



ZPE SYSTEMS STAND-ALONE HARDWARE MAINTENANCE AGREEMENT

This Hardware Maintenance Agreement is entered by and between ZPE Systems, Inc. ("ZPE") and you ("Licensee"), and is subject to the terms and conditions of the Master Agreement, as defined below.

1. **Definitions.** In addition to the Definitions in Schedule 1 to the Master Agreement (defined below), which Definitions are hereby incorporated by reference, the following terms shall have the meanings set forth below:

- 1.1 **"Agreement"** means this ZPE Systems, Inc. Hardware Maintenance Agreement.
- 1.2 **"Confidential Information"** means all confidential information relating to the Product and ZPE Intellectual Property Rights, together with all confidential information (in whatever media) related to ZPE business.
- 1.3 **"Documentation"** means written and/or online material provided by ZPE in connection with the Hardware Product.
- 1.4 **"Effective Date"** means the date Licensee purchased Hardware Maintenance for set forth in the Preamble above.
- 1.5 **"Expiration Date"** means two (2) years from the Effective Date.
- 1.6 **"Intellectual Property Rights"** means the ZPE IP as defined in the Master Agreement.
- 1.7 **"Services"** means the hardware maintenance services provided by ZPE pursuant to this Agreement.
- 1.8 **"Hardware Maintenance Package"** means the Limited, Silver or Gold Hardware Maintenance package Licensee purchased pursuant to this Agreement.
- 1.9 **"New Releases"** means the latest version of the Hardware, including any updates, revisions, or modifications released by ZPE.
- 1.10 **"Master Agreement"** means the ZPE Systems Master License Agreement by and between ZPE and Licensee.
- 1.11 **"RMA"** means Return Materials Authorization as used in the Hardware Maintenance Program Overview which is attached hereto as Schedule 1.

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Master Agreement, the provisions of the Master Agreement shall control.

2. **Services.** During the term of this Agreement, ZPE will provide Licensee with the following Services consistent with the Hardware Maintenance Package Licensee has purchased for the Product:

2.1 ZPE shall provide the Licensee with all New Releases during the term of this Agreement.

2.2 ZPE shall provide technical support (English Language only) via telephone or email during normal business hours (based on US Pacific Standard time). For Limited services customers, telephone support is during normal business hours. For Gold services customers, telephone support is 24/7. For local customer support numbers, please visit www.zpesystems.com/resources/support.

2.2 ZPE will repair or replace the applicable Product in accordance with ZPE RMA process. Gold customers receive next business day RMA service.

2.3 ZPE will provide advanced replacement services for Gold customers as set forth in the Hardware Maintenance Program Overview attached to this Agreement as Schedule 1. If ZPE exercises its option to proceed with advanced replacement of the applicable Product, ZPE will send a new, refurbished (in Licensee's sole discretion), or comparable model unit at no charge. Licensee will be directed by ZPE, through ZPE's Customer Support, to send the applicable Product back to ZPE and ZPE will provide Licensee with a RMA number. ZPE will ship replacements the same-day, unless ZPE provides Licensee notice that same-day shipping is not possible, for all requests received by a ZPE regional customer support center prior to 2:00 pm PST on a normal business day. For requests received after 2:00 pm PST, ZPE will ship on the next business day, unless ZPE provides Licensee notice that next business day shipping is not possible. ZPE's default shipment method will be one-day delivery using a national courier (UPS or FedEx), that permits tracking of the shipment. Circumstances beyond ZPE control, such as customs, duties, tariffs and receipt mechanisms at Licensee's locations, may affect actual delivery time. When Licensee receives the replacement Hardware Product, Licensee is

obligated to ship the original Product, at Licensee's expense, back to ZPE in the same shipping box to the indicated ZPE location with the RMA number clearly marked on the outside of the shipping box. If you do not return the original Product within fourteen (14) business days from receipt of the replacement Product, ZPE will bill Licensee for the replacement Product, at the current list price of the Product. If Licensee has purchased Gold Hardware Maintenance with Media Retention, there is no requirement to return the failed Product, however, Licensee is required to provide a certificate of destruction for the failed Product within thirty (30) days from receipt of the replacement Product, or ZPE will bill Licensee for the replacement Product, at the current list price of the Product.

2.3 ZPE shall also provide such other Services as it deems reasonably necessary to cause the Product to perform materially in accordance with the then current Documentation, provided that Licensee installs all updates, modifications, and corrections provided by ZPE and that Licensee's use of the Product is in accordance with this Agreement, the Documentation, and the Master Agreement. ZPE shall use its reasonable efforts to rectify any errors in the Product that Licensee notifies ZPE about, if ZPE is able to confirm that such error or defect exists through independent testing.

2.4 When notifying ZPE of an Error in the Product, Licensee shall provide ZPE with an example of the Error, the context in which the Error was encountered, a description of the system configuration, and the steps necessary to generate or reproduce the Error.

2.5 If requested by ZPE, Licensee shall grant ZPE or its representative's access to the Product and the System on which it is installed during working hours (and any extra agreed cover) so that ZPE can carry out its obligations under this Agreement. ZPE's access will be through a screen share access with Licensee. Notwithstanding the foregoing, Licensee reserves the right to grant or restrict ZPE's access to the Product.

2.6 Limitations. ZPE shall be under no obligation to furnish technical support or provide access to updates under this Agreement to the extent that such support or access to updates is required as a result of: (i) accident, abuse, or misapplication, (ii) power surges, water exposure, or acts of nature (including lightning), (iii) the operation of the Product in environmental conditions or configurations outside those prescribed in the Documentation; (ii) Licensee's material failure to maintain the Product in accordance with the Documentation provided to Licensee with the Product or during the term of this Agreement; (iii) maintenance of the Product by anyone other than ZPE or a third party authorized by ZPE; and (iv) modifications to the Product not authorized by ZPE or made by or on behalf of Licensee. The Services provided are further subject to the Third Party License Agreement(s) for the respective Product. Said Third Party License Agreement(s) are not intended to make any Stand-Alone Software Product part of this Agreement.

3. **Warranties.** In addition to the limited warranties set forth in the Master Agreement, ZPE represents that each ZPE employee assigned to perform Services under this Agreement possesses the skills and training necessary to be able to perform such Services in a competent and professional manner.

4. **Ownership.** ZPE has granted Licensee a non-exclusive, non-transferable license to use the Product for internal business purposes only. The Product is ZPE IP and its exclusive property and constitutes its valuable trade secret. Licensee will take reasonable steps to protect the trade secrets related to the Product. ZPE shall own the entire right, title, and interest in and to all corrections, modifications, enhancements, programs, information and work product conceived, created or developed, alone or with you or others, as a result of or related to the performance of this Agreement. Except and to the extent expressly provided in the License Agreement with respect to the Product, ZPE does not grant to you any right or license, express or implied, in or to the Product or any of the foregoing.

5. **Injunctive Relief.** Each party acknowledges that a violation or threatened violation of section 3 or 4 of this Agreement would result in damage that is largely intangible but nonetheless real and that is incapable of complete remedy by award of damages. Thus, such violation or threatened violation will give ZPE the right to a court-ordered injunction to specifically enforce such covenant or obligation.

6. **Term and Termination.** The term of this Agreement will commence upon the Effective Date and expire on the Expiration Date. Near the Expiration Date, ZPE will send Licensee an invoice to automatically renew this Agreement. Acceptance of the renewal will be indicated by Licensee either: (i) submitting a purchase order to ZPE, or (ii) making payment of the invoice. The term of Licensee's renewal will commence on the day following the Expiration Date of the prior term, and the new term expires on the second anniversary thereof, depending on the option Licensee purchased. Nonpayment of the invoice will indicate that Licensee does not wish to renew this Agreement. If you elect not to procure continuous Services but rather allow the Services to lapse, then Licensee will not be entitled to any New Releases published during the lapsed period. Should Licensee wish to reactivate a lapsed Hardware Maintenance Agreement later than thirty (30) days after its expiration, Licensee will be required to pay a reactivation fee equal to the amount of time that has lapsed since this Agreement expired, in addition to the Product maintenance costs requested for the current year term. The Services are nontransferable.

7. **Partial Invalidity.** If any provision of this Agreement is ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected.

8. **Entire Agreement.** The terms of this Agreement are deemed to be a part of the Master Agreement. This Agreement together with the Master Agreement and any applicable Documentation shall be the complete and exclusive statement of the agreement between the parties with respect to the provisions of Hardware Maintenance by ZPE, and shall be binding upon each of the parties hereto, their respective successors and to the extent permitted their assigns. Neither this Agreement nor the Master Agreement can be amended or otherwise modified, except as agreed to in writing by each of the parties hereto. A breach of this Agreement shall constitute a breach of the Master Agreement and vice versa.

The parties signing below agree to the above and intend to be legally bound. Notwithstanding any statute, regulation, or other rule of law, a signature provided by facsimile or other electronic copy will be deemed to be an original signature, and this Agreement may be executed in counter-parts, and all counterparts taken together will be regarded as one and the same instrument. If any provision of this Agreement is ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected.