

## Support Program Agreement Terms and Conditions

This Customer Support Program Agreement ("Support Agreement") is entered into between Linkbit, Inc., with its principle place of business at 3180 De La Cruz Blvd., Suite 200 Santa Clara, CA 95054 ("Linkbit") and the End User Customer hereunder ("End User"). The specific Support Services purchased by End User shall be as set forth in the Purchase Order submitted by End User and accepted by Linkbit. By accepting services from Linkbit, End User acknowledges and agrees that the provision of such services is governed by the terms and conditions of this Support Agreement and that no other terms or conditions, including, but not limited to, terms and conditions contained in End User's Purchase Order and/or ancillary documentation, will supersede this Support Agreement.

### 1. Definitions:

1.1. "Support Program" means the description of the Support Services which may be provided by Linkbit as defined in Linkbit's then current Support Packages and Programs service offering located on Linkbit's website at: [www.linkbit.com](http://www.linkbit.com). Linkbit reserves the right to revise such Support Program prior to the commencement of any renewal term upon notification to End User.

1.2. "Defect" shall mean a failure of the Product (as defined below) to operate substantially in accordance with Linkbit's material technical specifications or documentation for such Product.

1.3. "Product" means Linkbit's proprietary commercial products, including hardware products, software products, documentation and other related published materials, if any, supplied to End User in a commercial package.

1.4. "Support Services" means any or all of the maintenance and support services as defined in the Support Program as selected by End User, and for the Products identified in the Linkbit Quotation form and a Purchase Order.

**2. Technical Contacts.** End User shall appoint at least one (1) individual ("Technical Contact") within End User's organization to serve as the primary contacts between End User and Linkbit and to receive Support Services as provided herein. All of End User's support inquiries shall be initiated through these Technical Contacts to Linkbit's technical support center. End User may replace a Technical Contact upon prior written notice to Linkbit.

**3. Support Services.** Subject to the terms and conditions and during the term of this Support Agreement, End User will be entitled to receive Support Services.

3.1. Technical Support. Technical support will include telephone and email assistance as further described in the Support Program.

3.2. Releases. Linkbit shall use commercially reasonable efforts to provide End User with defect corrections, bug fixes, improvements, updates, modifications and enhancements to the Products (collectively "Releases"). The content of all Releases shall be decided upon by Linkbit in its sole discretion. Linkbit reserves the right to impose additional charges for updates and new versions not part of the current Product that encompass features or functions not performed by the Products originally sold to End User.

3.3. Product Obsolescence. From the End-of-Life (EOL) date of the hardware product, Linkbit will typically provide RMA hardware support (with spares or with like functionality replacement product) for a period of 1 year, and Software support for the EOL product will generally be maintained for 1 year after the EOL date.

3.4. Corrections. Linkbit shall use commercially reasonable efforts to provide a correction or workaround for any reported and reproducible Defect in the Products with a level of effort commensurate with generally accepted support practices.

3.5. Hardware Support. Linkbit shall use commercially reasonable effort to deliver hardware replacements in the time prescribed by the Support Program.

**4. Responsibilities of End User.** Linkbit's provision of Support Services to End User is subject to the following:

4.1. End User shall provide Linkbit with access to End User's personnel and the equipment if a problem the End User is experiencing cannot be reasonably duplicated at Linkbit's support facilities. Linkbit will inform End User of the specifications of the communication equipment and software needed, and End User will be responsible for the costs and use of said equipment and software;

4.2. End User shall document and promptly report all Defects to Linkbit's technical support center. End User shall take all steps necessary to carry out procedures for the rectification of Defects within a reasonable time after such procedures have been received from Linkbit.

4.3. End User shall maintain a current backup copy of all Software and related data.

4.4. End User shall properly train (or have trained by Linkbit) its personnel in the use and application of the Software.

4.5. End User shall promptly install or permit Linkbit or its authorized representative to install and implement all Releases provided under this Support Program.

**5. Return of Defective Products and Return Material Authorization (RMA).** Before returning any Product to Linkbit, End User shall first obtain a return material authorization from Linkbit ("RMA Number"). The RMA Number must be noted on the outside of the shipping container. End User must supply to Linkbit documentation regarding the alleged Defect, End User contact information, and shipping information. End User is responsible for all RMA shipping charges back to Linkbit, and Linkbit is responsible for all RMA shipping charges back to End User. Linkbit must receive faulty RMA hardware within 30 days of shipment of advance replacement hardware, else End User will be charged full product list price.

**6. Limitations and Exclusions.** Support Services will be provided only with respect to Supported Releases of the software. Linkbit shall only be obligated to support the then-current version of the products and the immediately prior version. Support Services will be provided only in English and End User agrees that all communication to Linkbit in respect of Support Services will be in English. The Support Services provided by Linkbit hereunder will not include support and maintenance of any third party software or hardware, whether or not such third party software or hardware is provided by Linkbit. Linkbit is not required to provide any on-site Support Services unless such service is offered by Linkbit as a separate service offering and is purchased by End User. Linkbit is not required to provide any Support Services for problems arising out of: (i) End User's failure to implement all Releases issued under this Support Agreement; (ii) alterations of or additions to the Product performed by parties other than Linkbit; (iii) accident, negligence, or misuse of the Product (such as, without limitation, operation outside of environmental specifications or in a manner for which the Product were not designed or outside of environmental specifications); or (iv) interconnection of the Product with other products not supplied by Linkbit. Support for other problems not covered under this Support Agreement may be obtained at Linkbit's then-current rates for special technical services and on Linkbit's then-current terms and conditions for such services.

**7. Fees and Payment.** End User purchases services directly from Linkbit, or authorized resellers and End User shall pay the Support Services fees in accordance with the current published price list. The fees are due and payable within 30 days after date of invoice unless otherwise agreed in writing by relevant parties. For any amounts owed by End User that are not paid within 30 days, End User shall pay, in addition to such amounts, interest at the lesser of 2.0% per month or the maximum allowed by law. Fees for Support Services are exclusive of sales, use and transfer taxes.

7.1. Ownership and Warranties. All Releases provided under this Support Agreement shall be deemed to be included within the Product and subject to the terms and conditions under which End User obtained the Product. All Releases provided hereunder are warranted for the remaining warranty period of the original Product, if any, as specified in the Limited Warranty information located at the Linkbit website. Nothing in this Support Agreement shall be construed as expanding or adding to the warranty set forth in the in the Limited Warranty. Linkbit will use reasonable commercial efforts to provide the Support Services requested by End User in a professional and workmanlike manner, but Linkbit does not guarantee that every question or problem raised by End User will be resolved. End User's sole and exclusive remedy,

and Linkbit's sole and exclusive liability, for any breach of the foregoing remedy is Linkbit's commercially reasonable efforts to re-perform the Support Services at no additional cost to End User.

**EXCEPT AS EXPRESSLY SET FORTH IN THIS DOCUMENT, LINKBIT MAKES NO WARRANTY, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESSLY, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT.**

#### **8. Limitation of Liability.**

**LINKBIT AND/OR ITS REPRESENTATIVES' LIABILITY UNDER, RELATING TO, OR ARISING OUT OF THE PROVISION OF SUPPORT SERVICES, WHETHER FOR BREACH OF CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO A REFUND OF THE PRO RATA MAINTENANCE AND SUPPORT FEES FOR ALL LIABILITY RELATED TO THE SUPPORT SERVICES. IN NO EVENT WILL LINKBIT BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO ANY LOSS OF BUSINESS AND/OR PROFITS, WHETHER FORESEEABLE OR NOT, EVEN IF LINKBIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PROVISION OF SUPPORT SERVICES. THE LIMITATIONS IN THIS SECTION SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

**9. Term and Termination.** The term of this Agreement shall commence upon Linkbit's receipt of Support Fees for Services in connection with such Product, and shall continue for one year. Additional yearly service coverage may be purchased at the then current rates, programs and then current terms and conditions subject to mutual written agreement by the parties, unless terminated earlier as provided herein.

This Support Agreement shall terminate upon 30 days notice of material breach of a party's obligations hereunder if such breach is not corrected within 30 days notice of such breach. If this Support Agreement is terminated for End User's breach, all earned and unpaid maintenance fees and other charges payable under this Support Agreement shall be immediately due and payable and End User is not entitled to a refund of any amount paid under this Support Agreement.

#### **10. General.**

This Support Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to the principles thereof concerning conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable. This Support Agreement shall inure to the benefit of Linkbit and its successors, assigns, and legal representatives. If any provision of this Support Agreement is held by a court of competent jurisdiction to be invalid or unenforceable to any extent under applicable law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Support Agreement will remain in full force and effect. Any notices or other communications to be sent to Linkbit must be mailed by certified mail to the following address:

Linkbit, Inc., 3180 De La Cruz Blvd., Suite 200 Santa Clara, CA 95054, USA, Attn.: Customer Support Manager

This Support Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior proposals, agreements, representations, statements, and undertakings are hereby expressly canceled and superseded. The terms of this Support Agreement will prevail should there be any variance with the terms and conditions of any order submitted by you and may not be changed or amended except by a written instrument executed by a duly authorized officer of Linkbit.