



## ST Engineering iDirect Standard Terms and Conditions of Support

Absent a Master or Frame Agreement between your company ("Customer") and ST Engineering iDirect, Inc. ("ST Engineering iDirect"), the following terms and conditions ("Terms and Conditions") apply to all proposals, offers and quotes (collectively "Quotes") made by ST Engineering iDirect to Customer for the sale of iSupport Services as well as Customer's related purchase orders and applicable ST Engineering iDirect invoices (Customer and ST Engineering iDirect each referred to as a "Party" and collectively, the "Parties").

### 1. Definitions.

**"Change Request"** means scheduled changes of system parameters.

**"Documentation"** means ST Engineering iDirect's standard package of text and graphic material, whether in print or in electronic form, related to the use, support and installation of Products.

**"Equipment"** means the equipment being supported by ST Engineering iDirect under the Terms and Conditions and applicable Quotes. Equipment specifically excludes any Third-Party Equipment.

**"General Release"** means a fundamental change to Product functionality. General Releases are typically designated as the first position of the release designation (e.g., N1, N2, N3).

**"Hub Solution"** means the items consisting of (a) equipment, hardware, circuit boards, components, chassis, and assemblies, and (b) Software in object code form only, including any Software Upgrades, and Documentation thereto. Remote terminals and associated licenses are excluded.

**"Incident"** means an event which causes a temporary interruption or a reduction in the performance of the Hub Solution.

**"Incident Call"** means Customer's contact with ST Engineering iDirect via telephone, email or the internet with respect to an Incident.

**"iSupport Fees"** means the fees payable for iSupport Services.

**"iSupport Services"** means an elective program of Technical Support and/or Software Upgrades and/or repair services.

**"Maintenance Release"** means a maintenance release where outstanding Software issues are addressed. No new features are included in Maintenance Releases. Maintenance Releases are typically designated in the fourth position (e.g., N1:N2:N3:N4).

**"Major Release"** means a release of the Software of the same generation in which substantial new features are introduced or other substantial changes are introduced requiring significant regression testing. Major Releases are typically designated in the second position of the release designation (e.g., N1:N2).

**"Minor Release"** means a release of the Software in which one or two smaller features are introduced or functional enhancements have been included. Minor Releases are typically designated in the third position of the release designation (e.g., N1:N2:N3).

**"Products"** means any of the Equipment or Software.

**"Resolution Time"** means the time elapsed time between the receipt of an Incident Call and the target time within which ST Engineering iDirect provides a resolution of the problem.

**"Response Time"** means the elapsed time between the receipt of an Incident Call and the target time within which ST Engineering iDirect begins Technical Support as verified by a verbal or written confirmation to Customer.

**"Service Hours"** means seven (7) days a week, twenty-four (24) hours a day, three hundred and sixty-five (365) days a year.

**"Service Period"** means the period between the start and end date as quoted on the iSupport Quotes by ST Engineering iDirect.

**"Service Request"** means a request from a user for information, advice, one or more Standard Changes (defined below), or access to a service.

**"Software"** means the specific ST Engineering iDirect proprietary software, in object code format, as being supported by ST Engineering iDirect under the Terms and Conditions. Software specifically excludes any Third-Party Software.

**"Software Upgrades"** means the provision of General Releases, Major Releases, Minor Releases and Maintenance Releases, as well as updates to the related on-line Documentation.

**"Standard Changes"** means pre-approved changes that are considered relatively low risk, low impact, are performed frequently, and follow a documented procedure.

**"Stop-the-Clock"** means mutually agreed (which agreement shall not unreasonably be withheld by either Party) suspension of a service level response target ("Service Level Response Target") as identified in Section 5 (iSupport Services) in circumstances when the Supplier cannot be held responsible for certain conditions affecting the service level. Until blocking conditions are lifted, the resulting delay will be subtracted from the Service Level Response Target identified in Section 5.

**"Technical Support"** means assistance by telephone or internet or otherwise in respect of Products and Incidents during Service Hours and in the English language.

**"Third-Party Equipment"** means the hardware and equipment manufactured by third parties and identified as such by ST Engineering iDirect.

**"Third-Party Software"** means the third-party software application(s) and/or code libraries, which are licensed separately by the third-party manufacturer or developer whether embedded in the Hub Solution or licensed as optional add-on functionality.

**"Third-Party Product"** means any of the Third-Party Equipment or Third-Party Software.

**2. Acceptance.** ST ENGINEERING IDIRECT'S ACCEPTANCE OF CUSTOMER'S PURCHASE ORDER IS SOLELY ACCEPTED ON THESE TERMS AND CONDITIONS, WHICH ARE IN LIEU OF ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION PERTAINING TO CUSTOMER'S PURCHASE ORDER. CUSTOMER'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT SHALL BE CONCLUSIVELY PRESUMED FROM CUSTOMER'S ACCEPTANCE OF ALL OR ANY PART OF THE SERVICES OR EQUIPMENT, OR FROM PAYMENT BY CUSTOMER FOR ALL OR ANY PART OF THE SERVICES OR EQUIPMENT. NONE OF THESE TERMS AND CONDITIONS MAY BE ADDED TO, MODIFIED, SUPERSEDED OR OTHERWISE ALTERED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ST ENGINEERING IDIRECT. FAILURE OF ST ENGINEERING IDIRECT TO OBJECT TO ANY TERMS OR CONDITIONS WHICH MAY BE CONTAINED IN ANY DOCUMENT OR FORM OF CUSTOMER SHALL NOT BE CONSTRUED AS A WAIVER OF THESE TERMS AND CONDITIONS, NOR AS AN ACCEPTANCE OF ANY SUCH TERMS AND CONDITIONS. PURCHASE ORDERS ACCEPTED BY ST ENGINEERING IDIRECT ARE SUBJECT TO CANCELLATION BY CUSTOMER ONLY UPON THE EXPRESS WRITTEN CONSENT OF ST ENGINEERING IDIRECT. ALL QUOTES BY ST ENGINEERING IDIRECT ARE NON-BINDING AND, UNLESS STATED OTHERWISE THEREON, WILL EXPIRE THIRTY (30) FROM ITS DATE

### 3. Disclaimers and Limitations.

**3.1. Disclaimers.** ST ENGINEERING IDIRECT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND HEREUNDER, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND ST ENGINEERING IDIRECT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NO WARRANTY IS MADE BY ST ENGINEERING IDIRECT ON THE BASIS OF TRADE USAGE OR COURSE OF DEALING OR COURSE OF PERFORMANCE. ST ENGINEERING IDIRECT DOES NOT WARRANT THAT THE SUPPORT SERVICES, SOFTWARE UPGRADES OR UPDATES OR ANY OTHER INFORMATION, MATERIALS, EQUIPMENT OR SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

**3.2. Disclaimers: Third Party Products.** ST ENGINEERING IDIRECT WILL HAVE NO OBLIGATION WHATSOEVER UNDER THESE TERMS AND CONDITIONS TO MAINTAIN AND/OR SUPPORT THIRD-PARTY PRODUCT(S), NOR WILL ST ENGINEERING IDIRECT HAVE ANY LIABILITY UNDER THESE TERMS AND CONDITIONS, REGARDLESS OF THE NATURE OF THE CLAIM OR ALLEGED DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, FOR ANY CLAIM ARISING FROM OR RELATED TO CUSTOMER'S USE OR DISTRIBUTION OF THIRD-PARTY PRODUCTS. ST ENGINEERING IDIRECT DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ANY AND ALL SUCH THIRD-PARTY PRODUCTS, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND/OR NON-INTERFERENCE.

**3.3. Limitations.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR OBLIGATIONS ARISING UNDER BREACHES

OF SECTION 10 (CONFIDENTIALITY), OR BODILY INJURY OR DEATH OF A PERSON ARISING FROM WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, NEITHER PARTY NOR THEIR SUPPLIERS SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THE QUOTES AND THESE TERMS AND CONDITIONS UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY, INCLUDING WITHOUT LIMITATION: (A) FOR ERROR OR INTERRUPTION OF USE, LOSS OR CORRUPTION OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS OR LOSS OF REVENUE; (C) FOR ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED AMOUNTS PAID OR PAYABLE BY CUSTOMER OVER THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CLAIM AROSE; IN EACH CASE EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

**4. Eligibility.** iSupport Services are available only to Customers with valid Software licenses who are current on iSupport payments or iSupport Fees. Technical Support is provided for current release(s) of the Software provided the Software has not been altered without ST Engineering iDirect's authorization.

#### **5. iSupport Services.**

##### **5.1. Service Level Response Targets.**

(a) Technical Support for Software is available during Service Hours and ST Engineering iDirect will use commercially reasonable efforts based upon table below:

<i>Service Level</i>	<b>Basic</b>	<b>Enhanced</b>	<b>Premium</b>
<i>P1 - Critical Priority</i>	2 Hours	1 Hour	30 minutes
<i>P2 - Major Priority</i>	6 Hours	4 Hours	2 Hours
<i>P3 - Minor Priority</i>	Reasonable Effort	1 day	12 Hours
<i>P4 - Low Priority</i>	Reasonable Effort	Reasonable Effort	1 day

(b) In the event the Parties mutually agree to Stop-the-Clock, Service Level Response Targets shall be temporarily suspended until the Parties mutually agree to re-initiate the Service Level Response Target timeline.

(c) Response Time does not apply to Change Requests or other Service Requests.

##### **5.2. Incident Call Priority.** Priority of Incidents are categorized as follows:

(a) **“Incident Call Priority 1”** Critical: This is a severe failure with total loss of service or resources where our product is inoperable, produces incorrect results and has a material impact on the Customer's financial operations, production has stopped and there is no workaround. The priority of a P1 Service Level ticket will not be downgraded unless the initial classification does not correspond with the actual P1 Service Level classification level.

(b) **“Incident Call Priority 2”** Major: This is an Incident with a major functionality failure where service is seriously impaired. Production has not stopped but there is a significant or degraded loss of service and no workaround exists.

(c) **“Incident Call Priority 3”** Minor: The Equipment is operational but does not provide a function in an optimum manner, or results in cosmetic or isolated errors. This usually has a minor business impact with minimal loss of service which is reasonably correctable by manual intervention or system workaround.

(d) **“Incident Call Priority 4”** Minimal Impact: Issue has no business impact. These are mostly general product and operational questions or product enhancement requests.

##### **5.3. Resolution Time Target.** The following are the target Resolution Times:

(a) ST Engineering iDirect shall use commercially reasonable efforts to resolve an Incident Call Priority based upon the below table:

<i>Service Level</i>	<b>Basic</b>	<b>Enhanced</b>	<b>Premium</b>
<i>P1 - Critical Priority</i>	50% in 8 Hours	90% in 6 Hours	70% in 2 Hours 90% in 4 Hours
<i>P2 - Major Priority</i>	80% in 4 Days	80% in 2 Days	50% in 8 Hours 80% in 12 Hours
<i>P3 - Minor Priority</i>	Reasonable Effort	Reasonable Effort	Reasonable Effort
<i>P4 - Low Priority</i>	Reasonable Effort	Reasonable Effort	Reasonable Effort

(b) Customer shall receive periodic updates regarding the Resolution status until the case has been closed by the assigned Customer Success Engineer (CSE). Downgrades of an Incident Call shall be issued by the CSE only after consultation with Customer and all status updates shall be delivered to Customer's designated contact.

(c) For purposes of this Section, **“Resolve”** or **“Resolution”** shall mean that the problem or Incident has been solved and the original functionality restored, or that a temporary workaround has been implemented so that Customer's business is not materially impacted while ST Engineering iDirect continues to work toward a permanent solution to the Incident.

(d) Customer agrees to use reasonable care in determining the Service Level classifications, so that valid Priority 1 and 2 Incidents can receive the most appropriate levels of attention from ST Engineering iDirect. ST Engineering iDirect reserves the right to re-classify an Incident once progress has been made and/or if the initial classification does not correspond with the actual Service Level Response Target classification level.

(e) Resolution Time does not apply to Change Order or other Service Requests.

**5.4. On-Site Support.** For so long as Customer is current in the payment of the appropriate iSupport Fees, and at ST Engineering iDirect's discretion but with Customer's prior consent, ST Engineering iDirect can decide to provide Technical Support at the Customer's site. In such event, Customer shall pay ST Engineering iDirect on a time and materials basis and also reimburse ST Engineering iDirect for all related expenses and costs for travel, lodging and meals. For sake of clarity, iSupport Services do not consist of consulting services that Customer may desire from time-to-time. iSupport Services are intended to assist Customer when experiencing problems with the Software or Equipment, and these are limited to providing assistance with actual application-related problems. Any services other than the resolution of Products-related problems are considered professional services, including consulting, auditing, customizations of software, or planning, and are provided under separate legal terms. ST Engineering iDirect's decision defining the nature of the support requested is final.

**5.5. Exclusions.** iSupport Fees do not include services requested as a result of, or with respect to causes that are not attributable to ST Engineering iDirect. These services will be billed to Customer at ST Engineering iDirect's then-current rates. Causes which are not attributable to ST Engineering iDirect include but are not limited to: (a) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; excessive heat; fire and smoke damage; operation of Equipment and/or Software with other media and hardware, software or telecommunication interfaces not meeting or not maintained in accordance with the manufacturer's specifications; or causes other than ordinary use; (b) improper installation by Customer, an unauthorized third party or use of the Equipment and/or Software that deviates from any operating procedures established by ST Engineering iDirect in the applicable Documentation; (c) modification, customization, alteration or addition or attempted modification, customization, alteration or addition of the Equipment and/or Software undertaken by Customer and other parties and current in the payment of the appropriate iSupport Fees or payments due under all other agreements between the Parties third party not authorized ST Engineering iDirect; or (d) software programs provided by Customer or other parties. Nothing in these Terms and Conditions shall be construed to give Customer a right to use, or otherwise obtain access to, any source code from which the Software or any portion thereof is compiled or interpreted.

**6. Software Upgrades.** Software Upgrades are classified as (a) **“General Release”** (b) **“Major Release”**; (c) **“Minor Release”**; and (d) **“Maintenance Release”**. Provided that Customer is in compliance with its contractual obligations with ST Engineering iDirect, and current in the payment of the appropriate iSupport Fees or payments due under all other agreements between the Parties.

**7. Responsibilities of Customer.** ST Engineering iDirect's provision of Technical Support to Customer is subject to the following:

**7.1.** Customer shall provide ST Engineering iDirect with reasonable and necessary access to Customer's personnel and its Equipment during Service Hours. ST Engineering iDirect shall comply with all confidentiality terms agreed between the Parties;

**7.2.** Customer shall provide supervision, control and management of the use of Products including implementing procedures for the protection of information and backup facilities in the event of Incidents;

**7.3.** Customer shall document and promptly report all detected Issues to ST Engineering iDirect and carry out procedures for the rectification of Incidents within a reasonable time after such procedures have been received from ST Engineering iDirect;

**7.4.** Customer shall maintain a current backup copy of all configuration files;

**7.5.** Customer shall properly train its personnel in the use and application of Products; and

**7.6.** Customer shall obtain access to the World Wide Web, at its expense, in order to access ST Engineering iDirect's Global Support Website, iSupport

Online at <https://support.idirect.net/> or ST Engineering iDirect's e-mail [tac@idirect.net](mailto:tac@idirect.net).

**8. Documentation.** ST Engineering iDirect agrees to provide Documentation to Customer at no additional charge and made available at <http://support.idirect.net>. In the event that such Documentation is modified during the term that Customer receives iSupport Services hereunder, ST Engineering iDirect agrees to provide to Customer all such modifications in electronic form at no additional charge. All Documentation provided by ST Engineering iDirect to Customer shall be in the English language. Customer agrees to ensure that all proprietary notices placed on any original copies by ST Engineering iDirect or its OEM suppliers, such as copyright notices, trademark notices, and confidentiality notices, are also included in the same manner on all copies.

**9. iSupport Fees.** Provision of iSupport Services is subject to the payment of iSupport Fees in accordance with the applicable Quotes.

9.1. Suspension of Services for Late Payment. In the event Customer fails to make any undisputed payment when due to ST Engineering iDirect under these Terms and Conditions such failure shall be deemed a material breach of these Terms and Conditions and, in addition to being entitled to all remedies available in law and equity, ST Engineering iDirect shall be entitled to immediately suspend the Customer's iSupport Services.

**10. Confidentiality.** Except as otherwise provided in this section, Customer and ST Engineering iDirect each agrees that all business, technical and financial information it obtains from the other Party that is designated as confidential or proprietary in writing, or is disclosed in such a manner that a reasonable person would understand the nature and confidentiality of the information disclosed, is and shall be the confidential property of the disclosing Party and its licensors ("Confidential Information" of the disclosing Party). Confidential Information shall not include information that: (a) is previously rightfully known to the receiving Party without restriction on disclosure, (b) hereafter becomes known to the general public, through no act or omission on the part of the receiving Party, (c) is disclosed to the receiving Party by a third party without breach of any separate nondisclosure obligation, or (d) is independently developed by the receiving Party without reliance on the Confidential Information of the disclosing Party. Except as expressly and unambiguously allowed herein, the receiving Party will not use or disclose the Confidential Information of the disclosing Party except as expressly permitted herein and will hold in confidence the Confidential Information of the disclosing Party using the same degree of care as it holds its own confidential or proprietary information, but no less than a reasonable degree of care. If required by law, rule, requirement, regulation or order of any government or government agency or court, the receiving Party may disclose Confidential Information of the disclosing Party, but to the extent lawful, will give adequate prior notice of such disclosure to the disclosing Party to permit the disclosing Party to intervene and to request protective orders or other confidential treatment therefore. The parties acknowledge that money damages will not be an adequate remedy if this provision is breached; therefore, either Party may, in addition to any other legal or equitable remedies, seek an injunction or other equitable relief against such breach without the necessity of posting any bond or surety.

**11. General.**

Customer shall pay all municipal, state, county, federal and foreign taxes including, but not limited to, value added, excise, sales, use, withholding or consumption taxes, customs duties, other governmental charges or other taxes which may be levied upon the sale, license or transfer, ownership or installation of goods, software, or technology. These Terms and Conditions will be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, without regard to, or application of, rules or principles regarding conflicts of law or to the United Nations Convention on the International Sale of Goods. For purposes of all claims brought under these Terms and Conditions, each Party hereby irrevocably submits to the exclusive personal and subject matter jurisdiction of the state and federal courts located in Fairfax County and Alexandria, Virginia. Notwithstanding the foregoing either Party may seek injunctive relief from any court of competent jurisdiction. In any action or proceeding to enforce rights under these Terms and Conditions, the prevailing Party shall be entitled to recover costs and attorneys' fees. These Terms and Conditions shall be interpreted and construed in the English language, which is the language of the official text of these Terms and Conditions. Customer's performance (or lack thereof) of any provision in these Terms and Conditions shall not affect ST Engineering iDirect's full right to require such performance at any time thereafter; nor shall the waiver by ST Engineering iDirect of any breach of any provision of these Terms and Conditions be taken or held to be a waiver of the provision itself. Customer may not assign these Terms and Conditions without ST Engineering iDirect's prior written consent, which such consent may be withheld for any or no reason, and any attempted or purported assignment by Customer shall be null and void. These Terms and Conditions are the complete and exclusive statement of the agreement between ST Engineering iDirect and Customer, which supersedes any proposal or prior agreement, oral or written, any terms that appear on Purchase Orders and any other communications between the

parties in relation to the subject matter of these Terms and Conditions. These Terms and Conditions may only be modified by an instrument in writing duly executed by an authorized representative of Customer and ST Engineering iDirect.