

LIGHTRIVER TECHNOLOGIES, INC.-TERMS AND CONDITIONS-SERVICES

1. Scope; Orders; Amounts Due; Transit:

(a) **Scope.** The Customer identified on the Quotation or Work Statement that has been executed between the Customer and LightRiver Technologies, Inc. ("LightRiver") hereby agrees that acceptance of an order by LightRiver is based solely upon the terms and conditions contained herein (T's & C's). All Services furnished by LightRiver to Customer under these T's and C's shall be for Customer's own internal use.

(b) **Orders; Pricing.** Customer may execute and issue Orders to LightRiver from time to time based on these T's & C's as described and priced on a valid Quotation or Work Statement. Customer agrees that each Order is placed solely under these T's and C's and that the T's and C's only shall govern all Orders regardless of any varying or additional terms or conditions in the Order. Each Order is effective upon acceptance and credit approval by LightRiver in writing or via fulfillment of the Order.

2. **Title; Security:** Customer understands and agrees that the Products, which may be provided as part of any Services, contain trade secrets belonging to LightRiver or its licensors or their respective suppliers and that the IP Rights are and shall remain the property and contain the confidential information of LightRiver and/or its licensors and/or their respective suppliers and shall be included within the definition of LightRiver's Confidential Information under these T's and C's.

3. Warranties:

(a) With respect to Products referenced herein and which may be provided during Services, LightRiver shall, at its sole expense and promptly after notification by Customer, correct or replace (at LightRiver's option) on site or at a LightRiver designated location (at LightRiver's option) defective Product provided that any manufacturer's warranty shall apply to such Products.

(b) As between the Parties, LightRiver has the right to determine whether any warranty claims under this Section 3 (including Manufacturer's Warranty claims) will be accomplished through repair or replacement and whether repairs will be conducted at Customer's site or some other LightRiver determined location. As such, no Product under warranty will be returned to LightRiver or manufacturer for repair unless and until Customer notifies LightRiver of the warranty claim and Customer obtains an RMA from LightRiver for the Product along with the ship to address for such Product for such repair or replacement. Customer shall be responsible for and shall pay for any disassembly, removal, shipment to the LightRiver designated location, installation and re-assembly costs incurred because of warranty repairs. LightRiver shall be responsible for the return of such repaired or replacement Product to Customer at Customer's US facility at LightRiver's cost.

(c) The provisions of this Section 3 shall apply to any corrected or replaced Product or replacement parts provided under the warranty herein except that (a) the warranty period for any corrected or replaced Product shall be the longer of (i) the remainder of the original warranty term for the original Product or (ii) six months from repair or replacement of the Product and (b) the warranty period for the replacement parts shall be the longer of (i) the remainder of the original warranty term for the original Product to which the replacement part belongs or (ii) six months from repair or replacement of the replacement part. All replaced Products and parts shall be the property of LightRiver.

(d) LightRiver makes no warranty with respect to defective conditions or non-conformities of the Products caused by any of the following acts (and the warranty exclusions of the manufacturer are hereby deemed broad enough to cover all of the exclusions in this Section 3(d)): misuse, neglect, accident or abuse by anyone other than LightRiver or its subcontractors; improper wiring, repairing, alteration, installation, storage or maintenance by anyone other than LightRiver or its subcontractors; use in a manner or in an environment not in accordance with specifications or operating instructions supplied by LightRiver or the Manufacturer; failure of Customer to install applicable modifications and corrections supplied by LightRiver; modifications of Products by other than LightRiver or its subcontractors; or use of Software on an operating system or application other than the system, application and version specified by LightRiver. In addition, LightRiver makes no warranty with respect to Products which have had their serial numbers or month and year of manufacture removed or altered, with respect to expendable items or warranty claims resulting from the combination of the Products with any other hardware or software. The cost of correcting any additional damage resulting from Customer's continued use of the defective Product, resulting from Customer's damage or misuse or as excluded in this subsection (d) shall be charged to Customer. If LightRiver determines that a Product is not defective then Customer shall pay LightRiver's costs of handling, inspecting, testing and transportation and if applicable, travel, living and lodging expenses.

(e) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES (WHETHER WRITTEN, ORAL, STATUTORY OR OTHERWISE), INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND LIGHTRIVER SPECIFICALLY DISCLAIMS ALL SUCH WARRANTIES. IN THE EVENT OF A BREACH OF WARRANTY UNDER THIS SECTION 3, LIGHTRIVER'S SOLE RESPONSIBILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, IS, AT LIGHTRIVER'S OPTION, TO REPAIR OR REPLACE THE PRODUCT AS SET FORTH ABOVE.

4. **Limitation of Warranties and Liability:** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3, NEITHER LIGHTRIVER, NOR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, THIRD PARTY LICENSORS OR THEIR RESPECTIVE SUPPLIERS SHALL HAVE ANY LIABILITY TO THE CUSTOMER OR ANY THIRD PARTY FOR THE PRODUCTS, THE SERVICES OR OTHERWISE ARISING OUT OF THESE T's & C's, INCLUDING ANY LIABILITY FOR NEGLIGENCE.

The cumulative liability of LightRiver, its affiliates, officers, directors, employees, third party licensors and their respective suppliers for all claims relating to the Products and Services or otherwise arising out of these T's and C's, in contract, tort, or otherwise, shall not exceed the total amount of all fees paid to LightRiver by the Customer under these T's and C's provided that if such claims or damages arise out of specific Products or Services provided by LightRiver to Customer, such liability shall be limited to fees paid for the relevant Product or Service giving rise to such claims or damages, which in the case of Maintenance for specific Products shall be an amount equal to the Maintenance fee paid with respect thereto by the Customer in the twelve months preceding the applicable claim.

Any action or proceeding against LightRiver must be brought 24 months after the cause of action accrues.

IN NO EVENT SHALL LIGHTRIVER, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, THIRD PARTY LICENSORS OR THEIR RESPECTIVE SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, MULTIPLE OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION AND LOST DATA, FOR ANY CLAIMS RELATING TO THE PRODUCTS AND SERVICES OR OTHERWISE ARISING OUT OF THESE T'S AND C'S, IN CONTRACT, TORT, OR OTHERWISE, EVEN IF LIGHTRIVER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSIONS OR LIMITATION MAY NOT APPLY TO YOU.

5. Services Offerings: Exhibit A includes additional terms and conditions under which LightRiver may offer Services to Customer from time to time.

6. Export Control: Customer acknowledges that the Products and data provided hereunder are subject to the export controls laws of the United States. Customer agrees that it shall comply with all applicable U.S. export control laws and regulations, and shall not export or re-export the Products and data provided through the Services, or direct products thereof, except as authorized by U.S. law.

7. Assignment: Except as provided in this Section, neither party shall assign these T's and C's or any right or interest, or delegate any work or obligation to be performed, under these T's and C's without the other party's prior written consent. Any attempted assignment in contravention of this Section shall be void and ineffective. LightRiver may assign these T's and C's or assign its rights or delegate its duties under it, in whole or in part, at any time and without Customer's consent, to any present or future affiliate. LightRiver may also utilize subcontractors and agents in carrying out its obligations under these T's and C's. LightRiver's use of such subcontractors and agents shall not release LightRiver from its obligations under these T's and C's.

8. Confidentiality: It is understood and agreed that each of the parties possess Confidential Information, and that the parties may need to disclose this Confidential Information to each other in connection with performance of their duties and obligations under these T's and C's. The receiving party will maintain any Confidential Information disclosed to it by the disclosing party in confidence in the same manner and to the same extent it protects its own confidential and/or proprietary Confidential Information of a similar nature. The receiving party shall not disclose any Confidential Information received by it to any person except the receiving party's employees, consultants or agents (provided that in the case of Customer as receiving party such consultants and agents are not competitors of LightRiver as reasonably determined by LightRiver) and only on a need-to-know basis solely for the purpose of receiving party performing its duties and obligations under these T's and C's where such employees, consultants or agents shall be made aware of the Confidential Information's proprietary or confidential nature, and shall be under a written non-disclosure agreement with the receiving party on terms at least as restrictive as the terms of this Section 8 on terms broad enough to protect the Confidential Information of disclosing party. Each party shall be responsible for any breach of these T's and C's by any and all of its employees, agents and consultants. Upon the disclosing party's request, the receiving party shall either return to the disclosing party all Confidential Information or shall certify to the disclosing party that all Confidential Information has been destroyed including media containing Confidential Information as determined by disclosing party.

The foregoing restrictions on each party's use or disclosure of Confidential Information shall not apply to Confidential Information that the receiving party can demonstrate: a) was independently developed by or for the receiving party without reference to the Confidential Information; or b) was lawfully received by the receiving party from a third party without restrictions of confidentiality; or c) is now or hereafter becomes generally available to the public without breach of confidentiality obligations by the receiving party; or d) was in the receiving party's possession without restriction or was known by the receiving party without restriction at the time of disclosure by disclosing party as evidenced by written records; or e) is the subject of a judicial or other governmental order for disclosure; provided, however, that the receiving party has given the disclosing party prompt notice of such demand for disclosure, the receiving party reasonably cooperates with the disclosing party's efforts to secure an appropriate protective order and the receiving party complies with any such protective order.

As between the parties, all Confidential Information shall remain the sole and exclusive property of the disclosing party. By disclosing Confidential Information, the disclosing party does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right.

It is further understood and agreed that money damages would not be a sufficient remedy for any breach by either party of this confidentiality section and that the non-breaching party shall be entitled to seek equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this section but shall be in addition to all other remedies available at law or equity to the non-breaching party. Customer further acknowledges that LightRiver shall not have an adequate remedy in the event that Customer breaches Section 2 of these T's and C's and that LightRiver will suffer irreparable damage and injury. In such event, Customer agrees that LightRiver shall be entitled to an injunction restricting Customer from committing or continuing any violation of Section 2.

Notwithstanding anything herein to the contrary, LightRiver may identify Customer as a customer of LightRiver to third parties verbally and in writing as well as use Customer's name and logo on LightRiver's web site, in customer lists and in materials and literature to identify Customer as a customer of LightRiver.

9. Force Majeure: Except for Customer's obligation to pay amounts owed to LightRiver under these T's and C's, neither party shall be held liable or deemed to be in default for any delay or failure in performance under these T's and C's resulting from acts reasonably beyond the control of such party, including, without limitation, extreme weather, acts of God, acts or regulations of any governmental or supra-national authority or national emergency, power failure, labor unrest, unavailability of or delays in receipt of goods, material and services from suppliers, delay or default of common carrier, accident, riot, fire or other natural calamity.

10. Term and Termination:

(a) Intentionally Left Blank

(b) Termination by Either Party. Either party may terminate all or any portion of any Order issued hereunder effective immediately upon written notice, if any one of the following events occurs: (i) the other files a voluntary petition in bankruptcy under Chapter 11 of the United States Bankruptcy Code and a trustee is named; (ii) the other has an involuntary petition in bankruptcy under Chapter 7 of the United States

Bankruptcy Code filed against it; (iii) the other is adjudged by a court of competent jurisdiction as bankrupt; (iv) a court assumes jurisdiction of the assets of the other under federal reorganization act; (v) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other; (vi) the other becomes insolvent or suspends business; or (vii) the other makes an assignment of its assets for the benefit of its creditors.

(c) **Termination by LightRiver.** LightRiver may terminate all or a portion of any Order issued hereunder effective immediately upon written notice if Customer shall materially breach any of the provisions of these T's and C's or an Order and Customer fails to discontinue and cure such breach within thirty (30) days after receipt of notice from LightRiver of such breach. LightRiver may also terminate all or a portion of any Order issued hereunder to the extent that LightRiver no longer has distribution rights with respect to Products or Services.

(d) **Effects of Termination.** Upon termination of any Orders, (i) each party shall return all Confidential Information supplied by one party to the other; (ii) LightRiver shall have no further obligations to perform the Services or ship the Products under terminated Orders; and (iii) in the event of termination, LightRiver has the option to pick up all Products which have not been paid for in full. The following provisions shall survive termination of any order: payment obligations under Section 1, Section 2, Section 8 and Section 9 along with Exhibit A (provided however that survival under Exhibit A is only with respect to (i) disclaimers, payment obligations and pricing adjustments thereunder and (ii) the completion of any Services being provided under Orders unless such Order(s) for Services are otherwise terminated under Section 10(b) or 10(c)). In the event of termination under Section 10(b) above by LightRiver, in addition to any other rights and remedies available to LightRiver hereunder or by law or in equity, LightRiver shall have the right to immediately pick up all Products from Customer which have been paid for in whole or in part but for which payment thereof may in the reasonable judgment of LightRiver be subject to treatment as a preference payment under applicable law.

11. Miscellaneous:

- (a) These T's and C's shall be governed by and construed in accordance with the internal laws of the State of California, without reference to its conflicts of law provisions. Any claims or legal actions by one party against the other arising out of the relationship between the parties contemplated herein (whether or not arising under these T's and C's) shall be commenced and maintained in any state or federal court located in the State of California, and both parties hereby submit to the jurisdiction and venue of any such court. The original of these T's and C's has been written in English. The parties hereto waive any statute, law, or regulation that might provide an alternative law or forum to have these T's and C's written in any language other than English. LightRiver and Customer exclude the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act from these T's and C's.
- (b) If any provision of these T's and C's is held to be excessively broad as to scope, activity, subject or otherwise so as to be unenforceable at law, such provision shall be constructed by limiting or reducing it so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear. If any provision of these T's and C's shall be declared void or unenforceable by any judicial or administrative authority, the validity of any other provision and of the entire T's and C's shall not be affected thereby.
- (c) These T's and C's represent the entire understanding between the parties with respect to its subject matter and supersedes all prior or contemporaneous communications and proposals, whether electronic, or written. These T's and C's may not be modified except by a written agreement signed by authorized representatives of both parties. In no event shall a purchase order amend, modify or supplement any of the terms of these T's and C's.
- (d) A waiver by either party of its rights hereunder shall not be binding unless contained in a written agreement signed by an authorized representative of the party waiving its rights. The non-enforcement or waiver of any provision on one occasion shall not constitute a waiver of such provision on any other occasions unless expressly so agreed in writing.
- (e) LightRiver, in rendering performance under these T's and C's, is acting solely as an independent contractor and Customer will not take any actions inconsistent with such relationship.
- (f) Any notice required or permitted under these T's and C's shall be in writing and shall be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed fax addressed to the respective party's address as found in the Quotation or Work Statement.
- (g) Notwithstanding anything in these T's and C's to the contrary, in the event that any suppliers of LightRiver have or impose terms and conditions of sale on LightRiver related to any Product (including Software Updates) or Services to be supplied hereunder then LightRiver reserves the right to impose new and/or additional terms and conditions of sale for such Product (including Software Updates) or Services on Customer and once such terms and conditions of sale and the Purchase Order itself are otherwise mutually agreed to in writing by LightRiver and Customer then such sale shall take place.
- (h) **Non-Solicitation.** For a period of two years after completion of the Work, Customer shall not, either directly or indirectly (whether through its employees, independent contractors, consultants or otherwise), employ or engage, or solicit for employment or engagement, any employee, independent contractor, consultant, agent or representative assigned or recommended by LightRiver to perform Maintenance and/or Professional Services or who Customer is introduced to as part of any order.

12. Definitions: Capitalized terms used and not otherwise defined in the text of these T's and C's have the respective meaning set forth below.

"Agent" shall mean agents and consultants of Customer, provided (i) the agent or consultant is not a competitor of LightRiver, as reasonably determined by LightRiver and (ii) such agent or consultant is bound by a non-disclosure agreement and license restrictions with Customer equivalent to the terms of these T's and C's.

"Annual Maintenance" shall have the meaning set forth in Exhibit A.

"Annual Maintenance Fee" shall mean the fee payable for Annual Maintenance as described in Exhibit A and set forth in the applicable Order.

"Confidential Information" shall include (but shall not be limited to) any trade secrets, knowledge, data, plans, specifications or other proprietary or confidential information relating to current and future products, services, processes, know-how, designs, formulae, developmental or experimental work, computer programs, databases, other original works of authorship, customer lists, business plans, marketing plans and strategies, financial information or other subject matter pertaining to any business of the parties hereto (or their respective suppliers, consultants or licensees) disclosed by one party to the other (without respect to the date on which such Confidential Information was first disclosed) which is identified in writing or verbally as Confidential Information. Confidential Information of LightRiver shall also include all information contained or embodied in the Software and Software Updates, if any, including without limitation, object code and source code, and all confidential information conveyed to the Customer in the course of provision of Services or otherwise.

"Maintenance" shall have the meaning set forth in Exhibit A.

"Maintenance Data Sheet" shall have the meaning set forth in Exhibit A.

“Order” shall mean a written order which contains the type of information set forth below for the particular items ordered and which references these T’s and C’s which may be executed by Customer and issued to LightRiver from time to time for Products and/or Services under these T’s and C’s. All Product Orders should contain Customer name, address, phone number, contact person and billing address, (collectively, “Customer Information”) along with ship to address, install address, requested ship date and Product name, part number, quantity and price. All Maintenance Orders should contain Customer Information, type of Maintenance to be provided (Annual Maintenance or Time and Materials Maintenance), Product type, quantify and location of Product for which Maintenance is to be provided, price for Maintenance and requested start date (subject to the terms of these T’s and C’s related to Annual Maintenance start dates). Professional Services Orders shall contain Customer Information, fee structure and fees (fixed price with related fixed price fee or time and materials daily rate(s)), requested start date, requested completion date and services to be performed as evidenced in a mutually agreed to Work Statement as described in Exhibit A.

“Product” shall mean hardware products as currently offered for sale by LightRiver to Customer on a Quotation or which may be provided by LightRiver as part of the Services.

“Product Fees” shall mean the fees payable for the Products, if necessary for the completion of Services, acquired under an Order as set forth in the applicable Order based on a Quotation.

“Professional Services” shall have the meaning set forth in Exhibit A.

“Published Specifications” shall mean the manufacturer’s published specifications for a Product at the time of shipment of the Product by LightRiver to Customer.

“Quotation” shall mean a written proposal issued by LightRiver to Customer for the sale of Products or Services which includes a description thereof and related pricing or rates, as applicable. All Quotations are issued subject to these T’s and C’s and are valid for sixty days from the date thereof.

“Services” shall mean Maintenance, Training and/or Professional Services.

“Software” shall mean a computer program in object code form previously licensed by LightRiver to Customer by LightRiver under a license agreement between Customer and LightRiver. Software Updates, to the extent provided by LightRiver, are included within the definition of Software and licensed under the applicable agreement between LightRiver and Customer except that there is no warranty provided on the Software Updates.

“Software Update” shall mean new updates, enhancements, modifications, error corrections and patches to the Software in object code form only which are commercially released to LightRiver’s entire maintenance and support customer base at no charge which are under a maintenance and support program which is the same as Customer’s Annual Maintenance, if any (or which are otherwise released by LightRiver to Customer in LightRiver’s sole discretion). Notwithstanding the foregoing, Software Updates do not include new software products or significant new features to the Software, including without limitation, extensions and new versions of the Software, any of which are available as separately price listed items on a Quotation, Work Statement or otherwise.

“Support Contact” shall mean personnel of Customer who are knowledgeable of the Products and the hardware and software with which it interacts and who have undergone training with respect to support of the Products.

“Term” shall have the meaning set forth in Section 10(a).

“Territory” shall mean United States of America.

“Time and Materials Maintenance” shall have the meaning set forth in Exhibit A.

“Training” shall have the meaning set forth in Exhibit A.

“Work Statement” shall have the meaning set forth in Exhibit A.

Exhibit A
Additional Services Terms

Section references contained in this Exhibit are to the body of the T's and C's unless otherwise specified herein.

1. Professional Services:

(a) Professional Services Offerings. Subject to the T's and C's, LightRiver may offer engineering, furnishing, installation, implementation, testing and turn-up and training services with respect to the Products, the overview description of which is set forth in LightRiver's then current professional services offering data sheets, as may be updated by LightRiver from time to time without notice as may be specifically quoted by LightRiver in a Quotation and as detailed in the applicable Order and related Work Statement ("Professional Services"). Customer may purchase Professional Services from LightRiver from time to time in accordance with Section 1(b).

(b) Professional Services Fees. Customer agrees to pay to LightRiver any fixed price Professional Services fees as set forth in the applicable Order (subject to increase as set forth in Section 1(e) of this Exhibit A). LightRiver will issue the invoice for fixed price Professional Services fees as follows: (i) fifty percent (50%) upon approval of the applicable Order by LightRiver, (ii) forty percent (40%) upon completion of the Professional Services and (iii) ten percent (10%) upon Acceptance of the Professional Services by Customer (as described in Section 1(e) of this Exhibit A). To the extent that the applicable Order provides for all or a portion of the Professional Services to be performed on a time and materials basis then the Professional Services fees will be invoiced at the daily rate (or hourly rate as elected by LightRiver) set forth in such Order on a monthly basis as the Professional Services are performed.

(c) Scope and Format. Each Order for Professional Services will include a work statement which will be effective upon acceptance by LightRiver ("Work Statement"). Each Work Statement will include at a minimum the following information: work to be performed, resources to be provided by each of the parties, access requirements of LightRiver, estimated schedules and deliverables, detail of fees (e.g.-(i) fixed price fee or (ii) time and materials rates), assumptions upon which fees were based and estimated timeframe. Either party may request changes to the Work Statement which will be effective upon mutual written agreement of the parties in the form of a change order.

(d) Responsibilities of LightRiver. LightRiver will use commercially reasonable efforts to perform the Professional Services. Scheduled performance dates are estimates only.

(e) Responsibilities of Customer. Customer will provide the access and the resources (including, without limitation, site, hardware, software, fiber and networks all to LightRiver supplied specifications) necessary for LightRiver to perform the Professional Services as set forth in the applicable Work Statement in a timely manner. Customer agrees that the resources will be of good quality, in good operating condition, compliant with any specifications provided by LightRiver, produce accurate output and correctly process data, as applicable. Customer agrees to maintain these resources as such. Customer will provide the proper operating environment and sufficient utilities for the Products to operate, including without limitation an uninterrupted power supply. Customer will provide LightRiver with such technical information, data, technical support and assistance as reasonably required by LightRiver to fulfill its obligations under these T's and C's. Customer covenants that any information required by LightRiver to perform its obligations under a Work Statement and any assumptions which LightRiver utilizes in formulating a Work Statement will be complete, accurate and promptly supplied. Customer will obtain all necessary and applicable governmental permits for installation, operation and maintenance of Products furnished hereunder, except for applicable permits LightRiver must have to conduct business in the ordinary course. Customer will fulfill the foregoing obligations without charge to LightRiver. If Customer fails to fully comply with the above, LightRiver will be excused from performing its obligations. Customer shall reimburse LightRiver for any costs and expenses incurred due to Customer's failure to comply with the above. Customer understands that failure to do any of the foregoing may cause delays or an inability of LightRiver to perform the Professional Services and may also result in (i) additional fees including, without limitation, an increase in fixed price fees and (ii) acceleration of payment for Fixed Price Professional Services which would otherwise be invoiced on completion of installation or Acceptance (as described below) if delays in achieving either were caused by other than Supplier. CUSTOMER WILL PROVIDE CURRENT AND COMPLETE BACKUP FOR ANY DATA, INFORMATION, NETWORKS OR PROGRAMS THAT MAY BE AFFECTED BY PERFORMANCE OF THE PROFESSIONAL SERVICES AND USE OF THE PRODUCTS. LIGHTRIVER SHALL NOT BE RESPONSIBLE FOR THE PROTECTION OR LOSS OF ANY SUCH PROGRAMS, DATA OR INFORMATION OR THE COST OF RESTORING OR RECREATING SUCH PROGRAMS, DATA, NETWORKS OR INFORMATION.

With respect to fixed price Work Statements, Customer shall perform tests within 15 days after LightRiver notifies Customer that the Professional Services have been completed thereunder to determine compliance with the specifications set forth in the applicable Work Statement and shall promptly provide notice of noncompliance within such 15 day period. LightRiver shall, at its sole expense, promptly correct any noncompliance through the means and at the location it deems most appropriate as the sole and exclusive remedy for such noncompliance. Notwithstanding the foregoing, Professional Services shall be deemed accepted if (i) Customer fails to provide notice and details of noncompliance to LightRiver within 15 days after LightRiver notifies Customer of completion of the Professional Services or (ii) Customer places the products to which the services relate into service. Furthermore, notwithstanding anything herein to the contrary, LightRiver is not responsible for failure of the Professional Services to comply with specifications in the Work Statement due to the acts or omissions of Customer or other third parties or for those same reasons as warranty obligations are excluded under Section 3.

2. Maintenance Services:

(a) Maintenance Offerings: Subject to the T's and C's, LightRiver may offer maintenance and support services for the Products either on an annual basis for an annual fee ("Annual Maintenance") or on a time and materials basis ("Time and Materials Maintenance"), the overview description of which are set forth in LightRiver's then current applicable service data sheets related to the Product, as may be updated by LightRiver from time to time without notice as may be specifically quoted by LightRiver in a Quotation and as detailed in the applicable Order ("Maintenance Data Sheet"). Annual Maintenance and Time and Materials Maintenance are referred to collectively in the T's and C's as "Maintenance". Customer may purchase Maintenance from LightRiver from time to time in accordance with Section 1(b). Maintenance may be provided directly by LightRiver or resold from the Manufacturer through LightRiver.

(b) Annual Maintenance Fees. Customer agrees to pay to LightRiver any annual maintenance fee for Annual Maintenance as set forth in the applicable Order ("Annual Maintenance Fee"). LightRiver has the right to modify and/or restructure each Annual Maintenance Fee once per annum. In the event that Customer acquires additional Products at the site or within the network of any Products which are already under Annual Maintenance ("Add-On Products") then Customer is hereby obligated to place such Add-on Products under Annual Maintenance and agrees that

the Annual Maintenance Fee will automatically increase by the then current Annual Maintenance Fee for such Add-On Products. Customer agrees to issue an Order for Annual Maintenance for the Add-On Products concurrently with issuance of the Order for the Add-On Products. In the event that Customer fails to purchase and pay for Annual Maintenance for the Add-On Products then such failure shall be deemed a material breach of the T's and C's subject to the terms of Section 10 and LightRiver shall not be required to provide Annual Maintenance on the Products or the respective Add-On Products. The Annual Maintenance fee for the Add-On Products is included in the definition of Annual Maintenance Fee. LightRiver will issue an invoice for the initial Annual Maintenance Fee for Products upon shipment of the Product. LightRiver will issue the invoice for Annual Maintenance renewals 30 days prior to the end of the previous Annual Maintenance term.

(c) **Time and Materials Maintenance Fees.** Customer agrees to pay to LightRiver any Time and Materials Maintenance fees at the rate(s) as set forth in the applicable Order. LightRiver will issue the invoice for Time and Materials Maintenance monthly as such services are provided.

(d) Additional Maintenance Terms.

(i) **Customer Responsibilities.** Customer, at its sole expense, shall: (i) provide LightRiver access to the Products, facilities and other items and such assistance and information as LightRiver reasonably determines necessary for purposes of performing the Maintenance; (ii) promptly install and implement all Software Updates, if any, on the hardware for which the Software was licensed; and (iii) provide LightRiver with access to at least (a) one Support Contact (not to exceed four (4) Support Contacts) and (b) one business contact. The initial Support Contacts and business contact will be supplied in writing by Customer to LightRiver concurrently with issuance of the Order for Maintenance. Customer agrees to follow LightRiver's then current procedures for the applicable Maintenance program when requesting Maintenance services for a Product from LightRiver. LightRiver may among other reasons decline to accept Maintenance Orders on Products at Customer locations where the performance costs of the Maintenance are determined by LightRiver to be cost prohibitive. All Products must be in good operating condition at the then current revision levels specified by LightRiver in order to be eligible for Maintenance at commencement of an Order for such Maintenance. LightRiver has the right to charge its then current time and materials rates to bring such Products to that level of operation. All replaced Products and parts which occur under Maintenance shall be the property of LightRiver.

(ii) **Software Updates.** Any Software Updates which are supplied to Customer under Maintenance are subject to the terms of the applicable license agreement between Customer and LightRiver for Software, except that the warranty provisions thereof do not apply. Software Updates are for installation and implementation by Customer on the hardware for which the Software was originally licensed only.

(iii) **Maintenance Exclusions.** The exclusions to warranty obligations set forth in Section 3 are also exclusions to Maintenance obligations under the T's and C's and the applicable Order. Maintenance does not include installation and implementation of any Products or Software Updates nor does it include on site support unless specifically provided in the applicable Order. In addition, Maintenance does not include any maintenance and support services with respect to Products which LightRiver reasonably determines that it can no longer maintain or service properly due to extensive wear and tear or deterioration.

(iv) **LightRiver Obligations.** Subject to the terms of the T's and C's, LightRiver will use commercially reasonable efforts to perform the Maintenance obligations with respect to the Products as set forth in the applicable Maintenance Data Sheet.

(e) **Annual Maintenance Term and Renewal.** Unless earlier terminated in accordance with Section 10 of the T's and C's the initial Annual Maintenance term for Products and Add-On Products will commence thirty days after shipment of the applicable Product or Add-On Product for which the Annual Maintenance is being provided and shall continue for a period of twelve (12) calendar months. Annual Maintenance will automatically renew for an additional twelve (12) month term unless either party has provided the other with written notice of non-renewal no less than thirty (30) days prior to the expiration of the then current term. In addition to LightRiver's right to update the Maintenance Data Sheets from time to time, LightRiver has the right to modify the Annual Maintenance terms set forth in the T's and C's on an annual basis.

3. Training:

(a) **Training.** Subject to the T's and C's, LightRiver may offer additional training (beyond that offered under its Professional Services offerings) with respect to the Products, the description of which is set forth in LightRiver's then current training offering data sheets, as may be updated by LightRiver from time to time without notice as may be specifically quoted by LightRiver in a Quotation or Work Statement and as detailed in the applicable Order ("Training"). Customer may purchase Training from LightRiver from time to time in accordance with Section 1(b).

(b) **Training Fees.** Customer agrees to pay to LightRiver the training fees as set forth in the applicable Order. LightRiver will issue the invoice for Training upon completion of the Training.

4. Additional Services Terms:

(a) **Expense Reimbursements.** Customer will reimburse LightRiver for all reasonable travel, living, lodging and other expenses incurred in connection with performance of the Services and warranty services. LightRiver will invoice Customer for such expenses on a monthly basis.

(b) **Product and Parts.** LightRiver may provide either new, reconditioned, refurbished or remanufactured Products or parts in the furnishing of Products, spares, replacement parts, repairs or Services under the T's and C's

(c) **Time and Materials Services.** The time and materials rates for Professional Services and Time and Materials Maintenance may be quoted (at LightRiver's election), either at (i) an hourly rate (minimum of four hours per session) or (ii) a daily rate, with in either case, hours worked per day over eight billed at 1.5 times the hourly rate and any amount of hours worked on weekends and holidays billed at two times the hourly rate.