



DIAMANTI SUPPORT AGREEMENT

PROVIDED THAT YOU HAVE PURCHASED, AND ARE CURRENT IN YOUR FEE PAYMENTS FOR, THE SUPPORT SERVICES DESCRIBED BELOW (“**Support**”), DIAMANTI, INC. (“**Diamanti**”) AGREES TO PROVIDE TO YOUR BUSINESS OR ORGANIZATION (“**Customer**”) SUCH SUPPORT FOR THE PRODUCT(S) THAT CUSTOMER HAS RECEIVED, EITHER DIRECTLY FROM DIAMANTI OR FROM AN AUTHORIZED DIAMANTI RESELLER, ONLY IF: (A) YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER; AND (B) YOU ACCEPT AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS IN THIS DIAMANTI SUPPORT AGREEMENT, INCLUDING ALL DOCUMENTS INCORPORATED HEREIN BY REFERENCE (COLLECTIVELY, THIS “**Agreement**”).

1. DEFINITIONS

- 1.1. “**Cluster**” means a group of Equipment operating together as a single logical entity.
- 1.2. “**Documentation**” means such manuals, documentation and any other supporting materials relating to the Products as currently maintained by Diamanti and generally provided to its Customers.
- 1.3. “**Error**” means any reproducible failure of the Products to perform any material function as set forth in Documentation.
- 1.4. “**Equipment**” means the hardware purchased by Customer, upon which the Software runs and operates. Equipment may be branded by Diamanti (“**Diamanti Equipment**”) or by a third-party OEM (“**OEM Equipment**”), and subject to a separate purchase or ordering document.
- 1.5. “**Licensed Materials**” means the Software and Documentation.
- 1.6. “**Order**” means a purchase order, invoice or other electronic or written order for the commercial transaction between Customer and Diamanti (or an authorized Diamanti Reseller) concerning Products and/or Support, including the applicable level of Support and Support Term that Customer has ordered and paid for pursuant to this Agreement.
- 1.7. “**Permanent Solution**” means a resolution to a problem that causes the Software or Diamanti Equipment to substantially conform with specifications.
- 1.8. “**Products**” means the Diamanti Equipment and Licensed Materials.”
- 1.9. “**Reseller**” means a third party that is authorized to resell Equipment, Licensed Materials and Support to Customer.
- 1.10. “**Software**” means the object code version of the Diamanti computer software provided to Customer pursuant to an Order, any extracts from such software, derivative works of such software or collective works constituting such software (such as subsequent releases) to the extent offered to Customer under this Agreement, and the related Documentation. Software may include third party software licensed to Diamanti. Software shall not mean software subject to open source, GPL or similar licensing terms which may be included with the Software. Applicable copyright notices and open source, GPL or similar licensing terms can be found at www.diamanti.com/legal.
- 1.11. “**Software Upgrades/Enhancements**” means any new release of Software providing error corrections, improved usability, improved performance, and/or enhancements, each of which are distributed on a when-and-if-available basis free of charge to Customer receiving Software maintenance. Software Upgrade/Enhancement shall not include Software whether currently existing or developed in the future, which is marketed and offered by Diamanti to its customers generally as a separate product.
- 1.12. “**Support Term**” means the term of Support (e.g., one-year, three-years or five-years).
- 1.13. “**Work Around**” means a temporary resolution that restores the operation of the Equipment or Software without material loss of functionality.

2. TERM OF SUPPORT

The Support Term commences upon the shipment of the Diamanti Equipment and/or Software pursuant to an Order, and, subject to timely payment, continued through the Support Term specified in the Order. Support is non-cancelable and non-transferable, and any fees paid for Support are non-refundable.

3. SUPPORT SERVICES

During the Support Term, Diamanti will provide the following:

3.1. Software Support Services.

3.1.1. Diamanti shall **(a)** repair or replace defective media on which any Software is furnished, caused by defects in materials and workmanship under normal use, and **(b)** use commercially reasonable efforts to correct or modify any Software so as to conform in all material respects with its specifications. In this regard, Diamanti may provide Software Upgrades/Enhancements to correct or modify the Licensed Materials, or provide a Permanent Solution or Work Around (as further described below) to the Software, all at no additional charge to Customer. Diamanti does not warrant that Customer's use of the Software will be uninterrupted or error free.

3.1.2. Diamanti will provide Customer with any Software Upgrades/Enhancements for the Software at no additional charge. Software Upgrades/Enhancements, bug fixes, Permanent Solutions and Work Arounds may be made available electronically.

3.1.3. Permanent Solutions. Diamanti shall use commercially reasonable efforts to deliver a Permanent Solution to Customer in Diamanti's next regularly scheduled Software Upgrade/Enhancement. A Permanent Solution may include a patch, if such patch can be deployed in the Software without affecting service or operation. If such a patch cannot be provided, Diamanti shall use commercially reasonable efforts to provide a Work Around.

3.1.4. Work Arounds. A Work Around may consist of a patch or instructions on how to avoid the problem. If possible, a Work Around shall be capable of being installed, without undue interruption or degradation of service or operation, in the Software.

3.2. Hardware Support Services.

3.2.1. Standard Support Service. Diamanti will provide telephone help desk support subject to the targeted response times below, between the hours of 9 AM to 5 PM PST, Monday through Friday. Any necessary replacement part(s) will be dispatched to arrive within three (3) business days provided that the determination by a Diamanti Customer Support Engineer that any replacement part(s) are required in order for the Equipment to conform to its published specifications, is made before 3 PM PST.

3.2.2. Premium Support Service. Diamanti will provide telephone help desk support subject to the targeted response times below, twenty-four (24) hours a day, seven (7) days per week. During business hours of 9 AM to 5 PM PST customers with Premium support will have access to Diamanti support via a private Slack channel established in the Diamanti Slack Workspace. Any necessary replacement part(s) will be dispatched to arrive the next business day provided that the determination by a Diamanti Customer Support Engineer that any replacement part(s) are required in order for the Equipment to conform to its published specification, is made before 3 PM PST.

3.2.3. Returns. Defective parts must be returned pursuant to Diamanti's return material authorization ("**RMA**") policy located at www.diamanti.com/legal. Diamanti reserves the right to charge Customer the cost of any replacement part if Customer fails to comply with its RMA policy. Notwithstanding the foregoing, in the event Customer has purchased and paid for contemporaneously with its Diamanti Equipment purchase, SSD component insurance to keep a non-conforming SSD, and Customer certifies (at a director level or above) that an SSD is defective and unusable, then Customer shall not be obliged to return the SSD and will receive a replacement SSD. Returned parts shall become the property of Diamanti.

For Non-Diamanti Equipment: The support services and RMA process for any third-party, OEM Equipment may be different than that of the Diamanti Equipment. If you have purchased OEM Equipment, please refer to the OEM provider for its support agreement, policies and RMA process.

3.2.4. Determination. For purposes of these Hardware Support Services, determination that Diamanti Equipment replacement parts are required will be made by a Diamanti Customer Support Engineer.

3.3. Response Times. Diamanti targets to provide responses for new cases in the timeframes outlined below based on the severity of the case:

Case Priority	Standard	Premium	Case Priority Severity Definition
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	Support	Support	
Severity 1:	4 hours*	2 hours	Cluster has stopped working and is down.
Severity 2:	8 hours*	4 hours	Cluster is working but in a degraded state.
Severity 3:	Next Business Day	8 hours	Product configuration issues.
Severity 4:	Next Business Day	16 hours	Product Information and Enhancement requests.
* Cases opened prior to 1:00 PM PST on a business day will be answered the same day. Cases opened after 1:00 PM PST may be answered on that business day or the next business day.			

4. PROBLEM REPORTING

Diamanti will provide portal, email and telephone support to Customer on non-conformance issues relating to the Equipment and Software in accordance with the Response Times set forth above.

Customers may notify Diamanti by telephone at US Toll Free +1-855-516-3767 or +1-408-805-3870 (International), by email (support@diamanti.com), or by Diamanti support portal and shall provide (i) Customer name, email address, phone number, serial number(s) of the Diamanti Equipment appliance(s) being reported, and (ii) a description of the problem encountered and how to repeat the condition which brought about the problem. Severity 1 and Severity 2 issues (as defined above) must be opened by calling Diamanti customer support. Severity 1 and 2 cases cannot be opened via email or portal.

5. EXCLUSIONS

5.1. Diamanti has no obligations to perform Support in the event of any abuse, misuse, accident, alteration including alteration, modification and/or installation of unauthorized equipment or software, neglect, unauthorized maintenance, repair, installation or movement, or exposure to any condition or operating environment beyond Diamanti's recommended physical, power, functional constraints or storage requirements (including temperature and/or humidity ranges).

5.2. The costs of configuration (after initial base configuration), reconfiguration, installation, de-installation, relocation, certification, supplies, accessories, media (unless covered by Section 3.1.1 above) and other expendables are also excluded and will be charged at Diamanti's current prices in effect at the time such costs are incurred.

5.3. Diamanti's Support Services are provided exclusively for Diamanti Software and Diamanti Branded Equipment. Support services for OEM Equipment, to the extent available, are solely provided by the OEM offering such OEM Equipment, or its designated third-party service provider.

6. CUSTOMER RESPONSIBILITIES

6.1. Diamanti's Support obligations are subject to:

- Customer's designation of personnel who have sufficient skill and training in using the Products and who contact Diamanti for Support after first attempting to resolve the issue themselves;
- Customer providing Diamanti reasonable access to Customer's site and/or network and personnel as Diamanti reasonably requests to assist Diamanti in performing the Support;
- Customer installation of Upgrades/Enhancements and recommended Product replacement parts, as reasonably directed by Diamanti; and
- Customer maintaining in place and complying with all licenses required with respect to the Software.

6.2. Customer shall back-up any data or other information stored or contained in or on any Products returned to Diamanti, and Diamanti excludes any liability for the loss of the same while in Diamanti's possession.

7. LIABILITY

7.1. **EXCLUSION OF CERTAIN LOSSES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, OR FOR ANY LOSS OF GOODWILL, LOST PROFITS, LOSS OF BUSINESS OR LOST OPPORTUNITIES IN ANY WAY RELATING TO THIS AGREEMENT, EVEN IF A PARTY HAS BEEN NOTIFIED OF, OR REASONABLY COULD HAVE

FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

7.2. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF DIAMANTI EXCEED THE LESSER OF ONE MILLION DOLLARS (\$1,000,000) OR THE FEES PAID BY CUSTOMER FOR THE LICENSED MATERIALS IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE CLAIM. FOR PURPOSES OF THIS SECTION, A "CLAIM" SHALL MEAN, COLLECTIVELY, ALL CAUSES OF ACTION, DAMAGES, CLAIMS OR DISPUTES OR SIMILAR REQUESTS FOR COMPENSATION THAT ARE RELATED TO OR ARISE FROM THIS AGREEMENT AND FROM A PARTICULAR EVENT, ACT, OMISSION, FAILURE OR ROOT CAUSE.

8. GENERAL

8.1. **Assignment.** Customer may not assign this Agreement or any of its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Diamanti. This Agreement shall bind each party and its permitted successors and assignees. Any assignment in contravention of this Section shall be null and void and of no force or effect.

8.2. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of California. The UN Convention on Contracts for the International Sale of Goods shall not apply.

8.3. **Entire Agreement.** This Agreement, including accepted Orders and any amendments hereto, is the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, communications or representations, written or oral, between the parties with respect to the subject matter of this Agreement and represents the complete integration of the parties' agreement. This Agreement may be modified only by a written agreement executed by authorized officers of each party. Any different or additional terms of Customer's purchase order, confirmation, quote or similar ordering document will have no force or effect and will not be considered accepted or agreed to by Diamanti. If the terms and conditions in this Agreement are considered an offer, acceptance is expressly limited to such terms and conditions.

8.4. **Severability.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired. No delay or omission to exercise any right or remedy accruing to a party upon any breach or default of the other party shall impair that right or remedy, or be construed to be a waiver of any breach or default.

8.5. **Hazardous and Excluded Use Restriction.** The Equipment and Licensed Materials are not designed for use, and Customer agrees not to use, the Equipment and Licensed Materials for: (i) the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems, or any other system whose failure could lead to injury, death, environmental damage, or mass destruction; and (ii) in applications in which failure of such products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage ("**Excluded Uses**"). Customer has the sole responsibility for protecting its data – by periodically creating redundant copies or otherwise – and Diamanti is not responsible for lost or corrupted data, work stoppage, inaccurate output or computer failure or malfunction associated with (or occurring during) any Excluded Use.

8.6. **Force Majeure.** Except for the obligation to pay monies due and owing, 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 acts of God, labor disputes, shortages of supplies, fire, war, disruption related to terrorism, epidemics or pandemics, delays of common carriers or any other cause which is beyond the reasonable control of such party. The obligations and rights of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay.

8.7. **Compliance with Laws.** Customer hereby acknowledges that the Equipment and Licensed Materials are subject to export controls under the laws and regulations of the United States and other countries. Customer shall comply with such laws and regulations and agrees not to export, re-export or transfer Equipment and Licensed Materials in violation of all required U.S. Government and other relevant government authorizations or licenses.

8.8. **Survival.** All terms of this Agreement which must survive in order to fulfil their essential purpose shall survive termination or expiration of this Agreement. For avoidance of doubt, no rights granted Customer hereunder shall survive termination.

