

Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

_____)	
In re)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590 (DML)
)	Jointly Administered
Debtors.)	
_____)	

**MOTION OF DEBTORS TO REJECT THE LICENSE AND SERVICES
AGREEMENT BETWEEN RISK LABORATORIES, LLC AND
MIRANT CORPORATION**

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors-in-possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject the "License and Services Agreement" (the "Contract") between Mirant and Risk Laboratories, LLC ("Risk Labs"), which is described below in greater detail and attached hereto as Exhibit B.¹ In support thereof the Debtors represent as follows:

¹ Not all parties were served with the Contract. Any party may request a copy of the Contract by making a written request to the Debtors' counsel.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. Mirant Corporation and 82 of its direct and indirect subsidiaries (the "Debtors") filed voluntary chapter 11 petitions and manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors' chapter 11 cases.

4. The Committees. Three official committees (collectively, the "Committees") have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases.

RELIEF REQUESTED

5. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject the Contract listed below in paragraph 8 hereof, effective ten (10) business days from the date of service of this Motion.

BASIS FOR RELIEF

6. On August 14, 2003, the Court entered an amended order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

7. In summary, the Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract at the last

known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit A.

8. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Contract will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

- (a) **Title of the Contract:** "License and Services Agreement" between Risk Labs and Mirant, inclusive of the "Risk Management Information System Proposal," dated January 18, 2002.

Effective Date of Rejection:
February 20, 2004, subject to paragraph 9 hereof

Parties to the Contract:

Mirant Corporation
Risk Laboratories, LLC

Contact Information for Non-Debtors:

Risk Laboratories, LLC
531 Roselane Street, Suite 800
Marietta, Georgia 30060
Attn: Client Services Department

9. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to the Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the Contract, then

the Contract shall be deemed rejected as of the date of the determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the respective Contract.

10. Pursuant to the Order, claims arising out of the rejection of the Contract must be filed with the Court, or any Court approved claims processing agent, by the later of (i) the deadline for filing proofs of claims established by the Court or (ii) thirty (30) days after the Effective Date of Rejection, or the date of the Order of the Court upholding the Debtors' determination to reject the Contract, unless otherwise agreed, in writing, by the Debtors and the counterparty to the Contract (the "Rejection Claims Deadline").

11. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of the Contract who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

General Description Relating to the Contract.

12. Pursuant to the Contract, Mirant acquired a license to use certain software, known as RiskConsole, an internet based system designed to assist in the flow of risk management information by providing a data center, current reports on reported data, and worldwide access via the internet. The Contract also provides Mirant with service and support for the maintenance of the RiskConsole system, including training, support, and standard upgrades. The Contract became effective February 15, 2002 and has a term of three (3) years, at a semi-annual fee of \$34,000.

The Contract May Be Rejected.

13. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). An executory contract has been defined as one where material performance is due on both sides such that the failure of either party to complete performance would constitute a material breach of the contract excusing performance of the non-breaching party. *See In re Liljeberg Enterprises, Inc.*, 304 F.3d 410, 436 (5th Cir. 2002); *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62-63 (5th Cir. 1994). The Contract is an executory contract because it requires (i) Risk Labs to provide Mirant with the on-going right to use the RiskConsole system and (ii) Mirant to pay for this right. Moreover, Risk Lab's failure to allow Mirant to use the RiskConsole system would constitute a material breach of the Contract, excusing the performance of the other party. Therefore, the Contract is undoubtedly an executory contract that may be rejected under section 365 of the Bankruptcy Code. *See, e.g., In re El Paso Refinery, L.P.*, 220 B.R. 37, 39 n.1 (Bankr. W.D. Tex. 1998) (contract requiring debtor to provide jet fuel to government held to be executory); *In re Cajun Elec. Power Coop., Inc.*, 230 B.R. 693, 702 (Bankr. D. La. 1999) (supply contracts entered into by debtor electric cooperative held executory).

Rejection of The Contract is Within the Debtors' Business Judgment.

14. Rejection of an executory contract requires court approval. A debtor's decision to assume or reject will be approved provided that it meets the "business judgment" test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("[A] bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision . . ."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor's request to assume or reject contract

should be approved where not manifestly unreasonable or made in bad faith). The "business judgment" test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. *See Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory contract, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

15. "The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)). Since Mirant entered into the Contract, the Debtors' business operations have changed and, after due inquiry, the Debtors have determined that the Contract is burdensome to their estates.

16. The Debtors have determined, in their reasonable business judgment, that the Contract should be rejected as uneconomical and an impediment to their ongoing business operations. Since Mirant entered into the Contract, the Debtors' business operations have changed and the Debtors no longer require or use the risk management information provided by the RiskConsole system. Hence, the Debtors are paying \$34,000 semi-annually for a service that provides no use or benefit to the estates. Therefore, the Debtors have determined that it is in their best interest to reject the Contract.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibits) via U.S. mail, and the addressees set forth below via overnight mail (with exhibits) on the 4th day of February, 2004.

Eric J. Taube
Mark C. Taylor
Hohmann, Taube & Summers, L.L.P.
100 Congress Avenue
Suite 1600
Austin, TX 78701

Deborah D. Williamson
Thomas Rice
Cox & Smith Incorporated
112 East Pecan Street
Suite 1800
San Antonio, TX 78205-1505

Howard L. Siegel
Brown Rudnick Berlack Israels LLP
City Place I, 185 Asylum Street
Hartford, CT 06103-3401

Bruce R. Zirinsky
Gregory Petrick
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, NY 10038

William R. Baldiga
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, MA 02111

Mark Thompson
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017-3954

Edward S. Weisfelner
Leslie H. Scharf
Brown Rudnick Berlack Israels LLP
120 West 45th Street
New York, NY 10036

Risk Laboratories, LLC
531 Roselane Street, Suite 800
Marietta, Georgia 30060
Attn: Client Services Department

Paul N. Silverstein
Andrews & Kurth, L.L.P.
805 Third Avenue
New York, NY 10022

Jason S. Brookner
Andrews & Kurth, L.L.P.
1717 Main Street
Suite 3700
Dallas, TX 75201

/s/ Ian T. Peck

EXHIBIT A

U.S. BANKRUPTCY COURT,
NORTHERN DISTRICT OF TEXAS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ENTERED
TAWANA J. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML-11
Debtors.)	Jointly Administered

**AMENDED ORDER REGARDING MOTION OF DEBTORS FOR AN ORDER
PURSUANT TO SECTIONS 365 AND 554 OF THE BANKRUPTCY CODE
AUTHORIZING AND APPROVING A PROCEDURE FOR THE REJECTION OF
CERTAIN EXECUTORY CONTRACTS**

Upon the Motion of Debtors for an Order Pursuant to Sections 365 and 554 of the Bankruptcy Code Authorizing and Approving a Procedure for the Rejection of Certain Executory Contacts (the "Motion") filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") in these Chapter 11 cases; and it appearing that this Court has jurisdiction over this matter; and it appearing that due and proper notice has been given; and upon due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Rejection Procedures referenced on Exhibit "A" attached hereto are hereby approved; and it is further

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising or related to the implementation of this Order; and it is further

ORDERED that the last date to file timely proofs of claim against the Debtors arising from the rejection of any Contracts and Leases (the "Rejection Claims Deadline") will be and hereby is the later of: (i) the deadline for filing proofs of claims established by this Court; and (ii) thirty (30) days after the Rejection Effective Date, as such term is defined in the

Rejection Procedures, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease; and it is further

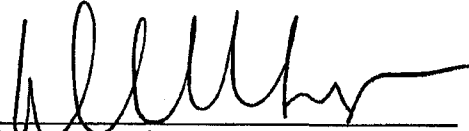
ORDERED that any holder of a claim allegedly arising from the rejections authorized in accordance with the Rejection Procedures who fails to timely file a proof of such claim on or prior to the expiration of the Rejection Claims Deadline be: (i) forever barred from asserting such claim against any of the Debtors or their estates; (ii) forever barred from sharing in any distribution of the Debtors' estates or assets under any plan of reorganization confirmed in these chapter 11 cases or order of the Court authorizing distributions from the Debtors' estates; and (iii) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and/or any order of the Court authorizing distributions from the Debtors' estates; and it is further

ORDERED that the procedures established by this Order, including the Rejection Claims Deadline, shall not apply to (a) any executory contract or unexpired lease between any of the Debtors and (i) PEPCO and any of its affiliates; (ii) WGES; (iii) Kern; (iv) 285 Venture; (v) Unitil; (vi) the NSTAR Companies (as each entity is defined it is respective objection or joinder to objections to the Motion) (vii) the Cape Light Compact Agreements, including the Pilot Electric Supply Agreement by and between the Cape Light Compact and Mirant Americas Retail Energy Marketing, LP; or (b) leases and lease-related contracts pertaining to the Dickerson and Morgantown power plants operated by Mirant Mid-Atlantic, LLC and its subsidiaries (in which the lease counterparties are certain limited liability companies affiliated with Bank One, N.A., Union Bank of California, N.A. and Verizon Capital Corp.); and it is further

ORDERED that, to the extent that any provision contained in this Order is inconsistent with this Court's Interim Order Authorizing the Debtors to (i) Comply With Terms of Prepetition Trading Contracts, (ii) Enter Into Postpetition Trading Contracts in the Ordinary Course of Business, (iii) Provide Credit Support Relating to Both Pre- and Post-Petition Trading

Contracts, and (iv) Setting a Final Hearing to Consider the Entry of a Final Order Affirming the Interim Order and Authorizing Assumption of Prepetition Trading Contracts entered on July 17, 2003 (the "Trading Order"), the Trading Order shall control.

Dated August 14, 2007



HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

Exhibit "A"

Rejection Procedures

- a. Unless a timely objection is filed, any Contract or Lease determined by the Debtors, in the exercise of their business judgment, to be unnecessary and/or burdensome to the Debtors' ongoing business operations shall, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease, be deemed rejected ten (10) business days from service of a motion to reject such Contract or Lease (the "Rejection Motion"), via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases (each, a "Committee").
- b. The Rejection Motion shall be substantially in the form of the Rejection Motion attached hereto as Exhibit A-1 and shall include a copy of the Order approving this Motion.
- c. If an objection to a Rejection Motion is filed by a counterparty to a Contract or Lease, or by any Committee, and timely served upon, and actually received by, counsel to the Debtors prior to the expiration of the ten (10) business day notice period, the Debtors will seek a hearing to consider the objection at the Court's earliest convenience.
- d. If no objections by either a counterparty to a Contract or Lease or by any Committee, are timely received, then the applicable Contract or Lease shall be deemed rejected as of the expiration of the ten (10) business day notice period described above unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease. The Rejection Effective Date for any rejection shall be the later of (a) the expiry of the ten (10) business day notice period if no objection is filed; (b) the entry of an order ultimately approving rejection if an objection to rejection is filed; and (c) such other date upon which the debtor and the objection party may agree.
- e. If an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of the Order unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.
- f. Claims arising out of the rejection of Contracts and Leases must be filed with the Bankruptcy Court or any Court approved claims processing agent by the later of (i) the deadline for filing proofs of claim established by this Court or (ii) thirty (30) days after the Rejection Effective Date, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease.

Exhibit "A-1"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

_____)	
In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML-11
Debtors.)	Jointly Administered
_____)	

**MOTION OF DEBTORS TO REJECT EXECUTORY CONTRACTS OR
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
OF [NAME OF COUNTERPARTY]**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject certain executory contracts (each, a "Contract") or unexpired leases of real property (each, a "Lease"), and in support thereof represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), each of the Debtors filed a voluntary petition in this court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C.

§§ 101-1330, as amended (the "Bankruptcy Code").¹ The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the Debtors' motion for an order requesting that the Debtors' bankruptcy estates be jointly administered.

4. Unsecured Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas formed two official committees of unsecured creditors. The first Committee is comprised of certain bondholders of Mirant Americas Generation, LLC. The Second Committee is comprised of certain creditors of Mirant Corporation and the remaining Debtors.

RELIEF REQUESTED

4. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject certain Contracts and/or Leases listed below, effective 10 (ten) business days from the date upon service of this Motion.

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the "Canadian Debtors") to commence plenary insolvency proceedings (the "Canadian Proceedings") in the Court of Queen's Bench of Alberta Judicial District of Calgary (the "Canadian Court") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

BASIS FOR RELIEF

5. On _____, 2003, the Court entered an order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

6. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit "A".

7. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Leases and/or Contracts will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

**Title of Lease/Contract:
Effective Date of Rejection:
Parties to the Lease/Contract
and Contact Information:**

8. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100,

Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of such determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.

9. Pursuant to the Order, claims arising out of the rejection of Contracts and Leases must be filed with the Court, or any Court approved claims processing agent, by the later of: (i) the deadline for filing proofs of claims established by this Court or (ii) thirty (30) days after the Effective Date, or the date of the Order of the Court upholding the Debtors' determination to reject the applicable Contract or Lease, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease (the "Rejection Claims Deadline").

10. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of a Contract or Lease who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

CONCLUSION

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas
_____, 2003

HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
(214) 651-5000

By _____

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Ian Peck
State Bar No. 24013306

-and-

Thomas E Lauria
State Bar No. 11998025
Michelle C. Campbell
State Bar No. 24001828
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
(305) 371-2700

PROPOSED ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT B

Risk Laboratories, LLC
LICENSE AND SERVICES AGREEMENT

This License and Services Agreement ("Agreement"), between Risk Laboratories, LLC ("Risk Labs"), a Georgia limited liability company with principal offices at 531 Roselane Street, Suite 800, Marietta, GA 30060, and you "Client" who agrees to be bound by these terms and conditions.

IN ORDER TO COMPLETE THE RISKCONSOLE™ REGISTRATION PROCESS, CLIENT MUST INDICATE ITS ACCEPTANCE OF THIS AGREEMENT BY CLICKING THE BUTTON MARKED "SUBMIT" BELOW. CLICKING ON THE "SUBMIT" BUTTON SHALL BE DEEMED CLIENT'S CONCLUSIVE ACKNOWLEDGEMENT THAT IT HAS READ, UNDERSTOOD AND ACCEPTED THE TERMS OF THIS AGREEMENT. CLIENT FURTHER AGREES THAT RISK LABS MAY MODIFY THE TERMS OF THIS AGREEMENT FROM TIME TO TIME BY NOTIFYING CLIENT AT ITS ADDRESS LISTED IN SECTION 14.2 OF THIS AGREEMENT. USER WILL HAVE THIRTY (30) DAYS FROM RECEIPT OF NOTICE IN WHICH TO OBJECT IN WRITING TO THE MODIFICATIONS. IF CLIENT SO OBJECTS, THIS AGREEMENT WILL TERMINATE PURSUANT TO SECTION 13 HEREOF. FAILURE TO OBJECT ON A TIMELY BASIS WILL CONSTITUTE ACCEPTANCE OF THE MODIFICATIONS.

IF CLIENT DOES NOT WISH TO BE BOUND BY THE TERMS OF THIS AGREEMENT, IT MAY NOT ACCESS OR USE THE SOFTWARE. IN THIS CASE, PLEASE CLICK THE "BACK" BUTTON ON THE WEBSITE. If CLIENT has any questions about this Agreement, it may contact Risk Labs at sales@risklabs.com

1. DEFINITIONS:

1.1 Documentation means FAQ's, manuals, and help files that describe the functionality of the Software.

1.2 Products means Software, Documentation and any Risk Labs proprietary applications that are downloaded in connection with the Software.

1.3 Server means the processor or equipment configuration on which the Software resides.

1.4 Services means training, consulting, project management, data conversion and custom programming provided by Risk Labs.

1.5 Support Services means Software remedial support, defect correction and technical assistance.



1.6 Proposal is any document that sets forth the fees for the Software and any related services, and is part of and incorporated by reference into this Agreement. Each Proposal will designate any Software licensed and terms applicable to services.

1.7 Software means Risk Labs' RiskConsole™ software product and/or other software more specifically described in the Proposal. Software includes warranty updates, which may be provided by Risk Labs.

1.8 Term of the Agreement shall mean the Initial Term and any and all Renewal Terms, as defined in Section 13 hereof.

2. PRICES AND FEES

2.1 Prices and Fees are specified in the Proposal. Prices and Fees shall remain fixed for the period specified in the Proposal. Any Services that are requested that are not set out in the Proposal will be billed on a time and materials basis at mutually agreed upon fees and are due and payable by Client upon receipt of invoice. Client agrees to pay Risk Labs for all preapproved reasonable and customary travel expenses incurred in the installation of products or delivery of Services at Client's site.

2.2 Exclusions. The prices and fees are exclusive of Internet connection fees, Internet Service Provider Fees and communication costs. Client is responsible for providing and paying for these services and fees through third parties. Client is also solely responsible for providing all hardware, telecommunications equipment, software and bandwidth that it requires to use the Software.

3. PAYMENT

3.1 For Client's authorization to use the Software, Client will pay Risk Labs the fees set forth in the Proposal as Proposal during the Term of this Agreement. Payment is due upon receipt of invoice.

3.2 Payment for Services that are not included in the above fees is due within thirty (30) days of invoice of said Services, including training fees, and related travel costs not included in the Proposal. Project management, consulting, configuration, and custom programming fees are billed as incurred less any pre-paid deposit amounts.

3.3 Unless stated otherwise in the Proposal, all prices are in U.S. dollars and payments shall be made in U.S. dollars. A monthly late charge of one and one-half (1.5%) percent of unpaid fees will be assessed beginning forty-five (45) days following submission of invoices, unless there is a dispute concerning the invoice.

3.4 Client shall pay all tariffs and taxes assessed or levied by any governmental entity that are now or may become payable solely by reason of the sales transaction of the Software or Services. Client shall also pay any interest or penalties on such tax;

risklabs

riskconsole™

provided, however, Client shall not be responsible for any interest or penalties resulting from (i) Risk Labs' failure to forward tax funds received from Client to the applicable tax authority or (ii) Client's failure to receive invoices or notices in connection with the payment of such taxes. This provision includes, but is not limited to, sales, use, excise, gross receipt and personal property taxes, but does not include taxes based upon the net income of Risk Labs.

4. DATA CONVERSION, DATA BACKUP AND DELIVERY OF SERVICES.

4.1 Unless included in the Proposal, Client is responsible for its own data conversion.

4.2 Risk Labs may, but is not required to, offer data backup services for RiskConsole™ users on a non-real-time basis. Client may request additional data back up services on a time and expense basis. Upon termination of its license, or anytime prior thereto, CLIENT may request Risk Labs to extract and provide to Client its data which Risk Labs shall so provide on a time and materials basis.

4.3 Risk Labs shall only be obligated to deliver the Services set forth in the Proposal. These Services may also require Client to get third party or internal staff cooperation and participation for Risk Labs to complete a specific Service. CLIENT will use its best efforts to accommodate any request by Risk Labs for such third party or internal staff cooperation and participation.

5. LIMITED WARRANTY

5.1 Risk Labs warrants to Client that Software will perform in accordance with the Proposal for one year after the effective date of this Agreement. RISK LABS DOES NOT WARRANT THAT THE EXECUTION OF SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. CLIENT ACKNOWLEDGES THAT THE USE OF THE SOFTWARE CAN RESULT IN LOSS OR MISTRANSMISSION OF DATA AND/OR FILES. RISK LABS IS NOT RESPONSIBLE TO CLIENT FOR RESPONSE TIMES, SYSTEM COMMUNICATION QUALITY OR DATA TRANSFER PERFORMANCE. RISK LABS DOES NOT WARRANT THE PERFORMANCE OR RELIABILITY OF THE INTERNET OR THAT THE SOFTWARE, OR FILES AVAILABLE TO CLIENT FOR DOWNLOADING WILL BE FREE OF INFECTION OR VIRUSES, WORMS OR OTHER PROGRAMMING CODE THAT MANIFESTS CONTAMINATING OR DESTRUCTIVE PROPERTIES. CLIENT IS SOLELY RESPONSIBLE FOR IMPLEMENTING SUFFICIENT PROCEDURES TO SAFEGUARD AGAINST, AND TO SATISFY ITS PARTICULAR REQUIREMENTS FOR PREVENTING THE DESTRUCTION OF THE DATA AND/OR FILES THAT IT IS DOWNLOADING AND THE SOFTWARE AND HARDWARE THAT IT IS USING. This warranty is a limited warranty and does not apply to improper use of the Products or other external causes as more fully set out in the Documentation. Risk Labs warrants that Services that it provides will be performed in a good and workmanlike manner.



5.2 RISK LABS DOES NOT WARRANT THE SOFTWARE'S REGULATORY CONTENT COMPLIANCE, INSURANCE COVERAGE CONTENT DETAILS OR OTHER BUSINESS RISKS AND Risk Labs RECOMMENDS THAT CLIENT VERIFY THE DATA AND DATA COMPLETENESS BY REVIEWING SOURCE DATA OR PHYSICAL DOCUMENTS APPROPRIATE TO THE PROCESS OR CONTENT.

5.3 Risk Labs warrants that it has the right to license the software and documentation to Client pursuant to the terms of this Agreement.

5.4 THE ABOVE WARRANTIES ARE THE EXCLUSIVE WARRANTIES AND NO OTHER WARRANTY, EXPRESS OR IMPLIED, SHALL APPLY. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY DISCLAIMED.

6. SOFTWARE LICENSE

6.1 Software License. Upon Client's acceptance of these terms by its registration and payment of the first installment of the fees, Risk Labs grants Client a non-exclusive Software License for use of the Software (including custom software) as described in the Proposal. Risk Labs may, at its option, update and enhance the Software from time to time. Client shall assign to each user a unique user ID and password. Client's use of the Software will be via the Internet only. The Software will at all times hereunder reside on a Server at Risk Labs' site or at a third party site authorized by Risk Labs. Risk Labs grants no other software licenses whatsoever, either express or implied. Client's License is personal and non-exclusive, and may not be transferred without Risk Labs' written consent. Any unauthorized assignment of Client's License shall be void. Title to Software shall remain in Risk Labs. Client shall execute the Software on Risk Labs' Server. In the event of a malfunction that prevents execution of the Software on Risk Labs' Server, Risk Labs may provide Client access to the Software on a temporary server until such malfunction is cured.

6.2 Prohibited uses. Client agrees not to use the Software or Services to (i) solicit other Risk Labs clients, (ii) violate the security of the Software, (iii) attempt to utilize another Risk Labs client account, name or password, or (iv) directly or indirectly send unsolicited electronic mail messages, whether commercial or not, to a large number of recipients.

6.3 License Limitation. Client shall not decompile, reverse engineer or reverse assemble the Software, or analyze or otherwise examine the Software, including any hardware implementation of the Software for the purpose of reverse engineering. Client shall not loan, rent, lease or sublicense Software or any copy or give its Account or password to third parties. Client is not permitted to private label their RiskConsole™ site and subcontract services, link to users or sites not specifically authorized by Risk Labs. Client cannot exceed the number of authorized Users accessing Software than the number provided for on the Proposal. Users are not authorized to share their passwords. This License is for use of the Software object code only.



6.4 Unless indicated otherwise on the Proposal, Client is licensing Software with 100 MB storage capacity and the ability to process, sort and store up to 500,000 records. Higher capacity and/or volumes may be available for an additional fee.

6.5 Confidentiality. Client acknowledges and agrees that Software and Documentation contain the trade secrets and proprietary technology of Risk Labs and agrees to hold the Software and Documentation in confidence and not to disclose or make available the Software or Documentation except to users who are pre-approved by Risk Labs and Client's employees to the extent needed to use the Software and Documentation in accordance with this License. Client's third party contractors shall not access Software, Documentation or the RiskConsole Website, www.riskconsole.com, unless specifically authorized by Risk Labs in writing, which shall not be unreasonably refused. Client agrees that Risk Labs will have the right to injunctive relief for any violation of this Section 6.5., in addition to any and all other remedies available to Risk Labs at law or under equity. Risk Labs reserves the right to refuse to authorize access to the Software and Documentation to its competitors. Client's obligations under this Section 6.5 will survive termination of the Software License.

7. CONFIDENTIALITY

7.1 As used herein, a party's "**Confidential Information**" means all information or data (in oral, written, electronic or other form) related to or owned or controlled by such party, valuable to such party (the "**Disclosing Party**") and not generally available to the Disclosing Party's competitors. For purposes of this Agreement, Client's Confidential Information includes (i) information subject to restrictions and limitations on disclosure and use under applicable securities laws, and (ii) the input and output data associated with the Software.

7.2 All Confidential Information of a Disclosing Party furnished or otherwise disclosed or made available to the other party (the "**Receiving Party**") in the course of performing this Agreement will remain the property of and be deemed proprietary and confidential to the Disclosing Party. Without limiting the foregoing, the Receiving Party agrees: (a) to the extent permitted by applicable law, to hold such Confidential Information in strict confidence and in trust for the Disclosing Party; (b) to use the same degree of care in protecting the Confidential Information of the Disclosing Party for which the Receiving Party protects its own Confidential Information of like nature, but in no instance with less than reasonable care to protect such Confidential Information against unauthorized use or disclosure; (c) to restrict disclosure of such Confidential Information to its employees, contractors and consultants who (i) have a need to know such Confidential Information for purposes of the Receiving party exercising its rights or performing its obligations under this Agreement and (ii) have been informed of the confidential nature of such information and the obligations under this Agreement. The Receiving Party will cause all such employees, contractors and consultants to comply with the terms of this Section 7.

7.3 All of the foregoing limitations on the possession, reproduction, disclosure, or use of Confidential Information shall not apply to any particular items or information of the Disclosing Party that:

(a) was developed independently by the Receiving Party, without use of or reference to Confidential Information of the Disclosing Party, prior to the receipt of such Confidential Information, as evidenced by written documentation;

(b) was received from a third party without violating any obligation of confidentiality to the Disclosing Party and without any obligation or restriction on use or disclosure of such Confidential Information;

(c) has been published or otherwise disclosed to others by the Disclosing Party without restrictions, or has come within the public knowledge or public domain or become generally known to the public without breach of this Agreement; or

(d) is legally required to be disclosed pursuant to a judicial order (provided that, prior to such disclosure, the party ordered to make such a disclosure promptly informs the other of the order and reasonably cooperates with any effort by the Disclosing Party to obtain a protective order or other appropriate remedy).

The party seeking the protection of Sections 4.3 (a) through (d) above shall bear the burden of proof with respect to any such exception in the case of any dispute with respect thereto.

7.4 The Disclosing Party agrees that if a court of competent jurisdiction determines that the Receiving Party has breached, or attempted or threatened to breach, its confidentiality obligations to the Disclosing Party set forth herein, the Disclosing Party will be entitled to obtain appropriate injunctive relief and other measures restraining further or attempted or threatened breaches, of such obligations. Such relief or measures shall be in addition to, and not in lieu of, any other rights and remedies available to the Disclosing Party.

7.5 Notwithstanding the termination of this Agreement, the provisions of this Section 7 shall apply to, and govern the use and disclosure of, (a) any Confidential Information of the other party that does not constitute a trade secret for a period of three (3) years after disclosure; and (b) any trade secret of the other party for so long as such information constitutes a trade secret under applicable law.

8. SECURITY AND COMPLIANCE WITH APPLICABLE LAWS.

8.1 Risk Labs will provide security via its data center technology. Client acknowledges the risks associated with using the Internet, including but not limited to, hackers, computer viruses, fraud, system downtime, privacy disclosure and other system breaches. Client further acknowledges that (i) it is impossible to maintain flawless security, (ii) Risk Labs cannot guarantee the security it employs or any other security will be 100% effective, error proof, "Hacker" proof, or failsafe. AS SUCH, RISK LABS EXPRESSLY

risk labs

riskconsole™

DISCLAIMS ANY REPRESENTATION OR WARRANTY OF SECURITY, INTEGRITY OR PRIVACY REGARDING THE ACCOUNTS OR FILES MAINTAINED OR DISTRIBUTED THROUGH THE SOFTWARE AND CLIENT ACKNOWLEDGES THAT CLIENT IS RESPONSIBLE FOR ASSESSING ITS OWN SECURITY NEEDS. Additional security measures may be needed based on Client's assessment of its needs. Client is advised to create and follow documented system and data management practices and to use consultants and experts to advise them on all aspects of using, managing and securing the RiskConsole™ system and data. Upon request by Client, Risk Labs may provide additional system security consulting at its then current time and materials rates. Risk Labs also recommends that Client obtain insurance coverage to protect their financial, operational and other business risks and exposures related to doing business on the Internet.

8.2 Client is responsible for securing its Account and password(s) provided by Risk Labs or selected by Client and for maintaining their security. Client agrees to use its best efforts to not reveal its Account or any password to any unauthorized person. Risk Labs will not be responsible for any loss, including loss of data, from any unauthorized use of Client's Account or password(s). Client further agrees not to disable or bypass any functionality, or time-limitation mechanisms of the Software or any Client account limits unless approval is received by Risk Labs, which will not be unreasonably withheld.

8.3 Client understands that computer systems sometimes fail and a computer failure may lead to the loss of data.

8.4 Objectionable File removal and Legal Production of Files. Risk Labs reserves the right to remove from the Server(s) any files that may damage Risk Labs' system or, after 48 hours notice to Client, any files that are in violation of the Agreement. Client hereby consents to such removal and waives any claim arising out of any such file removal. In addition, Client acknowledges that Risk Labs may be required to grant access to a third party and/or decrypt files in response to any lawful subpoena or other form of legal compulsion. Client hereby consents to such legal production and waives any claim arising out of any such legal production, but only after providing Client with at least 48 hours prior notice, thereby giving Client an opportunity to intervene in such action.

9. SUPPORT SERVICES

9.1 Scope of Support Center Services. During all times in which Client is current in the payment of fees, Risk Labs will provide Support Center Services as set forth in the Proposal. Such support will be provided by telephone, e-mail, Internet, or at Risk Labs' offices during Risk Labs' normal business hours. Any time expended by Risk Labs over and above what is specified in the Proposal shall be billed at mutually agreeable time and materials rates.

9.2 Excluded Items. The following activities are not included in the scope of Support Services: (a) Client's hardware or operating system support, (b) custom programming, (c) general systems management, (d) moving Client data, at Client's request, (e) moving,

risk labs

riskconsole™

relocating or reinstalling software programs or printers, at Client's request, (f) verification or correction of errors that result from data entry or procedural errors performed by Client or (g) unauthorized third party report writers. Risk Labs offers support or assistance for matters outside the scope of Support Services at mutually agreeable labor rates plus any related expenses including travel fees.

9.3 Client Responsibilities. Client's obligations include (1) editing, validating and auditing Client data entry work, (2) securing, testing, maintaining and updating, available telephone lines, network communication equipment support, in accordance with the then current System Requirements, and (3) monitoring and correcting its computer system's exposure to computer virus related programs.

9.4 Informational Messages. Client agrees that Risk Labs may send information transmissions to Client's account (or corresponding e-mail address) maintained by Client regarding, for example, updates and/or announcements regarding the Software, scheduled maintenance, upgrades and the like. Such correspondence shall not include solicitations by Risk Labs or any third parties unless approved in writing by Client.

10. TRAINING. Training will be provided via the Internet, at Risk Labs' offices, or at Client's site as set forth in the Proposal.

11. INDEMNIFICATION

11.1 Risk Labs shall indemnify and hold Client harmless (at Risk Labs' expense) from and against any claim (including any lawsuit) brought against Client alleging that any Software or Documentation furnished hereunder infringe a United States patent, copyright or trademark, and shall pay all loss, costs, liability, claim, damage, expense, lawsuit or other action (including without limitation, attorneys' fees and costs) incurred by Client, provided that Client gives Risk Labs prompt written notice of such claim, and information, reasonable assistance and sole authority to defend or settle the claim. In the defense or settlement of the claim, Risk Labs may elect to (i) obtain for Client the right to continue using the Software or Documentation, or part thereof, which is alleged to be infringing or (ii) replace or modify such Software or Documentation, or part thereof, so as to avoid further expenses associated with such claim of infringement and Client will cease use of the version of the Software, or part thereof, which was replaced or modified. If Client is not fully satisfied with such replacement software, Client shall have a right of refund based on a five-year straight-line depreciation. Risk Labs shall not have any liability if the alleged infringement is based upon the use, license or sale of the Software or Documentation in combination with other products (including software) not furnished by Risk Labs. Risk Labs shall further indemnify and hold Client harmless (at Risk Labs' expense) from any loss, cost, liability, claim, damage, expenses, lawsuit or other action, (including without limitation, attorneys' fees and costs) incurred by Client arising out of or in connection with any breach by Risk Labs of this Agreement. Risk Labs shall cooperate with Client as fully as reasonably required in the defense of such claim. Client reserves the right, at its own expense, to assume the exclusive defense and control of any

matter otherwise subject to indemnification by Risk Labs and Risk Labs shall not in any event settle any such matter without the written consent of Client.

11.2 Client shall indemnify and hold Risk Labs harmless (at Client's expense) from any loss, cost, liability, claim, damage, expense, lawsuit or other action (including without limitation, attorneys' fees and costs) incurred by Risk Labs arising out of or in connection with any breach by Client of this Agreement. Client shall cooperate with Risk Labs as fully as reasonably required in the defense of any such claim. Risk Labs reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Client and Client shall not in any event settle any such matter without the written consent of Risk Labs.

12. REMEDIES AND LIMITATIONS

12.1 In all situations involving performance or non-performance of Software furnished hereunder, Client's remedy is correction or replacement by Risk Labs (Client's option) of defective Software with Software that performs in accordance with the Documentation if Risk Labs is notified by Client in writing of a material defect within the warranty period and Client provides sufficient information to allow Risk Labs to recreate the defect.

12.2 As to Services, Risk Labs warrants to Client that the Services, as and when delivered or rendered hereunder, and for a period of one year following the same will conform to the description set forth in the Proposal. THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS, AND FITNESS FOR A PARTICULAR PURPOSE.

12.2 Client shall notify Risk Labs in writing within thirty (30) days after completion of the Services in question when any of the Services fail to conform to the description set forth in the Proposal. Such notification shall include the detailed information necessary for Risk Labs to verify such nonconformity. Upon actual receipt of such notification and verification of the nonconformity, Risk Labs shall correct the nonconformity so that the Services shall substantially conform with the agreed description in the Proposal. Client agrees to pay Risk Labs for all personnel time and expenses incurred in investigating reported nonconformities when the alleged nonconformities are not discovered. The passage of the thirty (30) day period after completion of the Services without the notification described herein shall constitute final acceptance of the Services.

12.3 RISK LABS' ENTIRE AGGREGATE LIABILITY, EXCLUDING THE INDEMNITIES SET FORTH IN SECTION 11 ABOVE, TO CLIENT FOR ANY AND ALL CAUSES WHATSOEVER SHALL BE LIMITED TO THE PURCHASE PRICE PAID TO RISK LABS FOR THE PRODUCTS AND/OR SERVICES THAT ARE THE SUBJECT OF CLIENT'S CLAIM. THIS LIMITATION WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER CONTRACT OR TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, BUT SHALL NOT APPLY TO ACTIONS



INVOLVING RECKLESS, INTENTIONAL OR GROSSLY NEGLIGENT ACTS BY RISK LABS.

12.4 EXCEPT FOR ACTIONS INVOLVING GROSSLY NEGLIGENT, INTENTIONAL OR RECKLESS ACTS, EVEN IF CLIENTS EXCLUSIVE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSES, RISK LABS SHALL NOT BE LIABLE UNDER THIS AGREEMENT TO CLIENT FOR LOST PROFITS, INCIDENTAL, SPECIAL, PUNITIVE AND/OR CONSEQUENTIAL DAMAGES IN ANY NATURE THEREOF.

13. TERM AND TERMINATION

13.1 Client's License shall continue for the Term specified in the Proposal ("Initial Term") unless terminated as provided herein. Thereafter, Client's license shall automatically renew for additional one year periods ("Renewal Terms") unless written notice of termination is given by Risk Labs or Client to the other party at least thirty (30) days prior to such party's desired termination.

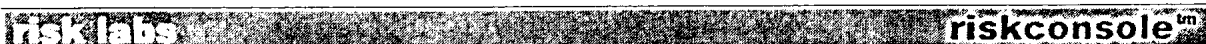
At its option, Risk Labs may offer Client a new Proposal upon Termination.

13.2 In addition, either party may immediately terminate this Agreement if the other party (i) becomes insolvent or makes an assignment for the benefit of creditors, (ii) files a petition for bankruptcy, or (iii) if a receiver or similar officer is appointed to take charge of all or part of that party's assets.

14. GENERAL CONDITIONS

14.1 Links to Third Party Web Sites. Risk Labs does not control or endorse the content of any linked Website. Risk Labs is not responsible for the content of any linked Website or any link contained in a linked Website, and Risk Labs makes no representation or warranty of the content or quality of such Website. Risk Labs reserves the right to terminate any link or linking program at any time without notice. If Client decides to access any of the third party sites linked to Risk Labs' Website, Client does so at its own risk.

14.2 All notices which are required to be given pursuant to this Agreement, except for notices that are specifically permitted to be sent via electronic mail, shall be in writing and shall be delivered by certified mail, return receipt requested, first class postage prepaid, or sent by overnight express or similarly recognized overnight delivery with receipt acknowledged or by facsimile, with a copy thereof sent by one of the other means. Notices shall be deemed to have been given at the time delivered and shall be addressed as follows or to such other address as a party may designate by proper notice hereunder:



If to Risk Labs:

Risk Laboratories, LLC
531 Roselane Street, Suite 800
Marietta, Georgia 30060
Attn: Client Services Department

If to Client:

Mirant Services, LLC
1155 Perimeter Center West
Atlanta, Georgia 30338
Attn: Risk Management & Insurance

If to Client, to the address set forth in Client's most recent User Profile.

Notices that are permitted to be sent by e-mail may be sent to service@risklabs.com

14.3 Both parties promise not to disclose the terms and conditions of this Agreement to any third party, except as required in the normal conduct of business or as agreed to by the nondisclosing party. Any such disclosure shall be deemed a breach of the confidentiality provisions of Section 7. hereof.

14.4 This Agreement and the Proposal: (i) constitute a fully integrated contract and state the entire agreement between the parties and supersede and merge any and all prior discussions, representations, demonstrations, negotiations, correspondence, writings and other agreements and together state the entire understanding and agreement upon which Risk Labs and Client rely respecting the subject matter of this Agreement; (ii) may be amended or modified only in a writing agreed to and signed by the authorized representatives of the parties and (iii) shall be deemed to have been entered into and executed in the State of Georgia and shall be construed, performed and enforced in all respects in accordance with the laws of that State. Notwithstanding any acknowledgment by Risk Labs of a purchase order submitted by Client, any condition or provision in any such purchase order or other memorandum of Client which is in any way inconsistent with, or which adds to the provisions of this Agreement, is null and void.

14.5 Risk Labs agrees to maintain statutory workers' compensation insurance, professional liability and commercial general liability insurance coverages with amounts customarily procured by companies with similar risks. .

14.6 Neither party hereto shall be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by the authorized representative of the party. No delay or omission by either party hereto in exercising any right shall operate as a waiver of such right. A waiver of a right on any one occasion shall not be construed as a waiver of such right on any future occasion. All rights and remedies hereunder shall be cumulative and may be exercised singularly or concurrently. Notwithstanding the foregoing, no action, with the exception of an action for breach of the confidentiality obligations delineated in this Agreement, arising out of breach of this Agreement or transactions related to this Agreement may be brought by either party more than 1 year after the cause of action has accrued, regardless of the form.



Risk Management Information System
Proposal



January 15, 2002

Presented by:

Mike Newman

Risk Laboratories, LLC
531 Roselane Street, Suite 800
Marietta, GA 30060
Phone: 678-784-4649
Fax: 678-784-4749
mnewman@risklabs.com

risklabstm

TABLE OF CONTENTS

Section		Page
1	Executive Summary	3
2	The RiskConsole Solution	4
3	Services and Compensation Agreement	6

Section 1: Executive Summary

Risk Labs is pleased to have the opportunity to submit this proposal for RiskConsole, our Internet based risk management information system. RiskConsole lays the foundation for any risk management program by utilizing the power of the World Wide Web to provide the most comprehensive and flexible information system on the market. With RiskConsole, claim, policy, and exposure data is available via an Internet connection, enabling users throughout your entire organization to easily log on to view information on individual records, as well as viewing reports that interrelate all of this data. The quantification and benchmarking of this data allows risk managers to answer the "so what?" questions, enabling proactive, rather than reactive management. This fully browser based system requires no internal technical assistance at your site. By using the Internet, RiskConsole eliminates the time and expense associated with traditional client/server products and internal system installations.

Risk Labs is dedicated to delivering risk management information solutions that provide the highest level of data integrity, service, support, and strong analytical tools that are as dynamic as the clients we service. Software that is too complex leads to errors and wasted time, and it doesn't get used. Software that is too simple isn't adaptable to the demands of growing, changing global enterprises. With these facts in mind, we have designed RiskConsole to be flexible, intuitive, robust and scalable.

Through our discussions with Mirant, we have identified several specific risk management system needs. Below are the needs Mirant has identified and our proposed solutions.

Mirant Requirements	Risk Labs Solution
User-friendly RMIS	<p>RiskConsole takes full advantage of the power of the Internet to provide a RMIS that is intuitive and easy to use.</p>
More efficient workflow and communication of risk management information	<p>RiskConsole provides a holistic view of all risk management data allowing Mirant to:</p> <ul style="list-style-type: none"> ▪ Manage the cost of risk ▪ Allocate costs ▪ Interface with other Mirant systems ▪ Distribute reports for improved communication within Mirant and to outside vendors
Service and support for Mirant RMIS users	<p>Client support is a key reason that clients choose Risk Labs. Our Client Services and Data Services staff combines risk management experience with technical expertise to give clients relevant, timely service.</p>

Another hallmark of Risk Labs and RiskConsole is our ability to add additional components to the system as Mirant's needs grow. The core architecture of RiskConsole allows for Mirant to add additional risk management data elements or even other departmental systems as the need arises.

Section 2: The RiskConsole Solution

Key Features

RiskConsole is a 100% Web based risk management information system (RMIS). Key features of RiskConsole include:

- Report Dashboard with graphical alerts
- Library of standard and advanced reports
- Access to your data and reports from anywhere
- Easy to use interface
- Data conversion and consolidation
- High quality client support and consulting services
- Report and graph distribution via the Web to field or non-Risk Management users
- Reports automatically refresh when new data is loaded, so reports are always current
- Multi-language support

User Requirements

- RiskConsole requires Microsoft Internet Explorer v5.5 or greater and an Internet connection
- Adobe Acrobat Reader is also necessary to view reports

Risk Labs Data Center

- Risk Labs features a state-of-the-art data center for client use. Our clients enjoy fast and secure data access from anywhere
- Qualifies for the IBM Safe Site top rating and uses 128-bit SSL encryption
- Risk Labs' historical system availability level is greater than 99% including scheduled maintenance

Implementation Services

Risk Labs specializes in making the implementation process as quick and easy as possible. Our client service representatives will work with you to customize RiskConsole for your specific needs.

Depending upon Mirant's specific needs, implementation may include:

- Location hierarchy setup from electronic source
- Security setup
- Report setup (Gold package)
- RiskConsole training

Data Conversion

Risk Labs' Data Services team recognizes that data integrity is vital to the success of a risk management information system. As such, every data conversion and load starts with an audit process to make sure financials balance to control totals and that field business rule integrity is maintained (date of loss is before or equal to date of report, etc.).

We have converted data from hundreds of different sources, ranging from TPA and Carrier systems to internal corporate applications and nearly everything in between. Each data load requires a unique setup routine, data translation table, load scheduling routine and load statistics. Risk Labs provides our clients with a comprehensive data conversion stewardship report identifying invalid codes, duplicate claim numbers, or any other potential data problems. This information is invaluable in evaluating data provided by carriers and TPA's.

Initial Data Loads are available in two different ways:

Historical Transactional Claims load: Risk Labs can convert and load all historical claim transactions such as payments and reserve changes, lookup tables (cause, result, location, body part, etc.) and any other pertinent claim data. In order to take advantage of point-in-time analysis on day one, a transactional claims load must be performed.

Snapshot Claims load: Risk Labs can convert and load all claim records with financials summarized to the evaluation date. Most carrier and TPA monthly tapes are snapshot tapes that lack full check level detail.

Additional load options

Exposures (HR, payroll, fleet): Exposure loads are client specific. Each exposure load involves its own processes and exception routines. Risk Labs works closely with clients to define their specific exposure load specifications.

Mirant Responsibilities

Risk Labs will provide Mirant with a turnkey RMIS solution. However, there are several items for which Mirant will be responsible. These include:

1. Assigning one "super user" as the primary contact for this project.
2. Ensuring that all key users are available for training to ensure that each user is able to effectively use RiskConsole.

Training

After claims data is loaded, Risk Labs will implement a training plan to ensure that each end user is able to effectively use RiskConsole. Risk Labs trainers are also available for new user training or refresher courses as requested. RiskConsole also includes a detailed on-line help system. This help system includes pop-up images and definitions, a search function, glossary and a "quick list" feature of typical issues and questions.

Support

Client support is a vital part of a successful RMIS solution, and this proposal includes phone consultation via a designated system administrator for end-user support regarding the functional usage of the system.

Client Services

Risk Labs can provide technical, risk management, and decision sciences experts to assist Mirant with special projects and reports including:

- Requests to perform additional work due to changes in Mirant's business practices
- Requests to write, change, or run reports
- Requests to create or change configuration or configurable objects
- Requests to create or change data or data loads, or provide customized documentation
- Meet or consult with third parties, or other work required but outside of Risk Labs control

Section 3: Services and Compensation Agreement (Revised 1/11/02)

RiskConsole Package	Gold				
RiskConsole User Licenses	Includes 5 full user licenses Includes 10 report viewer/ limited use licenses				
Data Conversion Services	Includes the following Data Services:				
Initial Data Conversion	<ul style="list-style-type: none"> ▪ Initial CompFirst historical transactional claim conversion ▪ Initial Kemper historical transactional claim conversion 				
On-going Data Conversion	<ul style="list-style-type: none"> ▪ Monthly CompFirst snapshot claim updates for 2 years from contract inception ▪ Monthly Kemper snapshot claim updates ▪ All data will be converted and mapped to the standard RiskConsole configuration 				
Training	One-day RiskConsole training				
Maintenance and Upgrades	Standard upgrades and new releases of the system are included as part of the annual fee. Risk Labs will release new features and functionality that may not be included in this agreement but will be offered for an additional fee.				
Customer Support	50 hours of telephone support are included per year. Travel expenses (if required) billed as incurred.				
Reports	Report library includes over 35 pre-formatted reports. Also, includes ad hoc report module. <table border="0" style="margin-left: 40px;"> <tr> <td style="text-align: center;"><u>Year One</u></td> <td style="text-align: center;"><u>Years Two and Three</u></td> </tr> <tr> <td>▪ 20 hours of custom report design are included.</td> <td>▪ 10 hours of custom report design per year.</td> </tr> </table>	<u>Year One</u>	<u>Years Two and Three</u>	▪ 20 hours of custom report design are included.	▪ 10 hours of custom report design per year.
<u>Year One</u>	<u>Years Two and Three</u>				
▪ 20 hours of custom report design are included.	▪ 10 hours of custom report design per year.				
Annual Fee	Annual Flat Rate Fee: \$34,132 34,000 paid semi-annually				
Billing Schedule	Billable at contract inception and each 12-month anniversary thereafter.				
Contract Inception	01/18/02 February 15, 2002				
Contract Term	Three years from contract inception				
Optional Kemper monthly transactional loads	<input type="checkbox"/> \$5,582 per year additional (includes set up)				

Risk Labs' Services and Compensation Agreement is valid through Contract Term. Your signature below will indicate your acceptance of this Agreement.

If the services and terms detailed in this Agreement are acceptable, please sign below and return to ATTN: Contracts, Risk Laboratories, LLC, 531 Roselane Street NW, Suite 800, Marietta, GA 30060.

ACCEPTED ON BEHALF OF MIRANT CORPORATION BY:

Dean Z. Fahls

Name

1/18/02

Date

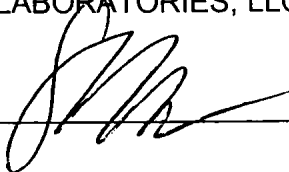
DIRECTOR - RISK MGT. & INSURANCE

Title

ACCEPTED ON BEHALF OF RISK LABORATORIES, LLC BY:

Scott Saffran

Name



1/14/02

Date

COO

Title