



G-Technology®

# G-TECHNOLOGY MASTER ANNUAL CUSTOMER SUPPORT AGREEMENT

## **MASTER ANNUAL CUSTOMER SUPPORT AGREEMENT**

This Master Annual Customer Support Agreement (the "Agreement") governs the provision of Support from G-Technology for the Products. By purchasing Support, you agree to these terms.

### **1. PROVISION OF SERVICE**

1.1 Support Offerings. Customer has purchased or licensed G-Technology products (herein after referred to as the "Products"), either directly or from an authorized G-Technology reseller, for internal use and desires support services ("Support") from G-Technology for such Products. Subject to the terms and conditions of this Agreement and Customer's payment of the applicable fees, G-Technology shall perform Support pursuant to the Support Offering purchased by Customer.

1.2 A description of the available Support Offerings ("collectively the "Support Offerings") is available on G-Technology's website.

1.3 Contact Point. Customer shall designate a point of contact for Support.

### **2. TERM & SUPPORT PERIODS**

This Agreement shall commence on the Effective Date of purchase of Support for G-Technology Products. Support periods shall cover the period of time purchased. In the event support lapses, customer will be required to pay to bring support current, and system inspection by an authorized G-Technology support engineer may be required before support will be reinstated.

### **3. FEES**

3.1 Customer will purchase Support through an authorized G-Technology reseller. Payment for Support is due in advance of performance of the Support Services by G-Technology.

3.2 Once paid, all Support fees are non-refundable.

3.3 Taxes. Customer shall be responsible for any applicable sales, use, or any value added or similar taxes payable with respect to provision of Support to Customer, or arising out of or in connection with this Agreement, other than payroll taxes and taxes imposed on G-Technology's income.

### **4. RELATIONSHIP OF THE PARTIES**

G-Technology is an independent contractor and neither G-Technology nor its personnel shall be deemed employees of Customer. G-Technology reserves the right to determine the manner in which it performs Support. Except as set forth in the description of the Support Offerings, and subject to Customer's normal business hours and security requirements, G-Technology shall be solely responsible for determining the times and locations at which G-Technology performs Support. So long as G-Technology's performance of Support is not materially adversely affected, G-Technology may replace or reassign G-Technology personnel designated to perform Support.

## 5. RESPONSIBILITIES OF THE PARTIES

5.1 G-Technology's Responsibilities. G-Technology shall provide Support as described in the applicable Support Offering. G-Technology may modify the Support Offerings from time to time.

5.2 Customer's Responsibilities. Customer may be required to purchase Support at the same Support Offering to cover all similar Products that it has purchased or acquired. Customer shall also provide G-Technology with access to Customer's materials, systems, information, facilities, and employees, including without limitation, remote access, as G-Technology may reasonably require in order to deliver Support. G-Technology reserves the right to audit Customer's records in order to ensure that Customer has paid all required Support Fees.

## 6. TERMINATION

In the event of a material breach of this Agreement by either party where no other remedy is specified, the non-breaching party may terminate this Agreement by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. This Agreement shall automatically terminate thirty (30) days following such notice, unless the breaching party cures or makes substantial progress, in the non-breaching party's reasonable discretion, in curing the breach before the expiration of the 30-day period.

## 7. EXCLUSIONS ON SUPPORT

G-Technology shall have no obligation to provide Support in the event: (i) Customer has not paid the Support fee for the applicable Product(s), (ii) Customer modifies the Product(s) without G-Technology's written authorization, (iii) Customer has failed to perform normal preventative maintenance in accordance with G-Technology's recommendations, (iv) the problem is due to Customer's negligence, or hardware or software not provided by G-Technology, (v) the problem is due to damage to the Product not caused by G-Technology, (vi) G-Technology has declared end-of-support or discontinued support for certain Products, or (vii) there are causes not within G-Technology's control. In the event the Products are used or refurbished and/or Customer is not the original user of the Products, Customer may be required to ship such Products to G-Technology for recertification prior to G-Technology providing Support and pay G-Technology's then-current recertification fee.

## 8. LIMITED WARRANTIES

8.1 Limited Warranty. G-Technology warrants to Customer that G-Technology will deliver Support in a competent and professional manner. Customer's sole remedy for breach of the foregoing warranty shall be G-Technology's re-delivery of the non-conforming work.

8.2 Limitations on Warranties. Except as specifically set forth in this Section, G-Technology does not warrant that Support will meet Customer's requirements. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTY ARISING OUT OF THE COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

## 9. LIMITATION OF LIABILITY

9.1 Exclusion of Certain Claims. IN NO EVENT SHALL EITHER PARTY BE LIABLE (WHETHER IN TORT OR CONTRACT, UNDER STATUTE OR OTHERWISE) FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION AND THE LIKE, ARISING OUT OF ITS PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, EVEN IF G-TECHNOLOGY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR G-TECHNOLOGY, THIS APPLIES TO ITS AFFILIATES, INCLUDING WESTERN DIGITAL CORPORATION AND ANY OF WESTERN DIGITAL CORPORATION'S SUBSIDIARIES.

9.2 Limitation. G-Technology's liability arising out of this Agreement shall in no event exceed the fees paid by Customer to G-Technology during the twelve (12) month period prior to when such liability arose under this Agreement.

## 10. CONFIDENTIAL INFORMATION

10.1 Confidential Information. Each party understands that the other possesses and will possess Confidential Information that is important to its business and may disclose information in the course of this Agreement that is considered to be trade secrets, highly confidential, or sensitive. For purposes of this Agreement, "Confidential Information" includes, but is not limited to, information about trade secrets, computer programs, designs, technology, proprietary software, algorithms, circuits, mask works, layouts, ideas, know-how, processes, formulas, compositions, data, techniques, improvements, inventions (whether patentable or not), works of authorship, business and product development plans, the salaries and terms of compensation of employees, customers and other information concerning the party's actual or anticipated business, research or development, or which is received in confidence from any other person.

10.2 Restrictions on Use. In the absence of a valid confidentiality agreement between the parties, or upon the expiration or termination thereof, the following provisions shall apply. For period of five (5) years from the date of disclosure, each party agrees to keep all Confidential Information in strictest confidence and trust and to take all reasonable precautions to protect against its disclosure or misuse. Neither party will disclose any Confidential Information except to employees or contractors with a need to know for purposes of delivering the Support. The parties shall not, however, be required to treat as confidential any Confidential Information which: (i) is in the public domain by reason of prior publication not directly or indirectly resulting from any act or omission of the recipient or its employees or subcontractors, or (ii) was already properly known to the recipient (other than in connection with this Agreement) without restriction on use or disclosure at the time of disclosure under this Agreement. All Confidential Information shall be returned to the disclosing party upon request and upon termination of this Agreement.

## 11. MISCELLANEOUS

11.1 Amendments and Waivers. Any term of this Agreement may be amended or waived only with the written consent of the parties.

11.2 Sole Agreement. This Agreement, including the description of the applicable Support Offering, constitutes the sole agreement of the parties and supersedes all oral agreements, prior writings and other printed terms with respect to the subject matter hereof.

11.3 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by an industry recognized and reputable delivery service (such as Federal Express or UPS), or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, if such notice is addressed to the party to be notified at such party's address as set forth above or as subsequently modified by written notice.

11.4 Choice of Law. The laws of the State of California shall govern the validity, interpretation, construction, and performance of this Agreement, without giving effect to the principles of conflict of laws.

11.5 Force Majeure. If performance of this Agreement, or any obligation hereunder except for the making of payments, is prevented, delayed, restricted or interfered with by reason of strike, fire, flood, weather, earthquake, governmental acts or other causes or events beyond either party's reasonable control, the other party shall be excused from performance.

11.6 Assignment. G-Technology may assign or subcontract its rights and/or obligations, in whole or in part, to another G-Technology entity or a third party without the prior consent of Company. Company may not assign its rights and/or obligations without G-Technology's prior written consent. Support is not transferrable.

11.7 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such provision shall be excluded from this Agreement, the balance of the Agreement shall be interpreted as if such provision were so excluded and the balance of the Agreement shall be enforceable in accordance with its terms.