

LIGHTPOINTE COMMUNICATIONS, INC.
WARRANTY AND SUPPORT AGREEMENT

This Warranty and Support Agreement (“Agreement”) sets forth the terms and conditions applicable to all hardware, software and support products that you obtain directly from LightPointe Communications, Inc. (“LightPointe,” “Company,” “us,” “our” or “we”) or from one of our authorized resellers.

1. HARDWARE WARRANTY

For a period of three (3) years, beginning on the date that we ship a hardware product to you, we warrant that each hardware product sold by the Company will operate in accordance with our published specifications and documentation for the product on the date it is shipped, or we will repair or replace the product as set forth below. Replacement parts are warranted for ninety (90) days or for the remainder of the warranty period in effect on the original product, whichever is greater.

2. HARDWARE SUPPORT OPTIONS

A. Standard Support

The Company’s standard hardware support program is Standard Support. For a period of three (3) years (36 months) from the date that your hardware warranty takes effect:

We will provide technical support by telephone, between the hours of 8:00 a.m. and 5:00 p.m. Pacific Time, Monday through Friday, excluding holidays (“Technical Support Hours”). You may call us at the numbers listed on our Web Site located at <http://www.lightpointe.com>. In addition, technical support is also offered on our Web Site, 24 hours a day, 7 days a week.

If you report a hardware problem to us during Technical Support Hours, we will provide technical assistance to you over the phone to determine the cause of the problem. If, after consultation with you over the phone, we determine that a problem exists in our product requiring repair or replacement, we will issue to you a Return Materials Authorization (“RMA”) number. The product requiring repair or replacement shall be shipped to us, and the RMA number shall be noted on the shipping container and shipping documents. You assume all risk for loss or damage during shipment to us. You will be subject to repair fees if the product is damaged due to negligence, misuse or is damaged during shipping. You will be subject to a restocking fee for the return of overstock equipment if it has been in your possession for more than 45 days and we will accept it only if the returned product is new and is in its original unopened container. We will use our reasonable efforts to ship interim loan hardware on an Advance Exchange basis to you the day you call; otherwise, interim loan hardware will be shipped the next business day. Interim loan hardware is provided without charge, provided you return the malfunctioning part to us within ten (10) business days of your receipt of the replacement part. On all advance Exchange and Warranty returns, LightPointe pays all shipping charges to your designated location and you pay all shipping charges to LightPointe’s designated location.

Within a commercially reasonable period of time after receiving the returned product, we will repair and return the defective product or provide you with a replacement product, at our discretion. We may provide you with new or equivalent to new replacement units and/or parts.

You or your agents will install replacement parts. We are not responsible for damage to our products caused by errors in installation performed by you or your agents. You will be responsible for returning the interim loan hardware within ten (10) business days of receipt of your returned product.

B. Extended Support

You can upgrade from our standard Support program to Extended Support, for an additional charge. Please contact LightPointe Sales Support for prices, conditions and payment options. You must purchase this option within one (1) year (12 months) after taking possession of the product.

Under the Extended Support plan, the warranty coverage described above in Paragraph 2A. will be extended for a period of two (2) years (24 months) from the date that your standard hardware support program expires.

3. LIMITED SOFTWARE WARRANTY

For a period of ninety (90) days from the date that we ship a software product to you, we warrant that (a) the software will materially conform to our then-current documentation for such software; and (b) that the media containing the software (but not the software itself) is free from physical defects.

4. SOFTWARE MAINTENANCE AND UPGRADE OPTIONS

For a period of ninety (90) days from the date that we ship a software product, we will provide you with upgrades and support services. Support services consist of the following:

(a) We will provide technical support by telephone during Technical Support Hours. You may call us at the numbers listed on our Web Site located at <http://www.lightpointe.com>. In addition, technical support is also available on our Web Site, 24 hours a day, 7 days a week.

(b) If you report a software problem to us, and we confirm that the problem exists in our product, we will use our reasonable efforts promptly to correct or supply a work-around for the error if it substantially degrades the performance of a product, and to correct other significant errors in future software releases.

For purposes of this Agreement, software includes firmware.

6. TIME AND MATERIALS SERVICE

If you request a product enhancement, or if a product or problem is not covered under the maintenance plan you have selected, we will so inform you, and provide an estimate of repair charges. If you then authorize us to attempt to repair the product, we will charge you for that service on a time and materials basis. Before we begin work, we will inform you of the current rate for that service, which may change from time to time. If no problem is found after examining a product, we reserve the right to charge you a fee for inspecting the product.

7. PURCHASE OF SPARE PARTS

You may purchase spare parts from us. Title to and risk of loss of the parts pass to you upon delivery by us to a common carrier. You pay all shipping charges. Parts supplied by us may be new or refurbished, at our option. Malfunctioning parts become our property, and must be returned to us within ten (10) business days, or you will be charged for them. Spare parts are warranted to conform to our published specifications on the date we ship them.

8. CUSTOMER OBLIGATIONS

In order to maintain your eligibility for warranty and maintenance service, you must (a) permit prompt access to products (subject to your standard security requirements of which you have informed us in writing prior to a service call), and (b) provide reasonable assistance and facilities in order to expedite the performance of maintenance and warranty service. Further, the product for which service is sought must meet our minimum configuration requirements, as set forth in the product documentation that is in effect on the date we ship the product.

You may be required to purchase and install current product releases to maintain eligibility for warranty and maintenance services.

You must provide backup or otherwise protect data against loss, damage or destruction prior to the provision of any warranty or maintenance services. Neither LightPointe nor its authorized resellers will be liable for any loss of data or information or any damages, costs or expenses resulting from any such loss.

You must provide written notification to Company of the relocation of any product from one site to another, before warranty or maintenance service will be performed at the new location. Relocation of products may result in additional charges if the new location is farther from a Company service center than was the prior location of the product.

9. EXCLUSIONS

Our warranties and maintenance agreements do not apply to, nor do prices include maintenance of, the repair or diagnosis of damage, malfunctions or product failures caused by: (a) you or any third party; (b) accident, misuse or abuse; (c) the installation, repair or alteration of our product (including modification of software) by anyone other than us; (d) products not sold by Company that are attached to or used with our product, even if those products are

sold by one of our authorized resellers; (e) your failure to provide a proper environment for the product (within the range of tolerances listed in our specifications for the product); (f) damage during transit; (g) power surge or failure, or (h) any other condition not arising under normal operating conditions. In addition, our warranty for any hardware product is void if the power supply originally supplied with that product is replaced with a power supply obtained from another vendor, or if a replacement power supply does not meet our specifications for minimum or maximum power output for that product.

10. EXCLUSIVE REMEDIES, LIMITATIONS OF LIABILITY, DISCLAIMER

THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE YOUR ONLY REMEDIES FOR HARDWARE OR SOFTWARE PRODUCT DEFECTS OR FAILURES, REGARDLESS OF CAUSE. EXCEPT FOR THE FOREGOING, COMPANY'S PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. FURTHER, COMPANY DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SOFTWARE OR WRITTEN MATERIALS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. SOME STATES DO NOT ALLOW LIMITATIONS ON THE DURATION OF AN IMPLIED WARRANTY, SO THE LIMITATIONS ABOVE MAY NOT APPLY TO YOU.

OUR TOTAL LIABILITY FOR ANY BREACH OF THIS AGREEMENT OR FOR ANY DAMAGES, LOSSES, INJURIES OR EXPENSES OF ANY KIND ARISING IN CONNECTION WITH ANY PERFORMANCE OR NONPERFORMANCE UNDER THIS AGREEMENT OR OF ANY PRODUCTS ORDERED OR PROVIDED HEREUNDER WILL BE THE GREATER OF \$1,000 OR THE TOTAL AMOUNT PAID BY YOU UNDER THIS AGREEMENT; PROVIDED THAT OUR TOTAL LIABILITY WILL IN NO CASE EXCEED \$20,000.

WE WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR LOST DATA, LOST PROFITS, LOST SAVINGS OR LOST REVENUES, EVEN IF WE ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGE.

THE WARRANTY DISCLAIMERS, LIMITED REMEDIES, AND LIMITATIONS ON LIABILITY AND TYPES OF DAMAGES STATED IN THIS AGREEMENT APPLY REGARDLESS OF THE FORM OF ANY LAWSUIT OR CLAIM YOU MAY BRING, WHETHER IN TORT, CONTRACT OR OTHERWISE, AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11. TERMINATION

If we fail to perform any term of this Agreement with respect to any product, and we do not remedy that failure within sixty (60) days after we receive your written notice of the failure, you may terminate this Agreement with respect to such product, and we will refund to you a pro rata portion of any pre-paid fees.

All of the provisions of this Agreement will survive the expiration or termination of this Agreement until the last purchased Maintenance Supplement hereunder is terminated or expires. In addition, the provisions regarding disclaimers, exclusive remedies, limitations of liability, and general provisions will survive the expiration or termination of this Agreement.

12. GENERAL

We are not liable for any loss, expense, damage or delay due to fire, power surges or failure, labor disputes, acts of God, transportation delays, inability to secure materials, or other causes beyond our reasonable control whether or not similar to those listed here.

Neither party may assign this Agreement or any rights hereunder without the written consent of the other, except that we may subcontract services to be provided under this Agreement.

We may from time to time modify any of the terms or conditions of this Agreement. Such changes will apply both to then current and future Maintenance Agreements, unless you promptly reject the changed terms in writing, in which case the new terms will apply only to Maintenance Agreements accepted by us more than thirty (30) days after the date of the notice. Except for such change notices, any modification or waiver of any term of this Agreement must be in writing and signed by an officer of Company. These terms will not be varied, supplemented

or interpreted by any course of dealing or usage of trade. The Agreement may not be modified by any purchase order or similar form even if we have accepted or acknowledged receipt of the form.

If any portion of this Agreement is deemed invalid or unenforceable, the remaining parts will still be enforced to the greatest extent possible.

This Agreement will be construed under and governed by California law, excluding the application of its conflicts of law rules.

This Agreement states the entire agreement of the parties with respect to products and services ordered hereunder and supersedes all prior Agreements, proposals or understandings with respect to such products and services.