

Dialogic® Pro™ Standard Per Unit Plan Support Services Agreement

THIS DIALOGIC® PRO™ STANDARD PER UNIT PLAN SUPPORT SERVICES AGREEMENT (“Agreement”) by and between DIALOGIC CORPORATION, with offices at 9800 Cavendish Blvd., 5th Floor, Montreal, Quebec H4M 2V9 Canada, on behalf of itself and its wholly owned subsidiaries, DIALOGIC (U.K.) LTD. with offices at Third Floor, Kings Chase, 107 King Street, Maidenhead Berkshire, England; DIALOGIC, INC. with offices at 1515 Route 10, Parsippany, New Jersey 07054 USA; CANTATA TECHNOLOGY, INC. with offices at 15 Crawford Street, Needham, MA 02494 USA and DIALOGIC SINGAPORE PTE LTD., with offices at 25 Serangoon North Avenue 5, Keppel Digihub, #05-12, Singapore 554914 (collectively, “Dialogic”) and those customers that register qualifying products with Dialogic and purchase a corresponding Standard Per Unit Plan for such products (the “Customer”) is effective as of the date of either (i) the date the Registered Product is shipped by Dialogic directly to Customer or (ii) the date the SPUP is registered by an authorized Dialogic distributor on behalf of Customer for such Registered Product (the “Effective Date”). The parties hereby agree that the following terms and conditions will apply to the Standard-Per-Unit Plan services described below provided by Dialogic to Customer:

1. COVERAGE

Under the Dialogic Pro Standard Per Unit Plan (“SPUP”), Dialogic’s technical support team (“Dialogic Support Team”) will use reasonable commercial efforts to assist with the isolation and resolution of technical problems arising from the installation, configuration and maintenance of Applicable Products. SPUPs shall only cover unmodified generally available versions of the Applicable Products. The procedures and benefits provided under this SPUP do not apply to Alpha, Beta, or custom products. The SPUP may only be purchased by Customer within two (2) months of purchase of the underlying Applicable Products unless otherwise agreed to by Dialogic in writing.

2. DEFINITIONS

- a. Advance Replacement shall mean shipment of a replacement product for a defective Registered Product within one (1) business day of notification by Customer and determination of failure by Dialogic through remote diagnosis. Advance Replacement shall be activated two (2) weeks after payment of a SPUP by Customer.
- b. Applicable Products shall mean, as of the Effective Date of the Agreement, those standard Dialogic® products in their current revision level listed on www.dialogic.com as being eligible for SPU Services, provided that the foregoing list may be amended from time to time without written notice. Lifecycle changes of Applicable Products and their resulting eligibility changes and/or limitations on a SPUP, if any, will be communicated by Dialogic via product change notices (“PCNs”).
- c. Electro-Static Discharge (ESD) Protection shall mean the procedures followed and devices worn by anyone handling Dialogic hardware, in order to protect delicate electronic components from damage due to static electricity.
- d. Hours of Coverage shall be the hours Dialogic provides SPU Services (as detailed herein) for the Applicable Products from the support center located nearest to Customer as follows:
 - (i) in North America, between the hours of 8:00 a.m. and 8:00 p.m. Eastern Standard Time, Monday through Friday, with the exception of public holidays;
 - (ii) in EMEA, between the hours of 9:00 a.m. and 5:00 p.m. Greenwich Mean Time, Monday through Friday, with the exception of public holidays; and
 - (iii) in Asia Pacific, between the hours of 9:00 a.m. and 5:00 p.m. local Singapore time (Greenwich Mean Time plus 8 hours or 7 hours during daylight savings), with the exception of Singapore public holidays.
- e. Registered Product shall mean each Applicable Product unit for which Customer has registered with Dialogic and purchased a corresponding SPUP.

f. Service Request shall mean a report maintained by Dialogic in its technical support database that contains pertinent information on a single technical support issue as reported by Customer. Information includes: Service Request Number, Customer contact information, system configuration information, Customer issue description, actions taken by Dialogic, actions suggested to and taken by Customer, and a record of all Customer contact events regarding the SPUP.

g. Service Request Number shall mean a unique service request number that is used for tracking the continuing status of an technical issue.

h. SPU Services means the isolation and resolution of technical problems arising from the installation, configuration, programming and maintenance of Applicable Products and Third Party Systems under a SPUP.

i. Standard Warranty Period shall mean the time period during which an Applicable or Registered Product is covered under warranty by Dialogic. The Standard Warranty Period for Registered Products is defined in the product documentation and commences from the date of Dialogic's shipment of the Registered Product.

j. Third Party Systems shall mean, as of the Effective Date of the Agreement, such third party products, including without limitation: power products, switches, routers, rack mount monitors and KVMS, rack mount servers and out of band element management systems, provided to Dialogic by an authorized Dialogic OEM partner for stand-alone sale or integration by Dialogic into Applicable Products. SPU Services for any Third Party System server shall only apply to such server hardware and software, provided however that SPU Services for Dialogic products populated into the Third Party Systems server may be purchased separately, if available.

k. Updates shall mean any modifications or fixes, other than new versions, upgrades or enhancement of the Applicable Product that correct errors, supports new releases of operating systems with which the Applicable Product is designed to operate, supports new hardware architecture or input/output devices, or provide other incidental or minor changes and corrections, but specifically excluding new features that Dialogic adds to the Applicable Products for which it charges customers.

2. TERM

This Agreement shall remain in effect for the length of time purchased by Customer (the "Term") unless terminated as set forth in Section 13. The initial Term ("Initial Term") shall commence upon the Effective Date and shall automatically renew for successive one year Terms ("Renewal Terms") unless terminated pursuant to Section 13 below. Notwithstanding any termination of the Agreement pursuant to Section 13 of the Agreement, any SPUP then in effect shall continue until the completion of an entire year period upon the terms and conditions of the Agreement.

3. NOTICES

Any notice, request, requirement, approval, permission, consent, or other communication required, authorized, permitted or contemplated to be given hereunder from Customer to Dialogic shall be given in writing and addressed to 9800 Cavendish Blvd., 5th Floor, Montreal, Quebec H4M 2V9 Canada, Attention: Legal Department. Notices shall be deemed accepted immediately when hand delivered or sent by courier service or five (5) days after having been mailed via registered mail or by telegram, fee prepaid. Either party may change its address for notices and/or notice recipient by providing written notice to the other party of such change.

4. PAYMENT

Customer will pay Dialogic or a designated Dialogic authorized distributor ("Billing Entity") within thirty (30) days of date of invoice for the SPUP that shall be invoiced and sold in advance on a "one Term at a time" basis. During the Term of the Agreement and subject to Section 7 below, Customer shall have the right to continue to renew a SPUP for a Registered Product until the associated Applicable Product has reached its end of repair date as communicated in a PCN.

5. SUPPORT SERVICES

The Dialogic Support Team will use reasonable commercial efforts to provide SPU Services, subject to the Hours of Coverage, as follows:

- Acknowledge within eight (8) business hours each initial phone or e-mail inquiry for SPU Services for Registered Products and Third Party Systems;
- Investigate Service Requests for each Registered Product and Third Party System during each Term for which SPU Services are purchased for such Registered Product. All Service Requests will be focused solely on the operation of the Registered Product or Third Party System and expressly exclude PBX, SS7, PSTN, TCP/IP Network or other configuration and integration support which is external to the Registered Product or Third Party System;
- Provide Customer with Advance Replacement for any defective Registered Products or Third Party System as follows: (i) if Customer believes that a Registered Product or Third Party System has failed due to hardware failure, it must contact Dialogic by calling one of the numbers listed on <http://www.Dialogic.com/support/contact>; (ii) during the call, Customer will be required to carry out a diagnostic procedure with guidance from the Dialogic Support Team to verify if the Registered Product or Third Party System is defective; (iii) if the diagnostic procedure demonstrates that the Registered Product or Third Party System may be defective, Dialogic will ship a replacement product that is functionally equivalent to the potentially defective product via an express courier of Dialogic's choice ("AR Courier"); (iv) Dialogic will make commercially reasonable efforts to ensure that Advance Replacement requests are dispatched within one business day, provided that Dialogic will not be responsible for delays in delivery by AR Courier; (v) costs for the AR Courier shipment to Customer will be borne by Dialogic, provided Customer shall be responsible for all applicable international taxes and duties; (vi) on receipt of the replacement product, Customer shall be responsible for return shipment of the potentially defective RMA product, prepaid, using the same packaging as the replacement product arrived in, to the designated Dialogic repair facility with the RMA number clearly visible on the outside; (vii) Customer shall be responsible for insurance for such shipping; (viii) Dialogic will test the potentially defective product on its return; (ix) If the potentially defective product is not returned within two (2) weeks of shipment of the replacement product, Dialogic will charge Customer the full retail price of the equivalent new replacement product; (x) Customer may have to reconfigure the software on receipt of the replacement product and Dialogic will provide telephone assistance to Customer should it require assistance in the installation of such replacement product; (xi) for each Registered Product or Third Party System, a maximum of three (3) Advance Replacement claims can be made during a one-year SPUP or six (6) during a three-year SPUP; and (xii) Customer may not request an Advance Replacement for a period of two (2) weeks from commencement date of each respective SPUP.
- Log the support request as a Service Request for each Registered Product or Third Party System in Dialogic's electronic call tracking and management system, and provide the associated Service Request Number to Customer for future reference;
 - Develop internal problem-specific test cases, as Dialogic deems appropriate, to isolate and reproduce the reported problems and/or code fragments and configuration files to demonstrate correct operation and programming of Registered Products;
 - Verify that any Service Request is resolved to Customer's reasonable satisfaction *before* closing the Service Request;
 - Provide a guide describing the steps involved in initiating and resolving a Service Request, including defined escalation processes, procedures, and contact names;
 - Provide regular updates and follow-up on Service Requests until such time as the Service Requests are resolved; and
 - Provide engineering releases, with a limited number of fixes to particular Customers experiencing problems, with a specific build number as the unique identifier for Registered Products and Third Party Systems provided such engineering releases are made available from respective third parties.
 - Provide Updates on the current release generally released by Dialogic. At Dialogic's sole discretion, Updates may be in the form of software patches, engineering releases, maintenance releases, minor, or major releases. Customer is not entitled to new or additional features beyond what was licensed under Customer's current software release and any upgrades or enhancements must be purchased separately. All Updates shall remain the property of Dialogic and Customer shall be entitled to use such Updates under appropriate licenses.

- For all Registered Products and Third Party Systems receiving Updates under this Agreement, provide such Customer with the right to copy (“RTC”) the appropriate Updates on all Registered Products and Third Party Systems under this Agreement, provided that Dialogic reserves the right to limit or restrict the RTC to specific third parties. RTC conveys to Customer the right to use the Updates on multiple Registered Products and Third Party Systems, without requiring Dialogic to supply duplicate media and documentation.

- Provide software-only Customers with license “Re-Hosting” support. Entitled Customers may have a covered license re-hosted to a different computer should the originally licensed computer fail, subject to the execution of a letter stating the Customer is no longer using the license on the original computer.

- All software used in: (a) the integration of hardware device(s); (b) services; (c) and/or enabling software provided to Dialogic in the combination with Customer’s product or platform, is provided to Customer “as is” and Dialogic disclaims all warranties with respect to such software to the fullest extent possible.

- Dialogic shall make available to Customer Updates to which Customer is entitled under applicable third party licenses. Dialogic will use commercially reasonable efforts to make available appropriate Updates to Customer promptly after they are provided to Dialogic by such third parties. In some instances, software releases and notices shall be posted on the Dialogic web page, directing Customer to appropriate sites for download.

- Subject to terms of any applicable third party license agreements, Customer shall receive a right to copy the appropriate Updates solely for use with licensed third party products or platforms covered under a support agreement or warranty.

6. CUSTOMER RESPONSIBILITIES

It is the responsibility of Customer to:

- During the Term, concurrently with the purchase by Customer of an Applicable Product, place such Applicable Product under a SPUP pursuant to this Agreement by submitting purchase orders that include SPUP charges associated with the Registered Product;

- Clearly identify the Customer as a SPUP Customer at the start of any communication with the Dialogic Support Team, and give the Serial Number of the Registered Product;

- Exercise proper care when handling the Registered Products, including proper use of ESD Protection when removing or installing Dialogic hardware;

- Maintain a test hardware configuration that is separate and independent from any production systems that will be available for use to assist with problem isolation and debugging;

- Prepare a comprehensive description of each Service Request and the environment in which the Service Request is occurring;

- When necessary, develop simple demonstration cases which help reproduce the Service Requests;

- Receive qualification from Customer’s application developer for any software engineering releases, Updates or configuration changes provided by Dialogic pursuant to Section 5 above before implementation on Customer’s system,

- Use phone or e-mail for the submittal, update and tracking of Service Requests;

- To the largest extent possible, completely implement or follow any actions or procedures requested or recommended by the Dialogic Support Team to help isolate or resolve any Service Requests, including, without limitation, the collection of Dialogic debugging logs and Customer application debugging logs;

- Not request an Advance Replacement for a period of two (2) weeks from commencement date of a SPUP; and

- Purchase an SPUP for an Applicable Product within one (1) month of purchase of corresponding Applicable Product. Orders for new SPUPs more than one (1) year from the original ship date of an Applicable Product, require the purchase of a three-year SPUP and the start date for such three-year SPUP will commence on the original shipping date of the corresponding Applicable Product as determined by Dialogic in its sole discretion.

7. RENEWALS

SPUPs may be renewed for annual Terms until the Applicable Product has reached its end of repair date as communicated in a PCN. Customer shall renew each SPUP before expiration of the then existing Term in order to ensure uninterrupted SPU Services subject to the following:

- If SPUP coverage expires, the start date for the renewal SPUP will be set to the previous SPUP expiration date; and
- If SPUP coverage lapses for a period of eight (8) months or more, Customer must purchase a three-year SPUP and the start date of the new three-year SPUP shall be set to the expiration date of the previous expired SPUP.

8. CONFIDENTIALITY

A. In order to enable Dialogic's personnel to perform the Services contemplated by this Agreement, and in order to enable Customer to satisfy its obligations hereunder, it may become necessary for each party to receive or have access to information of the other party or its affiliates which is considered proprietary or confidential ("Confidential Information"). Such information shall be considered Confidential Information if it is (i) in tangible form and bears a "confidential," "propriety," "secret," or similar legend and/or (ii) provided during discussions relating to such tangible information whether those discussions occur prior to, concurrent with, or following disclosure of such information. Confidential Information shall be treated as confidential pursuant to the terms of the applicable Non-Disclosure Agreement ("NDA") between Customer and Dialogic. If there is no NDA in place, the receiving party will maintain the confidentiality of the Confidential Information of the other party and its affiliates (collectively "disclosing party") with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. The disclosing party will not assert any claims for breach of this Section 8 or misappropriation of trade secrets against the receiving party arising from the receiving party's disclosure of the disclosing party's Confidential Information made more than five (5) years from the date of the disclosure, regardless of the termination of this Agreement. However, unless at least one of the exceptions set forth in the immediately following sentence has occurred, the receiving party will continue to treat such Confidential Information as the confidential information of the disclosing party and only disclose any such Confidential Information to affiliates or to third parties under the terms of a non-disclosure agreement. The receiving party will not be liable for the disclosure of any Confidential Information which is: (a) rightfully in the public domain other than by a breach of this Agreement of a duty to the disclosing party; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party; (d) independently developed by employees of the receiving party; or (e) generally made available to third parties by the disclosing party without restriction on disclosure. Title or the right to possess Confidential Information as between the parties will remain in the disclosing party.

B. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop products without the use of Confidential Information of the other party.

9. DISCLOSED INFORMATION

A. Customer will retain all right, title and interest (including all intellectual property rights) to its Confidential Information.

B. Dialogic will retain all right, title and interest (including all intellectual property rights) to its Confidential Information, any software, hardware, bug fixes, additions, modifications and/or improvements to any products that may result from the Services provided hereunder. Dialogic grants to Customer a non-exclusive, irrevocable, royalty-free license to use such Confidential Information, software, hardware, bug fixes, additions, modifications and/or improvements that is delivered or made available by Dialogic to Customer pursuant to this Agreement ("Delivered Information") for the purpose of utilizing the Dialogic hardware or software product purchased by Customer for which the Services are being provided.

C. Except as expressly set forth herein, no license is granted by Dialogic with respect to any patents, trademarks, copyrights, mask work protection rights and other intellectual property rights.

D. Customer grants Dialogic a worldwide, non-exclusive, fully paid-up, royalty free right and license to use Customer's intellectual property provided by Customer to Dialogic under this Agreement solely for the purpose of performing Services for Customer under this Agreement.

10. OFFERING OF COMPARABLE SERVICES

This Agreement does not prevent Dialogic from performing similar Services for others.

11. RIGHTFUL EMPLOYER

Customer agrees that Dialogic is acting as an independent contractor and that each of the parties will be responsible for all management matters, taxes or wages, etc., relating to its own employees.

12. SUBCONTRACTING

Dialogic may subcontract any or all of the work to be performed by it under this Agreement and will retain responsibility for the work subcontracted.

13. TERMINATION

A. Customer may terminate this Agreement, subject to accrued charges, if Dialogic is consistently unable to meet the response time targets for reasons not attributable either to Customer or force majeure conditions (as described in Section 15), or if Dialogic fails to perform or observe any material term or condition of this Agreement and such failure continues un-remedied for thirty (30) days after Dialogic's receipt of written notice thereof from Customer.

B. Either party may terminate this Agreement for any reason by notice in writing sixty (60) days before the end of the applicable Initial Term or Renewal Terms, provided no fees paid hereunder shall be refundable. In the event that Dialogic ceases to provide support the Applicable Products, Dialogic may terminate this Agreement at any time without cause upon written notice to Customer. In such event, Dialogic shall repay Customer on a pro-rata basis for any period for which Customer paid in advance which falls after the date of termination. Dialogic may terminate the Agreement at any time upon written notice if the Customer is not receiving any support or warranty services at the date of termination.

C. Customer will be in default of this Agreement if Customer fails to pay any charge to the Billing Entity when due or fails to perform or observe any other material term or condition of this Agreement. Dialogic may terminate this Agreement and exercise any applicable rights, if (i) the failure to pay the Billing Entity any charge when due continues un-remedied for ten (10) days or, (ii) for 30 days from receipt of written notice by Dialogic for other breaches. In the event of such termination by Dialogic, Customer shall be liable to pay the Billing Entity for any accrued charges.

D. Either party may terminate this Agreement by notice in writing in the event that the other makes an assignment for the benefit of creditors; or admits in writing an inability to pay debts as they mature; or a trustee or receiver of the other of any substantial part of the other's assets, is appointed by any court; or a proceeding is instituted under any provision of an applicable bankruptcy act by the other, or against the other, and is acquiesced in or is not dismissed within sixty (60) days, or results in adjudication in bankruptcy.

E. If Customer has failed to pay the Billing Entity for the Services, Dialogic may, at its sole option, suspend the performance of Services until the situation is remedied, and/or seek any other remedies it may have under this Agreement or at law or in equity, including terminating the agreement as provided in Section 13.C above.

F. If Customer does not renew this Agreement immediately upon expiration such that there is uninterrupted coverage, but subsequently renews this Agreement at a later date, Advance Replacement will not be available for the first month of the renewed Agreement.

14. EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY

A. For purposes of the exclusive remedies and limitations of liability set forth in this Section 14, "Dialogic" will be deemed to include Dialogic Corporation and/or any subsidiaries, affiliated entities and the directors, officers, employees, agents, representatives, subcontractors and suppliers of all of them and Customer shall be deemed to include Customer and/or any subsidiaries, affiliated entities and the directors, officers, employees, agents, representatives, subcontractors and suppliers of all of them; and "Damages" will be deemed to refer collectively to any and all claims, injuries, damages, losses, costs or expenses incurred.

B. DIALOGIC'S ENTIRE LIABILITY TO CUSTOMER AND CUSTOMER'S ENTIRE LIABILITY TO DIALOGIC AND BOTH PARTIES' EXCLUSIVE REMEDIES ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT OTHER THAN PAYMENT OBLIGATIONS (INCLUDING WITHOUT LIMITATION THE PERFORMANCE OR NONPERFORMANCE OF ANY SERVICES UNDER THIS AGREEMENT) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, WILL BE AS FOLLOWS:

(i) IN NO EVENT SHALL DIALOGIC OR CUSTOMER BE LIABLE FOR ANY INDIRECT DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER INCLUDING BUT NOT LIMITED TO INCIDENTAL, SPECIAL, EXEMPLARY, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF DIALOGIC OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(ii) OTHER THEN FOR DAMAGES ARISING AS A RESULT OF THE BREACH OF THE CONFIDENTIALITY OBLIGATIONS HEREUNDER AND PAYMENT OBLIGATIONS AND CUSTOMER'S INDEMNITY OBLIGATIONS UNDER SECTION 11(C) BELOW, IN NO EVENT SHALL DIALOGIC OR CUSTOMER'S CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER EXCEED THE AMOUNT PAID OR OWED BY CUSTOMER TO DIALOGIC FOR THE SERVICES FOR THE APPLICABLE ANNUAL TERM DURING WHICH THE DAMAGES AROSE.

(iii) DIALOGIC WILL HAVE NO LIABILITY FOR: (i) DELAYS WITH RESPECT TO ANY RESPONSE TIMES SPECIFIED HEREIN.

(iv) With regard to any equipment loaned to Dialogic as described in Section 19 of this Agreement, DIALOGIC WILL BE LIABLE ONLY FOR ACTUAL DAMAGE TO SUCH EQUIPMENT CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF DIALOGIC'S EMPLOYEES OR SUBCONTRACTORS.

(v) Customer represents that it shall not use the Services or any Delivered Information or other materials obtained from Dialogic pursuant to this Agreement, in aviation, process control, medical applications or other ultra hazardous activities. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CUSTOMER AGREES THAT DIALOGIC SHALL HAVE NO LIABILITY FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM SUCH ACTIVITIES.

C. Dialogic shall have no liability related to products sold or licensed by Customer or services provided by Customer under any circumstances regardless of whether Services were provided by Dialogic related to such products or services. Customer agrees to defend, indemnify and hold Dialogic harmless from and against any and all loss, damage, liability or expense (including attorney's fees) resulting from any claim related to Customer products or services, including intellectual property claims.

15. FORCE MAJEURE

Neither party will have liability for damages due to fire; explosion; lightning; pest damage; power surges or failures; strikes or labor disputes; water; acts of God; the elements; war; civil disturbances, acts of civil or military authorities or the public enemy; inability to secure raw materials, products or transportation facilities; fuel or energy shortages; acts or omissions of communications carriers; or other causes beyond such party's control, whether or not similar to the foregoing.

16. CHANGES

Except as expressly provided hereunder, any changes to this Agreement must be confirmed in writing and signed by authorized representatives of both parties.

17. SITE VISITS

Customer agrees that in the event its employees or agents visit a Dialogic site as a result of Dialogic providing Services hereunder, Customer shall ensure that such employees or agents abide by all rules and regulations set by Dialogic and shall indemnify and hold Dialogic harmless for any damage caused by such employees or agents.

18. WARRANTY DISCLAIMER.

DIALOGIC AND ITS AFFILIATES, SUBCONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED UNDER THIS AGREEMENT, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19. LOANED EQUIPMENT

A. In the event Customer desires, at its sole option, to provide Dialogic any computer software, hardware or other apparatus or device (“Equipment”) for use at the Dialogic premises in providing the Services, unless otherwise agreed to in a written agreement signed by an authorized representative of both parties which specifically overrides the terms of this Agreement: (i) Customer’s Equipment will be loaned to Dialogic free of charge; (ii) Dialogic’s liability for damages will be limited as provided in Section 14; (iii) Dialogic shall return Customer’s Equipment to Customer when requested by Customer; and (iv) the terms of Section 5 of this Agreement shall govern the handling of any Confidential Information regarding Customer’s Equipment.

20. GENERAL

A. If any paragraph, or clause thereof, of this Agreement will be held to be invalid or unenforceable in any jurisdiction in which this Agreement applies, then the meaning of such paragraph or clause will be construed so as to render it enforceable to the extent feasible; and if no feasible interpretation would save such paragraph or clause, it shall be severed from this Agreement and the remainder will remain in full force and effect. However, in the event such paragraph or clause is considered an essential element of the Agreement, the Parties will promptly negotiate a replacement thereof.

B. If either party fails, at any time, to enforce any right or remedy available to it under this Agreement, that failure will not be construed to be a waiver of the right or remedy with respect to any other breach or failure by the other party.

C. The construction, interpretation and performance of this Agreement will be construed in accordance with and governed by the laws of the State of New York to the exclusion of its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods is expressly stated as having no application to this Agreement or any dispute arising under it.

D. All disputes arising directly under the express terms of this Agreement or the grounds for termination thereof shall be resolved as follows: A legal and business representative of Dialogic and Customer shall meet to attempt to resolve such disputes. If the representatives cannot resolve the disputes, either party may make a written demand for formal dispute resolution and specify therein the scope of the dispute. Within thirty (30) days after such written notification, the parties agree to meet for one day with an impartial mediator and consider dispute resolution alternatives other than litigation. If an alternative method of dispute resolution is not agreed upon within thirty days after the one day mediation, either party may begin litigation proceedings.

E. Dialogic may assign its rights or delegate its obligations or any part thereof under this Agreement without prior consent from Customer.

F. Neither party shall export, either directly or indirectly, any product, service or technical data or system incorporating such Items without first obtaining any required license or other approval from any applicable governmental agency or department. In the event any product is exported or re-exported by either Party, that Party shall ensure that the distribution and export/re-export or import of the product is in compliance with all applicable laws, regulations, orders, or other restrictions. Both parties agree that neither it nor any of its subsidiaries will export/re-export any technical data, process, product, or service, directly or indirectly, to any country for which the applicable government from where it is shipping requires an export license, or other governmental approval, without first obtaining such license or approval.

G. Customers who purchase this SPUP shall be deemed to have agreed with and accepted the terms and conditions set out herein in the same manner as if the document was executed in writing.

H. THIS IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER AND SUPERSEDES ALL PRIOR AGREEMENTS, PROPOSALS OR UNDERSTANDINGS, WHETHER WRITTEN OR ORAL.