



HARMONIC SERVICE AND SUPPORT

TERMS AND CONDITIONS

These Terms and Conditions govern all Services (as defined below) that are provided by Harmonic or Harmonic International AG, and are between Harmonic or Harmonic International AG (as indicated in the quote or Sales Order Acknowledgement) and the end customer of such Services. By using any Services, the customer of such Services accepts these Terms and Conditions in their entirety. These Terms and Conditions apply only to Service Plans for Omneon branded products as described in Exhibit A

1. **Definitions.** Any capitalized terms not defined in this Section 1 shall have the meanings set forth on Exhibit A.
 - a) "Advance Exchange" means the practice of sending out replacement parts within the Parts Delivery Response Time, rather than waiting for receipt of a defective part before sending out a replacement.
 - b) "Advantage Service Plan" means the set of services for those Harmonic products eligible for coverage as set forth in Exhibit A under the description for the Advantage Service Plan.
 - c) "Business Day" means 9:00 AM to 5:00 PM during the days Monday through Friday, excluding legal public holidays observed by the country within which the Harmonic Regional Technical Support Center is located for parts dispatch and by the country within which the customer system is located for parts delivery.
 - d) "Defect" means a failure of a Product to conform as warranted, or in the absence of a warranty, a failure of a Product to perform substantially in conformance with its then current Documentation.
 - e) "Documentation" means the Harmonic documentation made available in electronic or hard copy form when shipped with a Product or otherwise provided to Customer when a Product is purchased. Documentation does not include advertising or marketing material.
 - f) "Emergency On-Site Service" means Harmonic on-site Technical Support during a "Severity Level 1" customer situation where a customer's production broadcast system is inoperable, or impaired to the point of impacting on-air operations in a significant way as defined herein as "Severity Level 1". Emergency On-Site Service is included with the Gold and Platinum Service Plans.
 - g) "Gold Service Plan" means the set of services set forth in Exhibit A under the description of the Gold Service Plan.
 - h) "Hardware" means a tangible product sold to Customer by Harmonic.
 - i) "Maintenance Release" means a Software Update offered to Customer to fix documented errors in Harmonic Software.
 - j) "OnDemand Service" means service provided to customers who are no longer covered under warranty or under an active Service Plan and who prefer and request support services on a 'Pay-as-You-Go' basis.
 - k) "On-Site Service" means that Harmonic will send a Field Service Engineer (FSE) to the customer's location where the Harmonic system is installed in order to provide technical servicing, in accordance with the Service Plan in effect for said customer.
 - l) "Pay-Per-Visit On-Site Service" support means customers may pre-purchase Technical Support Days for any type of post sales on-site technical support visit, to include; system tuning, commissioning, preventative maintenance, troubleshooting, break-fix, upgrade, or repair. These days may be banked for use at a later time. These Service Days expire after 12 months from date of purchase.
 - m) "Parts Delivery Response Time" means the elapsed time between the time at which Harmonic identifies the need for a Replacement Part and the time at which the Replacement Part is delivered to Customer, or delivered to customs of Customer's country if Customer is outside Harmonic's Parts Response Area (PRA). If the time at which Harmonic identifies the need for a hardware replacement occurs after a normal 'Business Day', then the Parts Delivery Response Time means the elapsed time as described above beginning the next Business Day. Installation time, if applicable, is not included in Response Time.
 - n) "Parts Response Area (PRA)" means the list of specific countries, cities, or other geographic regions or locations where Harmonic will make every reasonable commercial effort to deliver replacement parts within the "Parts Replacement Response Time" provided for in the specific Service Plan (Silver, Gold, Platinum, and Advantage) that the customer has purchased. Customers located outside of Harmonic PRAs will receive a parts delivery response time of 2 Business Days to point of importation. A list of Harmonic Parts Response Areas (PRAs) will be maintained and updated regularly on the Harmonic Web Site.
 - o) "Periodic Remote Support" means "Remote Support" in addition to regularly scheduled remote system health check, at customer's request. This service is only provided as part of the Gold and Platinum System Service Plans.

- p) "Platinum On-Site Support" means Harmonic will provide on-site Technical Support as required to resolve "Severity Level 1" and "Severity Level 2" technical issues, as defined herein, with the Harmonic system once all reasonable efforts have first been exhausted to diagnose and resolve issues via remote system access. On-Site support for "Severity Level 3" technical issues is limited to no more than five (5) days per quarter. Platinum On-Site Support days are for the sole purpose of resolving technical issues with the Harmonic system(s) covered under the Platinum level System Service Plan and cannot be used for new system installations, expansions to existing systems, training, or general system maintenance, with the exception that the "Platinum On-Site Support" includes a bi-annual On-Site System Audit and Preventative Maintenance Visits when requested by the customer. The "Platinum On-Site Service" is provided as part of the Platinum System Service Plan.
- q) "Platinum Service Plan" means the set of services set forth in Exhibit A under the description of the Platinum Service Plan.
- r) "Products" means, collectively, Hardware, Software and Service.
- s) "Project Management" means the set of services set forth in Exhibit B under the description of Project Management Services.
- t) "Replacement Parts" means a replacement of a failed Defective Product component or a complete replacement of a failed Product, at Harmonic's discretion.
- u) "Proactive Remote Support" means "Remote Support", in addition to constant connectivity to the customer system (with Customer's approval), system alerts monitoring and event notification. Harmonic will make all reasonable efforts to monitor the alerts generated by the customer's system and will notify the customer of significant events affecting the system.
- v) "Remote Support" means the collection of diagnostic information, technical troubleshooting, preventative health check-ups, configuration checks or changes of an Harmonic system via a remote, Virtual Private Network (VPN) or modem dial-up connection. All Harmonic Remote Support services are predicated upon a) customer approval for remote access and b) customer having the appropriate network infrastructure, technical equipment, facilities, and capabilities, and security approvals to support and permit remote access via VPN or Modem.
- w) "Service Area" means the area in which On-Site Services (as part of a System Service Plan) are available without possible additional charges to customer for Harmonic travel & expense, according to Harmonic's then-current Service policies. In general, a customer site is considered within an Harmonic Service Area when the physical location of the Harmonic product to be serviced is located within 200 KM or 125 Miles of an Harmonic Service Center or an Harmonic Field Service Engineer.
- x) "Service Day" means a unit of profession on-site support service which may be purchased by customer for support services described in Exhibit B.
- y) "Services" means any maintenance, technical support, installation, commissioning, training, consultation and other services performed or to be performed for customer by Harmonic.
- z) "Severity Levels" are levels that Harmonic assigns to each support case that is created for a customer. The level of severity is determined by the impact that a particular problem or situation has on the customer's operations.
- aa) "Severity Level 1" means

the Product(s) or any part thereof is inoperative or performance of the Product is so degraded that normal operations are prevented almost entirely. Without limiting the generality of the foregoing, examples of Severity Level 1 are the cessation of operation of one or more channels resulting in any of the following on-air disturbances:

- unintentional black video to air
- unintentional silence to air
- unintentional video and/or audio distortion
- unintentional video not synchronized to house reference
- unintentional viewer-noticeable lip-sync problems

or,

instability in the operation of one or more channels causing intermittent on-air disturbances, which outage could not be solved by switching to redundancy resources, and result in unintentional black video to air, unintentional silence to air, unintentional video and/or audio distortion, unintentional video not synchronized to house reference, and unintentional viewer-noticeable lip-sync problems.

or,

access to critical data is unavailable as a result of issues in the Product(s) causing an impact to normal operations.

- bb) "Severity Level 2" means performance of the Product is so downgraded that substantial disruption to normal business operations is occurring or the problem is threatening to cause a critical system failure. Without limiting the generality of the foregoing, examples of a Severity Level 2 issues include the operation of one or more channels on redundancy equipment or where all redundancy resources are exhausted or data access and transfer times are so high that it is preventing normal business operations.

- cc) "Severity Level 3" means the Product or any part thereof is experiencing errors or problems that have no impact on normal operations. Without limiting the generality of the foregoing, an example of a Severity Level 3 issues is where the Product is affected by minor problems such as one of the redundant power supplies in the backup video server is faulty where the backup video server is still actively running using the main power supply.
 - dd) "Severity Level 4" means a minor problem conditions or documentation errors, which are easily avoided or circumvented by the customer. Additional request for new feature suggestions, which are defined as new functionality in existing Product are also classified as Severity Level 4.
 - ee) "Silver Service Plan" means the set of Services set forth in Exhibit A under the description of the Silver Service Plan.
 - ff) "Software" means a) the software and/or firmware used in or with the Products and embedded into, provided with or loaded onto the Products in object code format, or b) Harmonic software products which are sold independently of Harmonic Hardware and require the use of a license key. For purposes of these Terms and Conditions, Software does not include third party software applications which are included with a Product, but are not required to operate the Product.
 - gg) "Service Plan" means the two major support service plans offered by Harmonic and categorized by the Harmonic Products eligible for coverage under those plans; System Service Plans (Silver, Gold, and Platinum) and the Advantage Service Plan.
 - hh) "System Service Plans" means the set of support services for those Harmonic Products eligible for coverage under the description for the Silver, Gold, and Platinum System Service Plans as described more fully in Exhibit A.
 - ii) "System Availability Service (SAS)" means a remote assessment service performed by Harmonic for Customers of the Platinum Service Plan as more fully described in Exhibit A.
 - jj) "Technical Consulting Days" means days that customers may purchase for technical consulting, to include system architecture development for future systems, advanced system technical discussions, network assessments, storage assessments, and other such services.
 - kk) "Technical Support Days" means days that Customer may purchase for any type of on-site technical support visit, to include system tuning, commissioning, preventative maintenance, troubleshooting, break-fix, upgrade, or repair. These days may be purchased in advance, and "banked", and expire 12 months from date of purchase.
 - ll) "Telephone Support" means telephone support services made available to Customer by Harmonic for the purposes of consultation and technical assistance on the use of the Products and the diagnosis of Defects in the Products, according to Harmonic's then-current telephone support policies.
 - mm) "Updates" means Software releases, provided by Harmonic when and if available, that are patches, workarounds, or bug fixes that correct coding, or make minor enhancements to the functionality or performance of the Software, but do not add new functionality.
 - nn) "Upgrades" means Software releases, when and if available, that contain significant enhancements to the functionality or performance of the Software. Software that is marketed by Harmonic as a new software product, and subject to new or additional license fees is not an upgrade.
2. **Service Plan.** Customer shall be entitled only to the Service Plan for which (i) Harmonic or Harmonic's agent has accepted the order in writing and (ii) Customer has paid the applicable fees. Harmonic may provide a higher level of service to Customer for a limited time at Harmonic's sole discretion, and Harmonic's provision of such level of service for such time does not constitute a right on the part of Customer to continue receiving such level of service.
 3. **Prices, Taxes and Payment Terms.** Customer will pay the fees for the Service Plans and other Services provided by Harmonic in accordance with Harmonic's standard price list, or as set forth in the Harmonic Product quote. Each Service Plan is a minimum of 12 months, and may be purchased up to a maximum of five (5) years, subject to the applicable Harmonic end-of-life policies in effect for the Harmonic Products covered by the Service Plan. The price to renew any Service Plan shall be the price in effect for the Service Plan at the time of renewal, unless otherwise set forth in a Product quote from Harmonic. Prices are exclusive of insurance, taxes and duties, all of which shall be paid by Customer. All payment for Services shall be due in advance of the twelve (12) month period for which the fees are due and in no event later than thirty (30) days from the date of invoice. If Customer has allowed the Service Plan to lapse greater than 6 Months without renewing and subsequently elects to purchase a new Service Plan, Customer may reinstate lapsed Services by paying all Services fees that are in arrears, plus any costs, on a time and material basis, that Harmonic incurs to update Customer's installation of Products to current versions (if applicable) or to resolve Defects caused by or arising during the lapse. Past due payments shall be subject to a monthly charge at the lower of (i) one and one-half percent (1.5%) per month or (ii) the highest rate of interest permitted by law. Customer shall also reimburse Harmonic for any costs incurred (including reasonable attorneys' fees) in the collection of past due payments. HARMONIC RESERVES THE RIGHT TO REFUSE SERVICE TO ANY CUSTOMER WHO IS NOT CURRENT IN ITS PAYMENT OF SERVICE FEES TO HARMONIC.
 4. **Confidential Information.** Each party agrees to treat any information that would reasonably be understood to be confidential ("Confidential Information") disclosed by the other party in the course of obtaining or providing the Services as strictly confidential, and use such Confidential Information only for the purposes of using and providing the Services as permitted hereunder. In the event that a party receiving Confidential Information is compelled to disclose the Confidential Information by law, the receiving party will first notify the disclosing party in writing.

5. **License Grant and Intellectual Property Rights.** The terms and conditions of your license to any Software are as set forth in the Product quote, or in the license which is provided with the Product (or Software Updates or Upgrades). In the absence of any such license terms and condition, the following terms and conditions will govern the use of the Software. Harmonic grants Customer a nonexclusive, nontransferable license to use the Software (including Maintenance Releases, Updates and Upgrades) only as embedded in the Products and for Buyer's internal use in conjunction with the use of the Products. Harmonic and its licensors retain all title, copyright, patent rights and other proprietary rights in the Software, Software development tools, routines and computer programs, and all tools, routines, programs, designs, technology, ideas, know-how, processes, formulas, techniques, improvements, inventions and works of authorship which are made, developed, conceived or reduced to practice by Harmonic in its performance of the Services ("Technology"). The provision of Services shall not convey or confer upon Customer or any third party a license, express or implied to any Product or Technology. Feedback and other information that is provided by Customer to Harmonic in connection with the Services may be used by Harmonic to improve or enhance its Products and, accordingly, Harmonic shall have a non-exclusive, perpetual license to use, reproduce, disclose, distribute, modify and otherwise exploit such feedback and information for any purpose and in any medium or product without restriction. Such right and license shall survive any termination or expiration of this Agreement for any reason.
6. **Contingencies to Performance of Services.** Harmonic's obligation to provide Services is contingent upon: (a) the existence of a license from Harmonic for the subject Software; (b) the performance by Customer of all of its obligations set forth in these terms and conditions (including Exhibit A) relating to the Services, (c) Customer being current in all its payments owed to Harmonic; and (d) Customer having at all times technically knowledgeable employees as its designated representatives to request support from Harmonic;.
7. **Subcontracts.** Harmonic shall have the right to use subcontractors to perform all or a portion of the Services that it performs, and the work of such subcontractors shall be deemed to satisfy Harmonic's obligations hereunder provided that such work meets the requirements of these terms and conditions. All payments are to be made to Harmonic unless Customer is notified in writing to the contrary by Harmonic. Harmonic will remain responsible for the failure of any subcontractor to perform the Services ordered by Customer.
8. **Notification of Defects.** If Customer believes that there is a Defect in the Products, Customer will (1) notify Harmonic, describing the parameters, procedures and conditions resulting from the Defect in reasonable detail to permit Harmonic to identify the Defect, and (2) provide Harmonic with all data files, software or any other relevant material, together with (if Harmonic requires) remote or on-site access, reasonably believed necessary by Harmonic for it to reproduce and analyze the Defect.
9. **Equipment and Customer Information.** To receive Services, Customer must provide Harmonic information required by Harmonic regarding the location and configuration of the Products for which Customer desires to receive the Services. Customer agrees not to move Products to another location without the express written consent of Harmonic. Continuation of Services at any new location is subject to written approval by Harmonic, and additional charges may apply.
10. **Parts Response Area.** The availability of Replacement Parts and the respective response times are limited to the Harmonic Parts Response Areas in effect at the time of parts replacement. Harmonic's current Parts Response Area may be reviewed at any time at www.omneon.com.
11. **Excluded Services.** Harmonic shall have no obligation to provide: (i) support or replacement of Products damaged by, or resolution of problems caused by, accident, abuse, misuse, third party product(s), natural or personal disaster including without limitation power surge or failure or the like, or other disaster, any unauthorized disassembly, repair or modification, or any failure to maintain and use the Products in a manner consistent with their intended purpose, the Documentation and instructions from Harmonic, (ii) support or replacement of Products that Harmonic determines in its reasonable discretion do not have a Defect; (iii) support of Software which is not within 2 releases of the most current version of the Software (iv) Products not equipped with the most current version of Hardware, if such version has been made available to Customer and Customer has failed to install such Hardware within 90 days of its availability; (v) delivery or On-Site Services outside the Service Area or On-Site Services where, in Harmonic's opinion, a condition exists that represents a hazard to the safety of its employees or agents; (vi) installation services other than those expressly provided herein or Exhibit A; (vii) customization of the Products; (viii) support or replacement of any third party product or Product in which any parts have been replaced with any different third party product not provided by Harmonic; (ix) expendable parts; (x) failure of hardware or software not covered by this Agreement; (xi) installation or use of Software on hardware or equipment not authorized by Harmonic; (xii) support services at Customer's site; (xiii) any hardware modifications necessary to accommodate Updates/Upgrades, or any remedial or other maintenance to any hardware; or (xiv) any Services for Software for which Harmonic has provided Customer written notice of discontinuance of Service. Customer will be responsible for charges on a time and materials basis for Services provided as a result of fault of Customer or third party products.
12. **Service Plan Changes.** Harmonic shall have the right to modify its Service Plans at any time. Harmonic will use reasonable efforts to notify Customers of changes to the Service Plans which result in a material reduction in Services. Unless otherwise notified by Harmonic, changes to the Service Plans will take effect upon renewal of Customer's Service Plan. Provided that, in the event Harmonic makes a change to the Service Plan during the term of Customer's Service Plan, Harmonic will provide Customer with written notice of those changes to the Service Plans which result in a substantial reduction in the Service Plans or levels of Service provided by Harmonic. Customer may, as a result of such notice, terminate its participation in the Service Plan by providing to Harmonic written notice of cancellation within 30 days of receipt of a notice of Service Plan changes from Harmonic.
13. **Customer Cooperation: Remote Network Access.** Customer shall provide Harmonic reasonable assistance and prompt access to and use of the Products and Software to allow Harmonic to provide the Services. Customer shall be responsible for providing backup of data and otherwise protecting data against loss or destruction prior to the provision of any Services. At Harmonic's reasonable request, Customer shall provide connection of Product to a telephone line or other remote access network connection, such as a virtual private network connection, for remote diagnostics and trouble-shooting, and safe adequate facilities in the event that Harmonic elects to perform any Services at Customer's site. Upon discovery of the Defect for which Services are requested, Customer shall promptly notify Harmonic according to Harmonic's published service procedures and provide a reasonably detailed observation of the Defect

including a description of the parameters, procedures, and conditions resulting from the Defect, as well as any data files, results of diagnostic programs and other information reasonably believed necessary by Harmonic to reproduce and analyze the Defect.

14. **Replacement Parts.** Only with the prior written authorization of Harmonic may Customer install Replacement Parts. Replacement Parts provided by Harmonic will be either new or refurbished to be functionally equivalent to new. Products replaced under this provision shall become the property of Harmonic. Customer will promptly package and ship the replaced items to Harmonic. Any replaced items not returned to Harmonic within thirty (30) days of receipt of the replacement item will be invoiced to Customer and Customer agrees to pay the then current list price for such items. Customer agrees, at Customer's cost and expense, to be responsible for diligence and care in the use and protection of the Replacement Parts. Without limiting the foregoing, Customer shall be responsible for following any instructions or guidelines from Harmonic with respect to Replacement Parts. Customer will be liable to Harmonic for any damages for loss of, or injury to, the Replacement Parts while in Customer's possession. All title, interest, and ownership rights in and to the Replacement Parts shall remain in Harmonic until installation of such Replacement Parts has been completed. Except with respect to Customers who have ordered the Platinum Level of Support Services, Replacement parts will be supplied on a 'Delivered Duty Unpaid' (DDU) basis (Incoterms 2010). Provided that in all cases where any Replacement Part is determined to be defective within 90 days of shipment to Customer, Harmonic will ship a subsequent Replacement Part Delivered Duty Paid. Customer will promptly package and ship the replaced items to Harmonic.

15. **Limited Services Warranty; Limitation of Liability.**

- a) **Service Warranty.** Harmonic warrants that it will use commercially reasonable efforts to perform the Services described hereunder and under the applicable Service Plan. Harmonic's entire liability and Customer's exclusive remedy for breach of this warranty shall be for Customer to cancel the Service if Harmonic fails to remedy the defective Service within sixty (60) days of notice from Customer.
- b) **Disclaimer of Warranty.** THIS WARRANTY SETS FORTH THE ENTIRE LIABILITY AND OBLIGATIONS OF HARMONIC AND ITS SUPPLIERS WITH RESPECT TO BREACH OF WARRANTY, AND THE WARRANTIES SET FORTH OR LIMITED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF NONINFRINGEMENT, FITNESS FOR PARTICULAR PURPOSE AND MERCHANTABILITY. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD.
- c) **Limitation of Liability.** HARMONIC (INCLUDING ANY OF THE PERSONNEL UTILIZED BY HARMONIC IN PROVIDING THE SERVICES) AND CUSTOMER SHALL NOT BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONDITIONAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS (INCLUDING DAMAGES FOR LOSS OF DATA, LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE), HOWEVER CAUSED, ON ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE), EVEN IF A PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HARMONIC'S CUMULATIVE LIABILITY FOR ALL CAUSES OF ACTION ARISING OUT OF THIS AGREEMENT AND/OR THE SALE OR PROVISION OF THE PRODUCTS (INCLUDING UNDER ANY WARRANTY EXTENDED IN CONNECTION THEREWITH) SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER FOR THE SERVICE(S) GIVING RISE TO THE CLAIM. THIS LIABILITY LIMIT IS CUMULATIVE AND NOT PER INCIDENT. THE FOREGOING LIMITATION OF LIABILITY WILL NOT APPLY TO ANY LOSS OR DAMAGE FOR (A) PERSONAL INJURY OR (B) PROPERTY DAMAGE TO THE EXTENT CAUSED BY HARMONIC'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- d) **Allocation of Risk.** THE LIMITED WARRANTY, EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN HARMONIC AND CUSTOMER. CUSTOMER AGREES THAT HARMONIC WOULD NOT BE ABLE TO PROVIDE THE PRODUCTS ON AN ECONOMIC BASIS WITHOUT SUCH LIMITATIONS.

16. **Term and Termination.**

- a) **Term.** This Agreement shall commence upon the later of (a) the shipment of the Product to which the Services apply, or (b) the date on which Customer submits payment for the applicable Service Plan in the event Customer purchases the Service Plan after delivery of the Product to which the Services apply ("Effective Date") and shall continue for the time period for which Customer has ordered the Service.
- b) **Termination.** Either party may terminate any or all Services by written notice to the other party no less than thirty (30) days prior to the anniversary of the Effective Date. In addition, Customer may terminate the Services at any time upon written notice to Harmonic, for any reason or no reason, but Customer shall not be entitled to any refund of the fee attributable to the remainder of the twelve (12) month period for which the Services were ordered.
- c) **Termination by Harmonic.** Notwithstanding anything to the contrary, Services may be terminated immediately by Harmonic in the event of (a) failure of Customer to pay amounts due hereunder and failure to remedy such breach within thirty (30) days after written notification by Harmonic of such breach, provided, however, that no cure period shall apply to Customer's failure to timely pay the initial payment for Services, (b) in the event of transfer or sale of all or substantially all of Customer's assets, or transfer of a controlling interest in Customer to an unaffiliated third party, (c) Customer ceasing to carry on business as a going concern, becoming the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver being appointed with respect to a substantial part of Customer's assets or (d) any material breach of these Terms and Conditions or any provision thereof by Customer.

17. **Survival.** Sections 1 (Definitions), 4 (Confidential Information), 5 (License Grant & Intellectual Property Rights), 15(b) (Disclaimer of Warranty), 15(c) (Limitation of Liability), 16 (Term and Termination) and 18 (General Provisions) shall survive any termination of Services. Section 3 (Prices, Taxes and Payment Terms) will survive with respect to any payment obligations incurred for the Services.

18. **General Provisions.** Any dispute related to the Services shall be governed in all respects by the laws of California and the parties consent to the exclusive personal jurisdiction and venue of the state and federal courts of Santa Clara County, California. These Terms and Conditions represent the entire agreement between Harmonic and Customer with respect to the subject matter, and Customer agrees that all prior negotiations, understandings, representations and/or agreements of the parties relating to the subject matter hereof, whether oral or written, are merged herein and superseded in their entirety. These Terms and Conditions may be modified only by a writing signed by both parties. Other than for express payment obligations, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation strikes, shortages of supplies, riots, war, earthquake, fire, epidemics, criminal or malicious acts of third parties, failure of utilities or common carriers, or other circumstances beyond its reasonable control. Services may not be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of Harmonic. Harmonic shall have the right to assign all or part of Services without Customer's approval. These Terms and Conditions shall bind and inure to the benefit of the successors and permitted assigns of the parties. Harmonic's failure to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights. In the event that any of these Terms and Conditions become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, all remaining Terms and Conditions shall remain in full force and effect.

EXHIBIT A
HARMONIC
SERVICE PLAN DESCRIPTIONS

Harmonic Service and Support

Harmonic offers two distinct service and support plans depending on the specific Omneon branded products to be covered. The System Service Plans (Silver, Gold, and Platinum) are uniquely designed for support of our systems products: Spectrum, MediaGrid, and MediaDeck. Support coverage for our growing portfolio of software applications and MediaTools product family is available separately under the Harmonic Advantage Plan. These service plans are described in more detail below.

Support for Harmonic Systems: Silver, Gold, & Platinum Service Plans

Customers who purchase an Omneon system may choose from one of three system Service Plans for Harmonic's core products - Spectrum, MediaGrid, and MediaDeck. Customers choose the specific service level (Silver, Gold, and Platinum) that meets their unique support and response time requirements. These System Service Plans provide support coverage for the system Hardware, as well as the core Software associated with the Harmonic Spectrum, MediaGrid, and MediaDeck systems, as well as the companion SystemManager and ContentManager management platforms.

System Service Plans At-A-Glance

Harmonic's System Service Plans provide customers with the level of support and service they need to ensure optimal uptime and system performance.

	<i>Silver Service Plan</i>	<i>Gold Service Plan</i>	<i>Platinum Service Plan</i>
Support Period	Up to 5 years	Up to 5 Years	Up to 5 Years
Parts Delivery Response¹	Advance Exchange: 3 Business Days	Advance Exchange: 2 Business Days	Advance Exchange: Next Business Day
Technical Assistance Center (TAC) Telephone Support	24 x 7	24 x 7	24 x 7 -- Priority Call Handling and Case Management
Periodic Remote Support²	At Harmonic's Discretion	Yes, plus periodic health checks	Yes, plus Proactive Remote Support ³
Software Support	Maintenance Releases & Updates	Maintenance Releases, Updates & Upgrades	Maintenance Releases Updates & Upgrades
OnSite Support	Pay per Visit	Emergency On-Site Service ⁴	Emergency On-Site Support & Platinum On-Site Support ⁴
System Availability Service (SAS)⁵	No	No	Yes

¹Delivery times are valid for customers within Harmonic Parts Response Areas (PRA). Those customers located outside of Harmonic PRAs will receive a delivery response of 2 Business Days to point of importation, or better. A list of Harmonic Parts Response Areas (PRAs) will be maintained and updated regularly at www.omneon.com.

² All Harmonic Remote Support services are predicated upon a) customer approval for remote access and b) customer having the appropriate network infrastructure, facilities, and security approvals to support and permit remote access via VPN or Modem.

³This may be purchased as an add-on to the Gold Service Plan.

⁴Applicable to Severity Level 1 Issues. Customer agrees to pay reasonable travel & expenses, at cost, for those customer locations not considered a "Service Area" by Harmonic.

⁵ Upon notification from the Customer of a natural disaster causing catastrophic impact to the Customer's broadcast operations, Harmonic will first perform a remote assessment of the damage and begin immediate preparations for delivery and installation of new Hardware and Software if needed to return the customer system back to operation as quickly as possible. Replacement components will be delivered to Customer's location and made available for a period not to exceed 90 days. Harmonic will return the damaged gear to its facility, perform a reparability assessment, and provide a summary of results to the Customer. Customer must either purchase the replacement components or pay for repair of the damaged components. Expenses for on-site services and product repair services will be billed to Customer at Harmonic's standard time and material rates. At the end of 90 days, Customer must return the replacement components to Harmonic at Customer's expense, unless Customer chooses to purchase the replacement components, otherwise Customer will be invoiced.

Support for Harmonic Software Applications and MediaTools: The Harmonic Advantage Plan

In addition to our systems products, Harmonic offers a family of software applications and MediaTool products that provide customers with a wide range of capabilities and features. Some of these applications are sold on a software-only standalone basis and some are sold as part of Harmonic’s Hardware Products. We offer a single comprehensive applications service plan for all of these Software Products, which we call the Harmonic Advantage Plan. The Harmonic Advantage Plan covers the following Harmonic products; the ProXchange, ProBrowse, and ProCast applications, the Harmonic family of MediaTools, and Rhozet software products. Harmonic reserves the right to add software applications to the list of supported applications under the Advantage Plan. The Harmonic Advantage plan provides customers with technical support coverage specifically for Harmonic Software applications and tools. This Advantage Plan is sold at the time of product purchase and provides the technical support services that customers require along with periodic feature enhancements through Software Updates. The Harmonic Advantage Plan includes:

- Technical support assistance via telephone or email 24 x 7
- Remote Access support for troubleshooting and diagnostic purposes¹
- Software Updates -- Maintenance Releases free of charge
- Software Upgrades – Major Releases with feature enhancements free of charge
- Next Business Day Advance Exchange Parts Replacement for any hardware components²

Service Plan Summary by Product Type

The chart below summarizes which Harmonic products are eligible for coverage under the two major types of Harmonic Service Plans.

Service Plan Type	Eligible Products
<p>System Service Plans</p> <ul style="list-style-type: none"> • Silver • Gold • Platinum 	<p>Harmonic Systems</p> <ul style="list-style-type: none"> • Spectrum Products • MediaGrid Products • MediaDeck Products • System Manager (including SW only version) • Content Manager
<p>Advantage Plan</p>	<p>Harmonic Applications & MediaTools</p> <ul style="list-style-type: none"> • Media Application Server • MediaTools • ProXchange • ProBrowse • ProDrive • ProXplore • MediaBridge • ProCast CDN • Rhozet

On-Site Spares

Customers having more stringent spare part delivery response requirements than those provided in the Harmonic Service Plans or who have deployed an exceptionally large or complex system architecture should consider the purchase of an on-site spares kit to ensure the highest availability of Product or component spares. Upon request, Harmonic technical support personnel will analyze a customer’s system architecture and recommend an On-Site Spares Kit customized to meet the unique requirements of each Harmonic system. Harmonic provides warranty and Service Plan coverage for any Product component purchased as part of an On-Site Spares kit.

OnDemand Service

Harmonic also offers an OnDemand Service Plan option for those customers who are no longer under Warranty or under any active support service plan, but who determine that they need support on a case-by-case basis. Harmonic OnDemand services can be purchased on a pay-as-you-go basis, and include OnDemand Remote Support, OnDemand Site Support, and OnDemand Hardware Replacements. Harmonic requires email confirmation from a customer representative of the customer’s request for OnDemand Service, prior to providing such service. Upon completion of requested service, Harmonic shall invoice the customer in accordance with the then current OnDemand Service pricing in effect. If an OnDemand customer does not pay the invoice under Harmonic’s standard payment terms, then OnDemand service will not be provided at next request.

- OnDemand Remote Support: Harmonic will provide as needed telephone, email, and remote support to customers who have no Service Plan in effect, but wish to purchase service OnDemand at a daily rate.
- OnDemand On-Site Support: Harmonic will provide On-site service and support to customers who have no Service Plan in effect, but wish to purchase on-site service OnDemand at a daily rate, plus reasonable travel expenses.

¹ In order to receive support under this plan, customers must provide Harmonic with remote system access. Such access may be provided on a temporary “as needed, per incident” basis, if necessary. All Harmonic Remote Support services are predicated upon a) customer approval for remote access and b) customer having the appropriate network infrastructure, facilities, and security approvals to support and permit remote access via VPN or Modem.

² Delivery times are valid for customers within Harmonic Parts Response Areas (PRA). Those customers located outside of Harmonic PRAs will receive a delivery response of 2 Business Days to point of importation, or better. A list of Harmonic Parts Response Areas (PRAs) will be maintained and updated regularly at www.omneon.com.

- OnDemand Hardware Replacements: Customer has a Hardware component fail that is no longer under warranty or covered under an active Service Plan. Harmonic will sell the customer a replacement item, with new Harmonic Enhanced Warranty.
- OnDemand Software Upgrade: Customer requests upgrade to latest version of Harmonic Software/Firmware release.

Harmonic Product Warranty Summary

Harmonic provides a 90-day limited software warranty and a 12 month limited hardware warranty included with the purchase price for all new products sold. During the product warranty periods, Harmonic provides customers with 24 x 7 technical assistance center (TAC) support for warranty related issues and advance exchange hardware replacement parts delivery. Customers with products under active warranty are eligible to receive Software Updates during the warranty period. Complete details of the Harmonic Warranty can be found on the Harmonic website. Customers who require a higher level of service and support than that provided under the Harmonic warranty should purchase the Harmonic Service Plan that meets their specific needs.

EXHIBIT B
HARMONIC
ADDITIONAL SERVICES DESCRIPTION

On-Site Service Days: Harmonic offers three types of on-site technical support services to meet unique customer requirements:

Technical Service Days: Customers may purchase Technical Support Days for any type of post sales on-site technical support visit, to include; system tuning, commissioning, preventative maintenance, troubleshooting, break-fix, upgrade, or repair.

Technical Consulting Days: Harmonic offers customers the option of purchasing technical consulting on a day-by-day basis. Examples of Harmonic technical consulting services would include; system architecture development for future systems, advanced system technical discussions, and network, storage, or workflow assessments.

Air Date Support Days: Customers may purchase for on-site presence of an Harmonic technical representative during on-air launch, and/or during the days immediately prior to or following launch, or during special pre-launch system testing. Air-Date Support Days can be purchased for the purposes of assisting the customer staff in administrative and operational processes or ensuring that an Harmonic technical resource is immediately available if needed during critical periods.

Each type of on-site support service is sold in the form of an on-site 'Service Day'. The pricing for on-site Service Days has been structured to provide maximum flexibility for provision of the support service at the most reasonable rate for a variety of customer environments and requirements, based on travel requirements. If desired, these days may be pre-purchased and banked for use at a later time. All Service Days expire after 12 months from date of purchase. Customer agrees to pay reasonable travel & expenses, at cost, for those customer locations not considered a "Service Area" by Harmonic. The Service is priced on a per-day basis, as follows:

- **Local Support Service Day:** This option applies to Harmonic customers where the physical location of the system is within 200 KM (125 miles) of an Harmonic Service center location with no air travel required.
- **First Day Support (non-local):** This is the price for the first day of any new visit to a non-local customer site. If multiple visits are required, a 'first day' charge is required for each separate trip.
- **Follow-on Support Service Day (non-local):** This price is applied for additional or subsequent non-local on-site Service Days following first day.

Project Management Services: Harmonic offers project management services to assist in the smooth integration of Harmonic products into customer environments. Harmonic Project Management Services will coordinate closely with installation staff, system integrators, and other suppliers as required to ensure a smooth system integration process. This service is available for upgrades, as well as for new system installations. Harmonic Project Management Services are offered in three tiers, depending on the size and complexity of the installation. Harmonic Project Management Services will coordinate closely with customer's installation staff, system integrator and other suppliers as required to ensure a smooth system integration process. This service is available for upgrades and additions as well as for new system installations.

Overview of Services provided

- Coordinate with customer project manager and/or the project manager for customer system integrator to ensure a smooth implementation and a predictable schedule
- Manage Harmonic deliverables and resources to ensure that there are no gaps
- Manage Harmonic interfaces with other vendors to ensure that any inter-product dependencies are addressed
- Manage multi-site installations and schedules where required
- Coordinate test planning with your staff and/or the system integrator
- Serve as single point of contact for implementation planning and scheduling
- Serve as single point of contact for any Harmonic issues that arise during implementation and testing
- Coordinate operational support requirements leading up to launch
- Verify completion of the project to ensure that no required items are left unaddressed

Specific Tasks

The Harmonic project manager will monitor key items to ensure that each is visible and fully planned, and that any changes that occur during that project are recognized and dealt with. Examples of such items include:

- Verify the detailed order information, and ensure that any changes needed since the order was entered are managed
- Ensure that all project information is communicated to Harmonic Service team, and facilitate communication of answers to any questions
- Draft target schedule with customer/SI, identify and reserve resources
- Verify ship dates for the Harmonic Products
- Work with your team and/or the system integrator on infrastructure preparation (power, cooling, rack space requirements, cabling)
- Verify shipment arrival and inventory, finalize the schedule for installation and coordinate with your team and/or the system integrator to ensure readiness
- Monitor the on-site implementation and testing process and ensure that all site information is recorded for effective support
- Work with customer team and/or the system integrator to ensure that effective test plan and schedule is in place
- Manage responses to issues raised during implementation, report status to customer team and/or the system integrator

Project Management Service Tiers

Harmonic Project Management Services are offered in three tiers, depending on the size and complexity of the installation. All three tiers include project management attention to the specific tasks listed above, as needed for the specific project. The project time allotted for each tier is appropriate to the scope and complexity for that tier. Harmonic will provide a quote for Project Management services tailored to your specific needs. The following examples provide a view to the typical situations appropriate for each of the three tiers of project services.

- *Tier 1:* This is appropriate for the installation or addition of a single Spectrum system, the upgrade of no more than three Spectrum systems at one site, or the installation, upgrade or addition of no more than 4 MediaDecks. This tier does not include site visits by the project manager; all Project Management Services will be performed remotely.
- *Tier 2:* This is intended to address the installation or addition of multiple Spectrum systems or a single MediaGrid system at one site. It includes one site visit by the project manager during the project planning process.
- *Tier 3:* This tier is appropriate for complex installations involving a large number of servers or a combination of servers and MediaGrid systems at one site. It includes two site visits by the project manager; one during the project planning phase and one during the Harmonic installation phase.
- Projects involving multiple sites can be accommodated with appropriate combinations of the above tier packages. Optional on-site days can be added to any of the tiers to ensure the best fit customer requirements while minimizing the cost of services to you.

Harmonic will use its reasonable efforts through effective project management and coordination to:

- Optimize the smoothness of the implementation process
- Ensure a predictable project schedule to improve adherence to target launch date
- Provide coordination with your team, the system integrator, and other vendors
- Serve as a single point of contact for all Harmonic issues
- Reduce the risk of potential problems at launch

Exclusions

The assigned Harmonic project manager assumes responsibility for the delivery and installation of Harmonic systems, acting as a central point-of-contact and coordinator for all aspects of the Harmonic system, but the overall project responsibility remains with the customer or the customer's chosen systems integrator. Harmonic project management services do not include responsibility for systems integrators or other vendors, or for their delivery or performance. The Harmonic Project Management services will be considered complete when the Harmonic system has been installed and any identified Harmonic issues have been documented and addressed, irrespective of final air or system launch date.

Dedicated Service Engineer ("DSE")

Harmonic offers Dedicated Service Engineering services for those customers with complex or critical operating environments who desire to augment their own technical engineering staff with a dedicated Harmonic field service engineer. An Harmonic dedicated service engineer ("DSE") is based locally and can be focused solely on one customer's operations or be shared among a small number of local or regional customers. An Harmonic DSE provides customers with the assurance of on-site dedicated technical expertise, with the key knowledge, skills, and experience to maintain, service, and support the complete range of Harmonic Products. DSEs provide customers with the following support services³:

- Proactive monitoring of the system status and health
- Preventative maintenance of Harmonic Products
- Direct internal access to Harmonic support and engineering infrastructure
- Management and monitoring of all active issues
- Regular reporting on status and open issues
- Installation of any software changes or upgrades
- On-Site support as needed during normal business hours
- After-hours support, as required and as mutually agreed
- Ongoing informal training of staff members on Harmonic system operation and maintenance
- Assistance in planning for changes and growth
- Detailed knowledge of overall operational workflow and requirements

The consistent view and focused expertise of the DSE provides a significant business benefit to the customer's operation as a whole. Harmonic DSEs are trained on all Harmonic Products and capable of providing a level of technical service and support commensurate with that of our standard field service engineering teams. The Dedicated Service Engineer is intended to complement your own technical staff, but does not replace it. This person is not responsible for the support of the overall operation, and is not responsible for equipment or systems not supplied by Harmonic.

Customer Responsibilities

Provide a reasonable work area for the DSE, including a desk and Internet access, and a telephone. Provide the DSE with physical access to the facility, equipment and systems, subject to any safety and security and policies that are in effect. For customer environments involving more than one site, the customer is responsible for expenses incurred if the DSE is asked to travel to sites other than the local site to which they are associated.

³ DSE services, while sold separately, are only available to those customers under an active Harmonic Warranty or Service Plan.

Educational Services

Harmonic offers a variety of technical training courses for our Harmonic family of products. Most courses are instructor led and incorporate lecture, hands-on, presentation by PowerPoint, eLearning skill building exercises, printed course materials, and open discussion; typically in a classroom/lab atmosphere. Customers may purchase training in several forms, to include; Individual Training Days, which provide informal hands-on operational and technical training at any location (customer, partner, Harmonic) with limited class size for 2-4 students, limited (if any) course materials, and no set curriculum and Formal Training, which provides instructor led training in a classroom environment, onsite or at an Harmonic location, with limited class size of 8 students, includes student training guides, and a set curriculum.