

STATE OF TEXAS §
§
COUNTY OF FORT BEND §

SECOND ADDENDUM TO BIBLIOTHECA MAINTENANCE AND SUPPORT SERVICE AGREEMENT

THIS SECOND ADDENDUM ("Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Bibliotheca, LLC ("BIBLIOTHECA"), a company authorized to conduct business in the State of Texas.

THAT, WHEREAS, the parties have executed and accepted that certain service and maintenance Extended Warranty Agreement for hardware and software maintenance and support services related to library computer workstations which was last amended on or about February 6, 2018, (“Agreement”), and incorporated by reference; and

WHEREAS, the parties now desire to renew the Agreement for an additional term;

NOW, THEREFORE, in consideration of the foregoing, the Agreement between the County and Bibliotheca is hereby amended as follows:

1. **Scope of Services.** County shall renew the annual support and maintenance services provided by BIBLIOTHECA as detailed in the Service and Maintenance/Extended Warranty Quote, attached as "Exhibit A", and incorporated by reference.
2. **Time of Performance.** The time for performance of the Scope of Services by Bibliotheca shall begin November 17, 2018 and shall end on November 16, 2019.
3. **Limit of Appropriation.** BIBLIOTHECA clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Sixty-three Thousand, Seven Hundred Eighty-five and 04/100 dollars (\$63,785.04), specifically allocated to fully discharge any and all liabilities County may incur. BIBLIOTHECA does further understand and agree, said understanding an agreement also being of the absolute essence of this Agreement, that the total maximum compensation that BIBLIOTHECA may become entitled to and the total maximum sum that County may become liable to pay to BIBLIOTHECA shall not under any conditions, circumstances, or interpretations thereof exceed Sixty-three Thousand, Seven Hundred Eighty-five and 04/100 dollars (\$63,785.04).
4. **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
4. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
5. **Confidential Information.** BIBLIOTHECA expressly acknowledges that County is subject to the Texas Public Information Act, Tex. Gov't. Code Ann. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by BIBLIOTHECA shall not be disclosed to any third party,

except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

6. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless BIBLIOTHECA for any reason are hereby deleted.
7. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by BIBLIOTHECA in any way associated with the Agreement.
8. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
9. **Applicable and Governing Law.**
 - a. The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to the Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.
 - b. As required by Chapter 2270, Government Code, BIBLIOTHECA hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
 - c. By signature below, BIBLIOTHECA represents pursuant to Section 2252.152 of the Texas Government Code, that BIBLIOTHECA is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.
10. **Insurance.**
 - a. Bibliotheca, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the following minimum limits of coverage:
 - i. Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

• Employers Liability - Each Accident	\$1,000,000
• Employers Liability - Each Employee	\$1,000,000
• Employers Liability - Policy Limit	\$1,000,000
 - ii. Commercial General Liability Insurance with limits of not less than:

• Each Occurrence Limit	\$1,000,000
• Damage to Rented Premises	\$300,000
• Personal & Advertising Injury	\$1,000,000
• General Aggregate	\$2,000,000
• Products - Completed Operations Aggregate	\$2,000,000

The required commercial general liability policy will be issued on a form that insures Bibliotheca's or its subcontractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

- iii. Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;
 - iv. Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$3,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of Bibliotheca and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Bibliotheca agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two (2) years after the expiration or cancellation of this Agreement.
- b. Bibliotheca will deliver to County evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any services by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.
 - c. All insurance policies, with the exception of worker's compensation, employer's liability, and professional liability will be endorsed and name the County as Additional Insured for liability caused in whole or in part by Bibliotheca's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Bibliotheca. The Commercial General Liability Additional Insured endorsement including on-going and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
 - d. Bibliotheca hereby waives all rights of subrogation against the County. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the County. No policy will be canceled until after thirty (30) days' unconditional written notice to the County. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to County thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy.
 - e. Bibliotheca is responsible to pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by County prior to the performance of any services by Bibliotheca under the Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
 - f. Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following County contact:
Name: Wyatt Scott, Director of Risk Management
Address: 301 Jackson St., Suite 224, Richmond, TX 77469
Facsimile Number: 281-341-3751

Email Address: RiskMgmt@fortbendcountytexas.gov

g. Bibliotheca's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by the County. Bibliotheca's or subcontractor's insurance will be kept in force until all services have been fully performed and accepted by County in writing.

11. **Conflict.** The Agreement remains in full force and effect. In the event there is a conflict between this Renewal and the Agreement, this Renewal controls to the extent of the conflict.
12. **Understanding, Fair Construction.** By execution of this Renewal, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Renewal. This Renewal, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

{EXECUTION PAGE FOLLOWS}

{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK}

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

BIBLIOTHECA, LLC



Authorized Agent – Signature

Authorized Agent Printed Name
Mary Zilles
Sales Operations Manager

Title

Date
1/3/19

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert E. Sturdivant, County Auditor

Exhibit A: Service and Maintenance/Warranty Quote

EXHIBIT A

Service and Maintenance/Extended Warranty Quote

Quote Date: 11/08/2018
Quote Number: QUO-86059-W1F8

Licensee Bill To:

Fort Bend County Libraries - Main
Tabitha Bridges
301 Jackson
Richmond TX 77469
United States of America

jsumpter@fortbend.lib.tx.us
Tel: +1 281 633-4766

System Licensee:

Fort Bend County Libraries - Main - County Auditor
Jill Sumpter
301 Jackson
Richmond TX 77469
United States of America

Sales Contact: Contract Team

Sales Phone: 800-328-0067

Sales Email: service-renewals-us@bibliotheca.com

US-62422-P5J5
11/17/18-11/17/19
Consolidated Renewal

Quote expires (180) days from Quote Date above.

Item ID	Item Type	Quantity	Sale Price	Sub Total
SUP000002-000-US	Annual Support and Maintenance Renewal Contract Term: Nov 17, 2018 - Nov 16, 2019	1	\$63,785.040	\$63,785.04
Total (Less Sales Tax):				\$63,785.04

Grand Total:	\$63,785.04
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3M Library Systems has merged with Bibliotheca LLC. Together, our customers will enjoy the best of both worlds. If you are a former 3M Library System customer, please note that your Service & Maintenance contract will be managed and serviced by Bibliotheca LLC.

Service and Maintenance prices exclude any applicable sales tax. Please provide Tax Exempt Certificate, if applicable.

Service and Maintenance/Extended Warranty Quote

Location	Asset Name	Serial #1	Qty	Start Date	End Date	Price
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001710		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001740		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001741		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001755		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001763		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001774		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001792		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001798		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001807		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001812		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001844		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001848		08/08/19	11/16/19	\$109.45
Fort Bend County Library - George Memorial Library	bibliotheca RFID workstation™ USB	210R001850		08/08/19	11/16/19	\$109.45
Fort Bend County Libraries - Main	RFID workstation shielded	6280809		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6280820		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281072		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281073		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281145		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281146		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281150		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281150		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281154		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281345		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281371		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281372		07/31/19	11/16/19	\$118.12
Fort Bend County Libraries - Main	RFID workstation shielded	6281374		07/31/19	11/16/19	\$118.12
Fort Bend County Library - Sienna Branch Library	8410F	84101628	1	11/17/18	11/16/19	\$2,354.00
Fort Bend County Library - Sienna Branch Library	8410F	84101630	1	11/17/18	11/16/19	\$2,354.00
Fort Bend County Library - Sienna Branch Library	8410F	84101631	1	11/17/18	11/16/19	\$2,354.00
Fort Bend County Library - University Branch Library	8422 selfCheck	84220276	1	11/17/18	11/16/19	\$1,719.90

Service and Maintenance/Extended Warranty Quote

Location	Asset Name	Serial #1	Qty	Start Date	End Date	Price
Fort Bend County Library - University Branch Library	8422 selfCheck	84220277	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - University Branch Library	8422 selfCheck	84220278	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - University Branch Library	8422 selfCheck	84220279	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - University Branch Library	8422 selfCheck	84220281	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - University Branch Library	8422 selfCheck	84220282	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - George Memorial Library	8422 selfCheck	84220932	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - George Memorial Library	8422 selfCheck	84220933	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - George Memorial Library	8422 selfCheck	84220934	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - Cinco Ranch Branch Library	8422 selfCheck	84221302	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - Cinco Ranch Branch Library	8422 selfCheck	84221303	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - Cinco Ranch Branch Library	8422 selfCheck	84221304	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - Cinco Ranch Branch Library	8422 selfCheck	84221305	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - First Colony Branch Library	8422 selfCheck	84221555	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - First Colony Branch Library	8422 selfCheck	84221556	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - First Colony Branch Library	8422 selfCheck	84221557	1	11/17/18	11/16/19	\$1,719.90
Fort Bend County Library - Sienna Branch Library	8902BC	89200564	1	11/17/18	11/16/19	\$1,814.72
Fort Bend County Library - George Memorial Library	Enterprise - Command Center	90100171	1	11/17/18	11/16/19	\$1,678.00
Fort Bend County Library - University Branch Library	9102BC-WL	91200226	1	11/17/18	11/16/19	\$1,558.94
Fort Bend County Library - University Branch Library	9102BC-WL	91200227	1	11/17/18	11/16/19	\$1,558.94
Fort Bend County Library - George Memorial Library	9102 Detection System	91201736	1	11/17/18	11/16/19	\$1,558.94
Fort Bend County Library - George Memorial Library	9102 Detection System	91201737	1	11/17/18	11/16/19	\$1,558.94
Fort Bend County Library - George Memorial Library	9102 Detection System	91201738	1	11/17/18	11/16/19	\$1,558.94
Fort Bend County Library - Cinco Ranch Branch Library	9102DM-WL	91202445	1	11/17/18	11/16/19	\$1,558.94
Fort Bend County Library - Bob Lutts Fulshear - Simonton Branch Library	RFID gate 9100 Direct Mount, 2 aisle	91203318		11/17/18	11/16/19	\$1,558.94
Fort Bend County Library - First Colony Branch Library	9103DM	91302922	1	11/17/18	11/16/19	\$2,004.35
Fort Bend County Library - Sienna Branch Library	selfCheck 500D desktop kiosk	B14975		07/31/19	11/16/19	\$387.92

Service and Maintenance/Extended Warranty Quote

Location	Asset Name	Serial #1	Qty	Start Date	End Date	Price
Fort Bend County Library - Sienna Branch Library	selfCheck 500D desktop kiosk	B14977		07/31/19	11/16/19	\$387.92
Fort Bend County Library - Sienna Branch Library	selfCheck 500D desktop kiosk	B14979		07/31/19	11/16/19	\$387.92
Fort Bend County Library - Mamie George Branch Library	RFID gate 9100 Direct Mount, 2 aisle	FS-RFID9102-000		11/17/18	11/16/19	\$1,558.94
Fort Bend County Library - Sugar Land Branch Library	RFID gate 9100 Direct Mount, 2 aisle	FS-RFID9102-001		11/17/18	11/16/19	\$1,558.94
Fort Bend County Library - Albert George Library	RFID gate 9100 Direct Mount, 2 aisle	FS-RFID9102-003		11/17/18	11/16/19	\$1,558.94
Fort Bend County Library - Sugar Land Branch Library	selfCheck 500D desktop kiosk	INT13667		11/17/18	11/16/19	\$1,299.00
Fort Bend County Library - Sugar Land Branch Library	selfCheck 500D desktop kiosk	INT13764		11/17/18	11/16/19	\$1,299.00
Fort Bend County Library - Sugar Land Branch Library	selfCheck 500D desktop kiosk	INT13770		11/17/18	11/16/19	\$1,299.00
Fort Bend County Libraries - Main	staffConnect™ gate Individual License (Year 1)	License		11/17/18	11/16/19	\$99.00

Service and Maintenance/Extended Warranty Quote

TERMS AND CONDITIONS

WHAT WE WILL DO:

Hardware: In consideration of payment of the agreement price, and according to service level purchased, Bibliotheca will furnish labor and replacement parts necessary to maintain the Equipment specified in this agreement in proper operating condition during the term of this agreement, provided that the Equipment is installed by an authorized Bibliotheca Service Provider and used as directed. This Service Agreement covers Equipment failure during normal usage. Bibliotheca agrees to provide:

- On-site remedial maintenance during On-Site Coverage Hours (except for depot repair agreements) When Bibliotheca is notified that the Equipment is not in good working order. Bibliotheca will provide a toll-free telephone number for Customer to place, and Bibliotheca will receive, Equipment maintenance service calls twenty-four (24) hours per day, seven (7) days per Week.
- All labor, service parts and Equipment modifications Bibliotheca deems necessary to maintain the Equipment in good working order. All service parts will be furnished on an exchange basis and will be new parts or parts of equal quality. For certain Equipment, Bibliotheca reserves the right to replace the entire unit with new equipment or equipment of equal quality when Bibliotheca determines that replacement is more economical than on-site repair. All Equipment and service parts removed for replacement become the property of Bibliotheca.

Software: In consideration of payment of the agreement price, Bibliotheca will furnish over-the-phone software support and remote troubleshooting of the Bibliotheca Software specified in this agreement as well as updates necessary to maintain the Bibliotheca Software specified in this agreement in proper operating condition during the term of this agreement, provided that the Bibliotheca Software is installed and used as directed. Bibliotheca agrees to provide:

- All software configuration modifications Bibliotheca deems necessary to maintain the Bibliotheca Software in good working order
- Bibliotheca Software updates
- Internet Filter list updates (as applicable)
- A toll-free telephone number for Customer to place and Bibliotheca to receive software support calls. Over-the-phone software support calls may be placed twenty-four (24) hours per day, seven (7) days per week. Calls will be addressed during Bibliotheca Software Support Coverage Hours in the order they were received.

WHAT IS NOT COVERED: The basic maintenance fee does not include and Bibliotheca is not obligated to provide or perform repair of damage or increase in service time caused by (i) failure of Customer to provide continually a proper operating environment and supply of power as prescribed by the Equipment manufacturer; (ii) accident; (iii) Acts of God, including but not limited to fire, flood, water, wind and lightning; (iv) neglect, abuse or misuse; (v) failure of Customer to follow Bibliotheca's published operating instructions; (vi) modification, service or repair of the Equipment by other than Bibliotheca authorized personnel; (vii) use of Equipment for purposes other than for which designed; (viii) painting or refinishing the equipment; (ix) relocation of the equipment; (x) replacement of broken or damaged cabinetry; to include items such as lattices, base covers, book check covers, etc.; (xi) electrical work external to the Equipment; (xii) cosmetic restoration (e.g., filling of holes in floor or walls, plugging or wire run openings, removal of tape residue, etc.) after removal or relocation of equipment for any reason; (xiii) restoration of Equipment performance when it has been degraded by placement of unauthorized interference sources within the affected range of said equipment; (xiv) service requests related to use of markers (strips) other than those manufactured by Bibliotheca or its authorized distributor(s), (xv) modification, or repair of the Bibliotheca Software by other than Bibliotheca authorized personnel; (xvi) use of the Bibliotheca Software for purposes other than for which designed; (xvii) virus / hacker activity; (xviii) Non- Bibliotheca Software related updates and upgrades including, but not limited to, Operation System, Anti-Virus, Intrusion Detection. (xix) labor or materials associated with consumables such as receipt printer paper, separator jaws, patron counter batteries, and similar items.

RENEWAL: This agreement is NOT automatically renewable. If a renewal agreement is offered by Bibliotheca, the agreement price quoted will reflect the age of the product and the service costs at the time of renewal.

ENTIRE AGREEMENT: This instrument sets forth the entire agreement between the parties, and no representation, promise or condition not contained herein shall modify these terms whether made prior to or subsequent to the execution of this agreement.

Submit Purchase Order by fax to 1-877-689-2269 or by email to service-renewals-us@bibliotheca.com.

Accepted By: _____

Accepted Date: _____

Customer Purchase Order Number: _____