



## Dialogic® Pro™ Support Services Agreement

THIS DIALOGIC® PRO™ SUPPORT SERVICES AGREEMENT (“Agreement”) by and between DIALOGIC INC., with offices at 1504 McCarthy Boulevard, Milpitas, CA95035-7405 USA, on behalf of itself and its Affiliates, each company independently and separately assuming the rights and obligations of Dialogic under this Agreement solely when, and with respect to, an Order that is placed with that corporate entity (hereinafter referred to as “Dialogic”) and [\_\_\_\_\_], with offices at [\_\_\_\_\_] (“Customer”) is effective as of [\_\_\_\_\_, 2014] (the “Effective Date”). “Affiliate” shall mean any companies that control, are controlled by or under common control with either party to this Agreement. For the purposes of this Agreement control shall be defined as the direct or indirect ownership of over 50% of the outstanding, issued voting shares of a company. 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 will remain in effect for a period of one (1) year from the Effective Date (the “Initial Term”) and shall thereafter be renewed automatically for successive one (1) year periods (“Renewal Terms”) unless terminated as set forth herein. Collectively, the Initial Term and all Renewal Terms shall be referred to herein as the “Term.”
- 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 and its Affiliates (collectively “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. 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 AND SUSPENSION OF SERVICES**

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

**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.** 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.

**D.** 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(A) 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 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 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.

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.

**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 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 within thirty (30) days of written notice of the dispute being sent from one party to the other, the parties agree that either party may refer the dispute to binding arbitration under the rules of the Canadian

Commercial Arbitration Centre (“CCAC”) before a sole arbitrator agreed upon by the parties or appointed by the CCAC in accordance with its rules. The arbitration shall occur in the English language in Montreal, Canada and the decision of the arbitrator shall be binding and non-appealable and enforceable before any applicable court. Each party agrees that CCAC arbitration is the sole venue for resolving any dispute under this Agreement and waive any objection as to venue.

**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.** 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.

**I.** 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.

By signing below, the parties hereto agree to be bound by the terms and conditions of this Agreement. Any executed copy of this Agreement made by reliable means (e.g. photocopy or facsimile) is considered an original.

**DIALOGIC INC.:** \_\_\_\_\_:

**By:** \_\_\_\_\_ **By:** \_\_\_\_\_

**Title:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**EXHIBIT A**  
**Support Service Details**

**1. Definitions**

<b>Advance Replacement</b>	Replacement of a defective Applicable Product unit with a functionally equivalent unit of the same Applicable Product via courier upon notification by Customer to Dialogic that an Applicable Product unit was defective and confirmation by Dialogic that the Applicable Product unit was defective through remote diagnosis.
<b>Applicable Products</b>	All standard Dialogic® PowerMedia™ Extended Media Server and Dialogic® BorderNet™ Virtualized Session Border Controller eligible for Silver and Gold Maintenance Services (excluding Hardware Repair services), Dialogic® BorderNet™ 2020 Session Border Controllers; Dialogic® BorderNet™ 3000 Session Border Controllers; Dialogic® BorderNet™ 4000 Session Border Controllers; Dialogic® I-Gate® 4000 Media Gateways; Dialogic® I-Gate® 4000 Session Bandwidth Optimizers; Dialogic® Integrated Media Gateways; and Dialogic® Distributed Signaling Interface products. Lifecycle changes of Applicable Products and their resulting eligibility, changes and/or limitations with respect to these Services, if any, will be communicated by Dialogic via amendment to this Agreement or product change notices.
<b>Early Field Trial Release</b>	A release of the Software prior to general commercial availability. Such releases are provided “AS IS”, without warranty of any kind, provided that Dialogic will accept feedback (which feedback shall be owned by Dialogic), and notifying the Customer when Error Corrections or feature enhancements are available.
<b>Error</b>	Any verifiable and reproducible failure of the Software to substantially conform to the Specifications. The term “Error” will not include any failure of the Software to substantially conform to the Specifications that: (i) results from Customer’s improper use of the Software; (ii) does not materially affect the operation and use of the Software; or (iii) results from the modification by Customer of the Software not contemplated by this Agreement.
<b>Error Correction(s)</b>	A (i) modification or addition to or deletion from the Software, that, when made to the Software, materially conforms the Software to the Specifications, or (ii) a procedure or routine that (a) is mutually acceptable to both Dialogic and Customer in good faith, and (b) when observed in the regular operation of the Software eliminates the material adverse effect of such Error to Customer.
<b>Hardware</b>	Means the physical Applicable Product.
<b>Maintenance Release</b>	A patch or software release directed at providing Error Correction(s) for Errors reported hereunder or by other Customers” means a patch or software release directed at providing Error Correction(s) for Errors reported hereunder or by other Customers.
<b>Obsolete Software Release</b>	Any Software Release prior to the current Software Release and the one preceding major Software Releases, where “major” Software Release denotes any Software Release indicated by any changes in the numeric identifier for the Software Release to any digits located immediately to the right of the left-most decimal (i.e. x.(x).x ).
<b>Permanent Resolution</b>	The time that an Error Correction has been provided and the Service Request for the

	Error is closed.
<b>Response Time</b>	The time required for a support technician to acknowledge receipt of an issue via phone answer, callback or Service Request update.
<b>Restore Time</b>	The interval from the time Customer first reports an issue to Dialogic until the time Dialogic provides the means to return the Applicable Product to operational status. The following may be provided to restore an Applicable Product : (i) temporary fixes that have been provided to correct an issue; (ii) a Workaround, or (iii) other method of restoration that have been provided to Customer.
<b>Service Request</b>	A Customer request for Service hereunder as logged under Dialogic’s call tracking system and assigned a reference number.
<b>Software</b>	Dialogic’s proprietary software, embedded in Hardware or provided as standalone products, in object code form and documentation, if any, including any Error Corrections and Updates thereto provided by Dialogic to Customer under this Agreement.
<b>Software Release</b>	The particular numerical classification and identification of Software, as designated by Dialogic, that refers to a set of Software modules that provide specific functionality, as described in the corresponding documentation for any such Software Release.
<b>Specifications:</b>	Dialogic’s standard, published approved description of the performance and functionality of the Software.
<b>TAC</b>	Dialogic Technical Assistance Center
<b>Update</b>	Any Software modifications or fixes that correct errors, support new releases of operating systems with which the Applicable Product is designed to operate, support new hardware architecture or input/output devices, or provide other incidental or minor changes and corrections, but excluding Upgrades and enhancements that provide new functionality to the Applicable Product.
<b>Upgrade</b>	Any Software Release that includes enhancements that provide new functionality of the Applicable Product. Upgrades may include separately licensed features.
<b>Workaround</b>	A temporary solution to an Error that allows the Software to regain functionality and provide all major functions in accordance with the Specifications.

2. **Silver Level Services.** Silver level scope of Services shall be as set forth below:

**2.1 8X5 Remote Support.**

8x5 remote technical support for Applicable Products (Hardware and/or Software, as applicable) expedites the resolution of operational problems and provides Customer with access to Dialogic’s experienced and knowledgeable TAC as set forth below:

- (i) Technical telephone support eight (8) hours a day, five (5) days a week between the hours of 9:00 AM and 5:00 PM local time for the assigned TAC, Monday through Friday, excluding Dialogic holidays (“Standard Support Hours”), for queries and assistance related to the Applicable Products.



- (ii) Use of remote diagnostic capabilities in the Applicable Products by Dialogic engineers to assist in the diagnosis and resolution of problems. Customers are obligated to provide Dialogic with remote access to all the equipment in order to receive services. Such access will be through VPN or other means.
- (iii) Access to Dialogic call tracking web site, which will provide current details and status of all Customer's open and recently closed calls and allow the Customer to log new Service Requests, subject to registration of individual users and adherence to Dialogic security requirements.

## **2.2 Hardware Repair.**

Dialogic will repair defective Field Replaceable Units ("FRU") ("Hardware Repair"). Unless otherwise agreed by the parties, Dialogic shall complete repairs and return a repaired FRU or ship an equivalent replacement FRU within thirty (30) business days of receipt of a defective FRU at the Dialogic assigned TAC. Once a FRU is identified as faulty, the Customer shall obtain a Return Material Authorization ("RMA") number from Dialogic and then return the FRU for repair/replacement. RMA requests shall be addressed by Dialogic during Standard Support Hours for the assigned TAC. Customer shall appropriately package the FRU to be returned to ensure that it is not damaged in shipment and is clearly marked. Any FRU damaged in transit will be repaired at the Customer's expense or, if in the opinion of Dialogic the damage is sufficient to compromise its future reliability, the FRU will be returned to the Customer unrepaired. Customer shall bear the risk of loss or damage until the FRU is received by Dialogic and shall bear the cost of transportation charges for shipment to Dialogic of the FRU to be repaired or replaced. For return shipments from Dialogic to the Customer, Dialogic shall bear the risk of loss or damage during transit and shall prepay and bear the cost of transportation charges for shipment of the FRU that has been repaired or replaced, provided Customer shall be responsible for all applicable international taxes and duties. If the FRU returned to Dialogic is not defective, Dialogic shall promptly advise the Customer in writing of this determination, and in such cases, Dialogic shall return the FRU to the Customer at Customer's expense and risk in its "as received" condition. If the FRU returned is not covered by the Services hereunder, Dialogic shall promptly advise Customer in writing of this determination; and in such cases, Dialogic shall return the FRU to the Customer at Customer's expense and risk in its "as received" condition. Any FRU repaired or replaced by Dialogic shall be either be provided with (i) Dialogic's standard warranty, commencing with the date upon which the repaired or replaced FRU is returned to the Customer, for a period of ninety (90) days or, (ii) the existing Term for the related Hardware, if such Term period is longer.

## **2.3 Current Software Release Updates/Upgrades.**

Customer shall be entitled to receive Updates and Upgrades on the current Software Release generally available from Dialogic. At Dialogic's sole discretion, Updates may be in the form of software patches, engineering releases, 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 include additional features or provide new functionality or enhancements to the Applicable Product must be purchased separately. All Updates and Upgrades shall be Delivered Information as defined herein. Installation of the Software as well as any Hardware upgrades that may be required to support the new Software Release are not included in the scope of the Services. Customer shall not be entitled to Updates or Upgrades to Software not otherwise licensed to Customer.

## **2.4 Right to Copy (“RTC”) Software Updates.**

For all Applicable Products 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.

## **2.5 License Re-Hosting.**

Software-only Customers will be entitled to license “Re-Hosting” support. Entitled Customers may have a covered license re-hosted to a different computer should the originally licensed computer fail, subject to the execution of a letter stating the Customer is no longer using the license on the original computer.

## **3. Gold Level Services**

Gold level scope of Services include the Silver level Services set forth above as well as the following:

### **3.1 24x7 Remote Support**

24x7 remote service (“24x7” Service”) extends the Standard Support Hours to twenty-four (24) hours per day seven (7) days a week (including Dialogic holidays) for the respective Dialogic TAC. 24x7 Service is only applicable for Critical Service Requests.

## **4. Platinum Level Services**

Platinum level scope of Services include the Gold and Silver level Services set forth above, as well as the following Advanced Replacement service for Hardware.

### **4.1 Advanced Replacement Service (Hardware)**

Provide Customer with Advance Replacement for any defective Applicable Products as follows: (i) if Customer believes that a Applicable Product has failed due to hardware failure, it must contact Dialogic by calling one of the numbers listed on <http://www.Dialogic.com/support/contact>; (ii) during the call, Customer will be required to carry out a diagnostic procedure with guidance from Dialogic to verify if the Applicable Product is defective; (iii) if the diagnostic procedure demonstrates that the Applicable Product may be defective, Dialogic will ship a replacement product that is functionally equivalent to the potentially defective product via an express courier of Dialogic’s choice (“AR Courier”); (iv) Dialogic will make commercially reasonable efforts to ensure that Advance Replacement requests are dispatched within two business days, provided that Dialogic will not be responsible for delays in delivery by AR Courier; (v) costs for the AR Courier shipment to Customer will be borne by Dialogic, provided Customer shall be responsible for all applicable international taxes and duties; (vi) on receipt of the replacement product, Customer shall be responsible for return shipment of the potentially defective RMA product, prepaid, using the same packaging as the replacement product arrived in, to the designated Dialogic repair facility with the RMA number clearly visible on the outside; (vii) Customer shall be responsible for insurance for such shipping; (viii) Dialogic will test the potentially defective product on its return; (ix) If the potentially defective product is not returned within two (2) weeks of shipment of the replacement product, Dialogic will charge Customer the full retail price of the equivalent new replacement product..

## **5. Dialogic® Pro™ Advantage Services - Premium and On Demand Services**

Premium and On Demand services are additional services beyond the scope of pre-pack services that Dialogic is making available to Customers and can be provided for at an additional fee.

## **5.1 Onsite Training /Remote Technical support**

Dialogic can make its professional, trained technical personnel available to the Customer on a time-based arrangement. Dialogic's technical personnel can support Customer in operating Dialogic products and configuring such products per Customer needs. With increased product expertise, Customer's technical personnel will gain experience and knowledge on how best to utilize its network. Dialogic technical personnel are available onsite or are fully dedicated to the Customer remotely. Onsite support is only available for a minimum package of up to 3 days onsite with option for an extension.

## **5.2 Annual Preventive Maintenance**

In order to prevent future failures and discrepancies in Customer's equipment, Dialogic offers the Preventive Maintenance and Inspection service. Dialogic service engineers will review Customer's network and solution and perform a preventative maintenance routine according to the product type procedure. To prevent traffic disruption, the preventative maintenance routine will be performed only upon full Customer authorization. Dialogic will provide a report at the end of the maintenance process which will summarize the current status of the equipment, and recommend any changes in the operation of the equipment and any additional action that needs to be taken.

## **5.3 Annual On-site Hardware Replacement**

On-Site Hardware repair transfers the management of all repair and replacement to Dialogic. By implementing the On-Site Hardware program, Customer out-sources the entire parts logistics process to Dialogic. Dialogic will consult with Customer to build a plan that meets Customer's business goals and objectives. This comprehensive service provides continuous monitoring and automatic replenishment of parts as well as intelligent inventory management and is available 7x24x365. Replacement units are shipped within two (2) business days after receiving the request call. The service may include full spare control and on site replacement depending on Customer needs and Dialogic abilities.

## **5.4 Non-Dialogic Service Requests**

The Services set forth in this Agreement are intended to provide support for Applicable Products and Customer is responsible for all defects and problems which are not related to Dialogic products. Under this service, in the event that the cause of a product malfunction is determined to be unrelated to Applicable Products, Dialogic will use commercially reasonable efforts to help Customer identify the issue and make recommendations on how to solve or temporarily workaround the issue. This support is available to be purchased in batches as Non-Dialogic Service Requests with a significant discount.

## **5.5 Test Bed Services**

Dialogic has test labs that are used to verify and simulate field problems and Customer's specific requirements. It is also used to simulate upgrade procedures of new Software packages. Customers that do not have test labs can use Dialogic labs to simulate specific network requirements or train its staff on specific features of the Applicable Product. Dialogic will make available mutually agreed to test equipment, media gateways, and and bulk load simulators to Customer together with full time professional service engineer that will help Customer to run his test plan.

# **6. CALL PROCEDURE, RESPONSE AND ESCALATION**

## **6.1 Service Request**

When Customer contacts a TAC, Dialogic will log a Service Request and provide Customer with a reference number. Customer can obtain the status of the Service Request at any time via Dialogic's website ([www.dialogic.com](http://www.dialogic.com)) or by calling the TAC. As part of the Service Request, Customer and Dialogic will determine in good faith the severity of the Service Request based upon the severity levels

set forth in Section 6.2 below. A Service Request is not considered recorded until a positive acknowledgement with a reference number is provided to Customer. Customer's individual user registration is required to gain access to confidential support information. Registration can be requested online via the website.

**6.2 Severity Level Definitions:** Customer and Dialogic will determine in good faith the severity level of the Service Request, based on the conditions set forth below:

<p><b>Critical</b></p>	<p>Errors that severely affect service, traffic, billing, and maintenance capabilities, and require immediate corrective action. Dialogic will reclassify a Critical Error as a Major Error if there is a suitable Workaround with adequate documentation. Critical Errors include, but are not necessarily limited to:</p> <ul style="list-style-type: none"> <li>• A total system failure that results in loss of all data transmission.</li> <li>• Reduction in capacity or traffic handling capability such that the system cannot handle expected loads in accordance with the Documentation. Capacity refers to the capacity for which the necessary Hardware has been installed and the Software configured.</li> <li>• Severe degradation in capacity or traffic handling capability.</li> <li>• Any material loss of safety or emergency capability (i.e. 911 call).</li> <li>• Loss of the system's ability to perform automatic system reconfiguration pursuant to the Documentation.</li> <li>• Inability to restart the system.</li> <li>• Loss of protection switching capability.</li> <li>• Loss of billing capability.</li> <li>• Corruption of billing or system databases that requires service-affecting corrective actions.</li> <li>• Loss of access for maintenance or recovery operations.</li> </ul> <p>Loss of the system's ability to provide any required Critical or Major Error notification.</p>
<p><b>Major</b></p>	<p>Errors that cause conditions that seriously affect system operation, maintenance, and/or administration, and require immediate attention. The urgency is less than for Critical Errors because of a lesser immediate or impending effect on system performance, Customers, and Customer operation and revenue. Dialogic will reclassify a Major Error as a Minor Error if there is a suitable Workaround with adequate documentation. Major Errors include, but are not necessarily limited to:</p> <ul style="list-style-type: none"> <li>• Material reduction in any capacity and traffic measurement function.</li> <li>• Any material loss of functional visibility and/or diagnostic capability.</li> <li>• Repeated degradation of port connections.</li> <li>• Prevention of access for routine administrative activity.</li> <li>• Degradation of access for maintenance or recovery operations.</li> <li>• Degradation of the system's ability to provide any required Critical Error or Major Error notification.</li> <li>• An increase in system-related Customer trouble reports.</li> <li>• High billing error rates.</li> </ul> <p>Corruption of system or billing databases not resulting in service affecting corrective actions.</p>
<p><b>Minor</b></p>	<p>Errors which do not significantly impair the functioning of the system and do not significantly affect service to Customers. These Errors are tolerable during system use.</p> <p>Dialogic will operate an automatic escalation procedure for all open Service Requests to ensure that senior management is aware of any problems that require increased attention to meet Service goals. Cases are escalated according to the table below.</p>

### 6.3 Dialogic Response and Escalation

Dialogic will use commercially reasonable efforts to adhere to target times (“Response Times”) specified in the table set forth below. All Response Times are estimates based on Dialogic experience and are provided during applicable support hours. Dialogic provides an automatic escalation procedure using the contacts and escalation thresholds set forth in the Response Time Table for all open Service Requests to ensure that appropriate management personnel are aware of problems that require increased attention. Response Times for Hardware issues are subject to Customer having the appropriate spare part on site, or Customer purchasing On-Site Hardware Repair Service. The escalation process is an automatic process, triggered by the severity level.

**Response Time Table**

	Error Classification		
	Critical	Major	Minor
Initial Response Time	< 30 minutes	< 2 hours	< 4 Business hours
Restore Time	Continuous activity to restore in < 48 hours	<3 days	< 5 days
Resource Allocation	Management and all appropriate technical resources	Appropriate technical resources	Technical resources as available
Escalation for Correction			
Senior Expert	6 hours	24 hours	30 days
Support Manager	12 hours	48 hours	60 days
VP Worldwide Services and Support	24 hours	72 hours	90 days

## 7. CUSTOMER RESPONSIBILITIES.

**7.1** Customer will, at no charge to Dialogic, provide Dialogic with appropriate telephone and remote access to the Applicable Products either through Customer’s network management system(s), or other systems as required by Dialogic to allow for the execution of remote diagnostic procedures, subject only to the Customer’s security rules, including remote access to the Software via ISDN BRI (in call-back mode) or a dedicated circuit.

**7.2** Customer will place all requests for Services to Dialogic by telephone, fax, email or web site using the contact points for the assigned TAC provided in Section 8 below, unless otherwise agreed to in writing by Dialogic. Service Requests for Critical and Major must be via telephone, email and web based Service Requests are treated as Minor severity, with regard to Response and Restore times, Service Requests made by the Customer directly to any other number, person or location are outside the scope of the Services provided herein and may be chargeable at Dialogic’s current time and materials maintenance service rates.

**7.3** Customer will provide Dialogic with a list of suitably qualified designated Customer contacts, up to a maximum of six per eight hour shift, that may contact the TAC.

**7.4** Customer, when requested by Dialogic, agrees to complete diagnostic and test routines recommended by Dialogic or included in the manufacturer's instructions for any third party hardware or software, which may assist Dialogic in completing remote diagnostic tests of the Applicable Products where appropriate.

**7.5** Customer will ensure that the Software conforms to Dialogic's minimum supported Software Release revision level requirements and is maintained in accordance with any and all changes to specifications identified in Dialogic’s Software Update and Upgrades service.

**7.6** Customer shall operate the Applicable Products in accordance with Dialogic's and/or manufacturers / suppliers instructions, as applicable, and shall at all times maintain the proper environmental conditions according to Dialogic's standard site specifications.

**7.7** Customer's personnel will not attempt any hardware repair or maintenance other than swapping out FRUs on the Applicable Products while they are covered under warranty or under this Service plan with Dialogic, unless agreed to in writing by Dialogic.

**7.8** Customer will maintain an adequate level of spares based on Dialogic recommendations and/or Dialogic supplied reliability information to meet all Critical service affecting hardware failures allowing for Dialogic's normal repair and return cycle of 30 business days plus shipping times. Restore Target Times shall be subject to the foregoing.

**7.9** Customer will be responsible for the installation of all Software Releases, Error Corrections and maintenance releases provided by Dialogic under these Services.

**7.10** Customer agrees to notify Dialogic in writing promptly following the discovery of any Error. Dialogic agrees to make available to Customer a list of known Errors and to notify Customer in writing promptly following the discovery of any Critical Error. Further, upon discovery of an Error, Customer agrees, if requested by Dialogic, to submit to Dialogic a list of output and any other data that Dialogic may reasonably require to reproduce the Error and the operating conditions under which the Error occurred or was discovered. Such list and data will be deemed Dialogic's Confidential Information. Dialogic will use commercially reasonable efforts to reproduce the Error based on the information submitted by Customer. If Dialogic is unable to reproduce the Error, it will have no responsibility to meet the timelines set forth in the table above. In such event, Dialogic will diligently continue to attempt to reproduce such Error, provided that Customer will continue to reasonably cooperate with Dialogic in efforts to reproduce the Error.

**7.11** Customer is responsible for completion of all applicable data back-ups for Applicable Products to include databases and operating systems to ensure that Dialogic can restore systems to normal if trouble conditions occur which require recovery of data.

## **8. SERVICE FEES**

Please refer to Annex A for the fees for the foregoing Services ("Support Fees") for the Initial Term and Renewal Terms. Support Fees shall be payable as set forth in Section 4 of the Agreement. Support Fees for Premium and On-Demand Support Services shall be determined on a case-by-case basis.

## **9. SERVICE EXCLUSIONS**

The Services do not include:

- repairs required to correct malfunctions or Errors where the operating environment is different from that in which the Applicable Product was originally installed;
- repairs attributable to or required due to any unauthorized attempt by Customer or any other party to repair or maintain the Applicable Product;
- repairs resulting from the Customer's attempt to de-install, relocate and install the Applicable Product;
- repairs resulting from casualty, catastrophe, or natural disaster (including lightning damage), accident, misuse, neglect or negligence of Customer, or causes external to the Applicable Product such as, but not limited to, failed or faulty electrical power or air conditioning, or any causes other than normal wear and tear from ordinary use;

- repairs for accessories, attachments or any other devices which are not identified in the applicable Order;
- repairs resulting from unauthorized changes, modifications or alterations or attachments of or to the Applicable Product;
- the furnishing of optional accessories or consumable supplies;
- installation/de-installation services and/or relocation/removal services;
- labor, parts and repairs necessary to restore the Applicable Product to good operating condition when the Product was not under a Dialogic warranty or under a Dialogic Support Services agreement immediately prior to this Agreement;
- Services for third party software and/or for obsolete Software Releases.;
- problems in the operation or performance of the Applicable Products caused by third party software or hardware products;
- interaction between the Software or Hardware and operating systems, database software and other software, when Dialogic has not approved such operating system, database software, and other software for use with the Software or Hardware;
- Customer's use of the Software or Hardware on non-approved equipment or at locations other than the Deployment Sites;
- on-site support, which Customer may procure at Dialogic's then-current rates; or
- special services that may be requested by Customer, including, but not limited to: (a) customization services, such as support for customization of routing plans and digit analysis; custom system provisioning and configuration; trunk provisioning; SS7 provisioning, and (b) program management, single point of contact for program issues, cross-vendor program management, formal project planning, issue management, reporting and trending.

If Dialogic determines that it is necessary to perform Services for a problem caused by any of the exclusions above (a "Customer-Generated Error"), Dialogic will notify Customer thereof as soon as Dialogic is aware of such Customer-Generated Error and, upon Customer's approval, Dialogic will have the right to perform such services and invoice Customer at Dialogic's then-current published time and materials rates for all such maintenance and support services performed by Dialogic.

## ANNEX A

The fees for the foregoing Services (“Support Fees”) for the Initial Term and Renewal Terms shall be as follows: