



IT Management Services Terms

version 1.0

The following IT Management Services Terms are the Service-Specific Terms applicable to the provision of IT Management Services by Digital Agent, LLC ("DA") except to the extent expressly provided otherwise in a written agreement between DA and Customer.

1. General Terms and Conditions.

These IT Management Services Terms supplement DA's General Terms and Conditions (the "GTCs") applicable to all services offered by DA. In the event of any conflict between the provisions of these IT Management Services Terms and any provision of the GTCs, the provisions of these IT Management Services Terms shall prevail.

2. Definitions.

When used in Customer's Application, the DA Quote, the GTCs or these IT Management Services Terms, the following terms shall have the definitions set forth below. Other terms are defined in Customer's Application and in the GTCs.

a. "Customer's System" means the computer and network hardware and software identified on the DA Quote accompanying Customer's Application, as the same may be revised from time to time as provided in Section 3.f, for which DA will provide Support Services pursuant to these IT Management Services Terms.

b. "Customer Equipment" means the equipment identified on the DA Quote accompanying Customer's Application, as the same may be revised from time to time as provided in Section 3.f.

c. "Hosted Services" means server-based hosted services purchased separately by Customer from DA. Hosted Services are subject to DA's Hosted Services Terms or a separate Service Order for such Hosted Services, as applicable.

d. "Customer Software" means the commercially available and Customer-provided computer and networking software identified on the DA Quote accompanying Customer's Application, as the same may be revised from time to time as provided in Section 3.f.

e. "Supported Software" means the computer and networking software identified on the DA Quote accompanying Customer's Application as "Supported Software."

f. "Support Services" means DA's consultative management and technical support services for the evaluation of requirements, setup, support, monitoring, training and implementation for Customer's information technology requirements, which enable Customer to outsource to DA all or part of the care, maintenance, management, problem resolution and operation of Customer's information technology infrastructure.

g. "Unsupported Software" means all Customer Software that is not Supported Software.

3. Scope of Services.

During the Term, DA shall, subject to the terms and conditions of these IT Management Services Terms, provide Support Services for Customer's System as follows:

a. Customer Equipment.

DA will provide proactive configuration, troubleshooting and diagnostic services and coordination with manufacturer representatives or other repair services for repair of Customer Equipment.

b. Supported Software.

DA will provide proactive configuration, troubleshooting, diagnostic and maintenance services for all Customer Software that is Supported Software, except that all DA services related to the inter-operation of Supported Software covered by Gold Support or Platinum Support with Unsupported Software shall be invoiced and paid at the Additional Services hourly rate associated with the applicable support package.

c. Unsupported Software.

DA will provide configuration, troubleshooting, diagnostic and maintenance services for Customer Software that is Unsupported Software upon the request of Customer and will interface and coordinate with any third party providing support services for Customer's Unsupported Software and take action under the direction of such third party. All DA Support Services related to Unsupported Software shall be (i) included in chargeable time under a Silver Support package or (ii) invoiced and paid at the applicable Additional Services hourly rate for Customers who elect a Gold or Platinum Support package. DA will not provide proactive support for Unsupported Software and may in its sole discretion decline to provide support for any Unsupported Software for which Customer does not have and maintain in effect a third party support services contract.

d. Purchases and Licenses Not Included.

Notwithstanding any other provision of the GTCs or these IT Management Services Terms, Customer shall be solely responsible for the cost of any parts, licenses or third party labor that may be required in connection with DA's provision of Support Services to Customer. Customer acknowledges that most computer software is licensed, not sold, and that it is Customer's responsibility to insure that it has and maintains a sufficient number of licenses for all computer and networking software installed or maintained on Customer's Equipment by DA.



IT Management Services Terms...cont.

e. Service Availability.

The charges described herein entitle Customer to weekday Support Service availability between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except holidays observed by DA (New Year's Day, Easter, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving, Day after Thanksgiving, Christmas Eve and Christmas Day). Scheduled preventative maintenance will be performed during the hours described above. DA shall perform Support Services on-site at Customer's premises or off-site at DA's offices in DA's sole discretion. DA will provide Support Services outside of regular hours on a scheduled basis or in response to urgent conditions impairing the usability of Customer's System. Support Services provided outside regular business hours will be charged against Silver Support package hours at time-and-a-half rates and on DA-observed holidays at double time rates.

f. Additions to and Deletions from Customer System.

Customer may request to include additional equipment and/or software within the scope of DA's Support Services by submitting a written request therefor to DA. If DA accepts such request in its sole discretion, such additional equipment and/or software shall become part of the Customer System for which DA provides Support Services.

g. Exclusions.

Other services are outside the scope of DA's Support Services, including without limitation:

- i. Electrical work external to Customer Equipment;
- ii. Repair of damage or increase in service time due to any cause external to any Customer Equipment adversely affecting its operability or serviceability, which shall include, but not be limited to, fire, flood, water, wind, lightning, transportation, neglect or misuse;
- iii. Repair of damage or increase in service time caused by failure to continually provide a suitable installation environment including, but not limited to, the failure to provide adequate electrical power, air conditioning or humidity control, or customer's improper use, management or supervision of the equipment, including, without limitation, the use of supplies, disk pack and cartridges;
- iv. Repair of damage or increase in service time caused by the use of any Customer Equipment for purposes other than for which it was designed;
- v. Furnishing platen, supplies or accessories, painting or refinishing machines or furnishing material therefore, making specification changes or performing services connected with relocation of Customer Equipment, or adding or removing approved accessories, attachments or other devices except as set forth herein;
- vi. Services which are impractical for DA's representatives to render because of alterations to Customer Equipment or its connection by mechanical or electrical means to another machine or device; and
- vii. Systems engineering services, programming and operational procedures of any sort.

4. Support Packages.

Customer has elected one of the following Support Packages as indicated on the DA Quote:

a. Silver Support.

With DA's Silver Support package, DA will provide Support Services for Customer's System and any DA Hosted Services purchased by Customer at reduced hourly rates up to the Monthly Commitment selected by Customer. Any and all Support Services beyond the Monthly Commitment will be invoiced and paid at DA's standard hourly rates. Support Service hours included in the Monthly Commitment that are not used in a given month do not carry over to the following month.

b. Gold Support.

With DA's Gold Support package, DA will provide unlimited Support Services for the support of Customer's System and the DA Hosted Services purchased by Customer and identified on the DA Quote with the exception of setup and deployment of additional servers, workstations or handheld devices. DA will provide setup and deployment for additional servers, workstations and handheld devices at fixed rates, rather than hourly rates.

c. Platinum Support.

With DA's Platinum Support package, DA is responsible for covered Customer Equipment and Supported Software, proactively applying software upgrades and changes to configuration files, as well as providing round-the-clock monitoring and issue resolution when events are detected. DA engineers will isolate problems and work with third party vendors, within defined limits, to resolve problems with Customer's System. Platinum Support includes unlimited onsite and offsite support for all Customer servers, workstations, network appliances, printers and supported handheld devices, as well as the Hosted Services purchased from DA identified on the DA Quote.

5. Support Exclusions.

DA will respond to support requests under the Gold Support and Platinum Support plans regardless of root cause of the support need. However, support provided under the Gold Support or Platinum Support plans will be billed at standard hourly rates if:



IT Management Services Terms...cont.

- a. Customer's System and Customer's Equipment as identified on the DA Quote represent less than all of Customer's software and equipment, and
- b. DA resolves and/or remediates a problem, and
- c. DA identifies the source of the problem as Customer equipment or software not identified on the DA Quote or Customer's improper management of devices within Customer's network.

6. Hosted Services.

Any Hosted Services purchased from DA by Customer are subject to DA's Hosted Services Terms or a separate Hosted Services Service Order, as applicable.

7. Initial Network and Security Assessment.

Promptly after the Service Commencement Date, DA shall inspect Customer's System to determine whether the Equipment and Software are in acceptable condition for DA's Support Services. If DA determines that the Equipment and Software are not in acceptable condition for DA's Support Services, DA will provide Customer with recommendations to bring the Equipment and Software up to acceptable condition for DA's Support Services. Any repairs, upgrades or modifications to Customer's System then deemed necessary by DA to bring the Equipment and Software up to an acceptable condition shall be made at Customer's expense prior to the commencement of DA's provision of Support Services, and DA has no obligation to provide Support Services hereunder until all Equipment and Software are in acceptable condition for DA's Support Services, but the fees payable hereunder shall continue to accrue. Notwithstanding the foregoing, if requested to do so by Customer, DA will provide Support Services to repair, upgrade or modify Customer's System to conform to DA's recommendations at DA's standard hourly rates or using Support Services hours purchased from DA as part of a Silver Support package. A DA engineer shall conduct the initial audit and evaluation of Customer's System. If Customer elects to not comply with DA's recommendation, it must notify DA in writing within two (2) business days after receiving such recommendations, and the Agreement for DA to provide IT Management Services to Customer shall be deemed terminated (though all charges accrued to Customer prior to the date of such notice remain due and payable). If Customer does not deliver timely notice, Customer will be deemed to have agreed to comply with DA's recommendations and will be obligated to do so.

8. Customer Responsibility.

a. Software Maintenance.

Except to the extent otherwise agreed in writing by DA, Customer is responsible at Customer's sole expense for maintaining all Customer Software to within two (2) versions of the most recent commercially available version of such software, provided that DA's Support Services shall include labor for the installation of patches and upgrades necessary to maintain such software. In the event that Customer fails or refuses to obtain any patch or upgrade to any Customer Software that DA reasonably determines to be necessary to maintain such software as provided in this section or fails or refuses to install or permit DA to install any such patch or upgrade, then DA may by written notice to Customer designate such Customer Software as Unsupported Software, whereupon such Customer Software shall be deemed to be Unsupported Software unless and until DA in its reasonable judgment determines that Customer has remedied the condition that caused such Customer Software to be designated as Unsupported Software.

b. Other Responsibilities of Customer. In addition to the foregoing, Customer shall be responsible at its own sole expense for the following:

- i. Customer shall notify DA engineers upon Equipment failure.
- ii. Customer shall allow DA full and free access to Customer Equipment and use of necessary data communications facilities and equipment, subject to Customer's security rules.
- iii. Customer shall not authorize or cause maintenance repairs to be made or attempted to Customer Equipment during the term of Customer's Agreement for DA's IT Management Services, except as specified and approved in advance by DA.
- iv. Customer shall maintain site environmental conditions in accordance with the specifications established by the manufacturers of all Customer Equipment.
- v. Customer shall not cause modifications to be made or accessories or devices not identified in the DA Quote or otherwise approved by DA in writing to be added to Customer Equipment. If Customer causes modifications to be made, or accessories or devices to be added to Customer Equipment without the written approval of DA, Support Services will be supplied only in DA's reasonable discretion. If such modifications or attachments make it impractical for DA (in DA's reasonable discretion) to render Support Services, or the modifications or attachments would materially increase DA's costs of providing Support Services, DA shall be relieved of any responsibility with respect to such Customer Equipment. Customer shall be responsible for the storage of any parts removed from Customer Equipment as a result of modifications or an attachment to Customer Equipment and for restoring Customer Equipment to normal condition when the attachment or alteration is removed.



IT Management Services Terms...cont.

- vi.** If Customer elects not to implement or make changes to any Customer Equipment pursuant to DA's technical recommendation, DA shall not be held liable nor responsible for any outcome or results from the Customer's decision or any defects in Support Services with respect to such Customer Equipment.
- vii.** Customer shall cooperate with and assist DA to the extent necessary in the provision of the Support Services and will provide any resources of Customer reasonably necessary for DA's performance of Support Services.
- viii.** Customer shall maintain and manage Customer equipment and software not identified for coverage on the DA Quote in a manner consistent with preserving the integrity of the totality of Customer's equipment and software system.

9. Limitation of Warranties.

DA represents and warrants that all Support Services for Customer Equipment and Supported Software shall be performed in a professional, workmanlike manner.

The foregoing warranty is in lieu of all other representations and warranties by DA, express or implied, contractual or statutory, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and noninfringement, with respect to the Support Services, and all such representations and warranties are hereby expressly disclaimed. Customer acknowledges that, except as expressly provided otherwise herein, the Support Services are provided to Customer "As Is," "with all faults" and "as available." Customer acknowledges and agrees that DA claims no expertise with respect to any Unsupported Software and that DA shall not be responsible for (a) any excessive time devoted to Unsupported Software at Customer's request (all of which shall be chargeable to Customer as provided in Section 3.c) or (b) remediation of any condition resulting from any action or non-action of DA with respect to any Unsupported Software.

10.Reimbursable Expenses.

In addition to the rates and charges payable for Support Services, Customer shall reimburse DA for all reasonable expenses incurred in connection with the provision of Support Services hereunder. Reimbursable expenses include, but are not limited to, hardware and software purchases, wiring accessories, network equipment, airfare to project sites, lodging, toll fees, parking expenses, and other related travel expenses.