

GIGAMON® PREMIUM SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT

This Premium Software Support and Maintenance Agreement (“Agreement”) is between Gigamon, LLC (GIGAMON) and _____ (“Customer”) for the support and maintenance of the software in Products for Customer by GIGAMON. This Agreement is for the period specified in the Product section below, inclusive (“the Effective Period”).

Support Contact Information:

Premium Support is available by email to support@gigamon.com or by phone (408) 263-2024 during Gigamon’s normal business hours. **After hours support is available by calling the Premium Support line at (408) 263-XXXX.**

1. **Definitions.** All capitalized terms not defined below shall have the meaning set forth in the Agreement.
 - 1.1. “**Error(s)**” means any verifiable and reproducible failure of the Product to materially conform to the applicable Gigamon’s published Product Specifications (“Specifications”) unless such failure (a) results from Customer’s misuse or improper use of the Product; (b) does not materially affect the operation and use of the Product; (c) results from the modification by Customer or any third party of the Product not approved in writing by a Gigamon C-level executive; or (d) results from Customer’s failure to implement in a timely manner all Updates, improvements or modifications to the Product provided to Customer.
 - 1.2. “**Error Correction**” means either a modification or addition to or deletion from the Product that materially conforms the Product to GIGAMON’s published specifications, or a procedure or routine that, when observed in the regular operation of the Product, eliminates that material adverse effect on Customer of such Error.
 - 1.3. “**Hardware**” means the hardware products which include Software purchased from Gigamon that are covered by this Premium Software Support and Maintenance Agreement as listed in Attachment A.
 - 1.4. “**Product**” means a combination of Hardware and Software, purchased from Gigamon that are covered by this Premium Software Support and Maintenance Agreement.
 - 1.5. “**Severity 1 Error**” means any demonstrable Error in the Product that in a production environment: (a) causes the Product to have a significant loss of utility of intended function; or (b) prevents the Product from being installed or operated when properly configured. Both Gigamon and Customer shall jointly agree on an error’s severity levels.

- 1.6. “Severity 2 Error” means any demonstrable Error in the Product that: (a) causes the Product to operate improperly in a manner which negatively impacts the normal course of business for Customer; or (b) produces results materially different from those described in the Specifications but does not rise to the level of a Severity 1 Error.
- 1.7. “Severity 3 Error” means any demonstrable Error in the Product that: (a) causes a function not to execute as documented in the published specifications without a significant loss of utility or intended functionality; or (b) disables one or more nonessential functions.
- 1.8. “Software” means the object or binary code included in the Hardware or ordered separately for use in the Hardware.
- 1.9. “Update” shall have the meaning as provided in the Agreement.
- 1.10. “Workaround” means a temporary solution to an Error that GIGAMON has implemented, or enabled Customer to implement and that allows the Software to regain functionality to provide major software functions in accordance with the published specifications.

2. Premium Software Support Services.

- a) Contact process:
 - i) For **Premium Support** customers, technical support is available by email to support@gigamon.com or by calling (408) 263-2024 during normal business hours of 8AM to 5PM Pacific Time. For calls made after Gigamon business hours, use only the dedicated Premium Support phone number (408) 263-XXXX. If immediate service is not available, an on-call Tech Support Engineer will respond within 4 hours.

2.2 Customer Responsibilities.

- a) Errors. Customer agrees to notify GIGAMON in writing promptly following the discovery of any Error by email at support@GIGAMON.com. Upon discovery of an Error by Customer, Customer agrees, if requested by GIGAMON, to submit promptly to GIGAMON a listing of output, screen shots, and any other information, including the operating conditions under which the Error occurred or was discovered, that GIGAMON may reasonably require to reproduce the Error. All service conversations and associated backup information will be considered as GIGAMON Confidential.

2.3 GIGAMON Responsibilities.

- a) Response to Errors. Gigamon shall provide the following responses to Error reports:

For Premium Software Support:

- (i) Severity 1 Errors. GIGAMON shall, within eight (8) business hours of receipt of notice of any Severity 1 Error, contact Customer to verify such error and begin a resolution process. Upon GIGAMON's verification of such error, GIGAMON will use commercially reasonable efforts to provide a Workaround within twenty four (24) business hours and a final resolution within five (5) business days.
 - (ii) Severity 2 Errors. GIGAMON shall, within eight (8) business hours of receipt of notice of any Severity 2 Error, contact Customer to verify such error and begin a resolution process. Upon GIGAMON's verification of such error, GIGAMON will use commercially reasonable efforts to provide a Workaround within twenty four (24) business hours and a final resolution within ten (10) business days.
 - (iii) Severity 3 Errors. GIGAMON shall, within one (1) business day of receipt of notice of any Severity 3 Error, contact Customer to verify such error. Upon GIGAMON's verification of such error, GIGAMON will use commercially reasonable efforts to provide a Workaround with the next Maintenance release.
- b) Exclusions from Support Services. GIGAMON shall have no obligation to provide support or troubleshooting services for any hardware or software not purchased from Gigamon and/or its authorized resellers. Customer shall bear all responsibility for any malfunction or damage to the Product caused by such non-Gigamon purchased products. GIGAMON shall have no obligation to provide support or troubleshooting services in connection with use of the Product or for any failure or defect in the Product caused by: (i) the improper use, alteration, or damage of the Product by Customer or persons not authorized by GIGAMON; (ii) modifications to the Product not provided or approved in writing by GIGAMON; or (iii) hardware, applications or other software not provided or approved in writing by GIGAMON.
- c) Additional Services. If GIGAMON performs services at Customer's request beyond the scope of the support services set forth in the Agreement, Customer shall be billed at GIGAMON's then current charges for such services. GIGAMON shall be under no obligation to provide any such services.

3. Software Maintenance

- a) Gigamon hereby agrees to distribute to Customer all major releases of the software product for the hardware product purchased and for any software modules separately licensed. Customer agrees to update software and operate the Product with current versions of software. GIGAMON guarantees an N-1 software support practice. Technical support is available on two versions of the software at a time, the current version (as notated by Product Support) and the previous major version. A major version is identified as one position to the right or the left of the decimal, as

indicating a progression of code. A minor release is typically two positions to the right of the decimal.

- b) Major releases shall include new features, functions, performance enhancements, and major bug fixes. Minor releases not distributed under this agreement may be released to production from time to time. These minor releases are restricted to changes of non-functional features, cosmetic features, correct minor bugs or other changes which Gigamon designates as minor. Other releases which are not standard production releases are not covered by this Software Support and Maintenance Agreement. These will be custom versions done for specific customer(s) or users which are not for general production release.
- c) This software maintenance agreement will be in force for a period specified in this Agreement for the covered Product(s). Extensions of the Software Support and Maintenance Agreement coverage shall be purchased in 12 month increments and shall be scheduled to allow coverage periods to be contiguous. Gaps in coverage are not allowed. In the event of a gap in coverage, customer shall pay standard rates for all gap periods before they may purchase a new Software Support and Maintenance Agreement.
- d) Method of distribution of updated software code shall be at the sole discretion of Gigamon and may be via internet from Gigamon's Server, or other commonly supported electronic media or file transfer method.
- e) Notification of availability of new major and general releases: users registered on Gigamon's website as the email contact for updates shall receive email notification of software releases. The Gigamon website at www.gigamon.com will also have information on the latest released software versions.

4. Proprietary Rights and Software Licensing

- a) Gigamon hereby grants to its Customer/User a nonexclusive, non-transferable license to use the Firmware and/or Software and its accompanying documentation ("Licensed Materials"). This license is subject to the following limitations: (i) Licensed Materials may be used only in conjunction with the Products; (ii) Licensed Materials may be copied into any machine-read-able or printed form for installation, backup or archival purposes only; (iii) Customer/User may not use, copy, or modify Licensed Materials, in whole or in part, except as expressly provided in this Agreement.
- b) Except as otherwise expressly authorized herein, the Customer/User may not: (i) make any copies or duplicates of software; (ii) reverse translate, decompile, disassemble, or reverse engineer the Products, or use the Confidential Information for competitive analysis; and (iii) remove any Product identification or notices of any proprietary or copyright restrictions from the Products. Further, Customer/User agrees not to translate, and to restrict its end-user from translating, any portion of the

software or associated documentation into any other format or language without a Gigamon C-level manager's prior written consent.

- c) Notwithstanding the license grant in Section 4.a above, Customer/User acknowledges that certain components of the Licensed Materials may be covered by so-called "open source" software licenses ("Open Source Components"), which means any software licenses approved as open source licenses by the Open Source Initiative or any substantially similar licenses, including without limitation any license that, as a condition of distribution of the software licensed under such license, requires that the distributor make the software available in source code format. Gigamon shall provide a list of Open Source Components for a particular version of the Licensed Materials upon Customer/User's request. To the extent required by the licenses covering Open Source Components, the terms of such licenses will apply in lieu of the terms of this agreement. To the extent the terms of the licenses applicable to Open Source Components prohibit any of the restrictions in this agreement with respect to such Open Source Component, such restrictions will not apply to such Open Source Component. To the extent the terms of the licenses applicable to Open Source Components require Gigamon to make an offer to provide source code in connection with the Licensed Materials, such offer is hereby made.

5. General

Gigamon warrants that the support service will be performed in a professional manner. Gigamon's entire liability and Customer's exclusive remedy shall be the repair or replacement, at Gigamon's sole discretion, of the Hardware and/or Software which do not meet the specifications stated in the Gigamon end user documentation. Any replacement Products are warranted for the remainder of the original warranty period or for ninety (90) days, whichever is longer.

THE WARRANTY AS SET FORTH HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GIGAMON SHALL NOT BE LIABLE FOR ANY LOST PROFITS OR CONSEQUENTIAL DAMAGES.

This Agreement is construed under California law and any claims between the parties arising out of this Agreement shall be venued in Santa Clara County, California. The parties agree to jurisdiction in California.

6. Payment Terms

All Software Support and Maintenance fees are non refundable.