Eastwind Communications, Inc.

Direct Comprehensive Support Plan Agreement – Public Cloud

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.

# 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

## 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 on matters solely related to the functioning of the public cloud images provided.

## Warranty Coverage

Warranty coverage for products purchased from Eastwind by Customer is for the duration of this contract.

## 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 A 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](mailto:techsupport@eastwindcom.com).

### 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.

## Image Support

### Software Update Coverage

From time to time Oracle will release new software functionality applicable to the Eastwind-provided image. Should Customer wish to upgrade to a specific release, Eastwind will create, test, and provide to customer a new image based on the preferred software load.

### All images provided are subject to the underlying software availability and support of Oracle

# Term and Termination of Agreement

### Initial Term

The initial term of this Agreement shall be for a period of twelve (12) months from the Term Start Date. The Start Date is specified on the signature page of this Agreement.

### Renewal

Following the initial term, this Agreement may be renewed for additional successive twelve (12) 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 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 End User License Agreement and usage terms.

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 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

Customer agrees to provide Eastwind remote access to their system via a mutually agreed upon method.

### 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 2 for follow-me service

Direct cell phone 508-215-8123

**2nd Escalation:**

Tony Agostinelli, President

508 862 8603, press 2 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**

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

**Overview**

Eastwind offers 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 Eastwind beginning configuration.

**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 2: Eastwind Remote Assistance

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