

GIGAMON SOFTWARE AND PRODUCT SUPPORT AGREEMENT

_____ SUPPORT TYPE

This **Gigamon Software and Product Support Agreement** (“**Support Agreement**”) is between Gigamon Inc. (“**Gigamon**”) and the customer identified in Attachment A (“**Customer**”) for the support and maintenance of the Products (defined below) by Gigamon. This Support Agreement is for the period specified in Attachment A (the “**Effective Period**”). The Support Type and Product(s) covered under this Agreement also are listed in Attachment A, which is hereby incorporated by this reference.

1. Technical Support Response, Restore, and Communication Levels.

- a. Generally. If Customer believes a Product is experiencing an Error, Customer may contact Gigamon Technical Support team (“**Support Team**”) as specified in <https://www.gigamon.com/support-and-services/contact-support>. Once Tech Support has confirmed that the Product is covered by an active Support Agreement, they will assist the Customer in addressing the Error in accordance with Gigamon’s Support Response Time Policy, which is attached as Attachment B and incorporated by reference. Gigamon and the Customer will jointly agree on the priority level assigned to an Error.
- b. Hardware. If a Support Team engineer confirms the Customer-reported Error in a Hardware unit (each such unit, “**Suspect Hardware**”), and approves the RMA before the local cut-off time, then the following process will apply:

R&R Services. The Suspect Hardware must be returned to Gigamon at the Customer’s cost and expense. 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., a Select Country, or an IOR/EOR Country (in which case importation will not be necessary). Within 10 business days of receipt of the Suspect Hardware, Gigamon will ship a Replacement Product. Gigamon may ship 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 or as recommended by the Support Team.

AHR Same Day Ship Services. Gigamon will provide (a) next business day delivery of the 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, 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., a Select Country, or and IOR/EOR Country (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 or as recommended by the Support Team. 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 to Customers shipping the Suspect Product from the US, a Select Country, or an IOR/EOR Country; but (ii) the Customer is responsible for the return freight as well as taxes, 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 requested time frame, or if Gigamon reasonably determines, after receipt of the Suspect Hardware, that the Customer-reported Error is not covered under this Support Agreement.

- c. Software. Subject to Gigamon’s Software Release Policy (at <https://www.gigamon.com/support-and-services/policies>), Customers will be entitled to receive General Availability Releases, Maintenance Releases and Hot Patches during the Effective Period. Customers registered on Gigamon’s Customer Portal website as the email contact for updates will receive email notification of Software releases. Both the Customer Portal and Gigamon website (www.gigamon.com), have information on the latest released Software versions.

If a Support Team engineer confirms a Customer-reported Error in Software, Gigamon will provide the Customer a workaround or instructions for downloading a Software correction. If the issue is new and has not been previously resolved by Gigamon, the Support Team will escalate the problem and provide a correction as set forth in Attachment B.

- d. **Exclusions.** Gigamon has no obligation under this Support Agreement to provide support or troubleshooting services, and will have no liability, for any hardware or software purchased from Gigamon or its authorized channel partners but not listed on Attachment A. Additionally, Gigamon will have no obligation to provide:
- (i) design, staging, or configuration validation unless directly associated to addressing an Error;
 - (ii) support, troubleshooting or configuration assistance for third party (non-Gigamon) hardware and/or software products; or
 - (iii) support or troubleshooting services in connection with use of the Product or for any failure or error 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. **Fees.** Gaps in coverage of a Support Agreement are not allowed. Therefore, Customers that purchase a Support Agreement after the initial Product purchase or an expiration of prior coverage will be charged fees to cover all gaps in coverage, in addition to any new Support Agreement purchased. Support Service fees for coverage gaps will be calculated starting as of the later of (a) the date of initial Product purchase; or (b) for renewals, the date the previous Support Agreement expired. All Software Support and Maintenance fees are non-refundable.
3. **Force Majeure.** Notwithstanding any other provision of this Support Agreement, Gigamon will have no liability for any cessation, interruption, or delay in the performance of its obligations hereunder due to causes beyond its reasonable control including, but not limited to: earthquake, flood, fire, storm, or other natural disaster, act of God, act of government, labor controversy or threat thereof, civil disturbance or commotion, acts or threats of terrorism, war, or armed conflict.
4. **No Warranty.** EXCEPT AS EXPRESSLY SET FORTH HEREIN THE SUPPORT SERVICES AND ARUs 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.
5. **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. IF A PRODUCT CONTAINS AN ERROR, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE REPAIR OR REPLACEMENT OF THE PRODUCT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GIGAMON'S MAXIMUM LIABILITY UNDER THIS SUPPORT AGREEMENT IS EXPRESSLY LIMITED TO THE LESSER OF THE PRICE PAID FOR THE PRODUCT OR THE COST OF REPAIR OR REPLACEMENT OF THE PRODUCT. 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.
6. **General.** Gigamon's entire liability and Customer's exclusive remedy under this Support Agreement will be the repair or replacement, at Gigamon's sole discretion, of the Products that do not meet the applicable Specifications. This Support Agreement is governed by the laws of the California, without reference to its conflict of laws principles. Any dispute regarding the Support Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, U.S.A. This Support Agreement is non-transferrable and non-refundable. The Support Agreement constitutes the entire agreement between Customer and Gigamon with respect to the Support Services and supersedes any other communications with respect to the Support Services. Additional or conflicting terms on any purchase order or other document issued by Customer or any third party will have no force or effect. These terms and conditions may not be amended, waived or modified, except in a writing signed by a duly authorized representative of each party and no course of dealing or usage of trade may be invoked to amend, waive or modify any term of this Support Agreement. If any provision of the Support Agreement is held invalid or unenforceable, the remainder of the Support Agreement will continue in full force and effect. No waiver by either party of any rights under the Support Agreement will be effective unless such waiver is in a writing signed by the party against whom enforcement is sought. Any notices relating to this Support Agreement should be sent via receipted delivery to Gigamon Inc., Attention: Legal Department, 3300 Olcott Street, Santa Clara, CA 95054 or by email to legal@gigamon.com.

7. Definitions.

- a. “**AHR**” means advance hardware replacement.
- b. “**ARU**” means a Replacement Product, which is sent to the Customer prior to Gigamon receiving the Suspect Hardware.
- c. “**CVSS**” means the Common Vulnerability Scoring System published by Forum of Incident Response and Security Teams (FIRST). Gigamon uses CVSS for guidance on determining the urgency of a response and maps it to Gigamon Priority scheme.
- d. “**Error**” means any verifiable and reproducible failure of the Product to materially conform to the Specifications unless such failure is caused by (a) Customer’s failure to implement in a timely manner Software updates, improvements, or modifications to the Product provided to Customer by Gigamon; (b) acts of God, (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 Gigamon’s End User License Agreement.
- e. “**General Availability Releases**” means Software issued concurrently to all Gigamon customers with an active Support Agreement at regular pre-planned intervals. General Availability Releases are identified by the first two digits. The first digit (e.g. 3.x and 4.x) indicates a Major Release. The second digit (e.g. 4.0 and 4.1) indicates a Minor Release.
- f. “**Hardware**” means the Gigamon-branded hardware products, purchased from Gigamon or its authorized distributors, and listed in Attachment A.
- g. “**Hot Patch**” means corrections provided to address defects or Errors in existing Software.
- h. “**IOR/EOR Countries**” means the countries listed at www.gigamon.com/support-and-services/rma-sd; Gigamon maintains local “non-stocking” depots in IOR/EOR Countries that allow for localized material handling.
- i. “**Major Release**” means an upgrade, such as an architectural change or new platform support, to existing Software.
- j. “**Minor Release**” means an update providing a new feature that builds upon the main upgrade trunk of existing Software.
- k. “**Maintenance Release**” means Software issued to address a known defect and/or to introduce minor feature additions.
- l. “**Product**” means the Hardware, the Software, or any combination thereof.
- m. “**Priority 1 Error**” means any demonstrable Error in the Product that, in a production environment, (a) causes the Product to have a significant loss of utility of intended function; or (b) prevents the Product from being installed or operated when properly configured or (c) CVSS v3 base score of 8.5 – 10 for any reported security vulnerability.
- n. “**Priority 2 Error**” means any demonstrable Error in the Product that (a) causes the Product to operate improperly in a manner which negatively impacts the normal course of business for Customer; or (b) produces results materially different from those described in the Specifications but does not rise to the level of a Priority 1 Error or (c) CVSS v3 score of 4 – 8.4 for any reported security vulnerability.
- o. “**Priority 3 Error**” means any demonstrable Error in the Product that (a) causes a function not to execute as documented in the Specifications without a significant loss of utility or intended functionality; or (b) disables one or more nonessential functions or (b) disables one or more nonessential functions or (c) CVSS v3 score of 0 – 3.9 for any reported security vulnerability
- p. “**R&R**” means Gigamon’s Return and Replace service, under which Gigamon will send a replacement Product to the Customer within 10 business days of receiving the suspect Product at Gigamon’s designated Return Location.
- q. “**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 after Gigamon has received the Suspect Hardware from the Customer.

- r. **“Return Location”** means the location specified by Gigamon for Suspect Hardware returns.
- s. **“RMA”** means a Gigamon-authorized return material authorization.
- t. **“Select Countries”** means the countries listed at www.gigamon.com/support-and-services/rma-sd that are main Global stocking reverse logistic depots.
- u. **“Software”** means the object or binary code included in the Hardware or ordered separately from Gigamon or its authorized distributors for use in connection with the Hardware and listed in Attachment A.
- v. **“Specifications”** means the applicable Gigamon-published Product specifications.
- w. **“Support Service”** means the services described in Sections 1(b).
- x. **“Support Type”** is the level of Support Service purchased under this Agreement, as set forth in Attachment A.
- y. **“Suspect Hardware”** is defined in Section 1(b).

ATTACHMENT B
Support Response Policy

STANDARD			
	Priority 1	Priority 2	Priority 3
Initial Response	2 Hour	4 Hours	2 Days
Status Update Time*	Live on phone until resolved	Daily	Twice Weekly
Restore Times	SW: 24 hours	SW: 48 Hours	N/A
Resolution Time	SW: 5 Days	SW: 10 Days	As agreed / Next MNT release
Communication Method	Phone Only	Phone/Email	Phone/Email

PREMIUM			
	Priority 1	Priority 2	Priority 3
Initial Response	1 Hour	2 Hours	8 Hours
Status Update Time*	Live on phone until resolved	Daily	Daily
Restore Times	SW: 24 hours	SW: 48 Hours	N/A
Resolution Time	SW: 5 Days	SW: 10 Days	As agreed / Next MNT release
Communication Method	Phone Only	Phone/Email <u>After Hours: Phone only</u>	Phone/Email <u>After hours: Phone only</u>

*Status Update Time may be renegotiated as agreed by Gigamon and Customer on a case-by-case basis.

ATTACHMENT B

Support Response Policy

Support Type: BASIC			
	Priority 1	Priority 2	Priority 3
Initial Response	2 Hour	4 Hours	2 Days
Status Update Time*	Live on phone until resolved	Daily	Twice Weekly
Restore Time	SW: 24 hours	SW: 48 Hours	N/A
Resolution Time	SW: 5 Days	SW: 10 Days	As agreed / Next MNT release
Communication Method	Phone Only	Phone/Email	Phone/Email

Support Type: ENHANCED			
	Priority 1	Priority 2	Priority 3
Initial Response	2 Hour	4 Hours	2 Days
Status Update Time*	Live on phone until resolved	Daily	Twice Weekly
Restore Time	SW: 24 hours	SW: 48 Hours	N/A
Resolution Time	SW: 5 Days	SW: 10 Days	As agreed / Next MNT release
Communication Method	Phone Only	Phone/Email	Phone/Email

Support Type: ELITE			
	Priority 1	Priority 2	Priority 3
Initial Response	1 Hour	2 Hours	8 Hours
Status Update Time*	Live on phone until resolved	Daily	Daily
Restore Time	SW: 24 hours	SW: 48 Hours	N/A
Resolution Time	SW: 5 Days	SW: 10 Days	As agreed / Next MNT release
Communication Method	Phone Only	Phone/Email <u>After Hours: Phone only</u>	Phone/Email <u>After hours: Phone only</u>

*Status Update Time may be renegotiated as agreed by Gigamon and Customer on a case-by-case basis.