

Communication Matrix Sales Agreement

This Communication Matrix Sales Agreement (the "**Agreement**") is entered into by and between Communication Matrix, Inc. (COMMAT), a California corporation with its principal place of business at 383 Allerton Avenue, South San Francisco, CA 94080, and _____ ("**Customer**"), a _____ (*fill in state*) corporation/partnership/sole proprietorship/individual (*circle the one that applies*) corporation with its principal place of business at _____, and sets forth the terms and conditions under which Communication Matrix will sell the products of several manufacturers ("**Products**") to Customer. This Agreement shall be effective as of _____ ("**Effective Date**") and if no date is filled in, then the Effective Date shall be the date of execution by the second Party. Communication Matrix and Customer are sometimes referred to herein individually as a "**Party**" or collectively as "**the Parties**".

RECITALS

WHEREAS, Communication Matrix is an authorized reseller of telecommunications products of Nortel Networks

WHEREAS, Customer wants to purchase Products from Communication Matrix for Customer's internal use or for resale purposes.

NOW THEREFORE, in consideration for the mutual promises and covenants contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

TERMS AND CONDITIONS

1 Scope

Communication Matrix will accept purchase orders from Customer for Products under the terms of this Agreement, for shipment by Communication Matrix to Customer's premises.

2 Term

This Agreement shall commence on the Effective Date and remain in force for a period of one year, unless terminated earlier as provided herein, and will automatically be extended for additional one-year periods thereafter (collectively the "**Term**") unless (i) one Party gives at least sixty (60) days notice to the other Party prior to the expiration of the current period of its intention that the Agreement expire at the end of the current period.

3 Prices, and Price Changes

3.1 Prices and Discounts. The applicable prices are stated in the price quotation provided by Communication Matrix to Customer. In the event of any conflict between this Agreement and the price quotation, the provisions of this Agreement shall prevail.

3.2 Price Changes. Communication Matrix may increase prices upon at least thirty (30) days advance written notice to Customer. Orders issued by Customer prior to the effective date of a price increase will be invoiced at the prior lower price provided the shipments are scheduled to ship within sixty (60) days of the effective date of the change. All orders issued after the effective date, or those in

the backlog which are scheduled to ship sixty (60) days or more after the effective date shall be subject to the price increase.

Communication Matrix may decrease the prices of Products by written notice to Customer at any time. A price decrease will apply to all Customer orders in the Communication Matrix backlog on the notification date of such decrease, and to all orders issued after the notification date.

4 Order Procedure

Customer may place orders for Products by faxing or sending by e-mail purchase orders to Communication Matrix referencing this Agreement and stating the Product number, quantity, applicable price, requested delivery date, bill-to and ship-to addresses, special shipping instructions (if any), partial/no partials allowed, and any special order handling instructions. Delivery date requested must be no less than thirty (30) days after Communication Matrix's receipt of the purchase order. Orders shall be subject to written acceptance by Communication Matrix and delivery schedules established in accordance with Product availability and Customer's credit status. Communication Matrix will make reasonable efforts to expedite delivery of an "ASAP order" subject to Product availability, but is not obligated to make such delivery on an expedited basis.

5 Change Orders and Cancellation

Any and all changes to Customer's purchase orders must be provided by either facsimile or e-mail notice (whichever method was used for submitting the original purchase order). Any change order increasing the purchase will be accepted by Communication Matrix if it can satisfy the additional requirement from available capacity and the dollars added are within the authorized credit limit.

If Customer cancels any portion or all of an order, it shall be assessed a charge equal to a percentage of the net price of the cancelled Products, according to the following schedule:

Cancellation notice received prior to shipment date	Cancellation Charge
60 days or more	No charge
59-30 days	5%
29-6 days	10%
5 days or less	15%

If Communication Matrix is unable to meet the delivery schedule, it shall provide notice as soon as it is reasonably aware of the situation. If Communication Matrix fails to ship on scheduled ship date, Customer may reschedule or cancel at no charge.

No Product may be returned except under warranty, for repair, or due to shipment error by Communication Matrix.

6 Delivery

Products will be shipped F.O.B. Origin, Communication Matrix's shipping dock. Shipping charges will be added to the invoice. Title and risk of loss shall pass to Customer upon delivery to the common carrier at Communication Matrix's shipping dock. Customer will pay all costs relating to transportation, delivery, and insurance. Customer will be responsible for filing claims relating to any lost or damaged goods.

7 Payment Terms; Late Charges; Taxes

7.1 Payment Terms. Payment terms are net ten (10) days after issuance of the invoice. The invoice is issued upon shipment. Customer must give Communication Matrix written notice of any discrepancies among the purchase order, the invoice, and the Products received, within ten (10) days after receipt of the Products or the invoice, whichever occurs later. If there is any dispute as to a part of a shipment, Customer will pay for the undisputed part of that shipment. Communication Matrix reserves the right to refuse shipment to Customer if Customer is delinquent in making payments.

Credit limits and payment terms decisions are made, at Communication Matrix's sole discretion, by an analysis of Customer's current and historical financial information, bank references, trade references, payment practices, etc. Customer must provide current financial information to Communication Matrix on an annual basis, or more frequently if so requested. In the event an adequate credit limit cannot be granted or until initial credit approval is given, deliveries will be made only on a cash-in-advance or irrevocable letter of credit basis.

7.2 Late Charges. Communication Matrix reserves the right to charge Customer interest on any delinquent balance. This interest is computed on a daily basis for each day that the payment is delinquent, at the lesser of eighteen percent (18%) per year or the maximum rate permitted by law.

7.3 Taxes. The prices stated herein do not include any federal, state, municipal or other government excise, sales, use, occupational or like taxes ("**Taxes**"). Except for taxes based on Communication Matrix's income, such Taxes, if any, shall be paid by Customer. Customer may provide Communication Matrix with a tax exemption certificate acceptable to the taxing authorities in lieu of paying such taxes.

8 End-User Software License Agreement

Software is subject to an End-User License Agreement between the third-party licensor and Customer. Customer agrees to abide by the terms of the License Agreement.

9 Security Interest

Customer hereby grants to Communication Matrix a purchase money security interest covering all Products purchased hereunder (and any proceeds thereof) in the amount of Communication Matrix's invoice for such Products, until payment in full is received by Communication Matrix. (A purchase money security interest only applies to the Products purchased hereunder by Customer and the proceeds from the sale of such Products by Customer.) Customer agrees to sign and execute any and all documents as required by Communication Matrix to perfect such security interest.

10 Warranties

10.1 Manufacturer's Limited Warranty. Communication Matrix does not provide any warranty for any new hardware Products or any software Products supplied hereunder, but will pass through to Customer the manufacturer's warranty, to the full extent allowed.

10.2 Communication Matrix Warranty on Refurbished Products. For refurbished hardware Products supplied hereunder, Communication Matrix warrants to Customer that such refurbished Products will be free from defects in workmanship and materials under normal use and service for ninety (90) days from the date of sale, or the date of installation if installed by Communication Matrix. Communication Matrix's sole obligation under this express warranty shall be, at Communication Matrix's option and expense, to repair the defective Product or part, deliver to Customer an equivalent Product or part to replace the defective item, or if neither of the two foregoing options is reasonably available, Communication Matrix may, in its sole discretion, refund to Customer the purchase price paid for the defective Product. Replacement Products or parts may be refurbished. All Products that are replaced will become the property of Communication Matrix. Communication Matrix warrants any replaced or repaired Product or part for thirty (30) days from the date of shipment, or the date of installation if installed by Communication Matrix, or the remainder of the initial warranty period, whichever is longer.

10.3 Obtaining Warranty Service. Customer must contact the Communication Matrix service department within the applicable warranty period to obtain a Return Material Authorization (RMA) number. Dated proof of purchase may be required. Products returned to Communication Matrix must have the RMA number marked on the outside of the package, and must be sent prepaid and packaged appropriately for safe shipment, and it is recommended that they be insured or sent by a method that provides for tracking of the package. Responsibility for loss or damage does not transfer to Communication Matrix until the returned Product is received by Communication Matrix. The repaired or replaced Product will be shipped to Customer, at Communication Matrix's expense, not later than thirty (30) days after Communication Matrix receives the defective Product. For mission critical Products, Communication Matrix will make commercial best efforts to ship a replacement Product the next business day if available in its inventory. Quicker turnaround time can be obtained by purchasing a Communication Matrix service agreement. Communication Matrix will retain risk of loss or damage until the item is shipped to Customer.

Communication Matrix shall not be liable under this warranty if its testing and examination disclose that the alleged defect in the Product does not exist or was caused by Customer's or any third person's misuse, neglect, improper installation or testing, unauthorized attempts to open, repair or modify the Product, or any other cause beyond the range of the intended use, or by accident, fire, lightning, other hazards, power cuts or outages, or acts of God. Communication Matrix shall not be responsible for any software, firmware, information, or memory data of Customer contained in, stored on, or integrated with any products returned to Communication Matrix for repair, whether under warranty or not.

10.4 Warranties Exclusive. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. THESE DISCLAIMERS OF WARRANTY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT.

11 Non-Warranty Repair Service

Non-warranty repair services for hardware Products will be provided by Communication Matrix at its then-current time and materials charges.

12 Limitation of Liability

EXCEPT FOR DAMAGES RESULTING FROM A BREACH OF SECTION 13 "CONFIDENTIALITY", TO THE FULL EXTENT ALLOWED BY LAW THE PARTIES EXCLUDE ANY LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. THE EXCLUSIONS STATED IN THIS PARAGRAPH ALSO APPLY TO COMMUNICATION MATRIX'S SUPPLIERS.

EXCEPT FOR DAMAGES RESULTING FROM A BREACH OF SECTION 13 "CONFIDENTIALITY", COMMUNICATION MATRIX'S MAXIMUM LIABILITY TO CUSTOMER FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS PURCHASED UNDER THIS AGREEMENT DURING THE ONE-YEAR PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO THE CLAIM.

THESE DISCLAIMERS OF LIABILITY WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE. COMMUNICATION MATRIX SHALL NOT BE RESPONSIBLE FOR LOSS OR RECOVERY OF CUSTOMER DATA. IT SHALL BE THE RESPONSIBILITY OF CUSTOMER TO PROVIDE ADEQUATE BACK-UP OF DATA.

13. CONFIDENTIALITY

13.1 General. During the course of this Agreement, each Party may disclose to the other certain proprietary information (both patentable and unpatentable, including trade secrets, know how, software, source codes, techniques, future product plans, marketing plans, customers, inventions, discoveries, improvements, and research and development data) ("Confidential Information") of a character regarded by the disclosing Party as confidential. Each Party and each of its employees or consultants to whom disclosure is made shall hold all Confidential Information in confidence, and shall not disclose such information to any third party or apply it to uses other than the recipient's performance of this Agreement.

Such Confidential Information if disclosed in writing shall be marked or identified as confidential or a similar designation, or if orally or visually disclosed, shall be identified as the confidential information of the disclosing Party at the time of disclosure and then summarized in writing and provided to the recipient in such written form within thirty (30) days after such oral or visual disclosure.

13.2 Obligation of Confidentiality. Each Party agrees that for a period of three (3) years from receipt of Confidential Information from the other Party hereunder, it shall use the same degree of care that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care, to prevent the unauthorized use or the disclosure of such Confidential Information to third parties. The Confidential Information shall be disclosed only to employees and consultants of a recipient with a "need to know" who are instructed to and agree in writing to not disclose third party confidential

information, and who shall use the Confidential Information only for the purpose set forth above. A recipient may not alter, decompile, disassemble, reverse engineer, or otherwise modify any Confidential Information received hereunder and the mingling of the Confidential Information with information of the recipient shall not affect the confidential nature or ownership of the same as stated hereunder.

13.3 Ownership of Confidential Information. All Confidential Information is, and shall remain, the property of the disclosing Party. Nothing herein shall be construed as granting or conferring any rights by license or otherwise in the Confidential Information except as expressly provided herein. A recipient acquires hereunder only a limited right to use the Confidential Information solely for the purpose of performing its obligations under this Agreement.

13.4 Return of Confidential Information. Upon the written request of the disclosing Party, or upon the expiration or any earlier termination of this Agreement, the recipient shall promptly return all copies of the Confidential Information, in whatever form or media, to the disclosing Party or, at the direction of such Party, destroy the same. The recipient shall certify in writing to the other such return or destruction within ten (10) days thereafter.

13.5 Exceptions to Obligation of Confidentiality. This Agreement shall impose no obligation of confidentiality upon a recipient with respect to any portion of the Confidential Information received hereunder which:

- (i) now or hereafter, through no unauthorized act or failure to act on recipient's part, becomes generally known or available;
- (ii) is lawfully known to the recipient without an obligation of confidentiality at the time recipient receives the same from the disclosing Party, as evidenced by written records;
- (iii) is hereafter lawfully furnished to the recipient by a third party without restriction on disclosure;
- (iv) is furnished to others by the disclosing Party without restriction on disclosure; or
- (v) is independently developed by the recipient without use of the disclosing Party's Confidential Information.

Nothing in this Agreement shall prevent the receiving Party from disclosing Confidential Information to the extent the receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the receiving Party shall:

- (i) assert the confidential nature of the Confidential Information to the agency;
- (ii) immediately notify the disclosing Party in writing of the agency's order or request to disclose; and
- (iii) cooperate fully with the disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

13.6 Agreement Confidential Neither Party shall disclose, advertise or publish the terms or conditions of this Agreement without the prior written consent of the other Party, except (i) as may be

required by law and (ii) to its professional advisors and to investors or potential investors who are under an obligation of confidentiality at least as restrictive as that contained in this Section 13.

14. NON-SOLICITATION

Customer acknowledges and agrees that Communication Matrix expends a great deal of effort and commits substantial resources to attract and retain qualified employees and consultants to provide services to its customers. During the Term of this Agreement and for one (1) year thereafter, Customer agrees not to solicit for employment (as an employee or as an independent contractor) any employee or consultant of Communication Matrix performing any services hereunder. In the event that Customer hires any such employee or consultant of Communication Matrix in violation of this provision, Customer agrees to pay Communication Matrix liquidated damages equal to one-half of such person's gross annualized remuneration from Communication Matrix, with a minimum of \$25,000. The foregoing prohibition shall not apply to general, non-targeted solicitations for employment such as newspaper or on-line job postings or advertisements, job fairs, etc.

15. TERMINATION

15.1 Termination for Cause. Either Party shall have the right to terminate this Agreement for cause if the other Party:

(i) fails to perform any material term or condition of this Agreement, and does not remedy the failure within thirty (30) days after receipt of written notice of such default given by the non-defaulting Party; or

(ii) becomes insolvent, files or has filed against it a petition under applicable bankruptcy or insolvency laws which is not dismissed within ninety (90) days, proposes any dissolution, composition or financial reorganization with creditors, makes an assignment for the benefit of creditors, or if a receiver, trustee, custodian or similar agent is appointed or takes possession with respect to any property or business of the defaulting Party.

15.2 Termination for Convenience. Either Party may terminate this Agreement without cause by written notice to the other Party given not less than sixty (60) days prior to the effective date of such notice. In no event shall either Party be liable for termination of this Agreement pursuant to this Subsection.

15.3 Obligations Upon Termination. The termination or expiration of this Agreement shall in no way relieve either Party from its obligations to pay the other Party any sums accrued hereunder prior to such termination or expiration.

16 Export Control Regulations

Customer shall not export, either directly or indirectly, any product, service or technical data or system incorporating such items ("**Technical Data**") without first obtaining any required license or other approval from the U.S. Department of Commerce or any other agency or department of the United States Government. In the event Customer exports any Technical Data from the United States or re-exports any Technical Data from a foreign destination, Customer shall ensure that the distribution and export/re-export or import of the Technical Data is in compliance with all laws, regulations, orders or other restrictions of the United States and the appropriate foreign government.

17 General

17.1 Entire Agreement. This Agreement is intended as the complete, final and exclusive statement of the terms of the agreement between the parties relating to the subject matter hereof, and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, relating to the subject matter hereof. Except where unilateral modification is specifically authorized herein, this Agreement may not be modified except in a writing executed by both parties. Although Customer may use its standard purchase order and other forms, and Communication Matrix may use its standard order acknowledgement, invoice, and other forms, the terms and conditions of this Agreement will prevail over Customer's and Communication Matrix's forms, and any inconsistent, conflicting, or additional preprinted terms in such forms will be of no effect.

17.2 Relationship of the Parties. The Parties shall at all times during the term of this Agreement act as, and shall represent themselves to be, independent contractors, and not an agent, partner, joint venturer, or employee of the other Party.

17.3 Force Majeure. Neither Party shall be liable to the other Party for any failure to perform any of its obligations hereunder (other than the payment of money) resulting from acts of the other Party, acts of civil or military authority, governmental priorities, earthquake, fire, flood, epidemic, quarantine, energy crisis, strike, labor trouble, war, riot, accident, shortage, delay in transportation, or any other causes beyond the reasonable control of the Party whose performance is delayed.

17.4 Notices. Notices shall be given in writing to the address stated immediately below, or to such other address as shall be given by either Party to the other in writing. Any notice involving non-performance, termination, or renewal shall be sent by recognized overnight courier or by certified mail, return receipt requested. All other notices may additionally be sent by fax or e-mail with a confirmation of receipt. All notices shall be deemed to have been given and received on the earlier of actual delivery (except that faxes and e-mails sent on a non-business day will be deemed received on the next business day) or three (3) days from the date of postmark.

To Communication Matrix:

To Customer:

e-mail: _____
Fax: _____
Telephone: _____

e-mail: _____
Fax: _____
Telephone: _____

17.5 Waiver. A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed. Except as expressly provided herein to the contrary, the exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity.

17.6 Severability. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, a modified provision shall be substituted which carries out as nearly as possible the original intent of the parties, and the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired thereby.

17.7 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other, which will not be unreasonably withheld or delayed; except that either Party may assign all, but not part, of this Agreement to its successor in a merger or other similar corporate reorganization or to the purchaser of substantially all of its assets to which this Agreement relates, provided such successor or purchaser agrees in writing to comply with the terms of this Agreement. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of, and is enforceable by the Parties hereto and their respective successors and assigns.

17.8 Arbitration. All disputes, claims, and controversies between the Parties arising out of or related to this Agreement or the breach thereof (except non-payment or late payment; breach of any obligation of confidentiality; infringement, misappropriation, or misuse of any intellectual property right; or any other claim where interim relief from the court is sought to prevent serious and irreparable injury to one of the Parties or to others) shall be settled by arbitration. The arbitration shall be conducted by one arbitrator, under the auspices of the American Arbitration Association and under its then-current Commercial Arbitration Rules. The power of the arbitrator shall be limited to that possessed by a Superior Court Judge in California and the arbitrator is prohibited from awarding damages or remedies in excess of those allowed by the provisions of this Agreement. The decision and award of the arbitrator shall be final and binding and judgment on the award so rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held in San Francisco County, California, or a mutually convenient location, and the award shall be deemed to be made in California. Both parties will share the costs of the arbitration equally, except that each Party shall bear its own costs and expenses, including attorney's fees, witness fees, travel expenses, and preparation costs.

17.9 Governing Law and Venue. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND ALL DISPUTES HEREUNDER SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF CALIFORNIA, EXCEPT ITS CONFLICT OF LAWS RULES. Subject to the Arbitration provision above, the Superior Court of San Francisco County and/or the United States District Court for the Northern District of California shall have exclusive jurisdiction and venue over all controversies in connection herewith.

17.10 Attorney's Fees. With the exception of the Arbitration provision above, in any action to enforce, or arising out of, this Agreement, the prevailing Party shall be entitled to be awarded all court costs and reasonable legal fees incurred.

17.11 Headings. Headings in this Agreement are for the purpose of convenience only, and are not intended to be used in its construction or interpretation.

17.12 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if both parties hereto had signed the same document. All counterparts will be construed together and will constitute one agreement. A facsimile copy or photocopy of this Agreement, including the signature pages hereto, shall be deemed to be an original.

17.13 Interpretation. Each provision of this Agreement shall be fairly interpreted and construed in accordance with its provisions and without any strict interpretation or construction in favor of or against either Party.

17.14 Survival The following sections will survive expiration or termination of this Agreement:

- 7 "Payment Terms; Late Charges; Taxes"
- 9 "Security Interest"
- 10 "Warranties"
- 12 "Limitation of Liability"
- 13 "Confidentiality"
- 14 "Non-Solicitation"
- 15.3 "Obligations Upon Termination"
- 16 "Export Control Regulations"
- 17 "General"

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date(s) shown below, to be effective as of the Effective Date.

Communication Matrix, Inc.

"Customer"

Signature _____

Signature _____

Printed _____

Printed _____

Title _____

Title _____

Date _____

Date _____