

# CLAROTY END USER LICENSE AGREEMENT

This End User License Agreement (the “**Agreement**”) is entered by and between Claroty Ltd., on behalf of itself and its affiliates (the “**Company**” or “**Claroty**”) and the person, company or other legal entity identified below (“**You**” or the “**Customer**”). The Company and you shall each be referred as a “**Party**” and together, the “**Parties**”.

## 1. **License Grant and Restrictions.**

1.1 **The Product.** The commercial software products licensed to you hereunder and the associated hardware devices (“**Appliances**”) as set forth in either (a) the purchase order executed between you and Claroty, or (b) the purchase order executed between Claroty’s authorized reseller (the “**Reseller**”) and you (both (a) and (b) are collectively referred herein as the “**Purchase Order**”). Software products include any revisions, modifications, enhancements, updates, and/or upgrades thereto (the “**Software**”), which are provided to you in binary executable form for the regular and standard purposes the Software was designed for, all in accordance with the terms set forth in this Agreement and the Purchase Order. The term “**Software**” also includes a compilation of data, or visual display resulting from the operation of the Software, and any associated materials, equipment, systems, specifications, and Documentation (as defined below).

1.2 **License.** Subject to the terms and conditions of this Agreement and the payment of fees set forth in the Purchase Order (“**Fees**”), the Company hereby grants you (and your Affiliates, if applicable), and you accept, either of the following licenses, as set forth in the Purchase Order:

(i) **Perpetual License:** a *perpetual*, non-exclusive, non-sublicensable, non-transferable and non-assignable license to install, operate and use the Software, in binary executable form only, solely for your internal business purposes and the number of facilities that are set forth in the Purchase Order (the “**Perpetual License**”); or

(ii) **Subscription License:** *during the term specified in the Purchase Order*, a limited, non-exclusive, non-sublicensable, non-transferable and fully revocable license to install, operate and use the Software, in binary executable form only, solely for your internal business purposes and the number of facilities that are set forth in the Purchase Order (“**Subscription License**”);

(iii) **Appliance License:** a *perpetual*, non-exclusive, non-sublicensable, non-transferable and non-assignable license to use the Appliance solely for your internal business purposes and the number of facilities that are set forth in the Purchase Order (the “**Appliance License**”).

The Software/Appliance will be installed and used in accordance with the terms contained in this Agreement and in accordance with the Software/Appliance’s documentation and manuals for installation provided by the Company or its Reseller (the “**Documentation**”). All other rights in the Software are expressly reserved by the Company. \_

1.3 **Prohibited Uses.** Except as explicitly provided herein, without the prior written consent of the Company, you may not, nor permit anyone else to, directly or indirectly: (i) use, modify, revise, enhance, incorporate into or with other software, or create a derivative work of any part of the Software; (ii) sell, resell, license (or sub-license), lease, assign, transfer, pledge, or share your rights under this Agreement with or to anyone else; (iii) copy, distribute, publish or reproduce the Software; (iv) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise; (v) disclose, publish or otherwise make publicly available the results of any benchmarking of the Software, or use such results for your own competing software development activities; (vi) disassemble, decompile, reverse engineer, or attempt to reconstruct or discover any source code, underlying ideas or algorithms, design or mask works of the Appliance, except to the extent otherwise permitted under applicable law in the jurisdiction of use, notwithstanding this prohibition; (vii) remove or otherwise alter any of the Company’s trademarks, logos, copyrights or other proprietary notices or indicia, if any, fixed or attached to the Software as delivered to you; (viii) ship, transfer or export the Software/Appliance into any country, make available or use the Software/Appliance in any manner which is in violation of applicable export control laws, restrictions or regulations; (ix) disclose, provide or otherwise make available trade secrets contained within the Software/Appliance in any form to any third party; and/or (x) use the Software/Appliance in violation of applicable laws, or in a manner which infringes third party rights (including without limitation, intellectual property or privacy rights).

1.4 **Authorized Users.** You may not allow the use of and/or access to the Software by third parties or anyone other than (i) your employees whose duties require such access or use; and (ii) your authorized consultants and subcontractors (excluding any direct competitors of the Company) while such access will be permitted only at your facilities/premises and only where such use is required as part of their performance of services on your behalf. You will ensure that your employees, consultants and subcontractors comply with the terms of this Agreement and shall bear full responsibility for any harm caused to the Company for breach of the terms of the license by your consultants or subcontractors.

1.5 **Affiliates.** To the extent that the Purchase Order sets forth a right to use the Software/Appliance by your Affiliates, you shall: (i) provide each such Affiliate with a copy of this Agreement; (ii) ensure that each such Affiliate complies with the terms and conditions therein; and (iii) be responsible for any breach of these terms and conditions by any such Affiliate. For purposes of this Agreement, “**Affiliate**” means any entity that Controls, is Controlled by, or is under common Control with you, where “**Control**” means ownership, directly or indirectly, of 50% or more of the voting interest.

2. **Services Related to the Software/Appliance.** Unless indicated in the Purchase Order, the Company has no obligation to provide the following services: Software/Appliance support and maintenance, Software training or other professional services. The Purchase Order will indicate which services are provided to you by the Company or its Resellers.

3. **Consideration.** The Fees and payment terms for the license and/or related services are specified in the Purchase Order.

4. **Title & Ownership.** The Software and the Documentation are licensed and not sold. Title to Hardware portions of the Appliance shall transfer to you upon delivery to you subject to you completing the payment therefor. Risk to Hardware portions of the Appliance shall transfer to you upon delivery to you. The Company and its licensors are and shall retain all right, interest and ownership in and to the Software and the Documentation, including without limitation in and to any and all intellectual property rights (including, without limitation, copyrights, trade secrets, trademarks, improvements, revisions, derivative works and etc.) evidenced by or embodied in and/or attached/connected/related to the Software. This Agreement does not convey to you an interest in or to the Software but only a limited revocable right to use the Software, during the applicable license term, in accordance with the terms of this Agreement. Nothing in this Agreement constitutes a waiver of the Company's intellectual property rights under any law. If you contact the Company or its Reseller with feedback data (e.g., questions, comments, suggestions or the like) regarding the Software (collectively, "**Feedback**"), such Feedback shall be deemed non-confidential, and the Company shall have a non-exclusive, worldwide royalty-free and perpetual license to use or incorporate such Feedback into the Software and/or other current or future products or services of the Company (without your approval and without further compensation).

5. **Representations and Warranties, Exclusions and Disclaimers**

5.1 **The Company's Representations.** The Company represents that, (i) it has the full right, power and authority to grant the rights and licenses granted herein; (ii) it implements industry standard measures to ascertain that the Software does not contain any viruses, harmful components, illicit code, time-bombs, worms, Trojan horses, protect codes, data destruct keys, or other programming devices or code that might, or might be used to, access, modify, delete, damage, deactivate or disable any deliverables or other software, computer hardware, or data; (iii) commencing from the date the Software is installed at your sites/premises and during a ninety (90) days' period thereafter, under normal authorized use, the Software shall perform in substantial conformance with its Documentation; (iv) the Company passes on to you the warranty provided by the hardware manufacturer on the same terms and conditions as provided by the manufacturer and subject to the same limitations and prerequisites. The Company shall repair any nonconformity during such period at the Company's expense. This warranty may be extended for any period during which Fees for support and maintenance services are paid, as set forth in the Purchase Order.

5.2 **Exclusions.** The warranties set forth above shall not apply if the failure of the Software/Appliance results from or is otherwise attributable to: (i) repair, maintenance or modification of the Software/Appliance by persons other than the Company's authorized third parties; (ii) accident, negligence, abnormal physical or electrical stress, abnormal environmental conditions, abuse or misuse of the Software/Appliance; (iii) use of the Software/Appliance other than in accordance with the Software/Appliance's manuals, specifications or Documentation; (iv) the combination of the Software/Appliance with equipment or software not authorized or provided by the Company or otherwise approved by the Company in the Software/Appliance's manuals, specifications or Documentation; or (v) the Software/Appliance being licensed for beta evaluation, testing or demonstration purposes.

5.3 **Disclaimers.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 5.1 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS AND THE COMPANY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, NON-INTERFERENCE, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

6. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR THE IP INFRINGEMENT INDEMNIFICATION OBLIGATION HEREIN (A) THE COMPANY OR ITS SUPPLIERS AND/OR LICENSORS AND/OR RESELLERS SHALL NOT BE LIABLE WHETHER UNDER CONTRACT, TORT OR OTHERWISE, TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO, ANY LOSS OR DAMAGE TO BUSINESS EARNINGS, LOST PROFITS OR GOODWILL AND LOST OR DAMAGED DATA OR DOCUMENTATION), SUFFERED BY ANY PERSON, ARISING FROM AND/OR RELATED WITH AND/OR CONNECTED TO THE INSTALLATION OF THE SOFTWARE OR APPLIANCE OR ANY EQUIPMENT OR SYSTEM SUPPLIED BY THE COMPANY OR ITS RESELLERS AND/OR ANY USE OF OR INABILITY TO USE THE SOFTWARE OR APPLIANCE OR ANY EQUIPMENT OR SYSTEM SUPPLIED BY THE COMPANY OR ITS RESELLERS, EVEN IF THE COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) IN NO EVENT SHALL THE COMPANY'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL PAYMENTS ACTUALLY RECEIVED BY THE COMPANY FOR THE SOFTWARE/APPLIANCE, IF ANY, DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM OR CAUSE OF ACTION AROSE. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

7. **Third Party Software.** The Software is based on software which is developed and owned by the Company and/or its licensors. The Software may use or include third party software, files and components that are subject to open source and third party license terms ("**Third Party Components**"). Your right to use such Third Party Components as part of, or in connection with the Software is subject to any applicable acknowledgements and license terms accompanying such Third Party Components contained therein or related thereto. If there is a conflict between the licensing terms of such Third Party Components and this Agreement, the licensing terms of the Third Party Components shall prevail in connection with the related Third Party Components. Such Third Party Components are provided on an "AS IS" basis without any warranty of any kind and shall be subject to any and all limitations and conditions required by such third parties. You hereby agree to such terms associated with the Third Party Components. Under no circumstances shall the Software or any portion thereof (except for the Third Party Components contained therein) be deemed "open source" or "publicly available" software.

A list of Third Party Components is available in the Software or its Documentation and will be updated from time to time. The licenses of certain Third Party Components may require the provision of the source code of these Third Party Components. With respect to any licenses of Third Party Components that require the provision of the open source code of these Components, the Company will provide you, during a period set forth by each such license, for a charge of no more than Company's cost of physically performing source distribution, a complete machine-readable copy of the corresponding source code, on a medium customarily used for software interchange.

8. **Customer Data.** You hereby acknowledge that the Software may collect, use, store and transmit to Company technical and related information of your systems and computers including IP address, file hashes, browser type, operating system, application usage (including but not limited to successful installation and/or removal), software usage and peripheral hardware, that may be gathered periodically to facilitate the provision of the Software, Software updates, Software's support and other services provided to you, including online services. The Software is

installed on your designated sites, hosted, managed and controlled solely by you and/or cloud-based services by or on behalf of the Company. The Company will have no access to such data unless it is provided voluntarily by you. To the extent that the Company processes on your behalf any Personal Data (as defined in the DPA, as applicable) collected, provided or otherwise made available to the Company, the terms of the Company's Data Processing Agreement, as amended or supplemented from time to time, presently located at <https://www.claroty.com/DPA> (<https://www.claroty.com/DPA>) (the "DPA"), which are hereby incorporated by reference, shall apply and the Parties agree to comply with such terms.

#### 9.1 **Indemnification.**

Company acknowledges and agrees to release, defend, indemnify and hold harmless, at its expense, any third party action or suit brought against you alleging that the Software infringes intellectual property rights held by any third party ("**IP Infringement Claim**"), and the Company will pay any damages awarded in final judgment of a competent court against you that are attributable to any such claim; provided that (i) you notify the Company promptly in writing of such IP Infringement Claim; and (ii) you will grant the Company sole authority to handle the defense or settlement of any such claim, suit or proceeding and will provide the Company with all reasonable information and assistance, at Company's expense. The Company will not be bound by any settlement that you enter into without the Company's prior written consent. If the Software becomes, or in the Company's opinion is likely to become, the subject of an IP Infringement Claim, then the Company may, at its sole option and expense (a) procure for your benefit the right to continue using the Software; (b) replace or modify the Software to avoid the IP Infringement Claim; or (c) if options (a) and (b) cannot be accomplished despite the Company's reasonable efforts, the Company may accept the return of the Software and grant you a prorated refund for the remaining license period (if applicable). Notwithstanding the foregoing, the Company shall have no responsibility for IP Infringement Claim resulting from or based on (i) modifications to the Software made by a party other than the Company or its designee; (ii) your failure to use updated or modified Software provided by the Company specifically to avoid the infringement; or (iii) combination or use of the Software with equipment, devices or software not supplied or authorized by the Company or not in accordance with the Company's instructions.

9.1. Company acknowledges and agrees to release, defend, indemnify and hold harmless, at its expense, any third party action or suit brought against you alleging that the Software infringes intellectual property rights held by any third party ("**IP Infringement Claim**"), and the Company will pay any damages awarded in the final judgment of a competent court against you that are attributable to any such claim; provided that (i) you notify the Company promptly in writing of such IP Infringement Claim; and (ii) you will grant the Company sole authority to handle the defense or settlement of any such claim, suit or proceeding and will provide the Company with all reasonable information and assistance, at Company's expense. The Company will not be bound by any settlement that you enter into without the Company's prior written consent. If the Software becomes, or in the Company's opinion is likely to become, the subject of an IP Infringement Claim, then the Company may, at its sole option and expense (a) procure for your benefit the right to continue using the Software; (b) replace or modify the Software to avoid the IP Infringement Claim; or (c) if options (a) and (b) cannot be accomplished despite the Company's reasonable efforts, the Company may accept return of the Software and grant you a prorated refund for the remaining license period (if applicable). Notwithstanding the foregoing, the Company shall have no responsibility for IP Infringement Claim resulting from or based on (i) modifications to the Software made by a party other than the Company or its designee; (ii) your failure to use updated or modified Software provided by the Company specifically to avoid the infringement; or (iii) combination or use of the Software with equipment, devices or software not supplied or authorized by the Company or not in accordance with the Company's instructions.

9.2. You agree to defend, indemnify and hold harmless the Company, its officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs, debts, and expenses (including but not limited to attorney's fees) arising from your unauthorized use of the Software, including any breach under Section 1.3.

#### 10. **Term and Termination.**

10.1 **Agreement Term.** This Agreement is effective upon the earlier of (a) the last signature date below, or (b) the first download, installation, operation or use of the Software/Appliance, and will remain in force during the Term, unless earlier terminated in accordance with this Agreement. The Purchase Order will indicate the term of your applicable license (usually as long as you pay the Fees for the license and related services) (the "**Term**"). Subscription Licenses are yearly-based licenses that may be renewed for subsequent periods. Perpetual Licenses or Appliance Licenses permit the perpetual use of the last Software version that you have paid for.

10.1 **Agreement Term.** This Agreement is effective upon the earlier of (a) the last signature date below, or (b) the first download, installation, operation or use of the Software/Appliance, and will remain in force during the Term, unless earlier terminated in accordance with this Agreement. The Purchase Order will indicate the term of your applicable license (usually as long as you pay the Fees for the license and related services) (the "**Term**"). Subscription Licenses are yearly-based licenses that may be renewed for subsequent periods. Perpetual Licenses or Appliance Licenses permit the perpetual use of the last Software version that you have paid for.

10.2 The Parties may terminate this Agreement or a specific Purchase Order on the following grounds: (i) termination by mutual written consent; (ii) by either Party upon written notice to the other Party if the other Party commits a material breach of this Agreement and fails to cure or remedy such breach within thirty (30) days after receiving written notice of such breach; or (iii) either Party may terminate this Agreement upon written notice to the other Party in the event that one or more of the following events occur(s): (a) appointment of a trustee or receiver for all or any part of the assets of the other Party; (b) insolvency or bankruptcy of the other Party; (c) a general assignment by the other Party for the benefit of creditor(s); or (d) dissolution or liquidation of the other Party.

10.3 **Effect of Termination.** Upon termination of this Agreement or a Purchase Order: (i) all Subscription Licenses granted to you under all valid Purchase Orders (in the event of termination of the Agreement) or those granted under a specific Purchase Order (in the event of its specific termination), as the case may be, shall expire, and you shall no longer be permitted to use the Software; (ii) except in the event of a your breach of this Agreement, your use of any Software licensed under a Perpetual License or Appliance License will be permitted under the terms and conditions set forth herein (without any obligation on the Company's or its Reseller's part to provide maintenance and/or support); and (iii) any sums paid by you until the date of termination are non-refundable, and you shall not be relieved of your duty to discharge in full all due sums owed to the Company under this Agreement, which sums shall become immediately due and payable on the date of termination of the Agreement.

10.4 **Survival.** Any right, obligation or required performance of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

11. **Confidentiality.** Each Party may have access to certain non-public and/or proprietary information of the other Party, in any form or media, including (without limitation) confidential trade secrets and other information related to the products, software, technology, data, know-how, or business of the other Party, whether written or oral, and any other information that a reasonable person or entity should have reason to believe is proprietary, confidential, or competitively sensitive (the “**Confidential Information**”). Each Party shall take reasonable measures, at least as protective as those taken to protect its own confidential information, but in no event less than reasonable care, to protect the other Party’s Confidential Information from disclosure to a third party. Neither Party shall use or disclose the Confidential Information of the other Party except as expressly permitted under this Agreement or by applicable law. All right, title and interest in and to Confidential Information are and shall remain the sole and exclusive property of the disclosing Party. Neither Party shall have an obligation under this Agreement to maintain in confidence any information that (i) is in the public domain at the time of disclosure, (ii) though originally Confidential Information, subsequently enters the public domain other than by breach of such Party’s obligations hereunder or by breach of another person’s or entity’s confidentiality obligations, (iii) is shown by documentary evidence to have been known by such Party prior to disclosure to such Party by the discloser; or (iv) is independently developed by such Party without reference to Confidential Information.

12. **Reference Customer.** You agree that the Company may identify you as a user of the Software and use your trademark and/or logo (i) in sales presentations, promotional/marketing materials, and press releases, and (ii) in order to develop a brief customer profile for use by the Company on its website and other promotional channels for promotional purposes.

13. **Miscellaneous.** This Agreement shall be construed and governed in accordance with the laws of the State of New York (except for conflict of law provisions) and the competent state and federal courts located in the State of New York, shall have exclusive jurisdiction in any conflict or dispute arising out of this Agreement. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. This Agreement represents the complete agreement concerning the license granted herein and the subject matter hereof supersedes any prior written or oral agreements and may be amended only by a written agreement executed by both Parties. The failure of either Party to enforce any rights granted hereunder or to take action against the other Party in the event of any breach hereunder shall not be deemed a waiver by that Party as to subsequent enforcement of rights or subsequent actions in the event of future breaches. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the maximum extent necessary to make it enforceable. This Agreement shall be binding upon the respective heirs, beneficiaries, legal or personal representatives, successors and permitted assigns of the Parties. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, and any attempt by either Party to so assign, shall be deemed null and void. Notwithstanding the foregoing, each of the Parties may transfer or assign any of its rights and/or obligations under this Agreement without obtaining the consent of the other Party, in connection with any merger (by operation of law or otherwise), consolidation, reorganization, change in control or sale of all or substantially all of its assets or similar transaction of such assigning Party. Neither Party shall be liable for any failure to perform or delay in performance of any of its obligations under this Agreement caused by circumstances beyond the reasonable control of a Party to this Agreement including without limitation act of God, government or local government, war, fire, flood, earthquake or storm, acts of terrorism, explosion, civil commotion, bank strike or industrial dispute.

#### **List of Exhibits**

Exhibit A: Service Level Agreement

#### **EXHIBIT A**

#### **SERVICE LEVEL AGREEMENT**

This Service Level Agreement (SLA) sets forth the terms under which Licensor (the “**Company**”) offers support, maintenance and other services described herein to Licensee (the “**Customer**”).

**DEFINITIONS.** “**Business Day**” means the applicable business days in accordance with the laws of the country in which the head offices of the Customer are registered.

“**Business Hours**” means 9:00AM to 5:00PM in accordance with the time zone in which the head offices of the Customer are registered.

“**Customer**” means the customer of Company purchasing support and maintenance services.

“**Error**” means any verifiable and reproducible failure of the Software to substantially conform to its published specifications. “**Error**” shall not include any failure caused: (i) by the use or operation of the Software with any other hardware, software or programming languages or in an environment other than intended or recommended by Company; (ii) by any bug, defect, error or malfunction in any hardware or software used with the Software and not provided by Company or any other failure of any such hardware to conform to its published specifications, (iii) due to modifications, alterations and repairs to the Software not made by Company, except as authorized in writing by Company, (iv) due to misuse, accidents or improper installation or maintenance that were not performed by Company, or (v) due to failure to install updates or patches provided by the Company specifically to avoid such failure.

“**Error Resolution**” means either one of the following:

#### **Temporary workaround.**

- Code or patch release that will be delivered according to a time schedule determined by Company.
- Software enhancement or new feature that will be delivered according to a time schedule determined by Company.

“**Hardware**” any tangible device capable of reading computer language and posing computing capabilities sufficient for running the Software.

“**Software**” means the Company software to which Customer purchased a license and support services.

“**Update**” means a modification or revision made to the Software to make minor improvements upon or repair existing functionality and features within the Software. Updates do not include new functionality, features or options.

● **CONTACT METHODS**

- Customer may contact Company with support request through the following methods:

<b>Location</b>	<b>Telephone Number</b>
US + Canada	+1-800-673-0932
US + Canada	+1-855-610-1427
Australia	1800 836 252
Rest of the world	+44-2035140657

● **SUPPORT RESPONSIBILITY**

<b>Services</b>	<b>Responsible Party</b>		
	<b>1st Level Support</b>	<b>2nd Level Support</b>	<b>3rd Level Support</b>
Support Services	Customer	Company	Company
Emergency Support Services	Customer	Company	Company
Maintenance Services	Customer	Company	Company
Pre-Release Services	Customer	Company	Company

**3A. Software Maintenance and Support:**

3A.1 **First Level Support** shall be comprised of initial analysis and investigation of Errors relating to the proper operation of the Software in accordance with the specifications and the delivery of an Error Resolution, which may be, a temporary workaround.

3A.2 First Level Support shall include responsibility for:

- a. Assessing, dispatching, monitoring, reporting and escalating incidents;
- b. Matching and resolving Errors relating to known errors with proven resolutions provided by Company’s knowledge base, if possible;
- c. Forwarding Errors requiring Second Level Support to Second Level Support;

3A.3 **Second Level Support** shall be comprised of in-depth analysis and investigation of Errors relating to the proper operation of the Software in accordance with the specifications and the delivery of an Error Resolution or, if an Error Resolution is not immediately available, a Workaround.

3A.4 Second Level Support shall include responsibility for:

- a. Providing Second Level Support to First Level Support;
- b. Identifying, classifying, investigating and diagnosing Errors;
- c. Testing and validation of installation of Updates as delivered by Third Level Support;
- d. Providing an Error Resolution which may include a workaround upon resolution of an Error;
- e. Escalating Errors unable to be resolved by Second Level Support to Third Level Support;

3A.5 **Third Level Support** shall be comprised of in-depth analysis, investigation and coding on the level of design specification and/or source code of Software related to reported Errors.

3A.6 Third Level Support shall include responsibility for:

- a. Providing bug fixing support on the applicable Software;
- b. Providing in-depth analysis support upon the request of the Second Level Support staff on all reported Errors;
- c. If an Error Resolution cannot be delivered by Second Level Support, Third Level Support shall define and deliver an Error Resolution within the timeframes mutually agreed between the parties;

**3B. Hardware Maintenance and Support**

3B.1 In case of a Hardware failure, Company undertakes to repair or replace, at its own discretion, the faulty Hardware. The faulty Hardware shall be returned by the Customer to Company’s possession for further diagnosis and repair. Company shall deliver the said repaired or replaced Hardware within the time interval as shall be procured by the Customer. Such time frame shall be measured as the time lapsing since that determination by the Company that the fault stems from Hardware malfunction until dispatch for shipment of the returned part to the Customer.

These provisions shall not apply if the Hardware or any part thereof have been damaged by improper operation, maintenance, misuse, accident, unusual or unstable electric current, moisture environment, fault or negligence or have been subject to the opening of any sealed or screwed components without Company’s prior written approval.

**3B.2 Support Plans Service Level**

Unless Customer procures from Company higher level of service, the normal response time for Hardware malfunction would be “RMA” subject to the following assumptions and as applicable:

3B.2.1 “**Next Business Day**” means Customer is replacing faulty Hardware based on Customer’s own resources unless otherwise determined by the manufacturer of the Hardware.

- ATA< SATA and MDL SAS hard drives have a maximum warranty period of (1) year regardless of the warranty period for the system in which they are installed.
- Solid State Drives, may be subject to Maximum Usage Limitation: the maximum amount of data that can be written to the device, Parts and components that Company determines have reached or exceeded their maximum usage limitations will not be provided, repaired or replaced under warranty.
- Response times are based on local standard business days and working hours. Unless otherwise stated, all responses are measured from the time the Customer calls until Company has either established a mutually acceptable time for support to be performed, or Company has begun to provide support or remote diagnostics. Response time is based on commercially reasonable efforts. In some countries and under certain supplier constraints, response time may vary. If Customer’s location is outside the customary service zone, response time may be longer or there may be an additional charge.
- Preventive maintenance requirements according to manufacturer’s manuals must be performed to maintain warranty and serviceability.

### 3B.2.2 Return Merchandise Authorization (RMA)

- Company will enquire all the relevant information of the defective Hardware and details regarding the nature of failure (the manner of discovery, failure characteristics, etc.).
- Customer is required to provide all relevant information to Company, especially the item code, item bar code serial number and the details of the problems encountered.
- Company will acknowledge the receipt of the RMA request and provide a SR (Service Request)/ tracking number, through email for the customer to arr Notice will include the address to where the Hardware should be shipped.
- Customer is only required to return the defective product without any other accessories (manual, cables, etc.). Any other component that is suspected to cause or be part of the problem root cause may be included, however the Customer must clearly indicate as such on the shipping document. Otherwise, Company will not be responsible for return of such accessories to Customer.
- For overseas in-warranty products shipment, Customer shall bear the freight charges for shipment to the location directed by the Company (which will be the closest relevant location to the Customer), whereas, the Company will bear the freight charges and return the required items back to the Customer.

### 3B.2.3 Hardware Maintenance and Support Period

The Company is obligated to a general service period of the earlier of (i) for as long as the Customer procures maintenance and support services from the Company; and (ii) three (3) years of the date of physical delivery of the Hardware to the Customer.

For some types of Hardware, the period may be further extended for additional payment but in any event not more than five (5) years from the date of physical delivery of the said Hardware to the Customer.

### • SUPPORT RESPONSE AND OBJECTIVES

The SLA support services refer to the response time of Company’s support team to Customer. Company’s undertakings hereunder are not intended to indicate a resolution to a problem that might have occurred.

#### 4.1 Response Times

- **High severity call** – A call related to an issue incurring production downtime or causing a severe disruption to normal production-related operations. **8-hour** response time during Business Days and Business Hours (from call open time).
- **Medium severity call** – A call related to an issue causing a medium disruption to normal production-related operation, or an issue that can be solved by using a workaround. **1 Business Day** response time during Business Days and Business Hours (from call open time).
- **Low severity call** – A call related to an issue affecting production but not causing severe interference to production-related operations, or an issue that can be solved by using a workaround. **2 Business Day** response time during Business Days and Business Hours (from call open time).
- **Irregular Working Hours:** A request for response to a call during hours which are not Business Hours shall be subject to payment of additional fees in accordance with the Company’s rates specified under professional services.

4.2 Points of Contact. Customer will assign at least 2 of its employees as its contact points to interface with Company’s support center.

- **LIMITATIONS**

Company's Support Services are subject to the following:

- The Services regarding Software do not include on-site technical support, consulting (redesigning, re-architecting or reconfiguring Customer's network), support for incompatible products or third party products, training, professional services or related out-of-pocket expenses.
- Company's support obligations shall apply only to those versions of the applicable Software that are within one (1) major version or two (2) minor versions of the then-current version, and within a one (1) year time frame of current version, whichever is greater; and provided Customer is current in installing all Updates provided to it. Error resolution will not be provided with respect to a Software version after the lapse of one (1) year from Company's discontinuation of such version.
- The services hereunder are provided with respect to Errors and/or Hardware failures only, subject to the exclusions described in Section 6 herein. In the event that any problem or error is discovered to fall outside of the scope of the definition of Error, then Company reserves the right to recover all expenses related to the support provided, at the then current prices for such services.

- **EXCLUSIONS**

- following, shall not be considered a default under this SLA:
  - (a) A failure of Customer's furnished equipment or premises, or equipment of a Customer vendor;
  - (c) A failure in local access facilities connecting Software to Customer's networks (e.g. ISP failure or internet backbone deficiencies);
  - (d) Force majeure events as defined under the Agreement or natural disaster that could not reasonably be foreseen or is a result of circumstances that cannot be expected to be prevented or cannot be reasonably foreseen;
  - (e) Any act or omission of Customer or any third party acting on Customer's behalf that lead to, without limitation, (i) inadequate access to facilities for installation, testing, or repair or replacement of Software or Hardware (ii) failing to provide access to Customer premises as reasonably required to enable Company to comply with its obligations regarding under the SLA, (iii) failing to take any remedial action in relation to a service as recommended by Company, (iv) failure to maintain the current version of the Software (subject to Section **Error! Reference source not found.**); or (v) any act or omission which causes Company to be unable to meet any of the SLA;

- **UPDATES**

As part of the support services provided by Company hereunder, Company shall make available to Customer any Updates to the Software or documentation, if and when Company makes such Updates generally available for no additional charge to its other customers then covered by maintenance services with similar terms as the terms of this SLA. Company shall have no obligation hereunder to make any modifications to the Updates to conform the same to any modifications of the Software or documentation made by any person or entity other than Company.