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Maintenance Services Agreement

This agreement ("Agreement") made this 20th day of September 2006 (the "Effective Date"), by and between NICE Systems Inc., a Delaware corporation, having its principal offices at 301 Route 17 North, 10<sup>th</sup> floor, Rutherford, NJ 07070 ("NICE") and the Monterey County Communications Department, having its principal offices at 1322 Natividad Road, Salinas, CA 93906 ("Customer").

WHEREAS, Customer has purchased from NICE certain equipment ("Equipment"), licenses to certain NICE proprietary software ("NICE Software") and licenses to third party software ("Third Party Software") (collectively, the "Products" and individually, each an "Individual Product"), as set forth on the List of Products on Exhibit A attached hereto ("List of Products"); and

WHEREAS, NICE and Customer wish to enter into an agreement for the provision of maintenance and additional services by NICE to Customer for the Products all as described in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and intending to be legally bound hereby, the parties hereby agree as follows:

**1. Scope of Services**

1.1 Customer shall purchase from NICE, and NICE shall provide to Customer, directly or through its agents or subcontractors, at the Customer installation site ("Site"), the maintenance services ("Maintenance Services") and the additional services ("Additional Services") set forth on the Service Level Agreement attached hereto as Exhibit B ("Service Level Agreement"), subject to the terms and conditions set forth in this Agreement and at the prices set forth on the Maintenance Services and Additional Services Price List attached hereto as Exhibit C ("Price List"). The Maintenance Services and the Additional Services are referred to herein collectively as the "Services."

1.2 The following services shall be deemed to be outside the scope of this Agreement and NICE shall not provide Maintenance Services for any of the following:

(a) Electrical work external to and not connected with any Products covered hereunder;

(b) Repairs that are impractical for NICE to perform due to the connection of any relevant Individual Products by mechanical or electrical means to another machine or device and/or the physical inaccessibility of such Individual Products;

(c) Maintenance of any server, hardware, equipment, alterations, attachments and/or other devices not furnished by NICE ("Non-NICE Hardware") excluding maintenance of Third Party Software performed in accordance with the terms of the license agreement for such Third Party Software; and

(d) Support for other devices connected to, or support for the connectivity of such devices to the same network or phone switch as the Products hereunder, if such devices were not included in the List of Products. Any problem resulting from the misuse, improper use, alteration, or damage of the Products;

(e) Any problem caused by modifications in any versions of the Products not made or authorized by NICE;

(f) Any problem resulting from programming other than the Products;

(g) Any problem resulting from the combination of the Products with such other programming or Non-NICE Hardware to the extent such combination has not been approved by NICE;

In the event that NICE attempts to diagnose or correct any of the problems described in Section 1.2, or diagnose and/or correct any problems with Non-NICE Hardware, such services shall be considered Additional Services and Customer shall pay for such Additional Services in accordance with the terms of this Agreement.

## **2. Responsibilities of NICE**

NICE shall provide the Maintenance Services and Additional Services for the List of Products in accordance with the Service Level Agreement and shall charge Customer the fees for such Services set forth on the Price List.

## **3. Responsibilities of Customer**

NICE's provision of the Services is contingent upon Customer's cooperation and performance of certain obligations. Accordingly, Customer shall, throughout the Term (as defined below), at no charge to NICE:

3.1 Maintain the Site in accordance with the requirements of NICE's specifications for the installation site as set forth on the applicable maintenance order or otherwise provided in writing to Customer ("Installation Site Specifications") and the instructions of NICE's maintenance personnel (including without limitation NICE employees, NICE certified technicians and/or NICE subcontractors) ("Maintenance Personnel"), including without limitation preparing the Site for any installation of new or upgraded or updated equipment, hardware and software, if any;

3.2 Perform the routine hardware preventive maintenance and cleaning described in the manuals and any documentation provided by NICE with the Products and any Individual Product ("Operating Manuals"), including without limitation cleaning air filters and DAT drives;

3.3 Provide the Maintenance Personnel with reasonable access to the Site as well as to the data relating to the operation of the Products to be maintained;

3.4 Operate the Products collectively and each Individual Product in accordance with the Instructions of the Maintenance Personnel and the recommendations and instructions appearing in the Operating Manuals;

3.5 Replace faulty or failed server hardware required for the Products that has not been furnished by NICE (the "Non-NICE Server");

3.6 Maintain the Non-NICE Server at full functionality status, as specified during the installation, including but not limited to the installation of the operating system, network connectivity, and installed devices, such as modems;

3.7 Perform Non-NICE Server backups, as specified by Nice;

3.8 Request Nice to provide Additional Services, if needed, to install and configure the Non-NICE Server to a functional status;

3.9 Perform administrative functions, including, without limitation, reloading agents, assigning access rights and creating recording schedules.

3.10 Not directly or indirectly, maintain, repair, modify or alter any Individual Product without the prior written approval of NICE, including without limitation not install or attempt to install software which interfaces with, writes to or otherwise alters any data files of an Individual Product (In such event, with respect to such Individual Product, at NICE's sole discretion and judgment all warranties, express, implied or statutory, may be revoked by NICE and be deemed waived by Customer);

3.11 At NICE's request, make available adequate storage facilities for spare parts, tools and other equipment that NICE wishes to store at the Site and provide the Maintenance Personnel, within reasonable proximity to each relevant Individual Product, with adequate working space and facilities, including without limitation access at Customer's cost to telephones that Maintenance Personnel may use to contact NICE service centers and offices;

3.12 assign a Customer Contact (as defined below in Exhibit B) to be the main liaison to the NICE personnel identified below on Exhibit B;

3.13 allow remote diagnostic access to the relevant Individual Products. In the event that VPN access is required to provide such remote access, the VPN shall be tested for compatibility with NICE's remote technology, and if such VPN not compatible, NICE and Customer shall find an acceptable alternate solution, at Customer's sole cost.; and

3.14 use its best efforts to conduct problem triage before reporting problems to NICE in accordance with the provisions set forth in the Service Level Agreement.

Notwithstanding the foregoing, if at any time Customer plans to use any Non-NICE Hardware in connection with the Products, Customer must seek NICE's prior written approval to use such Non-NICE Hardware. Customer's failure to seek such approval from NICE shall be deemed an immediate default under this Agreement allowing NICE to terminate this Agreement. NICE's approval of such Non-NICE Hardware shall in no way alter or affect any of Customer's responsibilities or obligations under this Agreement other than as provided for herein.

In addition, Customer shall be responsible for procuring, installing, and maintaining all Non-NICE Hardware necessary to operate the Products and obtain Services hereunder.

In the event Customer fails to meet any of its responsibilities (as set forth in this Section 3), then NICE's performance hereunder shall be excused.

#### 4. Relocation of Equipment

In addition to the foregoing responsibilities of Customer, Customer shall provide NICE with at least sixty (60) days prior written notice of its intention to move any or all of the Individual Products to a location within the Site or to a location other than the Site. NICE shall, within fourteen (14) days of its receipt of such notice, advise Customer in writing if such location is within the same NICE service area as the Site. If such location is not within the same NICE service area as the Site, Customer shall have the option to (a) receive Services from another NICE service center, or (b) pay any travel and other incidental costs incurred by NICE in providing the Services from the same NICE service center that provided said Services on the Effective Date hereof. The Maintenance Personnel shall supervise the dismantling and packing of the Products and shall inspect and reinstall the Products at the new location. Such services shall be billed to Customer as Additional Services. If, upon inspection following relocation and reinstallation, the Maintenance Personnel determine that any Individual Product is not in good operating condition as a result of causes beyond NICE's control, NICE shall endeavor to restore such Individual Product to good operating condition and shall bill Customer for all applicable additional labor, materials, parts and adjustments at the rates and prices for Additional Services. Notwithstanding the foregoing, NICE shall bear no responsibility for and incur no liability in connection with any Non-NICE Server or any Non-NICE Hardware used in connection with the Products or the installation thereof including Non-NICE Hardware approved by NICE in accordance with Section 3.

#### 5. Term of Agreement

5.1 This Agreement is effective as of the Effective Date and will continue in full force and effect for an initial term of one (1) year thereafter ("Initial Term"). Upon the expiration of the Initial Term, this Agreement will be extended automatically for additional periods of twelve (12) months (each a "Renewal Term") unless, at least ninety (90) days prior to the conclusion of the Initial Term or the then current Renewal Term, either party furnishes the other with a written notice of termination, which notice shall be effective at the conclusion of the then-current term. The Initial Term and any Renewal Terms are referred to herein collectively as the "Term."

*Auto Renewal*

5.2 In the event Customer violates any of its obligations under Section 3 hereof, or NICE has reason to believe that Customer has violated such obligations, NICE, at its sole option and at any time, may evaluate any and all Individual Products, their use and environment and, upon thirty (30) days prior written notice to Customer stating NICE's reasonable objections to continued maintenance of such Individual Products, may condition NICE's continued maintenance under this Agreement with respect to such Individual Products upon Customer's prior written agreement to: (i) pay revised prices and rates in respect of such Individual Products; or (ii) change such Individual Products, or modify the environment for and/or use of such Individual Products, or make such other modifications as are, in the opinion of NICE, necessary for the proper operation and maintenance of such Individual Products; provided that Customer shall pay NICE for any labor, materials, parts and adjustments deemed necessary by NICE at the fees and prices for Additional Services set forth on the Price List. In the event NICE makes changes to an Individual Product, discontinues an Individual Product, or ceases to make such Individual Product available to its customers generally, prices for Maintenance

Services for such Individual Product shall remain in effect to the end of the Initial Term or the then current Renewal Term only. Thereafter, NICE may change the cost of Maintenance Services for such Individual Product or refuse to maintain such Individual Product, in its sole discretion.

## **6. Fees for Services**

6.1 The prices and fees for the Services during the Initial Term are listed on the Price List. Prices and fees for a portion of a month will be prorated on the basis of a thirty (30) day month. NICE may, on or prior to the first day of any Renewal Term, update the list of prices and fees for the Services and provide Customer with a written copy of the updated price list, which such updated price list shall be deemed to be an amendment to the Price List and incorporated herein as of the first day of such Renewal Term.

6.2 Charges for the Maintenance Services are due and payable annually, in advance, on the Effective Date and each anniversary thereof. Additional Services will be billed on a monthly basis and such charges will be due and payable within thirty (30) days following the date of receipt of NICE's invoice.

## **7. Confidential Information and Non-Disclosure**

7.1 The term "Confidential Information" shall include all information provided by each party to the other party, or their affiliates, employees, officers, directors, agents or representatives, including without limitation the terms and conditions of this Agreement, the NICE Software, the Third Party Software, and any and all of a party's design specifications, drawings, written manuals, software programs, business plans, financial information, technical and marketing information and evaluations, service plans and customer information designated orally or in writing as confidential or otherwise which by its nature should be considered confidential. For purposes herein, a party disclosing information shall be deemed the "Disclosing Party" and a party receiving information shall be deemed the "Receiving Party." Confidential Information shall not include information which can be demonstrated: (a) to have been rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of said information to the Receiving Party ("Time of Disclosure"); (b) to have been in the public domain prior to the Time of Disclosure; (c) to have become part of the public domain after the Time of Disclosure by a publication or by any other means, except an unauthorized act or omission or breach of this Agreement on the part of the Receiving Party, or its employees; (d) to have been supplied to the Receiving Party after the Time of Disclosure without restriction by a third party who is under no obligation to the Disclosing Party to maintain such information in confidence; (e) to be required to be disclosed by law or court order, provided that the Receiving Party shall use best efforts to provide the Disclosing Party with prompt notice sufficient for the Disclosing Party to have a reasonable opportunity to prevent such disclosure and shall use best efforts to limit the information to be disclosed; or (f) to have been independently developed by the Receiving Party, provided that any persons developing same have not had access to Confidential Information and have written evidence demonstrating such independent development.

7.2 In consideration of the willingness of the Disclosing Party to disclose Confidential Information to the Receiving Party, the Receiving Party hereby agrees: (a) to use or disclose Confidential Information only for the purpose authorized in writing by the Disclosing Party; (b) to

use all reasonable precautions, including without limitation requiring any affiliates, employees, officers, directors, agents or representatives of the Receiving Party with access to Confidential Information of the Receiving Party's obligations under this Section to keep Confidential Information secret and to prevent its disclosure to third parties without the prior written consent of the Disclosing Party; (c) to refrain from copying or distributing such Confidential Information within the Receiving Party's own organization except on a limited "need to know" basis; and (d) to return all documents containing Confidential Information promptly upon the request of the Disclosing Party. In any event, Confidential Information shall be protected by the Receiving Party with the same degree of care as the Receiving Party uses for its own Confidential Information, but no less than a reasonable degree of care.

7.3 If the Receiving Party or any of its affiliates, employees, officers, directors, agents or representatives shall attempt to improperly use or knowingly disclose any of the Confidential Information, the Disclosing Party shall have the right, in addition to such other remedies which may be available to it, to injunctive relief enjoining such acts or attempts; it being acknowledged that legal remedies are inadequate.

#### **8. Ownership of Proprietary Data and Software**

Customer acknowledges and agrees that the license of any software to Customer is a limited right to use such software and does not constitute a sale of such software to Customer. All right, title and interest in and to all NICE Software, Third Party Software or any other proprietary software provided to Customer by NICE, and to all modifications or enhancements to said software, associated documentation, and other work product of NICE or a third party provided to Customer in connection with the Services provided hereunder including but not limited to any object code, source code, flow charts, documentation and any other materials developed under this Agreement and any modifications or enhancements thereto and all applicable patents, copyrights, trademarks and trade secrets and other intellectual property rights including translations, compilations, partial copies with modifications and derivative works are and shall remain the sole and exclusive property of NICE or the third party software manufacturer. Customer shall not assign, sublicense, transfer, pledge, lease, rent or share rights under any license agreement provided hereunder, unless expressly permitted under such license agreement. Customer shall maintain the software licensed hereunder in confidence, take reasonable steps to prevent unauthorized copying or disclosing, and treat the software licensed hereunder as Confidential Information.

#### **9. Warranty**

9.1 NICE represents to Customer that all Services provided to Customer hereunder will be performed in a workmanlike manner.

9.2 THE WARRANTY SET FORTH IN SECTION 9.1 IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY NICE UNDER THIS AGREEMENT. NICE EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE. NICE DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED. NICE'S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF NICE FOR DAMAGES

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ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT. EXCEPT FOR THE ABOVE LIMITED WARRANTY, THE ENTIRE RISK OF THE SERVICES IS WITH CUSTOMER.

**10. Limitation on Liability**

IN NO EVENT SHALL NICE BE LIABLE TO CUSTOMER, ITS EMPLOYEES, AGENTS OR ANY OTHER PERSONS FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING WITHOUT LIMITATION LOSS OF USE, LOSS OF OR DAMAGE TO RECORDS OR DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, REVENUE AND/OR PROFITS, SUSTAINED OR INCURRED REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING WITHOUT LIMITATION NEGLIGENCE, STRICT LIABILITY, INDEMNITY OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN AND REGARDLESS OF WHETHER NICE HAD RECEIVED NOTICE OR HAD BEEN ADVISED, OR KNEW OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. WITHOUT LIMITATION OF THE FOREGOING, NICE'S MAXIMUM LIABILITY FOR ANY AND ALL LOSSES OR DAMAGES (INCLUDING WITHOUT LIMITATION ANY LEGAL FEES OR EXPENSES) INCURRED BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED (A) IN RESPECT OF MAINTENANCE SERVICES, THE FEES FOR MAINTENANCE SERVICES, WITH RESPECT TO THE INDIVIDUAL PRODUCT GIVING RISE TO SUCH LIABILITY, ACTUALLY PAID TO NICE BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT CREATING SUCH LIABILITY; OR (B) IN RESPECT OF ADDITIONAL SERVICES, ALL AMOUNTS ACTUALLY PAID TO NICE BY CUSTOMER WITH RESPECT TO THE RELEVANT ADDITIONAL SERVICES GIVING RISE TO SUCH LIABILITY DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT CREATING SUCH LIABILITY. IN NO EVENT SHALL NICE BE LIABLE FOR ANY CLAIM THAT AROSE MORE THAN ONE (1) YEAR PRIOR TO THE INSTITUTION OF SUIT THEREON.

*Limitation  
on Liability*

**11. Termination by NICE**

11.1 Customer shall be deemed to be in default of this Agreement and NICE shall have the right to terminate this Agreement:

(a) Upon fifteen (15) days prior written notice in the event that Customer, or its employees or agents breaches any material provision of this Agreement, including without limitation the provisions regarding confidentiality and ownership;

(b) In the event Customer terminates or suspends its business; or

(c) In the event that Customer avails itself of or becomes subject to any bankruptcy proceeding under the Federal Bankruptcy Code relating to insolvency or the protection of creditors, and such proceeding is not dismissed within ninety (90) days from its commencement.

11.2 In addition to the right to cancel this Agreement pursuant to this Section, NICE shall have the right to reimbursement for its reasonable and proper cancellation charges, including

without limitation any applicable fees for Additional Services, and any other costs and expenses, incurred in connection with termination. In the event of termination under this Section, Customer shall continue to be obligated for any payments due under this Agreement, including without limitation any unpaid fees for Maintenance Services or Additional Services.

## **12. Termination by Customer**

12.1 Customer shall have the right to terminate this Agreement by providing to NICE a written "Notice of Termination for Default" in the event of and specifying one or more of the following causes or circumstances:

(a) Upon sixty (60) days prior written notice in the event that NICE, or its employees or agents breaches any material provision of this Agreement; or

(b) In the event that NICE avails itself of or becomes subject to any bankruptcy proceeding under the Federal Bankruptcy Code relating to insolvency or the protection of creditors, and such proceeding is not dismissed within ninety (90) days from its commencement.

## **13. Force Majeure**

NICE shall not be liable for, nor be deemed to be in default by reason of, any delay or failure in the performance of its tasks (or any part thereof) under this Agreement, when such delay or failure is caused, in whole or in part, by circumstances constituting force majeure, including without limitation, an act of god, war, riot, strike, fire, flood or failure or delay on the part of subcontractors, suppliers or carriers, change in governmental regulations, or any other cause or circumstance, direct or indirect, beyond NICE's reasonable control. Such failure or delay, to the extent it retards NICE's performance of the Services or any other undertaking under this Agreement, will extend the time for performing the same for as many days beyond the applicable performance date as is required to correct the effects of such force majeure event.

## **14. Personnel**

It is expressly agreed that NICE and Customer are acting hereunder as independent contractors and under no circumstances shall any of the employees of one party be deemed the employees of the other for any purpose. This Agreement shall not be construed as authority for either party to act for the other party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other except to the extent and for the purposes expressly provided for and set forth herein. Customer agrees during the Term of this Agreement and for a one (1) year period following the termination of this Agreement to refrain from directly or indirectly hiring or seeking to hire any employee, subcontractor or consultant of NICE, or in any other manner attempting, directly or indirectly to influence, induce, or encourage use, collect or disclose to any person, corporation or other entity any information concerning the names and addresses of NICE's employees, subcontractors, consultants or customers, except as required by law. For the avoidance of doubt, a general advertisement or similar general solicitation shall not be deemed to be a violation of this provision.

## **15. Miscellaneous**



15.1 Notices. All notices and requests in connection with this Agreement shall be given or made to the respective parties in writing and shall be deemed to be given as of the day such notice or request is deposited in the U.S. mails, postage pre-paid, certified or registered, return receipt requested or by signed facsimile transmission with proof of transmission, and addressed as follows:

NICE: NICE Systems Inc.  
301 Rt. 17N, 10<sup>th</sup> Floor  
Rutherford, NJ 07070  
Attention: Legal Department

Customer: Lynn Diebold  
Monterey County Communications Department  
1322 Natividad Road  
Salinas, CA 93906

Notice also may be delivered as indicated above to such other address as a party hereto designates in writing to the other party.

15.2 Billing Contact. For purposes of billing, all invoices to Customer should be directed to Customer's billing contact designated in the applicable order or, if no billing contact is designated in an applicable order, to:

Name: Lynn Diebold  
Title: Director of Communications  
Address: 1322 Natividad Road  
Salinas, CA 93906  
Telephone: 831-769-8880

15.3 Entire Agreement; Interpretation. This Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to such subject matter which may have been agreed or discussed by the parties prior to execution of this Agreement. This Agreement may not be modified or altered except by a written instrument duly executed by authorized representatives of each of the parties hereto. In the event of any conflict or difference between this Agreement and any order or other writing attached hereto and incorporated herein, or any other documentation provided to Customer by NICE, the terms and conditions of this Agreement shall prevail.

15.4 Assignment. Customer may not assign, without the prior written consent of NICE, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part. Customer agrees that NICE shall have the right to assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, as long as the assignee is capable of adequately performing the rights and duties so assigned, as provided for herein.

15.5 No Waiver. No delay or failure of either party in exercising any rights hereunder and no partial or single exercise thereof, shall be deemed to constitute a waiver of such rights or any other rights hereunder.

15.6 Enforceability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby and shall continue in full force and effect. To the extent that any provision hereof is deemed to be unenforceable under applicable law, it shall be replaced by an enforceable provision to the same or nearest possible equivalent effect.

15.7 Captions. The captions herein are for convenience of reference only and shall not limit, extend or otherwise affect the meaning hereof.

15.8 Governing Law. This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of California, except for its conflict of law principles. The parties hereby consent to jurisdiction and venue in the federal and state courts of the State of California. It is expressly agreed by the parties hereto that this Agreement shall not be governed by the provisions of the Convention on International Sale of Goods.

15.9 Sections 6, 7, 8, 9, 10 and 15 shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement, through their duly authorized representatives, on the date first set forth herein above.

NICE SYSTEMS INC.

By: Karen Durden

Name: Karen Durden

Title: Business Services Director

Date: 9-20-06

Customer

By: Lynn Diebold /bg

Name: Lynn Diebold

Title: Director, Emergency Comm.

Date: 9-29-06

**EXHIBIT A**  
**LIST OF PRODUCTS**

<u>Equipment Description</u>	<u>Me Nt</u>
<b>Total Annual Investment</b>	

Sales Order

429188

<u>Per</u>	<u>Amount</u>

<u>NICE Part #</u>	<u>Description</u>	<u>Qty</u>
PSBAS-120	120 Channel Public Safety Recording Bundle	1

Each NiceLog bundle for public safety includes the following items and features (see also Appendix A):

- ▶ Recording platform (Voice Logger) including NiceLog V8.0 SW
- ▶ Total of 17600 hours on line
- ▶ Hot-swappable redundant Power Supply
- ▶ On/Off hook detection
- ▶ DTMF detection (for analog telephony interface only)
- ▶ Beep tone insertion for analog interface Loggers
- ▶ Caller ID (for analog telephony interface only)
- ▶ NiceLog Media Library package
- ▶ Nice Monitoring (Enhanced SNMP Manager based on CA Unicenter) station license
- ▶ 3 x Scenario Replay user license
- ▶ 6 x LMR - seat (position) license (Last Message Replay)
- ▶ 3 x NICE Monitor user license
- ▶ Single Supervision license
- ▶ Single Administrator license
- ▶ Microsoft SQL-Server 2000 software + Microsoft SQL Client Access Licenses (CAL)
- ▶ User's manual CD

ANALOG8	Analog Coupler Card	15
G729A-120	G.729A, 8Kbps Compression up to 120 Channels	1
PSA/T1-2	Dual A/T1 Drives - 6000/9000 Hours Total Sequential	1
LOWZ1	600 Ohm impedance on Analog Inputs	5
PSHR17600R5N	17600 Hours with RAID 5	1
CA04	Open Lead Centronics Cable for 24 Channels - 10m	5

PSBAS-48	48 Channel Public Safety Recording Bundle	1
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Each NiceLog bundle for public safety includes the following items and features (see also Appendix A):

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- ▶ Recording platform (Voice Logger) including NiceLog V8.9 SW
- ▶ Total of 17600 hours on line
- ▶ Hot-swappable redundant Power Supply
- ▶ On/Off hook detection
- ▶ DTMF detection (for analog telephony interface only)
- ▶ Beep tone insertion for analog interface Loggers
- ▶ Caller ID (for analog telephony interface only)
- ▶ NiceLog Media Library package
- ▶ Nice Monitoring (Enhanced SNMP Manager based on CA Unicenter) station license
- ▶ 3 x Scenario Replay user license
- ▶ 5 x LMR - seat (position) license (Last Message Replay)
- ▶ 3 x NICE Monitor user license
- ▶ Single Supervision license
- ▶ Single Administrator license
- ▶ Microsoft SQL-Server 2000 software + Microsoft SQL Client Access Licenses (CAL)
- ▶ User's manual CD

ANALOG8	Analog Coupler Card	6
G729A-120	G.729A, 8Kbps Compression up to 120 Channels	1
PSAIT1-2	Dual AIT1 Drives - 6000/9000 Hours Total Sequential	1
LOWZ1	600 Ohm Impedance on Analog Inputs	5
PSHR17600R5N	17600 Hours with RAID 5	1
CAD4	Open Lead Centronics Cable for 24 Channels - 10m	5
<b>NICE CLS</b>		
PS-CLS-HW1	NiceCLS Server Hardware	1
NCLS89-SW-SRV	Nice CLS Server (SW Only)	1
NCLS89-REC	NiceCLS Server License (per 50 Seats)	4
NCLS89-TOTAL	Total Recording License (per 50 Seats)	4
CD-89-CVOX	Logger Activity Driver	1
NCLS89-QM-A	NiceCLS Software License for Universe (First 300)	1
CD-89-ANI/ALI	ANI/ALI Driver	1
<b>NICE STORAGE CENTER</b>		
PS-SC-HW1	NICE Storage Center Server Hardware	1
SC89-SRVR	Nice Storage Center Server - Basic Software	1
SC-89-CHANLIC	Nice Storage Center Channel License (per 50 Seats)	4
146GBX	146 Gb Hard drive	1
<b>NICE UNIVERSE</b>		
PS-WEB-HW1	NiceUniverse Web Server Hardware	1
NU89-WSRV	NiceUniverse Web Server Software (5 Users)	1
NU89-WEVP-A	NiceUniverse Application Suite	1
<b>Miscellaneous Items</b>		
PS-SUP-HW1	NICE Supervisor Workstation	1
NAP-RPTVLG-FST	NICE Reports Package for Public Safety	1
PS-RACK-HW1	NICE Rack with KVM Switch, Monitor and Cables	1

**EXHIBIT B**

**SERVICE LEVEL AGREEMENT  
Silver Level**

**Definitions and Requirements**

**Service Priorities**

**Priority 1 – Critical Failure, as defined below.**

<b>Response Category</b>	<b>Normal Response Times</b>
Support Coverage	Standard 8:00 a.m. - 5:00 p.m. Local Time, Monday through Friday Dispatch.
Phone Support	Standard 8:00 a.m. - 5:00 p.m. Local Time, Monday through Friday(24x7) Phone Support available, additional charges may apply
Call Back Response Time	(60) minutes after receipt of call from Customer's authorized representative
On-Site Response Time	(6) Hour On Site Response Times are in effect following the determination that on site support is required.

**Priority 2 – Major Problem, as defined below**

<b>Response Category</b>	<b>Normal Response Times</b>
Support Coverage	Standard 8:00 a.m. - 5:00 p.m. Local Time, Monday through Friday Dispatch
Phone Coverage	Standard 8:00 a.m. - 5:00 p.m. Local Time, Monday through Friday
Call Back Response Time	(120) minutes after receipt of call from Customer's authorized representative
On-Site Response Time	(24) hours On Site Response Times are in effect following the determination that on site support is required.

**Priority 3 – Product Anomaly**

<b>Response Category</b>	<b>Normal Response Times</b>
Support Coverage	Standard 8:00 a.m. - 5:00 p.m. Local Time, Monday through Friday Dispatch
Phone Coverage	Standard 8:00 a.m. - 5:00 p.m. Local Time, Monday through Friday
Call Back Response Time	(24) Hours after receipt of call from Customer's authorized representative
On-Site Response Time	(48) hours On Site Response Times are in effect following the determination that on site support is required.

**Priority 4 – System Inquiry, Planned Intervention or Request for Information**

<b>Response Category</b>	<b>Normal Response Times</b>
Support Coverage	Standard 8:00 a.m. - 5:00 p.m. Local Time, Monday through Friday Dispatch
Phone Coverage	Standard 8:00 a.m. - 5:00 p.m. Local Time, Monday through Friday
Call Back Response Time	(24) Hours after receipt of call from Customer's authorized representative
On-Site Response Time	(48) hours <i>On Site Response Times are in effect following the determination that on site support is required.</i>

## Priority Definitions

**Priority 1 - Critical Failure** – In a 100% recording environment, any failure of equipment, NICE software or communications to the Nice products which results in loss of recording channels or data, or if allowed to persist will result in such recording loss.

**Priority 2 – Major Problem** – Any problem resulting in loss of ability to retrieve calls or loss of replay functionality for two or more workstations.

**Priority 3 – Product Anomaly** - Any problem affecting one or more workstations which does not result in a loss of recording or replay but nevertheless results in diminished Product response or performance, for example if an administrator loses the ability to add or delete users.

**Priority 4 - System Inquiry, Planned Intervention or Request for information**

## Personnel

**Help Desk Agent (HDA)** – NICE individual responsible for opening trouble ticket and assigning problem ownership within the NICE Customer support network.

**Service Provider (SP)** – NICE certified individual responsible for problem ownership and resolution of technical and application problems.

**Director of Customer Support** – NICE individual responsible for all NICE Customer support activities in North America.

**Administrator** – Customer individual responsible for tape changes, adding and deleting users, defining user status and system access, etc.

**Customer Contact** – An individual employed or contracted by Customer who is designated by Customer as the Site liaison to the SP and HDA.

## NICE Systems Management contact information

Escalation Level	Contact Name	Contact number
Level 1	Maria Medel or Gary Akins maria.medel@nice.com; gary.akins@nice.com	720 264-4222 / 720 264-4217
Level 2	William Junior - VP of Customer Support william.junior@nice.com	720-264-4200
Level 3	Eran Gorev – President of the America's eran.gorev@nice.com	201 549-1888

**Standard Contact for Support – NICE Systems Help Desk 1-800-NICE-611 (1-800-642-3611)**

### **Maintenance Services**

#### **Maintenance During Normal Service Hours and Normal Response Times**

Maintenance Services shall be provided 8:00 a.m. - 5:00 p.m. per the time zone where the equipment resides, Monday through Friday, excluding NICE's published holidays ("Normal Service Hours"), and within the normal response times are set forth in the column entitled "Normal Response Times" in the charts above for the various priority levels of service ("Normal Response Times"). Phone support available 24\*7, additional charges may apply.

#### **Problem Reporting**

Customer will report technical problems with Equipment or NICE Software or Third Party Software to any NICE help desk agent (HDA). This problem will be logged for internal reporting and tracking. All problems will follow the pattern of communications outlined in the definitions and escalation provisions above.

The HDA will either resolve the problem over the telephone or refer the call to an engineer with specific expertise regarding the problem. The engineer will conduct remote diagnostics if necessary as well as continue to try to resolve the problem over the telephone.

The HDA will be responsible for resolution and reporting to the project manager.

The engineer will determine if, in NICE's sole discretion, an on-site visit is required by a NICE certified engineer to resolve the problem. In this event, the engineer will re-engage the HDA who will dispatch the closest SP. The SP will contact Customer and arrange the Site visit. Additional reporting activities are addressed below.

#### **On-Site Reporting**

All SPs will follow the procedure below.

- Upon arrival at the Customer Site in and go directly to the Customer Contact.
- When the SP is ready to leave, notify the Customer Contact.
- Provide verbal reports to the Customer Contact on all work completed and in progress by NICE.
- Sign out and leave with the Customer Contact a visit report of the work accomplished by NICE and the outstanding issues.
- Provide to the Customer Contact within one (1) week of the on-site visit a follow-up report on any outstanding issues.

The HDA will monitor the case and make all necessary updates and attachments.



NICE will provide monthly reports to Customer on all Priority 1 and Priority 2 problems upon resolution.

### **Escalating**

It is the responsibility of the SP to escalate unresolved problems in the time frames and manner described in the sections above in the Escalation chart.

### **Systems Checks and Trouble Shooting**

A schedule for daily and weekly checks will be established based upon such checks in the NiceLog and NiceCLS maintenance manual and the practices of Customer. Customer will assign internal responsibility for carrying out such preventive procedures.

Trouble shooting methodology is established in the above manuals, which are considered incorporated into this document by reference.

### **Repair or Replacement of Individual Products**

Repair or replacement (with either new or refurbished parts, at NICE's sole discretion) of Individual Products found to be faulty or unserviceable during the performance of the Maintenance Services described above.

### **Unscheduled Remedial Maintenance**

Unscheduled remedial maintenance, as requested in writing by Customer, in respect of those items that fail to operate properly; provided that to the extent any such remedial maintenance is requested by Customer and provided by NICE, and the reported problem is not due to a failure of the relevant Individual Product to function in accordance with the documentation for such Individual Product as provided to Customer by NICE ("Documentation"), then such remedial maintenance (including without limitation any on-site services) shall be considered Additional Services hereunder.

### **Installations and Upgrades or Updates**

The SP will be responsible for installations of new Equipment and NICE Software and Third Party Software, if any, as well as Equipment and NICE Software and Third Party Software upgrades or updates, if any, scheduled with Customer through the Customer Contact.

### **Spares**

NICE will assure the availability of spare parts through its direct service providers. Customers also will have the option of maintaining a critical spares list at the Site at an additional expense.

Critical spares kits may include:

- DAT drive
- Hard drive
- Power supply
- CPU board
- Audio card

### **Software Updates**

NICE's standard Maintenance Services shall include installation of only such software updates to the NICE Software which, in NICE's sole discretion, are necessary to ensure efficient operation of the Products ("NICE Software Updates"). NICE will provide Customer with a version of the NICE Software Update for Customer to review and authorize for installation. Upon such installation, Customer shall receive a copy of all written materials necessary to allow Customer to operate such NICE Software Updates. All NICE Software Updates are licensed for use solely on the Equipment on which the relevant NICE Software was first installed and shall, unless otherwise set forth herein, be governed by the terms and conditions of the software license for the NICE Software executed by both parties ("NICE Software License").

## **Additional Services**

### **Services Outside of Normal Service Hours or Normal Response Times**

Additional Service fees shall apply to services provided by NICE Maintenance Personnel to Customer outside of Normal Service Hours or Normal Response Times, as defined above.

### **Ineligible Products**

Additional Service fees shall apply for any maintenance provided by NICE for any and all Individual Products that are damaged by causes not caused directly by the gross negligence or intentional misconduct of NICE and external to the relevant Individual Product, including without limitation, damages to a Individual Product caused by: (i) neglect, mishandling, misuse and/or unauthorized repair by anyone other than NICE or a NICE certified technician; (ii) failure to maintain the Site in accordance with NICE's installation site specifications ("Installation Site Specifications"); (iii) relocation from the Site specified by the parties; (iv) use by anyone other than NICE or a NICE certified technician for purposes other than those for which it was designed, as described in the applicable documentation, Operating Manuals and/or specifications provided by NICE; (v) use by anyone other than NICE or a NICE certified technician of materials or supplies, including without limitation software and firmware programming, that do not meet NICE's specifications and instructions; (vi) use of the Products with any Non-NICE Hardware and/or (vii) an accident, transportation, improper cooling or humidity control, failure of telephone equipment or communication lines, failure or fluctuation of electrical power, other unusual physical or electrical stress and/or failure of interconnect equipment not provided by NICE or a NICE certified technician.

### **Modifications**

Additional Service fees shall apply for modifications, alterations, specification changes, engineering changes, enhancements, and other forms of extra work, including without limitation relocating the Products collectively or any Individual Product, and adding or removing accessories, wiring or devices.

### **Improperly Identified or Unidentified Individual Products**

Additional Service fees shall apply, at NICE's sole discretion, for maintenance provided to any Individual Product if the original identification marks on such Individual Product have been removed or altered.

### **Miscellaneous**

Additional Service fees shall apply for any other maintenance services that are not expressly included in Maintenance Services, as defined above, which shall be

performed by NICE only pursuant to a separate written agreement to be executed by the parties in the future.

**EXHIBIT C**

**NICE MAINTENANCE AND ADDITIONAL SERVICES PRICE LIST**

Maintenance Services and Additional Services will be billed to Customer according to the fee schedule below. Any services that are not included on the lists of Maintenance Services and Additional Services set forth on the Service Level Agreement attached hereto as Exhibit B shall be provided pursuant to a separate written agreement to be executed by the parties in the future.

Services	Price
Maintenance Services*	\$15,027 (YEAR 1 - Annual Contract Period) \$32,200 (YEAR 2+ - Annual Contract Period)
Additional Services**	\$165/hour M-F 8:00 -5:00 Local Time \$248/Hour Outside and Sat \$330/Hour Sun and Holiday
Travel Time***	\$100/hour

\* Maintenance Services include all services listed in the Maintenance Services section of the Service Level Agreement attached hereto as Exhibit B.

\*\* Additional Services include all services listed in the Additional Services section of the Service Level Agreement attached hereto as Exhibit B.

\*\*\* Fees for Travel Time with respect to Additional Services will be charged to Customer at the hourly rate for such Additional Services applicable to the day and hour in which the travel takes place. Travel expenses (including, without limitation, mileage, tolls, parking and other out-of-pocket costs) with respect to Additional Services will be charged as incurred.