



# UNIFY SOFTWARE PURCHASE

## TERMS AND CONDITIONS

Smash  
851 SW 6th Ave, 8th Floor  
Portland, OR 97204



## UNIFY SOFTWARE PURCHASE TERMS AND CONDITIONS

Entreda, Inc.'s products and services may include) and software in any form ("Software") (each and collectively "Product" or "Products"), and support services ("Support Services"), installation services ("Installation Services") and professional services ("Professional Services") (each and collectively "Service" or "Services").

The use of Products and Services by any person or entity ("Customer") is governed solely by this agreement (this "Agreement") which consists of: (i) the Quote (defined below); (ii) these Purchase Terms and Conditions, including attachments ("Purchase Terms and Conditions"); and (iii) any end user license agreement or separate click-wrap agreement or terms in any Software installation or download (the "EULA"). If there is a conflict among any of the foregoing, priority shall be given in order to the: Quote, Purchase Terms and Conditions and the EULA. As used in this Agreement, "Entreda" means Entreda, Inc., a Delaware corporation. By clicking the "I Agree" button indicating your acceptance of the EULA or any other agreement with Entreda or by executing an order form or the Quote that references the EULA or these Purchase Terms and Conditions, you agree to all of the terms set forth in these Purchase Terms and Conditions. If you are entering into the EULA or other agreement with Entreda on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these Purchase Terms and Conditions, in which case the terms "you", "your" or "Customer" shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with the terms and conditions set forth herein or in the EULA or other agreement you have entered into with Entreda, you must not accept these Purchase Terms and Conditions and may not use any Product or Service.

### ORDERING.

Entreda may submit a quote to Customer containing quantity, pricing and other ordering information ("Quote"). Customer will be deemed to have accepted a Quote when Customer either: (i) signs and returns the Quote; (ii) issues a purchase order ("PO") per the Quote; or (iii) sends Entreda an email or other written acceptance referring to the Quote. The foregoing is an "Order." Customer agrees that any terms and conditions inconsistent with or in addition to this Agreement, including without limitation any PO terms and conditions, are rejected and null and of no effect, even if Entreda accepts, acknowledges or ships Products in response to the Order. Each Order is complete when Entreda ships the Products and for Software when Entreda makes the Software available.

### PRICING.

Customer hereby agrees that the license fees and other pricing terms set forth in any Order or Quote are subject to change from time to time as determined by Entreda in its sole discretion. Entreda shall notify Customer of any change in the license fees or other pricing terms applicable to an Order at least 15 days prior to the change in such license fees or other pricing terms.

### SUBSCRIPTION, BILLING AND PAYMENT.

Entreda will invoice Customer after the Order is complete, and Customer will pay the invoice in the chosen payment method as well as pay or reimburse Entreda for all related taxes, withholdings, duties and assessments, except for taxes based on Entreda's net income. Entreda will invoice Customer for subscription fees related to any Services either annually, quarterly for no extra charge or monthly for a fee (10%) in advance, as indicated in the Order. Amounts are due in the currency stated in the Order,

as applicable, in full thirty (30) days after the date of invoice, with interest accruing thereafter at the lesser of 25% per month or the maximum permitted by law. If no currency is stated, amounts are due in United States dollars. Payment shall be made free of any currency controls or other restrictions, by check or wire transfer, to the address or bank account designated by Entreda. Entreda may suspend shipments of Products or performance of Services if Customer fails to make payment when due. Entreda reserves and Customer grants to Entreda a purchase money security interest in the Products sold and the proceeds thereof until Customer has paid the invoice.

## A. GENERAL TERMS

As such, Entreda bills Customer for paid services through the chosen payment provider (or “Payment Method”) for use of the Service. Customer agrees to pay Entreda all charges at the prices then in effect for any use of the Service by Customer, and the Customer in turn authorizes Entreda to charge for the services through the chosen Payment Method. Customer agrees to make payment using the selected Payment Method. Entreda reserves the right to correct any errors or mistakes that it makes even if it has already requested or received payment.

## B. RECURRING BILLING

Most subscription plans to the software and related services consist of recurring periodic charges as agreed to by Customer. By entering into this Agreement, Customer acknowledges that the subscription may have an initial and recurring payment feature as described in the Quote and the Customer accepts responsibility for all recurring charges prior to cancellation. ENTREDA SUBMITS PERIODIC CHARGES (E.G., MONTHLY, QUARTERLY OR ANNUALLY) WITHOUT FURTHER AUTHORIZATION FROM CUSTOMER, UNTIL CUSTOMER PROVIDES PRIOR NOTICE (CONFIRMED IN WRITING UPON REQUEST BY ENTREDA) THAT THE CUSTOMER HAS TERMINATED THIS AUTHORIZATION OR WISHES TO CHANGE THE PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE ENTREDA REASONABLY COULD ACT. TO TERMINATE AUTHORIZATION OF PAYMENT, CUSTOMER AGREES TO SEND AN EMAIL TO ACCOUNTING at ENTREDA dot COM IN ORDER TO CANCEL THE SUBSCRIPTION.

## C. CURRENT INFORMATION REQUIRED

CUSTOMER MUST PROVIDE CURRENT, COMPLETE AND ACCURATE BILLING INFORMATION. CUSTOMER MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP PAYMENT METHOD CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND MUST PROMPTLY NOTIFY ENTREDA IF PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF THE CUSTOMER BECOMES AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF USER NAME OR PASSWORD. IF CUSTOMER FAILS TO PROVIDE ENTREDA ANY OF THE FOREGOING INFORMATION, CUSTOMER AGREES THAT ENTREDA MAY CONTINUE CHARGING FOR USE OF THE SERVICES UNLESS THE SERVICE WAS TERMINATED AND AS CONFIRMED IN WRITING UPON REQUEST BY ENTREDA.

## D. PAYMENT METHOD

The terms of payment will be based on chosen Payment Method and may be determined by agreements between Customer and the financial institution, credit card issuer or other provider of the chosen Payment Method (the "Payment Method Provider"). If ENTREDA does not receive payment from chosen Payment Method Provider, customer agrees to pay all amounts due on the billing account including applicable interest.

## E. CHANGE IN AMOUNT AUTHORIZED

If the amount to be charged varies from the amount previously authorized (other than due to the imposition or change in the amount of state sales taxes), Customer has the right to receive, and ENTREDA shall provide, notice of the amount to be charged and the date of the charge at least 15 days before the scheduled date of the transaction. Any agreement customer has with the chosen Payment Method Provider will govern use of the Payment Method. Customer agrees that ENTREDA may accumulate charges incurred and submit them as one or more aggregate charges during or at the end of each billing cycle.

## F. AUTO-RENEWAL

The subscription will be automatically extended for successive renewal periods of the same duration as the subscription term originally selected, at the lesser value between the then-current non-promotional subscription rate and Quote or order as agreed upon by customer.

## G. REFUND FOR SUBSCRIPTION AND PRE-PAID SERVICES

If customer cancels the subscription, then the Customer is NOT eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period. In case of pre-payment for a certain period of service (for example if customer pays a lump sum for 12 months of service), the Customer is NOT eligible for a prorated refund of any portion of the pre-paid amount upon cancellation.

## H. REAFFIRMATION OF AUTHORIZATION

Customer's non-termination or continued use of the Service reaffirms that ENTREDA is authorized to charge through the chosen Payment Method. Entreda may submit those charges for payment and Customer agrees to be responsible for such charges. This does not waive Entreda's right to seek payment directly from the Customer. Charges may be payable in advance, periodically, or as otherwise described in the Quote or Order when Customer initially subscribed to the Service.

## I. FREE TRIALS AND OTHER PROMOTIONS

Any free trial or other promotion that provides subscriber-level access to the Service must be used within the specified time of the trial. Customer must cancel subscription before the end of the trial period in order to avoid being charged a subscription fee. If Customer cancels prior to the end of the

trial period and is inadvertently charged for a subscription, Customer shall contact [accountspayable@smarsh.com](mailto:accountspayable@smarsh.com) immediately to have the charges reversed.

## SOFTWARE & SOFTWARE RESTRICTIONS.

Software is licensed to Customer, not sold. By using any Software (including any Software hosted by Entreda and provided through the “cloud”), Customer agrees to be bound by and abide by the terms of the EULA.

## SERVICES.

Customer is not entitled to Services unless Customer has ordered and paid for Services as provided in the Order or Quote. Entreda’s obligations with respect to Support Services, Installations Services and Professional Services which are attached hereto and are hereby incorporated into and made an integral part of these Purchase Terms and Conditions. Nothing in this Agreement shall be interpreted to prevent Entreda’s use of subcontractors in order to provide the Products and/or Services hereunder.

## LIMITED WARRANTIES; WARRANTY DISCLAIMER; AND LIMITATION OF LIABILITY.

Entreda’s Limited Warranties, which include Entreda’s Warranty Disclaimer and Entreda’s Limitation of Liability which are attached hereto. The Limited Warranties are hereby incorporated into and made AN INTEGRAL part of these Purchase Terms and Conditions.

## INDEMNIFICATION.

Entreda will defend or settle any action brought against Customer by a third party to the extent it is based upon a third-party claim that a Product infringes any patent or copyright existing in the United States of America. Entreda will pay any actual, documented out-of-pocket costs and damages made in a written settlement negotiated by Entreda or awarded by a court of competent jurisdiction against Customer in final judgment resulting from the claim, provided Customer: (i) gives Entreda prompt written notice of the claim; (ii) grants Entreda sole control of the defense and settlement of the claim; (iii) cooperates in response to Entreda’s requests for information, assistance and authority in connection with the foregoing; and (iv) is not in breach of this Agreement. Entreda will not be bound by any settlement Customer enters into without Entreda’s prior written consent. Entreda will have no obligation under this Section 8 to the extent any claim is based on negligent acts, fraud or willful misconduct by Customer or Customer’s employees or subcontractors. If the operation of a Product becomes, or Entreda believes is likely to become, the subject of such a claim, Customer will permit Entreda, at Entreda’s option and expense, either to secure the right for Customer to continue using the Product or to replace or modify it so that it becomes non-infringing. However, if neither of the foregoing alternatives is available on terms which are reasonable in Entreda’s judgment, Customer will return the Product upon Entreda’s written request for a refund of the Product cost. Entreda shall have no liability or obligation to the extent that the alleged infringement arises out of or relates to: (i) the use or combination of a Product with third party products or services; (ii) use for a purpose or in a manner for which a Product was not designed or intended; (iii) any modification or alteration to a Product made by any person other than Entreda or its authorized or designated representatives; (iv) any modifications or alterations to a Product made by Entreda pursuant to Customer’s specific requests or instructions; (v) any technology owned or licensed by Customer from third parties; or (vi) use of any older version of Software when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION 8 STATES CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND ENTREDA’S ENTIRE LIABILITY AND OBLIGATION FOR THIRD PARTY CLAIMS OF

INFRINGEMENT BY THE PRODUCTS. NOTWITHSTANDING ANYTHING HEREIN OR IN ANY OTHER AGREEMENT ENTERED INTO WITH ENTREDA TO THE CONTRARY, ENTREDA'S MAXIMUM LIABILITY TO CUSTOMER SHALL IN NO EVENT EXCEED THE AGGREGATE PURCHASE PRICE FOR PRODUCTS PURCHASED AND/OR SERVICES RENDERED TO THE CUSTOMER.

## U.S. GOVERNMENT RIGHTS.

The Software is "commercial computer software" as defined in the U.S. Federal Acquisition Regulations ("FAR") at 2.101. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the "FAR" and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFARS") and its successors. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in the Software. Any confidential or proprietary information received by the U.S. Government in connection with this Agreement is exempt from release under the Freedom of Information Act and is prohibited from release under the Federal Trade Secrets Act, 18 U.S.C. 1905.

## CONFIDENTIAL INFORMATION.

Each of the parties ("Receiving Party") understands that the other party ("Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business, including, without limitation computer programs, software, technical drawings, algorithms, know-how, trade secrets, formulas, processes, ideas, inventions (whether patentable or not), designs, schematics and other technical, business, financial, customer and product information, data and development plans, of any nature and in any form whatsoever, which to the extent previously, presently or subsequently disclosed to the Receiving Party is "Confidential Information" of the Disclosing Party (whether or not such information was or is marked or designated in writing as "confidential," "proprietary," or any other similar term or designation). Customer agrees without limitation that Entreda's prices, quotes, discounts and proposals to Customer are Entreda's Confidential Information. The Receiving Party agrees: (i) to hold the Disclosing Party's Confidential Information in confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials); (ii) not to divulge any such Confidential Information to any third person, except to those of its employees and subcontractors that need to know such Confidential Information for the purpose of performing this Agreement, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein, and provided that Customer shall in any event remain liable for any breach of these provisions by its employees or subcontractors; (iii) not to make any use whatsoever at any time of such Confidential Information except to perform its obligations under this Agreement; and (iv) not to copy, decrypt, reverse assemble, disassemble, decompile or reverse engineer any such Confidential Information. Without granting any right or license, the Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document by contemporaneous written evidence: (i) is or becomes (through no improper action or inaction by the Receiving Party) readily available to the public; (ii) was in its possession or known by it without restriction prior to receipt from the Disclosing Party; (iii) was lawfully disclosed to it by a third party that

lawfully received such information without restriction on disclosure or use; or (iv) was independently developed without use of any Confidential Information of the Disclosing Party. The Receiving Party may make disclosures required by law or court order provided the Receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and provides reasonable advance notice of and allows the Disclosing Party to participate in the proceeding. To the extent that any of Customer's Confidential Information includes personally identifiable information, then Customer consents to Entreda's use of such personally identifiable information in accordance with Entreda's then-current privacy policy, which is provided herein. Customer acknowledges and agrees that any feedback, suggestions, comments, improvements, modifications and other information (including any ideas, concepts, "know-how" or techniques contained therein) that Customer provides to Entreda about its Products or Services or their performance (collectively, the "Feedback") shall not be deemed as Customer's Confidential Information and may be used, disclosed, disseminated or published by us for any purpose, including developing, manufacturing and marketing products and services incorporating Feedback, without obligation of any kind to Customer, Customer waives any rights whatsoever in or to all Feedback.

#### TERMINATION UPON BREACH OF CONTRACT.

Each party may terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof. Upon termination of this Agreement: (i) Customer will promptly return to Entreda all Confidential Information; and (ii) Customer will, within thirty (30) days after receipt of Entreda's invoice, pay all accrued and unpaid fees and expenses. The rights and obligations of the parties contained in Sections 6 through 15 (inclusive) will survive the termination of this Agreement.

#### EXPORT COMPLIANCE.

Customer will comply with all export laws and regulations of the Applicable Law (as defined in Section 13, below), including without limitation of the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, or other U.S. or foreign agency or authority, and Customer will not export, or allow the export or re-export of any Product in violation of any such laws or regulations. By installing or using any Product, Customer agrees to the foregoing and represents and warrants that Customer is not located in, under the control of, or a national or resident of any restricted country.

#### RESELLER ORDERS.

If Customer orders from an Entreda authorized reseller or distributor, Customer's order is governed by Customer's agreement with the reseller, and this Agreement does not apply to Customer except: (i) Customer's use of Software is subject to the EULA; (ii) Entreda's obligations and liabilities are subject to the terms, conditions and limitations in Sections 9 through 15 (inclusive); and (iii) if the Entreda Limited Warranties and designated Entreda Services are described in the attachments referenced in Section 6 and Section 7, and Customer and the reseller or Distributor agree to comply with (and which shall be a condition to Entreda's obligations) Entreda's terms and conditions including without limitation receipt by Entreda of payment in full.

## PRIVACY

### Entreda Unify Applet and Entreda Mobile Compliance Privacy Policy

#### INFORMATION WE COLLECT

Depending on the settings enabled as part of the account set-up process, we may collect and either store locally or transmit to Entreda, certain information as described below:

- General information such as operating system information, device hostname, device unique identifier (such as MAC address), IP address, software version, username and email address
- Compute device (MAC OS X, Windows x86) information which includes: device disk encryption status, device client firewall status, antivirus status (installed/enabled), malware protection software status, network type device connects to along with link encryption status/network name (if applicable), applications installed, applications processes running, device user login password policy settings, screen-lock settings, operating system updates status (enabled/disabled) along with patches, drive monitoring (USB flash drive, cloud storage activity) which include files modifications, files creations, files copy, and file name changes, remediation activity (whether a particular remediation was accepted or not); device connected status, Network Topology scans;
- Mobile device (iOS, Android) information which includes: device disk encryption status, WIFI network name device connects to along with link encryption status (if applicable), Applications installed, device pass-code settings, device auto-lock settings, operating system updates status;

#### HOW WE USE YOUR INFORMATION

##### Transmitted Information will be used for the purposes of:

- Enabling and optimizing the performance of the Entreda unify service;
- License administration;
- Monitor appropriate device settings and enforce remediation;
- Internal research and development, including improving Entreda products and services; and/or
- Statistical analysis of product deployment, including analysis of trends and comparisons in our aggregated install base

We may also use your information to send you promotional information, in accordance with all applicable laws.

#### TECHNICAL SUPPORT

In the event you provide information to Entreda in connection with a technical support request, such information will be processed and used by Entreda for the purpose of providing the requested technical support, including performing error analysis.

#### HOW WE SHARE YOUR INFORMATION

At no time, however, will Entreda, sell, trade, rent or distribute personal information to any outside organization.



## CONTACT US

For any inquiry about the information contained in this notice or about Entreda's privacy practices, please contact us at [privacy@smarsh.com](mailto:privacy@smarsh.com)

## CHANGES TO THIS NOTICE

We reserve the right to revise or modify this privacy notice. If this happens, we will notify you through email of these revisions.

## CHOICE OF LAW/VENUE.

This Agreement is governed by and construed in accordance with the laws of the State of California, United States, as if performed wholly within such state and without giving effect to the principals of conflict of law ("Applicable Law"). The U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply. In the event of a dispute concerning this Agreement, Customer consents to the sole and exclusive personal jurisdiction of the courts of competency in the location where Entreda's principal executive offices are located.

## GENERAL

Customer may not assign or transfer any rights or delegate any duties under this Agreement and any attempt to do so is void and without effect. These Purchase Terms and Conditions and its attachments (and any terms and documents incorporated herein by reference) and any associated EULA or other agreement entered into with Entreda in connection with the Products or Services represents the parties' entire agreement relating to the subject matter hereof and supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any communication between the parties relating to its subject matter. No modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. To the extent that any and all provisions of this Agreement (including its attachments) shall exclude or limit any statutory liability which, according to mandatory provisions of Applicable Law cannot be contractually excluded or limited by mutual agreement of the parties, then such provision shall be given only such effect, if any, as is permitted by the Applicable Law. Neither party will be responsible for any failure or delay in its performance under this Agreement, excluding Customer's payment obligations, due to causes beyond its reasonable control, including, but not limited to, any force majeure event, such as strikes, riots, insurrection, terrorism, fires, natural disasters, earthquakes, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

## SUPPORT SERVICES TERMS AND CONDITIONS

By executing an order form that references the EULA or these Support Services Terms and Conditions, you agree to all of the terms set forth in these Support Services Terms and Conditions. If you are entering into the EULA or other agreement with Entreda on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these Support Services

Terms and Conditions, in which case the terms “you”, “your” or “Customer” shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with the terms and conditions set forth herein or in the EULA or other agreement you have entered into with Entreda, you must not accept these Support Services Terms and Conditions and may not use any Product or Service. These Support Services Terms and Conditions are governed by the Purchase Terms and Conditions.

## SUPPORT.

Entreda will use commercially reasonable efforts to provide support services as described in these Support Services Terms and Conditions for the term Customer has purchased, which commences upon Software delivery (the “Support Services Term”) or product shipment. Entreda may suspend performance of Support Services if Entreda does not receive payment when due or if Customer is in breach of any contractual obligation to Entreda. Entreda’s Support Services contact information is available at <https://www.smarsh.com/customer-success/support>. Support Services are available 8:00AM to 8:00PM Eastern Time excluding United States Federal holidays, and such period shall be defined as “Business Hours”. The Support Services are made available primarily through Entreda’s web support portal and telephone support (1-650-308-4269). Entreda’s web support portal may be unavailable during periodic maintenance or emergency maintenance that Entreda will use commercially reasonable efforts to perform outside of Business Hours. Entreda’s Support Services obligation is limited to using commercially reasonable efforts to remedy a reported failure of the Products to substantially operate in accordance with Entreda’s official specifications or Documentation (i.e., the then-current, generally available, written user manuals and online help and guides for Software provided by Entreda). Support Services may include Software installation, training, consulting services or preventative maintenance. These Support Services Terms and Conditions do not apply to any support provided or performed by an Entreda-authorized reseller, distributor or third party except that Entreda shall provide tier-two support solely as a supplement to the tier-one support which shall be provided by such authorized reseller, distributor or other third party, in each case, solely to the extent the tier-one support does not resolve the support issue. In some cases, Entreda provides tier-one and tier-two support and in other cases, Entreda provides only tier-two support. In the event only tier-two support is provided, Customer acknowledges and agrees that the tier-one relationship is solely between Customer and Entreda’s authorized reseller, distributor or other third party. The level of support offered by Entreda to Customer will be set forth in the applicable Order. To the extent the Order does not specify the level of support, Entreda shall offer only tier-two support. Entreda makes no representations and warranties to Customer whatsoever regarding any support or services that may be provided by an Entreda-authorized reseller, Distributor or third party. Entreda’s representations and warranties regarding the support or services it provides to Customer are expressly limited to those stated herein or in the EULA and are subject to the limitations and qualifications set forth therein.

## A. SOFTWARE SUBSCRIPTION

Support Services includes a subscription to all new releases of the Customer licensed Software that are issued by Entreda during Customer’s term of Support Services which incorporate updates (“Releases”), but does not include enhancements licensed by Entreda for a separate fee at Entreda’s discretion. Any Software which is provided as an update or replacement may only be installed as an update to the original Software delivered. Any update to the Software or replacement Software will be subject to the terms and conditions set forth in the Purchase Terms and Conditions of which these Support Services Terms and Conditions are an integral part, and the EULA. Entreda makes no commitment that it will deliver any future release(s).

## B. [INTENTIONALLY OMITTED]

## C. SOFTWARE SUPPORT.

Entreda classifies Software problem severity as either: S1: Critical—Issue impacts multiple users: Service is down, or major functionality is unavailable or materially impacted by performance issues, and no workaround is available.. S2: High—Issue impacts multiple users: important features are unavailable or degraded, or multiple users are degraded, and no workaround is available. Or The issue impacts a single user, major functionality is unavailable or materially impacted by performance issues, and no workaround is available. S3: Medium—Issue impacts multiple or single users: important features are unavailable, but a workaround is available, Or intermittent disruption of Services. S4: Request: A minor feature is unavailable, Or there is a minor performance impact. In the event Entreda is providing Customer both tier-one and tier-two support (as specified in the applicable Order), Entreda will use commercially reasonable efforts to acknowledge Customer's problem report and commence Support Services efforts within the initial technical response objective, based upon Severity Level, after Entreda has received and classified Customer's report: S1: 2 Business Hours; S2: 6 Business Hours; S3: 8 Business Hours; S4: 24 Business Hours. All Severity 1 issues must be reported to Entreda by phone. For Software problems for Customer's entitled to both tier-one and tier-two support, Entreda will provide on-line technical support at Entreda's discretion. If Entreda determines that Customer's problem was not caused by Entreda Products and if Support Services were requested by Customer, then Entreda may charge Customer Entreda's then-current daily time and materials rate for the on-site Support Services. Notwithstanding anything herein or in any other document or agreement to the contrary, if the Software has been provided by an authorized reseller, distributor or other third party, such authorized reseller, distributor or other third party shall provide tier one support and Entreda shall only provide only limited tier-two support. Only Customer's with an Order that expressly specifies that Entreda is providing both tier-one and tier-two support shall be entitled to the support described herein.

### EXCLUSIONS.

Entreda will have no Support Services obligations for any conditions attributable to: (i) negligence, misuse or abuse of the Product or accident or neglect by Customer or any third party; (ii) installation, operation or use of the Product other than in accordance with Entreda's official specifications and the applicable Documentation; (iii) modifications, alterations or repairs to the Product made by a party other than Entreda or a party expressly authorized or designated by Entreda; (iv) use of a Product in an environment, in conditions, in a manner or for a purpose for which Product was not intended or designed or failure to maintain in accordance with Entreda's instructions, specifications or the applicable Documentation; (v) use of the Product in combination with any non-Entreda apparatus, data or programs outside Entreda's typical, recommended or reasonably anticipated use of the Products within its official Product specifications.; or (vi) causes beyond Entreda's control.

### CONDITIONS TO ENTREDA'S SUPPORT OBLIGATIONS.

Customer needs to do the following as a condition to Entreda's provision of Support Services: (i) pay all applicable fees; (ii) designate from time to time a reasonable number of authorized persons trained by Entreda who can contact Entreda for Support Services, and these are Customer's only personnel entitled to contact Entreda for Support Services; (iii) register all Products with Entreda, and provide notice to Entreda of all sites and site moves; (iv) provide Entreda access to Customer's site and/or

network and personnel as Entreda reasonably requests to assist Entreda in performing the Support Services; (v) enable Entreda's automated alert system on the Products which sends regular system status reports and alerts to Entreda when certain critical system events occur in the Product at Customer's site; (vi) use the Products in a supported configuration and maintain the Software within the then-current prior two Releases; (vii) install recommended replacement parts in the Products as reasonably directed by Entreda; (viii) refrain from arbitrarily changing Product settings or configurations reasonably recommended by Entreda; (ix) ensure that proper licenses have been obtained for all Software and adhere to all licensing terms and conditions; and (x) make available to Entreda any of Customer's systems data, information and other materials reasonably required by Entreda for the Support Services ("Customer Materials"), the accuracy of which is solely Customer's responsibility. Subject to Customer's rights in the Customer Materials, Entreda will exclusively own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by Entreda or Entreda's personnel in connection with performing Support Services ("Entreda Materials"), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. Customer will have no rights in the Entreda Materials except as expressly agreed to in writing by Entreda and Customer. Nothing in these Purchase Terms and Conditions will be deemed to restrict or limit Entreda's right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party. Customer agrees that it may be necessary for Entreda to collect, process and use Customer's data in order to perform Entreda obligations to provide Support Services. Customer consents to these activities and to the transfer of the data to Entreda affiliated companies and service providers located throughout the world who are subject to confidentiality agreements with Entreda. Entreda will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Products returned to Entreda for repair.

## REINSTATEMENT OF SUPPORT.

If Customer has not continuously complied with the terms and conditions of Support Services, Customer may request that Entreda perform an inspection of the Products and any professional services Entreda reasonably determines are required for the Products to be certified as substantially operating within their official Product specifications. After Entreda's certification, Customer may re-instate Support Services if Entreda then offers it in general commercial availability and upon payment to Entreda of: (i) time and materials services payment for certification described above; (ii) the pro rata Support Services fees that would have been payable at Entreda's then applicable annual rate of Support Services for the period the Products were not covered by Support Services; and (iii) the Support Services fees for the annual period commencing upon the re-instatement of Support Services.

## RELATIONSHIP OF THE PARTIES.

Entreda is performing Support Services as an independent contractor, and not as an employee, agent, joint venturer or partner of Customer, and neither of the parties has the authority to bind the other by contract or otherwise. Entreda acknowledges and agrees that Entreda personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Entreda is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between Entreda and Entreda personnel and the performance of Support Services by Entreda personnel.

## ENGLISH.

The parties agree and acknowledge that all Support Services will only be provided in the English language.

## LIMITED SOFTWARE WARRANTY.

Entreda warrants solely to the Customer that Software and any Entreda Service will substantially conform to the applicable Documentation for such Software and that any physical media provided by Entreda will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. Unless otherwise stated on the Quote, the warranty period for Software shall (i) be ninety (90) days; and (ii) commence upon delivery of the media or the date Customer is notified of electronic availability, as applicable. Entreda does not warrant that the operation of Software or Entreda Service will be uninterrupted or error free, that all defects can be corrected, or that Software or the Entreda Service will meet Customer's requirements. Support Services from Entreda for Software are available for separate purchase. The warranty for Software extends solely to the Customer and is not transferable.

(i) Entreda's entire liability and obligation, and Customer's sole and exclusive remedy, under the limited warranties described in this Section shall be for Entreda, at Entreda's option, to remedy the non-compliance or to replace the affected Software or Entreda Service. If Entreda is unable to effect such within a reasonable time, then Entreda shall refund the amount actually received by Entreda from Customer for Software or Entreda Service concerned. All replaced Software contained on physical media supplied by Entreda shall be returned to and become the property of Entreda. Entreda shall have no liability hereunder after expiration of the applicable warranty period. The foregoing shall not void any supplementary remedies made available to Customer by a Distributor, with respect to which Entreda shall have no liability or obligation.

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## SERVICES WARRANTY.

Entreda will use commercially reasonable efforts to provide Services in a workmanlike manner. Customer must notify Entreda of any failure to so perform within ten (10) days after the date on which such failure first occurs. Entreda's entire liability and obligation, and Customer's sole and exclusive remedy, under the limited warranties described in this Section will be for Entreda, at Entreda option: (i) to use reasonable efforts to re-perform the deficient Services within a commercially reasonable period of time; or (ii) if, after commercially reasonable efforts Entreda is not able to correct the deficiencies, refund the portion of any Services fee that corresponds to the failure to perform.

## EXCLUSIONS FROM WARRANTIES.

Entreda will have no obligation under these Limited Warranties to the extent that any problem with a Product or Software results from or is otherwise attributable to: (i) negligence, misuse or abuse of the Product or Software or accident or neglect by Customer or any third party; (ii) installation, operation or use of the Product or Software other than in accordance with Entreda's official specifications and the

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#### LIMITATION PERIOD.

UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW, THE LIMITATION PERIOD FOR CLAIMS FOR DAMAGES SHALL BE TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION ACCRUES, UNLESS STATUTORY LAW PROVIDES FOR A SHORTER LIMITATION PERIOD, IN WHICH CASE THE LIMITATION PERIOD SHALL BE SUCH SHORTER PERIOD.

#### SUPPLIERS.

THE LIMITATIONS HERIN SHALL ALSO APPLY IN FAVOR OF ENTREDA'S SUPPLIERS.

#### HAZARDOUS USE RESTRICTION.

THE PRODCUTS ARE NOT DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS, OR ANY OTHER SYSTEM WHOSE FAILURE COULD LEAD TO INJURY, DEATH, ENVIRONMENTAL DAMAGE, OR MASS DESTRUCTION.

## CAPITALIZED TERMS.

Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions, the Support Services Terms and Conditions, or the End User License Agreement, in each case to the extent applicable, each of which these Limited Warranties are an integral part and which may be found at <http://www.smarsh.com/legal>.