

AUKUA SYSTEMS CUSTOMER SUPPORT SERVICES AGREEMENT

THE FOLLOWING ARE THE TERMS AND CONDITIONS (THE “AGREEMENT”) UNDER WHICH AUKUA SYSTEMS, INC. (“AUKUA”) AGREES TO PROVIDE CUSTOMER SUPPORT SERVICES (AS GENERALLY DESCRIBED IN EXHIBIT A) TO YOU (“CUSTOMER”) FOR AUKUA’S PRODUCTS, INCLUDING HARDWARE AND SOFTWARE.

Aukua provides customer support services at a single “Standard” level of support to meet all of its Customers’ needs. The support services include crucial updates and upgrades, live customer support and timely hardware repair and replacement.

(a) Definitions.

For the purposes of this Agreement, the following definitions shall apply:

“**Aukua Facility**” means Aukua’s headquarters in Austin, Texas or such other Aukua facility as designated by Aukua.

“**Effective Date**” means the date of (a) shipment of the Product with respect to the Support Services provided with the purchase of each Product or otherwise (b) purchase of the Support Services.

“**Product**” means the Aukua Packet Generator, Capture Analyzer and any other product sold by Aukua, and any associated hardware, firmware and software (but does not include certain third party products sold separately by Aukua).

“**Support Engineer**” means an Aukua technician or other personnel who provides Support Services under this Agreement.

“**Support Level**” means the “Standard” level of support that is offered by Aukua and purchased by Customer.

“**Support Services**” means the customer support services at the Support Level purchased by Customer as more specifically described in Exhibit A and as may be modified from time to time.

“**Term**” means (a) the twelve (12) month period of coverage of Support Services (at the “standard” Support Level) provided with the purchase of each Product or otherwise (b) the period of coverage of Support Services purchased by Customer, in each case commencing with the applicable Effective Date.

(b) **Telephone and Email-Based Support.** Aukua provides technical assistance during coverage hours by telephone or through email. A Support Engineer shall work with Customer remotely to diagnose and identify software and hardware not performing to documented specifications. Aukua also provides general assistance regarding use and documentation on a limited basis. Support Services are provided in English only.

(c) Hardware Service

Support Services with respect to hardware include the repair or replacement of hardware not performing to specifications published at the time of purchase. The replacement hardware may be new, or like-new. In the event a Product has been designated “end-of-life”, Aukua’s sole obligation shall be to try to repair such hardware. If Aukua is unable to repair hardware that has been designated “end of life”,

Customer shall have the option of either (i) purchasing new hardware and continuing the Agreement for the remainder of the Term or (ii) cancelling the Agreement and receiving a pro-rata refund of the fees paid for Support Services based on the remainder of the Term relative to the whole Term.

Upon Aukua's diagnosis of a hardware failure, the Support Engineer shall issue Customer with an RMA number and provide Customer with instructions for returning the failed hardware to Aukua.

Replacement products shall be shipped from Aukua's facility in Austin, Texas.

Aukua shall not accept failed units without a valid RMA number.

(d) Software/Firmware Updates. Support Services include software and firmware releases, updates and upgrades and Customer is entitled to such releases, updates and upgrades for Products purchased. Aukua shall use commercially reasonable efforts to notify Customer of new updates and upgrades. The updates and upgrades shall be delivered exclusively via the Web. Aukua reserves the right to issue updates and upgrades in its sole discretion.

(e) Customer Responsibilities for Support Services.

It is Customer's responsibility to:

(i) Provide complete information to and cooperate with the Support Engineer in resolving the problem Customer is experiencing. Information required by the Support Engineer may include, but not be limited to, the type of hardware Customer is using, the serial number of the specific unit, the complete text of error messages and description of the problem for which Customer is seeking support and additional software or hardware Customer is using that falls outside the scope of coverage of this Agreement. The Support Engineer may also, among other things, require that Customer reload firmware or software or configuration information in order to diagnose problems. Customer understands and agrees that the completeness and accuracy of the information provided to Aukua may affect Aukua's ability to assist Customer.

(ii) Maintain the Product(s) in a location that conforms to the environmental conditions required of the Product.

(iii) Return at its cost the original failed hardware to the Aukua Facility in accordance with the return shipment instructions provided by Aukua no later than fifteen (15) days after shipment of the replacement hardware if Customer receives an advanced replacement of hardware under its Support Level. Aukua reserves the right to invoice Customer for the advanced replacement equipment at its then current price if the original failed hardware is not returned in accordance with the terms hereof.

(f) Exclusions and Restrictions.

(i) The Agreement is valid during the Term only and Customer must renew the Agreement for Support Services prior to the end of the then current Term in order to avoid any reactivation fee.

(ii) Support Services are strictly limited to telephone and electronic support only and does not include on-site support. Customer acknowledges and understands that no software is perfect or error-free and that, despite its commercially reasonable efforts, Aukua may be unable to provide answers to or resolve some or all requests for software support. Aukua makes no promises, guarantees or assurances of any kind that it shall be able to provide a resolution to problems that Customer reports. Unless otherwise agreed by Aukua, Support Services shall be provided only on the two most recent "major releases" of the firmware

or software. For purposes of this Agreement, a “major release” is a release that is denoted as a major release in the related release notes and is otherwise made available on a commercial basis.

(iii) Customization, installation, de-installation, configuration or relocation services are not covered by this Agreement.

(iv) Aukua is not obligated under this Agreement to repair or replace Product that has been (a) damaged by abuse, accident, act of God, catastrophe, neglect, theft, use not in accordance with Aukua supplied documentation, misapplication, transportation, modification, unauthorized maintenance, improper installation or shipment or the like, or damage from faulty external factors (e.g. electrical power, temperature or humidity); (b) Product that has been opened or modified by someone other than an employee or agent of Aukua or (c) damaged by the use of transceivers or other third party products that are not sold by Aukua with the Product. Customer shall not be entitled to any refund under these circumstances.

(v) For all Products, Customer must purchase a customer support services agreement only for those units for which Customer wants Support Services.

(vi) Customer may be required to implement a more current release of the software for Aukua to provide the Support Services. If a more current release of software requires a hardware upgrade, such additional cost is not part of the Support Services. Aukua shall require the Product to be shipped to the Aukua Facility for upgrade and Customer shall bear all costs associated with the hardware upgrade. Aukua shall not provide hardware upgrades for “end of life” hardware (see paragraph (g), End of Life below).

(vii) Any software, including any updates and upgrades, provided under this Agreement is licensed under the same terms and conditions as the Aukua software license associated with the Product(s) purchased.

(viii) Aukua shall use commercially reasonable efforts to meet the response time objectives stated in the Support Level. Due to the complexities of technical environments and issues that may arise, the response times are just an estimate only and actual response times may vary.

(ix) To reactivate an expired customer support agreement, Customer must pay the then current reactivation fee. In addition, prior to reactivating an expired customer support agreement on any Product, all repairs shall need to be performed, and all end-of-life hardware shall need to be upgraded. Customer shall bear all costs of such repairs and upgrades.

(x) Aukua only provides Support Services for the Products. Support for certain third party products sold separately by Aukua is provided by the relevant third party and Aukua shall not have any responsibility or obligations with respect to any such third party product support.

(xi) Aukua is not obligated under this Agreement to repair or replace Product (a) that has been exported, re-exported or imported in violation of U.S. or other countries’ export control laws and regulations; (b) if to do so would be in violation of any applicable law or regulation or (c) if Customer is currently in breach of any of the terms of this Agreement or the terms and conditions under which Customer purchased the Product. Customer shall not be entitled to any refund under these circumstances.

(g) End of Life. Aukua reserves the right to refuse to enter into a customer support services agreement with respect to any Product that it believes is reasonably likely to be designated “end-of-life” within the next twelve (12) months. Aukua decides, at its sole discretion, when a version of a Product shall be designated “end-of-life” and what the “end-of-life” date (“EOL Date”) shall be. Aukua shall use commercially reasonable efforts to provide Customer a minimum of ninety (90) day notice prior to the EOL Date of any version of a Product. Limited Support Services are available for a Product for up to twelve

(12) months after the EOL Date. Such Support Services shall not include (a) replacement of any hardware or (b) software updates or upgrades.

(h) Confidentiality. Customer agrees, both during the term of this Agreement and for a period of five (5) years thereafter, to hold all information given to it by Aukua in connection with the Support Services that is identified as confidential, and all information concerning the Products (including any software) that is not customarily and publicly available to Customer through use of the Products (collectively, the "Confidential Information"), in confidence, and not to make the Confidential Information available in any form to any third party or to use the Confidential Information for any purpose other than in connection with the Product(s). Customer agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of this Agreement, including limiting disclosure to employees or other persons who have a need to know and who are subject to confidentiality agreements with terms no less restrictive than those set forth in this paragraph (h). This restriction on disclosure shall not apply to the extent that any Confidential Information (i) is or becomes a part of the public domain through no act or omission of Customer; (ii) was in Customer's lawful possession prior to the disclosure and had not been obtained by Customer from Aukua; (iii) is lawfully disclosed to Customer by a third party without restriction on disclosure; or (iv) is independently developed by Customer personnel not having access to the Confidential Information.

(i) Warranty.

SUPPORT SERVICES RENDERED HEREUNDER AND PRODUCTS SUPPLIED PURSUANT HERETO, COME WITH AUKUA'S STANDARD 90 DAY LIMITED WARRANTY. This limited warranty is exclusive and in lieu of all other warranties, and AUKUA IS MAKING NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. The foregoing limitations shall apply even if the above-stated warranty fails of its essential purpose.

ANY SOFTWARE FURNISHED TO CUSTOMER HEREUNDER IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NONINFRINGEMENT.

(j) Limitation of Liability.

IN NO EVENT SHALL AUKUA BE LIABLE TO CUSTOMER OR ANY OTHER ENTITY FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY ANYONE OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, REPUDIATION OF CONTRACT, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT AUKUA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, ACCEPTANCE, PERFORMANCE, POSSESSION, OPERATION OR USE OF THE PRODUCT, HARDWARE, SOFTWARE OR SUPPORT SERVICES FURNISHED HEREUNDER. AUKUA'S LIABILITY IN CONNECTION WITH THIS AGREEMENT AND SUPPORT SERVICES PROVIDED HEREUNDER WHETHER FOR BREACH OF CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO A REFUND OF THE PRO RATA CHARGES PAID FOR THE SPECIFIC SUPPORT SERVICES INVOLVED IN THE CLAIM, OR \$1,000.00, WHICHEVER IS LESS. The essential purpose of this provision is to limit the potential liability of Aukua arising out of the provision of the Support Services to Customer whether for breach of contract, negligence, or otherwise. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

(k) General Provisions

(i) **Force Majeure.** Aukua shall not be liable for its failure to perform its obligations under this Agreement for causes beyond its reasonable control.

(ii) **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, excluding its choice of law rules. In the event that any dispute or controversy between the parties arises out of or is related to this Agreement, and/or the performance or termination thereof, such dispute or controversy shall be subject to the exclusive jurisdiction of the Texas state courts in and for Travis County, Texas (or, if there is federal jurisdiction, the U.S. District Court for the Western District of Texas) and the prevailing party shall recover all of its costs, including reasonable attorneys' fees.

(iii) **Transferability.** Customer may not assign this Agreement without written consent from Aukua and any attempted assignment without Aukua's consent shall be null and void. Aukua may assign its right and obligations under this Agreement to a third party.

(iv) **Complete Agreement; Amendments.** This Agreement, including the general description of the Support Services in Exhibit A, is the complete and exclusive agreement between Customer and Aukua regarding Support Services of its Product(s) and supersedes all proposals, oral or written, all negotiations, conversations or discussions between the parties relating to this Agreement or industry custom.

(v) **Unenforceable Provisions.** If any term of this Agreement is found to be illegal or unenforceable, the remaining portions of this Agreement shall remain in effect.

(vi) **Compliance with Export Control Laws and Regulations.** The Products and the Support Services, including the hardware and software, are subject to the export regulations of the United States, including but not limited to regulation under the U.S. Export Administration Regulations. Customer agrees that it shall not directly or indirectly export, re-export, transfer or disclose any Product except in strict compliance with applicable U.S. laws and regulations.

EXHIBIT A

AUKUA CUSTOMER SUPPORT SERVICES

The Aukua Systems mission is to build the highest quality products, coupled with a commitment to providing industry leading customer support services. The key components of Aukua Systems' customer support services include:

- Software Updates –
Products are kept current with the latest features and bug fixes. Aukua Systems typically provides one-to-two major software releases per year.
- Hardware Support –
In the event that a customer's hardware systems need to be repaired, Aukua Systems offers return to factory repair and advanced replacement options as described below.
- Technical Support –
Customer support is provided by trained support engineers located at the Aukua Facility in Austin, Texas, USA. A variety of support access hour and response time options are available as described below.

Software Updates

Aukua products covered by a customer support services agreement shall have access to all commercially released software and firmware updates (which shall include bug fixes, standard functions and GUI enhancements) and upgrades.

- Updates shall include standard base features.
- Support applies to the two most recent major releases. Products with older software must be upgraded.
- Software updates do not include product extensions and new functions that are generally sold by Aukua as separate software products.
- Software updates do not include custom programming, training and on-site support (including installation of hardware or software). These services are available separately at an additional cost.
- Upgrades of software do not include any necessary upgrade of hardware.

Current software releases may not work in hardware that has been designated as “end-of-life.” If a system has reached end-of-life, the customer shall need to purchase new hardware to be able to run current software.

Technical Support

Aukua's customer support offers full e-mail and live phone support.

- Support hours
 - Standard support is available 9:00 am to 6:00 pm (Central Standard Time) Monday through Friday, excluding holidays.

- Initial response time via phone or email
 - 1 business day
- If required, second level support from Aukua's engineering team is provided 9:00 am to 6:00 pm (Central Standard Time) Monday through Friday, excluding holidays.

Hardware Support

If it is determined that an issue is related to hardware, the unit shall be repaired or replaced. Determination of whether to repair or replace the hardware is at the sole discretion of Aukua.

Standard support program is 'Return to Factory'

- Requires remote field investigation by a designated support technician
- If hardware problem cannot be fixed in the field, unit to be returned to Aukua for repair or replacement.
- Aukua System's RMA process is used to return the unit to the Aukua factory.
- Unit repair/replacement turn-around shall generally be within two weeks from time of arrival at Aukua Systems.

A Customer without a currently valid customer support services agreement may send in a unit for diagnostic evaluation. The fee shall be the then current diagnostic fee. Based on this diagnosis, Aukua shall provide a quote for the cost to repair the unit.