

Ecessa Support Services Terms and Conditions

IMPORTANT—READ CAREFULLY: These Support Services Terms and Conditions (“Terms”) describe the terms and conditions under which Ecessa Corporation (“Ecessa”) will provide support services under the Service Level Agreement purchased by you (“Customer”). These Support Services Terms and Conditions, which may be amended from time to time, will be available on the Ecessa corporate website, including prior revisions, if applicable, together with: (i) Ecessa’s acceptance of Customer’s Purchase Order for a Service Level Agreement as defined below, and (ii) receipt by Ecessa of Customer’s payment for the Service Level Agreement or Ecessa’s acceptance of payment terms as defined in each such Purchase Order, combine to constitute the Support Services Agreement (“Agreement”). The terms and conditions applied to a specific Agreement shall be based on the terms and conditions in effect on the commencement date of the Service Level Agreement and will not be subject to change during the term of the original contract. Any renewal or extension of a contract shall be subject to the Terms in effect on the renewal or extension date.

All Support Services described below, and Ecessa’s obligations, are expressly conditioned upon having a valid Agreement in force.

SUPPORT SERVICES DEFINITIONS

- A. **“Authorized Source”** means an authorized seller of Ecessa Products, Support Services and other Services as recognized by Ecessa.
- B. **“Customer Support Portal”** means that portion of Ecessa’s website URL where Customer may access product documentation, software downloads, active tracking of service requests and such other information as Ecessa may provide to Customer as part of the Support Services.
- C. **“Error”** means a failure of the Product to conform to the specifications for such Product published on Ecessa’s corporate website.
- D. **“Hardware”** means those specific hardware products, including, without limitation, physical appliances, sold by Ecessa as listed on its Price List and not identified as a third party product.
- E. **“Product(s)”** means those certain Ecessa Hardware and Software products offered for sale by Ecessa, that are purchased or licensed by Customer through Ecessa’s authorized channel, and that are identified on a specific order confirmation or in a specific Service Level Agreement of Support Services.
- F. **“Purchase Order”** means an order placed by Customer with an Authorized Source to purchase a Service Level Agreement at a specified service level for a specific term, at a specific price.
- G. **“RMA”** means “Return Material Authorization” or replacement for those Hardware products under Warranty or a valid Service Level Agreement covering such Products, under the process set forth in the support section of the corporate website.
- H. **“Service Level”** means the service and support level obligations attributable to and as set forth in the specific Service Level Agreement covering such Product.
- I. **“Service Level Agreement”** means document provided to Customer specifying the Start date and End date of the Support Services, Product part number(s), serial number(s), description, and the applicable Support Services. Unless otherwise set forth in the Agreement, upon receipt of a purchase order from an Authorized Source, Ecessa shall send a Service Level Agreement to Customer via email specifying the commencement date and expiration date of the Support Services, Product part number(s), serial number(s) and description, and the applicable Support Services.
- J. **“Service Request”** means the specific case number assigned to the Customer by Ecessa at the time Customer makes a verified request under a valid Service Level Agreement or Warranty.

- K. **“Site Location”** means a physical location associated with a single address and includes the floors of a single building or adjoining buildings when linked together by Ecessa Products into a functionally integrated networking system where the Products are installed.
- L. **“Software”** means those specific software products, including, without limitation, virtual appliances or cloud products.
- M. **“Software Update”** means a formal or informal software release for a Product from Ecessa that incorporates functionality changes to the Software, but is not treated as a new product by Ecessa. Ecessa shall make Software Updates available to Customer via electronic download from the Customer Support Portal while an Agreement covering a Product for which such Software Update is released is in effect. The content of all Software Updates shall be determined by Ecessa in its sole discretion.
- N. **“Support Services”** means the technical support provided by Ecessa to Customer at the Service Level specified in and under the applicable Agreement covering a Product.
- O. **“Work Around”** shall mean a temporary procedure by which a Customer can avoid a reported Error by changes to Product configuration.

1.0. ORDERING SUPPORT SERVICES

- 1.1. *Purchase Order Placement.* Customer may order Support Services by placing a Purchase Order with an Authorized Source.
- 1.2. *Order Acceptance.* Upon acceptance of the Purchase Order, Ecessa shall send a Service Level Agreement to Customer via email specifying, among other things, the Start date and End date of the Support Services, Product part number(s), serial number(s) and description, and the applicable Services Level for the Support Contract.
- 1.3. *Ordering on Behalf of Third Parties.* If Customer is ordering Support Services for a third party and is accepting the Agreement on behalf of such third party, Customer represents and warrants that it (a) has the authority to accept the terms of the Agreement on behalf of such third party; and (b) has bound such third party to terms and conditions that are substantially similar to and no less protective of Ecessa as the Agreement. Customer agrees to defend, indemnify and hold Ecessa, its shareholders, employees and agents, or subcontractors harmless in any and all legal actions brought against Ecessa to the extent based upon Customer’s breach of the foregoing warranties.
- 1.4. *Support Service Renewals.* Renewal of Support Services will be under the Support Service terms applicable at the time of renewal. Prior to the expiration of the Service Level Agreement, Ecessa may send a reminder notice to Customer or the Authorized Source with whom Customer placed the initial Purchase Order. Customer will provide to Ecessa, either directly or through its Authorized Source, a completed List of all Products covered and corresponding Purchase Order to renew Support Services therefor. If a Service Level Agreement renewal is not completed prior to the expiration date of the current Support Service term, the Service Level Agreement shall expire, and Ecessa will not have any support obligations to Customer from the date of such expiration.
- 1.5. *Service Reinstatement.* In the event Customer desires to reinstate Support Services after termination or non-renewal of a prior Agreement, or if the Customer fails to purchase Support Services at the time of Product purchase, Customer must pay for Support Service fees for the period from the end of the previous Support Services term (or Product ship-date if Support Services were not purchased) to the date Support Services are reinstated. Reinstatement of the Agreement is contingent on the product(s) passing a Product Inspection described below. Any Support Agreements that have lapsed may be reinstated at the sole discretion of Ecessa, subject to a Health Check, and such other conditions as Ecessa may impose, in its sole discretion.
- 1.6. *Payment.* Support charges are payable in advance. All payments will be in U.S. dollars. All payments will be made free of any withholdings or restrictions.

2.0. TERM AND TERMINATION

- 2.1. *Term.* The Term of the Agreement is effective upon the last to occur of (i) Ecessa’s acceptance of a Purchase Order with payment terms specified, (ii) Customer’s payment of the Purchase Order if Ecessa does not extend payment terms and shall continue as specified in the Service Level Agreement from Ecessa, unless

terminated earlier as provided herein. The Support contract term will commence on the date specified in the Service Level Agreement.

2.2. *End of Support Services.* Ecessa will give notice on the corporate website when Ecessa decides, in its sole discretion, to discontinue Products or Service ("End of Life"), in accordance with the End of Life Policy on the corporate website. Such notice will include, among other items, the timing and process for the dates when such Products will no longer be sold or serviced, provided however that Ecessa will honor all Service Level Agreements then in effect through the end of the then-current term of such Agreements. Failure to provide Customer notice of an end of Support Service date is not a breach of the Agreement. After the end of the then-current Service Level Agreement, Customer may continue to use the Products without Support Services. Ecessa may, in its discretion, offer alternative support options to Customer after the end of life date, at a price and on terms to be determined by Ecessa.

2.3. *Termination for Cause.* Either party may terminate the Agreement for cause if the other party fails to perform any material term or condition of the Agreement, and does not remedy the failure within thirty (30) days after receipt of written notice of such default.

2.4. *Effect of Termination of Support Services.* Termination of Support Services due to the expiration of a Service Level Agreement (or End of Support Services by Ecessa) will not constitute termination of the perpetual licenses for the licensed Products, provided that Customer is not in default of the Agreement and continues to comply with the terms hereof, however, it does end all Support Services to be provided to Customer under the Agreement. The Sections of the Agreement that address Confidential Information, Ownership, Warranty, Export, Limitation of Liability, Termination, and governing law all survive the expiration and termination of the Agreement.

3.0. ELIGIBILITY FOR SUPPORT SERVICES

3.1. *Eligibility for Support Services.* **To be eligible for Support Services, the Product must be covered by a valid Agreement for Support Services.** The Product must contain the most current revision of Software and/or firmware that is actively supported by Ecessa. Upgrading to the most current level shall be at Customer's cost, unless such upgrade is included as a Service Level under the applicable Service Level Agreement. The Product must be installed and remain in an operating environment in accordance with the Product Documentation. Products that have been modified without Ecessa's prior written approval are not eligible for Support Services.

3.2. *Product Inspection.* Upon prior notice, Ecessa may perform a Health Check on the device before commencement of Support Services hereunder to determine whether the Product is in good operating condition when: (1) Customer allows Support Services to lapse and wants to reinstate Support Services for the Product, or (2) Customer did not purchase Support Services when initially purchasing the Product(s). If Ecessa determines that the Product is in need of repair, Ecessa will utilize an Authorized Source to provide Customer an estimated repair cost. An inspection certification charge may be applied and invoiced by an Authorized Source at Ecessa's then-current, professional services rate). The fees associated with the Product Inspection are non-refundable.

4.0. SUPPORT SERVICES

4.1. *Coverage Generally.* Ecessa will use commercially reasonable efforts to provide assistance with the diagnosis of, and resolution of, basic Product configuration issues and failures specific to products in production. All Support Services will be provided as and in accordance with the processes set forth on the Customer Portal, including, without limitation, the proper initiation of Service Requests, priority rules, information and assistance required, escalation paths, Workarounds, and such other processes and information as Ecessa requires to perform the Service Level applicable to the Service Level Agreement covering such Product. Ecessa can provide professional services to assist in installation and configuration of Products and interoperability with third party applications at a separate fee and under a separate Professional Services Agreement. Except and unless specified under a separate Professional Services Agreement, Ecessa does not offer support for any software provided by application vendors and will not provide software fixes, patches, maintenance releases, updates or new feature releases for any third party applications, and such support is expressly excluded from Support Services.

4.2. Product Documentation. Ecessa shall make available from time to time through the Customer Support Portal, at no charge to Customer, the Product Manual and such other documentation as Ecessa determines, as well as succeeding revisions (collectively, the "Product Documentation") designed to enable Customer to install, maintain and operate the Product, as generally made available and provided by Ecessa.

4.3. Software Support. Subject to Section 4.1 above, Ecessa will provide technical support for Software and access to Software Updates for Products under a Service Level Agreement at the Service Level specified. Customer's right to use the Software Update is governed by the terms and conditions set forth in the License Agreement under which the Product was purchased, as well as any other terms and conditions specified on the Customer Support Portal under which such Software Update is made available. In addition, Customer shall only have the right to download Software Updates for the specific Product(s) to which Customer has a valid entitlement at the time of download. Software Updates may only be loaded onto a Product that has entitlement at the time of installation. Customer may be required to purchase Hardware upgrades, improvements or changes in order to install or use a Software Update that is a Release. In the event that Customer demonstrates a non-conformance with Software Product specifications that can be duplicated by Ecessa and that is not addressed by a Software Update, Ecessa will use commercially reasonable efforts to remedy such non-conformance. Such remedy may include a Work Around or other temporary or permanent fix. Ecessa does not represent or warrant that all non-conformities of the Software will be corrected. Ecessa reserves the right to incorporate any remedies provided to Customer into future software revisions, in its sole discretion.

4.4. Hardware Support. Subject to Section 4.1 above, Ecessa will provide technical support for Hardware under a Service Level Agreement at the Service Level specified. All failed Hardware and parts replaced by Ecessa will become the property of Ecessa. Ecessa may, in its sole discretion, provide to Customer diagnostic documentation, spare parts, tools, test equipment or other material used in performing the Support Services. All such items remain the sole and exclusive property of Ecessa, and Ecessa grants no license, title or interest in or to such items. Customer immediately will return such items to Ecessa upon Ecessa's request, or, at Ecessa's option, will grant immediate access to and facilitate Ecessa's recovery of such items.

5.0. CUSTOMER OBLIGATIONS AND WARRANTY

5.1. Process Compliance and Product Registration. The Products may include features that require Customer to register the Products or components. Customer must complete any such registration requirements as instructed in the Product Manual or Customer Support User Guide available on the Support Portal within the time period specified for such Product or component (hereinafter "Registration Period") in order to continue to use all of the features of the Product licensed by Customer. If Customer fails to complete the registration requirements, the Software features may become inoperable and Customer may be unable to use such features until registration is completed.

5.2. Site Location Address. Customer must notify Ecessa in writing of any physical moves of Products to a new location no less than ten (10) days in advance of the move. Customer must ensure Ecessa has accurate Site Location address information for Products covered by a guaranteed delivery Support Services. Each change in Product location will require a new site validation approval from Ecessa, and may result in modifications to the service level available. Failure to provide accurate Site Locations information may result in additional charges to provide Support Services, and delayed delivery times.

5.3. Work Environment. For Customer locations where Products are located, Customer will provide Ecessa support personnel with Site Location access, access to appropriate Customer personnel, a healthy and safe working environment, including light, heat, electrical outlets and ventilation, adequate work space, and access to telephones with outside lines, as Ecessa may reasonably determine are necessary to perform the Support Services hereunder. Customer will provide all necessary authorizations for remote access, and maintaining sufficient equipment and technology to facilitate Ecessa's remote diagnostic capability and provision of Support Services.

5.4. Technical Data. Customer shall provide reasonable assistance to Ecessa when providing technical Support Services, which may include the Customer providing required data from the Product to implement a Work Around to minimize Customer impact, or such other information as may be required by Ecessa in order to perform the Support Services.

5.5. Product Returns. (a) Process. Customer will be responsible for shipping inoperable Products back to Ecessa promptly after a replacement is received. Ecessa will provide instructions to assist with the return of the inoperable Product, designating a specified return location. If the inoperable Product is not received at Ecessa's specified return location within ten (10) business days of Customer's receipt of the replacement Product, Customer shall pay the list price per unit as stated in the then-current Ecessa price list. If crossing international borders, proof of shipment is sufficient for proof of return. Customer's failure to return Products promptly or pay any invoice hereunder will result in the suspension of Support Services by Ecessa. (b) Noncompliance. In addition to any and all other rights and remedies available to Ecessa, in the event Customer fails to return Products promptly or pay any invoice due hereunder, Ecessa may suspend delivery of Support Services until such noncompliance is remedied by Customer to Ecessa's reasonable satisfaction. Such suspension will not extend the term of the Service Level Agreement.

5.6. Data and Recovery. Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Ecessa will not be responsible or held liable for Customer's internal processes, procedures or requirements to ensure the protection, loss, confidentiality, or security of Customer data or information.

5.7. Customer Warranty Regarding Third Parties. If Customer is using the Products to provide services to a third party or is managing support of Products for a third party and is accepting the Agreement on behalf of such third party, Customer represents and warrants that it (a) has the authority to accept the terms of the Agreement on behalf of such third party; and (b) has bound such third party to terms and conditions that are substantially similar to and no less protective of Ecessa as the Agreement. Customer agrees to defend, indemnify and hold Ecessa, its shareholders, employees and agents, or subcontractors harmless in any and all legal actions brought against Ecessa to the extent based upon Customer's breach of the foregoing warranties.

6.0. SERVICE EXCLUSIONS

6.1. The Support Services covered by a Service Level Agreement will include only those items expressly defined in the Agreement, and no other services shall be implied. Without limiting the foregoing, the following services are specifically excluded from the Support Services but may be provided by Ecessa at the request of Customer for an additional charge under a Professional Services Agreement:

- (a) Any work at Customer's site, other than as mutually agreed as necessary to perform a specific Service Level Agreement.
- (b) Any services, including replacement of parts or repair of damage, which in the reasonable opinion of Ecessa are necessitated by the Product, unit or subassembly (a) subject to accident, neglect or misuse, improper programming, failure of electrical power, electrical surge, air conditioning, humidity control, transportation or other than normal use or causes ; (b) utilizing replacement parts not provided by Ecessa; (c) having been used in a negligent manner; or (d) having been used outside the environmental range specified by Ecessa; (e) not used and maintained in accordance with the Product Manual .
- (c) Support for any modifications of the Products by anyone other than Ecessa.
- (d) Products purchased through a non-Authorized Source, or used equipment; or maintenance or repair by anyone other than Ecessa personnel or authorized Ecessa representatives.
- (e) Products that have reached the Ecessa published end of life date.
- (f) Support for any software provided by application vendors and will not provide software fixes, patches, maintenance releases, updates or new feature releases for any third party applications.
- (g) Support for any non-Ecessa equipment, including, without limitation, electrical or network cabling external to the Products; accessories, attachments or any other devices not furnished by Ecessa.
- (h) Failure to notify Ecessa of the Product defect during the term of the Agreement.

7.0. CONFIDENTIAL INFORMATION AND OWNERSHIP

7.1. *Information Definition.* Either party may provide to the other certain information which is confidential in nature ("Confidential Information") in connection with the Support Services. All information that Customer desires to be treated as Customer's Confidential Information shall be prominently marked, or, if disclosed orally,

confirmed in writing as confidential within thirty (30) days of disclosure. Any Ecessa information relating to any Products or Support Services of Ecessa, and any derivative information related thereto that is not generally released or otherwise made available publicly by Ecessa will be deemed Confidential Information of Ecessa. Confidential Information shall not be divulged to any third party without the prior written consent of the disclosing party for a period of three (3) years following receipt. This obligation shall not apply to information which: (i) now or hereafter, through no unauthorized act or failure to act on recipient's part, becomes generally known or available; (ii) is lawfully known to the recipient without an obligation of confidentiality at the time recipient receives the same from the disclosing party, as evidenced by written records; (iii) is hereafter lawfully furnished to the recipient by a third party without restriction on disclosure; (iv) is furnished to others by the disclosing party's confidential information; or (v) is independently developed by the recipient without use of the disclosing party's confidential information; or (vi) is required to be disclosed pursuant to a requirement of a governmental agency or law, so long as the recipient provides prompt notice to the disclosing party of such requirement prior to any such disclosure.

7.2. Administrative Procedures. Customer is solely responsible for the security of its own Confidential Information and for maintaining adequate procedures to protect its Confidential Information and to reconstruct lost or altered files, data and programs.

7.3. Feedback. Customer may provide suggestions, comments or other feedback ("Feedback") with respect to the Products or the Support Services. Feedback, even if designated as confidential by Customer, shall not create any confidentiality obligations on Ecessa unless a separate written agreement is signed by the parties. Customer will not give Feedback that is subject to license terms that seek to require any product, technology, service or documentation incorporating or derived from such Feedback, or any intellectual property of Ecessa, to be licensed or otherwise shared with any third party. Furthermore, unless otherwise provided in a separate subsequent agreement between the parties, Ecessa shall be free to use, disclose, reproduce, license or otherwise distribute and exploit the Feedback provided as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

7.4. Ownership. Customer's license and rights to the Products and any derivative materials arising out of the Support Services, including, without limitation, the Software Updates, are limited to those expressly granted (i) in the license under which the Products were purchased, (ii) as expressly defined in the Agreement, (iii) as conditioned on the Customer Portal, and (iv) as limited under Ecessa's public website, relating to such Products or derivative materials. Ecessa expressly reserves all rights, title and interest in and to all Products, Support Services, Confidential Information and derivative works not expressly granted to Customer, including, without limitation, all designs, engineering, details and other data pertaining thereto, all works of authorship, computer programs, fixes, updates, discoveries, inventions, patents, know-how and techniques, and any works developed as a result of the above, excluding only Customer's Confidential Information.

7.5. Rights to Use Customer Data. Customer may provide information to Ecessa via registration of the Products or in the implementation, use or operation of the Products or Services purchased or licensed by Customer, in the course of Ecessa providing Support Services, or otherwise. Customer hereby authorizes Ecessa to use this information, including, without limitation, Customer contact email addresses, to send Customer other communications, such as important information and updates. Further, Customer acknowledges that Ecessa engages other companies and individuals ("agents") to perform functions on its behalf, such as payment processing, order fulfillment, marketing assistance and customer service. Ecessa may share Customer's information with such agents in order to perform these and other functions, but, unless Ecessa informs you otherwise, such agents may not use Customer's information for other purposes. Without limiting Customer's agreement to the other terms hereof, by entering into the Agreement, Customer expressly agrees that Ecessa may collect, retain and use the information specified above in the manner specified above.

8.0. ECESSA LIMITED WARRANTY AND DISCLAIMER

8.1. LIMITED PRODUCT WARRANTY. Ecessa's warranty with respect to any Product is limited to that set forth on the Ecessa corporate website, and expressly subject to Customer's strict compliance with the conditions, processes and timing described therein with respect to each such Product. Notwithstanding anything to the contrary, neither Software Updates nor Support Services are covered under any warranty whatsoever. ANY

LIABILITY OF ECESSA WITH RESPECT TO PRODUCTS OR THE PERFORMANCE THEREOF UNDER ANY WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY WHATSOEVER WILL BE LIMITED EXCLUSIVELY TO REPLACEMENT OR, IN ECESSA'S SOLE DISCRETION, REFUND OF ALL OR A PORTION OF THE FEES PAID THEREFOR. Replacement Products and parts, including parts used in Product repair, may be refurbished in Ecessa's sole discretion. EXCEPT AS EXPRESSLY SET FORTH AND SUBJECT TO THE CONDITIONS DESCRIBED ON THE CORPORATE WEBSITE, ALL PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE PRODUCTS, REPLACEMENT PRODUCTS OR PARTS.

8.2. *LIMITED SUPPORT SERVICES WARRANTY.* Ecessa warrants that the Support Services will be performed in a professional and workmanlike manner with a reasonable standard of care in accordance with general industry standards. EXCEPT FOR THE PRECEDING WARRANTY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ECESSA AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SUPPORT SERVICES.

8.3. *Additional Limitations.* ECESSA SHALL NOT BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED DEFECT IN THE HARDWARE OR SOFTWARE DOES NOT EXIST OR WAS CAUSED BY CUSTOMER'S OR ANY THIRD PERSON'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO REPAIR OR MODIFY, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING OR OTHER HAZARD.

8.4. *Disclaimer regarding Third Parties.* ECESSA'S WARRANTIES CONTAINED HEREIN RUN ONLY TO CUSTOMER, AND ARE NOT EXTENDED TO ANY THIRD PARTIES. ECESSA'S NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSONS TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SUPPORT SERVICES PROVIDED UNDER THE AGREEMENT. In addition, Customer may link to third party sites through the use of certain Products. The third party sites are not under the control of Ecessa, and Ecessa is not responsible for the contents of any third party sites, any links contained in third party sites, or any changes or updates to third party sites.

9.0. LIMITATION OF LIABILITY

9.1. *Testing Period.* Ecessa shall not be liable for any damages arising from performance or non-performance of the Hardware or Software during a testing period or for any damages caused by the failure of Customer or the Ecessa Authorized Service Agent to perform its responsibilities.

9.2. *Customer Data.* Ecessa shall not be responsible for any of Customer's software, firmware, information or memory data contained in, stored on, or integrated with any Hardware or Software returned to Ecessa under the Agreement.

9.3. *Damage Exclusion.* OTHER THAN INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, ECESSA SHALL NOT BE LIABLE, UNDER ANY CAUSE OF ACTION OR THEORY WHATSOEVER, FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF SUPPORT SERVICES UNDER THE AGREEMENT, EVEN IF ECESSA HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. ECESSA'S LIABILITIES OR OBLIGATIONS UNDER OR PURSUANT TO THE AGREEMENT ARE EXPRESSLY LIMITED TO THE PROVISION OF THE SUPPORT SERVICES SPECIFIED IN THE SERVICE LEVEL AGREEMENT. IN NO EVENT OTHER THAN INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE SHALL ECESSA'S LIABILITY EXCEED AN AMOUNT EQUAL TO THE FEES PAID FOR THE SUPPORT CONTRACT UNDER WHICH LIABILITY IS IMPOSED, DEPRECIATED MONTHLY USING A STRAIGHT LINE METHOD. THE PARTIES HEREBY AGREE TO THIS DISCLAIMER OF LIABILITY FOR DAMAGES, REGARDLESS OF WHETHER ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE. Neither party will be liable for any delays or failures in performance due to circumstances beyond its reasonable control that could not be avoided by its exercise of due care.

10.0. GENERAL

10.1. *General.* For all purposes of the Agreement each party shall be and act as an independent contractor and not as partner, joint venture, or agent of the other and shall not bind nor attempt to bind the other to any contract. All notices under the Agreement shall be in writing, and shall be deemed given when personally delivered, when sent by confirmed fax, or three days after being sent by prepaid certified or registered mail to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice. As used herein, the term 'day' shall be refer to a business day that does not fall on a weekend or holiday. Customer shall not have any right or ability to assign, transfer, or sublicense any obligations or benefit under the Agreement without the written consent of Ecessa (and any such attempt shall be void). The failure of either party to enforce its rights under the Agreement at any time for any period shall not be construed as a waiver of such rights. It is the intention of the parties that the Agreement be controlling over additional or different terms of any purchase order, confirmation, invoice or similar document, even if accepted in writing by both parties, and that waivers and amendments shall be effective only if made by non-pre-printed agreements clearly understood by both parties to be an amendment or waiver. Notwithstanding the foregoing, Ecessa reserves the right to modify, amend or withdraw any of its Support Services without notice, provided that such change shall not materially impact the scope of Support Services under the Agreement prior to the end of the then-current term. The Agreement supersedes all proposals, oral or written, all negotiations, conversations, or discussions between or among parties relating to the subject matter of the Agreement and all past dealing or industry custom. In the event that any provision of the Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect and enforceable. Neither party is liable for failure or delay due to strikes, wars, and acts of terrorism, fires, floods, natural disasters, labor shortages, government regulations, or other causes beyond its reasonable control. The Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to the conflicts of law's provisions thereof. In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover costs and attorney's fees. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

10.2. *Arbitration.* All disputes, claims, and controversies between the parties arising out of or related to the Agreement or the breach thereof (except for non-payment and breach of any obligation of confidentiality or infringement of any intellectual property right for which an injunction may be sought) shall be settled by arbitration. The arbitration shall be conducted by a panel of three (3) arbitrators under the then current Commercial Arbitration Rules of the American Arbitration Association in Hennepin County, MN. One arbitrator is to be selected by each party and the third arbitrator is to be selected by the other two arbitrators. The power of the arbitrators shall be limited to that possessed by a trial level judge in the place of arbitration. The arbitrators are prohibited from awarding damages or remedies in excess of those allowed by the provisions of the Agreement. The decision of the arbitrators shall be final and binding and judgment on the award so rendered may be entered in any court having jurisdiction thereof.

10.3. *Export Regulations.* All Hardware, Software, documents, technical data, and any other materials delivered under the Agreement are subject to U.S. export control laws and may be subject to export or import regulations in other countries. Customer, on behalf of itself and any subsidiary or affiliate, agrees to comply strictly with these laws and regulations and acknowledges that Customer has the responsibility to obtain any licenses as may be required after delivery to Customer. Without limiting the foregoing, Customer agrees that it will not export, re-export, transfer or divert any Products, Software, Ecessa Confidential Information or technical data, or any product thereof, to any country or resident of any country to which such exports are restricted or embargoed under US export control laws without first obtaining all licenses and approvals required by the United States government.