

LIGHTPOINTE COMMUNICATIONS, INC.  
STANDARD 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 (“Customer,” “your,” or “their”) obtain directly from LightPointe Communications, Inc. (“LightPointe,” “Company,” “us,” “our” or “we”) or from one of our authorized partners, resellers or distributors.

1. HARDWARE WARRANTY

- All LightPointe products carry a standard 3 year, 36 month, manufacturer’s warranty against manufacturing defect.
- The standard warranty covers only the repair and return shipment of defective product unless the Advance Exchange option has been purchased and registered by LightPointe.
- The Warranty periods automatically begin the day the product ships from LightPointe’s facility OR the Warranty period start date will change to the install date when the Product Warranty Registration Form is received by LightPointe. The Warranty Registration form must be completed and on file with LightPointe or the Warranty may be void. The Warranty Registration form is available by contacting LightPointe, visiting our support website, or a blank form ships with most products and may be filled in and returned to us in the postage paid envelope provided.
- All Advanced Exchange Services options MUST be purchased within 90 days of product shipment.
- Extended Warranty Services may be purchased no later then 30 days after the standard warranty expires.
- Certain products offered by LightPointe and all Refurbished, Repaired or Replacement parts are warranted for 12 months, or for the remainder of the warranty period for the original product, whichever is greater.

2. HARDWARE SUPPORT OPTIONS

A. Standard Support

LightPointe’s standard hardware support program is for a period of three (3) years (36 months) from the date that your hardware warranty takes effect (usually Ship Date or Installation Date.)

We will provide technical support by telephone, in person, or email, between the hours of 8:00 a.m. and 5:00 p.m. (US) Pacific Standard Time (GMT -8) or Central European Time (GMT +1), 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> or use the contact numbers at the end of this document. In addition, technical support is also offered at, <http://lightpointe.custhelp.com>, 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 determine the cause of the problem. If, after consultation, we determine that a problem exists in LightPointe product requiring repair, we will issue to you a Return Materials Authorization (“RMA”) number. The product requiring repair will be shipped to us, and you must note the RMA number on the shipping container and documents. Customer assumes all risk for loss or damage during shipment to LightPointe. You will be subject to repair fees if the product is damaged due to negligence, misuse or is damaged during shipping to LightPointe.

Within a commercially reasonable period of time after receiving the returned product, LightPointe will repair and return the defective product, or provide you with a replacement product. LightPointe may provide you with new or equivalent to new replacement units and/or parts under the terms of this Warranty.

Customer or Customer’s agents must de-install and re-install any replacement parts. LightPointe is not responsible for damage to our products caused by errors in installation performed by you or your agents.

## B. Extended Warranty Support and Advance Exchange Services

You can upgrade from our standard Warranty Support program to enhanced Warranty Support options for additional charges. Please contact LightPointe Sales Support for details, prices, conditions and payment options. These upgrades can be purchased directly from LightPointe or through any LightPointe agent, distributor or reseller.

Warranty Upgrade Options:

### Advance Exchange

Advance Exchange service during the Standard 36 month Warranty Support period is available for an additional charge. Advance Exchange service must be purchased within 90 days of the ship date of the equipment being covered by the service. If the Advanced Exchange option has been purchased, LightPointe will use all reasonable efforts to ship interim loan hardware on an Advance Exchange basis the same business day you call. Otherwise, interim loan hardware will be shipped the next business day. A deposit or purchase order may be required prior to shipping you the interim loan hardware. Interim loan hardware is provided without charge assuming the following provisions are met:

- i. You return your malfunctioning part to us within ten (10) business days of your receipt of the interim loan hardware. Within a commercially reasonable period of time after receiving your returned product, LightPointe will repair your product, or provide you with new or equivalent to new replacement product and/or parts, and return them to you.
- ii. You then return the LightPointe interim loan hardware to us within ten (10) business days of your receipt of your repaired or replaced system(s) or part(s). If you choose to keep the interim loan hardware, or do not return the interim loan hardware within ten days, you will be invoiced for the equipment at the appropriate commercial price as determined by LightPointe.

On all Advance Exchange and Warranty returns, LightPointe pays all shipping charges (excluding Customs, Duties, and Taxes) to your designated location and you pay all shipping charges to LightPointe's designated return location. The designated location will be specified when you receive your RMA number from LightPointe Customer Service.

### Warranty Extension

Extension of the Warranty Support period can be purchased any time up to 37 months from the date of shipment (no more than 30 days after the Standard Warranty expires). Under the Extended Warranty Support plans, the warranty coverage described above in Paragraph 2.A. will be extended for either 12 or 24 months. Neither Warranty Extension option includes any Advance Exchange services.

- i. Option one (1) increases the standard 36 month warranty to 48 months – 12 month extension
- ii. Option two (2) increases the standard 36 month warranty to 60 months – 24 month extension.

## 3. LIMITED SOFTWARE WARRANTY

For thirty-six (36) months from the date that we ship a software product to you we warranty that is if free from physical defect and will work with the appropriate product.

## 4. SOFTWARE MAINTENANCE AND UPGRADE OPTIONS

For a period of thirty-six (36) months 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 during Technical Support Hours.
- 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, remedy or supply a work-around for the error. For purposes of this Agreement, software includes firmware.
- C. Software Technical support, Software upgrades and new Software downloads are available for no charge at our Technical Support website at <http://lightpointe.custhelp.com>, during the warranty period.

#### 6. REPAIR SERVICES FOR PRODUCTS THAT ARE NOT COVERED BY WARRANTY

If a product or problem is currently not covered under a LightPointe Warranty plan, we will inform you, and provide an estimate of the repair charges for your equipment. If you 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. If no problem is found after examining a product, we reserve the right to charge you a fee for inspecting the product. LightPointe offers the option of full refurbishment services for most products at an additional charge. We reserve the right to refuse this service at our discretion.

Repaired or Refurbished equipment is Warranted to be free from physical defects and will perform to published specifications for twelve (12) months from the date that we ship it to you, or it will be repaired or replaced free of charge.

#### 7. WARRANTY TERMS FOR EQUIPMENT PURCHASED AS "SPARE PARTS"

You may purchase spare parts from LightPointe and we will defer the start of the Warranty Period. If you purchase spare parts on a separate and distinct Purchase Order that is clearly marked as "SPARE PARTS", LightPointe will delay the start of the Standard Warranty period until one of the following two dates: (a) the *installation date* as determined when we receive the Warranty Registration Form with the installation date clearly specified, OR (b) *twelve (12) months from date of shipment*. Title and risk of the Spare Parts passes to you when the carrier picks up the part. You pay all shipping charges. Spare Parts are warranted to conform to our published specifications on the date we ship them.

#### 8. CUSTOMER OBLIGATIONS

You may be required to purchase and install current product releases, upgrades, or mechanical improvements to maintain eligibility for warranty and maintenance services.

You must provide backup, or otherwise protect data against loss, damage or destruction, prior to the removal of any LightPointe equipment for warranty repairs or upgrades. 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.

#### 9. EXCLUSIONS

Our warranties and maintenance agreements do not apply to 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 LightPointe or our authorized agent; (d) products not sold by LightPointe that are attached to or used with our product, even if those products are sold by one of our authorized resellers; (e) 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 the LightPointe product is replaced with a power supply not approved by LightPointe, or if a replacement power supply not approved by LightPointe is used to power the equipment at any time during its service life.

#### 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 to upgrade or extend the warranty.

All of the provisions of this Agreement will survive the expiration or termination of this Agreement until the last purchased Maintenance Supplement is terminated or expires. In addition, the 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.

#### 13. Contact information as of Feb 2004:

LightPointe (USA)  
10140 Barnes Canyon Rd.  
San Diego, CA 92121  
858-643-5200 option 2  
858-643-5201 Fax

LightPointe Europe (Germany)  
Werkstätten Strasse #16  
Handelsregister Dresden  
HRB 18909  
+49-351-339-4500  
+49-351-339-4599 Fax