

SUPPORT SERVICES AGREEMENT

This Support Services Agreement is a legal agreement between you (“Customer”), and the applicable LANDesk entity specified below (“LANDesk”):

For a Customer with its primary office located outside of the United States of America, Japan or the People’s Republic of China (“PRC”), this Agreement is between Customer and LANDesk International Limited, an Irish company.

For a Customer with its primary office located in North America, Central America, South America, this Agreement is between Customer and LANDesk Software, Inc., a Delaware corporation.

For a Customer with its primary office located in Japan, this Agreement is between Customer and LANDesk Software K.K., a Japanese company.

For a Customer with its primary office located in the PRC, this Agreement is between Customer and Avocent (Beijing) Information Technology Co., Ltd., a Chinese company.

This Agreement is made effective as of the date you accept these terms and conditions (“Effective Date”). Terms with initial capital letters shall have the meanings ascribed to them in this Agreement. In consideration of the obligations contained herein, and for other good and valuable consideration, LANDesk and Customer agree as follows:

General Overview. LANDesk’s support programs are points-based programs with benefits based on the level of annual investment in LANDesk Products and Support Services. A customer’s level of investment is expressed in points that are calculated based on the specific LANDesk Products licensed by the customer during each annual period, the Support Services purchased, and any additional points purchased by the customer to upgrade to a higher support level. Customer can access its specific point totals through the LANDesk sales personnel, via the Service Portal or on any LANDesk sales quote. The level of points accumulated determines the specific support benefits for which the customer is eligible. Points expire at the end of each Support Services period and new point calculations are done for each renewal period. For more information see <http://www.landesk.com/Support/ProgramDetails/>.

Support Services. LANDesk’s Support Services consist of software upgrade protection, support and maintenance, additional assigned support personnel, and professional services (as specified in this Agreement and additionally through the above link). The support services listed below may be provided by LANDesk to Customer pursuant to this Agreement (“Support Services” as defined below):

Software Upgrade Protection (“SUP”)
Support – Initial Level:
0 – 2,999 Points: Base Support with Incident Packs (ICP)
3,000 – 49,999 Points: Professional Support (PS)
50,000 – 199,999 Points: Enterprise Support (ES)
200,000+ Points: Enterprise Plus Support (EPS)
Technical Account Manager (“TAM”) Services:
Available Specialty: ALM/LPM, LDMS/LDSS, or LDSD
Advantage TAM
Premier TAM
Enterprise TAM
Dedicated TAM

* Asset Lifecycle Manager = ALM, LANDesk Process Manager = LPM, LANDesk Management Suite = LDMS, LANDesk Security Suite = LDSS, LANDesk Service Desk = LDSD.

Entire and Final Agreement. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all other prior and contemporaneous communications, discussions, understandings, negotiations, arrangements and agreements between the Parties, whether written or oral, relating to LANDesk’s Support Services. This Agreement may not be modified or amended except in writing, duly executed by both Parties. Any terms and conditions of any purchase order or other document submitted by Customer in connection herewith that are in addition to, different from or inconsistent with this Agreement are not binding on LANDesk and are ineffective. No vendor, distributor, dealer, retailer, reseller, sales person or other person is authorized by LANDesk to modify this Agreement or to make any warranty, representation or promise that is different than, or in addition to, the warranties, representations or promises expressly set forth in this Agreement.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS: The following definitions apply to this Agreement:

1.1. **"Affiliate"** means any entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control (through the continued direct or indirect ownership of more than fifty percent (50%) of the outstanding voting securities or rights of the entity provided) with Customer

1.2. **"Agreement"** means this Support Services Agreement, including any and all Exhibits hereto.

1.3. **"Business Hours"** means the normal business hours, Monday through Friday (excluding LANDesk Holidays) in the LANDesk support center for the region specified below (based on Licensee's primary office location):

Primary Office Location	Business Hours
North, South, Central America or other regions not referenced in this table	6 A.M. – 6 P.M. (Utah time)
In a member state of the European Union or the European Free Trade Association	8 A.M. – 6 P.M. (U.K. time)
Japan, China or other areas in Asia or the Pacific	9 A.M. – 6 P.M. (China time)

1.4. **"Confidential Information"** means any non-public information disclosed by one Party to the other Party, either directly or indirectly, whether communicated in writing, orally or by inspection of tangible objects which is designated as "Confidential," "Proprietary" or some similar designation or is identified as Confidential Information at the time of its disclosure, or if such information by its nature should reasonably be understood by the receiving Party to be confidential. Confidential Information shall include any and all non-public information relating to any LANDesk Product or LANDesk proprietary software (including, without limitation, product plans, products, services, customer or potential customer lists, markets, software, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing or financial information, and training, Documentation and other related materials) regardless of whether or not such materials are marked as "Confidential," "Proprietary" or some similar designation. Confidential Information may also include any of the foregoing information that is disclosed to a Party by one or more third parties. Notwithstanding the foregoing, Confidential Information shall not include any information that: (i) was publicly known or made generally available in the public domain prior to the time of disclosure by the disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the disclosing Party to the receiving Party through no action or inaction of the receiving Party; (iii) is already in the possession of the receiving Party at the time of disclosure by the disclosing Party (as shown by the receiving Party's files and records) prior to the time of disclosure; (iv) is obtained by the receiving Party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information (as shown by documents and other competent evidence in the receiving Party's possession); or (vi) is required by law to be disclosed by the receiving Party, provided that the receiving Party shall promptly give the disclosing Party written notice of such requirement prior to any disclosure so that the disclosing Party may have sufficient time to seek a protective order or other appropriate relief.

1.5. **"Customer"** means the entity identified as such on the Online Form and any Affiliates.

1.6. **"Documentation"** means the end user manual and other documentation (including print and online), if any, provided to or made accessible to Customer with the license of LANDesk Product.

1.7. **"Effective Date"** means the date set forth on the first page of this Agreement.

1.8. **"Error"** means a reproducible failure of a properly licensed, implemented, and used LANDesk Product to perform in substantial conformity with the applicable Documentation accompanying such LANDesk Product. The priority level of an Error shall be determined by

LANDesk in its sole discretion according to the priority definitions in this Agreement.

1.9. **"Incident"** means a single support issue with a LANDesk Product and the reasonable effort needed to resolve it. A single support issue cannot be divided into sub-problems regardless of the amount of effort required to resolve the issue. If an issue consists of multiple problems, a separate incident will be required to solve each problem. LANDesk shall determine what constitutes an incident on a case-by-case basis.

1.10. **"LANDesk Holidays"** means specified days when LANDesk is not open for business (for additional details see <http://www.landesk.com/Support/ContactUs/>).

1.11. **"LANDesk Product"** means any then-current product (software or hardware) licensed or sold under the "LANDesk" brand to Customer.

1.12. **"Update(s)"** means a LANDesk-designated update of an existing, separately-licensed release of a LANDesk Product, generally designed to address one or more Errors or reduce the effects thereof. A LANDesk Update may also include enhanced, improved or modified functionality (as determined in LANDesk's sole discretion).

1.13. **"Upgrade(s)"** means a LANDesk-designated, enhanced, improved and/or modified version of one or more existing, separately-licensed LANDesk Products that replaces the existing version of such LANDesk Product.

1.14. **"Order Form"** means Customer's Initial Order Form or any other future order form accepted by LANDesk from Customer.

1.15. **"Online Form"** means the Online Form a Customer must fill out with its pertinent information in order to receive Support Services.

1.16. **"Party"** means either LANDesk or Customer, as applicable; **"Parties"** means both LANDesk and Customer.

1.17. **"Payee"** means either the LANDesk Authorized Reseller or LANDesk, depending on the Customer-selected purchase model as indicated by the checked box under the heading "Purchase Model" on the first page of this Agreement.

1.18. **"Priority Level 1," "P1,"** and **"Very High Service Impact"** means a support or maintenance incident where, notwithstanding proper installation and usage: (a) a substantial portion of one or more LANDesk Products does not operate and cannot be restarted; (b) there is an Error in a major program function that renders such major program function completely unusable; or (c) there is an Error that causes a third-party mission-critical application to be unstable.

1.19. **"Priority Level 2," "P2,"** and **"High Service Impact"** means a support or maintenance incident where, notwithstanding proper installation and usage, there is an Error in a major program function causing significant impact to one or more LANDesk Products such that the LANDesk Product is difficult but not impossible to use.

1.20. **"Priority Level 3," "P3,"** and **"Medium Service Impact"** means a support or maintenance incident where, notwithstanding proper installation and usage, there: (a) is non-critical degradation of performance or function in one or more LANDesk Products; or (b) are minor intermittent problems in one or more LANDesk Products. A commercially reasonable workaround may be available. Any incident reported other than by telephone (i.e. email, web, or otherwise) will be classified as a P3 or P4 incident, at LANDesk's reasonable discretion.

1.21. **"Priority Level 4," "P4,"** and **"Low Service Impact"** means all requests for an enhancement to, information, questions, or Documentation issues concerning one or more LANDesk Products or Errors with little or no effect on normal operation of the LANDesk Product.

1.22. **"Reseller"** means the LANDesk Authorized Reseller, if any, identified on the first page of this Agreement under the "Purchase Model" heading. Customer may change its preferred Reseller to another LANDesk Authorized Reseller upon written notice to LANDesk. Customer agrees that LANDesk may inform both the prior and any new Reseller of the Customer's purchase history and any changes.

1.23. **"Response Time"** means the time between the receipt of a properly classified and reported P1 or P2 support request (as indicated by the date and time the support ticket was created) and the first acknowledgement and response from LANDesk.

1.24. "Service Portal" means LANDesk's on-line, self-service site for customers to find solutions to support issues, content and articles, the solution advisor, and other support-related resources and options (see <http://community.landesk.com/support/community/smartservice>).

1.25. "Support Community" means LANDesk's on-line site for customers (available at <http://community.landesk.com>) to find and share information about LANDesk Products (including technical articles, a forum for posting questions, and the ability to contribute documents). Registration is required for participation in the Support Community.

1.26. "Support Services" means the support services provided by LANDesk for LANDesk Products and available for purchase by Customer as more specifically described in this Agreement.

1.27. "Support Services Fee" means the fee (including annual renewals of fees) to be paid by Customer to the Payee for purchased and renewed Support Services.

2. **SUPPORT SERVICES.** Subject to Customer's payment to Payee of the applicable annual Support Services Fee and compliance with this Agreement, LANDesk shall provide to Customer the Support Services specified in this Agreement for Customer's then-current support level. Support levels are reviewed and may be adjusted at the end of the Support Term, any Renewal Term, and anytime Customer purchases additional points or Support Services. Customer may access specific point totals through LANDesk sales personnel or via the Service Portal.

2.1. **Coverage.** If Customer elects to purchase Support Services for a LANDesk Product, Customer must purchase such Support Services for all instances and uses of such LANDesk Products during the Support Term and any Renewal Term. For example, a customer licensing 1000 nodes of LANDesk Management Suite cannot purchase support services for only 500 nodes.

2.2. **Support Services Scope.** The provision of Support Services does not extend or modify the limited warranty (if any) for any LANDesk Products. Support Services, Updates and Upgrades do not include any type of installation, deployment, or application assistance for Customer's unique requirements or environment. LANDesk does not represent, warrant or guarantee that any of the Support Services provided hereunder or the referenced Response Times will correct or resolve any Error within any specific time period. When notifying LANDesk of any suspected Error, Customer must provide LANDesk with detailed information about the Error, including an example, the context in which it was encountered, details of Customer's system configuration, and the steps necessary to generate or reproduce the Error. If requested by LANDesk, Customer shall permit LANDesk or its representative full access to Customer's implementation of the LANDesk Product and the system on which it is installed so that LANDesk can carry out the Support Services.

2.3. **Support Services Limitations.** LANDesk shall be under no obligation to furnish the Support Services or provide access to Updates and Upgrades under this Agreement to the extent that such support or updates is required as a result of: (i) the operation of the LANDesk Products in environmental conditions or configurations outside those described in the Documentation; (ii) Customer's material failure to maintain the LANDesk Products in accordance with the standards prescribed in the Documentation; or (iii) causes unrelated to the LANDesk Product as delivered to you by LANDesk, including without limitation, unauthorized modifications to the LANDesk Product, made by Customer or on Customer's behalf.

3. **Current Version Requirements.** In order for Customer to receive Support Services, Customer must be using the current version or a prior version of the LANDesk Products still being supported by LANDesk. LANDesk's currently supported versions and installation deadlines are specified at <http://www.landesk.com/support/eol/>. It is Customer's sole responsibility to properly install each LANDesk Update and LANDesk Upgrade within the appropriate time limits.

4. **UPGRADE PROTECTION AND SUPPORT SERVICES.**

4.1. **Available Support.** Depending on Customer's Support Point Total (access current point totals via the Service Portal), Customer may qualify for any of the following support offerings:

Available Support Services	SUP	ICP	PS	ES	EPS
Updates & Upgrades (1)	Yes	Yes	Yes	Yes	Yes
Email Alerts (2)	Yes	Yes	Yes	Yes	Yes
Support Web Site Access (3)	Yes	Yes	Yes	Yes	Yes
E-Learning Library (4)			Yes	Yes	Yes
Instructor-led Online (ILO) Training (4)			Yes	Yes	Yes
24 x 7 Issue/Question Submission (5)			Yes	Yes	Yes
Standard Phone Support (6)			Yes	Yes	Yes
Incident Tracking and Response (7)			Yes	Yes	Yes
24 x 7 Phone Support (8)				Yes	Yes
Support Account Manager (SAM) (9)					Yes
Priority Phone Support and Support Hotline (10)					Yes

(1) Updates and Upgrades are for LANDesk Products licensed and paid for by Customer. Upgrades and Updates will be made available when provided to general customer base.

(2) LANDesk provides email alerts for issues such as technical updates, patches, utilities and documents (sign up for e-mail alerts at <http://community.landesk.com/support/community/sections/bulletins>). LANDesk is not liable for any failure of Customer to receive alerts, including due to failure of e-mail systems or Internet connectivity.

(3) Subject to general up-time and availability, Customer is eligible to access LANDesk's Service Portal (to initiate and track issues without help desk intervention) and support services web (including technical support knowledge base, technical support white papers, and critical patches and software fixes).

(4) For PS level, Customer receives a single, one-year subscription to the E-Learning Library and a single voucher for one-day of ILO training; For ES level, Customer receives three, one-year subscriptions to the E-Learning Library and two vouchers for one-day ILO training; For EPS level, Customer receives five, one-year subscriptions to the E-Learning Library and three vouchers for one-day ILO training. The E-Learning Library and the related subscription and ILO training are each subject to separate agreements presented upon registration and access to the respective sites.

(5) Customer may submit issues and questions to LANDesk 24 hours per day, 365 days per year via the Service Portal (except P1 issues which must be submitted by phone only). LANDesk's electronic reply will be delivered during Business Hours once prepared.

(6) Telephone support available during Business Hours.

(7) Incident tracking and response (see Section 4.2 below).

(8) Telephone support available 24 hours per day, 365 days per year for P1 issues only.

(9) Single point of escalation for support issues for EPS level customers. Provides quarterly reports (summarizing Customer specific support matters including update on support incidents, status of onsite work and of any vouchers, and recap of proactive notifications), and manages an annual 15-point health-check review of server and client configurations.

(10) Priority access to customer support with a phone line dedicated to EPS-level customers. The telephone number of priority phone support will be provided to eligible customers.

For more information on the various Support Services offerings, see <http://www.landesk.com/support/>.

4.1.1. **Incident Packs.** Only available to licensees who qualify for the Base Support level (0 – 2,999 Points) or LANDesk's educational customers licensed under the LANDesk Academic Alliance Software

License and Support Agreement or other education/academic licensing/pricing models. If Customer purchases "Base Support with Incident Packs," then for the number of Incidents purchased, LANDesk will provide to Customer the following Support Services:

(i) Email Support Services to allow Customer to submit issues and questions to LANDesk 24 hours per day, 365 days per year.

(ii) Telephone support available during Business Hours for P1 issues.

In addition, Customer will be eligible to access LANDesk's Support Services web site (24 hours per day, 365 days per year), including the LANDesk Knowledge Base, technical support white papers, and critical patches and software fixes. Customer will also be eligible to access the Service Portal (24 hours per day, 365 days per year) to initiate and track support tickets without help desk intervention and will receive one, three-month subscription to the LANDesk E-Learning library.

4.2. Incident Tracking and Reporting.

4.2.1. **Tracking and Response.** Each Incident submitted to LANDesk by Customer for Support Services will be issued a LANDesk tracking number. Customer will be able to reference any such Incident by using the assigned tracking number. LANDesk will respond to and set internal resolution priorities for each reported Incident on the following basis:

Severity Level	Response Time in Business Hours	
	PS	ES or EPS
Priority Level 1 or P1	2	1
Priority Level 2 or P2	8	4

If an EPS level customer has a Priority Level 1 Incident that needs around-the-clock work, the LANDesk support team will transfer the customer from region to region through the LANDesk support sites (in the United States, Japan, China and Europe) as needed; provided that the customer has resources available and is working with LANDesk on a 24x7 basis to resolve the Incident.

4.2.2. **Technical Contacts.** Customer shall designate up to two (2) named contacts for the ICP or PS level, four (4) named contacts for ES level, and ten (10) named contacts for EPS level to interface with LANDesk's support teams for all Support Services (designated contacts will be required to provide verification to receive Support Services). Each designated technical contact must be familiar with the Customer's LANDesk Products and be capable of (and appropriately authorized for) performing basic network administrative functions. Customer shall identify its technical contacts to LANDesk as reasonably required by LANDesk. Customer may change its designated technical contacts on written notice to LANDesk. Additionally, Customer may qualify to receive additional technical contacts by having individuals become certified in LANDesk Products. Any Certified LANDesk Administrator (or greater) can be added as an additional technical contact to Customer's account.

5. TECHNICAL ACCOUNT MANAGEMENT SERVICES.

5.1. **Technical Account Management.** If Customer qualifies for PS, ES or EPS level support, Customer may also purchase any of Company's Technical Account Manager (TAM) offerings (as indicated by a checked box on the Technical Account Management section of the Order Form):

TAM Type	Advantage	Premier	Enterprise	Dedicated
Vouchers (1)	1	2	4	8
TAM to Customer Ratio (2)	1/14	1/7	1/7	1/1
Response Time (3)	2 Hours	1 Hour	1 Hour	30 Minutes
On-Site Visits (4)	0	8	16	32
Assigned TAMs (5)	1	1	2	1
SAM (6)	No	Yes	Yes	Yes
Health Check (7)	0	1	2	Per Product Owned
Available Specialty (8)	LDMS/LDSS	ALM/LPM, LDMS/LDSS, or LDSD	ALM/LPM, LDMS/LDSS, or LDSD	ALM/LPM, LDMS/LDSS, or LDSD
Language Support (9)	No	Yes	Yes	Yes
Contacts (10)	2	3	6	6

(1) Number of vouchers to attend regularly scheduled training sessions at Company's facility (Customer responsible for all travel and expenses) or via the online learning system. Vouchers expire on the regular TAM Period schedule as outlined in Section 2.7.

(2) Ratio of TAM customers generally assigned to TAM type. Subject to change based on disproportionate customer use of TAM's time that extends for more than one quarter.

(3) During TAM hours of availability, assigned TAM shall use commercially reasonable efforts to respond to any phone contact from Customer within the time specified. TAM shall be available 8am-5pm, Monday through Friday (excluding LANDesk Holidays), based on the location of the TAM and not the Customer. During hours outside of TAM availability, Customer with a Premier, Enterprise or Dedicated TAM offering may call the 24x7 support line.

(4) Number of days during each annual period (as measured from the Effective Date) the TAM shall be available for on-site visits to Customer's facility (subject to agreed timing). Onsite days must be used in at least 2 consecutive day increments, not to exceed a total of 3 trips for the Premier TAM offering, 6 trips for Enterprise and 12 trips for Dedicated.

(5) Number of TAMs assigned to Customer.

(6) If Customer does not already have a Support Account Manager (SAM), a SAM will be included with the Premier, Enterprise or Dedicated TAM offering.

(7) Number of remote health checks performed on an annual basis.

(8) TAMs are product specific and Customer may select TAM specialists for the following products: Asset Lifecycle Manager (ALM), LANDesk Service Desk (LDSD), LANDesk Process Manager (LPM), LANDesk Management Suite (LDMS) or LANDesk Security Suite (LDSS).

(9) Local language support available by request through the SAM or TAM in one of the following languages: English, French, German or Japanese.

(10) Number of assigned Customer contacts that may open issues with the assigned TAM.

For more information on the Company's various TAM offerings, see <http://www.landesk.com/Support/TAM/>.

6. **PROFESSIONAL SERVICES.** LANDesk has professional services (including installation, configuration, consulting, training and education classes and courses) available for purchase by Customer. If Customer desires to purchase such professional services, LANDesk and Customer shall enter into a separate agreement or statement of work for such services.

7. LIMITED WARRANTY.

7.1. **Limited Warranty.** LANDesk warrants that the Support Services will be performed in a workmanlike manner consistent with industry standards reasonably applicable to the performance of such Services and subject to payment by Customer of all Support Services Fee(s). If Customer believes there has been a breach of this limited

warranty for Support Services, and so notifies LANDesk in writing stating in reasonable detail the nature of the alleged breach within thirty (30) days after the Support Services are delivered to Customer by LANDesk, then LANDesk will promptly investigate the matter to determine the nature of the alleged breach of warranty. If LANDesk determines there has been a breach of this warranty, then LANDesk's sole obligation, and Customer's exclusive remedy, will be for LANDesk to correct or re-perform any affected Support Services as necessary to cause them to comply with this warranty. If LANDesk is unable to correct a breach of this warranty after repeated efforts, LANDesk may elect, in its sole discretion, to give Customer an equitable adjustment in the Support Services Fees actually paid (up to the total amount of such Support Services Fees) to reflect any reduction in the value of the Support Services as a result of the uncorrected breach of warranty.

7.2. LIMITATION OF WARRANTY. EXCEPT AS PROVIDED IN SECTION 7.1 ABOVE, LANDESK SUPPORT SERVICES, DOCUMENTATION, AND ANY OTHER MATERIAL OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS," AND LANDESK AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT THERETO, AND LANDESK SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY. LANDESK DOES NOT WARRANT THAT ANY OF THE FOREGOING SHALL MEET CUSTOMER'S, ANY AFFILIATE'S OR THEIR END-USERS' REQUIREMENTS, THAT THE OPERATION THEREOF SHALL BE UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS THEREIN SHALL BE CORRECTED. NONE OF THE FOREGOING IS INTENDED FOR USE IN CRITICAL CONTROL APPLICATIONS (INCLUDING BUT NOT LIMITED TO SAFETY OR HEALTH CARE CONTROL SYSTEMS, NUCLEAR ENERGY CONTROL SYSTEMS, AND AIR OR GROUND TRAFFIC CONTROL SYSTEMS) AND ANY SUCH USE IS UNDERTAKEN AT CUSTOMER'S SOLE RISK AND LIABILITY. NOT WITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THIS LIMITATION OF WARRANTY IS NOT MEANT TO EXCLUDE LIABILITY FOR PERSONAL INJURY OR DEATH.

8. LIMITATIONS OF LIABILITY.

8.1. DIRECT DAMAGES ONLY. LIABILITY ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES AND NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY OR A THIRD PARTY FOR ANY INDIRECT OR SPECULATIVE DAMAGES INCLUDING, WITHOUT LIMITING THE FOREGOING, CONSEQUENTIAL, INCIDENTAL AND SPECIAL DAMAGES OR DAMAGES RELATED TO LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTIONS, AND LOSS OF PROFITS, IRRESPECTIVE OF WHETHER THE PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF ANY SUCH DAMAGES; PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT APPLY TO ANY BREACH OF ANY CONFIDENTIALITY OBLIGATIONS OR LANDESK'S INTELLECTUAL PROPERTY RIGHTS.

8.2. LIABILITY CAP. NOTWITHSTANDING THE FOREGOING, LANDESK'S TOTAL COLLECTIVE LIABILITY TO CUSTOMER AND ALL AFFILIATES UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE SUPPORT SERVICES FEE ACTUALLY RECEIVED BY LANDESK OR THE LANDESK AUTHORIZED RESELLER PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO SUCH LIABILITY. THE PARTIES ACKNOWLEDGE THAT THE LIMITATION ON POTENTIAL LIABILITY SET FORTH IN THIS SECTION 8 IS AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT. LANDESK NEITHER ASSUMES, NOR AUTHORIZES ANYONE TO ASSUME FOR IT, ANY OTHER LIABILITIES. NEVERTHELESS, NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE ANY LIABILITY FOR DAMAGES INCURRED DUE TO GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD.

9. INTELLECTUAL PROPERTY.

9.1. Ownership. All right, title and ownership of LANDesk Products, Support Services, Documentation and all copies thereof, remains with LANDesk or its Affiliates, licensors, suppliers or vendors. Customer shall not remove any copyright notice in or on LANDesk Products, Support Services, or Documentation.

9.2. No Other License. Except as expressly provided herein, LANDesk grants no rights or licenses, expressly or by implication, estoppel or otherwise, to any Confidential Information or intellectual property including, without limitation, patents, copyrights, trade secrets, trademarks, or trade names and LANDesk is not granting any license under this Agreement for Customer to design, develop or assist in designing or developing any product either for itself or for any third party.

9.3. Nonsolicitation. So long as this Agreement remains in effect and for twelve (12) months after its expiration or termination, Customer (and any Affiliates) will not knowingly hire or directly solicit for employment any employee of LANDesk unless Customer obtains prior written consent of LANDesk. Because the actual damages attributable to a breach of this Section 9.3 would be difficult to determine, the Parties agree that if Customer breaches this obligation, Customer will promptly pay LANDesk liquidated damages in an amount equal to three times (3X) the employee's annual compensation (including bonuses and incentives) immediately prior to the breach, such sum being a reasonable measure of the damages reasonably anticipated by the Parties.

10. PAYMENTS. If Customer is purchasing through a LANDesk Authorized Reseller, then such Reseller shall be the Payee for payments from Customer pursuant to this Agreement (until such time as Customer designates, in writing, another Reseller to be the Payee) and the terms of Section 10.2 below shall not apply. If Customer purchases directly from LANDesk, then LANDesk shall be the Payee for all payments from Customer pursuant to this Agreement and the terms of Section 10.1 below shall not apply. All payments under this Agreement are nonrefundable.

10.1. Reseller. Customer shall pay all sums due to the Payee in accordance with such payment terms as are negotiated between Customer and Payee, including the annual Subscription Fees and annual Support Services Fees.

10.2. LANDesk. All payments from Customer to LANDesk shall be in United States Dollars and shall be paid in full within thirty (30) days of the Effective Date and, for each annual renewal period any applicable Support Services Fees, payment shall be due within thirty (30) days of the start of the renewal period. Any third-party charges (other than LANDesk's bank charges) incurred in making payments are the sole responsibility of the Customer. If Customer fails to make a payment to LANDesk when due, LANDesk may charge Customer interest at a rate of one and one half percent (1.5%) per month, or the maximum rate allowed by law, which interest will accumulate on the outstanding balance on a daily basis until paid in full. Customer shall reimburse LANDesk for all reasonable costs, including legal fees and related costs LANDesk incurs in collecting any late payments, under payments and interest from Customer.

10.3. Taxes and Duties. Other than taxes based on LANDesk's income, Customer is responsible for all taxes, including without limitation any Value Added Tax ("VAT"), any state or local sales tax and assessed importation or exportation duties, on transactions with respect to Customer's procurement of the Support Services under this Agreement. In the event that such taxes or duties are legally imposed initially on LANDesk, or in the event that LANDesk is later assessed by any taxing authority, then Customer will promptly reimburse LANDesk for such taxes or duties, plus any interest and penalties suffered by LANDesk.

10.4. Records. So long as this Agreement remains in effect and for four (4) years thereafter, Customer agrees to maintain sufficient books, records and accounts to calculate and verify payment of all fees due under this Agreement and Customer's usage of the LANDesk Products and to make such records available to LANDesk upon LANDesk's request.

10.5. Audit Rights. During the Term and for two (2) years thereafter, upon reasonable prior notice, LANDesk or its designee may conduct an audit of Customer's and each Affiliate's compliance with this Agreement. Audits will not generally occur more than once in any annual period. The cost of such audits will be borne by LANDesk; provided, however, that if such audit determines that Customer has failed to pay any fees required under this Agreement, Customer shall reimburse LANDesk for the cost of such audit in addition to payment of any identified delinquent fees. For purposes of this audit right, conducting an audit in multiple locations of Customer and any Affiliate shall constitute a single audit. Additionally, failure to conduct an audit in any given annual period shall not constitute a waiver of LANDesk's right to conduct future audits.

11. GOVERNING LAW AND JURISDICTION. This Agreement and any and all claims arising under this Agreement shall be governed as follows:

(a) For a Customer with its primary office in North America, Central America, South America or in any other area not expressly mentioned below, this Agreement is governed by the laws of the state of Utah and the federal laws of the United States of America, excluding its principles of conflict or choice of laws. Notwithstanding anything to the contrary herein, to the extent permitted under the applicable law, LANDesk may bring an action in any jurisdiction for the purpose of (a) enforcing a judgment; or (b) protecting LANDesk's intellectual property rights.

(b) For a Customer with its primary office in a member state of the European Union or the European Free Trade Association, the Middle East or Africa, this Agreement is governed by the laws of England and Wales, excluding its principles of conflict or choice of laws. To the extent permitted by applicable law, each of the Parties hereto hereby irrevocably submits to the jurisdiction of any court of England or Wales over any suit, action or other proceeding brought by any party arising out of or relating to this Agreement, and each of the Parties hereto irrevocably agrees that all claims with respect to any such suit, action or other proceeding shall be heard and determined in such courts.

(c) For a Customer with its primary office in Japan, this Agreement is governed by the laws of Japan, excluding rules of conflicts of law. To the extent permitted by applicable law, each of the Parties hereto hereby irrevocably submits to arbitration in Tokyo, Japan through the American Arbitration Association over any suit, action or other proceeding brought by any party arising out of or relating to this Agreement, and each of the Parties hereto irrevocably agrees that all claims with respect to any such suit, action or other proceeding shall be heard and determined in such arbitration.

(d) For a Customer with its primary corporate office in China, this Agreement is governed by the laws of the PRC, excluding rules of conflicts of law. To the extent permitted by applicable law, each of the Parties hereto hereby irrevocably submits to arbitration in Beijing, China through the China International Economic and Trade Arbitration Commission ("CIETAC") in accordance with the CIETAC arbitration rules applicable at the time of submission for arbitration over any suit, action or other proceeding brought by any Party arising out of or relating to this Agreement, and each of the Parties hereto irrevocably agrees that all claims with respect to any such suit, action or other proceeding shall be heard and determined in such arbitration.

Regardless of the applicable governing law, Customer and LANDesk agree to exclude application of the United Nations Convention on Contracts for the International Sale of Goods. Notwithstanding anything to the contrary herein, to the extent permitted under the applicable law, LANDesk may bring an action in any jurisdiction for the purpose of: (a) enforcing a judgment; or (b) protecting LANDesk's intellectual property rights. To the extent permitted by applicable law, in any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing Party will be entitled to recover its fees and costs, including reasonable attorneys' fees.

12. TERMINATION

12.1. Termination by LANDesk. LANDesk may terminate this Agreement if Customer fails to pay Payee the applicable Support Services Fee or any other fee described herein, or if Customer fails to comply with this Agreement, within thirty (30) days of written notice from LANDesk to Customer of such failure. Additionally, LANDesk may terminate this Agreement for cause immediately if Customer files or has filed against it a petition in bankruptcy, has a receiver appointed to handle its assets or affairs, makes or attempts to make an assignment for benefit of creditors, or ceases to conduct business in the normal course and Customer does not continue to pay Payee for the LANDesk Support Services set forth in this Agreement. LANDesk's right to terminate is in addition to any other rights that LANDesk may have under this Agreement.

12.2. Termination by Customer. Customer may terminate this Agreement if LANDesk fails to comply with this Agreement within thirty (30) days of written notice from Customer to LANDesk of such failure. Customer's right to terminate is in addition to any other rights that Customer may have under this Agreement.

12.3. Effect of Termination or Expiration: In the event of termination or expiration of this Agreement for any reason, LANDesk shall no longer provide Support Services to Customer. The foregoing shall not limit or affect any remedy available to LANDesk for Customer's breach.

12.4. Termination of Affiliate. In the event that an entity ceases to be an Affiliate hereunder (or fails to meet the control requirement for an Affiliate),

then all rights of such entity under this Agreement shall be immediately terminated.

13. CONFIDENTIALITY.

13.1. Permitted Disclosures. The terms of this Agreement are confidential and neither Party may make any disclosures regarding this Agreement without the express prior written consent of the other Party, except for disclosure: (a) to legal and financial advisors in their capacity of advising a Party and to the extent required by law, legal process or financial transactions; (b) during the course of litigation so long as the disclosure is restricted in the same manner as is the confidential information of other litigating parties, the restrictions are embodied in a court-entered protective order, and the disclosing Party informs the other Party in writing in advance of the disclosure; (c) to Reseller, to the extent reasonably necessary to facilitate the purposes of this Agreement; or (d) to a Party's own employees as reasonably required to facilitate the purposes of this Agreement provided that such employees are bound by non-use and non-disclosure obligations substantially similar to the provisions hereof.

13.2. Protection of Confidential Information. Each Party agrees that it shall take reasonable measures (which shall be at least those measures that it takes to protect its own most highly confidential information but, in no event, less than commercially reasonable measures) to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other Party throughout the Support Term and any Renewal Term and for a period of three (3) years after termination or expiration of this Agreement. Neither Party shall make any copies of the Confidential Information of the other Party unless the same are previously approved in writing by the other Party. Each Party shall reproduce the other Party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original. Neither Party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other Party's Confidential Information and which are provided by one Party to the other Party hereunder.

13.3. Ownership. All documents and other tangible objects containing or representing Confidential Information, and all copies thereof, shall remain the property of the disclosing Party and shall be promptly returned to the disclosing Party upon written request.

13.4. No Warranty. All Confidential Information is provided "AS IS" and without any warranties, express, implied or otherwise, regarding the accuracy, completeness or performance of such Confidential Information.

14. GENERAL.

14.1. Notices. All notices required or permitted to be given hereunder shall be in writing, shall make reference to this Agreement, and shall be delivered by hand, or dispatched by prepaid courier or by registered or certified mail, postage prepaid, addressed as follows:

If to Customer

The address identified in the Online Form.

If to LANDesk

LANDesk Software, Inc.
698 West 10000 South, Suite 500
South Jordan, Utah 84095
Attn: Legal Dept.

Notices shall be deemed served when received by addressee or, if delivery fails by reason of some fault or action of the addressee, when tendered for delivery. Either Party may change the notice address or recipient at any time by providing written notice to the other Party.

14.2. Injunctive Relief. Each Party agrees that its confidentiality or intellectual property obligations hereunder are necessary and reasonable in order to protect the other Party and the other Party's business, and expressly agrees that monetary damages would be inadequate to compensate the other Party for any breach by either Party of such obligations. Accordingly, each Party agrees and acknowledges that any such violation or threatened violation of such obligations will cause irreparable injury to the other Party and that, in addition to any other remedies that may be available in law, in equity or otherwise, the other Party shall be entitled to obtain injunctive relief against a threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages. Each Party agrees that in the event such equitable relief is granted against it in the United States, it will not object to courts in other jurisdictions granting provisional remedies enforcing such U.S. judgments

14.3. Additional Rights and Remedies. The rights and remedies provided in this Agreement are in addition to any other rights and remedies provided at law or in equity.

14.4. U.S. Government Restricted Rights. The LANDesk Products, Support Services, and Documentation were developed at private expense and are provided with "RESTRICTED RIGHTS." Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in Federal Acquisition Regulations (FAR) 52.227-14, FAR 52.227-19 and DFAR 252.227-7013 et seq. or applicable successor provisions. Use of the LANDesk Products by the United States Government constitutes acknowledgment of LANDesk's proprietary rights therein. The Contractor or Manufacturer is LANDesk Software, Inc. (or its subsidiaries or affiliates), with an office at 698 West 10000 South, Suite 500, South Jordan, UT 84095, USA.

14.5. Force Majeure. Except with regard to the payment of fees, neither Party shall be responsible for any failure to perform hereunder due to unforeseen circumstances or to causes beyond the non-performing Party's reasonable control (such as: acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, accidents, and shortages of transportation, fuel, energy, or material).

14.6. Assignment. Customer may not assign any rights, duties or obligations hereunder, whether by merger, consolidation, dissolution, or operation of law, without the prior written approval of LANDesk. LANDesk may assign all or any part of its rights, duties or obligations upon written notice to Customer.

14.7. Relationship of the Parties. Neither Party will be deemed to be the agent or legal representative of the other Party for any purpose. Each Party will act as an independent contractor with regard to the other Party in its performance under this Agreement. The Agreement shall not authorize either Party to create any obligation or responsibility whatsoever, express or implied, on behalf of the other Party, or to bind the other Party in any manner, or to make any representation, commitment or warranty on behalf of the other Party.

14.8. Headings. The headings to the sections and subsections of this Agreement are for convenience only, do not form a part of this Agreement, and shall not in any way affect the interpretation thereof. Where the context so requires, the singular will include the plural and the plural will include the singular.

14.9. Survival. Upon termination or expiration of this Agreement for any reason, the following sections of this Agreement shall remain in effect: the main body of this Agreement (comprising the first two pages); Section 1, Definitions; Section 7, Limited Warranty; Section 8, Limitation of Liability; Section 9, Intellectual Property; Section 10, Payments; Section 12, Term and Termination; Section 13, Confidentiality; and Section 14, General.

14.10. Conflicts. In the event of a conflict between this Agreement and any other document related to the subject matter of this Agreement, the terms of this Agreement shall govern.

14.11. Severability. All rights and remedies, whether conferred hereunder, or by any other instrument or law, will be cumulative and may be exercised singularly or concurrently. Failure of either Party to enforce any of the provisions hereof shall not be construed to be an ongoing waiver thereafter. The provisions stated herein are declared to be severable. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.