Specific sales terms and conditions and support program for systems, solutions and related services

EXFO

These Specific Sales Terms and Conditions and Support Program for Systems, Solutions and Related Services apply to Customer's purchases (whether from EXFO or from EXFO authorized channel partners, distributors, resellers or sales representatives) of EXFO's systems, solutions and related services, including but not limited to Service Assurance, Analytics, Passive Monitoring and EXFO Ontology Simulators ("**Systems and Solutions**"), unless Customer has a separate written agreement with EXFO that expressly applies to Customer's purchase of such Systems and Solutions. These Specific Sales Terms and Conditions and Support Program for Systems, Solutions and Related Services, along with all other published EXFO Terms and Conditions, are available at www.exfo.com/how-to-buy/sales-terms-conditions or from EXFO upon request, and, when applicable, constitute the entire contract between the Customer and EXFO ("**Agreement**"). If a term in EXFO's Standard Sales Terms and Conditions or the Software License Agreement conflicts with a term in these Specific Sales Terms and Conditions and Support Program, the provisions of these Specific Sales Terms and Conditions and Support Program will prevail. "**EXFO**" means the direct or indirect affiliate or subsidiary of EXFO Inc. named on an EXFO quotation, order acknowledgement, invoice or other sales documents. "**Customer**" means the entity that places an order for Products with EXFO. The Agreement may not be altered, supplemented, or amended by the use of any other document(s) unless otherwise agreed to in a written agreement duly signed by both Customer and EXFO. Customer's acceptance of this Agreement in its entirety is expressed by ordering, accepting delivery, keeping, or using the Systems and Solutions or any other act or expression of acceptance by Customer. EXFO and Customer are each a "**Party**" to this Agreement, and may be referred to collectively as the "**Parties**."

1. DEFINITIONS

1.1 "**Acceptance Test Protocol**" or "**ATP**" means the acceptance testing included in a SOW and described in Section 7 to this Agreement.

1.2 "**EXFO Support Program**" means the EXFO Systems and Solutions support and subscription service purchased by Customer and provided by EXFO under this Agreement and described in Section 3.1 to this Agreement.

1.3 "**Hardware Product**" means the physical equipment purchased by the Customer that is provided by EXFO and specified in EXFO's acknowledgement of each applicable purchase order of the Customer.

1.4 "**Intellectual Property**" means discoveries, inventions, designs, works of authorship, and any related rights that is or may be granted or recognized under any Canadian, US or foreign legislation including patents, registered designs, copyrights, moral rights, mask works, trade secrets, trademarks and service marks, integrated circuit topography, logos, and any other statutory provision or common or civil law principle regarding intellectual and industrial property, wheter registered or unregistered, and including rights in any application for any of the foregoing.

1.5 "**Licensed Software**" means the computer programs specified in EXFO's acknowledgement of each applicable purchase order of the Customer and any related Documentation, which are subject to and defined more particularly in Section 2.1 to this Agreement and the EXFO Software License Agreement.

1.6 "**NQMS**" means Fiber Monitoring and Assurance products and solutions.

1.7 "**Release**" means a major release providing significant new functionality and is represented by the digit to the right of the decimal point (ex.: 7.0). A feature release contains a variety of feature enhancements and is represented by the first digit to the left of the decimal point (ex.: 7.1). Both release types are counted as releases when determining how many backward release versions are supported.

1.8 "**Services**" means any services purchased by Customer and provided by EXFO under this Agreement and described in Section 3.2 to this Agreement.

1.9 "**Statement of Work**" or "**SOW**" means a separate document signed by the Parties to this Agreement and described in Section 3.3 to this Agreement.

1.10 "**Third Party**" means any individual, corporation, partnership, association or other entity, other than the Parties to this Agreement.

1.11 "**Third Party Product**" means the hardware products distributed by EXFO but manufactured by a Third Party, as applicable and as indicated in EXFO's quotation, sales ackowledgement, invoice or other sales document.

1.12 "**Third Party Software**" means the computer programs distributed by EXFO as part of the Licensed Software which have been developed by Third Parties or their licensors.

1.13 "**Work Product**" means all deliverables in whatever form produced, created and delivered to Customer as a result of, or related to, performance of Services under this Agreement.

2. DESCRIPTION OF LICENSED SOFTWARE

2.1 EXFO shall provide Customer with one (1) object code copy of the Licensed Software by electronic transfer via a secure media determined by EXFO.

2.2 EXFO shall furnish one (1) copy of the EXFO standard user document(s) with delivery of the Licensed Software accessible by electronic transfer via a secure media. Customer may make electronic or paper copies of the Documentation and any of its portions for its internal use only, provided any copy or portion bears the same proprietary and/or copyright notices appearing on the originals.

3. SUPPORT AND SERVICES

3.1 **Support**. EXFO shall provide support to the extent set forth in the EXFO Support Program attached hereto as Exhibit A during the coverage period determined by invoice period or subsequent renewal notices.

3.2 **Services**. EXFO, or its subcontractors, shall provide training, installation, commissioning or any other professional services on a fixed fee or time and material basis, to the extent set forth in EXFO's sales acknowledgement of each applicable purchase order of the Customer ("Services").

3.3 **Statement of Work**. If required by the type of Services to be performed by EXFO, the Parties may enter into a Statement of Work. SOW refers to the technical solution proposed by EXFO to Customer. Each SOW shall include a description of the scope of Services to be provided and, where applicable, the resulting Work Product to be delivered, pricing for performance of these Services, time frame for execution, acceptance conditions, and the responsibilities of the Customer. EXFO designs the SOW based on information received from the Customer prior to the performance of Services. Customer acknowledges it has reviewed the SOW proposed and shall inform EXFO of any necessary modifications prior to signature. The Parties acknowledge that adjustements to the SOW may be necessary in the event of unforeseen circumstances or Customer's inability to fulfill any of its responsibilities. Customer acknowledges that any changes to the planned SOW executed by the Parties that may become necessary or that may be requested by Customer are subject to EXFO's written acceptance, the application of additional charges that will be invoiced separately and EXFO may delay or suspend the performance of Services accordingly.

3.4 **Performance of Services**. EXFO shall assign personnel of appropriate skills, qualification and experience to perform the Services. The Services dates shall be agreed by the Parties upon receipt of the purchase order and set forth in EXFO's sales acknowledgement. Unless otherwise provided in a SOW, in no event shall the Services completion dates be later than ninety (90) days following shipping of the Hardware and/or the licensed Software Product. In the event EXFO cannot perform the Services within such delay because of Customer's default, namely but not limited to Customer's failure to provide access to Customer's site and/or to provide an appropriate site, then the Services rendered up to that date shall be deemed accepted by Customer and EXFO shall issue an invoice for payment of the rendered Services, the Hardware Product, the Licensed Software and the EXFO Support Program, as applicable. In addition, Customer shall support any additional costs incurred by EXFO resulting of EXFO's incapacity to perform the Services due to Customer's default.

3.5 **Intellectual Property**. EXFO shall retain all Intellectual Property in or related to the performance of Services and the Work Product under a SOW or otherwise under this Agreement, and any Intellectual Property that could result from any alterations, attachments and improvements made by either party. Customer agrees that all Work Product and all other deliverables which are made, created, developed, written or reduced to practice in any form, at any stage of creation and on any medium by EXFO or its subcontractors resulting from the Services shall be the sole and exclusive property of EXFO. EXFO shall grant to Customer under license, on a non-exclusive basis, all such user rights to its own Intellectual Property which are necessary for the Customer to freely use the Work Product pursuant to the scope of Services in the SOW.

4. OWNERSHIP AND LICENSE GRANT

Unless otherwise agreed in writing by the Parties, EXFO and its Third Party providers and licensors reserve all rights, title and interests, including Intellectual Proprietary, in and to the Hardware Products, the Licensed Software and the Documentation. The Licensed Software is provided under license, a copy of which is located at www.exfo.com/how-to-buy/sales-terms-conditions or may be obtained on request.

5. ORDERS, DELIVERY, FEES AND PAYMENTS

5.1 Orders, fees and payments shall be subject to EXFO's Standard Sales Terms and Conditions, www.exfo.com/how-to-buy/sales-terms-conditions or on request.

5.2 Unless otherwise agreed by EXFO, the shipping terms of the Licensed Software and Hardware Product shall be FCA (Incoterms 2010) EXFO shipping facility designated on EXFO's purchase order acknowledgement or any other location specified by EXFO. Customer shall bear all freight, shipping and handling costs, custom brokerage fees and custom duties for such delivery of the Licensed Software and Hardware Product, and all risk of loss, including any insurance costs.

5.3 Customer shall pay or reimburse EXFO for all sales or use taxes, duties, withholding taxes or levies imposed by any authority, government or government agency (other than those levied on EXFO's net income) in connection with this Agreement. If EXFO is required to collect a tax to be paid by Customer, Customer shall pay this tax on demand. If Customer is required to withhold any sum to pay a withholding tax, the amount paid will still be owed to EXFO and Customer shall promptly pay that amount to EXFO.

5.4 If Customer fails to pay any fee, expense, tax or any sum due to EXFO, Customer shall pay all reasonable expenses incurred by EXFO in collecting these sums, including reasonable attorney's fees.

6. ACCEPTANCE

6.1 **Acceptance of Licensed Software and Hardware Product**. The Licensed Software and the Hardware Product shall be deemed accepted upon shipment by EXFO, unless otherwise agreed by the parties in a SOW which includes acceptance conditions, including but not limited to, an Acceptance Test Protocol, as the case may be. In event of an ATP, it shall be performed in accordance with Section 7 below. Notwithstanding anything else to the contrary herein or in a SOW or ATP, the Licensed Software and the Hardware Product shall also be deemed accepted immediately if Customer starts using the Licensed Software or the Hardware Product in a production environment.

6.2 **Acceptance of Services**. Services shall be deemed accepted upon their completion and will not require an Acceptance Test Protocol or any other acceptance mechanism/criteria, unless otherwise provided in a SOW. In such event, an ATP shall be performed in accordance with Section 7 below.

6.3 **Acceptance of Deliverables**. Deliverables (as hereinafter defined) shall be deemed accepted by Customer upon delivery of the Notice of Compliance and EXFO shall be entitled to invoice Customer for such Deliverables according to the payment terms in the SOW or otherwise under this Agreement. Acceptance shall not waive any other rights or remedies of Customer under this Agreement.

7. ACCEPTANCE TEST PROTOCOL

7.1 **Deliverables subject to ATP**. When Services, Work Product, Licensed Software and/or Hardware Products (hereinafter "**Deliverables**") are subject to acceptance testing in accordance with Sections 6.1 or 6.2 above, the Acceptance Test Protocol (ATP) shall be set forth in a SOW. The ATP performed by EXFO shall demonstrate that the Deliverables materially conforms to the specifications agreed by the Parties in the SOW and following the completion, EXFO shall provide a written certification to the Customer ("**Notice of Compliance**").

7.2 **ATP Provision**. Upon the completion of any Deliverables, EXFO shall notify Customer that the Deliverables are ready for use and for the ATP. Commencing upon such notification, EXFO shall have a period of thirty (30) days to conduct the ATP (the "**Acceptance Period**") in the presence of a Customer's representative, if prior requested by the Customer. Upon successful completion, EXFO shall provide the Notice of Compliance to the Customer. In the event EXFO determines the Deliverables do not materially meet the specifications agreed by the Parties in the SOW during the Acceptance Period, notwithstanding any provision in the Agreement to the contrary, EXFO shall correct the Deliverables, at no cost to Customer, within a time period agreed to by the Parties and reperform the ATP per this Section.

8. LIMITED WARRANTIES AND DISCLAIMER

8.1   **Services**. EXFO warrants that the provision of Services under this Agreement will be provided in a professional and workmanlike manner and, if applicable, the Work Product shall comply with this Agreement and the requirements set forth in the SOW. If a breach of the warranty set forth in this Section 8.1 occurs, Customer's sole and exclusive remedy is that EXFO will correct the errors in the Work Product and/or re-perform the Services, provided EXFO is notified in writing within the period of sixty (60) days following completion of the Services and/or delivery of the Work Product or acceptance of the Deliverables according to Section 6.3 to the extent applicable.

8.2   **Licensed Software**. EXFO warrants, that for a period of sixty (60) days following EXFO's shipment of the Licensed Software ("**Licensed Software Warranty Period**"), that the Licensed Software will operate and perform in materially conformance with the Documentation. If a breach of the warranty set forth in this Section 8.2 occurs, Customer's sole and exclusive remedy is that EXFO will provide reasonable efforts to correct nonconformances which are reproducible by EXFO during the Licensed Software Warranty Period or any period in which Customer purchased the EXFO Support Program for such Licensed Software. EXFO does not warrant that the Licensed Software will perform error-free or uninterrupted, or that EXFO will correct all program errors.

8.3   **Hardware Products**. EXFO warrants, that for a period of one (1) year following EXFO's shipment of the Hardware Products (with the exception of Simulators, M5, PowerHawk and TravelHawk products which have a warranty period of sixty (60) days) ("**Hardware Product Warranty Period**"), that the Hardware Product will be free from defects in materials and workmanship. If a breach of the warranty set forth in this Section 8.3 occurs, Customer's sole and exclusive remedy is that EXFO will repair or replace the Hardware Product, at EXFO's sole discretion, provided Customer notifies EXFO during the Hardware Product Warranty Period and returns the Hardware Product to EXFO for repair or replacement. Customer shall prepay shipping charges, taxes and duties for Hardware Products returned to EXFO under this warranty.   Extended warranty is available in subsequent years and is provided at no additional charge as long as the Hardware Product is covered under the EXFO Support Program. The warranty does not cover recalibration or additional performance verification unless requires as a result of any under-warranty repair. All consumable parts are excluded from warranty, including but not limited to, batteries, connectors and adapters, cables, cleaning tools, cases, charges and patchcords.

8.4   **High Risk Activities Disclaimer**. The Licensed Software and the Hardware Product are not fault-tolerant and are not designed, manufactured or intended for use or resale in hazardous environments that require fail-safe performance such as in the operation of nuclear facilities, aircraft navigation or communications system, air traffic control, emergency response, terrorism prevention or response, life support or weapons systems (collectively "High Risk Activities"), the failure of which could lead to death, personal injury, or severe physical or environmental damages. EXFO EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

8.5   **Limited Warranties**. EXFO makes no representations and extends no warranties of any kind (other than those set forth in Sections 8.1, 8.2, and 8.3), and assumes no responsibility or liability with respect to (i) the use, sufficiency or accuracy of the Licensed Software, (ii) the sufficient or accuracy of the reports or tests performed utilizing the Licensed Software, (iii) any network delay, outage, interruption or malfunction, which may occur in the Customers's network as a consequence of any Services, work or testing done by EXFO or its subcontractors and as mandated by the Customer; (iv) any Third Party Hardware and Third Party Software. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, EVEN IF EXFO HAS BEEN MADE AWARE OF SUCH PURPOSE, AND THE WARRANTY AGAINST INFRINGEMENT OF PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS.

8.6   **Exclusions**. The warranty shall be null and void if:
   • the Licensed Software and Hardware Product have been tampered with, repaired, or worked upon by unauthorized individuals or non-EXFO personnel;
   • the Hardware Product warranty sticker has been removed;
   • Hardware Product case screws, other than those specified in the manual, have been removed;
   • Hardware Product case has been opened in a manner different from that explained in the manual;
   • Hardware Product equipment serial number has been altered, erased, or removed; or
   • the Licensed Software and Hardware Product have been misused, neglected, or damaged;
   • the Hardware Product is physically damaged during shipment due to poor packaging or mishandling by Customer's shipping carrier.

8.7   **Third Party Warranty**. To the extent permitted by law or contract, EXFO shall pass through to Customer the warranties for the Third Party Software or any Third Party Product.

9.   LIMITATION OF LIABILITY

9.1   EXFO IS NOT LIABLE FOR ANY INDIRECT DAMAGES, LOST PROFITS, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THIS AGREEMENT OR THE FURNISHING OF THE LICENSED SOFTWARE, THIRD PARTY SOFTWARE, HARDWARE OR SERVICES, INCLUDING THE USE OR INABILITY TO USE THE LICENSED SOFTWARE, HARDWARE, HARDWARE PRODUCT OR THE THIRD PARTY SOFTWARE. EXFO'S LIABILITY UNDER THIS AGREEMENT AND EACH PURCHASE ORDER, IF ANY, IS LIMITED TO THE LICENSE FEES AND HARDWARE FEES RECEIVED BY EXFO FOR THE LICENSED SOFTWARE AND HARDWARE PRODUCT PURCHASED UNDER SUCH PURCHASE ORDER, EXCLUDING ANY FEES FOR SERVICES. IF ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY, DISCLAIMERS AND EXCLUSIONS OF WARRANTY AND DAMAGES SET FORTH IN THIS AGREEMENT SHALL REMAIN IN EFFECT

10.   INTELLECTUAL PROPERTY INFRINGEMENT

10.1   During the term of this Agreement, EXFO shall defend or settle any claim, suit, or proceeding brought against Customer by any Third Party to the extent such claim, suit, or proceeding is based on an allegation that Customer's operation or possession of the latest Release of the Licensed Software in the form licensed to Customer, infringes any United States patent or United States copyright of such Third Party.

10.2   Notwithstanding the foregoing, EXFO shall have no obligation to defend or settle any claim, suit, or proceeding under any of the following circumstances: (i) the infringement claim is not directly attributable solely to the operation of the Licensed Software or the infringement claim is based on the operation of the Licensed Software in combination with any other software or hardware not provided or licensed by EXFO; (ii) the infringement claim is based upon Customer's use of other than the most current version of the Licensed Software; (iii) the infringement claim is based on a patent or copyright owned, controlled, licensable, or licensed by Customer or any of its affiliates; or (iv) the infringement claim is based on Customer's operation of the Licensed Software in a manner not expressly permitted under this Agreement or in violation of this Agreement.

10.3   EXFO, in its sole discretion, may at any time choose to mitigate damages and remedy any actual or potential Third Party claim, suit or proceeding for which it has a defense obligation under this Section by taking any one or combination of the following measures: (i) securing for Customer the right to continue to use the Licensed Software; or (ii) replacing or modifying the Licensed Software or any part thereof to make it non-infringing.

11.   TERMINATION

11.1   EXFO may terminate the license and rights granted to Customer under this Agreement if (i) Customer assigns the license for the benefit of creditors; (ii) Customer admits in writing its inability to pay debts as they mature; (iii) a trustee or receiver is appointed for a substantial part of Customer's assets; or (iv) a bankruptcy proceeding is instituted against Customer which is acquiesced in and is not dismissed within sixty (60) days, or results in an adjudication of bankruptcy. The termination is effective upon Customer's receipt of EXFO's written termination notice.

11.2   If either Party breaches one or more of its material obligations under this Agreement, the other Party may elect at any time, in addition to any other remedy, to terminate this Agreement. Prior to the termination, the non-breaching Party must give the other Party one (1) month written notice specifying the breach. The non-breaching Party may terminate this Agreement if the other Party does not remedy all breaches specified in the written notice within the one (1) month notice period.

11.3   Upon termination or expiration of this Agreement, Customer shall return or destroy all Licensed Software and Documentation, including all copies and, if requested, certify in writing to EXFO the return or destruction. Customer is bound by all obligations incurred prior to the termination or expiration; however, all of EXFO's obligations will automatically terminate upon such termination or expiration. EXFO is under no obligation to refund any monies because of such termination. These termination rights are in addition to all other rights and remedies available to EXFO.

12.   GENERAL

12.1   Neither the execution of this Agreement nor anything in it, or the Licensed Software, shall be construed as providing or implying any arrangement or understanding that EXFO will make any purchase, lease, examination or test of, or give any approval with respect to, any product or service.

12.2   In those cases where the activities of EXFO or a responsibility of EXFO, called for by a schedule or otherwise, are dependent on an activity or responsibility of Customer, or is dependent on receiving information or approval from Customer, and the activity, responsibility, information or approval is not given or notified to EXFO by the scheduled date or time, then the activity or responsibility of EXFO may be delayed a corresponding amount of time and may result in an increase to the fees and expenses to be paid to EXFO.

12.3   This Agreement shall not prevent either Party from entering into any similar agreement with any Third Party, whether in the same or in a different industry.

12.4   Customer may not assign, in whole or in part, this Agreement, or any license, rights or obligations granted, to any subsidiary, affiliate or entity owned or controlled by Customer, or pursuant to any merger, consolidation or other Customer reorganization, or to any other person or entity, without (i) the prior written consent of EXFO; (ii) the payment of the assignment fees as determined by EXFO; and (iii) compliance with any other conditions that may be determined by EXFO. In the event the Customer wishes to transfer the ownership of the Hardware Products and Licensed Software for the purpose of financing the purchase of the Hardware Products and Licensed Software, EXFO's consent shall not be unreasonably withheld and the assignment shall not be subject to any assignment fees. For clarity purpose, EXFO shall be entitled to assign this Agreement or any or its rights, obligations or purchase orders, in part or in totality, received hereunder to any of its affiliates, subsidiaries, parent company, or parent company's affiliates and subsidiaries.

12.5   The failure of either Party at any time to enforce any of the provisions of this Agreement or any right under this Agreement, or to exercise any option provided, will in no way be construed to be a waiver of the provisions, rights, or options, or in any way to affect the validity of this Agreement. The failure of either Party to exercise any rights or options under the terms or conditions of this Agreement shall not preclude or prejudice the exercising of the same or any other right under this Agreement.

12.6   Neither Party shall be liable to the other for non-compliance with any provision of this Agreement if the non-compliance resulted directly from any cause beyond the reasonable control of the Party. However, this provision shall not apply to any payments due to EXFO under this Agreement.

12.7   With the exception of any disputes or questions concerning confidentiality matters or intellectual property infringement, namely but not limited to where injunctive relief may be obtained, the Parties agree that this Agreement must be construed and enforced according to the substantive laws of the province of Quebec, Canada, without regards to any conflict-of-laws rules. The Parties specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. Any dispute, conflict or claim arising under this Agreement, in particular concerning its formation, existence, validity, effects, interpretation, implementation, violation, resolution or annulment, shall be finally resolved by means of arbitration in accordance with the International Arbitration Rules of the Canadian Commercial Arbitration Centre by a sole arbitrator appointed in accordance with the said Rules. Either party may commence arbitration by serving a written demand for arbitration on the other party. The decision rendered by the arbitrator shall be final and there shall be no appeal therefrom. Any such arbitration shall occur in Quebec City, Province of Quebec, Canada, and the decision of the arbitrator shall be final and binding upon the Parties both as to law and to facts. The Parties shall share the expenses of the arbitrator equally, unless the arbitrator determines that expenses shall be otherwise assessed.

12.8   If any provision or portion of a provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall not be affected, and the remaining terms will continue in effect and be binding on the Parties, provided that such holding of invalidity or unenforceability does not materially affect the essence of the Agreement.

12.9   Any notice or other written communication required or permitted to be given by a Party under this Agreement will be considered delivered: (i) five (5) business days after the notice has been mailed by certified mail; or (ii) on the same day if sent by facsimile transmission. Notice to the Customer shall be sent to the address and contact information provided by Customer to EXFO in connection with this Agreement on Customer's purchase order or other purchase documents. Notice to EXFO shall be sent to the attention of EXFO's General Counsel and Corporate Secretary, 400 Godin Avenue, Quebec, QC, G1M 2K2, fax: (418) 683-9839.

12.10   The Parties agree to comply with all applicable laws. If EXFO requires any government licenses or approvals to proceed with the Services, EXFO will provide Customer with prior notice of the requirement and an estimate of any resulting increase in the price of the Services.

12.11   Customer will comply with all applicable export and import control laws and regulations of the United States and the foreign jurisdiction in which the Hardware Product or Licensed Software is used and, in particular, Customer will not export or re-export the Hardware Product or Licensed Software without all required United States and foreign government licenses. Customer acknowledges and understands that the Licensed Software contains encryption technology that may require an export license from the U.S. State Department when exported or re-exported to government end-users, Internet or telecommunications service providers providing services specific to government end-users. Export of the Licensed Software to certain countries is prohibited. Customer will defend, indemnify, and hold harmless EXFO from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors, or employees.

12.12   The terms and conditions of this Agreement regarding confidentiality, payment, warranties, limitation of liability and all others that by their sense and context are intended to survive the execution, delivery, performance, termination or expiration of this Agreement survive and continue in effect.

12.13   Any reference to information contained in an URL form an integral part of this Agreement and each party hereby confirms that it has access to the Internet and confirms that prior to entering into this Agreement has read and agrees with the terms and conditions set out in those documents.

13.   ENTIRE AGREEMENT

This is the entire Agreement between the Parties about its subject. This Agreement incorporates and supersedes all written and oral communications about its subject. It may only be changed or supplemented if expressly stated by a written amendment signed by the authorized representatives of the Parties and any provision of a purchase order purporting to supplement or vary the provisions hereof shall be void unless expressly agreed by EXFO.

EXHIBIT A
EXFO Systems and Solutions Support Program ("EXFO Support Program")

1. DEFINITIONS

Capitalized terms not defined herein shall have the same meaning ascribed to them under the EXFO Specific Sales Terms and Conditions for Systems, Solutions and Services, unless otherwise expressly stipulated.

1.1   "**Term**" For purposes of this EXFO Support Program and subject to EXFO's rights to terminate or discontinue the EXFO Support Program, EXFO shall provide the EXFO Support Program for an initial term of twelve (12) months from (i) the date EXFO delivers the initial Release of the Licensed Software; or (ii) the date of acceptance of the Deliverables to the extent applicable (the "Initial Support Term"). Thereafter, the term may be renewed for an additional twelve (12) month period (each, a "Renewal Term") if agreed by the Parties. The Initial Support Term and Renewal Term shall together be deemed to be the "Term".

2. EXFO SUPPORT

2.1   **Scope of EXFO Support**. During the Term, EXFO shall provide support for the current version and two previous revision of Licensed Software. EXFO shall also provide support for EXFO Hardware Product. The above mentionned support includes:

2.1.1   Technical telephone assistance, or access to the NQMS support portal as the case may be, on the use and operation of the Licensed Software and Hardware Product based upon the following contracted service level. EXFO shall have the option to provide a non-standard service as separately agreed to by both Parties in writing.

Support – Standard/Silver
5 days/week (from Monday to Friday), 8 hours/day – 9 a.m. to 5 p.m. Customer Local Time
(excluding federal observed holidays)

Support – Premium*/Gold
7 days/week 24 hours/day – 365 days/year
(*Not available for Simulators, M5, PowerHawk and TravelHawk products)

2.1.2   Current software Releases of all Licensed Software and bug fixes will be applied only to the most current Release or two versions previous to the current version.

2.1.3   Updated documentation and Release notes will highlight the modifications for each delivered update and will be made available in electronic format via a secure FTP location.

2.1.4   Service on Hardware Product purchased by the Customer will be based upon the following warranties or contracted service level. EXFO and the Customer shall have the option to provide and procure, respectively, a non-standard service as separately agreed to by both Parties in writing.

Support – Standard/Silver
Hardware – Warranty or extended warranty coverage. Repaired or replaced and returned to Customer within 15 business days from EXFO receipt, except for external switches (OTAUs and MOTAU). Shipment fees to EXFO repair center are borne by Customer. Shipment fees back to Customer are borne by EXFO during the Hardware Product Warranty Period.

Support – Premium*/Gold
Hardware – Next Business Day Shipment of Replacement unit. Next Business Day Shipment can only be guaranteed in certain countries and regions, in some areas of the world shipment time will be best effort. Shipment fees to repair center are borne by Customer. Shipment fees back to Customer are borne by EXFO (*Not available for Simulators, NQMS, M5, PowerHawk and TravelHawk products).

2.1.5   Resolution Timeframes and Performance Requirements

SEVERITY LEVELS	PERFORMANCE REQUIREMENTS
CRITCAL – S1 (EXFO P1)	Respond – 20 minutes Restore – 24 Hours Resolve – 30 Calendar Days
MAJOR – S2 (EXFO P2)	Respond – 60 minutes Resolve – 30 Calendar Days
MINOR - S3 (EXFO P3)	Respond – 1 Business Day Resolve – 180 Calendar Days

NQMS EVENT CLASS	RESPONSE TIMES	PERFORMANCE REQUIREMENTS
A	Silver - 1 Working Day	Silver - 3 Working Days
B	Silver - 1 Working Day	Silver - 5 Working Days
C	Silver - 3 Working Days	Silver - 8 Working Days
D	Silver - 5 Working Days	Silver - 8 Working Days

2.2   **Exclusions**. Support does not include on-site support, operating supplies or accessories, application engineering support or support of Third Party Products, applications written by Customer, or non-current versions (which is defined as more than two version previous to the current version) of the Licensed Software. Further, EXFO shall have no obligation to provide EXFO Support due to:

a) Problems that do not arise out of a failure of the Licensed Software to conform in any material respect to its related Documentation;

b) Licensed Software that has been altered, damaged, modified or incorporated with or into other software, except as performed or authorized in writing by EXFO;

c) Errors caused by the negligence, abuse or misapplication, attempt to maintain the Licensed Software or use of the Licensed Software other than as set forth in the EXFO Support Program, by Customer or any Third Party; or

d) Failure of associated computer equipment not maintained or supplied by EXFO.

3. Fees and Expenses

3.1   **Initial Support Term Fee**. Within thirty (30) days from EXFO's shipment of the Licensed Software to Customer, Customer shall pay EXFO the initial support term fee for the EXFO Support provided during the initial Support Term.

3.2   **Renewal Term Fee**. For each Renewal Term, EXFO will invoice Customer the applicable EXFO Support fee in advance and Customer shall pay the fee within thirty (30) days from the date of the invoice. Additional products purchased during the Support term will be added to the main support plan at the same service level and will be billed for the annual service cost for the items purchased. At the annual renewal of the main support plan, the renewal date of the additional products purchased will be synchronized to the main support plan. Accordingly, the cost of any overlap of service due to additional purchases will be credited against the annual renewal cost for the main support plan.

3.3 **Additional Support and Expenses**. If EXFO provides additional support not required by this EXFO Support Program or Addendum, EXFO will bill and Customer will pay the cost of such additional support at the EXFO then current time and materials rate within thirty (30) days from the date of the EXFO invoice. In addition, if EXFO incurs expenses (namely travel and living expenses) in its performance of the EXFO Support, EXFO shall bill Customer for the expenses on a monthly basis and Customer shall reimburse EXFO for the expenses invoiced within thirty (30) days from the date of the invoice.

3.4 **Replacement Unit**. If Customer fails to return a Hardware Product that was replaced under the Support – Premium service level within thirty (30) days from Customer's receipt of the Replacement unit, Customer will pay the cost of the Hardware Product at actual list price within thirty (30) days from the date of the EXFO invoice.

3.5 **Cessation of EXFO Support**. If Customer fails to pay the fees for the EXFO Support when due, EXFO shall have no further obligation to continue to provide EXFO Support following the date such payment was due.

3.6 **Re-instatement of EXFO Support**. Following a lapse in support coverage, Customer can request to have Licensed Software and Hardware Product put back under an EXFO Support Program within a 90 day period. EXFO will require the contract to be paid in arrears. Beyond 90 days, penalties or additional service charges may also apply, at EXFO's sole discretion.