Eastwind Communications, Inc.

Direct Comprehensive Support Plan Agreement - Oracle

Eastwind Agreement No. Company Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company Number: Customer P.O. No.

# Eligibility

This Direct Comprehensive Support Plan Agreement (“Agreement”) is between the undersigned (“Customer”) and Eastwind Communications Inc.

Currently supported (not discontinued) Products are eligible for support and services as described herein. Certain service limitations and restrictions may apply based upon Customer’s geographical location. A platform is a combination of a hardware device and/or enabling software provided by Eastwind and licensed under the appropriate Oracle/Eastwind End User License Agreement.

# Scope of Services

Support Services offered by Eastwind under this Agreement are outlined in the paragraphs below. Additional information is available through your Eastwind Account Representative and in the Plan Summary included at the end of this document as Attachment A.

## Support Model

### Direct Support Model:

This Agreement sets forth a Direct Comprehensive Support Plan under which Eastwind shall support the end-user/service-provider operations personnel directly.

## Warranty Coverage

Warranty coverage for products purchased from Eastwind by Customer are detailed in the applicable Vendor limited warranty provided to Customer with such products and/or in the Terms and Conditions for Product Purchase provided to Customer in connection with such purchased products.

## Technical Support

### Remote Technical Support (RTS)

Remote Technical Support consists of Telephone Assistance and E-mail support. RTS is designed to address the needs of experienced network operators who are encountering operating issues with the system. It is not designed to be a replacement for authorized system operations training or for installation services (See Attachment B for Installation Service Program details). At its sole discretion, Eastwind reserves the right to discontinue support at any time should it feel that the Customer is not sufficiently trained in the operations of the system.

Telephone Assistance shall be available **from 8:30 am to 5 pm Eastern Time during normal business days,** excluding reasonable Eastwind holidays. Emergency telephone support shall be available to the Customer’s Designated Callers 24 hours per day, seven (7) days per week, 52 weeks per year. **Customers must notify Eastwind of emergency issues via the telephone to ensure timely response.** The Tech Support Telephone phone number for Eastwind Communications is (508) 862-8620.

The Customer’s designated representatives may submit e-mail requests 24 hours per day, seven (7) days per week, 52 weeks per year. Eastwind shall receive and acknowledge receipt of E-mail and Web based requests within 24 hours, or the next business day, whichever is later.

Eastwind’s E-mail addresses for support requests are:

techsupport@eastwindcom.com.

### Critical On-Site Assistance

In the event Customer is unable to resolve problems utilizing Eastwind Remote Technical Support, Customer may request Eastwind to provide critical on-site assistance at Customer’s designated location. Eastwind Management approval is required, and is at Eastwind’s sole discretion. Geographical limitations and the availability of third-party travel services may impact Eastwind’s response time; however, Eastwind shall use commercially reasonable efforts to provide on-site support in a timely fashion. Customer shall reimburse Eastwind for all travel and lodging expenses incurred by Eastwind as aresult of On-Site Assistance.

### No Trouble Found

If the problem is determined to be outside of the vendor platform, then Customer will reimburse Eastwind for Eastwind’s hourly fee. If Eastwind was requested by Customer to go on site, travel and lodging expenses incurred as a result of On-Site assistance will also be reimbursed by Customer.

## Software Support - Oracle

### Oracle Communications Network Software Premier Support Features

• Program updates, fixes, security alerts and critical patch updates

• Upgrade scripts (availability may vary by program)

• Certification with most new third-party products/versions (availability may vary by program)

• Major product and technology releases, if and when made available at Oracle’s discretion, which may

include general maintenance releases, selected functionality releases, and documentation updates

• Oracle reserves the right to desupport any existing software release at any point in time

#  Term and Termination of Agreement

### Initial Term

The initial term of this Agreement shall be for a period of twelve (12), twenty-four (24), or thirty-six (36) months from the Term Start Date. The term length and Start Date are specified on the signature page of this Agreement.

### Renewal

Following the initial term, this Agreement may be renewed for additional successive twelve (12), twenty four (24), or thirty-six (36) month periods upon mutual written agreement of the parties prior to the expiration date of the current support contract. Quotes for renewal will generally be provided at least sixty (60) days prior to the end of the then current term.

### Termination

Eastwind may terminate this Agreement with thirty (30) days prior written notice to the Customer if the Customer is in material breach of this Agreement or in breach of payment obligations and has not cured such breach within such thirty (30) day period.

### Liability

Neither party shall be liable to the other on account of a termination, cancellation, or expiration of this Agreement. Neither party is liable for compensation or for damages of any kind, on account of the loss of: present or prospective profits on sales or anticipated sales, good will, expenditures, investments or commitments made in contemplation or anticipation of this Agreement or any transaction expected under it. Notwithstanding this provision, the termination, cancellation, or expiration of this Agreement shall not prejudice or otherwise affect the rights or liabilities of the parties with respect to products or services already sold under this Agreement, or any indebtedness then owing by either party to the other.

# Charges

### Annual Fee

Customer will be charged an annual fee, or a fee established based on the term purchased, for participation under this Agreement. The annual fee is provided in a separate quote.

Following the initial term of this Agreement, Eastwind may adjust charges upon a thirty (30) day written notification to the Customer.

### Invoicing

The Annual Fee, or the fee established based on the term purchased, for the Direct Comprehensive Support Plan will be invoiced to the Customer upon receipt of a signed Agreement from the Customer.

### Expenses

Materials, services, travel, and lodging expenses not covered by this Agreement will be billed to the Customer at or soon after the time the service is provided by Eastwind.

### Additional Charges

Charges are exclusive of all sales, use and like taxes, which are the responsibility of the Customer. Such taxes may be added as separate items on the invoice.

### Payment

Payment of all charges billed to Customer related to a renewal of the annual plan will be due to Eastwind within thirty (30) days from the date of invoice date. Interest shall accrue on past due amounts at 1.5% per month or the highest lawful rate, whichever is less.

# Customer Responsibilities

### Covered Systems

Customer agrees to place all installed Vendor systems under this Agreement. It is the Customer’s responsibility to provide Eastwind with the Serial Numbers of products to be covered under this agreement.

Customer must notify Eastwind when each system containing a licensed software product is deployed and where it is deployed. Any product re-locations must be provided to Eastwind within 30 days.

### Product Changes

Customer agrees that the use of any and all updates, changes, improvements, revisions, patches, data or documents furnished by Vendor in connection with this Agreement shall be governed by the terms and conditions of the relevant Oracle/Eastwind End User License Agreement and usage terms which can be found at http://www.eastwindcom.com/contract--licensing-information.html.

Customer agrees to install any and all updates, changes, improvements, revisions, or patches, furnished by Vendor to remedy reported problems.

While this Agreement is in effect, Customer agrees to maintain the systems supported under this Agreement, at the agreed-upon revision level, and also agrees to maintain a current back-up copy of the software release and configuration information.

### Support Responsibilities

The Customer is responsible for providing local and remote support for their deployed platforms. This includes administration, monitoring, diagnosis, troubleshooting and resolution of any application-related, or external network interfacing problems, and correcting configuration or operational errors.

The Customer will provide failure reporting, fault isolation, logs and failure information to Eastwind as requested in order for Eastwind to fulfill its support responsibilities as outlined in this agreement.

### System Access

In the case where Eastwind provides Critical On-Site Assistance as defined in Section 2.3.2 above, Customer shall provide full and free access to the system. In addition, Customer shall provide a trained person to be available at the in-service site.

Prior to Eastwind dispatch, Customer shall provide a trained person to be available at the in-service site that will work with the Eastwind technical representative to attempt to repair the problem through telephone consultation.

### Notifications

Customer shall provide Eastwind with a customer representative contact person name, E-mail address and phone number.

Name:

E-mail:

Phone Number:

Customer shall provide Eastwind with a customer representative contact person for notification of technical support information updates, process changes, etc.

Name:

E-mail:

Phone Number:

Customer shall provide Eastwind with the names and telephone numbers of Customer’s Designated Callers. Customer shall update this information when appropriate.

# Exclusions

Support provided under this Agreement shall not include (1) operating supplies and accessories; (2) service due to failure of hardware or software not provided by Eastwind; (3) service provided when the reported problem is caused by hardware, firmware, or media not supplied by Eastwind, (4) service provided when the reported problem is caused by operator error, by Customer’s negligence or improper use of the system, or by Customer’s failure to perform its responsibilities under Section 5.

# Limitations of Liabilities

IN NO EVENT SHALL EASTWIND BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, OR EXEMPLARY DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR USE, BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR STRICT LIABILITY OR OTHER LEGAL THEORY, EVEN IF EASTWIND AND/OR VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EASTWIND AND/OR VENDOR’S LIABILITY FOR ANY OTHER DAMAGES HEREUNDER SHALL BE LIMITED TO THE AMOUNT OF FEES PAID UNDER THIS AGREEMENT.

# General

(a) This Agreement shall be governed by the laws of the Commonwealth of Massachusetts exclusive of its conflicts of laws rules and exclusive of the United Nations Convention on Contracts for the International Sale of Goods; (b) Customer may not assign this Agreement without Eastind’s prior written consent; (c) Any notice under this Agreement shall be deemed properly given if mailed postage prepaid to the party at the address shown below; (d) This Agreement is the complete and exclusive statement of the contract between parties with respect to the subject matter contained herein. There are no other understandings, oral or written. Any amendment or modification of this Agreement must be in writing and signed by authorized representatives of the parties hereto; (e) Captions and headings contained in this Agreement have been included for ease of reference and convenience and shall not be considered in interpreting or construing this Agreement; (f) The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such party; (g) In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the party invoking this provision, the affected party’s performance shall be excused and the time for performance shall be extended for the period of delay or inability to perform due to such occurrence, provided however that this subsection (g) shall not apply to Customer’s payment obligations.

**9 Escalation**

**First call:**

Eastwind Support Line 508 862 8620

**Escalation:**

Michael Twomey, VP Product Management

508 862 8605, press 0 for follow-me service

Direct cell phone 508-215-8123

**2nd Escalation:**

Tony Agostinelli, President

508 862 8603, press 0 for follow-me service

Direct cell phone 508-685-1545

IN WITNESS WHEREOF, the undersigned have caused this agreement to be executed as of the dates set forth under their signatures below.

Term: 12 monthsTerm Start Date:

**Eastwind Communications: Customer:**

By: By:

Printed Name: Printed Name:

Title: Title:

Date Signed: Date Signed:

**Please return this signed agreement to:**

Eastwind Communications Inc.

75 Perseverance Way

Hyannis, Ma 02601

Attention: Customer Order Management

**Please provide addresses for Notice Purposes:**

Eastwind Communications Inc.

75 Perseverance Way

Hyannis, Ma 02601

Attention: Technical Support

**Attachment A**

**Direct Comprehensive Support Plan Summary and Pricing Chart**

|  | **Support Plan****Service Feature** | **Warranty** | **Direct Comprehensive Support Plan** |
| --- | --- | --- | --- |
| **Remote Technical Support** | Hours of Coverage9:00 AM to 5:30 PMEastern Time  | N/A | 9:00 am – 5:30 pm ET Remote Technical Support7 x 24 Emergency Support |
| **On-Site Assistance** | On-Site Assistance | $375/hour plus expenses Minimum 8 Hours | Travel Expenses Only |
| **Software Updates** | Software Fixes | 90 days from shipment: email support | Included |
| Minor and Maintenance Releases | N/A | Included(New functionality extra charge) |
| Right to Copy Fixes | N/A | Included |
| **Training** | Remote User Training  | N/A | $900/day per student minimum of 2 students |
| **On-site Installation** | On-site Installation & Turn-up of SBC  | N/A | Price based on customer requirements |
| **Remote Configuration** | Remote Provisioning and Turn-up of SBC | N/A | Price based on customer requirements. See Attachment B for further details |
| **Systems Operations** | Eastwind Operating Customer-owned systems  | N/A | Price based on customer requirements |

**Attachment B**

**Eastwind SBC/EOM/OCOM/ECB Remote Configuration Services Program**

**Overview**

Eastwind offers both on-site and remote installation services in support of Oracle applications. These services are designed to help customers get their new deployments up and running quickly while simultaneously helping customers learn how to install and operate the application software. To successfully leverage these services, it is incumbent on the customer to provide certain key pieces of information (e.g. Network Diagram) prior to the SBC being shipped from Eastwind.

**Installation Program Components**

Phase 1: Pre-shipment To-do List

1. Review Oracle documentation - Customer
2. Complete Network Diagram and Provide routing/translation requirements – Customer and Eastwind
3. Create Acceptance Test Plan – Customer.
4. Sign off on Acceptance Test Plan - Eastwind
5. Confirm availability of rack and power and confirm turn-up dates for network connectivity and power – Customer

Phase 2a: Eastwind On-site Assistance (Optional Extra)

1. Physically install and connect servers and/or hardware
2. Load and Configure application software
3. Place initial test calls and trouble-shoot to establish and validate proper call processing

Phase 2b: Eastwind Remote Assistance

a. Physically install and connect SBC - Customer

1. Provide Eastwind with remote access via IP – Customer
2. Load and Configure application software - Eastwind
3. Place initial test calls and trouble-shoot to establish and validate proper call processing – Customer and Eastwind

**Conditions and Requirements**

1. Customer’s application software must be covered under existing Eastwind Support Plan
2. For pricing, please ask Eastwind Sales Representative for a quote