SOFTWARE SUPPORT AND LICENSE AGREEMENT

Under this Agreement, Client may order Software and Support Services from FireGiant. This Agreement and the applicable Quote are the complete agreement regarding transactions by which Client acquires Software and Support Services. FireGiant will not accept any other terms or conditions unless Client and FireGiant have executed a written agreement which specifically modifies, supersedes and/or replaces this Agreement. Acceptance of all purchase orders is expressly made conditional upon Client's assent, expressed or implied, to the terms and conditions set forth herein without modification or addition.

Client's acceptance of this Agreement shall be indicated by any of the following, whichever first occurs: (a) Client's making of an offer to purchase Software and/or Support Services from FireGiant; (b) Client's written acknowledgment hereof; (c) Client's acceptance of any shipment of any part of the items specified for delivery; or (d) any other act or expression of acceptance by Client. FireGiant's acceptance is expressly limited to these terms and conditions in their entirety without addition, modification or exception, and any term, condition or proposal hereafter submitted by Client (whether oral or in writing) which is inconsistent with or in addition to these terms and conditions is objected to and is hereby rejected by FireGiant. FireGiant's silence or failure to respond to any such subsequent or different term, condition or proposal shall not be deemed to be FireGiant's acceptance or approval thereof.

Whereas, FireGiant develops and maintains Windows ® installation Software and has the skills to support such software for preparing installation programs for custom software and offers to provide support for such software for a fee.

Whereas, Client desires to hire FireGiant to provide support for its development efforts.

1. The FireGiant version of WiX available at https://account.firegiant.com/downloads/ ("FireGiant WiX")

   OR

2. The WiX toolset available at: http://wixtoolset.org/releases/ ("Community WiX").

FireGiant WiX and Community WiX are known collectively as "Software". FireGiant WiX is comprised of two parts. The FireGiant binary extensions, authored by FireGiant and subject to the license of this Agreement and the Open Source WiX Software whose use is governed by the license located at: http://wixtoolset.org/about/license/ ("MS-RL License"). FireGiant is the author and owner of the binary code of FireGiant WiX. FireGiant is not necessarily the author of all code in the Open Source WiX or Community WiX. As such, Support Services, Warranties, if any, Indemnification, if any, and other

terms of this Agreement may differ as to whether the Client is using FireGiant WiX or Community WiX.

Therefore, the Parties agree as follows:

1. **Support Services.** FireGiant will provide support and maintenance services ("**Support Services**") for the Software as follows:

   a. Support Services shall include consultation in the use of the Software for creation of installation packages for Client's software development programs.

   b. Support Services shall be limited to fixing bugs or errors in features of FireGiant WiX as supplied. Fixing bugs or errors in features of Community WiX shall be attempted at the sole discretion of FireGiant. Even if bugs or errors in Community WiX are addressed by FireGiant, FireGiant can make no warranties as to the timing of implementation of such repairs in Community WiX.

   c. Support Services shall include email support. If support incidents cannot reasonably be resolved via email, then FireGiant will, at its discretion, arrange phone consultations with Client as needed to resolve incidents. Client shall provide FireGiant with the contact list of its personnel that can contact FireGiant for Support Services. In order to better maintain confidentiality of Client information, only those names listed on the contact list may request support. The contact list may be updated by Client from time to time.

   d. Client shall be entitled to access to new releases of FireGiant WiX that FireGiant makes generally available to other clients who purchase support, which may include new features. New releases of FireGiant WiX shall be at FireGiant's sole discretion. FireGiant does not control releases of Community WiX.

   e. Email responses to support incidents will typically be provided within 1 business day but will not take more than 2 business days.

   f. Support Services shall <u>not</u> include adding new, Client requested, features to the Software. Should Client desire to have new features added to the Software that work would be done under a separate agreement.

   g. Client shall be entitled to receive one written code review per year of Client's installer source code at any time during the term of this Agreement. Only a single code review per year is included as part of this Agreement. Client shall request the code review in writing during the term of the Agreement and provide all source code subject to the review. FireGiant shall provide the written code review within 8 weeks of receipt of Client's written request. For multi-year Agreements, code reviews not requested in one year do not accrue into subsequent years.

h. Client shall be entitled to a single 2-hour phone consultation with FireGiant staff to discuss any topics related to use of the Software for Client's products. Client shall request the phone consultation in writing during the term of the Agreement. FireGiant shall schedule the phone consultation within 2 weeks of receipt of Client's written request, or a later date if requested by Client. For multi-year Agreements, phone consultations not requested in one year do not accrue into subsequent years.

2. **Service Fee.**

a. Client's fee for the Support Services ("Service Fee") is based upon the number of individuals ("Developers") that are developing Client's software products (the "Developer Count"). The Developer Count as of the Effective Date is included in the Quote provided to Client. At each yearly anniversary of this Agreement, Client shall supply the valid Developer Count (to the best of its knowledge). The following years' Service Fee shall be calculated based on the Developer Count identified by Client on the yearly anniversary date.

b. Developers added after the Effective Date (or after the yearly anniversary) but during the year following disclosure of the count shall be supported at no additional costs to the Client during that year.

c. The Service Fee is due on the yearly anniversary of this Agreement and payable within thirty (30) days of Client's receipt of the invoice from FireGiant.

d. Taxes. Unless otherwise stated in the Quote provided to Client, FireGiant is solely responsible for payment of taxes on any fees paid by Client and shall not invoice Client for such amounts.

3. **License.**

a. **Scope.** In order to obtain Support Services for the Software, Client must agree to download and install either FireGiant WiX or Community WiX. FireGiant WiX is licensed, not sold, to Client for use under the terms of this Agreement. Community WiX is subject to the license located at: http://wixtoolset.org/about/license/ ("MS-RL License").

b. **Components of Software.** FireGiant WiX includes both proprietary software owned by FireGiant and WiX Open Source software which is maintained by FireGiant and has been compiled by FireGiant. The WiX Open Source software is subject to the MS-RL License. FireGiant agrees that as part of its duties under this Agreement it shall remain in compliance with the terms of the MS-RL license, including any publishing requirements required by the MS-RL. The Software is used to create installation packages for installation of Client's software products ("Installation Packages").

c. **FireGiant WiX License**. FireGiant grants Client (and Client's employees, affiliates and contractors) a limited, non-exclusive, and fully paid up right and license to use FireGiant WiX delivered to Client hereunder for Client's and Client's affiliate's business purposes only. Such license shall be perpetual and irrevocable, except in the event that Client breaches the Agreement and fails to cure such breach after a reasonable period of time FireGiant may terminate the license to FireGiant WiX. "Client's affiliate" means any entity or organization that is owned or controlled by Client. The Client understands that FireGiant WiX is a binary code subject to the license include herein ("License") and is not Open Source software subject to the MS-RL license. FireGiant grants Client (and Client's employees, affiliates and contractors) a perpetual, fully paid up, irrevocable right and license to use any Installation Packages, including components of FireGiant WiX, if any, that are incorporated into the Installation Packages. This License does not grant Client any title or right of ownership in the Software or related end user documentation ("Documentation"). No right or license, express or implied, is granted in this Agreement for the use of any FireGiant trade names, service marks or trademarks.

d. **FireGiant WiX License Limitations.** Client may not copy, except as expressly permitted by this License and this Agreement, decompile, reverse engineer, disassemble, attempt to derive the source code, modify, or create derivative works of FireGiant WiX or any updates to FireGiant WiX, except to the extent this restriction is prohibited by applicable law or to the extent it is permitted by the licensing terms governing use of any open sourced components included with the Software. To the extent that FireGiant WiX may be used to reproduce, modify, publish or distribute materials, such use is licensed to Client for materials that Client is authorized or legally permitted to reproduce, modify, publish or distribute.

e. The License with respect to FireGiant WiX delivered under this Agreement shall survive any termination of this Agreement, except that in the event that Client breaches this Agreement and fails to cure such breach after a reasonable period of time, FireGiant may terminate the License to FireGiant WiX. The license with respect to the Installation Packages shall survive any termination of this Agreement. For clarity, there are no additional fees associated with the licenses to FireGiant WiX and Installation Packages and the License and license for the Installation Packages is included as part of the Service Fees paid hereunder.

4. **Warranties:**

a. **Software Warranty.** FireGiant represents and warrants that FireGiant has the rights to grant the licenses granted herein. FireGiant represents and warrants that FireGiant WiX materially conforms to its published specifications described in the Documentation supplied by FireGiant. FireGiant disclaims any warranty with respect to Community WiX.

b. **Service Warranty.** FireGiant represents and warrants to Client that all Support Services provided

hereunder shall be performed in a professional and workman like manner by qualified personnel and the Support Services delivered hereunder shall conform to generally accepted industry standards and practices for similar services.

a. **Malicious Code.** FireGiant will use standard industry practices including, without limitation, the use of an updated commercial anti-virus program, to test all FireGiant WiX hereunder prior to its delivery or transmission for Malicious Code and remove any Malicious Code it discovers prior to delivery or transmission to the other party. "**Malicious Code**" means any code that is designed to harm, or otherwise disrupt in any unauthorized manner, the operation of a recipient's computer programs or computer systems or destroy or damage recipient's data in an unauthorized manner. To the best of FireGiant's knowledge, FireGiant WiX does not, at the time of delivery to Client include Malicious Code. FireGiant disclaims any warranty with respect to Malicious Code, if any, in Community WiX.

b. **DISCLAIMER OF WARRANTY.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE AS PROVIDED BY FIREGIANT "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. FIREGIANT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SOFTWARE BE ERROR FREE OR THAT FIREGIANT WILL CORRECT ALL SOFTWARE ERRORS. ANY FAILURES DUE TO MODIFICATION BY CLIENT OF SOFTWARE ARE EXPRESSLY EXCLUDED FROM ANY WARRANTY AND INDEMNIFICATION BY FIREGIANT.

c. **LIMITED REMEDY FOR BREACH OF WARRANTY.** CLIENT'S EXCLUSIVE REMEDY, AND FIREGIANT'S ENTIRE LIABILITY FOR THE BREACH OF THE SOFTWARE WARRANTY SPECIFIED IN SECTION a. ABOVE, WILL BE THE COMMERCIALLY REASONABLE EFFORT TO FIX DEFECTS IN THE SOFTWARE. CLIENT'S EXCLUSIVE REMEDY FOR A BREACH OF THE SERVICES WARRANTY IS THAT CLIENT MAY TERMINATE THE AGREEMENT AND RECEIVE A REFUND FOR DEFICIENT SERVICES AND A PRO RATA REFUND OF THE UNUSED AND PREPAID SERVICES FEES PAID TO FIREGIANT HEREUNDER FOR THE RELEVANT PERIOD REMAINING.

5. **Indemnification:**

a. FireGiant, at its own expense, shall defend Client, its officers and employees from any and all third party claims that FireGiant WiX or its use in accordance with FireGiant's instructions infringes or violates any third party intellectual property (each a "Claim"), and FireGiant shall indemnify Client, its officers and employees from any damages, loses or expenses (including reasonable attorneys' fees) associated with the defense or settlement of any such Claims.

b. Client, at its own expense, shall defend FireGiant, its officers and employees from any and all third party claims that use of Software in violation or contravention of FireGiant's instruction infringes or

violates any third party intellectual property (each a "Claim"), and Client shall indemnify FireGiant, its officers and employees from any damages, loses or expenses (including reasonable attorneys' fees) associated with the defense or settlement of any such Claims.

6. **Term; Termination; Renewal Fees.** The term of this Agreement will begin on the Effective Date and will continue for one (1) year ("Term"). FireGiant reserves the right to modify the service fee schedule provided in the Quote to Client if the parties mutually agree to any renewal of the Agreement.

7. **LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY BREACHES OF THE CONFIDENTIALITY OBLIGATIONS STATED HEREIN OR ANY INDEMNITY OBLIGATIONS DESCRIBED HEREIN:**

    (a) IN NO EVENT SHALL CLIENT OR FIREGIANT BE LIABLE TO THE OTHER PARTY FOR ANY LOST REVENUE, PROFIT, LOST OR DAMAGED DATA, OR BUSINESS INTERRUPTION, OR FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE, ASSOCIATED SERVICES, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND

    (b) IN NO EVENT SHALL THE AGGREGATE LIABILITY OF CLIENT OR FIREGIANT ARISING IN CONNECTION WITH THIS AGREEMENT (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE FEES PAID OR DUE TO FIREGIANT HEREUNDER.

8. **Independent Contractors.** The Parties are acting as independent contractors and nothing in this Agreement or performance under this Agreement will be construed to create a joint venture, employment, or any other agency relationship between the Parties. FireGiant will be solely responsible for any and all obligations and payments due with respect to its personnel, including ay wages, salaries, and other amounts due to its personnel in connection with the agreement and FireGiant is responsible for all reports and obligations respecting them relating to solicit security, income tax withholding, unemployment, compensation, workers' compensation and other similar matters. Neither party will make any commitment, by contract or otherwise, binding upon the other or represent that it has any authority to do so. This is not an exclusive agreement. Client reserves the right to use other service providers to provide products and services that are the same or similar to those delivered hereunder.

9. **Assignment.** This Agreement is not assignable by either Party; except, either party may, upon written notice and without the prior approval of the other party: (a) assign this Agreement to an affiliate as long as the affiliate can satisfy its obligations under this Agreement; and (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such Party's assets or stock.

10. **Notices.** All notices, demands, and other communications under this Agreement will be made in writing in

English and will be deemed to have been given (i) immediately when delivered by hand or when transmitted by facsimile or email with delivery confirmed or verified, (ii) when one working day has passed after delivery to an internationally recognized overnight courier for overnight delivery; or (iii) when five (5) working days have passed after the transmission by postage prepaid, first class, United States certified mail, return receipt requested, or its international equivalent. Such notices, demands, and other communications will be sent to the following addresses, unless the party changing its address notifies the other party of the change by fifteen (15) days prior written notice. Notices may not be delivered by telephone, but telephone numbers are listed to facilitate notice by other means authorized above. Address for notices to the Parties is listed in the Quote provided to Client.

11. **Confidential Information.**

   a. **"Confidential Information"** means any non-public data, information and other materials regarding the products, software, services, or business of a party (and/or, if either party is bound to protect the confidentiality of any third party's information, of a third party) provided by one party ("Disclosing Party") to the other party ("Recipient") where such information is marked or otherwise communicated as being "proprietary" or "confidential" or the like, or where such information should, by its nature or circumstances of disclosure, be reasonably considered to be confidential and/or proprietary.

   b. During the term of this Agreement, both parties agree that (i) Confidential Information of the other Party will be used only in connection with performing hereunder or exercising rights granted herein; (ii) each will use the same degree of care with respect to the other parties Confidential Information as it utilizes to protect its own Confidential Information, but in no event less than reasonable care; and (iii) the Confidential Information of the Disclosing Party may be disclosed only to employees, affiliates, agents and contractors (including of Recipient with a need to know such information,, provided that any such employee, affiliate, agent or contractor of Recipient shall be subject to obligations of non-use and confidentiality with respect to such Confidential Information at least as restrictive as the terms of this Agreement, and the Recipient shall remain liable for any non-compliance of such employee, affiliate, agent or contractor with the terms of this Agreement.

   c. Confidential Information will not include information which: (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure by the Disclosing Party; (iii) is independently developed by the Recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; or (v) is software code in either object code or source code form that is

licensed under an open source license. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

12.   **Data Privacy.** Client agrees that they will not transfer any Personal information to FireGiant that requires protection under any local, state, federal and foreign privacy laws.

13.   **Force Majeure.** Neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, hurricanes, earthquakes, government restrictions, or terrorist acts. However, the party whose performance is delayed will use its best efforts to notify the other party of such delay and to minimize its effect. If any force majeure condition causes a party to be delayed by more than thirty (30) days in performance of its obligations under this Agreement, Client may, upon written notice, terminate this Agreement in its sole discretion and receive a prorate refund of any unused fees paid hereunder.

14.   **Remedies.** Unless specifically provided otherwise, all other remedies provided for under this Agreement or available in law or equity will remain available to the parties.

15.   **Governing Law, Jurisdiction.** This Agreement is governed by the laws of the State of California, USA, without regard to its conflicts of laws provisions, or the United Nations Convention on Contracts for the International Sale of Goods.

16.   **Export Laws.** Client acknowledges that the software delivered hereunder and the use documentation may be subject to the export laws and regulations of the United States. Accordingly, Client shall not, directly or indirectly, export, reexport, license, sell, give, loan, transfer, disclose or otherwise grant access to the software or the documentation to any prohibited country or person, if any.

17.   **Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.

18.   **Waiver.** The delay or failure of either Party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the Party against whom such waiver is sought to be enforced.

19.   **Complete Agreement.** This Agreement and the Quote provided to Client represent the final, complete and exclusive statement of the agreement between the Parties with respect to the software and services provided herein, notwithstanding any prior written agreements or prior and contemporaneous oral agreements with respect to the subject matter.

20. **Amendment.** This Agreement may be amended or modified only by a writing signed by the Parties.

21. **Counterparts.** To the extent permissible under applicable law, the parties consent to use electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of this Agreement made by reliable means is considered an original.

22. **Dispute Resolution.**

   a. Any dispute between the parties should, in the first instance, be referred to the senior manager responsible for the function to which FireGiant provides Services, and the parties shall first to try in good faith to settle the dispute by negotiation within thirty (30) days of first notice of the claim before resorting to arbitration, litigation, or some other dispute resolution procedures.

   b. Any dispute, controversy or claim of any kind arising out of or relating to or in connection with this Agreement or the performance hereof, including without limitation as to their existence, validity, enforceability, interpretation, performance, or their breach or termination, including claims in tort and claims raising questions of law, which is not settled by agreement in accordance with the foregoing, shall be settled exclusively by final and binding arbitration conducted in California pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect by one or more arbitrators appointed in accordance with such rules. Arbitral proceedings will be conducted in English. The costs of any arbitration, including administrative fees and fees of the arbitrator, shall be shared equally by the parties. Each party shall bear the cost of its own attorneys' fees and expert fees.

   c. Notwithstanding any provision of applicable law, the parties will not request, and the arbitrator shall have no authority to award, punitive or exemplary damages against any party. The arbitrator shall have the authority to grant injunctive relief and order specific performance. The arbitrator shall determine what discovery will be permitted, consistent with the goal of limiting the cost and time which the parties must expend for discovery; provided the arbitrator shall permit such discovery as they deem necessary to permit an equitable resolution of the dispute. Evidence need not be obtained in the presence of the arbitrator. At the arbitration hearing, each party may make written and oral presentations to the arbitrator, present testimony and written evidence, and examine witnesses. The parties and the arbitrator shall use their best efforts to complete any such arbitration within one (1) year after the appointment of the arbitrator, unless a party can demonstrate to the arbitrator that the complexity of the issues or other reasons warrant the extension of the time table. In such case, the Panel may extend such timetable as reasonably required. The arbitrator shall, in rendering its decision, apply the substantive law of the State of California, without giving effect to its choice of law principles.

   d. Nothing herein shall prevent a party from seeking from a court of competent jurisdiction any equitable, injunctive, interim or provisional relief that may be necessary to protect the rights or property of that party. In reaching its decision, the arbitrator(s) shall apply the provisions of this

Agreement, including the substantive law specified herein and applicable statutes of limitation. The decision and/or award rendered by the arbitrator shall be written (specifically stating the arbitrator's findings of facts as well as the reasons upon which the arbitrator's decision is based), shall be final and non-appealable (except for an alleged act of corruption or fraud on the part of the arbitrator), and may be entered in any court of competent jurisdiction and shall be binding and enforceable in any court of competent jurisdiction.

23. **Nondiscrimination/Affirmative Action.** If applicable, FireGiant and its subcontractors (if relevant) shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

24. **Delivery of FireGiant WiX.** FireGiant WiX shall be delivered electronically.

25. **Headings.** The title of this Agreement and the headings of Sections and Subsections used in this Agreement are for ease of reference only and will not be used to interpret any part of this Agreement.

26. **Authority.** Each party represents that the individual signing this Agreement has the requisite legal authority to bind the party on whose behalf he/she is signing.