

Dialogic® Pro™ Support Services Agreement

THIS DIALOGIC® PRO™ SUPPORT SERVICES AGREEMENT ("Agreement") by and between DIALOGIC INC., with offices at 1504 McCarthy Boulevard, Milpitas, CA 95035-7405 USA, on behalf of itself and its affiliates and subsidiaries (collectively, "Dialogic") and those customers that have agreed to and accepted the terms and conditions of the Agreement ("Customer") and is effective as of the date of such acceptance of the terms and conditions herein by Customer (the "Effective Date"). The parties hereby agree that the following terms and conditions will apply to the services described in Exhibit A provided by Dialogic to Customer:

- 1. COVERAGE.** This Agreement will cover the services provided by Dialogic to Customer, as specified in Exhibit A ("Services").
- 2. TERM.** This Agreement shall remain in effect for the length of time purchased by Customer (the "Term") unless terminated pursuant to the provisions of the Agreement. Customer may purchase one (1) year or three (3) year per unit plans ("PUPs"). The initial Term ("Initial Term") shall commence upon the Effective Date and may be renewed for successive one (1) year or three (3) year Terms ("Renewal Terms").
- 3. NOTICES.** Any notice or other communication required, authorized, permitted or contemplated to be given hereunder from any party to another party, shall be given in writing and addressed to the legal department of the other party. Any notice to Dialogic shall be sent to Anthony Housefather, Executive Vice President and General Counsel at 6700 Cote-de-Liesse Road, Suite 100, Saint-Laurent, Quebec, Canada H4T 2B5 and any notice to Customer shall be sent to the address specified above or such other address as may be provided in writing. Notices shall be deemed accepted immediately when hand delivered or sent by courier service or five (5) days after having been mailed via registered mail or by telegram, fee prepaid. Either party may change its address for notices and/or notice recipient by providing written notice to the other party of such change.
- 4. PAYMENT.** Customer will pay Dialogic or a designated Dialogic authorized distributor ("Billing Entity") within thirty (30) days of date of invoice for the Services that shall be invoiced and sold in advance on a "one year at a time" basis. Payment for a Renewal Term Services shall be automatically invoiced by the Billing Entity forty-five (45) days before the end of the respective Renewal Term, or, if applicable, Initial Term. In the event of a change in price for Services in a Renewal Term, Dialogic agrees to provide notice to Customer of such price change in writing ninety (90) days before the end of the applicable Initial Term or Renewal Terms.
- 5. CONFIDENTIALITY.** In order to enable Dialogic's personnel to perform the Services contemplated by this Agreement, and in order to enable Customer to satisfy its obligations hereunder, it may become necessary for each party to receive or have access to information of the other party or its affiliates which is considered proprietary or confidential ("Confidential Information"). Such information shall be considered Confidential Information if it is (i) in tangible form and bears a "confidential," "propriety," "secret," or similar legend and/or (ii) provided during discussions relating to such tangible information whether those discussions occur prior to, concurrent with, or following disclosure of such information. Confidential Information shall be treated as confidential pursuant to the terms of the applicable Non-Disclosure Agreement ("NDA") between Customer and Dialogic. If there is no NDA in place, the receiving Party will maintain the confidentiality of the Confidential Information of the other party and its affiliates (collectively "disclosing party") with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. The disclosing party will not assert any claims for breach of this Section or misappropriation of trade secrets against the receiving party arising from the receiving Party's disclosure of the disclosing party's Confidential Information made more than five (5) years from the date of the disclosure, regardless of the termination of this Agreement. However, unless at least one of the exceptions set forth in the immediately following sentence has occurred, the receiving party will continue to treat such Confidential Information as the confidential information of the disclosing party and only disclose any such Confidential Information to affiliates or to third parties under the terms of a non-disclosure agreement. The receiving party will not be liable for the disclosure of any Confidential Information which is: (a) rightfully in the public domain other than by a breach of this Agreement of a duty to the disclosing party; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to the receiving party without any

limitation on use or disclosure prior to its receipt from the disclosing party; (d) independently developed by employees of the receiving party; or (e) generally made available to third parties by the disclosing party without restriction on disclosure. Title or the right to possess Confidential Information as between the Parties will remain in the disclosing party. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop products without the use of Confidential Information of the other party.

6. DISCLOSED INFORMATION. Customer will retain all right, title and interest (including all intellectual property rights) to its Confidential Information. Dialogic will retain all right, title and interest (including all intellectual property rights) to its Confidential Information, any software, hardware, bug fixes, additions, modifications and/or improvements to any products that may result from the Services provided hereunder. Dialogic grants to Customer a non-exclusive, irrevocable, royalty-free license to use such Confidential Information, software, hardware, bug fixes, additions, modifications and/or improvements that is delivered or made available by Dialogic to Customer pursuant to this Agreement ("Delivered Information") for the purpose of utilizing the Dialogic hardware or software product purchased by Customer for which the Services are being provided. Except as expressly set forth herein, no license is granted by Dialogic with respect to any patents, trademarks, copyrights, mask work protection rights and other intellectual property rights. Customer grants Dialogic a worldwide, non-exclusive, fully paid-up, royalty free right and license to use Customer's intellectual property provided by Customer to Dialogic under this Agreement solely for the purpose of performing Services for Customer under this Agreement.

7. OFFERING OF COMPARABLE SERVICES. This Agreement does not prevent Dialogic from performing similar Services for others.

8. RIGHTFUL EMPLOYER. Customer agrees that Dialogic is acting as an independent contractor and that each of the parties will be responsible for all management matters, taxes or wages, etc., relating to its own employees.

9. SUBCONTRACTING. Dialogic may subcontract any or all of the work to be performed by it under this Agreement and will retain responsibility for the work subcontracted.

10. TERMINATION

A. Customer may terminate this Agreement, subject to accrued charges, if Dialogic fails to perform or observe any material term or condition of this Agreement for reasons not attributable to Customer or force majeure conditions (as described herein) and such failure continues un-remedied for thirty (30) days after Dialogic's receipt of written notice thereof from Customer.

B. Either party may terminate this Agreement for any reason by notice in writing sixty (60) days before the end of the applicable Initial Term or Renewal Terms.

C. Customer will be in default of this Agreement if Customer fails to pay any charge to the Billing Entity when due or fails to perform or observe any other material term or condition of this Agreement. Dialogic may terminate this Agreement and exercise any applicable rights, if (i) the failure to pay the Billing Entity any charge when due continues un-remedied for ten (10) days or, (ii) for 30 days from receipt of written notice by Dialogic for other breaches. In the event of such termination by Dialogic, Customer shall be liable to pay the Billing Entity for any accrued charges.

D. Either party may terminate this Agreement by notice in writing in the event that the other makes an assignment for the benefit of creditors; or admits in writing an inability to pay debts as they mature; or a trustee or receiver of the other of any substantial part of the other's assets, is appointed by any court; or a proceeding is instituted under any provision of an applicable bankruptcy act by the other, or against the other, and is acquiesced in or is not dismissed within sixty (60) days, or results in adjudication in bankruptcy.

E. If Customer has failed to pay the Billing Entity for the Services, Dialogic may, at its sole option, suspend the performance of Services until the situation is remedied, and/or seek any other remedies it may have under this Agreement or at law or in equity, including terminating the agreement as provided in Paragraph 10(C) above.

11. EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY

A. For purposes of the exclusive remedies and limitations of liability set forth in this Section, "Dialogic" will be deemed to include Dialogic Inc. and its affiliates and the directors, officers, employees, agents, representatives, subcontractors and suppliers of all of them and Customer shall be deemed to include Customer and/or its affiliates and the directors, officers, employees, agents, representatives, subcontractors and suppliers of all of them; and "Damages" will be deemed to refer collectively to any and all claims, injuries, damages, losses, costs or expenses incurred.

B. DIALOGIC'S ENTIRE LIABILITY TO CUSTOMER AND CUSTOMER'S ENTIRE LIABILITY TO DIALOGIC AND BOTH PARTIES' EXCLUSIVE REMEDIES ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT OTHER THAN PAYMENT OBLIGATIONS (INCLUDING WITHOUT LIMITATION THE PERFORMANCE OR NONPERFORMANCE OF ANY SERVICES UNDER THIS AGREEMENT) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, WILL BE AS FOLLOWS:

(i) IN NO EVENT SHALL DIALOGIC OR CUSTOMER BE LIABLE FOR ANY INDIRECT DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER INCLUDING BUT NOT LIMITED TO INCIDENTAL, SPECIAL, EXEMPLARY, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF DIALOGIC OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(ii) OTHER THEN FOR DAMAGES ARISING AS A RESULT OF THE BREACH OF THE CONFIDENTIALITY OBLIGATIONS HEREUNDER AND PAYMENT OBLIGATIONS AND CUSTOMER'S INDEMNITY OBLIGATIONS HEREUNDER, IN NO EVENT SHALL DIALOGIC OR CUSTOMER'S CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER EXCEED THE AMOUNT PAID OR OWED BY CUSTOMER TO DIALOGIC FOR THE SERVICES FOR THE APPLICABLE ANNUAL TERM DURING WHICH THE DAMAGES AROSE.

(iii) DIALOGIC WILL HAVE NO LIABILITY FOR DELAYS WITH RESPECT TO ANY RESPONSE TIMES SPECIFIED IN EXHIBIT A.

(iv) With regard to any equipment loaned to Dialogic as described herein or in an exhibit or appendix to this Agreement, DIALOGIC WILL BE LIABLE ONLY FOR ACTUAL DAMAGE TO SUCH EQUIPMENT CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF DIALOGIC'S EMPLOYEES OR SUBCONTRACTORS.

(v) Customer represents that it shall not use the Services or any Delivered Information or other materials obtained from Dialogic pursuant to this Agreement, in aviation, process control, medical applications or other ultra hazardous activities. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CUSTOMER AGREES THAT DIALOGIC SHALL HAVE NO LIABILITY FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM SUCH ACTIVITIES.

C. Dialogic shall have no liability related to products sold or licensed by Customer or services provided by Customer under any circumstances regardless of whether Services were provided by Dialogic related to such products or services. Customer agrees to defend, indemnify and hold Dialogic harmless from and against any and all loss, damage, liability or expense (including attorney's fees) resulting from any claim related to Customer products or services, including intellectual property claims.

12. FORCE MAJEURE. Neither party will have liability for damages due to fire; explosion; lightning; pest damage; power surges or failures; strikes or labor disputes; water; acts of God; the elements; war; civil disturbances, acts of civil or military authorities or the public enemy; inability to secure raw materials, products or transportation facilities; fuel or energy shortages; acts or omissions of communications carriers; or other causes beyond such party's control, whether or not similar to the foregoing.

13. CHANGES. Except as expressly provided hereunder, any changes to this Agreement must be confirmed in writing and signed by authorized representatives of both parties.

14. SITE VISITS. Customer agrees that in the event its employees or agents visit a Dialogic site as a result of Dialogic providing Services hereunder, Customer shall ensure that such employees or agents abide by all rules and regulations set by Dialogic and shall indemnify and hold Dialogic harmless for any damage caused by such employees or agents.

15. WARRANTY DISCLAIMER. DIALOGIC AND ITS AFFILIATES, SUBCONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED UNDER THIS AGREEMENT, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

16. LOANED EQUIPMENT. In the event Customer desires, at its sole option, to provide Dialogic any computer software, hardware or other apparatus or device ("Equipment") for use at the Dialogic premises in providing the Services, unless otherwise agreed to in a written agreement signed by an authorized representative of both parties which specifically overrides the terms of this Agreement: (i) Customer's Equipment will be loaned to Dialogic free of charge; (ii) Dialogic's liability for damages will be limited as provided herein; (iii) Dialogic shall return Customer's Equipment to Customer when requested by Customer; and (iv) the terms of this Agreement shall govern the handling of any Confidential Information regarding Customer's Equipment.

17. US FOREIGN CORRUPT PRACTICES ACT AND ANALOGOUS LEGISLATION. Customer and its subsidiaries, owners, partners, officers, directors, employees, agents, representatives, and subcontractors (collectively, "Customer Affiliates") are fully aware of the provisions of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. § 78 et seq.) ("FCPA") and any analogous applicable legislation enacted by other governments on corrupt practices ("Other Laws"). Customer and Customer Affiliates have not and will not commit, and have no information, reason to believe, or knowledge of anyone else having committed or intending to commit, any violation of the FCPA or Other Laws or any act or omission which could cause Dialogic to be in violation of the FCPA or Other Laws with respect to any activities related to this Agreement or the business of Dialogic. In carrying out their responsibilities under this Agreement, Customer and Customer Affiliates shall not pay, offer or promise to pay, or authorize any payment or offer of money or anything of value, directly or indirectly, to any foreign government official, a foreign political party or party official, or any candidate for foreign political office (in each case, a "Covered Person") for the purpose of influencing any act or decision of a Covered Person in his or her official capacity, inducing the Covered Person to do or omit to do any act in violation of his or her lawful duty, obtaining any improper advantage, or inducing a Covered Person to use his or her influence improperly to affect or influence any act or decision. For purposes of this Agreement, "government" includes any and all foreign governments, including any department, division, subdivision, court, arbitrator, regulatory, administrative, or other agency, corporation, unit, branch or authority or other instrumentality of a foreign government. A "foreign government official" includes employees or agents of a business which is owned or controlled by a government, and any person acting in an official capacity on behalf of a government entity. Neither Customer nor any Customer Affiliate is controlling, controlled by or is under common control with a Covered Person, or any of a Covered Person's agents, representatives or subcontractors is or will become a Covered Person during the term of this Agreement, unless such person obtains the prior written consent of Dialogic. Customer shall ensure that all of Customer Affiliates involved in Customer's performance of this Agreement are informed of, and comply with, Customer's obligations under and the restrictions contained in this Section. Customer must immediately notify Dialogic if it knows or has reason to believe that a violation of the FCPA or Other Laws or any of the representations, warranties, or covenants in this Section has occurred or will occur. If Dialogic has reason to believe that a breach of any of the representations, warranties or covenants in this Section has occurred or will occur, Dialogic may withhold further delivery of Products and other performance under the Agreement until such time as it has received confirmation to its satisfaction that no breach has or will occur. Customer shall maintain accurate books and records and shall maintain a system of internal accounting controls sufficient to provide reasonable assurances that such books and records are accurate. If Dialogic has reason to believe that a breach of any of the representations, warranties or covenants in this Section has occurred or will occur, Dialogic shall have the right to audit Customer (and Customer Affiliates) in order to satisfy itself that no breach has occurred or will occur. Promptly following a request by Dialogic, Customer shall execute and deliver, and cause all Customer Affiliates to execute and deliver, to Dialogic a standard certification regarding FCPA and Other Laws compliance in the form requested by Dialogic. In no event shall Dialogic

be obligated under this Agreement to take any action or omit to take any action that Dialogic believes, in good faith, would cause it to be in violation of any U.S. laws, including the FCPA, or the laws of any other jurisdiction including Other Laws, to which Dialogic or Customer is subject, including counter corruption laws. If Dialogic believes, at its sole and absolute discretion that a violation of any U.S. law including the FCPA, or the laws of any other jurisdiction including Other Laws to which Dialogic is subject, including counter corruption laws has occurred, Dialogic shall have the immediate right without any remedy to Customer to terminate this Agreement.

18. GENERAL

A. If any paragraph, or clause thereof, of this Agreement will be held to be invalid or unenforceable in any jurisdiction in which this Agreement applies, then the meaning of such paragraph or clause will be construed so as to render it enforceable to the extent feasible; and if no feasible interpretation would save such paragraph or clause, it shall be severed from this Agreement and the remainder will remain in full force and effect. However, in the event such paragraph or clause is considered an essential element of the Agreement, the Parties will promptly negotiate a replacement thereof.

B. If either party fails, at any time, to enforce any right or remedy available to it under this Agreement, that failure will not be construed to be a waiver of the right or remedy with respect to any other breach or failure by the other party.

C. The construction, interpretation and performance of this Agreement will be construed in accordance with and governed by the laws of the Province of Quebec, Canada. The United Nations Convention on Contracts for the International Sale of Goods is expressly stated as having no application to this Agreement or any dispute arising under it.

D. Any Exhibits and Appendices attached hereto are incorporated herein by reference.

E. All disputes arising directly under the express terms of this Agreement or the grounds for termination thereof shall be resolved as follows: A legal and business representative of Dialogic and Customer shall meet to attempt to resolve such disputes. If the representatives cannot resolve the disputes, either party may make a written demand for formal dispute resolution and specify therein the scope of the dispute. Within thirty (30) days after such written notification, the parties agree to meet for one day with an impartial mediator and consider dispute resolution alternatives other than litigation. If an alternative method of dispute resolution is not agreed upon within thirty days after the one day mediation, either party may begin litigation proceedings.

F. Dialogic may assign its rights or delegate its obligations or any part thereof under this Agreement without prior consent from Customer.

G. Neither party shall export, either directly or indirectly, any product, service or technical data or system incorporating such Items without first obtaining any required license or other approval from any applicable governmental agency or department. In the event any product is exported or re-exported by either Party, that Party shall ensure that the distribution and export/re-export or import of the product is in compliance with all applicable laws, regulations, orders, or other restrictions. Both parties agree that neither it nor any of its affiliates will export/re-export any technical data, process, product, or service, directly or indirectly, to any country for which the applicable government from where it is shipping requires an export license, or other governmental approval, without first obtaining such license or approval.

H. Customers who purchase this Agreement shall be deemed to have agreed with and accepted the terms and conditions set out herein in the same manner as if the document was executed in writing.

I. THIS IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER AND SUPERSEDES ALL PRIOR AGREEMENTS, PROPOSALS OR UNDERSTANDINGS, WHETHER WRITTEN OR ORAL.

J. This Agreement has been drafted in English at the express wish of the parties. Ce contrat a été rédigé en anglais à la demande expresse des parties.

Exhibit A - Statement of Work
Dialogic® Pro™ XMS Per Unit Plan Agreement

1.0 SCOPE

This statement of work for Dialogic’s XMS per unit support plan (“XPUP”) is being issued pursuant to and in accordance with the foregoing terms and conditions of the Agreement. This Agreement shall only cover unmodified generally available versions of the Applicable Products. A XPUP may only be purchased by Customer within two (2) months of purchase of the underlying Applicable Products unless otherwise agreed to by Dialogic in writing. Customers must register qualifying products with Dialogic and purchase a corresponding XPUP for such products in order to receive XPUP Services (as defined below) under the Agreement.

2.0 DEFINITIONS

Applicable Products:	Standard Dialogic® PowerMedia™ Extended Media Server products, in their current revision level, which Customer has purchased support for and are eligible for XPUP Services as determined by Dialogic, in its sole discretion. Lifecycle changes of Applicable Products and their resulting eligibility changes and/or limitations on XPUPs, if any, will be communicated by Dialogic via product change notices. Discontinuation of an Applicable Product by Dialogic shall mean that such Applicable Product is automatically deleted herein as of the discontinuation date.
XPUP Services:	The isolation and resolution of technical problems arising from the installation, configuration, programming and maintenance of Applicable Products under a XPUP utilizing Dialogic online services.
Updates:	Any Software maintenance release that corrects errors, supports new releases of operating systems with which the Applicable Product is designed to operate, supports new hardware architecture or input/output devices, or provides other incidental or minor changes and corrections, but excluding Upgrades and enhancements that provide new functionality to the Applicable Product.
Upgrades:	Any Software Release that includes enhancements that provides new functionality of the Applicable Product. Upgrades may include separately licensed features.

3.0 XMS PER UNIT PLAN FEATURES Dialogic will use reasonable commercial efforts to provide the following XPUP Services:

- 3.1. Dialogic Helpweb.** Unlimited online access to product based technical information including Dialogic’s PowerMedia™ XMS Developer Webpage containing technotes sample applications and demos;
- 3.2. Forums.** Unlimited online access to Dialogic’s PowerMedia™ XMS Developer Group online forum for posting questions and reviewing postings from other developers and Dialogic engineers;
- 3.3. Online Documentation.** Unlimited online access to Dialogic’s XMS technical documentation including installation, configuration, and API user guides for multiple API interfaces. Release notes, feature guides and quick start guides are also included.

3.4. Software Support.

3.4.1. Updates/ Current Release. Customer shall be entitled to receive Updates on the current software release generally available from Dialogic. At Dialogic's sole discretion, Updates may be in the form of maintenance releases, minor or major releases. Customer is not entitled to new or additional features beyond what was licensed under Customer's current software release and any Upgrades that provide new functionality or include additional features or enhancements to the Applicable Product must be purchased separately. All Updates shall remain the property of Dialogic and Customer shall be entitled to use such Updates under appropriate licenses. Installation of the software is not included under the Agreement.

3.4.2. Right to Copy ("RTC") Updates. For all Applicable Products and s receiving Updates under this Agreement, Customer receives the RTC the appropriate Updates on all Applicable Products supported under this Agreement, provided that Dialogic reserves the right to limit or restrict the RTC to specific third parties. RTC conveys to Customer the right to use the Updates on multiple Applicable Products, without requiring Dialogic to supply duplicate media and documentation.

4.0 CUSTOMER RESPONSIBILITIES

It is the responsibility of Customer to:

- Receive qualification from Customer's application developer for any Updates or configuration changes provided by Dialogic pursuant to Section 3 above before implementation on Customer's system.
- Receive qualification from Customer's application developer for any Updates or configuration changes provided by Dialogic pursuant to Section 3 above before implementation on Customer's system.

5.0 RENEWALS

XPUPs may be renewed for annual Terms until the Applicable Product has reached its end of support dates as communicated in a product change notice ("PCN"). Customer shall renew each XPUP before expiration of the then existing Term in order to ensure uninterrupted XPUP Services. If XPUP coverage expires, the start date for the renewal XPUP will be set to the previous XPUP expiration date.

6.0 XPUP SERVICE FEES

The fees for the foregoing PUP Services for the Initial Term and Renewal Terms shall be included on Dialogic's standard price list, which may be amended from time to time, and shall be payable as set forth in Section 4 of the Agreement.