

Edgecore Software Support Agreement

This Software Support Agreement (Agreement) defines how Edgecore Networks Corporation, a Taiwanese corporation with offices at No. 1 Creation Road III, Science Park, Hsinchu 300, Taiwan, R.O.C. (“Edgecore”) will provide Software Support for its customers. Singularly referred to as Party; Collectively referred to as Parties. Individual customer is referred to herein as “You” or “Your”.

General

Edgecore will provide You Software Support, including Software maintenance for the time period (“Term”) and at the annual fee (“Fee”) stated in the Support Invoice provided to You by Edgecore (“Support Invoice”). All Fees are payable at the beginning of each annual period, which commences upon the Effective Date of Your Agreement and continues annually for as long as You pay the annual Fee to Edgecore. All such fees are non-refundable. All software support is provided for the Software as defined Your Support Invoice.

Such Software Support will be for unmodified Software provided by Edgecore to You from Edgecore’s web site, provided that You are able to reproduce failures or support issues and show that the Software is not functioning as defined in the Software Functional Description provided to You along with the Software. For the avoidance of doubt, this software is Open Source Software and is provided without any warranty of any kind.

Should You discontinue this Software Support and at a later time wish to reinstate such support, Edgecore is not required to reinstate the Software Support and if Edgecore agrees to reinstate such discontinued Software Support, the terms will be those in effect at that time. Also, to reinstate discontinued Software Support or to purchase Software Support at a later time than when You obtain the Software, Edgecore must review the state and level of Your unmodified Software provided by Edgecore and, if necessary, bring such Software up to a supportable level. Such review and effort to bring the Software to a supportable level will be at Your expense and will be charged at Edgecore’s then hourly rate for Software Support.

Definitions

Confidential Information means all information, whether written or oral, and in any form (including, without limitation, engineering documents, research and development, manuals, reports, designs, drawings, plans, flowcharts, software (in source or object code), program listings, data file printouts, printed circuit boards, processes, component part listings and prices, product information, new product plans, business plans, sales and marketing plans and/or programs, pricing information, customer lists and other customer information, financial information and employee files or other employee information) relating to a Party’s business or technology which is disclosed by either Party (the “Disclosing Party”), either directly or indirectly, to the other Party (the “Receiving Party”) which, if disclosed in tangible form, is marked “confidential” or with similar markings, and if disclosed in a non-tangible form, is identified by the disclosing Party as confidential at the time of disclosure and confirmed to be of a confidential nature in writing sent to the receiving Party within thirty (30) days following the disclosure. Notwithstanding the foregoing, the Parties agree that any information that by its nature should be understood as confidential by a reasonable person is Confidential Information.

Critical Problem(s) means a problem that causes a system crash during normal software operation, causes an overall feature to be unusable or severely degrades the flow of traffic through a network, rendering the network unusable.

Effective Date means the date on which You pay the fee stated in the Support Invoice.

Functional Description means the description of the functional capabilities of the Software provided to You when downloading Software from Edgecore’s website.

Maintenance Release shall mean an intermediate release of the Software containing minor modifications to the Software, which incorporate corrections of defects (i.e., failures of the Software to perform substantially in accordance with the Functional Description), but which do not contain functional additions to the Software that Edgecore would designate as a Minor or Major Release. Examples of Maintenance Release may include, but not be limited to, bug fixes or cosmetic changes. Usually designated by Edgecore using a numbering scheme where the

'x' numeral to the right of the second decimal point is changed (as in 1.1.x). Licenses to these releases are included as part of the Software Support.

Major Problem(s) means a problem that causes a noticeable degradation of traffic flow through a network or prevents a feature from being fully utilized.

Major Release means a release of the Software containing major functional additions or architectural changes (resulting in new Software product). Designated by Edgecore using a numbering scheme where the 'x' numeral to the left of the decimal point is changed (as in x.1)

Minor Problem(s) means a problem that is cosmetic or minor in nature causing little or no impact to the product or network.

Minor Release means a release of Software containing functional additions or modifications to one or more base modules of the Software described in Exhibit A and may include minor changes in the interface to and support for, new platforms. Designated by Edgecore using a numbering scheme where the 'x' numeral to the right of the decimal point is changed (as in 2.x).

Object Code Software means machine-readable form of the Software.

Patch (es) means a Permanent Solution for a specific problem.

Permanent Solution(s) means the Products (a) are no longer affected by Software defects, and (b) the Software conforms to the Documentation and Specifications. Permanent Solutions are provided in the form of Patches and Maintenance Releases.

Problem means a Critical Problem, Major Problem or Minor Problem.

Problem Report means Licensee's notice to Edgecore, reporting the details of a Problem with enough detailed information including traps, traces, and log information so that Edgecore can reproduce the problem.

Product means any of Your products in which the Software is integrated, embedded or otherwise incorporated, including any updates, new versions and new releases of such Product.

Software means that Software defined in Your Agreement.

Software Updates means (i) Workarounds, bug fixes, patches, and Maintenance Releases to the Software that Edgecore makes generally available to its licensees of the Software receiving Software Support; and (ii) new Minor releases to the Software that Edgecore makes generally available to its licensees of the Software receiving Software Support but do not include any Major Release or upgrade in features, functionality or performance of the Software which Edgecore generally licenses separately for an additional fee.

Source Code Software means the human readable form of the Software.

Workaround(s) means a temporary resolution of a Problem, restoring the functionality of the affected Software until a Permanent Solution is released as a patch or update or maintenance release.

1 Software Support Fee Covers:

1.1 You must identify the names of a primary and secondary Software Support interfaces. These Software Support interfaces will be the sole contacts with Edgecore Software Support engineers. Any calls from other of Your employees will be referred to Your Software Support interfaces. You may identify a different primary or secondary Software Support interface upon written notice to Edgecore. Changes will be limited to one per month barring extenuating circumstances.

1.2 *Access to On-line Support Database*

The primary and secondary Software Support interfaces will each receive a user id and password to access Edgecore's on-line support database. This database is available 24 hrs a day and updated periodically. The database includes:

- Patches to all problems
- Documentation
- Maintenance Releases
- Application Notes
- FAQ's

1.3 *Support: Edgecore Support may be contacted by via the Edgecore Support Portal (<https://support.edge-core.com>) or via e-mail (support@edge-core.com or support@edgecore.zendesk.com). In the event You require support under this Agreement, Your Software interfaces should open a Technical Support Request ("TSR"). The time and date of opening the TSR will be noted on the TSR and will be used to track the timing of responses and corrections. Edgecore staffs the support system from 9:00am to 6:00 pm, Your time zone during normal Edgecore business days. In the event support is needed from Edgecore, Your Software interfaces should submit a TSR into the Edgecore support system or e-mail Edgecore Support as indicated above. Edgecore Support shall respond within time based on the priority levels from the time an ticket is entered into the support system by You.*

1.3.1 Edgecore will provide You with access to its Licensee web site(s). You will be responsible for any local service and access charges for its use.

1.3.2 The Parties will establish reasonable security measures to protect their electronic communications.

1.4 *Software Update Releases*

You will be provided all Update Releases during the Software Support Term. These Update Releases will be provided via Edgecore's website.

2 *Support Details*

2.1 *Software Support Services*

Edgecore will use commercially reasonable efforts to provide Workarounds and Permanent Solutions for all Problems and ensure that the Documentation is complete and accurate. Your Software interface will be the contact for Your Problem resolution issues. This Software Support will be provided for as long as you pay the annual Fee during the as stated in the Support Invoice.

2.2 *Problem Priority Levels*

You will include the level of Problem in the Problem Report. Edgecore will respond according to the level of response for the Problem. You will report Problems in sufficient detail so that Edgecore can recreate the Problem. Edgecore will assign a tracking number to each issue (Case Number). Edgecore will notify the Software Support interface regarding the status of the Case Numbers before the close of the next business day after Edgecore's receipt of the Problem Report.

2.2.1 *Critical and Major Problems Responses*

Response time is 4 hours during the hours the support system is staffed by Edgecore support experts as indicated above. Until a Permanent Solution or Workaround is achieved, Edgecore will make continuous, commercially reasonable efforts to resolve the Problem and to provide the Permanent Solution or Workaround within the following number of days after Edgecore's receipt of the Problem Report: (a) five (5) business days for a Critical Problem and (b) fourteen (14) business days for a Major Problem.

2.2.2 *Minor Problems Response*

Response time is 24 hours during the hours the support system is staffed by Edgecore support experts as indicated above. Until a Permanent Solution or Workaround is achieved Edgecore will make commercially reasonable efforts to resolve the Problem and to provide the Permanent Solution or Workaround within thirty (30) business days after its receipt of the Problem Report.

2.3 *Permanent Solutions*

Edgecore will use commercially reasonable efforts to ensure that the first Software Update released after a Permanent Solution is achieved contains the Permanent Solution.

2.4 *Status Reports and Notifications*

You will have access to Edgecore's on-line support database that will identify known problems in the Software and patches that are available.

2.5 *Software Updates*

As part of the Software Support provided hereunder for the Term of this Agreement, Edgecore will (a) provide You with Software Updates for the Software, (b) notify Your Software Support interface of the Software Updates, (c) make the Software Updates available electronically, whenever Edgecore makes such Software Updates available to its other licensees receiving Software Support and (d) provide the reason for the Software Update and written instructions for its use.

3 *Confidentiality*

3.1 The receiving Party shall protect Confidential Information from disclosure to third parties, using the same degree of care used to protect its own confidential information of like importance, but in any case using no less than a reasonable degree of care. The receiving Party may disclose the disclosing Party's Confidential information as necessary to exercise its rights or perform its obligations hereunder to its employees, Contractors, OEMs, Distributors and advisors, in each case if such employees, Contractors OEMs, Distributors and advisors have a need to know such Confidential Information, provided such employees, Contractors OEMs, Distributors and advisors are informed of and agree in writing to abide by restrictions at least as restrictive as the restrictions on disclosure of such Confidential Information under this section.

Notwithstanding expiration or termination of this Agreement, the duty to protect Confidential Information

expires (5) five years from the date of receipt of Confidential Information.

3.2 The duty of protection set forth above shall not apply to information that (a) a receiving Party can demonstrate through written documentation was already known to the receiving Party; (b) becomes known or generally available to the public (other than by act of the receiving Party) after its disclosure; (c) is disclosed or made available to the receiving Party by a third party having a bona fide right to do so and without similar confidentiality obligations; (d) is independently developed by receiving Party as demonstrated by its business records; or (e) is required to be disclosed by subpoena or other process of law. The receiving Party will notify the disclosing Party promptly of a subpoena or other process of law requiring disclosure.

3.3 The Parties acknowledge and agree that in the event of a breach or threatened breach of this Section 3, damages would be difficult to measure and that remedy at law would be inadequate. Accordingly, the Parties agree that in addition to any other rights or remedies that the Disclosing Party may have, the Disclosing Party is entitled to obtain injunctive relief, without the necessity of proof of damages or of posting a bond.

3.4 Upon termination of this Agreement for any reason, all Confidential Information shall be returned to the disclosing Party.

4 *Invoices and Payments*

4.1 Invoicing and payment terms shall be as stated in your Support Invoice.

4.2 You will comply with all governmental laws and regulations. The Fees charged for Software Support are exclusive of all sales, use, value-added, withholding tax and other taxes or duties. You agree to comply with and pay all taxes, duties, value added charges, and any other fees imposed by any competent authority and will not deduct any such taxes from its payment to Edgecore.

5 Warranties

5.1 License, Intellectual Property and Services Warranties

Edgecore represents and warrants as follows:

- (a) Edgecore has the right to provide the Software Support as defined herein.
- (b) Any Software Services provided by Edgecore, will be provided in a professional and timely manner by qualified and competent personnel knowledgeable in the Software.

5.2 THE FOREGOING WARRANTIES, TERMS OR CONDITIONS ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EDGECORE DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE ERROR FREE OR IN AN UNINTERRUPTED MANNER.

6 Limitation of Liability

Except for claims resulting from bodily injury or death caused by negligence or willful misconduct, Edgecore's liability under this Software Support Agreement will not exceed an amount equal to the total amount paid by You to Edgecore for Software Support during the twelve (12) month period immediately preceding the cause of any claim.

IN NO EVENT, EXCEPT FOR EITHER PARTY'S BREACH OF SECTION 3 (CONFIDENTIALITY) WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES OF ANY KIND OR FOR LOSS OF PROFITS OR REVENUE OR LOSS OF BUSINESS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH THEREOF, WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

7 Term and Termination

7.1 Term

The Term of this Software Support will be as long as You pay the annual Fee stated in the Support Invoice.

7.2 In the event of non-payment, all Software Support shall cease.

8 General

8.1 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be legally unenforceable or invalid, the remaining provisions will continue in effect. The parties will substitute a provision that most closely approximates the economic effect and the original intent of the invalid provision and complies with applicable laws.

8.2 Assignment

Neither You nor Edgecore will assign or transfer this Agreement, or its rights or obligations hereunder, without the prior written consent of the other. Consent will not be unreasonably withheld, delayed or conditioned. No approval is required when an entity acquires all or substantially all of the assets, voting stock or business of a Party, in which case the acquiring entity will be bound by the terms and conditions of this Agreement. The acquired Party will promptly notify the other Party of such an occurrence. This Software Support Agreement will be binding upon, and inure to the benefit, of the Parties and their respective successors and permitted assigns.

8.3 Waiver

Unless waived and agreed in writing by the Parties, no action or inaction by a Party under this Agreement will constitute a waiver of (a) a Party's rights or obligations under this Agreement, or (b) a Party's breach of this Agreement. The waiver by either Party of any right under this Agreement or the failure to perform or of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other right under this Agreement or of any other breach or failure, whether of a similar nature or otherwise.

8.4 *Independent Contractors*

Under this Agreement You and Edgecore are independent contractors. This Agreement does not create a joint venture, partnership, principal-agent or employment relationship between You and Edgecore.

8.5 *Entire Agreement*

This Agreement is the entire agreement between You and Edgecore related to the subject matter herein. This Agreement supersedes all prior written or oral agreements between the Parties on the subject matter herein. This Agreement or any provision thereof may not be changed or otherwise altered except in writing signed by authorized representatives of each Party.

8.6 *Governing Law; Venue*

This Agreement shall be governed by and construed in accordance with the laws of the state of California, United States of America, without regard to its conflicts of law principles. The U.N. Convention on Contracts for the International Sale of Goods (Vienna, 1980) shall not apply to this Agreement. All disputes arising out of or relating to this Agreement will be subject to the jurisdiction and venue of the courts located in and serving Orange County, California and the Parties irrevocably consent to the jurisdiction and venue in such courts.

8.7 *Force Majeure*

Neither Party will be liable for any delay in performance under this Agreement caused by any "act of God" or other cause reasonably beyond the Party's control and without the Party's fault or negligence. Once the delaying cause ceases, the Parties will promptly meet to determine the best method to resume normal operations under this Agreement.

8.8 *Days*

All reference to days in this Agreement shall mean calendar days unless otherwise specified herein.

8.9 *Surviving Provisions*

The obligations under Sections 3, 4, 6, 7 and 8 of this Agreement shall survive its termination until each terminates in accordance with its own terms.

8.10 *Legal Fees*

In any dispute relating to any portion of this Agreement, the prevailing Party shall be entitled to collect all attorneys' fees and any other expenses required to settle such dispute.

8.11 *Counterparts*

This Agreement may be executed in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon and all of which together shall constitute one and the same instrument.