

This Fee for Service Support Agreement (“**Agreement**”) governs the Fee for Service Support (“**Fee for Service Support**”) provided to Customer by Western Digital Technologies, Inc., a corporation having a place of business at 951 SanDisk Drive, Milpitas, CA 95035 USA (“**Provider**”).

By authorizing Provider Customer Support Center to charge the Support Services Fee (as defined below) from Customer’s credit card, Customer accepts to be bound by this Agreement and the applicable Support Plan(s) and authorizes the immediate performance of the Fee for Service Support by Provider.

## 1. Definitions.

- 1.1. “**Customer**” means an end user of a supported Product that has purchased Fee for Service Support from Provider Customer Support Center.
- 1.2. “**Customer Support Center**” means Provider web-based support available at the URL: <https://link.sandisk.com/commercialsupport> that provides the Customer access to a database of software and other available releases, technical tools, frequently asked questions, Product documentation, technical notes, product information, bug reporting, case initiation and resolution tools.
- 1.3. “**Incident**” means a report by Customer that a Product is not performing in substantial conformance to its documented specifications or is otherwise experiencing a problem.
- 1.4. “**Product**” means SanDisk brand Fusion IoMemory™ hardware and software products.
- 1.5. “**Software Release**” means a new production version and commercial release of licensed software.
- 1.6. “**Support Plan**” means the description of the technical support services that Provider offers for the Product, which Provider publishes in the Customer Support Center.
- 1.7. “**Fee for Service Support**” or “**Support Services**” means the technical support services provided to Customer pursuant to this Agreement as further described in the applicable Support Plan.

**2. Provider Fee for Service Support.** Subject to this Agreement Provider shall provide the Support Services described below and better detailed in the applicable Support Plan under “Warranty Plus” level with respect to a particular Product so long as (i) Customer has paid the Support Fee by credit card as instructed by phone by Customer Support Center, and (ii) the Product is covered by valid warranty.

- 2.1. **Maximum Number of Serial Numbers.** Each purchase of Fee for Service Support Services shall cover a maximum number of five (5) serial numbers of the same Product SKU and exhibiting the same type of Incident. In order to receive support for additional serial numbers and/or new Incidents Customer shall purchase additional Fee for Service Support Services.
- 2.2. **Technical Support.** Provider will make reasonable efforts to provide Customer with remote access to Provider qualified staff and Provider self-help tools to answer questions and address Incidents related to Products covered by Support Services. Customer will access technical support by phone, electronic mail or the Customer Support Center. The Support Plan will identify the hours for phone or electronic mail Support Services. Provider may provide Customer with access to its case management system through which Customer may view, post and receive updates to Incidents reported by Customer. Provider, in its sole discretion, may change Support Plans at any time; provided that changes made by Provider will not result in a material reduction in the level of Support Services provided during the period for which Customer has already paid. Updated Support Plan(s) will be available at the Customer Support Center.
- 2.3. **Hardware Replacement.** Provider will replace defective hardware Products pursuant to the applicable warranty and Return Material Authorization (“RMA”) terms.
- 2.4. **Software Releases.** If a Support Plan entitles Customer to Software Releases for a Product, Provider will use commercially reasonable efforts to provide Customer access to all such Software Releases when these are made generally available to other Provider Support Services Customers.
- 2.5. **Incidents Excluded from Support.** Notwithstanding any provision herein or in the applicable Support Plan, Support Services do not include assistance with any of the following: (a) Products not manufactured or licensed by Provider or Incidents caused by third party technology, including but not limited to changes to the operating system or the hardware environment in which a Product operates; (b) Products that have been improperly installed or that have been modified by someone other than an authorized representative of Provider; (c) Products damaged - whether by fire, water, humidity, virus, impact, power surge or otherwise - unless such damage is the result of the gross negligence or willful misconduct of Provider, or the agents or employees of Provider; (d) Products obtained from any party other than Provider or an authorized reseller or distributor of Provider; (e) Products that Provider no longer supports; (f) Products used in a manner other than for which they were designed or licensed; (g) Incidents caused by the use of a Product in an environment not specified in the applicable Product documentation; and (h) Incidents that are a failure to implement a Software Release made available by Provider.

3. **Customer Obligations and Service Conditions.** Customer shall comply with the following as well as with any additional requirements included in the applicable Support Plan(s) or communicated by Provider, including via the Customer Support Center.

3.1 **Maintaining Supported Software Releases.** Customer may be required to upgrade to a more recent Software Release made available by Provider with respect to a Product in order to resolve an Incident. Notwithstanding anything to the contrary in this Agreement, Provider's obligation to provide Support Services for software shall be limited to the most recent major version/Software Release thereof.

3.2 **Network Access.** Customer will provide Provider or its authorized service representative sufficient access to the affected Products and will designate a primary technical contact. Provider is not responsible for any failure to provide Support Services where Customer has refused a reasonable request for access to Customer's technical assets and records.

3.3 **Configuration Files and Backups.** Customer is responsible to maintain sufficient backup files of its data and systems configurations that can be used to restore its devices and services. Provider is not responsible for any loss of data or system information.

3.4 **System Information.** Customer shall provide information reasonably requested by Provider, including but not limited to Product serial number, software license key or serial number, operating system configuration, installation address and contact name, email address and telephone number. If Customer changes the location of a Product, Customer shall notify Provider of the new location immediately. Provider shall not be responsible for lapses or delays in Support Services associated with Customer's failure to provide such required notice.

3.5 **Responsibility for Third Party Material and Equipment Usage Rights.** Customer understands and agrees that Provider's ability to provide Support Services for a Product is preconditioned upon Customer's procuring and maintaining wherever applicable, third party materials and equipment necessary or reasonably expected to be linked to such Product. Customer is solely and exclusively responsible to obtain the ownership and rights to use applicable third party materials and equipment in connection with the operation of a Product.

#### 4. Support Services Fees

4.1 **Support Services Fee.** Provider will charge its then-current Support Services Fee (plus VAT as applicable) as communicated via the Customer Support Center. The Support Services Fee will be immediately charged on Customer's credit card. The Support Services Fee will be charged in US dollars. Additional bank fees may apply.

#### 5. Confidential Information

5.1 **Definition.** "Confidential Information" means the terms and conditions of this Agreement and information provided by the Disclosing Party to the Receiving Party that relates to the subject matter of this Agreement and is (a) marked by the Disclosing Party as confidential or designated as confidential in writing shortly after an oral disclosure and (b) the terms and pricing under this Agreement. Notwithstanding the foregoing, Confidential Information does not include information that is: (c) publicly available; (d) already known to the Receiving Party at the time of Disclosure without any obligation of confidentiality; (e) lawfully disclosed to the Receiving Party by a third party; (f) independently developed by the Receiving Party; or (g) disclosed pursuant to a legal requirement or order.

5.2 **Confidentiality Obligations.** Each party agrees not to disclose each other's Confidential Information to any third party other than those set forth in the following sentence for a period of three years from the date of the Disclosing Party's disclosure of the Confidential Information to the Receiving Party. Confidential Information may be disclosed only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under this Agreement; in addition, Provider shall also have the right to disclose the Confidential Information of Customer to affiliates of Provider (and their respective employees and subcontractors) who are likewise required to protect it against unauthorized disclosure in a manner no less protective than under this Agreement. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders submitted under this Agreement in any legal proceeding arising from or in connection with this Agreement or disclosing the Confidential Information to a governmental entity as required by law.

#### 6. Proprietary Materials; Information Provided by Others.

6.1 **Licensed Materials.** Subject to the limitations set forth below in this Section 6, Customer hereby grants Provider, and Provider hereby accepts, access to and use of Customer's and/or its third party licensor's proprietary material (the "**Licensed Materials**") solely for the purposes of providing Support Services. Customer warrants and represents that it has, or will use commercially reasonable efforts to obtain, the right and authority to grant such access to and use of all Licensed Materials to Provider hereunder. Provider shall not make any copies, distribute, reproduce, modify, transmit, reverse engineer, disassemble, decompile, prepare derivative works, of any Licensed Materials, except as necessary to provide support and as approved by Customer.

6.2. **Feedback.** To the maximum extent permitted under applicable law, Provider will own all right, title, and interest in and to any feedback (e.g., information, suggestions, ideas or comments) provided by Customer in connection with the Support Services or any product (including any derivative work associated with a product), and Customer hereby assigns any and all rights in the feedback to Provider. Provider may use the feedback, free of charge, without obtaining your consent.

## 7. Disclaimer of Warranty and Limitation of Liability

7.1. **Disclaimer of Warranty.** THIS AGREEMENT DEFINES A SERVICE ARRANGEMENT AND NOT A PRODUCT WARRANTY. SUPPORT SERVICES (INCLUDING ANY DELIVERABLES) PROVIDED HEREUNDER ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES AND CONDITIONS WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, ARE DISCLAIMED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, CONDITION, OWNERSHIP, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND/OR OF NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS AND ANY WARRANTIES ARISING DUE TO CUSTOM OF TRADE OR COURSE OF USAGE.

7.2. **Limitation of Liability.** To the extent not prohibited by applicable law, under no circumstances will Provider and/or its affiliates be liable to Customer or to Customer's affiliates or partners under any contract, strict liability, negligence, or other legal or equitable theory, for any indirect, incidental, special, punitive or consequential damages or lost profits. Notwithstanding anything else in this Agreement or otherwise, and without limiting the foregoing, neither Provider nor its affiliates will be liable for any amounts in excess of the aggregate amounts paid to Provider for the specific Support Plan(s) giving rise to the liability in question in the twelve (12) months preceding the event giving rise to such liability.

## 8. Term and Termination

8.1. **Term, Expiration, Termination.** The Term of this Agreement shall be the period necessary to close the Incident for which Customer has purchased Fee for Service Support. This Agreement is non-renewable.

Provider may terminate this Agreement for breach effective immediately by written notice if Customer breaches the terms of any software license agreement with Provider (and/or its affiliates) or this Agreement. Provider shall have no obligation to refund or credit any prepaid fees. Upon termination or expiration of this Agreement: a) Provider shall have no further Support Services obligation for all affected Products; and b) Customer shall cease using all Provider Support Services for the affected Products, including the Customer Support Center.

8.2. **Survival.** Sections 4, 5, 6, 7 and 9.1, and all financial obligations to Provider arising in connection with the Support Services or this Agreement shall survive termination or expiration of the Support Services and continue in full force and effect.

## 9. Miscellaneous

9.1 **Governing Law and Venue.** Without giving effect to principles of conflict of laws, this Agreement shall be governed by: (i) the laws of the State of California, USA, for Customers located in North America, Latin America and China; (ii) the laws of Ireland for Customers located elsewhere. Any dispute arising out of this Agreement shall be finally settled under the ICC Rules of Arbitration including those governing arbitrators selection. The language of the arbitration shall be English. The place of arbitration shall be Santa Clara County, California, USA, for disputes under (i) and Dublin, Ireland, for disputes under (ii). This Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods. Customer will comply with applicable export and trade laws and regulations associated with the Support Services and provide sufficient and timely information to Provider to achieve such compliance.

9.2 **Entire Agreement/ No Waiver.** This Agreement and the Support Plan(s) constitute the entire agreement between the parties and supersede any prior agreements between them with respect to its subject matter. Failure of any party to enforce any of the terms of this Agreement shall not constitute a waiver of that party's right thereafter to enforce each and every term of this Agreement.

9.3 **Force Majeure.** Except for Customer's payment obligations to Provider, neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without negligence of the parties.

9.4 **Assignment.** Neither this Agreement, nor any right or interest hereunder may be assigned or transferred by Customer (including by operation of law) to any third party without the prior written consent of Provider.

9.5 **Invalidity.** If any portion of this Agreement is held invalid, such invalidity shall not reflect the validity of the remaining portions of this Agreement.