

# HARDWARE MAINTENANCE AND SUPPORT PLAN

For customers located in Canada or elsewhere (excluding the U.S.A.), Entrust means Entrust Limited. For customers located in the U.S.A., Entrust means Entrust, Inc. Entrust customers will receive the following second line support features under this Plan, subject to the terms and conditions herein.

## 1. DEFINITIONS

For the purposes of this Plan, in addition to the capitalized terms defined elsewhere in this Plan, the following terms shall have the meaning ascribed to them as follows;

- (a) **“Affiliate”** of a party means any corporation or other entity that a party directly or indirectly controls, is controlled by or under common control with. In this context, an entity “controls” a corporation or other entity if it owns fifty percent (50%) or more of the voting rights for the board of directors or other mechanism of control for the corporation or other entity.
- (b) **“Confidential Information”** means any data, designs, specifications, know-how, trade secrets, inventions, source code, processes, algorithms, software programs, firmware, schematics, designs, business, marketing, technical, scientific or other information disclosed by either party (including its Affiliates) which, at the time of disclosure is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties (or its Affiliates), exercising reasonable business judgment, to be confidential.
- (c) **“Product”** means the hardware product purchased from Entrust for which Entrust has agreed to provide Support services.
- (d) **“Support”** means the maintenance and Upgrade services set forth in this Plan.
- (e) **“Support Anniversary Date”** means the annual anniversary from the date that Support was initially purchased by Customer.
- (f) **“Support Plan”** means the Silver Support Plan, Gold Support Plan or the Platinum Support Plan, as selected and paid for by Customer, and as described in this Plan.
- (g) **“Upgrade”** means: (i) the hardware manufacturer’s updates to the Product, including, but not limited to, any drivers, libraries or firmware, and (ii) manufacturer’s documentation updates. Certain Upgrades may be required and/or mandated by the third party manufacturer.

## 2. SUPPORT PROVISION

Entrust shall provide Customer with the Support services set out in this Plan in accordance with the Support Plan selected and paid for by Customer.

## 3. SUPPORT TERM

If a Customer elects to purchase Support, Support shall begin on the date that Support is purchased and shall continue for a twelve (12) month period (**“Support Term”**). Unless a party notifies the other party at least thirty (30) days prior to the end of the Support Term or a Renewal Term (as defined below) with notice of its election not to continue Support, Support shall automatically renew pursuant to the terms of the then-current support policies for successive twelve (12) month periods (each such term a **“Renewal Term”**), upon payment by Customer of applicable renewal fees. The renewal fees for Support to be provided during a Renewal Term shall be due upon the commencement of such Renewal Term.

## 4. SUPPORT PLANS

This Plan describes Support services provided under the Entrust Silver Support Plan. The Gold Support Plan entitles Customers to receive the services provided under the Silver Support Plan plus the additional benefits set forth in Section 12 below. The Platinum Support Plan entitles Customers to receive the services provided under the Silver Support Plan plus the additional benefits set forth in Section 13 below.

## 5. SUPPORT FEES

If Customer acquires additional Product and wishes to purchase Support services for such additional Product, the Support services fees will be as set out in the Entrust quotation document. Upon payment of such fees, the Support services for such additional Product shall be governed by the terms and conditions of this Plan. The Support service fees for such additional Product shall be pro-rated for the balance of the Support Term or Renewal Term in which such Product was acquired. The Support service fees for such additional Product will be combined on the next Support Anniversary Date with the Support

service fees paid by Customer for previous Product acquired by Customer. Applicable taxes shall be paid by Customer. Support service fees shall be paid by Customer in advance of each Support Term and/or Renewal Term. All amounts payable under this Plan shall be paid by Customer to the invoicing Affiliate of Entrust within thirty (30) days of the date of the invoice. Customer may reinstate lapsed Support services for any currently-supported version of the Product by paying all Support service fees in arrears, in addition to any reinstatement fees that may be payable according to Entrust's then-current policy for Support services reinstatement.

## 6. SUPPORT SERVICES

6.1 Services. Entrust shall provide Support services to Customer provided that the Product is operating at either (i) the then-current version of the firmware, libraries and drivers, or (ii) the immediately preceding version of the firmware, libraries and drivers, as identified and published by Entrust or its supplier from time to time. Customer's Product must be, in Entrust's reasonable opinion, in good operating condition. In addition, in those jurisdictions allowed by law, the Product may be subject to a purchase money security interest (PMSI) until all amounts due for the Product have been received by the third party manufacturer. Customer agrees that Entrust and its Affiliates may collect and use technical information gathered as part of the product support services provided to Customer, if any, related to the Product. Entrust may use this information solely to improve its products or to provide customized services or technologies to Customer and will not disclose this information in a form that personally identifies Customer. Customer shall establish and maintain the organization and process to provide "**First Line Support**" for the Product directly to its end users. First Line Support shall include but not be limited to: (a) a direct response to its end users with respect to inquiries concerning the performance, functionality, or operation of the Product, (b) a direct response to its end users with respect to problems or performance deficiencies with the Product, (c) a diagnosis of problems or performance deficiencies in the Product, (d) a resolution of problems or performance deficiencies in the Product, (e) regarding IBM appliances, installation of Customer Replaceable Units ("CRU"), and (f) regarding IBM appliances, completion of required engineering changes.

6.2 Customer Efforts. If, after commercially reasonable efforts, Customer is unable to diagnose or resolve problems or deficiencies in the Product, Customer may contact Entrust for Second Line Support (as defined below) and Entrust shall provide Second Line Support for the Product in accordance with the Support Plan purchased by Customer.

6.3 Second Line Support. "**Second Line Support**" may include but not be limited to: (i) diagnosis of problems or performance deficiencies in the Product and the resolution thereof, or (ii) coordination of the repair or replacement of a malfunctioning unit with the third party manufacturer.

6.4 Second Line Support Availability. Second Line Support shall be provided through email, internet or telephone support as provided during Entrust's normal technical support business hours or as outlined in the Support Plan purchased by Customer.

6.5 Customer Contacts. Second Line Support shall be provided by Entrust's trained support representatives. Entrust shall not provide Second Line Support directly to Customer's end users.

## 7. FORMS OF SUPPORT

### **Telephone Support**

- ◆ technical support assistance and diagnostics support provided by a support specialist.

### **Entrust Extranet Web Support**

- ◆ on-line access to technical and product-specific information secured using Entrust software
- ◆ searchable knowledge base which provides self-diagnosis and resolution capabilities
- ◆ on-line creation and updating of service requests

### **E-mail Support**

- ◆ technical assistance through a dedicated e-mail address is provided to Customer for correspondence regarding existing service requests

### **Product Warranty and Replacement**

- ◆ depending on the particular Product purchased by Customer, repair or replacement of a malfunctioning Product under warranty may be provided directly by the third party manufacturer or coordinated through Entrust in accordance with

Entrust's warranty provisions with the third party manufacturer. Entrust will pass through to Customer any applicable third party manufacturer warranty.

- ◆ Entrust recommends that Customer stock an adequate number of spare or stand-by Products.

## 8. COVERAGE HOURS

### Telephone Support

- ◆ unlimited telephone support accessible between 8:00 a.m. to 8:00 p.m. Eastern Time (7:00 a.m. to 7:00 p.m. GMT for European customers), Monday to Friday.

### Entrust Extranet Web Support

- ◆ accessible 24 hours a day, 7 days a week

### E-mail Support

- ◆ accessible 24 hours a day, 7 days a week

## 9. PROBLEM CLASSIFICATION

When the Customer reports an incident, Entrust will, in consultation with the Customer, first classify the incident according to its severity and nature. Severity 1 and 2 incidents are limited to incidents that occur on a "**Production System**" (i.e. active users outside of a test lab environment). The incident will then be logged in Entrust's incident tracking system and classified into one of the following categories below:

**Severity 1:** A critical error which completely disables the Product on a Production System for which no work-around exists.

**Severity 2:** An error that significantly affects the functionality of the Product on a Production System.

**Severity 3:** An isolated error which does not significantly affect the functionality of the Product.

## 10. RESPONSE TIMES

### Telephone Support

Entrust shall use commercially reasonable efforts to provide an initial call back response to all Customer calls with reports of support incidents within:

- ◆ One (1) hour of Entrust's receipt of notice of a Customer incident.

During the initial response, Entrust and Customer shall mutually determine and classify the severity of the incident. Incidents shall be defined as a reported problem which is unique from any other opened support incident reported by Customer. Incidents will be handled according to the level of severity, as defined in Section 9, in the following manner: Severity 1 or Severity 2 incident - Entrust shall promptly initiate and continue diagnostic and remedial measures, using qualified employees and in a workmanlike manner conforming to standards generally accepted in the maintenance & support industry. Entrust shall make commercially reasonable efforts to resolve and correct a **Severity 1** incident within forty-eight (48) hours from notification. The resolution and correction will be implemented through a work around or currently available Product release. If changes are required in the Product, Entrust shall make commercially reasonable efforts to resolve and correct a Severity 1 incident as soon as practicable. Entrust shall make commercially reasonable efforts to resolve and correct a **Severity 2** incident within five (5) continuous business days from notification. If changes are required in the Product, Entrust shall make commercially reasonable efforts to resolve and correct a Severity 2 incident as soon as practicable. Such resolution and correction may be provided to the Customer as a fix or work-around. For Severity 1 and Severity 2 incidents, Entrust shall advise Customer periodically at reasonable intervals as to the progress made by Entrust in diagnosing and/or correcting any reported incident.

In the event of a **Severity 3** incident, Entrust will make commercially reasonable efforts to provide a solution within twenty (20) business days. If changes are required in the Product, Entrust shall make commercially reasonable efforts to resolve and correct a Severity 3 incident as soon as practicable.

### Entrust Extranet Web Support

- ◆ Entrust shall use commercially reasonable efforts to provide an initial response to Customer's reports of an incident submitted via the Entrust Extranet within one (1) business day from Entrust's receipt of Customer's notice of an incident. Incident creation via the Entrust Extranet is provided for Severity 3 incidents only.

### **E-mail Support**

Entrust shall use commercially reasonable efforts to provide an initial response to Customer's reports of an incident by e-mail within one (1) business day from Entrust's receipt of Customer's notice of an incident. Incident creation via e-mail is provided for Severity 3 incidents only.

### **11. ON-SITE DIAGNOSIS**

Entrust may, at its discretion, escalate the resolution of a Severity 1 or Severity 2 incident which may include, without limitation, on-site diagnosis and resolution and other appropriate steps ("**Escalation**") at Entrust's sole expense. If such Escalation results from an incident reported by the Customer which is subsequently determined to be due to causes other than the Product, Customer shall pay to Entrust its then-published time and materials rate and any out-of-pocket expenses for such Escalation.

### **12. GOLD SUPPORT ADDITIONAL BENEFITS (NOT AVAILABLE FOR IBM APPLIANCES)**

The following additional benefits are available to Gold Support service subscribers:

#### **Telephone Support**

- ◆ unlimited basic support accessible 24 hours a day, Monday to Friday, weekends and Canadian holidays excepted.

#### **Response Time**

Entrust shall make commercially reasonable efforts to resolve and correct a Severity 1 incident within twenty-four (24) hours from notification. If changes are required in the Product (including, but not limited to, any parts repair/replacement), Entrust shall make commercially reasonable efforts to resolve and correct a Severity 1 incident as soon as practicable.

### **13. PLATINUM SUPPORT ADDITIONAL BENEFITS**

The following additional benefits are available to Platinum Support service subscribers:

#### **Telephone Support**

- ◆ unlimited basic support accessible 24 hours a day, seven (7) days a week, on-site service for Product hardware issues.

#### **Response Time**

Entrust shall make commercially reasonable efforts to resolve and correct a Severity 1 incident within twenty-four (24) hours from notification. If changes are required in the Product (including, but not limited to, any parts repair/replacement), Entrust shall make commercially reasonable efforts to resolve and correct a Severity 1 incident as soon as practicable.

For IBM appliances, from time of problem determination, a technician will be dispatched to Customer premises to replace failed components. The response time target for this service is four (4 hours). This service is available in specific geographic locations only.

### **14. RELEASE SERVICES**

For as long as Customer is receiving and paying for Support services, Entrust shall provide Customer with Upgrades at no additional cost, provided such Upgrades are generally available from the third party manufacturer at no additional cost.

### **15. ENHANCED SUPPORT SERVICES**

Subject to the availability of qualified personnel, Entrust will provide Enhanced Support services on an ad-hoc basis as requested by the Customer. This may include but not be limited to, on-site installation assistance, training, or problem diagnosis and resolution. These services will be charged at Entrust's then-current applicable rate plus related expenses as mutually agreed upon in advance between Entrust and the Customer.

### **16. ENGINEERING CHANGES (FOR IBM APPLIANCES ONLY)**

Entrust reserves the right to require engineering changes to the Products where such engineering changes are mandated to satisfy certain requirements such as (but not limited to) government standards, protection of data integrity, elimination of non-conformance, safety or environmental reasons. Entrust will provide notice to Customer as soon as reasonably practicable prior to the required engineering change.

For engineering changes which Entrust designates as requiring installation services by Entrust, Entrust, an Entrust subsidiary company or an Entrust-designated service provider will provide such services.

For engineering changes which Entrust designates as requiring Customer set-up, Entrust will provide installation instructions. Customer shall make commercially reasonable efforts to effect the installation of the engineering change within a reasonable time period. If Customer is unable to have the engineering change implemented in the manner and time as specified by Entrust, Entrust may install or cause to be installed the engineering change and Entrust may charge Customer for all costs associated with the installation, including the cost of Entrust labor and travel expenses. In addition, Customer may be required to permit access for IBM to install or cause to be installed an engineering change. At Entrust's option, such installation service may be performed at an Entrust location or at Customer's location. If Entrust requests the return of parts displaced by the installation of an engineering change, Customer will return those parts to Entrust, at Entrust's expense, within ninety (90) days after the installation of such engineering change and such parts shall become property of Entrust.

#### **17. CUSTOMER REPLACEABLE UNITS (FOR IBM APPLIANCES ONLY)**

If a problem can be resolved with a CRU (e.g., hard disk drive), Entrust will arrange to send a CRU to the Customer site.

#### **18. SUPERSEDED AND DISCONTINUED PRODUCTS**

**Superseded Products.** Support services shall be provided for a period of three (3) years from the date that a Product was initially purchased by the Customer. Entrust may, in its sole discretion, offer Customer extended support as an extra-cost support service for a period of one (1) year after the initial three (3) years of support, provided such extended support services are available from the third party manufacturer.

**Discontinued Products.** Entrust reserves the right to replace discontinued Product with replacement Product and negotiate with the Customer the additional cost, if any, provided that any such additional cost is negotiated in good faith by Entrust and the Customer and equitably reflects Customer's need or desire for any additional functionality in the replacement Product.

#### **19. EXCLUDED SERVICES**

Entrust shall have no obligation to provide Support services under this Plan if an incident is caused by: (a) relocation, movement, improper operation, neglect or misuse of the Product, (b) Customer's failure to maintain proper site or environmental conditions, (c) any fault of Customer's agents or employees, (d) any attempts at repairs, maintenance, or modifications to the Product performed by other than authorized service personnel of Entrust, (e) casualty, act of God, strikes, riot, war, terrorism, or the unauthorized acts of third parties, (f) failure or interruption of any electrical power, telephone or communication line or like cause, (g) service for the Product for which all required maintenance releases have not been implemented by Customer, or (h) any other cause external to the Product except ordinary use. Entrust shall have no obligation to stock spare Products. Such responsibility remains with Customer.

#### **20. SUPPORTED PRODUCTS**

Support services shall be limited to Product operating on either (i) the then-current version of the firmware, libraries and drivers, or (ii) the immediately preceding version of the firmware, libraries and drivers, as identified and published by Entrust or its supplier from time to time. Support services for Product operating on outdated firmware, libraries and drivers may be provided, at Entrust's sole discretion. Entrust reserves the right to discontinue Support services for a Product upon three (3) months prior written notice to Customer.

#### **21. CONFIDENTIALITY**

Each party (including its Affiliates) shall retain the Confidential Information of the other party (including its Affiliates) in confidence and shall use and disclose it solely for the purpose of, and in accordance with, this Plan. Each party (including its Affiliates) shall only disclose Confidential Information of the other party (or any of its Affiliates) to those of its employees with a need to know such Confidential Information. Each party (including its Affiliates) shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, to prevent the unauthorized use or disclosure of the other party's (or any of its Affiliates) Confidential Information.

Neither party (or any of its Affiliates) shall be bound by any obligations restricting disclosure and use set forth in this Plan with respect to Confidential Information of the other party (or any of its Affiliates), or any part thereof, which:

- (i) was known to the receiving party (or any of its Affiliates) prior to disclosure;
- (ii) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of this Plan;

- (iii) was disclosed to the receiving party (or any of its Affiliates) by a third party, provided that such third party is not in breach of any confidentiality obligation in respect of such information; or
- (iv) is independently developed by the receiving party (or any of its Affiliates).

If the receiving party (or any of its Affiliates) is compelled pursuant to legal, judicial, or administrative proceedings, or otherwise required by law, to disclose Confidential Information of the disclosing party (or any of its Affiliates), the receiving party (or, if applicable, its Affiliates) shall use reasonable efforts to (i) seek confidential treatment for such Confidential Information, and (ii) provide prior notice to the disclosing party (or, if applicable, its Affiliates) to allow the disclosing party (or, if applicable, its Affiliates) to seek protective or other court orders.

**22. DISCLAIMER OF WARRANTY**

**ENTRUST AND ITS SUPPLIERS DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS WHETHER EXPRESS, IMPLIED, STATUTORY, ARISING BY USAGE OF TRADE, OR OTHERWISE, WITH RESPECT TO THE SUPPORT SERVICES PROVIDED UNDER THIS PLAN, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.**

**23. LIMITATION OF LIABILITY**

**IN NO EVENT SHALL ENTRUST OR CUSTOMER (INCLUDING SUCH PARTY'S AFFILIATES, SUBCONTRACTORS, AGENTS, SUPPLIERS, DIRECTORS OR EMPLOYEES) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, RELIANCE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) WHETHER ARISING FROM CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN THIS PLAN, IN NO EVENT SHALL ENTRUST'S TOTAL CUMULATIVE LIABILITY PURSUANT TO THIS PLAN EXCEED THE SUPPORT FEES PAID BY CUSTOMER TO ENTRUST HEREIN.**

**NOTWITHSTANDING THE FOREGOING, NO LIMITATION OF EITHER PARTY'S LIABILITY SET FORTH IN THIS PLAN SHALL APPLY TO (I) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (II) DAMAGES ARISING FROM A PARTY'S INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR (III) CLAIMS FOR INJURY TO INDIVIDUALS OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE NEGLIGENCE OF SUCH PARTY OR ITS EMPLOYEES, SUBCONTRACTORS OR AGENTS.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SUPPORT PLAN, ENTRUST IS NOT RESPONSIBLE FOR ANY OF CUSTOMER'S CONFIDENTIAL, PROPRIETARY OR PERSONAL INFORMATION CONTAINED OR RESIDING IN ANY PRODUCT WHICH IS RETURNED TO ENTRUST OR TO THE THIRD PARTY MANUFACTURER.**

**24. TERMINATION**

If either party is in material breach, or fails to perform one or more of its material obligations under this Plan, the other party may, by written notice to the party in material breach, require the remedy of the material breach or the performance of the material obligation and, if the party so notified fails to remedy or produce a reasonable plan to remedy (which if such plan is not followed by the breaching party shall entitle the other party to terminate this Plan immediately), or perform within thirty (30) days of the written notice, declare the party in material breach to be in default and terminate this Plan. Sections 1, 21, 22, 23 and 25 to 34 shall survive any termination or expiration of this Agreement. All payment obligations shall survive any termination or expiration of this Agreement.

**25. EXPORT RESTRICTIONS**

The Product and related information is subject to export and import restrictions. Customer shall comply with any laws which may impact Customer's right to export, import or use the Product or related information (including, without limitation, United States and Canadian export laws). Customer shall not use the Product or related information for any purposes prohibited by export laws, including, without limitation, nuclear, chemical or biological weapons proliferation. Customer shall be responsible for procuring all required permissions for any subsequent export, import or use of the Product or related information.

**26. FORCE MAJEURE**

Neither party shall be deemed in default hereunder or liable for any loss or damage resulting from delays in performance or from failure to perform or comply with the terms of this Plan due to any causes beyond its reasonable control, which causes include but are not limited to acts of God or the public enemy; riots and insurrections, terrorism, war, accidents, fire, strikes

and other labor difficulties (whether or not the party is in a position to concede to such demands), embargoes, judicial action, lack of or inability to obtain export permits or approvals, necessary labor, materials, energy, utilities, components or machinery, acts of civil or military authorities.

**27. GOVERNING LAW**

If the Customer is located in Canada or elsewhere (excluding the U.S.A.), this Plan shall be governed by the laws of the Province of Ontario, Canada. If the Customer is located in the U.S.A., this Plan shall be governed by the laws of the State of New York, U.S.A. No choice of laws rules of any jurisdiction shall apply to this Plan. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Plan is expressly excluded.

**28. INCLUSION OF AFFILIATES**

Each party warrants it has the authority to bind its Affiliates to the provisions of this Plan. Entrust may use one or more Affiliates to perform its obligations under this Plan, provided that such use will not affect Entrust's obligations hereunder. Customer may extend the rights designated for Affiliates under this Plan to its Affiliates, provided that any such Affiliates agree to comply with the obligations, and otherwise be subject to the terms and conditions, of this Plan and that Customer shall cause each such Affiliate to comply with the terms and conditions of this Plan to the full extent as if the Affiliate were a party hereto, and that any act or omission relating to this Plan (including without limitation a breach hereof) by such Affiliate shall constitute an act or omission of Customer.

**29. ASSIGNMENT**

Neither the Customer nor Entrust shall assign this Plan, any interest herein or any rights hereunder without the prior written consent of the other party, except that either party may assign this Plan, with written notice to the other party, to any party which acquires all or substantially all of its related business by merger, sale of assets, or otherwise to an Affiliate of such party.

**30. NOTICE**

Unless otherwise expressly provided for in this Agreement, all notices to Entrust must be in writing and delivered either in person or by means evidenced by a delivery receipt, to the person(s) and address specified below. Such notice will be effective upon receipt.

For Entrust:

Two Lincoln Centre  
5420 LBJ Freeway, Suite 300  
Dallas, TX 75240  
Attention: Chief Legal Officer  
Fax: (972) 728-0447

With a copy to:

1000 Innovation Drive  
Ottawa, ON K2K 3E7  
Canada  
Attention: Legal Dept.

Notices to Customer shall be sent via notification on Entrust's website or in writing (including facsimile or electronic mail) to the address provided on the order acknowledgment, purchase order or a separate document incorporating the terms of this Agreement.

**31. WAIVER**

The failure of a party to claim a breach of any term of this Plan shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term.

**32. SEVERABILITY**

In the event that any provision of this Plan is found to be invalid, void or unenforceable, the parties agree that unless such provision materially affects the intent and purpose of this Plan, such invalidity, voidability or unenforceability shall not affect the validity of this Plan nor the remaining provisions herein.

**33. NO PARTNERSHIP**

Nothing contained in this Plan shall be deemed to constitute either party as the partner, agent or legal representative of the other party or to create any joint venture or fiduciary relationship for any purpose whatsoever. Except as otherwise specifically provided in this Plan, nothing in this Plan shall confer on either party any authority to act for, bind, or create or assume any obligation or responsibility on behalf of the other party.

**34. ENTIRE AGREEMENT**

This Plan constitutes the entire agreement between the parties on the subject matter hereof and supersede all prior agreements, communications and understandings of any nature whatsoever, oral or written including documentation included with the Product. The terms of this Plan will supersede the terms of any purchase order or other document issued by Customer. This Plan may not be modified or waived orally and may be modified only in a writing signed by a duly authorized representative of both parties.