

System Support Solutions, Inc.

994 Hunt Farm Road
Orono, Minnesota 55356

For Emergency Incident only call: 763-572-4056

BridgeWave *RAPIDRESPOND* SYSTEM MAINTENANCE

THIS AGREEMENT ("Agreement") is hereby entered into between System Support Solutions, with offices at 994 Hunt Farm Road, Orono, Minnesota, 55356 ("Contractor") and Acme Sample, Inc., with offices at 2222 3rd Street, NY, NY 77777, ("Customer") on the following terms and conditions:

1. General Undertaking.

(a) Scope of Coverage. During the Term, Contractor and/or Contractor Assigns or Designees shall provide Remedial Maintenance with respect to the items of "Covered Hardware" and associated devices specifically described in the attached Schedule of Covered System Components and located at the site identified therein (the "Covered System") according to the specifications supplied by Contractor or by the applicable vendor or manufacturer ("Specifications").

(b) Changes in Covered System. The Schedule of Covered System Components may from time to time be modified by mutual agreement of the parties and a signed amendment to this Agreement. Such changes may result from additions or deletions of Covered System Components occasioned by Customer's ongoing business requirements or by applicable vendor releases or manufacturer engineering changes. Any change in Covered System Components shall include a price adjustment or other surcharge under Section 5 ("Prices & Payment"), or a notation that no adjustment or surcharge is required.

(c) Exclusions from Covered System. The Covered System subject to this Agreement includes only those items of hardware and imbedded software identified on the Schedule of Covered System Components. Hardware items must be specifically identified by serial number (to the extent so imprinted) or otherwise specifically listed on the Schedule of Covered System Components. In no event shall the Covered System include any consumables, services (including telecommunications services), cabling (even if installed by Contractor), or any other items not specifically listed on the Schedule of Covered Components.

2. System Maintenance Services. During the Term hereof, and in consideration of the payment set forth in Section 5 ("Prices & Payment"), in addition to periodic cleaning, alignment checks, and realignment as required, the Contractor shall provide the following "Maintenance Services" with respect to the Covered System:

(a) On-Site Remedial Maintenance Services. During the Term, Contractor shall be available seven (7) days per week, twenty-four (24) hours per day to provide on-site Remedial Maintenance Service in response to "Major Alarms" reported by Customer. For these purposes, a Major Alarm means a request for Remedial Maintenance Service prompted by a malfunction in the Covered System preventing it from operating substantially in accordance with the Specifications, and causing an immediate and significant disruption of an important business activity of Customer which cannot reasonably be avoided by relatively minor operational adjustments known to Customer or recommended by Contractor. Problems other than Major Alarms shall be addressed during Regular Work Hours.

(i) Notice & Acknowledgment of Major Alarms. Customer shall notify Contractor of Major Alarms by telephone by calling 763-572-4056. Contractor shall contact Customer and acknowledge Major Alarms received during Emergency On-Call Hours within sixty (60) minutes after Contractor receives the Major Alarm. At the time of Contractor's acknowledgment, the Customer shall forward or provide

information contained on Contractor's standard "trouble report" procedures to assist Contractor in diagnosing the reported problem. Customer shall cooperate with Contractor's reasonable requests for assistance to determine the cause of the reported problem and whether an on-site Remedial Maintenance Service visit is required.

(ii) Response to Major Alarms. If Contractor cannot reasonably determine from the Trouble Report that a Major Alarm received during Regular Work Hours was caused by something other than a malfunction in the Covered System, Contractor shall on a best efforts basis after the Major Alarm in the case of Covered Hardware, dispatch a service technician to the Customer site location specified in the Schedule of Covered System Components. Upon arrival, Contractor's technician shall with the reasonable cooperation and assistance of Customer be given access to the premises and the Covered System and shall promptly commence diagnosis and repair efforts.

(iii) Diagnosis and Correction Efforts. Once Contractor's technician commences diagnosis and error correction efforts, such efforts shall continue until (a) the Major Alarm is temporarily or permanently corrected or otherwise "worked around," (b) any on-site technician is relieved by the arrival of a replacement technician, (c) the Contractor reasonably determines that the reported problem was not caused by a malfunction in the Covered System or (d) Contractor concludes that further diagnosis or repair efforts must be postponed until the arrival of replacement parts or the occurrence of some other contingency.

(b) Other Billable Maintenance Service. The Contractor may from time to time agree at the rates referenced in Section 5(b) ("Surcharges"), to assist Customer with additional services outside the scope of Remedial Maintenance Services. Subject to Contractor's availability, such services might include additional site preparation, installation or relocation of software, equipment, associated devices or cabling (including work required to implement changes to the Schedule of Covered System Components) and functional enhancements to the Covered Software. For these purposes, a "functional enhancement" is a change to Covered Software or Hardware that materially exceeds or is different from the functionalities documented in the Specifications. Unless clearly erroneous, the Contractor's characterization of requested service as a "functional enhancement" shall be dispositive.

3. Spare Parts and Components.

(a) Inventory of Spare Parts. Contractor shall maintain in its possession an inventory of spare parts and components for Covered Hardware that Contractor's experience suggests are necessary to maintain the Covered System as contemplated herein and which cannot otherwise be obtained on short notice. Contractor may use functionally equivalent spare parts or hardware components in performing the maintenance services contemplated herein. Contractor's performance is conditioned upon the availability of spare parts for Covered System Components.

(b) Ownership of Spare Parts, Equipment. Contractor shall be deemed the owner of spare parts and other components of Covered Hardware held in inventory whether physically stored at Contractor's facility or Customer's facility. When spares are incorporated into Customer's system, such spares and/or components shall continue to be deemed owned by Contractor, and the original covered Hardware shall be repaired and returned to service as soon as practical. Any license to underlying computer software, firmware or other intellectual property rights embodied in spare parts or components shall be deemed transferred along with the spare parts and components, subject to all terms, conditions and restrictions imposed by the owner of such intellectual property rights.

4. Certain Customer Responsibilities.

(a) Generally. Customer shall ensure that: (i) the Covered System, any associated software and equipment are installed and operated according to applicable manufacturer specifications and recommendations; (ii) all upgrades and releases to Covered Software or engineering changes to Covered Hardware, associated software and equipment specified or recommended by the applicable manufacturer have been procured by Customer and properly installed; (iii) a continuous, uninterrupted and suitable power supply and temperature, humidity and other environmental conditions recommended by the manufacturer or Contractor have been implemented and maintained; (iv) suitable surge protection devices have been implemented on both the high voltage and low voltage (unless fiber cabled) equipment interfaces and power supplies; (v) no other equipment or software having an adverse impact on the Covered System have been introduced; (vi) no repair attempts or other changes have been made to Covered System Components, other than by or with the express approval of Contractor or the applicable manufacturer, (vii) the Covered Hardware has not been mishandled, neglected, abused, vandalized, dropped, jolted, transported to another location, damaged by fire, lightning or water, or otherwise subjected to unusual electrical or physical stress beyond the manufacturer's specified operating capabilities, (viii) Customer removes or takes other precautions to protect all software, data and removable storage media prior to commencement of Maintenance Services, (ix) Customer periodically makes and stores in a safe place archival copies of all Covered Software, configuration files, and all valuable data and software residing on or affected by the operation or malfunction of Covered System Components, (x) all debris or any and all other environmental detriments to system function are mediated, (xi) all network cabling, switches, hubs, routers, servers and all other required system equipment have been verified and are fully functional.

(b) Failure to Comply. To the extent any Remedial Maintenance Service is required because of Customer's failure to comply with the requirements of Subsection (a), the Contractor may refuse to provide Maintenance Service or may treat any such work as Other Billable Maintenance Service under Section 2(c), subject to the prices referenced in Section 5(b) ("Surcharges").

5. Prices and Payment.

(a) Three Year Agreement Maintenance Fee. Subject to Subsection (b), the Three Year Maintenance Fee set forth in the "Schedule of Fees and Surcharge Rates" compensates Contractor for providing the Maintenance Services. All other work is subject to Subsection (b) ("Surcharges").

(b) Surcharges. To the extent Contractor provides services subject to a specific surcharge authorized hereunder (including Section 2(b) ("Other Billable Maintenance Service")) or provides other services beyond the scope of what is covered by Section 5(a) ("Three Year Maintenance Fee"), the Customer shall pay Contractor the "Surcharge Rate" set forth in the Schedule of Service Charges (or Contractor's then prevailing rates if not specified therein).

(c) Price Changes. Unless otherwise agreed in writing, upon commencement of any Renewal Term, the Contractor may increase the Maintenance Fee and Surcharge Rates by not more than five (5) percent beyond the applicable price as it existed immediately prior to such price increase.

(d) Out-of-Pocket Costs & Taxes. Unless otherwise agreed, prices quoted include the Contractor's reasonably anticipated out-of-pocket costs of travel (air & cab fare, lodging, auto rental, per diem, etc.), photocopying, long distance telephone and regular shipping expense in rendering the Remedial Maintenance Service hereunder. Contractor shall be reimbursed by Customer for any extraordinary out-of-pocket costs, all out-of-pocket costs for any Billable Maintenance Service under Section 2(b) and in responding to an alleged Major Alarm that Contractor subsequently determines was not caused by the Covered System or was caused by Customer's failure to comply with its responsibilities hereunder, including Section 4 ("Certain Customer Responsibilities"). Customer shall pay, indemnify and hold Contractor harmless from all sales, use, gross receipts, value-added, personal

property or other tax or levy (including interest and penalties) imposed on the services, software or spare parts provided hereunder.

(e) Invoices & Payment. The Three Year Maintenance Fee shall be invoiced at the initiation of coverage. Any other amounts due hereunder, including the applicable Surcharge Rate and any reimbursable out-of-pocket costs, shall be invoiced monthly as services are rendered. Customer shall pay amounts invoiced under the terms of this Agreement within fifteen (15) days after receipt of invoice. Customer may not withhold or "setoff" any amounts due hereunder. Contractor reserves the right to stop work without prejudice until all amounts determined by Contractor to be due are paid in full. Any late payment shall be subject to any costs of collection (including reasonable legal fees) and shall bear interest at the rate of one and one-half (1.5) percent per month or fraction thereof until paid.

6. Term, Termination. The term of this Agreement ("Term") shall commence on the date last below written and shall continue in full force and effect for a period of three (3) years, unless terminated earlier as provided herein. This Agreement, unless auto-renewal is declined in writing thirty (30) days or more prior to its three-year anniversary date, will auto-renew on that date for an additional three (3) year term. This Agreement may be terminated earlier on account of either party's default, which remains uncorrected after following the procedures set forth in Section 14 ("Default"). Termination shall have no effect on the parties' rights and obligations under Section 7 ("Proprietary Rights"), Section 8 ("Confidential Information"), Section 9 ("Nonsolicitation") or Section 20 ("Compliance with Export Regulations"). Either party may also unilaterally terminate this Agreement without cause by giving written notice to the other thirty (30) days in advance of the desired termination date, and in such case Contractor will be required to refund 20% of the remaining pro-rated prepaid Maintenance Fee.

7. Proprietary Rights.

(a) Third Party Software. Any releases, updates or other software provided by third parties and incorporated into or used in conjunction with the Covered System ("Third Party Software") shall be governed by the terms and conditions of the license agreement accompanying or otherwise applicable to such Third Party Software.

(b) Custom Work Product Defined. "Custom Work Product" means, solely with respect to this Agreement, the resulting software updates, releases, corrections and enhancements, if any, (including all functional and technical designs, programs, modules, code, algorithms, flowcharts, data diagrams, documentation and the like) created by Contractor after the effective date of this Agreement on behalf of Customer and in the course of rendering Maintenance Services hereunder. Custom Work Product does not include any Third Party Software, Covered Software, or any pre-existing software owned by Contractor or by any third party and incorporated or "embedded" into the Custom Work Product ("Embedded Software"). The provisions of this Agreement have no bearing on the ownership or use of any Covered Software.

(c) Ownership of Custom Work Product. Customer shall own all right, title and interest to all Custom Work Product. Contractor expressly acknowledges and agrees that all such Custom Work Product constitutes "work made for hire" under the Federal copyright laws (17 U.S.C. Sec. 101) owned exclusively by Customer and, alternatively, hereby irrevocably assigns to Customer all ownership rights and irrevocably waives all other rights (including moral rights) it might have in Custom Work Product. Upon termination hereof, Contractor shall turn over to Customer or destroy all copies of Custom Work Product.

(d) License to Embedded Software. This Agreement conveys no ownership rights to Customer with respect to Embedded Software, and Customer is granted a paid-up, perpetual, nonexclusive license to use the Embedded Software strictly as an integral part of, and in conjunction with, Customer's use of the Custom Work Product and for no other purpose.

8. Confidential Information.

(a) Acknowledgment of Confidentiality. Each party hereby acknowledges that it may be exposed to confidential and proprietary information of the other party including, without limitation, technical information (including functional and technical specifications, designs, drawings, analysis, research, processes, computer programs, methods, ideas, "know how" and the like), business information (sales and marketing research, materials, plans, accounting and financial information, personnel records and the like) and other information designated as confidential expressly or by the circumstances in which it is provided ("Confidential Information"). Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the recipient, or (iii) information received by the recipient from a third party who was free to disclose it.

(b) Covenant Not to Disclose. With respect to the other party's Confidential Information, the recipient hereby agrees that during the Term and at all times thereafter it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to its own employees having a "need to know" (and who are themselves bound by similar nondisclosure restrictions), and to such other recipients as the other party may approve in writing; provided, that all such recipients shall have first executed a confidentiality agreement in a form acceptable to the owner of such information. Neither party nor any recipient may alter or remove from any hardware, software or associated documentation owned or provided by the other party any proprietary, copyright, trademark or trade secret legend. Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own confidential information.

9. Nonsolicitation. During the Term and for a period of one (1) year thereafter, with regard to the services having been provided, Customer agrees not to hire, solicit, nor attempt to solicit, the services of any employee or subcontractor of Contractor for similar work without the prior written consent of Contractor. Violation of this provision shall entitle Contractor to assert liquidated damages against the Customer equal to one hundred fifty (150) percent of the solicited person's annual compensation.

10. Injunctive Relief. The parties acknowledge that violation by one party of the provisions of Section 7 ("Proprietary Rights"), Section 8 ("Confidential Information") or Section 9 ("Nonsolicitation") would cause irreparable harm to the other party not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

11. Warranties.

(a) Assignment of Manufacturers' Warranties. With respect to all spare parts and to the extent, if any, that Covered System Components manufactured by a third party was purchased or leased by or through the Contractor, and with respect to all releases or updates to Third Party Software Products provided hereunder, the Contractor hereby assigns to Customer (to the extent assignable) all manufacturers' and vendors' warranties pertaining to the Covered System Components. To the extent coverage under any such assignable warranty exceeds Contractor's obligation to provide Maintenance Services hereunder, the Customer shall look solely to the applicable manufacturer or vendor for performance of such additional service.

(b) Limited Warranty on Maintenance Services. Subject to the terms and conditions of this Agreement (including Customer's compliance with Section 4 ("Certain Customer Responsibilities")), Contractor represents and warrants for a period of thirty (30) days after Maintenance Services are rendered that it will use its best efforts to perform Maintenance Services in a competent and workmanlike manner. Contractor does not warrant that the Covered System, spare parts or loaner equipment (if any) will be entirely free from malfunction or that Maintenance Services will always be successful. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION ("WARRANTIES") THE CONTRACTOR HEREBY DISCLAIMS WITH RESPECT TO ALL

SERVICES, SPARE PARTS & COMPONENTS AND LOANER EQUIPMENT (IF ANY) PROVIDED HEREUNDER, ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE.

(c) Certain Customer Assurances. Except to the extent otherwise disclosed in the Schedule of Covered System Components, Customer represents and warrants that on the effective date of this Agreement the Covered System functions substantially in accordance with the Specifications.

12. Limitation of Remedies & Liabilities. The parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk:

(a) Remedies. Except for certain injunctive relief authorized under Section 10 ("Injunctive Relief"), Customer's sole and exclusive remedies for Contractor's default hereunder shall be (i) to obtain the repair, replacement or correction of the defective services or spare parts to the extent warranted under Section 11 ("Warranties") or, if Contractor reasonably determines that such remedy is not economically or technically feasible, (ii) to obtain an equitable partial or full refund of amounts paid with respect to the defective services or spare parts.

(b) Liabilities. EXCEPT FOR DAMAGES ARISING FROM BODILY INJURY CAUSED SOLELY BY THE NEGLIGENCE OF CONTRACTOR, CONTRACTOR SHALL NOT BE LIABLE FOR ANY AMOUNT EXCEEDING THE TOTAL PORTION OF THE CONTRACT PRICE ACTUALLY PAID BY CUSTOMER. IN NO EVENT SHALL EITHER PARTY BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS, PROFIT OR BUSINESS INTERRUPTION EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY) ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT.

13. Notices. Legal notices sent to either party shall be effective when delivered in person or transmitted by telecopier ("fax") machine, one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid to the address set forth above, or at such other address as the parties may from time to time give notice. A facsimile of this Agreement and notices generated in good form by a fax machine (as well as a photocopy thereof) shall be treated as "original" documents admissible into evidence unless a document's authenticity is genuinely placed in question.

14. Default. Either party may be declared in default of this Agreement if it breaches any material provision hereof and fails within ten (10) days after receipt of notice of default to correct such default or to commence corrective action reasonably acceptable to the other party and proceed with due diligence to completion. Either party shall be in default hereof if it becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in Bankruptcy is filed with respect to the party and is not dismissed within thirty (30) days.

15. Disputes, Choice of Law. Except for certain emergency judicial relief authorized under Section 10 ("Injunctive Relief") which may be brought at any time, the parties agree that all disputes between them shall first be subject to the procedures in Section 14 ("Default") and then shall be submitted for informal resolution to their respective chief operating officers. Any remaining dispute shall be submitted to a panel of three (3) arbitrators, with each party choosing one (1) panel member and the third member chosen by the first two (2) panel members. The proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The award of the arbitrators shall include a written explanation of their decision, shall be limited to remedies otherwise available in court and shall be binding upon the parties and enforceable in any court of competent jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE UNITED STATES AND MINNESOTA, AND ANY ACTION SHALL BE

INITIATED AND MAINTAINED IN A FORUM OF COMPETENT JURISDICTION IN THE STATE OF MINNESOTA.

16. Independent Contractor Status. Each party and its people are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties. Each party shall remain responsible, and shall indemnify and hold harmless the other party, for the withholding and payment of all Federal, state and local personal income, wage, earnings, occupation, social security, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements (under ERISA, state law or otherwise) now existing or hereafter enacted and attributable to themselves and their respective people.

17. Security, No Conflicts. Each party agrees to inform the other of any information made available to the other that is classified or restricted data, agrees to comply with the security requirements imposed by any state or local government, or by the United States Government, and shall return all such material upon request. Each party warrants that its participation in this Agreement does not create any conflict of interest prohibited by the United States government or any other domestic or foreign government and shall promptly notify the other party if any such conflict arises during the Term.

18. Insurance, Indemnity. Each party shall maintain adequate insurance protection covering its workers and their respective activities hereunder, including coverage for statutory workers' compensation, comprehensive general liability for bodily injury and property damage, as well as adequate coverage for vehicles. Each party shall indemnify and hold the other harmless from all liability for bodily injury, death, tangible property damage or other costs and expenses (including attorneys' fees) resulting from the acts or omissions of its own officers, agents, employees or representatives.

19. Government Contract Provisions. If this Agreement is in support of a contract with the United States Government, Contractor agrees to provide all services or spare parts in accordance with all applicable government contract provisions.

20. Compliance with Export Regulations. Customer has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; shall indemnify and hold Contractor harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the spare parts or other technology to be developed or provided herein. Customer shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce. Customer shall take no action, nor omit to take any required action, which would cause either party to violate the Foreign Corrupt Practices Act of 1977 or the U.S. Export Administration Regulations.

21. Miscellaneous. This document, any applicable provisions under Section 19 ("Government Contract Provisions"), and the accompanying Schedules constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This Agreement may be modified or amended only by a writing signed by the party against whom enforcement is sought. Except as specifically permitted herein, neither this Agreement nor any rights or obligations hereunder may be transferred or assigned without the other party's prior written consent and any attempt to the contrary shall be void. Neither party shall be liable for delays caused by events beyond its reasonable control, including the inability of Contractor to secure adequate supplies of spare parts or components. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Waiver of any provision hereof in one instance shall not preclude enforcement thereof

on future occasions. Headings are for reference purposes only and have no substantive effect.

IN WITNESS WHEREOF, for adequate consideration and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

System Support Solutions, Inc.

By:

Title: Pres.

Date:

Acme Sample, Inc.

By:

Title:

Date:

SCHEDULE OF COVERED SYSTEM COMPONENTS

A. SITE ADDRESSE(S):

SITE ADDRESS

SITE CONTACT(S)

PRIMARY:
SECONDARY:

Response: 24X7

B. DESCRIPTION OF COVERED SYSTEM:

Covered Hardware Description Model No. Serial Number(s).

SCHEDULE OF FEE AND SURCHARGE RATES

Three-Year Maintenance Fee: \$ _____

Out-of-scope work (non-covered item or non-failure related incident) billable as follows:

	<u>\$/Hr.</u>
Prime Time	120 (8:00 AM-5:00 PM M-F excluding holidays)
Non-Prime time	180 (other than 8:00 AM-5:00 PM M-F excluding Holidays)
Expedite (4 Hr)	180
NPT+ Expedite	240