

Empirix Inc.
TECHNICAL SUPPORT AND MAINTENANCE POLICY

I. SUPPORT AND MAINTENANCE PROVIDED

A. General. Empirix shall provide the support and maintenance services (“**Support**”) as described in this Policy for Empirix software (“**Software**”) and/or hardware (“**Hardware**”). Hardware and Software are sometimes referred to collectively as (“**Product**”). Support under this Policy is offered for Empirix Products only. Technical support and maintenance for third party products is offered on a “pass through” basis only. Support is provided for no additional charge for a period of 12 months from the date of the first delivery of the Product purchased by Empirix customers (“**Customers**”). After this initial Support period, a Customer must subscribe to annual Support by issuance of a purchase order at least forty five (45) days prior to the expiration of the initial Support period, and thereafter, at least forty five (45) days prior to the expiration of the then-current Support term.

B. Support Contact and Hours Information. Support shall be available from the following sources:

Email: support@empirix.com

World Wide Web: www.empirix.com/support

Telephone (US and Canada): +1 781 266 3202

Telephone EMEA: +44 (0)1344 741063

Fax (USA and Canada): +1 781 266 5462

Fax EMEA: + 44 (0)1344 746524

Standard Support: Support is available in the US and Canada between the hours of 8:00 a.m. and 8:00 p.m. EST, and in EMEA between the hours of 8:30 a.m. and 6:00 p.m. GMT, (as applicable, “**Business Hours**”) Monday to Friday, with the exception of holidays (“**Business Days**”).

Premium Support: Empirix offers an optional premium support services program for its OneSight® for Voice, OneSight® for Web and Hammer XMS™ product lines. Customers who purchase this premium service are entitled to Standard Support and in addition, 24x7 pager and call-back support for all technical support issues covered under these terms. For Premium Support, target response and resolution times for software are as set out in the table below, with timing on a 24x7 basis.

C. Severity Levels, Response & Resolution Target Times. Empirix will provide technical advice and assistance in connection with the use of a Product according to severity level. Empirix will use commercially reasonable efforts to meet all target times noted in below, with respect to Software. In order to best resolve the problem, Customer must make available a contact person to provide ongoing support and cooperation with Empirix to identify and support resolution of the technical issue. In order to resolve a technical issue in the most efficient means available, Empirix may request remote access to the Software, and Empirix and Customer will cooperate to establish the required network connections using best practices for security and in all cases, in compliance with the network security policies of both parties.

The table below applies with respect to support of Software:

Severity	Definition	Target Response*	Target Resolution Time
1	The Software has ceased to work, which prevents performance of critical day-to-day business activities.	2 Business Hours	Within 72 hours after the error is identified.** The solution may include a temporary workaround or a generally available new release of the Software.
2	The Software use is significantly impacted by the failure of a major function of the software.	4 Business Hours	Within 5 Business Days after error is identified.** The solution may include a temporary workaround or a generally available new release of the Software.
3	The Software is causing a minor problem that is only having a minimal impact on normal operating activities.	8 Business Hours	Within 7 Business Days after error is reproduced. The solution may consist of (a) a change to the Software code in a future release at the discretion of Seller, or (b) other workaround.
4	Product questions (general) or enhancements.	12 Business Hours	Within 10 Business Days. The solution may consist of providing answers to questions, submitting feature requests to product management, and/or making changes to future releases of the Product.

*Response time shall be measured from the time that Customer has properly notified Empirix of the defect through the proper Empirix Technical Support channel, which is limited to the designated toll-free numbers, the <http://esupport.empirix.com> portal, or the designated Empirix technical support email addresses, with sufficient information that enables Empirix to identify the error in question as it relates to the specific operating environment of Customer.

Except with respect to Software that is a Release, or Software that is part of a new Hardware installation (each, a “New Installation**”), in which case an initial reasonable production burn-in period will apply before resolution times are applied.

If Empirix determines that an operational or functional error is Hardware-related, or if a Software work-around does not correct the problem and Empirix cannot otherwise correct the problem through remote means, Customer shall follow the return procedures set out in Section E below to return the Product to Empirix for resolution, which may then include a Software work-around or code fix, or a Hardware repair or replacement.

D. Software Updates. Empirix will provide Customer all Bug Fixes, Minor Releases, Major Releases, and enhancements to the Software which it makes generally available to its other licensees of the Software under contract for Empirix Technical Support for no additional fee, together with all required amendments to the associated Documentation. Major Releases and new Products for which Empirix charges separate fees are not included as part of Technical Support. For the purpose of this provision, the following definitions shall apply:

- i. “**Bug Fix**” means a software patch or code intended to fix errors, problems or usability or performance issues in Software and is sometimes designated by a software release designated by a higher number two digits to the right of the decimal (e.g., from version 2.10.2 to 2.10.3);
- ii. “**Minor Release**” means a new release of Software with minor changes in features, functions or performance, often indicated by a version number designated by a higher number one digit to the right of the decimal (e.g., from version 2.1 to 2.2); and
- iii. “**Major Release**” means a new release of Software with major changes in features, functions or performance, often indicated by a version number designated by a higher number one digit to the left of the decimal (e.g., from version 2.x to 3.x).

E. Hardware Repair/RMA. With respect to Hardware, support also includes (i) remote dial-in to the Hardware system for assistance; (ii) US depot hardware repair for Hardware systems that cannot be repaired remotely; and (iii) Hardware replacement for defective components as determined by Empirix. If Empirix determines that it is necessary for the Customer to return Hardware to Empirix for repair or replacement, the returned Hardware must be accompanied by a Return Material Authorization (“**RMA**”) number. An RMA number will be provided by an Empirix support technician. The following procedures will apply to Empirix’s repair of Hardware, except as otherwise noted:

- i. Empirix will provide an interface to Customer to manage the return and repair of Hardware.
- ii. Customer will email an RMA form to request an RMA number.
- iii. When contacting Empirix for an RMA, Customer should have the following information available:
 - Model number and serial number of the Hardware;
 - Reason for return and symptoms of problem;
 - Purchase order number to cover charges for out-of-warranty items;
 - Name and phone number of person to contact if Empirix has questions about the Hardware; and
 - Address to which Empirix should return the repaired or replaced Hardware.
- iv. Empirix will provide the RMA number within four (4) Business Hours of the determination that it is necessary for the Customer to return Hardware to Empirix for repair or replacement. Customer must return all Hardware to Empirix prior to shipment of replaced Hardware. All Hardware returned by Customer to Empirix must be returned to the Empirix factory, shipping prepaid, and packaged according to best commercial practices for electronic equipment. Customer is responsible for mode and cost of shipment and insurance to Empirix.
- v. Customer must mark the RMA number on the package shipped to Empirix. Hardware sent to Empirix without RMA numbers will be returned to Customer, unopened, at Customer’s expense.
- vi. Empirix seeks to ship the repaired or replacement Hardware to the Customer within five (5) Business Days of receipt. However, the time required to return the Hardware in good working order will be impacted by a number of factors, including: the time required to order replacement parts, build replacement systems, prepare the replacement systems for return shipping, and the actual shipping. Empirix will use all reasonable good faith efforts to minimize any delays relating from these factors that are within its control.
- vii. Empirix will return the repaired or replacement Hardware by the same method (e.g., overnight express, regular express, etc.) utilized by the Customer in shipping the Hardware to Empirix. Empirix will pay shipping charges for delivery of repaired or replaced Hardware on return from the Empirix factory.

Empirix encourages its Customers to avoid operational disruption that may be caused by the delays inherent in the above RMA procedures by either (a) purchasing spares kits or replacement systems for Hardware to have on hand as a back-up during any repair or replacement down-times, or (b)

with respect to Empirix Hammer® XMS product, participate in the optional advance replacement program as described in Part VI below.

F. Exclusions. Support specifically excludes:

- defects or errors resulting from any modifications of the Software or Hardware made by any person other than Empirix or an authorized agent of Empirix;
- any version of the Software released by Empirix other than (a) the two most current “point” releases of the current major version; and (b) the last released “point” release of the previous major version;
- incorrect use of the Software or Hardware or operator error, including failure to follow best practices and policies described in Empirix’s support policy documentation found at <http://esupport.empirix.com/>;
- any error caused by fault in the Customer’s use environment or in any software not supplied by Empirix used in conjunction with the Software or Hardware; and
- defects or errors caused by the use of the Software with any third party products other than those specifically certified for use by Empirix.

II. OBLIGATIONS OF CUSTOMERS

Empirix’s Support policy requires that the Customer shall:

- ensure that the Software and/or Hardware is used in accordance with the terms of the applicable license agreement between the Customer and Empirix;
- not request, permit or authorize anyone other than an Empirix authorized person to provide any maintenance or support services for the Software and/or Hardware;
- co-operate fully with Empirix’s personnel in the diagnosis of any error or defect in the Software and/or Hardware; and
- make available to Empirix, free of charge, all information, facilities and services reasonably required by Empirix to enable Empirix to perform the support services described in this policy.

III. DISCONTINUATION OF SUPPORT

Empirix may, from time to time in its sole discretion, decide to discontinue support for one or more of its Products and shall endeavor to provide Customer written notice of its decision to discontinue support at least nine (9) months in advance.

IV. REINSTATEMENT OF LAPSED SUPPORT

Should Customer terminate support from Empirix, and then seek to reinstate support, Customer must pay Empirix a reinstatement fee equal to fifty percent (50%) of all support fees that would have been due to Empirix during the intervening period had the Customer not terminated.

V. INCORPORATION OF OTHER POLICIES

From time to time, Empirix adopts policies regarding matters such as use of anti-virus programs, support of operating systems, and other similar policies. These policies are available at <http://esupport.empirix.com/>, as may be amended by Empirix from time to time, and are incorporated by reference herein. If any of these policies impact the Customer’s use of the Product in any materially adverse respect, Customer may, within sixty (60) days of the posting of such policy, cancel its maintenance renewal for a pro-rata refund of the maintenance fees.

VI. ADVANCE REPLACEMENT PROGRAM

For Hammer® XMS and Performance/Functional Testing products, Empirix offers an advance replacement program. In consideration of payment of Empirix's then-current annual program fee, Customers who purchase this program are entitled to receive a replacement Hardware unit prior to returning their existing Hardware unit to Empirix. The program works as follows: once Empirix has determined that the problem is in fact with the Hardware and is not a problem with software installed on the Hardware or the Customer environment, Empirix will promptly ship the Customer a replacement Hardware unit (with a target of two (2) Business Days) via next day delivery (for certain configurations, the build and burn process may delay shipment beyond this two (2) business day period). Customers are required to return their existing Hardware unit to Empirix within fifteen (15) days of receipt of the replacement unit; if Customer fails to do so, Customer agrees to pay Empirix an amount equal to the then-current list price for the replacement Hardware unit. Empirix will bear the cost of shipping and will provide Customers with packing material.

VII. GENERAL TERMS

A. **Term and Termination.** Each Support subscription term shall continue for a period of twelve (12) months, unless earlier terminated in accordance with the terms of this Policy. Either party may terminate Support subscription in the event that the other materially breaches any of the terms hereof and fails to cure such breach within 30 days following written notice thereof from the non-breaching party. If Customer terminates the subscription due to Empirix's breach, Customer shall be entitled to a pro-rata refund of all pre-paid Services fees and all remaining fees shall be waived. If Empirix terminates due to Customer's breach, any remaining Support fees shall become due and payable by Customer within 30 days of receipt of an invoice from Empirix.

B. **Warranty and Limitation of Liability.** Empirix warrants that the services performed hereunder will be performed in a workman-like and professional manner in accordance with ordinary business custom and usage. NO WARRANTY OTHER THAN THOSE EXPRESSLY SET OUT IN THIS POLICY IS MADE WITH RESPECT TO THE SERVICES TO BE SUPPLIED UNDER THIS POLICY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

THE MAXIMUM LIABILITY OF EMPIRIX FOR CLAIMS ARISING FROM OR IN CONNECTION WITH ANY SUPPORT SUBSCRIPTION SHALL BE THE SUBSCRIPTION FEE IN ANY ONE CASE, EXCEPT FOR ANY CLAIMS FOR PERSONAL INJURY OR DEATH (FOR WHICH NO LIMIT APPLIES). WHETHER OR NOT EMPIRIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, NEITHER EMPIRIX NOR ITS SUBSIDIARIES OR LICENSORS SHALL BE LIABLE IN RESPECT OF ANY MISREPRESENTATION, BREACH OF ANY IMPLIED OR EXPRESSED WARRANTY OR CONDITION, BREACH OF ANY OTHER TERM OR BE OTHERWISE LIABLE IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE FOR LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, LOSS, DAMAGE TO OR CORRUPTION OF DATA, OR LOSS OF AVAILABILITY, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS HOWSOEVER CAUSED WHICH ARISES OUT OF OR IN CONNECTION WITH THE SERVICES OR OTHERWISE UNDER THIS AGREEMENT.

C. **Miscellaneous.** The terms of this Policy constitute the entire agreement and understanding between Empirix and Customer and supersedes all previous or simultaneous communications, representations, or agreements regarding Support for Products provided by Empirix. These terms may be modified only in writing signed by both parties. To the extent caused by force majeure, no delay, failure or default in performance of any obligation by either party, excepting all obligations to make payments under this Agreement, shall constitute a breach of these terms. These terms shall be governed exclusively by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts

of laws provisions and without regard to other state or foreign laws or multi-lateral conventions of any nature. The parties consent to the exclusive jurisdiction and venue for actions related to the subject matter hereof in the state and federal courts located in Boston, Massachusetts. In any action or proceeding to enforce rights under this Policy, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees. If any provision of these terms is held to be invalid or unenforceable, the parties shall substitute for the affected provision a valid or enforceable provision which approximates the intent and economic effect of the affected provision, and that provision shall be limited or eliminated to the minimum extent necessary so that these terms shall otherwise remain in full force and effect. The failure or delay by any party to enforce any of these terms shall not be deemed a waiver of such term.

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