

Master Agreement for Software License and Support

By installing the enclosed Software, you (the “Customer”) acknowledge that you have reviewed all terms and conditions in this Master Agreement (“Agreement”) and you agree to be legally bound by them including those terms limiting liability and disclaiming warranties.

This Agreement shall apply to all proposals, quotes, purchase orders, Order Forms and other documents issued by either party in connection with the purchase and sale of Software and/or Support from Qualtech Systems Inc. (“QSI”). This Agreement include any Quote Sheet made by QSI to Customer referencing this Agreement. Inconsistent or additional terms or conditions proposed by Customer in any purchase order, Order Form other document are hereby deemed to be material alterations and notice of objection to them is hereby given. Any such proposed terms shall be void.

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

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| <p>1 Definitions. Definitions in this Agreement apply in their respective singular and plural forms.</p> <p>1.1 “Annual License” allows you to Designate a License to a device or User for an Annual License Term of one (1) calendar year. A new Software License must be acquired at the end of the Annual License Term for continued operation of the Software.</p> <p>1.2 “Client” means any user, computer or device that establishes a single session and interacts with Server Software.</p> <p>1.3 “Concurrent User” of Server Software is the maximum combined number of clients that may simultaneously access the Server at any given time.</p> <p>1.4 “Customer Affiliate” or “Customer Subsidiary” means any entity that that directly or indirectly controls or is controlled by Customer for so long as this control continues to exist. The term “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or other ownership interest.</p> <p>1.5 “Designate a License” of Software means to designate that Software License to one device or User for the term of the Software License.</p> <p>1.6 “Documentation” means manuals, flow charts, and other documents and online files related to the Software as published by QSI from time to time.</p> <p>1.7 “Delivery Date” means the date QSI first places each Software product with a carrier for delivery to Customer, or, the date QSI provides the customers with instructions to download the software.</p> <p>1.8 “Embedded Software” means Software as inseparably embedded code, in executable form, in a product or device sold, leased or licensed by Customer.</p> | <p>1.9 “Fee” means collectively all ME&S Fees, Service Fees, License Fees, or other fees charged under this Agreement.</p> <p>1.10 “Floating User License” allows a Software License to be shared among a group of machines in the local area network, as long as only one instance of the Software is in Use at any given time.</p> <p>1.11 “Instance” of a Software is what you create by loading it into memory and executing one or more of its instructions. Once running, an instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory. References to Software in this agreement refer to “instances” of the Software that you licensed from QSI.</p> <p>1.12 “License Fee” means those one-time and annual fees listed on a Quote Sheet in consideration for the Software Licenses granted under this Agreement.</p> <p>1.13 “License Key” is a combination of numbers and letters that you use to Designate a Software License to a device or User for a specified period of time. A single License Key may allow you to Designate multiple Software Licenses.</p> <p>1.14 “Lifetime License” allows you to Designate a License to a device for the Lifetime License Term which is the life of the device.</p> <p>1.15 “Major Version” of Software is released typically every two (2) to five (5) years and is signified by a change in the first digit in the release number <i>before</i> the decimal point.</p> <p>1.16 “ME&S Fee” (Maintenance, Enhancements and Support Fee) means the total annual charges listed on a Quote Sheet or renewal invoice related to Software Support and Software Updates.</p> <p>1.17 “Minor Version” of Software is released typically every three (3) to nine (9) months and is signified by a change in the first digit in the release number <i>after</i> the decimal point.</p> |
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- 1.18 **“Named User”** means an individual or device authorized by Customer to Use Software regardless of whether the individual is actively using the Software at any given time. If a Client is programmed to access the Software in an automatic manner, then each discrete Client of this type is counted as a Named User.
- 1.19 **“Node-Locked”** licenses are tied to a particular computer or device.
- 1.20 **“Order Form”** means a document used by Customer to order Software Licenses and related services from QSI and accept the terms of this Agreement and the Quote Sheet.
- 1.21 **“Quote Sheet”** means the information provided by QSI to detail the terms of Software and/or Support offered to Customer. The terms of the Quote Sheet are incorporated by reference into the terms of this Agreement.
- 1.22 **“Server Software”** means a single copy of Software residing on a computer server within a System. Only Software specifically designated as Server Software may have Clients connecting to them.
- 1.23 **“Service Fee”** means any fee for services QSI provides to Customer for general services as listed on an Quote Sheet, but not including any fees provided under a Statement of Work (SOW).
- 1.24 **“Software”** means each of the (A) object code versions of QSI software listed in one or more Quote Sheets, (B) respective Updates to the Software, and (C) any Documentation.
- 1.25 **“Software License”** means each license granted under this Agreement by QSI to Customer to use Software as listed on a Quote Sheet and accepted on an Order Form.
- 1.26 **“Support”** means the response to and resolution of Customer-encountered problem(s) with the Software as reported to QSI by Customer and more fully detailed herein at Section 9.
- 1.27 **“System”** means a discrete group of Customer’s internal computer systems as designated by a unique QSI system identification number. Customer may have multiple Systems as authorized by QSI.
- 1.28 **“Third Party Software”** means the computer program(s) (if any), listed in the Quote Sheet to which the terms and conditions of the applicable Third Party Software shall be attached to this Agreement.
- 1.29 **“Update”** means a new or subsequent release of Software (including bug fixes, patches, maintenance releases and enhancements) that QSI makes generally available at no additional charge to customers that are current in their payment of ME&S Fees. Update does not include any new module or Software that QSI separately licenses for an additional fee.
- 1.30 **“Use”** means the loading, utilization, storage or display of the Software by the number of Concurrent Users or Named Users as set forth in the Quote Sheet to process Company’s information and serve Company’s computing needs in the countries referred to in the Quote Sheet.
- 2 License Grant, Restrictions, Ownership and Use.**
- 2.1 **License Grant.** Subject to the provisions of this Agreement as well as the payment of all applicable License Fees for the Software Term of such Software License, QSI grants to Customer, for each Software product listed in the Quote Sheet, a limited, personal, non-exclusive, nontransferable object code license to (A) Use the Software, solely for Customer’s own internal Use on Customer’s System in compliance with this Agreement, (B) use the Documentation in connection with Use of the Software, (C) copy the Software for backup or archival purposes only provided that all titles, trademark symbols, copyright symbols and legends, and other proprietary markings are reproduced and (D) embed the Software, only as Embedded Software, in compliance with this Agreement.
- 2.2 **License Restrictions.** Except as set forth in this Agreement or as may be permitted in writing by QSI, Customer agrees that that it will not itself, or through any parent, subsidiary, affiliate, agent or other third party:
- 2.2.1 sell, lease, license, sublicense, encumber or otherwise deal with any portion of the Software or Documentation;
- 2.2.2 decompile, disassemble, or reverse engineer any portion of the Software, unless and to the extent required under national law;
- 2.2.3 write or develop any derivative software or any other software program based on the Confidential Information provided by QSI;
- 2.2.4 use the Software to provide processing services to third parties, commercial timesharing, rental or sharing arrangements, or on a “service bureau” basis;
- 2.2.5 provide, disclose, divulge or make available to, or permit use of the Software by persons other than Company’s employees without QSI’s prior written consent; or
- 2.2.6 exceed the number of users set forth in the Quote Sheet.
- 2.3 **Copying.** The Software may only be copied, in whole or in part, with the proper inclusion of QSI’s copyright notice and any other proprietary notice or trademark on the Software, as may be necessary and incidental for Use, archival purposes or to replace a worn or defective copy.
- 2.4 **Moving.** If Customer is unable to operate the Software on the System due to an equipment malfunction, the Customer may request QSI to Designate the License or otherwise transfer the license to another Customer system within the country of purchase for a Service Fee. This

Service Fee is waived for customers with an active Support contract.

- 2.5 **Embedded Software.** Subject to the Assignment terms in this Agreement, Customer may embed Software, only as inseparably embedded code in executable form, in Customer's products, and Customer may sell, lease, license or otherwise make available such products for use by Customer's customers. Customer's customers shall have no rights to sell, lease, license or otherwise make available any Software or Software in executable form to third parties.
- 2.6 **Development Only License Rights and Limitations.** Some QSI products, TEAMS-RDS for example, are available in a configuration for development and testing purposes only. Customer may not use such licenses for deployment or production use; for such use Customer must obtain a Software License without such restrictions.
- 2.7 **Trial Use Software License Rights and Limitations.** QSI may grant short term or trial use licenses of its Software for sole purpose of internal demonstration and evaluation by the customer ("Trial Use Software"). Because the Software is provided "as is," QSI may not provide Support Services for Trial Use Software unless separately contracted to do so.
- 2.8 **Ownership.** Title to and ownership of the Software (including any portion, modification, translation, or derivative thereof, even if unauthorized) and all applicable rights in patents, copyrights, trade secrets or other intellectual property rights in the Software remains exclusively with QSI.
- 2.9 **Customer Use.** Software is valuable, proprietary, and unique, and Customer is bound by and will observe its proprietary nature. Customer will take diligent action to fulfill its obligations under this Agreement by instruction or agreement with its employees or agents that are permitted access to the Software (whose confidentiality obligations must survive termination of their employment or agency). Customer may only provide access to Software on a need-to-know basis. Customer acknowledges that unauthorized reproduction, use, or disclosure of the Software may cause irreparable injury to QSI, who may therefore be entitled to injunctive relief to enforce these license restrictions, in addition to any other remedies available at law, in equity, or under this Agreement.
- 2.10 **Affiliate Use of Software.** QSI agrees that Customer Affiliates may Use the Software, if prior to any Customer Affiliate's use of the Software:
 - 2.10.1 Customer Affiliate shall be bound by the terms and conditions of this Agreement to the same extent as Customer and that Customer shall be liable for all claims

and liabilities arising under this Agreement related to any use of the Software by Customer Affiliate;

- 2.10.2 QSI is not obligated to support the Affiliate directly;
 - 2.10.3 Customer indemnifies QSI against losses or damages suffered by QSI arising from breach of this Agreement by the Customer Affiliate; and
 - 2.10.4 Use must not constitute an unauthorized exportation of the Software under U.S. Government laws and regulations, or under the laws of other jurisdictions.
- 3 Software License Term and Users.**
- 3.1 **License Term.** The License Term for Software supplied under this Agreement will be as specified in the Quote Sheet. The License Term may be a Lifetime License Term (for "Lifetime License") or Annual License Term (for "Annual License"). Software Licenses with an Annual License Term include Software Support for the duration of the License Term. Software Support must be purchased separately for Software Licenses with a Lifetime License Term. The maximum License Term for Trial Use Software is limited to ninety (90) days from your initial installation of the Software.
 - 3.2 **Server Software Licenses** are Node-Locked and allow a specified number of Concurrent Users. The following products are governed by Server Software License: TEAMS-RDS and TEAMS-IDE.
 - 3.3 **User Licenses** may be Named User, Floating or Node-Locked. The following products are governed by User Licenses: TEAMS-Designer, TEAMATE, TEAMS-RT, PackNGo.
 - 3.4 **Multiplexing.** If Customer elects to use a concentrator or multiplexer, technology to provide Users with access to the Software (whether hardware or software; e.g., web/IP server, gateway, shared user identities, etc.), then all Users with the ability to access the Software via that technology will be counted individually for licensing purposes.
 - 3.5 **Audit Rights.** Subject to any consents required by law, QSI may audit Customer's Software usage remotely, via outbound email of system metrics generated by QSI's system monitoring utility, during on-site service calls, or upon reasonable notice to Customer during standard business hours. The audit will determine usage for each Software License, including concurrent access as measured by QSI's monitoring utility. If an audit determines that Customer's usage has exceeded its Software Licenses, then Customer agrees to purchase additional Software Licenses in compliance with this Agreement; however, this statement in no way limits QSI's remedies. Customer agrees to comply with all relevant laws, and to obtain all necessary consents, to allow QSI to exercise its rights under this Section.

4 Fees, Payment and Delivery.

- 4.1 License Fees.** In consideration of the rights granted herein, Customer shall pay QSI the License Fee specified in the Quote Sheet.
- 4.2 Payment Terms.** QSI will invoice Customer for all Fees. Customer must pay each invoice upon receipt, unless otherwise specified in the Agreement. If Customer authorizes deliveries in installments, Customer must pay each invoice for a delivery upon receipt without regard to other scheduled shipments. Invoices not paid within thirty (30) days of the due date will have a one and a half percent (1.5 %) per month interest charge (or the highest lawful rate, whichever is lower) assessed against the unpaid balance starting on the 31st day after the invoice date and continuing until the date payment is received. Customer will pay all costs QSI incurs to collect any overdue accounts (including reasonable attorney's fees). All payments made must be paid in the currency stated on the invoice.
- 4.3 Customer Payment of Taxes.** Customer must pay all taxes, levies, and similar governmental charges, however designated, and all liabilities with respect thereto that may be imposed by any jurisdiction, including, without limitation, customs, privilege, excise, sales, use, consumption, value-added and property taxes levied or based on gross revenue or operation of this Agreement, except those taxes based upon QSI's net income.
- 4.4 Withholding Taxes.** If withholding taxes are required to be withheld on payments to QSI, QSI shall add charges to Customer equal to any such withholding taxes validly levied or based upon this Agreement or upon the Software or Support furnished hereunder. QSI may estimate and invoice such charges in advance to address the potential tax impact.
- 4.5 Delivery.** All Software and License Keys are delivered to Customer electronically via email and QSI customer support portal.

5 Indemnification.

- 5.1 General Indemnification.** Subject to the limitations contained in this Agreement, QSI agrees to indemnify and hold harmless Customer, and Customer agrees to indemnify and hold harmless QSI respectively, from any liabilities, penalties, demands, or claims finally awarded (including the costs, expenses, and reasonable attorney's fees on account thereof) that may be made by any third party for personal bodily injuries, including death, resulting from the indemnifying party's gross negligence or willful acts or omissions or those of persons furnished by the indemnifying party, its agents, or subcontractors or resulting from use of the Software and/or Support furnished hereunder. QSI agrees to defend Customer, at Customer's request, and Customer agrees to defend QSI, at QSI's request, against any such liability, claim, or demand. Customer and QSI respectively agree to notify the other party promptly of any written claims or demands against the indemnified party for which the indemnifying

party is responsible hereunder. The foregoing indemnity shall be in addition to any other indemnity obligations of QSI or Customer set forth in this Agreement.

5.2 Infringement Indemnity.

- 5.2.1 Infringement Claims.** QSI will defend at its own expense any action against Company brought by a third party to the extent that the action is based upon a claim that the Software directly infringes any U.S. copyright or misappropriates any trade secret recognized as such under the Uniform Trade Secret Law, and QSI will pay those costs and damages finally awarded against Company in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.

- 5.2.2 Conditions.** QSI's obligations under the preceding paragraph with respect to an action are conditioned on (A) Company notifying QSI promptly in writing of such action; (B) Company giving QSI sole control of the defense thereof and any related settlement negotiations; and (C) Company cooperating with QSI in such defense (including, without limitation, by making available to QSI all documents and information in Company's possession or control that are relevant to the infringement or misappropriation claims, and by making Company's personnel available to testify or consult with QSI or its attorneys in connection with such defense). QSI will not be responsible for any compromise made without its consent.

- 5.2.3 QSI's Option.** If the Software becomes, or in QSI's opinion is likely to become, the subject of an infringement or misappropriation claim, QSI may, at its option and expense, either (A) procure for Company the right to continue using the Software; (B) replace or modify the Software so that it becomes non-infringing; or (C) terminate Company's right to use the Software and give Company a refund or credit for the License Fees actually paid by Company or QSI for the infringing components of the Software less a reasonable allowance for the period of time Company has used the Software.

- 5.3 Exclusions to QSI Indemnity.** Notwithstanding the provision in this Section 5, QSI has no liability to Customer based upon any liability, claim or demand (A) based upon the use of the Software in connection or in combination with equipment, devices, or software not supplied by QSI; (B) based upon Use of Software in a manner not expressly authorized by this Agreement or in a manner that the Software was not designed for; (C) that would have been avoided but for Customer's use of Software other than the latest, unmodified release of Software made available to Customer by QSI; or (D) based on any modification of the Software made by any person other than QSI.

- 5.4 Entire Liability.** Subject to the limitations contained in this Agreement, this Section 5 states QSI's entire liability

and Customer's sole and exclusive remedy for infringement and misappropriation claims and actions.

5.5 Customer Indemnity. Customer will indemnify and defend QSI from any loss, cost or expense suffered or incurred in connection with any claim, suit or proceeding brought against QSI so far as it is based on a claim that the use, sale, or licensing of any Software delivered and modified or altered or combined with any products, device, or software not supplied by QSI constitutes an infringement because of the modification, alteration or combination.

6 Limitation of Liability.

6.1 DISCLAIMER OF LIABILITY. QSI SHALL NOT BE LIABLE FOR ANY (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT OR ANY ORDER OR THE OPERATION OR USE OF THE SOFTWARE AND SERVICES INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST CUSTOMER BY ANY THIRD PERSON, EVEN IF QSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY QSI TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND QSI'S REASONABLE CONTROL; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST QSI MORE THAN TWO YEARS AFTER ANY SUCH CAUSE

6.2 LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, QSI'S LIABILITIES UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNTS ACTUALLY RECEIVED BY QSI UNDER THIS AGREEMENT OR IN THE TWELVE MONTHS PRIOR TO THE DATE OF THE ACTION GIVING RISE TO THE CLAIM.

7 Installation.

7.1 Customer Installation. Customer is responsible for installation of the Software and the installation of any required disk storage systems, network software, application servers, systems and computer terminals or workstations prior to installation of the Software.

7.2 QSI Installation. At Customer's request, QSI may agree to provide standardized installation services within the scope of its installation packages. QSI's installation packages are limited to loading the Software onto a System and testing the Software using QSI's standard

testing tools. Installation will be deemed successful and completed when the Software is loaded on a System and passes the appropriate test. Any services outside of an installation package's scope must be separately purchased under the terms of a SOW.

8 Limited Warranty.

8.1 General Warranty. QSI warrants that it that it owns all rights, title, and interest in and to the Software, or that in the case of any third party software that it has the right to grant a sublicense to use such third party software.

8.2 Software Warranty. QSI warrants for a period of 90 days from Delivery Date, Software used in a manner for which it was designed will generally conform to the applicable QSI Documentation provided at the time of delivery. The warranty applies only to the unmodified portion of the Software. QSI does not warrant uninterrupted or error-free operation of the Software or that QSI will correct all Software defects. Customer is responsible for the results obtained from the use of the Software.

8.3 Trial Use Software Warranty and Warranty Disclaimer. TRIAL USE SOFTWARE IS LICENSED "AS-IS." THE CUSTOMER BEARS ALL RISK OF USE. QSI GIVES NO EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS. YOU MAY HAVE ADDITIONAL CONSUMER RIGHTS UNDER YOUR LOCAL LAWS WHICH THIS AGREEMENT CANNOT CHANGE. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAWS, QSI EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

8.4 Warranty Disclaimer. EXCEPT AS SET FORTH IN THIS SECTION 8, LICENSOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE, OR SERVICES OR THEIR CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY CUSTOMER. LICENSOR FURNISHES THE ABOVE WARRANTIES IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.5 Exclusive Remedies. Customer must report in writing to QSI any breach of the warranties contained in this Section during the relevant warranty period. In the event of any breach of the warranties set forth in this Agreement, QSI's sole and exclusive responsibility, and Customer's sole and exclusive remedy, shall be for QSI to correct or replace, at no additional charge to Customer, any portion of the Software or Services found to be defective; provided, however, that if within a commercially reasonable period QSI neither corrects such defects nor replaces the defective Software or Services, then Customer's sole and exclusive remedy shall be to receive direct damages not to exceed the license fees paid to QSI for use of the defective Software or Services. In the event of any breach

of any provision of this Agreement other than the warranties set forth in this Agreement, Customer's sole and exclusive remedy shall be to receive direct damages not to exceed the amounts received by QSI pursuant to this Agreement. For the avoidance of doubt, Customer's monetary remedies for any breaches of any provision of this Agreement (including, without limitation, the warranty provisions) shall not, in the aggregate, exceed an amount equal to the amounts actually received by QSI from Customer. These exclusive remedies are also subject to the limitations contained in this Agreement.

8.6 Voiding of Warranties. Any and all warranties and indemnifications shall be void as to Support or Software where the non-compliance is caused by or related to (1) the acts or omissions of non-QSI personnel, its agents, or third parties; (2) misuse, theft, vandalism, fire, water, or other peril; (3) moving or relocation not authorized by QSI; (4) any alterations or modifications made to any Software by the Customer, its representatives, or agents; (5) use of the Software other than in the operating environment specified in the technical specifications; or (6) coding, information, or specifications created or provided by Customer.

9 Support.

9.1 Support Term:

9.1.1 Initial Support Term. The initial term of Support will begin on the Delivery Date of the Software to the Customer and end twelve (12) months later ("Initial Support Term"). Customer must pay in advance for the Initial Support Term, with payment due upon Invoice.

9.1.2 Additional Support Terms. After the Initial Support Term, Support for Customer will automatically renew for one (1) year terms thereafter ("Renewal Term(s)"), unless terminated with sixty (60) days prior written notice. Payment for Renewal Term(s) is due upon Invoice.

9.1.3 Adding New Support after the Software Purchase. If new Software is purchased without Support and it is later purchased, then the Initial Support Term for that Software will begin on the date of the applicable Order Form and end twelve (12) months thereafter, with payment in advance for one (1) year of ME&S Fees.

9.1.4 Software Add-ons. The term of Support and related ME&S Fees will be coterminous with the term of Support applicable to the Software initially covered.

9.2 Hours of Support Availability. Payment of the standard ME&S Fees entitles Customer to Support during the Principal Period of Support ("PPS"). The PPS is an 8-hour contiguous daily time period between the hours of 9:00 AM and 5:00 PM, US/Eastern time, Monday through Friday excluding QSI's published holidays or holidays as observed locally by QSI. All Support subsequently added will have the same PPS. Customer may request, in

writing, special extended coverage options. Extended coverage options, excluding QSI holidays, are subject to QSI's approval and the prevailing terms, conditions and prices for service at that time. Extended hours entitlement does not extend the Customer's PPS; extended hours entitlement extends the Customer's ability to place problem calls to QSI's Technical Response Center ("TRC") during the extended hours of coverage period and receive the same priority remote response for critical issues ("P1s") as during PPS.

9.3 Scope of Support. Support will be provided under QSI's policies as described in the "Summary Description of QSI's Support Program" then in effect. Resolution of Customer-encountered problems may, at QSI's option, consist of: (A) Support provided through telephone or computer networks; (B) correction of any defect in the Software that materially and adversely affects the use of the Software as described in Documentation; and (C) delivery of Software defect corrections or other changes limited to the current or immediate prior Major Version of the software. QSI will use commercially reasonable efforts to respond to Customer calls according to the priority level of the call. QSI will ensure the Customer's call is resolved within a commercially reasonable period.

9.4 Software Enhancements and Upgrades. Customer has the right to receive upgrades to major new versions and patches, updates and enhancements on an "if and when available during their term of support" basis.

9.5 Support Limitations. QSI Support is limited to correcting defects of QSI Software. Support is contingent upon the use of unmodified Software (except as authorized by QSI) operated in accordance with QSI's Documentation. Support specifically excludes the following: (A) Support to a version of Software other than the current or immediate prior release; (B) efforts to restore a release of the Software beyond the current or immediate prior release; (C) efforts to restore Customer data beyond the most recent back-up; (D) operating systems and data bases; (E) Software defects which QSI cannot reproduce; or (F) custom applications or application templates. QSI Technical Consulting Services are not included within the standard deliverables of Support under this Agreement. These additional services may be requested by Customer to provide on-site technical problem assistance, perform software installation, upgrades or other "value-added" services not included as Support. Additional service requests will be handled on a reasonable effort and scheduled basis at current time and material rates.

9.6 End of Support Life. QSI periodically announces the End of Support Life ("EOSL") for Software. QSI will notify the Customer in writing or by electronic mail or posting on QSI's website, at QSI's discretion, a minimum of six (6) months prior to the EOSL. After the EOSL, telephone and or web-based support limited to current available fixes will be available on a commercially reasonable efforts basis at prevailing rates.

- 9.7 Customer's Support Responsibilities.** Customer must meet the following responsibilities:
- 9.7.1 Technical Contacts:** Customer must designate one primary and one backup individual ("technical contact") to serve as liaison with QSI. Customer designated technical contacts are the sole liaison between the Customer and QSI for technical support of QSI software. To avoid interruptions in support services, Customer must notify QSI whenever technical contact responsibilities are transferred to another individual.
 - 9.7.2 Software Configuration:** Customer shall provide QSI with accurate configuration information, screen shots, or other related documentation as required for a support request.
 - 9.7.3 Reasonable Diligence:** Customer shall make reasonable effort to ensure that the problem is not due to any hardware or third party software before requesting QSI support. If deemed necessary, Customer may engage QSI support personnel for the then current hourly consulting support rate to assist with the aforementioned effort. QSI reserves the right to invoice Customer for support incidents that are unrelated to QSI software defects.
 - 9.7.4 Supported Software Version:** Customer shall install any and all updates, patches, or upgrades posted by QSI. Support is limited to a version of Software that is either current or immediate prior release but not any older.
 - 9.7.5 Supporting Data:** Customer shall provide models and error logs to QSI to help QSI reproduce the problem. Typical transmission of files will be handled via e-mail.
 - 9.7.6 Access:** Customer shall provide QSI with adequate remote access and privileges to the affected computer for performing troubleshooting and support tasks.
 - 9.7.7 System Administration:** Customer shall perform adequate system and database back-ups to prevent against loss of data and information, and enable roll back of software and configuration to a previously working version.
 - 9.7.8 English Only Support:** Customer shall communicate with QSI in English only.
- 9.8 Software Modification.** QSI will not be responsible to Customer for loss of use of Software or data or for any other liabilities arising from alterations, additions, adjustments or repairs that are made to the Software by other than QSI's authorized representatives. QSI reserves the right to terminate this Agreement upon written notice to Customer if any alteration, addition, adjustment or repair adversely affects QSI's ability to render Support to the Software.
- 9.9 ME&S Fees.**
- 9.9.1 ME&S Fee for Annual Licenses.** The ME&S Fees for an Annual License includes Software Support for the License Term and no additional ME&S Fee is required.
 - 9.9.2 ME&S Fee for Lifetime Licenses.** The ME&S Fees for Lifetime Licenses require an Annual ME&S Fee of 20% of the list price of the License Fee for the Software License.
 - 9.9.3 ME&S Fee Modification.** After the Initial Support Term and upon thirty (30) days written notice, QSI may change its ME&S Fees then in effect. If the ME&S Fees are increased, Customer may terminate Support as of the effective date of the increase, upon fifteen (15) days written notice to QSI. If Customer does not terminate Support as stipulated, the new ME&S Fees become effective on the date specified in the notice.
 - 9.9.4 Invoices.** ME&S Fees will be invoiced annually in advance, and any one-time fee will be invoiced as incurred. Customer must pay all invoices in full upon receipt of the invoice regardless of whether Customer utilizes Support every month during the term.
 - 9.9.5 Default.** Customer will be in default if undisputed ME&S Fees have not been paid within thirty (30) days of receipt of an invoice or if Customer fails to perform any of its Support-related obligations. Customer's default will constitute sufficient cause for QSI to suspend or terminate Support under this Agreement.
 - 9.9.6 Support Termination.** Except as otherwise stated herein, neither party may terminate Support during the Initial Support Term. After the Initial Support Term, either party may terminate Support without cause upon ninety (90) days advance written notice to the other. If Support is terminated by QSI during a Support Term, QSI will refund a prorated amount of any prepaid ME&S Fees applicable to the unexpired period of the current Initial or Renewal Support Term.
 - 9.9.7 Support Reinstatement.** QSI Software Licenses purchased but not placed under Support, or those licenses removed from Support for any reason, a reinstatement fee of twenty five percent (25%) of the annual ME&S fee will be assessed in addition to the ME&S Fee that would otherwise have been paid to QSI if the products were under uninterrupted Support.
- 9.10 Supplemental Maintenance Support.**
- 9.10.1 Per-incident Support:** Customer's may request additional support services from QSI at the then current hourly consulting support rate plus expenses and travel time with a minimum charge of two (2) hours for online/web support, and a minimum equivalent of forty (40) hours minimum for onsite support.
 - 9.10.2 Other Support.** If Customer desires to obtain additional or extended support (such as, for example, extended coverage, right to receive unspecified upgrades, Updates on an "if and when available" basis

and technical consulting) it may request such support. If QSI is willing to provide such additional or extended support, it will require receipt of a valid Customer purchase order or appropriate payment and may require that a SOW be executed by the parties. If performed, these services will be charged to Customer at current prices and terms in effect at the time service is rendered.

10 Confidential Information and Intellectual Property.

10.1 "Confidential Information" means this Agreement and all its Exhibits, any addenda hereto signed by both parties, all Software listings, Documentation, information, data drawings, benchmark tests, specifications, trade secrets, object code and machine-readable copies of the Software, source code relating to the Software, and any other proprietary information supplied to Company by QSI, or by Company to QSI and clearly marked as "confidential information" including all items defined as "confidential information" in any other agreement between Company and QSI whether executed prior to or after the date of this Agreement.

10.2 Non-Disclosure. Each party acknowledges that the Confidential Information constitutes valuable trade secrets and each party agrees that it shall use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the other party's prior written consent. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. However, neither party bears any responsibility for safeguarding information that is (A) publicly available; (B) obtained by the other party from third parties without restrictions on disclosure, (C) independently developed by the other party without reference to Confidential Information, or (D) required to be disclosed by order of a court or other governmental entity. Nothing herein will prevent routine discussions by QSI that normally take place in a "user group" context.

10.3 Cease Use. At any time upon request from one party ("Requesting Party"), the other party will return or securely destroy all Confidential Information (including all copies) that it received from the Requesting Party, and will destroy all notes and memoranda to the extent they contained Confidential Information of the Requesting Party, and will make no further use of any Confidential Information. In the event of destruction, and upon request, the other party will certify in writing that such destruction has been accomplished.

10.4 Intellectual Property. Pre-existing intellectual property and all improvements thereto that QSI uses in connection with performing Support, providing any Software and performing any other services hereunder shall remain the sole and exclusive property of QSI,.

11 Agreement Term and Termination.

11.1 Agreement Term. This Agreement is effective as of the respective Effective Date and each will remain in effect unless terminated as provided in this Section 11 ("Agreement Term"). Each paid-up Software License granted under this Agreement will commence on the applicable Delivery Date and will remain in effect for its full License Term unless terminated as provided in this Section 11.

11.2 Termination Events. Termination of this Agreement shall occur if any of the following events ("Termination Events") occur, provided that in no such termination will entitle Customer to a refund of any portion of any monies which have been paid to QSI:

11.2.1 Customer fails to pay all required License Fees;

11.2.2 Customer is otherwise in breach of this Agreement by failing to materially comply with the terms and conditions of this Agreement, and the breach, if capable of being cured, is not cured within thirty (30) days after QSI gives Customer written notice of such breach; or

11.2.3 Customer terminates its business activities or becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority.

11.3 Termination of Support. Termination of a Software License will automatically terminate the corresponding Software Support.

11.4 Discontinued Use of the Software. In the event Customer notifies QSI in writing that it wishes to permanently discontinue use of a Software License, each such Software License will terminate in accordance with Customer written notification to QSI. In all other cases, a Software License will terminate or expire as provided for under this Agreement.

11.5 Effect of Termination. Termination will become effective immediately or on the date set forth in the written notice of termination. Termination or expiration of the Software License or Software Support will not: (A) limit either party from pursuing any remedies available to it, including injunctive relief; (B) relieve Customer of its obligation to pay all Fees accrued or owed to QSI; or (C) affect the parties' rights and obligations under any section of this Agreement which by its nature should survive termination or expiration, including, without limitation, Sections 5 (Indemnification), 6 (Limitation of Liability), 2.8 (Ownership), 10 (Confidential Information and Intellectual Property), 11.5 (Effect of Termination), 11.6 (Handling of Software at Termination), 17 (Choice of Law) and 18 (Dispute Resolution).

11.6 Handling of Software at Termination. Upon expiration or termination of a Software License Customer must immediately return or destroy the Software, all portions and copies of Software and all related Documentation as

- directed by QSI. If requested by QSI, Customer must certify in writing, within ten (10) days of the request that it has fully complied with this obligation.
- 12 Export.** Customer agrees that the Software will not be exported directly or indirectly, separately or as part of any system, without first obtaining a license from the U.S. Department of Commerce or any other appropriate agency of the U.S. Government, or any foreign agency or authority, as required.
- 13 U.S. Government Restricted Rights.** The Software and Documentation are "Commercial Items," as that term is defined at Federal Acquisition Regulations ("FAR")(48 C.F.R.) §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as those terms are used in FAR §12.212. Consistent with FAR §12.211 (Technical Data) and FAR §12.212 (Computer Software) and Defense Federal Acquisition Regulation Supplement ("DFAR") §227.7202-1 through §227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, this Software is being licensed to U.S. Government end users (A) only as Commercial Items, and (B) with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement and any applicable Software License. Contractor/manufacturer is: Qualtech Systems Inc., 100 Corporate Place, Suite 220, Rocky Hill, CT 06067, USA. Unpublished-rights reserved under the copyright laws of the United States.
- 14 Assignment.** Neither party may assign in whole or in part any of its rights or obligations under this Agreement, whether expressly, impliedly, or by operation of law, without the prior written consent of the other party, except that either party may assign its rights under this Agreement to an Affiliate or successor in interest of such party. Any attempted assignment in contravention of this provision will be null and void. QSI may, in its discretion, freely assign this Agreement or any of its rights under this Agreement or delegate any of its obligations under this Agreement. This Agreement will be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.
- 15 Waiver, Amendment or Modification.** The parties' rights and remedies are separate and cumulative. Any waiver, amendment, or modification of any right, power, remedy, or term of this Agreement will not be effective unless in writing and signed by both parties' authorized representatives. Furthermore, this Agreement's general terms may not be amended by the terms of any Customer purchase order, or QSI's acknowledgment of same, even if the purchase order has been signed by both parties.
- 16 Force Majeure.** QSI will not incur any liability to Customer on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control of QSI. Such events, occurrences or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions.
- 17 Choice of Law.** The laws of the State of Connecticut applicable to contracts fully executed and performed in Connecticut will govern the construction and operation of this Agreement without regard to any conflict of laws provisions And the parties hereto irrevocably submit to the exclusive jurisdiction and venue of the United States Federal District Court in Hartford County, Connecticut to resolve any disputes arising hereunder or related hereto.
- 18 Dispute Resolution.** Both parties will act in good faith to resolve disputes. Neither party will bring a legal action under this Agreement more than two (2) years after the cause of action arose. Each party waives its right to a jury trial in any resulting litigation.
- 19 Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.
- 20 Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the specific subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, representations, and proposals (whether oral or written) between QSI and Customer.
- 21 Headings.** The Section headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement.
- 22 Notice.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (A) delivered in person, (B) sent by registered mail return receipt requested, or (C) sent by overnight air courier, in each case forwarded to the appropriate address set forth herein. Either party may change its address for notice by written notice to the other party. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after posting or one (1) day after delivery to an overnight air courier services. Notices to QSI must be sent to the attention of "Contracts Administration."