

TERMS AND CONDITIONS FOR SOFTWARE TECHNICAL SUPPORT SERVICES

NOTICE – Licensor’s providing of Software Technical Support Services is expressly conditioned on Licensee’s assent to these Terms and Conditions for Software Technical Support Services (“Terms and Conditions”). Any additional or different terms proposed by Licensee are expressly objected to and will not be binding upon Licensor unless agreed to in writing by Licensor. Any order to perform Software Technical Support Services and Licensor’s performance of any Software Technical Support Services shall constitute assent to these Terms and Conditions.

1. Definitions

Unless otherwise agreed to by Licensor, the following terms shall mean:

“Documentation” means all associated material, including all printed material and on-line or electronic documentation (excluding training materials) referencing the Software.

“License” means the separate license agreement under which Licensor licenses the Software to Licensee.

“Licensee” means the entity to which Licensor has licensed the Software and is providing support services hereunder.

“Licensor” means the entity licensing the Software and providing support services hereunder.

“Software” means Licensor’s proprietary computer software and software security devices provided by Licensor under the License.

“Software Technical Support Services” means the maintenance and support services to be provided by Licensor hereunder.

“Support Charges” means those charges, fees, costs set forth in Attachment A, or as otherwise mutually agreed to in writing.

“Terms and Conditions” means these Terms and Conditions for Software Technical Support Services and any Attachments and /or Exhibits attached hereto.

2. Guide to Software Technical Support Services

2.1 Software Technical Support Services are provided for the most current version of Software (including release updates, program maintenance, and reasonable telephone support) and a previous release for no more than twelve (12) months from the release date of the new version Software (includes only program maintenance and reasonable telephone support). The level, type, and scope of Software Technical Support Services shall be outlined in the appended Attachment(s), which shall be incorporated fully herein by reference:

Attachment A – Technical Support Agreement

2.2 Licensor reserves the right, in its sole discretion, to make changes to Attachment A from time to time.

3. Term and Termination

3.1 Software Technical Support Services shall extend for a designated term as outlined in the appended Attachment(s), which shall be incorporated herein by reference:

Attachment A - Technical Support Agreement

3.2 Software Technical Support Services shall commence the earlier of (a) upon Licensor’s receipt of the completed Technical Support Agreement, contained in Attachment A, or (b) if purchased with Software, activation begins 30 days after Software shipment. Software Technical Support Services shall continue for the period designated in Attachment A, unless terminated as follows:

Licensee may terminate Software Technical Support Services upon 90 days written notice to Licensor. Licensee’s termination of Software Technical Support Services hereunder shall release Licensor from any further obligation under these Terms and Conditions. Licensee shall retain the right to continue to use the Software as per the terms of the License (provided Licensee is not in breach of its terms and conditions). Notwithstanding anything contained herein to the contrary, if Licensee terminates Software Technical Support Services prior to the expiration of the then-current term, then Licensee shall not be entitled to any refund of the support charges for said term.

3.3 Licensor may terminate Software Technical Support Services (a) if Licensee commits a material breach of these Terms and Conditions or the terms and conditions of the License and such breach remains uncured thirty (30) days after written notice of such breach is delivered to Licensee, including, without limitation, the failure to pay any amounts due; or (b) immediately if Licensee becomes insolvent, makes an assignment for the benefit of creditors, or commences or has commenced against it in any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws, laws of debtor’s moratorium or similar laws.

3.4 Licensor reserves the right to limit the amount of Software Technical Support Services assistance if Licensee’s requests for assistance becomes unreasonable.

4. Pricing and Payment Terms

4.1 Support Charges for Software Technical Support Services shall be billed in advance and upon terms mutually agreed to in writing and/or as set forth in Attachment A.

4.2 Licensor shall be entitled to increase the Support Charges in accordance with (a) any change in Licensor’s standard scale of charges, (b) movements in the Consumer Price Index or Retail Price Index, or (c) movements in the U.S. dollar exchange rate (if applicable), by giving to Licensee not less than ninety (90) days written prior notice. Notwithstanding the foregoing, Licensor shall be entitled to immediately increase Support Charges, in its sole discretion, if Licensee relocates the Software to an equipment location different from where the Software was originally installed.

4.3 Prices do not include, and Licensee is responsible for, all taxes, duties, fees, or other charges of any nature (other than taxes imposed on Licensor’s net income) imposed by any government authority related to Software Technical Support Services provided hereunder. If Licensee deducts or withholds taxes for which Licensor is responsible, Licensee shall furnish within one (1) month to Licensor accurate official receipts from the appropriate governmental authority for each such deduction or withheld tax.

4.4 Unless otherwise set forth in Attachment A, Licensee agrees to make all undisputed payments to Licensor within thirty (30) days from Licensor’s invoice date. For purposes of these Terms and Conditions, “undisputed” means Licensee has no reasonable objection to a Licensor’s invoice and has not given Licensor notice of dispute within 15 days from Licensee’s receipt of such invoice. Any invoice not disputed within such 15-day period shall be considered undisputed.

4.5 In addition to the Support Charges, Licensee agrees to pay time and material charges, plus reasonable travel, lodging, meal expenses or any other expenses, for any extended technical support beyond the scope of Software Technical Support Services, as further detailed in the then-current rate schedule and/or Attachment A. Such additional expenses shall include, but not be limited to, technical support for on-site service or attending to a problem caused by incorrect Licensee data, incorrect Licensee usage, and/or Licensee modifications to the Software. Such expenses shall be invoiced at cost, plus a twelve percent (12%) administrative fee.

4.6 Licensee agrees to pay a monthly late payment charge computed at the rate of one and one-half percent (1.5%), or the maximum interest rate permitted by applicable law, whichever is less, on any past-due amount for each calendar month (or fraction thereof) that such payment is overdue and all costs of Licensor collection efforts including reasonable attorney’s fees.

4.7 Upon termination as provided herein, Licensee shall have thirty (30) days from Licensor’s invoice date to pay any amounts due and payable to Licensor up to, and including, the date of termination. Licensee’s obligations to pay amounts owed shall survive termination.

4.8 Should Licensee wish to reinstate terminated Software Technical Support Services, they may be reinstated by paying Licensor an amount equal to one and one-half (1-1/2) times the elapsed fees or by relicensing the Software at Licensor’s then-current license fee.

5. Title/Warranty/Limitation of Liability

5.1 Title to Software Technical Support Services shall pass to Licensee as performed.

5.2 Licensor represents and warrants that Software Technical Support Services will be performed in a competent and diligent manner.

5.3 Licensor’s sole liability and Licensee’s sole remedy for any failure of Licensor to provide Software Technical Support Services is (a) for Licensor to use commercially reasonable efforts to fix or resolve material programming Errors (where “Error” is defined as a problem caused by an incorrect operation of the unmodified computer code in the Software or an incorrect statement or diagram in the Documentation that produces incorrect results) so as to restore the Software to material conformance with the Documentation, or (b) for Licensee to terminate its receipt of Support Services and receive a refund of the portion of the Support Charges allocable to the period following the termination date.

5.4 Licensor shall determine in its sole discretion whether a particular enhancement constitutes an on-going improvement or a change to the Software or a new version of the Software.

5.5 Licensor is not liable for and is not required to perform Software Technical Support Services with respect to problems caused by third party products or any Software that has been altered or modified by anyone other than Licensor.

5.6 This Section 5 sets forth the exclusive remedies for all claims based on failure of or defect in the Software Technical Support Services, whether a claim, however instituted, is based on these Terms and Conditions, indemnity, warranty, tort (including negligence)/extracontractual liability, strict liability or otherwise. The foregoing warranties are exclusive and are in lieu of all other warranties and guarantees whether

written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

5.7 The total liability of Licensor, on all claims of any kind (excluding claims for death or bodily injury), whether in these Terms and Conditions, warranty, indemnity, tort (including negligence)/extracontractual liability, strict liability, or otherwise, arising out of or relating to the subject matter hereof, shall not exceed the Support Charges paid for the then-current term.

5.8 In no event, whether as a result of breach of these Terms and Conditions, warranty, tort (including negligence)/extracontractual liability, strict liability, indemnity, or otherwise, shall Licensor be liable for loss of profits or revenues, loss of use of products or services, interruption of business, cost of capital, or for any special, consequential, incidental, indirect, punitive, or exemplary damages.

5.9 For the purposes of this Section 5, the term "Licensor" shall mean Licensor, its affiliates, and their successors or assigns.

6. Multiple Attachments; Entire Agreement

6.1 Purchasing or utilizing software services with these Terms and Conditions indicates acceptance of the provisions herein and in any appended Attachments as follows:

Attachment A—Technical Support Agreement

6.2 The provisions of these Terms and Conditions, plus its Attachments and Exhibits, if any, constitute the entire agreement and supersede all prior agreements, whether oral or written, related to the Software Technical Support Services. No amendment or modification of any provision of these Terms and Conditions will be effective unless such is in writing and is executed by both parties hereto.

7. Access

7.1 To the extent applicable, Licensee shall provide Licensor access to the site and any other facilities free of charge, including the operating and development environment and information, as necessary for Licensor's performance hereunder.

8. Precedence of Terms and Conditions

8.1 These Terms and Conditions shall apply solely to Licensee. Unless any access to Software Technical Support Services by Licensee is expressly stated herein, it is hereby deemed to be excluded from the scope of these Terms and Conditions and may only be obtained from Licensor pursuant to a separate written agreement, if available, from Licensor.

8.2 Notwithstanding the content of any Licensee purchase order or any other document or record, whether in writing or electronic, relating to the subject matter hereof, the terms of these Terms and Conditions shall govern and take precedence; any conflicting, inconsistent, or additional terms contained in such other documents shall be null and void.

9. Survival

9.1 Any and all provisions or obligations contained in these Terms and Conditions or its Attachments which by their nature or effect are required or intended to be observed, kept, or performed after termination of Software Technical Support Services will survive such termination and will remain binding upon and for the benefit of the parties and their permitted successors (including, without limitation, successors by merger) including, but not limited to, those provisions and obligations relating to confidentiality and protection of Licensor's intellectual property rights.

10. Independent Contractors

10.1 Both parties are acting as independent contractors. Personnel supplied by either party hereunder are not personnel or agents of the other. Each party will remain responsible for the withholding and payment of all federal, state, and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements (under ERISA, state law or otherwise) attributable to that party, its employees, and its contractors.

11. Parties Bound By Agreement, Successors and Assigns

11.1 The delegation or assignment by Licensee of any or all of its duties or rights hereunder without Licensor's prior written consent shall be void.

11.2 Licensor may assign or novate its rights and obligations hereunder, in part or in whole, to any entity directly or indirectly controlling, controlled by, or under common control with Licensor without Licensee's consent. Licensee agrees to execute such documents as may be necessary to effect the assignment or novation.

12. Excusable Events

12.1 Licensor shall not be liable nor in breach or default of its obligations hereunder to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of Licensee or Licensee's suppliers or agents, any act

(or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance.

13. Dispute Resolution/Governing Law

13.1 Any dispute involving a Licensee having its pertinent place of business in a country other than the U.S., Korea, Taiwan, Japan, Thailand, Vietnam, Indonesia or the Philippines, and arising out of or in connection with these Terms and Conditions, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("LCIA") Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one unless the amount in dispute exceeds the equivalent of \$1,000,000, in which event it shall be three. When three arbitrators are involved, each party shall appoint one arbitrator, and those two shall appoint the third, who shall be the Chairman. None of the arbitrators may be a national or resident of the country of the site or the countries in which either party is organized or has its principal place of business. The seat, or legal place, of arbitration shall be London, England. The arbitration shall be conducted in the English language. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in these Terms and Conditions, and if a solution is not found herein, shall apply the governing law of these Terms and Conditions. The decision of the arbitrator shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of such decision.

13.2 Any claim, legal action or proceeding (including without limitation claims for set-off or counterclaim) involving a Licensee having its pertinent place of business in the U.S., Korea, Taiwan, Japan, Thailand, Vietnam, Indonesia or the Philippines, arising out of or in connection with these Terms and Conditions, shall be brought in the U.S. District Court for the Northern District of Georgia, or in the event that court lacks jurisdiction to hear the claim, in the appropriate state courts of Cobb County, Georgia, and the parties irrevocably consent to the exclusive jurisdiction of such courts in respect of all such claims. Each party hereby submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to its respective person and property, and irrevocably consents to the service of process in connection with any such action or proceeding by personal delivery to the party or by the mailing thereof by registered or certified mail, postage prepaid to the other party at the address for the party.

13.3 The validity, performance and all matters relating to the interpretation and effect of these Terms and Conditions and all further documents executed pursuant to it shall be construed and interpreted in accordance with the laws of (i) the State of New York, U.S., if the Licensee has its pertinent place of business in the U.S. or (ii) England and Wales if the Licensee has its pertinent place of business outside of the U.S., excluding its rules on the conflict or choice of laws.

14. General Terms

14.1 If any provision of these Terms and Conditions is found to be void or unenforceable, the remainder of these Terms and Conditions shall not be affected and the parties hereby agree that they will replace any such void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect and which is valid and enforceable.

14.2 These Terms and Conditions represent the entire agreement between the parties, and no modification, amendment or waiver shall be binding on either party unless agreed to in writing by the parties' authorized representatives.

14.3 For direct and indirect U.S. government contracts only, all Products and/or Services provided hereunder shall be considered "commercial items" as defined in FAR Part 2, 2.101 and in accordance with FAR 52.244-6. If the reasonableness of the price cannot be established, if cost or pricing data is required for any other reason, or if the Products or Services cannot be considered "commercial items," Seller may withdraw the proposal or cancel the Contract without penalty or other liability.

14.4 This agreement may be executed in multiple counterparts that together shall constitute one agreement.

14.5 Except as provided in the Article entitled "Limitation of Liability," this agreement is for the benefit of the parties hereto and not for any third party.

14.6 Headings of particular Sections are inserted only for convenience and are not to be used to define, limit, or construe the scope of any term or provision of these Terms and Conditions.

14.7 Licensee's signature on these Terms and Conditions indicates acceptance of the provisions herein and those contained in any appended Attachments and/or Exhibits, including the following:

Attachment A—Technical Support Agreement