



**TERMS AND CONDITIONS OF SALE
FOR TBC INTEGRATION, INC. PROVIDED
EQUIPMENT AND/OR SERVICES**

1. **ADDITIONAL/INCONSISTENT TERMS.** Any terms and conditions of the purchase order or instrument which are in addition to or inconsistent with these terms and conditions of sale will not be binding on TBC Integration, Inc. (hereinafter "Seller") and will not apply to this transaction unless specifically agreed to in writing by an authorized employee of the seller. All such additions or inconsistencies are deemed to have been specifically considered, and excluded by mutual agreement of the parties.

2. **PRICES.** Prices for equipment and services do not include any insurance, transportation, shipping, taxes (except on Seller's income) or duties (now or hereafter enacted), all of which shall be Buyer's responsibility. In respect of the provision of equipment or services by Seller, Buyer shall pay those taxes or other taxes, however, designated or levied (including any value added or similar tax that may be imposed), on the sale or use of such equipment and services other than taxes based upon Seller's capital or net income. Unit prices apply only to the specific quantities and delivery schedule shown. Any variation in quantity, specification and/or rate of delivery may necessitate a revision to the unit price.

3. **PAYMENT TERMS, TITLE.** If Seller extends credit to Buyer, terms of payment will be net thirty (30) days after date of invoice. After the due date, the lessor of one and one-half (1 1/2) percent of unpaid balance (annual rate of 18%) or the maximum rate of interest permitted by the law will be charged for each month or part thereof that payment is delayed. The Seller has the right at any time to change the amount of credit or terms of payment to withdraw credit and to require partial or full payment in advance as a condition to be a separate delivery for purposes of this paragraph. Payment shall be made without regard to whether Buyer has made or may make any inspection or tests. Anything herein to the contrary notwithstanding, if shipments are delayed at Buyer's request, payment shall be due on the date Seller is prepared to make shipments. Goods held thereafter by Seller or Carrier for Buyer shall be at Buyer's sole risk and expenses. The passage of risk of loss notwithstanding, the right, title and interest in and to all goods covered by Buyer's order are reserved to Seller until the purchase price for all goods has been paid. If Buyer fails to pay such sums as are due to Seller, Seller shall have the right to take possession of such goods as are in Buyer's possession or control, and resell, retain or otherwise dispose of the same, offsetting against such unpaid sums any moneys received (net of costs and expenses) as a result of any resale of the goods. Buyer hereby consents to re-entry of judgment or order in any competent jurisdiction, without bond or other security, permitting Seller to enter upon any premises on which such goods may be situated and take possession of the goods thereon or remove the same therefrom without, liability to Buyer, its employees or agents, for any damages caused by such exercise of Seller's rights. As further security for any and all indebtedness to Seller, Buyer hereby grants to Seller, until such time as it is paid in full, a purchased money security interest, with priority over all other security interests, in all (i) goods to which Buyer now or will acquire title hereunder, and (ii) present and future accounts receivable and contract rights arising from Buyer's sale, lease or transfer of the goods, (iii) proceeds and accessions of and to any and of the foregoing. Buyer authorizes Seller to execute and file, at any time or times, one or more financing statements with respect to such goods, signed only by the Seller and to otherwise perfect security interest on Buyer's behalf, and will cooperate fully in accomplishing the same. On orders exceeding \$100,000, a down payment and some form of progress payments will be required.

4. **SHIPPING TERMS, RISK OF LOSS, DELIVERY AND ALLOCATION.** Shipping terms shall be FOB origin. Buyer shall be responsible for all freight and related costs for shipment from Seller's designated facility to Buyer's specified destinations. Liability for loss or damage to the goods shall pass to Buyer when Seller puts the goods into possession of a carrier for shipment to Buyer (the carrier being deemed to be acting as Buyer's agent) or when otherwise placed at Buyer's disposal as defined by Seller. Shipping and delivery dates are approximate only, and are subject to availability. Seller may allocate production and deliveries among any or all of Seller's customers as Seller may determine, including without limitation, regular customers not then under contract and Seller's (including Seller's subsidiaries and affiliates, if any) own requirement for further manufacture or Seller use. Seller has the right to deliver



in installments. Seller shall not be liable for any loss or expense (consequent or otherwise) incurred by Buyer if Seller fails to meet such dates for any reasons, including, but not limited to, the contingencies stated in paragraph 6 hereof or any other avoidable production delays, delays in prompt approval of samples by Buyer, modification of specifications previously agreed upon or delays in submission of specifications acceptable to Seller or delays due to the fact that Seller has placed Buyer on credit hold. Delays in performance delivery, nonconformity or nondelivery of an installment shall not relieve Buyer of its obligations hereunder with respect to any other installment being deemed to be a separate contract. Unless specified on the front hereof, Seller shall select the mode of transportation and the carrier.

5. **INSPECTION AND ACCEPTANCE.** All Equipment delivered shall be inspected by Buyer within fifteen (15) days after receipt thereof, and such goods shall be conclusively deemed accepted by Buyer unless a written notice of rejection has been sent by Buyer to Seller within such fifteen (15) day period. Buyer shall place rejected goods in safe storage for inspection by Seller. Acceptance testing of the Equipment shall occur within fifteen (15) days of delivery, or if Buyer's purchase requires Seller to install the Equipment, upon installation. Seller shall conduct acceptance testing for the charges set forth herein. Seller shall conduct the acceptance tests and if any such tests are successfully completed, Seller shall evaluate the test and make any adjustments or corrections of the Equipment as will result in performance of the Equipment in accordance with the specifications.

6. **CONTINGENCIES.** Seller shall not be liable for any delay in performance or for lack in performance in whole or in part caused by the occurrence of any contingency beyond the control of Seller or Seller's suppliers, agents or subcontractors including, but not limited to, war (whether actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, judicial action, any act of government or any agency or division thereof, accident, fire, explosion, earthquake, flood, storm or other Act of God, labor dispute, failure or delay in transportation, shortage of labor, fuel, raw materials, tool, dies or equipment, or any technical or field failure. Any such delays shall excuse Seller from performance until Seller's time for performance shall be extended, for the period of the delays and for a reasonable period thereafter.

7. **SUBSTITUTE AND MODIFICATIONS OF GOODS OR SERVICES.** Seller has the right to modify the specifications of goods or services to be furnished by Seller and substitute substantially equivalent goods or services.

8. **WARRANTIES.**

a) Seller hereby represents and warrants to Buyer that the equipment being sold to Buyer and the media upon which the software is furnished in connection with the sale of such equipment, under the agreement shall be free from defects in materials and workmanship for the warranty periods set forth in subparagraph 8c.

b) Such warranties shall not apply: (i) to any equipment or media subjected to accident, misuse, alteration, improper handling, improper transport, improper storage, improper use, improper installation, improper testing or unauthorized repair, or (ii) to cosmetic items or defects which result from normal wear and tear under ordinary use, and do not affect the performance or use of the equipment or media. Such warranties shall not be enlarged, diminished, and no obligation or liability shall arise or grow out of, Seller's rendering of technical advice or service in connection with Buyer's order of the equipment furnished hereunder. As to the equipment not manufactured by Seller, at Buyer's request, Seller, to the extent permitted by Seller's contract with its supplier, shall assign to Buyer any rights Seller may have under warranty of the supplier thereof.

c) In respect of an item of equipment, the warranties set forth in subparagraph 8a above shall end:

i. All Products - Manufacturer's warranties apply.

The periods of time described in (i) and (ii) above, together with the period of any extended warranty, shall be collectively referred to as the "Warranty Period." Seller must be notified of any claims hereunder no later than thirty (30) days after the expiration of the Warranty Period.



(d) During the term of the Warranty Periods set forth in subparagraph 8c, Seller's sole and exclusive liability will be, at its expense, to either repair, replace or credit Buyer's account with respect to any nonconforming equipment returned to Seller. Equipment returned for repairs shall be packed securely by Buyer and shall be shipped prepaid, together with a statement setting forth the claimed defect to Seller's designated repair facility. Seller shall prepay and bear the cost of freight for shipments to Buyer of repaired or replaced equipment.

THE FOREGOING ARE IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, IN CONNECTION WITH FURNISHING THE GOODS AND SERVICES UNDER THIS ORDER INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER IMPLIED WARRANTY OBLIGATION ON THE PART OF SELLER, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF AUDIO, VIDEO OR DATA SIGNALS, INTERRUPTION OF BUSINESS, LOSS OF BUSINESS PROFIT OR SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGES IN ANY KIND OF NATURE WHATSOEVER.

9. PROPRIETARY RIGHTS AND CONFIDENTIALITY. (a) All confidential information, know-how programming, software, copyrighted materials, trademarks, trade secrets, documentation, planning drawings, specifications, test results, designs and patterns furnished or created by Seller or by Seller's agents or subcontractors (other than Buyer) and all property rights embodied therein are and shall remain the sole property of Seller and neither Buyer nor any other party shall have or acquire any title to or interest therein. (b) Buyer recognized and acknowledges that it may gain access to certain confidential, secret or proprietary information possessed by Seller (information) which is a valuable business asset of Seller and that disclosure or unauthorized use of the information would cause grave and irreparable injury to Seller. Buyer shall at all times, whether during the term of the Agreement or subsequent thereto, honor, maintain and protect the confidentiality of such information. Buyer shall not make any copies of any of the information nor use such information in any manner contrary to the purposes of this Agreement without prior written consent of Seller. Buyer will take appropriate action to restrict access to the information to those of its employees and agents who have actual need for such access in the course of their duties. (c) Buyer shall refrain from any reverse engineering, altering, modification, decompiling or disassembly of any software license terms. (d) This Agreement shall not be construed as granting any right or license, express or implied, except as set forth herein. The provisions of this Section 10 shall survive the performance, termination or cancellation of this Agreement.

10. INDEMNIFICATION.

a) Each party shall indemnify and hold harmless the other party, its shareholders, directors, officers, employees, agents, designees and assignees, or any of them from and against all losses, damages, liabilities, expenses, costs, claims, suits, demands, actions, causes of actions, proceedings, judgments, assessments, deficiencies and charges (collectively, "Damages") caused by, relating to or arising from the performance by such party of its obligations under this Agreement and Buyer shall also indemnify Seller without limiting the foregoing, for any such item caused by, relating to or arising from (a) the services which are received using the System, including any assertion that any such services involving copyright infringement, (b) any dispute between Buyer and any of its program distributors or other distributors or affiliates, (c) any dispute or claims involving the subscribers for Buyer's services, or (d) any assertion that Buyer has involved in, that Buyer's conduct or that Buyer's use of the System it involves, any unfair competition or violations of laws, rules or regulations, including without limitations, laws, rules or regulations pertaining to content.

b) In the event of a third-party claim, with respect to which a party is entitled to indemnification hereunder, a party (the "Indemnified Party") shall notify the other party (the "Indemnifying Party") in writing as soon as practicable, but in no event later than fifteen (15) days after receipt of such claim. The Indemnified Party's failure to provide such notice shall not preclude it from seeking indemnification hereunder unless such failure has materially prejudiced the Indemnifying Party's ability to defend such claim. The Indemnifying Party shall promptly defend such claim (with counsel of its own choosing) and the Indemnified Party shall cooperate with the Indemnifying Party in the defense of such claim including the settlement of the matter on the basis stipulated by the Indemnifying Party (with the Indemnifying Party being responsible for all costs and expenses of such settlement). If the Indemnifying Party within reasonable time after notice of a claim fails to defend the Indemnified Party, the Indemnified Party shall be entitled to undertake the defense, compromise or settlement of such claim at the expense of the Indemnifying Party. Upon the assumption of the defense of such claim, the Indemnifying party may settle compromise or defend as it sees fit.



11. PROPRIETARY RIGHTS INDEMNIFICATION. Seller will defend any suit or proceeding brought against Buyer to the extent that such suit or proceeding is based on a claim that the manufacture and sale of goods by Seller to Buyer hereunder constitute direct infringement of any valid United States patent and Seller shall pay all damages and costs award by final judgment (from which no appeal may be taken) against Buyer holding such goods do so infringe, on condition that Seller (i) is promptly informed and furnished a copy of each communication, notice or other actions relating to the alleged infringement, (ii) is given authority, information, and assistance necessary to defend or settle such suit or proceeding in such a manner as Seller shall determine and (iii) is given sole control of the defense (including the right to select counsel), and the sole right to compromise and settle such suit or proceeding; provided, however, that Seller's liability hereunder, if any, shall be strictly and solely limited to the amount of royalties, which would be payable in respect of revenue derived by Seller from Seller's sale to Buyer of such infringing goods, or subscriber revenue derived by Buyer therefrom or any royalty basis, other than as set forth above. Seller shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specifications or from a combination with, an addition to, or modification of goods manufactured and supplied by Seller after delivery by Seller, or from use of the goods or any part thereof in the practice of a method or process. If Seller has an indemnification obligation to Buyer therein, the manufacture or sale of goods supplied by Seller to Buyer is held to directly infringe any valid United States patent as set forth above, and Buyer is enjoined from using the same, or if Seller believe such infringement is likely, Seller will exert reasonable efforts, at its option and its expense, to procure for Buyer the right to use such goods free of any such liability for patent infringement or to replace or modify such goods with a non-infringing substitute otherwise complying substantially with the specification for goods, or (iii) upon return of the goods, refund the transportation costs and the purchase price, less any applicable depreciation or credit for use, of such goods. If the infringement is alleged prior to completion of delivery of the goods, Seller has the right to decline to make further shipments without being in breach of contract.

Seller has not been enjoined from selling such goods to Buyer, Seller may (at Seller's sole election), at Buyer's request, supply such goods to Buyer in which event Buyer shall be deemed to extend to Seller an indemnity of comparable scope to the hereinabove stated. A comparable indemnity as that set forth above shall also be deemed to be extended to Seller by Buyer if any suite or proceeding is brought against Seller based on a claim that the goods manufactured by Seller in compliance with Buyer's specifications infringe any valid United States patent.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR INFRINGEMENT OR THE LIKE OF PATENTS, TRADEMARKS, COPYRIGHTS, AND OTHER INTELLECTUAL PROPERTY RIGHTS, WHETHER DIRECT OR CONTRIBUTORY, AND IS IN LIEU OF ALL WARRANTIES EXPRESS, IMPLIED OR STATUTORY IN REGARD THERETO, INCLUDING WITHOUT LIMITATION, THE WARRANTY AGAINST INFRINGEMENT SPECIFIED IN THE UNIFORM COMMERCIAL CODE.

12. REMEDIES AND DAMAGES.

a) Where Buyer timely and rightfully rejects or revokes acceptance of goods and/or notifies Seller of a breach of warranty, Seller's sole and exclusive liability will be (at Seller's option) to repair, replace or credit Buyer account with respect to any nonconforming goods returned to Seller during the applicable warranty period set forth above, upon the following conditions. Goods returned shall be packed securely and shall be shipped prepaid, together with a statement setting forth the claimed defect. Goods may not be returned without written authorization and will be refused and returned freight collect to the sender. Authorized returns shall clearly indicate the RMA number on the mailing label. Returned goods shall be subject to examination by Seller. Any goods determined by Seller to be free of defect or otherwise conforming to the warranties hereunder shall be subject to a restocking and handling charge.

b) WHERE SELLER FAILS TO MAKE DELIVERY OR REPUDIATES OR BREACHES ANY OTHER PROVISIONS OF THE CONTRACT (OTHER THAN THE WARRANTY AGAINST PATENT INFRINGEMENT), INCLUDING, WITHOUT LIMITATION, SELLER'S OBLIGATIONS WITH RESPECT TO NONCONFORMING ITEMS, SELLER'S LIABILITY SHALL NOT EXCEED THE TOTAL CONTRACT PRICE SPECIFIED HEREIN OR COMPONENTS IN RESPECT OF WHICH EACH CLAIM IS MADE LESS THE PURCHASE PRICE ACTUALLY RECEIVED BY SELLER FOR ANY ITEMS DELIVERED AND ACCEPTED HEREUNDER.



c) IN NO EVENT WILL SELLER BE LIABLE TO ANYONE FOR SPECIAL, INCIDENTAL OR INCONSEQUENTIAL DAMAGES FOR BREACH OF ANY OF THE PROVISIONS OF THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, PROVISIONS REGARDING WARRANTIES, INDEMNITY AND PATENT INFRINGEMENT, SUCH EXCLUDED DAMAGES TO INCLUDE WITHOUT LIMITATION, COSTS OF REMOVAL AND REINSTALLATION OF ITEMS, LOSS OF GOODWILL, LOSS OF PROFITS OR LOSS OF USE.

13. **WAIVER.** In the event of any default or breach by Buyer, Seller has the right to refuse to make further shipment. Seller's failure to enforce at any time or for any period of time any of the provisions of this contract shall not constitute a waiver of such provisions or of the right of Seller to enforce each and every provision.

14. **GOVERNING LAW.** The validity, construction and performance of the Agreement and the transactions to which it relates shall be governed by the laws of the State of California without regard to conflict of laws principle. All actions, claims or legal proceedings in any way pertaining to the Agreement, or such transactions shall be commenced and maintained in any State or Federal court located in the Southern District of California and Buyer agrees to submit itself to the jurisdiction of the court.

15. **SEVERABILITY.** If any provision of the Agreement or the terms and conditions set forth herein is declared or found to be illegal, unenforceable or void, the parties shall negotiate in good faith to agree upon a substitute provision that is legal and enforceable and is as nearly as possible consistent with the intentions underlying the original provision. If the remainder of the Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent of the permitted law.

If any of these Terms of Sale is declared invalid by a court, agency, commission or other tribunal or authority having jurisdiction thereof, the applications of such provisions to parties or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term; so declared invalid or unenforceable shall be valid and shall be enforced to the fullest extent permitted by law and the rights and obligations of the parties shall be construed and enforced as though a valid commercially reasonable term consistent with the undertakings of the parties under the Seller has been substituted in place of the invalid provision.

16. **ASSIGNMENT.** This contract is binding upon and inures to the benefit of the parties hereto and successors and assigns of the entire business and goodwill of either Seller or Buyer or that part of the business of either used in the performance of the Agreement but will not be otherwise assignable except that the Seller has the right to assign the Agreement to an affiliate and Seller has the right to assign accounts receivable or the proceeds of the Agreement. Nothing in this Agreement shall inure to the benefit of or to be deemed to give any rights in any third party whether by operation or law otherwise.

17. **SURVIVAL.** Termination or expiration of the Agreement for any reason shall not release either from any liabilities or obligations set forth in the Agreement which: (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by nature of the rights or obligations set forth therein, might reasonably be expected to be intended to survive any such termination or expiration.

18. **NO THIRD PARTY BENEFIT.** Except as otherwise set forth in the Agreement, nothing therein is intended or shall be construed to confer upon or give to any person, firm, or corporation other than the parties hereto, and their respective successors and assigns, any remedy or claim by any person of the Agreement or any term, covenant or condition thereof or hereof, all of which shall be for sole and exclusive benefit of the parties of the Agreement.

19. **SET-OFF.** Buyer may not set-off any amount owing from Seller to Buyer against any amount liable to Buyer to Seller whether or not related to the Agreement.

20. **EXPORT RESTRICTIONS.** Buyer hereby undertakes to comply with the export laws and regulations of the United States and agrees that, without obtaining the necessary license or approval from the United States government, Buyer will not knowingly (i) export, directly or indirectly, any United States origin technical data or software acquired from Seller, or any direct product of that technical data, to any country for which the United States government or any agency thereof at the time of export requires an export license or other governmental approval; or (ii) disclose



any United States origin technical data or software acquired from Seller to any national of any country for which the United States government or any agency thereof requires an export license or other governmental approval.

21. CONSTRUCTION. The Agreement and the Exhibits thereto have been drafted jointly by the parties in the event of any ambiguities in the language hereof, there shall be no inference drawn in favor of or against either party.

22. CAPTIONS. The captions and headings in the Agreement and Exhibits thereto are inserted for convenience and reference only and in no way define or limit the scope or content of the Agreement and shall not affect the interpretation of its provisions.

23. MERGER. This Agreement constitutes the final written expression of all terms of the agreement relating to the transactions described on the pages hereof, and is a complete and exclusive statement of those terms. This Agreement supercedes all previous and contemporaneous communications, representations, promises or statements, either oral or written with respect to such transactions (including, without limitation, any terms proposed by Buyer) in such communications, representations, promises or statements, of any kind, made by any representative of Buyer or Seller, which are not stated herein shall not be binding on Seller. Acceptance by Buyer is limited to these terms. No additions or modifications of any printed provision of this contract will be binding upon Seller (and Seller hereby objects to and rejects the same) unless made in writing (referring specifically to this Agreement) and signed by an authorized officer of Seller. Neither commencement nor performance nor delivery shall be deemed or construed as an acceptance by Seller of Buyer's additional or different terms. No course of dealing or usage of trade or course of performance will be deemed relevant to explain or supplement any term expressed in this contract.

24. ADDITIONAL TERMS AND CONDITIONS FOR EXPORT ORDERS.

a) The prices quoted are EX WORKS (Incoterms 1990) our or manufacturer's factories in the United States and do not include freight charges, forwarding agent fees, export/import duties, wharfage fees, insurance, licenses, and the like, which will borne by Buyer.

b) A down payment of 25% is required with the purchase order. The balance is to be payable by wire or through an irrevocable Letter of Credit in English, confirmed at Buyer's expense by our U.S. bank. All bank charges in the Buyer's country as well as the Seller's country are to be paid by the Buyer.

c) The Terms for the Letter of Credit are included in the attached UCP 500 Irrevocable Documentary Credit Application. Any deviation from this form will be rejected.

d) If BXA-629P Form, Statement of Ultimate Consignee and Purchaser, is required, the original must be received before the application for export license can be submitted.

e) Any other documents will be at the Buyer's expense.

f) Additional wire transfer information:

Beneficiary:

TBC Integration, Inc.
30100 Town Center Drive, Suite O-444
Laguna Niguel, CA 92677