



## GIGAMON SUPPORT AND MAINTENANCE AGREEMENT

Last Updated 09.21.2020

This Gigamon Support and Maintenance Agreement (“**Support Agreement**”) is between Gigamon Inc. (“**Gigamon**”) and the company or other legal entity (“**Customer**”) that is purchasing support and maintenance services from Gigamon (“**Support Services**”), directly or through an authorized channel partner, for the Products and for the subscription term listed on the applicable purchase order.

### 1. Support Services.

- a. **Generally.** If Customer believes a Product is experiencing a Defect, Customer may contact the Gigamon Technical Support team (“**Support Team**”) as specified in <https://www.gigamon.com/support-and-services/contact-support>. After the Support Team has confirmed that the Product is covered by an active Support Agreement, they will use reasonable efforts to address the Defect. Support Services are subject to Gigamon’s End of Sale/End of Life terms set forth in Exhibit A.
- b. **Hardware.** If a Support Team engineer confirms the Customer-reported Defect in a Hardware Product (each such Product, “**Suspect Hardware**”), and approves the RMA before the local cut-off time, then the following process will apply:
  - (i) **Return and Replacement (R&R).** Unless Customer has purchased a Support Level that includes advance Hardware Replacement, the Suspect Hardware must be returned to Gigamon at the Customer’s cost and expense prior to Gigamon providing a Replacement Product. For all return shipments of Suspect Hardware to Gigamon, Customer will pay for freight to the Return Location. Customer will also pay all taxes, duties, fees or other charges incurred in connection with the Suspect Hardware importation unless Customer is returning Suspect Hardware from the U.S., any Select Countries, or any IOR/EOR Countries (in which case importation will not be necessary). Within 10 business days of receipt of the Suspect Hardware at the Return Location, Gigamon will ship a Replacement Product. Gigamon may ship a Replacement Product with a minimum shipping version of Software and Customer will be responsible for upgrading to the then-current version of the Software for the Replacement Product.
  - (ii) **Advance Hardware Replacement (AHR).** If Customer purchases a Support Level that includes advance Hardware replacement, Gigamon will send a Replacement Product to Customer prior to receiving the Suspect Hardware. Gigamon will provide (a) next business day delivery of the Advanced Replacement Unit (ARU) to Customer locations in the U.S. and Select Countries; or (b) same-day shipment of the ARU to Customer for Customer locations in all other countries. For all ARU shipments, Gigamon will pay for freight to Customer’s location; however, Customers will pay all taxes, tariffs, duties, fees or other charges incurred in connection with the ARU importation unless the ARU is shipped to a Customer location in the U.S., any Select Countries, or any IOR/EOR Countries (in which case importation will not be necessary). Gigamon may ship ARUs with a minimum shipping version of Software and Customer will be responsible for upgrading to the then-current version of the Software for the ARU. Customer must return the Suspect Hardware to the Return Location within thirty (30) days of receiving the ARU unless Gigamon waives this requirement in advance and in writing. Regarding the return shipment of the Suspect Hardware to the Return Location: (i) Gigamon will provide a pre-paid return label if Customer is shipping the Suspect Product from the US, any Select Countries, or an IOR/EOR Countries; but (ii) Customer is responsible for the return freight as well as taxes, tariffs, duties, fees, or other charges incurred in connection with return shipments of Suspect Hardware to Gigamon from any other country. Customer will be billed for the then-current published list price of the ARU if Customer fails to return the Suspect Hardware to Gigamon within the specified time frame, or if Gigamon reasonably determines, after receipt of the Suspect Hardware, that the Customer-reported Defect is not covered under this Support Agreement.
- c. **Software.** Customer will be entitled to receive General Availability (GA) Releases, and any updates to GA Releases, such as Maintenance Releases during the subscription term of the Support Services for which Customer has paid. If a Support Team engineer confirms a Customer-reported Defect in Software, Gigamon will use reasonable efforts to make available to



Customer a correction or workaround for the Defect, provided that the Defect occurs when the Software is used within normal operating conditions and as permitted in the Gigamon Terms and subject to the other provisions herein.

- d. **Exclusions.** Gigamon has no obligation under this Support Agreement to provide support or troubleshooting services, and will have no liability, for:
- (i) any hardware or software purchased from Gigamon or its authorized channel partners for which Support Services has not been purchased;
  - (ii) design, staging, or configuration validation;
  - (iii) support, troubleshooting or configuration assistance for hardware and/or software products not provided by Gigamon; or
  - (iv) support or troubleshooting services in connection with use of the Product or for any Defect in the Product caused by: (A) the improper use, alteration, or damage of the Product by Customer or any third party; (B) modifications to the Product; or (C) third party hardware or software.
- e. **Additional Services.** If Gigamon performs services at Customer's request beyond the scope of the Support Services, Customer will be billed at Gigamon's then-current charges for such services. Gigamon will be under no obligation to provide any such services.

**2. No Gaps in Support Services Allowed.** Gaps in coverage of Support Services for Products are not allowed. Therefore, Customers that purchase Support Services after the initial Product purchase or an expiration of prior Support Services may be charged a certification and/or reinstatement fee, along with fees to cover all gaps in coverage, in addition to the renewal of or new Support Services purchased. Fees for gaps in Support Services will be calculated starting (a) for initial Product purchase, on the date the initial Product is shipped or otherwise made available for download; or (b) for renewals, on the date the previous Support Agreement expired.

**3. No Warranty.** EXCEPT AS EXPRESSLY SET FORTH HEREIN THE SUPPORT SERVICES AND REPLACEMENT PRODUCTS ARE PROVIDED "AS-IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED, IMPLIED, OR STATUTORY. TO THE EXTENT PERMITTED BY LAW, GIGAMON EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NONINFRINGEMENT. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE APPLICABLE COVERAGE PERIOD.

**4. Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, GIGAMON WILL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS OR LOST DATA, IN CONNECTION WITH THE PRODUCTS OR SUPPORT SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GIGAMON'S MAXIMUM LIABILITY UNDER THIS SUPPORT AGREEMENT IS LIMITED TO THE FEES RECEIVED BY GIGAMON FOR THE SUPPORT SERVICES IN THE TWELVE (12) MONTHS PERIOD BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY. THESE LIMITATIONS OF LIABILITY WILL APPLY REGARDLESS OF THE NATURE OR THEORY OF THE CLAIM AND WILL BE EFFECTIVE EVEN IF GIGAMON HAS BEEN ADVISED OF THE POSSIBILITY OF ANY DAMAGES. THE LIMITATIONS IN THIS SECTION WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS SUPPORT AGREEMENT

**5. Force Majeure.** Gigamon shall not be liable for any failure to perform its obligations under this Support Agreement as a result of a cause beyond its reasonable control (a "Force Majeure Event"), including but not limited to, act of God or public enemy; act of terrorism; act, order, requirement or advisory of any military, civil or regulatory authority; change in any law or regulations; fire, flood, earthquake, storm, epidemic, pandemic, viral or communicable disease outbreak, quarantine, national emergency, or other like event and any governmental orders or advisories related thereto; supply chain disruption; disruption of transportation systems; disruption or outage of communications, power or utility; labor problem; lack of or inability to obtain fuel, power, components or materials; or any other cause, whether similar or dissimilar to any of the foregoing, that could not have been prevented with reasonable care.



- 6. General.** This Agreement is governed by the laws of the State of California, without reference to its conflict of laws principles. Any dispute regarding this Support Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. This Support Agreement is the entire agreement between Customer and Gigamon and supersedes any other communications with respect to the subject matter of this Support Agreement. Additional or conflicting terms on any purchase order or other document issued by Customer or any authorized channel partner will have no force or effect. Customer's access and use of the Products is governed by the Gigamon Terms.
- 7. Definitions.**
- a. **"AHR"** means advance Hardware replacement.
  - b. **"ARU"** means an advanced Replacement Product unit, which is sent to the Customer prior to Gigamon receiving the Suspect Hardware.
  - c. **"CVSS"** means the Common Vulnerability Scoring System published by the Forum of Incident Response and Security Teams (FIRST). Gigamon uses CVSS for guidance on determining the urgency of a response and to assign a Defect priority level.
  - d. **"Defect"** means any verifiable and reproducible failure of the Product to materially conform to the Specifications that is validated by Gigamon, unless such failure is caused by (a) Customer's failure to implement in a timely manner Software upgrades or updates to the Product made available to Customer by Gigamon; (b) a Force Majeure Event, (c) acts of government; (d) misuse or abuse, (e) Customer instructions, installation, or set up adjustments; (f) modifications of or to any part of the Product by any party other than Gigamon; (g) accident or damage; or (h) use of the Software other than as permitted in the Gigamon Terms.
  - e. **"General Availability Release" or "GA Release"** means generally available Software issued concurrently to all Gigamon customers with an active Support Agreement.
  - f. **"Gigamon Terms"** means the end user terms and conditions for Gigamon Products set forth at <https://www.gigamon.com/content/dam/resource-library/english/user---support-documentation/gigamon-terms-and-conditions.pdf>.
  - g. **"Hardware"** means the Gigamon-branded hardware products, purchased from Gigamon or its authorized channel partners. For clarity, Software may be included with or embedded in Gigamon Hardware (but is not included within the scope of Gigamon Hardware).
  - h. **"Hot Patch"** means corrections provided outside the Maintenance Release update cycle to address Defects in existing Software.
  - i. **"IOR/EOR Countries"** means the countries listed at <https://www.gigamon.com/support/warranty/local-service-depot-countries.html>.
  - j. **"Maintenance Release"** means Software issued to address a Defect and/or to introduce feature additions within a GA Release.
  - k. **"Priority 1 Defect"** means any Defect in the Product that, in a production environment, (a) causes Customer's network or environment to go down, (b) causes a critical impact to Customer's business operations, or (c) has a CVSS v3 base score of 8.5 – 10 for any reported security vulnerability.
  - l. **"Priority 2 Defect"** means any Defect in the Product that (a) causes Customer's network or environment to be severely degraded, (b) causes significant aspects of Customer's business operation to be negatively affected, or (b) has a CVSS v3 score of 4 – 8.4 for any reported security vulnerability.
  - m. **"Priority 3 Defect"** means any Defect in the Product that (a) causes operational performance of Customer's network or



environment to be impaired while most business operations remain functional or (b) has a CVSS v3 score of 0 – 3.9 for any reported security vulnerability.

- n. **“Product”** means the Hardware, the Software, or any combination thereof.
- o. **“Replacement Product”** means, at Gigamon’s sole discretion, the same Product model or a product of equivalent fit, form, and function, which is sent to the Customer.
- p. **“Return Location”** means the location specified by Gigamon for Suspect Hardware returns.
- q. **“RMA”** means a Gigamon-authorized return material authorization.
- r. **“Select Countries”** means the countries listed at <https://www.gigamon.com/support/warranty/local-service-depot-countries.html> that are main global stocking reverse logistic depots.
- s. **“Software”** means any object or binary code or firmware, any accompanying Documentation, and any upgrades or updates therefor, that are provided by Gigamon or an authorized channel partner on Gigamon’s behalf and that are either (i) included with or embedded in the Gigamon Hardware, or (ii) provided as a separate Gigamon-branded software product.
- t. **“Specifications”** means the applicable Gigamon-published Product specifications.
- u. **“Support Level”** is the level of Support Services purchased under this Support Addendum as set forth in the applicable purchase order.



## EXHIBIT A

### **END OF SALE/END OF LIFE TERMS**

**Last Updated 09.21.2020**

**Notice that Product will become an End of Sale (EOS) Product.** Gigamon will make commercially reasonable efforts to provide a minimum of six (6) months advance notice (by posting on the customer and/or channel partner portals) of the date after which orders for a particular Product (the “EOS Product”), will no longer be accepted (“Last Sale Date”). During that six-month period, Gigamon will continue to accept orders for the EOS Product, as well as for support and maintenance for such EOS Product. Gigamon may, at its discretion, agree to ship EOS Products after the Last Sale Date, but only if the order is accepted by Gigamon prior to the Last Sale Date. Support and maintenance is available for five (5) years following the Last Sale Date for hardware and one (1) year following the Last Sale Date for software, subject to the Software Release Policy notes below.

**Support and Maintenance after Last Sale Date.** If a customer has an active support and maintenance agreement for the EOS Product as of the Last Sale Date, it will be honored for the duration of the applicable term, subject to the Software Release Policy notes below.

**Renewal of Support and Maintenance after Last Sale Date.** After the Last Sale Date, customers may renew existing support and maintenance agreements, but the term of those renewals shall not extend beyond the End of Life Date (defined below) and are subject to the Software Release Policy notes below.

**End of Life/End of Support Date.** The date that is 5 years after the Last Sale Date for hardware and 1 year after the Last Sale Date for software is the End of Life Date (the “EOL Date” or “End of Life Date”). On the EOL Date, no further support or maintenance of any kind (even for security vulnerabilities) will be available for the Product.

**Warranty after Last Sale Date.** If a customer has an active warranty applicable to the EOS Product as of the Last Sale Date, it will be honored for the duration of the applicable warranty term, subject to the Software Release Policy notes below.

#### **Software Release Policy Notes.**

Subject to the customer having an active support and maintenance agreement as of the Last Sale Date, the customer receives the benefit of all operating system software updates and upgrades for 12 months after the Last Sale Date and must upgrade to the last GA Release provided within that 12 month period (“Final Release”). The customer will receive additional Maintenance Releases and support during the lifecycle of the Final Release, for either 12 months from the Final Release general availability date (if the release is designated as a “Technology Release” for which Gigamon offers a limited engineering and technical support life-cycle) or 24 months from the Final Release general availability date (if the version is designated as a “Long-Term Support Release” for which Gigamon offers a prolonged engineering and technical support life-cycle). At the expiration of this period, the customer may receive only Hot Patches for P1 defects on the Final Release software on the EOS Product until the earlier of the expiration of the customer’s support contract or the End of Life Date.

**No Lapse and Reinstatement of Support and Maintenance Allowed.** If a customer’s support and maintenance agreement applicable to the EOS Product has lapsed prior to the Last Sale Date without renewal, it may not be reinstated, and no support or maintenance of any kind will be offered for such product after the Last Sale Date.