



**EMPIRIX, AN INFOVISTA COMPANY  
SINGLE PROJECT RESELLER AGREEMENT**

THIS SINGLE PROJECT RESELLER AGREEMENT is made effective as of the date written below (the "Effective Date") by and between Empirix Inc. d/b/a Empirix, an Infovista company, having its principal office at 600 Technology Park Drive, Suite 100, Billerica, Massachusetts 01821 USA ("Empirix") and **RESELLER NAME**, having its principal office at **[ADDRESS], [ADDRESS CITY, STATE], [ADDRESS ZIP], [ADDRESS COUNTRY]** ("Reseller").

**1. End Customer**

Reseller may resell the Empirix hardware and software products ("Products") and services ("Services") listed on Empirix **Quote # [QUOTE NUMBER]** attached as Schedule 1 to this Agreement (the "Quote") to the following Reseller customer (the "End Customer"):

**[END CUSTOMER NAME]**

**2. Pricing; Payment Terms**

Reseller shall purchase the Products and Services from Empirix for the End Customer in accordance with the pricing set out in the Quote. Empirix shall invoice Reseller for 100% of the total amount set out in the Quote upon receipt of a purchase order and Reseller shall pay Empirix within thirty (30) days of receipt of invoice. Reseller shall remit payment by wire transfer in accordance with the following wire instructions:

**Silicon Valley Bank  
3003 Tasman Drive  
Santa Clara, CA 95050  
Routing Number: 121140399  
Swift Code: SVBKUS6S  
Final Credit Account 3300254613**

The parties acknowledge and agree that (i) the General Terms and Conditions attached as Schedule 2, (ii) the Minimum Terms of the EULA attached as Schedule 3 and (iii) the Technical Support and Maintenance Policy attached as Schedule 4 are part of this Agreement, and the signatures below constitute each party's acceptance of this Agreement.

**EMPIRIX, AN INFOVISTA COMPANY**

**RESELLER NAME.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

Fax: \_\_\_\_\_

Tel: \_\_\_\_\_

**SCHEDULE 1**

**EMPIRIX QUOTE # [QUOTE NUMBER]**

**(See attached quote)**

## SCHEDULE 2

### GENERAL TERMS AND CONDITIONS

#### 1. Authorization

Empirix hereby authorizes Reseller to purchase from Empirix and resell to the End Customer listed above the Empirix Products and Services contained in the Quote. Reseller may not resell Empirix Products or Services to any other End Customer without prior written approval from Empirix.

#### 2. Reseller's Obligations

2.1 Reseller shall contract directly with End Customer for the sublicense of Products and/or the provision of Services by Empirix. Reseller shall provide Tier One Technical Support in accordance with the terms of Schedule 5 to the End Customer for each annual period in which the End Customer purchases a maintenance through Reseller. Empirix's technical support policy is defined in Schedule 4.

2.2 Reseller shall not make any affirmations, representations, warranties or guaranties with respect to the Products to the End Customer or other third party or otherwise display, demonstrate, or represent the Products in any manner that is false or misleading, or make warranty or representations as to quality, merchantability, fitness, or any other feature of the Products in any manner that would expand the warranties or representations made by Empirix under the this Agreement.

2.3 With respect to Services to be performed by Empirix for Reseller or its End Customer, Reseller shall, as appropriate for the Services subject to the Order:

- (i) Arrange for reasonable access to the relevant facilities and equipment, sufficient in all cases to permit the Services to be performed.
- (ii) Arrange for reasonable work space at such facilities for Empirix employees, as necessary or appropriate.
- (iii) Ensure that: (x) all equipment, software, documentation, information and personnel required for the performance of such Services is made available to Empirix on a timely basis, and (y) all Reseller personnel assigned to assist Empirix are familiar with the requirements of Reseller or its End Customer, as the case may be, and have the expertise and capabilities necessary to permit Empirix to undertake and complete the Services.

2.4 Unless otherwise agreed upon in writing by the parties, Reseller shall pay its own expenses, including without limitation all travel, lodging and entertainment expenses, incurred in connection with discharging its obligations hereunder. Empirix shall not reimburse Reseller for any of those expenses.

#### 3. Restrictions

3.1 Empirix does not grant and Reseller acknowledges that it shall have no right, license or interest in any of the patents, copyrights, trademarks, or trade secrets owned, used or claimed now or in the future by Empirix. Except as expressly permitted in this Agreement, Reseller shall not, and shall not authorize others to, (i) use, modify, copy, or otherwise reproduce the Products in whole or in part, (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Products, (iii) sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes, or (iv) remove any proprietary notices or labels on the Products (including without limitation, any copyright or trademark notices).

#### 4. Prices: Payment

4.1 All prices are exclusive of all taxes and other charges, including but not limited to sales, use, value-added or other similar taxes, customs duties or assessments. Reseller shall be free to unilaterally establish the pricing it charges End Customer for the Products and Services

4.2 Reseller agrees to pay amounts due in accordance with the terms on the signature page above.

4.3 For undisputed invoices, Empirix reserves the right to impose a late payment charge up to the maximum allowed by law for each month that any payment is late. Reseller shall also pay Empirix's costs of collecting any amounts that are overdue including, but not limited to, reasonable collection and attorneys' fees.

4.4 Under no circumstance shall payment be contingent on either payment by End Customer or acceptance of the Services by End Customer unless expressly agreed in writing by the Chief Financial Officer of Empirix

#### 5. Ordering: Delivery

5.1 Delivery of Products shall only be made against a written purchase order ("Order") issued by Reseller to Empirix. All Orders are subject to acceptance by Empirix at its discretion. At a minimum, each Order shall specify the following items:

- (i) The complete list of the Products and Services covered by the Order, specifying the quantity and description of each;
- (ii) The price of each Product and any additional charges; and
- (iii) The name and billing address of the End Customer.

5.2 No Order, acknowledgment form, or other document or communication from either party shall vary or supplement the terms and conditions of this Agreement unless both parties expressly agree in writing.

5.3 All deliveries of the Products purchased pursuant to this Agreement will be made Ex Works Empirix's facility in Billerica, Massachusetts USA (Incoterms 2000). In no event will Empirix be liable for any delays in delivery.

5.4 For each order of Services, other than standardized or packaged services, Empirix will prepare and agree with Reseller a Statement of Work. Empirix shall use commercially reasonable efforts to perform the Services pursuant to the timetables specified in the applicable Order, Quote or SOW.

#### 6. Empirix Software License: Right to Sublicense

6.1 Title to and ownership of all proprietary rights in or related to the Empirix Software shall at all times remain with Empirix and its licensors. All references in this Agreement to sale, resale or purchase of the Products, or references of like effect, shall, with respect to the Software, mean licenses or sublicenses of the Software. All references in this Agreement to purchasers of the Products, or references of like effect, shall, with respect to the Software, mean Reseller as a licensee or authorized sub-licensees of the Software.

6.2 In consideration of payment of the fees associated with an Order for Software, Empirix hereby grants to the Reseller a non-exclusive right, during the term of this Agreement, to Resell to the End Customer, provided that the End Customer shall have first executed a legally binding end user license agreement directly with Reseller, or has issued a purchase order that includes or accepts terms, that is no less favorable to Empirix as those defined in the end user license agreement ("EULA") attached hereto as Schedule 3. Empirix may condition

acceptance of an Order upon presentation of a complete copy of the EULA to Empirix.

6.3 The term of use of the license granted under this Agreement shall be perpetual unless otherwise set forth in the Quote.

6.4 The Reseller may permit its sub-licensee End Customer to make a single copy of the Software exclusively for back-up or archival purposes, provided that all copies bear Empirix's proprietary notices. Any attempt to sublicense, resell, transfer or assign any Software, or any portion of Software, except in accordance with this Section 6 shall be null and void. All Orders placed under this Agreement shall be for resale only. Reseller may not use any Product or Service for internal use.

## **7. Warranties**

7.1 The Software is not error-free. Empirix warrants that for a period of ninety (90) days following delivery (the "Software Warranty Period") the Software, when installed and used in accordance with the Software Documentation, will operate and perform in all material respects in accordance with the Software Documentation ("Conform"). A minor discrepancy between the actual operation, functionality or performance of the Software and as described in the Software Documentation shall not be considered a failure to Conform. Empirix shall attempt, through reasonable efforts, to correct any material failure of the Software to Conform, if such failure is reported to Empirix within the Software Warranty Period and Reseller, at Empirix's request, provides Empirix with sufficient information (which may include access to the relevant computer system for use of the Software by Empirix or its designated personnel) to reproduce the defect in question. If, during the Software Warranty Period, after a reasonable number of attempts, as determined by Empirix, to correct the failure to Conform, Empirix is unable to revise the Software such that it Conforms, then Reseller may, at its option, cancel the Order, return all copies of the Software, and associated Hardware, if applicable, and receive a refund of any fees paid for such non-conforming Software, and associated Hardware, if applicable. This paragraph states Reseller's exclusive remedy and Empirix's sole liability under the forgoing Software warranty, and if a refund is provided for associated Hardware, under the Hardware warranty set out below in Section 7.2 below as well.

7.2 Empirix warrants that, for a period of one (1) year following delivery (the "Hardware Warranty Period"), the Hardware shall be in good working order and will perform, function and operate in all material respects to the relevant Product specifications. Hardware supplied may contain either new or refurbished parts. If refurbished, all components will be warranted as new. Reseller's exclusive remedy and Empirix's sole liability under this warranty shall be for Empirix to provide during the Hardware Warranty Period, at no additional charge to Reseller, the parts and labor necessary to restore the Hardware to good working order. Reseller shall notify Empirix of the failure of any of the Hardware to perform in accordance with the applicable specifications, and thereafter, pursuant to Empirix's direction, arrange for the delivery of the damaged Hardware to Empirix or its designee for repair in accordance with Empirix RMA procedures.

7.3 Empirix warrants that all Services shall be performed in a competent and professional manner. Empirix's sole liability and Reseller's exclusive remedy for breach of this warranty is for Empirix to re-perform such Service for no additional charge.

7.4 Empirix makes no warranties with respect to the Products and Services except as set out in this Section. Warranties are for the benefit of Reseller only. Reseller shall indemnify and hold Empirix harmless against all claims made by a Customer or any person claiming through Customer in an action directly against Empirix with respect to, resulting from, or arising out of the Resale of any Product.

7.5 EXCEPT AS NOTED IN THIS SECTION 7, EMPIRIX AND ITS THIRD PARTY LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OR

REPRESENTATIONS OF WORKMANSHIP, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE.

## **8. Limitation of Liability**

8.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT THAT THIS LIMITATION SHALL NOT APPLY TO A BREACH BY RESELLER OF SECTION 3.1, SECTION 9 OR ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.2. THE CUMULATIVE LIABILITY OF EMPIRIX TO RESELLER HEREUNDER, IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY RESELLER TO EMPIRIX UNDER THIS AGREEMENT.

## **9. Confidential Information**

9.1 For purposes of this Agreement, "Confidential Information" shall mean any information that (i) is delivered in written form marked "confidential", (ii) is delivered orally, described as confidential at the time of delivery, and its confidential nature is confirmed in writing within thirty (30) days, or (iii) in any event the receiving party might reasonably be expected to judge as confidential.

9.2 During the term of this Agreement, and for three years thereafter, each party shall keep confidential and shall not use for any purpose any Confidential Information provided to it by the other party unless the information sought to be disclosed (a) is publicly known at the time of disclosure, (b) is lawfully received from a third party not bound in a confidential relationship with the other party, (c) is published or otherwise made known to the public by the other party, (d) was generated independently by the receiving party without use of the Confidential Information, or (e) is required to be disclosed under a court order.

9.3 Each party shall treat and protect Confidential Information in the same manner as it treats its own information of like character, but with not less than reasonable care. Upon request from the disclosing party, the receiving party shall return all Confidential Information or certify its destruction.

## **10. Indemnification**

10.1 Indemnification by Empirix. Empirix shall (as long as Reseller is not in default under this Agreement) defend Reseller from and against any and pay all damages and costs, incurred by Reseller in connection with any third-party claim of infringement by the Products of any U.S patent, copyright or misappropriation of any trade secret, provided Empirix is promptly notified of such claim and given reasonable assistance by Reseller and the opportunity to assume sole control over defense and settlement of any claim. The foregoing obligations do not apply with respect to the Products (a) modified after delivery by Empirix, (b) combined with other products, processes or materials to the extent the alleged infringement relates to such combination, or (c) used other than as specified by Empirix. In the event that the Products are held, or are believed by Empirix, to be infringing, Empirix shall have the option to (i) modify the Products to be non-infringing, (ii) obtain a license for continued use of the Products, (iii) replace the Products with functionally equivalent non-infringing products or (iv) cease selling the Products. THIS SECTION STATES THE ENTIRE LIABILITY OF EMPIRIX AND RESELLER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY INFRINGEMENT BY THE PRODUCTS.

10.2 Indemnification by Reseller. Reseller shall defend, indemnify and hold harmless Empirix and its respective officers, directors, employees and agents from and against any and all damages, costs and expenses, including attorneys fees, incurred by Empirix in connection with any claim against Empirix that relates to: (i) representations made

by Reseller, (ii) actions or omissions by Reseller inconsistent with this Agreement, or (iii) any violation or alleged violation of law by Reseller.

## 11. Ownership

11.1 Except for the license rights granted hereunder, all right, title and interest in and to the Software, Software documentation, programs, program code, information and other intellectual property rights (including but not limited to all test scripts and other items delivered by Empirix to Reseller) ("Empirix Property") hereunder shall be retained by Empirix and its suppliers.

11.2 Subject to Empirix's reserved rights in the Empirix Property, all deliverables arising out of Services shall belong to Reseller and End Customer upon full payment. In performing the Services, including developing the deliverables, Empirix may utilize Empirix Property. Empirix shall retain all ownership rights in and to the Empirix Property. Empirix shall retain the unlimited right to use and to sublicense to others the ideas, concepts, techniques or other expertise which it developed or employed in providing the Services or creating the deliverables, in any products and for any purposes (including providing services and developing deliverables for other customers) whatsoever, so long as in doing so Empirix does not disclose any Reseller confidential information.

## 12. General

12.1 This Agreement supersedes all prior and contemporaneous agreements, representations, warranties and understandings and contains the entire agreement between the parties. No amendment, modification, termination, or waiver of any provision of this Agreement or consent to any departure from this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each party. No failure or delay on the part of either party in exercising any right or remedy under this Agreement shall operate as a waiver of such right or remedy.

12.2 Neither party shall have the right to assign or otherwise transfer its rights or delegate its duties under this Agreement without receiving the express prior written consent of the other party; provided, however, that Empirix may assign this Agreement in the event of an acquisition, merger or consolidation, or the sale of all or substantially all of Empirix's assets or stock.

12.3 All notices or demands under this Agreement shall be in writing and sent by overnight courier to the receiving party at its address as set forth in this Agreement to the individuals executing this Agreement on behalf of Empirix and Reseller, or to any other address that the receiving party may have provided to the sending party in writing.

12.4 Reseller shall at all times comply with all laws, regulations, decrees and ordinances of every country and locality as relevant to the transactions contemplated under this Agreement. No owner, shareholder (direct or beneficial), officer, director, employee, third party representative, agent, or other individual with any direct or indirect beneficial interest in Reseller, or Reseller's payments under this Agreement, or any family relation of any such person, is a current "Government Official."

- (i) For purposes of this Agreement, the term "Governmental Official" means any official, elected or appointed; any employee or any agent of any national, state, provincial, or municipal government, or any subdivision, agency, or part thereof; any candidate for political office; political party official; royalty; any honorary government official; any official or employee of any international organization (such as the United Nations, the World Health Organization, NATO, the World Bank, etc.); and any officer, employee, or agent of any government-owned or -controlled enterprise, such as a state owned or controlled telecommunications company.

Reseller shall notify Empirix immediately if, during the term of this Agreement, (i) any owner, shareholder, officer, director, employee, third party representative, agent, or other individual with any direct or indirect connection with or beneficial interest in Reseller, or Reseller's payments under this Agreement, or any family relation of any such person, becomes a Governmental Official; or (ii) there is an acquisition by a Government Official or entity of a legal or beneficial interest in Reseller or in the payments to Reseller received under this Agreement.

Reseller confirms its understanding of the U.S. Foreign Corrupt Practices Act, as amended, together with all regulations promulgated thereunder ("FCPA") and the UK Bribery Act 2010, as amended, together with all regulations promulgated thereunder ("Bribery Act"). Reseller also acknowledges receipt of copies of, and confirms its understanding of, Empirix's Anticorruption Compliance Policy (the "Policy"). Reseller agrees to comply with the Policy and all Anticorruption laws and shall not cause Empirix to be in violation of any Anticorruption laws.

Reseller and its owners, shareholders (direct or beneficial), officers, directors, employees, third party representatives, and agents, and other individuals with any direct or indirect beneficial interest in Reseller or Reseller's payments under this Agreement, will not, directly or indirectly, provide, offer or promise to provide, or authorize the provision of money, gifts, or Anything of Value to any Government Official or political party for the purpose of obtaining or retaining business, obtaining an improper business advantage, or otherwise in violation of the Anticorruption Laws, the local law of any country, or the Policy.

- (i) For purposes of this Agreement, "Anything of Value" means money, gifts over a nominal value, as well as, without limitation: (i) stock or other forms of interest in a business; (ii) entertainment over a nominal value; (iii) charitable contributions; (iv) discounts on products or services not readily available to others; (v) offers of employment, including to friends and family; (vi) assumption or forgiveness of debt; (vii) payment of travel expenses, if not a "bona fide," business expense related to Reseller's or Empirix's business and pre-approved, in writing, by Empirix's Legal Department; and (viii) personal favors.
- (ii) Payments made to "obtain or retain business" are defined extremely broadly and can include any payments to which there is a potential business nexus.

Reseller shall not, directly or otherwise, for the purpose of selling or purchasing products or services, provide, offer or promise to provide, or authorize the provision of Anything of Value or other benefits to a business counterparty (either an entity or individual) except for granting or accepting a discount/rebate or providing product samples, consistent with the Policy. Reseller also shall ensure that no part of any payment, compensation, reimbursement, or fee paid by Reseller or Empirix will be used as a corrupt payment, gratuity, emolument, bribe, kickback, or other improper benefit to any Government Official or to any person.

If Reseller has information or suspects that there may be a violation of the FCPA, the Bribery Act or any other applicable laws, regulations, orders, judicial decisions, conventions, or international rules regarding corruption, bribery, gifts, and/or gratuities to public officials or private persons (collectively, "Anticorruption Laws"), or the Policy, in connection with its performance under this Agreement, or any work related thereto, Reseller shall immediately notify Empirix of such knowledge or suspicion. Reseller shall answer in reasonable detail any questionnaire or other written or oral communications from Empirix or its authorized representatives, to the extent the same pertains to compliance with any of the representations and warranties in this Agreement, and Reseller agrees, pursuant to this Section, that Empirix has the right to reasonable access to Reseller's books and records and to audit Reseller's books and records as they pertain to Empirix and the services Reseller is performing for Empirix. Representative consents to the written disclosure by Empirix of the contents of this Agreement, including those provisions setting forth Reseller's compensation, to any governmental entity or person. Any violation of Export Controls, Anticorruption Laws or the Policy, shall be deemed a material breach of this Agreement.

12.5 This Agreement shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts USA. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

12.6 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement unless either party deems such prohibited or unenforceable provision to be essential to this Agreement, in which case such party may terminate this Agreement, effective immediately upon notice to the other party.

12.7 The Products may contain technology which is subject to certain export regulations of the United States. Reseller agrees not to export the Products without obtaining the appropriate licenses or approvals to do so.

12.8 The relationship between the parties is that of independent contractors. This Agreement creates no relationship of principal and agent, partner, joint venture, franchise or any similar relationship between Empirix and Reseller. Reseller agrees Empirix may use Reseller's name and logo and identify Reseller as a reseller of Empirix products and services in Empirix advertising, promotion and similar public disclosures, including, but not limited to, press releases.

12.9 This Agreement is effective upon the Effective Date and will remain in force until termination pursuant to the terms hereof. Either party may terminate this Agreement at any time upon thirty (30) days written notice to the other party in the event that the other party shall have breached any of its material obligations hereunder and shall not have cured such breach prior to the expiration of the 30-day period. Reseller agrees that in the event of termination of this Agreement for any reason, Reseller's rights hereunder are immediately terminated. The provisions of the following Sections shall survive the expiration or earlier termination of this Agreement for any reason: 3.1, 4, 7.5, 8, 9, 10, 11 and 12.

12.10 Reseller acknowledges that certain Third Party Technology (including but not limited to the operating system and anti-virus software that ships with certain Hardware) and third party hardware products (together, "**Third Party Products**") are provided by Empirix as a "pass through" to Reseller, and such Third Party Products are covered by a warranty offered by the third party hardware or software vendor, not Empirix. Reseller acknowledges and agrees that Empirix makes no warranty of any kind with respect to such Third Party Products, and agrees to look solely to the applicable vendor for warranty support for such Third Party Products. Empirix shall provide first level technical support for all Third Party Products; provided that the level, scope and cost (other than for Initial Support period) of such support shall be in accordance with the technical support offering of the third party.

### SCHEDULE 3 MINIMUM TERMS OF THE EULA

1. Empirix licensed software (“**Software**”), and Empirix hardware (“**Hardware**”), are to be used solely for internal business purposes to test and/or monitor the End Customer’s voice and/or web applications and infrastructure. End Customer may not use Software or Hardware (Software and Hardware, collectively referred to as a “**Product**”) (a) for the primary benefit of any third party, including without limitation, using the Product to provide voice and/or web application or infrastructure testing or monitoring services for others, whether or not the application or infrastructure being tested or monitored is installed or operated by the End Customer, or (b) in a service bureau or time-sharing arrangement. End Customer may not sublicense, distribute, rent, lease or transfer the Software to any third party; provided that End Customer may authorize third party integrators and consultants to support its installation or implementation of the Product. End Customer shall be responsible for the acts and omissions of any consultants retained to assist it with the installation or deployment of the Product.
2. End Customer may not alter, adopt, modify, vary, or create derivative works based on the whole or any part of the Software in any way whatsoever, except as permitted by law, nor permit any third party to alter, modify, vary, or create derivative works based on the whole or any part of the Software; and End Customer shall not make or permit to be made any translation, alteration, adaptation, enhancement, modification, update or addition to, nor decompile, reverse engineer or disassemble the Software without the prior written consent of Empirix.
3. When Software is licensed as a part of, in conjunction with, or intended to be used with Hardware, Software may only be used with the Hardware. The Software may include license management components designed to administer usage rights and restrictions. End Customers agrees not to permit the circumvention or any attempt to circumvent such technical means to enable usage rights in excess of those purchased. Unless otherwise stated in a quote, End Customers may only deploy a single instance of the Software at a single location. End Customer shall retain and shall not alter or obscure any notices, markings or other insignia that are affixed to the Software, Hardware or associated documentation or any part thereof at the time of delivery of such Product or associated documentation by Empirix.
4. End Customer acknowledges that certain of Empirix products or components thereof may be supplied by third parties. Licensed Software may utilize Open Source Software that may be included as a part of the Software, included in the same medium on which the Software is delivered or as a part of the download of Software received by Reseller, or pre-loaded on Hardware. For the purposes herein, “Open Source Software” means any software for which the source code and certain other rights normally reserved for copyright holders are provided under an Open Source Software License or that is in the public domain, and an “Open Source Software License” is any license to software that meets the Open Source Definition of the Open Source Initiative at <http://www.opensource.org/docs/definition.php>. Because Empirix distributes its software in object code form, Empirix will provide End Customer, on request, with the complete corresponding machine readable source code of Open Source software that is subject to any Open Source License that requires that Empirix provide, without charge (other than a charge for the cost of distribution), source code to the software, whether in original form or as modified by Empirix, for a period of up to three (3) years after delivery of the Software within which the Open Source software is included. Any such Open Source Software requested and so received by End Customer shall be subject to the applicable Open Source License and this license does not modify or abridge any rights or obligations End Customer may have under such Open Source License. Any permitted use (or distribution) of Open Source Software separate and apart from use of the Software is governed by the relevant Open Source License and, with respect to which, no indemnification obligations pertain.
5. Empirix Products are not fault-tolerant and are not designed, manufactured or intended for use for testing of on-line control equipment in hazardous environments requiring fail-safe performance, such as the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software or Hardware could lead directly to death, personnel injury or severe physical or environmental damage (“**High Risk Activities**”). Accordingly, Empirix and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities and no license is granted to use the Software or Hardware for such activities.
6. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO WARRANTY, WHETHER EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE SOFTWARE, HARDWARE, SOFTWARE DOCUMENTATION OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, NEITHER RESELLER NOR END CUSTOMER, NOR ANY OF THEIR RESPECTIVE PARENTS, SUBSIDIARIES, SUPPLIERS OR LICENSORS, SHALL BE LIABLE FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, HOWEVER CAUSED, OR OTHERWISE BE LIABLE IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE AND WHETHER SUCH LOSS ARISES OUT OF OR IN CONNECTION WITH THE USE OF THE SOFTWARE, HARDWARE, SERVICES OR OTHERWISE UNDER THIS AGREEMENT. THE MAXIMUM LIABILITY OF RESELLER, ITS SUPPLIERS AND LICENSORS FOR CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT SHALL BE THE FEES PAID TO RESELLER FOR THE SOFTWARE, HARDWARE OR SERVICES GIVING RISE TO THE CLAIM.
7. End Customer may not publish any results of benchmark tests run on the Software.
8. End Customer shall comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the Products, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws.
9. Reseller may audit End Customer’s use of the Software and report such use to Empirix or assign Reseller’s right to audit the End Customer’s use of the Software to Empirix.
10. Empirix and its suppliers are third party beneficiaries of the End Customer license and may directly enforce the obligations of End Customer under the license.
12. The Parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

## SCHEDULE 4 TECHNICAL SUPPORT AND MAINTENANCE POLICY

### I. SUPPORT AND MAINTENANCE PROVIDED

A. Support Contact and Hours Information. Empirix Technical Support (included for first year after delivery of purchase of Product and available on an annual subscription basis thereafter) shall be available from the following sources:

#### North America

Email: [support@empirix.com](mailto:support@empirix.com)

Phone: +1 978-313-7002

Fax: +1 978-313-7001

Hours: M-F, 8:00 am – 8:00 pm EST, excluding Empirix Holidays

Online esupport: <https://esupport.empirix.com/>

#### EMEA/APAC

Email: [support@empirix.com](mailto:support@empirix.com)

Phone: UK +44 118 935 7010, Italy +39 059 740 9324

Fax: UK +44 118 935 7064, Italy +39 059 740 9301

Hours: M-F, 8:00 am – 6:00 pm GMT +0, excluding Empirix Holidays

Online esupport: <https://esupport.empirix.com/>

Standard Support: Support is available in the US and Canada between the hours of 8:00 a.m. and 8:00 p.m. EST, and in EMEA between the hours of 8:30 a.m. and 6:00 p.m. GMT, (as applicable, "**Business Hours**") Monday to Friday, with the exception of holidays ("**Business Days**").

Premium Support: Empirix offers an optional premium support services program. Resellers who purchase this premium service are entitled to Standard Support and in addition, 24x7 pager and call-back support for all technical support issues covered under these terms. For Premium Support, target response and resolution times for software are as set out in the table below, with timing on a 24x7 basis.

B. Severity Levels, Response & Resolution Target Times. Empirix will provide technical advice and assistance in connection with the use of Software and/or Hardware (together, the "**Products**") according to severity level. Empirix will use commercially reasonable efforts to meet all target times noted in below, with respect to Software. In order to best resolve the problem, Reseller must make available a contact person to provide ongoing support and cooperation with Empirix to identify and support resolution of the technical issue. In order to resolve a technical issue in the most efficient means available, Empirix may request remote access to the Software, and Empirix and Reseller will cooperate to establish the required network connections using best practices for security and in all cases, in compliance with the network security policies of both parties.

The table below applies with respect to support of Software:

Severity	Definition	Target Response*	Target Resolution Time
1	The Software has ceased to work, which prevents performance of critical day-to-day business activities.	2 Business Hours	Within 72 hours after the error is identified.** The solution may include a temporary workaround or a generally available new release of the Software.
2	The Software use is significantly impacted by the failure of a major function of the software.	4 Business Hours	Within 5 Business Days after error is identified.** The solution may include a temporary workaround or a generally available new release of the Software.
3	The Software is causing a minor problem that is only having a minimal impact on normal operating activities.	8 Business Hours	Within 7 Business Days after error is reproduced. The solution may consist of (a) a change to the Software code in a future release at the discretion of Seller, or (b) other workaround.
4	Product questions (general) or enhancements.	12 Business Hours	Within 10 Business Days. The solution may consist of providing answers to questions, submitting feature requests to product management, and/or making changes to future releases of the Product.

\*Response time shall be measured from the time that Reseller has properly notified Empirix of the defect through the Empirix Technical Support channel, which is limited to the designated toll-free numbers, the <http://esupport.empirix.com> portal, or the designated Empirix Technical Support email addresses, with sufficient information that enables Empirix to identify the error in question as it relates to the specific operating environment of Reseller.

\*\*Except with respect to Software that is a Release, or Software that is part of a new Hardware installation (each, a "**New Installation**"), in which case an initial reasonable production burn-in period will apply before resolution times are applied.



If Empirix determines that an operational or functional error is Hardware-related, or if a Software work-around does not correct the problem and Empirix cannot otherwise correct the problem through remote means, Reseller shall follow the return procedures set out in Section D below to return the Product to Empirix for resolution, which may then include a Software work-around or code fix, or a Hardware repair or replacement.

C. Software Updates. Empirix will provide Reseller all Bug Fixes, Minor Releases, Major Releases, and enhancements to the Software that it makes generally available to its other licensees of the Software under contract for Empirix Technical Support for no additional fee, together with all required amendments to the associated Documentation. Major Releases and new Products for which Empirix charges separate fees are not included as part of Technical Support. For the purpose of this provision, the following definitions shall apply:

- i. **"Bug Fix"** means a software patch or code intended to fix errors, problems or usability or performance issues in Software and is sometimes designated by a software release designated by a higher number two digits to the right of the decimal (e.g., from version X.X.1 to X.X.2);
- ii. **"Minor Release"** means a new release of Software with minor changes in features, functions or performance, often indicated by a version number designated by a higher number one digit to the right of the decimal (e.g., from version X.1 to X.2); and
- iii. **"Major Release"** means a new release of Software with major changes in features, functions or performance, often indicated by a version number designated by a higher number one digit to the left of the decimal (e.g., from version 1.x to 2.x).

D. Hardware Repair/RMA. With respect to Hardware, support also includes (i) remote dial-in to the Hardware system for assistance; (ii) US depot hardware repair for Hardware systems that cannot be repaired remotely; and (iii) Hardware replacement for defective components as determined by Empirix. If Empirix determines that it is necessary for the Reseller to return Hardware to Empirix for repair or replacement, the returned Hardware must be accompanied by a Return Material Authorization ("**RMA**") number. An RMA number will be provided by an Empirix support technician. The following procedures will apply to Empirix's repair of Hardware, except as otherwise noted:

- i. Empirix will provide an interface to Reseller to manage the return and repair of Hardware.
- ii. Reseller will email an RMA form to request an RMA number.
- iii. When contacting Empirix for an RMA, Reseller should have the following information available:
  - Model number and serial number of the Hardware;
  - Reason for return and symptoms of problem;
  - Purchase order number to cover charges for out-of-warranty items;
  - Name and phone number of person to contact if Empirix has questions about the Hardware; and
  - Address to which Empirix should return the repaired or replaced Hardware.
- iv. Empirix will provide the RMA number within four (4) Business Hours of the determination that it is necessary for the Reseller to return Hardware to Empirix for repair or replacement. Reseller must return all Hardware to Empirix prior to shipment of replaced Hardware. All Hardware returned by Reseller to Empirix must be returned to the Empirix factory, shipping prepaid, and packaged according to best commercial practices for electronic equipment. Reseller is responsible for mode and cost of shipment and insurance to Empirix.
- v. Reseller must mark the RMA number on the package shipped to Empirix. Hardware sent to Empirix without RMA numbers will be returned to Reseller, unopened, at Reseller's expense.
- vi. Empirix seeks to ship the repaired or replacement Hardware to the Reseller within five (5) Business Days of receipt. However, the time required to return the Hardware in good working order will be impacted by a number of factors, including: the time required to order replacement parts, build replacement systems, prepare the replacement systems for return shipping, and the actual shipping. Empirix will use all reasonable good faith efforts to minimize any delays relating from these factors that are within its control.
- vii. Empirix will return the repaired or replacement Hardware by the same method (e.g., overnight express, regular express, etc.) utilized by the Reseller in shipping the Hardware to Empirix. Empirix will pay shipping charges for delivery of repaired or replaced Hardware on return from the Empirix factory.

Empirix encourages its Resellers to avoid operational disruption that may be caused by the delays inherent in the above RMA procedures by either (a) purchasing spares kits or replacement systems for Hardware to have on hand as a back-up during any repair or replacement down-times, or (b) with respect to Empirix Hammer® XMS product, participate in the optional advance replacement program as described in Part VI below.

E. Exclusions. Support specifically excludes:

- defects or errors resulting from any modifications of the Software or Hardware made by any person other than Empirix or an authorized agent of Empirix;
- any version of the Software released by Empirix other than (a) the two most current "point" releases of the current major version; and (b) the last released "point" release of the previous major version;
- incorrect use of the Software or Hardware or operator error, including failure to follow best practices and policies described in Empirix's support policy documentation found at <http://esupport.empirix.com/>;
- any error caused by fault in the Reseller's use environment or in any software not supplied by Empirix used in conjunction with the Software or Hardware; and
- defects or errors caused by the use of the Software with any third party products other than those specifically certified for use by Empirix.

## II. OBLIGATIONS OF RESELLERS

Tier One support obligations of Reseller is described in Schedule 5.

III. DISCONTINUATION OF SUPPORT

Empirix may, from time to time in its sole discretion, decide to discontinue support for one or more of its Products and shall endeavor to provide Reseller written notice of its decision to discontinue support at least nine (9) months in advance.

IV. REINSTATEMENT OF LAPSED SUPPORT

Should Reseller terminate support from Empirix, and then seek to reinstate support, Reseller must pay Empirix a reinstatement fee equal to fifty percent (50%) of all support fees that would have been due to Empirix during the intervening period had the Reseller not terminated.

V. INCORPORATION OF OTHER POLICIES

From time to time, Empirix adopts policies regarding matters such as use of anti-virus programs, support of operating systems, and other similar policies. These policies are available at <http://esupport.empirix.com/>, as may be amended by Empirix from time to time, and are incorporated by reference herein. If any of these policies impact the Reseller's use of the Product in any materially adverse respect, Reseller may, within sixty (60) days of the posting of such policy, cancel its maintenance renewal for a pro-rata refund of the maintenance fees.

VI. ADVANCED REPLACEMENT SERVICE

Empirix offers an advance replacement service program, in consideration of payment of Empirix's then-current annual program fee. Resellers who purchase this program are entitled to receive a replacement Hardware unit prior to returning their existing Hardware unit to Empirix. The program works as follows: once Empirix has determined that the problem is in fact with the Hardware and is not a problem with software installed on the Hardware or the Reseller environment, Empirix will promptly ship the Reseller a replacement Hardware unit (with a target of two (2) Business Days) via next day delivery (for certain configurations, the build and burn process may delay shipment beyond this two (2) business day period). Resellers are required to return their existing Hardware unit to Empirix within fifteen (15) days of receipt of the replacement unit; if Reseller fails to do so, Reseller agrees to pay Empirix an amount equal to the then-current list price for the replacement Hardware unit. Empirix will bear the cost of shipping and will provide Resellers with appropriate packing material.

VII. TECHNICAL SUPPORT AND MAINTENANCE SERVICES PRICING

Base Service Offering For Empirix Technical Support:

1. Standard telephone, email and web portal support service offering from 8:30 a.m. and 6:00 p.m. GMT
2. Bug Fixes
3. Minor Releases
4. Major Releases
5. Depot basis service for hardware
  - Return to the factory for repair or replacement
  - Spare kits sold separately

ADD-ON SERVICE OPTIONS FOR EMPIRIX TECHNICAL SUPPORT:

1. 24x7 support
2. Advanced replacement services ("ARS").

Pricing:

Technical Support Packages	% of Product List Price
Base Service Offering*	20%
Add-on Service Options Bundles	
• 24x7 support	+5%
• ARS	+5%

\*Base Service Offering and Add-on Service Options do not include Third Party Products, which service is provided on a pass-through basis only.

## SCHEDULE 5

### TIER ONE TECHNICAL SUPPORT OBLIGATIONS OF RESELLER

1. Tier One technical support is the first line, direct Customer contact, via a telephone call handling group, provided by the Reseller. Tier One support includes:
  - First contact direct customer/Customer interaction
  - Problem report administration and tracking
  - Account problem/escalation management
  - Initial classification of the customer incident to Empirix Severity Levels
  - Information collection and analysis
  - Identification of whether the problem is known and has a known solution
  - Resolution of system configuration issues
  - Troubleshooting and problem reproduction
  - Isolating any network related issues
  - Isolating HW defects down to the FRU level
  - Perform system recovery
  - Perform performance analysis to validate system capacity is not causing the issues
2. The parties agree that Customers shall not have the right to contact Empirix directly for questions related to the Products. All such inquiries will be directed back to Reseller. Reseller technical personnel are expected to be proficient in all related technologies required to support the contracted environments.
3. Tier One support is "technical support" provided by Reseller personnel. Tier One support includes Level 1 and Level 2 support. Level 2 support is typically provided by experts in the applicable Product and who serve as the escalation point for Reseller's Level 1 personnel.
4. Should the Level 2 analyst be unable to resolve a problem, either because of lack of expertise, exhausted troubleshooting knowledge, the Level 2 support engineer may escalate the problem to Empirix Tier Two support personnel for resolution. Level 2 personnel of Reseller will continue to diligently work with Tier Two personnel of Empirix to accomplish resolution. Level 2 personnel of Reseller will communicate all resolutions back to the Customer.
5. Escalations should be presented to Empirix engineers in the form of an eSupport Service Request data base record, with all pertinent configuration detail and failure information or symptoms documented in detail.
6. In an effort to maintain an efficient support organization and crisp exchange of information, Reseller will limit the number of support personnel (Level 2) authorized to contact Empirix to five (5) and will ensure that these personnel have attended Empirix training and maintained training levels sufficient to supported environments.
7. **The technical tasks to be performed by Reseller include, but are not necessarily limited to, the following:**
  - A. Receive and respond to requests received from Customers during contracted hours.
  - B. Initial classification of the customer incident to Empirix Severity Levels
  - C. Install Software updates remotely or at Customer's site.
  - D. Under the direction of Empirix, alert Customers as to the existence of known problems and recommended preventative actions.
  - E. Diagnose the cause of Customer problems by:
    - a. verifying that the installed system components and Licensed Software are intended to be compatible with each other;
    - b. verifying that the configuration is valid for the desired operation;
    - c. isolate any HW defects down to the FRU level;
    - d. verifying that maintenance procedures prescribed by Empirix have been performed;
    - e. document the steps, results and error messages resulting in the problem from the Customer.
    - f. Perform performance analysis to validate system capacity is not causing the issues
  - F. Resolve Customer problems (either directly via an electronic data link or by directing personnel on-site) by:
    - a. correcting invalid configuration;
    - b. installing known and prescribed product updates;
    - c. implementing prescribed work around procedures;
    - d. perform system recovery action to restore operation while problems are analyzed;

- e. prepare and submit HW RMA's to Empirix
- f. reproduce the problem and/or provide documented evidence of the issue as reported
- g. isolate and resolve network and environmental issues

**8. eSupport ticket requirements:**

- A. Problem Summary (100 characters max):
  - B. Problem Description: Detailed description of problem and steps taken to reproduce or demonstrate the issue.
  - C. System ID:
  - D. Product:
  - E. Product Software Version:
  - F. Problem Category: (Software Problem, Hardware Problem, Defect Report, General Question, Feature Request)
  - G. SubCategory:
    - a. Platform: (Windows, Linux, etc.)
    - b. Platform Version:
  
  - H. Error Message: Describe the exact error message received. If there is no error, describe the symptoms of the problem as clearly as possible.
  - I. Provide complete and detailed information on the nature of the problem, including steps to reproduce the issue. Provide Screen Capture(s) of each step in problem reproduction.
  - J. Configuration: upload a copy of the configuration.
  - K. Log Files: upload the applicable log files and network or call traces, as appropriate.
    - a. Note: For IPExplorer issues provide PCAP trace(s)
  - L. File Details: Provide details about the file(s) uploaded.
  - M. System access details: Provide system access information and any security restrictions/requirements needed to access the system at fault
9. At the request of Empirix, Reseller shall deliver, at its expense, updates and upgrades to the Software or Hardware in accordance with the terms of the Technical Support and Maintenance Policy to Reseller's Customers, as part of the Empirix Technical Support purchased by such Customers.
10. Reseller will inform its Customers of Empirix's renewal policies for Empirix Technical Support and will use its reasonable efforts to encourage Customers to purchase Technical Support renewals before the completion of Customer's the then-current Empirix Technical Support term. Reseller may only provide Updates and/or replacement hardware to Customers who have a then-current right to receive Empirix Technical Support. If Empirix Technical Support is terminated before its normal conclusion, neither the Reseller nor the Customer shall be entitled to any refund of Empirix Technical Support fees.