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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 TERM OF CONTRACT.

The term of this contract shall be from the date of award through 30 September 1994, subject to the Government's option to renew in accordance with "Option to Extend Term of Contract" Clause in Section I.

H.2 FIRM PRICES.

The Government is in no way bound to purchase any services and/or materials beyond the term of contract set forth in H.1. The additional periods and firm prices set forth in Section B are for the option provision if the Government chooses to exercise the option.

H.3 ORDERING PERIODS

a. The hardware, software, installation, technical engineering services and training CLINs, if required, will be ordered for 60 months from date of award in accordance with the Option to Extend Term of Contract, Section I.

b. The consumable supplies (rechargeable batteries that are unique to Intermec's items) will be ordered, if required, for 60 months from date of award in accordance with the Option to Extend Term of Contract, Section I.

c. The maintenance and documentation CLINs, if required, will be ordered from date of award through the life of the contract (120 months) in accordance with the Option to Extend Term of Contract, Section I.

d. The Program Management, if required, will be ordered from date of award through the life of the contract (120 months) in accordance with the Option to Extend Term of Contract, Section I.

H.4 OPTION TO EXTEND/REDUCE THE PRINCIPAL PERIOD OF MAINTENANCE (PPM).

The Government may extend or reduce the PPM by the consecutive hours per day stated elsewhere in the contract and at the prices specified therein. The Contracting Officer may exercise the option, at any time within the term of the contract, by giving thirty (30) days written notice to the Contractor.

H.5 WARRANTY.

a. The Contractor will furnish all maintenance in accordance with C.8 from initial delivery through expiration of the warranty.

b. All replaced parts during the warranty period shall become the property of the Contractor.

c. Prior to the expiration of the warranty period, whenever equipment is shipped for mechanical replacement purposes, the Contractor shall bear all costs, including, but not limited to, costs of packing, transportation, rigging, drayage and insurance.

d. The warranty shall not apply to maintenance required due to the fault or negligence of the Government.

H.6 INSURANCE.

In accordance with the clause "Insurance - Work on a Government Installation (Sep 1989)(FAR 52.228.5)" and this schedule, the Contractor shall acquire and maintain during the entire performance period of this contract insurance of at least the following kinds and minimum amounts set forth below:

a. Workman's Compensation and Employer's Liability Insurance in accordance with the amounts specified by the laws of the states in which the work is to be performed under this contract. In the absence of such state laws, an amount of \$100,000 shall be required and maintained.

b. General Liability Insurance: Bodily injury liability in the minimum amount of \$500,000 per occurrence.

c. Automobile Liability Insurance in the amount of: \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.

H.7 EXEMPTION FROM THE SERVICE CONTRACT ACT OF 1965.

This contract has been determined to be exempt from the Service Contract Act of 1965 in accordance with criteria set forth in 29 CFR Part 4.123 (e)(1)(i). If the Department of Labor determines at a later date that the exemption is inapplicable, the contract will become subject to the Service Contract Act effective the date of the DOL determination and corrective procedures as outlined in 29 CFR Part 4.5(c)(2) will be followed to modify the contract accordingly.

H.8 ENGINEERING CHANGES.

a. The contractor must propose commercially announced technological improvements. In addition, the contractor is encouraged to propose, independently, engineering changes to equipment, software, or other contract requirements irrespective of commercial announcement. These changes may be proposed for reasons of immediate economy, or to improve performance, to save energy, personnel, or to meet increased data processing requirements, and so reduce project life cycle costs. After reviewing the contractor's suggested changes, the Government at its discretion may ask for a price proposal. If the Government agrees to the technical and price proposals of the contractor, changes shall be processed as modifications to the contract.

b. This clause applies only to those proposed changes initiated by the contractor and identified as a proposal submitted pursuant to the provisions of this clause. As a minimum, the following information shall be submitted by the contractor with each proposal:

(1) A description, in detail, of the difference between the existing contract items and/or services and those proposed, and a specific analysis of the comparative advantages and disadvantages of each.

(2) Specific items or services contained in the contract which must be changed if the proposal is adopted, e.g., if new equipment is offered to replace currently installed, will the old be exchanged for the new, and on what basis.

(3) A statement as to how the changes will affect performance, costs, etc., if adopted.

(4) An evaluation of the effects the change would have on Life Cycle Costs such as Government-Furnished Property (GFP), maintenance, personnel, site modification, energy, etc.

(5) An analysis of a time frame in which the change should be instituted so as to obtain maximum benefit to the Government for the remainder of the contract.

c. The decision of the contracting officer as to the acceptance of any such proposal under this contract shall be final and not subject to the "Disputes" clause of this contract.

d. Acceptance of any engineering change proposal submitted pursuant to this clause shall be made by issuance of a written modification to this contract. Unless and until such a modification is issued to the contractor, the contractor remains obligated to perform in accordance with the terms of the existing contract.

e. If a change proposal submitted pursuant to this clause is accepted and applied to this contract, either the contractor or the Government shall be entitled to an equitable adjustment in the contract price. When the cost of performance of this contract is either increased or decreased as a result of the change, the equitable adjustment increasing or decreasing the contract price shall be in accordance with the "changes" clause rather than under this clause but the resulting contract modification shall state that it is made pursuant to this clause. In those cases when the entitlement to equitable adjustment is essentially equal between the parties there may be no set increase or decrease in the contract amount.

f. If the Army asks for a price proposal on the Engineering Change submitted by the contractor under the provisions of this clause, the Army agrees to reimburse the contractor for his reasonable actual costs in formulating both the technical and price proposals.

H.9 MOVEMENT OF EQUIPMENT.

a. The Government reserves the right to relocate the equipment provided under this contract to an installation other than the one for which the initial award was written. In the event that such a contingency develops, the Government will give the Contractor not less than thirty (30) days written notice of its intention to move the equipment. Maintenance at any geographical area outside a 100 mile radius of the initial installation shall be a matter for equitable adjustment.

b. Maintenance charges shall be suspended on the day the dismantling of the equipment in preparation for shipment is started. These charges shall be reinstated on the day following the first day the equipment is in place and in good operating condition at the new location.

c. Shipment to the new installation site shall be made by the Government. The Contractor shall provide any necessary packing, unpacking, and placement. The Contractor shall provide the services for the disassembling, installing, testing, and reconfiguring diagnostics.

d. Except in an emergency, equipment shall not be moved from the general location in which installed unless the Contractor has been notified that a move is to be made.

H.10 RISK OF LOSS OR DAMAGE.

The Government is relieved from all risks of loss or damage to purchased equipment during periods of transportation, installation, and prior to delivery of the equipment, except when loss or damage is due to the negligence of the Government.

H.11 TERM OF USE.

The terms of use shall permit the Government to use the equipment 24 hours per day, 7 days per week.

H.12 ALTERATIONS AND ATTACHMENTS.

H.12.1 The Government or its duly authorized agent(s) may make alterations or install attachments to the equipment at the Government's expense, provided that a safety hazard is not thereby created. The contractor will be notified at least thirty (30) days in advance of any such alterations or attachments.

H.12.2 Any reprogramming required to accommodate such alterations and/or attachments will be accomplished at the Government's expense.

H.12.3 If alterations made by the Government increase the cost of maintenance, an equitable adjustment, as applicable, shall be made for each installation.

H.13 SPECIAL PROVISIONS APPLICABLE TO MAINTENANCE.

H.13.1 DISCONTINUANCE OF MAINTENANCE.

The Government may, by written notice, discontinue maintenance under this contract, at no cost to the Government, thirty (30) days after receipt by the Contractor of such notice, or sooner if mutually agreeable to the parties.

H.13.2 NONCHARGEABLE MAINTENANCE ITEMS.

There shall be no additional maintenance charges for:

- a. Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after a service call has commenced.
- b. Remedial maintenance rendered in response to a Government request for service started within and completed outside the selected Official Operating Hours.
- c. Remedial maintenance occasioned by the recurrence of the same malfunction repaired in the preceding 48 hour period.

H.14 NEW, USED AND/OR RECONDITIONED EQUIPMENT.

a. As consistent with the contractor's proposal, new, used, and/or reconditioned equipment may be provided under this contract. Used or reconditioned equipment must be identified as such. All used equipment shall be reconditioned and warranted as equivalent to new. A certificate of equipment maintainability under the Original Equipment Manufacturer's (OEM) Standard Maintenance Agreement shall be furnished for all used or reconditioned equipment.

b. Used and/or reconditioned equipment delivered under this contract shall

be free of defects including, but not limited to, dirt; rust; cracked, chipped, or peeling paint; mismatched exterior surfaces; broken or missing glass panels; burns; stains; scratches; and dents.

c. If the contractor indicates that "only new" equipment shall be delivered, used equipment shall not be delivered for any reason.

H.15 CURRENT TECHNOLOGY SUBSTITUTIONS/ADDITIONS.

a. The Contractor, upon commercial announcement of new components that can be technically and economically substituted or added for/to items listed in Section B of this contract, shall offer said items for addition or substitution. These item(s) may be accepted at the option of the Government, provided at least equivalent performance with economic benefits or significantly enhanced performance at no additional cost per unit of capability accrues to the Government. The transaction shall be accomplished by means of a bilateral modification to the contract and shall be negotiated in accordance with FAR 52.243-1 Clause, "Changes-Fixed Price," contained in Section I, of this contract, but in no event will the prices for the particular item be in excess of the GSA automated equipment schedule price or the price charged to the contractor's most favored commercial customer, whichever is less. The offer of component substitution or addition shall be supported by the information required by paragraph b(1) through (5) of the Engineering Changes Clause contained in Section H, of this contract. The Contractor shall be reimbursed the reasonable cost associated with preparation of a proposal for component substitution or addition described above provided that:

(1) The Contracting Officer deems such proposal acceptable for adoption under the provisions of this clause; and

(2) The Contractor requests reimbursement separately or as an element of the proposal.

b. The decision as to the acceptability of such a proposal shall be at the sole and exclusive discretion of the Contracting Officer and not subject to the disputes article of this contract.

c. If a substitution is made under this clause, the contractual unit price will be used as the basis of any unit of capability analysis. If an item goes out of production and the Government does not accept a substitution under this clause, the contractor shall be required to deliver the contracted item, at the contracted price, or be held for possible default action.

H.16 NOTICE TO PROCEED

Notwithstanding FAR Clause 52.233-3 entitled "Protest After Award," the contractor will take no actions on this contract, or incur any costs, without the contracting officer's official notice to proceed. This notice to proceed will generally be issued upon expiration of time allowed for receipt of protests after award. All delivery dates based upon "days after contract award" will be interpreted to be "days after receipt of notice to proceed."

H.17 ORDERING PROCEDURES.

a. Each order issued hereunder is subject to the terms and conditions of this contract. The contract shall control in the event of a conflict between an order and the contract. Each order shall be composed in accordance with the contract and the ordering guide.

b. Each order issued under this contract shall be forwarded to the appropriate Service/Agency Central Order Processing Office (COPO) for verification and validation.

c. The COPO will assign a unique control number (UCN) as designated by PM AIT to each delivery order for tracking purposes only.

d. The COPOs will forward the order to the Contractor, PM AIT and CAO stated on the face page of the contract. Also a copy of the order will be forwarded to the Payment Office stated in Section G of the contract. The remaining distribution shall be made by the ordering office and in accordance with their procedures after the COPO's validation.

e. Issuance of an order shall be defined as when the Contractor has received the order from a COPO.

H.18 OTHER DIRECT COSTS.

Other direct costs (ODC) shall only include those items/materials necessary to the completion of the service ordered in accordance with the Technical Engineering Services in Section C. If ODCs exceed the simplified acquisition dollar limit of \$50,000, the ODCs shall be procured separately from this contract.

H.19 OTHER FEDERAL AGENCY UTILIZATION.

a. Other Federal agencies shall be allowed to utilize the contract on a non-mandatory basis to satisfy requirement for hardware, software, documentation, installation, training, technical engineering services, consumable supplies and maintenance in accordance with H.3, Ordering Periods. The total other agency requirement satisfied under the contract shall not exceed ten percent (10%) of the total estimated contract value over the life of the contract as determined at the time of contract award.

b. The total use of the contract over its life by any individual agency shall not exceed two percent (2%) of the total estimated contract value. The maximum order limitation for individual order by other Federal Agencies shall be one million dollars (\$1,000,000).

H.20 TRAVEL EXPENSES.

All Travel expenses, including those subject to per diem rates, shall be separately reimbursed at cost. However, reimbursement shall not exceed the rates then authorized for Government personnel in the Federal Joint Travel Regulations or other applicable regulations. Travel expenses and per diem shall be reimbursed when ordered.

H.21 SOFTWARE LICENSE AGREEMENT.

a. All software and related documentation delivered under this contract shall conform to the terms of this LICENSE.

b. This license incorporates and interrelates with DFARS clause 252.227-7013, "Rights in Technical Data and Computer Software." Unless otherwise stated in this contract, the Government takes "Restricted Rights" in "commercial computer software" pursuant to paragraph (c)(1)(ii) of the clause, and "Limited Rights" in related "computer software documentation" pursuant to paragraph (b)(3) of the clause.

c. The license shall be in the name of the U.S. Government.

- d. The Government has a nonexclusive right to use and display the software package (hereinafter the "Software") on a single computer (i.e. with a single CPU) at a single location.
- e. The U.S. Government owns the magnetic or other physical media on which the software is originally or subsequently recorded or fixed, but the contractor and its subcontractors retain ownership of the software recorded on the original disk(s) and all subsequent copies of the software, regardless of the form or media. This license is not a sale of the original software or any copy.
- f. The license is fully paid up. The Government may retain the software as delivered forever, regardless of the contract term, with no additional payment for use of the software under the terms of the License.
- g. The Government shall not sell or transfer this license to any non-Government licensee.
- h. The Government, including support contractors or subcontractors, may use the software purchased under this contract on any other computer to which the software is transferred. The software may be transferred to any other computer at no additional cost to the Government.
- i. Software provided under this contract shall not be copy-protected, except that the Contractor may deliver software which is physically protected from overwriting (e.g., a write-protect tab).
- j. The Government has the right to modify the computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.
- k. One copy of the software may be made for backup purposes only. The copyright notices will be reproduced and included in the backup copy.

H.22 SECURITY REQUIREMENTS

Contractor personnel performing on delivery orders awarded under this contract, when required by the delivery order, must obtain or hold a final SECRET Security Clearance in accordance with the DD254 at Section J, Attachment 9. The contractor must comply with all applicable Federal, DoD, Department of the Army, and PEO STAMIS Security Regulations and procedures during performance of this contract. The contractor site(s) must also have a SECRET Security Clearance.

H.23 YEAR 2000 WARRANTY - COMMERCIAL SUPPLY ITEMS

- a. The contractor warrants that each hardware, software, and firmware product delivered under this contract shall accurately process date and date-related data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by the contractor, provided that all products (e.g. hardware, software, firmware) used in combination with such contract products properly exchange date and date-related data with such contract products. If the contract requires that specific contract products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those contract products as a system.
- b. The duration of this warranty and the remedies available to the

Government for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the contractor's standard commercial warranty or warranties contained in this contract. However, notwithstanding any provision to the contrary in such commercial warranty or contract warranties, or in the absence of any such warranty or warranty provisions: (i) the remedies available to the Government under this warranty shall include, at the option of the Government, repair or replacement of any non-compliant product, and reimbursement for correction of damage to other system components caused by a non-compliant product, provided the non-compliance is discovered and made known to the contractor in writing within ninety (90) days after the end of the Year 2000 warranty period, and; (ii) the warranty shall begin no later than acceptance and end no earlier than 31 March 2000.