



This Support Services Agreement (“**Agreement**”) and the associated Support Plan(s) govern support services provided to Customer by SanDisk International Limited, an Irish company having its principal place of business at Second Floor, South Block, The Concourse Building, Airside Business Park, Swords, Co. Dublin, Ireland and its majority-owned subsidiaries, affiliates and parent companies (collectively, “**SanDisk**”).

By purchasing Support Services Customer accepts this Agreement and the applicable Support Plans, which are hereby incorporated by reference.

## 1. Definitions.

- 1.1. “**Customer**” means an end user of a supported SanDisk Product that has purchased Support Services from SanDisk or an authorized SanDisk reseller or distributor.
- 1.2. “**Customer Support Center**” means SanDisk 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 a SanDisk hardware or software product (including hardware and software bundled together).
- 1.5. “**Software Release**” means a new production version and commercial release of the SanDisk licensed software.
- 1.6. “**Support Plan**” means the description of the technical support services that SanDisk offers for specific Products, which SanDisk publishes in the Customer Support Center.
- 1.7. “**Support Services**” means the technical support services provided to Customer pursuant to this Agreement as further described in the applicable Support Plan.

2. **SanDisk Support Services.** Subject to this Agreement and throughout the Term, SanDisk shall provide the Support Services described below and better detailed in the applicable Support Plan(s) with respect to a particular Product so long as: (a) the Support Plan expressly applies to such Product; and (b) SanDisk has accepted a valid purchase order (or other mutually agreed ordering document) for such Support Services.

2.1. **Technical Support.** SanDisk will make reasonable efforts to provide Customer with remote access to SanDisk qualified staff and SanDisk 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. SanDisk may provide Customer with access to its case management system through which Customer may view, post and receive updates to Incidents reported by Customer. SanDisk, in its sole discretion, may change Support Plans at any time; provided that changes made by SanDisk 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.

2.2. **Hardware Replacement.** SanDisk will replace defective hardware Products pursuant to the applicable warranty and Return Material Authorization (“RMA”) terms. If advance replacement shipment is provided under the applicable Support Plan, Customer must return the defective Products following the RMA instructions within thirty (30) days of advance replacement shipment. If Products returned are not received within 30 days of advance replacement shipments, SanDisk reserves the right to invoice Customer at the then-current list price. Additional Hardware Replacement Support Services are described in the applicable Support Plan and may be purchased.

2.3. **Software Releases.** If a Support Plan entitles Customer to Software Releases for a Product, SanDisk will use commercially reasonable efforts to provide Customer access to all such Software Releases when these are made generally available to other SanDisk Support Services Customers.

2.4. **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 SanDisk 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 SanDisk representative; (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 SanDisk, its agents or employees; (d) Products obtained from any party other than SanDisk or an authorized SanDisk reseller or distributor; (e) Products that SanDisk 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 SanDisk.

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 SanDisk, including via the Customer Support Center.

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

3.2 **Network Access.** Customer will provide SanDisk or its authorized service representative sufficient access to the affected Products and will designate a primary technical contact. SanDisk 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. SanDisk is not responsible for any loss of data or system information.

3.4 **System Information.** Customer shall provide information reasonably requested by SanDisk, 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 SanDisk of the new location immediately. SanDisk 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 SanDisk'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.** If Customer purchases Support Services from a third party, the amount of the fee and timing of payment shall be agreed between Customer and the third party. If Customer purchases Support Services directly from SanDisk, SanDisk will charge its then-current fee for Support Services, as set forth in a SanDisk quote or similar document. Fees for Support Services purchased from SanDisk shall be invoiced in advance and payment shall be due 30 days from the invoice date. SanDisk may also offer additional Support Services against payment of per incident support fee(s). SanDisk's prices do not include taxes.

4.2. **Renewal.** For Support Services that are renewable, no less than thirty (30) days prior to the expiration of the initial and subsequent renewal terms, Customer will receive a notice of expiration and invoice or quotation notification for annual fees for subsequent one-year terms of any Support Plans (or if applicable, pro-rated fees). If Customer wishes to continue receiving Support Services under any Support Plans, it shall provide a purchase order matching the quotation on or before the expiration date of the Support Plans in question, after which Customer will be invoiced in accordance with terms of this Agreement.

4.3. **Reinstatement of Support.** If: (a) the warranty has ended, or (b) a previously purchased Support Plan has expired or has been terminated, SanDisk, in its sole discretion, may agree to inspect the Product and place the Product under a new Support Plan. In that event, Customer must pay a non-refundable reinstatement fee and/or hardware inspection fee billed at the then-current rate in addition to the new Support Plan fees.

4.4. **End of Support Life.** SanDisk may elect, in its sole discretion and at any time, to cease providing Support Services for the Products, including different versions of any software Product. The End of Life (EOL) announcement for a Product may identify the last Support Services date or End of Service (EOS) date for such Product. Products on EOL status may have a reduced level of services available during the final three years of the EOL time period due to material availability. In the event of an EOS for a software Product, SanDisk may choose to either: (a) provide Support Services for that version of the software Product until the end of Customer's then-current Support period, at which time Support for that version will automatically terminate; or (b) issue Customer a prorated refund or credit of amounts actually received by SanDisk for the Support Services that will no longer be provided. Customer may not purchase a Support Plan(s) for Products that have reached EOS or are within one (1) year of EOS. A given Product's Support Plan may contain supplemental terms addressing EOS and EOL.

#### 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. 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 SanDisk, and SanDisk 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 SanDisk hereunder. SanDisk 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, SanDisk 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 SanDisk. SanDisk 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 SanDisk be liable to Customer nor 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, SanDisk will not be liable for any amounts in excess of the aggregate amounts paid to SanDisk 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, Renewals.** The term of each Support Plan shall be the period identified in the applicable purchase order and shall begin on date of shipment of the Product by SanDisk. For software Products, the date of shipment shall be the date of delivery unless otherwise noted in Customer's order acknowledgement. If the applicable quote or SanDisk confirmation document does not state the term, the initial term shall be one (1) year. Upon expiration of the initial term and acceptance by SanDisk of a valid purchase order for a Support Plan renewal term, the Support Services will automatically be renewed for successive periods as specified in the applicable purchase order.

8.2. **Termination.** SanDisk may terminate all or some Support Plan(s) or this Agreement for breach effective immediately by written notice if Customer breaches the terms of any software license agreement with SanDisk or this Agreement and upon thirty (30) days' prior written notice for all other material breaches that Customer fails to cure within such notice period. Either party may terminate all or some Support Services upon the bankruptcy or insolvency of the other party. Customer may terminate all or some Support Plan(s) or this Agreement upon thirty (30) days' prior written notice to SanDisk. Notwithstanding the foregoing and irrespective of whether a termination of a Support Plan or of this Agreement is for cause or for convenience, SanDisk shall have no obligation to refund or credit any prepaid fees for Support Plan(s) even if termination occurs prior to the end of a Support Plan period. Upon termination of the Support Plan for a Product or of this Agreement: a) SanDisk shall have no further Support Services obligation for all affected Products; and b) Customer shall cease using all SanDisk Support Services for the affected Products, including the Customer Support Center.

8.3. **Survival.** Sections 4, 5, 6, 7 and 9.1, and all financial obligations to SanDisk 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 SanDisk 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 SanDisk, 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 SanDisk.

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.