

ServicePassSM Complete Master Subscription Agreement
Terms and Conditions

This ServicePass Complete Master Subscription Agreement ("Agreement") entered into as of the date set forth on the cover page is made by and between **LXE Inc.** ("LXE") and * ("Customer").

1. Master Subscription Agreement

In consideration of the Subscription fees to be paid by Customer and the covenants herein, LXE agrees to maintain the Product(s) identified on Exhibit A, as revised from time to time by the parties, according to this Agreement and the Subscription Schedule, the form of which is attached on the cover page. Each Subscription Schedule shall be consecutively numbered and annexed hereto.

2. Definitions

a. "Covered Site" means the facility this Agreement defines on the Subscription Schedule.

b. "Co-dependent Product Component" is hardware component(s) that is part of the LXE RF computer that is controlled, monitored by or dependent upon the Software in that RF computer.

c. "Designated Service Center" means that service center identified on an applicable Subscription Schedule as the facility authorized by LXE to perform according to this Agreement.

d. "Dispatch Response Time" means the time elapsed between receiving an emergency call from Customer and, when mutually deemed necessary, dispatching an LXE service representative for travel to the Covered Site. Total time to reach the Covered Site depends on carrier availability and distance to the Covered Site.

e. "Fixed RF Backbone Product" means those portions of the Product consisting of radio frequency units, network controllers, access points, RF bridges and/or antennae.

f. "Level 1 Subscription Service" shall mean Customer shall call whichever party that has been designated by LXE or the LXE website to take the call for the initial request for service, such contact being one of the following: 1) LXE Call Response Center or 2) Customer's own Help Desk. Level 1 Subscription Service includes preliminary diagnosis of the problem and assistance in implementing the proposed solution to the extent needed.

g. "LXE Call Response Center" means the LXE telephone support helpdesk.

h. "LXE Software" means those computer programs included in Software which are or were from time to time created through original development work of LXE or acquired by LXE by assignment from third parties and which are supported by LXE.

i. "Point Release" is a Software fix to correct a Software Non-conformity that has not been through formal certification as part of a major version release.

j. "Product(s)" means the hardware, Software, and/or third-party products covered by this Agreement.

k. "Service Provider" means an entity trained and certified by LXE to provide to Customer the services offered pursuant to this Agreement.

l. "Software" means computer programs in machine-readable, object code form only, proprietary to LXE or its suppliers, licensed to Customer pursuant to in-product and other product-specific licenses, and either resident in the Product or provided on separate media. Software includes LXE Software.

m. "Travel Expenses" means LXE's costs for airfare or mileage and tolls (if LXE personnel drive to site), rental car, lodging and per diem.

n. "Turnaround Time" means the following as applicable: 1) for Product repairs - time from receipt of Product at the Designated Service Center to return shipment from LXE's premises to Customer; and 2) for telephone calls for technical support – response time to call the Customer back and begin problem analysis.

o. "Warranty Period" means the period during which LXE provides warranty coverage service for the Products, at no charge to Customer, pursuant to a purchase agreement for such Products.

3. Term

Unless sooner terminated as provided pursuant to this Agreement, the term of this Agreement shall begin at the Commencement Date set forth herein and shall continue through the Expiration Date as shown on the Subscription Schedule. Thereafter, upon written agreement, the parties may extend the term of this Agreement for consecutive periods for the quoted price for that period of the extended Agreement

4. Core Services

a. Support and Repair Services. LXE shall provide for the support and repair of Customer's Product. This includes parts and labor required for the repair of internal electrical components, as well as, including repair and/or replacement for accidental physical damage to all non-consumable components on RF Computers, AP's, Scanners and most peripherals, excluding printers. If LXE decides that it is necessary to replace the Product rather than repair it, Customer will receive a new or refurbished Product

equivalent to or better than the Product originally purchased from LXE, as determined by LXE in our sole and reasonable discretion. Each Product returned to LXE or to a Designated Service Center by Customer must be assigned an LXE Return Material Authorization number ("RMA") by the LXE Call Response Center or the LXE website prior to its return. Each technical support call will be assigned an open call number.

b. Service Hours. Service is provided between 8:00 a.m. to 5:00 p.m. local time of the Designated Service Center, Monday through Friday, exclusive of generally recognized holidays. Emergency system down support is provided during any other time, including weekends and holidays. Emergency support may only be used for assistance in restoring normal system operation in the event of loss of major functionality that affects Covered Site operation. Diagnostics and analysis to determine root cause of a system outage will be performed during normal hours of support.

c. Turnaround Time. LXE guarantees a Turnaround Time of:

- two business days for repairs of RF backbone Products: access points, session managers, radio frequency units, and network controllers;
- three business days for repairs of LXE-manufactured computers, docks, and cradles;
- five business days for repairs of scanners, gang battery chargers, and battery analyzers;
- twenty business days for repairs of Product which is not manufactured by LXE or not set forth above, and
- thirty minute call back response to initial telephone call for technical support calls.

Each request for service shall constitute a separate incident. If LXE fails to meet the designated Turnaround Time for one or more incidents during any one month period, Customer's sole remedy shall be a one-time credit in the amount of 10% of one month's charge for the Subscription Schedule then in effect for the Covered Site for the month in which the missed Turnaround Time occurred. Any such credit will, upon Customer's written request and option, be applied on the next month's invoice, on the first payment for the next Agreement period, or toward the first repair not covered under the Agreement.

d. Items not Included. Specifically not included are any services for equipment not included on Exhibit A, identified by LXE serial number, for the Covered Site. Any equipment or Software not purchased from LXE are excluded unless LXE expressly agrees to add any such equipment or Software to the Agreement.

e. Configuration for Repaired Product. Product sent to LXE will be returned to Customer configured according to the Customer Covered Site record. A Customer Covered Site record is created whenever LXE performs a site configuration & testing, site certification service, preventive maintenance inspection or the Customer provides LXE with site drawings with RF backbone Product marked on it and a

completed site certification document. The record is maintained by LXE, and Customer shall contact the LXE Call Response Center to report configuration changes made to the Product. If no record exists, then the returned terminals will be set to the manufactured default setting.

f. Product Examination. If LXE determines that the Product is not defective, LXE will notify Customer and request further information regarding why the Product was returned. If the Product is defective, but it is not covered by the terms of this Agreement, LXE will prepare a failure analysis report and a quotation of the cost to repair for Customer. Customer then will advise LXE on further disposition of the Product.

g. Shipping. For the return of Products covered under this Agreement to LXE's Designated Service Center, Customer shall be responsible for the selection of the carrier and method of shipment, as well as for payment of all shipping charges. LXE will not accept collect shipments. For the return to Customer of Products repaired under this Agreement, for Covered Sites in the U.S., LXE will provide for overnight delivery of RF backbone Product and for two-day delivery of all RF computers. At LXE's discretion, LXE will return all other Products, at its expense, to Customer by the transportation method LXE deems appropriate for the Product/shipment (i.e., bulky or heavy accessory Product will normally be shipped via ground transportation). LXE ships F.O.B from Designated Service Center. If at the time the RMA is granted to Customer, Customer expressly so requests, LXE will use such other shipping method as Customer shall specify, subject to Customer paying for the difference in any increased shipping expenses. For Covered Sites outside the U.S., Customer is responsible for all customs duties, similar taxes or other fees related to importation and exportation of the Products, and agrees to reimburse LXE for any such charges paid on Customer's behalf. Customer shall ship Products free domicile if applicable.

h. LXE Not Responsible. In addition to the provisions set forth above, LXE has no responsibility to provide services for Customer which are required due to the following:

(i) Any damage to Customer's equipment or Product as a result of Customer connecting Scanners not purchased from LXE and/or inspected and approved by LXE for connection to such equipment or Product.

LXE and Service Provider have no responsibility for painting or refinishing the Product, or furnishing material therefore, or for consumable materials, such as ribbons, paper, magnetic tape and cleaning materials.

LXE has no responsibility for the replacement or repair of Products under this Agreement for Product failures, or for increased service time or cost, caused directly or indirectly by:

- (i). Abuse, neglect, misuse, abnormal conditions of operation of the Products, negligent or willful act of Customer, its employees, or third parties;
- (ii) Causes external to LXE-maintained Products (i.e., power surges or Force Majeure Event, as defined in Section 14);
- (iii) Damage to the Product which is a result of the use of unapproved, non-LXE mounting devices;
- (iv) Relocation or movement of Fixed RF Backbone Product(s) by Customer without any required prior approval of LXE; or
- (v) Unauthorized attempts by other than LXE or Service Provider personnel to install, repair, maintain, or modify the Product(s) or system.
- (vi) Damage caused by malicious destruction, or damages deemed by LXE as abnormally recurrent.

i. Conditions for Acceptance of Equipment Under this Agreement.

- (i) Equipment purchased from LXE and placed under a an Agreement immediately upon expiration of the Warranty Period will be automatically accepted.
- (ii) After expiration of the Warranty Period, or cancellation or termination of the Agreement, an inspection of the equipment by LXE must show to LXE's satisfaction that the equipment is in an acceptable service condition before service can begin. LXE shall conduct such inspection and may offer to repair such equipment or otherwise bring it up to serviceable condition all on a time and materials (" T&M ") basis, plus Travel Expenses. Customer is required to purchase an LXE preventive maintenance inspection for on-site service or send equipment to the Designated Service Center for inspection, upgrades and repairs prior to an Agreement being purchased. A purchase order is required from the Customer for either one of these services.
- (iii) LXE offers service on scanners not purchased from LXE provided they are connected to LXE RF computers, are the model type LXE is licensed to repair, and are certified by the Designated Service Center or LXE Field Engineer.

j. Additional Products. Subscription services shall also be provided with respect to any additional LXE equipment purchased during the term of any Subscription Schedule for the particular Covered Site, effective upon expiration of the Warranty Period for each such LXE equipment at the Covered Site for an additional charge. If Customer purchases additional equipment for sites, both covered or not covered under the Agreement, the Customer will need to purchase Subscription coverage for this equipment separately. LXE's charges for additional Product(s) shall be in accordance with paragraph 5.a.

k. Parts. LXE service may include the replacement of parts deemed necessary by LXE. All parts shall be new or refurbished parts of equal quality. Parts which have been replaced become the property of LXE.

l. Movement of Products.

- (i) Customer shall notify LXE at least thirty (30) days prior to moving any Fixed RF Backbone Product at any Covered Site. LXE shall be under no obligation to continue service for Product at the Covered Site if such Fixed RF Backbone Product is moved without the prior written consent of LXE, which consent will not be unreasonably withheld;
- (ii) Customer, at its option and expense, may request LXE to supervise the removal and reinstallation of the Fixed RF Backbone Product Customer wishes to move. LXE's repairing, modifying or otherwise dealing with problems caused by Customer's movement of the Fixed RF Backbone Product without notification to LXE or supervision by LXE will be covered on a T&M basis plus Travel Expenses.

m. LXE Sole Maintenance Supplier. Except with LXE's prior consent, Customer shall not permit any person other than an authorized representative of LXE or person qualified by LXE to perform covered maintenance or to attempt any repair to the Products.

n. Technical Support Service. LXE provides telephone technical analysis and diagnosis of system problems relating to LXE Product and Software, but exclusive of problems arising from Customer's interface software or host computer. In the event such technical analysis and diagnosis identifies and confirms Product or Software malfunctions, and Customer elects to have LXE correct such defects, such correction will be provided in accordance with subsection o. below over the telephone on a call back basis. Customer's call will be logged by the LXE Call Response Center, including site contact information and the nature of the problem

o. Software Support. LXE provides software maintenance, including Software upgrades. Customer is provided with two levels of LXE Software support:

- (i) LXE shall correct, at its expense, all failures of the LXE Software to perform substantially in accordance with the applicable specifications (each failure a "LXE Software Non-conformity"), provided Customer has notified LXE of the occurrence of such failures at the Covered Site. To assist LXE in its response to such problems, Customer agrees to keep a written log of all such problems documenting in reasonable detail the nature of the defect. Applicable specifications are those published by LXE in its Product manual(s) current at the time of Product delivery. Point Releases containing a compliant software fix shall be supplied to Customer promptly upon correction.

LXE may offer, subject to prior approval by Customer, to install any Point Release to correct a LXE Software non-conformity and required Co-dependent Product Component(s), if any, on a return to factory basis. If Customer requests, prior to the time the Product is shipped to Customer, LXE will use such other shipping method as Customer shall specify, subject to Customer paying any increased shipping

expenses. If LXE opts to send a service representative to the Covered Site to install any LXE Point Release for the LXE Software non-conformity, the cost shall be borne by LXE. If LXE goes to the Covered Site and the Software non-conformity is found not to be a LXE Software non-conformity, but caused by Customer's environment or application software, then Customer shall pay LXE the charges under the current T&M rates plus Travel Expenses and the cost of any required Co-dependent Product Component(s).

(ii) If LXE has released a Software upgrade(s) for enhanced features to LXE Software, then LXE will provide Customer with such software enhancement. Customer may choose to send the Product to the LXE Designated Service Center or request a LXE service representative to come to the Covered Site, in which case, the Customer will need to provide LXE with a purchase order for the time on site, at current T&M rates and Travel Expenses

If Customer is capable of loading the LXE Point Release or a Software enhancement, LXE will offer to e-mail the Software load to Customer.

If installation of any LXE Software enhancement necessitates the replacement of any Co-dependent Product Component or license, LXE shall provide Customer with an estimate of all fees, cost, and expenses associated with such LXE Software enhancement and, if Customer approves the replacement of Co-dependent Product Component and any required license, Customer shall pay for these fees when upgrade is performed. LXE reserves the right to classify new Product and Software as a new Product generation which shall not be made available to Customers as LXE Software enhancements and/or Co-dependent Product Component hereunder.

p. Warranty on Software Fixes and Software Enhancements. All LXE Software non-conformity fixes, Co-dependent Product Component and Software Enhancement are warranted for a period of ninety (90) days from the date of installation at the Covered Site to perform substantially in accordance with the applicable functional specifications provided by LXE. LXE's obligation to perform pursuant to this warranty is limited to undertaking all reasonable efforts to identify and correct any such non-conformities with the specifications. EXCEPT FOR THE EXPRESS WARRANTY STATED IN THIS SUBSECTION P, WHICH IS EXCLUSIVE, LXE DISCLAIMS ALL WARRANTIES ON LXE SOFTWARE NON-CONFORMITY FIXES, CO-DEPENDENT PRODUCT COMPONENTS AND LXE SOFTWARE UPGRADES PROVIDED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

q. Emergency On-site Dispatch. Upon completion of normal telephone diagnostics and remedial procedures, including remote diagnostics, and when mutually deemed necessary for problem diagnosis, LXE will make

commercially reasonable efforts to provide eight-hour emergency Dispatch Response Time to the Covered Site within the continental U. S. For sites outside of the continental U.S., dispatch and site arrival time for each incident will be as mutually agreed upon by LXE and Customer. Subject to Customer's normal security procedures, Customer shall allow LXE employees access to the Covered Site at hours consistent with LXE's obligations under this Agreement. If the Customer requests LXE to send a service representative to the Covered Site prior to completion of normal telephone and remote support procedures, or if LXE determines that the problem is not directly related to defective Product or LXE Software including but not limited to Customer non-LXE equipment problem, interface software problem, or host computer problem, Customer will pay on a T&M basis in accordance with the then current T&M rates, with a minimum charge of eight hours site labor, plus Travel Expenses. In the case of requests to dispatch a service representative prior to completion of normal telephone procedures, Customer must provide LXE with a Purchase Order in the amount of \$6,000 (U.S.) for such dispatch prior to LXE dispatching a service representative.

r. Remote Diagnostics. For Covered Sites with 2.4 GHz systems, Customer will provide a laptop PC with radio and client on the PC for diagnostics.

For Covered Sites in which the LXE 6200 generation of Product is installed, Customer shall provide a data rated telephone modem line connection at the Covered Site. Customer shall provide for use at the Covered Sites, as required by LXE, a functional computer capable of operating LXE's Network Management Software (such computer must include an Intel compatible 386 or better processor).

s. Web-enabled Support Services. LXE offers Customer access to an LXE website designed to address support issues. Customer may access from the website white papers, technical support bulletins, other similar documents, and certain Software fixes. Customer may also use the website to monitor the status of Product returned to LXE for repair. Upon Customer request, LXE will furnish Customer with the Internet address, a password, and no more than 4 user log-ins during the term of the Agreement or any renewal thereof. It is Customer's responsibility to possess the proper equipment to access the website and to implement and maintain sufficient security procedures. Customer shall notify LXE immediately of a change in the status of any Customer employee given access to the password.

t. End User Training. LXE offers Customer End User Training at the LXE training facility in Norcross, Georgia. Training is limited to two days of the End User Training Course for up to 8 of Customer's employees. Training includes basic configuration of the LXE Products and system analysis. End User Training is offered on a published schedule. This end user training is also available on the Web for an additional fee. All expenses of

Customer's employees associated with training, including but not limited to transportation, meals and lodging, are the responsibility of Customer.

5. Charges and Payment

a. Charges. Charges identified on any Subscription Schedule shall be the Subscription fee for the term identified thereon. With respect to each Product added or replaced during any Subscription term, the annual Subscription fees shall be applied immediately upon shipment of Product to Customer. With respect to each Product requested to be removed by Customer during any Subscription term, the Subscription fee shall be adjusted upon the next anniversary of the Commencement Date of the applicable Subscription Schedule.

b. Invoices. LXE will invoice Customer in advance for the full term of the Subscription. All payments shall be in U.S. Dollars only and shall be due thirty (30) days from the invoice date.

c. Change in Applicable Charges and Terms. During the initial term of this Agreement, LXE may, on not less than sixty (60) days' written notice, notify Customer of revised rates and/or any changes in the description of services set forth in an applicable Subscription Schedule, for future renewal periods. Unless within thirty (30) days thereafter Customer notifies LXE in writing of its intent not to continue receiving services under this Agreement hereunder, such changes shall become effective at the beginning of the next renewal period. After the initial term, any such modifications of rates and/or description of services shall become effective at the end of the notice period.

d. Late Payment. If an invoice remains unpaid for thirty (30) days from its due date, interest shall be due on the unpaid balance at the rate of 1.5% per month, or such lower rate as may be required by the law of the state in which the Product is located. Failure to provide payment within the period stated on the invoice may result in Customer's requests for Product Subscription services being held in abeyance until payment is received at LXE.

e. Taxes. Customer agrees to pay all taxes resulting from this Agreement, or LXE's services provided hereunder, other than taxes incurred by LXE based on its net income. Customer shall provide appropriate documentation to support any claim of tax-exempt status.

6. LXE Responsibilities

Subject to the other provisions hereof, LXE shall maintain the Products covered under this Agreement in satisfactory operating condition. LXE's sole obligation under this Agreement shall be to repair or replace any Product that has been reported by Customer to LXE as defective, and has been determined by LXE, in its sole discretion, to require and be entitled to service or repair hereunder.

LXE retains the option at all times to determine that it is no longer commercially reasonable to repair a Product, and

thereupon may exclude said Product from coverage under this Agreement. Upon such exclusion, Customer shall be entitled to receive a pro-rated refund of any pre-paid Subscription service payments allocable to the defective Product from the time said Product was determined to have been defective until the expiration date of the pre-paid Subscription.

7. Products with End of Life Notification

As Products go through their life cycle, there comes a time when Products are retired and no longer manufactured. Up to twelve (12) months ahead of such occurrence, LXE may issue an end of life notice and inform the Customer of last order date.

LXE makes every commercially reasonable effort to procure parts to continue to service each Product after the end of life notice. After it is no longer commercially reasonable to repair a Product for a particular component/product failure on component(s) that is no longer available and when LXE can no longer meet Turnaround Time of the Agreement on some repairs of this Product due to non-availability, LXE will offer modified end of life Subscription services ("EOL Subscription Services") for this Product as described below, notwithstanding anything to the contrary herein:

EOL Subscription Services:

- Products covered by this EOL Subscription Services are identified by LXE serial number separately, on Exhibit C, "Product Identified as End of Life Product".
- The Subscription Schedule for end of life Products will be renewed only for one year at a time.
- No guarantee of repairs of Product that need parts where shortages occur, however, such Product will receive priority on parts over T&M customers, as parts are available.
- Turnaround Time will be met on repairs only if the necessary parts are in stock at the Designated Service Center when the Product is received from Customer at the Designated Service Center for the repair.
- No Premium Services will be offered for end of life Products in the Agreement.

If a defective Product is returned to the Designated Service Center and it is determined by LXE that it is not repairable, the Customer will be promptly notified. Customer may either choose to have LXE hold the Product to see if any spare parts come in at a later date or remove the Product from the Subscription Schedule. If Customer chooses to remove the Product from the Subscription Schedule, LXE will offer equivalent replacement equipment at special pricing if it is commercially reasonably available. The replacement equipment will automatically be covered under Section 4 of the Agreement, Core Services, but any optional Premium Services would have to be purchased for this Product. Such replaced defective Product becomes the property of LXE.

8. Optional Training - Customer's LXE-Certified Help Desk

Customer's LXE-Certified Help Desk shall be a centrally designated place or office where all Product problems are first logged, reviewed and diagnosed by Customer, before they are transferred to LXE. To receive a LXE-Certified Help Desk discount, Customer must create and maintain a Customer LXE-Certified Help Desk with respect to the Products. LXE agrees to provide training relating to Product operation and diagnoses. All expenses of Customer's employees associated with training, including but not limited to transportation, meals and lodging, are the responsibility of Customer. The price for training shall be based on LXE's current published training rates. Customer must recertify Help Desk personnel every twelve (12) months

Customer shall maintain a sufficient number of Customer employees, but in no event less than two, who are LXE trained and will field all of Customer's Level 1 Maintenance Service questions. Only Customer LXE-Certified Help Desk employees may escalate requests to LXE.. Customer will ensure Customer LXE-Certified Help Desk service without any interruptions, including but not limited to employee illness, termination, promotion, or the like. In the event Customer, in LXE's opinion, fails to adequately maintain and staff the Customer LXE-Certified Help Desk, Customer will be required to come to LXE for additional training. If the Customer's LXE-Certified Help Desk continues to have problems handling Level 1 calls, the certification will be revoked and they shall no longer be entitled to a LXE-Certified Help Desk discount.

9. Optional Premium Services

Please initial on the line adjacent to any of the following optional Premium Services that Customer wishes to purchase to supplement this ServicePass Agreement for additional charge(s):

_____ **a. Disposal Service.** LXE will help Customer dispose, in an environmentally safe manner, old LXE-branded Product that Customer ships to LXE. The additional charge over the price of ServicePass Complete for this service is shown on the Subscription Schedule. Customer must call to get a Disposal Authorization Number (DA) prior to shipping the Product to LXE.

_____ **b. Spare-in-the-Air.** For ServicePass Complete Customers, LXE will manage their existing pool of spare Product for all their RF computers of any Product type and/or printers. The additional charge over the price of ServicePass Complete for this service is shown on the Subscription Schedule. The Customer may select the Product type they want to cover under this premium service, but the total quantity of that Product type must be included in the annual charge for the service. Product(s) covered under this premium service are shown on Exhibit D and identified by LXE serial number. Customer must purchase the spares for the Spare-in-the-Air pool kept at LXE.

When the Spare-in-the-Air Customer has nonfunctioning LXE Product, the Customer must first call the LXE Call Response Center to obtain a Return Material Authorization ("RMA") number. For Covered Sites in the U.S., if the notification is received at LXE: (a) by 3:00 p.m. Eastern Time, and the RMA number has been issued, LXE will ship the requested Product, configured for the specific site, on the same day via standard commercial overnight a.m. delivery if available, or (b) at or after 3:00 p.m. Eastern Time, the product will be shipped the next day for arrival on the following day. If the Customer requests shipment and arrival of product on the same day, LXE will use all reasonable means available to ship as requested and any extra shipping charge above the normal freight charge for next day delivery will be invoiced to the Customer.

To help ensure that Customer has available inventory in the spare pool at all times at LXE, the Customer must send the nonfunctioning Product as soon as possible to LXE for repair pursuant to this Agreement. Upon receipt of the nonfunctioning Product, LXE will attempt to repair it within twenty-four (24) business hours and store the Product in the Customer's spare pool.

If any spare Product is not repairable, it will be removed from the spare pool and removed from the Agreement, with a prorated credit given to the Customer for that unit. If new equipment is purchased by Customer to replace it and ServicePass is purchased, it will automatically be covered under Section 4 of the Agreement, Core Services, but Spare-in-the-Air Premium Service would have to be purchased for this Product.

It is the Customer's responsibility to have an adequate supply of spare Product in the spare pool at LXE.

The Customer should have one point of contact per site or a corporate contact for physically damaged or non-repairable Product in order to issue a purchase order for repairs/replacement of this Product.

The Customer must give LXE an accurate configuration for each Product and for each site that is participating in the program. This will help ensure that the Product is set up properly before it is shipped from LXE.

_____ **c. Customer Certified Image.** For ServicePass Customers, LXE will maintain a copy of Customer's standard hard disk image or a specific LXE software revision that can be loaded into units that have been returned to the LXE Designated Service Center. The Customer Certified Image is available for any LXE computers with Windows® CE operating system, LXE Point Release or standard certified software that has been mutually agreed to in writing by the Customer and LXE. The additional charge over the price of ServicePass Complete for this service is shown on the Maintenance Schedule. It is a flat rate price per image plus a per Product loading charge for LXE to transfer the image to Customer's Product. Any changes to the image will result in an

additional flat rate price. This configuration information will be maintained in the site(s) records at LXE so that it will be available to LXE personnel for new orders, repairs, and technical support.

10. Limitation of Liability

THE MAXIMUM LIABILITY OF LXE FOR BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO A REFUND OF THE MONTHLY SUBSCRIPTION PAYMENTS ALLOCABLE TO THE DEFECTIVE PRODUCT FOR THE PERIOD SAID ITEM WAS REPORTED AND DETERMINED TO HAVE BEEN DEFECTIVE; PROVIDED, HOWEVER, THAT THIS LIMITATION DOES NOT APPLY TO LXE'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11. IN NO EVENT WILL LXE HAVE LIABILITY FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR FOR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE PRODUCTS, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, EVEN IF LXE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Indemnification

LXE will defend and indemnify Customer against all third party claims for injuries to persons (including wrongful death) and damage to tangible personal property directly attributable to the negligence or willful misconduct of LXE or its employees in the performance of services under this Agreement, except to the extent caused by the negligence or willful misconduct of Customer or any third party.

12. Termination

a. Termination by Either Party. Either Party may terminate any Subscription Schedule(s) by giving the other party written notice sixty (60) days' in advance of the Subscription renewal date. In such an event, the applicable Subscription and associated services and fee(s) shall be terminated upon the next anniversary of the Commencement Date for the affected Subscription Schedule(s) in accordance with Section 5.a.

b. Breach. Either party may terminate any Subscription Schedule or this Agreement if the other party shall have failed within thirty (30) days after receipt of written notice to remedy any material breach of this Agreement set forth in such notice (such notice to contain a warning of such party's intention to so terminate).

c. Termination of Subscription Schedules. After all Subscription Schedules are terminated pursuant to paragraph 12.a. or 12.b., this Agreement shall automatically terminate on the expiration date of the then current Subscription Schedule(s), unless Customer and LXE agree in writing that subsequent Subscription Schedule(s) will be covered under this Agreement. After all Subscription Schedules are terminated pursuant to paragraph 12b., LXE

will recover all multi-annual discount amounts that have been previously credited to Customer's account.

13. Notices

Any notices or other communication required by or relating to this Agreement shall be in writing, and shall be sufficient, and effective on the following specified dates, if given as follows: (a) if delivered by hand or sent by facsimile, on the date of receipt, as confirmed by the courier or by automatic facsimile confirmation; (b) if sent by cable, telegram, or telex, on the day following the day of sending; (c) if sent by certified or registered mail, return receipt requested, with a copy sent by first class mail, on the earlier of the date of receipt thereof or on the third business day after mailing, in each case to the address set forth below, subject to any address change provided by notice given in such manner:

If to LXE:

LXE Inc.

125 Technology Parkway

Norcross, Georgia 30092

Attention: Customer Service Contracts Administrator

Facsimile: (770) 447-4561

If to Customer:

*

*

*

Attention:

Facsimile:

All notices sent by facsimile must be confirmed in writing to be effective.

14. Force Majeure

Neither party to this Agreement shall be liable for its failure to perform or for delay in performing any of its obligations hereunder to the extent that such performance is delayed or prevented by acts of God or other events beyond the reasonable control of such party ("Force Majeure Event").

15. Agreement Approval

Each party represents and warrants that all necessary approvals for this Agreement have been obtained, and the person whose signature appears below has the authority necessary to execute this Agreement on behalf of the party indicated.

16. Assignment

This Agreement or any part hereof shall not be assigned or otherwise transferred by any party without the prior written consent of the other party, which consent shall not be unreasonably withheld, and any such attempted assignment without such consent shall be void; provided, however, LXE may assign its rights to receive payment hereunder without such consent. Notwithstanding, the foregoing shall not prohibit assignment or other transfer to any successor corporation by merger or other transaction in which a successor acquires substantially all of the transferor's business and assets. This Agreement shall be binding upon

and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

17. Modifications

No modification of this Agreement shall be effective unless such modification is expressed in writing and executed by each of the parties.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to Georgia's conflict of laws and choice of law principles. The parties agree that any legal proceeding arising under this Agreement shall take place in the state or federal courts located within the State of Georgia, and both parties expressly consent to jurisdiction in such courts and to service of process with respect thereto, and waive any objections to any proceeding in any such court that it might otherwise have based on jurisdiction, venue or the adequacy of extra-territorial service of process.

19. Disputes

All claims or disputes between LXE and Customer, arising out of or relating to this Agreement, shall be mutually resolved, if possible, through good faith negotiation between the parties. The parties agree that if any claim or dispute is not resolved by mutual agreement within sixty (60) days of the commencement of such good faith negotiations they will, prior to initiating any legal action, engage a mutually-acceptable mediator to assist in evaluating and resolving such claim or dispute. All fees and expenses of such mediator will be evenly divided between the parties. LXE shall continue to provide maintenance to Customer during any such negotiation and mediation proceeding unless otherwise mutually agreed upon in writing or unless the claim or dispute involves payment(s) due to LXE hereunder.

20. Severability

The provisions of this Agreement are to be construed separately, and if any one or more of the provisions are not given legal effect by a court of competent jurisdiction, such provision(s) shall be deemed deleted from the Agreement and the Agreement shall be construed and enforced as it is written without such provision(s), subject to the right of the party adversely affected thereby to terminate this Agreement immediately by written notice to the other party.

21. Waiver

Either party's failure to exercise any of its rights under this Agreement shall not constitute a waiver of any past, present or future right or remedy.

22. Retention of Rights

Customer shall not obtain, by this Agreement, any right, title or interest in or to the patent rights, trademarks, service marks, trade secrets and copyrights or any and all other intellectual property rights embodied in the Products and sub-assemblies thereof manufactured by, or on behalf of, LXE, or any documentation related thereto, nor shall this Agreement give Customer the right to use, refer to, or incorporate in any way or form such intellectual property rights.

23. Captions

The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of the provisions set forth herein.

24. Survival

Termination, cancellation, or expiration of this Agreement shall not affect the obligations of the parties hereunder incurred as of the date of termination, cancellation or expiration, nor the obligation to negotiate and engage a mediator with respect to any dispute hereunder as provided in Section 19.

25. Non-Disclosure

In connection with the maintenance of the Products to Customer, LXE may disclose to Customer non-public trade secrets (including but not limited to documentation and other information offered on LXE's website, and computer programs recorded in firmware or on some other medium) and other non-public proprietary or otherwise confidential information concerning the Products and the business and affairs of LXE (such non-public trade secrets and other proprietary and confidential information are hereinafter collectively called the "Information"). LXE has a legitimate business interest in restricting the disclosure and use of the Information, and Customer agrees that these provisions are reasonable and necessary to protect the legitimate business interests of LXE.

LXE will retain all right, title and interest in and to all Information, including but not limited to any intellectual property rights embodied therein. Customer agrees to (a) keep in strictest confidence and trust all Information and not use or disclose any Information without the express prior written consent of LXE, except as reasonably necessary for the maintenance of the Products, and (b) diligently protect all of the Information against loss by inadvertent or unauthorized disclosure or use.

26. Entire Agreement

Each party acknowledges that this Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement.

