

All references to BlueCat Networks in these Terms and Conditions should be read as “Contractor (immixTechnology, Inc.), acting by and through its supplier, BlueCat Networks.”

TERMS AND CONDITIONS FOR BLUECAT NETWORKS PRODUCTS AND SERVICES

This Agreement is entered into by BlueCat Networks (USA) Inc., (with respect to transactions in the USA) and BlueCat Networks, Inc., (with respect to transactions outside of the USA.) (collectively "BCN") and the Person that has licensed the Software or acquired the services ("CUSTOMER").

1. DEFINITIONS

In this Agreement, including the above notice, the following terms shall have the meaning set forth opposite them respectively:

1.1 "Affiliate" means a Party's direct or indirect parent or subsidiary corporation (or other Person), or any corporation (or other Person) with which the Party is under common control.

1.2 "Agreement" means this document, each Order and any document incorporated by reference.

1.3 "Authorized Contacts" mean those CUSTOMER employees or agents who have been authorized to submit Cases to BCN hereunder.

1.4 "CARE" means BCN's then-current online self-service support mechanism, which provides a structured means of reporting and enquiring about Cases and which provides access to a searchable knowledge base, support library, technical documentation and technical bulletins relating to the Product(s).

1.5 "Case" means an Error, or an inquiry relating to the operation or use of the Product.

1.6 "Confidential Information" means information of or provided by a Party not generally known to the public and may include, but is not limited to, the terms hereof and:

- a. computer software, know-how, technical data, research, products, business or financial information, plans or strategies, business practices, operations, and procedures of a Party;
- b. information about a Party's customers, suppliers, business partners, employees, research plans, data and results, computer systems and communications networks, including information stored thereon;
- c. the confidential BCN or third party components of the Products supplied hereunder, including without limitation all information regarding BCN Products, methodology and work product, and future development or sales plans, all information with respect to the use, installation and operation of BCN Products or services provided for in the Agreement, whether received by CUSTOMER from BCN, its representatives or its suppliers or developed by CUSTOMER;
- d. information of a Party which, due to its nature or the circumstances surrounding its communication, would be reasonably considered confidential by an independent person; and
- e. any other information of any nature, in any form, received from or belonging to a Party which is marked or identified as confidential, or if oral or visual, is identified as confidential when disclosed, then summarized in writing and so provided to the receiving Party promptly thereafter, or which a recipient, acting reasonably, would have understood to be confidential even if not marked.

1.7 "CPI" means the most recently published Consumer Price Index for "All Urban Consumers, U.S. City Average - All Items Less Food and Energy" published monthly by the U.S. Department of Labor, Bureau of Labor Statistics ("Bureau"), or, if the Bureau discontinues the publication of said index, or alters the same in a material manner, then a substitute index or substitute procedure to be agreed upon by the Parties, which reasonably reflects and monitors changes in consumer prices throughout the United States.

1.8 "Delivery" means the physical shipment of the Product to the destination identified in the Order, if a physical Product, or transferring electronically, a virtual Software Product, including a Key if applicable, available to CUSTOMER for electronic transfer, including but not limited to, File Transfer Protocol ("FTP") download.

1.9 "Documentation" means BCN's generally available post-sale end user manual for operation of the then current version of the Product which CUSTOMER has acquired.

1.10 "Error" means a failure of the Product to materially conform to the Documentation.

1.11 "Expiry Date" means the last day of the term of the then current Software license (if not perpetual), or contract for Maintenance and Support Services.

1.12 "Featurepack" means a group of features that have been unit-tested and regression-tested by BCN and released to add functionality to an existing version of the Software.

1.13 "Fixpack" means a group of fixes released by BCN that has been unit-tested and regression-tested by BCN and that is intended to provide a permanent Resolution for one or more Cases.

1.14 "Hardware System" means the physical appliance (if any) purchased and associated base computer programs (such as BIOS, firmware, RAID, licensed to BCN and sublicensed from BCN to CUSTOMER, or which sublicense is transferred to CUSTOMER), upon which the Software licensed by BCN to CUSTOMER resides.

1.15 "hereof", "hereunder", "hereto", "herewith" mean this Agreement and not any particular section of this Agreement.

1.16 "Hotfix" means a fix or a group of fixes that BCN has unit-tested, but not regression-tested, and that is intended to provide a temporary, customer(s)-specific Resolution for a Case until BCN provides a corresponding Fixpack.

1.17 "Implementation" means usage of the Product with CUSTOMER data in (a) a production environment, or (b) test environment for the purposes of using the Product in production.

1.18 "Indirect Damages" includes without limitation: (a) punitive, exemplary or aggravated damages; (b) damages for loss of profits or revenue, (c) failure to realize expected savings, business interruption, loss of use or unavailability of facilities, including without limitation computer resources and any stored data or inability to process data; (d) indirect, incidental, consequential or special damages; (e) injury or loss to customers; or (f) contribution or indemnity in respect of any claims against CUSTOMER),

1.19 "Installation" means, for a physical Product, removal from the shipping boxes, and connection to a network and power source, and for a virtual Product, installation of the Software on a server designated by CUSTOMER

1.20 "Instance" means an object code only copy, made by CUSTOMER, of the Software downloaded as a file from BCN and installed on CUSTOMER's virtual server, licensed by CUSTOMER in accordance with, and subject to, this Agreement.

1.21 "Instance Limits" means both: (a) the number of Instances of the Product which CUSTOMER has the right to create, pursuant to the Order, subject to payment and compliance with this Agreement; and (b) restrictions on the use of each Instance.

1.22 "Key" means a license key consisting of a series of numbers and/or letters provided by BCN to CUSTOMER to permit CUSTOMER to activate and use a defined (or unlimited) number of Instances of the virtual Product (each a "Virtual Instance"), or physical Product, as specified in CUSTOMER's Order, when passed to a verification

function in the Product, which manipulates the key sequence according to a mathematical algorithm to verify compliance.

1.23 "Major Release" means a new release of the Software that is signified by a change in the number to the left, or immediately to the right, of the decimal point in the version number (e.g., version 5.x to 6.x or 5.1 to v5.2).

1.24 "Minor Release" means a new release of the Software that is signified by a change in the number to the right (but not immediately to the right) of the decimal place in the version number (e.g., version x.1.1 to x.1.2).

1.25 "Order" means a written (including electronic) purchase order for Product and/or services.

1.26 "Party" means either CUSTOMER or BCN, or an Affiliate of either which has acceded to this Agreement in writing.

1.27 "Person" means a natural person, a corporation, company or other body corporate (with or without share capital), a partnership or limited partnership, an unincorporated association, a governmental or regulatory authority, or any other legal or business entity however designated or constituted, provided that if the purchase is made by anyone other than a natural person, such individual signing on behalf of that entity, shall represent and warrant that s/he/it has the authority to bind the purchasing corporation or entity.

1.28 "Primary Administrator" means an Authorized Contact who shall serve as the principal CUSTOMER liaison for all Support Services Cases.

1.29 "Product" means the (i) Software ("virtual Product"); or (ii) if a physical server is acquired, the Hardware System, plus the BCN Software distributed with, preloaded thereon or embedded therein ("physical Product") acquired by CUSTOMER pursuant to the Order or provided on a trial basis to the CUSTOMER, and BCN's then applicable version of the end user manual.

1.30 "Product Warranty Period" means thirty (30) days from Product Delivery (if not installed by BCN pursuant to a mutually agreed upon SOW) or from Installation (if installed by BCN).

1.31 "Resolution" means, with respect to a reported Case correction or reasonable mitigation of the Case, and which may, dependent on the nature of the Case, be accomplished by means of one or more of the following:

- a. direct telephone support from BCN's Support Desk or other personnel;
- b. the recommendation by BCN of a Workaround (which may include a Hotfix) acceptable to the CUSTOMER acting reasonably;
- c. the Delivery by BCN of a patch or similar direct code correction to the underlying Software;
- d. the Delivery by BCN of a new Fixpack, Minor Release or Major Release version(s) of the Software; or
- e. the Delivery of a replacement part or unit for the Hardware System identified as the cause of the Case.

1.32 "Severity Code" means the system impact of a Case, as established in accordance with Table A1 below in **Schedule A** "Customer Care – Technical Support Services".

1.33 "Site" means the destination location specified in the accepted Order (or in the case of virtual Product means the geographic location where the computing device upon which the Product is downloaded, is physically located, as specified in the accepted Order).

1.34 "Software" means the then current object code version of the computer program licensed by CUSTOMER from BCN, including Updates provided to CUSTOMER via download or otherwise (but excluding computer programs such as firmware, BIOS, RAID that may be included in any Hardware System).

1.35 "Support Handbook" means a BCN document that describes standard processes and best practices by which CUSTOMER accesses technical Support Services hereunder, as updated by BCN from time to time.

1.36 "Support Desk" means the technical help desk, from which BCN shall provide Case support to the CUSTOMER.

1.37 "Support Services" if purchased, means technical support to be provided by or on behalf of BCN, as described in Schedule A: Customer Care – Technical Support Services, and includes if separately purchased by CUSTOMER, Technical Account Management (as described more fully in Section A.6 of Schedule A attached hereto).

1.38 "Support Services Start Date" means the commencement date of Support Services provided hereunder, as described in the applicable Order.

1.39 "Term" means: (a) perpetual for the license of the Software acquired for fair market value, unless a shorter period has been agreed upon in writing by the Parties (b) thirty (30) days from Delivery for the license of the Software provided for free for evaluation purposes only, unless a different period is agreed upon by the Parties in the loan quote; and (c) the designated term of the Support Services (or renewals thereof) purchased by CUSTOMER in an Order; unless in any such case earlier terminated as permitted hereunder.

1.40 "Updates" means Major Releases, Minor Releases and Fixpacks.

1.41 "Workaround" means a process or procedure, or series thereof that allows the effects of a Case to be mitigated or overcome by CUSTOMER. A Workaround may be achieved by CUSTOMER by a number of possible methods, including, without limitation:

- a. data manipulation;
- b. variation of a standard process; or
- c. implementation of a manual process.

1.42 "written", "in writing" mean any non-oral communication that is reduced to a human readable format, including handwriting, a printed form, and an email.

2. SCOPE

2.1 During the Term, BCN shall make available to CUSTOMER for: (a) purchase: certain Hardware Systems; (b) limited licenses to use, Software (and sublicenses of computer programs within the Hardware System if acquired), and Documentation, collectively comprising the Products, and (c) services, as more particularly described in sections 5 ("Delivery, Installation, Implementation and Training"), and 11 ("Support Services") to the extent acquired pursuant to any BCN accepted Order.

2.2 If CUSTOMER is acquiring without fair market value payment, for evaluation purposes, then BCN shall loan CUSTOMER the Product, for the loan Term.

2.3 If CUSTOMER is subscribing for managed external DNS services ("MEDNSS"), the terms and conditions of "Managed External DNS Services Agreement" (and NOT this Agreement) shall apply to such subscription and delivery of the MEDNSS.

3. ORDERS

3.1 Inspection/Acceptance. The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("BLUECAT NETWORKS") published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Customer reserves the right to inspect or test any supplies or services that have been delivered. The Customer may require

repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Customer may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Customer must exercise its post-acceptance rights-(1) Within the warranty period; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

3.2 CUSTOMER shall be entitled to order the Product or services pursuant hereto for use by its Affiliates, so long as: (a) neither CUSTOMER nor the Affiliate, or the Delivery Site, is located in a country to which US or Canadian export or sale restrictions prohibit the export, sale or Delivery of the Product or service; (b) the Affiliate agrees in writing with BCN to be bound by the terms hereof.

3.3 Unless otherwise agreed in writing, Products and services are priced in U.S. dollars.

4. RISK OF LOSS AND TITLE

Risk of loss of, or damage to, Product, shall pass to CUSTOMER upon Delivery of Product into the possession and custody of the CUSTOMER (as evidenced by a confirmed receipt). Title to the Hardware System where the Product is being purchased by CUSTOMER shall pass to CUSTOMER upon Delivery of Product into the possession and custody of the shipper shipping the Product to the CUSTOMER (as evidenced by a confirmed receipt) or in the case of a virtual Product, upon delivery of the initial Key to the CUSTOMER. Delivery shall be made to the Site. BCN shall arrange for shipping and insurance of physical Product, but unless otherwise agreed CUSTOMER shall reimburse BCN for same incurred by BCN. Title does not transfer for a unit of Product provided on an evaluation loan basis.

5. DELIVERY, INSTALLATION, IMPLEMENTATION, TRAINING

5.1 BCN shall arrange for Delivery of all Products specified in the Order to the Site. Where applicable, BCN shall provide estimated ship dates to CUSTOMER upon acceptance of an Order. Estimated ship dates do not guarantee a delivery date to CUSTOMER.

5.2 Subject to a mutually agreed upon Order issued by CUSTOMER to BCN directly or via a reseller, which BCN has agreed to accept, CUSTOMER may purchase, and BCN shall provide any one or more of: (a) Installation (b) Implementation or (c) training, and/or services. BCN shall Install and/or Implement and/or provide training upon the initial Product at CUSTOMER's (or subject to Section 3.2, any Affiliate's or third party's) Site, and the Software warranty set forth in section 8.2 hereof shall be effective on the date of Installation by BCN, and otherwise, shall be effective upon Delivery. Additional terms and effective dates of warranties not provided by BCN for Hardware Systems and associated third party computer programs (other than the Software) are described in Schedule B "Hardware System". Additional terms and effective dates of warranties provided by BCN for professional services including training are described in Schedule C "Professional Services".

6. PRICING AND PAYMENT

6.1 Purchase prices for Product and any services shall be specified in the particular accepted Order.

6.2 Reserved.

6.3 BCN shall issue invoices (including Product prices, shipping, insurance and any applicable Installation fee, plus taxes), for Orders upon Delivery of the Product to CUSTOMER's designated Site. The fees for the training and other professional services (such as assistance in Implementation) described in Section 5 shall be invoiced as agreed, but not later than upon completion of such services unless otherwise agreed. CUSTOMER shall pay all valid invoices rendered per this Agreement within thirty (30) days of the date of the invoice (which, for Product and training and other professional services, shall not be prior to delivery date of the Product or service ordered). If purchased, then Support Services shall be prepaid for the applicable Support Services Order Term.

7. SOFTWARE LICENSE

7.1 The Product is comprised of Software, or includes embedded Software. Subject to the terms hereof, a non-exclusive, worldwide, non-transferable, non-sublicensable, license or sublicense of the object code version of the Software, (and a sublicense of other computer programs in the Hardware System) for use within the Product only, if a physical Product, or for the Software, if a virtual Product, is granted by BCN to CUSTOMER, during the Term, but solely for use within the physical versions of Product (if applicable), and in any event only for CUSTOMER's internal needs in connection with its business.

7.2 Except as otherwise provided herein, CUSTOMER will not: (i) modify, translate or copy any software distributed with or preloaded on the Product, for a physical Product, or the Software, except to make one copy of the Software solely for backup and archival purposes; (ii) use the Product except as is contemplated by the Documentation; (iii) reverse engineer, create derivative works based on, decompile or disassemble the Software or the Product or otherwise attempt to derive source code from the Product (except to the extent applicable law overrides in which case CUSTOMER shall provide BCN at least ninety (90) days advance written notice of its belief that such action is warranted and permitted and provide BCN an opportunity to evaluate if the law's requirements necessitates or permits such action); (iv) use the Product, except as authorized herein; (v) rent, lease, or use the Product to operate a service bureau or application service provider (ASP); (vi) use the Software on equipment not provided or explicitly approved in writing by BCN; or (vii) remove any proprietary notice, labels, or marks on the Software or Product, Documentation, and containers. CUSTOMER will take all reasonable precautions to prevent any Person from using the Products or any part thereof in any way that would constitute a breach hereof.

7.3 CUSTOMER shall not use the Products until it agrees to any license for third party computer programs (other than those which are part of the Software) preloaded on or distributed with the Hardware System required by its supplier, where a physical Product is being purchased or used on a trial basis by CUSTOMER. Use constitutes acceptance.

7.4 Notwithstanding anything else in this Section 7 "Software License", a Product provided on an evaluation loan basis shall only be used by CUSTOMER in a non-production laboratory environment, for internal testing purposes only, to determine whether to acquire the Product for fair market value, and only at the Site to which the Product is shipped or downloaded. A copy of the results of the evaluation shall be provided to BCN, but not to any other Person. No reviews may be published or provided to any Person other than BCN. Except as herein provided, all rights and ownership in the Product shall at all times remain solely with BCN.

8. WARRANTIES AND DISCLAIMERS OF WARRANTIES AND CONDITIONS

8.1 (A) CUSTOMER warrants that if it is an entity other than a natural person, the individual representing it has the authority to bind such entity in entering into this Agreement.

(B) CUSTOMER agrees to use the Products only for the purposes, and in the manner, stipulated in the Documentation and this Agreement.

8.2 BCN warrants that: (A) it shall provide to CUSTOMER, upon Delivery: unencumbered good title to the hardware components of the Hardware System if purchased by CUSTOMER, and a valid license for the Software for the Term of the Agreement; (B) the Product and any services provided by BCN or its subcontractors shall comply with all applicable governmental regulations; (C) it is a duly authorized licensor or sub-licensor of the software which it purports to license, and owner of the physical components of the Hardware System sold, at the point of sale of the Product to CUSTOMER, pursuant hereto; (D) during the Product Warranty Period the Software shall: (i) be free from material defects in materials; and (ii) be free from material Errors; and (iii) materially conform to the Documentation; (E) it has taken commercially reasonable steps, in keeping with currently available technology and industry standards, to eliminate any codes, commands or instructions, including viruses, malicious code, spyware, malware, time bombs, worms, and trojan horses, or other harmful components of any kind that may be used to, access, alter, delete, damage or disable the Software, save and except that CUSTOMER acknowledges that on the Expiry Date of the applicable license Term, BCN has the right to disable the Product, or after which

time the Product may not function; and (F) if CUSTOMER has provided an Order to BCN for Installation, Implementation, training or Support Services which are to be performed by BCN or its subcontractors, the applicable services will be performed: (i) in a professional manner using an adequate number of qualified, experienced BCN representatives familiar with the Products, and (ii) in accordance with the terms set out in the applicable Order.

8.3 GENERAL LIMITATION: EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE ARE NO REPRESENTATIONS OR WARRANTIES, CONDITIONS OR GUARANTEES, EXPRESS OR IMPLIED, COMMON LAW, STATUTORY OR OTHERWISE, RELATING TO THE PRODUCTS, OR SERVICES INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE PARTIES HEREBY EXPRESSLY EXCLUDE THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. Warranties herein will not extend to any Product: (A) operated with software or hardware unapproved in writing by BCN; (B) subjected to service not authorized by BCN; (C) used other than in accordance with the Documentation provided by BCN; or (D) provided for evaluation / loan purposes. Where BCN can demonstrate the defects for which warranty service has been claimed arise from use of non-approved software, hardware or services, or use other than in accordance with the end user manual, CUSTOMER shall bear all costs associated with Product repair and replacement including without limitation, parts, labor, shipping and insurance charges and BCN travel and accommodations costs and reasonable compensation for BCN's time. Without limiting the generality of the foregoing, BCN does not warrant the Products will satisfy CUSTOMER's needs or operate error or interruption free, or that all errors will be detected and corrected. BCN and its suppliers do not warrant the performance or results obtained by using the Product.

BCN bears no responsibility whatsoever respecting: (a) open source software or other third party products preloaded on or distributed with the Product requiring, or pursuant to, a separate contract between CUSTOMER and the third party, of which BCN advised CUSTOMER prior to accepting the Order, or (b) compatibility of the Product with, or capacity limitations of, third party products not provided by BCN; including without limitation responsibility to enhance the Product to achieve or maintain compatibility with such third party products or enhancements thereto, or to maintain third party products.

Other terms applicable to the Product where a physical Product is purchased are set forth in Schedule **B**.

8.4 REPAIR, REPLACEMENT, OR REFUND. If, during the Product Warranty Period, the Product fails to operate in accordance with the warranty, and the failure is reproducible, and repair in accordance with the Schedule A – Customer Care do not materially resolve the non-conformity, CUSTOMER shall contact BCN to obtain the appropriate information necessary to process the return of the Product upon a Product unit failure and obtain a Return or Repair Material Authorization ("RRMA") number. All warranty claims, correspondence and warranty service requests must specify both the model name and serial number of the Products (and verified individual license Key number if applicable) and are to be directed to BCN pursuant to its then current RRMA procedure. During the Product Warranty Period, BCN shall (at BCN's option), at no additional charge to CUSTOMER, repair or replace any defective Product, whether stand-alone Software or embedded in the physical Product, reported by CUSTOMER to BCN pursuant to the RRMA process, or (at BCN's option), refund the price for that unit of the Product.

8.5 LOANS: notwithstanding anything else in this s.8 "Warranties" or s.9 "Limitation of Liability", a unit of Product provided on an evaluation loan basis is provided "**as is, where is**" with no warranty of any kind, express or implied, and in no event, whether based in contract, tort or otherwise, including without limitation for fundamental breach, will BCN be liable to CUSTOMER for direct or Indirect Damages, in connection with or arising out of this Agreement however caused, and regardless of the legal theory of liability, even if any exclusive remedy provided for herein fails of its essential purpose. BCN has advised and required CUSTOMER to test/evaluate the product in a non-production laboratory environment only.

9. LIMITATION OF LIABILITY

9.1 BCN's liability and CUSTOMER's remedy in relation to the Products under the warranties herein will be limited to the repair and/or replacement (with product of equal or greater functionality), of defective or non-conforming units of Products, or termination and refund of CUSTOMER's unamortized or unexpensed acquisition price of Product, in each case at BCN's sole election.

9.2 Reserved.

9.3 OTHER THAN FOR CLAIMS OR LOSSES ARISING OUT OF BREACH OF THE CONFIDENTIALITY, LICENSE RESTRICTIONS AND/OR INDEMNITY OBLIGATIONS UNDER SECTION 10, NOTWITHSTANDING ANY OTHER PROVISION HEREOF, IN NO EVENT, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, INCLUDING WITHOUT LIMITATION FOR FUNDAMENTAL BREACH, WILL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT HOWEVER CAUSED, AND REGARDLESS OF THE LEGAL THEORY OF LIABILITY, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR HEREIN FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS RESPONSIBLE FOR THE BACK UP OF ITS OWN DATA AND FOR ENSURING THAT CUSTOMER EITHER RENEWS THE LICENSE FOR THE BCN SOFTWARE WITH BCN PRIOR TO THE EXPIRY DATE, OR ARRANGES FOR TRANSITION TO AN ALTERNATIVE SOLUTION SATISFACTORY TO ITS NEEDS PRIOR TO THE EXPIRY DATE OR OTHER TERMINATION OF THE AGREEMENT. CUSTOMER AGREES THAT BCN IS NOT LIABLE FOR ANY DAMAGE OF ANY NATURE OR KIND, ARISING FROM BCN'S FAILURE TO REMIND CUSTOMER OF THE EXPIRY DATE OR OTHER TERMINATION OF AGREEMENT FOR THE PRODUCT, OR THE TERMINATION OR REDUCTION IN FUNCTIONALITY ARISING FROM CUSTOMER'S FAILURE TO BACK UP, RENEW OR TRANSFER TO AN ALTERNATIVE IN A TIMELY FASHION. BCN DOES NOT WARRANT THAT PRODUCTS: WILL FUNCTION IN ANY SPECIFIC CONFIGURATION THAT INCLUDES OPEN SOURCE OR OTHER THIRD PARTY HARDWARE OR SOFTWARE, OR WILL FUNCTION TO PRODUCE A PARTICULAR RESULT, EVEN IF BCN HAS DISCUSSED THE SPECIFIC CONFIGURATION OR THE RESULT WITH CUSTOMER. THE PRODUCT HAS BEEN DESIGNED, MANUFACTURED, AND TESTED FOR USE IN GENERAL-USE OFFICE/BUSINESS ENVIRONMENTS. BCN HAS NOT TESTED OR CERTIFIED ITS PRODUCTS FOR USE IN APPLICATIONS, WHERE THE FAILURE OR MALFUNCTION OF PRODUCTS CAN REASONABLY BE EXPECTED TO RESULT IN DEATH, PERSONAL INJURY, CATASTROPHIC PROPERTY DAMAGE OR CATASTROPHIC ENVIRONMENTAL HARM. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ACKNOWLEDGES THAT THE PRODUCT IS NOT FAULT TOLERANT AND IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL SAFE PERFORMANCES INCLUDING, WITHOUT LIMITATION, IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, DIRECT LIFE-SUPPORT MACHINES, OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR PROPERTY DAMAGE (COLLECTIVELY, "HIGH RISK ACTIVITIES"), AND THAT BCN SHALL IN NO WAY BE LIABLE FOR USE OF THE PRODUCT IN HIGH RISK ACTIVITIES.

10. IP OWNERSHIP AND INFRINGEMENT INDEMNIFICATION

10.1 All worldwide propriety rights respecting intellectual property in any form or on any media related to BCN's Confidential Information or to the intellectual property in or derived from any Products supplied by BCN to CUSTOMER hereunder, including the structure, organization and design of hardware (if any) and computer programs included as part of the Products, and CUSTOMER feedback on the Products and services, are and will remain the proprietary and valuable intellectual property of BCN and/or its licensors or suppliers, as applicable, including moral rights.

10.2 If any third party claims or asserts in any suit, that CUSTOMER's or its Affiliate's permitted use of the Product or any portion thereof infringes or violates any intellectual property right, CUSTOMER shall promptly notify BCN thereof and BCN shall, at its own expense, and to the extent permitted by federal law, defend such action and indemnify and hold harmless the CUSTOMER from and against any award of damages in favour of the third party

(notwithstanding the limitation on direct damages in Section 9.2 above), and reasonable attorneys' fees arising therefrom or caused thereby. BCN may make settlements thereof at its own discretion (so long as it does not require an admission of fault or payment by CUSTOMER), and CUSTOMER may not settle or compromise such claim, except with prior written consent of BCN. BCN may, at its expense, and at its sole option, (i) procure for the CUSTOMER the right to use the Product, or applicable portion thereof; (ii) modify the same so that it is no longer infringing, but still substantially conforms to the end user manual; or (iii) terminate this Agreement entirely or as it relates to the Product, and (upon return of the Product (or certified destruction for non-physical Product) to BCN if BCN's requests), refund to the CUSTOMER the unamortized or unexpensed portion of the purchase price or license fee of the applicable Product or units or components thereof, as determined in accordance with CUSTOMER's generally accepted accounting procedures. BCN's duty to indemnify under this Section is contingent upon BCN receiving prompt notice of a claim or assertion of any suit and BCN's right to solely control resolution of the claim or assertion of the suit.

The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) a modification of the Product by any Person other than BCN or its duly authorized agents; (ii) the incorporation into a Product of any information provided by or requested by or on behalf of CUSTOMER; (iii) a combination of the Product with any other computer programs or equipment where the infringement or misappropriation would not exist without such combination; or (iv) the use of a version of the Product other than the then-current version if infringement would have been avoided by using of the then-current version. Notwithstanding anything else in this Section 10 "IP Ownership and Infringement Indemnification", with regard to a unit provided on an evaluation loan basis, the Section 10 indemnity obligation shall not extend to any claims of infringement, or to any damage awarded, to the extent the claim or damage arose because of a failure of CUSTOMER to use the Product solely in a non-production environment and solely to test whether or not to acquire the Product for commercial use.

11. SUPPORT SERVICES

Upon the terms of a mutually agreed Order for Support Services issued by CUSTOMER to BCN directly or through a reseller, BCN shall provide Support Services as set out in Schedule A attached.

In performing maintenance, support or other services (including without limitation upgrades and implementations) BCN may identify and suggest changes to CUSTOMER configuration and/or set-up. Any change to a production system carries risk. The Product may be a critical element in CUSTOMER's network, upon which CUSTOMER's ability to operate depends. CUSTOMER bears the risk of all loss arising from its failure to follow appropriate change management procedures according to the BCN and CUSTOMER guidelines, including testing proposed changes in a non-production lab environment or during a scheduled maintenance window "off hours". If CUSTOMER does not have a non-production environment, BCN recommends, and upon CUSTOMER's written request BCN will provide, at no charge, a virtual non-production environment for a mutually agreed upon time.

CUSTOMER agrees to deploy Product only with, and in an environment appropriate for the risk, and take such other steps as are necessary including, without limitation, best practices for system administration, such as: (i) upgrading only during off-peak hours, (ii) multiple levels of redundancy including (without limitation) at the network and DNS/DHCP and adjacent service levels; and (iii) with a full, independent, back-up and disaster recovery system in place) to ensure service continuity.

12. RESERVED

13. SURVIVING PROVISIONS

Sections 1, 8.3, 8.5, 9, 10, 13, 14, 16, 18, 19, 20, 21, 22, 26 and 28, shall survive termination of this Agreement for any reason.

14. RESERVED

15. NO ASSIGNMENT

Except in the context of a sale of all or substantially all of its assets to a third party, neither BCN nor CUSTOMER may assign any of its rights or any of its duties pursuant to this Agreement without the prior written consent of the other, not to be unreasonably withheld or delayed. Any such attempted assignment without such consent shall be void.

16. USE OF NAME

Neither Party shall use the other's name or logo without prior written consent, or permit Products to be used for third party comparisons without consent.

17. INSURANCE

BCN shall, at its own cost and expense, obtain and maintain in full force and effect, during the Term of this Agreement, commercially reasonable insurance, and shall provide CUSTOMER with a certificate of the insurance coverage upon request.

18. CONFIDENTIAL INFORMATION

A Party will use the same care to avoid disclosure of any Confidential Information received from the disclosing Party as it uses with its own similar information it does not wish to disclose. A receiving Party: (a) will use disclosing Party's Confidential Information only to aid in the performance of its obligations or full enjoyment of its rights hereunder; and (b) will not disclose same except to its employees or agents on a need to know basis, who have first agreed to be bound by this obligation in favour of the disclosing Party. In any event, receiving Party will be responsible and liable for unauthorized use or disclosure by its employees or agents. Neither Party shall reproduce or use the Confidential Information except as otherwise provided herein. All copies of Confidential Information shall contain the same proprietary notices and legends appearing on the original information. Each Party, upon request of the other, shall return, and cause its employees or agents to return or destroy, all copies of the other's Confidential Information. Receiving Party shall advise disclosing Party of any loss, or unauthorized use or disclosure of any Confidential Information, promptly upon discovery of such event. Notwithstanding the foregoing, Confidential Information obligations do not apply if such information: i. was known to receiving Party when disclosed as evidenced by any written documents possessed by receiving Party; ii. is available to the general public when disclosed to receiving Party or thereafter, without restrictions as to its use or disclosure, without fault of receiving Party; iii. is disclosed to receiving Party by another Person having the right to disclose same; iv. is information receiving Party is compelled to disclose by law/government order; or v. is reasonably required to be disclosed to a court to permit it to decide the Parties' rights hereunder, provided reasonable steps are taken to protect against further disclosure or use. Either party may disclose to legal counsel and other advisors who agree to be bound by these confidentiality provisions, in connection with the enforcement of this Agreement or in connection with an actual or proposed merger, acquisition, or similar transaction.

19. SEVERABILITY

If any term or provision of this Agreement should be declared invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remaining terms and provisions and the enforceability of such provisions in any other circumstances shall be unimpaired, and the Parties shall substitute a valid, legal and enforceable provision as close in legal and economic consequences as possible to the provision struck down. If the Parties cannot do so, either may request the competent jurisdiction which made such declaration to do so, and if it declines, either may apply for arbitration to do so.

20. NO WAIVER; CHANGES

No failure or delay of either Party to exercise any rights or remedies under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same or other rights or remedies preclude any further or other exercise of the same or other rights or remedies, nor shall any waiver of any rights or remedies with respect to any circumstances be construed as a waiver thereof with respect to any other circumstances. The terms and conditions of

this Agreement may not be amended, waived, or modified, except in writing signed by the Party to be bound thereby. Upon expiry of the license Term, BCN may, but has no obligation to, continue provision of the Product. BCN may provide a grace period, during which CUSTOMER is permitted to renew after the Expiry Date, but BCN is not required to do so. BCN is not liable for any failure to provide a grace period, or having provided a grace period, estopped from relying on its rights to fail to provide any subsequent grace period.

21. RESERVED

22. RESERVED

23. FORCE MAJEURE

Neither Party shall be held responsible or in any manner liable for damages, nor be deemed in breach of this Agreement, by reason of delays or inability to perform caused by circumstances beyond such Party's reasonable control, including, without limitation, acts of terrorism, fire, explosion, flood, acts of God, and governmental acts.

24. RESERVED

25. U.S. GOVERNMENT END-USERS

Each Product is a "commercial item" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined in FAR 12.212, and is provided to the U.S. Government only as a commercial end item. Government end users acquire the rights set out in this Agreement for each Product consistent with: (i) for acquisition by or on behalf of civilian agencies, the terms set forth in FAR 12.212; or (ii) for acquisition by or on behalf of the Department of Defense, the terms set forth in DFARS 227.7202. Use of each Product and related documentation is further restricted by the terms and conditions of this Agreement.

26. NON-SOLICITATION

The Parties agree that during the Term and for twelve (12) months thereafter, neither will, directly or indirectly through any other Person: (a) induce or attempt to induce any employee of the other or any of its Affiliates to leave the employ of the other or such Affiliate; (b) hire any Person who was an employee of the other within the past twelve (12) months prior to commencing employment with the hirer or any of its Affiliates; or (c) in any way interfere with the relationship between any customer, supplier, licensee or business relation of the other or any of its Affiliates.

27. LAB UNITS AND COLD SPARES

If CUSTOMER acquired a unit of Product for use in a laboratory environment, or as a cold spare, then that product unit is provided "as is" with no warranty (until in the case of a cold spare only it is used on a production basis and the product unit it is replacing is returned to BCN (or at BCN's option, certified destroyed), at which time the other warranties in this Agreement applicable to the returned (or destroyed) unit are transferred to the cold spare unit). For laboratory units the warranties and indemnities herein apply only for claims arising from, and for damage arising solely from, non-production use.

28. CONFLICT

In the event of a conflict between the version of the Agreement attached to, or referred to, in CUSTOMER's accepted quote, and the version in CUSTOMER's acquired Product, the version in the quote prevails.

29. EXPORT COMPLIANCE ASSURANCE

CUSTOMER agrees that all Products are subject to the United States and other government export control and economic sanctions laws. CUSTOMER agrees neither it nor its Affiliates will directly or indirectly export, re-export, transfer, or release, (herein referred to as "export"), any such Products or any direct product thereof to any destination or Person, or use it for any end-use prohibited or restricted under such laws without prior government authorization as applicable, either in writing or as permitted by applicable law. The US government currently maintains embargoes and sanctions against countries listed in the Export Administration Regulations, Country Groups E:1 and E:2 to Part 740, Supplement 1, www.access.gpo.gov/bis/ear/pdf/740spir.pdf. Canada maintains a substantially similar list. The current list of embargoed or sanctioned countries to which BCN cannot export consists of Belarus (Byelorussia), Cuba, Iran, North Korea, Sudan, and Syria. These lists are amended from time to time and all such amendments shall apply.

30. INTERPRETATION

In this Agreement, singular includes plural, male includes female, and vice versa.

31. EVALUATION RETURNS

If, on or prior to Term expiry of the evaluation loan, CUSTOMER has elected to purchase a Product, for a term beyond the evaluation term, the acquisition shall be subject to the terms of this Agreement for non-evaluation acquisitions. If CUSTOMER does not so elect, then the right to use the Product expires. If the Product is physical, CUSTOMER shall contact BCN to obtain the appropriate information necessary to process the return of the physical Product, by logging a "Hardware Support" Case within BCN's CUSTOMER portal currently known as "CARE". Returns shall be in the same condition received, at the CUSTOMER's expense and risk, reasonable wear and tear excepted, and shipped, in the original, (or equivalently protective), packaging. If CUSTOMER elects to commercially acquire, then CUSTOMER's issuance of the purchase Order for that commercial acquisition constitutes acceptance of the Agreement terms. CUSTOMER shall not deploy in a production environment without purchasing. BCN recommends that CUSTOMER engage BCN or its authorized agents for Implementation in a production environment.

32. RESERVED

33. ADDITIONAL PROVISIONS FOR PHYSICAL PRODUCT

If CUSTOMER has purchased a physical Product, Schedule B herein shall additionally apply.

34. BUSINESS CONTACTS. Each party agrees to permit the other to store and use its business contact information wherever they do business, in connection with or in furtherance of the business relationship.

SCHEDULE A: CUSTOMER CARE - TECHNICAL SUPPORT SERVICES

Schedule A applies if CUSTOMER has purchased Support Services pursuant to which BCN is responsible to provide all tiers of support directly to CUSTOMER. If CUSTOMER has purchased support, whether independent of, directly from or through BCN, pursuant to which CUSTOMER has required a third party, (such as a reseller or systems integrator), to be responsible to provide first, or first and second line, support directly to CUSTOMER, Schedule A does not apply and CUSTOMER's support agreement with the third party would then apply.

A.1 TERM OF SUPPORT SERVICES

a) Initial Term. If Support Services have been purchased, the initial term of Support Services shall be from the Support Services Start Date until the Expiry Date. If a Support Services Term extends beyond a license Term, BCN is only obliged to provide Support Services for the balance of the Support Services Term if CUSTOMER purchases an extension of the license Term for at least the balance of the Support Services Term. Renewal of the license Term,

if it is not perpetual, (purchase of an extension and new Key) does not automatically extend the Support Services Term. Renewal of the Support Services Term does not automatically extend the license Term.

b) Reserved.

c) Termination. CUSTOMER shall be entitled to terminate Support Services (or only the Technical Account Management element thereof) by providing written notice to BCN not less than sixty (60) days prior to the Expiry Date.

d) Reinstatement. Should CUSTOMER terminate (or choose not to renew) annual Support Services and subsequently re-instates them, CUSTOMER shall be responsible for payment of all Support Services fees that would have regularly been incurred during the period between termination/non-renewal and reinstatement. BCN reserves the right to require a billable 'system health check' to ensure that CUSTOMER's infrastructure and Product are in a supportable state prior to reinstatement.

e) Fees. Unless otherwise agreed, BCN may increase Support Service fees once per year during the term of the Support Services, by the greater of: (i) CPI for the corresponding period (i.e. since the commencement of the Term or since the last renewal date under Section A.1(b)); or (ii) five percent (5%). Support Services are not included in the license fee for the Software, and the Support Services fee does not include payment for any license fee or renewal thereof. Support Services are only available if separately purchased and if your account is in good standing.

f) Product Retirement.

1. BCN is entitled to discontinue Support Services for any version of a Product at any time.

2. Absent an emergency, BCN will use reasonable commercial efforts to notify CUSTOMER in writing six (6) months prior to BCN's discontinuance of Support Services provided to CUSTOMER for: (i) one or more applicable versions of the Software for (or comprising) the applicable Product, and/or (ii) the Hardware System where Support Services are provided directly by, or on behalf of, BCN.

3. Notwithstanding A.1(f)1 and 2, CUSTOMER shall be entitled to continue to receive all Support Services for such discontinued:

(A) Software until the end of the CUSTOMER's then current contract for purchase of Support Services that is in force as of the effective date of such notice; and

(B) Hardware Systems where Support Services are provided directly by, or on behalf of, BCN from the original unit's ship date; provided CUSTOMER maintains an active, and uninterrupted, Support Services contract in good standing for the unit of the Product.

4. After the discontinuance period has expired, CUSTOMER may purchase support. However, during such discontinuance period and thereafter, Support Services shall exclude Updates. By way of illustration only, assume a January 1 notice of discontinuance, advising that Software version 5.0 is being discontinued on June 1, and replaced by version 5.5. Assume CUSTOMER has purchased support for version 5.0 through September 30, and CUSTOMER does not wish to upgrade from version 5.0 to version 5.5. BCN will continue to support version 5.0 for CUSTOMER through September 30, but such support will not include Updates between said June 1 and September 30. Thereafter, CUSTOMER may still purchase technical support, for the immediately following term, conditional upon it upgrading to the then current Release. Alternatively, CUSTOMER may continue to use and obtain Support Services (excluding Updates) for a discontinued version for a term and at a price mutually agreed upon by CUSTOMER and BCN.

g) Reserved.

A.2 SCOPE OF SUPPORT SERVICES

a) Authorized Contacts. Only Authorized Contacts shall be entitled to access Support Services hereunder.

b) Version Support. BCN or its authorized agent shall provide Support Services hereunder for Cases in respect of the current Major Release of the Software and the previous Major Release. Cases pertaining to versions prior to the previous Major Release of the Software are not eligible for Support Services. BCN shall use reasonable commercial efforts to provide at least six (6) months' prior notice to CUSTOMER of the end of support for a particular Major Release.

c) Language. BCN shall provide Case Support Services described herein in English.

d) Enhancements and Program Changes. BCN shall be entitled to continue to reasonably develop the Support Services provided to CUSTOMER and the processes through which they are made available to CUSTOMER. BCN shall notify CUSTOMER of any such changes within an updated Support Handbook or otherwise from time to time. If BCN alters the scope of such Support Services during the Term of the Support Services in such a way as to materially and adversely impact CUSTOMER's ability to make use of such Support Services, CUSTOMER shall be entitled to terminate the Term for Support Services upon sixty (60) days' prior written notice to BCN.

A.3 LIMITATIONS

BCN or its authorized agent shall provide the Support Services in a reasonably satisfactory manner. BCN has no obligation to provide any Support Services if: i) CUSTOMER has modified or attempted to modify the Product without BCN's written authorization (including, without limitation, opening the Product's shell); ii) CUSTOMER is attempting to use the Product with hardware or computer programs (including operating system computer programs) other than those specifically recommended by BCN; iii) BCN has not received payment for services, license or both; or iv) BCN determines that the cause of the Error or problem is the malfunctioning or failure of any hardware, computer programs or other item not furnished by BCN. Any Support Services provided in any such situation is without warranty of any nature or kind.

BCN Support Services do not include: (a) support, installation or upgrades for any third party non-BCN products other than the Software and Hardware System; (b) onsite services unless specifically and separately agreed upon; (c) Implementation of Updates (including any data migration for such Implementation); or (d) any professional services work under a separate statement of work.

Subject to delays necessitated by adherence to A.7g) below, CUSTOMER acknowledges BCN bears no liability for damage suffered by CUSTOMER after the recommended Update, Featurepack, Fixpack, or Hotfix is available and before it is deployed, if, or to the extent, its deployment would have avoided or mitigated the damage, if BCN is not responsible for the CUSTOMER's delay in deployment.

a) Authorized Contacts. CUSTOMER shall appoint up to 3 named individuals, including a Primary Administrator, as Authorized Contacts, who shall be entitled to access Case Support Services hereunder.

CUSTOMER shall be entitled to replace Authorized Contacts upon reasonable notice to BCN at any time during the term of Support Services, provided however that the total number of Authorized Contacts at any time shall not exceed the maximum number identified above. BCN reserves the right to limit designation of Authorized Contacts to individuals with a demonstrated ability to perform this function.

For security and confidentiality purposes, each Authorized Contact must include the specific individual's email address, rather than a distribution list.

b) Primary Administrator.

i. Appointment. CUSTOMER shall designate one Authorized Contact as Primary Administrator. CUSTOMER shall also identify one alternate Authorized Contact to fulfill all responsibilities of the Primary Administrator if the Primary Administrator is unavailable. Only one individual shall fulfill the function of Primary Administrator at any given time.

ii. Responsibilities. The Primary Administrator (or the alternate, if applicable) shall be responsible for ensuring CUSTOMER's compliance with the "CUSTOMER Responsibilities" articulated in Article A.8 hereof, and shall be responsible for the following:

- Avoidance of submission by CUSTOMER of duplicate Cases;
- Conducting or ensuring knowledge transfer within CUSTOMER's organization relating to incoming and resolved Cases;
- Co-ordination of CUSTOMER's Case Resolution priorities; and
- Resolution of escalation from BCN to CUSTOMER in relation to any Support Services issues.

A.4 TECHNICAL SUPPORT

a) Support Desk. For the Support Services term, BCN shall provide all Authorized Contacts with access to the Support Desk for CUSTOMER's Case Support inquiries. The Support Desk is responsible for coordinating and monitoring the Resolution of all Cases.

b) Normal Service Hours. Subject to scheduled maintenance, normal service hours of the Support Desk are 24 × 365 days a year.

c) CARE. The online Technical Support Self-Service Portal CARE provides CUSTOMER's Authorized Contacts with a structured means of reporting, logging, and tracking Cases and related Resolution activities. Cases shall be recorded in CARE with information relating to their symptoms, basic diagnostic data and information about the Product and CUSTOMER's use thereof.

d) Case Management.

i. Reporting and Communication. For initial reporting and submission of Cases, the applicable Authorized Contacts shall endeavor to use CARE, unless CARE is unavailable due to scheduled maintenance, unscheduled outage, or is otherwise inaccessible by the applicable Authorized Contact. CARE can be accessed by Authorized Contacts through the Internet, using a supported Web browser. For subsequent enquiries or updates, CUSTOMER may use CARE, or may email or telephone the Support Desk.

ii. Response Commitment. Following initial Case submission, BCN shall provide the Authorized Contact with prompt email confirmation of the Case Support submission, and a direct response from a Support Desk representative within the response times set out in Table A1 below. This response shall indicate whether BCN requires any further information with respect to the Case and an indication of the commencement of Resolution activities. If a Case is determined by BCN to relate to a third party product to which Support Services are not provided by BCN and not to the Product, then the Case shall be referred back to CUSTOMER in order that CUSTOMER contact the appropriate third party provider of support services or warranty provider for that Case.

iii. Severity Code Assignment. If BCN cannot promptly provide a Resolution to the submitted Case, the Support Desk representative shall assign a Severity Code set out in Table A1 below, to the Case (if not provided, or if BCN reasonably disputes the assignment provided by the applicable Authorized Contact). If conditions relating to a logged Case materially change, such that the Case subsequently meets the criteria of a higher or lower Severity Code, then such Case shall be re-classified by BCN as such, and shall then follow the Response Time as hereinafter provided of: (i) a higher Severity Code, upon BCN's receipt of CUSTOMER's written notice or notice via BCN's CARE portal, reasonably requesting such a change (ii) a lower Severity Code, which BCN may reasonably deem as a result of BCN's and CUSTOMER's Resolution activities or a reasonable Workaround.

iv. Assessment and Resolution Estimate. The Support Desk representative shall promptly initiate detailed Case assessment activities, the completion of which shall result in BCN's provision to the Authorized Contact of a good faith, non-binding, estimate of the time required to produce a Resolution for the Case.

v. Prioritization. Unless otherwise directed by the Primary Administrator, BCN shall attend to each of CUSTOMER's reported Cases based upon the level of its Severity Code and, for Cases of the same Severity Code, based upon either the date and time of receipt of the reported Case or the defined business priority identified.

vi. Resolution.

- BCN or its authorized agent shall use commercially reasonable efforts to provide Resolutions to all submitted Cases in a timely manner.
- CUSTOMER shall co-operate promptly with BCN or its authorized agent in the investigation, diagnosis and Resolution of Cases. Without limiting the generality of the foregoing, CUSTOMER shall respond in accordance with timelines articulated in the Support Handbook to BCN's requests for information or action relating to a Case. BCN or its authorized agent shall work with CUSTOMER to determine the appropriateness of Workarounds and patches to reported Cases, as necessary.
- Cases that cannot be resolved promptly by the Support Desk personnel may be assigned or escalated to other specialized groups within BCN (e.g. Development) or its authorized agent.
- When a Case has been resolved the Support Desk shall ensure that Case records are reasonably complete and accurate, and that the Resolution is agreed upon by the appropriate Authorized Contact.

A.5 MAINTENANCE

a) Updates. During the Support Services term, CUSTOMER shall be entitled to receive all Updates of the Software (subject to A.1 f) 4), that BCN makes generally available, without additional payment, to Support Services subscribers, including any associated Documentation. Upon release, BCN shall promptly notify CUSTOMER of such Updates and/or Documentation and Deliver such Updates and Documentation to CUSTOMER's in good standing, upon request.

b) Hardware Repair and Replacement.

CUSTOMER shall be entitled to the level of Hardware System support it has purchased, as evidenced by the unit serial number and Order.

(i) Repair – If CUSTOMER is determined to be eligible for onsite repair, a certified hardware technician will be scheduled to arrive, following the confirmation of a hardware failure with the BCN Support Desk, within one (1) business day, or if premium support has been purchased, within five (5) hours.

(ii) Replacement – If BCN determines CUSTOMER is eligible for rapid replacement for qualifying Hardware System failures, per BCN's then current RRMA process, and following the confirmation of a hardware failure, BCN will ship a replacement system or part free of charge using an express courier service. If the request to ship is received, and eligibility confirmed, before 2pm ET, BCN will make reasonable commercial efforts to ship a replacement unit to arrive for the next business day if not earlier. Requests made after 2pm ET will be shipped on the next business day. Delivery is typically 1-3 business days but can vary according to location.

A.6 TECHNICAL ACCOUNT MANAGEMENT (TAM) SUPPORT

a) Scope of TAM Support. A Technical Account Manager (TAM) is a senior Customer Care team member designated to work with a CUSTOMER that purchases TAM Support, through its Authorized Contacts. The TAM will become as familiar with the CUSTOMER's Product configuration related needs as the CUSTOMER reasonably requires, so that the TAM can be a ready resource when required. TAM Support Services include:

- i. Direct Case Escalation**
- ii. Release Management Support**
 - The TAM shall provide services in relation to the evaluation, recommendation and coordination of deployment of Updates, as requested by CUSTOMER;
- iii. Scheduled communication and activity, including assistance for scheduled after-hours activity;**
- iv. Detailed Case reports, manually and automatically extracted from Care;**
- v. Onsite activity, when requested and mutually agreed upon as a necessary next step;**
- vi. Operational Support, which consists of:**
 - General suggestions for consideration by CUSTOMER regarding interoperability between Product and third party components not licensed by BCN to CUSTOMER;
 - General Product performance investigation, and possible remediation.
- b) Prerequisites and Fees.**
 - i. Prerequisites.** TAM Support services are only available if:
 - CUSTOMER is a current Support Services subscriber in good standing, and has additionally subscribed for TAM support; and
 - All valid invoices for TAM Support have been paid when due and the account remains in good standing.

A.7 CUSTOMER RESPONSIBILITIES

a) CUSTOMER Environment Dependency. To address certain Cases related to Product performance, BCN may request that CUSTOMER disable or remove non-essential computer programs from each applicable server, and/or upgrade third party hardware, network, or other components. If CUSTOMER is unable or unwilling to take such measures and if such Case is related thereto, CUSTOMER acknowledges that BCN shall not be required to provide Resolutions to such Cases hereunder.

b) CUSTOMER Instance Connectivity. If the CUSTOMER deems necessary, CUSTOMER shall provide BCN with read-only access to CUSTOMER's production environment and read-write access to CUSTOMER's test application environment. Certain remote administration computer programs such as WebEx, or an alternate may be required. Provided that CUSTOMER provides BCN with reasonable advance notice, BCN shall comply with CUSTOMER's reasonable security and privacy requirements in connection with any such access.

c) Apply Updates. CUSTOMER shall apply recommended Updates and shall make any related infrastructure requirements for each deployed Update to ensure continued supportability, within a commercially reasonable time frame. Subject to delays necessitated by adherence to A.7(g) below, CUSTOMER acknowledges BCN bears no liability for damage suffered by CUSTOMER after the recommended Update is available and before it is deployed, if, or to the extent, its deployment would have avoided or mitigated the damage.

d) Attend Training. As necessary, CUSTOMER shall ensure that the System Administrator and each designated Authorized Contact attends approved training (both Product and administration training, where available; conducted by either BCN trainers, or by CUSTOMER's trainers who have completed BCN's 'train-the-trainer' training), for each Major Release of the Software that CUSTOMER implements.

e) CUSTOMER "Triage". CUSTOMER shall conduct internal Case "triage" (assessment and prioritization) for each Case via CUSTOMER's internal support mechanisms or 'tier 1 support desk' which shall first review all appropriate Documentation for relevant information pertaining to each Case (e.g., user guide, on-line help, installation guide, and the Care knowledge base. Prior to reporting each Case to BCN, CUSTOMER shall reproduce each Case in a lab that matches the current production environment, which CUSTOMER maintains and which is sufficiently standardized to determine the root cause. BCN reserves the right to charge its regular hourly professional services rate for a Case if it becomes apparent that the Customer has not performed the triage in a reasonable manner.

f) Support Handbook. Authorized Contacts shall adhere to BCN's reasonable support procedures and escalation guidelines as set out in the Support Handbook.



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g) Update Testing. CUSTOMER shall test all provided Updates within a reasonable amount of time from Delivery in a non-production lab environment, and prior to deployment into CUSTOMER's production environment.

Table A1 - CASE SUPPORT COMMITMENTS (see next page)

Severity	Definition	Response SLA	Priority	Resource Escalation	Commitment &
1	Production System Down or imminent Production mission critical failure, no workaround available.	1 Hr	1	<ul style="list-style-type: none"> • Immediate engagement of an Escalation Analyst • Immediate notification to Customer Care Management • Further escalation to a Sr. Developer 	
2	Loss of key functionality which affects significant aspects of the business or operations.	3 Hr	2 through 3	<ul style="list-style-type: none"> • Escalation from Technical Representative to Technical Analyst • Further escalation to Escalation Analyst and/or Development as required 	
3	Issue impacting an isolated component that does not affect the ability of the system to perform in accordance with the documentation.	6 Hrs	2 through 5	<ul style="list-style-type: none"> • Escalation from Technical Representative to Technical Analyst • Further escalation to Escalation Analyst and/or Development as required 	
4	Product is usable with limitations and workarounds – also a placeholder for general inquiries.	24 Hrs	2 through 5	<ul style="list-style-type: none"> • Escalation from Technical Representative to Technical Analyst • Further escalation to Escalation Analyst and/or Development as required 	
5	No system impact identified (e.g. Feature Requests, User Account Requests, Software Delivery, etc...)	48 Hrs	2 through 5	<ul style="list-style-type: none"> • Escalation recipient is dependent on the type of case requested 	

SCHEDULE B “Hardware System”

BCN offers its Software in virtual format, and embedded on a Hardware System.

The Hardware System is provided to BCN by a third party manufacturer (“TPM”), and the following additional provisions, including warranties, service provisions, indemnifications and limitations of liability shall apply to CUSTOMERS (and their Affiliates) ordering (or acquiring) units of physical Product, so long as they have purchased and are in good standing under a BCN maintenance and support services agreement for the applicable units:

1. Warranties

1.1 Third Party Product Warranty. “**Third Party Products**” mean any hardware or software, other than: a) BCN Software; or b) TPM Hardware System. If CUSTOMER specifically asks BCN to acquire a Third Party Product and to supply it as part of the transaction, then such Third Party Products (if any) may carry with them a limited warranty from the original manufacturer or licensor (“**Third Party Warranty**”). Neither TPM nor BCN is responsible for fulfillment of any Third Party Warranty or for problems attributable to the use of Third Party

Products, absent any service agreement between the CUSTOMER and BCN explicitly obligating BCN to support and maintain same.

1.2 Limited Warranty on TPM Hardware System. TPM provides a limited warranty to BCN which is passed on to the CUSTOMER who has acquired the physical Product under this Agreement (the “**Limited Warranty**”). The Limited Warranty shall extend to the physical product, and the firmware and associated software drivers (including the BIOS and RAID drivers pre-installed by TPM and as applicable) for components which are necessary to allow the TPM Hardware System to meet its published specifications, for such period of time as TPM’s warranty on the TPM Hardware System is effective, except TPM makes no warranty or representation, express or implied, that the operation of the firmware or software will be uninterrupted or error free. The Limited Warranty period for the TPM Hardware System shall subsist so long as CUSTOMER has a valid BCN Support Services agreement, except as noted below. The Limited Warranty period will begin on the date of shipment from TPM’s manufacturing location. The Hardware System is not subject to any “return and exchange without cause” policy.

1.3 The Limited Warranty does not cover: (i) Third Party Products; (ii) components that are added to the TPM Products after the TPM Products are shipped from TPM or added through TPM’s custom factory integration services at CUSTOMER’S request to BCN; (iii) any problems caused by such components or Third Party Products; (iv) repairs necessitated by software problems (other than the firmware or associated software drivers covered by the Limited Warranty as set forth above within the TPM Hardware System) or as a result of alteration or repair by anyone other than TPM or its representatives; or (v) damage or problems due to external causes, including as to this subsection (v): accident, abuse, misuse, neglect, problems with electrical power, acts of God, usage not in accordance with product instructions, (but in all cases damage or problems due to normal wear and tear are excepted).

1.4 BCN does not warrant that Products will function in any specific configuration that includes non-TPM hardware or software or will function to produce a particular result, even if BCN has discussed the specific configuration or the result with CUSTOMER. TPM’s Hardware System has been designed, manufactured, and tested by TPM or its suppliers for use in general-use office/business and/or consumer environments. TPM has not tested or certified its Products for use in applications, where the failure or malfunction of Products can reasonably be expected to result in death, personal injury, catastrophic property damage or catastrophic environmental harm.

1.5 Warranty Remedies. BCN shall at its option, repair or replace TPM Hardware Systems that do not conform to the Limited Warranty, using new or refurbished parts, or provide a depreciated refund for the Hardware System to CUSTOMER, calculated on a 5 year straight-line basis, except to the extent that if a refund is required within the first 60 days of the applicable warranty period, CUSTOMER shall be entitled to a full refund rather than a pro-rata refund as contemplated above. Subject to the terms of any applicable separate support agreement between BCN and TPM with regard to CUSTOMER, BCN assumes no obligation to repair Third Party Products, non-warranted defects in the TPM Hardware System, or any defects in TPM Hardware System after the warranty period (set out in s.1.2) has expired.

1.6 Services Warranty. TPM warrants that the services provided by TPM as described in section 2 of this **Schedule B “Hardware System”** shall be done in a good and workmanlike manner.

1.7 BCN shall determine whether a Case referred to BCN by an Authorized Contact is subject to the Limited Warranty and if so, shall contact TPM to require TPM to remedy the Case or BCN will refund the CUSTOMER the price for the Product or repair or replace the Product in accordance with any service agreement between BCN and CUSTOMER.

1.8 BCN assumes no obligation to repair TPM Hardware System or Third Party Products, other than as set out in this section 1 (“**Warranties**”), subject to the explicit terms of any applicable separate service agreement between BCN and CUSTOMER which specifically call out and override this section 1.

1.9 Disclaimer of Warranties and Conditions. **EXCEPT FOR THE EXPRESS LIMITED WARRANTY FOR TPM’S HARDWARE SYSTEM IN SECTION 1.2 ABOVE AND THE WARRANTY SET FORTH IN SECTION 1.6, BCN AND TPM DISCLAIM, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL WARRANTIES, CONDITIONS AND GUARANTEES, EXPRESS OR IMPLIED, INCLUDING,**

WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS OF THE HARDWARE SYSTEM FOR A PARTICULAR PURPOSE. THE FOREGOING SHALL SURVIVE ANY TERMINATION OR EXPIRY OF THIS AGREEMENT, HOWSOEVER CAUSED. TPM may, in its sole discretion, revise its Limited Warranty from time to time with regard to future units CUSTOMER may acquire.

2. Service and Support

2.1 Support Services. Without diminishing from BCN's obligations set out in section 2 of this Schedule, (including its obligation to repair, replace or refund), warranty support services for the Hardware System will be performed in accordance with the applicable services description, which is **5 hour** response time or next business day response time, depending upon geographical location. Specific details concerning the TPM services purchased by BCN and transferred to CUSTOMER shall be described in the relevant Order.

2.2 Services Outside of Geographic Locations. If BCN directly or indirectly supplies, or CUSTOMER moves, the TPM Hardware System to a geographic location in which TPM warranty support service is not available or not available at the same price as BCN paid for such service, BCN and CUSTOMER may not have TPM service coverage or may incur an additional charge, or a delay in time (for example from 5 hours to next business day) to maintain the same categories of support coverage at the new location.

3. LIMITATION OF LIABILITY

WITH REGARD TO THE HARDWARE SYSTEM, NEITHER TPM NOR BCN WILL BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY DAMAGES WHATSOEVER. NEITHER TPM NOR BCN HAS ANY LIABILITY TO CUSTOMER FOR ANY LOSS OF INCOME, PROFIT, REVENUE, OR SAVINGS (WHETHER DIRECT OR INDIRECT), LOSS OF USE, OR LOSS OR CORRUPTION OF DATA OR SOFTWARE. TPM SHALL NOT HAVE ANY LIABILITY FOR ANY DAMAGES RESULTING FROM OR RELATED TO THE FAILURE OF AND/OR USE OF THE PRODUCTS IN ANYHIGH RISK ACTIVITIES, AND SHALL IN NO WAY BE LIABLE FOR USE OF THE PRODUCT IN HIGH-RISK ACTIVITIES. CUSTOMER AGREES THAT THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM IN WHICH SUCH CLAIMS ARE BASED (WHETHER IN CONTRACT, TORT, OR OTHERWISE) AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES. THE FOREGOING SHALL SURVIVE ANY TERMINATION OR EXPIRY OF THIS AGREEMENT, HOWSOEVER CAUSED.

SCHEDULE C "Professional Services"

C-1 Professional Services (Other Than E-Learning)

In addition to the terms of the Agreement to which this Schedule C-1 is attached, the following additional terms and conditions apply to all such professional services except for E-Learning training:

1. **Order Dates:** CUSTOMER shall issue Orders for the labor specified in the applicable SOW, no later than ten (10) business days prior to the start of the engagement. If the Order's service description or address for invoicing conflict with the SOW, the SOW shall govern.
2. **Invoices:** Unless otherwise agreed, BCN will invoice CUSTOMER for services performed and expenses incurred on a monthly basis. Payment is due within thirty (30) days of invoice delivery.
3. **Prepaid:** Pre-paid service days expire unless used within twelve (12) months of the purchase date as specified on the Order issued to, and accepted by, BCN. No credit or refund shall be due to CUSTOMER for such expired services.
4. **SOW Expiry:** Unless otherwise agreed, the SOW expires if not implemented with twelve (12) months of its effective date, otherwise than due to BCN's breach.
5. **"Normal Business Hours" or "day"** means eight (8) hours of work conducted between 8am and 5pm, including 1 hour for meals, in the local time zones. The work schedule may be adjusted by mutual agreement to accommodate CUSTOMER work hours or special circumstances.

6. **Weekend/Overtime:** If CUSTOMER requests in writing and BCN agrees, weekend work and overtime will be performed. Weekend and overtime rates are billed at 1.5 times the hourly rate agreed upon in the applicable Order or SOW. Weekend rates begin 5pm on Friday and end Monday at 8am. Overtime begins at 5pm on a normal work day. The parties acknowledge that a request for weekend and overtime work will not require the SOW's change control process, and that an email request to BCN will be sufficient to bind CUSTOMER to pay for the additional hours plus any additional travel and accommodation expenses incurred.
7. **Termination For Convenience:** If CUSTOMER chooses to terminate a professional services engagement for convenience, ten (10) business days prior written notice of termination will be provided to BCN.
8. **Upon Termination:** Upon termination, CUSTOMER shall pay BCN for the time used, and expenses incurred (per s.14), towards the project at the service rates as defined in the Order or SOW. The payment will be made immediately upon termination of the Agreement.
9. **Expenses:** Unless otherwise stated in the applicable SOW, in addition to services fees, CUSTOMER shall reimburse BCN for documented, reasonable travel and accommodation expenses incurred by BCN in the performance of the services, including, without limitation, travel, parking, meals and lodging.
10. **Change Control:** Subject to s.6, any work efforts that fall outside of the SOW shall be subject to the change control process below, and will be invoiced using the published BCN rate for such services that is in effect at the time that the services are provided. If either party wishes to make any changes to the scope or timeline or estimate of work as described in this Statement of Work, approval of such change requests will be controlled as follows:
 1. CUSTOMER or BCN may generate a change request which will document the change.
 2. Within a commercially reasonable time, BCN will provide a change order with scope, time and cost estimates.
 3. CUSTOMER will notify BCN within 3 business days of the receipt of BCN's response whether it accepts or rejects BCN's response reflecting the applicable impact analysis.
 4. If CUSTOMER accepts it in writing, BCN will sign evidencing acceptance within 3 business days.
11. This is a time and materials agreement. As such, the actual cost of the services provided may be less or greater than the estimated cost stated in the Order or SOW. If requested, BCN will provide regular budget updates to CUSTOMER. BCN shall not exceed the amount on the applicable PO without written permission from CUSTOMER
12. This is not a work for hire agreement. Any deliverables or work product created by BCN, including without limitation training materials, remain owned by BCN. Deliverables are licensed to CUSTOMER for its end use solely in conjunction with CUSTOMER's end use of the BCN Products.
13. Entering into this agreement constitutes consent to subcontracting of services in whole or party by BCN, so long as BCN remains liable for the work of the subcontractor.
14. **Cancellation/Rescheduling Policy.** Cancellations shall be in writing and are only effective when actually received by BCN. CUSTOMER agrees that CUSTOMER's cancellation or rescheduling of this engagement may cause BCN to incur non-refundable travel expenses and other costs. Once an engagement date is confirmed, BCN requires ten (10) business days prior notice of any scheduling changes, failing which CUSTOMER shall reimburse BCN for any non-reimbursable travel and accommodation expenses. If BCN is unable to re-deploy affected staff to alternative paying engagements despite commercially reasonable efforts, CUSTOMER agrees to pay an amount equal to the lesser of the length of the engagement or 1 week of services.

C-2 Professional Services (E-Learning)

1. **License Model.** Access to E-Learning content is licensed on a subscription basis. The length of time that CUSTOMER's representatives may access and use the content is equal to the length of the subscription CUSTOMER purchased. For instance, if CUSTOMER acquired a 30-day subscription to an E-Learning

Course, for two representatives, those two representatives may access that E-Learning Course content via this site for a 30-day period. The subscription period begins on the date CUSTOMER activates the subscription to the related licensed content. CUSTOMER may not share this right, or the licensed content, with third parties and, may only use the licensed content for its personal training use. Additionally, CUSTOMER shall not permit the sharing of credentials among multiple users (i.e. if it purchases a subscription for two representatives, it will receive two vouchers with log-in data, and the log-in data is for those two representatives only). One named CUSTOMER representative per voucher. CUSTOMER may access and use the online service and licensed content remotely from any device. No other person may use the licensed content under the same license except to provide support services

2. **Order Dates:** CUSTOMER shall purchase on-line or issue Orders for the E-Learning. When BCN receives the order, it will provide the web-site at which to register, and the number of vouchers for the number of CUSTOMER representatives for which CUSTOMER has purchased.
3. **Invoices:** Unless CUSTOMER purchases by credit card, BCN will invoice CUSTOMER for E-Learning upon receipt of the Order commencement of the course. and payment is due within thirty (30) days of invoice delivery.
4. **Prepaid:** The right to access the E-Learning on line expires unless used within twelve (12) months of the purchase date as specified on the Order issued to, and accepted by, BCN. No credit or refund shall be due to CUSTOMER for such expired subscription.
5. This is not a work for hire agreement. E-Learning access is licensed to CUSTOMER for its end use solely in conjunction with CUSTOMER's end use of the BCN Products.
6. This license is personal to CUSTOMER and non-transferable. CUSTOMER may not sublicense to third parties in any form for any reason. CUSTOMER is responsible for all uses of the E-Learning through CUSTOMER's login name and password, and for protecting and securing such login name and password from unauthorized use and disclosure. If CUSTOMER becomes aware of or believes there has been any breach, such as unauthorized use of CUSTOMER's login name and password, CUSTOMER will notify BCN immediately.
7. Some activities within an E-Learning course may request users to submit information that is tabulated and stored in a database. The data obtained is used to produce statistics that are integral to the educational value of these activities. Anywhere the requested data is personal in nature, a user's specific responses remain confidential and are not associated with name or e-mail address in any way. BCN will not disclose personally identifiable information associated with CUSTOMER's use of the website (e.g. name, address, access code) to any third parties not affiliated with BCN except to duly authorized investigative agencies for the limited purpose of investigating a good faith claim that a particular user has violated the restrictions on use of or access to the E-Learning course.
8. If CUSTOMER resides in the European Union, Canada or other jurisdiction with similar data transfer regulations, CUSTOMER acknowledges that by registering CUSTOMER will be indicating CUSTOMER's explicit consent that the attendee's personal information provided may be transferred and stored in countries outside the EU, Canada or CUSTOMER's resident jurisdiction, including the United States. If CUSTOMER fails to provide this consent, CUSTOMER will not be permitted to access Course for which registration is required. CUSTOMER's attendee's personal information shall only be used in accordance with the terms of this Agreement.
9. BCN does not warrant or guarantee that Course will fulfill the CUSTOMER's intended purpose. BCN's liability with respect to the course provided hereunder will not exceed the amount CUSTOMER paid for course, even if any term of this Agreement fails of its essential purpose.