

# Enterprise Services Maintenance Agreement

## TERMS AND CONDITIONS

All purchases by an End User (as defined herein) from Zebra Technologies Enterprise Corporation, or any of its Affiliates ("Affiliates" means any company which is, now or during the term of this Agreement, a wholly-owned subsidiary of a party or any of its wholly-owned subsidiaries, the parent company of a party, or a wholly-owned subsidiary of the parent company) (collectively and individually referred to as "Seller") of service offers identified by a Seller designated SKU number or other identifying factor established by Seller and described in writing to the End User or to Company (the "Services"), whether sold directly by Seller to the End User or through a Seller Reseller or Distributor (herein after referred to as an "Authorized Partner") or sold directly by Seller and Company, shall (as between Seller and the End User or Seller and Company) be governed by these Terms and Conditions, the associated Services Description Document ("SDD") and any modifications agreed to by Seller in writing (collectively referred to as the "Agreement") and Seller's acceptance of an order for such Services shall be communicated to End User or to Company (as applicable) in a written order acceptance communication ("Acceptance Notice").

**ANY OF THE END USER'S OR COMPANY'S TERMS OR CONDITIONS THAT ARE DIFFERENT FROM OR IN ADDITION TO THOSE CONTAINED HEREIN ARE HEREBY REJECTED AND OF NO FORCE OR EFFECT.** Any prior or contemporaneous representations, agreements, comments, covenants or assertions that relate to the subject matter of the Agreement, whether written or oral, are not enforceable.

For all purposes hereof, "End User" shall mean both a customer who buys Services directly from Seller for its own use and not for resale or the ultimate purchaser or user of the Services who orders the Services for their own use and not for resale from a Seller Authorized Partner.

For all purposes hereof "Company" shall mean an Authorized Partner who subcontracts Seller to perform Services while contracting directly with End Users and serving as their sole point of contact with respect to the Services.

For all purposes hereof, "e-Contract" shall mean a service offer detailed under the Agreement that is purchased via an electronic medium, including but not limited to those via Electronic Data Interchange (commonly referred to as EDI), or Seller's My-Symbol-Order Web portal (also known as MSO).

**1.0 Nature of Agreement.** By Company's signing of the Service Order Form or by End User's submittal to Seller or to an Authorized Partner of a purchase order for Services, Company or End User (as applicable) order and agree to pay for those Services listed therein and Seller agrees to deliver the ordered Service(s). Only the written terms and conditions of this document, the associated Services Description Document, and any attachments agreed upon and signed by the applicable parties will apply. Seller's acceptance of any purchase order is expressly conditional on End User's or Company's (as applicable) assent to the additional or different terms and conditions herein. Any of Company's or End User's terms and conditions that are different or in addition to those contained herein are hereby objected to and of no effect. Oral or other representations unless contained herein, are not enforceable under the Agreement.

**2.0 Term.** Subject to Company's or End User's (as applicable) compliance with all of the terms and conditions of the Agreement and acceptance by Seller of Company's or Authorized Partner's or End User's (as applicable) order for the particular package of Services, such Services shall be supplied to Company or to End User for the term as defined by the applicable SKU or as otherwise agreed to in writing by Seller.

### 3.0 Supported Equipment.

**3.1** Seller will provide the Services with such levels of skills and experience as it deems appropriate to perform the Services. Seller's obligation to deliver the Services is subject to Seller's receipt of all required information regarding the End User and the supported products as Seller shall request. This information may include, but is not limited to: End User billing address; product's installation address; authorized contact names; valid serial numbers, and service start date. For e-Contract orders, the End User must provide to Seller a valid authorized buyer's e-mail address and company address. Automatic Addition ("Auto-Add") of additional units of product and Automatic Renewals are only available to End Users who purchase Services directly from Seller. Purchasers of Services through Seller Authorized Partners may only change, add or delete units to the Agreement by submitting a written order via a Seller Authorized Partner. Auto-Add and Automatic Renewals are not available to Company under the Agreement.

**3.2** Seller may require from the End User or from Company a proof of purchase of the particular unit of product and the Services for such product. The Services shall cover the particular units of Seller products described in the Acceptance Notice issued by Seller which will, among other things, identify the product number and associated serial number for each unit of product covered. During provision of the Services, if replacement parts or units of products are needed, such parts will be new or refurbished, and such units of products will be products equivalent to new in performance.

**3.3** The Agreement covers the individual units of the Seller products identified in the Acceptance Notice, including any Auto-Add units that are acquired by the End User for which Seller will issue a separate Acceptance Notice.

**4.0 Service Charges.** Service price(s) as listed are for each particular category of Service related to it. These charges do not include applicable taxes. The price(s) will remain as listed during the initial term of the End User's or Company's (as applicable) order.

**5.0 Invoicing and Payment Terms.** For Services purchased or contracted directly with Seller, invoices will be provided by Seller up to forty-five (45) days in advance of the applicable billing period. All terms are thirty (30) days net from the date of invoice for all Service agreements. Seller reserves the right, at any time, to revoke any credit extended if payment is in arrears for more than thirty (30) days after notice, or if in Seller's sole discretion End User's or Company's credit does not warrant further extension of credit. Additionally, Seller may charge late payment interest of the lesser of the highest legally permissible rate or 1.5% per month for the late payment of any and all balances of invoices from when they are due and payable. For Services purchased through or from an Authorized Partner or from Company, the payment terms agreed to between End User and such Authorized Partner or Company will apply as between such End User and the Authorized Partner or Company (as applicable).

**6.0 Limitations.** Service coverage does not include physical damage, misuse, unauthorized alterations or attempts to repair, abnormal operating

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environments, manmade or natural disasters, direct lightning damage, nor damage to consumable items such as tapes, diskettes, ribbons, paper, cables, print heads, batteries or chargers, and any associated equipment or system except as affected by the particular covered product, unless also specifically covered in writing by Seller. Products submitted for repair under these conditions will be subject to an additional fee to bring product up to Seller's specifications.

**7.0 Services Outside Scope of Standard Offers.**

Where services are requested that are outside the scope of the services covered under Seller's standard Service offering as described in the SDDs, such services will require additional payment by Company or by End User (as applicable) in accordance with Seller's prevailing rates. Prior to carrying out such services, Seller shall issue a quote to Company or to End User for payment via a credit card if the additional payment is less than \$1,000. Seller requires a purchase order if the additional payment is greater than \$1,000 for approved Companies and End Users.

**8.0 Right To Inspect.**

Seller reserves the right to inspect any unit of product that has not been covered by a Seller Service Agreement or Seller Service Warranty and, if necessary, make it operational. Company or End User (as applicable) will be responsible for an inspection fee as well as the cost of any repair work that may be necessary to make the product acceptable for coverage under the Agreement. Equipment which had been covered by an Agreement that has expired may also be subject to product inspection fees prior to renewal.

**9.0 Company / End User Responsibilities.**

Company's or End-User's responsibilities include: (a) immediate notification to Seller if there is any change regarding the information provided as part of the Agreement and the products (this may impact Seller's ability to perform and require additional fees); (b) making all reasonable efforts to cooperate with Seller in resolving problems remotely; executing self tests, diagnostic programs and so on; (c) paying all telecommunications charges associated with provision of telephone and remote Services; (d) compatibility of non-supported products, accessories and devices with the product(s); (e) security of their respective (and, in the case of Company, its End User's) proprietary and confidential information and for maintaining a procedure for reconstruction of lost or altered files or data programs; and (f) those activities and responsibilities identified in any associated SDDs.

**10.0 Changes and Notices.**

- 10.1** Seller may change the serial number of product(s) covered by the Services when the original product is damaged beyond economic repair and a replacement product is provided or when the Services offer provides an advance replacement product. Notification of the replacement unit serial number will be provided to Company or to End User.
- 10.2** In addition to requesting the Auto-Add feature, where applicable, End User may request a change of the unit(s) of each product being covered under the Agreement by forwarding those changes in writing to Seller, One Motorola Plaza, Mail Stop A-19, Holtsville, NY, 11742, Attn: Service Contract Administration. Additions to the Agreement may be accepted by Seller to be effective thirty (30) days after receipt for pro-rata fees for the remaining term under the then current Agreement for such additional units of product; the Agreement is non-cancellable although a deletion of some limited number of units of product from the Agreement may be accepted by Seller, at its sole discretion, thirty (30) days after receipt of such proposed request for a deletion of a unit for a pro-rata credit of the pre-paid fee for the service of such units. Products submitted for repair while not under Service coverage or warranty will be charged Seller's repair rate prevailing at the time such service is provided prior to placing unit under Service Agreement.

**11.0 Termination.**

Termination does not relieve the parties of their respective accrued obligations hereunder. Seller must deliver all Services due until the termination date, and Company and End User must pay for all Services delivered. Seller may terminate the Agreement in event of any of the following: (a) failure of Company or End User (as applicable) to comply with any Agreement provision within ten (10) days of written notice of such failure from Seller; or (b) Company's or End User's (as applicable) insolvency, bankruptcy or filing to seek relief from creditors.

**12.0 Force Majeure.**

Seller shall not be responsible or liable for any failure to perform hereunder if such failure is caused by acts of God, acts of government, strikes or labor disputes, failures of transportation, fire or flood or other casualty, failures of subcontractors or suppliers, or any other cause or causes (whether or not similar in nature to any of those herein specified) which are beyond Seller's reasonable control.

**13.0 Limitation of Liabilities.**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER WILL NOT BE LIABLE TO COMPANY AND/OR TO END USER, THEIR RESPECTIVE AFFILIATES OR ANY OTHER PERSON FOR ANY LOST REVENUES, PROFITS, GOODWILL OR USE, THE COST OF SUBSTITUTED PRODUCTS OR SERVICES, BUSINESS INTERRUPTION OR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE PROGRAMS, DATA OR REMOVABLE DATA STORAGE MEDIA, FOR THE RESTORATION OR REINSTALLATION OF ANY SOFTWARE PROGRAMS OR DATA, OR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND HOWEVER CAUSED RELATED TO THE SERVICES OR THE AGREEMENT, OR THE INABILITY TO USE THE PRODUCTS, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), EQUITY OR ANY OTHER THEORY OF LIABILITY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES OR EVEN IF THOSE DAMAGES ARE FORESEEABLE. COMPANY AND/OR END USER'S EXCLUSIVE REMEDY IS EXPRESSLY LIMITED TO PERFORMANCE OF THE SERVICES PROVIDED FOR BY THE AGREEMENT OR THE FAIR MARKET VALUE THEREOF. SELLER'S ENTIRE LIABILITY FOR DAMAGES TO COMPANY AND/OR TO END USER OR OTHERS RESULTING FROM SERVICES PERFORMED UNDER THE AGREEMENT SHALL IN NO EVENT EXCEED THE ANNUAL SERVICES CHARGE PAID BY COMPANY OR BY END USER, EXCEPT FOR INSTANCES OF PHYSICAL INJURY TO PERSON OR TANGIBLE PERSONAL PROPERTY DAMAGE. SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE OR NON-INFRINGEMENT. NEITHER PARTY MAY BRING A LEGAL ACTION UNDER THE AGREEMENT OR RELATED TO THE SERVICES MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION AROSE UNLESS PROVIDED OTHERWISE BY APPLICABLE NONWAIVABLE LAW.

**14.0 Holidays.**

Seller will observe all local public holidays and no Services shall be provided on these days.

**15.0 Disputes.**

If any legal proceedings are commenced to resolve any dispute or difference which may arise in connection with the Agreement or the performance of the Services, the prevailing party shall be entitled, in addition to any other award that may be made, to recover costs, attorney's fees and expert witness fees, including any costs or attorney fees incurred in connection with any appeals.

All provisions of this agreement and any applicable service description exhibits, schedules or attachments constitute a Service Agreement between Seller and Company or End User as fully identified on the Service Order Form.

**16.0 Entire Agreement.** No subsequent agreement, arrangement, relationship or understanding between the parties shall be valid, effective or enforceable and no obligation or liability shall be created on behalf of either party hereto unless and until it is contained in writing, signed by a duly authorized representatives of each party. The Agreement constitutes the entire understanding between Seller and Company or between Seller and End User (as applicable) with respect to the subject matter hereof and supersedes and replaces all prior and contemporaneous agreements, whether written or oral, as to such subject matter. If a conflict exists between these Terms and Conditions and an SDD, the SDD shall prevail.

**17.0 Assignment.** The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Company and End User may not transfer or assign their respective interests in the Agreement, in whole or in part, without the prior written consent of Seller, which consent shall be in Seller's sole discretion to grant. Notwithstanding any and all other rights Seller has to assign and subcontract its interests in and obligations under the Agreement, Company and End User specifically acknowledge and agree that Seller may transfer or assign its interests in the Services and the Agreement to a Seller Affiliate, or to the purchaser of all or substantially all of the capital stock, assets or business of such Seller entity (the "Assignee") without the consent of the End User or Company. In the event of such assignment and if the Assignee separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, reorganization, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), the Assignee may without prior written consent of Company or End User (as applicable) and at no additional cost to Seller and to Assignee, split the Agreement by assigning certain of its rights or obligations such that it will continue to benefit both Assignee and the Separated Business and their respective affiliates following the Separation Event.

**18.0 Governing Law and Venue.**

**18.1** When the Services are delivered in the Americas (North and Latin America), the Agreement shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof and excluding the Convention on Contracts for the International Sale of Goods. Company and End User hereby irrevocably and unconditionally submits for themselves and their respective property in any legal action or proceeding relating to the Agreement or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, in the County of Suffolk, New York, and to the United States District Court for the Eastern District of New York, and to the respective appellate courts thereof in connection with any appeal therefrom.

**18.2** When the Services are delivered in the EMEA region (Europe, Middle East and Africa), the Agreement shall be governed by English Law without giving effect to the conflict of law principles thereof and excluding the Convention on Contracts for the International Sale of Goods. Company and End User hereby irrevocably and unconditionally submits for themselves and their respective property in any legal action or proceeding relating to the Agreement or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the English courts.

**18.3** When the Services are delivered in the APAC region (Asia, Australia and New Zealand), the Agreement shall be governed by Singapore Law. Any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of one (1) arbitrator to be appointed by the Chairman of the SIAC.

**19.0 Export Control.** Provision of the Services to Company or to End User may be subject to export control law and regulations. Seller does not represent that any necessary approvals and licenses will be granted. Company and End User will provide reasonable assistance to Seller to obtain any necessary consent. If, through no fault of Seller, any necessary consent is not granted, the respective parties can terminate the Agreement without any liability to the other.

**20.0 Third-Party Rights.** If applicable, a person who is not party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

**21.0 Language.** The parties hereto confirm that it is their wish that the Agreement, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language only.

Les parties aux présentes confirment leur volonté que le convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

Los partidos a esto confirman que es su deseo que este acuerdo, así como el resto de los documentos que se relacionaban a esto, incluyendo todos los avisos, ha estado y será elaborado en la lengua inglesa solamente.