

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made as of the ___ day of _____, 201___, by and between TANTALUS SYSTEMS INC., with its principal place of business at 1121 Situs Court, Situs II, Suite 190, Raleigh NC 27606 (“**Tantalus**”) and _____, with its principal place of business at _____ (the “**Customer**”).

RECITALS:

- A. Tantalus is in the business of providing Smart Grid communications products for advanced metering, demand response and distribution automation.
- B. Customer wishes to purchase from Tantalus certain Products and/or Services.
- C. It is intended by the parties that the provisions of this Agreement shall govern the sale by Tantalus of Products and/or Services to Customer during the term of this Agreement.

In consideration of the mutual promises set out below, the adequacy and receipt of which is hereby acknowledged by each party, the parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings indicated, such meanings to be applicable to both the singular and plural forms of the terms defined:

- (a) “**Additional Services**” means such additional services that Tantalus may provide to Customer from time to time including without limitation the additional services described in sections 3.2 and 3.3 herein;
- (b) “**Affiliate**” means when used with respect to one of the parties hereto, any legal entity or entities directly or indirectly controlling, controlled by, or under common control with a party to this Agreement. The term “**control**” as used in the immediately preceding sentence means the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares, partnership interests, membership shares or similar evidences of ownership of such controlled entity;
- (c) “**Business Day**” means any day that is not a Saturday, Sunday or a “holiday” as defined by the relevant law and policies;
- (d) “**Confidential Information**” of a party is information (in tangible or intangible form) that it owns or has license for, and discloses to the other party, that: (i) derives economic value, actual or potential, from not being generally known to, and is not readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its confidentiality; and includes technical information (such as formulas, data, programs, methods, techniques and processes), business information (such as information about finances, customers and potential customers, marketing plans and business strategies), and the terms of this Agreement; but Confidential Information

does not include information that the receiving party establishes: (i) it developed independently; or (ii) was generally available to the public through no fault of its own; or (iii) was possessed by it before its receipt thereof from disclosing party; or (iv) was acquired from a third party without the breach of any confidentiality obligation; or (v) five (5) years after its disclosure, does not constitute a trade secret under relevant laws and policies. Confidential Information shall also include all notes, copies and summaries, in any media, and recollections of a receiving party of Confidential Information:

- (e) **“Destination”** means Customer’s designated destination point for the delivery of Products;
- (f) **“Dispute”** means any dispute, controversy, difference or claim, arising under or in connection with this Agreement, including its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims.
- (g) **“Force Majeure”** is an event that is beyond the reasonable control of a party, including:
 - (i) physical disasters such as floods, earthquakes, fire, ice storms, epidemics, quarantine, riots, war (declared or undeclared), terrorism; and
 - (ii) transportation shortages, materials and components shortages, will result in the forgiveness of failure to timely perform up to maximum of six (6) months after the beginning of the Force Majeure, but does not eliminate the necessity of a party fully performing the contract as rapidly as reasonably possible;
- (h) **“Initial Deployment Services”** means the initial deployment support services provided by Tantalus to Customer to facilitate proper network operations of Products during initial deployment including, without limitation, the provision of: (i) project management services; (ii) installation, configuration and systems integration of the Products; and (iii) initial training.
- (i) **“Products”**(or unit thereof) means the products manufactured by or for Tantalus as specified on the price list that Tantalus provides from time to time and includes, without limitation: (i) all software and documentation related thereto; and (ii) the Initial Deployment Services;
- (j) **“Proprietary Rights”** means all patent rights, copyrights, trademarks, tradenames, know-how, trade secrets and other intellectual property rights which are protected by laws and regulations of any relevant countries;
- (k) **“Purchase Orders”** means purchase orders issued, from time to time, by Customer to Tantalus pursuant to which Customer shall purchase Products in accordance with the terms of this Agreement, as such purchase orders may be modified in accordance with the terms of this Agreement;
- (l) **“Shipping Point”** means the designated depot or depots in North America selected by Tantalus as its shipping point for Product; and
- (m) **“Specifications”** means the design, performance and regulatory requirements for each Product, as such may be amended from time to time by Tantalus.

1.2 Interpretation Not Affected by Headings, etc. The division of this Agreement into sections and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

1.3 Number, etc. Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders.

1.4 Date For Any Action. In the event that any date on which any action is required to be taken hereunder by any of the parties hereto is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

1.5 Construction. In this Agreement, unless otherwise indicated:

- (a) the terms “this Agreement”, “hereof”, “herein”, “hereunder” and “hereby” and similar expressions refer to this Agreement (including the schedules hereto), as amended or supplemented from time to time pursuant to the applicable provisions hereof, and not to any particular section or other portion hereof;
- (b) the words “include”, “including” or “in particular”, when following any general term or statement, shall not be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (c) time is of the essence; and
- (d) references to a “party” or “parties” are references to a party or parties to this Agreement.

1.6 Authorship. Authorship of this Agreement will have no bearing on the construction of any terms hereof or ambiguities thereof.

ARTICLE 2 TERMS OF PURCHASE AND SALE

2.1 Purchase Orders. Customer may purchase Products and/or Additional Services from Tantalus by issuing properly authorized Purchase Orders to Tantalus. Each Product may have an economic order quantity, meaning that no Purchase Order may be placed for a quantity of Products which is less than the minimum number of units specified on the then current Tantalus price list and designated as the “economic order quantity”. Each Purchase Order issued by Customer shall have a lead-time of at least 120 days. Lead-time means the time extending from the date the Purchase Order is received by Tantalus to the specified delivery date. Each Purchase Order shall reference this Agreement and shall state,

- (a) if for Products: Product description, quantity of Products ordered, part number, desired delivery date and Destination, method of shipment, unit price for each unit ordered and total purchase price of the Products; and
- (b) if for Additional Services: the nature of the Additional Services ordered, the relevant fee for each Additional Service ordered and the total fees for all Additional Services.

The pre-printed terms and conditions of any Purchase Order, order acknowledgement or other form of document of Customer or Tantalus shall not apply. In the event of any inconsistency or conflict between

any terms of a Purchase Order, order confirmation, invoice or any other commercial form used by the parties and this Agreement, the terms of this Agreement shall govern. No oral, electronic, or written additional or different provisions proposed by either party in any acceptance, confirmation, or acknowledgment shall apply. Purchase Orders, once accepted, may not be cancelled. Purchase Orders, once accepted, may not be rescheduled or otherwise modified except with the prior written consent of Tantalus, acting in its sole discretion.

2.2 Acceptance or Rejection of Purchase Orders. Tantalus will notify Customer of its acceptance or rejection of such Purchase Order as soon as practicable and, in any event, within fifteen (15) business days following receipt of Purchase Order. Notice of acceptance shall include confirmation of requested quantities, delivery dates and prices consistent with the terms of this Agreement. If Tantalus fails to so notify Customer within the aforementioned time frame, such Purchase Order will be deemed to be rejected.

2.3 Pricing. The prices for Products and Additional Services sold by Tantalus to Customer shall be as set forth on Tantalus' then current price list and shall be fixed for the period set forth therein. In addition, Tantalus shall bear the costs and charges to ensure Products purchased by Customer are cleared for importation into the United States, if applicable, and delivered to the Shipping Point. Prices are otherwise exclusive of all federal, state, municipal or other governmental use, sales, value-added taxes, occupational or other taxes, duties and surcharges now in force or enacted in the future.

2.4 Price Changes. Tantalus reserves the right, in its sole discretion, to change the prices applicable to the Products and/or Additional Services sold by Tantalus to Customer on thirty (30) days prior written notice to Customer. Notwithstanding the foregoing, any Products and/or Additional Services ordered by Customer prior to the effective date of such price change shall receive the benefit of the new price if such is lower and otherwise shall not be changed.

2.5 Credit Limit. Customer's credit limit will be set by Tantalus, in its sole discretion, from time to time. Without prejudice to Tantalus' other rights and remedies, if Customer fails to meet Tantalus' credit terms or exceeds its credit limit, Customer agrees to either:

- (a) pay for Products ordered from Tantalus prior to shipment by means of a wire transfer drawn on a major clearing bank reasonably acceptable to Tantalus and transferred to Tantalus' bank;
- (b) issue an irrevocable Letter of Credit precisely pursuant to Tantalus' instructions for the total amount of Products ordered. All bank and other charges associated with the Letter of Credit are the sole responsibility of Customer; or
- (c) pay for the goods by such other method as may be mutually agreed upon by both parties in writing.

2.6 Payment.

- (a) Customer agrees to pay an advance payment (the "**Deposit**") equal to twenty-five percent (25%) of the total purchase price of the Products and/or Additional Services specified on each Purchase Order. The Deposit will be due and payable, notwithstanding the absence of the applicable Tantalus' invoice, within ten (10) days of the date of the Tantalus order acknowledgement issued in connection with an accepted Purchase Order. Failure to pay the Deposit by such due date shall result in the cancellation of the Purchase Order by

Tantalus, without requirement for any further action, or notice to Customer, by Tantalus. Notwithstanding the foregoing, if Customer places a single blanket Purchase Order that is at least 12 months in duration or represents greater than thirty percent (30%) of the total customer base, the Deposit amount will be reduced to ten percent (10%) on that Purchase Order and subsequent Purchase Orders that are also at least 12 months in duration or represent greater than thirty percent (30%) of the total customer base.

- (b) Tantalus shall invoice Customer for Products purchased upon delivery of such Products to Customer at the Shipping Point. Amounts paid under section 2.6 (a) will be reflected as a credit to the total purchase price due and owing upon delivery completion of the total Purchase Order. Payment terms are net thirty (30) days from date of Tantalus's invoice. All payments shall be in U.S. dollars, unless a different currency is quoted by Tantalus. In addition to any other remedies Tantalus may have for late payments, Customer will be charged interest at 1½% per month (equivalent to an annual rate of interest of 18%), payable monthly. Payments will be applied first to interest payable and then principal owing. Tantalus may modify the preceding payment terms if, in its reasonable opinion, the payment record or financial condition of Customer so justifies.

2.7 Delivery/Title/Risk of Loss. Tantalus shall deliver the Products to Customer at the Shipping Point (cleared for export, if applicable) and title (other than title to licensed software which shall remain with Tantalus) and risk of loss of Products shall pass from Tantalus to Customer at the Shipping Point. If the Shipping Point and Destination are not the same, Customer shall be responsible for and shall pay all transportation and insurance costs for Products from the Shipping Point to the Destination, provided however that upon request by Customer, Tantalus shall make the arrangements for such transportation and insurance and will invoice Customer for reimbursement at cost. The payment terms described in Section 2.6 shall apply to such invoices, *mutatis, mutandis*. Delivery dates are approximate only. Tantalus shall notify Customer in writing, if Tantalus has knowledge of any event that is reasonably likely to delay any specified delivery date or change any specified delivery date.

2.8 Insurance. During all times in which Customer has possession of Products for which Tantalus has not received payment in full, Customer shall ensure that comprehensive general liability insurance with limits at least equal to the total value of all such Products is obtained and, upon request, provide Tantalus with a certificate evidencing such coverage.

2.9 Product Changes. Tantalus reserves the right from time to time in its sole discretion, without incurring any liability to Customer with respect to any previously placed Purchase Order, to modify, change, discontinue or to limit its production of any Product at any time; to allocate, terminate or limit deliveries of any Product in time of shortage; to alter the design or construction of any Product and to add new or additional products to the "Products".

2.10 No Resell. Customer acknowledges and agrees that it has no rights to market and resell the Products. The purchase and sale of Products and/or Services hereunder is solely for Customer and its Affiliates' requirements.

2.11 Affiliates. Tantalus agrees that all of Customer's Affiliates approved by Tantalus, such approval not to be unreasonably withheld or delayed, wherever located, shall be entitled to make purchases of Products and Services under the terms and conditions of this Agreement.

ARTICLE 3 SERVICES

3.1 Services. In connection with the purchase of Products, Tantalus shall provide the Initial Deployment Services at the Tantalus then current per diem rates. Customer may decline to accept the Initial Deployment Services only with the prior written approval of Tantalus. Additional Services including, without limitation, out-of-warranty repairs in accordance with Tantalus programs in effect at the time, will be determined by the Customer and provided by Tantalus on an as needed basis at the Tantalus' then current per diem time and materials rates.

3.2 Ongoing and Technical Support. As part of the TUNet deployment, ongoing Additional Services may be provided for deployment optimization, project management, installation, configuration, systems integration and OEM interfacing, at Tantalus' then current per diem rates.

3.3 Training. Tantalus may offer training in addition to that provided as part of the Initial Deployment Services. Training may include classroom and/or field training for installation, deployment, integration or operations. Training is provided at Tantalus' then current per diem rates.

ARTICLE 4 CONFIDENTIAL INFORMATION

4.1 Confidentiality. Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except as expressly set forth herein or otherwise authorized in writing, shall implement reasonable procedures to prohibit the disclosure, unauthorized duplication, misuse or removal of the other party's Confidential Information and shall not disclose such Confidential Information to any third party except as may be necessary and required in connection with the rights and obligations of such party under this Agreement, and subject to confidentiality obligations at least as protective as those set forth herein. Without limiting the foregoing, each of the parties shall use at least the same procedures and degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other party under this Agreement, but in no event less than reasonable care. The receiving party will not commingle or mix the other party's Confidential Information with other information.

4.2 Authorized Disclosure. In addition, each party shall be entitled to disclose the other party's Confidential Information to the extent such disclosure is necessary to comply with reporting requirements for public companies and as requested by the order or requirement of a court, administrative agency, or other governmental body; provided, that the party required to make the disclosure shall: (i) provide prompt, advance notice thereof to enable the other party to seek a protective order or otherwise prevent such disclosure; and (ii) seek treatment of the Confidential Information to the highest level of protection afforded under relevant laws and policies.

4.3 Remedies. If either party breaches any of its obligations with respect to confidentiality, or if such a breach is likely to occur, the other party shall be entitled to all relief, remedies and recourses available at law or in equity, including monetary damages. In addition to all other remedies available at law and at equity, the other party shall be entitled to seek specific performance or a restraining order, decree or injunction.

ARTICLE 5 WARRANTIES

5.1 Warranties.

(a) For a period of one year from the date of transfer of title to new Products to Customer, Tantalus warrants that for all such Products: (i) each such Product will be free from defects in material, workmanship and manufacture under normal use and service, (ii) title to each such Product shall be free and clear of all liens, financial encumbrances and security interests, (iii) all materials, parts, components and other items initially incorporated in each such Product will be new; and (iv) each such Product shall be compliant with, and perform in accordance with its Specifications. The warranty for replaced or repaired Product originally warranted under this paragraph shall be ninety (90) days from date of return to Customer or the balance of the original warranty period, whichever is greater.

(b) For a period of 90 days from the date of transfer of title to refurbished Products to Customer, Tantalus warrants that for all such Products: (i) each such Product will be free from defects in material, workmanship and manufacture under normal use and service, (ii) title to each such Product shall be free and clear of all liens, financial encumbrances and security interests; and (iii) each such Product shall be compliant with, and perform in accordance with its Specifications.

(c) The aforementioned warranties in paragraph (a) and (b) apply only when all three of the following conditions prevail: (i) the unit of Product is owned by the original Customer and not by an assignee; (ii) the Customer is not the subject of bankruptcy or comparable proceedings; and (iii) while Tantalus has not invoked a subsisting remedy in respect of Force Majeure.

5.2 Warranty Returns. Customer shall return defective Product, transportation charges prepaid by Customer, to Tantalus at its designated depot with Tantalus' return material authorization number ("RMA") and completed problem sheet. For all in-warranty repairs, Tantalus will, at its sole option and expense, repair or replace defective Product or refund the purchase price thereof, within 60 days of receipt of such defective Product, provided that the Customer has returned the defective Product to Tantalus no later than four weeks after the expiry of the applicable warranty period set out in section 5.1. Tantalus will pay all shipping and other costs incidental to the return of repaired or replacement Product to Customer. To the extent Tantalus determines the Product returned under warranty is not defective (that is, no fault found), Customer will pay for the return of the Product and will pay Tantalus the fee of US\$150 per no fault found Product.

5.3 No Warranty. The warranties described in section 5.1 shall not apply to any units of Products which have been mistreated including without limitation the following: (i) units whose original bar code, copyright notices and proprietary legends, if any, have been spoiled or altered, (ii) units that were not installed or operated in accordance with Tantalus specifications, (iii) units that were the subject of repair, modification or alteration without Tantalus's approval, and (iv) units that in Tantalus's reasonable opinion, have been misused, altered, abused or subject to abnormal conditions of operation or handling.

5.4 DISCLAIMER. THE ABOVE EXPRESS WARRANTIES ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. TANTALUS DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF OTHER'S INTELLECTUAL PROPERTY RIGHTS, AND DURABILITY.

ARTICLE 6

LIABILITY AND INDEMNITY

6.1 Relief for patent and copyright matters. Tantalus, at its expense, shall defend any court suit brought against Customer by a third party alleging that units of Products purchased by Customer infringe US or Canadian patent or copyright. Tantalus's obligation to defend is effective only if Customer is not in breach of any of the terms and conditions of this Agreement and of any other agreement between the parties, and if Tantalus is notified promptly and given complete information, assistance and authority by Customer to conduct the defence. If any unit of Product: (a) is adjudicated by a court of competent jurisdiction after appeals therefrom are exhausted, as infringing any US or Canadian patent or copyright or (b) has its use enjoined by such court, Tantalus will, at its election: (i) procure for the Customer the right to continue using said unit; (ii) replace it with non-infringing and functional equivalent; (iii) modify it to become non-infringing; or (iv) if none of the aforementioned options are reasonably available, refund to Customer all amounts paid for the infringing Products, depreciated on a straight line basis over a ten (10) year period. Tantalus's obligation to defend includes the right to settle. Tantalus's obligation to defend does not apply to the following: (A) Products based on a design supplied or requested by Customer; (B) combinations of the Products with hardware or software not provided by Tantalus; (C) changes made to the Products that were not approved by Tantalus; or (D) any settlement of a suit made without Tantalus's consent. The foregoing states Tantalus's entire liability with respect to intellectual property infringement by any part of the Products or Services.

6.2 Product Liability. Tantalus shall indemnify and hold Customer harmless from all loss, expense or damages (including without limitation, reasonable attorney's fees) which may be incurred by Customer as a result of any claims or actions resulting from: (a) damage to persons or property, and personal injury or death caused by the negligent or willful acts or omissions of Tantalus; and (b) strict liability or products liability in connection with the Products. Customer will provide Tantalus with prompt, written notice of any claim covered by this indemnification. Customer shall not undertake the defense of any such claim. Tantalus, at its sole expense, shall defend all such claims and actions against Customer, whether brought informally or through court or administrative procedures.

6.3 Customer Indemnity. The relationship of Tantalus and Customer established by this Agreement is that of independent contractors and neither party is an employee, agent or joint venturer of the other. All financial obligations associated with Customer's business are the sole responsibility of Customer. Except for warranty claims under section 5.1, Customer shall indemnify, defend and hold harmless Tantalus from and against any and all claims, liabilities, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever that may arise on account of Customer's activities, or those of its employees or agents, including, without limitation, i) all sales and use taxes and similar charges arising in connection with the purchase of Products hereunder and all other federal, state and municipal taxes, interest, fines and penalties arising in connection with Customer's business activities and ii) those relating to Customer's use of the Products or Customer's breach of any term, representation or warranty of this Agreement.

6.4 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, TANTALUS WILL NOT BE LIABLE TO CUSTOMER FOR ANY (I) SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSSES, INCLUDING LOSS OF DATA, LOSS OF REVENUE OR PROFITS, CLAIMS BY USERS AND THIRD PARTIES, LOSS OF GOODWILL, BUSINESS INTERRUPTION OR OTHER PECUNIARY LOSS WHETHER ARISING FROM BREACH OF WARRANTY OR CONDITION, BASED ON CONTRACT, TORT, RELIANCE, FUNDAMENTAL BREACH, STATUTE, OR ANY OTHER THEORY, AND EVEN IF TANTALUS WAS AWARE OF SUCH DAMAGES OR LOSSES; OR (II) COST OF PROCUREMENT OF

SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT AND WITHOUT LIMITING THE FOREGOING, TANTALUS WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, CIVIL LIABILITY, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR: (A) ANY AMOUNTS IN EXCESS OF THE AGGREGATE AMOUNTS PAID TO TANTALUS FOR PRODUCTS AND/OR SERVICES GIVING RISE TO SUCH LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM; (B) ANY FAILURE OR DELAY DUE TO FORCE MAJEURE; OR (C) ANY ALLOCATION OF PRODUCTS AMONG ITS CUSTOMERS IN THE EVENT OF A SHORTAGE. LIMITATIONS OF LIABILITY WILL NOT BE ASSERTED TO THE EXTENT PROHIBITED BY RELEVANT LAWS AND POLICIES.

ARTICLE 7 OWNERSHIP OF INTELLECTUAL PROPERTY

7.1 Software and Hardware.

(a) Customer will not copy, reverse engineer, decompile or disassemble software and/or hardware that is or is part of a Product, or create derivative works of the software, except as expressly permitted by relevant laws and policies.

(b) Title to any software portion of the Products always remains in Tantalus or its third party licensors as applicable. Tantalus grants a limited, non-exclusive license to Customer to use such copy of software on the unit of Product where it resides when delivered, for operation in a utility telemetry network, and in strict accordance with third party license conditions, if any, and Tantalus reserves all other rights. This license for Products, on a unit by unit basis thereof, automatically terminates (without notice required from Tantalus) upon the earliest occurrence of: when Customer fails to timely pay fully (including interest charges) for the unit; when Customer is the subject of bankruptcy or comparable proceedings; when Customer destroys the delivered unit copy of software; and when Customer breaches any of its obligations under this Agreement. Except for licences otherwise expressly granted under this Agreement, the sale of Products hereunder does not convey to Customer any Proprietary Rights in the Products and Customer acknowledges Tantalus's exclusive rights thereto. Neither the sale of Products nor any provision of this Agreement will be construed to grant to Customer, either expressly, by implication or by way of estoppel, any licence under any other Proprietary Rights of Tantalus covering or relating to any other product or invention of Tantalus, or any combination of the Product with any other product of Tantalus.

ARTICLE 8 TERM AND TERMINATION

8.1 Term. Unless terminated earlier as provided herein, this Agreement shall have an initial term of one (1) year commencing on the execution date of this Agreement and shall continue for successive one year periods thereafter.

8.2 Termination.

(a) Either party may terminate this Agreement effective upon the delivery of written notice of such termination to the other party, if:

- (i) the other party becomes insolvent, is generally not paying its debts as such debts become due, makes an assignment for the benefit of creditors, is the subject of any voluntary or involuntary case commenced under the federal bankruptcy laws, as now constituted or hereafter amended (which, in the case of involuntary bankruptcy, is not dismissed within days), or of any other proceeding under other applicable laws of any jurisdiction regarding bankruptcy, insolvency, reorganization, adjustment of debt or other forms of relief for debtors, has a receiver, trustee, liquidator, assignee, custodian or similar official appointed for it or for any substantial part of its property, or is the subject of any dissolution or liquidation proceeding; or
- (ii) the other party is in default in any material respect in the performance of any its obligations under of this Agreement, provided that the party not at fault has given the other party thirty (30) days prior written notice of such default and such other party has not remedied the default.

(b) Either party may terminate this Agreement, at any time and for any reason, on ninety (90) days' prior written notice to the other party.

(c) Prior to the effective termination of this Agreement, all of the terms and conditions of, and the respective rights and obligations of the parties to, this Agreement will remain completely valid and enforceable; provided however that, in the event Tantalus terminates the Agreement under section 8.2(a), then any deliveries of Products to Customer which are scheduled to be made subsequent to the effective date of termination shall be cancelled.

8.3 Other Remedies. Termination is not the sole remedy under this Agreement and, whether or not termination is effected, all other remedies will remain available.

8.4 Survival. Notwithstanding anything to the contrary in this Agreement, no expiration or termination of this Agreement by either party shall affect any rights or obligations of either party: (i) which are vested pursuant to this Agreement as of the effective date of such expiration or termination, (ii) which are pursuant to Article 5 of this Agreement with respect to Products still under warranty, (iii) any other provisions intended by the parties to survive such expiration or termination, or (iv) under any accepted Purchase Orders.

ARTICLE 9 DISPUTE RESOLUTION

9.1 Dispute Resolution. Except for disputes related to nonpayment or as otherwise provided in this section 9.1, neither party shall resort to formal arbitration proceedings under section 9.2 until the parties have attempted to resolve the Dispute through the process set forth in this section 9.1. The party raising a Dispute shall submit to the other party a written notice and supporting material describing all issues and circumstances related to the Dispute (a "**Dispute Notice**"). A designated senior management representative of each party shall attempt to resolve the Dispute. If the parties' representatives fail to resolve the Dispute within thirty (30) days from receipt of a Dispute Notice, either party may commence formal arbitration proceedings in accordance with section 9.2 to resolve the Dispute. This section 9.1 shall not be construed to prevent a party from instituting proceedings earlier than as indicated in this section 9.1 to: (a) avoid the expiration of any applicable limitations period, (b) preserve a superior creditor position or (c) seek injunctive relief to prevent irreparable harm, including without limitation, harm caused by a breach of confidentiality obligations set forth in Article 4.

9.2 Arbitration. Subject to section 9.1 above, any Dispute arising out of or in connection with this Agreement or the performance, breach or termination thereof, shall be finally settled by binding arbitration in Chicago, Illinois under the Rules of the American Arbitration Association (the "**Rules**") then in effect. The arbitration shall be conducted by a single independent arbitrator, if the parties agree upon one, otherwise by three (3) independent arbitrators, one to be appointed by each party and a third to be chosen by the first two named before they enter upon the business of arbitration. If the two (2) arbitrators are unable to agree upon the third arbitrator, such third arbitrator shall be appointed in accordance with the Rules. The arbitrator(s) shall apply the governing laws specified in section 10.5. The award and determination of the arbitrator(s) or any two of the three arbitrators shall be binding upon the parties and their respective successors and assigns. The parties and arbitrator or arbitrators shall use reasonable, diligent efforts to complete the arbitration within sixty (60) calendar days after the appointment of the arbitrator or arbitrators under this section 9.2. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for injunctive relief without breach of this arbitration provision or Tantalus may institute an action for payment under this Agreement, in any court of competent jurisdiction. As to any such suit, both parties accept and submit to the non-exclusive in personam jurisdiction of the state or federal courts in the State of Delaware. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys fees.

ARTICLE 10 GENERAL PROVISIONS

10.1 Notices. Any notification, notice, approval, confirmation or consent required or permitted to be given must be in writing and signed by an authorized representative of a party by (whether a party hereto or a third party, as the case may be), and will be deemed to have been duly given when delivered by hand (or by facsimile transmission if followed by delivery of the original thereof), addressed to the other party at its address set out above or such other address as it may notify of, to the attention of the President if for Tantalus and to the attention of _____ if for Customer. Unless expressly set out to the contrary herein, consent or approval that is explicitly required herein of a party hereto will not be unreasonably delayed, withheld or withdrawn by it.

10.2 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

10.3 Entire Agreement. This Agreement contains the sole and entire agreement between the parties on the subject matter hereof, and supersedes and invalidates all other commitments, representations, warranties, conditions and understanding relating to the subject matter hereof. Any purported amendment of this Agreement, to have binding effect, must be approved by the parties in writing.

10.4 Amendment and Waiver. No amendment or waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced. No waiver by any party or any breach or series of breaches in performance by the other party, and no failure, refusal or neglect to exercise any right, power or option given to either party to insist upon strict

compliance with or performance of the obligations hereunder, will constitute a waiver of the provisions hereof with respect to any subsequent breach thereof or a waiver by such party of its right at any time thereafter to require strict compliance with the provisions hereof.

10.5 Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware without regard to conflicts of law provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods. Tantalus and Customer:

- (a) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement must be brought in either the United States District Court for the District of Delaware or the Commercial Division of the State Court of Delaware, which Court will have exclusive jurisdiction over any controversy arising out of this Agreement;
- (b) consent to the jurisdiction of such Court in any such suit, action or proceeding;
- (c) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in such Court and claim that any such suit, action or proceeding has been brought in an inconvenient forum; and
- (d) waive a trial by jury in any such suit, action or proceeding.

10.6 Successors and Assigns. This Agreement binds, and inures to the benefit of, the parties and their respective successors. This Agreement shall not be assigned by either party without the prior written consent of the other party, except that Customer agrees that Tantalus may assign, without notice to Customer, any account receivable arising under this Agreement in connection with a factoring arrangement.

10.7 Execution in Counterparts and by Facsimile. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. This Agreement may be executed and delivered by facsimile and the parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each party may use such facsimile signatures as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their duly authorized representatives as of the date and year set out in page 1.

TANTALUS SYSTEMS INC.

CUSTOMER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____