/2

AGREEMENT FOR SERVICES #358-C0111
AMENDMENT I

This Amendment I to that Agreement for Services #358-C0111, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "Customer"), and Ascent Solutions, Inc., now known as PKWARE of Ohio, Inc., an Ohio Corporation duly qualified to conduct business in the State of California, whose principal place of business is 9009 Springboro Pike, Miamisburg, OH 45342, (hereinafter referred to as "ASi");

WITNESSETH

WHEREAS, ASi has been engaged by Customer under Agreement for Services #358-C0111 to provide software license fee and maintenance for PKZIP MVS Base 2.51A to compress/decompress files on the mainframe during file transfers for the Information Technologies Department; and

WHEREAS, ASi has undergone a name change effective December 12, 2002 and is now doing business as PKWARE of Ohio, Inc.; and

WHEREAS, Ascent Solutions, Inc. and PKWARE of Ohio, Inc. have requested that the Customer accept work under the Agreement by PKWARE of Ohio, Inc., and

WHEREAS, Ascent Solutions, Inc., will remain liable for all obligations, covenants, and conditions, and/or liabilities for services already performed under the terms and conditions of Agreement for Services #358-C0111, as approved by the Board of Supervisors and executed on March 28, 2000, incorporated herein and made by reference a part hereof; and

WHEREAS, Ascent Solutions, Inc., acknowledges and agrees that all existing indemnity and insurance obligations will remain in full force and effect for the duration of the Agreement for Services #358-C0111, and as thereafter required by the Agreement; and

WHEREAS, PKWARE of Ohio, Inc. will assume all ASi's duties, responsibilities and obligations under the Agreement, including providing outstanding duties and responsibilities associated with software license and maintenance services under the terms and conditions of agreement for Services #358-C0111, and

WHEREAS, The parties hereto have mutually agreed to add **ARTICLE 14-Taxpayer Identification Number (Form W-9)** and **ARTICLE 15-California Residency (Form 590)**; and

WHEREAS, Customer will accept this Amendment I on condition that Ascent Solutions, Inc. and PKWARE of Ohio, Inc. fulfill the terms and conditions of this Amendment I, and the original Agreement for Services #358-C0111;

NOW, THEREFORE, the parties to the assignment of the subject Agreement from Ascent Solutions, Inc. to PKWARE of Ohio, Inc. effective December 12, 2002, and that PKWARE of Ohio, Inc. assumes all duties, covenants and obligations of the ASi under this Agreement and is responsible for executing the work after December 12, 2002, in accordance with all terms and conditions as defined in the original Agreement for Services #358-C0111; and that Ascent Solutions, Inc. shall remain liable, jointly and severally, for all work performed prior to December 12, 2002, and further agrees that all indemnity and insurance obligations remain in full force and effect as stated herein above. Additionally, the parties do hereby agree that Agreement for Services #358-C0111 shall be amended a first time to read as follows:

14. Taxpayer Identification Number (Form W-9): All independent contractors or Corporations providing services to the County of El Dorado must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

15. California Residency (Form 590): All independent Contractors providing services to the County of El Dorado must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or Customer shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding $1,500.00.

Except as herein amended, all other parts and sections of this Agreement # 358-C0111 for Services shall remain unchanged and in full force and effect.

REQUESTING DEPARTMENT CONCURRENCE:

By: _____   Dated: _11/18/2003_____

Patrick Hale, Director of Information Technologies

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement #358-C0111 the day and year first below written.

--- C O U N T Y   O F   E L   D O R A D O ---
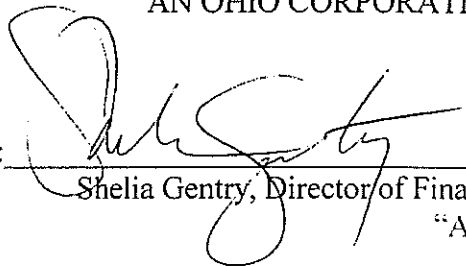
Dated: _12-2-03_

By: _Helen Baumann_
Helen Baumann, Chairman
"Customer"

ATTEST:
Dixie L. Foote
Clerk of the Board of Supervisors

By: _Margaret L. Mooney_ Date: _12-2-03_
Deputy Clerk

-- C O N S U L T A N T --

Dated: _11/14/03_

PKWARE OF OHIO, INC.,
AN OHIO CORPORATION

By: _Shelia Gentry_
Shelia Gentry, Director of Finance
"ASi"

#358-C0111

Site ID: <u>10219</u>

License Agreement Number: <u>33559</u>

ASi (ASCENT SOLUTIONS Inc.)
9009 Springboro Pike
Miamisburg, OH 45342
Telephone: (937) 847-2374
Fax: (937) 847-2375

LICENSE AGREEMENT FOR ASi™ SOFTWARE

This Agreement ("Agreement") is by and between ASCENT SOLUTIONS Inc. ("ASi"), and <u>County of El Dorado</u> ("Customer") for the purchase and support of a License to use the ASi software described on the attached Machine Description Form(s) (the "Software"), to be executed only on the machine(s) identified on the Machine Description Form(s) attached hereto.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties do hereby agree that:

1. License
ASi grants Customer a License to use the Software on the machine(s) described on the Machine Description Form(s) attached hereto subject to the terms and conditions of this Agreement.

2. Support
ASi agrees to provide product support for the Software, at no additional charge to Customer, for the first one (1) year term of this Agreement in the following areas:

a. Error Conditions: When error conditions are the result of errors in the Software code, they shall be corrected.

b. Data format and content changes: When the format and content of raw data which is processed by the Software change as a result of vendor changes in the operating system and sub-systems which create the data, ASi agrees to provide for the continued compatibility of the Software.

c. Enhancements: Enhancements to the Software shall be provided to Customer. ASi retains the right to determine the nature and scope of such enhancements.

d. If Customer desires product support for the Software beyond the first one (1) year term of this Agreement, Customer and ASi may execute a Support Addendum and Customer shall pay ASi the appropriate fee(s).

e. If Customer and ASi execute a Support Addendum and Customer pays the Support Addendum fee, ASi agrees to issue key(s) to Customer, allowing Customer to execute the Software on a substitute machine(s) of an equal or a lesser average MIPS capacity in lieu of the machine(s) listed on the attached Machine Description Form(s), at no additional charge to Customer.

f. Customer acknowledges that if Customer and ASi do not execute a Support Addendum, keys, which would allow Customer to execute the Software on a substitute machine(s) in lieu of the machine(s) listed on the attached Machine Description Form(s), shall not be issued to Customer.

g. If Customer and ASi execute a Support Addendum and Customer pays the Support Addendum fee, ASi agrees to issue extra emergency backup key(s) to Customer, beyond the one emergency backup key provided in Article 6, for use on machine(s) at an emergency backup site for disaster testing or actual disaster, at no additional charge to Customer.

h. Customer acknowledges that if Customer and ASi do not execute a Support Addendum, additional emergency backup keys, beyond the one provided in Article 6, shall not be issued to Customer.

3. Administrative Procedures

a. General: Support, both during the first one (1) year term of this Agreement and thereafter if ASi and Customer execute a Support Addendum, is directed toward the identification and correction of general error conditions in the Software, additions due to changes in the format of data processed by the Software, and new executables for additional features.

b. New Versions: New versions of the Software are complete replacement executable(s) in a machine-readable form, and are the primary support mechanism. New versions are scheduled as required by changes and enhancements.

c. Temporary Changes and PreReleases: Between versions of the Software, corrections, changes, and enhancements may be provided to Customer both during the first one (1) year term of this Agreement and thereafter if ASi and Customer execute a Support Addendum, and may be provided in printed form, by telephone, telefax, or mail, or in a machine readable form as a Software PreRelease, upon request from Customer, at no cost to Customer.

d. Documentation: The Software includes one set of documentation. This documentation can include Installation and Operation Manual, Release Notes, Patch Notes, and other related documents. Additional documentation sets can be purchased for US$20.00 plus shipping and handling per set. Documentation can be copied only for internal use in conjunction with the Software as long as all proprietary marks, copyright notices and acknowledgements are retained.

e. Method of Shipment: The Software is sent using Parcel Service Ground direct to Customer at the Technical Address on the Machine Description Form(s).

f. Consulting Service: During the first one (1) year term of this Agreement and thereafter if ASi and Customer execute a Support Addendum, limited telephone or written consultation for non-error conditions may be available to Customer's personnel who have access to the documentation, at the discretion of ASi.

4. Term

a. The License to use the Software shall be effective for a period of one (1) year commencing on the first day after ASi executes this Agreement and receives the First Year Fee.

The License to use the Software shall automatically renew for successive one (1) year terms unless earlier terminated pursuant to Article 4(c).

b. The support provided in Article 2 shall be for a period of one (1) year commencing on the first day after ASi executes this Agreement and receives the First Year Fee. The support provided in Article 2 shall not renew unless Customer and ASi execute a Support Addendum and ASi receives the support fee.

c. Both the License to use the Software and support shall immediately terminate if Customer violates any term of this License, violates any of ASi's intellectual property rights, fails to co-operate with ASi as provided in Article 8, does not pay an upgrade fee if assessed, returns the Software, or if a thirty (30) day written notice of termination is given by Customer. If Customer terminates this License, ASi shall not make any refund of any fees, except as provided in Article 7.

5. Charges

a. The First Year Fee for purchase of the License and first year support shall be $10,585.00 U.S. dollars that is an accumulation of the Total Amount(s) indicated on the Machine Description Form(s). "First Year Fee" means the fee Customer must pay for the License and support for the first one (1) year term of this Agreement. The fee depends on the machine's model, type and manufacturer.

b. Any invoice issued to Customer under this Agreement is due and payable within thirty (30) days of its receipt by Customer. Initially, a key will be issued for thirty (30) days until payment in full for the First Year Fee is received by ASi.

c. Customer shall pay an upgrade fee when the MIPS capacity of the machine(s) increases from the base machine(s) at the time of purchase. The upgrade fee shall be equal to the difference between the average MIPS capacity of the base machine(s) indicated on the Machine Description Form(s) and the average MIPS capacity of the upgraded machine(s), multiplied by the per-MIPS fee indicated on the Machine Description Form(s). The upgraded machine will establish the new average base MIPS capacity. Average MIPS capacity per machine is determined by Cheryl Watson's CPU chart, or equivalent source if not available.

d. Customer shall be responsible for all other federal, state, municipal and other government excise, sales, use, customs, value added, or other taxes, fees or duties now in force or enacted in the future, except for taxes measured by ASi's net income.

e. If Customer requires Purchase Order Number or Contract Number to be printed on the invoices, Customer must provide the same. In the event of conflict between Customer's Purchase Order/Contract and this Agreement, the parties agree that this Agreement shall control.

f. Payment shall be made in U.S. dollars drawn on a U.S. bank item that is clearable through the Federal Reserve System of the U.S.

6. Customer Acknowledgement

Customer acknowledges that the Software is protected by copyright and other intellectual property rights and constitutes a valuable asset of ASi. Customer shall not violate any of ASi's intellectual property rights. Customer is hereby permitted to make Archived copies for an inactive backup stored off site. The Software may be temporarily executed on one machine at one emergency backup site for disaster testing or actual disaster. Customer acknowledges that the Software checks hardware serial, model and version numbers. Customer agrees NOT to copy, publish, display, or otherwise make available to any other persons the Software or any of the copyrighted material without the written consent of ASi. CUSTOMER ACKNOWLEDGES THE SOFTWARE IS LICENSED FOR USE ON THE MACHINE(S) LISTED ON THE MACHINE DESCRIPTION FORM(S). THE SOFTWARE IS TO BE EXECUTED ONLY ON SUCH MACHINE(S), EXCEPT THE ONE MACHINE AT ONE EMERGENCY BACKUP SITE FOR DISASTER TESTING OR ACTUAL DISASTER. IF CUSTOMER AND ASi EXECUTE A SUPPORT ADDENDUM AND CUSTOMER PAYS THE SUPPORT ADDENDUM FEE, ASi AGREES TO ISSUE TEMPORARY EXTRA EMERGENCY BACKUP KEY(S) TO CUSTOMER AT NO ADDITIONAL CHARGE TO CUSTOMER; OTHERWISE ONLY ONE TEMPORARY EMERGENCY BACKUP KEY SHALL BE ISSUED.

7. Money-back Warranty

If Customer is not satisfied with the Software, Customer has thirty (30) days after ASi signs this Agreement to return the Software for full refund of the First Year Fee and cancellation of this Agreement. THIS WARRANTY OBLIGATION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. Indemnification

Subject to Article 9, ASi shall indemnify and hold Customer harmless against any damages, costs and expenses arising out of any suit, claim, or proceeding based on an assertion that the materials provided hereunder infringe any copyright or trade secret; provided that Customer (A) promptly notifies ASi in writing of any such claim; (B) makes no admission of liability; (C) provides ASi with full information and assistance that may be reasonably necessary to defend any such claim; and (D) gives ASi sole authority, at its expense, to direct and control all defense, settlement or compromise negotiations.

9. Liability

ASi'S LIABILITY IN CONTRACT, TORT, OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR ASi'S PERFORMANCE HEREUNDER, SHALL NOT EXCEED THE FEES CUSTOMER PAID TO ASi IN THE YEAR PRECEDING CUSTOMER'S PRESENTATION OF THE CLAIM TO ASi. IN NO EVENT SHALL ASi BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ASi'S PERFORMANCE HEREUNDER, EVEN IF ASi SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL DAMAGES. NO OBLIGATION OR LIABILITY SHALL ARISE FROM ASi'S RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THIS AGREEMENT.

10. Return

Upon termination or cancellation of the License provided herein, Customer must communicate in writing that the Software has been removed from Customer's system(s), must return all material (the Software media, documentation, diskettes, etc.) and must explain the technical reasons why the Software failed to meet Customer's expectations.

11. Notice

Any notice, request, instruction or other document to be given hereunder by either party to the other shall be in writing, and delivered via email, personally, overnight courier, express mail, or certified mail, return receipt requested, postage prepaid (such mailed notice to be effective on the date such receipt is signed by the receiving party), to the signatories of this Agreement.

12. General

This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior oral and written agreements and understandings related hereto. No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by the parties.

The failure of either party at anytime (or times) to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions contained in this Agreement. In the event of conflict between this Agreement and the Support Addendum, if executed, this Agreement shall control. This Agreement shall be subject to and interpreted in accordance with the laws of the State of Ohio. All provisions of this Agreement which by their nature are intended to survive the expiration or termination of this Agreement shall survive and remain in full force and effect, including but not limited to Articles 5, 6, 7, 8, 9, and 12.

13. Administrator

Administrator: The County Officer or employee with responsibility for administering this Agreement is Woodrow Covington, Information Technologies Manager, Information Services Department, or successor.

CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ THIS AGREEMENT AND AGREES TO ALL TERMS AND CONDITIONS CONTAINED HEREIN.
Total number of Machines executing the Software pursuant to this Agreement: 1
(Each requires a separate "Machine Description Form" to be attached.)

County of El Dorado

By: _____

Typed Name: **WILLIAM S. BRADLEY**

Title: Chairman

Date: December 12, 2000

ASi (ASCENT SOLUTIONS Inc.)

By: _____

Typed Name: Scott Beeson

Title: Director of Sales

Date: 1/3/2001

ATTEST: DIXIE L. FOOTE, Clerk
of the Board of Supervisors

By _____
DEPUTY

12-12-2000

ASi (ASCENT SOLUTIONS Inc.)
9009 Springboro Pike
Miamisburg, OH 45342
Telephone: (937) 847-2374
Fax: (937) 847-2375

LICENSE AGREEMENT FOR ASi™ SOFTWARE
SUPPORT ADDENDUM

ASi agrees to provide product support for the Software, beyond the first one (1) year term of the License Agreement for ASi Software (the "Agreement"), in the following areas:

a. Error Conditions: When error conditions are the result of errors in the Software code, they shall be corrected.

b. Data format and content changes: When the format and content of raw data which is processed by the Software change as a result of vendor changes in the operating system and sub-systems which create the data, ASi agrees to provide for the continued compatibility of the Software.

c. Enhancements: Enhancements to the Software shall be provided to Customer. ASi retains the right to determine the nature and scope of such enhancements.

d. New Versions: New versions of the Software are complete replacement executable(s) in a machine-readable form, and are the primary support mechanism. New versions are scheduled as required by changes and enhancements.

e. Temporary Changes and PreReleases: Between versions of the Software, corrections, changes, and enhancements may be provided to Customer in printed form, by telephone, telefax, or mail, or in a machine readable form as a Software PreRelease, upon request from Customer, at no cost to Customer.

f. Limited telephone or written consultation for non-error conditions may be available to Customer's personnel who have access to the documentation, at the discretion of ASi.

During the term of this Addendum, ASi agrees to issue key(s) to Customer, allowing Customer to execute the Software on a substitute machine(s) of an equal or a lesser average MIPS capacity in lieu of the machine(s) listed on the attached Machine Description Form(s).

During the term of this Addendum, ASi agrees to issue extra emergency backup key(s) (in addition to the one provided in Article 6 of the Agreement) to Customer for disaster testing or actual disaster.

This Addendum shall commence after the first one (1) year term of the Agreement. This Addendum shall automatically renew upon payment of a renewal invoice unless Customer violates any of the terms of the Agreement, violates any of ASi's intellectual property rights, fails to co-operate with ASi as provided in Article 8 of the Agreement (Indemnification), does not pay an upgrade fee if assessed, returns the Software, or if a thirty (30) day written notice of termination is given by Customer.

The fee for subsequent years support beyond the first one (1) year term of the Agreement shall be <u>17.5 %</u> percent of the total List price or <u>$1,852.37</u>U.S. dollars per year. This fee may be increased: (1) at ASi's discretion by an amount not to exceed the cost of living plus five (5) percent per year; and (2) in connection with a machine upgrade.

Renewal invoices shall be issued approximately sixty (60) days in advance of the current support termination date. Payment of the renewal invoice constitutes renewal of this Addendum for an additional one (1) year term. Non-payment of the renewal invoice constitutes expiration of this Addendum.

A reinstatement fee equal to the First Year Fee (as defined in the Agreement) may be charged for reinstatement of expired or canceled machines.

The services ASi shall perform pursuant to this Addendum shall be performed in accordance with generally accepted industry standards. THIS WARRANTY OBLIGATION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ASi'S LIABILITY IN CONTRACT, TORT, OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS ADDENDUM, OR ASi'S PERFORMANCE HEREUNDER, SHALL NOT EXCEED THE FEES CUSTOMER PAID TO ASi IN THE YEAR PRECEDING CUSTOMER'S PRESENTATION OF THE CLAIM TO ASi. IN NO EVENT SHALL ASi BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS ADDENDUM OR ASi'S PERFORMANCE HEREUNDER, EVEN IF ASi SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL DAMAGES. NO OBLIGATION OR LIABILITY SHALL ARISE FROM ASi'S RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THIS ADDENDUM.

County of El Dorado

By: X _____

Typed Name: Chairman **WILLIAM S. BRADLEY**

Title: _Chairman_

Date: _December 12, 2000_

ASi (ASCENT SOLUTIONS Inc.)

By: _____

Typed Name: Scott Beeson

Title: Director of Sales

Date: _1/3/2001_

ATTEST: DIXIE L. FOOTE, Clerk
of the Board of Supervisors

By _Margaret B Moody_
    DEPUTY

_12-12-2000_