall cap on Supplier's liability. For avoidance of doubt, unless otherwise specified in **Schedule G**, Supplier's performance under the Master Agreement and all Companion Agreements shall be measured and reported in the aggregate for purposes of determining Supplier's compliance with applicable Service Levels and calculating and assessing any resulting Service Level Credits.
 - (b) **Deliverable Credits.** Supplier recognizes that Hercules is paying Supplier to provide certain Critical Deliverables by the time and in the manner agreed by the Parties. If Supplier fails to meet its obligations with respect to such Critical Deliverables, then, in addition to other remedies available to Hercules, Supplier shall pay or credit to Hercules the Deliverable Credits specified in **Schedules G, H and/or H.1** or established by Hercules as part of the project approval process on a case by case basis in recognition of the diminished value of the Services resulting from Supplier's failure to meet the agreed upon level of performance, and not as a penalty. If Hercules recovers monetary damages from Supplier as a result of Supplier's failure to meet its obligations with respect to one (1) or more Critical Deliverables, Supplier shall be entitled to set-off against such damages any Deliverable Credits paid for the failure(s) giving rise to such recovery.
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Deliverable Credits are not counted toward and are not subject to the overall cap on Supplier's liability and are in addition to Service Level Credits.

7.3 Problem Analysis.

If Supplier fails to provide Services in accordance with the Service Levels and/or the terms of this Agreement, Supplier shall (after restoring service or otherwise resolving any immediate problem) (i) promptly investigate and report on the causes of the problem; (ii) provide a Root Cause Analysis of such failure as soon as practicable after such failure or at Hercules' request (iii) correct the problem as soon as practicable (regardless of cause or fault) or coordinate the correction of the problem if Supplier does not have responsibility for the cause of the problem; (iv) advise Hercules of the status of remedial efforts being undertaken with respect to such problem; (v) demonstrate to Hercules' reasonable satisfaction that the causes of such problem have been or will be corrected on a permanent basis; and (vi) take all commercially reasonable action to prevent any recurrence of such problem. Supplier shall use all commercially reasonable efforts to complete the Root Cause Analysis within fifteen (15) days of a failure; provided that, if it is not capable of being completed within fifteen (15) days using reasonable diligence, Supplier shall complete such Root Cause Analysis as quickly as possible and shall notify Hercules prior to the end of the initial fifteen (15) day period as to the status of the Root Cause Analysis and the estimated completion date.

7.4 Continuous Improvement Reviews.

- (a) **Improvement of Service Quality.** Supplier acknowledges that the quality of the Services provided in certain Service areas can be improved during the Term and agrees that the Service Levels in such Service areas can be enhanced periodically in recognition of the anticipated improvement in service quality. Supplier will use commercially reasonable efforts to improve the quality of the Services provided in such areas to meet or exceed the enhanced Service Levels and shall do so at no additional charge to Hercules.
- (b) **Increase of Service Levels.** In addition to the foregoing, Hercules and Supplier shall periodically review the Service Levels and the performance data collected and reported by Supplier in accordance with Schedule G, and relevant industry data and trends on an annual basis (or more frequently if requested by Hercules). Supplier shall give Hercules any assistance it reasonably requires to review and verify such data. As part of such review process, the Parties shall, at no additional cost to Hercules, improve the Service Levels as and to the extent provided in Schedule G. In addition, subject to Section 4.4 and Schedule G, the Parties shall agree, to the extent reasonable and appropriate, to (i) improve the Service Levels to reflect improved performance capabilities associated with advances in the proven processes, technologies and methods available to perform the Services; (ii) add new Service Levels to permit further measurement or monitoring of the accuracy, quality, completeness, timeliness, responsiveness, cost-effectiveness, or productivity of the Services; (iii) modify or increase the Service Levels to reflect changes in the processes, architecture, standards, strategies, needs or objectives defined by Hercules; and (iv) modify or increase the Service Levels to reflect agreed upon changes in the manner in which the Services are performed by Supplier.

7.5 Measurement and Monitoring.

On or before the Commencement Date or as otherwise provided in Schedule G, Supplier shall implement measurement and monitoring tools and metrics as well as standard reporting procedures, all acceptable to Hercules, to measure and report Supplier's performance of the Services at a level of detail sufficient, as determined by Hercules, to verify Supplier's compliance with the applicable Service Levels. As of the Effective Date, it is the understanding and expectation of the Parties that Supplier will use the measurement and monitoring tools used by Hercules as of such date and that, in addition to such tools, Supplier will provide, implement and use a tool known as "My Dashboard." Hercules or its designee shall have the right to audit all such measurement and reporting tools, performance metrics and reporting procedures. Supplier shall provide Hercules with on-line access to up-to-date problem management data and other data regarding the status of service problems, service requests and user inquiries. Supplier also shall provide Hercules with access to the data used by Supplier to calculate its performance against the Service Levels and the measurement and monitoring tools and procedures utilized by Supplier to generate such data for purposes of audit and verification. Hercules shall not be required to pay any amount in addition to the Charges for such measurement and monitoring tools or the resource utilization associated with their use.

7.6 Satisfaction Surveys.

- (a) **General.** At specified intervals, Supplier and/or independent third parties engaged by Supplier shall conduct the satisfaction surveys described in **Schedule Q** in accordance with the survey protocols and procedures specified therein. To the extent Supplier engages an independent third party to perform all or any part of any satisfaction survey, such third party shall be approved in advance by Hercules. Supplier shall be responsible for the expenses of all such surveys conducted pursuant to this **Section 7.6(a)** and **Schedule Q**.
- (b) **Hercules Conducted Surveys.** In addition to the satisfaction surveys to be conducted pursuant to **Section 7.6(a)**, Hercules may survey satisfaction with Supplier's performance in connection with and as part of broader satisfaction surveys periodically conducted by Hercules and/or independent third parties engaged by Hercules. At Hercules' request, Supplier shall cooperate and assist Hercules with the formulation of the survey questions, protocols and procedures and the execution and review of such surveys. At Hercules' request, Supplier shall provide data to Hercules or such third party to enable such surveys.
- (c) **Survey Follow-up.** If the results of any satisfaction survey conducted pursuant to **Section 7.6(a)** or **(b)** indicate that the level of satisfaction with Supplier's performance is less than the target level specified by Hercules in **Schedule Q**, Supplier shall promptly: (i) analyze and report on the root cause of such dissatisfaction; (ii) develop an action plan to address and improve the level of satisfaction; (iii) present such plan to Hercules for its review, comment and approval; and (iv) take action in accordance with the approved plan and as necessary to improve the level of satisfaction. Hercules and Supplier shall establish a schedule for completion of a root cause analysis and the preparation and approval of the action plan which shall be reasonable and consistent with the severity and materiality of the problem; provided, that the time for completion of such tasks shall not exceed thirty (30) days from the date such user survey results are finalized and reported. Supplier's action plan developed hereunder shall specify the specific measures to be taken by Supplier and the dates by which each such action shall be completed. Following completion of the measures described in such action plan, Supplier shall conduct follow-up surveys with the affected Hercules management and/or Authorized Users to confirm that the cause of any dissatisfaction has been addressed and that the level of satisfaction has improved. The Parties recognize that Supplier's failure to take the actions set forth in such action plan by the agreed upon dates may have an adverse impact on the business and operations of Hercules and the Eligible Recipients. Accordingly, if Supplier fails to take the actions set forth in the action plan by the agreed upon dates, then, in addition to any other remedies available to Hercules under this Agreement, at law or in equity, Supplier shall pay to Hercules the applicable Deliverable Credits specified in **Schedule G** or the applicable action plan.

7.7 Notice of Adverse Impact.

If Supplier becomes aware of any failure by Supplier to comply with its obligations under this Agreement or any other situation (i) that has impacted or reasonably could impact the maintenance of Hercules' or any Eligible Recipient's financial integrity or internal controls, the accuracy of Hercules' or any Eligible Recipient's financial, accounting, safety, security, manufacturing/production quality or human resources records and reports, or compliance with Hercules Standards or applicable Laws, or (ii) that has had or reasonably could have any other material adverse impact on the Services in question or the impacted business operations of Hercules or the Eligible Recipients, then, Supplier shall immediately inform Hercules in writing of such situation and the impact or expected impact and Supplier and Hercules shall meet to formulate an action plan to minimize or eliminate the impact of such situation.

8 PROJECT PERSONNEL

8.1 Key Supplier Personnel.

- (a) **Approval of Key Supplier Personnel.**
 - (i) Prior to the Commencement Date, Hercules shall designate up to ten (10) positions to be held by Key Supplier Personnel. Supplier shall identify and obtain Hercules' approval of all Key Supplier Personnel prior to the Commencement Date. The positions designated by Hercules and the Key
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Supplier Personnel that have been selected and approved as of the Effective Date are listed in Schedule C.

- (ii) Before assigning an individual to act as one of the Key Supplier Personnel, whether as an initial assignment or a subsequent assignment, Supplier shall notify Hercules of the proposed assignment, shall introduce the individual to appropriate Hercules representatives, shall provide reasonable opportunity for Hercules representatives to interview the individual, and shall provide Hercules with a resume and such other information about the individual as may be reasonably requested by Hercules. If Hercules in good faith objects to the proposed assignment, the Parties shall attempt to resolve Hercules' concerns on a mutually agreeable basis. If the Parties have not been able to resolve Hercules' concerns within five (5) business days of Hercules communicating its concerns, Supplier shall not assign the individual to that position and shall propose to Hercules the assignment of another individual of suitable ability and qualifications.
 - (iii) Hercules may from time to time reasonably change the positions designated as Key Supplier Personnel under this Agreement with Supplier's approval which shall not be unreasonably withheld.
- (b) **Continuity of Key Supplier Personnel.** Supplier shall cause each of the Key Supplier Personnel to devote full time and effort to the provision of Services under this Agreement for, at a minimum, the period specified in Schedule C from the date he or she assumes the position in question (provided that, in the case of Key Supplier Personnel assigned prior to the Commencement Date, the minimum period shall be the period specified in Schedule C from the Commencement Date). Supplier shall not transfer, reassign or remove any of the Key Supplier Personnel (except as a result of voluntary resignation, involuntary termination for cause, illness, disability, or death) or announce its intention to do so during the specified period without Hercules' prior approval, which Hercules may withhold in its reasonable discretion and self-interest. In the event of the voluntary resignation, involuntary termination for cause, illness, disability or death of one of its Key Supplier Personnel during or after the specified period, Supplier shall (i) give Hercules as much notice as reasonably possible of such development, and (ii) expeditiously identify and obtain Hercules' approval of a suitable replacement. In addition, even after the period specified in Schedule C, Supplier shall transfer, reassign or remove one of its Key Supplier Personnel only after (i) giving Hercules reasonable prior notice of such action, (ii) identifying and obtaining Hercules' approval of a suitable replacement at least thirty (30) days prior to such transfer, reassignment or removal, (iii) providing Hercules with a plan describing the steps and knowledge transfer necessary to transition responsibility to the replacement, and (iv) demonstrating to Hercules' reasonable satisfaction that such action will not have an adverse impact on Supplier's performance of its obligations under this Agreement. Unless otherwise agreed, Supplier shall not transfer, reassign or remove more than one Key Supplier Personnel in any six (6) month period.
- (c) **Retention and Succession.** Supplier shall implement and maintain a retention strategy designed to retain Key Supplier Personnel on the Hercules account for the prescribed period. Supplier shall also maintain active succession plans for each of the Key Supplier Personnel positions.

8.2 Supplier Account Manager and Supplier Delivery Manager.

- (a) **Supplier Account Manager.** Supplier shall designate a "Supplier Account Manager" for this Hercules engagement. The Supplier Account Manager shall (i) be one of the Key Supplier Personnel; (ii) be a full time employee of Supplier; (iii) devote sufficient and substantial time and effort to managing the Services; (iv) remain in this position for the minimum period specified in Schedule C (except as a result of voluntary resignation, involuntary termination for cause, illness, disability, or death); (v) be the principal point of contact to whom all Hercules communications concerning this Agreement may be addressed; (vi) have authority to act on behalf of Supplier in all matters pertaining to this Agreement, including any modifications to this Agreement; and (vii) have overall responsibility for relationship management; .
- (b) **Supplier Service Delivery Manager.** Supplier shall also designate a "Supplier Delivery Manager" for this Hercules engagement. The Supplier Service Delivery Manager shall (i) be one of the Key Supplier Personnel; (ii) be a full time employee of Supplier; (iii) devote his or her full time and effort to managing the Services; (iv) remain in this position for the minimum period specified in Schedule C (except as a result of voluntary resignation, involuntary termination for cause, illness, disability, or death); (v) serve as the single point of accountability for the Services, (vi) be an alternative point of contact to whom all Hercules
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communications concerning this Agreement may be addressed; (vii) have authority to act on behalf of Supplier in all day-to-day matters pertaining to the Services; (viii) have day-to-day responsibility for service delivery, billing and relationship management; and (ix) have day-to-day responsibility for customer satisfaction and Service Levels attainment.

8.3 Supplier Personnel Are Not Hercules Employees.

Except as otherwise expressly set forth in this Agreement, the Parties intend to create an independent contractor relationship and nothing in this Agreement shall operate or be construed as making Hercules (or the Eligible Recipients) and Supplier partners, joint venturers, principals, joint employers, agents or employees of or with the other. No officer, director, employee, agent, Affiliate, contractor or subcontractor retained by Supplier to perform work on Hercules' behalf hereunder shall be deemed to be an officer, director, employee, agent, Affiliate, contractor or subcontractor of Hercules or the Eligible Recipients for any purpose. Supplier, not Hercules or the Eligible Recipients, has the right, power, authority and duty to supervise and direct the activities of the Supplier Personnel and to compensate such Supplier Personnel for any work performed by them on the behalf of Hercules or the Eligible Recipients pursuant to this Agreement. Supplier, and not Hercules or the Eligible Recipients, shall be responsible and therefore solely liable for all acts and omissions of Supplier Personnel, including acts and omissions constituting negligence, willful misconduct and/or fraud.

8.4 Replacement, Qualifications, and Retention of Supplier Personnel.

- (a) **Sufficiency and Suitability of Personnel.** Supplier shall assign (or cause to be assigned) sufficient Supplier Personnel to provide the Services in accordance with this Agreement and such Supplier Personnel shall possess suitable competence, ability and qualifications and shall be properly educated and trained for the Services they are to perform.
 - (b) **Requested Replacement.** In the event that Hercules determines lawfully and in good faith that the continued assignment to Hercules of any individual Supplier Personnel (including Key Supplier Personnel) is not in the best interests of Hercules or the Eligible Recipients, then Hercules shall give Supplier notice to that effect requesting that such Supplier Personnel be replaced. Supplier shall have ten (10) days following Hercules' request for removal of such Supplier Personnel in which to investigate the matters forming the basis of such request, correct any deficient performance and provide Hercules with assurances that such deficient performance shall not recur (provided that, if requested to do so by Hercules for actual or suspected violations of Hercules Rules, Supplier shall immediately remove (or cause to be removed) the individual in question from all Hercules Facilities and Hercules Sites pending completion of Supplier's investigation and discussions with Hercules). If, following such ten (10) day period, Hercules is not reasonably satisfied with the results of Supplier's efforts to correct the deficient performance and/or to ensure its non-recurrence, Supplier shall, as soon as possible, permanently remove and replace such Supplier Personnel with an individual of suitable ability and qualifications, without cost to Hercules. Nothing in this provision shall operate or be construed to limit Supplier's responsibility for the acts or omission of the Supplier Personnel, or be construed as joint employment.
 - (c) **Turnover Rate and Data.** Supplier shall use commercially reasonable efforts to keep the turnover rate of Supplier Personnel to a level comparable to or better than the industry average for well-managed service companies in the applicable country performing services similar to the Services. If Hercules believes that the turnover rate of Supplier Personnel is excessive and so notifies Supplier, Supplier shall within ten (10) business days (i) provide Hercules with data concerning Supplier's turnover rate, (ii) meet with Hercules to discuss the reasons for the turnover rate, (iii) submit a proposal for reducing the turnover rate for Hercules' review and approval, and (iv) agree to a program for reducing the turnover rate at no additional cost to Hercules. Notwithstanding any transfer or turnover of Supplier Personnel, Supplier shall remain obligated to perform the Services without degradation and in accordance with the Service Levels.
 - (d) **Restrictions on Performing Services to Competitors.** Neither Supplier nor any Subcontractor shall cause or permit Key Supplier Personnel or other Supplier Personnel agreed to by the Parties and listed on Attachment C.1 filling the positions identified on Schedule C.2 to perform services directly or indirectly for a Direct Hercules Competitor either while engaged in the provision of Services or during the nine (9) months
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immediately following the termination of his or her involvement in the provision of such Services without Hercules' prior written consent.

- (e) **Background Check/Drug Screening.** Supplier shall ensure that Supplier Personnel are authorized to work in any country in which they are assigned to perform Services. In addition, Supplier shall use all commercially reasonable efforts to verify that Supplier Personnel have not been convicted of or accepted responsibility for a felony or a misdemeanor involving a dishonest act, do not use illegal drugs, and are not otherwise disqualified from performing the assigned work under applicable Laws. Supplier shall also use all commercially reasonable efforts to verify that Supplier Personnel have completed the years of education and degree programs claimed by such personnel. To the extent allowed by applicable laws, Supplier shall perform or have performed a reasonable background check on all Supplier Personnel assigned to work hereunder, provided that, if a satisfactory background check was completed in connection with the hiring of such Supplier Personnel, it need not be repeated.
- (f) **Notice by Supplier.** Supplier shall provide Hercules not less than ninety (90) days notice of the expiration of any collective bargaining agreement with unionized Supplier Personnel if the expiration of such agreement or any resulting labor dispute could potentially interfere with or disrupt the business or operations of Hercules or an Eligible Recipient or impact Supplier's ability to timely perform its duties and obligations under this Agreement.

8.5 Staffing Plan: Restrictions on Changes in Supplier Staffing/Facilities.

- (a) **Staffing Plan.** Set forth in Schedule M is a staffing plan showing the planned staffing and deployment of Supplier Personnel by Functional Service Area, job classification and location (the "**Staffing Plan**"). During the thirty (30) months immediately following the Effective Date Supplier shall comply with the Staffing Plan, and shall not make any changes to the planned staffing and deployment without Hercules' prior approval. The Parties acknowledge and agree that such review and approval of the Staffing Plan and changes in the Staffing Plan shall not constitute joint employment.
- (b) Supplier shall not move Services in a Functional Service Area or sub-Functional Service Area (e.g., Procurement, Accounts Payable, Human Resources, Payroll) provided from an approved Supplier Facility and country to a Supplier Facility and country from which such Services had not previously been provided by Supplier without Hercules' prior approval.
- (c) To the extent Services in the same Functional Service Area or sub-Functional Service Area are provided by Supplier Personnel from Supplier Facilities in different countries, Supplier shall not change the extent to which such Services are provided by Supplier Personnel from each such Supplier Facility and country, as specified in Schedule O.2, without Hercules' prior approval. For avoidance of doubt, changes attributable solely to changes in service volumes are not subject to the limits described in this Section 8.5(b).

8.6 Conduct of Supplier Personnel.

- (a) **Conduct and Compliance.** While at Hercules Facilities and Hercules Sites, Supplier Personnel shall (i) subject to Section 6.2(d), comply with the Hercules Rules and other rules and regulations regarding personal and professional conduct, (ii) comply with reasonable requests of Hercules or the Eligible Recipients pertaining to personal and professional conduct, (iii) attend workplace training offered by Hercules and/or the Eligible Recipients at Hercules' request, and (iv) otherwise conduct themselves in a businesslike manner.
 - (b) **Identification of Supplier Personnel.** Except as specifically authorized by Hercules, Supplier Personnel shall clearly identify themselves as Supplier Personnel and not as employees or representatives of Hercules and/or the Eligible Recipients. This shall include any and all communications, whether oral, written or electronic, unless and to the extent authorized by Hercules in connection with the performance of specific Services. Each Supplier Personnel shall wear a badge indicating that he or she is employed by Supplier or its Subcontractors when at a Hercules Facility or Hercules Site.
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- (c) **Restriction on Marketing Activity.** Except for marketing representatives designated in writing by Supplier to Hercules, none of the Supplier Personnel shall conduct any marketing activities to Hercules or Eligible Recipient employees at Hercules Facilities or Hercules Sites (including marketing of any New Services), other than reporting potential marketing opportunities to Supplier's designated marketing representatives.

8.7 Substance Abuse.

- (a) **Employee Removal.** To the extent permitted by applicable Laws, Supplier shall immediately remove (or cause to be removed) any Supplier Personnel who is known to be or reasonably suspected of engaging in substance abuse while at Hercules Facility or Hercules Site, in a Hercules vehicle or while performing Services. In the case of reasonable suspicion, such removal shall be pending completion of the applicable investigation. Substance abuse includes the sale, attempted sale, possession or use of illegal drugs, drug paraphernalia, or, to the extent not permitted on at Hercules Facilities or Hercules Sites, alcohol, or the misuse of prescription or non-prescription drugs.
- (b) **Substance Abuse Policy.** Supplier represents and warrants that it has and will maintain substance abuse policies, in each case in conformance with applicable Laws, and Supplier Personnel will be subject to such policies. Supplier represents and warrants that it shall require its Subcontractors and Affiliates providing Services to have and maintain such policy in conformance with applicable Law and to adhere to this provision.

8.8 Affected Employees.

Supplier shall have the right, but not the obligation, to extend offers of employment to Affected Employees in United States of America, listed on **Schedule V**. Unless otherwise agreed by the Parties, Affected Employees accepting such offers shall be hired by Supplier effective as of the Commencement Date or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan or the date on which such Affected Employee actually commences his or her employment with Supplier (the "**Employment Effective Date**").

8.9 EC Acquired Rights Directive.

- (a) **EC Acquired Rights Directive.** The rights and obligations of the Parties with respect to Hercules Personnel employed as of the Effective Date or, if later, the Commencement Date in jurisdictions in which the EC Acquired Rights Directive is applicable shall be set forth in the Companion Agreement(s) for such jurisdictions. Supplier shall not communicate orally or in writing with such Hercules Personnel without Hercules' prior approval
- (b) **Validity.** Hercules may be obligated under applicable Law to undertake consultation with certain employees in certain European countries through relevant recognized trade unions, works councils, other appointed employee representatives and/or with employees directly as to the proposal to outsource certain Services as provided in this Master Agreement. Accordingly, Hercules and Supplier agree that the provisions of this Master Agreement relating to the Services to be provided to Eligible Recipients in such countries shall not be effective as of the Effective Date. Such provisions shall become effective only if Hercules notifies Supplier in writing that the consultations have been completed or the applicable statutory periods have expired and the Parties thereafter execute a Companion Agreement with respect to Eligible Recipients in such country. If such written notice is given, it will designate whether all or only a portion of the Services are to be provided for the country in question.

9 SUPPLIER RESPONSIBILITIES

9.1 Policy and Procedures Manual

- (a) **Delivery and Contents.** As part of the Services, and at no additional cost to Hercules, Supplier shall deliver to Hercules a reasonably complete draft of the Policy and Procedures Manual(s) with respect to the Services to be transitioned to Supplier on the Commencement Date, for Hercules' review, comment and approval, at least thirty (30) days prior to the Commencement Date. Thereafter, as part of the Services, and at no
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additional cost to Hercules, Supplier shall deliver to Hercules a reasonably complete draft of the Policy and Procedures Manual with respect to each remaining Service (or, if such Policy and Procedures Manual already exists, any additional portions of such Policy and Procedures Manual pertaining to such Service), for Hercules' review, comment and approval, at least thirty (30) days prior to the Transition Milestone date for the transition of each such Service to Supplier. In each case, Hercules shall have at least fifteen (15) days to review the draft Policy and Procedures Manual and provide Supplier with comments and revisions. Supplier shall then incorporate such comments and revisions into the Policy and Procedures Manual and shall deliver a final version to Hercules at least five (5) business days prior to the scheduled transition date for the applicable Service for Hercules' final approval.

At a minimum, each Policy and Procedures Manual shall address the subjects specified in Schedule S (to the extent applicable) and shall include the following:

- (i) a detailed description of the Services and the manner in which each will be performed by Supplier, including (A) the Equipment, Software, and Systems to be procured, operated, supported or used; (B) documentation (including operations manuals, user guides, specifications, policies/procedures and disaster recovery/business continuity plans) providing further details regarding such Services; (C) the specific activities to be undertaken by Supplier in connection with each Service, including, where appropriate, the direction, supervision, monitoring, staffing, reporting, planning and oversight activities to be performed by Supplier under this Agreement; (D) the checkpoint reviews, testing, acceptance, controls and other procedures to be implemented and used to assure service quality; and (F) subject to Section 15.7, the processes, methodologies and controls to be implemented and used by Supplier to ensure compliance with applicable Laws;
- (ii) the procedures for Hercules/Supplier interaction and communication, including (A) call lists; (B) procedures for and limits on direct communication by Supplier with Hercules personnel; (C) problem management and escalation procedures; (D) priority and project procedures; (E) Acceptance testing and procedures; (F) Quality Assurance procedures and internal controls (G) the Project formation process and implementation methodology; and (H) annual and quarterly financial objectives, budgets, and performance goals; and
- (iii) practices and procedures addressing such other issues and matters as Hercules shall require.

Supplier shall incorporate Hercules' then current policies and procedures in the Policy and Procedures Manual to the extent it is directed to do so by Hercules.

- (b) **Compliance.** Supplier shall perform the Services in accordance with applicable Laws and Hercules' then current policies and procedures until the Policy and Procedures Manual is finalized and agreed upon by the Parties. Thereafter, Supplier shall perform the Services in accordance with the Policy and Procedures Manual. In the event of a conflict between the provisions of this Agreement and the Policy and Procedures Manual, the provisions of this Agreement shall control unless the Parties expressly agree otherwise and such agreement is set forth in the relevant portion of the Policy and Procedures Manual.
 - (c) **Maintenance, Modification and Updating.** Supplier maintain the Policy and Procedures Manual so as to be accessible electronically to Hercules management and Authorized Users via a secure web site in a manner consistent with Hercules' security policies. Supplier shall promptly modify and update the Policy and Procedures Manual monthly to reflect changes in the operations or procedures described therein and to comply with Hercules Standards, the Technology and Business Process Plan and Strategic Plans as described in Section 9.5. Supplier shall provide the proposed changes in the manual to Hercules for review, comment and approval. To the extent such change could (i) increase Hercules' total costs of receiving the Services; (ii) have adverse impact or require changes as described in Section 9.6(c), or (iii) violate or be inconsistent with the Hercules Standards, the Technology and Business Process Plan or Strategic Plans, Supplier shall not implement such change without first obtaining Hercules' approval, which Hercules may withhold in its sole discretion. For avoidance of doubt, Supplier shall prepare and maintain a single Policy and Procedures Manual for this Master Agreement and all Companion Agreements, rather than a separate Policy and Procedures Manual for each Master Agreement and Companion Agreement.
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- (d) **Annual Review.** The Parties shall meet to perform a formal annual review of the Policy and Procedures Manual on each anniversary of the Commencement Date or such other date reasonably designated by Hercules.

9.2 Reports.

- (a) **Reports.** Supplier shall provide Hercules with (i) the reports described in Schedule R in the format and at the frequencies provided therein, and (ii) the reports generated by Hercules Personnel during the twelve (12) month period preceding the Commencement Date, (“**Reports**”). In addition, from time to time, Hercules may identify additional Reports to be generated by Supplier and delivered to Hercules on an ad hoc or periodic basis. All Reports shall be provided to Hercules as part of the Services and at no additional charge to Hercules. The Reports described in Schedule R and, to the extent reasonably possible, all other Reports shall be provided to Hercules in a network accessible format with ability for data to be downloaded to Hercules' current standard spreadsheet application.
- (b) **Back-Up Documentation.** As part of the Services, Supplier shall provide Hercules with such documentation and other information available to Supplier as may be reasonably requested by Hercules from time to time in order to verify the accuracy of the Reports provided by Supplier. In addition, Supplier shall provide Hercules with all documentation and other information reasonably requested by Hercules from time to time to verify that Supplier's performance of the Services is in compliance with the Service Levels and this Agreement.
- (c) **Correction of Errors.** As part of the Services and at no additional charge to Hercules, Supplier shall promptly correct any errors or inaccuracies in or with respect to the Reports, the information or data contained in such Reports, or other contract deliverables delivered by Supplier or its agents, Subcontractors, Managed Third Parties or other third party product or service providers to the extent provided in Schedule E.

9.3 Governance Model; Meetings.

- (a) **Governance.** The governance model to be employed by the Parties in connection with this Agreement is set forth in Schedule S.
- (b) **Meetings.** During the Term, representatives of the Parties shall meet periodically or as requested by Hercules to discuss matters arising under this Agreement, including any such meetings provided for in this Agreement, the Transition Plan, the Policy and Procedures Manual or Schedule S. Each Party shall bear its own costs in connection with the attendance and participation of such Party's representatives in such meetings.
- (c) **Agenda and Minutes.** For each such meeting, upon Hercules request, Supplier shall prepare and distribute an agenda, which will incorporate the topics designated by Hercules. Supplier shall distribute such agenda in advance of each meeting so that the meeting participants may prepare for the meeting. In addition, upon Hercules request, Supplier shall record and promptly distribute minutes for every meeting for review and approval by Hercules.
- (d) **Authorized User and Eligible Recipient Meetings.** Supplier shall notify the Hercules Relationship Manager or his or her designee(s) in advance of scheduled meetings with Authorized Users or Eligible Recipients (other than meetings pertaining to the provision of specific Services on a day-to-day basis) and shall invite the Hercules Relationship Manager or his or her designee(s) to attend such meetings or to designate a representative to do so.

9.4 Quality Assurance and Internal Controls.

- (a) Supplier shall develop and implement Quality Assurance and internal control (e.g., financial and accounting controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) processes and procedures, including implementing tools and methodologies, to ensure that the Services are performed in an accurate and timely manner, in accordance with (i) the Service Levels and other requirements of this Agreement, (ii) applicable generally accepted
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accounting principles and standards, (iii) the best practices of the ITO outsourcing services providers, and (iv) the Laws applicable to Hercules, the Eligible Recipients and/or the Services, and (v) industry standards (e.g., QS 9000, ISO 9001/2000, ISO 14000) applicable to Hercules and the Eligible Recipients and the performance of the Services. Such processes, procedures and controls shall include verification, checkpoint reviews, testing, acceptance, and other procedures for Hercules to assure the quality and timeliness of Supplier's performance.

- (b) Without limiting the foregoing, the processes, procedures and controls developed and implemented by Supplier shall require Supplier to:
- (i) Maintain a strong control environment in day-to-day operations, to assure that the following fundamental control objectives are met: (1) financial and operational information is valid, complete and accurate; (2) operations are performed efficiently and achieve effective results, consistent with the requirements of this Agreement; (3) assets are safeguarded; and (4) actions and decisions of the organization are in compliance with Laws;
 - (ii) Build the following basic control activities into its work processes: (1) accountability clearly defined and understood; (2) access properly controlled; (3) adequate supervision; (4) transactions properly authorized; (5) transactions properly recorded; (6) transactions recorded in proper accounting period; (7) policies, procedures, and responsibilities documented; (8) adequate training and education; (9) adequate separation of duties; and (10) recorded assets compared with existing assets;
 - (iii) Develop and execute a process to ensure periodic control self-assessments are performed with respect to all Services (such self-assessments to be performed at least quarterly unless and until Hercules approves less frequent self-assessments);
 - (iv) Maintain an internal audit function sufficient to monitor the processes and Systems used to provide the Services (i.e., perform audits, track control measures, communicate status to management, drive corrective action, etc.);
 - (v) Conduct investigations of suspected fraudulent activities within Supplier's organization that impact or could impact Hercules or the Eligible Recipients. Supplier shall promptly notify Hercules of any such suspected fraudulent activity and the results of any such investigation as they relate to Hercules or the Eligible Recipients. At Supplier's request, Hercules shall provide reasonable assistance to Supplier in connection with any such investigation;
 - (vi) Comply with all applicable requirements and guidelines established by Hercules in order to assist Hercules to meet the requirements of the Sarbanes-Oxley Act of 2002 and implementing regulations promulgated by the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board;
 - (vii) Comply with the Hercules Business Practices Policy; and
 - (viii) Recommend and, with Hercules' prior approval, implement revisions to the Sarbanes-Oxley compliance measures.
- (c) Supplier shall submit such processes, procedures and controls to Hercules for its review, comment and approval within thirty (30) days prior to the Commencement Date and shall use commercially reasonable efforts to finalize such processes, procedures and controls and obtain Hercules' final approval on or before the Commencement Date. Upon Hercules' approval, such processes and procedures shall be included in the Policy and Procedures Manual. Prior to the approval of such processes and procedures by Hercules, Supplier shall adhere strictly to Hercules' then current policies, procedures and controls. No failure or inability of the quality assurance procedures to disclose any errors or problems with the Services shall excuse Supplier's failure to comply with the Service Levels and other terms of this Agreement.
- (d) **Industry Standards, Certifications and Compliance.** Supplier has achieved and, to the extent relevant, will maintain certification or compliance with the BS7799/ ISO 27001 standards.
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9.5 Processes, Procedures, Architecture, Standards and Planning.

- (a) **Supplier Support.** As requested by Hercules, Supplier shall assist Hercules on an ongoing basis in defining: (A) the standards, policies, practices, processes, procedures and controls to be adhered to and enforced by Supplier in the performance of the Services; and (B) the associated technologies, architectures, standards, products and systems to be provided, operated, managed, supported and/or used by Supplier in connection therewith (collectively, the “**Hercules Standards**”). Supplier also shall assist Hercules in preparing annual Strategic Plans and short-term implementation plans on an annual basis and in modifying and updating such Strategic Plans and implementation plans on a periodic basis as appropriate. The assistance to be provided by Supplier shall include: (i) active participation with Hercules representatives on permanent and ad-hoc committees and working groups addressing such issues; (ii) assessments of the then-current Hercules Standards; (iii) analyses of the appropriate direction for such Hercules Standards in light of business priorities, business strategies, competitive market forces, and changes in technology; (iv) the provision of information to Hercules regarding Supplier’s technology, business processes and telecommunications strategies for its own business; and (v) recommendations regarding standards, processes, procedures and controls and associated technology architectures, standards, products and systems. With respect to each recommendation, Supplier shall provide the following at a level of detail sufficient to permit Hercules to make an informed business decision: (i) the projected cost to Hercules and the Eligible Recipients and cost/benefit analyses; (ii) the changes, if any, in the personnel and other resources Supplier, Hercules and/or the Eligible Recipients will require to operate and support the changed environment; (iii) the resulting impact on the total costs of Hercules and the Eligible Recipients; (iv) the expected performance, quality, responsiveness, efficiency, reliability, security risks and other service levels; and (v) general plans and projected time schedules for development and implementation. Any assistance provided by Supplier under **Sections 9.5** shall be at no additional Charge beyond the Charges specified in **Schedule J** for the Services, unless an additional Charge has been approved by Hercules.
- (b) **Hercules Authority and Supplier Compliance.** Hercules shall have final authority to promulgate Hercules Standards and Strategic Plans and to modify or grant waivers from such Hercules Standards and Strategic Plans. Supplier shall (i) comply with and implement the Hercules Standards and Strategic Plans in providing the Services, (ii) work with Hercules to enforce the Hercules Standards and Strategic Plans, (iii) modify the Services as and to the extent necessary to conform to such Hercules Standards and Strategic Plans, and (iv) obtain Hercules’ prior written approval for any deviations from such Hercules Standards and Strategic Plans.
- (c) **Financial, Forecasting and Budgeting Support.** To support Hercules’ forecasting and budgeting processes, Supplier shall provide the following information regarding the costs to be incurred by Hercules and/or the Eligible Recipients in connection with the Services and the cost/benefit to Hercules and/or the Eligible Recipients associated therewith: (i) actual and forecasted utilization of Resource Units; (ii) actual and forecasted changes in the total cost or resource utilization of Hercules and the Eligible Recipients associated with changes to the environment; and (iii) opportunities to modify or improve the Services, to reduce the Charges, Pass-Through Expenses or retained expenses incurred by Hercules. Such information shall be provided at Hercules’ request, and at no additional charge to Hercules, in accordance with the schedule reasonably established by Hercules.
- (d) **Technology and Business Process Plan.** Supplier shall develop and implement a technology and business process plan that is consistent with the Hercules Standards and Strategic Plan and that shows how Supplier shall provide the Services to enable Hercules to achieve the Strategic Plan objectives and to implement and support Hercules’ ITO objectives and strategies (“**Technology and Business Process Plan**”). The development of the Technology and Business Process Plan will be an iterative process that Supplier shall carry out in consultation with Hercules. The timetable for finalization of the Technology and Business Process Plan shall be set each year having regard to the timetable for the Strategic Plan. Following approval by Hercules, the Technology and Business Process Plan will replace the previous plan.

The Technology and Business Process Plan, Supplier shall, among other things, include plans for: (A) refreshing Equipment and Software (consistent with the refresh cycles defined in **Section 9.14**); (B) adopting new technologies and business processes as part of the Technology and Business Process Evolution of the Services, as defined in this Agreement; and (C) maintaining flexibility as described in **Section 9.14**. In the

Technology and Business Process Plan, Supplier shall also present implementation plans for the achievement of the Strategic Plan and the Hercules Standards.

Supplier shall comply with the Technology and Business Process Plan at all times, unless Hercules agrees to depart from the Technology and Business Process Plan.

9.6 Change Control.

- (a) **Compliance with Change Control Procedures.** In making any change in the standards, processes, procedures or controls or associated IT technologies, architectures, standards, products, Software, Equipment, Systems, Services or Materials provided, operated, managed, supported or used in connection with the Services, Supplier shall comply with the change control procedures specified in the Policy and Procedures Manual (“**Change Control Procedures**”).
 - (b) **Financial responsibility for Changes.** Unless otherwise set forth in this Agreement, including specified in Schedule E, or approved in advance in accordance with Sections 4.5, 9.6(c) or otherwise, Supplier shall bear all charges, fees and costs associated with any change desired by Supplier, including all charges, fees and costs associated with (i) the design, installation, implementation, testing and rollout of such change, (ii) any modification or enhancement to, or substitution for, any impacted business process or associated Software, Equipment, System, Services or Materials, (iii) any increase in the cost to Hercules or the Eligible Recipients of operating, maintaining or supporting any impacted business process or associated Software, Equipment, System, Services or Materials, and (iv) any increase in Resource Unit usage resulting from such change.
 - (c) **Hercules Approval - Cost, Adverse Impact.** Supplier shall make no change which may (i) increase Hercules' total cost of receiving the Services; (ii) require material changes to, or have an adverse impact on, Hercules' or an Eligible Recipient's businesses, operations, environments, facilities, business processes, systems, software, utilities, tools or equipment (including those provided, managed, operated, supported and/or used on their behalf by Hercules Third Party Contractors); (iii) require Supplier, Hercules, the Eligible Recipients or Supplier to install a new version, release, upgrade of, or replacement for, any Software or Equipment or to modify any Software or Equipment, (iv) have a material adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality or resource efficiency of the Services; (v) have an adverse impact on the cost, either actual or planned, to Hercules of terminating all or any part of the Services or exercising its right to in-source or use third parties; (vi) requires changes to or have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost or resource efficiency of Hercules' Retained Systems and Business Processes or (vii) violate or be inconsistent with Hercules Standards or Strategic Plans as specified in Section 9.5, without first obtaining Hercules' approval, which approval Hercules may withhold in its sole discretion. If Supplier desires to make such a change, it shall provide to Hercules a written proposal describing in detail the extent to which the desired change may affect the functionality, performance, price or resource efficiency of the Services and any benefits, savings or risks to Hercules or the Eligible Recipients associated with such change.
 - (d) **Hercules Legal Approval - IVR/VRU Solution.** In addition to the foregoing, Supplier shall not implement or use in performing the Services an IVR or VRU solution having one or more of the following characteristics without first obtaining the approval of Hercules General Counsel or his or her designee: (i) the entry by callers of distinct customer verification data that is compared to information stored in a database to determine if the caller is qualified to continue using the system; (ii) the IVR system provides the caller with computer generated confirmation numbers; (iii) the use by callers of temporary PINs with the ability to change the PIN; or (iv) the generation of automatic screen pops at the operator terminal based on caller-specific information entered by the caller.
 - (e) **Information for Exercise of Strategic Authority.** In order to facilitate Hercules' strategic control pursuant to Section 9.5, Supplier shall provide Hercules with such information as Hercules shall reasonably require prior to making any proposed change. Such information shall include, at a minimum, a description of the proposed rights of Hercules and the Eligible Recipients with respect to ownership and licensing (including any related restrictions) relating to such Software, Equipment or other technology or Materials. Such description shall include the license fees, maintenance fees and/or purchase or lease terms (if any) for use of such Software, Equipment, Systems, Services or Materials by Hercules, the Eligible Recipients and their
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respective third party contractors upon termination or expiration of the Term and any limitations or conditions on such use.

- (f) **Temporary Emergency Changes.** Notwithstanding the foregoing, Supplier may make temporary changes required by an emergency if it has been unable to contact the Hercules Relationship Manager or his or her designee to obtain approval after making reasonable efforts. Supplier shall document and report such emergency changes to Hercules not later than the next business day after the change is made. Such changes shall not be implemented on a permanent basis unless and until approved by Hercules.
- (g) **Implementation of Changes.** Supplier shall schedule and implement all changes so as not to (i) disrupt or adversely impact the business or operations of Hercules or the Eligible Recipients, (ii) degrade the Services then being received by them, or (iii) interfere with their ability to obtain the full benefit of the Services.
- (h) **Planning and Tracking.** On a monthly basis, Supplier shall prepare, with Hercules' participation and approval, a rolling quarterly "look ahead" schedule for ongoing and planned changes for the next three (3) months. The status of changes shall be monitored and tracked by Supplier against the applicable schedule.

9.7 Software Currency.

- (a) **Currency of Supplier Owned Software.** Subject to and in accordance with Sections 6.4, 9.5, 9.6, 9.7(c), and 9.13 and Schedule J, Supplier shall maintain reasonable currency for Supplier Owned Software and provide maintenance and support for new releases and versions of such Software. At Hercules' direction, Supplier shall operate multiple releases or versions of Supplier Owned Software and shall continue to maintain and support each such release or version, without any increase in the Charges. For purposes of this Section, "reasonable currency" shall mean that, unless otherwise directed by Hercules, (i) Supplier shall maintain Supplier Owned Software at the then current Major Release, and (ii) Supplier shall install Minor Releases promptly or earlier, if requested by Hercules. It is understood that, to the extent the installation of a new Major Release requires more than twenty (20) FTE hours, it shall be treated as a Project in accordance with Section 3 of Schedule J.
 - (b) **Currency of Third Party Software.** Subject to and in accordance with Sections 6.4, 9.5, 9.6, 9.7(c), and 9.13 and Schedule J, Supplier shall maintain reasonable currency for Third Party Software for which it is financially responsible under this Agreement and provide maintenance and support for new releases and versions of Third Party Software for which it is operationally responsible. At Hercules' direction, Supplier shall operate multiple releases or versions of Third Party Software, without any increase in the Charges. In addition, unless otherwise directed by Hercules, Supplier shall keep Third Party Software within release levels supported by the appropriate third party vendor to ensure compatibility with other Software or Equipment components of the Systems. For purposes of this Section, "reasonable currency" shall mean that, unless otherwise directed by Hercules, (i) Supplier shall maintain Third Party Software within one Major Release of the then current Major Release, and (ii) Supplier shall install Minor Releases promptly or earlier, if requested by Hercules. It is understood that, to the extent the installation of a new Major Release requires more than twenty (20) FTE hours, it shall be treated as a Project in accordance with Section 3 of Schedule J.
 - (c) **Evaluation and Testing.** Prior to installing a new Major Release or Minor Release, Supplier shall evaluate and test such Release to verify that it will perform in accordance with this Agreement and the Hercules Standards and Strategic Plans and that it will not (i) increase Hercules' total cost of receiving the Services; (ii) have an adverse impact or require changes as described in Section 9.6(c); or (iii) violate or be inconsistent with Hercules Standards, Strategic Plans, the Technology and Business Process Plan or applicable Laws. The evaluation and testing performed by Supplier shall be at least consistent with the reasonable and accepted industry norms applicable to the performance of such Services and shall be at least as rigorous and comprehensive as the evaluation and testing usually performed by highly qualified service providers under such circumstances.
 - (d) **Approval by Hercules.** Notwithstanding Section 9.7(a) and (b), Supplier shall confer with Hercules prior to installing any Major Release or Minor Release, shall provide Hercules with the results of its testing and
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evaluation of such Release and a detailed implementation plan and shall not install such Release if directed not to do so by Hercules. Where specified by Hercules, Supplier shall not install new Software releases or make other Software changes until Hercules has completed and provided formal signoff on successful user acceptance testing.

- (e) **Updates by Hercules.** Hercules and the Eligible Recipients shall have the right, but not the obligation, to install new releases of, replace, or make other changes to Applications Software or other Software for which Hercules is financially responsible under this Agreement.

9.8 Maintenance.

- (a) **Supplier Responsibility.** To the extent Supplier has operational responsibility for Equipment or Software under **Schedule J.1**, Supplier shall (i) maintain such Equipment and Software so that it operates substantially in accordance with the Service Levels and applicable Specifications, (ii) maintain such Equipment in good operating condition, subject to normal wear and tear, (iii) undertake repairs and preventive maintenance on such Equipment in accordance with the applicable Equipment manufacturer's recommendations and requirements, and (iv) perform Software maintenance in accordance with the applicable Software supplier's documentation, recommendations and requirements. Supplier shall maintain such Equipment and Software in accordance with this provision at no additional Charge to Hercules, provided that Hercules may be financially responsible for certain Third Party Contracts for maintenance for such Equipment or Software under **Schedule J.1**.
- (b) **Out of Support Third Party Equipment and Software.** For Third Party Equipment and Software no longer supported by the licensor or manufacturer for which Supplier has operational responsibility under this Agreement, Supplier shall use all commercially reasonable efforts to perform maintenance for such Equipment or Software as required to meet its obligations under this Agreement. Notwithstanding the preceding sentence, the maintenance of out-of-support Equipment and Software shall not be subject to Service Levels or the imposition of Service Level Credits.

9.9 Efficiency and Cost Effectiveness.

Supplier shall use commercially reasonable efforts to provide the Services in the most cost-effective and efficient manner consistent with the required level of quality and performance. Without limiting the generality of the foregoing, such actions shall include:

- (a) **Timing of Actions.** Making adjustments in the timing of actions (consistent with Hercules priorities and schedules for the Services and Supplier's obligation to meet the Service Levels).
- (b) **Timing of Functions.** Delaying or accelerating, as appropriate, the performance of non-critical functions within limits acceptable to Hercules.
- (c) **Systems Optimization.** Tuning or optimizing the Systems (including memory), Applications Software, databases and/or business processes to optimize performance and minimize costs.
- (d) **Usage Scheduling.** Controlling its use of the System and/or the Hercules data network by scheduling usage, where possible, to low utilization periods.
- (e) **Alternative Technologies.** Subject to **Section 9.5**, using alternative technologies to perform the Services.
- (f) **Efficiency.** Efficiently using resources for which Hercules is charged hereunder, consistent with industry norms, and compiling data concerning such efficient use in segregated and auditable form whenever possible.

9.10 Malicious Code.

Each Party shall cooperate with the other Party and shall take commercially reasonable actions and precautions consistent with **Schedule E** to prevent the introduction and proliferation of Malicious Code into Hercules' or an

Eligible Recipient's environment or any System used by Supplier to provide the Services. Without limiting Supplier's other obligations under this Agreement, if Malicious Code is found in Equipment, Software or Systems provided, managed or supported by Supplier, Supplier shall, at no additional charge to Hercules, eliminate and reduce the effects of such Malicious Code and, if the Malicious Code causes a loss of operational efficiency or loss of data, to mitigate such losses and restore such data with generally accepted data restoration techniques. If Malicious Code is found in Equipment, Software or Systems provided, managed or supported by Hercules and Supplier or Supplier Personnel are determined to have caused or materially contributed to the introduction or proliferation of such Malicious Code, Supplier shall reimburse Hercules for any costs incurred by Hercules or the Eligible Recipients in eliminating and reducing the effects of such Malicious Code and, if the Malicious Code causes a loss of operational efficiency or loss of data, mitigating such losses and restoring such data with generally accepted data restoration techniques.

9.11 Access to Specialized Supplier Skills and Resources.

Upon Hercules' request, Supplier shall provide Hercules and the Eligible Recipients with prompt access to Supplier's specialized services, personnel and resources pertaining to ITO standards, processes and procedures and associated software, equipment and systems on an expedited basis taking into account the relevant circumstances (the "**Specialized Services**"). The Parties acknowledge that the provision of such Specialized Services may, in some cases, constitute New Services for which Supplier is entitled to additional compensation, but in no event shall Supplier be entitled to any additional compensation for New Services under this subsection unless the Hercules Relationship Manager and Supplier Account Manager, or their authorized designees, expressly agree upon such additional compensation or Supplier's entitlement to additional compensation is established through the dispute resolution process. If Hercules authorizes Supplier to proceed but the Parties disagree as to whether the authorized work constitutes New Services, Supplier shall proceed with such work and the disagreement shall be submitted to dispute resolution pursuant to Article 19.

9.12 Audit Rights.

- (a) **Contract Records.** Supplier shall, and shall cause its Subcontractors and suppliers to, maintain complete and accurate records of and supporting documentation for all Charges, all Hercules Data and all transactions, authorizations, changes, implementations, soft document accesses, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Supplier in the performance of its obligations under this Agreement ("**Contract Records**"). Supplier shall maintain such Contract Records in accordance with applicable Laws. Supplier shall retain Contract Records in accordance with Hercules' record retention policy (as such policy may be modified from time to time and provided to Supplier in writing) during the Term and any Termination Assistance Services period and thereafter through the end of the second full calendar year after the calendar year in which Supplier stopped performing Services (including Termination Assistance Services requested by Hercules under Section 4.3(b)(8)) (the "**Audit Period**").
 - (b) **Operational Audits.** During the Audit Period (as defined in Section 9.12(a)), Supplier shall, and shall cause its Subcontractors and suppliers to, provide to Hercules (and internal and external auditors, inspectors, regulators and other representatives that Hercules may designate from time to time), including customers, vendors, licensees and other third parties to the extent Hercules or the Eligible Recipients are legally or contractually obligated to submit to audits by such entities) access at reasonable hours to Supplier Personnel, to the facilities at or from which Services are then being provided and to Supplier records and other pertinent information, all to the extent relevant to the Services and Supplier's obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections to (i) verify the integrity of Hercules Data, (ii) examine the systems that process, store, support and transmit that data, (iii) examine the internal controls (e.g., financial controls, human resource controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and the security, disaster recovery and back-up practices and procedures; (iv) examine Supplier's performance of the Services; (v) verify Supplier's reported performance against the applicable Service Levels; and (vi) examine Supplier's measurement, monitoring and management tools. Supplier shall (i) provide any assistance reasonably requested by Hercules or its designee in conducting any such audit, including installing and operating audit software, (ii) make requested personnel, records and information available to Hercules or its designee, and (iii) in all cases, provide such assistance, personnel, records and information in an
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expeditious manner to facilitate the timely completion of such audit. If an audit reveals a non-trivial breach of this Agreement, Supplier shall promptly reimburse Hercules for the actual cost of such audit.

- (c) **Financial Audits.** During the Audit Period (as defined in Section 9.12(a)), Supplier shall, and shall cause its Subcontractors to, provide to Hercules (and internal and external auditors, inspectors, regulators and other representatives that Hercules may designate from time to time, including customers, vendors, licensees and other third parties to the extent Hercules or the Eligible Recipients are legally or contractually obligated to submit to audits by such entities) access at reasonable hours to Supplier Personnel and to Contract Records and other pertinent information to conduct financial audits, all to the extent relevant to the performance of Supplier's obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections to (i) verify the accuracy and completeness of Contract Records, (ii) verify the accuracy and completeness of Charges and any Pass-Through Expenses and Out-of-Pocket Expenses, (iii) examine the financial controls, processes and procedures utilized by Supplier, (iv) examine Supplier's performance of its other financial and accounting obligations, and (v) enable Hercules and the Eligible Recipients to meet applicable legal, regulatory and contractual requirements, in each case to the extent applicable to the Services and/or the Charges for such Services. Supplier shall (i) provide any assistance reasonably requested by Hercules or its designee in conducting any such audit, (ii) make requested personnel, records and information available to Hercules or its designee, and (iii) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If any such audit reveals an overcharge by Supplier, and Supplier does not successfully dispute the amount questioned by such audit in accordance with Article 19, Supplier shall promptly pay to Hercules the amount of such overcharge. In addition, if any such audit reveals an overcharge of more than five percent (5%) of the audited Charges, Supplier shall promptly reimburse Hercules for the actual cost of such audit (including auditors' fees), provided that the amount to be reimbursed with respect to any audit shall not exceed the lesser of the amount of such overcharge or USD \$25,000.
- (d) **Audit Assistance.** Hercules and certain Eligible Recipients may be subject to regulation and audit by governmental bodies, standards organizations, other regulatory authorities, customers or other parties to contracts with Hercules or an Eligible Recipient under applicable Laws, rules, regulations, standards or contract provisions. If any such Entity exercises its right to examine or audit Hercules' or an Eligible Recipient's books, records, documents or accounting practices and procedures pursuant to such Laws, rules, regulations, standards or contract provisions, Supplier shall provide all assistance requested by Hercules or the Eligible Recipient in responding to such audits or requests for information and shall do so in an expeditious manner to facilitate the prompt closure of such audit or request.

In addition, Hercules and certain Eligible Recipients will be subject to periodic financial and internal controls audits by independent registered public accounting firms. Supplier shall provide all assistance requested by Hercules, the Eligible Recipient and/or such accounting firms in responding to such audits or requests for information and shall do so in an expeditious manner to facilitate the prompt closure of such audit or request.

- (e) **General Procedures.**
- (i) Notwithstanding the intended breadth of Hercules' audit rights, Hercules shall not be given access to (A) the Confidential Information of other Supplier customers, (B) Supplier locations that are not related to Hercules, the Eligible Recipients or the Services, or (C) Supplier's internal costs, except to the extent such costs are the basis upon which Hercules is charged (e.g., reimbursable expenses, Out-of-Pocket Costs, Pass-Through Expenses or cost-plus Charges) and/or are necessary to calculate the applicable variable Charges.
- (ii) In performing audits, Hercules shall endeavor to avoid unnecessary disruption of Supplier's operations and unnecessary interference with Supplier's ability to perform the Services in accordance with the Service Levels.
- (iii) Following any audit, Hercules shall conduct (in the case of an internal audit), or request its external auditors or examiners to conduct, an exit conference with Supplier to obtain factual concurrence with issues identified in the review.
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- (iv) Hercules shall be given adequate private workspace in which to perform an audit, plus access to photocopiers, telephones, facsimile machines, computer hook-ups, and any other facilities or equipment needed for the performance of the audit.
 - (v) Hercules shall provide Supplier with reasonable notice prior to any operational or financial audit by Hercules or its authorized agents or representatives; provided that no such notice shall be required with respect to audits conducted by government auditors, inspectors, regulators or representatives.
 - (f) **Supplier Internal Audit.** If Supplier determines as a result of its own internal audit that it has overcharged Hercules, then Supplier shall promptly pay to Hercules the amount of such overcharge.
 - (g) **Supplier Response.** Supplier and Hercules shall meet promptly upon the completion of an audit conducted pursuant to this **Section 9.12** (i.e., an exit interview) and/or the issuance of an interim or final report to Supplier and Hercules following such an audit. Supplier will respond to each exit interview and/or audit report in writing within thirty (30) days, unless a shorter response time is specified in such report. Supplier and Hercules shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or recommendations identified in such exit interview or audit report and Supplier, at its own expense, shall undertake remedial action in accordance with such action plan and the dates specified therein to the extent necessary to comply with Supplier's obligations under this Agreement.
 - (h) **Supplier Response to Government Audits.** If an audit by a governmental body, standards organization or regulatory authority having jurisdiction over Hercules, an Eligible Recipient or Supplier results in a finding that Supplier is not in compliance with any applicable Law or standard, including any generally accepted accounting principle, or any other audit requirement relating to the performance of its obligations under this Agreement, Supplier shall, at its own expense and within the time period specified by such auditor, address and resolve the deficiency(ies) identified by such governmental body, standards organization or regulatory authority, in the manner approved by Hercules.
 - (i) **SAS70 Audit.** In addition to its other obligations under this **Section 9.12**, Supplier shall cause a Type II Statement of Auditing Standards ("SAS") 70 audit (or equivalent audit) to be conducted by an independent auditor on an annual or more frequent basis for each Supplier facility at, from or through which Services are provided to Hercules and/or the Eligible Recipients or Hercules Data is transmitted or stored. Supplier shall permit Hercules to participate in the planning of each such audit, shall confer with Hercules as to the scope and timing of each such audit and shall accommodate Hercules' requirements and concerns to the extent practicable. Unless otherwise agreed by the Parties, such audit shall be conducted so as to result in a final audit report dated September 1 or later each calendar year. Supplier shall provide Hercules with a report from each SAS 70 to facilitate periodic compliance reporting by Hercules and the Eligible Recipients under the Sarbanes-Oxley Act of 2002 (and implementing regulations promulgated by the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board) and comparable Laws in other jurisdictions. To the extent the resulting audit report is relevant to Hercules and/or the Eligible Recipients, Supplier shall provide a copy of such report to Hercules and its independent auditors for review and comment as soon as reasonably possible and in all events within thirty (30) days of completion. Supplier shall respond to such report in accordance with **Section 9.12(g)**.

To the extent Hercules requests that, in addition to the Type II SAS 70 audit described above, Supplier conduct a Hercules-specific Type II SAS 70 audit, Supplier shall do so at Hercules's expense (provided, Supplier notifies Hercules of such expense, obtains Hercules's approval, and uses commercially reasonable efforts to minimize such expense). If, however, Supplier undertakes additional or different Type II SAS 70 audits (or equivalent audits) of Supplier Facilities at, from or through which Services are provided to Hercules and/or the Eligible Recipients (other than customer-specific audits requested and paid for by other Supplier customers), Supplier shall accord Hercules the rights described in the preceding paragraph with respect to such audits.
 - (j) **Audit Costs.**
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- (i) Except as provided in **Section 9.12(j)(ii)** below, Supplier and its Subcontractors and suppliers shall provide the Services described in this **Section 9.12** at no additional Charge to Hercules.
- (ii) As part of the Monthly Base Charges, Supplier shall provide, at Hercules' request, up to 2080 FTE hours of audit assistance for audits initiated by Hercules in any Contract Year ("**Baseline Audit FTEs**"). The Hercules Relationship Manager or his or her designee shall request, define and set the priority for such audit assistance. Supplier shall report monthly on the level of effort expended by Supplier in the performance of such audit assistance and shall not exceed the Baseline Audit FTEs without Hercules' prior approval. Subject to **Sections 9.12(j)(iii), (iv), (v), and (vi)**, if Hercules authorizes Supplier to exceed the Baseline Audit FTEs in any Contract Year, Hercules shall either pay Supplier for such additional FTE hours at the rates specified in **Schedule J** or apply such additional FTE hours against the Baseline Project FTE Pool set forth in **Section 3 of Schedule J**.
- (iii) Notwithstanding **Section 9.10(j)(ii)**, to the extent the level of audit assistance requested by Hercules and provided by Supplier Personnel in connection with any audit activities initiated by Hercules is eight (8) FTE hours or less, there shall be no additional Charge to Hercules for such assistance and such FTE hours shall not be counted against the Baseline Audit FTE pool described in **Section 9.10(j)(ii)** above; provided that, if Supplier reasonably believes that the number of requests is unreasonable and unduly burdensome, Supplier may present and escalate its concern through the governance process.
- (iv) Notwithstanding **Section 9.10(j)(ii)**, to the extent the audit assistance requested by Hercules can be provided by Supplier using personnel already assigned to perform Services for Hercules without impacting Service Levels, there will be no additional charge to Hercules for such audit assistance. If the audit assistance requested by Hercules cannot be provided by Supplier using such personnel then assigned to Hercules without impacting Service Levels, Hercules, in its sole discretion, may forego or delay any work activities or temporarily or permanently adjust the work to be performed by Supplier, the schedules associated therewith or the Service Levels to permit the performance of such audit assistance using personnel already assigned to perform the Services.
- (v) Notwithstanding **Section 9.10(j)(ii)**, there will be no additional charge or reduction of the Baseline Audit FTEs for audit assistance relating to a Hercules Type II SAS 70 audit or any audit that uncovers evidence that Supplier has breached in any material respect any obligation(s) under this Agreement.

9.13 Subcontractors.

- (a) **Use of Subcontractors.** In subcontracting any of its responsibilities under this Agreement, Supplier shall comply strictly with this **Section 9.13**. Prior to entering into a subcontract with respect to the Services, Supplier shall (i) at Hercules' request, forward to Hercules a copy of the proposed subcontract, or (in Hercules' reasonable discretion) a detailed description of the scope and material terms (other than pricing terms) of the proposed subcontract; (ii) give Hercules reasonable prior notice of the subcontract, specifying the components of the Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed Subcontractor, the reasons for subcontracting the work in question, the location of the Subcontractor facilities from which the Services will be provided, the extent to which the subcontract will be dedicated, and the Subcontractor's willingness to grant the rights described in **Section 6.4(c)** upon expiration or termination; and (iii) obtain Hercules' prior approval of the proposed Subcontractor, other than Subcontractors that qualify as Shared Subcontractors in accordance with **Section 9.13(c)** below. Subcontractors listed on **Schedule D** as of the Effective Date are deemed to be approved by Hercules.
 - (b) **Right to Revoke Approval.** Hercules also shall have the right during the Term to revoke its prior approval of a Subcontractor and direct Supplier to promptly replace such Subcontractor, at no additional cost to Hercules, if the Subcontractor's performance is materially deficient. If directed to do so, Supplier shall remove and replace such Subcontractor as soon as possible. Supplier shall continue to perform its obligations under the Agreement, notwithstanding the removal of the Subcontractor. Hercules shall have no
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responsibility for any termination charges or cancellation fees that Supplier may be obligated to pay to a Subcontractor as a result of the removal of such Subcontractor at Hercules' request or the withdrawal or cancellation of the Services then performed by such Subcontractor as permitted under this Agreement.

- (c) **Shared Subcontractors.** Notwithstanding Sections 9.13(a) and (b), Supplier may, in the ordinary course of business, enter into subcontracts with total estimated annual revenue of less than USD \$200,000 per subcontract or USD \$500,000 in the aggregate (i) for third party services or products that are not a material portion of the Services, that are not exclusively dedicated to Hercules and that do not include regular direct contact with Hercules or Eligible Recipient personnel or the performance of services at Hercules Sites, or (ii) with temporary contract labor, including temporary personnel firms providing such labor (collectively, "**Shared Subcontractors**"); provided, that such Shared Subcontractors possess the training and experience, competence and skill to perform the work in a skilled and professional manner. Supplier shall not be required to obtain Hercules' prior approval of Shared Subcontractors. If, however, Hercules expresses dissatisfaction with the services or products of a Shared Subcontractor, Supplier shall work in good faith to resolve Hercules' concerns on a mutually acceptable basis and, at Hercules request, replace such Shared Subcontractor at no additional cost to Hercules.
- (d) **Supplier Responsibility.** Unless otherwise approved by Hercules, the terms of any subcontract must be consistent with this Agreement, including: (i) confidentiality and intellectual property obligations; (ii) Hercules' approval rights (which must apply directly to the Subcontractor); (iii) compliance with Hercules Standards, Strategic Plans and applicable Laws; (iv) compliance with Hercules' policies and directions; (v) audit rights, as described in Section 9.12; (vi) Key Supplier Personnel; and (vii) insurance coverage with coverage types and limits consistent with the scope of work to be performed by such Subcontractors. Notwithstanding the terms of the applicable subcontract, the approval of such Subcontractor by Hercules or the availability or unavailability of Subcontractor insurance, Supplier shall be and remain responsible and liable for any failure by any Subcontractor or Subcontractor personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Supplier under this Agreement to the same extent as if such failure to perform or comply was committed by Supplier or Supplier employees.

9.14 Technology and Business Process Evolution.

- (a) **Obligation to Evolve.** Supplier acknowledges and agrees that its current technologies and business processes shall continue to evolve and change over time, and at a minimum, shall remain consistent with the best practices of ITO service providers and the objectives and competitive needs of Hercules and the Eligible Recipients. Subject to Section 9.5, Supplier shall provide the Services using current technologies and business processes that will enable Hercules and the Eligible Recipients to take advantage of advances in the industry and support their efforts to maintain competitiveness in the markets in which it competes. In addition, subject to Sections 9.5 and 4.4, Supplier shall make such current technologies and business processes available to Hercules to perform ITO services and functions on behalf of itself and/or the Eligible Recipients.
 - (b) **Initially blank.**
 - (c) **Obligation to Propose Technology and Business Process Evolutions.** Supplier shall identify and propose the implementation of Technology and Business Process Evolutions that are likely to: (i) improve the efficiency and effectiveness of the Services (including cost savings); (ii) improve the efficiency and effectiveness of the ITO services and functions performed by or for Hercules and the Eligible Recipients at or from Hercules facilities; (iii) result in cost savings or revenue increases to Hercules and the Eligible Recipients in areas of their business outside the Services; (iv) enhance the ability of Hercules and the Eligible Recipients to conduct their businesses and serve their customers; and (v) achieve the objectives of Hercules and the Eligible Recipients faster and/or more efficiently than the then current strategies. Subject to its non-disclosure obligation under other customer contracts, Supplier shall obtain information regarding Technology and Business Process Evolutions from other customer engagements and shall communicate such information to Hercules on an ongoing basis.
 - (d) **Supplier Briefings and Technology and Business Process Monitoring.** Supplier shall routinely and regularly monitor and analyze Technology and Business Process Evolutions of possible interest or
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applicability to Hercules and the Eligible Recipients. At least semi-annually, Supplier shall meet with Hercules to formally brief Hercules regarding such Technology and Business Process Evolutions. Such briefing shall include Supplier's assessment of the business impact, performance improvements and cost savings associated with such Technology and Business Process Evolutions. Where requested by Hercules, Supplier shall develop and present to Hercules proposals for: (i) implementing Technology and Business Process Evolutions or (ii) changing the direction of Hercules' then current strategy.

- (e) **Supplier Developed Advances.** If Supplier develops technological advances in or changes to the ITO business processes and services and associated technologies used to provide the same or substantially similar services to other Supplier customers or Supplier develops new or enhanced processes, services, software, tools, products or methodologies to be offered to such customers (collectively, "New Advances"), Supplier shall, subject to Section 4.4, (i) offer Hercules the opportunity to serve as a pilot customer in connection with the implementation of such New Advances; and (ii) if Hercules declines such opportunity, offer Hercules preferred access to such New Advances and the opportunity to be among the first of the Supplier customer base to implement and receive the benefits of any New Advances.
 - (f) **Flexibility.** Supplier shall ensure that the technologies and business process strategies it employs to provide the Services meet industry standards and are flexible enough to allow integration with new technologies or business processes, or significant changes in Hercules' or an Eligible Recipient's business, ITO and information technology objectives and strategies. For example, Equipment must have sufficient scalability and be sufficiently modular to allow integration of new technologies without the need to replace whole, or significant parts of, systems or business processes (e.g., made to be a one-to-many model) to enable Hercules' and/or the Eligible Recipients' business to become more scalable and flexible.
 - (g) **Equipment Implementation and Refresh.** To the extent Supplier is financially responsible for particular Equipment under Schedule J.1, Supplier shall be responsible for the cost of acquiring new Equipment in the ordinary course of Technology and Business Process Evolution. In addition, to the extent Supplier is operationally responsible for particular Equipment under Schedule J.1, Supplier shall be responsible for the deployment and implementation of new Equipment in the ordinary course of Technology and Business Process Evolution. In each case, Supplier shall refresh such Equipment in accordance with the defined refresh strategies, as set out in the Technology and Business Process Plan, and as necessary to provide the Services in accordance with the Service Levels and satisfy its other obligations under this Agreement. If Supplier is aware that these strategies differ from generally accepted practice (or there are any other areas of concern in relation to such strategies) it shall provide Hercules with notice of that fact and, upon request, provide Hercules with further information as to how to more closely align the strategies with generally accepted practice.
 - (h) **Software Implementation and Refresh.** To the extent Supplier is financially responsible for particular Software, tools and methodologies under Schedule J.1, Supplier shall be responsible for the cost of acquiring such new or changed Software, tools and methodologies in the ordinary course of Technology and Business Process Evolution. In addition, to the extent Supplier is operationally responsible for particular Software, tools and methodologies under Schedule J.1, Supplier shall be responsible for the deployment and implementation of new or changed Software, tools and methodologies in the ordinary course of Technology and Business Process Evolution. In each case, Supplier shall: (i) refresh Software in accordance with Section 9.7 of this Agreement and the Technology and Business Process Plan; and (ii) provide training to Hercules personnel regarding the use of any new or changed Software, tools and methodologies.
 - (i) **Included in Charges.** The deployment, implementation and support of Technology and Business Process Evolution and New Advances shall be included in the Monthly Base Charges unless and to the extent (A) the Technology and Business Process Evolution or New Advance is considered a New Service pursuant to Section 4.4, or (B) Hercules requests that it be implemented more quickly than the established refresh schedule, and in each case, only if and to the extent additional Supplier Personnel and resources are required to do so in the desired timeframe.
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9.15 Network Configuration Data.

Supplier (i) shall provide Hercules (and Hercules Third Party Contractors) with network configuration data with respect to the network provided and used by Supplier to provide Services to Hercules and/or the Eligible Recipients; and (ii) hereby grants Hercules (and Hercules Third Party Contractors) the right to use such data in connection with the performance of ancillary services (e.g., security reviews or audits) or the exercise of Hercules' other rights under this Agreement.

10 HERCULES RESPONSIBILITIES

10.1 Responsibilities.

In addition to Hercules' responsibilities as expressly set forth elsewhere in this Agreement, Hercules shall be responsible for the following:

- (a) **Hercules Relationship Manager.** Hercules shall designate one (1) individual to whom all Supplier communications concerning this Agreement may be addressed (the "**Hercules Relationship Manager**"), who shall have the authority to act on behalf of Hercules and the Eligible Recipients in all day-to-day matters pertaining to this Agreement. Hercules may change the designated Hercules Relationship Manager from time to time by providing notice to Supplier. Additionally, Hercules will have the option, but will not be obligated, to designate additional representatives who will be authorized to make certain decisions (e.g., regarding emergency maintenance) if the Hercules Relationship Manager is not available.
- (b) **Cooperation.** Hercules shall cooperate with Supplier by, among other things, making available, as reasonably requested by Supplier, management decisions, information, approvals and acceptances so that Supplier may accomplish its obligations and responsibilities hereunder.
- (c) **Requirement of Writing.** To the extent Supplier is required under this Agreement to obtain Hercules' approval, consent or agreement, such approval, consent or agreement shall be in writing and shall be signed by or directly transmitted by electronic mail from the Hercules Relationship Manager or an authorized Hercules representative. Notwithstanding the preceding sentence, the Hercules Relationship Manager may agree in advance in writing that as to certain specific matters oral approval, consent or agreement will be sufficient.

10.2 Savings Clause.

Supplier's failure to perform its responsibilities under this Agreement or to meet the Service Levels shall be excused if and to the extent such Supplier non-performance is caused by (i) the wrongful or tortious actions of Hercules, an Eligible Recipient or a Hercules Third Party Contractor performing obligations on behalf of Hercules under this Agreement (unless and to the extent, as to Hercules Third Party Contractors, such failure is attributable to Supplier's failure to properly manage such Hercules Third Party Contractor), or (ii) the failure of Hercules, an Eligible Recipient or such a Hercules Third Party Contractor to perform Hercules' expressly specified obligations under this Agreement, but only if (A) Supplier immediately notifies Hercules of such wrongful or tortious action or failure to perform and its inability to perform under such circumstances, (B) Supplier provides Hercules with every reasonable opportunity to correct such wrongful or tortious action or failure to perform and thereby avoid such Supplier non-performance, (C) Supplier identifies and pursues all commercially reasonable means to avoid or mitigate the impact of such wrongful or tortious action or failure to perform, (D) Supplier uses commercially reasonable efforts to perform notwithstanding such wrongful or tortious action or failure to perform, and (E) Supplier conducts a Root Cause Analysis and thereby demonstrates that such wrongful or tortious action or failure to perform is the cause of Supplier's non-performance. Supplier acknowledges and agrees that the circumstances described in this **Section 10.2**, together with force majeure, are the only circumstances in which its failure to perform its responsibilities under this Agreement or to meet the Service Levels will be excused and that Supplier will not assert any other act or omission of Hercules or the Eligible Recipients as excusing any such failure on Supplier's part.

11 CHARGES

11.1 General.

- (a) **Payment of Charges.** In consideration of Supplier's performance of the Services, Hercules agrees to pay Supplier the applicable Charges set forth in **Schedule J** beginning as of the date specified therein. Supplier shall use commercially reasonable efforts to continually seek to identify methods of reducing such Charges and will notify Hercules of such methods and the estimated potential savings associated with each such method.
 - (b) **No Additional Charges.** The Charges for the Services are set forth in **Schedule J** and there are no separate or additional charges for such Services. Any costs incurred by Supplier prior to the Commencement Date are included in the Charges as set forth in **Schedule J** and are not to be separately paid or reimbursed by Hercules.
 - (c) **Incidental Expenses.** Supplier acknowledges that, except as expressly provided otherwise in this Agreement, expenses that Supplier incurs in performing the Services (including management, travel and lodging, document reproduction and shipping, desktop Equipment and other office Equipment required by Supplier Personnel, and long-distance telephone) are included in Supplier's charges and rates set forth in this Agreement. Accordingly, such Supplier expenses are not separately reimbursable by Hercules unless Hercules has agreed in advance and in writing to reimburse Supplier for the expense.
 - (d) **Proration.** Periodic charges under this Agreement are to be computed on a calendar month basis, and shall be prorated for any partial month on a calendar day basis.
 - (e) **Charges for Contract Changes.** Unless otherwise agreed, changes in the Services (including changes in the Hercules Standards, Strategic Plans, Technology and Business Process Plans, business process, Software, Equipment and Systems) and changes in the rights or obligations of the Parties under this Agreement (collectively, "**Contract Changes**") shall result in changes in the applicable Charges only if and to the extent (i) the Agreement expressly provides for a change in the Supplier Charges in such circumstances; (ii) the agreed upon Charges or pricing methodology expressly provides for a price change in such circumstances (for example, **Schedule J** specifies the number of FTEs or hours of coverage to be provided for the quoted price, or defines a Resource Unit rate for increased or decreased usage above or below the applicable Resource Baseline); or (iii) the Contract Change meets the definition of Billable Project or New Services and additional Charges are applicable in accordance therewith. Notwithstanding the foregoing, if a Contract Change causes a material increase or decrease in the number of billable Resource Units without a commensurate increase or decrease in the level of effort, resources or expense associated with the performance of the applicable Service, the Parties will discuss in good faith appropriate adjustments to the Resource Baselines and associated ARC and RRC rates as necessary to reflect the change in the number of Resource Units, but the Monthly Base Charges and ARC and RRC rates will be modified in connection therewith only if and to the extent such Contract Change results in a material change in the level of effort, resources or expense required to perform such Service.
 - (f) **Eligible Recipient Services.**
 - (i) **Eligible Recipients.** Supplier shall provide the Services to Eligible Recipients designated by Hercules. To the extent a designated Eligible Recipient will receive less than all of the Services, Hercules shall identify the categories of Services to be provided by Supplier to such Eligible Recipient.
 - (ii) **New Eligible Recipients.** From time to time Hercules may request that Supplier provide Services to Eligible Recipients not previously receiving such Services. Except as provided in **Section 4.4** or otherwise agreed by the Parties, such Services shall be performed in accordance with the terms, conditions and prices (excluding any non-recurring transition or start-up activities specific to such Eligible Recipients) then applicable to the provisions of the same Services to existing Eligible Recipients.
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- (iii) **Existing Supplier Customer.** To the extent Hercules or an Eligible Recipient acquires an Entity such that it is also an Eligible Recipient and such Entity has an existing contract with Supplier for ITO services, Hercules may, in its discretion, designate such Entity as an Eligible Recipient under this Agreement and terminate the other contract for convenience or terminate this Agreement and the applicable Work Statements for convenience and roll the Service then being provided hereunder under the other contract. In either event, Supplier shall reduce and/or rollover to the extent possible the applicable termination charges and/or wind-down expenses Hercules would otherwise be obligated to pay in connection with such a termination. Supplier shall require Hercules to pay only unavoidable wind-down expenses (as defined in Section 2(a) or (b) of **Schedule N** and unamortized balance sheet items or other miscellaneous termination charges (as defined in Section 2(c) of **Schedule N**, unless and to the extent such items are rolled into the applicable termination charges under the surviving contract.
- (iv) **Election Procedure.** In the event of a transaction described in clause (c) or (d) within the definition of Eligible Recipient in **Schedule A**, Hercules may elect, on behalf of the Eligible Recipient in question, either (i) that such Eligible Recipient shall continue to obtain some or all of the Services subject to and in accordance with the terms and conditions of this Agreement for the remainder of the Term, (ii) that the Entity shall obtain some or all of the Services under a separate agreement between Supplier and such Entity containing the same terms and conditions as this Agreement or (iii) that the Term shall be terminated as to such Eligible Recipient with respect to some or all the Services as of a specified date, subject to its receipt of Termination Assistance Services pursuant to **Section 4.3**. If the Services are provided under a separate agreement, Hercules shall have no obligation to pay any fees in relation to the Services provided to such Entity. Services provided to such Entity shall be included in the calculation of Service volumes, if any, under this Agreement, but shall be excluded when determining any Termination Charges payable to Supplier.

11.2 Pass-Through Expenses.

- (a) **Procedures and Payment.** No new Pass-Through Expenses may be added without Hercules' prior consent, which it may withhold in its sole discretion. Before paying any Pass-Through Expense, Supplier shall (i) review and validate the invoiced charges, (ii) identify any errors or omissions, and (iii) communicate with the applicable vendor to correct any errors or omissions, resolve any questions or issues and obtain any applicable credits, rebates, discounts or other incentives for Hercules. Supplier shall deliver to Hercules the original vendor invoice, together with any documentation supporting such invoice and a statement that Supplier has reviewed and validated the invoiced charges, within ten (10) days after Supplier's receipt thereof; provided that, if earlier, Supplier shall use commercially reasonable efforts to deliver such invoice, documentation and statement at least five (5) business days prior to the date on which payment is due; and provided further that, if it is not possible to deliver such invoice, documentation and statement at least five (5) business days prior to the due date, Supplier shall promptly notify Hercules and, at Hercules' option, either request additional time for review and validation or submit the invoice for payment subject to subsequent review and validation. If the vendor offers a discount for payment prior to a specified date, Supplier shall use commercially reasonable efforts to deliver such invoice and associated documentation to Hercules at least five (5) days prior to such date. In addition, during the last month of each calendar quarter, Supplier shall use commercially reasonable efforts to deliver all such invoices and associated documentation to Hercules by the end of the month and, to the extent that is not possible, Supplier shall provide Hercules with information sufficient to accrue the applicable expenses on or before the end of such month.
- (b) **Efforts to Minimize.** Supplier will continually seek to identify methods of reducing and minimizing Hercules' retained and Pass-Through Expenses and will notify Hercules of such methods and the estimated potential savings associated with each such method.

11.3 Reserved.

11.4 Taxes.

The Parties' respective responsibilities for taxes arising under or in connection with this Agreement shall be as follows:

- (a) **Income Taxes.** Each Party shall be responsible for its own Income Taxes.
- (b) **Sales, Use and Property Taxes.** Each Party shall be responsible for any sales, lease, use, personal property, stamp, duty or other such taxes on Equipment, Software or property it owns or leases from a third party, including any lease assigned pursuant to this Agreement, and/or for which it is financially responsible under this Agreement.
- (c) **Recoverable Taxes.** All sums payable under or in connection with this Agreement shall be exclusive of Recoverable Taxes, and each Party shall, in addition to such sums, pay such Recoverable Taxes properly chargeable thereon on receipt of a valid invoice. Supplier shall note any amounts that may be subject to Recoverable Taxes on each invoice to facilitate Hercules' internal processes regarding Recoverable Taxes, including the payment and recovery of such Recoverable Taxes with applicable jurisdictions.
- (d) **Taxes on Goods or Services Used by Supplier.** Supplier shall be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption, and other taxes and duties, including VAT, payable by Supplier on any goods or services used or consumed by Supplier in providing the Services (including services obtained from Subcontractors) where the tax is imposed on Supplier's acquisition or use of such goods or services and the amount of tax is measured by Supplier's costs in acquiring or procuring such goods or services and not by Hercules' cost of acquiring such goods or services from Supplier.
- (e) **Service Taxes.**
- (i) Hercules shall be financially responsible for all Service Taxes existing as of the Effective Date that are assessed against either Party on the Services as a whole, or on any particular Service by a Tax Authority in a jurisdiction in which Hercules and/or the Eligible Recipients are physically located and receive the Services ("**Hercules Service Taxes**"). If new or higher Hercules Service Taxes become applicable to the Services as a result of either Party moving all or part of its operations to a different jurisdiction (e.g., Hercules opening a new office, Supplier relocating performance of Services to a shared service center or assigning this Agreement to an Affiliate) the Party initiating such move shall be financially responsible for such new or higher Hercules Service Taxes. If new or higher Hercules Service Taxes become applicable to such Services after the Effective Date for any other reason (e.g., tax law changes, but not volume changes) the Parties shall negotiate in good faith and diligently seek to agree upon legally permissible means of avoiding or minimizing such new or higher Hercules Service Taxes and/or an allocation or sharing of financial responsibility for such additional Hercules Service Taxes. If the Parties are unable to agree upon such measures, Hercules shall be financially responsible for such additional Hercules Service Taxes to the extent the financial impact of all such new or higher Service Taxes does not exceed three percent (3%) of the then-current monthly Charges. To the extent the financial impact exceeds three percent (3%), the Parties shall each be financially responsible for fifty percent (50%) of the additional Hercules Service Taxes exceeding that threshold.
- (ii) Supplier shall be financially responsible for all Service Taxes existing as of the Effective Date assessed against either Party on the provision of the Services as a whole, or on any particular Service by a Tax Authority in a jurisdiction from which such Services are provided by Supplier ("**Supplier Service Taxes**"). If new or higher Supplier Service Taxes become applicable to the Services as a result of either Party moving all or part of its operations to a different jurisdiction, the Party initiating such move shall be financially responsible for such new or higher Supplier Service Taxes. If new or higher Supplier Service Taxes become applicable to such Services after the Effective Date for any other reason (e.g., tax law changes, but not volume changes), Supplier shall, within thirty (30) days, prepare a detailed proposal identifying all viable and legally permissible means of avoiding or minimizing such new or higher Supplier Service Taxes without adversely impacting the quality or price of the Services or the business objectives or requirements of Hercules and the Eligible Recipients, including the possibility of modifying or reducing the nature or scope of the Services to be delivered from such jurisdiction, or migrating the delivery of such Services to Supplier Facilities in other jurisdictions. In preparing its proposal, Supplier shall give due consideration to any legally permissible means of avoiding or minimizing such Service Taxes
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proposed by Hercules. Following Hercules' receipt and review of Supplier's proposal, the Parties shall negotiate in good faith and diligently seek to agree upon legally permissible means of avoiding or minimizing such new or higher Supplier Service Taxes and/or an allocation or sharing of financial responsibility for such additional Supplier Service Taxes. If the Parties are unable to agree upon such measures, Supplier shall be financially responsible for such additional Supplier Service Taxes to the extent the financial impact of all such new or higher Service Taxes does exceed three percent (3%) of the then-current monthly Charges. To the extent the financial impact exceeds three percent (3%), the Parties shall each be financially responsible for fifty percent (50%) of the additional Supplier Service Taxes exceeding that threshold.

- (iii) If required under applicable Laws, Supplier shall invoice Hercules for the full amount of the Service Taxes and then credit or reimburse Hercules for that portion of such Service Taxes for which Supplier is financially responsible under this provision.
 - (f) **Withholding.** Any withholding tax or other tax of any kind that Hercules is required by applicable Law to withhold and pay on behalf of Supplier with respect to amounts payable to Supplier under this Agreement shall be deducted from said amount prior to remittance to Supplier. Hercules will provide to Supplier reasonable assistance, which shall include the provision of documentation as required by revenue authorities, to enable Supplier to claim exemption from or obtain a repayment of such withheld taxes and will, upon request, provide Supplier with a copy of the withholding tax certificate.
 - (g) **Telecommunication Surcharges or User Fees.** To the extent Hercules is responsible under **Schedule J** for telecommunication surcharges or user fees imposed by government authorities and associated with the Services and the allocation of such fees or surcharges is within Supplier's or its Subcontractors' discretion, Supplier and its Subcontractors shall act fairly and equitably in allocating such fees and surcharges to Hercules, and Hercules and the Eligible Recipients shall not receive more than a proportionate share of such fees and surcharges. In addition, in the event any such fee or surcharge for which Hercules or an Eligible Recipient is responsible is subsequently reduced or vacated by the appropriate regulatory authority or court of competent jurisdiction, Supplier shall seek on behalf of Hercules a refund of any overpayment of such fee or surcharge by Hercules or the Eligible Recipient.
 - (h) **Notice of New Taxes and Charges.** Supplier shall promptly notify Hercules when it becomes aware of any new taxes or other charges (including changes to existing taxes or charges) to be passed through and/or collected by Hercules under this Section. Such notification (which may be separate from the first invoice reflecting such taxes or other charges) shall contain a detailed explanation of such taxes or charges, including the effective date of each new tax or charge.
 - (i) **Efforts to Minimize Taxes.** Supplier shall cooperate fully with Hercules to enable Hercules to more accurately determine its own tax liability (including Recoverable Taxes) and to minimize such liability to the extent legally permissible. Supplier's invoices shall separately state the Charges that are subject to taxation, the Service Taxes associated with such Charges, and any amounts that may be Recoverable Taxes. Each Party will provide and make available to the other any resale certificates, information regarding out-of-state or out-of-country sales or use of equipment, materials, or services, and other exemption certificates or information reasonably requested by either Party. At Hercules' request, Supplier shall provide Hercules with (i) written confirmation that Supplier has filed all required tax forms and returns required in connection with any Service Taxes collected from Hercules, and has collected and remitted all applicable Service Taxes, and (ii) such other information pertaining to applicable Taxes as Hercules may reasonably request.
 - (j) **Tax Audits or Proceedings.** Each Party shall promptly notify the other Party of, and coordinate with the other Party, the response to and settlement of, any claim for taxes asserted by applicable taxing authorities for which the other Party is financially responsible hereunder. With respect to any claim arising out of a form or return signed by a Party to this Agreement, such Party shall have the right to elect to control the response to and settlement of the claim, but the other Party shall have the right to participate in the responses and settlements to the extent appropriate given its potential responsibilities or liabilities. Each Party also shall have the right to challenge the imposition of any tax liability for which it is financially responsible under this Agreement or, if necessary, to direct the other Party to challenge the imposition of any such tax liability. If either Party requests the other to challenge the imposition of any tax liability, such other Party shall do so
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(unless and to the extent it assumes financial responsibility for the tax liability in question), and, the requesting Party shall reimburse the other for all fines, penalties, interest, additions to taxes or similar liabilities imposed in connection therewith, plus the reasonable legal, accounting and other professional fees and expenses it incurs. Each Party shall be entitled to any tax refunds or rebates obtained with respect to the taxes for which such Party is financially responsible under this Agreement.

- (k) **Tax Filings.** Each Party represents, warrants and covenants that it will file appropriate tax returns, and pay applicable taxes owed arising from or related to the provision of the Services in applicable jurisdictions. Supplier represents, warrants and covenants that it is registered to and will collect and remit Service Taxes in all applicable jurisdictions.

11.5 Extraordinary Events.

- (a) **Definition.** As used in this Agreement, an “**Extraordinary Event**” shall mean a circumstance in which an event or discrete set of events has occurred or is planned with respect to the business of Hercules or the Eligible Recipients that results or will result in a change in the scope, nature or volume of the Services that Hercules and the Eligible Recipients will require from Supplier, and which is expected to cause the estimated average monthly usage of any chargeable Resource Unit to increase or decrease by twenty percent (20%) or more from the actual average monthly usage for the preceding twelve (12) months (or, if less, the number of months for which such data is available), provided that such increase or decrease is not temporary or seasonal and that such decrease is not due to Hercules resuming the provision of Services itself or transferring the provision of the Services to another services provider. Examples of the kinds of events that might cause such substantial increases or decreases include the following:

- (i) changes in locations where the Eligible Recipients operate;
- (ii) changes in products of, or in markets served by, the Eligible Recipients;
- (iii) mergers, acquisitions, divestitures or reorganizations of the Eligible Recipients;
- (iv) changes in the method of service delivery;
- (v) changes in the applicable regulatory environment;
- (vi) changes in Hercules' policy, technology or processes;
- (vii) changes in market priorities; or
- (viii) changes in the business units being serviced by Supplier.

- (b) **Consequence.** If an Extraordinary Event occurs, Hercules may, at its option, request more favorable pricing with respect to applicable Charges specified in **Schedule J** in accordance with the following:

- (1) Supplier and Hercules shall mutually determine on a reasonable basis the efficiencies, economies, savings and resource utilization reductions resulting from such Extraordinary Event and, upon Hercules' approval, Supplier shall then proceed to implement such efficiencies, economies, savings and resource utilization reductions as quickly as practicable and in accordance with the agreed upon schedule. As the efficiencies, economies, savings or resource utilization reductions are realized, the Charges specified on **Schedule J** and any affected Resource Baselines shall be promptly and equitably adjusted to pass through to Hercules the full benefit of such efficiencies, economies, savings and resource utilization reductions; provided, that Hercules shall reimburse Supplier for any net costs or expenses incurred to realize such efficiencies, economies, savings or resource utilization reductions if and to the extent Supplier (i) notifies Hercules of such additional costs and obtains Hercules' approval prior to incurring such costs, (ii) uses commercially reasonable efforts to identify and consider practical alternatives, and reasonably determines that there is no other more practical
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or cost effective way to obtain such savings without incurring such expenses, and (iii) uses commercially reasonable efforts to minimize the additional costs to be reimbursed by Hercules.

- (2) Subject to Section 4.4, an Extraordinary Event shall not result in Charges to Hercules being higher than such Charges would have been if the rates and charges specified in Schedule J had been applied. Hercules may, at its sole option, elect, for each Extraordinary Event, at any time to forego its rights under this Section 11.5 and instead, apply the rates and charges (e.g., ARCs and RRCs) specified in Schedule J to adjust the Charges.

11.6 Reserved.

11.7 Refundable Items.

- (a) **Prepaid Amounts.** Where Hercules and/or the Eligible Recipients have prepaid for a service or function for which Supplier is assuming financial responsibility under this Agreement, Supplier shall promptly refund to Hercules or such Eligible Recipient, upon either Party identifying the prepayment, that portion of such prepaid expense which is attributable to periods on and after the Commencement Date.
- (b) **Refunds and Credits.** If Supplier should receive a refund, credit, discount or other rebate for goods or services paid for by Hercules and/or the Eligible Recipients on a Pass-Through Expense, Retained Expense, cost-plus or cost-reimbursement basis, then Supplier shall (i) notify Hercules of such refund, credit, discount or rebate and (ii) promptly pay the full amount of such refund, credit, discount or rebate to Hercules or such Eligible Recipient.

11.8 Hercules Benchmarking Reviews.

- (a) **Benchmarking Review.** From time to time during the Term, Hercules may, at its expense and subject to this Section 11.8, engage the services of an independent and recognized third party (e.g., Gartner Inc.) (a “**Benchmarker**”) to compare the quality and cost of all or any portion of the Services against the quality and cost of other well managed service providers performing similar services to ensure that Hercules is receiving from Supplier pricing and levels of service that are competitive with market rates, prices and service levels, given the nature, volume and type of Services provided by Supplier hereunder (“**Benchmarking**”). The Parties shall confer in good faith (with the assistance of the Benchmarker) regarding the methodology to be used by the Benchmarker during the Benchmarking. In making this comparison and any adjustments related thereto, the Benchmarker shall substantially comply with such agreed upon methodology and consider the following factors: (i) whether supplier transition charges are paid by the customer as incurred or amortized over the term of this Agreement; (ii) the extent to which supplier pricing includes the purchase of the customer’s existing assets; (iii) the extent to which supplier pricing includes the cost of acquiring future assets; (iv) the extent to which this Agreement calls for Supplier to provide and comply with unique Hercules requirements; and (v) whether Service Taxes are included in such pricing or stated separately in supplier invoices.
- (b) **General.** The Benchmarker engaged by Hercules shall be a nationally recognized firm with experience in benchmarking similar services (e.g., Gartner Group or Compass). Prior to selecting the Benchmarker, Hercules shall confer in good faith with Supplier as to the Benchmarker and methodology to be employed, but shall not be obligated to proceed in accordance with Supplier’s views and recommendations. The Benchmarker engaged by Hercules shall execute a non-disclosure agreement substantially in the form attached hereto as Exhibit 1. Supplier shall cooperate fully with Hercules and the Benchmarker during such effort, and shall (i) provide the Benchmarker reasonable access to any premises, equipment, personnel or documents; and (ii) provide any assistance required by the Benchmarker to conduct the Benchmarking, all at Supplier’s cost and expense. Notwithstanding the preceding sentence, Supplier shall not be obligated to disclose to the Benchmarker the confidential information of other Supplier customers. The Benchmarking shall be conducted so as not to unreasonably disrupt Supplier’s operations under this Agreement.
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- (c) **Result of Benchmarking.** If the Benchmarker finds that the Charges paid by Hercules for all Services or for any service element are greater than the lowest twenty-five percent (25%) of the prices charged by other well managed service providers for work of a similar nature, type or volume, (the “**Benchmark Standard**”), the Parties shall meet and negotiate in good faith as to reductions in the Charges to eliminate any unfavorable variance. If the Parties are unable to agree upon such reductions, Hercules may, at its option, terminate the Services in whole or in part. If Hercules elects to terminate on this basis, Hercules shall pay a Termination Charge equal to fifty percent (50%) of the Termination Charge it would have been obligated to pay under **Schedule N** if it had terminated for convenience under **Section 20.2**. If the Services are terminated in part, Supplier’s Charges shall be equitably adjusted to reflect the Services no longer performed by Supplier.
- (d) **Supplier Review and Dispute.** Hercules shall provide Supplier with a copy of the Benchmarker’s report and Supplier shall have ten (10) days to review such report and contest the Benchmarker’s findings. If the Parties are unable to agree upon the validity of such findings, the matter shall be resolved pursuant to the dispute resolution procedures set forth in **Article 19**. Reductions in Supplier’s Charges shall be implemented effective as of the date the Benchmarker’s report was first provided to Supplier.

11.9 Most Favored Customer.

Supplier’s Charges to Hercules for Services to be provided under this Agreement shall be in the lowest twenty-five percent (25%) quartile of Supplier’s charges to other commercial customers for the same or substantially similar services normalized to reflect, as appropriate, differences in volume of Services (scale), scope of Services, service levels, financing or payment streams, geographic distribution, complexity of supported environment, technologies employed, terms and conditions, market factors and other pertinent factors that may be relevant to a comparison of fees payable by different customers (“**Similar Services**”). If Supplier’s charges to Hercules are outside the lowest twenty-five percent (25%) quartile of Supplier’s prices for Similar Services, Supplier shall adjust the Hercules charges effective as of the date mutually agreed upon. At the end of each Contract Year, a financial officer of Supplier shall certify in writing that Supplier has strictly complied with this provision. The provisions of this **Section 11.9** shall not (i) apply in respect of any agreements with any Supplier customer in effect as of the Effective Date or (ii) any proof of concept or pilot programs offered by Supplier to any of its customers.

12 INVOICING AND PAYMENT

12.1 Invoicing.

- (a) **Invoice.** Within fifteen (15) days after the beginning of each month, Supplier shall present Hercules with one or more invoices for any Charges due and owing for the preceding month (the “**Monthly Invoice**”), including Monthly Base Charges, Transition Services Charges and ARCs and RRCs. At Hercules’ request, Supplier shall provide separate Monthly Invoices for each Eligible Recipient (or group of Eligible Recipients designated by Hercules, such as Hercules’ U.S. based Eligible Recipients and European based Eligible Recipients) then receiving Services, with the Charges allocated among such Eligible Recipients or groups of Eligible Recipients based on the chargeback data generated by Supplier, and/or the allocation methodology provided by Hercules. The Monthly Invoice(s) shall be delivered to Hercules, at its request, at the address(es) listed in **Section 21.3**, and/or electronically. Concurrent with the delivery of such Monthly Invoice(s), Supplier shall provide Hercules with a Report summarizing all Monthly Invoice(s). Supplier shall not invoice Hercules for any advance or concurrent charges or other amounts.
 - (b) **Form and Data.** Each invoice shall be in the form specified in **Exhibit 2** and shall (i) comply with all applicable legal, regulatory and accounting requirements, (ii) allow Hercules to validate volumes and fees, (iii) comply with the chargeback and other billing requirements defined in **Exhibit 2**, and (iv) meet Hercules’ and the Eligible Recipient’s business, accounting and billing requirements. Each invoice shall include the pricing calculations and related data utilized to establish the Charges and sufficient information to validate the service volumes and associated Charges. The data underlying each invoice shall be delivered to Hercules electronically in a form and format compatible with Hercules’ accounting systems.
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- (c) **Credits.** To the extent a credit may be due to Hercules pursuant to this Agreement, Supplier shall provide Hercules with an appropriate credit against amounts then due and owing; if no further payments are due to Supplier, Supplier shall pay such amounts to Hercules within fifteen (15) days.
- (d) **Time Limitation.** If Supplier fails to provide an invoice to Hercules for any amount within ninety (90) days after the month in which the Services in question are rendered or the expense incurred, Supplier shall waive any right it may otherwise have to invoice for and collect such amount.

12.2 Payment Due.

Subject to the other provisions of this **Article 12**, each Monthly Invoice provided for under **Section 12.1** shall be due and payable within sixty (60) days after receipt by Hercules of such Monthly Invoice, unless the amount in question is disputed in accordance with **Section 12.4**. Any undisputed amount due under this Agreement for which a time for payment is not otherwise specified also shall be due and payable within sixty (60) days.

12.3 Set Off.

With respect to any amount to be paid or reimbursed by Hercules hereunder, Hercules may set off against such amount any undisputed amount that Supplier is obligated to pay Hercules hereunder.

12.4 Disputed Charges.

Hercules may withhold payment of particular Charges that Hercules reasonably disputes in good faith subject to the following:

- (a) **Notice of Dispute.** If Supplier's invoice includes sufficient detail and supporting documentation to enable Hercules to reasonably determine whether Supplier's Charges are in accordance with this Agreement, Hercules shall notify Supplier on or before the payment due date of such invoice if it disputes any of the Charges in such invoice.
- (b) **Notice of Insufficient Detail, Documentation and Dispute.** If Supplier's invoice does not include sufficient detail and supporting documentation to enable Hercules to reasonably determine whether Supplier's Charges are in accordance with this Agreement, Hercules shall so notify Supplier on or before the payment due date. Supplier shall promptly provide such reasonable detail and supporting documentation, and Hercules shall notify Supplier within ten (10) business days after receipt thereof by the Hercules Relationship Manager or his or her designee whether it disputes any of the Charges in Supplier's invoice.
- (c) **Description and Explanation.** If Hercules disputes any Supplier Charges, Hercules shall so notify Supplier and provide a description of the particular Charges in dispute and an explanation of the reason why Hercules disputes such Charges.
- (d) **Escrow.** To the extent the disputed Charges exceed, in the aggregate, an amount equal to the average of the total monthly Charges for the preceding six (6) months (i.e., the total Charges for the preceding six (6) months, divided by six), the excess disputed Charges shall be paid or deposited by Hercules in an interest bearing escrow account for the benefit of both Parties at a United States financial institution reasonably acceptable to Supplier until such dispute has been resolved. Upon resolution of such dispute, such escrowed amounts and interest earned on such escrowed amounts shall be allocated to each Party to the extent a Party prevails.
- (e) **Continued Performance.** Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved unless and until such obligations are terminated by the termination or expiration of this Agreement.

No Waiver. Neither the failure to dispute any Charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right Hercules may otherwise have to dispute any Charge or amount or recover any amount previously paid.

13 Hercules DATA AND OTHER CONFIDENTIAL INFORMATION

13.1 Confidential Information.

Nothing in this Section 13.1 is intended to limit the obligations of Supplier under Sections 13.2 and 13.3 of this Agreement with respect to the Hercules Data addressed in such Sections and, to the extent the provisions of Sections 13.2 or 13.3 conflict with the provisions of this Section 13.1 as they pertain to Hercules Data, the provisions of Sections 13.2 or 13.3 shall control over the provisions of Section 13.1, as applicable.

- (a) **Confidential Information.** Supplier and Hercules each acknowledge that the other possesses and will continue to possess information that has been developed or received by it, has commercial value in its or its customers' business and is not generally available to the public. Except as otherwise specifically agreed in writing by the Parties, "Confidential Information" means (i) this Agreement and the terms hereof and thereof, (ii) all information marked confidential, restricted or proprietary by either Party, and (iii) any other information that is treated as confidential by the disclosing Party and would reasonably be understood to be confidential, whether or not so marked. In the case of Hercules and the Eligible Recipients, Confidential Information also shall include Software, Developed Materials, Hercules Data, Hercules Personal Data, Authorized User information, attorney-client privileged materials, attorney work product, customer lists, customer contracts, customer information, rates and pricing, information with respect to competitors, strategic plans, account information, research information, information that contains trade secrets, financial/accounting information (including assets, expenditures, mergers, acquisitions, divestitures, billings collections, revenues, finances, forecasts and budgets), human resources and personnel information, marketing/sales information, information regarding businesses, plans, operations, mergers, acquisitions, divestitures, third party contracts, licenses, internal or external audits, law suits, regulatory compliance or other information or data obtained, received, transmitted, processed, stored, archived, or maintained by Supplier under this Agreement.
 - (b) **Disclosure of Confidential Information.**
 - (i) The Disclosing Party represents and warrants that it has the right to disclose its Confidential Information to the Receiving Party, subject to the confidentiality obligations contained in this Section 13.1.
 - (ii) During the term of this Agreement and at all times thereafter as specified in Section 13.5, each Receiving Party (A) shall hold Confidential Information received from a Disclosing Party in confidence and shall use such Information only for the purposes of fulfilling its obligations or exercising its rights under this Agreement and for no other purposes, and (B) shall not disclose, provide, disseminate or otherwise make available any Confidential Information of the Disclosing Party to any third party without the express written permission of the Disclosing Party, unless expressly permitted by Sections 13.1(b)(iii) and 13.1(b)(iv) below or elsewhere in this Agreement. Each Receiving Party shall use at least the same degree of care to safeguard and to prevent disclosure and misuse of the Disclosing Party's Confidential Information to third parties as the Receiving Party employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care.
 - (iii) A Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, directors, attorneys, financial advisors, contractors and agents provided that (A) such person or entity has a need to know the Confidential Information for purposes of performing his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such person's scope of responsibility, (B) such disclosure is made pursuant to an obligation of confidentiality upon such person or entity that is no less stringent than that set forth in this Section 13.1, and (C) such disclosure is not in violation of Law. The Receiving Party assumes full responsibility for the acts or omissions of any person or entity to whom it discloses Confidential Information of the Disclosing Party regarding their use of such Confidential Information and must take commercially reasonable
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measures to protect the Confidential Information from disclosure or use in contravention of this Agreement.

- (iv) A Receiving Party may disclose Confidential Information of a Disclosing Party as required to satisfy any legal requirement of a competent government body, provided that, promptly upon receiving any such request, the Receiving Party, to the extent it may legally do so, gives notice to the Disclosing Party of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to the making such disclosure in order that the Disclosing Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information. The Receiving Party shall use commercially reasonable efforts to cooperate with the Disclosing Party in its efforts to seek a protective order or other appropriate remedy or, in the event such protective order or other remedy is not obtained, to obtain assurance that confidential treatment will be accorded such Confidential Information.
 - (v) Unless expressly permitted by this Agreement, neither Party shall (A) make any use or copies of the Confidential Information of the other Party except as expressly contemplated by this Agreement, (B) possess or acquire any right in or assert any lien against the Confidential Information of the other Party, (C) sell, assign, transfer, lease, encumber, or otherwise dispose of or disclose the Confidential Information of the other Party to third parties or commercially exploit, or permit a third party to commercially exploit, such Information, or (D) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party's Confidential Information (including any copies thereof) to the other Party if requested to do so.
 - (vi) Notwithstanding the foregoing, Hercules may disclose Confidential Information relating to the financial or operational terms of this Agreement and/or Supplier's performance hereunder (e.g., applicable Service Levels and measurements of Supplier's performance with respect to such Service Levels) in connection with a benchmarking under Section 11.8 or the solicitation of proposals for or the procurement of the same or similar services from prospective Hercules Third Party Contractors; provided, however, Hercules may not divulge Supplier's pricing for the Services in connection with any such solicitation or procurement.
 - (vii) Each Party shall take all necessary steps to cause its employees comply with these confidentiality provisions.
 - (c) **Exclusions.** Notwithstanding the above, Section 13.1(b) shall not apply to any particular information which the receiving Party can demonstrate (i) is, at the time of disclosure to it, generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations; (ii) after disclosure to it, is published by the Disclosing Party or otherwise becomes generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations; (iii) was lawfully in the possession of the Receiving Party immediately prior to the time of disclosure to it; (iv) is received from a third party having a lawful right to disclose such information; or (v) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.
 - (d) **Loss of Confidential Information.** Each Party shall (i) immediately notify the other Party of any possession, use, knowledge, disclosure, or loss of such other Party's Confidential Information in contravention of this Agreement, (ii) promptly furnish to the other Party all known details and assist such other Party in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss, (iii) cooperate with the other Party in any investigation or litigation deemed necessary by such other Party to protect its rights, and (iv) promptly use all commercially reasonable efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this Agreement. Each Party shall bear any costs it incurs in complying with this Section 13.1(d).
 - (e) **No Implied Rights** Nothing contained in this Section 13.1 shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to any Confidential Information of the other Party.
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- (f) **Return or Destruction of Confidential Information.** Each Party shall securely store the other Party's Confidential Information until such Confidential Information is returned or destroyed as described in this Section. Except as provided below with respect to contract records, each Party shall destroy all documentation in any medium that contains, refers to, or relates to the other Party's Confidential Information (or the portion of such Confidential Information specified by the other Party) or shall return such documentation to the other Party or its designee, in the format and on the media prescribed by the other Party, (i) within thirty (30) days of the expiration or termination of this Agreement and completion of each Party's obligations hereunder, including, with respect to Supplier, all periods of Termination Assistance Services requested by Hercules, and (ii) with respect to Hercules Confidential Information, at any time Hercules requests such Information or, with respect to particular Confidential Information, within thirty (30) days of the date that such Confidential Information is no longer required by Supplier to perform its obligations under this Agreement. Such documentation shall include all copies of a Party's Confidential Information in the other Party's possession or under the other Party's control. The Party returning or destroying the other Party's Confidential Information shall deliver to the other Party written certification of its compliance with this paragraph signed by an authorized representative of such Party.

Notwithstanding the foregoing, either Party may retain one copy of the other Party's Confidential Information in its legal department as and to the extent required to comply with applicable Laws or enforce its rights under this Agreement; provided that such Confidential Information shall be returned or destroyed in accordance with this provision upon the expiration of the period specified in the applicable Law, the expiration of the applicable statute of limitations and the final resolution of any pending dispute.

Subject to the preceding paragraph, Contract Records shall be retained by Supplier for the audit period specified in Section 9.12(a) unless and to the extent Supplier is directed by Hercules to deliver such Contract Records to Hercules prior to the expiration of such Audit Period.

In no event shall a party withhold any Confidential Information of the other party as a means of resolving any dispute.

13.2 Hercules Data.

Nothing in this Section 13.2 is intended to limit the obligations of Supplier under Sections 13.1 and 13.3 of this Agreement with respect to the Confidential Information addressed in such Sections. To the extent that the provisions of Section 13.1 pertaining to Hercules Data conflict with the provisions of this Section 13.2, the provisions of Section 13.2 shall control over the provisions of Section 13.1. To the extent that the provisions of Section 13.3 pertaining to Personal Data conflict with the provisions of this Section 13.2, the provisions of Section 13.3 shall control over the provisions of Section 13.2.

- (a) **Ownership of Hercules Data.** Hercules Data shall be and remain, as between the Parties, the property of Hercules and/or the relevant Eligible Recipient regardless of whether Supplier or Hercules is in possession of the Hercules Data. Supplier shall not possess or assert any lien or other right against or to Hercules Data. Supplier shall not sell, assign, lease, or encumber Hercules Data. Supplier shall not disclose to or allow access by third parties to Hercules Data, unless expressly provided for in this Agreement. Supplier shall not commercially exploit, or permit a third party to commercially exploit, Hercules Data on behalf of Supplier or any other person or entity.

Hercules Data shall be made available to Hercules, upon its request, in the form and format as reasonably requested by Hercules.

(b) Safeguarding of Hercules Data.

- (i) Supplier and Subcontractors to whom Hercules Data is provided shall maintain a comprehensive data security program, which shall include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of Hercules Data in the possession of Supplier or such Subcontractors, and which shall be (i) no less rigorous than those maintained by Hercules as of the Commencement Date (or implemented by Hercules in the future to the extent deemed necessary by Hercules), (ii) no less rigorous than those maintained by Supplier for its own information of a similar nature, (iii) no less rigorous than accepted security standards in the industry, and (iv) adequate to meet the requirements of Hercules' privacy, security and records retention policies.

The data security program and associated technical, organizational and security measures shall comply in all material respects with the following:

- (A) Subject to **Section 15.7**, all applicable Laws;
- (B) Hercules data security policy and other applicable Hercules policies set forth in **Schedule T.2**;
- (C) Hercules Standards, including information technology, security, privacy and record retention policies, standards, protocols, requirements and specifications, including Hercules' requirements for Supplier's utilization of secure infrastructure and data encryption methods; and
- (D) ISO 27001 (or its successors), as it may be modified or replaced from time to time.

The content and implementation of the data security program and associated technical, organizational and security measures shall be fully documented in writing by Supplier. Supplier shall permit Hercules to review such documentation and/or to inspect Supplier's compliance with such program in accordance with **Section 9.12**.

- (ii) Under no circumstances shall Supplier make any changes that materially weaken any technical, organizational or security measures in place to safeguard Hercules Data, or result in Supplier's failure to meet any of the minimum standards set forth above without Hercules' prior approval. Under no circumstances shall Supplier or Supplier Personnel attempt to access or allow access to Hercules Data that is not required for the performance of Supplier's obligations or otherwise permitted under this Agreement.
- (iii) Subject to any restriction in contracts with Supplier's other customers, Supplier shall regularly advise Hercules of data security practices, procedures and safeguards in effect for other Supplier customers that, in Supplier's reasonable judgment, are (1) relevant to the Services being provided under the Agreement and (2) exceed relevant industry standards pertaining to human resources, payroll, procurement, accounts payable and other in-scope services. If requested by Hercules, Supplier shall, to the extent reasonably practicable and subject to the Change Control Procedures, implement such enhanced practices, procedures, and safeguards with respect to its provision of Services to Hercules hereunder.
- (iv) Hercules shall have the right to establish backup security for any Hercules Data and to keep backup and files for such Data in its possession if it chooses. Supplier shall provide Hercules with downloads of Hercules Data, as requested by Hercules, to enable Hercules to maintain such backup copies.
- (v) In the event Supplier discovers or is notified of a breach or potential breach of security relating to Hercules Data in the possession or control of Supplier or its Subcontractors or Affiliates, Supplier
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shall, in addition to its obligations pursuant to **Sections 6.2(c)**, expeditiously (i) notify Hercules of such breach or potential breach, (ii) investigate (with Hercules' participation if so desired by Hercules) such breach or potential breach and perform a risk assessment, Root Cause Analysis and corrective action plan thereon, (iii) provide a written report to Hercules of such risk assessment, Root Cause Analysis and action plan, (iv) remediate such breach or potential breach of security to the extent within Supplier's or its Subcontractor's or Affiliate's areas of control, (v) take commercially reasonable actions to prevent the recurrence of such breach or potential breach of security, and (v) to the extent such breach or potential breach is within Supplier's or its Subcontractor's or Affiliate's areas of control, provide Hercules with reasonable assurances that such breach or potential breach will not recur.

- (vi) To the extent Supplier removes Hercules Data from any media that is taken out of service that is under Supplier's control, Supplier shall destroy or securely erase such media in accordance with the Policy and Procedures Manual. Under no circumstances shall Supplier use or re-use media on which Hercules Data has been stored to store data of any other customer of Supplier or to deliver data to a third party, including another Supplier customer, unless such Hercules Data has been securely erased in accordance with the Policy and Procedures Manual.
- (vii) To the extent Supplier has access to cardholder payment card information including acct #, expiration date and 3 digit code on systems that the Supplier controls, Supplier shall comply with the Payment Card Industry ("PCI") security standard dated June 30, 2005 and any later promulgated changes to such standard.

13.3 Personal Data.

In addition to the provisions of **Sections 13.1** and **13.2**, the following privacy and data protection provisions shall apply to Personal Data. To the extent any of the provisions of this **Article 13** purporting to apply to Personal Data conflict with provisions of this **Section 13.3**, the provisions of **Section 13.3** shall control over such other provisions.

- (a) Supplier shall hold any Personal Data that it receives in confidence and in compliance with (1) Supplier's obligations under this Agreement, the Schedules and Attachments hereto and the Policy and Procedures Manual, and (2) subject to **Section 15.7**, all Laws regarding its use of and access to such Personal Data.
 - (i) Supplier shall process and store all Personal Data in (1) the United States, (2) the jurisdiction in which the data subject resides (or, in the case of a data subject residing in the European Economic Area ("EEA"), in the EEA) or (3) the jurisdictions set forth in the Policy and Procedures Manual and shall not transfer, process, or maintain Hercules Data in any other jurisdiction without the prior consent of Hercules.
 - (ii) Supplier shall not transfer Personal Data from a country within the European Economic Area to countries deemed by the European Union not to have adequate protection without first ensuring that the standard contractual clauses approved by the European Commission in Commission Decision as the standard contractual clauses for the transfer of personal data to processors in third countries under Directive 95/46/EC, 2002 O.J. L6/52 are in place between the Hercules Affiliate that is the Data Exporter and the Data Importer.
 - (iii) Supplier shall maintain technical, organizational and security measures to protect the confidentiality of Personal Data processed in the EU consistent with the security measures contained in this section.
 - (iv) The Parties acknowledge that, for purposes of the European Data Protection Legislation, Supplier will act as a Data Processor in relation to all Personal Data it accesses under this Agreement, that Hercules is the Data Controller with respect to such Personal Data, and that Supplier will act in accordance with Hercules' instructions in relation to such Personal Data.
 - (b) Supplier agrees that Supplier and Supplier Personnel will not use any Personal Data for any purpose other than the fulfillment of the terms and conditions of this Agreement. Supplier as well as its employees, agents and Subcontractors shall not process or disseminate Personal Data to any third party or transfer Personal Data
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without the approval of Hercules unless expressly provided for in this Agreement. Supplier shall take appropriate action to cause:

- (i) Any Supplier Personnel who have access to Personal Data pursuant to this Agreement to be advised of, and comply with, the terms and conditions of this **Section 13.3**; and
- (ii) Any Supplier Personnel who have access to Personal Data to be trained regarding their handling of such Personal Data.

Supplier shall be responsible for any failure of Supplier Personnel to comply with the terms and conditions regarding Personal Data set forth in this **Section 13.3**.

- (c) When interfacing with Hercules or the applicable Eligible Recipient regarding Personal Data, Supplier shall only disclose or transmit Personal Data to those Hercules or Eligible Recipient employees and Hercules Third Party Contractors authorized by the Hercules Relationship Manager or his or her designee or identified in the Policy and Procedures Manual.
- (d) Hercules shall notify Supplier of any:
 - (i) Limitation in any privacy notice used by Hercules to the extent that such limitation may affect Supplier's use or disclosure of Personal Data; and
 - (ii) Restriction on the use or disclosure of Personal Data to which Hercules agreed to the extent that such restriction may affect Supplier's use or disclosure of such Personal Data.

Supplier agrees to promptly implement any such limitation or restriction as directed by Hercules.

- (e) If Supplier has knowledge of any unauthorized disclosure of or access to Personal Data, Supplier shall:
 - (i) Expediently report such unauthorized disclosure or access to Hercules,
 - (ii) Mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to Supplier or its agents, and
 - (iii) Cooperate with Hercules in providing any notices regarding impermissible disclosures caused by such disclosure or access which Hercules deems appropriate.

To the extent such unauthorized disclosure or access is attributable to a breach by Supplier or Supplier Personnel of Supplier's obligations under this Agreement with respect to Personal Data, Supplier shall bear (A) the costs incurred by Supplier in complying with its legal obligations relating to such breach, and (B) in addition to any other damages for which Supplier may be liable for under this Agreement, the following costs incurred by Hercules or the Eligible Recipient in responding to such breach, to the extent applicable, (1) the cost of providing notice to affected individuals, (2) the cost of providing notice to government agencies, credit bureaus, and/or other required entities, (3) the cost of providing affected individuals with credit monitoring services for a specific period not to exceed twelve (12) months, to the extent the disclosure of the affected individual's Personal Data could lead to a compromise of the data subject's credit or credit standing, (4) call center support for such affected individuals for a specific period not to exceed thirty (30) days, (5) the cost of any other measures required under applicable Law, and (6) any other Losses for which Supplier would be liable under this Agreement.

13.4 File Access.

Hercules shall have secure access to, and the right to review and retain the entirety of, all Hercules Confidential Information in the possession or control of Supplier or its Affiliates and Subcontractors. Such access shall be provided to Hercules in real time and by the means and in the format reasonably requested by Hercules. At no time shall Hercules' Confidential Information be stored or held by Supplier in a form or manner not readily accessible to Hercules in this manner.

13.5 Hercules Data -- Correction and Restoration

- (a) **Corrections.** The correction of any errors or inaccuracies in or with respect to Hercules Data shall be performed by the Party that has operational responsibility for inputting such Hercules Data into the applicable System. To the extent (i) Supplier is operationally responsible for inputting such data, or (ii) such errors or inaccuracies are attributable to the failure of Supplier or Supplier Personnel to comply with Supplier's obligations under this Agreement, Supplier shall bear the cost of correcting such errors or inaccuracies.
- (b) **Re-running of Corrected Data.** If the correction of errors or inaccuracies as described above necessitates the re-running of corrected Hercules Data and thereby results in the usage of additional Resource Units, Hercules shall pay the applicable Resource Unit charge as set forth in **Schedule J**, unless the underlying errors or inaccuracies are attributable to the failure of Supplier or Supplier Personnel to comply with Supplier's obligations under this Agreement (including the failure of Supplier or Supplier Personnel to adhere to applicable processes and controls that, if adhered to, would have enabled Supplier or Supplier Personnel to identify and timely correct such errors or inaccuracies, even if caused by Hercules), in which case Supplier shall be financially responsible for any additional Resource Units usage resulting from the re-running of corrected data.
- (c) **Restoration of Data.** The restoration of any destroyed, lost or altered Hercules Data shall be performed by the Party that has operational responsibility for maintaining the System on which such Hercules Data resides and for creating and maintaining backup copies of such Hercules Data. To the extent (i) Supplier is operationally responsible for performing such restoration or (ii) such destruction, loss or alteration is attributable to the failure of Supplier or Supplier Personnel to comply with Supplier's obligations under this Agreement, Supplier shall bear the cost of restoring such data.

13.6 Survival

Supplier's obligations under this Article with respect to Personal Data shall survive the expiration or termination of this Agreement and shall be perpetual. The Parties' obligations under this Article with respect to all other Confidential Information shall survive the expiration or termination of this Agreement for a period of eight (8) years from the later of (i) the expiration or termination of this Agreement (including all periods of Termination Assistance Services), or (ii) the return or destruction of Confidential Information in accordance with **Sections 13.1** (but not including accounting information pertaining to this Agreement that Supplier is required to maintain pursuant to applicable Laws); provided, however, that the passage of this eight (8) year period shall not absolve either Party of responsibility for any breach of this **Article 13** occurring prior to the expiration of such eight (8) year period.

14 OWNERSHIP OF MATERIALS

14.1 Hercules Owned Materials.

- (a) **Ownership of Hercules Owned Materials.** For purposes of this Agreement, Hercules shall be the sole and exclusive owner of (i) all intellectual property, Software and other Materials owned by Hercules or the Eligible Recipients as of the Effective Date, including Hercules Owned Software and other Materials owned by Hercules and the Eligible Recipients, (ii) all enhancements and Derivative Works of such intellectual property, Software and Materials, including all United States and foreign patent, copyright and other intellectual property rights in such Materials, and (iii) certain Developed Materials, as provided in **Section 14.2** (collectively, "Hercules Owned Materials").
 - (b) **License to Hercules Owned Materials.** As of the Commencement Date, Hercules hereby grants Supplier and, to the extent necessary for Supplier to provide the Services, to Subcontractors designated by Supplier that sign a written agreement to be bound by all of the terms contained herein applicable to such Materials (such agreement shall be agreed to by the Parties and shall include the terms specified in this Section as well as those pertaining to the ownership of such Materials and any Derivative Works developed by the Parties, the scope and term of the license, the restrictions on the use of such Materials, the obligations of
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confidentiality, etc.) a non-exclusive, non-transferable, royalty-free limited right and license during the Term (and thereafter to the extent necessary to perform any Termination Assistance Services requested by Hercules) to access, use, execute, reproduce, display, perform, modify and distribute the Hercules Owned Materials for the express and sole purpose of providing the Services. Supplier and its Subcontractors shall have no right to the source code to such Hercules Owned Materials unless and to the extent approved in advance by Hercules. Hercules Owned Materials shall remain the property of Hercules. Supplier and its Subcontractors shall not (i) use any Hercules Owned Materials for the benefit of any person or Entity other than Hercules or the Eligible Recipients, (ii) separate or uncouple any portions of the Hercules Owned Materials, in whole or in part, from any other portions thereof, or (iii) reverse assemble, reverse engineer, translate, disassemble, decompile or otherwise attempt to create or discover any source or human readable code, underlying algorithms, ideas, file formats or programming interfaces of the Hercules Owned Materials by any means whatsoever, without the prior approval of Hercules, which may be withheld at Hercules' sole discretion. Except as otherwise requested or approved by Hercules, Supplier and its Subcontractors shall cease all use of Hercules Owned Materials upon the end of the Term and the completion of any Termination Assistance Services requested by Hercules pursuant to **Section 4.3(b)(8)** and shall certify such cessation to Hercules in a notice signed by an officer of Supplier and each applicable Subcontractor. THE HERCULES OWNED MATERIALS ARE PROVIDED BY HERCULES TO SUPPLIER AND ITS SUBCONTRACTORS ON AN AS-IS, WHERE-IS BASIS. HERCULES EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO SUCH HERCULES OWNED MATERIALS, OR THE CONDITION OR SUITABILITY OF SUCH MATERIALS FOR USE BY SUPPLIER OR ITS SUBCONTRACTORS TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- (c) **License to Hercules Third Party Materials.** Subject to Supplier having obtained any Required Consents, Hercules hereby grants to Supplier, for the sole purpose of performing the Services and solely to the extent of Hercules' underlying rights, the same rights of access and use as Hercules possesses under the applicable software licenses with respect to Hercules licensed Third Party Materials. Hercules also shall grant such rights to Subcontractors designated by Supplier if and to the extent necessary for Supplier to provide the Services; provided that, Supplier shall pay all fees, costs and expenses associated with the granting of such rights to such Subcontractors. Supplier and its Subcontractors shall comply with the duties, including use restrictions and nondisclosure obligations, imposed on Hercules by such licenses. In addition, each Subcontractor shall sign a written agreement to be bound by terms consistent with the terms contained herein applicable to such Third Party Materials and shall include the terms specified in this Section as well as those pertaining to the ownership of such Materials and any Developed Materials, the scope and term of the license, the restrictions on the use of such Materials, and the obligations of confidentiality. Except as otherwise requested or approved by Hercules (or the relevant licensor), Supplier and its Subcontractors shall cease all use of such Third Party Materials upon the end of the Term and the completion of any Termination Assistance Services requested by Hercules pursuant to **Section 4.3(b)(8)**. THE HERCULES LICENSED THIRD PARTY MATERIALS ARE PROVIDED BY HERCULES TO SUPPLIER AND ITS SUBCONTRACTORS ON AN AS-IS, WHERE-IS BASIS. HERCULES EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, AS TO SUCH HERCULES LICENSED THIRD PARTY MATERIALS, OR THE CONDITION OR SUITABILITY OF SUCH MATERIALS FOR USE BY SUPPLIER OR ITS SUBCONTRACTORS TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14.2 Developed Materials.

- (a) **Ownership by Hercules.** Unless otherwise agreed by the Parties and except as provided in **Section 14.2(c)**, all Developed Materials shall be owned solely by Hercules and considered to be works made for hire (as that term is used in Section 101 of the United States Copyright Act, 17 U.S.C. § 101, or in analogous provisions of other applicable Laws) and owned by Hercules. If any such Developed Materials may not be considered a work made for hire under applicable Law, Supplier hereby irrevocably assigns, and shall assign, to Hercules in perpetuity without further consideration, all of Supplier's worldwide rights, title and interest in and to such Developed Materials, including United States and foreign intellectual property rights. Supplier acknowledges that Hercules and the successors and assigns of Hercules shall have the right to obtain and hold in their own name any intellectual property rights in and to such Developed Materials. Supplier agrees
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to execute any documents and take any other actions reasonably requested by Hercules to effectuate the purposes of this **Section 14.2(a)**. Hercules hereby grants to Supplier a license to such Developed Materials on the same terms as described in **Section 14.1(b)**. Hercules may, in its sole discretion and upon such terms and at such financial arrangement as Hercules and Supplier may agree, grant Supplier a license to use the Developed Materials for other purposes and to sublicense such Developed Materials.

- (b) **Source Code and Documentation.** Supplier shall, promptly as it is developed by Supplier, provide Hercules with the source code and object code and documentation for all Hercules owned Developed Materials and any other Hercules-specific Materials used by Supplier. Such source code and documentation shall be sufficient to allow a reasonably knowledgeable and experienced programmer to maintain and support such Materials and the user documentation for such Materials shall accurately describe in terms understandable by a typical end user the functions and features of such Materials and the procedures for exercising such functions and features.
- (c) **Supplier Owned Developed Materials.** Notwithstanding **Section 14.2(a)**, Developed Materials that are Derivative Works of Supplier Owned Materials shall be owned by Supplier. Supplier hereby grants to Hercules a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up license, with the right to grant sublicenses, to use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of such Supplier owned Developed Materials for the benefit and use of Hercules, Hercules Affiliates and the Eligible Recipients.
- (d) **Third Party Materials.** The ownership of Derivative Works of Third Party Materials created in connection with the Services shall, as between Supplier and Hercules, be considered Developed Materials owned by the Party that is the licensee of such Third Party Materials. For purposes of the foregoing, Supplier shall be deemed the licensee of Third Party Materials licensed by its Subcontractors or Affiliates and Hercules shall be deemed the licensee of Third Party Materials licensed by Hercules Affiliates or any Eligible Recipient. Each Party acknowledges and agrees that its ownership of such Derivative Works may be subject to or limited by the terms of the underlying agreement with the owner of the underlying Third Party Materials; provided, that if a Derivative Work is to be made of Third Party Materials provided by Supplier, Supplier shall notify Hercules in advance and obtain Hercules' consent prior to proceeding with such Derivative Work if the terms of any such agreement will preclude or limit, as applicable, Hercules' license rights in and to such Derivative Work as contemplated in **Sections 14.3** and **14.6**.
- (e) **Disclosure by Supplier of Developed Materials.** Supplier shall promptly disclose in writing to Hercules each Developed Material that is developed in connection with the Services. With respect to each disclosure, Supplier shall indicate the features or concepts that it believes to be new or different.
- (f) **Waiver of Moral Rights.** To the extent permitted by law, Supplier hereby waives any moral rights in the Hercules owned Developed Materials, such as the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation, whether arising under the Berne Convention or otherwise.

14.3 Supplier Owned Materials.

- (a) **Ownership of Supplier Owned Materials.** Supplier shall be the sole and exclusive owner of the (i) intellectual property, Software and Materials lawfully owned by it prior to the Commencement Date, (ii) intellectual property, Software and Materials acquired by Supplier on or after the Commencement Date, other than acquisitions for Hercules or an Eligible Recipient in connection with the performance of the Services, (iii) Developed Materials that are Derivative Works of Supplier owned intellectual property, Software and Materials created by or for Supplier as provided in **Section 14.2(c)**, (iv) intellectual property, Software and Materials developed by or on behalf of Supplier other than in the course of the performance of its obligations under this Agreement or in connection with the use of any Hercules Data or Hercules Owned Materials, including all United States and intellectual property rights in such Materials (“**Supplier Owned Materials**”).
 - (b) **License to Supplier Owned Materials.** As of the Commencement Date, Supplier hereby grants to Hercules and the Eligible Recipients, at no additional charge, a world-wide non-exclusive, royalty-free right and
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license, with the right to grant sublicenses, to access, use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of the Supplier Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto) during the Term and any Termination Assistance Services period, for the benefit of Hercules, the Eligible Recipients and their respective Affiliates, to (i) receive the full benefit of the Services provided by Supplier, (ii) perform or have performed ITO services, (iii) monitor, access, interface with or use the Materials and Software then being used by Supplier and (iv) perform or have performed ancillary services and functions, including related information technology services and functions. Supplier Owned Materials shall remain the property of Supplier. The rights and obligations of Hercules and the Eligible Recipients with respect to such Supplier Owned Materials following the expiration or termination of the Agreement or termination of any Service are set forth in **Section 14.6**.

- (c) **Embedded Materials.** To the extent that Supplier Owned Materials are embedded in any Developed Materials owned by Hercules pursuant to **Section 14.2(a)** and **(b)**, Supplier shall not be deemed to have assigned its intellectual property rights in such Supplier Owned Materials to Hercules, but Supplier hereby grants to Hercules and the Eligible Recipients a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up license, with the right to grant sublicenses, to use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of such Supplier Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto) for the benefit of Hercules, the Eligible Recipients and their respective Affiliates for so long as such Supplier Owned Materials remain embedded in such Developed Materials and are not separately commercially exploited. Following the expiration or termination of the Term and the termination of the Service(s) for which such Materials were used, Supplier shall, at Hercules' request, provide Upgrades, maintenance, support and other such services for such embedded Supplier Owned Materials on Supplier's then-current standard terms and conditions in accordance with **Section 14.6(b)**. If there are no then-current standard terms and conditions applicable to such embedded Supplier Owned Materials, Supplier shall provide Upgrades, maintenance, support and other such services on reasonable terms and conditions agreeable to both Parties failing which Supplier shall provide Hercules the source code and object code for such Supplier Owned Materials, in accordance with **Section 14.6(b)**, if needed for the effective use, maintenance and/or support of such Developed Materials by Hercules.
- (d) **License to Supplier Third Party Materials.** Unless Hercules otherwise agrees prior to Supplier's first use of such Third Party Materials (and such agreement is reflected in **Schedule U**), Supplier hereby grants to Hercules and the Eligible Recipients the rights specified below with respect to Third Party Materials that are used by Supplier or its Affiliates or Subcontractors in providing the Services and that are either licensed by Supplier or its Affiliates or Subcontractors or for which Supplier is financially responsible under this Agreement. As of the Commencement Date and subject to Supplier having obtained any Required Consents with respect to such Third Party Materials, Supplier hereby grants to Hercules and the Eligible Recipients, at no additional charge, a non-exclusive, royalty-free right and license, with the right to grant sublicenses, to access and/or use the Third Party Materials as to which Supplier holds the license or for which Supplier is financially responsible under this Agreement (including all modifications, substitutions, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto), during the Term and any Termination Assistance Services period, for the benefit and use of Hercules, the Eligible Recipients and their respective Affiliates, (i) receive the full benefit of the Services provided by Supplier, (ii) perform or have performed ITO services, (iii) monitor, access, interface with or use the Materials and Software then being used by Supplier and (iv) perform or have performed ancillary services and functions, including related information technology services and functions. The rights and obligations of Hercules, the Eligible Recipients and Hercules Third Party Contractors with respect to such Supplier licensed Third Party Materials following the expiration or termination of the Agreement or termination of any Service are set forth in **Section 14.6**.

14.4 Other Materials.

This Agreement shall not confer upon either Party intellectual property rights in Materials of the other Party (to the extent not covered by this **Article 14**) unless otherwise so provided elsewhere in this Agreement.

14.5 General Rights.

- (a) **Copyright Legends.** Each Party agrees to reproduce copyright legends which appear on any portion of the Materials which may be owned by the other Party or third parties.
- (b) **Residuals.** Nothing in this Agreement shall restrict any employee or representative of a Party from using ideas, concepts, practices, learning or know-how relating generally to the performance of ITO services that are retained in the unaided memory of such employee or representative after performing the obligations of such Party under this Agreement, except to the extent that such use infringes upon any patent, copyright or other intellectual property right of a Party or its Affiliates (or, in the case of Supplier, any Eligible Recipient); provided, however, that this **Section 14.5(b)** shall not (i) be deemed to limit either Party's obligations under this Agreement with respect to the disclosure or use of Confidential Information, or (ii) operate or be construed as permitting an employee or representative of Supplier to disclose, publish, disseminate or use (a) the source of any Confidential Information of Hercules or an Eligible Recipient, (b) any financial, statistical or personnel information of Hercules or an Eligible Recipient, or (c) the business plans of Hercules or the Eligible Recipients. An individual's memory is unaided if the individual has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it and does not identify the information as Confidential Information upon recollection. For avoidance of doubt, the foregoing would not permit Supplier Personnel to use Confidential Information of Hercules or an Eligible Recipient (other than ideas, concepts, practices, learning and know-how relating generally to the performance of ITO services) for any purpose other than the provision of Services under this Agreement.
- (c) **No Implied Licenses.** Except as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to one Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Materials owned by the other Party or any Affiliate of the other Party (or, in the case of Supplier, any Eligible Recipient).
- (d) **Incorporated Materials.** Should either Party incorporate into Developed Materials any intellectual property subject to third party patent, copyright or license rights, any ownership or license rights granted herein with respect to such Materials shall be limited by and subject to any such patents, copyrights or license rights; provided that, prior to incorporating any such intellectual property in any Materials, the Party incorporating such intellectual property in the Materials has disclosed this fact and obtained the prior approval of the other Party.

14.6 Hercules Rights Upon Expiration or Termination of Agreement.

As part of the Termination Assistance Services, Supplier shall provide the following to Hercules, Hercules Affiliates and the Eligible Recipients with respect to Materials and Software:

- (a) **Hercules Owned Materials and Developed Materials.** With respect to Hercules Owned Materials (including Hercules owned Developed Materials), Supplier shall, at no cost to Hercules:
 - (i) Deliver to Hercules all Hercules Owned Materials and all copies thereof in the format and medium in use by Supplier in connection with the Services as of the date of such expiration or termination; and
 - (ii) Following confirmation by Hercules that the copies of the Hercules Owned Materials delivered by Supplier are acceptable and the completion by Supplier of any Termination Assistance Services for which such Materials are required, destroy or securely erase all other copies of such Materials then in Supplier's possession and cease using such Materials and any information contained therein for any purpose.
 - (b) **Supplier Owned Materials.** With respect to Materials owned by Supplier, Supplier Affiliates or (subject to **Section 6.4(c)**) Subcontractors and used by them to provide the Services (and any modifications, substitutions, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto):
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- (i) Unless Hercules otherwise agrees prior to Supplier's first use of such Supplier Owned Material in the performance of the Services, Supplier hereby grants to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) a worldwide, perpetual, non-exclusive, non-transferable, irrevocable, fully paid-up license to use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works and to permit a third party to use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of each such Supplier Owned Material for the benefit of Hercules, Hercules Affiliates and the Eligible Recipients upon the expiration or termination of the Term;
- (ii) Supplier shall deliver to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) (A) a copy of such Supplier Owned Materials and related documentation, (B) the source code and object code for such Supplier Owned Materials to the extent such code is reasonably necessary to permit them to use such Supplier Owned Materials, (C) the source code and the object code for Supplier Owned Materials that are not commercial off-the-shelf products, and (D) the source code and object code for Supplier Owned Materials that are commercial off-the-shelf products if Supplier does not offer or provide upgrades, maintenance, support and other services for such Materials as provided in Section 14.6(b)(iii); and
- (iii) Supplier shall offer to provide to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) Upgrades, maintenance, support and other services for commercial off-the-shelf Materials on Supplier's then-current standard terms and conditions for such services.

Unless Hercules otherwise agrees prior to Supplier's first use of such Supplier Owned Material in the performance of the Services, Hercules and the Eligible Recipients (and, to the extent applicable, Hercules' designee(s)) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses and other rights above. Supplier shall not use any Supplier Owned Materials for which it is unable to offer such license or other rights without Hercules' prior written approval (and absent such approval, Supplier's use of any such Supplier Owned Materials shall obligate Supplier to provide, at no additional cost, such license and other rights to Hercules, Hercules Affiliates, the Eligible Recipients and Hercules' designees).

- (c) **Third Party Materials.** Unless Hercules otherwise agrees in advance in accordance with Section 6.4(c), with respect to Third Party Materials licensed by Supplier or Supplier Affiliates or Subcontractors and used by them to provide the Services, Supplier hereby grants to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) a sublicense (with the right to grant sublicenses) offering the same rights and warranties with respect to such Third Party Materials available to Supplier (or Supplier Affiliates or Subcontractors), on the same terms and conditions, for the benefit and use of Hercules, Hercules Affiliates and the Eligible Recipients upon the expiration or termination of the Term; provided that, during the Termination Assistance Services period, Supplier may, with Hercules' approval, substitute one of the following for such sublicense:
 - (i) the assignment to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) of the underlying license for such Third Party Materials; or
 - (ii) the procurement for Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) of a new license (with terms at least as favorable as those in the license held by Supplier or its Affiliates or Subcontractors and with the right to grant sublicenses) to such Third Party Materials for the benefit or use of Hercules, Hercules Affiliates and the Eligible Recipients.

In addition, Supplier shall deliver to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) a copy of such Third Party Materials and related documentation and shall cause maintenance, support and other services to continue to be available to Hercules and the Eligible Recipients (or, at Hercules' election, to their designee(s)) to the extent it has been available to Supplier. Unless Hercules has otherwise agreed in advance in accordance with Section 6.4(c), Hercules and the Eligible Recipients (and, to the extent

applicable, Hercules' designee(s)) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses, sublicenses and other rights specified in this **Section 14.6(c)**. Supplier shall not use any Third Party Materials for which it is unable to offer such license, sublicense or other rights without Hercules' prior approval (and absent such approval, Supplier's use of any such Third Party Materials shall obligate Supplier to provide, at no additional cost, such licenses, sublicenses and other rights). Hercules, however, shall be obligated to make monthly or annual payments attributable to periods after the expiration or termination of the Term with respect to the Services for which such Third Party Materials were used for the right to use and receive maintenance or support related thereto, but only to the extent Supplier would have been obligated to make such payments if it had continued to hold the licenses in question or Hercules has agreed in advance to make such payments.

To the extent Hercules has agreed in advance to pay any fees in connection with its receipt of such licenses, sublicenses or other rights, Supplier shall, at Hercules' request, identify the licensing and sublicensing options available to Hercules and the Eligible Recipients and the license or transfer fees associated with each. Supplier shall use commercially reasonable efforts to obtain the most favorable options and the lowest possible transfer, license, relicense, assignment or termination fees for Third Party Materials. Supplier shall not commit Hercules or the Eligible Recipients to paying any such fees or expenses without Hercules' prior approval. If the licensor offers more than one form of license, Hercules (not Supplier) shall select the form of license to be received by Hercules, the Eligible Recipients or their designee(s).

15 REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Work Standards.

Supplier represents, warrants and covenants that: (i) the Services shall be rendered with promptness, due care, skill and diligence; (ii) the Services shall be executed in a workmanlike manner, in accordance with the best practices of service providers of ITO services and the Service Levels; (iii) Supplier shall use adequate numbers of qualified individuals with suitable training, education, experience, know-how, competence and skill to perform the Services; (iv) Supplier shall provide such individuals with training as to new products and services prior to the implementation of such products and services in the Hercules/Eligible Recipients environment; and (v) Supplier shall have the resources, capacity, expertise and ability in terms of Equipment, Software, know-how and personnel to provide the Services.

15.2 Software.

- (a) **Ownership and Use.** Supplier represents, warrants and covenants that it is either the owner of, or authorized to use, any and all Software provided and used by Supplier in providing the Services. As to any such Software that Supplier does not own but is authorized to use, Supplier shall advise Hercules as to the ownership and extent of Supplier's rights with regard to such Software to the extent any limitation in such rights would impair Supplier's performance of its obligations under this Agreement.
 - (b) **Performance.** Supplier represents, warrants and covenants that any Supplier Owned Software will perform in conformance with its Specifications and will provide the functions and features and operate in the manner described therein.
 - (c) **Developed Materials Compliance.** Supplier warrants and covenants that, during the ninety (90) days immediately following Acceptance (the "**Warranty Period**"), each Developed Material will be free from material errors in operation and performance, will Comply with the applicable documentation and the Specifications in all material respects and will provide the functions and features and operate in the manner described in this Agreement or otherwise agreed by the Parties. Supplier shall correct any failure to Comply at no additional charge to Hercules and shall use commercially reasonable efforts to do so as expeditiously as possible. In the event that Supplier fails or is unable to repair or replace such nonconforming Developed Material, Hercules shall, in addition to any and all other remedies available to it hereunder, be entitled to obtain from Supplier a copy of the source code and/or object code to such Developed Material.
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- (d) **Nonconformity of Supplier Owned Software.** In the event that Supplier Owned Software (excluding Supplier owned Developed Materials, which are addressed in **Section 15.2(c)**) does not conform to the Specifications and criteria set forth in this Agreement, and/or materially adversely affects the Services provided hereunder, Supplier shall expeditiously repair such Software or replace such Software with conforming Software.

15.3 Non-Infringement.

- (a) **Performance of Responsibilities.** Except as otherwise provided in this Agreement, each Party represents, warrants and covenants that it shall perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other proprietary or privacy rights of any third party; provided, however, that the performing Party shall not have any obligation or liability to the extent any infringement or misappropriation is caused by (i) modifications made by the other Party or its contractors or subcontractors, without the knowledge or approval of the performing Party, (ii) the other Party's combination of the performing Party's work product or Materials with items not furnished, specified or reasonably anticipated by the performing Party or contemplated by this Agreement, (iii) a breach of this Agreement by the other Party, (iv) the failure of the other Party to use corrections or modifications provided by the performing Party offering equivalent features and functionality, or (v) Third Party Software, except to the extent that such infringement or misappropriation arises from the failure of the performing Party to obtain the necessary licenses or Required Consents or to abide by the limitations of the applicable Third Party Software licenses. Each Party further represents, warrants and covenants that it will not use or create materials in connection with the Services which are libelous, defamatory or obscene.
- (b) **Third Party Software Indemnification.** In addition, with respect to Third Party Software provided by Supplier pursuant to this Agreement, Supplier covenants that it shall use best efforts to obtain and provide intellectual property indemnification for Hercules and the Eligible Recipients (or obtain intellectual property indemnification for itself and enforce such indemnification on behalf of Hercules and the Eligible Recipients) from the suppliers of such Software. Unless otherwise approved in advance by Hercules, such indemnification shall be (i) comparable to the intellectual property indemnification provided by Supplier to Hercules and the Eligible Recipients under this Agreement, or (ii) the best indemnification available in the industry for the same or substantially similar types of software products. If Supplier cannot obtain such intellectual property indemnification from the supplier of such Software, Supplier shall so notify Hercules. Unless otherwise approved in advance by Hercules, Supplier shall either (i) not provide or use such Third Party Software under this Agreement, or (ii) agree to indemnify Hercules, the Eligible Recipients, and other indemnitees under this Agreement as if such Third Party Software were Supplier Owned Materials.

15.4 Authorization.

Each Party represents, warrants and covenants to the other that:

- (a) **Corporate Existence.** It is a corporation duly incorporated, validly existing and in good standing under the Laws of its State of incorporation;
 - (b) **Corporate Power and Authority.** It has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
 - (c) **Legal Authority.** It has obtained all licenses, authorizations, approvals, consents or permits required to perform its obligations under this Agreement under all applicable federal, state or local laws and under all applicable rules and regulations of all authorities having jurisdiction over the Services, except to the extent the failure to obtain any such license, authorizations, approvals, consents or permits is, in the aggregate, immaterial;
 - (d) **Due Authorization.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party; and
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- (e) **No Violation or Conflict.** The execution, delivery, and performance of this Agreement shall not constitute a violation of any judgment, order, or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default.

15.5 Inducements; Hercules Business Practices Policy.

- (a) **Inducements.** Supplier represents, warrants and covenants that it has not given and will not give commissions, payments, kickbacks, lavish or extensive entertainment, or other inducements of more than minimal value (as defined in the Hercules Business Practices Policy) to any employee or agent of Hercules in connection with this Agreement. Supplier also represents, warrants and covenants that, to the best of its knowledge, no officer, director, employee, agent or representative of Supplier has given any such payments, gifts, entertainment or other thing of value to any employee or agent of Hercules. Supplier also acknowledges that the giving of any such payments, gifts, entertainment, or other thing of value is strictly in violation of Hercules policy on conflicts of interest, and may result in the cancellation of this Agreement and other existing and future contracts between the Parties.
- (b) **Hercules Business Practices Policy.** Supplier represents, warrants and covenants that, in the performance of the Services and its other contractual obligations hereunder, it shall comply with the Hercules Business Practices Policy, as set forth in Attachment T.3, as such Business Practices Policy may be reasonably modified from time to time.

15.6 Disabling Code.

Supplier represents, warrants and covenants that, without the prior written consent of Hercules, Supplier shall not insert into the Software any code that could be invoked to disable or otherwise shut down all or any portion of the Services. Supplier further represents, warrants and covenants that, with respect to any disabling code that may be part of the Software, Supplier shall not invoke or cause to be invoked such disabling code at any time, including upon expiration or termination of this Agreement for any reason, without Hercules' prior written consent. Supplier also represents, warrants and covenants that it shall not use Third Party Software containing disabling code without the prior approval of Hercules. For purposes of this provision, code that serves the function of ensuring software license compliance (including passwords) shall not be deemed disabling code, provided that Supplier notifies Hercules in advance of all such code and obtains Hercules' approval prior to installing such code in any Software, Equipment or System.

15.7 Compliance with Laws.

- (a) **Compliance by Supplier.** Subject to Section 15.7(b), (e), (f) and (g), Supplier represents, warrants and covenants that, with respect to the provision of the Services and the performance of any of its other legal and contractual obligations hereunder, it is and shall be in compliance with all applicable Laws on the Commencement Date and shall remain in compliance with such Laws for the Term and any Termination Assistance Services period, including identifying and procuring applicable permits, certificates, approvals and inspections required under such Laws. If a charge of non-compliance by Supplier with any such Laws occurs, Supplier shall promptly notify Hercules of such charge.
 - (b) **Compliance by Hercules.** Subject to Section 15.7(a), (e) and (f), Hercules represents and warrants that, with respect to the performance by Hercules and the Eligible Recipients of Hercules' legal and contractual obligations under this Agreement, it is and shall be in compliance in all material respects with all applicable Laws for the entire Term of the Agreement. If a written charge of non-compliance by Hercules with any such Laws occurs, Hercules shall promptly notify Supplier of such charge.
 - (c) **Compliance Data and Reports.** At no additional charge, Supplier shall provide Hercules with data and reports in Supplier's possession necessary for Hercules to comply with, all Laws applicable to the Services.
 - (d) **Software, Equipment, Systems and Materials Compliance.** Supplier covenants that the Software, Equipment, Systems and Materials owned, provided or used by Supplier in providing the Services are in
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compliance with all applicable Laws on the Commencement Date and shall remain in compliance with such Laws for the Term and any Termination Assistance Services period.

- (e) **Notice of Laws.** Supplier shall notify Hercules of any Laws and changes in Laws applicable to Supplier as a provider of ITO services and other in-scope services, including those Laws applicable to the employment of Supplier Personnel and the provision of Services from jurisdictions in which Supplier Facilities are located (“**Supplier Laws**”). The definition of Supplier Laws also shall include Laws applicable to (i) the technical, organizational and security measures associated with safeguarding Personal Data to be implemented and maintained by Supplier and at Supplier Facilities, (ii) restrictions or prohibitions on the use or disclosure of Personal Data made available to Supplier under this Agreement, and (iii) the United States, United Kingdom, Netherlands and/or Belgium that could have a material adverse impact on the ability of Hercules and/or the Eligible recipients to receive the benefit of the Services (collectively, “**Supplier Laws**”). Hercules shall notify Supplier of any other Laws and any changes in such other Laws applicable to the provision or receipt of the Services (collectively, “**Hercules Laws**”).

During the Transition Period, the Parties shall identify any additional Laws or areas of Law (i) as to which the displaced Hercules Personnel were responsible for keeping Hercules apprised prior to the Commencement Date, or (ii) for which Supplier can readily assume such responsibility. If such Laws or areas of Law are identified, the Parties shall confer in good faith as to the addition of such Laws or areas of Law to the definition of Supplier Laws and shall use commercially reasonable efforts to avoid or minimize to the extent practicable any increase in the applicable Charges.

Supplier shall, through the Supplier Personnel, maintain general familiarity with Hercules Laws, and shall bring additional or changed requirements to Hercules' attention. Subject to its non-disclosure obligation under other customer contracts, Supplier also shall make commercially reasonable efforts to obtain information regarding such requirements from other outsourcing customer engagements and to communicate such information to Hercules in a timely manner. Each Party shall use commercially reasonable efforts to advise the other of Laws and changes in Laws about which such Party becomes aware in the other Party's area of responsibility, but without assuming an affirmative obligation of inquiry, except as otherwise provided herein, and without relieving the other Party of its obligations hereunder. At Hercules' request, Supplier Personnel shall participate in Hercules provided compliance training programs.

- (f) **Interpretation of Laws or Changes in Laws.** Hercules shall be responsible, with Supplier's cooperation and assistance, for interpreting Hercules Laws or changes in Hercules Laws and for identifying the impact of such Hercules Laws or changes in Hercules Laws on Supplier's performance and Hercules' and/or the Eligible Recipients' receipt and use of the Services. Supplier shall be responsible, with Hercules' cooperation and assistance, for interpreting Supplier Laws or changes in Supplier Laws and for identifying the impact of such Supplier Laws or changes in Supplier Laws on Supplier's performance and Hercules' and/or the Eligible Recipients' receipt and use of the Services. To the extent the impact of any Supplier Law or change in Supplier Law cannot be readily identified by Supplier, the Parties shall cooperate in interpreting such Law or change in Law and shall seek in good faith to identify and agree upon the impact on Supplier's performance and Hercules' and/or the Eligible Recipients' receipt and use of the Services. If the Parties are unable to agree upon such impact, Hercules shall retain the right, in its sole discretion, to interpret such Supplier Law or change in Supplier Law and determine its impact if and to the extent such Supplier Law or change in Supplier Law could impact the Services to be provided by Supplier or Hercules' and/or the Eligible Recipients' receipt and use of such Services and Supplier shall retain the right, in its reasonable discretion, to interpret such Supplier Law or change in Supplier Law if and to the extent such Supplier Law or change in Supplier Law could impact matters internal to Supplier (such as wages/salaries, employee benefits, occupational safety and health, etc.), but not the Services to be provided by Supplier or Hercules' and/or the Eligible Recipients' receipt and use of such Services. In addition, if Supplier reasonably concludes, after due inquiry, that the compliance obligations associated with any such Supplier Law or change in Supplier Law are unclear or that there is more than one reasonable approach to achieving compliance, Supplier may escalate the issue to Hercules for a final decision.
- (g) **Implementation of Changes in Laws.** In the event of any changes in Laws (including Hercules Laws to the extent Supplier receives notice of such Hercules Laws from Hercules or as otherwise provided in Section
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15.7(e), Supplier shall implement any necessary modifications to the Services prior to the deadline imposed by the regulatory or governmental body having jurisdiction for such requirement or change. Supplier shall bear the costs associated with compliance with such Laws changes in Laws applicable to the Services unless such change meets the definition of New Service, in which case it shall be treated as a Project. At Hercules' request, Supplier Personnel shall participate in Hercules provided regulatory compliance training programs.

- (h) **Export Control.** The Parties acknowledge that certain Software and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the laws and regulations of the United States, the European Union, the United Nations and other jurisdictions. No Party shall export or re-export any such items or any direct product thereof or undertake any transaction or service in violation of any such laws or regulations. To the extent within Supplier's control, Supplier shall be responsible for, and shall coordinate and oversee, compliance with such export laws in respect of such items exported or imported hereunder..
- (i) **Responsibility.** Subject to **Section 15.7(e)**, Supplier shall be responsible for any Losses imposed on Supplier, Hercules or the Eligible Recipients resulting from any failure of Supplier or its Subcontractors or third party product or service providers to comply with applicable Laws or respond in a timely manner to changes in such Laws, unless and to the extent such failure directly results from the sole acts or omissions of Hercules, an Eligible Recipient or a Hercules Third Party Contractor in contravention of Hercules' obligations under this Agreement.
- (j) **Assistance to Hercules.** As part of the Services and on an ongoing basis, Supplier shall assist Hercules and the Eligible Recipients as they may reasonably require in their efforts to comply with applicable Laws (including any changes to Laws) not applicable to Supplier or related to the Services.

15.8 Interoperability

Supplier represents, warrants and covenants that the Software, Equipment and Systems used by Supplier to provide the Services are fully compatible and interoperable with the Retained Systems and Business Processes (including the software, equipment and systems used by Hercules or the Eligible Recipients to provide the same or similar services and/or which may deliver records to, receive records from, or otherwise interact with the Software, Equipment and Systems used by Supplier to receive the Services) as of the Commencement Date and remain compatible and interoperable with such Retained Systems and Business Processes during the Term and any Termination Assistance Services period.

15.9 Disclaimer.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES TO THE OTHER PARTY, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE .

16 INSURANCE AND RISK OF LOSS

16.1 Insurance.

- (a) **Requirements.** Supplier agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance with the specified minimum limits of liability during the term of this Agreement:
 - (i) Workers' Compensation, Employer's Liability, and comparable Insurance covering employees for occupational illnesses and injuries in full compliance with the applicable Laws of the state and/or country in which the work is to be performed or the country of hire (whichever is applicable).
 - (i) The limits of liability of Workers' Compensation, Employers' Liability and comparable Insurance shall be not less than the limits required by applicable Law.
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- (ii) In addition, in the United States the limits of liability of Employer's Liability Insurance shall be minimum limits of \$1 million per employee by accident/\$1 million per employee by disease (or, if higher, the limits required by applicable Law). The Parties acknowledge and agree that Employer's Liability Insurance is not available in all jurisdictions outside the United States and that Supplier is relieved of its obligation to provide such coverage in such jurisdictions.
- (ii) Commercial General Liability Insurance (including coverage for Contractual Liability assumed by Supplier under this Agreement, Premises-Operations, Completed Operations—Products, and Independent Contractors) providing coverage for bodily injury, personal injury, advertising injury and property damage with combined single limits of not less than \$5 million per occurrence.
- (iii) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, leased, and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than \$5 million per occurrence. The Parties acknowledge and agree that Commercial Business Automobile Liability Insurance is not available in all jurisdictions outside the United States and that Supplier is relieved of its obligation to provide such coverage in such jurisdictions.
- (iv) Professional Liability (also known as Errors and Omissions Liability) Insurance, including technology errors and omissions coverage, covering acts, errors and omissions arising out of Supplier's operations or Services in an amount not less than \$8 million per claim, which may be satisfied in combination with its Umbrella / Excess Liability Insurance coverage. Supplier shall continue to purchase such coverage for a period of at least two (2) years from the termination or expiration of this Agreement
- (v) Comprehensive Crime Insurance, including employee dishonesty and computer fraud coverage and a third party extension, covering losses arising out of or in connection with any fraudulent or dishonest acts committed by Supplier employees, acting alone or with others, in an amount not less than \$5 million per occurrence. Supplier shall continue to purchase such coverage for a period of at least two (2) year from the termination or expiration of this Agreement
- (vi) All Risk Property Damage and Business Interruption Insurance covering all assets owned or leased by Supplier, for the replacement value of such assets and for the actual business loss sustained and extra expenses incurred during any interruption of Supplier's business that is related to or connected with insured property damage.

The above stated limits of insurance may be provided through any combination of Supplier's primary and excess insurance policies, all of which shall comply with the requirements stated in Sections 16.1(b) and (c).

- (b) **Approved Companies.** All such insurance shall be procured with reputable insurance companies and in such form as is usual and customary to Supplier's business. Such insurance companies shall maintain a rating at least "A" and be at least a Financial Size Category VIII as both criteria are defined in the most current publication of Best's Policyholder Guide.
 - (c) **Endorsements.** Supplier's insurance policies as required herein under Section 16.1(a)(ii) and (iii), including any umbrella/excess liability policies, shall name Hercules, Hercules Affiliates and Eligible Recipients and their respective officers, directors and employees as Additional Insureds for any and all liability arising at any time in connection with Supplier's or Supplier Personnel's performance under this Agreement. The Supplier insurance policies required under Section 16.1(a)(iv) and (v) shall name Hercules, Hercules Affiliates and Eligible Recipients and their respective officers, directors and employees as loss payees for any and all liability arising at any time in connection with Supplier's or Supplier Personnel's performance under this Agreement. All insurance required under this Section 16.1 shall be primary and non-contributing insurance and any other valid insurance existing for Hercules' benefit shall be excess of such primary insurance.
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- (d) **Certificates.** Supplier shall provide Hercules with certificates of insurance evidencing compliance with this **Article 16** (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers within thirty (30) days after the Effective Date and thereafter, for each year this Agreement is in effect. Each certificate of insurance shall provide that the issuing company shall not cancel, reduce, or otherwise materially alter the insurance afforded under the above policies unless notice of such cancellation, reduction or material alteration has been provided at least thirty (30) days in advance to Hercules in accordance with **Section 21.3(a)**.
- (e) **No Implied Limitation.** The obligation of Supplier and its Affiliates to provide the insurance specified herein shall not limit in any way any obligation or liability of Supplier provided elsewhere in this Agreement. The rights of Hercules and its subsidiaries, Affiliates and Eligible Recipients to insurance coverage under policies issued to or for the benefit of one or more of them are independent of this Agreement shall not be limited by this Agreement.
- (f) **Insurance Subrogation.** With respect to insurance coverage to be provided by Supplier pursuant to this **Section 16.1(a)(i), (ii), (iii), and (vi)**, the insurance policies shall provide that the insurance companies waive all rights of subrogation against Supplier, Hercules, the Eligible Recipients and their respective Affiliates, officers, directors and employees.

16.2 Risk of Loss.

- (a) **General.** Supplier and Hercules each shall be responsible for any damage, destruction, loss, theft or governmental taking of their respective tangible property or real property (whether owned or leased) and each Party agrees to look only to its own insuring arrangements (if any) with respect to such damage, destruction, loss, theft, or governmental taking. Each Party shall promptly notify the other Party of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of such other Party's tangible property or real property (whether owned or leased) and cooperate with such other Party in seeking to recover for such damage or loss.
- (b) **Waiver.** Supplier and Hercules hereby waive, on behalf of themselves and shall cause their respective insurers to issue appropriate waivers of subrogation rights for, any claims that either may have against the other for loss or damage resulting from perils covered by the All Risk Property Damage and Business Interruption Insurance. It is understood that this waiver is intended to extend to all such loss or damage whether or not the same is caused by the fault or neglect of either Supplier or Hercules and whether or not insurance is in force. If required by policy conditions, each party shall secure from its property insurer a waiver of subrogation endorsement to its policy, and deliver a copy of such endorsement to the other party to this Agreement if requested..

17 INDEMNITIES

17.1 Indemnity by Supplier.

Supplier agrees to indemnify, defend and hold harmless Hercules and its Affiliates and the Eligible Recipients and their respective officers, directors, employees, agents, representatives, successors, and assigns from any and all Losses and threatened Losses due to non-party claims arising from or in connection with any of the following:

- (a) **Representations, Warranties and Covenants.** Supplier's breach of any of the representations, warranties and covenants set forth herein.
 - (b) **Reserved.**
 - (c) **Licenses, Leases and Contracts.** Supplier's failure to observe or perform any duties or obligations to be observed or performed on or after the Commencement Date by Supplier under Third Party Software licenses, Equipment leases or Third Party Contracts used by Supplier to provide the Services or for which Supplier has assumed financial or operational responsibility under this Agreement.
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- (d) **Hercules Data or Confidential Information.** Supplier's breach of its obligations with respect to Hercules Data, Hercules Personal Data or Hercules Confidential Information.
 - (e) **Infringement.** Infringement or misappropriation or alleged infringement or alleged misappropriation of a patent, trade secret, copyright or other proprietary rights in contravention of Supplier's representations, warranties and covenants in **Sections 15.2** and **15.3**.
 - (f) **Compliance with Laws.** Losses, including government fines, penalties, sanctions, interest or other remedies resulting from Supplier's failure to perform its responsibilities under this Agreement.
 - (g) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of Supplier under **Section 11.4**.
 - (h) **Shared Facility Services.** Services, products or systems provided by Supplier to a third party from any shared Supplier facility or using any shared Supplier resources and not constituting Services provided to an Eligible Recipient pursuant to this Agreement.
 - (i) **Affiliate, Subcontractor or Assignee Claims.** Any claim, other than an indemnification claim under this Agreement, initiated by (i) a Supplier Affiliate or Subcontractor asserting rights under this Agreement or (ii) any entity to which Supplier assigned, transferred, pledged, hypothecated or otherwise encumbered its rights to receive payments from Hercules under this Agreement.
 - (j) **Supplier Personnel Injury Claims.** Any claim by Supplier Personnel for death, bodily injury, or illness, except to the extent caused by Hercules' gross negligence or willful misconduct.
 - (k) **Employment Claims.** Any claim (including claims by Affected Employees considered for employment and/or hired by Supplier, Supplier Affiliates or Subcontractors) to the extent resulting from any (i) violation by Supplier, Supplier Affiliates or Subcontractors, or their respective officers, directors, employees, representatives or agents, of any Laws or any common law protecting persons or members of protected classes or categories, including Laws prohibiting discrimination or harassment on the basis of a protected characteristic; (ii) liability arising or resulting from the employment of Supplier Personnel by Supplier, Supplier Affiliates or Subcontractors (including Affected Employees hired by Supplier, Supplier Affiliates or Subcontractors from and after their Employment Effective Dates) (including liability for any social security or other employment taxes, workers' compensation claims and premium payments, and contributions applicable to the wages and salaries of such Supplier Personnel); (iii) payment or failure to pay any salary, wages or other cash compensation due and owing to any Supplier Personnel (including Affected Employees hired by Supplier, Supplier Affiliates or Subcontractors from and after their Employment Effective Dates), (iv) payment or failure to pay any employee pension or other benefits due and owing to any Supplier Personnel (including Affected Employees hired by Supplier, Supplier Affiliates or Subcontractors for pension or other benefits accruing from and after their Employment Effective Dates), (v) other aspects of the employment relationship of Supplier Personnel (including Affected Employees hired by Supplier, Supplier Affiliates or Subcontractors) with Supplier, Supplier Affiliates or Subcontractors or the termination of such relationship, including claims for wrongful discharge, claims for breach of express or implied employment contract and claims of co-employment or joint employment, and/or (vi) other acts or omissions with respect to Affected Employees considered for employment and/or hired by Supplier, Supplier Affiliates or Subcontractors, including any act, omission or representation made in connection with the interview, selection, hiring and/or transition process, the offers of employment made to such employees, the failure to make offers to any such employees, the rescission of such offers of employment, or the terms and conditions of such offers (including compensation and employee benefits), except, in each case, to the extent resulting from the wrongful actions of Hercules, the Eligible Recipients, or Hercules Third Party Contractors, errors or inaccuracies in the information provided by Hercules and faithfully communicated by Supplier or the failure of Hercules, the Eligible Recipients, or Hercules Third Party Contractors to comply with Hercules' responsibilities under this Agreement.
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17.2 Indemnity by Hercules.

Hercules agrees to indemnify, defend and hold harmless Supplier and its officers, directors, employees, agents, representatives, successors, and assigns, from any Losses and threatened Losses due to non-party claims arising from or in connection with any of the following:

- (a) **Representations, Warranties and Covenants.** Hercules breach of any of the representations, warranties and covenants set forth herein.
- (b) **Licenses, Leases or Contracts.** Hercules' failure to observe or perform any duties or obligations to be observed or performed by Hercules under any of the applicable Third Party Software licenses, Equipment Leases or Third Party Contracts to the extent Hercules is financially or operationally responsible under this Agreement.
- (c) **Reserved.**
- (d) **Supplier's Confidential Information.** Hercules breach of its obligations with respect to Supplier's Confidential Information.
- (e) **Infringement.** Infringement or misappropriation or alleged infringement or alleged misappropriation of a patent, trade secret, copyright or other proprietary rights in contravention of Hercules' representations, warranties and covenants in Section 15.3.
- (f) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of Hercules under Section 11.4.
- (g) **Hercules Affiliate, Eligible Recipient or Third Party Contractor Claims.** Any claim, other than an indemnification claim or insurance claim under this Agreement, initiated by an Hercules Affiliate, an Eligible Recipient (other than Hercules) or an Hercules Third Party Contractor asserting rights under this Agreement.
- (h) **Employment Claims.** Any claim (including claims by Affected Employees) to the extent resulting from any (i) violation by Hercules or its respective officers, directors, employees, representatives or agents, of Federal, state, provincial, local, international or other Laws or regulations or any common law protecting persons or members of protected classes or categories, including laws or regulations prohibiting discrimination or harassment on the basis of a protected characteristic, (ii) payment or failure to pay any salary, wages or other cash compensation owed by Hercules to an Affected Employee hired by Supplier or a Supplier Affiliate or Subcontractor for the period of his or her employment with Hercules, (iii) Hercules' failure to pay any accrued employee pension or other benefits owed by Hercules to an Affected Employee hired by Supplier or a Supplier Affiliate or Subcontractor and accruing during the period of his or her employment with Hercules, (iv) other acts or omissions of Hercules in its capacity as an employer of Affected Employees hired by Supplier or a Supplier Affiliate or Subcontractor, but excluding claims covered by Section 17.1(k), and/or (v) liability resulting from representations (oral or written) to the Affected Employees by Hercules or its officers, directors, employees, representatives or agents, except, in each case, to the extent resulting from the wrongful actions of Supplier, Supplier Affiliates or Subcontractors, errors or inaccuracies in the information provided by Supplier and faithfully communicated by Hercules, or the failure of Supplier, Supplier Affiliates or Subcontractors to comply with Supplier's responsibilities under this Agreement.

17.3 Additional Indemnities.

Supplier and Hercules each agree to indemnify, defend and hold harmless the other, and the Eligible Recipients and their respective Affiliates, officers, directors, employees, agents, representatives, successors, and assigns, from any and all Losses and threatened Losses to the extent they arise from or in connection with any of the following: (a) except as otherwise provided in Section 17.1(j), the death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by the negligence or other tortious conduct of the indemnitor or the failure of the indemnitor to comply with its obligations under this Agreement; and (b) except as otherwise provided in Section 16.2, the damage, loss or destruction of any real or tangible personal property caused by the negligence or

other tortious conduct of the indemnitor or the failure of the indemnitor to comply with its obligations under this Agreement.

17.4 Infringement.

In the event that (1) any Software, Equipment, Materials, or Services provided by Supplier or its Affiliates or Subcontractors pursuant to this Agreement or used by them in the performance of the Services are found, or in Hercules' reasonable opinion are likely to be found, to infringe upon the patent, copyright, trademark, trade secrets, intellectual property or proprietary rights of any third party in any country in which Services are to be performed or received under this Agreement, or (2) the continued use of such Software, Equipment or Materials are enjoined, Supplier shall, in addition to defending, indemnifying and holding harmless Hercules as provided in **Section 17.1(e)** and to the other rights Hercules may have under this Agreement, promptly and at its own cost and expense and in such a manner as to minimize the disturbance to Hercules' and the Eligible Recipients' business activities do one of the following:

- (a) **Obtain Rights.** Obtain for Hercules and the Eligible Recipients the right to continue using such Software, Equipment or Materials.
- (b) **Modification.** Modify the item(s) in question so that it is no longer infringing (provided that such modification does not degrade the performance or quality of the Services or adversely affect Hercules' and the Eligible Recipients' intended use as contemplated by this Agreement).
- (c) **Replacement.** Replace such item(s) with a non-infringing functional equivalent acceptable to Hercules.

17.5 Indemnification Procedures.

With respect to non-Party claims which are subject to indemnification under this Agreement (other than as provided in **Section 17.6** with respect to claims covered by **Section 17.1(f)**), the following procedures shall apply:

- (a) **Notice.** Promptly after receipt by any person or entity entitled to indemnification under this Agreement of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee will seek indemnification hereunder, the indemnitee shall notify the indemnitor of such claim. The indemnitee shall use commercially reasonable efforts to provide such notice to the indemnitor (i) within fifteen (15) days of its receipt of notice of a civil, criminal, administrative, or investigative action or proceeding, and/or (ii) at least ten (10) days prior to the date on which a response is due. No delay or failure to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that such indemnitor has suffered actual prejudice by such delay or failure. Within fifteen (15) days following receipt of notice from the indemnitee relating to any claim, but no later than five (5) days before the date on which any response to a complaint or summons is due, the indemnitor shall notify the indemnitee that the indemnitor elects to assume control of the defense and settlement of that claim (a "**Notice of Election**").
 - (b) **Procedure Following Notice of Election.** If the indemnitor delivers a Notice of Election within the required notice period, the indemnitor shall assume sole control over the defense and settlement of the claim; provided, however, that (i) the indemnitor shall keep the indemnitee fully apprised at all times as to the status of the defense, and (ii) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such claim asserting any liability against the indemnitee or imposing any obligations or restrictions on the indemnitee or ceasing to defend against such claim. The indemnitor shall not be liable for any legal fees or expenses incurred by the indemnitee following the delivery of a Notice of Election; provided, however, that (i) the indemnitee shall be entitled to employ counsel at its own expense to participate in the handling of the claim, and (ii) the indemnitor shall pay the fees and expenses associated with such counsel if there is a conflict of interest with respect to such claim which is not otherwise resolved or if the indemnitor has requested the assistance of the indemnitee in the defense of the claim or the indemnitor has failed to defend the claim diligently and the indemnitee is prejudiced or likely to be prejudiced by such failure. The indemnitor shall not be obligated to indemnify the indemnitee for any amount paid or payable by such indemnitee in the settlement of any claim if (i) the indemnitor has delivered
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a timely Notice of Election and such amount was agreed to without the written consent of the indemnitor, (ii) the indemnitee has not provided the indemnitor with notice of such claim and a reasonable opportunity to respond thereto, or (iii) the time period within which to deliver a Notice of Election has not yet expired.

- (c) **Procedure Where No Notice of Election Is Delivered.** If the indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the indemnitee shall have the right to defend the claim in such manner as it may deem appropriate. The indemnitor shall promptly reimburse the indemnitee for all such reasonable costs and expenses incurred by the indemnitee, including reasonable attorneys' fees.

17.6 Indemnification Procedures - Governmental Claims.

With respect to claims covered by Section 17.1(f), the following procedures shall apply:

- (a) **Notice.** Promptly after receipt by Hercules of notice of the commencement or threatened commencement of any action or proceeding involving a claim in respect of which the indemnitee will seek indemnification pursuant to Section 17.1(f), Hercules shall notify Supplier of such claim. No delay or failure to so notify Supplier shall relieve Supplier of its obligations under this Agreement except to the extent that Supplier has suffered actual prejudice by such delay or failure.
- (b) **Procedure for Defense.** Hercules shall be entitled, at its option, to have the claim handled pursuant to Section 17.5 or to retain sole control over the defense and settlement of such claim; provided that, in the latter case, Hercules shall (i) consult with Supplier on a regular basis regarding claim processing (including actual and anticipated costs and expenses) and litigation strategy, (ii) reasonably consider any Supplier settlement proposals or suggestions, and (iii) use commercially reasonable efforts to minimize any amounts payable or reimbursable by Supplier.

17.7 Subrogation.

Except as otherwise provided in Sections 16.1, in the event that an indemnitor shall be obligated to indemnify an indemnitee pursuant to any provision of this Agreement, the indemnitor shall, upon payment of such indemnity in full, be subrogated to all rights of the indemnitee with respect to the claims to which such indemnification relates.

18 LIABILITY

18.1 General Intent.

Subject to the specific provisions and limitations of this Article 18, it is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred by the non-breaching Party as a result of the breaching Party's failure to perform its obligations in the manner required by this Agreement.

18.2 Force Majeure.

- (a) **General.** Subject to Section 18.2(d), no Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God; wars, terrorist acts, site-specific terrorist threats, riots, civil disorders, rebellions or revolutions; strikes, lockouts or labor disputes; or any other cause beyond the reasonable control of such Party; except to the extent that the non-performing Party is at fault in failing to prevent or causing such default or delay, and provided that such default or delay can not reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute involving Supplier Personnel shall not excuse Supplier from its obligations hereunder. In addition, the refusal of Supplier Personnel to enter a facility that is the subject of a labor dispute shall excuse Supplier from its obligations hereunder only if and to the extent such refusal is based upon a reasonable fear of physical harm.
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- (b) **Duration and Notification.** In the event of a force majeure event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so prevented, hindered or delayed in its performance shall, as quickly as practicable under the circumstances, notify the Party to whom performance is due by telephone (to be confirmed in writing within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the force majeure event, the steps being taken to address such force majeure event, and the expected duration of such force majeure event.
- (c) **Substitute Services; Termination.** If any event described in **Section 18.2(a)** has substantially prevented, hindered or delayed or is reasonably expected to substantially prevent, hinder or delay the performance by Supplier or one of its Subcontractors of Services necessary for the performance of critical Hercules or Eligible Recipient functions for longer than the recovery period specified in the applicable disaster recovery plan, or if there is no such recovery period, seventy-two (72) hours, Supplier shall, unless and until otherwise directed by Hercules, use commercially reasonable efforts to procure such Services from an alternate source at Supplier's expense for so long as the delay in performance shall continue, up to the Charges actually paid to Supplier for the Services with respect to the period of non-performance. If Supplier is unable to procure such substitute services on an expedited basis or Hercules elects to contract directly for such services, Hercules may procure such Services from an alternate source at Hercules' expense. In addition, if any event described in **Section 18.2(a)** substantially prevents, hinders or delays the performance by Supplier or one of its Subcontractors of Services necessary for the performance of critical Hercules functions (i) for more than five (5) days, Hercules, at its option, may terminate any portion of this Agreement so affected without payment of Termination Charges and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) for more than ten (10) days, Hercules, at its option, may terminate this Agreement in whole or part without payment of Termination Charges. Supplier shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Supplier's ability to perform.
- (d) **Disaster Recovery / Business Continuity.** Upon the occurrence of a force majeure event that constitutes a disaster under the applicable disaster recovery/business continuity plan, Supplier shall implement promptly, as appropriate, such disaster recovery/business continuity plan and provide disaster recovery and business continuity services as described in such plan and in **Schedule E**. The occurrence of a force majeure event shall not relieve Supplier of its obligation to implement the applicable disaster recovery/business continuity plan and provide disaster recovery and business continuity services.
- (e) **Payment Obligation.** If Supplier fails to provide Services in accordance with this Agreement due to the occurrence of a force majeure event, all amounts payable to Supplier hereunder shall be equitably adjusted in a manner such that Hercules is not required to pay any amounts for Services that it is not receiving whether from Supplier or from an alternate source at Supplier's expense pursuant to **Section 18.2(c)**.
- (f) **Allocation of Resources.** Without limiting Supplier's obligations under this Agreement, whenever a force majeure event or disaster causes Supplier to allocate limited resources between or among Supplier's customers and Affiliates, Hercules and the Eligible Recipients shall receive at least the same treatment as comparable Supplier customers. In no event will Supplier re-deploy or re-assign any Key Supplier Personnel to another customer or account in the event of the occurrence of a force majeure event.

18.3 Limitation of Liability.

- (a) **Exclusions from Limitations.** EXCEPT AS PROVIDED IN THIS **SECTION 18.3**, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, COLLATERAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 - (b) **Liability Cap.** Additionally, except as provided below, the total aggregate liability of either Party, for claims asserted by the other Party under or in connection with this Agreement, regardless of the form of the
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action or the theory of recovery, shall be limited to the greater of USD \$5,000,000 or the total Charges payable to Supplier during the twelve (12) month period preceding the last act or omission giving rise to such liability. For avoidance of doubt, this liability cap is an aggregate liability cap for the Master Agreement and all Companion Agreements.

- (c) **Exceptions to Limitations of Liability.** The limitations of liability set forth in Sections 18.3(a) and (b) shall not apply with respect to:
- (i) Losses occasioned by the fraud, willful misconduct, or gross negligence of a Party.
 - (ii) Losses that are the subject of indemnification under this Agreement (provided that, indemnification obligations arising under Sections 17.1(a) and (h), 17.2(a) and 17.3 shall nonetheless be subject to the liability cap set forth in Section 18.3(b)).
 - (iii) Losses occasioned by Supplier's refusal to provide Services or Termination Assistance Services (for purposes of this provision, "refusal" shall mean the intentional cessation by Supplier, in a manner impermissible under this Agreement, of the performance of all or a material portion of the Services or Termination Assistance Services then required to be provided by Supplier under this Agreement).
 - (iv) Amounts paid under Section 17.3 with respect to death or bodily injury of an agent, employee, customer, business invitee, business visitor or other person or damage, loss or destruction of real or tangible personal property.
 - (v) Losses occasioned by any breach of a Party's representations or warranties set forth in Sections 15.3 and 15.4 of this Agreement.
 - (vi) Losses occasioned by any breach of a Party's obligations under Article 13.
- (d) **Items Not Considered Damages.** The following shall not be considered damages subject to, and shall not be counted toward the liability exclusion or cap specified in, Section 18.3(a) or (b):
- (i) Service Level Credits or Deliverable Credits assessed against Supplier pursuant to Schedule G.
 - (ii) Amounts withheld by Hercules in accordance with this Agreement due either to incorrect Charges by Supplier or non-conforming Services.
 - (iii) Amounts paid by Hercules but subsequently recovered from Supplier due either to incorrect Charges by Supplier or non-conforming Services.
 - (iv) Invoiced Charges and other amounts that are due and owing to Supplier for Services under this Agreement.
- (e) **Waiver of Liability Cap.** If, at any time, the total aggregate liability of one Party for claims asserted by the other Party under or in connection with this Agreement exceeds eighty percent (80%) of the liability cap specified in Section 18.3(a) and, upon the request of the other Party, the Party incurring such liability refuses to waive such cap and/or increase the available cap to an amount at least one-half of the original liability cap, then the other Party may terminate this Agreement without payment of Termination Charges.
- (f) **Acknowledged Direct Damages.** The following shall be considered direct damages and neither Party shall assert that they are indirect, incidental, collateral, consequential or special damages or lost profits to the extent they result from either Party's failure to perform in accordance with this Agreement:
- (i) Costs and expenses of recreating or reloading any lost, stolen or damaged Hercules Data.
 - (ii) Costs and expenses of implementing a work-around in respect of a failure to provide the Services or any part thereof.
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- (iii) Costs and expenses of replacing lost, stolen or damaged Equipment, Software, and Materials.
- (iv) Cover damages, including the costs and expenses incurred to procure the Services or corrected Services from an alternate source, to the extent in excess of Supplier's Charges under this Agreement.
- (v) Straight time, overtime or related expenses incurred by either Party, including overhead allocations for employees, wages and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges and similar charges.
- (vi) Costs and expenses incurred to bring the Services in-house or to contract to obtain the Services from an alternate source, including the costs and expenses associated with the retention of external consultants and legal counsel to assist with any re-sourcing.
- (vii) Damages of a Hercules Affiliate or an Eligible Recipient which would be direct damages if they had instead been suffered by Hercules (including being so considered under this **Section 18.3(f)**).
- (viii) Payments, fines, penalties, interest, sanctions, or other remedies imposed by a governmental body or regulatory agency or required by an applicable Law for failure to comply with legal requirements or deadlines.
- (ix) Damages, fines, penalties, interest or other monetary remedies awarded to non-government claimants by a court or in final settlement of a claim for failure to comply with applicable Laws. .

19 DISPUTE RESOLUTION

19.1 Informal Dispute Resolution.

Prior to the initiation of formal dispute resolution procedures with respect to any dispute, other than as provided in **Section 19.1(d)** and **(e)**, the Parties shall first attempt to resolve such dispute informally, as follows:

- (a) **Initial Effort.** The Parties agree that the Hercules Relationship Manager and the Supplier Account Manager shall attempt in good faith to resolve all disputes (other than those described in **Section 19.1(d)**). The Parties also agree that to the extent provided in **Schedule S** or the Policy and Procedures Manual, the Executive Steering Committee shall attempt in good faith to resolve disputes (other than those described in **Section 19.1(d)**) between the Parties. In the event a dispute cannot be resolved in accordance with the foregoing in an amount of time that either Party deems reasonable under the circumstances, such Party may refer the dispute for resolution to the senior corporate executives specified in **Section 19.1(b)** below upon written notice to the other Party.
 - (b) **Escalation.** Within five (5) business days of a notice under **Section 19.1(a)** above referring a dispute for resolution by senior corporate executives, the Hercules Relationship Manager and the Supplier Account Manager will each prepare and provide to the Supplier General Counsel and the Hercules General Counsel, respectively, summaries of the non-privileged relevant information and background of the dispute, along with any appropriate non-privileged supporting documentation, for their review. The designated senior corporate executives will confer as often as they deem reasonably necessary in order to gather and furnish to the other all non-privileged information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The designated senior corporate executives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions will be left to the discretion of the designated senior corporate executives, but may include the preparation of agreed-upon statements of fact or written statements of position.
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- (c) **Provision of Information.** During the course of negotiations under Section 19.1(a) or (b) above, all reasonable requests made by one Party to another for non-privileged information, reasonably related to the dispute, will be honored in order that each of the parties may be fully advised of the other's position. All negotiation shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for these proceedings shall not be used as evidence by the other Party in any subsequent arbitration or litigation; provided, however, the underlying facts supporting such materials may be subject to discovery.
- (d) **Prerequisite to Formal Proceedings.** Formal proceedings for the resolution of a dispute may not be commenced until the earlier of:
 - (i) the designated senior corporate executives under Section 19.1(b) above concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or
 - (ii) thirty (30) days after the notice under Section 19.1(a) above referring the dispute to senior corporate executives.
- (e) **Equitable Remedies.** The provisions and time periods specified in this Section 19.1 shall not be construed to prevent a Party from instituting, and a Party is authorized to institute, formal proceedings earlier to (A) avoid the expiration of any applicable limitations period, (B) preserve a superior position with respect to other creditors, (C) address a claim arising out of the breach of a Party's obligations under Article 13, or (D) address a claim arising out of the breach or attempted or threatened breach of the obligations described in the next paragraph.

Supplier acknowledges that, in the event it breaches (or attempts or threatens to breach) (i) its obligation to provide Services or Termination Assistance Services in accordance with this Agreement, its obligation respecting continued performance in accordance with Section 19.4, (ii) its obligations with respect to Hercules Confidential Information, Hercules Data and/or Hercules intellectual property rights in accordance with Articles 13 and 14, or (iii) its obligation to provide access to Hercules Data in accordance with Section 13.4, Hercules and/or the Eligible Recipients will be irreparably harmed. In such a circumstance, Hercules may proceed directly to any court of competent jurisdiction, notwithstanding the exclusive jurisdiction requirement in Section 19.3.

19.2 Arbitration.

- (a) **Arbitration.** Except for claims arising out of the breach of a Party's obligations under Article 13 or disputes subject to Sections 19.1(e), any controversy or claim arising out of or relating to this Agreement, or any breach thereof, which cannot be resolved using the procedures set forth above in Section 19.1 shall be finally resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association then in effect; provided, however, that without limiting any rights at law or in equity a Party may have because of an improper termination of this Agreement by the other Party, nothing contained in this Agreement shall limit either Party's right to terminate this Agreement pursuant to Article 20.
 - (b) **Location and Decision.** The Arbitration shall take place in Wilmington, Delaware, and shall apply the governing law of this Agreement. The decision of the arbitrators shall be final and binding and judgment on the award may be entered in any court of competent jurisdiction, notwithstanding the exclusive jurisdiction requirement in Section 19.3. The arbitrators shall be instructed to state the reasons for their decisions, including findings of fact and law. The language of the arbitration will be English. The arbitrators shall be bound by the warranties, limitations of liability and other provisions of this Agreement. Except with respect to the provisions of this Agreement which provide for injunctive relief rights, such arbitration shall be a precondition to any application by either Party to any court of competent jurisdiction.
 - (c) **Selection and Qualification of Arbitrators.** Within ten (10) days after delivery of written notice ("Notice of Dispute") by one Party to the other in accordance with this Section, the Parties each shall use good faith efforts to mutually agree upon one (1) arbitrator. If the Parties are not able to agree upon one (1) arbitrator within such period of time, the Parties each shall within ten (10) days: (i) appoint one (1) arbitrator who has
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at no time ever represented or acted on behalf of either of the Parties, and is not otherwise affiliated with or interested in either of the Parties and (ii) deliver written notice of the identity of such arbitrator and a copy of his or her written acceptance of such appointment to the other Party. If either Party fails or refuses to appoint an arbitrator within such ten (10) day period, the single arbitrator appointed by the other Party shall decide alone the issues set out in the Notice of Dispute. Within ten (10) days after such appointment and notice, such arbitrators shall appoint a third neutral and independent arbitrator who at no time ever represented or acted on behalf of either of the Parties, and is not otherwise affiliated with or interested in either of the Parties. In the event that the two (2) arbitrators fail to appoint a third arbitrator within ten (10) days of the appointment of the second arbitrator, either arbitrator or either Party may apply for the appointment of a third arbitrator to the American Arbitration Association.

- (d) **General.** All arbitrators selected pursuant to this Section shall possess at least five (5) years of relevant experience in technology, finance and/or law applicable to the Services or similar services or transactions. Any such appointment shall be binding upon the Parties. The Parties shall use best efforts to set the arbitration within sixty (60) days after selection of the arbitrator or arbitrators, as applicable, but in no event shall the arbitration be set more than ninety (90) days after selection of the arbitrator or arbitrators, as applicable. Discovery as permitted by the Federal Rules of Civil Procedure then in effect will be allowed in connection with arbitration to the extent consistent with the purpose of the arbitration and as allowed by the arbitrator or arbitrators, as applicable. The decision or award of the arbitrator or the majority of the three arbitrators, as applicable, shall be rendered within fifteen (15) days after the conclusion of the hearing, shall be in writing, shall set forth the basis therefore, and shall be final, binding and non-appealable upon the Parties. Notwithstanding the exclusive jurisdiction requirement in **Section 19.3**, the decision or award of the arbitrator or the majority of the three arbitrators, as applicable, may be enforced and executed upon in any court or other body having jurisdiction over the Party against whom the enforcement of such decision or award is sought. Each Party shall bear its own arbitration costs and expenses and all other costs and expenses of the arbitration shall be divided equally between the Parties; provided, however, the arbitrator or arbitrators, as applicable, may modify the allocation of fees, costs and expenses in the award in those cases where fairness dictates other than such allocation between the Parties.

19.3 Jurisdiction.

Subject to **Section 19.2**, each Party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in Wilmington, Delaware, and each Party irrevocably submits to the sole and exclusive jurisdiction of the courts in Delaware in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party. Notwithstanding the foregoing, Hercules may seek injunctive or other equitable relief or seek to enforce a judgment in any court of competent jurisdiction.

19.4 Continued Performance.

- (a) **General.** Each Party agrees that it shall, unless otherwise directed by the other Party, continue performing its obligations under this Agreement while any dispute is being resolved; provided, that this provision shall not operate or be construed as extending the Term of this Agreement or prohibiting or delaying a Party's exercise of any right it may have to terminate the Term as to all or any part of the Services. For purposes of clarification, Hercules Data may not be withheld by Supplier pending the resolution of any dispute.
- (b) **Non-Interruption of Service.** Supplier acknowledges and agrees that any interruption to the Service will cause irreparable harm to Hercules and/or the Eligible Recipients, in which case an adequate remedy at law would not be available. Supplier expressly acknowledges and agrees that, pending resolution of any dispute or controversy, it shall not deny, withdraw, or restrict Supplier's provision of the Services to Hercules and/or the Eligible Recipients under this Agreement, except as specifically and expressly agreed in writing by Hercules and Supplier.
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19.5 Governing Law.

This Agreement and performance under it shall be governed by and construed in accordance with the applicable laws of the State of Delaware, without giving effect to the principles thereof relating to conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

20 TERMINATION

(a) **By Hercules.** If Supplier:

- (i) commits a material breach of its obligations with respect to Transition Services as provided in Section 4.2(f);
- (ii) commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of the breach from Hercules;
- (iii) commits a material breach of this Agreement which is not capable of being cured within the period specified pursuant to Section 20.1(a)(ii);
- (iv) commits numerous breaches of its duties or obligations which collectively constitute a material breach of this Agreement and Supplier fails, within thirty (30) days after receiving notice of such breaches, to (A) cure all such breaches to the extent applicable, or (B) correct the underlying systemic cause(s), if any, of such breaches;
- (v) becomes liable for or incurs Service Level Credits under this Agreement that, in the aggregate, exceed fifty percent (50%) of the cumulative At Risk Amount during any rolling six (6) month period; or
- (vi) fails to perform in accordance with the Minimum Service Level for same Critical Service Level for three (3) consecutive months or during four (4) of any six (6) consecutive month period;

then Hercules may, by giving notice to Supplier, terminate the Term with respect to all or any part of the Services, in whole or in part, as of a date specified in the notice of termination, provided that, unless otherwise agreed, any termination rights under Section 20.1(a)(v) or (vi) must be exercised by Hercules within six (6) months of the happening of the last event giving rise to such termination rights, if such breach has been cured by Supplier. Supplier shall not be entitled to any Termination Charges in connection with such a termination for cause. If Hercules chooses to terminate this Agreement in part, the Charges payable under this Agreement will be adjusted in accordance with the pricing by charge component, as set forth in Schedule J, to reflect such partial termination. For avoidance of doubt, the Parties acknowledge and agree that a material breach under this Master Agreement or any Companion Agreement shall be deemed a material breach under this Master Agreement and all Companion Agreements for purposes of this provision.

The express acknowledgment that a certain amount of Service Level Credits or number of Service Level defaults constitutes grounds for termination under Section 20.1(a)(v) and (vi) does not imply that a lesser amount or number cannot constitute a material breach of this Agreement and therefore grounds for termination under other subsections, and no Party shall contend otherwise in any dispute or controversy between the Parties.

(b) **By Supplier.** Supplier may only terminate the Term if:

- (i) Hercules fails to (A) pay Supplier undisputed Charges exceeding in the aggregate two (2) months of Monthly Base Charges by the specified due date, or (B) deposit disputed Charges into escrow as required under Section 12.4 and such undeposited amounts exceed in the aggregate two (2) months of Monthly Base Charges, and, in either event, Hercules fails to cure such default within thirty (30) days of notice from Supplier of its intention to terminate on this basis; or
 - (ii) Hercules misappropriates Supplier's Proprietary Information or intellectual property rights, such misappropriation causes (or is likely to cause) irreparable harm to Supplier's business, and such
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misappropriation constitutes a material breach of this Agreement, but only if Hercules fails within thirty (30) days of notice from Supplier of its intention to terminate to establish reasonable safeguards to prevent the same or similar breaches from reoccurring in the future, and Supplier could not be reasonably compensated for such breach under Section 17.2 or 18.3 of the Agreement.

Supplier acknowledges and agrees that this Section 20.1(b) and Section 20.5 describes Supplier's sole right to terminate this Agreement and Supplier hereby waives any other rights it may have to terminate this Agreement.

20.2 Termination for Convenience.

Hercules may terminate the Term with respect to all or any portion of the Services for convenience and without cause at any time. If Hercules elects to terminate all Services provided under this Master Agreement and all Companion Agreements on this basis, Hercules shall give Supplier at least six (6) months prior notice designating the termination date. If Hercules elects to terminate less than all Services and/or less than all Companion Agreements, Hercules shall give Supplier at least ninety (90) days prior notice designating the termination date. In either event, Hercules shall pay to Supplier a Termination Charge calculated in accordance with Schedule N. In the event that a purported termination for cause by Hercules under Section 20.1 is determined by a competent authority not to be properly a termination for cause, then such termination by Hercules shall be deemed to be a termination for convenience under this Section 20.2.

20.3 Termination Upon Supplier Change of Control.

In the event of a change in Control of Supplier (or that portion of Supplier providing all or any material of the Services under this Agreement) or the Entity that Controls Supplier (if any), where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of Supplier (or that portion of Supplier providing all or any material of the Services under this Agreement) are acquired by any entity, or Supplier (or that portion of Supplier providing all or any material of the Services under this Agreement) is merged with or into another entity to form a new entity, then at any time within twelve (12) months after the last to occur of such events, Hercules may at its option terminate the Term by giving Supplier at least ninety (90) days prior notice and designating a date upon which such termination shall be effective; provided, however, if such change in Control of Supplier involves a Direct Hercules Competitor, Hercules may terminate the Term by giving Supplier at least ten (10) days prior notice, and such Direct Hercules Competitor shall be prohibited from any contact with Hercules Data, Hercules Confidential Information and any and all other information about the Hercules account, including discussions with Supplier Personnel regarding specifics relating to the Services. Supplier shall not be entitled to any Termination Charges in connection with a termination on this basis.

20.4 Termination Upon Hercules Acquisition or Merger.

In the event that, in a single transaction or series of transactions, Hercules acquires or is acquired by any other Entity (by stock sale, asset sale or otherwise) or merges with any other Entity, then, at any time within twelve (12) months after the last to occur of such events, Hercules may at its option terminate the Term by giving Supplier at least ninety (90) days prior notice and designating a date upon which such termination shall be effective. If Hercules elects to terminate on this basis, Hercules shall pay a Termination Charge equal to seventy-five percent (75%) of the Termination Charge it would have been obligated to pay under Schedule N if it had terminated for convenience under Section 20.2.

20.5 Termination for Insolvency.

In the event that any Party (i) files for bankruptcy, (ii) becomes or is declared insolvent, or is the subject of any bona fide proceedings related to its liquidation, administration, provisional liquidation, insolvency or the appointment of a receiver or similar officer for it, (iii) passes a resolution for its voluntary liquidation, (iv) has a receiver or manager appointed over all or substantially all of its assets, (v) makes an assignment for the benefit of all or substantially all of its creditors, (vi) enters into an agreement or arrangement for the composition, extension, or readjustment of substantially all of its obligations or any class of such obligations, (vii) fails or become incapable of paying its debts as they become due or is otherwise in default under material contracts and fails to promptly cure such defaults, or (vii)

experiences an event analogous to any of the foregoing in any jurisdiction in which any of its assets are situated, then the other Party may terminate this Agreement as of a date specified in a termination notice; provided, however, that Supplier will not have the right to exercise such termination under this Section so long as Hercules pays for the Services to be received hereunder in advance on a month-to-month basis. If any Party elects to terminate this Agreement due to the insolvency of the other Party, such termination will be deemed to be a termination for cause hereunder.

20.6 Hercules Rights Upon Supplier's Bankruptcy.

- (a) **General Rights.** In the event of Supplier's bankruptcy or other formal procedure referenced in Section 20.5 or of the filing of any petition under bankruptcy laws affecting the rights of Supplier which is not stayed or dismissed within thirty (30) days of filing, in addition to the other rights and remedies set forth herein, to the maximum extent permitted by Law, Hercules will have the immediate right to retain and take possession for safekeeping all Hercules Data, Hercules Confidential Information, Hercules licensed Third Party Software, Hercules owned Equipment, Hercules owned Materials, Hercules owned Developed Materials, and all other Software, Equipment, Systems or Materials to which Hercules and/or the Eligible Recipients are or would be entitled during the Term or upon the expiration or termination of this Agreement. Supplier shall cooperate fully with Hercules and the Eligible Recipients and assist Hercules and the Eligible Recipients in identifying and taking possession of the items listed in the preceding sentence. Hercules will have the right to hold such Hercules Data, Confidential Information, Software, Equipment, Systems and Materials until such time as the trustee or receiver in bankruptcy or other appropriate insolvency office holder can provide adequate assurances and evidence to Hercules that they will be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material or filing. Supplier and Hercules agree that without this material provision, Hercules would not have entered into this Agreement or provided any right to the possession or use of Hercules Data, Hercules Confidential Information, or Hercules Software covered by this Agreement.
- (b) **Hercules Rights in Event of Bankruptcy Rejection.** Notwithstanding any other provision of this Agreement to the contrary, in the event that Supplier becomes a debtor under the United States Bankruptcy Code (11 U.S.C. §101 et. seq. or any similar Law in any other country (the "**Bankruptcy Code**")) and rejects this Agreement pursuant to Section 365 of the Bankruptcy Code (a "**Bankruptcy Rejection**"), (i) any and all of the licensee and sublicensee rights of Hercules and the Eligible Recipients arising under or otherwise set forth in this Agreement, including without limitation the rights of Hercules and/or the Eligible Recipients referred to in Section 14.6, shall be deemed fully retained by and vested in Hercules and/or the Eligible Recipients as protected intellectual property rights under Section 365(n)(1)(B) of the Bankruptcy Code and further shall be deemed to exist immediately before the commencement of the bankruptcy case in which Supplier is the debtor; (ii) Hercules shall have all of the rights afforded to non-debtor licensees and sublicensees under Section 365 (n) of the Bankruptcy Code; and (iii) to the extent any rights of Hercules and/or the Eligible Recipients under this Agreement which arise after the termination or expiration of this Agreement are determined by a bankruptcy court not to be "intellectual property rights" for purposes of Section 365(n), all of such rights shall remain vested in and fully retained by Hercules and/or the Eligible Recipients after any Bankruptcy Rejection as though this Agreement were terminated or expired. Hercules shall under no circumstances be required to terminate this Agreement after a Bankruptcy Rejection in order to enjoy or acquire any of its rights under this Agreement, including without limitation any of the rights of Hercules referenced in Section 14.6.

20.7 Termination for Supplier Degraded Financial Condition.

If (i) Supplier has a substantial reduction in its long term credit rating as determined by Moody's Investors Service or Standard & Poors, or (ii) Supplier receives a "going concern" explanation or qualification from its external auditor, then Hercules may, in its sole discretion, terminate this Agreement by giving Supplier at least ninety (90) days prior notice. If Hercules elects to terminate on this basis, Hercules shall pay a Termination Charge equal to fifty percent (50%) of the Termination Charge it would have been obligated to pay under Schedule N if it had terminated for convenience under Section 20.2.

21 GENERAL

21.1 Binding Nature, Assignment.

- (a) **Binding Nature.** This Agreement will be binding on the Parties and their respective successors and permitted assigns.
- (b) **Assignment.** Neither Party may, or will have the power to, assign this Agreement without the prior written consent of the other, except in the following circumstances:
 - (i) Hercules may assign its rights or obligations under this Agreement, without approval of Supplier, to an Affiliate which expressly assumes Hercules' obligations and responsibilities hereunder, provided Hercules remains fully liable for and is not relieved from the full performance of its obligations under this Agreement; and
 - (ii) Hercules may assign its rights and obligations under this Agreement without the approval of Supplier to an Entity acquiring, directly or indirectly, Control of Hercules, an Entity into which Hercules is merged, or an Entity acquiring all or substantially all of Hercules' assets, provided the acquirer or surviving Entity agrees in writing to be bound by the terms and conditions of this Agreement.
- (c) **Impermissible Assignment.** Any attempted assignment that does not comply with the terms of this Section shall be null and void.

21.2 Entire Agreement; Amendment.

This Agreement, including any Schedules and Exhibits referred to herein and attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertaking, whether written or oral, with respect to the subject matter contained in this Agreement. No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, modification, change, waiver, or discharge is sought to be enforced.

21.3 Notices.

- (a) **Primary Notices.** Any notice, notification, request, demand or determination provided by a Party pursuant to the following:

Section 4.3 (Termination Assistance Services);
Section 4.6(a) (Use of Third Parties - Right of Use);
Section 6.7 (Notice of Defaults);
Section 7.7 (Notice of Adverse Impact);
Section 11.5 (Extraordinary Events);
Section 13.1(d) (Loss of Confidential Information);
Section 16.1(d) (Cancellation, Expiration or Alteration of Insurance);
Sections 17.5 (Indemnification Procedures);
Section 17.6 (Indemnification Procedures - Government Claims);
Section 18.2 (Force Majeure);
Section 18.3(e) (Waiver of Liability Cap);
Section 19.1 (Informal Dispute Resolution);
Article 20 (Termination); and
Section 21.1 (Binding Nature, Assignment);

shall be in writing and shall be delivered in hard copy using one of the following methods and shall be deemed delivered upon receipt: (i) by hand, (ii) by an express courier with a reliable system for tracking delivery, or (iii) by registered or certified mail, return receipt requested, postage prepaid. Unless otherwise notified, the foregoing notices shall be delivered as follows:

In the case of Hercules:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: Chief Information Officer

With a copy to:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: General Counsel

and

In the case of Supplier:

HCL America, Inc.
106 Allen Road
Basking Ridge, NJ 07920
Attention: R Srikrishna/ Sr. Vice President

With a copy to:

HCL America, Inc
330 Potrero Avenue,
Sunnyvale, California -94085
Attention: General Counsel

- (b) **Other Notices.** All notices, notifications, requests, demands or determinations required or provided pursuant to this Agreement, other than those specified in **Section 21.3(a)**, may be sent in hard copy in the manner specified in **Section 21.3(a)**, or by e-mail transmission (where receipt is acknowledged by the recipient) or facsimile transmission (with acknowledgment of receipt from the recipient's facsimile machine) to the addresses set forth below:

In the case of Hercules:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: Anne Schumann/Chief Information Officer
E-mail Address: aschumann@herc.com
Facsimile Number: 302-594-7200

and

In the case of Supplier:

HCL America, Inc.
106 Allen Road

Basking Ridge, NJ 07920
Attention: R Srikrishna/ Sr. Vice President
E-mail Address: rsrikrishna@hcl.in
Facsimile Number: 908 604 0366

- (c) **Service of Process.** Notwithstanding the above, for the purpose of service of legal process and receipt of notice or pleadings in judicial proceedings before the federal or state courts of Delaware, as selected by the Parties under **Section 19.2** of the Agreement, both Parties to this Agreement and all parties to all Companion Agreements irrevocably appoint the company below as their agent for service of process and receipt of such notice or notification, and further elect domicile at the address of said company in Delaware, as follows:

In the case of Hercules:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: General Counsel

With a copy to:

Hercules Incorporated
1313 North Market Street
Wilmington, DE 19894-0001
Attention: Chief Information Officer,

and

In the case of Supplier:

HCL America, Inc
330 Potrero Avenue,
Sunnyvale, California -94085
Attention: General Counsel

With a copy to:

HCL America, Inc.
106 Allen Road
Basking Ridge, NJ 07920
Attention: R Srikrishna/ Sr. Vice President

- (d) **Notice of Change.** A Party may from time to time change its address or designee for notification purposes by giving the other prior notice of the new address or designee and the date upon which it shall become effective.

21.4 Counterparts.

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

21.5 Headings.

The article and section headings and the table of contents used herein are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

21.6 Relationship of Parties.

Supplier, in furnishing services to Hercules and the Eligible Recipients hereunder, is acting as an independent contractor, and Supplier has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Supplier under this Agreement. The relationship of the Parties under this Agreement shall not constitute a partnership or joint venture for any purpose. Except as expressly provided in this Agreement, Supplier is not an agent of Hercules or the Eligible Recipients and has no right, power or authority, expressly or impliedly, to represent or bind Hercules or the Eligible Recipients as to any matters, except as expressly authorized in this Agreement.

21.7 Severability.

In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable to the full extent permitted by law.

21.8 Consents and Approval.

Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, confirmation, notice or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

21.9 Waiver of Default; Cumulative Remedies.

- (a) **Waiver of Default.** A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the Party waiving its rights.
- (b) **Cumulative Remedies.** All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise. The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party shall not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract or otherwise.

21.10 Survival.

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect. Additionally, all provisions of this Agreement will survive the expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.

21.11 Publicity.

Subject to **Section 13.1(b)(iv)**, neither Party shall use the other Party's name or mark or refer to the other Party directly or indirectly in any media release, public announcement, or public disclosure relating to this Agreement, including in any promotional or marketing materials, customer lists or business presentations without the prior written consent of the other Party prior to each such use or release. Supplier shall not make any public statements about this Agreement, the Services or its relationship with Hercules and/or the Eligible Recipients without Hercules' prior

approval unless required by applicable securities laws, provided that in no event Supplier shall disclose any Confidential Information of Hercules without complying with Section 13.1(b)(iv).

21.12 Service Marks.

Supplier agrees that it shall not, without Hercules' prior consent, use any of the names, service marks or trademarks of Hercules or the Eligible Recipients in any of its advertising or marketing materials.

21.13 Third Party Beneficiaries.

Except as expressly provided herein, this Agreement is entered into solely between, and may be enforced only by, Hercules and Supplier. This Agreement shall not be deemed to create any rights or causes of action in or on behalf of any third parties, including without limitation employees, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

21.14 Covenant Against Pledging.

To the extent Supplier assigns, transfers, pledges, hypothecates or otherwise encumbers its rights to receive payments from Hercules under this Agreement, Supplier shall continue to be Hercules' sole point of contact with respect to this Agreement, including with respect to payment. The person or Entity to which such rights are assigned, transferred, pledged, hypothecated or otherwise encumbered shall not be considered a third party beneficiary under this Agreement and shall not have any rights or causes of action against Hercules.

21.15 Order of Precedence.

In the event of a conflict, this Agreement shall take precedence over the Schedules attached hereto, and the Schedules shall take precedence over any attached Exhibits.

21.16 Hiring of Employees.

- (a) **Solicitation and Hiring.** Except as expressly set forth herein, during the Term and for a period of twelve (12) months thereafter, Supplier will not solicit for employment directly or indirectly, nor employ, any employees of Hercules or an Eligible Recipient or individual Hercules Third Party Contractors without the prior approval of Hercules. Except as expressly set forth herein in connection with the expiration or termination of this Agreement, during the Term and for a period of twelve (12) months thereafter, Hercules will not solicit for employment directly or indirectly, nor employ, any employee of Supplier involved in the performance of Supplier's obligations under this Agreement without the prior consent of Supplier. In each case, the prohibition on solicitation and hiring shall extend one hundred eighty (180) days after the termination of the employee's employment or, in the case of Supplier employees, the cessation of his or her involvement in the performance of Services under this Agreement. This provision shall not operate or be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association.
- (b) **Publications.** Neither the publication of classified advertisements in newspapers, periodicals, Internet bulletin boards, or other publications of general availability or circulation nor the consideration and hiring of persons responding to such advertisements shall be deemed a breach of this Section 21.16, unless the advertisement and solicitation is undertaken as a means to circumvent or conceal a violation of this provision and/or the hiring party acts with knowledge of this hiring prohibition.

21.17 Further Assurances.

Each Party covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

21.18 Liens.

Supplier shall not file, or by its action or inaction permit, any mechanics or materialman's liens to be filed on or against property or realty of Hercules or any Eligible Recipient. In the event that any such liens arise as a result of Supplier's action or inaction, Supplier shall obtain a bond to fully satisfy such liens or otherwise remove such liens at its sole cost and expense within thirty (30) days.

21.19 Covenant of Good Faith.

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

21.20 Acknowledgment.

The Parties each acknowledge that the terms and conditions of this Agreement have been the subject of active and complete negotiations, and that such terms and conditions should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

21.21 References.

Unless otherwise directed by Hercules, Supplier shall use Hercules as a reference for prospective Supplier customers interested in purchasing services that include the same or substantially similar services to the Services at least twice per calendar quarter. In conjunction with the foregoing, Hercules Relationship Manager (or equivalent level of Hercules management), shall serve as the contact point for such prospective Supplier customers and shall respond to such inquiries in a timely manner. Notwithstanding **Section 13.3**, Supplier acknowledges and agrees that Hercules Relationship Manager (or equivalent level of Hercules management) may freely discuss all aspects of Supplier's performance and Hercules' satisfaction with such performance with prospective Supplier customers. Supplier shall provide such prospective Supplier customers with appropriate Hercules contact information. The identity of such prospective Supplier customers and all information related thereto shall be considered Supplier Confidential Information.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

Hercules Incorporated

HCL Technologies Limited

By: ___/s/ Craig Rogerson_____

By: ___/s/ Sanjeev Nikore_____

Title: _President & CEO_____

Title: _Corporate Vice President_____

Date: _January 16, 2007_____

Date: _January 29, 2007_____

HCL America, Inc.

By: ___R. Srikrishna_____

Title: _Supvr. Sales, HCL Amer_____

Date: _January 29, 2007_____

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Hercules

Schedule A

Glossary

Schedule A

Glossary

This is **Schedule A** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”).

The following terms, when used in the Agreement or any Schedule or Attachment to the Agreement, shall have the meanings specified below. Other terms have the meaning given them in the Agreement.

- (1) “**Acceptance**” means the determination, in Hercules’ reasonable discretion, following implementation, installation, testing and execution in the production environment for an agreed upon number of business cycles that Software, Equipment, Systems and/or other contract deliverables are in Compliance in all material respects with the Specifications. Unless otherwise stated in this Agreement or agreed by the Parties, Hercules shall provide Supplier a notice of its determination as to whether or not to Accept within ten (10) business days.
 - (2) “**Actual Uptime**” means the measurement of time that the full functionality of a particular System, Application, Software, Equipment, Network or any other part of the Services is actually available during the Measurement Window, and such measurement will be calculated by subtracting Downtime from the Scheduled Uptime.
 - (3) “**Additional Resource Charge**” or “**ARC**” is the charge per Resource Unit that is applicable whenever the actual consumption of a defined Resource Unit by Hercules and the Eligible Recipients exceeds the Resource Baseline for such Resource Unit set forth in **Schedule J**. The total additional charges will be calculated by multiplying the Additional Resource Charge by the number of Resource Units in excess of the Resource Baseline actually consumed by Hercules and the Eligible Recipients.
 - (4) “**Affiliate**” means with respect to any Entity, any other Entity that is directly or indirectly Controls, is Controlled by or under common Control with such Entity at the time in question.
 - (5) “**Agreement**” has the meaning given in the preamble to the Agreement.
 - (6) “**Allocation of Pool Percentage**” means the portion of the Pool Percentage Available for Allocation that is specified for a Performance Category. The total of all Allocation of Pool Percentages shall not exceed the Pool Percentage Available for Allocation.
 - (7) “**Applications Software**” or “**Applications**” means those software application programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) used to support day-to-day business operations and accomplish specific business objectives to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule E** or **Schedule J.1**. Applications Software shall include all such programs or programming in use or required to be used as of the Commencement Date, including those set forth in **Schedule B**, those as to which the license, maintenance or support costs are included in the Hercules Base Case, and those as to which Supplier received reasonable notice and/or access prior to the Commencement Date. Applications Software also shall include all such programs or programming developed and/or introduced by or for Hercules or the Eligible Recipients on or after the Commencement Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule E** or **Schedule J.1**.
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- (8) “**At Risk Amount**” means, for any month during the Term, an amount, expressed as a percentage of the Monthly Charges, which is the maximum amount that the Supplier will have at risk for Service Level Credits. The At Risk Amount shall be 10% of the Monthly Charges.
 - (9) “**Authorized User(s)**” means, individually and collectively, the employees, business units, contractors, subcontractors, customers, agents, representatives, and joint ventures of Hercules and the Eligible Recipients (other than Supplier and its Subcontractors) designated by Hercules or an Eligible Recipient to receive or use the Systems or Services provided by Supplier.
 - (10) “**Availability**” means the period of time during which a Service component is scheduled to be available during the Measurement Window divided by the period of time such component is actually available during such Measurement Window; provided that for such calculation shall not include periods of downtime that is the result of scheduled maintenance (for example, preventive maintenance, system upgrades, etc.), provided that such maintenance is performed during defined maintenance windows or during a time period mutually agreed by the Parties and scheduled to minimize impact to Hercules' business, and provided further that Supplier maintains Availability during such periods to the extent reasonably practicable.
 - (11) “**Baseline Project FTE Hours**” has the meaning given in Section 3 of Schedule J.
 - (12) “**Benchmark Standard**” has the meaning given in Section 11.8(c) of the Agreement.
 - (13) “**Benchmarker**” has the meaning given in Section 11.8(a) of the Agreement.
 - (14) “**Benchmarking**” has the meaning given in Section 11.8(a) of the Agreement.
 - (15) “**Charges**” means the amounts set forth in Article 11 and Schedule J (or otherwise set forth in the Agreement) as charges due to the Supplier in return for providing the Services.
 - (16) “**Change Control Procedures**” has the meaning given in Section 9.6(a) of the Agreement.
 - (17) “**Commencement Date**” means May 1, 2007, or such other date as the Parties may agree upon in writing as the date on which Supplier shall assume full responsibility for the Services identified in the Agreement.
 - (18) “**Compliance**” and “**Comply**” means, with respect to outsourced business process(es), Software, Equipment, Systems or other contract deliverables to be implemented, designed, developed, delivered, integrated, installed and/or tested by Supplier, in compliance in all material respects with the Specifications.
 - (19) “**Confidential Information**” has the meaning given in Section 13.1(a) of the Agreement.
 - (20) “**Contract Changes**” has the meaning given in Section 11.1(e) of the Agreement.
 - (21) “**Contract Year**” means, for the first Contract Year, a period commencing on the Commencement Date and ending on December 31, 2007 and, for each ensuing Contract Year, a twelve (12) month period commencing on January 1 and ending on December 31. If any Contract Year is less than twelve (12) months, the rights and obligations under this Agreement that are calculated on a Contract Year basis will be proportionately adjusted for such shorter period.
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THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

- (22) “**Control**” and its derivatives means: (a) the legal, beneficial, or equitable ownership, directly or indirectly, of (i) at least fifty percent (50%) of the aggregate of all voting equity interests in an Entity, or (ii) equity interests having the right to at least fifty percent (50%) of the profits of an Entity or, in the event of dissolution, to at least fifty percent (50%) of the assets of an Entity; (b) the right to appoint, directly or indirectly, a majority of the board of directors; (c) the right to control, directly or indirectly, the management or direction of the Entity by contract or corporate governance document; or (d) in the case of a partnership, the holding by an Entity (or one of its Affiliates) of the position of sole general partner.
- (23) “**Critical Deliverables**” means those deliverables performed on a one-time or periodic basis, for which a Deliverable Credit may be payable in accordance with **Schedule G** and described in **Attachment G.1** or **Schedule H**. Critical Deliverables are not Critical Service Levels.
- (24) “**Critical Service Levels**” means those Service Levels established under **Schedule G** for which a Service Level Credit may be payable. Critical Service Levels are identified and defined in **Attachment G.1**. Each Critical Service Level has an Expected Service Level and a Minimum Service Level associated with it unless otherwise specified. It is the intent of the Parties that all Critical Service Levels shall be quantifiable, measurable and objective.
- (25) “**Deliverable Credits**” means the monetary amount(s) that Supplier shall pay to Hercules (or apply against monthly Charges) in the event of a failure to achieve a Critical Deliverable.
- (26) “**Derivative Work**” means a work based on one or more preexisting works, including a condensation, transformation, translation, modification, expansion, or adaptation, that, if prepared without authorization of the owner of the copyright of such preexisting work, would constitute a copyright infringement under applicable Law, but excluding the preexisting work.
- (27) “**Developed Materials**” means any Materials (including Software), or any modifications, enhancements or Derivative Works thereof, developed by or on behalf of Supplier for Hercules or the Eligible Recipients in connection with or as part of the Services.
- (28) “**Development Tools**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used in the development, testing, deployment and maintenance of Applications to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule E** or **Schedule J.1**. Development Tools shall include all such products in use or required to be used as of the Commencement Date, including those set forth in **Schedule B**, those as to which the license, maintenance or support costs are included in the Hercules Base Case, and those as to which Supplier received reasonable notice and/or access prior to the Commencement Date. Development Tools also shall include all such products selected and/or developed by or for Hercules or the Eligible Recipients on or after the Commencement Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule E** or **Schedule J.1**.
- (29) “**Direct Hercules Competitor**” means the Entities identified in **Schedule P**, as well as their Affiliates, successors and assigns to the extent such Affiliates, successors or assigns are in the same or similar industry as Hercules, as such list of Entities may be modified by Hercules from time to time by providing Supplier reasonable advance notice before such change is effective.
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- (30) “Downtime” means the time that the full functionality of a particular System, Application, Software, Equipment, Network or any other part of the Services is not available during the Measurement Window.
- (31) “Earnback” means the methodology used to determine the potential return of a Service Level Credit as described in Section 6 of Schedule G.
- (32) “Effective Date” has the meaning given in the preamble to the Agreement.
- (33) “Eligible Recipients” means, collectively, and to the extent such Entity is receiving Services under this Agreement, the following:
- (a) Hercules;
 - (b) any Entity that is an Affiliate of Hercules on the Commencement Date, or thereafter becomes an Affiliate of Hercules;
 - (c) any Entity that purchases after the Commencement Date from Hercules or any Affiliate of Hercules, all or substantially all of the assets of Hercules or such Affiliate, or of any division, marketing unit, business unit, administrative unit, or manufacturing, research or development facility thereof, provided that such Entity agrees in writing to be bound by the terms and conditions of this Agreement;
 - (d) any Entity that after the Commencement Date is created using assets of Hercules or any Affiliate of Hercules, provided that such Entity agrees in writing to be bound by the terms and conditions of this Agreement;
 - (e) any Entity into which Hercules or any Affiliate of Hercules merges or consolidates, provided that such Entity has assumed Hercules’ obligations under this Agreement, and provided further that such Entity agrees in writing to be bound by the terms and conditions of this Agreement;
 - (f) any Entity which merges into or consolidates with Hercules or any Affiliate of Hercules;
 - (g) any Entity or facility, including any corporation, joint venture, partnership or manufacturing, research or development facility, in which on or after the Commencement Date, Hercules or any Affiliate of Hercules has an ownership interest and/or as to which Hercules or such Affiliate has management or operational responsibility by law or contract;
 - (h) intentionally blank;
 - (i) any customer of an Eligible Recipient identified in clauses (a) through (h) above, or an Entity to which such an Eligible Recipient is a subcontractor, but only in connection with the provision of products or services by such Eligible Recipient to such customer;
 - (j) any person or Entity engaged in the provision of products or services to Hercules or an Eligible Recipient identified in clauses (a) through (h) above, but only in connection with the provision of such products or services to Hercules or such Eligible Recipient; and
 - (k) other entities to which the Parties agree.
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- (34) “**Entity**” means a corporation, partnership, joint venture, trust, limited liability company, limited liability partnership, association or other organization or entity.
- (35) “**Equipment**” means all computing, networking, communications and related computing equipment (hardware and firmware) procured, provided, operated, supported, or used by Hercules, Supplier or Authorized Users in connection with the Services, including (i) mainframe, midrange, server and distributed computing equipment and associated attachments, features, accessories, peripheral devices, and cabling, (ii) personal computers, laptop computers, terminals, workstations and associated attachments, features, accessories, printers, multi-functional printers, peripheral devices, and cabling, and (iii) voice, data, video and wireless telecommunications and network and monitoring equipment and associated attachments, features, accessories, cell phones, peripheral devices, and cabling.
- (36) “**Expected Service Level**” means the level of performance designated as such for a Service Level, as set forth in Attachment G.1, below which an Expected Service Level Default shall be deemed to occur.
- (37) “**Expected Service Level Default**” means the Supplier's level of performance for a particular Service Level fails to meet the applicable Expected Service Level (but does not fail to meet the applicable Minimum Service Level) as specified in Attachment G.1, and has already failed to meet such Expected Service Level two or more months in any rolling twelve (12) month period.
- (38) “**Extraordinary Event**” has the meaning given in Section 11.5(a) of the Agreement.
- (39) “**Full Time Equivalent**” or “**FTE**” means a level of effort, excluding vacation, holidays, training, administrative and other non-productive time (but including a reasonable amount of additional work outside normal business hours), equivalent to that which would be provided by one person working full time for one year. Unless otherwise agreed, one FTE is assumed to be at least 2080 productive hours per Contract Year. Without Hercules’ prior written approval, one (1) dedicated individual’s total work effort cannot amount to more than one FTE.
- (40) “**Functional Service Area**” means each of the substantive areas of Services in which Supplier shall provide Services (i) global data center operations, SAP basis, and SAP security, (iii) Tier II Services, (iv) messaging, (v) network services / non-SAP security, (vii) help desk / service desk) as more thoroughly described in Schedules E and J.
- (41) “**Hercules Base Case**” means the summary financial base case attached hereto as Schedule K, as well as the detailed financial and budget information underlying such summary base case.
- (42) “**Hercules Data**” means any data or information of Hercules, an Eligible Recipient or an Authorized User that is provided to or obtained by Supplier in connection with the negotiation and execution of this Agreement or the performance of Supplier’s obligations under this Agreement, including data and information with respect to the businesses, customer, operations, facilities, products, rates, regulatory compliance, competitors, consumer markets, assets, expenditures, mergers, acquisitions, divestitures, billings, collections, revenues and finances of Hercules, any Eligible Recipient or an Authorized User. Hercules Data also means any data or information (i) created, generated, collected or processed by Supplier in the performance of its obligations under this Agreement, including data processing input and output, service level measurements, asset information, Reports, third party service and product agreements, contract charges, and Retained Expense and Pass-Through Expenses or (ii) that resides in or is accessed through Software, Equipment or Systems provided, operated, supported, or used by Supplier in connection with the Services, as well as information derived from this data and information.
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- (43) “**Hercules Facilities**” means the facilities listed in Schedule O.1 that are provided by Hercules or the Eligible Recipient for the use of Supplier to the extent necessary to provide the Services.
- (44) “**Hercules Owned Materials**” has the meaning given in Section 14.1 of the Agreement.
- (45) “**Hercules Owned Software**” means Software owned by Hercules, a Hercules Affiliate or an Eligible Recipient and used, operated, maintained or supported by or on behalf of Supplier under or in connection with this Agreement.
- (46) “**Hercules Personal Data**” or “**Personal Data**” means that portion of Hercules Data that is subject to any Privacy Laws.
- (47) “**Hercules Personnel**” means the employees, agents, contractors or representatives of Hercules or its Affiliates or Eligible Recipients who performed any of the Services to be provided by Supplier during the twelve (12) months preceding the Commencement Date.
- (48) “**Hercules Relationship Manager**” has the meaning given in Section 10.1 of the Agreement.
- (49) “**Hercules Rules**” has the meaning given in Section 6.2(e) of the Agreement.
- (50) “**Hercules Standards**” has the meaning given in Section 9.5(a) of the Agreement.
- (51) “**Hercules Third Party Contractors**” has the meaning given in Section 4.6.
- (52) “**Income Tax**” means any tax on or measured by the net income of a Party (including taxes on capital or net worth that are imposed as an alternative to a tax based on net or gross income), or tax which is in the nature of an excess profits tax, minimum tax on tax preferences, alternative minimum tax, accumulated earnings tax, personal holding company tax, capital gains tax or franchise tax for the privilege of doing business.
- (53) “**Key Measurements**” means those Service Levels for which no Service Level Credit is payable, but which are meaningful to Hercules’ business, and are described in Attachment G.1.
- (54) “**Key Supplier Personnel**” means the Supplier Personnel filling the positions designated in Schedule C.1 as Key Supplier Personnel.
- (55) “**Laws**” means all federal, state, provincial, regional, territorial, local and other laws, statutes, ordinances, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof, in any jurisdiction in which the Services are provided or received, including the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board. The definition of Laws shall include Privacy Laws. For purposes of this Agreement, Laws also shall include all generally accepted accounting principles (“GAAP”), as such principles and standards may be modified during the Term by the Public Company Accounting Oversight Board or other applicable authorities.
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- (56) “**Level 1 Support**” means support that is provided as the entry point for inquiries or problem reports from Authorized Users. If Level 1 Support cannot resolve the inquiry or problem, the inquiry or problem is directed to the appropriate Level 2 Support or third party for resolution.
- (57) “**Level 2 Support**” means support that serves as a consolidation point for inquiries and problems between Level 1 and Level 3 Support. For example, Level 2 Support might exist in a computer operations or a distribution/mail out center. If Level 2 Support cannot resolve the inquiry or problem, the inquiry or problem is directed to the appropriate Level 3 Support or third party for resolution. Inquiries or problems to this level are usually reported by Level 1 Support personnel, but may be initiated directly by Authorized Users or the Supplier, as approved by Hercules.
- (58) “**Level 3 Support**” means support that is provided by the personnel or third party that is most knowledgeable and experienced about the underlying inquiry, problem or question and is utilized when efforts to resolve the problem or question by Level 1 and Level 2 Support have failed or are bypassed. Inquiries or problems to this level are usually reported by Level 1 or Level 2 Support personnel, but may be initiated directly by Authorized Users or the Supplier, as approved by Hercules.
- (59) “**Losses**” means all losses, liabilities, damages, fines, penalties, interest and claims (including taxes), and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, experts, and settlement) to the extent recoverable under Section 18.3 of the Agreement.
- (60) “**Major Release**” means a new version of Software that includes changes to the architecture and/or adds new features and functionality in addition to the original functional characteristics of the preceding Software release. These releases are usually identified by full integer changes in the numbering, such as from “7.0” to “8.0,” but may be identified by the industry as a major release without the accompanying integer change.
- (61) “**Malicious Code**” means (i) any code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or interfere with the operation of the Software, code, program, or sub-program, itself, or (ii) any device, method, or token that permits any person to circumvent the normal security of the Software or the system containing the code.
- (62) “**Managed Third Parties**” means the Hercules Third Party Contractors listed on Schedule D.2 and any substitute or replacement third party contractors reasonably designated by Hercules, and shall include Fully Managed Third Parties and General Managed Third Parties, as defined in Section 6.6.
- (63) “**Management Tools**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used by Supplier to deliver and manage the Services. Management Tools shall include all such products in use or required to be used as of the Commencement Date, including those set forth in Schedule B, those as to which the license, maintenance or support costs are included in the Hercules Base Case, and those as to which Supplier received reasonable notice and/or access prior to the Commencement Date. Management Tools also shall include all such products selected and/or developed by or for Hercules, the Eligible Recipients or Supplier on or after the Commencement Date to the extent a Party has financial or operational responsibility for such programs or programming under Schedule E or Schedule J.1.
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- (64) “**Materials**” means, collectively, Software, literary works, other works of authorship, specifications, designs, analyses, processes, methodologies, concepts, inventions, know-how, programs, program listings, programming tools, documentation, user materials, reports, drawings, databases, spreadsheets, machine-readable text and files, financial models and work product, whether tangible or intangible.
 - (65) “**Measurement Window**” means the time during, or frequency by, which a Service Level shall be measured. The Measurement Window will exclude Hercules approved scheduled maintenance.
 - (66) “**Minimum Service Level Default**” means the Supplier's level of performance for a particular Service Level fails to meet the applicable Minimum Service Level at any time.
 - (67) “**Minimum Service Level(s)**” means the minimum level of performance set forth in Attachment G.1 below (i.e., worse from the perspective of Hercules) which a Minimum Service Level Default shall be deemed to occur, with respect to each Critical Service Level and Key Measurement.
 - (68) “**Minor Release**” means a scheduled release containing small functionality updates and/or accumulated resolutions to defects or non-conformances made available since the immediately preceding release (whether Major Release or Minor Release). Minor Releases shall include “Maintenance Releases” which are supplemental to and made available between Major Releases and other Minor Releases, issued and provided under specific vendor service level or maintenance obligations and contain only accumulated resolutions or mandated changes. These releases are usually identified by a change in the decimal numbering of a release, such as “7.12” to “7.13.”
 - (69) “**Monthly Base Charge**” means the Supplier Charges for Services associated with a specific Functional Services Area for a given month at the number of Resource Units included within the Resource Baseline(s) for the applicable month.
 - (70) “**New Advances**” has the meaning given in Section 9.14(e) of the Agreement.
 - (71) “**New Services**” means new services that are materially different than the existing Services or significant changes to the existing Services that are requested by Hercules, and that require materially different levels of effort, resources or expense from Supplier for which there is no current Resource Baseline or charging methodology.
 - (72) “**Out-of-Pocket Expenses**” means reasonable, demonstrable and actual out-of-pocket expenses due and payable to a third party by Supplier that are approved in advance by Hercules and for which Supplier is entitled to be reimbursed by Hercules under this Agreement. Out-of-Pocket Expenses shall not include Supplier's overhead costs (or allocations thereof), general and/or administrative expenses or other mark-ups. Out-of-Pocket Expenses shall be calculated at Supplier's actual incremental expense and shall be net of all rebates and allowances.
 - (73) “**Party**” or “**Parties**” means Hercules and Supplier.
 - (74) “**Pass-Through Expenses**” means the expenses, if any, listed in Schedule J, as such list may be amended by Hercules from time to time, for which Hercules has agreed in advance to be financially responsible, in accordance with Section 11.2 of this Agreement, following processing and review of the third party invoice by Supplier. Supplier shall not charge any handling or administrative charge in connection with its processing or review of such invoices.
-

- (75) “**Performance Category**” means a grouping of Service Levels as set forth in **Schedule G**. Critical Deliverables do not constitute a Performance Category.
- (76) “**Policy and Procedures Manual**” has the meaning given in **Section 9.1(a)** of the Agreement.
- (77) “**Pool Percentage Available for Allocation**” means the total amount that may be allocated for Service Level Credits among the Critical Service Levels. The Pool Percentage Available for Allocation shall be 300% of the At Risk Amount.
- (78) “**Privacy Laws**” means Laws relating to data privacy, trans-border data flow or data protection (e.g., the implementing legislation and regulations of the European Union member states under the European Union Directive 95/46/EC), including, subject to **Section 15.7**, any rules, regulations, directives, principles and policies of Hercules or an Eligible Recipient or any self-regulatory organizations to which Hercules or an Eligible Recipient belongs.
- (79) “**Projects**” has the meaning given in **Section 4.5(a)** of the Agreement.
- (80) “**Quality Assurance**” means the actions, planned and performed, to provide confidence that all business processes, Systems, Equipment, Software and components that influence the quality of the Services are working as expected individually and collectively.
- (81) “**Reduced Resource Credit**” or “**RRC**” means the credit per Resource Unit that is applicable whenever the actual consumption of a defined Resource Unit by the Eligible Recipients falls below the Resource Baseline for utilization of such Resource Unit set forth in **Schedule J**. The total credit will be calculated by multiplying the Reduced Resource Credit by the number of Resource Units below the Resource Baseline actually consumed by the Eligible Recipients.
- (82) “**Recoverable Taxes**” means any tax on goods or services where the payer of the tax is able to claim a credit for that tax from a Tax Authority, and includes Goods and Services Taxes, Harmonized Sales Taxes, Value Added Taxes and other similar taxes.
- (83) “**Reports**” has the meaning set forth in **Section 9.2(a)** of the Agreement.
- (84) “**Required Consents**” means the consents (if any) required to be obtained: (i) to assign or transfer to Supplier Hercules licensed Third Party Software, Third Party Contracts or Acquired Assets (including related warranties); (ii) to grant Supplier the right to use and/or access the Hercules licensed Third Party Software in connection with providing the Services; (iii) to grant Hercules and the Eligible Recipients the right to use and/or access the Supplier Owned Software, Third Party Software and Equipment acquired, operated, supported or used by Supplier in connection with providing the Services; (iv) to assign or transfer to Hercules, the Eligible Recipients or their designee(s) any Developed Materials, (v) to assign or transfer to Hercules, the Eligible Recipients or their designee(s) Supplier Owned Software, Third Party Software, Third Party Contracts, Equipment leases or other rights following the Term to the extent provided in this Agreement; and (vi) all other consents required from third parties in connection with Supplier’s provision of the Services or performance of its obligations hereunder.
- (85) “**Resource Baselines**” means the estimated number of Resource Units to be required and/or consumed by Hercules and the Eligible Recipients during a defined period of time and included in the Monthly Base Charges. The Resource Baselines as of the Commencement Date are set forth in **Schedule J**.
-

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- (86) “**Resource Unit**” or “**RU**” means a measurable device, unit of consumption, staffing level, or other resource that is associated with the Services, as described in **Schedule J**, that is measured to determine Hercules’ and the Eligible Recipients’ actual utilization of such resource compared to the applicable Resource Baseline for purposes of calculating Additional Resource Charges and Reduced Resource Credits as described in **Schedule J**.
- (87) “**Retained Systems and Business Processes**” means those systems and business processes of Hercules or an Eligible Recipient for which Supplier has not assumed responsibility under this Agreement (including those provided, managed, operated, supported and/or used on their behalf by Hercules Third Party Contractors). Retained Systems and Business Processes include equipment and software associated with such systems and business processes.
- (88) “**Root Cause Analysis**” means the formal process to be used by Supplier to diagnose the underlying cause of problems at the lowest reasonable level so that corrective action can be taken that will eliminate repeat failures. Supplier shall implement a Root Cause Analysis as specified in **Section 7.3** or as requested by Hercules.
- (89) “**Scheduled Uptime**” means that period of time (days of the week and hours per day) during which a particular System, Application, Software, Equipment, Network or any other part of the Services is expected to be available during the Measurement Window.
- (90) “**Service Level Credit Allocation Percentage**” means, for a particular Critical Service Level, the portion of Allocation of Pool Percentage allocated to a Critical Service Level within a Performance Category and used to calculate the Service Level Credit payable to Hercules in the event of a Service Level Default in such Critical Service Level. In no event shall the sum of all Service Level Credit Allocation Percentages in any Performance Category exceed one hundred percent (100%), unless otherwise set forth in Schedule G.1 as of the Effective Date.
- (91) “**Service Level Credits**” has the meaning given in **Section 7.2** of the Agreement and **Schedule G**.
- (92) “**Service Level Default**” means a Minimum Service Level Default or an Expected Service Level Default.
- (93) “**Service Level(s)**” means, individually and collectively, the quantitative performance standards for the Services set forth in **Schedule G**.
- (94) “**Service Taxes**” means all sales, service, value-added, use, excise and other similar taxes that are assessed against either Party on the provision of the Services as a whole, or on any particular Service received by Hercules or an Eligible Recipient from Supplier, excluding Recoverable Taxes and Income Taxes.
- (95) “**Services**” means, collectively: (i) the services, functions and responsibilities described in **Article 4** and elsewhere in this Agreement (including Transition Services, Transformation Services and Termination Assistance Services) as they may be supplemented, enhanced, modified or replaced during the Term in accordance with this Agreement; and (ii) ongoing Projects and new Projects, upon Hercules’ acceptance of Supplier’s proposals for such Projects in accordance with **Section 4.5** and the other provisions of this Agreement; and (iii) any New Services, upon Hercules’ acceptance of Supplier’s proposal for such New Services in accordance with **Section 4.4** and the other provisions of this Agreement.
-

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- (96) “**Software**” means all software programs and programming for which a Party is financially or operationally responsible under Schedule E or Schedule J.1 (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto), including Applications, Development Tools, Management Tools, and Systems Software.
- (97) “**Specialized Services**” has the meaning given in Section 9.11 of the Agreement.
- (98) “**Specifications**” means, with respect to business processes, Software, Equipment, Systems or other contract deliverables to be designed, developed, delivered, integrated, installed and/or tested by Supplier, the technical, design and/or functional specifications set forth in Schedule E or H, in third party vendor documentation, in a New Services or Project description requested and/or approved by Hercules, or otherwise agreed upon in writing by the Parties.
- (99) “**Strategic Plan**” means the plans that may be periodically developed by Hercules that set forth Hercules’ key business objectives and requirements and outline its strategies for achieving such objectives and requirements. Hercules may revise the Strategic Plan from time to time. The Strategic Plan is likely to include both annual and multi-year strategies, objectives and requirements.
- (100) “**Subcontractors**” means subcontractors (of any tier) of Supplier, including Shared Subcontractors (as defined in Section 9.13(c)). The initial list of Subcontractors is set forth on Schedule D.1, each of which has been approved by Hercules to the extent such approval is required and described thereon. Schedule D may be amended during the Term in accordance with Section 9.13.
- (101) “**Supplier Account Manager**” has the meaning given in Section 8.2 of the Agreement and shall describe the Supplier representative responsible for both the day to day relationship with Hercules as well as the delivery of all Services to Hercules.
- (102) “**Supplier Facilities**” means, individually and collectively, the facilities owned or leased by Supplier (or its Affiliates or Subcontractors) from which Supplier (or its Affiliates or Subcontractors) provides any Services. Supplier Facilities are listed on Schedule O.2 of the Agreement.
- (103) “**Supplier Owned Materials**” has the meaning given in Section 14.3(a) of the Agreement.
- (104) “**Supplier Owned Software**” means any Software owned by Supplier and used to provide the Services.
- (105) “**Supplier Personnel**” means those employees, representatives, contractors, subcontractors and agents of Supplier, Subcontractors and Supplier Affiliates who perform any Services under this Agreement.
- (106) “**System**” means an interconnected grouping of manual or electronic processes, including Equipment, Software and associated attachments, features, accessories, peripherals and cabling, and all additions, modifications, substitutions, Upgrades or enhancements to such System, to the extent a Party has financial or operational responsibility for such System or System components under Schedule E. System shall include all Systems in use or required to be used as of the Commencement Date, all additions, modifications, substitutions, Upgrades or enhancements to such Systems and all Systems installed or developed by or for Hercules, the Eligible Recipients or Supplier following the Commencement Date.
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- (107) “**Systems Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that perform tasks basic to the functioning of the Equipment and are required to operate the Applications Software or otherwise support the provision of Services by Supplier, including operating systems, systems utilities, data security software, compilers, performance monitoring and testing tools and database managers, to the extent a Party has financial or operational responsibility for such programs or programming under Schedule E or Schedule J.1. Systems Software shall include all such programs or programming in use or required to be used as of the Commencement Date, including those set forth in Schedule B, those as to which the license, maintenance or support costs are included in the Hercules Base Case, and those as to which Supplier received reasonable notice and/or access prior to the Commencement Date. Systems Software also shall include all such programs or programming developed and/or introduced by or for Hercules, the Eligible Recipients or Supplier after the Commencement Date to the extent a Party has financial or operational responsibility for such programs or programming under Schedule E or Schedule J.1.
- (108) “**Tax Authority**” means any federal, state, provincial, regional, territorial, local or other fiscal, revenue, customs or excise authority, body or official competent to impose, collect or assess tax.
- (109) “**Technology and Business Process Evolution**” means any improvement, upgrade, addition, modification, replacement, or enhancement to the standards, policies, practices, processes, procedures, methods, controls, scripts, product information, technologies, architectures, standards, Applications, Equipment, Software, Systems, tools, products, transport systems, interfaces and personnel skills associated with the performance of the in-scope information technology process products and services in line with the generally accepted practices of leading providers of such products and services. Supplier’s obligations with respect to Technology and Business Process Evolution apply not only to the Services performed by Supplier, but also to its support of related information technology and business processes and functions performed by or for Hercules and the Eligible Recipients. Technology and Business Process Evolution includes: (i) higher capacity, further scaling and commercializing of business processes, more efficient and scalable business processes, new versions and types of applications and systems/network software, new business or IT processes, and new types of hardware and communications equipment that will enable Supplier to perform the Services more efficiently and effectively as well as enable Hercules and the Eligible Recipients to meet and support their business requirements and strategies and (ii) any change to the Equipment, Software or methodologies used to provide the Services that is necessary to bring that function, Equipment or Software or those methodologies into line with the Hercules Standards and/or current industry standards.
- (110) “**Technology and Business Process Plan**” has the meaning given in Section 9.5(d) of the Agreement.
- (111) “**Term**” has the meaning given in Article 3.
- (112) “**Termination Assistance Services**” means the termination/expiration assistance requested by Hercules to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to Hercules or its designee, as such assistance is further described in Section 4.4 and Schedule I.
- (113) “**Termination Charge**” means the termination charges payable by Hercules upon termination pursuant to Section 20.2 of the Agreement, as set forth in Schedule N.
-

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- (114) “**Third Party Contracts**” means all agreements between third parties and Hercules, an Eligible Recipient or Supplier (or Supplier’s Subcontractors or Affiliates) that have been or will be used to provide the Services to the extent a Party has financial or operational responsibility for such contracts under Schedule E or Schedule J.1. Third Party Contracts shall include all such agreements in effect as of the Commencement Date, those as to which the costs are included in the Hercules Base Case, and those as to which Supplier received reasonable notice and/or reasonable access prior to the Commencement Date. Third Party Contracts also shall include those third party agreements entered into by or for Hercules, an Eligible Recipient or Supplier (or Supplier’s Subcontractors or Affiliates) after the Commencement Date to the extent a Party has financial or operational responsibility for such Third Party Contracts under Schedule E or Schedule J.1.
- (115) “**Third Party Materials**” means intellectual property, Third Party Software or other Materials that are owned by third parties and provided under license to Supplier (or its Affiliates or Subcontractors) or Hercules (or the Eligible Recipients) and that have been or will be used to provide or receive the Services.
- (116) “**Third Party Software**” means all Software products (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are provided under license or lease to Supplier or Hercules or an Eligible Recipient that have been or will be used to provide or receive the Services to the extent a Party has financial or operational responsibility for such Software products under Schedule E or Schedule J.1. Third Party Software shall include all such programs or programming in use or required to be used as of the Commencement Date, including those set forth in Schedule B, those as to which the license, maintenance or support costs are included in the Hercules Base Case, and those as to which Supplier received reasonable notice and/or access prior to the Commencement Date. Third Party Software also shall include all such programs or programming licensed and/or leased after the Commencement Date to the extent a Party has financial or operational responsibility for such Third Party Software under Schedule E or Schedule J.1.
- (117) “**Transition Milestone**” has the meaning given in Section 4.2(b) of the Agreement.
- (118) “**Transition Period**” means the period that commences on the Effective Date and expires 11:59:59 p.m., Eastern Time, on the date specified for the completion of the Transition Services as specified in the Transition Plan, unless expressly extended in writing by Hercules.
- (119) “**Transition Plan**” means the outline set forth in Schedule H and the detailed plan developed pursuant to Section 4.2 of the Agreement.
- (120) “**Transition Services**” means the services, functions and responsibilities described in Section 4.2 of the Agreement and the Transition Plan to be performed by Supplier during the Transition Period.
- (121) “**Upgrade**” and its derivatives means the updates, renovations, enhancements, additions and/or new versions or releases of Software or Equipment by Supplier. Unless otherwise agreed, financial responsibility for the costs, fees and expenses associated with an Upgrade of Software or Equipment shall be allocated between the Parties in accordance with Section 6.4 and Schedule J.
- (122) “**Yearly Performance Weighted Average**” means, with respect to each Critical Service Level for which there was a Service Level Default during the preceding Contract Year, the average of the Supplier’s average monthly performances in the Critical Service Level during the preceding Contract Year.
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Hercules

Schedule B

Software

Schedule B

Software

This is **Schedule B** to the Master Professional Services Agreement by and between Hercules and Supplier (the "**Agreement**"). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

Certain Hercules Provided Software:

Citrix
Oracle
Windows 2000 and 2003
MS Office
SAP
Lotus Notes
Telaert
HP OV
MOM
Remedy
MS SMS
Dell Open Manager
HP NNM
Whatsup Gold
Bindview
PGP
Navisphere
Maestro
Oracle Enterprise Management
Object Manager
Visual Networks
Lotus Notes Administrator
VM Center

Other Software to be identified during the Transition Period and inventoried in a database or spreadsheet. The Parties acknowledge and agree that this list is not all inclusive.

Supplier Provided Software:

myDashboard

Hercules

Schedule C

Key Supplier Personnel

and

Competitive Restrictions

SCHEDULE C.1

KEY SUPPLIER PERSONNEL

This is Schedule C.1 to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

In accordance with Section 8.1 of the Agreement, the following positions shall be held by Key Supplier Personnel and the Key Supplier Personnel listed for each such position are approved as of the Effective Date.

| Position | Name of Key Supplier Personnel | Committed Period | Location |
|--|-----------------------------------|------------------|----------|
| Supplier Relationship Manager** | Vijay Verma | 12 Months | U.S. |
| Supplier Account Manager | * | 18 Months | U.S. |
| Service Delivery Manager | * | 18 Months | India |
| Track Lead - Unix | * | 18 Months | India |
| Track Lead - Wintel | * | 18 Months | India |
| Track Lead - DC Ops | * | 18 Months | India |
| Track Lead SAP Basis | * | 18 Months | India |
| Track Lead Tier II Services | * | 18 Months | India |
| Track Lead Helpdesk & End User Computing | * | 18 Months | India |
| Track Lead Security | * | 18 Months | India |
| Track Lead Architect | * | 18 Months | India |
| Program Manager | * | 18 Months | Delaware |

Several of the track lead positions above may be performed by a single Supplier Personnel, but no one individual may perform more than three (3) positions above.

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* The Key Supplier Personnel names will be provided within 30 days of the Effective Date.

** Part-time as needed

SCHEDULE C.2

COMPETITIVE RESTRICTIONS

This is Schedule C.2 to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

As of the Effective Date, the following positions are subject to the restrictions described in Section 8.4(d):

Position

All positions relating to Key Supplier Personnel

Hercules

Schedule D

Subcontractors

and

Managed Third Parties

SCHEDULE D.1

SUBCONTRACTORS

This is **Schedule D.1** to the Master Professional Services Agreement between Hercules and Supplier (the “**Agreement**”). Unless otherwise expressly defined herein, the capitalized terms used herein shall have the meaning assigned to them in the Agreement.

The Supplier may utilize the following Subcontractors to perform the services described below in accordance with **Section 9.13** of the Agreement:

| Subcontractor | Functional Service Area | Description/Scope of Services | Location |
|---------------|-------------------------|-------------------------------|----------|
| None | | | |
| | | | |
| | | | |
| | | | |
| | | | |

SCHEDULE D.2

MANAGED THIRD PARTIES

This is **Schedule D.2** to the Master Professional Services Agreement between Hercules and Supplier (the “**Agreement**”). Unless otherwise expressly defined herein, the capitalized terms used herein shall have the meaning assigned to them in the Agreement.

| | |
|---|--|
| Fully Managed Third Parties | |
| None, as of the Effective Date | |
| Generally Managed Third Parties | |
| Telecommunications providers, including Sprint, Excel Communications, and others designated by Hercules | |
| Avaya | |
| Cisco | |
| HP | |
| Dell | |
| Hercules approved vendors providing dispatched services (e.g., workstation and other information technology support) at Hercules designated locations | |
| SAP | |
| BMC (including Remedy support) | |
| IBM (including Lotus Notes support) | |
| Citrix | |
| Microsoft | |
| EMC | |
| Other third parties as agreed during the Transition Period | |



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Hercules
SCHEDULE E

STATEMENT OF WORK

SCHEDULE E

Statement of Work

This is Schedule E to the Master Professional Services Agreement by and between Hercules and Supplier. All capitalized terms and acronyms used but not defined in this Schedule E will have the meanings given them in the Agreement.

I. General

Supplier shall perform the Services pursuant to the Agreement (including the Staffing Assurances set forth in Schedule J) and subject to the following:

1. To the extent Services are characterized to be provided to Hercules, such Services will also be provided to the Eligible Recipients. References to Hercules will be deemed to also be references to Eligible Recipients.
2. The specific Services described in each Statement of Work Schedule attached to this Schedule E (e.g., Schedules E.1, and E.2) are certain Services Hercules may require and Supplier shall perform under the Agreement. During the Transition Period, the Parties intend to revise and refine the specific Statements of Work set forth in this Schedule E as mutually agreed.
3. The Hercules Relationship Manager (or his or her designee) may prioritize Services and identify other new or additional work activities that could be performed by Supplier Personnel with the skills and experiences described herein or as otherwise required under the Agreement, subject to the other provisions of the Agreement.
4. Supplier shall provide the Services as necessary in order to satisfy the Service Levels and in accordance with the Policy and Procedures Manual, the then current Hercules Standards as described in Section 9.5 in the Agreement, applicable Laws (in accordance with Section 15.7 of the Agreement), and as directed by Hercules from time to time. Supplier shall manage and perform the Services in a tightly integrated manner and fully cooperate with any Hercules Third Party Contractor providing business process or application development and maintenance services. For the avoidance of doubt, the foregoing requires using Hercules' Remedy Application.
5. Supplier shall provide the Services as they may evolve and be supplemented and enhanced during the Term of the Agreement due to changes in applicable Laws, technologies and Hercules' business needs.
6. Nothing herein shall limit Supplier's obligations to meet the Staffing Assurances described in Schedule J.

II. Supplier Personnel

Supplier shall provide Supplier Personnel in accordance with the Agreement. Before assigning proposed Supplier Personnel that are track leaders or perform service desk Services, whether as an initial assignment or a subsequent assignment, Supplier shall (i) verify that such Supplier Personnel meets the requirements of the Agreement, (ii) notify Hercules of the proposed assignment, (iii) provide reasonable opportunity for Hercules representatives to interview (in-person or through a conference call) the individual, and (iv) provide Hercules with a resume and such other information about the individual as may be reasonably requested by Hercules.

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If Hercules in good faith objects to any proposed assignment or the proposed individual does not meet the applicable requirements, the Parties shall attempt to resolve that situation on a mutually agreeable basis. If the Parties have not been able to resolve that situation within five (5) business days of Hercules communicating its concerns to Supplier, Supplier shall not assign the individual to that position and shall propose to Hercules the assignment of another individual meeting the applicable requirements in accordance with the Agreement.

III. Other Requirements and Services

Supplier shall provide at no Charge: (i) one (1) part-time senior service director, and (ii) other senior personnel that will participate in governance activities pursuant to Schedule S. The Parties acknowledge and agree that such individual are in addition to and not set forth in Schedule J.

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SCHEDULE E.1

IT Infrastructure

Statement of Work

Statement of Work

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This is **Schedule E.1** to the Master Professional Services Agreement by and between Hercules and Supplier. All capitalized terms and acronyms used but not defined in this **Schedule E.1** will have the meanings given them in the Agreement.

Definitions

A. "**Center of Excellence**" means a Supplier group of employees that maintain a central repository of knowledge on IT technology related topics including best practices in IT management that may be consulted with from time to time by Supplier employees on behalf of Hercules, at no charge to Hercules.

B. "**Hercules Data Center**" means the Hercules Facility that is a central data center where most computers are housed and maintained and running primarily Applications used to run the business.

C. "**Enterprise Help Desk**" means the help desk service provided remotely by Supplier under this Agreement.

- D. “Hands and Feet Support” means third party provided personnel who are located at the remote site and available to perform simple tasks like changing tapes and installing cables.
- E. “High Availability Environment” means a computer System that for business reasons must be kept available for use for a greater percentage of available hours than other Systems.
- F. “ITIL” shall mean Information Technology Infrastructure Library, an industry standard which provides a framework for infrastructure process definition.
- G. “LAN” shall mean local area network
- H. “Projects” has the meaning given in Section 4.5 of the Agreement.
- I. “Level 1 Support” shall mean support of functional, operational and technical requests fielded directly by Hercules personnel. Supplier shall respond to user inquiries and requests for Services. Supplier shall provide user assistance and problem resolution per assigned Service request tickets received from the help desk or problem reports. Level 1 help desk teams are the recipients of the first call from the Hercules’s applications user community. Level 1 Support personnel answer the telephone, receive email notifications, or receive voice response unit routed calls, solve the problem or perform initial problem diagnosis, and generate problem tickets.
- J. “Level 2 Support” shall mean the resolution of technical, functional and operational questions, (including and not limited to configuration and setup changes, enabling features and functionality, and performance improvement, which exceed the capabilities of Level 1 support personnel. Such unresolved level 1 tickets will be passed on to the Level 2 team for performing more detailed problem identification, diagnosis and isolation; impact analysis; resolution options and viable effective solution.
- K. “Level 3 Support” shall mean the resolution of technical, functional and operational questions, (including and not limited to code change, configuration and setup changes, enabling features and functionality, extensions and customization deployment) and performance improvement, which exceed the capabilities of, Level 1 and Level 2 Support personnel. Final changes to the production environment will be as per the Hercules approved Change Control Procedures.
- L. “Maintenance” shall mean the modifications required to ensure each item of the Supported Applications continues to provide the existing business and technical functionality. Such Services are included in the base scope of work of the Services
- M. “Management Processes” means a set of processes and procedures consistently adhered to the performance of the Services provided under the Agreement
- N. “OMC” shall mean operations management center, a centralized command center to operate all Hercules data centers from one or two automated locations.
- O. “Problem Management” means a defined process root cause identification and elimination to prevent future reoccurrences.
- P. “Project Request Process” means the process for requesting, defining and initiating a Project and will be fully described in the process control document.
- Q. “SME” shall mean subject matter expert.
- R. “SOP” shall mean standard operating procedure, a document that delineates operating procedure for infrastructure management.
-

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S. *“Systems Management Tools“ means tools provided and maintained by Supplier at that are used to remotely monitor Hercules’ systems and diagnose and or predict failure.*

T. *“TCO” shall mean total cost of ownership*

U. *“UAT” shall mean user acceptance testing.*

V. *“WAN” shall mean wide area network*

Introduction

This Statement of Work (“SOW”) work to be performed by Supplier for Hercules.

Service Description Summary/Scope of Work

The scope of Services includes the Functional Service Areas identified in this SOW (“Current Scope”). The Services will also include certain Projects referenced in this SOW (“In Scope Projects”) and described more fully in this Schedule.

Supplier’s efforts shall include execution of all tasks outlined in this summary, which tasks are detailed in the following sections and the attached tasks lists, and performance to the Service Levels detailed in a separate section.

The Services include:

- Datacenter Operations & Support.
- Help Desk
- Global Client Support & Services (Tier -2 support)
- Data Network Operations and Support
- Voice Network Operations and Support
- Messaging Support
- Information Security
- System Database Services
- Architectural Services
- SAP Basis

Service Description Principles

Supplier will be responsible for delivery of Services for all in scope Functional Service Areas.

Participation of SMEs for all Services for cross-functional teams is a Supplier requirement to be performed by Supplier.

Project Management and Execution

Hercules’ current infrastructure team performs both support, operational and Project work. Supplier will perform Projects in accordance with the Agreement.

All Project requests will be initiated via a Project request process and the Project scope, deliverables and responsibilities will be mutually discussed and signed off by the Parties.

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [***] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.**

For any of the Projects which require a skill set that is outside the scope of this SOW, Supplier may be required to temporarily augment its staff, either onsite or at a Supplier Facility, for such Projects. Such augmentation will be agreed in writing in advance by Hercules prior to execution. In case the Project requirement involves extraordinary scope change, then it will be discussed and scoped separately as per the Change Control Procedures.

Service Level Agreements

Hercules and Supplier have agreed to Service Levels set forth in Schedule G.

Resource baselines

The Resource Baselines are set forth in Schedules J and M.

Tools

Below is a subset of the infrastructure tools currently used by Hercules to manage and support the Hercules IT Infrastructure. It is assumed that the Supplier will have all responsibility for lifecycle maintenance of the below tool set (exclusive of Software / Equipment acquisition & maintenance cost, other than such costs assumed by Supplier at Supplier Facilities).

- Telaert
- HP OV
- MOM
- Remedy
- MS SMS
- Dell Open Manager
- HP NNM
- Whatsup Gold
- Bindview
- PGP
- Navisphere
- Maestro
- Oracle Enterprise Management
- Object Manager
- Visual Networks
- Lotus Notes Administrator
- Virsa
- VM Center

The Supplier should leverage the investment made by Hercules in the current tool set. Supplier shall introduce its own tools, if any, pursuant to the Agreement.

SOX Compliance

Supplier's responsibilities regarding Sarbanes Oxley is set forth in the Agreement.

Management Processes

Supplier's responsibilities will consist of the following processes consistent with the ITIL framework:

- a. Availability management is the process for coordinating the appropriate skills and information, and implementing tools and procedures required to manage the availability of interactive networks and their supporting hardware and software components;
- b. Batch management is the process for controlling production batch work including the scheduling of resources, the processing of data and transactions and the distribution of data output/information between Authorized Users; and

Hercules will provide current, available documentation at the Effective Date relative to how the environment is managed by Hercules which will be the minimal operating standard instructions on what, when and how to schedule and recover batch jobs and which will be included in the Policy and Procedures Manual; and

Supplier will perform and control batch setup and scheduling in accordance with the Policy and Procedures Manual; and

- c. Capacity management is the process for the proactive development, maintenance and communication of tactical and strategic plans by the Parties to verify that the operating environments accommodate Hercules's growing or changing business requirements;
- d. Change management is the process for the planning, testing, coordinating, implementing and monitoring of changes affecting service delivery and the operating environments without adversely impacting service delivery;
- e. Quality management is the process by which the integrity of Hercules's IT computing environment is ensured. This is a function that applies across all other processes and includes both auditing of process execution to ensure Service Level is achieved, as well as ensuring that appropriate testing occurs during Software development activities
- f. Configuration management is the process for monitoring, implementing and maintaining hardware and Software configurations and maintaining current lists and diagrams of system configurations. Supplier will provide revised configuration documentation for those components for which Supplier has responsibility to Hercules, upon Hercules's reasonable request;
- g. Inventory management is the process for maintaining a controlled, audited record of the Supplier and Hercules Equipment and Software (incoming and outgoing) for those environments for which Supplier is providing Services; and

this activity includes tracking by machine model, serial number and location, maintaining available configuration data and providing necessary information for provision of hardware and Software maintenance by Supplier or as necessary for Supplier to manage such maintenance provided by third party vendors, as applicable;

- h. Performance management is the process for proactive monitoring, measuring, analyzing and remediating or mitigating to meet or exceed the current Service Levels and reporting on the same. Where warranted, Supplier may recommend that Hercules changes to Hercules owned or leased and/or out of scope hardware and Software to enable system performance improvement;
 - i. Problem management is the process for identifying, recording, tracking, and correcting and identifying root cause analysis for issues impacting service delivery, recognizing and remediating or mitigating
-

recurring problems, addressing procedural issues and containing or minimizing the impact of problems that occur;

- j. Incident management is the process for responding to and addressing incident notifications received either from end-users (through the Help Desk), IT remote support personnel, or from automated Systems Management Tools that notify the Command Center of infrastructure events. Incident Management is distinct and different from Problem Management in that it focuses primarily on the efficient restoration of service, whereas Problem Management is focused on root cause identification and elimination to prevent future reoccurrences..
- k. The Change Control Process is the process by which users ask for changes to the environment which are driven by a change in needs and not by a problem or malfunction.
- l. Recovery management is the process for planning, establishing, testing and periodically updating the recovery procedures required to re-establish the functionality of systems included in the Services in the event of a system failure; the intent of this process is to anticipate and minimize the impact of Systems resource failure through the development of predefined, documented procedures and Software/hardware recovery capabilities; and

Hercules and Supplier will agree on and periodically update the procedures for recovery. The Policy and Procedures Manual will contain such current procedures.

4 Description of Services

Unix Server Operations and Support

Description of Service:

Technical Platform

Operating Systems HP UX, Windows,
IBM Mainframe
Database Oracle, SQL
Storage SAN, Tape backup
Applications SAP, Multiple others
Systems Management HP OV, MOM, What's-up Gold

•HP-UX Servers

Roles and Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules for UNIX Operations. The table captures the role and responsibilities for Supplier and Hercules in delivering these services. Supplier would deliver the Unix servers as a unified team supporting both the Hercules datacenter environment.

| | TASK LIST - Enterprise UNIX Servers & Engineering UNIX Servers | Supplier Responsibility | Hercules Responsibility |
|-----|--|-------------------------|-------------------------|
| 1. | Installation, Upgrading & Configuration Of Servers. | | |
| 2. | H/W Installation in RACKS | Y | |
| 3. | Network connectivity of systems | Y | |
| 4. | Connection of server to console | Y | |
| 5. | Operating system installation/upgrade | Y | |
| 6. | Firmware upgrade | Y | |
| 7. | Network configuration and fine Tuning. | Y | |
| 8. | File system configuration | Y | |
| 9. | Tools Installation | Y | |
| 10. | System customizations to application requirements | Y | |
| 11. | Startup and shutdown scripts setup , changes & administration | Y | |
| 12. | Server configuration documentation and CMDDB | Y | Y |
| 13. | Add server to storage dashboard monitor | Y | |
| 14. | Procedures Documentation | Y | |
| 15. | User Administration | | |
| 16. | Add/modify/delete users | Y | |
| 17. | Customize user account environment | Y | |
| 18. | Create/delete home directories. | Y | |
| 19. | Disk & Storage Administration. | | |
| 20. | Adding and removing disks in SAN and NAS | Y | |
| 21. | Adding and removing disks in DAS | Y | |
| 22. | Installation and configuration of disk device drivers | Y | |
| 23. | Storage troubleshooting and administration (SAN & NAS) | Y | |
| 24. | Storage troubleshooting and administration (DAS) | Y | |
| 25. | Configuring disk arrays and RAID levels (SAN & NAS) | Y | |
| 26. | Configuring disk arrays and RAID levels (DAS) | Y | |
| 27. | Disk and file systems cleanups | Y | |
| 28. | File system administration | Y | |
| 29. | Setting up of disk quotas at OS level | Y | |
| 30. | Setting up of disk quotas at SAN level | Y | |
| 31. | Dual pathing setup and maintenance at server level | Y | |
| 32. | Dual pathing setup and maintenance at SAN level | Y | |

| | | | |
|------------|---|---|---|
| 33. | Disk and Storage - Management System - Hardware and Software I/M/A/C/D | Y | |
| 34. | Service Management | | |
| 35. | Planning NIS/NIS+/DNS/NFS/LDAP/sendmail layouts | Y | |
| 36. | Guidelines for NIS/NIS+/DNS/NFS environments | Y | |
| 37. | I/M/A/C/D support for all services | Y | |
| 38. | Patch Administration | | |
| 39. | Intentionally blank | | |
| 40. | Patch Management I/M/A/C/D | Y | |
| 41. | Patch maintenance and troubleshooting - Keeping up-to-date patch-levels as per policies. | Y | |
| 42. | Package administration | Y | |
| 43. | Backup and restore | | |
| 44. | Installation and configuration of server backup software. | Y | |
| 45. | Troubleshoot backup and restore issues | Y | |
| 46. | Install and configure backup client software (incl. scheduling) | Y | |
| 47. | Monitor backup | Y | |
| 48. | Administer and troubleshoot backup and restore server issues | Y | |
| 49. | Administer and troubleshoot backup and restore client issues | Y | |
| 50. | Tape and optical library handling and management | Y | |
| 51. | On-site and off-site tape media management | Y | |
| 52. | Capacity Planning | | |
| 53. | Capacity planning of servers and storages | Y | |
| 54. | Alert capacity problems | Y | |
| 55. | Monitor capacity parameters (CPU, memory, disk utilization) | Y | |
| 56. | Server-Security Administration | | |
| 57. | Defining Server Security Policies | | Y |
| 58. | OS Hardening | Y | |
| 59. | Security patch updates | Y | |
| 60. | Port management , /etc/services | Y | |
| 61. | Troubleshooting server security Issues | Y | |
| 62. | Device Management | | |
| 63. | Installing and configuring new devices | Y | |
| 64. | Managing device driver software | Y | |
| 65. | Administration and troubleshooting of devices. | Y | |
| 66. | Scripts Maintenance | | |
| 67. | Develop routine shell scripts for day-to-day administration | Y | |
| 68. | Maintaining and troubleshooting shell scripts. | Y | |
| 69. | Develop routine perl scripts for day-to-day administration | Y | |
| 70. | Maintaining and troubleshooting perl scripts & cronjobs | Y | |
| 71. | Systems Network & Remote Console Management | | |
| 72. | Initial Setup and Certification - Infrastructure Remote Admin (Hardware, Software, Connectivity). | Y | |
| 73. | I/M/A/C/D Infrastructure Remote Admin (Hardware and Software). | Y | |
| 74. | Infrastructure Remote Admin (Hardware and Software). Procedures and Documentation. | Y | |
| 75. | Printer Management | | |
| 76. | Add and remove of new print queues | Y | |
| 77. | Administration & Troubleshooting print issues on Unix servers | Y | |
| 78. | Syslog and Log Management | | |
| 79. | Troubleshooting based on syslog and/or Openview Console | Y | |
| 80. | Setting up of Syslog server | Y | |
| 81. | Administration and troubleshooting of Syslog server | Y | |
| 82. | Licensing | | |
| 83. | Installing and configuring licenses | Y | |
| 84. | Troubleshooting and maintaining license issues. | Y | |
| 85. | Obtain licenses from OEM | Y | |
| 86. | Obtain licenses from Hercules | Y | |
| 87. | License Management within CMDB | Y | |

| | | | |
|------|---|---|---|
| 88. | High Availability / Failover (to be executed jointly with OEM) | | |
| 89. | Installation and setup of High Availability and/or Failover. | Y | |
| 90. | Intentionally blank | | |
| 91. | Third-level support to High Availability and/or Failover. | Y | |
| 92. | Day-to-day administration of High Availability environments | Y | |
| 93. | Monitoring health checks and logs in High Availability environment | Y | |
| 94. | Troubleshooting High Availability environment | Y | |
| 95. | H/W Maintenance. | Y | |
| 96. | Vendor (OEM) coordination to install hardware | Y | |
| 97. | Vendor (OEM) coordination to troubleshoot and fix hw issues | Y | |
| 98. | Server performance management. | | |
| 99. | Analyzing & Troubleshooting Performance alerts like CPU , Swap , File system bottlenecks. | Y | |
| 100. | Maintaining and troubleshooting performance related kernel and system parameters. | Y | |
| 101. | Documentation | | |
| 102. | System management documentation | Y | |
| 103. | Service management documentation | Y | |
| 104. | Tool management documentation | Y | |
| 105. | Scripts documentation | Y | |
| 106. | Server configuration documentation (for each server) | Y | |
| 107. | Process related activities | | |
| 108. | Attending department meetings and conference-calls | Y | |
| 109. | Participation as SME in cross-functional project teams | Y | |
| 110. | Problem ticket management | Y | |
| 111. | Weekly status reports | Y | |
| 112. | Uptime reports | Y | |
| 113. | Service level reports | Y | |
| 114. | Escalation of issues to management | Y | |
| 115. | Change Management | | |
| 116. | Initiate change request | Y | |
| 117. | Approve change request | | Y |
| 118. | Implement change | Y | |
| 119. | Verify change ticket | Y | |
| 120. | Close change ticket | Y | |
| 121. | Other Services | | |
| 122. | Renew hardware/software support contracts | | Y |
| 123. | Specify on site spares needed to meet Service Levels | Y | |
| 124. | Arrange to procure on site spares needed | Y | |
| 125. | Verify proper licenses exist for OS and layered products | | Y |
| 126. | Obtain proper licenses for OS and layered products | | Y |

MS Windows Server Operations and Support

Description of Service

MS Windows server operations and support will include plan, build, run and fix approximately 275 Microsoft servers. These servers are utilized as file/print servers, infrastructure servers, domain controllers, network specialty devices, Lotus Notes and application servers. Name resolution services including DNS and WINS are a part of the infrastructure servers. The servers are distributed worldwide with a concentration of application servers in the Wilmington Hercules Facility. Hercules owns the Windows servers.

1. The MS Windows server environment has the following technologies. All of the business Windows servers are owned by Hercules.

| Technical Platform | |
|--|--|
| CPU's running MS Windows OS with DAS and NAS storage | |
| Rack servers | |
| Windows 2000 | |
| Windows 2003 | |
| Windows NT 4 | |
| Blade Servers | |
| SAN and NAS | |

Roles and Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules for Windows Servers. Supplier will have a unified team for providing MS Windows Operations and support for these servers. The table captures the role and responsibilities for Supplier and Hercules in delivering these services.

| | MS Windows Servers Operations and Support | Supplier Responsibility | Hercules Responsibility |
|------------|--|-------------------------|-------------------------|
| 1. | Installation/Upgrade & Configuration | | |
| 2. | Network configuration | Y | |
| 3. | Connection of server to console | Y | |
| 4. | Firmware installation/upgrade | Y | |
| 5. | Operating system installation/upgrade | Y | |
| 6. | File system configuration | Y | |
| 7. | Tools Installation | Y | |
| 8. | System customization to application | Y | |
| 9. | Startup & shutdown scripts, setup & Admin | Y | |
| 10. | Complete server configuration document | Y | |
| 11. | Update server checklist | Y | |
| 12. | Add server to dashboard monitor | Y | |
| 13. | User Administration | Y | |
| 14. | Add/modify/delete users | Y | |
| 15. | Customize user account environment | Y | |
| 16. | Create/delete home directories. | Y | |
| 17. | Intentionally blank | Y | |
| 18. | Intentionally blank | Y | |
| 19. | Share folder management | Y | |
| 20. | Server Disk & Storage Administration. | Y | |
| 21. | Adding and removing disks | Y | |
| 22. | Installation and configuration of disk drivers | Y | |
| 23. | Storage troubleshooting and administration | Y | |
| 24. | Configuring disk arrays and RAID Levels | Y | |
| 25. | Disk and file systems cleanups | Y | |
| 26. | File system administration | Y | |
| 27. | Setting up of disk quotas | Y | |
| 28. | Setting up directory / folder shares | Y | |
| 29. | Adding and removing disks | Y | |
| 30. | Storage troubleshooting and administration | Y | |
| 31. | Configuring disk arrays and RAID levels | Y | |
| 32. | Dual pathing setup and maintenance | Y | |

| | | | |
|------------|---|---|--|
| 33. | Setup and administration of shadow imaging | Y | |
| 34. | Monitor disk usage | Y | |
| 35. | DHCP Server | | |
| 36. | DHCP server installation | Y | |
| 37. | DHCP service management | Y | |
| 38. | DHCP scope activation | Y | |
| 39. | DHCP scope option definition/administration | Y | |
| 40. | WINS Server | | |
| 41. | WINS server installation and configuration | Y | |
| 42. | WINS service monitoring | Y | |
| 43. | WINS database consistency checking | Y | |
| 44. | WINS replication management | Y | |
| 45. | DNS to WINS integration mgmt. | Y | |
| 46. | Static (IP Address) mapping creation | Y | |
| 47. | DNS | | |
| 48. | DNS server installation and configuration | Y | |
| 49. | Setting up and populating DNS host tables | Y | |
| 50. | DNS record management (Add, Modify, Delete) | Y | |
| 51. | Aging and scavenging management | Y | |
| 52. | AD DNS integration management | Y | |
| 53. | DNS replication service mgmt. | Y | |
| 54. | Troubleshooting DNS server issues | Y | |
| 55. | Web Server | | |
| 56. | Install / configure Web servers | Y | |
| 57. | Add/Modify/Remove Websites | Y | |
| 58. | Intentionally blank | | |
| 59. | Web server troubleshooting | Y | |
| 60. | FTP Server | Y | |
| 61. | Install / configure FTP servers | Y | |
| 62. | Add/Modify/Remove FTP sites | Y | |
| 63. | Intentionally blank | | |
| 64. | FTP server troubleshooting | Y | |
| 65. | Patch Administration | Y | |
| 66. | Testing and implementation of patches | Y | |
| 67. | Patch maintenance - keeping up-to-date patch-Levels | Y | |
| 68. | Service pack deployments | Y | |
| 69. | Citrix Package Administration | | |
| 70. | Planning and developing package deployment | Y | |
| 71. | Add or Remove packages and applications | Y | |
| 72. | Maintain and troubleshoot package Issues. | Y | |
| 73. | Capacity Planning | | |
| 74. | Alert customer of capacity problems | Y | |
| 75. | Capacity planning of servers and storages (CPU, Memory, Disk utilizations, etc) | Y | |
| 76. | Add server to storage snapshot monitor | Y | |
| 77. | Intentionally blank | | |
| 78. | Intentionally blank | | |
| 79. | Intentionally blank | | |
| 80. | Intentionally blank | | |
| 81. | Device Management | | |
| 82. | Installing and configuring devices | Y | |
| 83. | Managing device driver software | Y | |
| 84. | Tools Administration | | |
| 85. | Intentionally blank | | |
| 86. | Agent installation and configuration | Y | |
| 87. | Installations of monitoring tools | Y | |

| | | | |
|-------------|---|---|---|
| 88. | Scripts Maintenance | | |
| 89. | Develop routine scripts for day-to-day admin | Y | |
| 90. | Maintaining and troubleshooting scripts | Y | |
| 91. | Log-on script definitions for users | Y | |
| 92. | Services Management | | |
| 93. | Active Directory service | Y | |
| 94. | Replication services | Y | |
| 95. | Systems Network Management | | |
| 96. | Configuring network services on server | Y | |
| 97. | Routing administration and troubleshooting | Y | |
| 98. | Troubleshooting NIC and network h/w issues at server Level | Y | |
| 99. | Troubleshooting system N/W issues | Y | |
| 100. | Printer Management | | |
| 101. | Administering print queues | Y | |
| 102. | Troubleshooting print issues on Windows servers | Y | |
| 103. | Defining new print queues | Y | |
| 104. | Defining new print servers | Y | |
| 105. | Event Log Management (System) | | |
| 106. | Troubleshooting based on system event log | Y | |
| 107. | Licensing | | |
| 108. | Installing and configuring licenses | Y | |
| 109. | Troubleshooting and maintaining licenses | Y | |
| 110. | Obtain licenses from OEM | | Y |
| 111. | Obtain licenses from Hercules | Y | Y |
| 112. | License management | Y | |
| 113. | High Availability | | |
| 114. | Installation and setup of High Availability Environment | Y | |
| 115. | Support to High Availability | Y | |
| 116. | Day-to-day administration of High Availability environments | Y | |
| 117. | Monitoring health checks and logs in availability environment | Y | |
| 118. | Troubleshooting High Availability environment | Y | |
| 119. | H/W Maintenance. | | |
| 120. | Vendor (OEM) coordination to install hardware | Y | |
| 121. | Vendor (OEM) coordination to troubleshoot and fix hardware Issues | Y | |
| 122. | Server Performance | | |
| 123. | Maintaining system parameters | Y | |
| 124. | Windows services management | Y | |
| 125. | Disk space and paging space management | Y | |
| 126. | Enterprise Server Administration | | |
| 127. | Setup and configuration | Y | |
| 128. | Enterprise platform administration | Y | |
| 129. | Individual domain administration | Y | |
| 130. | Day-to-day monitoring and troubleshooting | Y | |
| 131. | Defining and managing trust relationship | Y | |
| 132. | Adding /removing/modifying trust relationship | Y | |
| 133. | Server Migration | | |
| 134. | Design/engineer server consolidations and migrations | Y | |
| 135. | Documentation for Process Updates | | |
| 136. | System management documentation for process updates | Y | |
| 137. | Service management documentation | Y | |
| 138. | Tool management documentation | Y | |
| 139. | Scripts documentation | Y | |
| 140. | Server configuration documentation (for each server) | Y | |
| 141. | Process related activities | | |

| | | | |
|-------------|---|---|---|
| 142. | Problem ticket management (Low, Medium and High tickets) | Y | |
| 143. | Problem ticket management (urgent tickets) | Y | |
| 144. | Change ticket management (remotely possible) | Y | |
| 145. | Change ticket management (onsite preferred) | Y | |
| 146. | Weekly status reports | Y | |
| 147. | Uptime reports | Y | |
| 148. | Service Levels reports | Y | |
| 149. | Escalation of issues to customer management | Y | |
| 150. | Antivirus Management | | |
| 151. | Implementing and configuring antivirus package for Servers | Y | |
| 152. | Deploying periodic DAT file updates on servers | Y | |
| 153. | Removing, cleaning and replacing infected files | Y | |
| 154. | Installation antivirus on nodes. | Y | |
| 155. | Disaster Recovery Management | | |
| 156. | Designing the disaster recovery management | Y | Y |
| 157. | Test the results on development environment | Y | |
| 158. | Implementation of the planned structure | Y | |
| 159. | Monitoring and troubleshooting the architecture | Y | |
| 160. | Load Balancing | | |
| 161. | Planning load balances for services | Y | |
| 162. | Implement and monitoring load balancing | Y | |
| 163. | Backup & Restore | | |
| 164. | Backup and restore | Y | |
| 165. | Installation and configuration of server side backup software. | Y | |
| 166. | Troubleshoot backup and restore issues | Y | |
| 167. | Install and configure backup client software (incl. scheduling) | Y | |
| 168. | Monitor backup | Y | |
| 169. | Administer and troubleshoot backup and restore server issues | Y | |
| 170. | Administer and troubleshoot backup and restore client issues | Y | |
| 171. | Tape library handling and management | Y | |
| 172. | On-site and off-site tape media management | Y | |
| 173. | Alert management for each backup schedules | Y | |
| 174. | Change Management | | |
| 175. | Initiate change request | Y | |
| 176. | Approve change management request | | Y |
| 177. | Implement change | Y | |
| 178. | Verify change ticket | Y | |
| 179. | Close change ticket | Y | |
| 180. | Other Services | | |
| 181. | Set up backup schedule and monitor backup | Y | |
| 182. | Add server to storage dashboard monitor | Y | |
| 183. | Monitor storage usage for capacity planning | Y | |
| 184. | Install, configure, schedule, and monitor virus scan | Y | |
| 185. | Update list of hardware and software for support contract renewal | Y | |
| 186. | Renew hardware/software support contracts | | Y |
| 187. | Specify on site spares needed to meet Service Levels | Y | |
| 188. | Arrange to procure on site spares needed | | Y |
| 189. | Verify properly licenses exist for OS and layered products | Y | |
| 190. | Obtain proper licenses for OS and layered products | | Y |
| 191. | For all vendor management aspects | Y | Y |

Storage Operations and Support

Description of Services

Storage Operations and Support includes EMC technology. Hercules Datacenter Environments has storage devices attached. Support activities include managing disk zones, disk adds, SAN script modifications and disk & server virtualization, among others.

Technical Platform

Data Center

Enterprise Data Center

EMC Storage

Roles and Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules for Storage Operations Tower - SAN & NAS. The table captures the role and responsibilities for Supplier and Hercules in delivering these Services. Any New storage frame installation will be undertaken by the OEM and handed over to the Supplier for support.

Roles & Responsibilities - SAN Support

| | Task List - SAN | Supplier Responsibility | Hercules Responsibility |
|-----|--|-------------------------|-------------------------|
| 1. | Intentionally blank | | |
| 2. | Intentionally blank | | |
| 3. | Storage Fabric Build | | |
| a. | Disk and Storage - Management System - Hardware and Software I/M/A/C/D | Y | |
| 4. | Storage fabric logical planning and verification | Y | |
| 5. | Storage fabric physical planning and Verification | Y | |
| 6. | Rack Installation for fabric equipments | Y | |
| 7. | Storage fabric switches software validation | Y | |
| 8. | Planning of zone configurations | Y | |
| 9. | Configure IP addresses, domain and core PID for fabric switches | Y | |
| 10. | Storage fabric cabling | Y | |
| 11. | Server to switch cabling | Y | |
| 12. | Connecting storage fabric inter-switches | Y | |
| 13. | Connecting hosts on the storage infrastructure | Y | |
| 14. | Storage ports configuration | Y | |
| 15. | Nomenclature of storage switches | Y | |
| 16. | Setting up storage switch ID's | Y | |
| 17. | Documenting storage attached fabric devices | Y | |
| 18. | Fabric manager installation | Y | |
| 19. | Configuring web browser with fabric manager | Y | |
| 20. | Storage switches installation | Y | |
| 21. | Configuration of storage switches(core/edge) | Y | |
| 22. | Storage Infrastructure Build | | |
| 23. | Validating fabric configurations | Y | |
| 24. | Creating storage domain | Y | |
| 25. | Physical Deployment and Acclimatization of \ Storage Array | Y | |
| 26. | Drives Population as Per requirements | Y | |
| 27. | FA/RA installation | Y | |
| 28. | Configuring cache settings | Y | |
| 29. | Configuring storage access control | Y | |
| 30. | Creating storage domain | Y | |
| 31. | Binding LUN's (Logical Unit Number) | Y | |
| 32. | Assigning clone private LUN's | Y | |
| 33. | HBA drivers installation | Y | |
| 34. | Activating load balancing & mirroring features for HBA's | Y | |
| 35. | Installing Navisphere agents | Y | |

| | | | |
|------------|---|---|--|
| 36. | Assigning storage to hosts | Y | |
| 37. | Configuring failover settings | Y | |
| 38. | Creating and Configuring Storage Groups | Y | |
| 39. | Verifying drives in device manager | Y | |
| 40. | Initializing storage disks | Y | |
| 41. | Creating and formatting partitions | Y | |
| 42. | Creation of BIN File | Y | |
| 43. | Storage Monitoring | | |
| 44. | Probe | Y | |
| 45. | Pings | Y | |
| 46. | Scans | Y | |
| 47. | Storage sub-systems performances | Y | |
| 48. | Fabric performances | Y | |
| 49. | Switch performance | Y | |
| 50. | Usage monitoring | Y | |
| 51. | Assets monitoring | Y | |
| 52. | Inter-switch links | Y | |
| 53. | Storage space | Y | |
| 54. | Storage growth rate | Y | |
| 55. | Storage Management | | |
| 56. | Switch hardware and software configuration | Y | |
| 57. | Switch licensing installation and policy Definition | Y | |
| 58. | Switch performance setting for ports | Y | |
| 59. | Fabric ease-of-management group definition | Y | |
| 60. | Fabric Zoning definition | Y | |
| 61. | Fabric ISL(Inter switch link) configuration | Y | |
| 62. | Storage volume configuration | Y | |
| 63. | LUN configuration | Y | |
| 64. | File system configuration | Y | |
| 65. | HBA configuration | Y | |
| 66. | | | |
| 67. | Performance and Capacity Management | | |
| 68. | Perform System Performance Review and develop plan | Y | |
| 69. | Perform System Capacity Review and develop plan | Y | |
| 70. | | | |
| 71. | Patch Administration | | |
| 72. | | | |
| 73. | Patch Management I/M/A/C/D | Y | |
| 74. | Patch maintenance and troubleshooting - Keeping up-to-date patch-levels as per policies. | Y | |
| 75. | Package administration | Y | |
| 76. | | | |
| 77. | Remote Management | | |
| 78. | Initial Setup and Certification - Infrastructure Remote Admin (Hardware, Software, Connectivity). | Y | |
| 79. | I/M/A/C/D Infrastructure Remote Admin (Hardware and Software). | Y | |
| 80. | Infrastructure Remote Admin (Hardware and Software). Procedures and Documentation. | Y | |
| 81. | Process related activities | | |
| 82. | Attending department meetings and conference-calls | Y | |
| 83. | Participation as SME in cross-functional project teams | Y | |
| 84. | Problem ticket management | Y | |
| 85. | Weekly status reports | Y | |
| 86. | Uptime reports | Y | |
| 87. | Service level reports | Y | |
| 88. | Escalation of issues to management | Y | |

| | | | |
|-------------|---|---|--|
| 89. | Change Management | | |
| 90. | Initiate change request | Y | |
| 91. | Approve change request | Y | |
| 92. | Implement change | Y | |
| 93. | Verify change ticket | Y | |
| 94. | Close change ticket | Y | |
| 95. | Documentation | | |
| 96. | System management documentation | Y | |
| 97. | Service management documentation | Y | |
| 98. | Tool management documentation | Y | |
| 99. | Scripts documentation | Y | |
| 100. | Configuration documentation | Y | |
| 101. | Other Services | | |
| 102. | Renew hardware/software support contracts | Y | |
| 103. | Specify on site spares needed to meet Service Levels | Y | |
| 104. | Arrange to procure on site spares needed | Y | |
| 105. | Verify proper licenses exist for storage systems and products | Y | |
| 106. | Obtain proper licenses for storage systems and products | Y | |
| 107. | Maintain the SAN components of the DR/BCP | Y | |
| 108. | Intentionally blank. | | |

Roles & Responsibilities - NAS Support

| | Task List -NAS | Supplier Responsibility | Hercules Responsibility |
|------------|---|--------------------------------|--------------------------------|
| 1. | NAS Disk and Storage - Management System - Hardware and Software I/M/A/C/D | Y | |
| 2. | Filer Administration | | |
| 3. | Configuring the filer | Y | |
| 4. | Monitoring and maintaining client access to data | Y | |
| 5. | Monitoring and maintaining network access | Y | |
| 6. | Monitoring and maintaining filer hardware | Y | |
| 7. | Performing periodic administration tasks | Y | |
| 8. | Monitoring and maintaining client access | | |
| 9. | Monitor client access to data on the filer | Y | |
| 10. | Gathering file statistics so that can schedule snapshots | Y | |
| 11. | Monitoring CIFS access so that can identify potential security problems | Y | |
| 12. | Maintain client access | | |
| 13. | Configuring volumes and Q trees to accommodate the needs of Windows and UNIX clients | Y | |
| 14. | Configuring volumes so that there is enough disk space for data | Y | |
| 15. | Configuring RAID groups to maintain maximum data availability | Y | |
| 16. | Configuring snapshots so that data is recoverable in case of accidental deletions | Y | |
| 17. | H/W Maintenance. | | |
| 18. | Vendor coordination to install hardware | Y | |
| 19. | Vendor coordination to troubleshoot and fix hw Issues | Y | |
| 20. | Vendor coordination to troubleshoot and fix software issues | Y | |
| 21. | Performance and Capacity Management | | |
| 22. | Perform System Performance Review and develop plan | Y | |
| 23. | Perform System Capacity Review and develop plan | Y | |
| 24. | Patch Administration | | |
| 25. | | | |
| 26. | Patch Management I/M/A/C/D | Y | |
| 27. | Patch maintenance and troubleshooting - Keeping up-to-date patch-levels as per policies. | Y | |
| 28. | Package administration | Y | |
| 29. | Remote Management | | |
| 30. | Initial Setup and Certification - Infrastructure Remote Admin (Hardware, Software, Connectivity). | Y | |
| 31. | I/M/A/C/D Infrastructure Remote Admin (Hardware and Software). | Y | |
| 32. | Infrastructure Remote Admin (Hardware and Software). Procedures and Documentation. | Y | |
| 33. | Process related activities | | |
| 34. | Attending department meetings and conference-calls | Y | |
| 35. | Participation as SME in cross-functional project teams | Y | |
| 36. | Problem ticket management | Y | |
| 37. | Weekly status reports | Y | |
| 38. | Uptime reports | Y | |
| 39. | Service level reports | Y | |
| 40. | Escalation of issues to management | Y | |
| 41. | Change Management | | |
| 42. | Initiate change request | Y | |
| 43. | Approve change request | Y | |

| | | | |
|------------|---|---|---|
| 44. | Implement change | Y | |
| 45. | Verify change ticket | Y | |
| 46. | Close change ticket | Y | |
| 47. | Documentation | | |
| 48. | System management documentation | Y | |
| 49. | Service management documentation | Y | |
| 50. | Tool management documentation | Y | |
| 51. | Scripts documentation | Y | |
| 52. | Configuration documentation | Y | |
| 53. | Other Services | | |
| 54. | Renew hardware/software support contracts | Y | |
| 55. | Specify on site spares needed to meet Service Levels | Y | |
| 56. | Arrange to procure on site spares needed | Y | |
| 57. | Verify proper licenses exist for storage systems and products | Y | |
| 58. | Obtain proper licenses for storage systems and products | Y | |
| 59. | Maintain the NAS components of the DR/BCP | Y | |
| 60. | Vendor management - (contracts/licensing/procurement/technical/ billing issues) | Y | Y |

Note: All Hercules responsibility around obtaining new or upgrading licenses or sourcing services from a third party vendor, if required, will be based on direction from Supplier.

Command Center Operations

Description of Services

Command Center Operations is responsible for the 24 hours per day X 7 days a week X 365 days a year monitoring and other Level 1 operations for the server, storage, applications, and network devices. Command Center Operations are responsible for monitoring, and execution of batch processing, event notification and escalation, etc.

Roles and Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules for the Hercules Datacenter. The table captures the role and responsibilities for Supplier and Hercules in delivering these Services.

| No. | Command Center Operations | Supplier Responsibility | Hercules Responsibility |
|------------|--|-------------------------|-------------------------|
| 1. | Monitor Data Center facility - from a Facility Management e.g. UPS/AC/HVAC etc. | Y | |
| 2. | Monitor batch schedules for any failures and perform first level troubleshooting | Y | |
| 3. | Enter incident tickets to arrange and monitor job and schedule failures, escalating as required. | Y | |
| 4. | Track service levels, and issue daily production report and shift reviews. | Y | |
| 5. | Monitor and escalate events/failures 24 X 7 X 365 | Y | |
| 6. | Coordinates scheduling of extract, archive, and delete jobs with applications functional teams. | Y | |
| 7. | Manage and secure backup tapes, optical discs, CDs, DVDs, and other media in the tape vault on campus/offsite. | Y | |
| 8. | Maintains schedules for all batch systems. Modify schedules as needed for holidays and special events, and for user requests. Identify potential schedule bottlenecks. | Y | |
| 9. | Handle ad hoc and permanent schedule changes, including new applications, schedules, and jobs. | Y | |
| 10. | Participate in change management process along with other Infra team | Y | |
| 11. | Perform basic system administration functions such as hardware and software inventories, printer configurations, security requests, monthly software changes/fixes, annual software upgrades. | Y | |
| 12. | Produce daily production activity reports and shift reviews. | Y | |
| 13. | Produce monthly management reports and graphs. | Y | |
| 14. | Primary driver of unplanned outage reporting: track outage data, produce outage root cause analysis and follow-up & action reports (major problem reviews). Reporting includes outages by severity and by business impact. | Y | |
| 15. | Coordinate and process requests to install or remove equipment from the data center. Prepare facilities requests for the installation of power and communications cables, and maintain documentation on power (what servers are supported by which power distribution units, including power specs). | Y | |
| 16. | Gather and distribute information for the disaster recovery manual or crisis book (server inventories, contact information, etc.) | Y | |
| 17. | Track and report on various data center metrics. Produce monthly management reports and graphs. | Y | |
| 18. | Maintain internal procedures, develop internal process improvements, and provide formal shift handover at shift changes. | Y | |
| 19. | Manage and coordinate the availability of the remote site infrastructure, working with third party vendors to test, validate, trouble-shoot any event. | Y | |
| 20. | Change management | | |
| 21. | Initiate change request | Y | |
| 22. | Approve change request | | Y |
| 23. | Implement change | Y | |
| 24. | Verify change ticket | Y | |
| 25. | Close change ticket | Y | |
| 26. | Intentionally blank. | | |

Helpdesk Support

Description of Service

Hercules wishes to create a single point of contact for all IT inquiries, problems, changes and information requests. Hercules' current helpdesk operations have been outsourced to a local provider who performs only a catch and dispatch function. Requests to the help desk are entered by end users on the Hercules web Intranet. Others are received via phone. The Helpdesk will only support calls in the English language.

Roles and Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules for Helpdesk operations. The table captures the role and responsibilities for Supplier and Hercules in delivering these Services.

| No | Helpdesk Support | Supplier | Hercules |
|------------|--|----------|----------|
| 1. | Incident Management | | |
| 2. | Provide Helpdesk (support to Hercules End Users) | Y | |
| 3. | Logging of end user calls and work requests | Y | |
| 4. | First level call resolution | Y | |
| 5. | Set expectation of customer for tickets being dispatched | Y | |
| 6. | Notification and escalation to higher levels of support | Y | |
| 7. | Reporting (daily/weekly/monthly) | Y | |
| 8. | First level remote desktop management support | Y | |
| 9. | Answer / Resolve "How- To" questions | Y | |
| 10. | Web interface to receive request | Y | |
| 11. | Knowledge base for end users to query | Y | |
| 12. | Call recording for evaluation | Y | |
| 13. | Escalations of incidents | Y | |
| 14. | Automated ticket status changes to requesters | Y | |
| 15. | Call avoidance notification, updating call center greeting to notify all callers of current issues and resolutions | Y | |
| 16. | Change Management | | |
| 17. | Initiate work requests assigned to IT Helpdesk | Y | |
| 18. | Triage work requests to appropriate groups | Y | |
| 19. | Manage work request process | Y | |
| 20. | Execution of approved work requests | Y | |
| 21. | Problem Management | | |
| 22. | Initiate root cause process | Y | |
| 23. | Update knowledge base on finding of solution | Y | |
| 24. | User Account management | | |
| 25. | Supported applications (custom and standard) account administration and access rights | Y | |
| 26. | Creation of accounts | Y | |
| 27. | Facilitation of approved Account creation / deletion | Y | |
| 28. | Other Activities | | |
| 29. | Vendor ticket initiation and coordination | Y | |
| 30. | Conduct customer satisfaction surveys and reports | Y | |
| 31. | Follow up actions related to customer satisfaction measurements | Y | |
| 32. | Receipt and preparation regarding the release to production process | Y | |
| 33. | Performance measurement | Y | |
| 34. | Knowledge base management | Y | |
| 35. | Maintain call list, management notifications, time keeper function, post mortems | Y | |
| 36. | Procurement Activities | | |
| 37. | Receiving user requests, logging tickets | Y | |
| 38. | Escalation to desk-side vendors | Y | |
| 39. | Complete follow up with desk-side team | Y | |

| | | | |
|-----|-------------------------|---|--|
| 40. | Intentionally blank. | | |
| 41. | Change Management | | |
| 42. | Initiate change request | Y | |
| 43. | Approve change request | Y | |
| 44. | Implement change | Y | |
| 45. | Verify change ticket | Y | |
| 46. | Close Change ticket | Y | |
| 47. | Intentionally blank. | | |

Client Support Services

Roles and Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules for desktop support. The table captures the role and responsibilities for Supplier and Hercules in delivering these services.

| No. | Client Services and Support (End User Computing) | Supplier | Hercules |
|-----|--|----------|----------|
| 1. | Desk Side Support (Refer to section below task list) | Y | |
| 2. | Hardware Break/Fix (Refer to section below task list) | Y | |
| 3. | Tier 2 Support | Y | |
| 4. | A combination of local on-site and remote (dispatched) | Y | |
| 5. | Problems which require desk side assistance for resolution | Y | |
| 6. | Desktop/Desk side software support and hardware repair | Y | |
| 7. | IMAC (install, move, add, change) activity | Y | |
| 8. | On-site repair services for all equipment and return of equipment to full and proper function. | Y | |
| 9. | All travel, parts and service labor required to return the hardware to full and proper working order. | Y | |
| 10. | Loaner hardware for use during the repair period as required by Service Levels. | Y | |
| 11. | Spare management as deemed necessary to maintain Service Levels. | Y | Y |
| 12. | Preventive maintenance activities | Y | |
| 13. | All manufacturer's mandatory engineering changes, upgrades and recalls. | Y | |
| 14. | Provide LAN troubleshooting and touch services as required. | Y | |
| 15. | Tier 3 Support | | |
| 16. | Various Supplier teams will be supporting the desktop support personnel teams in case of escalation from Tier 2 | Y | |
| 17. | Legacy systems and applications | Y | |
| 18. | LAN/WAN administration, requests and problems | Y | |
| 19. | Modifications to applications and databases | Y | |
| 20. | Providing knowledge and support to Tier 1 & Tier 2 support | Y | |
| 21. | Supplemental desk side support on standard software product requests. | Y | |
| 22. | Standards Management | | |
| 23. | Image creation and management | Y | |
| 24. | All standard images supported. | Y | |
| 25. | Process for updating and deploying standard images. | Y | |
| 26. | Ability to support standard shrink wrapped software which is not part of a standard image. | Y | |
| 27. | Ability to remotely push standard software to user workstations over both a LAN, VPN and dial-up connections. | Y | |
| 28. | Ability of user to pull standard software over both a LAN, VPN and dial-up connections. | Y | |
| 29. | Ability to undertake desktop OS Refresh (OS Refresh of the entire environment will be treated as a project) | Y | |
| 30. | Define maximum number of standard desktop and laptop configurations supported. | | Y |
| 31. | Recognition and base support of a desktop system as including system unit or laptop/docking station, monitor, keyboard, mouse, PDA and network attached & local printers | Y | |
| 32. | Ability to support other desktop hardware peripherals such as multiple PDAs, monitors, scanners, CD/DVD writers, plotters, etc. as part of base services. | Y | |
| 33. | Warehouse | | |
| 34. | Responsible for providing warehouse space at locations as needed | | Y |
| 35. | Executing users requests (for new PCs/ laptops etc) | Y | |
| 36. | Install, Move Add, Change ("I/M/A/C") | | |
| 37. | Receive and execute requests. | Y | |
| 38. | Obtain necessary hardware/software and schedule resources. | Y | |
| 39. | Execute Install, add or change. | Y | |
| 40. | Execute physical move (to be coordinated with the Hercules Facilities Department) | Y | |
| 41. | Disconnect and reconnect moved desktop equipment | Y | |
| 42. | Backup and restore User data as required. | Y | |

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|------------|---|---|---|
| 43. | Configure and test hardware as required. | Y | |
| 44. | Load software, including base image and applications as required. | Y | |
| 45. | Final systems test and user acceptance. | Y | |
| 46. | Update asset management records and perform asset disposal (if needed). | Y | |
| 47. | Post completion follow-up. | Y | |
| 48. | Update Supplier trouble ticketing records for all issues. | Y | |
| 49. | IMAC Reports | | |
| 50. | Quantity of client seats | Y | |
| 51. | Quantity/ types of pending and completed IMAC's, equipment type problem | Y | |
| 52. | Calls, and fix requests, software problem calls, or similar software service response and fix requests | Y | |
| 53. | Client support data (e.g. hardware/software configurations, core software builds, and software changes) | Y | |
| 54. | Summary, trends, and analysis of desktop support requests | Y | |
| 55. | Support PDA Synchronization for enterprise applications only with the desktop for standard devices | Y | |
| 56. | Coordinate and Collect PCs and peripherals from separating employees and redeploy as needed. In remote offices that have no IT personnel on-site, Supplier will coordinate with the Hercules designated site contact. | Y | |
| 57. | Change Management | | |
| 58. | Initiate change request | Y | |
| 59. | Approve change request | | Y |
| 60. | Implement change | Y | |
| 61. | Verify change ticket | Y | |
| 62. | Close change ticket | Y | |
| 63. | Asset Disposal | Y | |
| 64. | For all vendor management aspects (contracts/licensing/procurement/technical/ billing issues) | Y | |

Dispatch Support

Supplier will dispatch support services for Authorized Users using Supplier Personnel or Managed Third Parties, excluding Authorized Users located in Asia-Pacific, Latin America, or Canada.

Data Network Support

Description of Service

Hercules's WAN topology carrier provided by Sprint services. MPLS (Multi-protocol Label Switching) is the primary WAN service. Access service into a carrier's MPLS cloud can be via traditional access lines such as fractional T1, T1, E1, T3 and others. In some minor cases, carriers also use their frame relay services to provide local access from a Hercules site into their MPLS service cloud.

- WAN & LAN network at 75 locations
- Primarily Cisco network devices
- 4 hour part replacement agreement with Cisco, predominant network equipment is from Cisco

Roles and Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules for Data Network. The table captures the role and responsibilities for Supplier and Hercules in delivering these services.

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| No. | Data Network Support | Supplier Responsibility | Hercules Responsibility |
|-----|--|-------------------------|-------------------------|
| 1. | Analysis of WAN Tickets | Y | |
| 2. | Asset Management | Y | |
| 3. | Understanding Business end user requirements w.r.t application response time (with assistance from Supplier) | | Y |
| 4. | Automated identification of infrastructure links, network end user, and network servers to measure business impact | Y | |
| 5. | Automatically details inventory down to the port level | Y | |
| 6. | Awareness of ports connecting to trunks, switches, routers, and hosts when interpreting thresholds | Y | |
| 7. | Backup network to keep business up and running | Y | |
| 8. | Bandwidth monitoring and optimization on the lease line | Y | |
| 9. | Baseline data collection | Y | |
| 10. | Baseline reporting on a quarterly basis | Y | |
| 11. | Base lining the network | Y | |
| 12. | Cabling plant wiring | Y | |
| 13. | Capacity planning | Y | |
| 14. | Capturing the routers in NMS (define) | Y | |
| 15. | Configuration backup | Y | |
| 16. | Configuring links on Helpdesk for alerting & threshold monitoring | Y | |
| 17. | Configuring on NMS for data collections | Y | |
| 18. | Consolidates trend reports on a regular basis | Y | |
| 19. | Coordination for lease line procurement | | Y |
| 20. | Critical Port Management | Y | |
| 21. | Device hardware maintenance and change | Y | |
| 22. | Device installation | Y | |
| 23. | Device management | Y | |
| 24. | Device monitoring | Y | |
| 25. | Device summary: CPU, memory utilization, free memory, buffer failure | Y | |
| 26. | Electronically capture all configurations, archive, restore if required. For Cisco routers/switches = Cisco works or NCM tool | Y | |
| 27. | Equipment - configuration, software, hardware changes | Y | |
| 28. | Evaluate various broadcast oriented protocols like NETBIOS, NETBEUI & IPXSAP and recommend for optimization. | Y | |
| 29. | Event handling | Y | |
| 30. | Approve appropriate change control processes | | Y |
| 31. | Failure analysis of the product. | Y | |
| 32. | Fault monitoring | Y | |
| 33. | For all vendor management aspects (contracts/licensing/procurement/technical/ billing issues) - Refer to Vendor Management Section | Y | |
| 34. | For all work requests & trouble tickets perform appropriate & timely updates, including escalations | Y | |
| 35. | Identification, isolation and rectification of response time problems | Y | |
| 36. | Identify degradation or performance overload prior to failure to enable proactive management | Y | |
| 37. | Identify port failures and the affected users and devices | Y | |
| 38. | Identify potential point of failures and critical segments | Y | |
| 39. | In-depth analysis and performance rating of each component of the network | Y | |
| 40. | Intelligent tagging of events based on severity | Y | |
| 41. | Intelligent threshold setting | Y | |
| 42. | Inter VLAN traffic analysis | Y | |
| 43. | Inventory management | Y | |
| 44. | IP address design and implementation | Y | |
| 45. | IP address schema review and management | Y | |

| | | | |
|-----|---|---|---|
| 46. | Issue automatic alerts to degradation as well as to failures | Y | |
| 47. | Liaison with Telco/vendors/OEMs for outage/ problem resolution | Y | |
| 48. | Link management | Y | |
| 49. | Link monitoring | Y | |
| 50. | Maintain configuration backup of switches, routers | Y | |
| 51. | Maintain the properties of ports, modules, devices, VLANs | Y | |
| 52. | Maintain tools for remote management of LAN HW and SW as required to maintain capacity; utilization & availability, i.e.. Cisco Works; Vital Net; HPOV Etc | Y | |
| 53. | Maintaining the lease lines for high availability. | Y | |
| 54. | Managing internet access service | Y | |
| 55. | Measure and monitors critical network parameters | Y | |
| 56. | Monitor availability | Y | |
| 57. | Monitor device performance | Y | |
| 58. | Monitor port performance | Y | |
| 59. | Monitoring of critical switch ports | Y | |
| 60. | Monitoring trend data, application response time and application distribution | Y | |
| 61. | Network monitoring and alerting | Y | |
| 62. | Performance management | Y | |
| 63. | Physical plant cabling changes - interior and exterior | Y | |
| 64. | PING, SNMP traps and syslog to identify failures on the network | Y | |
| 65. | Priorities network events based on their impact on business | Y | |
| 66. | Proactive fault detection and management | Y | |
| 67. | Problem location identification | Y | |
| 68. | Problem prioritization based on business impact | Y | |
| 69. | Protocol Analysis, monitoring and fine tuning | Y | |
| 70. | Protocol wise utilization and reporting | Y | |
| 71. | Provide layer 2 views and intelligence on LAN | Y | |
| 72. | Provide on-call Support | Y | |
| 73. | Provide reports for use in analyzing network utilization and capacity planning over time | Y | |
| 74. | Approve changes to circuits (increase/ decrease) | | Y |
| 75. | Approve Supplier Recommendations on Network Design Optimization | | Y |
| 76. | Repair / replace equipment. | Y | |
| 77. | Review and implementation of spanning tree to build redundancy in network | Y | |
| 78. | Review and testing of backup devices | Y | |
| 79. | Review of buffer size and over subscription issues | Y | |
| 80. | Review of forwarding and ARP Tables | Y | |
| 81. | Review of routing policies | Y | |
| 82. | Review of routing policies and fine-tuning for efficient use of network resources | Y | |
| 83. | Review of VLAN Policies | Y | |
| 84. | Scalable, high performance SNMP event collection, filtering, and correlation engine | Y | |
| 85. | | | |
| 86. | Analyze data link redundancy and backup plan | Y | |
| 87. | Analyze network infrastructure, backup strategy and historical NMS data | Y | |
| 88. | Analyze Traffic Pattern and determination of local traffic | Y | |
| 89. | Threshold Definition | Y | |
| 90. | Threshold violation alerts through mail, pager and SMS | Y | |
| 91. | Timely and successful implementation of Lease Lines. | Y | |
| 92. | Track hardware and software faults | Y | |
| 93. | Track severity of problems: moderate, and severe | Y | |
| 94. | Traffic monitoring and analysis including port utilization on routers | Y | |
| 95. | Trouble ticket generation and tracking through resolution | Y | |
| 96. | Vendor independent technology to indicate performance of particular network component using parameters like collision, latency, packet loss and reduced bandwidth | Y | |
| 97. | VLAN configuration & fine-tuning | Y | |
| 98. | WAN Lab testing of Apps | Y | |

| | | | |
|-------------|----------------------------------|---|---|
| 99. | Moves, Adds, Changes and Deletes | Y | |
| 100. | Change Management | | |
| 101. | Initiate change request | Y | |
| 102. | Approve change request | | Y |
| 103. | Implement change | Y | |
| 104. | Verify change ticket | Y | |
| 105. | Close change ticket | Y | |
| 106. | Intentionally blank. | | |

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Voice Network Support

Description of Service:

Scope Includes for Europe locations only.

Roles and Responsibilities:

The supplier would be responsible for hands & feet and co-ordinating the dispatch services for the respective locations in Europe. The team will work under the guidance from the US voice support team for undertaking voice activities.

Messaging Support

Description of Service:

Hercules uses Lotus Notes within Hercules Windows 2000 and 2003 Active Directory infrastructure for its messaging, database and collaboration needs. The messaging infrastructure is centrally managed in Wilmington, Delaware. Spam filtering and content review is provided by Hercules. There are approximately 45 Lotus Notes Servers. The Sametime application and support is included in this service.

Roles and Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules. The table captures the role and responsibilities for Supplier and Hercules in delivering these services.

| No. | Messaging Support - Lotus Notes / Domino | Supplier | Hercules Responsibility |
|------------|--|----------|-------------------------|
| 1. | Administrative Task | | |
| 2. | Creation/modification/deletion of ACL Groups | Y | |
| 3. | Creation/modification/deletion of entries in address book | Y | |
| 4. | Server ID creation | Y | |
| 5. | Cross certification | Y | |
| 6. | Certifier and domain documents | Y | |
| 7. | Pass through users configuration/maintaining/support | Y | |
| 8. | Cluster management configuring/maintaining | Y | |
| 9. | Connection documents support for application database | Y | |
| 10. | Connection documents support for Lotus systems database | Y | |
| 11. | Lotus vendor call interaction initiative & coordination | Y | |
| 12. | Third party vendor management | Y | |
| 13. | Support/maintaining/troubleshooting | Y | |
| 14. | Domino directory monitoring | Y | |
| 15. | Domino directory maintenance | Y | |
| 16. | Directory assistance maintenance and monitoring | Y | |
| 17. | Log maintenance (Certlog.nsf, Admin4.nsf) | Y | |
| 18. | Log recovery (.nsf files) | Y | |
| 19. | Monitoring/Maintenance for Lotus native routing infrastructure | Y | |
| 20. | Troubleshooting for Lotus native routing infra | Y | |
| 21. | Setting/monitoring/maintenance for Lotus SMTP routing infra | Y | |
| 22. | Troubleshooting problems with Lotus SMTP routing infra | Y | |
| 23. | Database maintenance | | |
| 24. | Monitor stats DB for server statistics | Y | |
| 25. | Monitor / recover corrupt admin request DB | Y | |
| 26. | Recover corrupt statistics report / events | Y | |
| 27. | Recover corrupt address / directory DB (names.nsf) | Y | |
| 28. | Recover corrupt catalogue | Y | |
| 29. | Recover corrupt system databases | Y | |
| 30. | Domino Server - Backend Activities | | |
| 31. | Weekly/monthly reporting on server health and server status | Y | |
| 32. | Domino performance and capacity tuning | Y | |
| 33. | Backup validation and verification through test database | Y | |
| 34. | Backup /restoration process | Y | |
| 35. | Determine backup strategy for new Domino servers | Y | |
| 36. | Monitoring backup reports and issuing high alarm | Y | |
| 37. | Building of Lotus Domino server | Y | |
| 38. | Monitoring and managing the Domino server | Y | |
| 39. | Resolve / recover Domino server crash | Y | |

| | | | |
|------------|--|---|--|
| 40. | Connection documents creation | Y | |
| 41. | Creation of replicas on to the new server from Standard server | Y | |
| 42. | Domino monitoring - whether running or not | Y | |
| 43. | Domino monitoring - All tasks are working | Y | |
| 44. | Domino monitoring - CPU utilization | Y | |
| 45. | Domino monitoring - Disk utilization | Y | |
| 46. | Monthly maintenance - soft boot for Domino and OS | Y | |
| 47. | Monthly maintenance- run DB utilities(compact, fixup, etc) | Y | |
| 48. | Monthly maintenance- delete logs | Y | |
| 49. | Monthly maintenance - error message | Y | |
| 50. | Monthly maintenance - Check the status of the Domino tasks | Y | |
| 51. | Listing of critical patches introduced by Lotus/IBM | Y | |
| 52. | Requisitions for the approval of these patches | Y | |
| 53. | Testing of the critical patches with existing Domino release | Y | |
| 54. | Implementation of the patches | Y | |
| 55. | Recreation of the user | Y | |
| 56. | Deletion of the Notes account from the server | Y | |
| 57. | HTTP password support | Y | |
| 58. | Changes in the common name of the user | Y | |
| 59. | Users OU changes | Y | |
| 60. | Support to the corrupted public keys issues | Y | |
| 61. | Support for the mismatch of the public keys | Y | |
| 62. | Re-certification of the Notes ID | Y | |
| 63. | User ID creation, as per user ID creation process | Y | |
| 64. | Person document creation for the Web clients | Y | |
| 65. | Domino | | |
| 66. | | | |
| 67. | Software release | Y | |
| 68. | Replication topology - mail and application, changes or restructure | Y | |
| 69. | LDAP integration with Lotus Domino | Y | |
| 70. | Management of the security guidelines | Y | |
| 71. | Maintain the logging levels and standards | Y | |
| 72. | Auditing the server logs, Data Base logs | Y | |
| 73. | Auditing the Domino server | Y | |
| 74. | | | |
| 75. | Test the DR Plan | Y | |
| 76. | Evaluation of Domino tools (performance / monitoring tools) | Y | |
| 77. | Recommend " New tools/Upgrades/Add-on" | Y | |
| 78. | Implementation of approved recommendation and evaluation | Y | |
| 79. | Lotus Domino Application Environment | | |
| 80. | Creation and maintenance of the resource DB - restrictions also | Y | |
| 81. | Support developers facing issues related to Domino server | Y | |
| 82. | Creation of DB from built in templates like discussion DB, team room | Y | |
| 83. | Signing the databases during deployment in production environment | Y | |
| 84. | Moving database from the development to production servers | Y | |
| 85. | Signing the database for moving it to the production environment | Y | |
| 86. | Create copies / replicas after approval | Y | |
| 87. | Restoration of the application from the backup | Y | |
| 88. | Restoration of the entire database | Y | |
| 89. | Creation of the mail groups | Y | |
| 90. | Internet addressing for persons and mail groups | Y | |
| 91. | Working with Administrator for the ACL access | Y | |
| 92. | Running database utilities on database | Y | |
| 93. | Troubleshooting the server response in case of delays | Y | |

| | | | | |
|-------------|---|-------------------------------------|---|---|
| 94. | Resolve replication issues | | Y | |
| 95. | Anti Virus | | | |
| 96. | Installation and configuration of the anti virus | | Y | |
| 97. | Check anti virus log of mail server | | Y | |
| 98. | Update anti virus Dat file | | Y | |
| 99. | Check anti virus quarantine on demand scanning | | Y | |
| 100. | Support cleanup in case of E mail routing problems | | Y | |
| 101. | Black Berry | | | |
| 102. | Installation configuration of BES | | Y | |
| 103. | Enterprise activation of BB devices | | Y | |
| 104. | Assist customer with synchronization Issues | | Y | |
| 105. | Administrative - upgrades and patches responsibilities for BES server | | Y | |
| 106. | Add remove black berry owners from the BES server | | Y | |
| 107. | Mentor training application | | Y | |
| 108. | Support the base mentor training application | | Y | |
| 109. | Training to HelpDesk on this application | | Y | |
| 110. | Notes Client issues | | Y | |
| 111. | Properly configured Person document | Y (Performed by Supplier Help Desk) | | |
| 112. | Sametime Connect client connectivity issues | Y (Performed by Supplier Help Desk) | | |
| 113. | Resolve corrupt Inbox issues | Y (Performed by Supplier Help Desk) | | |
| 114. | Overall Notes client support | Y (Performed by Supplier Help Desk) | | |
| 115. | Retrieve backup Notes IDs and passwords | | Y | |
| 116. | Change Management | | | |
| 117. | Initiate change request | | Y | |
| 118. | Approve change request | | | Y |
| 119. | Implement change | | Y | |
| 120. | Verify change ticket | | Y | |
| 121. | Close change ticket | | Y | |
| 122. | Intentionally blank. | | | |

System Database Services

Description of Service:

The Hercules environment has multiple server platforms, but operates primarily on the Oracle DBMS platform with some SQL servers.

Roles & Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules for the Database Tower. The table captures the role and responsibilities for Supplier and Hercules in delivering these Services.

| | Systems Database Services | Supplier | Hercules |
|-----------|--|----------|----------|
| 1. | Database Monitoring | | |
| 2. | Proactive monitoring of the database | Y | |
| 3. | Up/down - database & listener whenever required | Y | |
| 4. | Free space - check if all objects still can grow | Y | |
| 5. | Check log file error -alerts | Y | |
| 6. | Check transaction log/ archive redo log growth - free space | Y | |
| 7. | Check for database corruptions | Y | |
| 8. | Check database security - file permissions, internal db security | Y | |
| 9. | Detection of console related events | Y | |
| 10. | Prompt addressing of console events | Y | |
| 11. | Define requirements for remote control monitoring, backup/recovery and maintenance tools | Y | |
| 12. | Procure remote control monitoring tools | | Y |
| 13. | Install and configure remote control monitoring tools | Y | |

| | | | |
|------------|--|---|---|
| 14. | Monitoring of critical services/processes (defined) | Y | |
| 15. | Monitor database resource utilization. | Y | |
| 16. | Report database resource utilization | Y | |
| 17. | Database specific monitoring of available disk for DB servers | Y | |
| 18. | Monitor database specific backup of DB servers (exports, archiving) | Y | |
| 19. | Storage Management | | |
| 20. | Create and manage data files, table spaces (and related OS level activities, see server management) | Y | |
| 21. | Perform database storage capacity management | Y | |
| 22. | Online & offline defragmentation | Y | |
| 23. | Internal database space management | Y | |
| 24. | Reorganize specific database objects, tables space | Y | |
| 25. | Backup Management | | |
| 26. | Define & provide database related backup and recovery strategy and procedures | Y | |
| 27. | Install and configure database related backup/recovery tools (agents & plugins , on top of typical Server backup/Recovery tools) | Y | |
| 28. | Maintain & update/upgrade specific database backup/recovery tools (on top of typical server backup/recovery tools) | Y | |
| 29. | Create/configure/Execute Database backup (incl. Regular exports) jobs | Y | |
| 30. | Make sure the availability of tape backups necessary to meet the operational requirement (DB requirements on top of server backup) | Y | |
| 31. | Change tape backups as per operational schedule (DB requirements on top of server backup) | Y | |
| 32. | Monitor daily database backups, exports, archiving. | Y | |
| 33. | Database Rebuild/Restore | | |
| 34. | Execute restore/recovery requests (caused by DB crash or failure or at customer request due to user error) | Y | |
| 35. | Check application related batch jobs | | |
| 36. | Job scheduling and monitoring | Y | |
| 37. | Maintenance & Housekeeping | | |
| 38. | Maintain database components (databases, instances, listeners, monitoring, agents) | Y | |
| 39. | Define/maintain housekeeping jobs (log files, trace files, audit logs,...) | Y | |
| 40. | Maintain database object statistics (if required - optimizer) | Y | |
| 41. | Reorganize table spaces or specific objects | Y | |
| 42. | Maintain the backbone infrastructure for database address resolution, database monitoring | Y | |
| 43. | Security management | | |
| 44. | Determine the necessary database software security patching baseline | Y | |
| 45. | Intentionally blank. | | |
| 46. | Install patches on databases | Y | |
| 47. | Verify patch installation, keep evidence of installation | Y | |
| 48. | Monitor database security logs | Y | |
| 49. | Maintain database system accounts (power users, not end users) | Y | |
| 50. | Maintain database specific admin users/passwords | Y | |
| 51. | Release Management | | |
| 52. | Agree with internal or external customers on new releases for databases | | Y |
| 53. | Procure licenses for necessary applications and system software | | Y |
| 54. | Test new releases for database instances | Y | |
| 55. | Prepare installation documentation for database release upgrades | Y | |
| 56. | Prepare planning for release upgrades for individual database instances. | Y | |
| 57. | Execute database upgrades (installation and configuration) | Y | |
| 58. | Building and configuration new databases | Y | |
| 59. | Configuration Management | | |
| 60. | Identify necessary database software upgrades and fixes | Y | |
| 61. | Create database instance documentation | Y | |
| 62. | Maintain application system documentation | Y | |
| 63. | Performance, Capacity & Availability Management | | |
| 64. | Agreement on database management Service Levels | Y | |
| 65. | Agreement on database management metrics and service levels | Y | |
| 66. | Define Database management capacity, performance and availability reporting | Y | |

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|------------|--|---|---|
| 67. | Monitor capacity trends. | Y | |
| 68. | Establish database management capacity, performance and availability reporting | Y | |
| 69. | Create and maintain reports for database management Service Levels reporting | Y | |
| 70. | Communicate database management Service Levels | Y | |
| 71. | Database instance tuning | Y | |
| 72. | Setup of new database instances (dedicated or shared) | Y | |
| 73. | Procure database software and maintenance | | Y |
| 74. | Installation of database software (system tables) | Y | |
| 75. | Creation and configuration of the database instance | Y | |
| 76. | Setup basic database security administration | Y | |
| 77. | Building and configuration new servers required for database management | Y | |
| 78. | Business continuity management | | |
| 79. | Work internally on business continuity plan within Hercules | | Y |
| 80. | Perform database restore test as per operational schedule | Y | |
| 81. | Rebuild the database in case of disaster | Y | |
| 82. | Change Management | Y | |
| 83. | Initiate change request | Y | |
| 84. | Approve change request | | Y |
| 85. | Implement change | Y | |
| 86. | Verify change ticket | Y | |
| 87. | Close change ticket | Y | |
| 88. | Intentionally blank. | | |

Information Security

Roles & Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules for security track. The table captures the role and responsibilities for Supplier and Hercules in delivering these Services. Many of these tasks listed are considered cross-functional and will be addressed within the respective technology tracks. The tools and Procedures required for delivering these activities will be provided by Hercules.

| No | Security | Responsibility | |
|-----|---|----------------|----------|
| | | Vendor | Hercules |
| | USER ACCESS | | |
| 1. | For all platforms, confirm access authorization to Hercules data in accordance with the current security access policies. Add or user IDs, passwords and profiles as requested, check for segregation of duty issues where appropriate and provide a documented audit trail for all changes. | Y | |
| 2. | Disable and delete user accounts on a timely basis. | Y | |
| 3. | Monitor systems for misuse and unauthorized access. Log security violations and promptly provide Hercules with written reports of logged information security breaches discovered by or made known to Supplier. Review the severity of violations with Hercules. Develop and implement procedures and activities to deter subsequent violations as appropriate. | Y | |
| 4. | Create and maintain user access rights via group rules, end user profiles, where applicable. | Y | |
| 5. | Maintain physical access controls to computer room facilities. | | Y |
| 6. | Administer user access to files located on the servers. | Y | |
| 7. | Assign and delete directories, where applicable. | Y | |
| 8. | Upon Hercules's request, provide user reports needed to evaluate licenses, access rights, etc. (such as a list of authorized users at Hercules Service Locations designated by Hercules, including the level of access granted to each such user.) | Y | |
| 9. | Provide a centralized user administrative process that enables administration of all platforms by any security administrator. | Y | |
| 10. | Periodically prepare and review security reports ensuring that authorized users are able to access the system, and promptly report to Hercules management any breaches of security; events that may indicate security violations; or attempts to gain unauthorized access to computers, information systems, or data resident on information resources. | Y | |
| 11. | Maintain a complete IT security administration guide and supporting procedures for all information security provisioning tasks. | Y | |
| | SYSTEM SECURITY | | |
| 12. | Provide high-level security requirements. | | Y |
| 13. | Identify, in consultation with Hercules, IT security risks (exposure), and recommend procedures to minimize them. When approved by Hercules, implement such procedures. | Y | |
| 14. | Maintain access controls and configuration which secure individual access to applications, server equipment, server software, and the data network, where applicable. | Y | |
| 15. | Provide routine intrusion detection/prevention monitoring and reporting (e.g. those threats that are detected on the Internet-facing systems). Using the tools provided by Hercules. | Y | |
| 16. | Provide vulnerability scanning on key systems on a regular basis, including workflow capability to track remediation and trends. This will be done using the existing tool provided by Hercules. | Y | |
| 17. | Provide independent periodic security assessments such as external penetration testing, including no-knowledge tests. | | Y |
| 18. | Maintain and provision capabilities such as anti-virus, anti-SPAM and any other forms of software to detect and disable malware on servers and PCs; provide user support as required. | Y | |
| 19. | Administer and manage all firewalls, console servers, proxy servers, site blocking and content filtering systems | Y | |
| 20. | Administer and manage all forms of remote access to Hercules Systems. | Y | |
| 21. | Test patches and perform patching on all systems once approved. Specifically perform emergency patching as part of a security incident in an expedited mode | Y | |
| 22. | Management of WebMail servers and associated software for web-based email | Y | |
| 23. | Ensure that system media are protected from unauthorized access misuse or corruption, and that media no longer required are disposed off securely and safely. | Y | |
| | SECURITY MANAGEMENT | | |
| 24. | In consultation with Hercules, identify, security risks (exposure), including but not limited to software vulnerabilities, physical and procedural vulnerabilities. Recommend procedures to minimize risk and implement such procedures when approved by Hercules. | Y | |

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| 25. | Maintain an audit trail of all IT security operational activities using existing Hercules Tools. | Y | |
| 26. | Conduct SOX control testing; evaluate and report security compliance; maintain appropriate documentation | Y | Y |
| 27. | Provide a security awareness program which includes but is not limited to awareness campaigns, maintaining and communicating security-related procedures or self-help guidelines for security-related tasks. Update and maintain information in a well-known and accessible location, such as a web site on the Hercules network. | Y | Y |
| 28. | Ensure mechanisms are in place to meet with Hercules security personnel to ensure services are in line with existing policies and adaptable to meet requirements in ongoing security strategic initiatives. | Y | Y |
| 29. | Provide Hercules with recommendations for security improvement based on security best practices from other clients as well as within industry. | Y | |
| 30. | Prepare ad-hoc and periodic reports, including management dashboards, which show Hercules security status, such as relevant threats, etc. | Y | |
| 31. | Provide appropriate expertise to perform incident response and investigation, including forensic analysis and provide relevant information in a confidential manner as directed. | Y | |
| 32. | Maintain an audit trail of all security operational activities using existing Hercules tools. | Y | |
| 33. | Provide resources and data to support internal and external audits using existing Hercules Tools. | Y | |
| 34. | Conduct security remediation activities resulting from audits or security incidents as directed by Hercules. | Y | |
| 35. | | | |
| 36. | Ensure all areas within Hercules and the provider organization are regularly reviewed to ensure compliance with security policy, standards and procedures. | Y | Y |
| 37. | Ensure duties and areas of responsibility are separated to reduce opportunities for misuse. | Y | Y |
| 38. | | | |
| 39. | Process Security exception requests in a timely manner. | Y | |
| 40. | Account lockout management | Y | |
| 41. | Group management and security alternations | Y | |
| 42. | Provide security mgmt. (incl. user access mgmt) for all servers | Y | |
| 43. | | | |
| 44. | Adding or Removing server security policies | Y | |
| 45. | Troubleshooting server security issues | Y | |

Disaster Recovery / BCP

| | Disaster Recovery / BCP | Supplier | Hercules |
|------------|--|----------|----------|
| 1. | Planning Activities | | |
| 2. | Identification of systems, network, connectivity to be protected with Recover Time Objective (Joint responsibility of Hercules and Supplier) | | Y |
| 3. | Identification of data to be protected along with required Recovery Priority | | Y |
| 4. | Protection methodology including advanced recovery technologies | Y | |
| 5. | Resource identification (both from Customer & Supplier) and allocation | Y | |
| 6. | Business Impact Analysis and requirements | | Y |
| 7. | | | |
| 8. | Overall management of DR contract for enterprise data center. | | Y |
| 9. | Implement infrastructure and application architecture to meet business resumption service tier requirements. | Y | |
| 10. | Review and revise DR plan components of technology | Y | |
| 11. | Review and revise overall DR program (Including Communications and business testing components). | | Y |
| 12. | Approve DR plan components | | Y |
| 13. | Schedule annual testing and define scope | | Y |
| 14. | Rehearsal Activities | | |
| 15. | Understand disaster recovery roles and responsibilities. | Y | |
| 16. | Develop, maintain and update the plan as scheduled. | Y | |
| 17. | Participate in Business Continuity Plan testing as required | Y | |
| 18. | Develop drill plan in conjunction with Customer requirement | Y | |
| 19. | Assist in building up systems and applications on Windows / Unix / DB / Storage | Y | |
| 20. | Install and configure application related backup/recovery agents, add-ons, plug ins | Y | |
| 21. | Testing backup and recovery procedures thoroughly | Y | |
| 22. | Assist executing activities in drill plan | Y | |
| 23. | Monitor and approve the overall recovery process | | Y |
| 24. | Generate results; find out bugs/ gap in DR Plan performance. | Y | |
| 25. | Assisting in identifying root cause and possible remedy for failures in system performance | Y | |
| 26. | Document all the test results for future reference. | Y | |
| 27. | Train Hercules employees to be prepared for emergencies and rehearsals | | Y |
| 28. | At the time of Disaster | | |
| 29. | Providing management with a comprehensive understanding of the total effort required for recovery | Y | |
| 30. | Request disaster declaration (incident management) | Y | |
| 31. | Approve disaster declaration | | Y |
| 32. | Coordinate with vendors and suppliers in restoring, repairing, or replacing salvageable hardware and equipment. | Y | Y |
| 33. | Facilitate effective co-ordination of recovery tasks | Y | Y |
| 34. | Restore operating systems, applications, and network software from backup medium. | Y | |
| 35. | Initialize new tapes as needed in the recovery process. | Y | |
| 36. | Conduct backups at the off-site location. | Y | |
| 37. | Test and verify operating systems, applications, and network software. | Y | |
| 38. | Modify the LAN configuration to meet the alternative site configuration. | Y | |
| 39. | Ensure that restoration occurs within the planned critical time frames | Y | |
| 40. | Identify the reasons for disaster and find corresponding remedial action | Y | Y |
| 41. | Document the learning's | Y | |
| 42. | Employee communications | | Y |
| 43. | Intentionally blank. | | |

Vendor Management

| No. | Vendor Management | Supplier Responsibility | Hercules Responsibility |
|-----|---|-------------------------|-------------------------|
| 1. | Provide technical requirements/ inputs/ technical SOW on vendor contracts (new/ renewals) and project plan / schedules | Y | |
| 2. | Manage negotiation of contract and financial terms | | Y |
| 3. | Develop and track service level and performance terms in the contract | Y | |
| 4. | Technical evaluation of different vendors on basis of mutually agreed IT parameters. | Y | Y |
| 5. | Establishing Vendor Contract | | Y |
| 6. | Selection of vendors including negotiation | | Y |
| 7. | Signing and closure of contracts | | Y |
| 8. | Liaison with vendors on technical and timing aspects of the delivery of services | Y | |
| 9. | Contract renewals - hardware, software, services etc. | | Y |
| 10. | Contract review for justification of business need | | Y |
| 11. | Validation/ acceptance of services/ products provided by vendors | Y | |
| 12. | Payment of vendors | | Y |
| 13. | Log and track the trouble ticket until closure. | Y | |
| 14. | Event escalation to higher level in case the problem is not resolved within pre-defined period. | Y | |
| 15. | Service Levels tracking and reporting of Vendors contracted by Hercules | Y | |
| 16. | Escalate to Hercules on non - conformity of support vendors | Y | |
| 17. | Providing initial base-line information to Supplier | | Y |
| 18. | Monitor license usage for Infrastructure application, tools and OS on best effort basis in absence of tools(subject to availability of tools provided by Hercules) | Y | |
| 19. | Obtain licenses | | Y |
| 20. | Deployment of new licenses and processing of desktop license requests | Y | |
| 21. | Tracking the spares level for re-order | Y | |
| 22. | Recommend re-order levels | Y | |
| 23. | Providing status reports on spares | Y | |
| 24. | Procurement of spares | Y | Y |
| 25. | Intentionally blank. | | |

SAP Basis Engineering and Support

| No | SAP Basis Engineering and Support | Responsibility | |
|--|---|----------------|----------|
| | | Vendor | Hercules |
| Support of high availability landscapes for SAP R3, SAP BW, SAP PLM, SAP Solution Manager, SAP Enterprise Portal, SAP Web Application Server, IXOS, EDI, TaxWare, BSI TaxFactory, DataPass, SAP Business Connector, SAP Router, Adobe Jetforms, TopCall, Object Manager, Maestro, Redwood, OV SPI | | | |
| 1 | Intentionally blank. | | |
| 2 | Intentionally blank. | | |
| 3 | Establish Boundary conditions for: a. Availability requirements b. Functionality b. Budgets | Y | |
| 4 | Intentionally blank. | | |
| 5 | Intentionally blank. | | |
| 6 | Intentionally blank. | | |
| 7 | Provide documentation for Implementation team | Y | |
| Build, Test & Administer High Availability Landscapes | | | |
| 8 | Develop prototype of High Availability Landscape in Test conditions | Y | |
| 9 | Perform Detailed Testing & Gap analysis based on load balancing, functionality etc | Y | |
| 10 | Validate success criteria | Y | |
| 11 | Execute Build of High Availability Landscape in conjunction with relevant Infrastructure & Application teams | Y | |
| 12 | Update documentation for support by relevant Infrastructure & Application teams | Y | |
| SAP Basis & Upgrade & Migration Strategy | | | |
| 13 | Align Upgrade & Migration path with Functional teams | Y | |
| 14 | Define Basis Maintenance & Support Strategies | Y | |
| 15 | Evaluate & Identify Tools/Processes for implementation of strategies | Y | |
| 16 | Execute Upgrade & Maintenance Strategies | Y | |
| Standards/Processes | | | |
| 17 | Keep documentation accurate and updated | Y | |
| 18 | Recommend improvements in processes/standards | Y | |
| Applications - Infrastructure Alignment | | | |
| 19 | Evaluate technical requirements for applications (SAP add-ons and interfaces) for alignment with Infrastructure Services technical architecture | Y | |
| Service Level Management | | | |
| 20 | Define Baseline requirements based on statistical data for SLM in conjunction with SAP technical & functional teams | Y | |
| 21 | Define Parameters for measurement (Turnaround time, availability etc) | Y | |
| 22 | Benchmark proposed Service Levels against industry standards | Y | |
| 23 | Develop detailed Service Level Frameworks along with measurement criteria | Y | |
| 25 | Set Service Level Objectives against defined parameters & monitor for compliance | Y | |
| 26 | Formalize Service Levels and plan and implement Continuous Improvement Strategies | Y | |
| SAP R/3 Failover Environment | | | |
| 27 | Create & Backup Cluster Lock Disk Information | Y | |
| 28 | Configure HP XP 1024 arrays | Y | |
| 29 | Configure Cluster environment for SAP R/3 tools | Y | |
| 30 | Configure failover package and distribute | Y | |
| 31 | Ensure SAP Kernel Configuration consistency | Y | |
| 32 | Setup Monitoring hardware | Y | |
| 33 | Manage Running cluster on an ongoing basis | Y | |
| Assess & Review | | | |
| 34 | Perform proactive analysis of expected changes in hardware & software environment | Y | |
| 35 | Changes in Hardware/Platforms/versions on existing SAP & bolt on environment & performance | Y | |
| 36 | Changes in Software/Platforms/versions on existing environment & performance | Y | |
| 37 | Assesse Partitioning technologies, upgrades etc. | Y | |

| | | | |
|---|--|---|--|
| 38 | Prepare Business Case | Y | |
| 39 | Prepare Appropriation requests | Y | |
| IXOS Management | | | |
| 40 | Manage IXOS archiving infrastructure - Optical libraries, interfaces etc | Y | |
| 41 | Monitor & troubleshoot key interfaces/media etc | Y | |
| 42 | Manage IXOS cleint & server software | Y | |
| 43 | Perform related upgrades, releases etc | Y | |
| SAP Document Archiving | | | |
| 44 | Identify Retention requirements, data to be archived etc | Y | |
| 45 | Schedule extracts using SAP functionality | Y | |
| 46 | Execute Batch Jobs/Extracts based on predefined schedules | Y | |
| 47 | Monitor & Restart/Reschedule failed jobs extracts | Y | |
| 48 | Verify SAP extracts | Y | |
| 49 | Archive to IXOS | Y | |
| 50 | Delete archives from SAP | Y | |
| 51 | Identify opportunities to archive additional data to IXOS | Y | |
| SAP GUI Release Upgrades | | | |
| 52 | Intentionally blank. | | |
| 53 | Test new releases for application , application components, required tooling , high availability components, ... | Y | |
| 54 | Prepare installation documentation for release upgrades | Y | |
| 55 | Prepare planning for release upgrades for individual application instances, components, tools,... | Y | |
| 56 | Execute software upgrades (installation and configuration, generating evidence, Qualification documents,..) | Y | |
| Patching & Support Pack Management | | | |
| 57 | Reviewing the support packs in detail for any issues whenever support pack upgrade is planned | Y | |
| 58 | Test Support Packs | Y | |
| 59 | Coordinate the support pack upgrade process | Y | |
| 60 | Apply support pack in SAP landscape as per the sequence specified | Y | |
| 61 | Coordinate with SAP in case of bugs with support pack | Y | |
| 62 | Review Patches for SAP Bolt Ons and perform Testing | Y | |
| 63 | Implemented Tested patches | Y | |
| 64 | Perform rollbacks if necessary | Y | |
| Business Copy using HP ExSID | | | |
| 65 | Assess Requirements for Business/System Copies | Y | |
| 66 | Define Schedules for Copies to test/consolidation environment | Y | |
| 67 | Execute physical copies as per schedule | Y | |
| 68 | Perform necessary post copy activities | Y | |
| Performance Management | | | |
| 69 | Build & Configure SAP Monitoring Infrastructure | Y | |
| 70 | Support & Administer on an ongoing basis | Y | |
| 71 | EarlyWatch & GoLive checks | Y | |
| 72 | Performance Tuning based on Recommendations from Unix/Data teams and EarlyWatch/GoLive checks | Y | |
| 73 | Recommend Application Changes to Functional teams | Y | |
| Disaster Recovery | | | |
| 74 | Intentionally blank. | | |
| 75 | Define RPO/RTO requirements | Y | |
| 76 | Define DR plan and testing schedules | Y | |
| 77 | Define Application Configuration & Infrastructure required to meet RPO/RTO objectives | Y | |
| 78 | Execute DR test drills as per schedule | Y | |
| Basis Kernel Upgrades | | | |
| 79 | Identify & Baseline current Kernel versions | Y | |
| 80 | Identify & assess requirement for upgrade | Y | |
| 81 | Implement Upgrade on Dev & QA environments | Y | |
| 82 | Schedule and execute Kernel upgrade | Y | |

| Transport Management | | | |
|---|---|---|---|
| 83 | Design Transport Management strategy | Y | |
| 84 | Manage & Execute Transport requests | Y | |
| 85 | Establish Transport routes | Y | |
| 86 | Clearing old data from transport direct | Y | |
| 87 | Intentionally blank. | | |
| Internal Controls | | | |
| 89 | Implement and monitor internal controls for SAP systems. Accountable for internal and external system audits. | Y | |
| Appropriation Requests | | | |
| 90 | Initiate appropriation request and procurement process as required. | Y | |
| Backup & Restores | | | |
| 91 | Establish requirements & schedules for Backups | | Y |
| 92 | Execute Backups in conjunction with Data Center Operations team | Y | |
| 93 | Restore data/file systems in conjunction with Backup team | Y | |
| CATT | | | |
| 94 | CATT Tool Management | Y | |
| 95 | Intentionally blank. | | |
| Application and Operations Tier II Support | | | |
| 96 | 24x7x365 SAP Basis On Site/Call Support | Y | |
| 97 | Execute and Coordinate SAP Restores | Y | |
| 98 | Perform Basis PSP Buffer Tuning | Y | |
| 99 | Perform Basis Workload performance tuning | Y | |
| 100 | Monitor and Interpret HP Openview | Y | |
| 101 | Monitor and Interpret View System Logs | Y | |
| 102 | Monitor and Interpret Short Dumps | Y | |
| 103 | Monitor and Interpret System Wide Processes | Y | |
| 104 | Monitor and Interpret Activity of Users | Y | |
| 105 | Monitor and Interpret Batch Input | Y | |
| 106 | Monitor and Interpret File Systems | Y | |
| 107 | Provide Second Level Support for Printers | Y | |
| 108 | Provide Second Level Support for Job Scheduling | Y | |
| 109 | Provide Second Level Support for CTS Transporting/Object Manager | Y | |
| 110 | Provide Second Level Support for SAP OSS/Portal support | Y | |
| 111 | Lifecycle Maintenance IMACD SAP Instances | Y | |
| 112 | Lifecycle Maintenance IMACD SAP Interfaces: Bolt Ons - PI, D&B, Languages | Y | |
| 113 | Lifecycle Maintenance IMACD SAP Interfaces: Object Manager | Y | |
| 114 | Lifecycle Maintenance IMACD SAP Interfaces: Taxware | Y | |
| 115 | Lifecycle Maintenance IMACD SAP Interfaces: Kaba Benzing - ETIME | Y | |
| 116 | Lifecycle Maintenance IMACD SAP Interfaces: Lisa/Mimi | Y | |
| 117 | Lifecycle Maintenance IMACD SAP Interfaces: Gentran | Y | |
| 118 | Lifecycle Maintenance IMACD SAP Interfaces: BSI TaxFactory | Y | |
| 119 | Execute and Coordinate Client Exports/Imports/Deletes | Y | |
| 120 | Configure and Tune SAP: Load Balancing | Y | |
| 121 | Configure and Tune SAP:CTS/Workbench | Y | |
| 122 | Configure and Tune SAP:Remote Function Call | Y | |
| 123 | Configure and Tune SAP:Operation Modes | Y | |
| 124 | Configure and Tune SAP:Logon Groups | Y | |
| 125 | Configure and Tune SAP:Client Configuration | Y | |
| 126 | Configure and Tune SAP:Workflow | Y | |
| 127 | Configure and Tune SAP:Profile parameters | Y | |
| 128 | Prepare SAP GUI for Client Deployment | Y | |
| 129 | Tier II Support Infrastructure Software Application(s) | Y | |
| SAP BASIS Security | | | |
| 130 | Support design and implementation of SAP Security in R/3, BW/BI, | Y | |
| 131 | User Management | Y | |

| | | | |
|------|--|---|--|
| 132 | Roles and Profile Management | Y | |
| 133a | End user assistance and support for profile assignment, content and management | Y | |
| 133 | Intentionally blank. | | |
| 134 | Monitor, identify SOD issues and appropriate notifications | Y | |
| 135 | Maintain VIRSA Compliance Calibrator tool | Y | |
| 136 | SAP License Reports | Y | |
| 137 | Intentionally blank. | | |
| 138 | SAP Security tasks Process documentation | Y | |
| 139 | Intentionally blank. | | |
| 140 | Intentionally blank. | | |
| 141 | Transport Management | Y | |
| 142 | Master Records and roles assignment through Computer Aided Testing Tool Script | Y | |
| 143 | Intentionally blank. | | |
| 144 | License Administration Workbench | Y | |
| 145 | SOX Audit related reporting | Y | |

Architecture Services

Description of Service

The Architecture Service will provide Hercules with a technology planning and design function. This Service will be responsible for taking business and management requirements and designing solutions. These solutions will form a cohesive information technology architecture that provides integration between Systems, cost effective standards and successful implementations.

Roles and Responsibilities:

The table below depicts the scope of work and tasks to be performed by Supplier and Hercules for Architecture Services. The table captures the role and responsibilities for Supplier and Hercules in delivering these Services.

| No | Architecture Services | Supplier | Hercules |
|-----|--|----------|----------|
| 1. | Provide subject matter expertise on an as-needed basis for projects as they are defined and approved. This expertise will require a range of knowledge including: applications, networking, security, data management etc. | Y | |
| 2. | Maintain and update roadmap documentation for key Hercules technologies for use in planning. | Y | |
| 3. | Provide blueprint documentation outlining the configuration and implementation of new or upgraded technologies as they are introduced at Hercules. | Y | |
| 4. | Provide support to implementation teams as new or updated technologies are introduced at Hercules. | Y | |
| 5. | Provide requirements and high level direction for an enterprise network architecture including: WAN services, LAN services, Internet access service and remote access services. | | Y |
| 6. | Provide subject matter expertise to develop, document and maintain an enterprise network architecture including: WAN services, LAN services, Internet access service, remote access services | Y | |
| 7. | Approve the final architecture design for an enterprise network architecture including: WAN services, LAN services, Internet access service and remote access services. | | Y |
| 8. | Provide requirements and high level direction for a standard local area network architecture including: switching, DNS, DHCP, IP infrastructure, Wi-Fi and network availability. | | Y |
| 9. | Provide subject matter expertise to develop, document and maintain a standard local area network architecture including: switching, DNS, DHCP, IP infrastructure, Wi-Fi and network availability | Y | |
| 10. | Approve the final architecture design for a standard local area network architecture including: switching, DNS, DHCP, IP infrastructure, Wi-Fi and network availability. | | Y |
| 11. | Provide requirements and high level direction for an enterprise telephony architecture including: VoIP Call Manager clusters, Voicemail services, softphone access, voice/data integration and cost optimization. | | Y |
| 12. | Intentionally Blank | | |
| 13. | Approve the final architecture design for an enterprise telephony architecture including: VoIP Call Manager clusters, Voicemail services, softphone access, voice/data integration and cost optimization. | | Y |
| 14. | Provide requirements and high level direction for an SAP landscape architecture that supports standard SAP ERP applications including: SAP R3, SAP BW, SAP PLM, SAP Solution Manager, SAP WebAS and other key components of the MySAP ERP family. | | Y |
| 15. | Provide subject matter expertise to develop, document and maintain an SAP landscape architecture that supports standard SAP ERP applications including: SAP R3, SAP BW, SAP PLM, SAP Solution Manager, SAP WebAS and other key components of the MySAP ERP family. | Y | |
| 16. | Approve the final architecture design for an SAP landscape that supports standard SAP ERP applications including: SAP R3, SAP BW, SAP PLM, SAP Solution Manager, SAP WebAS and other key components of the MySAP ERP family. | | Y |
| 17. | Provide requirements and high level direction for a storage architecture including: SAN services, NAS services and off-line tape backup services. | | Y |
| 18. | Provide subject matter expertise to develop, document and maintain a storage architecture including: SAN services, NAS services and off-line tape backup services. | Y | |
| 19. | Approve the final architecture design for an enterprise network architecture including: SAN services, NAS services and off-line tape backup services. | | Y |
| 20. | Provide requirements and high level direction for a messaging and collaboration architecture including: email, instant messaging and electronic web meetings. | | Y |
| 21. | Provide subject matter expertise to develop, document and maintain a messaging and collaboration architecture including: email, instant messaging and electronic web meetings. | Y | |
| 22. | Approve the final architecture design for a messaging and collaboration architecture including: email, instant messaging and electronic web meetings. | | Y |
| 23. | Provide requirements and high level direction for a standard Wintel server architecture including: servers, OS, and VM technologies. | | Y |
| 24. | Provide subject matter expertise to develop, document and maintain a standard Wintel server architecture including: servers, OS and VM technologies. | Y | |

| | | | |
|-----|---|---|---|
| 25. | Approve the final architecture design for a standard Wintel server architecture including: servers, OS and VM technologies. | | Y |
| 26. | Provide requirements and high level direction for a Disaster Recovery architecture that meets DR/BC requirements including: Servers, applications, telecommunications etc. | | Y |
| 27. | Provide subject matter expertise to develop, document and maintain Disaster Recovery architecture that meets DR/BC requirements | Y | |
| 28. | Approve the final architecture design for a Disaster Recovery architecture that meets DR/BC requirements | | Y |
| 29. | Provide requirements and high level direction for a Security architecture including: Directory services, data network security, remote access, server and application security. | | Y |
| 30. | Provide subject matter expertise to develop, document and maintain a Security architecture including: Directory services, data network security, remote access, server and application security. | Y | |
| 31. | Approve the final architecture design for a Security architecture including directory services, data network security, remote access, server and application security. | | Y |
| 32. | Provide requirements and high level direction for a web-based portal architecture including: SAP Enterprise Portal, development tools for the platform, and supporting infrastructure. | | Y |
| 33. | Intentionally Blank | | |
| 34. | Approve the final architecture design for a web-based portal architecture including: SAP Enterprise Portal, development tools for the platform, and supporting infrastructure.. | | Y |
| 35. | Provide requirements and high level direction for a system patching and management architecture including: servers and telecom equipment. | | Y |
| 36. | Provide subject matter expertise to develop, document and maintain a system patching and management architecture including: servers and telecom equipment. | Y | |
| 37. | Approve the final architecture design for a system patching and management architecture including: servers and telecom equipment. | | Y |
| 38. | Provide requirements and high level direction for an application architecture including: integration technologies, application management tools and development tool standards. | | Y |
| 39. | Intentionally Blank | | |
| 40. | Approve the final architecture for an application architecture including: integration technologies, application management tools and development tool standards. | | Y |
| 41. | Defining patch administration policies | | Y |
| 42. | Architect & design high availability server landscapes for SAP R3, SAP BW, SAP PLM, SAP Netweaver, Architect & design high availability server landscapes for SAP extensions (e.g. Adobe, Redwood, Maestro, IXOS, Taxware, BSI, Jetform, Top Call, Object Manager). | | Y |

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Hercules

Schedule G

Service Levels Methodology

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SCHEDULE G
SERVICE LEVELS METHODOLOGY

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1. GENERAL

This is **Schedule G** to the Master Professional Services Agreement between Hercules and Supplier (the “**Agreement**”). It sets forth certain quantitative Critical Service Levels, Key Measurements and Critical Deliverables against which Supplier’s performance is measured.

2. ATTACHMENT

The following Attachments are attached to this **Schedule G** and incorporated herein by reference:

Attachment G.1: Service Levels Matrix. This Attachment sets forth the (i) definition of Service Levels and Key Measurements, (ii) the quantitative measurements that Supplier shall meet or exceed for each such Service Level and Key Measurement, and Measurement tools. **Attachment G.1** also sets forth certain Critical Deliverables.

3. REPORTING, INVESTIGATION AND CORRECTION

Unless otherwise specified in **Attachment G.1**, each Critical Service Level and Key Measurement shall be measured and reported on a monthly basis beginning on the Commencement Date or, if later the date specified in **Attachment G.1**. Supplier shall provide to Hercules, as part of Supplier’s monthly performance reports, a set of hard- and soft-copy reports to verify Supplier’s performance and compliance with the Critical Service Levels, Key Measurements and Critical Deliverables (until all Critical Deliverables are received and approved by Hercules).

Supplier shall provide detailed supporting information for each report to Hercules in machine-readable form suitable for use on a personal computer. The data and detailed supporting information shall be Hercules’ Confidential Information, and Supplier shall provide Hercules access to such information on-line and in real-time at any time during the Term.

Supplier will also be responsible for promptly investigating and correcting failures to meet the Service Levels by:

1. Promptly initiating problem investigations, including Root Cause Analyses conducted in accordance with the Agreement;
2. Promptly reporting problems to Hercules in accordance with the escalation process set forth in the Policy and Procedures Manual;
3. Using all commercially reasonable efforts to correct problems and to begin meeting or restoring Service Levels as soon as practicable;
4. Advising Hercules of the root cause of problems and the status of remedial efforts being undertaken with respect to such problems;
5. Providing reasonable evidence to Hercules that the causes of such problems have been or will be corrected; and
6. Making written recommendations to Hercules for improvement in procedures.

Supplier will identify root causes, correct problems and minimize recurrences of missed Service Levels for which Supplier is responsible and which cause or contribute to Supplier not meeting the Service Levels.

4. NOTICE REQUIREMENTS FOR ADDITIONS, DELETIONS AND MODIFICATIONS

Hercules may send written notice to Supplier at least ninety (90) days prior to the date that any of the following shall be effective, provided that Hercules may send only one such notice (which notice may contain multiple changes) each calendar quarter.

1. New Performance Categories or additions or deletions to Performance Categories as permitted under Section 7;
2. Additions, deletions or modifications to Service Levels (which include Critical Service Levels and Key Measurements) as expressly permitted under Sections 7 or 8;
3. Movement of Critical Service Levels to Key Measurements and Key Measurements to Critical Service Levels;
4. Modifications to Service Level Credit Allocation Percentages for any Critical Service Levels; or
5. Modifications to Allocation of Pool Percentage for Performance Categories.

5. SERVICE LEVEL CREDITS

In the event of a Service Level Default for a Critical Service Level, Supplier shall provide Hercules credits as defined below:

1. Attachment G.1 sets forth the information required to calculate the Service Level Credits Supplier shall pay to Hercules (or apply against monthly Charges) in the event of a Service Level Default. For each Service Level Default, Supplier shall pay to Hercules, subject to Section 6 below, a Service Level Credit that will be computed in accordance with the following formula:

Service Level Credit = A x B x C

Where:

A = The Allocation of the Pool Percentage specified for the Performance Category in which the Service Level Default occurred as shown in Attachment G.1.

B = The Service Level Credit Allocation Percentage for which the Service Level Default occurred as shown in Attachment G.1.

C = At Risk Amount

For example, assume that Supplier fails to meet the Minimum Service Level for a Critical Service Level, that the total monthly Charges for all Services for the month in which the Service Level Default occurred were \$***** and that the At Risk Amount was *****% of such monthly Charges.

Additionally, assume that the Allocation of Pool Percentage for the Performance Category of such Critical Service Level (as set forth on Attachment G.1) is *****% and that the Service Level Credit Allocation Percentage for such Service Level Default (as set forth on Attachment G.1) is *****%. The Service Level Credit due to Hercules for such Service Level Default would be computed as follows:

A = *****% (the Allocation of Pool Percentage)

multiplied by

B = *****% (the Service Level Credit Allocation Percentage)

multiplied by

C = \$***** (*****percent (*****%) of \$*****, Supplier's total monthly Charge for all Services for the month during which the Service Level Default occurred).

= \$***** (the amount of the Service Level Credit)

2. If more than one Service Level Default has occurred in a single month, the sum of the corresponding Service Level Credits shall be credited to Hercules.
3. In no event shall the aggregate amount of Service Level Credits credited to Hercules with respect to all Service Level Defaults occurring in a single month exceed, in total, the At Risk Amount for such month.
4. Supplier shall notify Hercules in writing if Hercules becomes entitled to a Service Level Credit, which notice shall be included in the standard monthly reporting for Critical Service Levels and Key Measurements as described in Section 3 and shall describe the Service Level Defaults for the month that is the subject of the monthly Critical Service Level report. The monthly reports shall also describe any failure to meet Key Measurements for the month being reported on.
5. The total amount of Service Level Credits that Supplier will be obligated to pay to Hercules, with respect to Service Level Defaults occurring each month (subject to Supplier's Earnback rights described in Section 6), shall be reflected and credited to Hercules on the invoice that contains charges for the month during which the Service Level Default(s) giving rise to such credit(s) occurred. For example, the amount of Service Level Credits payable (subject to the Supplier's Earnback rights described in Section 6) with respect to Service Level Defaults occurring in August shall be set forth in and credited against, the invoice for the August Monthly Charges issued in September.
6. Supplier acknowledges and agrees that the Service Level Credits shall not be deemed or construed to be liquidated damages or a sole and exclusive remedy or in derogation of any other rights and remedies Hercules has under the Agreement.
7. If a Minimum Service Level Failure recurs in three or more consecutive months for the same Critical Service Level, the amount of the applicable Service Level Credit payable to Hercules shall be doubled for such third and each subsequent failure. For the avoidance of doubt, the Service Level Credit shall only be doubled one time, such doubled amount shall be payable for all successive consecutive Service Level Failures for the subject Minimum Service Level, and such doubled amount shall not be subject to Earnback.

6. EARNBACK

Supplier shall have Earnback opportunities with respect to each Service Level Credit as follows:

1. Within thirty (30) days after the end of each Contract Year, Supplier shall provide a report to Hercules that will include, with respect to each Critical Service Level for which there was a Service Level Default during the preceding Contract Year, the following:
 - 1.1. Statistics on Supplier's average monthly performance in that Critical Service Level during the preceding Contract Year (the "**Yearly Performance Average**").
 - 1.2. The total amount of Service Level Credits imposed for Service Level Defaults in that Critical Service Level.
2. If, during the preceding Contract Year, Supplier achieved a Yearly Performance Average in a Critical Service Level that was equal to or greater than the Expected Service Level in effect for such Critical Service Level during the preceding year, Supplier shall be entitled to receive an earnback credit ("**Earnback Credit**") equal to all Service Level Credits (except doubled Service Level Credits calculated in accordance with **Section 5.7** above) assessed during the preceding Contract Year for such Critical Service Level. In no event will: (i) the total amount of Earnback Credits for any Contract Year exceed the total amount of Service Level Credits assessed and credited to Hercules for Service Level Defaults in the applicable Critical Service Levels for that Contract Year; or (ii) any Earnback Credit carry forward to subsequent Contract Years or back to previous Contract Years.
3. If, during the preceding Contract Year, Hercules deletes a Critical Service Level, the Supplier shall be relieved from paying Service-Level Credits assessed during the preceding Contract Year for Service-Level Defaults in that Critical Service Level.
4. The Earnback Credits shall be invoiced by Supplier to Hercules on the first monthly invoice reflecting charges for the first month of the Contract Year immediately following the Contract Year in which such Earnback Credit occurred. If there will be no further invoices, the Supplier will promptly invoice Hercules in accordance with the Agreement for the Earnback Credit. Hercules will pay the Earnback Credit to Supplier in accordance with and subject to **Section 12** of the Agreement.
5. If the Critical Service Level was in effect for less than the entire Contract Year, the foregoing process shall be undertaken only with respect to the portion of the Contract Year during which the Critical Service Level was in effect. If the Agreement (or any portion thereof) is terminated prior to the end of the Term, the foregoing process shall be undertaken only with respect to the portion of the Contract Year during which the Agreement (or applicable portion thereof) was in effect.
6. The provision for Earnback shall only affect Supplier's right to receive return of Service Level Credits provided to Hercules and shall have no effect on any other rights or remedies of Hercules under the Agreement, including rights of termination.

7. ADDITIONS AND DELETIONS OF PERFORMANCE CATEGORIES

Hercules may add or delete Performance Categories by sending written notice as described in **Section 4**. Such change notice shall include changes necessary to accommodate the addition of new Performance Categories. In no event may (i) the sum of the Allocations of Pool Percentage for all the Performance Categories exceed the Pool Percentage Available for Allocation, or (ii) the sum of the

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Service Level Credit Allocation Percentages for all Critical Service Levels within a Performance Category exceed ***** percent (*****%) (unless otherwise set forth in Schedule G.1 as of the Effective Date).

8. ADDITIONS AND DELETIONS OF SERVICE LEVELS

Hercules may add, delete or modify Critical Service Levels or Key Measurements as follows by sending written notice in accordance with **Section 4**.

8.1 Additions of New Service Levels

Hercules may add Service Levels in accordance with this **Section 8.1** and by providing written notice in accordance with **Section 4**. Expected Service Level and Minimum Service Level commitments associated with added Service Levels will be computed as follows:

1. Where at least six (6) consecutive months of Supplier provided service measurements exist for a particular Service that is being provided by Supplier, the Parties agree that the Expected Service Level shall be defined as the average of such service measurements for the six-month measurement period and that the Minimum Service Level shall be defined as the lowest¹ Both Parties understand that certain Service Levels may not be measured against an objective of ***** percent (*****%), for example, Time (days, hours, etc.), defects, etc. where ***** (***** hours/days and ***** percent (*****%), respectively, are the appropriate objectives. The calculations described in this Schedule G will be modified as appropriate to reflect these objectives. For example, if the Service Level involved defects in lines of code where ***** percent (*****%) is the objective, lowest would be changed to highest in **Section 8.1**, highest would be changed to lowest in **Section 8.1.3.2.1** and ***** percent (*****%) would be changed to ***** percent (*****%) in **Section 8.1.3.2.1**.

service measurement achieved during the six-month measurement period, or

2. Where no measurements exist for a particular Service that is being provided by Supplier, the Parties shall attempt in good faith to agree on an Expected Service Level and a Minimum Service Level commitment using industry standard measures or third party advisory services (for example, Gartner Group, Yankee Group, etc.), or
3. Where less than six (6) months or no measurements exist for a particular Service that is being provided by Supplier, and the Parties fail to agree on an Expected Service Level and a Minimum Service Level commitment using industry standard measures as described in **Section 8.1.2** above, the Parties shall do the following:
 - 3.1. Supplier shall begin providing monthly measurements within thirty (30) days after Supplier's receipt of Hercules' written request and subject to agreement on such measurements in accordance with the Change Control Procedures.
 - 3.2. After six (6) or more actual service level attainments have been measured (or should have been measured per **Section 8.1.3.1** above and if not so measured; constructed as described in **Section 8.1.3.2.1** below), Hercules may at any time in writing request that **Section 8.1.1** above be used to establish the Expected Service Level and Minimum Service Level commitments.

8.2 Deletions, Demotions and Promotions

Hercules may delete Critical Service Levels or Key Measurements by sending written notice in accordance with Section 4.

Hercules also may demote existing Critical Service Levels to Key Measurements and promote existing Key Measurements to Critical Service Levels by sending written notice in accordance with Section 4.

8.3 Impact of Additions and Deletions of Critical Service Levels on Service Level Credit Allocation Percentages

When adding or deleting a Critical Service Level, promoting a Key Measurement to Critical Service Level or demoting a Critical Service Level to Key Measurement, Hercules shall modify the Service Level Credit Allocation Percentages for the other Critical Service Levels within the Performance Category such that the total Service Level Credit Allocation Percentages for all Critical Service Levels within the Performance Category equals *****percent (*****%).

If Hercules adds a Critical Service Level in accordance with Section 8.1 or 8.2.2 above, but does not modify the Service Level Credit Allocation Percentages for the other Critical Service Levels within the applicable Performance Category under this Section 8.3, then, until such time as Hercules so modifies such Service Level Credit Allocation Percentages, the Service Level Credit Allocation Percentage for such added Critical Service Level shall be zero.

8.4 Modifications of Allocation of Pool Percentages and Service Level Credit Allocation Percentages for Critical Service Levels

1. Allocation of Pool Percentages

Hercules may modify the Allocation of Pool Percentage for any Performance Category by sending written notice to Supplier in accordance with Section 4. When modifying the Allocation of Pool Percentage for a Performance Category Hercules shall modify the Allocation of Pool Percentages for one or more other Performance Categories such that the total of the Allocation of Pool Percentages for all Performance Categories does not exceed the Pool Percentage Available for Allocation.

2. Service Level Credit Allocation Percentages

Hercules may modify the Service Level Credit Allocation Percentages for two or more of the Critical Service Levels within a Performance Category by sending written notice to Supplier in accordance with Section 4. In no event may the total Service Level Credit Allocation Percentages for all Critical Service Levels within the Performance Category exceed *****percent (*****%) (unless otherwise set forth in Schedule G.1 as of the Effective Date).

9. CRITICAL DELIVERABLES - AFTER EFFECTIVE DATE

Certain of Supplier's obligations under the Agreement are one-time or periodic obligations to deliver Critical Deliverables. **Schedule H and Attachment G.1** set forth the Deliverable Credits that shall be payable by Supplier to Hercules in the event Supplier fails to deliver any of the Critical Deliverables within the time period relative to the Effective Date, specified in **Schedule H or Attachment G.1**. Imposition of Deliverable Credits for failure to meet the Critical Deliverables obligations shall not be included in the calculation related to the At Risk Amount previously described in **Section 5.3**. The total amount of Deliverable Credits that Supplier will be obligated to pay to Hercules shall be reflected and credited on the invoice that contains charges for the month

during which the Critical Deliverable failure occurred (for example, the amount of Deliverable Credits payable for failure to deliver any Critical Deliverable(s) in August shall be set forth in and credited against the invoice for August charges issued in September). Unlike Service Level Credits, Deliverable Credits will not be subject to Earnback.

10. COMMENCEMENT OF OBLIGATIONS

The obligations set forth herein shall commence on the Service Commencement Date or as otherwise specified in **Attachment G.1** referencing the column "SCD + mos**". The numbers used in the column "SCD + mos**" are in the format X where "X" represents the number of months after the Service Commencement Date when Supplier will be responsible to provide measurement data in support of the Critical Service Level and Supplier will be responsible for Service Level Credits for any failures to attain the Critical Service Level. If the notation in column "SCD + Mos**" is "SCD" the obligation will commence on the Commencement Date (or, if later, the date on which Supplier assumes responsibility for the Services in question in accordance with the Transition Plan).

11. COOPERATION

The achievement of the Service Levels by Supplier may require the coordinated, collaborative effort of Supplier with other Hercules third parties contractors. Supplier will provide a single point of contact for the prompt resolution of all Service Level Defaults and all failures to provide high quality Services to Hercules, regardless of whether the reason for such Service Level Defaults, or failure to provide high quality Services to Hercules, was caused by Supplier.

12. CONTINUOUS IMPROVEMENT - SERVICE LEVELS

The Parties agree to the concept of continuous improvement with the existing Supplier Personnel and other resources and that the Critical Service Levels and Key Measurements should be modified during the Agreement to reflect this concept. The Parties acknowledge that there may be limits to the extent to which Critical Service Levels and Key Measurements may be continually improved with such Supplier Personnel and resources. To accomplish this, Critical Service Levels and Key Measurements will be modified at the end of each Contract Year during the Term as described below, unless otherwise agreed:

1. Each Expected Service Level will be reset to the average of the four highest monthly actual results (for example, 99.6% is higher than 99.4%) at or above the Expected Service Levels achieved during the preceding twelve months; provided that, if fewer than four monthly actual results exceeded the Expected Service Level, the Expected Service Level will be reset by taking the four (4) highest monthly actual results, replacing each such actual result that is below the Expected Service Level with the Expected Service Level, and dividing the sum of the resulting four (4) numbers by four (4).

For example, if the Expected Service Level being adjusted were 99.6%, and there were three actual results that were higher and none equal (e.g., 99.9%, 99.8%, and 99.7%), the calculation would be $((99.9\% + 99.8\% + 99.7\% + 99.6\%) / 4) = 99.75\%$ with the subsequent reset governed by Section 12.2 below.

2. Notwithstanding Section 12.1 above, in no event shall any single increase in an Expected Service Level pursuant to Section 12.1 above exceed ten percent (10%) of the difference between one hundred percent (100%) and the then-current Expected Service Level.

For example, if the Expected Service Level being adjusted were 99.6%, the maximum increase for that reset would be 0.04% (i.e. from 99.6% to 99.64%).

3. Notwithstanding the foregoing, the Parties acknowledge and agree that calculating improvements for certain Service Levels using the formula above may not be possible to effectuate the purpose of this Section. Accordingly, alternative approaches will be utilized by the Parties as mutually agreed.
4. Each Minimum Service Level will be adjusted as mutually agreed.

13. IMPROVEMENT PLAN FOR KEY MEASUREMENTS

If Supplier fails to satisfy any Key Measurement, Supplier shall provide Hercules with a written plan for improving Supplier's performance to satisfy the Key Measurement within thirty (30) days of the failure to meet the Expected Service Level or the Minimum Service Level for the Key Measurement, which plan shall be subject to Hercules' approval, not to be unreasonably withheld. Supplier shall promptly implement such plan once it has been approved by Hercules.

14. MEASURING TOOLS

The measuring tools that exist in Hercules environment (or as otherwise provided by Hercules) during the Term shall be the measuring tools for the Critical Service Levels and Key Measurements designated. Supplier shall fully utilize such tools to measure the Critical Service Levels and Key Measurements.

As directed by Hercules, Supplier shall enhance existing tools or implement new tools as a Project in accordance with **Section 4.5** of the Agreement and **Schedule J**. Hercules shall be financially responsible for providing measuring tools. Tools for new Service Levels will be implemented in accordance with the foregoing and according to the Change Control Procedures.

If, after the Effective Date or the implementation of tools for new Service Levels, Supplier desires to use a different measuring tool for a Critical Service Level or Key Measurement, Supplier shall provide written notice to Hercules. If Hercules approves such tool, the Parties will reasonably adjust the measurements as necessary to account for any increased or decreased sensitivity in the new measuring tools. Unless and until such tool is approved, Supplier will continue to use the measurement tool that had been initially approved by Hercules.

It is not anticipated that changes in the measurement tools will drive changes in Service Levels; rather, the need to collect and accurately reflect the performance data should drive the development or change in performance measurement tools.

15. TIMES

Unless otherwise set forth herein, all references in this **Schedule G** shall refer to Eastern Standard Time or Eastern Daylight Time, as applicable.

16. SINGLE INCIDENT/MULTIPLE DEFAULTS

If a single incident results in the failure of Supplier to meet more than one Minimum Service Level, Hercules shall have the right to select any one of such multiple Minimum Service Level Defaults for which it will be entitled to receive a Service Level Credit. Hercules shall not be entitled to a Service Level Credit for each of such Minimum Service Level Defaults.

17. EXCEPTIONS

Supplier will be relieved of responsibility for failure to meet a Service Level and associated Service Level Credits to the extent provided in the Agreement, including **Section 10.2** of the Agreement, and to the extent Supplier's failure to meet the Service Level(s) is directly attributable to any of the following:

1. Problems resulting from components (hardware, software, network, maintenance) for which Hercules is operationally responsible.
2. Hercules' reprioritization of tasks to be performed by Supplier where Supplier has notified Hercules in advance that such reprioritization will cause Supplier to miss such Service Level.
3. Circumstances that excuse performance in connection with a force majeure event as specified **Section 18.2** of the Agreement.
4. Service or resource reductions requested or approved by Hercules and agreed to by the Parties through the Change Control Procedures; provided that Supplier has previously notified Hercules in writing as part of such Change Control Procedures that the implementation of such request would result in such failure to meet the Service Level.

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

Hercules Incorporated

Schedule G.1 Service Level Matrix

The Following 4 Tables Have Been Redacted.

Hercules

Schedule H

Transition Plan

Schedule H

Transition Plan

This is **Schedule H** to the Master Professional Services Agreement between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

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Schedule H.1: Preliminary Transition Plan and Transition Deliverable Credits

Schedule H.2: Transition Methodology

1. Transition Milestones.

The initial transition project plan, attached hereto as **Schedule H.1**, reflects the Services to be transitioned to Supplier by Functional Service Area as set forth in **Schedule H.1** (transition of each Functional Service Area to be referred to as a “**Transition Stream**”). The Transition Milestones associated with each Transition Stream are described in **Schedule H.1** and **H.2**. The Transition Deliverable Credits associated with certain critical Transition Milestones (“**Critical Transition Milestones**”) are also described in **Schedule H.1**. **Schedule H.2** describes further details regarding the Transition Services and Transition Milestones. Within thirty (30) days after the Effective Date, Supplier shall deliver to Hercules a detailed Transition Plan for Hercules’s review, comment and approval in accordance with **Section 4.2** of the Agreement.

2. Acceptance Procedure.

- (a) Supplier’s final performance and/or delivery of the Transition Services and deliverables associated with individual Transition Milestones shall be subject to Hercules’s Acceptance. This Section sets forth the procedures that shall apply to Hercules’s Acceptance of such Transition Services and deliverables.
- (b) Before submitting the Transition Service and/or deliverables associated with a Transition Milestone to Hercules for Acceptance, Supplier shall successfully complete all quality assurance and testing activities with respect to such activities and deliverables. Supplier shall then submit to Hercules notification (each such notification, a “**Transition Milestone Submission Notice**”) seeking Hercules’s Acceptance that the applicable Transition Service or deliverable has

been successfully completed in accordance with the Transition Milestone.

- (c) Upon receipt of each Transition Milestone Submission Notice, Hercules shall review the applicable Transition Service or deliverable and shall advise Supplier in writing within two (2) business days of receipt (each such Hercules response, a “**Transition Milestone Submission Response**”) whether, in Hercules’s reasonable discretion, the Transition Service or deliverable has been completed in accordance with the Transition
-

Milestone (each such approval a “Transition Milestone Final Approval”, and each such failure, a “Nonconformity”). In the event that Hercules fails to provide a Transition Milestone Submission Response within such two (2) business days of receipt, Supplier shall notify Hercules of such failure. If Hercules fails to thereafter provide a Transition Milestone Submission Response within an additional one (1) business day of such notice, then the Transition Milestone shall be deemed to be Transition Milestone Final Approval as if the applicable Transition Milestone Final Approval was sent to Supplier.

- (d) In the event of a Nonconformity, Hercules shall deliver notice to Supplier (within the Transition Milestone Submission Response period) specifying the nature of the failure in reasonable detail. Supplier shall then propose for Hercules’s approval a date for remedying the Nonconformity and resubmitting the Transition Service or deliverable.
- (e) At no additional charge to Hercules, Supplier shall: (1) correct the Nonconformity so that the Transition Service or deliverable meets the Transition Milestone on or before the rescheduled date; and (2) submit a new Transition Milestone Submission Notice for such Transition Milestone. The Parties shall thereafter follow the same procedures as set forth in subsections above.

3. Transition Deliverable Credits and Earnback.

- (a) **Transition Milestones by Transition Streams.** Schedule H.1 identifies Transition Milestones at the Transition Stream level that Supplier must complete in accordance with the Transition Plan and applicable provisions of the Agreement. A final Critical Transition Milestone for a Transition Stream shall not be deemed complete until the Policy and Procedures Manual (including standards) for that Transition Stream is final and complete in all material respects.
- (b) **Transition Deliverable Credits.** If Supplier fails to obtain Transition Milestone Final Approval on or before the applicable Critical Transition Milestone for a particular Transition Service for which there is an associated Transition Deliverable Credit, Supplier shall accrue liability for the Deliverable Credit identified in Schedule H.1 (each a “**Transition Deliverable Credit**”) in accordance with the following:
 - (i) ***** percent (*****%) of the Deliverable Credit on the first day after the applicable Transition Milestone;
 - (ii) an additional ***** percent (*****%) of the Deliverable Credit if Supplier fails to obtain Transition Milestone Final Approval within five (5) business days after the applicable Transition Milestone;
 - (iii) an additional ***** percent (*****%) of the Deliverable Credit if Supplier fails to obtain Transition Milestone Final Approval within ten (10) business days after the applicable Transition Milestone;
 - (iv) an additional ***** percent (*****%) of the Deliverable Credit if Supplier fails to obtain Transition Milestone Final Approval within fifteen (15) business days after the applicable Transition Milestone; and
 - (v) the remaining ***** percent (*****%) of the Deliverable Credit if Supplier fails to obtain Transition Milestone Final Approval within twenty (20) business days after the applicable Transition Milestone.

Supplier shall pay Hercules any accrued portion of the applicable Deliverable Credit in accordance with Section 12.1 of the Agreement.

- (b) **At Risk Amount for Transition Services.** In no event shall the aggregate amount of Transition Deliverable Credits paid to Hercules with respect to all

failures to meet Critical Transition Milestones exceed, in total, ***** percent (*****%) of the total Transition Charges (“**At Risk Amount for Transition Services**”).

- (c) **Earnback.** Supplier may earn back Transition Deliverable Credits with respect to its failure to meet an interim Critical Transition Milestone for a Transition Stream, provided that Supplier meets the associated final Critical Transition Milestone for that Transition Stream on or before the date specified in **Schedule H.1**, in which case Supplier will be entitled to the return of all Transition Deliverable Credits paid in connection with its prior failure to meet said interim Critical Transition Milestone.

SCHEDULE H.1

INITIAL TRANSITION PLAN TRANSITION DELIVERABLE CREDITS

| # | Transition Stream | Transition Deliverable | Milestone Date | Interim/Final Milestone | Deliverable Credit |
|---|--------------------------|--|----------------|--|--------------------|
| 1 | Windows / Database | Knowledge Absorption (Support Process, Operations Process, Reports, Escalation Process) | Week 1 - 5 | Receiving all the existing Documents from customer. If not existing then prepare with joint efforts. | \$***** |
| | | Adaptation / Redesign (Finalize Solution Design, Role Transfer Map, Draft Run Book, Offshore team readiness) | Week 6 - 7 | Submitting draft of refined documents. | \$***** |
| | | Replication (Successful Staging exercise, Offshore team Realignment) | Week 8 - 9 | Knowledge transfer to offshore team by training them. | \$***** |
| | | Parallel Run (Role Transfer Plan completion, Consolidated runbooks) | Week 10 - 11 | Acceptance Test Plan signoff. | \$***** |
| 2 | UNIX, Storage & Backup | Knowledge Absorption (Support Process, Operations Process, Reports, Escalation Process) | Week 1 - 5 | Receiving all the existing Documents from customer. If not exist then prepare with joint efforts. | \$***** |
| | | Adaptation / Redesign (Finalize Solution Design, Role Transfer Map, Draft Run Book, Offshore team readiness) | Week 6 - 7 | Submitting draft of refined documents. | \$***** |
| | | Replication (Successful Staging exercise, Offshore team Realignment) | Week 8 - 9 | Knowledge transfer to offshore team by training them. | \$***** |
| | | Parallel Run (Role Transfer Plan completion, Consolidated runbooks) | Week 10 - 11 | Acceptance Test Plan signoff. | \$***** |
| 3 | Tier - II Services | Knowledge Absorption (Support Process, Operations Process, Reports, Escalation Process) | Week 1 - 5 | Receiving all the existing Documents from customer. If not exist then prepare with joint efforts. | \$***** |
| | | Adaptation / Redesign (Finalize Solution Design, Role Transfer Map, Draft Run Book, Offshore team readiness) | Week 6 - 9 | Submitting draft of refined documents. | \$***** |
| | | Replication (Successful Staging exercise, Offshore team Realignment) | Week 10 - 11 | Knowledge transfer to offshore team by training them. | \$***** |
| | | Parallel Run (Role Transfer Plan completion, Consolidated runbooks) | Week 11 - 12 | Acceptance Test Plan signoff. | \$***** |
| 4 | SAP Basis & SAP Security | Knowledge Absorption (Support Process, Operations Process, Reports, Escalation Process) | Week 1 - 4 | Receiving all the existing Documents from customer. If not exist then prepare with joint efforts. | \$***** |
| | | Adaptation / Redesign (Finalize Solution Design, Role Transfer Map, Draft Run Book, Offshore team readiness) | Week 5 - 8 | Submitting draft of refined documents. | \$***** |
| | | Replication (Successful Staging exercise, Offshore team Realignment) | Week 9 - 10 | Knowledge transfer to offshore team by training them. | \$***** |
| | | Parallel Run (Role Transfer Plan completion, Consolidated runbooks) | Week 10 - 12 | Acceptance Test Plan signoff. | \$***** |

| | | | | | |
|----|----------------------------|--|--------------|---|---------|
| 5 | DC Operations | Knowledge Absorption (Support Process, Operations Process, Reports, Escalation Process) | Week 1 - 5 | Receiving all the existing Documents from customer. If not exist then prepare with joint efforts. | \$***** |
| | | Adaptation / Redesign (Finalize Solution Design, Role Transfer Map, Draft Run Book, Offshore team readiness) | Week 6 - 8 | Submitting draft of refined documents. | \$***** |
| | | Replication (Successful Staging exercise, Offshore team Realignment) | Week 9 - 10 | Knowledge transfer to offshore team by training them. | \$***** |
| | | Parallel Run (Role Transfer Plan completion, Consolidated runbooks) | Week 11 | Acceptance Test Plan signoff. | \$***** |
| 6 | Helpdesk | Knowledge Absorption (Support Process, Operations Process, Reports, Escalation Process) | Week 1 - 4 | Receiving all the existing Documents from customer. If not exist then prepare with joint efforts. | \$***** |
| | | Adaptation / Redesign (Finalize Solution Design, Role Transfer Map, Draft Run Book, Offshore team readiness) | Week 4 - 6 | Submitting draft of refined documents. | \$***** |
| | | Replication (Successful Staging exercise, Offshore team Realignment) | Week - 6-10 | Knowledge transfer to offshore team by training them. | \$***** |
| | | Parallel Run (Role Transfer Plan completion, Consolidated run books) | Week 10 - 12 | Acceptance Test Plan signoff. | \$***** |
| | | Phase Transfer of calls | Week 12 - 16 | Authorized User satisfaction 3.5 out of 5 or better. | \$***** |
| 7 | Desk Side Support | Knowledge Absorption (Support Process, Operations Process, Reports, Escalation Process) | Week 1 - 4 | Receiving all the existing Documents from customer. If not exist then prepare with joint efforts. | \$***** |
| | | Adaptation / Redesign (Finalize Solution Design, Role Transfer Map, Draft Run Book, Onsite team readiness) | Week 4 - 5 | Submitting draft of refined documents. | \$***** |
| | | Parallel Run - hands on support(Role Transfer Plan completion, Consolidated run books) | Week - 5-9 | Acceptance Test Plan signoff. | \$***** |
| 8 | Security (Non- SAP) | Knowledge Absorption (Support Process, Operations Process, Reports, Escalation Process) | Week 1 - 2 | Receiving all the existing Documents from customer. If not exist then prepare with joint efforts. | \$***** |
| | | Adaptation / Redesign (Finalize Solution Design, Role Transfer Map, Draft Run Book, Offshore team readiness) | Week 3- 5 | Submitting draft of refined documents. | \$***** |
| | | Replication (Successful Staging exercise, Offshore team Realignment) | Week 5 - 7 | Knowledge transfer to offshore team by training them. | \$***** |
| | | Parallel Run (Role Transfer Plan completion, Consolidated run books) | Week 8 - 10 | Acceptance Test Plan signoff. | \$***** |
| 9 | Voice & Video | Knowledge Absorption (Support Process, Operations Process, Reports, Escalation Process) | Week 1 - 2 | Receiving all the existing Documents from customer. If not exist then prepare with joint efforts. | \$***** |
| | | Adaptation / Redesign (Finalize Solution Design, Role Transfer Map, Draft Run Book, Offshore team readiness) | Week 3- 4 | Submitting draft of refined documents. | \$***** |
| | | Replication (Successful Staging exercise, Offshore team Realignment) | Week 5 - 6 | Knowledge transfer to offshore team by training them. | \$***** |
| | | Parallel Run (Role Transfer Plan completion, Consolidated run books) | Week 7 - 8 | Acceptance Test Plan signoff. | \$***** |
| 10 | LAN / WAN | Knowledge Absorption (Support Process, Operations Process, Reports, Escalation Process) | Week 1 - 3 | Receiving all the existing Documents from customer. If not exist then prepare with joint efforts. | \$***** |
| | | Adaptation / Redesign (Finalize Solution Design, Role Transfer Map, Draft Run Book, Offshore team readiness) | Week 4- 6 | Submitting draft of refined documents. | \$***** |
| | | Replication (Successful Staging exercise, Offshore team Realignment) | Week 7 - 8 | Knowledge transfer to offshore team by training them. | \$***** |
| | | Parallel Run (Role Transfer Plan completion, Consolidated run books) | Week 9 - 10 | Acceptance Test Plan signoff. | \$***** |

**Schedule H-2
Transition Methodology**

Hercules roles and responsibilities for each IT service tower
Hercules Resource Requirements During Transition

| Function | Role | Estimated Time Commitment |
|-----------------------------|---|---------------------------|
| Program Manager | <ul style="list-style-type: none"> 4 Single point of contact for Supplier (“HCL” as described herein). The key responsibilities of the Program Manager include: 4 Participate in Weekly review meetings with the HCL Project /team Lead. To be the single point of interface for any scope related issues 4 Provide any approvals related to changes required in IT Policies for the successful execution of the project 4 Act as interface to the business units inside Hercules for the project 4 Communicate the project progress to the Hercules Executive Sponsor on a periodic basis | Full time |
| SME’s | <ul style="list-style-type: none"> 4 They will act as Subject Matter Experts working with HCL Project Lead and offshore transition lead. | Full time |
| Infrastructure/Telecom team | They will work with HCL offshore team and onsite Technical Project Manager to ensure HCL’s connectivity to the internal tools and systems. | Part time |
| Tools team | They will be responsible to ensure tools extension to the offshore center. They will also work with HCL tools team. | Part time |
| | | |



The table below details the roles and responsibilities of HCL and Hercules during transition: -

For the tables below :

Y = Primarily responsible

y = secondary responsibility

Program Management

| Sr. | Task | HCL Responsibility | Hercules Responsibility |
|-----|---|--------------------|-------------------------|
| 1. | To assign a project manager to coordinate and act as single point of contact | Y | Y |
| 2. | Maintain and Track project plan | Y | y |
| 3. | Project Communication & Interface to other HERCULES Teams | | Y |
| 4. | HR communication plan to ensure smooth transition | | Y |
| 5. | Formulation and implementation of Review plan - Daily/Weekly/Fortnightly review meetings for status updates | Y | y |
| 6. | Approval of scope and timeline related changes | | Y |
| 7. | Approval of changes in contracted service levels | | Y |

Infrastructure

| Sr. | Task | HCL Responsibility | Hercules Responsibility |
|-----|---|--------------------|-------------------------|
| 1. | Infrastructure Design Approval | | Y |
| 2. | To provide offshore facility to prevent unauthorized entry | Y | |
| 3. | To provide card access system for HERCULES Dedicated OMC in offshore centers | Y | |
| 4. | To provide badges to HERCULES dedicated personnel involved in transition and service delivery | Y | |
| 5. | Intentionally blank. | | |
| 6. | To provide network equipment (Router or Switch) for HERCULES OMC | Y | |
| 7. | To prevent tampering of network equipment and detail network security policy | Y | |
| 8. | Voice & Data links - From HCL US POP to OMC in India | Y | |
| 9. | Voice & Data link integration for end-to-end routing | Y | Y |
| 10. | Desktops to be provided in HCL OMC facility | Y | |
| 11. | Standard images required for Hercules work will be provided HCL OMC. (Images include but not limited to: Antivirus clients, office suite, messaging client and all relevant applications to be used by Operations Team) | | Y |
| 12. | To allow/authorize Hercules OMC personnel to be on Hercules Network. (HCL to provide list of authorized personnel) | | Y |
| 13. | Desktop Security policy and Internet access to personnel | | Y |
| 14. | Voice & Data link from Hercules location (US) to HCL US POP | | Y |
| 15. | Provisioning necessary resources for HCL OMC team e.g. User accounts in all systems, Access mechanisms | | Y |
| 16. | To provide point of contact to coordinate for testing the infrastructure and assist in testing. | Y | Y |
| 17. | Infrastructure Testing (Call Routing, Data Quality, phone line quality, Tools Access) | Y | Y |

Tools

| Sr. | Task | HCL Responsibility | Hercules Responsibility |
|-----|--|--------------------|-------------------------|
| 1. | To provide all the information regarding the current tools being used | | Y |
| 2. | To enable adoption and replication of tools and automation, used by the current delivery teams | | Y |
| 3. | To arrange licenses for the current tools that needs to be installed at offshore OMC | | Y |
| 4. | Familiarize HCL Transition Team with the use of the Hercules tools relevant for steady state service delivery (HCL responsible for Hercules tool competency) | | Y |

Study/Redesign Phase

| Sr. | Task | HCL Responsibility | Hercules Responsibility |
|-----|---|--------------------|-------------------------|
| 1. | To designate a single point contact during transition stage and steady state operations. | Y | Y |
| 2. | To enable actual knowledge transfer and training (Completion of Knowledge Transfer templates), with access to available operations documentations and engineer's time. | | Y |
| 3. | Design and Track detailed onshore training plan with assigned owners. | Y | y |
| 4. | Provide all data for historical Trending - Trouble ticket Reports, RFS/work requests for analysis | | Y |
| 5. | | | |
| 6. | Provide office space, PC, telephone and other office facilities to all on site HCL personnel during the transition and steady state per Schedule O. | | Y |
| 7. | Access to existing Knowledge Base, SOP's, Training Material etc. to HCL Transition Team. | | Y |
| 8. | Enable in defining the standard operating procedures (escalations, touch points, interfaces, current processes) and migration of existing processes, including process redesign if required. | | Y |
| 9. | Documentation of Problems/Change/Work requests in scope - like List of common incidents reported, Known Problems and solutions, Last 3 months Sev 1 and Sev 2 calls - Detailed description and Solution etc. | Y | |
| 10. | Documentation and definition of Process Flow & Delivery Model like service request logging and prioritization process Escalation Process, Case/Call flow procedures, Change Management Process, Interface and dependency between internal and external Teams etc. | Y | |
| 12. | Draft Run Book for in scope services | Y | |
| 13. | | | |
| 14. | SLA Definition and Measurement Mechanism | Y | Y |
| 15. | To help in identifying required reports, frequencies, reporting mechanisms. | | Y |
| 16. | Detailed Scope of Work and HCL Deliverables | Y | Y |

Replication Phase

| Sr. | Task | HCL Responsibility | Hercules Responsibility |
|-----|--|--------------------|-------------------------|
| 1. | Review & Signoff of Run books | | Y |
| 2. | Steady State Roles & Responsibilities Definition | Y | |
| 3. | Shift Roster Creation, subject to Hercules review and Acceptance | Y | |
| 4. | Approval of SLA | | Y |
| 5. | Process Flow & Delivery Model Approval | | Y |
| 6. | Training all offshore resources | Y | |
| 7. | Definition of Acceptance Test Cases for Readiness Assessment and Testing Phase | Y | y |
| 8. | Readiness Assessment | Y | y |

Testing Phase

| Sr. | Task | HCL Responsibility | Hercules Responsibility |
|-----|--|--------------------|-------------------------|
| 1. | Provisioning resources (onsite) during Testing will be Hercules responsibility and Provisioning resources offshore during the testing phase will be the responsibility of HCL. Hercules may consider sending a resource to India during this phase | Y | Y |
| 2. | Testing of services from offshore | Y | |
| 3. | Review of acceptance test cases performance | Y | Y |
| 4. | Change identification & Incorporation into the Hercules change management process | Y | |
| 5. | Signoff on successful Service Delivery | | Y |
| 6. | Signoff on Transition Project Completion | | Y |

Transition Methodology

HCL proposes to deploy its time tested offshore transition process derived from the HCL IT Operations Off-sourcing Model. The diagram below shows different phases in a typical transition plan.

HCL with its significant Global experience in transitioning Infrastructure support for environments similar to Hercules proposes the following plan, which ensures a risk free transition with no impact to end-users and services.

[Missing Graphic Reference]

The above approach will form the basis for transitioning services for Hercules requirements. HCL has constituted a separate team of transition experts, who have experience in large and complex transitions to be part of this project.

HCL transition framework is designed to address the following critical issues:

- ❖ Low-risk transition to offshore for service support
 - ❖ Minimal disturbance to existing service delivery
 - ❖ Optimal transition costs and effort for Hercules
-

Transition Timelines

The transition plan for Hercules will follow the following timelines for different track. The below time lines at this stage are to be considered indicative, with a 5% variance possibility. The variance will depend upon the level of existing documentation among other factors. We will commit to a firm schedule upon completion of a study/due diligence exercise.

Infrastructure Services Transition Plan

Service Transition from In- sourced and third party contractors

[Missing Graphic Reference]

Transition Process

HCL will send its team of specialist to the Hercules locations. Each track/ service line for Hercules will undergo a 3-step transition process:

- 1.Knowledge Absorption**
- 2.Redesign & Replication phase**
- 3.Staging/Testing**

The total duration for the transition of all the three above mentioned track will be 13 weeks. However, the transition would be preceded by a complete Due Diligence process for 1 week to validate the solution components, deliverables and assumptions.

During first one week of due diligence, HCL transition experts will go through the SOP's, Hercules specific technologies, Knowledge base, Documentation etc to get acquainted to Hercules environment. Hercules will be responsible to provide the above information to HCL before starting of this phase.

The key activities in various phases of transition are as below:

Knowledge Transfer

The team, during this phase will do a detailed operations requirement analysis, which will involve discussions with the Hercules appointed personnel. Based on this assessment, the team will provide service specific reports to Hercules providing the plan for offshoring each service. This will need to be studied and accepted by Hercules. During onsite transition phase, the approach would be of staff augmentation. The transition resource would work along with Hercules team to perform the services. It serves following purposes:

- √ Current service levels would be maintained
- √ No reduction in quality of service delivery
- √ Current DR plans and procedures would remain intact
- √ Transition resource would get hands-on experience of working on live environment and this would help in effective knowledge absorption

Critical Activities Performed

- √ Infrastructure Study and end user requirements from the service.
- √ Understand the standard operating procedures and deployed tools
- √ Study People Skills, Roles and tasks performed
- √ Get trained to transfer Knowledge Offshore - "Train the Trainer"
- √ Initial SOP preparation and other documentation

Duration

- √ HCL & Hercules - 4 week onsite (3 weeks for client support and security services tracks)

Roles and Responsibilities

Hercules

- √ Presentations and walkthroughs by Hercules shift supervisors
- √ Providing relevant documentation to HCL transition team

HCL

- √ Study documentation and understand processes to replicate them offshore

Replication and Redesign Phase

During this stage, HCL would replicate & redesign the services keeping the offshoring based service support in mind. This would be done by the onsite resources when they return back offshore. This may require telephonic & mail interactions with the relevant people in various teams within Hercules. All SOPs formed during transition or existed, as currently deployed in Hercules would be transferred to HCL Operations Management Center, in India in totality and a detailed study will be done on them. Some SOPs may need to be modified in consultation with Hercules.

Critical Activities Performed: Some of the critical activities performed during this stage are:

- √ Processes adaptation for offshore delivery
- √ Documentation Run Books Creation
- √ Tool and Facility Architecture & Connectivity Design
- √ Role Transfer Map and Shift Roster creation
- √ Implementation and testing of connectivity solution & tools
- √ Familiarization with work environment, user expectations, culture and other soft issues
- √ Training of offshore team on Hercules processes, environment, workflows, tools, SOPs etc.
- √ Classroom and hands-on training of offshore team
- √ Staging exercise

Duration

- √ HCL- 3 week offshore at HCL- Hercules OMC in India (5 weeks for client support and security services towers)

Roles and Responsibilities

Hercules

- √ Providing assistance from onsite
- √ Approve HCL created documentation & suggest changes wherever necessary
- √ Review & final Signoff of Run books
- √ Shift Roster & SLA Acceptance
- √ Process Flow & Delivery Model Approval

HCL

- √ Documentation and definition of Process Flow & Delivery Model like Escalation Process, Case/Call flow procedures, Change Management Process, Interface and dependency between internal and external Teams etc.
- √ Steady State Roles & Responsibilities Definition
- √ Readiness Assessment of trained resources

Parallel Run/Testing

This would involve testing of the entire service end to end by running operations out of Operations Management Center (OMC) in India. During this stage, the HCL would expect Hercules project team to guide the team in the service support. Any infrastructure or process issues that are identified will be ironed out during this stage.

Critical Activities Performed

Some of the critical activities performed during this stage are:

- √ Task Transfers
- √ CSF & SLA review
- √ Process Tuning
- √ Hercules Signoff

Duration

√ HCL- 3 weeks offshore at HCL- Hercules OMC in India

Roles and Responsibilities

Hercules

- √ Review of acceptance test cases and HCL Team Performance
- √ Signoff on successful Service Delivery
- √ Signoff on Transition Project Completion

HCL

- √ Change identification & Incorporation into service Delivery Model
- √ Testing of services from offshore
- √

Risk Management

Risk identification activities will span the entire scope of the service support-outsourcing project. HCL will play a proactive role recognizing the possibility of risks and identifying these at every step in the project. At every stage, HCL senior management will review the delivery risks. HCLT and Hercules will jointly derive a risk mitigation plan for identified risks. Appropriate escalations will be made within HCLT based on agreed criteria so that corrective actions can be put in place as early as possible.

Risk identification activities will span entire contract duration. HCL Project Manager will play a proactive role recognizing the possibility of risks and identifying these at every step in the project. The Project Manager will use risk checklists provided by HCL QMS to identify and mitigate risks during the delivery of service. Appropriate escalations will be made within HCL and if required with Hercules based on agreed criteria so that corrective actions can be put in place as early as possible.

General Risks associated are:

| Risk | Description | Mitigation | Responsibility |
|------------------------|--|---|---|
| People Transition Risk | During the transitioning in the Transition Phase, the Hercules employees need to be retained | Retention bonus for key Hercules resources Shadow resources at HCLT in India to mitigate any eventuality Diligent knowledge Transfer | Hercules and HCLT HCLT HCLT and Hercules |
| Communication | Communications between HCLT and Hercules and also between the HCLT onsite and offshore teams | Peer Mapping Program Office and steering committee to ensure proper communication channels Dedicated link with redundancy to cover disaster HCLT methodology to ensure proper communication and workflow between onsite and offshore teams | Hercules/HCLT Hercules/HCLT Hercules/HCLT HCLT |
| Unknown dependencies | Any other activities in an enterprise or business outcomes that are not identified. | Program office to mitigate this by actively communicating the technology road maps. HCLT to use its technical and business knowledge in suggesting plans for reducing risks | HCLT/Hercules HCLT |

| | | | |
|--|--|---|--|
| Incorrect and / or unmanaged assumptions | Assumptions regarding performance, functionality, or delivery that have not been articulated or recorded and managed. | To be covered by a methodological due diligence and knowledge transfer | HCLT/Hercules |
| Scope creep | Including informal, small service requests on an ongoing basis outside management processes | SOW will be clearly articulated at the end of due diligence Process to be defined for recording the enhancements in Scope of Work Joint Sign offs to be used as exit and entry criteria for a all work areas and new statements of work | HCLT HCLT/Hercules Hercules/HCLT |
| Skills mismatch and resource shortages | Critical business, technical, or subject matter experts that cannot be made available on a timely basis due to external circumstances. Staff inexperienced or untrained in the business or technology. | Technical requirement projection to become a part of outsourcing program HCLT to leverage its large resource base and external recruiting channels if required | HCLT/Hercules HCLT |
| Lack risk and issue management | Not implementing a formal risk and issue management process where they are logged and reviewed on a regular basis. | | |
| Expectations not clearly defined | Not having the expectations and implications written down. | Roles and responsibilities of each individual in the outsourcing program will be defined during the knowledge transfer phase | HCLT |
| Cultural Mismatch | Not identifying the organizational impacts of the new system such as job role changes, revised scopes of authority, increased levels of visibility, documentation and training. | PMO to be used for formalizing the technical road map | HCLT/Hercules |
| Change in Key sponsor | Reorganizations that introduce new leadership that requires time to accept the business case or question the assumptions of the case. | Controlled by clearly defined contract Flexibility of exit options for both the parties | HCLT/Hercules HCLT/Hercules |

Hercules

Schedule I

Termination Assistance Services

Schedule I Termination Assistance Services

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GENERAL

This is Schedule I to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

As part of the Termination Assistance Services, Supplier shall transfer control and responsibility for the Services to Hercules, an Eligible Recipient and/or their designee(s). Supplier shall perform, as requested by Hercules, the Services, functions and responsibilities set forth in this Schedule I, as well as those set forth in Section 4.3 of the Agreement in a manner that will not unnecessarily interfere with the ability of Hercules and the Eligible Recipients to obtain the Services.

TERMINATION ASSISTANCE PLAN

Supplier will assist Hercules in the development of a plan for the transition of the Services from Supplier to Hercules or its designee(s) in accordance with the provisions of Section 4.3(b)(1)(i) of the Agreement.

SPECIFIC TERMINATION ASSISTANCE SERVICES

General Support

As directed by Hercules, Supplier shall perform general support and other activities as set forth in Section 4.3(b) of the Agreement.

Knowledge Transfer

Supplier will provide for a transfer of knowledge regarding the Services and related topics so as to facilitate the provision of the Services by Hercules, and Eligible Recipient and/or their designee(s). This knowledge transfer shall include:

Supplying information regarding the Services as reasonably necessary to implement the termination assistance plan, and providing such information regarding Services as reasonably necessary for Hercules, an Eligible Recipient or their designee(s) to assume responsibility for continued performance of Services in an orderly manner so as to minimize disruption in the operations of Hercules and the Eligible Recipients, including (i) relevant documentation; and (ii) key support contacts (names, business phone numbers, fax numbers, e-mail addresses and business postal addresses) of Hercules, third party personnel and Supplier Personnel during the transition from Supplier to Hercules and Eligible Recipient and/or their designee(s);

Supplying information concerning Equipment, Software (consistent with the provisions of **Section 14.6** of the Agreement and **Schedule B** (Software), types and skills of personnel, third parties, and other resources used by Supplier to provide Services to Hercules under this Agreement, as may be reasonably necessary for Hercules, an Eligible Recipient and/or their designee(s) to assume responsibility for the Services;

Explaining the Change Control Procedures, change management process, problem management process, Policy and Procedures Manual, Reports and other standards and procedures to Hercules', and Eligible Recipients' and/or their designee(s)'s operations staff;

Providing reasonable access, in person and by telephone, to Supplier Personnel through the end of Supplier's provision of Termination Assistance Services (including any Supplier Personnel involved in performing the Services during the twelve (12) months preceding Supplier's receipt of the notice of termination or non-renewal to the extent that (i) such individuals are then employed by Supplier, and (ii) such information is not otherwise available from the Supplier Personnel then assigned to Hercules); and

Explaining the extent and nature of the impact on the Services of Supplier Laws as they relate to the providing of the Services (as opposed to Supplier generally).

Transfer of Resources

Supplier shall provide all reasonable assistance required for the transfer to Hercules, an Eligible Recipient and/or their designee(s) the resources (e.g., Materials, Equipment, Third Party Contracts) to which Hercules is entitled under the Agreement. Such assistance shall include at a minimum:

Identifying any third party services which are required by Hercules, and Eligible Recipient and/or their designee(s) to perform the Services, and to which Hercules is entitled under **Section 4.3** of the Agreement;

Providing a list of assets for Equipment and Software owned or licensed by Supplier, its Subcontractors, Hercules and/or Eligible Recipients, including those which are required by Hercules or its designee(s) to perform the Services and to which Hercules is entitled under **Sections 4.3** and **14.6** of the Agreement;

Working with Hercules, and Eligible Recipient and/or its designee(s) to minimize or eliminate any potential taxes that might be incurred as a result of any transfers; and

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Performing functions required under the Agreement required to effect the assignment of Equipment, Materials and Third Party Contracts, which are required by Hercules, and Eligible Recipient and/or their designee(s) to perform the Services, and to which Hercules is entitled under Section 4.3 of the Agreement, including transferring billing and executing legal documents.

Operational Transfer

Supplier shall perform all activities requested by Hercules pursuant to Section 4.3 of the Agreement to effect a smooth transfer of operational responsibility for the Services. Such activities include:

Providing to Hercules, an Eligible Recipient and/or their designee(s), machine-readable source and object code (to the extent Hercules is entitled to such code under the Agreement), along with run documentation and job control listing for the Systems Software, and other similar information necessary to provide the Services;

To the extent used to provide the Services, documenting and delivering source materials (to the extent Hercules is entitled to such materials under the Agreement), object libraries and reference files;

To the extent applicable and available, delivering support profiles, enhancement logs, problem tracking/resolution documentation, and status reports associated with the Services;

Providing any Authorized User information collected or maintained which further details the information in the reports set forth in Schedule R (Reports) as such exists as of the effective date of termination or expiration;

Providing assistance in identifying alternate sources of resources, including skilled labor and spare equipment parts.

Providing for the orderly hand-off of ongoing Projects, including a listing of current and planned Projects, as well as all Equipment ordered or in process, and eligible to be purchased by Hercules or the Eligible Recipients in accordance with Section 4.3 of the Agreement. With respect to each Project, document current status, stabilize for continuity during transfer, and provide reasonable training to achieve transfer of responsibility without loss of momentum;

Providing Materials in accordance with Section 14.6 of the Agreement;

Documenting and delivering Hercules Data and data bases maintained by Supplier specific to the Services;

Transferring physical and logical security processes and tools (to the extent required under the Agreement), including cataloging and

tendering any badges and keys for Hercules Facilities or Hercules Sites held by Supplier Personnel, documenting ownership and access levels for all passwords maintained by Supplier or in Supplier's possession, and instructing Hercules or its designee(s) in the use and operation of security controls;

Assisting with physical de-installation and transportation (not to include packing and transport) of Equipment owned by or to be conveyed to Hercules from the Supplier locations;

Providing and coordinating reasonable assistance to Hercules in notifying relevant third parties of the procedures to be followed prior to, during, and after the transition;

Returning to Hercules any remaining property of Hercules or the Eligible Recipients in Supplier's possession or under Supplier's control, including any remaining Reports, Hercules Data, Hercules owned Materials, Materials in which Hercules otherwise has rights under this Agreement beyond the Term or the period of provision of Services under Section 4.3 of the Agreement and other Confidential Information of Hercules and the Eligible Recipients;

Cooperating with Hercules' test plans, back out procedures, and contingency plans as part of the migration of Services and maintaining the capability to cut back to Supplier in case of a service failure or service problem for up to thirty (30) days following the transition of the Service then being transitioned; provided, however, that the capacity and resources required to provide such Services have not been transitioned or sold to Hercules and that Hercules pays a reasonable fee for such thirty (30) day period, which shall be negotiated in good faith and agreed to by the Parties during the Termination Assistance Services period..

In conjunction with Hercules, conducting a rehearsal of the migration prior to cutover, as requested by Hercules;

After the migration, providing additional assistance as reasonably requested by Hercules to assure continuity of operations, so long as such assistance is within the period of Supplier's provision of Termination Assistance Services specified within the Agreement; and

Freezing all System changes unless otherwise requested by Hercules; as long as such freezing of System changes does not affect Supplier's provision of the Services at the Service Levels, in which case either Hercules shall relieve Supplier of the obligation to freeze

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such changes or Supplier shall be relieved from such Service Level.

Organizational Transfer

Supplier shall provide reasonable assistance required to transfer the organizational procedures developed during the Term which are specific to the support of Hercules and required to perform the Services and in connection with Hercules' efforts at hiring, as contemplated in Section 4.3(b)(2) of the Agreement. Such assistance will include:

Providing a current account organizational chart by individual Supplier Personnel assigned to perform the Services, together with such other information as Hercules may reasonably require and Supplier may disclose in accordance with its personnel policies and which is associated with its efforts to hire such individual Supplier Personnel as contemplated in Section 4.3(b)(2) of the Agreement;

Providing a listing of the then-current positions and the approximate amount of time (FTEs) spent to provide the Services; and

Identifying any then-current or anticipated personnel resource requirements.

TERMINATION ASSISTANCE SERVICES RATES

The rates applicable to the performance of Termination Assistance Services shall be as described in Sections 4.3(b)(8) and (9) of the Agreement.

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HERCULES

SCHEDULE J

SUPPLIER CHARGES

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SCHEDULE J

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LIST OF ATTACHMENTS

Attachment J.1: Summary of Charges
Attachment J.2: Detailed Annual Base Charges
Attachment J.3: Intentionally blank
Attachment J.4: Productivity Assurances
Attachment J.5: Transition Charges
Attachment J.6: Pass-Through Expenses and Other Charges
Attachment J.7: Intentionally blank
Attachment J.8: Rate Card

LIST OF RELATED SCHEDULES

Schedule J.1: Financial Responsibility Matrix

SCHEDULE J

Supplier Charges

INTRODUCTION

- (a) This is **Schedule J** to the Master Professional Services Agreement by and between Hercules and Supplier (the "**Agreement**"). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.
- (b) The Charges for the Services shall consist of the Monthly Base Charge (which is derived from the Annual Services Charge described in **Section 2** below for the applicable Contract Year), as adjusted in accordance with this Schedule, and any other Charges or adjustments described herein. The Parties acknowledge and agree that the Charges described in this **Schedule J** fully compensate Supplier for provision of the applicable Services and the performance of its other obligations under this Agreement.
- (c) This **Schedule J** also describes the variable charging structure, the methodology for measuring and tracking Resource Unit utilization and the methodology for converting to a transaction (or unit) based pricing structure (e.g., based on servers or desktops).
- (d) Supplier shall be responsible for the accuracy and completeness of the operational and financial assumptions and dependencies underlying its pricing, and if such assumptions are incorrect or incomplete, Supplier shall not be entitled to adjust the Charges or any other items or terms of the Agreement.

SERVICES CHARGES

Transition Charges

The fixed Charges for Transition Services are set forth in **Attachment J.5** and are chargeable in arrears in three (3) equal monthly installments beginning on the first month in which the Transition Services begin (scheduled, as of the Effective Date, to begin in February, 2007 for Services received in the United States and April, 2007 for Services received in Europe).

There are no separate or additional Charges or other expenses for the Transition Services. For the avoidance of doubt, the fixed Charges for Transition Services include all Out-of-Pocket Expenses incurred by Supplier (or Supplier Personnel) in connection with the performance of such Transition Services, including Out-of-Pocket Expenses associated with travel and lodging.

Base Service Charge

- (a) **General.** The "**Annual Services Charge**" or "**ASC**" for each Contract Year is set forth in **Attachment J.2**, and is the firm fixed Charge to Hercules for Supplier's provision of the Services with the applicable FTEs specified in **Schedule M** (the "**Baseline FTEs**") after the applicable Commencement Date, subject to the Staffing Assurances and provisions of this **Schedule J** and **Schedule J.1**).
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(b) **FTEs.** The number of Baseline FTEs may be revised from time to time in accordance with the Agreement and this **Schedule J**. In such event, the Annual Service Charge will be adjusted accordingly based on the FTE rates set forth in **Attachment J.8** and the Staffing Assurances set forth below.

(c) **Monthly Invoice.** In accordance with **Section 12** of the Agreement, Supplier shall invoice Hercules on a monthly basis for a pro rata portion of the Annual Services Charge, which shall be calculated by dividing the ASC specified in **Attachment J.2** for the applicable Contract Year by the number of calendar months in that Contract Year.

Staffing Assurances

(a) **General.** Supplier will perform the Services and provide FTEs in accordance with the “**Volume per FTE**” set forth in **Attachment J.4**, on-site:off-site ratios, and other assurances described in this Section (“**Staffing Assurances**”).

(b) **Throughput and Productivity Related Assurances Regarding FTEs.**

(i) **Additional FTEs.** If Supplier requires more than the number of Baseline FTEs for any particular Service to meet its performance obligations, Supplier shall provide such additional FTEs at no additional Charge, unless the Supplier is meeting or exceeding the “Volume per FTE” metric set forth in **Attachment J.4** for the applicable Service for three (3) or more consecutive months (i.e., the actual non-FTE Resource Unit set forth in **Attachment J.4** during such period is greater than the Baseline non-FTE Resource Unit set forth in **Attachment J.4**). Additional chargeable FTEs will only be provided as mutually agreed by the Parties pursuant to **Schedule S** (“**Additional Chargeable FTE**”) and the ASC shall be accordingly adjusted based on the FTE rates set forth in **Attachment J.8** and the other provisions of this Section. Additional Chargeable FTEs shall be added in no less than 0.5 FTE increments, except for FTEs related to the help desk Services which will be added in increments of one (1) FTE. Supplier is responsible for any additional amounts incurred or resources as a result of inefficiencies of any FTEs. To the extent that Supplier can realize shift utilization levels greater than 1.0 shift per seat at a Supplier Facility the Charges for each additional FTE shall be equitably reduced so that the Party’s equally share in the savings associated with the reduced overhead for such additional FTE.

(A) For example, if the actual number of Unix servers is 40 and the non-FTE Resource Unit Baseline set forth in **Attachment J.4** is 30 and the Volume per FTE is 20 servers/FTE, then 0.5 FTEs would potentially be added under this Section (e.g., $\text{Additional Chargeable FTE} = (\text{Actual non-FTE Resource Units} - \text{non-FTE Resource Baseline}) / \text{Volume per FTE}$).

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(ii) **Reduced FTES.** If and to the extent the actual number of non-FTE Resource Units is decreased below the non-FTE Resource Unit Baseline for three (3) or more consecutive months (e.g., because of a decrease in Hercules non-FTE Resource Units), Supplier shall provide Hercules a credit each month thereafter based on the following formula ("**Reduced FTE Credit**");

$$\text{Reduced FTE Credits} = ((\text{non-FTE Resource Baseline} - \text{actual non-FTE Resource Units}) / \text{Volume per FTE}) * X$$

Where X = applicable hourly rate set forth in Attachment J.8 x 2080 / 12

unless (i) the Parties agree to redeploy the FTEs (or partial FTEs) that could be removed from such reduction in non-FTE Resource Unit to other Services in which case there would be no change to the Charges, or (ii) the foregoing occurred as a result of a New Service or Project and the Parties expressly agreed to otherwise share the benefits of the reduction in non-FTE Resource Units in which case the Charges would be reduced as mutually agreed for that New Service or Project. If such FTEs are not redeployed to perform other Services, such Reduced FTE Credit shall not apply in the first two (2) months in which such Reduced FTE Credit would otherwise be applicable (i.e., one twelfth of the ASC would be charged per month for such two (2) months). Notwithstanding the foregoing, Reduced FTEs Credits shall only be in full one (1) FTE increments.

(c) **Onsite:Offsite Ratio Assurances.** Supplier shall perform the Services using a ratio of FTEs that are primarily assigned to a Hercules Facility and Supplier Facility that is no less advantageous to Hercules than the ratio contemplated under **Schedule M**, unless otherwise mutually agreed.

(d) **Optimization.** Supplier shall optimize FTE productivity, the mix of FTE resources (e.g., the number of highly experienced Supplier Personnel to lesser experienced Supplier Personnel), and on-site:off-site ratios to minimize the Charges and other amounts payable to Supplier, unless otherwise directed by Hercules.

Resource Units

(a) **General.** There are FTE Resource Units and Non-FTE Resource Units. The Baseline FTE Resource Units are set forth in **Schedule M**. Non-FTE Resource Units are set forth in **Attachment J.4**. Supplier shall measure Resource Unit volumes (including FTE utilization and non-FTE Resource Unit volumes) each month. Such Resource Units can be used to determine Supplier's performance and Hercules's and the Eligible Recipients' actual usage of certain Services.

(b) **Measurement and Tracking.** Beginning no later than the Commencement Date, Supplier shall measure and track Hercules' and the Eligible Recipients' usage of Resource Units using the processes and procedures described in the Policy and Procedures Manual. Supplier shall report such usage to Hercules on a periodic basis, no less frequent than monthly.

(c) **New or Additional Resource Units.** New Resource Units may be added from time to time by mutual agreement of the Parties. New or existing Resource Units may be changed from time to time by mutual agreement of the Parties. Appropriate adjustments will then be made to the new or existing Resource Baselines as applicable and mutually agreed, to reflect advancements or changes in technology, business processes, and productivity.

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FTE to Transaction Unit Conversion

As of the Effective Date, the Services are being charged in accordance with this **Schedule J** on an FTE basis. As requested by Hercules with respect to all or certain Services, Supplier shall (i) gather and provide Hercules metrics and other information, (ii) re-engineer or revise activities and processes relating to such Services, or (iii) take other actions for the purpose of converting the FTE based pricing under this **Schedule J** to another appropriate basis (e.g., fixed price, business transactions, number of customer master records, number of vendor master records) (each an actual or potential "**Pricing Conversion**"). Pricing Conversions will leverage the non-FTE Resource Units set forth in **Attachment J.4** and other applicable metrics agreed by the Parties. ARCs and RRCs shall be computed in accordance with **Section 2.6** and the Parties shall agree upon an appropriate deadband for such non-FTE Resource Units. No Pricing Conversion will be effective without each Party's prior written approval, subject to the following:

(a) Supplier shall prepare and provide Hercules an analysis of the advantages and risks associated with any potential Pricing Conversion. As reasonably requested by Hercules, Supplier shall provide Hercules proposals and offers regarding each potential Pricing Conversion. Supplier's Pricing Conversion proposals shall include appropriate productivity and process improvements. Pricing Conversions shall be at least as favorable to Hercules as the FTE-based Charges associated with the applicable Services. As requested by Hercules, Supplier shall negotiate in good faith with Hercules the potential terms, conditions, and Charges relating to any potential Pricing Conversion before it becomes effective.

(b) Prior to implementing any mutually agreed Pricing Conversion, Hercules may request that Supplier (i) continue to Charge the applicable Services that are potentially subject to a Pricing Conversion on a FTE basis, and (ii) report to Hercules what the Charges would be if the Pricing Conversion were actually implemented.

ARCs/RRCs for Non-FTE Resource Unit Usage

To the extent the Charges for any Service are based upon actual usage of non-FTE Resource Units as a result of a mutually agreed Pricing Conversion, the Resource Baseline for such Resource Unit and the applicable Additional Resource Charge ("ARC") and Reduced Resource Credit ("RRC") shall be mutually agreed, subject to Section 2.5. In such event, Supplier shall calculate ARCs and RRCs by comparing the total actual usage of each such Resource Unit during the preceding month ("Actual RUs") with the applicable Resource Baseline for such month and shall reflect such ARCs and RRCs on the monthly invoice in accordance with Article 12 of the Agreement.

(a) **Additional Resource Charges.** If the total number of Actual RUs exceeds the aggregate Resource Baseline for such month by more than any applicable deadband, Supplier shall invoice Hercules for an Additional Resource Charge equal to the difference between the Actual RUs and the Resource Baseline, multiplied by the specific ARC Rate for the applicable Resource Unit category for the applicable Contract Year (i.e., $ARC = [(Actual\ RUs - Resource\ Baseline) \times ARC\ Rate]$).

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(b) **Reduced Resource Credits.** If the total number of Actual RUs is less than the aggregate Resource Baseline for such month by more than any applicable deadband, Supplier shall credit Hercules a Reduced Resource Credit equal to the difference between the Resource Baseline and the Actual RUs for that Resource Unit, multiplied by the specific RRC Rate for the applicable Resource Unit category for the applicable Contract Year (i.e., $RRC = [(Resource\ Baseline - Actual\ RUs) \times Z \times RRC\ Rate]$, where Z equals a mutually agreed constant).

Rate Validity

The Charges calculated in accordance with this **Schedule J** shall be valid to 50% above and 50% below the non-FTE Resource Unit Resource Baseline set forth in **Attachment J.4**. If, during any three consecutive months, (i) the total actual non-FTE Resource Unit is either 50% above or 50% below the applicable non-FTE Resource Baseline as set forth in **Attachment J.4**, and (ii) such volumes are reasonably expected to remain at such levels, the Parties shall examine the impact of such change on Supplier's variable pricing and shall, if appropriate, negotiate in good faith and mutually agree upon an equitable adjustment to the Monthly Base Charge and/or to some or all of the applicable FTE rates and/or ARC/RRC Rates.

Notwithstanding the foregoing, if Hercules eliminates an entire Functional Service Area, it will be treated as a termination for convenience to which Termination Charges may be applicable, and not as a subject of negotiation pursuant to this provision.

PROJECTS

Project Pool

(a) **General.** Supplier shall perform Projects requested and approved by Hercules as part of the Services and as part of the ASC in accordance with **Section 4.5** of the Agreement and this **Section 3** without adversely impacting the Staffing Assurances.

(b) **Project Pool.** As part of the Monthly Base Charges, Supplier shall provide the number of Baseline Project FTE Hours specified below to perform Projects requested and approved by Hercules in accordance with **Section 4.5** of the Agreement. The Baseline Project FTE Hours represent the Baseline Project FTEs (i.e., twenty percent (20%) of the total number of Supplier Personnel) multiplied by 2080, as such may be modified from-time-to-time in accordance with this **Schedule J** for any Additional Chargeable FTEs or a reduction in the number of FTEs approved by the Parties. In the event of a material change in the scope of the Services by Hercules that results in an increase or decrease in the number of Supplier Personnel from those reflected in **Schedule M**, the number of Baseline Project FTE Hours shall be adjusted incrementally, upward or downward, as applicable, in accordance with the above formula.

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(c) **Business as Usual / De Minimis Projects.** Notwithstanding anything to the contrary, to the extent the level of effort requested by Hercules and provided by Supplier Personnel in connection with any Project work is less than twenty (20) FTE hours or less, there shall be no additional charge to Hercules for such efforts and such FTE hours shall not be counted against the Baseline Project FTE Hours.

(d) **Project Management Reporting.** Supplier shall report monthly on Projects in accordance with Schedule R. Such reports shall specify, among other things, the Supplier Charges, FTEs, resources and expenses for each Project for the applicable month and Contract Year and any other pertinent information requested by Hercules.

(e) **Intentionally blank.**

(f) **Projects Pricing: Additional Hours or Fixed Price.** Subject to Section 4.5 of the Agreement, if and to the extent Hercules authorizes Supplier to exceed the applicable Baseline Project FTE Hours in any Contract Year, Hercules shall pay Supplier for such additional FTEs at the rates specified in Attachment J.8. At Hercules' request, Supplier shall provide fixed pricing for Projects without utilizing the Baseline Project FTE Hours. In such instances, the fixed price proposed by Supplier shall be no less favorable to Hercules than the price obtained by multiplying the FTE rates specified in Attachment J.8 by the projected level of effort.

(g) **Project Requirements.** Supplier shall scope, price and perform each Project in accordance with the Project formation process and Project implementation methodology set forth in the Policy and Procedures Manual. Before beginning work on any Project, Supplier shall obtain Hercules' approval and follow the Project formation process. Projects performed without such approval shall be at Supplier's sole expense.

(h) **Project Proposals/Reporting.** The first twenty hours expended by Supplier in preparing proposals or plans or reporting on the status of a Project shall be included in the Monthly Base Charges and shall not be counted against the Baseline Project FTE Hours or be otherwise chargeable.

(i) **Shared Projects.** It is understood and agreed that, if and to the extent a Project is requested by Hercules and one or more other Supplier customers, the Charges and/or number of FTE hours associated with such Project shall be allocated on a pro rata basis to Hercules and such other Supplier customer(s). In addition, to the extent the benefits of a Project are to be made available to Hercules and Supplier and/or one or more other Supplier customers, the Charges and/or number of FTE hours associated with such Project shall be allocated on a pro rata basis to Hercules, Supplier and/or such other Supplier customer(s). Supplier shall use commercially reasonable efforts to identify Project opportunities that could be pursued jointly by Hercules and Supplier or one or more other Supplier customers, to notify Hercules of such joint Project opportunities and to facilitate communications with Supplier or such other Supplier customers regarding such Project opportunities.

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NEW SERVICES

If Hercules requests Supplier to perform New Services pursuant to Section 4.4 of the Agreement, the Charges (and Attachments to this Schedule J) shall be adjusted as provided therein.

OUT-OF-POCKET EXPENSES.

Supplier shall be entitled to reimbursement of travel and living expenses in connection with Projects and New Services only if and to the extent reimbursement of travel and living expenses is expressly approved in advance by the Hercules Relationship Manager on a case by case basis. To the extent Supplier is entitled to reimbursement for travel and living expenses, such expenses must be incurred and submitted in accordance with the more stringent of (i) Supplier's then-current travel and living expenses and (ii) Hercules' then-current Travel and Living Policy.

PASS-THROUGH EXPENSES

Supplier shall process and administer (including validate) the Pass-Through Expense invoices in accordance with Section 11.2 of the Agreement and pursuant to the applicable procedures in the Policy and Procedures Manual. No new Pass-Through Expenses may be added without Hercules prior consent, which it may withhold in its sole discretion. As of the Commencement Date, the Pass-Through Expenses consist solely of the specific items set forth in Attachment J.6. The administration/processing of Pass-Through Expenses by Supplier is included in the Annual Service Charge.

ECONOMIC CHANGE ADJUSTMENT ("ECA")

On January 1, 2008 and each January 1 thereafter, the Annual Service Charge and rates set forth in Attachment J.1, J.2, J.3 and J.8 shall be increased by four (4%) percent per year.

TAXES

Each Party shall be financially responsible for taxes as provided in Section 11.4 of the Agreement.

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CURRENCY; INVOICING; PAYMENT

Except as expressly stated otherwise, all Charges in the Attachments to this Schedule J are set forth in United States Dollars. Supplier shall invoice Hercules in accordance with Section 12.1 of the Agreement in United States Dollars, except for Services received in Europe which shall be invoiced in Euros as requested by Hercules and converted (directly from United States Dollars to Euros) using the Bloomberg month ending benchmark exchange rate or another similar mutually agreed rate. Charges shall be paid in such currency in accordance with Section 12.2 of the Agreement. Notwithstanding anything to the contrary, Supplier shall bear all risks associated with fluctuations in currencies after the Effective Date unless expressly stated otherwise herein.

MISCELLANEOUS CHARGES AND OTHER PROVISIONS

Schedule

Schedule J.1 sets forth certain financial responsibilities of the Parties and is hereby incorporated into this Schedule J.

Telecommunications

Supplier shall provide all connectivity and secured redundant data and voice telecommunications equipment, services, and bandwidth necessary to connect each Supplier Facility with Supplier points of presence (each a "POP"). Supplier shall provide and be financially responsible for the Supplier network and for all data and voice connections from each POP and among Supplier Facilities. Supplier shall be financially responsible for long distance calls made by Supplier Personnel and, to the extent applicable, Hercules representatives from Supplier Facilities. Long distance calls from Hercules and third parties (e.g., Hercules customers and vendors) shall be routed by Supplier from POPs to other Supplier Facilities. Hercules shall be financially responsible for "last mile" telecommunications services between Hercules Facilities and Supplier POPs. Supplier.

Disaster Recovery / Business Continuity Seats

Supplier shall provide Hercules seven (7) disaster recovery and business continuity seats at no additional charge at a mutually agreed location.

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Remote Dispatching

As requested and approved by Hercules, Supplier shall perform (directly or through a subcontract) certain remote services (e.g., on-site desktop break-fix at less populated sites) dispatched under the Agreement as a New Service. The Charges for such New Services shall not exceed (i) ***** (*****%) percent of Supplier's Out-of-Pocket Expenses for such services (e.g., if Supplier contracts with third parties to perform such services) or (ii) the rates set forth in Attachment J.8, as applicable.

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HERCULES INCORPORATED

**INFRASTRUCTURE
ATTACHMENTS J.1 - J.8**

SUPPLIER CHARGES

ATTACHMENT TO EXHIBIT J (SUPPLIER CHARGES)

THE FOLLOWING 6 TABLES HAVE BEEN REDACTED

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HERCULES INCORPORATED

**INFRASTRUCTURE
SCHEDULE K HERCULES BASE CASE**

THE FOLLOWING 1 TABLE HAS BEEN REDACTED

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [***] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.**

Hercules

Schedule L

Projects

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

Schedule L

In-Flight Projects

This is **Schedule L** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

| In-Flight Project Not Subject to the Baseline FTE Project Pool | Description |
|--|-------------|
| Intentionally blank | |

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

HERCULES INCORPORATED

INRASTURCTURE

SCHEDULE M STAFFING PLAN

THE FOLLOWING 1 TABLE HAS BEEN REDACTED

Hercules

Schedule N

Termination Charges

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

SCHEDULE N

TERMINATION CHARGES

1. Introduction

This is Schedule N to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

2. Termination Charges

The Termination Charges are set forth below and shall be prorated for any terminations occurring after the first day of any Contract Year in accordance with this Schedule N. Termination Charges shall only be applicable as expressly described in the Agreement.

THE FOLLOWING TABLE HAS BEEN REDACTED

The Termination Charges shall be calculated as of the termination date or, if later, the substantial cessation of any Termination Assistance Services requested by Hercules pursuant to the Agreement, whichever is later. The amounts specified above represent the Termination Charges as of the Effective Date and the last day of each Contract Year. To the extent the Termination Charges are calculated as of a date during any Contract Year, it shall be adjusted on a pro rata basis as follows: (Termination Charges as of the end of the preceding Contract Year) minus (the difference between the Termination Charges as of the end of such Contract Year and end of the then current Contract Year, divided by 365, and then multiplied by the number of days passed in the then current Contract Year as of the effective date of such calculation).

Hercules

Schedule O.1

Hercules Facilities

SCHEDULE O.1

HERCULES FACILITIES

This is **Schedule O.1** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

In accordance with **Section 6.2** of the Agreement, Hercules shall provide Supplier with office space and office furniture in the following Hercules Facilities, as more fully described below.

United States Locations

1. 500 Hercules Road
CSD Building 8145
Wilmington, DE 19808-1599

| No. of Supplier Personnel | Description | Duration |
|---------------------------|--|----------|
| 1 | Office space and office furniture for Supplier Personnel | 2 Years |
| 3 | Work space and furniture for Supplier Personnel | Term |
| 1 | Office space and office furniture for Supplier Personnel | 2 Years |
| 1 | Office space and office furniture for Supplier Personnel | 1 Year |
| 1 | Work space and furniture for Supplier Personnel | Term |
| 1 | Office space and office furniture for Supplier Personnel | Term |
| 2 | Work space and furniture for Supplier Personnel | Term |

2. 1313 North Market Street
Wilmington, DE - 19894-0001

| No. of Supplier Personnel | Description | Duration |
|---------------------------|--|----------|
| 1 | Space and furniture for Supplier Personnel | Term |

3. Hercules Facility In Brunswick, NJ

| No. of Supplier Personnel | Description | Duration |
|---------------------------|---|----------|
| 1 | Work space and furniture for Supplier Personnel | Term |

4.
Hercules Facility in Hopewell

| No. of Supplier Personnel | Description | Duration |
|---------------------------|---|----------|
| 1 | Work space and furniture for Supplier Personnel | Term |

International Locations

5.
Hercules Facility in the Netherlands

| No. of Supplier Personnel | Description | Duration |
|---------------------------|--|----------|
| 1 | Office space and office furniture for Supplier Personnel | Term |
| 1 | Work space and furniture for Supplier Personnel | Term |

6.
Hercules Facility in Italy

| No. of Supplier Personnel | Description | Duration |
|---------------------------|---|----------|
| 1 | Work space and furniture for Supplier Personnel | Term |

7.
Hercules Facility in Germany

| No. of Supplier Personnel | Description | Duration |
|---------------------------|---|----------|
| 1 | Work space and furniture for Supplier Personnel | Term |

8.
Hercules Facility in Spain

| No. of Supplier Personnel | Description | Duration |
|---------------------------|---|----------|
| 1 | Work space and furniture for Supplier Personnel | Term |

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9.
Hercules Facility in Finland

| No. of Supplier Personnel | Description | Duration |
|---------------------------|---|----------|
| 1 | Work space and furniture for Supplier Personnel | Term |

10.
Hercules Facility in Sweden

| No. of Supplier Personnel | Description | Duration |
|---------------------------|---|----------|
| 1 | Work space and furniture for Supplier Personnel | Term |

11.
Hercules Facility in Belgium

| No. of Supplier Personnel | Description | Duration |
|---------------------------|---|----------|
| 1 | Work space and furniture for Supplier Personnel | Term |

12.
Hercules Facility in France

| No. of Supplier Personnel | Description | Duration |
|---------------------------|---|----------|
| 1 | Work space and furniture for Supplier Personnel | Term |

Hercules

Schedule O.2

Supplier Facilities

**SCHEDULE O.2
SUPPLIER FACILITIES**

This is **Schedule O.2** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

Supplier Facilities

| | Street Address | Scope of Services Provided | City | State | Country |
|---|--|-----------------------------------|-------------|--------------|----------------|
| 1 | A-9, Sector III, Noida - 201301 | Any Services | Noida | U.P. | India |
| 2 | Manak Building, Gurgaon | Any Services | Gurgaon | Haryana | India |
| 3 | Arihant Technopolis, 4/293, Old Mahabalipuram Road, Kandan Chavadi | TBD during Transition Period | Chennai | Tamil Nadu | India |

Hercules

Schedule O.3

Hercules Provided Equipment

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**SCHEDULE O.3
HERCULES PROVIDED EQUIPMENT**

This is **Schedule O.3** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

In accordance with **Section 6.4(e)** of the Agreement, Hercules shall provide Supplier with the following Equipment for the specified period.

| Hercules Facility Location | Quantity | Description of Hercules Provided Equipment | Duration |
|----------------------------|----------|---|----------|
| | | None, other than as described in Schedule O.1 or Schedule J.1 | |
| | | | |
| | | | |
| | | | |

Hercules

Schedule P

Direct Hercules Competitors



**SCHEDULE P
DIRECT HERCULES COMPETITORS**

This is **Schedule P** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

Akzo Nobel
Amazon
BASF
Bayer
Buckman
Ciba
Colorcon
Dow Chemical Co.
Eka
GP
Hexion
Huber
Kemira (includes Lanxess acquisition)
Nalco Holding Company
Nippon Soda Company
Perstorp and
Rhodia
Rohm & Haas
Samsung
SE Tylose (part of Shinetsu)
Wolff

Hercules

Schedule Q

Satisfaction Survey

SCHEDULE Q

SATISFACTION SURVEY

This is **Schedule Q** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

HCL shall conduct two types of surveys for measuring satisfaction as reasonably directed by Hercules:

- 1) The Remedy System can be configured to trigger a survey form for every ticket (whether it is an incident / Service request) and Supplier shall review the feedback everyday and work on any action items and present improvement plans to Hercules. Supplier shall implement such plans as approved by Hercules.
 - 2) Supplier shall also have a quarterly service score card (HCL Cares) implemented. Supplier will send an email based survey to the key Hercules stakeholders to understand the satisfaction on deliverables In terms of communication, technology and process adherence. A detailed questionnaire based on the above mentioned parameter will be developed during the Transition Period. The questionnaire for such surveys shall be determined during the Transition Period.
-

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HERCULES

SCHEDULE R

REPORTS

SCHEDULE R

REPORTS

This is **Schedule R** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

1.0 Introduction

In accordance with **Section 9.2** of the Agreement, Supplier shall provide Hercules the Service management Reports specified in this **Schedule R** and **Attachment R-1**. In addition, Supplier shall provide Hercules (i) Service Level management reports as required under **Schedule G** and (iii) business and other reports (e.g., reports in the SAP Software) as part of the Services.

2.0 Reports

Supplier’s responsibilities include:

1. Providing Hercules all reports provided by or for Hercules during the twelve (12) month period immediately prior to the Effective Date.
 2. Delivering all reports according to the format, content, and frequency specified in **Attachment R-1** or, if there is no such specification, provided by or for Hercules during the twelve (12) month period immediately prior to the Effective Date.
 3. Modifying the format, content, and frequency of any report as requested by Hercules.
-

ATTACHMENT R-1

Description of Service management Reports

This **Attachment R-1** to **Schedule R** contains a summary description of the format, content and frequency of key reports required by Hercules. This Attachment may not include all reports provided by or for Hercules during the twelve (12) month period immediately prior to the Effective Date or otherwise requested by Hercules or required as part of the Agreement. However, Supplier is required to provide any and all such reports regardless of their inclusion in this Schedule.

1.0 SERVICE MANAGEMENT Reports

| Functional Service Area | Report Name | Description | Frequency | Recipient | Media |
|-------------------------|---------------------------------------|--|----------------------------------|--|-------------|
| Security (MyDashboard) | Device Reports | 1. Denied Inbound / Outbound connections. 2. Top intruders by source. 3. Top attacked destinations. | To be decided during Transition. | | |
| Security (My Dashboard) | Device Reports | 1. Summary of Internet Browse Time by Category (Would be generated by WebSense Reporter) 2. Top by Hits à Categories receiving the highest number of hits (Would be generated by WebSense Reporter) 3. Destination Summary àThe destinations accessed by groups, including domain, hits, URL, and category (Would be generated by WebSense Reporter) 4. Bandwidth Summary à Summary report on the bandwidth used by groups, including domain, bytes transferred, URL/cost, and category. (Would be generated by WebSense Reporter). | To be decided during Transition. | | |
| Security (Dashboard) | Analysis Reports | 1. Weekly Global Analysis Report. 2. Monthly Global Analysis Report. | To be decided during Transition. | | |
| Security | SOX Compliance | These reports will be decided depending on the information captured during transition | To be decided during Transition. | | |
| All Tracks | Incident Report | Incident by Sev, Status, Ticket no. using Remedy. | Daily | Track Leads/ Customer Manager | Email/Excel |
| Helpdesk | Change Report | 1. Open Change Requests 2. Closed Change Request over a period of time | Weekly | Change Control Board / SDM | Email. |
| Helpdesk | TSF Report (Telephone Service Factor) | It will combine individual factors like Abandonment rate, ASA, AHT etc. | Daily | Helpdesk Manager/ Customer Designated Team | Email/Excel |
| Helpdesk | Performance Summary Report | SLA metric agreed Vs Actual | Weekly | Business owners/SDM/Helpdesk Manger | Email/PPT |
| Helpdesk | Management Survey Report | Survey feedback, Management Sat Score, Action update | Weekly | Business owners/SDM/Helpdesk Manger | Email Excel |
| Helpdesk | Monthly Report | SLA metric, Changes, Value Add, Complaint Mgmt. | Monthly | Business owners/SDM/Helpdesk Manger | Email/PPT |
| Lotus Notes | Mail Flow Report | Number of Inbound / Outbound mail flow. | Weekly | Business owners / SDM | Email |
| Lotus Notes | Server Statistics | Server utilization, Load usage etc | Weekly | Business owners / SDM | Email |
| Lotus Notes | Mail Replication | Database Replication failures | Weekly | Business owners / SDM | Email |
| DC Operations | Abend Report | Failed Jobs Report. | Daily Weekly | Business owners / SDM | Email |
| DC Operations | Batch Report | Number of Batch Jobs | Monthly | Business owners / SDM | Email |
| DC Operations | Trend Report | No. of Abends Vs Date | Monthly | Business owners / SDM | Email |
| Network (WAN) | Router Utilization | Router Availability | Daily Monthly | Business owners / SDM | Email |
| Network | Router Utilization | Router Inbound / Outbound utilization | Daily | Business owners / SDM | Email |

| | | | | | |
|-------------------|-------------------|---|-------------------|-----------------------|-------|
| (WAN) | | | Monthly | | |
| Network (Voice) | PBX & Telco | 1. Trunk Utilization Report (Individual Trunk reports) 2. Trunk peak hour report. 3. Trunk incoming & outgoing report. 4. System Utilization report. 5. Major / Minor alarm status. | Monthly | Business owners / SDM | Email |
| Network (Voice) | PBX & Telco | 1. System Health check reports 2. System Audit Reports 3. Preventive maintenance reports | Quarterly | Business owners / SDM | Email |
| Servers (Windows) | Server Report | 1. CPU Utilization. 2. Memory Usage. 3. Disk Utilization | Weekly Monthly | Business owners / SDM | Email |
| Servers (UNIX) | Backup Reports | Backup Success / Failure Reports using Data Protector. | Daily | Business owners / SDM | Email |
| Servers (UNIX) | Failure Reports | HP-UX Server (Hardware / Software) failure report using ISEE. | Daily | Business owners / SDM | Email |
| SAN | Allocation Report | SAN Allocation report. | Weekly | Business owners / SDM | Email |

Above are the lists of indicative reports which will need further refinement during the Transition Period. Some the exact report deliverables for specific tracks (e.g., SAP Basis, SAP Security) will be refined during the Transition Period.

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Hercules

Schedule S

Governance

SCHEDULE S GOVERNANCE

2.0 Introduction

This is **Schedule S** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

During the Transition Period the Parties will develop a governance model. Such model will include the committees described in this Schedule.

3.0 Committees and Teams

3.1 Executive Steering Committee

The Parties will establish an executive steering committee. The executive steering committee will have executive management responsibility for the Agreement and for the relationship between the Parties. The executive steering committee will meet quarterly (in person or by teleconference) or as otherwise agreed.

3.2 Management Team

The Parties will establish a management team. The names and/or titles of the initial representatives serving on the management team shall be determined during the Transition Period.

Hercules

Schedule T

Hercules Rules, Hercules IT, Security, and Related Standards, and Hercules Business Practices Policy

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SCHEDULE T

Hercules Rules, Hercules IT, Security, and Related Standards, and Hercules Business Practices Policy

This is **Schedule T** to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

Hercules Rules, Hercules IT, Security, and Related Standards, and Hercules Business Practices Policy to be made available to Supplier after the Effective Date and from time-to-time thereafter as requested by Supplier and is hereby incorporated by reference.

Hercules

Schedule U

Termination / Expiration Rights

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SCHEDULE U

TERMINATION / EXPIRATION RIGHTS

This is **Schedule U** to the Master Professional Services Agreement by and between Hercules and Supplier (the "**Agreement**"). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

In accordance with **Section 6.4(c)** of the Agreement, Hercules consents to Supplier's use of the following Third Party Software licenses, Equipment leases or Third Party Contracts for Supplier's provision of the Services, notwithstanding Supplier's inability to obtain the rights and assurances specified below that are otherwise required by **Section 6.4(c)** of the Agreement.

MyDashboard

Hercules

Schedule V

Affected Employees

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SCHEDULE V

AFFECTED EMPLOYEES

This is Schedule V to the Master Professional Services Agreement by and between Hercules and Supplier (the “**Agreement**”). All capitalized terms used but not defined in this Schedule shall have the meanings given them in the Agreement.

To be determined by Hercules within thirty (30) days after the Effective Date and/or ten (10) days after applicable work council consultations.

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Hercules

Exhibit 1

Form of Non-Disclosure Agreement

FORM OF NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“NDA”) is made as of this ___ day of _____, 200__, by and between _____, (“Supplier”), and _____, (“Receiving Party”), a third party retained by _____ (“Hercules”).

WHEREAS, Supplier and Hercules are parties to the Master Professional Services Agreement, dated _____ (the “Contract”);

WHEREAS, Supplier is the owner and licensor of certain Confidential Information (as defined below); and

WHEREAS, Hercules wishes to disclose, or have Supplier disclose, to Receiving Party, and Receiving Party wishes to receive, under the terms and conditions of this NDA, Confidential Information;

NOW, THEREFORE, in consideration of the promises hereinafter set forth, Receiving Party and Supplier acknowledge and agree as follows:

1. Confidential Information.

a. “Confidential Information” shall mean all information provided by Supplier, whether marked or not as “Proprietary”, “Confidential”, or with a similar legend, or otherwise identified in writing promptly after disclosure as proprietary or confidential.

b. Confidential Information shall not include information Receiving Party can demonstrate (i) is, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of Receiving Party; (iii) is in the possession of Receiving Party at the time of disclosure to it without obligation of confidentiality; (iv) is received without obligation of confidentiality from a third party having a lawful right to disclose such information; or (v) is independently developed by Receiving Party without reference to Confidential Information.

2. Receiving Party's Duties.

a. During the term of this NDA and at all times thereafter, Receiving Party shall not disclose, and shall maintain the confidentiality of, all Confidential Information. Receiving Party shall use at least the same degree of care to safeguard and to prevent disclosing to third parties Confidential Information as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care. Receiving Party may disclose Confidential Information to its employees as and to the extent such disclosure is necessary for the performance of such person's or entity's obligations or otherwise naturally occurs in such person's or entity's scope of responsibility. Receiving Party assumes full responsibility for the acts or omissions of such person or entity and must take all reasonable measures to ensure that Confidential Information is not disclosed or used in contravention of this NDA.

b. Receiving Party shall not (i) make any use or copies of Confidential Information except as contemplated by this NDA; (ii) acquire any right in or assert any lien against Confidential Information; (iii) sell, assign, transfer, lease, or otherwise dispose of Confidential Information to third parties or commercially exploit such information, including through derivative works; or (iv) refuse for any reason to promptly provide Confidential Information (including copies thereof) to Supplier if requested to do so.

c. Receiving Party shall not be considered to have breached its obligations under this NDA for disclosing Confidential Information as required to satisfy any legal, accounting, or regulatory requirement of a competent government body, provided that, promptly upon receiving any such request and to the

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extent that it may legally do so, Receiving Party advises Supplier of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to making such disclosure in order that Supplier may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

d. Receiving Party shall: (i) promptly notify Supplier of any known possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this NDA; (ii) promptly furnish to Supplier all known details and assist Supplier in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss; (iii) reasonably cooperate with Supplier in any investigation or litigation deemed necessary by Supplier to protect its rights; and (iv) promptly use commercially reasonable efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this NDA. Receiving Party shall bear its own costs in complying with this subsection.

3. Termination.

a. Upon completion of Receiving Party's assignment for Hercules, Receiving Party shall return or destroy, as Supplier may direct, all Confidential Information, and retain no copies; provided that auditors and benchmarkers performing audit and benchmarking functions may retain their work papers.

b. The obligations to maintain confidentiality, the restrictions on use, disclosure, duplication, protection, and security of Confidential Information and indemnification for breach thereof by Receiving Party shall survive the rescission, termination, or completion of this NDA, and remain in full force and effect until such Confidential Information, through no fault of Receiving Party, becomes part of the public domain.

4. General Provisions.

a. This NDA shall be governed by and construed, and the legal relations between the parties shall be determined, in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of laws.

b. This NDA supersedes all prior understandings and negotiations, oral and written, and constitutes the entire understanding between the parties on this subject.

c. No waiver, modification, or amendment to this NDA shall be binding upon the parties unless it is in writing signed by an authorized representative of the party against whom enforcement is sought.

d. Nothing in this NDA nor any disclosure made hereunder shall be deemed to grant to Receiving Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Confidential Information.

e. Nothing in this NDA nor any disclosure made hereunder shall be deemed to grant to Receiving Party, a right to receive any further information of Supplier which is otherwise protected by confidentiality agreement with any third party, or any information about Supplier's profitability, employee remuneration or other similar information, not otherwise available to the public.

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

IN WITNESS WHEREOF, the parties have caused this Non-Disclosure Agreement to be signed by their Authorized Representatives on the date and year first above written.

[_____] (“Supplier”)

[Receiving Party] (“Receiving Party”)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date:

Date:



THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

Hercules

Exhibit 2

Form of Invoice

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [*****] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

EXHIBIT 2

FORM OF INVOICES

To be determined by Hercules within thirty (30) days of the Effective Date. U.S. and European invoice forms may vary.

Exhibit 3

COMPANION AGREEMENT

[Local Country Name]

This Companion Agreement - [local country name] (this "Companion Agreement") is entered into effective as of _____, 200_ (the "Agreement Date"), by and between [Name of Hercules local country Eligible Recipient], with an office at [_____] ("Hercules"), and [Name of Supplier local country affiliate] ("Supplier"), with an office at [_____].

RECITALS

- A. Hercules Incorporated, a Delaware corporation having a principal place of business in Wilmington, Delaware, and HCL America, Inc., a California corporation having a principal place of business in Sunnyvale, California and HCL Technologies Limited, an Indian public limited company having its registered office at 806 Siddharth, 96, Nehru Place, New Delhi 110 019 entered into the Master Professional Services Agreement dated as of [____], 2007 (the "Master Agreement").
- B. The Master Agreement contemplates the provision of certain services in various countries outside the United States, including [name of local country]. The Master Agreement also contemplates that an Eligible Recipient designated by Hercules Incorporated and an Affiliate of HCL America, Inc., respectively, will enter into a Companion Agreement for the provision of such products and services in each such country.
- C. The purpose of this Agreement is to set forth the terms and conditions for Supplier's provision of such services to certain Eligible Recipients in [name of local country].

NOW, THEREFORE, in consideration of the promises contained in this Companion Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hercules and Supplier agree as follows:

- 1. Incorporation of Master Agreement. This Companion Agreement is entered into under the provisions of the Master Agreement, and except as provided below, all of the terms and provisions of the Master Agreement are incorporated into this Companion Agreement by this reference as if fully set forth herein. The following provisions of the Master Agreement do not apply to this Companion Agreement and are not incorporated into this Companion Agreement: [list provisions of the Master Agreement that should not apply to the local country agreement due to legal restrictions (if any)]. In the event of any inconsistency between the terms of this Companion Agreement and the Master Agreement, this Companion Agreement shall control as to the subject matter of this Companion Agreement. Capitalized terms used in this Companion Agreement, to the extent not otherwise defined in this Companion Agreement, shall have the same meanings as in the Master Agreement.
 - 2. Term. The term of this Companion Agreement will commence on _____, 200_ (the "Agreement Date"), and will continue thereafter until the expiration or termination of the Master Agreement, unless this Companion Agreement is terminated earlier in accordance with the terms of the Master Agreement.
 - 3. Local Services. During the term of this Companion Agreement, Supplier shall provide the Services described in the Master Agreement to the Eligible Recipients in [name of local country] and/ or as listed in Attachment __ hereto, subject to Section 4.7 of the Master Agreement. Supplier shall provide such Services in the manner and in accordance with the Service Levels set forth in the Master Agreement. Supplier also shall timely perform or cause to be performed the obligations of [_____] specified in the Master Agreement with respect to such Services, subject to Section 4.7 of the Master Agreement.
-

4. Local Hercules Obligations. Subject to Section 4.7 of the Master Agreement, Hercules shall timely perform or cause to be performed the obligations of Hercules Incorporated specified in the Master Agreement with respect to the Services provided by Supplier to the Eligible Recipients in *[name of local country]*.
6. Supplier Charges.
- (a) Supplier Charges. The Charges for the Services to be provided by Supplier under this Companion Agreement are set forth in Attachment __ hereto.
 - (b) Taxes. Unless otherwise specified in this Companion Agreement, the responsibilities of each Party for taxes arising under or in connection with this Companion Agreement shall be as set forth in Section 11.4 of the Master Agreement.
 - (c) Invoicing and Payment Terms. Unless otherwise specified in this Companion Agreement, the responsibilities of each Party for invoicing and payment for Services provided under this Companion Agreement shall be as set forth in Article 12 and **Schedule J** of the Master Agreement and /or Attachment __ hereto.
7. Additional Provisions.
- (a) **The Parties agree they will fully cooperate with each other in good faith to:**
 - (i) comply with all applicable laws, constitutions, treaties, directives, statutes, secondary legislation, order code of practice, binding case law, contractual obligations and other common law or other relevant authority relating to the employment or dismissal of employees in the relevant country;
 - (ii) inform and/or consult singularly or jointly, as required, with any recognized trade union, works council, or other appointed employee representative before implementing the terms of this Companion Agreement and to contest any claim by any person resulting from or in connection with this Companion Agreement;
 - (iii) modify the terms of the Companion Agreement in order to comply with sections (i) and (ii) to achieve the original objectives of the Parties; and
 - (iv) comply with all obligations pursuant to the EC Acquired Rights Directive .
 - (b) Supplier:
 - (i) May, in its sole discretion, offer employment to EU Hercules Personnel (other than those covered by EC Acquired Rights Directive) whose employment is or will be terminated as a result of this Companion Agreement or Master Agreement;
 - (ii) Shall, in addition to Article 17 of the Master Agreement, indemnify, defend and hold harmless Hercules and the Eligible Recipients and their respective officers, directors, employees, agents, representatives, successors, and assigns against any Losses and threatened Losses in connection with any of the following
-

(unless and to the extent the claim for such Losses or threatened Losses is based upon the acts or omissions of Hercules or an Eligible Recipient):

- a. any act or omission of Supplier, a Supplier Affiliate or Subcontractor relating to the employment or termination of the employment of any EU Supplier Personnel;
 - b. any claim by a recognized trade union, works council, staff association or other representative, person or body in respect of EU Supplier Personnel;
 - c. any claim by any EU Hercules Personnel subsequently employed by Supplier for any cause of action arising after such employment by Supplier; and
 - d. upon expiration or termination of the Master Agreement, this Companion Agreement or any part of the Services:
 1. a claimed employment relationship between Hercules or such Eligible Recipient or Hercules Third Party Contractor and any such EU Supplier Personnel under the EC Acquired Rights Directive or other similar applicable Law;
 2. the termination by Supplier or a Supplier Affiliate or Subcontractor of the employment of any EU Supplier Personnel in connection with the cessation or termination of any Services previously performed by Supplier or a Supplier Affiliate or Subcontractor; or
 3. any claim by a trade union, works council, staff association, worker representative or employee in respect of all or any of the EU Supplier Personnel arising out of a failure or alleged failure by Supplier or a Supplier Affiliate or Subcontractor to comply with their legal obligations to consult, notify and/or perform under the EC Acquired Rights Directive or other similar applicable Law.
- (c) Hercules shall in addition to Article 17 of the Master Agreement, indemnify, defend and hold harmless Supplier and its Affiliates and Subcontractors and their respective officers, directors, employees, agents, representatives, successors, and assigns against any Losses and threatened Losses in connection with any of the following (unless and to the extent the claim for such Losses or threatened Losses is based upon the acts or omissions of Supplier or a Supplier Affiliate or Subcontractor):
- a. against all actions, proceedings, costs (including legal costs), losses, damages, fines, penalties, compensation, awards, demands, orders, expenses and liabilities connected with or arising from any law, constitution, treaty, directive, statutes, secondary legislation, order, code of practice, binding case law, contractual obligation, and other common law right, relating to or connected with the employment and dismissal of employees which the Supplier may suffer or incur in relation to the termination of employment of EU Hercules Personnel, the employment of the EU Hercules Personnel up to the date of that termination of employment;
-

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [***] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.**

- b. any claim by a recognized trade union, works council, staff association or other representative, person or body in respect of EU Hercules Personnel in relation to the termination of employment of EU Hercules Personnel and the employment of the EU Hercules Personnel up to the date of that termination of employment;
- c. any claim by any EU Hercules Personnel subsequently employed by Supplier for any cause of action arising before such employment;
- d. upon execution of the Master Agreement, this Companion Agreement or any part of the Services:
 - 1. a claimed employment relationship between Supplier or any Affiliate of Supplier and any such EU Hercules Personnel under the EC Acquired Rights Directive or other similar applicable Law;
 - 2. the termination by Hercules or an Eligible Recipient or a Hercules Third Party Contractor of the employment of any EU Hercules Personnel in connection with the performance of any Services by Supplier or a Supplier Affiliate or Subcontractor; or
 - 3. any claim by a trade union, works council, staff association, worker representative or employee in respect of all or any of the EU Hercules Personnel arising out of a failure or alleged failure by Hercules or a Hercules Affiliate or a Hercules Third Party Contractor to comply with their legal obligations to consult, notify and/or perform under the EC Acquired Rights Directive or other similar applicable Law.

For the purposes of this Companion Agreement,

“EU Supplier Personnel” shall mean all Supplier Personnel located within any country to which the EC Acquired Rights Directive or other similar Law applies.

“EU Hercules Personnel” shall mean all Hercules Personnel, including any employees of any Hercules Third Party Contractor located within any country to which the EC Acquired Rights Directive or other similar Law applies.

- 8. Disputes and Jurisdiction. For avoidance of doubt, any dispute arising under this Companion Agreement shall be resolved in accordance with the provisions of Article 19 of the Master Agreement.
 - 9. Governing Law. Except as otherwise provided in this Companion Agreement, this Companion Agreement and performance under it shall be governed by and construed in accordance with the applicable Laws of the State of Delaware, USA, without giving effect to the principles thereof relating to conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. The election of Delaware Law for this purpose shall not operate or be construed to result in the extra-territorial application of any Laws of the State of Delaware or the United States of America unrelated to the interpretation of contracts.
 - 10. Service of Legal Process. For the sole purpose of service of legal process, receipt of any notice or notification of writ or other judicial proceedings before the courts of Wilmington, Delaware, as selected by the Parties under Section 19.3 of the Master Agreement, the Parties to this Companion
-

Agreement irrevocably appoint the companies below as their agents for service of process and receipt of such notice or notification, and further elect domicile at the address of said company in Wilmington, Delaware, as follows:

In the case of Hercules:

With a copy to:

and

In the case of Supplier:

With a copy to:

12. Counterparts. This Companion Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.
 13. Severability. In the event that any provision of this Companion Agreement conflicts with the Law under which this Companion Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable Law. The remaining provisions of this Companion Agreement and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable to the full extent permitted by Law.
 14. Language. The Parties have requested that this Companion Agreement and all documents contemplated thereby or relating thereto be drawn up in the English language. This document shall be translated into an official language of *[name of country]*, if required by Law, but in the event of inconsistencies or conflicts the English version shall prevail.
 15. Entire Agreement. Together with the Master Agreement and the documents identified in Section 2.2 of the Master Agreement, as each may be amended, this Companion Agreement and the Schedules, Exhibits and Attachments thereto constitute the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein and therein. This Companion Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertaking, whether written or oral, with respect to the subject matter contained in this Companion Agreement. No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, modification, change, waiver, or discharge is sought to be enforced (except, however, that amendments to the Master Agreement shall be applicable to and, by reference, incorporated in this Agreement).
-

THIS EXHIBIT HAS BEEN REDACTED AND IS THE SUBJECT OF A CONFIDENTIAL TREATMENT REQUEST. REDACTED MATERIAL IS MARKED WITH [***] AND HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.**

IN WITNESS WHEREOF, Hercules and Supplier have each caused this Companion Agreement to be executed by their respective duly authorized representatives on the dates set forth below to be effective as of the Agreement Date.

[Hercules name]

[Supplier name]

By:

By:

Title:

Title:

Date:

Date:

PRINCIPAL CONSOLIDATED SUBSIDIARIES AS OF DECEMBER 31, 2006

ArgentinaHercules Argentina S.A.

AustriaHercules Austria GmbH

BahamasHercules International Trade Corporation Limited

Belgium

Hercules Beringen B.V.B.A.

Hercules Doel B.V.B.A.

Hercules Europe B.V.B.A.

Hercules Holding B.V./B.V.B.A.

BermudaCurtis Bay Insurance Co. Ltd.

BrazilHercules do Brasil Produtos Quimicos Ltda.

British Virgin IslandsEver Success Overseas Limited

CanadaHercules Canada Inc.

ChileHercules Chile Limitada

China

Hercules Asia Pacific (Shanghai) Regional

Company Ltd.

Hercules Chemicals (Jiangmen) Company Limited

Hercules Chemicals (Nanjing) Company Limited

Hercules Tianpu Chemicals Company Limited ⁽¹⁾

Hercules Trading (Shanghai) Company Ltd.

Shanghai Hercules Chemicals Co., Ltd.

Czech (Republic)Hercules CZ s.r.o.

DenmarkHercules Investments ApS

FinlandHercules Finland OY

France**Indonesia**P.T. Hercules Chemicals Indonesia

ItalyHercules Italia S.p.A.

JapanHercules Japan Ltd.

KoreaHercules Korea Chemical Co. Ltd.

IndiaHercules Industrial Chemicals Private Limited

LuxembourgHercules Investments S.a.r.l.

Mexico

Hercules Mexico, S.A. de C.V.

Hercules Services Mexico S.A. de C.V.

The Netherlands

Aqualon France B.V.

Hercules B.V.

Hercules Chemical B.V.

Hercules Holding Specialty Materials B.V.

Hercules International Ltd. LLC

NorwayHercules Norway AS

PeruHercules Peru S.R.L.

PolandHercules Polska Sp. z.o.o.

PortugalHercules Portuguesa, Lda.

RussiaHercules Russia L.L.C.

SingaporeHercules Chemical Solutions Pte Ltd.

South AfricaHercules Chemicals South Africa (Proprietary) Limited

Spain

Aqualon France B.V.

Hercules SA

Germany

Abieta Chemie GmbH (1)

Hercules Deutschland GmbH

Hercules GmbH

Hong Kong

Hercules China Limited

Hercules Quimica S.A.

Sweden

Hercules AB

Switzerland

Hercules International GmbH

Taiwan

Hercules Chemicals (Taiwan) Co., Ltd.

PRINCIPAL CONSOLIDATED SUBSIDIARIES AS OF DECEMBER 31, 2006

United Kingdom

Hercules Holding II Limited
Hercules Limited

United States

Aqualon Company, Delaware
East Bay Realty Services, Inc., Delaware
Hercules Country Club, Inc.
Hercules Euro Holdings, L.L.C., Delaware
Hercules Finance Company, Delaware
Hercules Flavor, Inc., Delaware
Hercules Hydrocarbon Holdings, Inc., Delaware
Hercules Paper Holdings, Inc., Delaware
WSP, Inc., Delaware

U.S. Virgin Islands

Hercules Islands Corporation (U.S.)⁽¹⁾

⁽¹⁾ These entities are owned in part by Hercules with the remaining interests held by third parties.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Registration Nos. 333-63423 and 333-29225) and Form S-8 (Registration Nos. 33-37279, 33-21668, 33-21667, 33-47664, 33-51178, 33-66136, 33-65352, 333-38795, 333-38797 and 333-68863) of Hercules Incorporated of our reports dated February 28, 2007, relating to the financial statements, financial statement schedule, and the effectiveness of Hercules Incorporated's internal control over financial reporting which appears in this Form 10-K.

BDO Seidman, LLP
February 28, 2007

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Registration Nos. 333-63423 and 333-29225) and Form S-8 (Nos. 33-37279, 33-21668, 33-21667, 33-47664, 33-51178, 33-66136, 33-62314, 33-65352, 333-38795, 333-38797, and 333-68863) of Hercules Incorporated of our report dated March 16, 2005, relating to the financial statements and financial statement schedules, which appears in this Form 10-K.

PricewaterhouseCoopers LLP
February 28, 2007

RULE 13a-14(a)/15d-14(a) CERTIFICATION

I, Craig A. Rogerson, President and Chief Executive Officer, certify that:

1. I have reviewed this Annual Report on Form 10-K of Hercules Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

/s/ Craig A. Rogerson

Craig A. Rogerson

President and Chief Executive Officer

February 28, 2007

RULE 13a-14(a)/15d-14(a) CERTIFICATION

I, Allen A. Spizzo, Vice President and Chief Financial Officer, certify that:

1. I have reviewed this Annual Report on Form 10-K of Hercules Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors:
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

/s/ Allen A. Spizzo

Allen A. Spizzo

Vice President and Chief Financial Officer

February 28, 2007

SECTION 1350 CERTIFICATION

In connection with the Annual Report on Form 10-K of Hercules Incorporated (the "Company") for the period ended December 31, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Craig A. Rogerson, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Craig A. Rogerson

Craig A. Rogerson
President and Chief Executive Officer

February 28, 2007

SECTION 1350 CERTIFICATION

In connection with the Annual Report on Form 10-K of Hercules Incorporated (the "Company") for the period ended December 31, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Allen A. Spizzo, Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Allen A. Spizzo

Allen A. Spizzo
Vice President and Chief Financial Officer

February 28, 2007