

**IMPORTANT. Read the following NXP Professional Support Service Agreement (“Agreement”) completely. By any affirming action performed by you, you indicate that you accept the terms of this Agreement.**

## **Professional Support Service Agreement**

This Agreement is a legal contract between you, either as an individual or as an authorized representative of your employer, (referred to as “you”) and NXP USA, Inc., with offices located at 6501 William Cannon Drive West, Austin, Texas 78735-8598 (“NXP”) that sets out the terms and conditions for the provision to you of Support Services for certain software as more specifically defined below, from NXP. You and NXP are sometimes referred to in this Agreement collectively as the “Parties” and individually as “Party”.

### **1. Definitions**

- 1.1. The following terms are defined in the Order: Support Fee, Customer Project, Term, and Support Hours Cap.
- 1.2. "Affiliate" means, with respect to a party, any corporation or other legal entity that now or hereafter Controls, is Controlled by or is under common Control with such party; where "Control" means the direct or indirect ownership of greater than fifty percent (50%) of the shares or similar interests entitled to vote for the election of directors or other persons performing similar functions. An entity is considered an Affiliate only so long as such Control exists.
- 1.3. “Bug” means an error or performance issue with the Supported Software which does not substantially conform with applicable documentation.
- 1.4. “Confidential Information” means all data and information relating to the business, management, and technology of a party that, if disclosed in writing, is marked as confidential or similar marking and, if disclosed orally or visually, is identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days after the disclosure. Confidential Information does not include information that:
  - a) is or later becomes generally available to the public without fault of the receiving party (“Recipient”);
  - b) is rightfully in Recipient’s possession without obligation of confidentiality prior to its disclosure by the disclosing party (“Discloser”); is independently developed by Recipient without the use of any Confidential Information of Discloser or any breach of this Agreement;
  - c) is obtained by Recipient without obligation of confidentiality or use from a third party who has the right to so disclose it; or
  - d) is approved for release in writing by the Discloser. The parties agree that any source code versions of Software delivered by NXP are the Confidential Information of NXP regardless of whether the Software was marked as confidential or otherwise.
- 1.5. “Hot Fix” means a quick release of specific component(s) of the Supported Software intended to address specific issues in the Supported Software to remove any blocking issues encountered. A Hot Fix is provided only to users who have encountered the

particular error addressed by the Hot Fix. Hot Fixes have minimal testing and may not receive the full testing performed on a full release.

- 1.6. "Order" means the documentation provided by NXP or NXP distribution partner and used by you to order Support Services.
- 1.7. "Patch" means a collection of Hot Fixes. Patches may be provided to all Support Service customers from time to time to address various issues before a full release is available. Like Hot Fixes, patches will undergo sufficient testing to ensure that errors are corrected but may not receive the full testing performed on a full release.
- 1.8. "Private Support Portal" means a unique, secure support forum privately accessible only by your designated support users and NXP. Unless agreed in advance by NXP, the Private Support Portal will be the primary means to submit Support Issues and receive Support Services, receive feedback and answers, exchange code, other files, and track interactions with NXP's technical support team.
- 1.9. "Professional Support Representative" means the NXP internal or third-party engineering resource(s) assigned by NXP to perform Support Services.
- 1.10. "Support Issue" means a question or issue within the scope of the Support Services Agreement submitted by you using your Private Support Portal requiring a response from NXP.
- 1.11. "Support Services" means those services more specifically outlined in section 2.
- 1.12. "Supported Software" means the Board Support Package or other software agreed to be supported by NXP and acquired through an authorized download from NXP.com.

## **2. Support Services.**

- 2.1. Upon NXP acceptance of your purchase order for the Support Fee - received directly from you or on your behalf through an approved NXP distribution partner - during the applicable Term, NXP will use commercially reasonable efforts to provide Support Services for the Supported Software. Support Services include:
  - a) technical assistance provided through a unique, secure Private Support Portal, and
  - b) updates in the form of workarounds, documentation updates, Hot Fixes, Patches, or Releases of Supported Software to the you at NXP's sole discretion.
  - c) Technical assistance to confirm the existence of a reported Bug, however no Support Services hours will be charged against your Professional Support contract for NXP's time to correct or determine a fix for the reported Bug.

NXP may address support requests by eliminating the defect, providing updates, or demonstrating how to avoid the effects of the defect with reasonable commercial effort. Support requests may also be resolved through error corrections, patches, bug fixes, workarounds (i.e. temporary solutions used to complete a task that would not otherwise be possible due to a problem or limitation in the affected Supported Software),

replacement deliveries or any other type of Supported Software or documentation corrections or modifications. Each party acknowledges that despite a party's reasonable efforts, not all problems may be solvable.

- 2.2. Support Services are provided to you principally through your Private Support Portal. NXP, in its sole discretion will respond to support requests or otherwise communicate with you by phone or through email. Support Services are purchased and provided for a single, specified Customer Project associated with the Supported Software unless notated differently in the Order. Support Services are provided for three users defined by you and accepted by NXP. NXP, in its sole discretion may allow more than three users.
- 2.3. Support Services will be provided for up to a limit of hours specified in the Order as Support Hours Cap. NXP will provide Support Services for the Supported Software up to the Support Hours Cap for a period of 52 weeks from the date you purchased the Support Services ("Support Period").
- 2.4. NXP will acknowledge receipt of a Support Issue within 1 business day and will use commercially reasonable efforts to provide a prompt resolution of Support Issues during NXP's normal business hours, which are during the days Monday through Friday (excluding holidays) and between the hours of 8am-5pm Central Standard Time.
- 2.5. If you encounter a problem while using the Supported Software, you must provide NXP with sufficient detail to permit NXP to understand and reproduce the problem. In addition, NXP may, at its sole discretion and from time to time, make updates generally available to users of the Supported Software.
- 2.6. NXP may use a third party to perform the Support Services. You will provide timely input to NXP for all reasonably requested assistance in performing the Services. Support Services are provided in English only.
- 2.7. Support Services do not include the diagnosis and correction of errors arising from:
  - a) Products made, supplied or licensed by a third party, or modifications or adaptations of, or merger (in whole or in part) of the Supported Software by any party other than NXP or its agents that modifies the general operation or the intended purpose of the Supported Software. If you notify NXP of a problem and it is established that the problem is due to the incorrect or improper use or modification of the Supported Software (as opposed to a defect in the Supported Software), NXP will have no obligation to take any action, but may at its sole discretion attempt to correct the problem to the extent such problem is related to the preceding causes. Upon your written request and written authorization delivered to NXP that NXP should proceed with work on a time and materials basis, and at NXP's sole discretion, NXP may attempt to correct the problem, and you will pay NXP the then current time and materials rate for all services provided and all expenses of NXP associated with performance of those services, whether or not the problem is eventually corrected.
  - b) The improper use, operation or neglect of the Supported Software.

- c) The failure by you to implement recommendations in respect of the solutions and faults previously advised by NXP.
  - d) Any breach by the you of your obligations under this Agreement or the License Agreement.
  - e) The use of the Supported Software for a purpose for which it was not designed.
- 2.8. NXP may at its sole discretion discontinue support for Supported Software that NXP has discontinued.
- 2.9. Exclusively in connection with your design and development of product containing a programmable processing unit (e.g. a microprocessor or microcontroller) supplied directly or indirectly from NXP, NXP may provide hardware-based debug, design or board bring up assistance (“Hardware Design Guidance”) on your custom platform design. Hardware Design Guidance is provided “AS IS”, without warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose, or non-infringement. You assume the entire risk arising out of the use or performance of the Hardware Design Guidance, or any systems you design using the Hardware Design Guidance (if any).

### **3. Your Obligations.**

- 3.1. You must have normal and customary commercial grade Internet access for NXP to provide the Support Services.
- 3.2. To be eligible to receive Support Services, and as a condition to NXP providing those Support Services, you must have downloaded the Supported Software and agreed to the license terms and conditions associated with that download (“Underlying License”) or have a separately negotiated and signed license (“Signed License”) (Underlying License and Signed License are referred to collectively as the “License Agreement”) and be in compliance with those terms.
- 3.3. Prior to placing a support request with NXP, you must have examined whether the error is reproducible, whether the error relates to your system and if so, whether the error may be related to any third party owned Supported Software components in your system.
- 3.4. All support requests must be accompanied by adequate supporting information. Minimally, this information will include (i) detailed description of the error (ii) circumstances under which the error occurred; and (iii) sufficient additional information to enable NXP to reproduce, classify and correct the error.
- 3.5. You will have the sole discretion whether or not to use any error corrections or updates provided by NXP. You will install the error corrections and updates only in accordance with the license grant under the License Agreement and validate correct operation of the installed error correction or update.

### **4. License Terms and License to Error Corrections and Updates**

- 4.1. The Supported Software, including any error corrections and updates provided pursuant to the Support Services, is licensed to you under the License Agreement that you have already agreed to separately.
- 4.2. If NXP decides, in its sole discretion, to provide Support Services related to code other than the Supported Software, as per section 2.8(a), these Support Services will be performed entirely on your behalf.
  - a) Any new 3<sup>rd</sup> party software downloaded in the scope of these Support Services will be deemed to be downloaded directly by you, and your receipt of such software is not a distribution from NXP. You are responsible for obtaining a valid license and complying with all license conditions, obligations, requirements, and limitations. You have the right to reject any such software, with the understanding that NXP has no obligation to attempt to find an alternative if the proposed solution is rejected.
  - b) This type of Support Services involves work on your software, whether you send it to NXP's Professional Support Representatives or they come to your facilities. In no case will there be a "distribution" of software. When NXP's Professional Support Representatives gain access to your software this is not considered to be you distributing software to NXP, and when NXP's Professional Support Representatives make modifications on your behalf this is not considered to be NXP distributing the modifications to you.

## **5. Support Fee.**

- 5.1. Initial Term. In consideration for the Support Services to be provided under this Agreement, you will pay the Support Fees associated with the level of support purchased by you. NXP reserves the right to invoice all or a part of the Support Fee as an NRE (Non-Recurring Engineering) fee. If you accept any access code from NXP that allows you to access Support Services prior to receipt of any invoices or other normal and customary order processing events, you agree not to take any action that interferes with the order processing events – like rejecting delivery of the physical support certificate.
- 5.2. Payments. You will pay each invoice within 30 days of the date of invoice (the "Due Date"). NXP reserves the right to supply and invoice through any Affiliate or Distributor at its discretion. You acknowledge that Distributor is an independent business and is free to set its own prices, terms and conditions of sale, which may include a markup to cover the cost of its value-added services. NXP makes no representation about the prices, terms and conditions of sale agreed upon by Distributor and Company. For any overdue payments, NXP may suspend Support Services and you will pay NXP an interest charge calculated from the Due Date at the prime rate, as set forth in the Wall Street Journal, East Coast Edition on the first day such payment is overdue, plus one and one half (1½) percent, or the highest rate permitted by applicable law, whichever is lower.
- 5.3. Taxes.
  - a) All fees and amounts payable by you to NXP are exclusive of any value added tax, goods and service tax, sales tax, use tax, consumption tax or any other similar tax only (collectively referred to as "VAT"). If the transactions as described in this Agreement are subject to any applicable VAT, NXP will provide you with an invoice which specifically states this VAT. Provided NXP has stated VAT (as identified above) on an invoice you will pay to NXP the VAT properly chargeable in respect of

that payment. NXP will not invoice or otherwise attempt to collect from you any taxes with respect to which you have provided NXP with (i) a valid resale or exemption certificate, (ii) evidence of direct payment authority, or (iii) other evidence, reasonably acceptable to NXP, that such taxes do not apply.

- b) If any VAT or VAT surcharge deductions or withholdings are required by applicable Law to be made from any of the sums payable, you will pay such additional amount to NXP as well, after the VAT or VAT surcharge deduction or withholding has been made, leaving the NXP with the same amount as it would have been entitled to receive in the absence of any such requirement to make a VAT or VAT surcharge deduction or withholding.
- c) If you are required by law to withhold (not being VAT or VAT surcharges) and remit tax relating to a purchase under this Agreement, you will transmit to NXP official tax receipts or other evidence issued by said tax or other government authorities sufficient to enable NXP to support a claim for tax credit or refund in respect to such withheld taxes paid by you.

## **6. Feedback**

You grant to NXP a non-exclusive, transferable, irrevocable, perpetual, worldwide, royalty-free, sub-licensable license under your intellectual property rights to use without restriction and for any purpose any suggestion, comment or other feedback related to the Supported Software (including, but not limited to, error corrections, bug fixes and updates).

## **7. Intellectual Proprietary Rights.**

The Supported Software, including any fixes or updates provided to you, is licensed, not sold. All intellectual property rights, including all copyrights and patent rights, in and to the Supported Software will, at all times, remain with NXP or its licensors. NXP and its licensors reserve all rights not expressly granted to you. Physical copies of the Supported Software remain the property of NXP. You must fully reproduce any copyright or other notice marked on any part of the Supported Software on all authorized copies and must not alter or remove any such copyright or other notice.

## **8. Termination.**

- 8.1. This Agreement is effective from the date you register Support Services and will continue until the either the maximum hours of Support Services has been expended, or the time period for the purchased Support Services has expired, whichever is sooner.
- 8.2. Support Services may be terminated by NXP for: failure by you to pay for Support Services; abusive or fraudulent use of Support Services by you; or for breach of the License Agreement. If NXP terminates the Support Services as a result of your breach of the License Agreement, you will immediately cease use of the Supported Software, delete the Supported Software from all computer systems on which it resides, and return to NXP any media containing the Supported Software as well as any related materials.
- 8.3. The provisions of Sections 6 (Feedback), 7 (Intellectual Property Rights), 8 (Termination), 9 (Limitation of Liability), 10 (Export Compliance) 11 (Confidentiality) and 12 (General) will survive any termination of the Agreement.
- 8.4. When Support Services expire, you will have continued use of Supported Software received under this Agreement, subject to the continued adherence to the terms and conditions of this Agreement and the License Agreement.

## **9. LIMITATION OF LIABILITY.**

- 9.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NXP OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, PERSONAL INJURY, LOSS OF PRIVACY, OR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE RESULTS OF SERVICES OR NXP DELIVERABLES, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR BREACH OF CONTRACT OF NXP OR ANY SUPPLIER, AND EVEN IF NXP OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2. NOTWITHSTANDING ANY DAMAGES THAT YOU MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED ABOVE AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE LIABILITY OF NXP AND ANY OF ITS SUPPLIERS UNDER ANY PROVISION OF THIS AGREEMENT AND YOUR EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING WILL BE LIMITED TO THE AMOUNT, IF ANY, ACTUALLY PAID BY YOU FOR THE SUPPORT SERVICES. THE FOREGOING LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 9.3. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES TO BE PURCHASED ARE FURNISHED AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

## **10. EXPORT COMPLIANCE.**

- 10.1 Each party will comply with all applicable federal, state and local laws, including, but not limited to those pertaining to U.S. Export Administration (including without limitation restrictions on certain military end uses and military end users as specified in Section 15 C.F.R. § 744.21) or the export or import controls or restrictions of other applicable jurisdictions.
- 10.2 If the delivery of products, services, software, or technology (collectively, "Items") under this Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, NXP may suspend its obligations and you/your rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and NXP may terminate any Agreement related to such Items, without incurring any liability towards you.

If an end-user statement is required, NXP will inform you immediately and you will provide NXP with required documentation upon NXP's written request. You will inform NXP immediately if an import license is required, and you will provide NXP with the applicable document as soon as it is available. By entering into this Agreement or accepting any Items, you agree that it will not deal with the Items, and/or documentation related thereto in violation of any applicable export or import control laws and regulations."

## **11. Confidentiality.**

Each party receiving Confidential Information ("Recipient") from the other party ("Discloser") will not disclose to any third party or use for any purpose except as required in the performance of this Agreement any Confidential Information of Discloser. Recipient may disclose such Confidential Information only to its employees, agents or consultants who must use the Confidential Information for purposes of this Agreement and who are bound to keep such information confidential. Recipient will give Discloser's Confidential Information at least the same level of protection as it gives its own Confidential Information of similar nature, but not less than a reasonable level of protection. Recipient's confidentiality and use obligations under this Section 11 will survive for five (5) years from the date of disclosure, except with respect to source code, where they will be perpetual. A Recipient may make disclosures of a Discloser's Confidential Information required by court order provided that the Recipient limits disclosure to the information specifically required, provides reasonable notice of the requirement, allows the Discloser to participate in the proceeding regarding disclosure, and assists Discloser's efforts to obtain confidential treatment or a protective order at the Discloser's expense.

## **12. General.**

This Support Agreement constitutes the entire and final agreement and supersedes all other communications. No modifications will be binding unless made in a signed, written amendment, or a subsequent NXP click-through. If any provision is held invalid, all other provisions will remain valid. This Support Agreement may not be assigned by you. Any assignment in violation of the foregoing will be null and void. NXP may assign this Agreement, or any part of this Agreement, in its sole discretion. This Support Agreement will be enforced and construed in accordance with the laws of the State of Texas without reference to conflict of law principles. Any litigation will be subject to the exclusive jurisdiction of the state or federal courts in the State of Texas and you consent to the personal jurisdiction of the state and federal courts located in Travis County, Texas. NXP will not be liable for any delay or failure to perform due to force majeure or any other cause beyond its control.