

## Maintenance Service and Support Policy

### GENERAL TERMS AND CONDITIONS

#### 1. DEFINITIONS

**“Effective Date”** - The earlier of (i) the date upon which Service commences or (ii) the date the Agreement is fully executed by both parties.

**“End of Service”** – Date at which Visara is no longer able to secure parts or technical support necessary to maintain or provide Service for the Equipment.

**“Equipment”** - Those items of computer equipment listed in the Addendum attached to this Agreement for which Visara provides Service hereunder.

**“Legal Holidays”** - New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day.

**“Response time”** – The time between receipt of request for service and the time a service technician arrives on site.

**“Restore time”** – The time at which the service technician completes repair of equipment.

**“Service”** - Remedial repair and/or preventive maintenance services as required to maintain Equipment at manufacturer's specified operating condition.

**“Serviceable Areas”** - The geographic locations within which Service is available as determined by Visara.

**“SLA”** (Service Level Agreement) – The required level of service response time, restore time and hours/days of coverage.

#### 2. TERM

These “Terms and Conditions” will commence on the contracted Effective Date and shall remain in effect for a term (the “Term”) of one (1) year renewable on a yearly basis. Upon the expiration of “Term” if the contract is not renewed it will be considered to have lapsed at which time maintenance support will be terminated. **Lapsed service contracts are subject to recertification and/or reinstatement fees.**

The “Term” may be cancelled by either party with sixty (60) days' notice in accordance with Section 25, TERMINATION.

#### 3. MAINTENANCE SERVICE

In consideration of the payment of the fees set forth herein, Visara will provide maintenance service to keep the Equipment in, or restore the Equipment to, good working order. Maintenance Service includes repair and/or replacement of whole units or maintenance parts, as deemed necessary by Visara. Whole units and maintenance parts (which may be refurbished) will be furnished on an exchange basis, and the replaced units/parts will become the property of Visara. Visara agrees to wipe off/destroy/delete any customer information within the replaced units/parts and notify customer in writing upon doing so.

As a condition to Visara's obligation set forth above, Customer agrees to provide a suitable environment for the Equipment, as specified by Visara, and to provide full, free and safe access to the Equipment to conduct maintenance service.

#### 4. EQUIPMENT CONDITION

Customer is responsible for ensuring that all Equipment subject to this Agreement is in proper working condition on and after the Effective Date. Equipment may be subject to inspection at current on-site inspection rates by Visara if necessary. Visara will advise Customer if remedial repairs are required and shall provide a cost estimate of said repairs at current parts and labor rates where applicable. Required repairs must be completed prior to such Equipment being covered under this Agreement.

#### 5. ENGINEERING CHANGES

Engineering changes for Equipment will be controlled and installed as specified by Visara pursuant to the terms of this Agreement or another applicable agreement between the parties hereto.

#### 6. CUSTOMER'S RESPONSIBILITIES

Customer shall ensure that all of its files are adequately duplicated and documented. Visara is not responsible for Customer's failure to do so, or for the cost of reconstructing data stored on disc files, tapes, memories, etc., lost or damaged during the performance of Service under this Agreement.

Customer warrants that it has or will have the legal right and/or license to use all software installed on its Equipment.

#### 7. PRODUCT SERVICE LEVEL AGREEMENT (SLA): DEFINITIONS

Product Class	SLA	Description
<b>Controllers &amp; Servers:</b> includes:  <b>CCA-3074</b> Console Consolidation  <b>MCC - Hardware</b> Master Console Center  <b>CNA-8000</b> Channel Network Appliance  <b>Vi-59xx, Vi-77xx, Vi-88xx</b> Visara Storage Systems  <b>FEP-4600</b> Communication Controller  <b>1174 Servers</b> Communication Server  <b>1199 Multiplexer</b> Terminal Multiplexer	<p><b>1</b></p> <p><b>2</b></p>	<p><b>9 hours per day 5 days per week</b> (52 weeks excluding holidays), between the hours of 8am and 5pm, Monday through Friday, local time. "8 Hour Response" means Visara or its Authorized Contractor will arrive on-site within 8 business hours of receiving the call request. The service request must be opened in the dispatch center by 12:00 noon customer local time for same day on-site response. If the call is placed after 12:00 noon, customer local time, the onsite response is 8 hrs. (business hrs.) and will be measured from the time the call is placed. The Service Technician will have the necessary parts to repair the equipment within forty-eight (48) hours of failure identification, excluding weekends and holidays.</p> <p><b>24 hours/7 day/4 hour/365 days</b> "4 Hour Response" means Visara or its Authorized Contractor will follow up initial call within 2 hours and arrive on-site within 4 hours of receiving the initial call. All time is based on customer local time. The Service Technician will have the necessary parts to repair the equipment within twenty-four (24) hours (weekends and holidays forty-eight (48) hours) of failure identification.</p>
<b>Vi-5990/MCC - Software</b> Technical Support	<b>3</b>	<p><b>24 hours/7 day/2 hour/365 days</b> same day response. "2 Hour Response" means technical telephone support and direct dial-in diagnostic service. All time is based on customer local time.</p>
<b>eManager</b> Network Management Program	<b>5</b>	<p><b>9 hours per day 5 days per week</b> Visara IntelliCenter response (excluding holidays), between the hours of 8am and 5pm Eastern Standard Time, Monday through Friday. "8 Hour Response" means the Visara IntelliCenter will respond via telephone within 8 business hours of receiving the call request.</p>

Product Class	SLA	Description
<b>Console Display</b> Thin Client Console	<b>6</b>	<ol style="list-style-type: none"> <li>1. <b>Return to Depot Service</b> is available only for Product purchased and located in the Continental United States or Canada.</li> <li>2. VISARA will make commercially reasonable efforts to repair your product within 10 business days of receipt at the depot repair facility.</li> <li>3. Customer must contact the VISARA Intellicenter at 1-888-542-7282 between 8:00 a.m. - 5:00 p.m. Eastern Standard Time, M-F, Holidays excluded, from any location in the Continental US or Canada. Be prepared to provide the Technical Analyst with the following information:               <ul style="list-style-type: none"> <li>- Company Name</li> <li>- Model and Serial # of Equipment</li> <li>- Brief Description of the Problem</li> <li>- Location/Address of the Equipment</li> </ul> </li> <li>4. After opening the call, the Technical Analyst will forward your claim to Customer Administration as warranted.</li> <li>5. A Visara Customer Administrator will contact the end user (contact name provided in the call) and provide a Return Material Authorization Number (RMA#) and return instructions.</li> <li>6. Customer is responsible for packaging the Product sufficiently to prevent damage in transit. Packaging is available for purchase from Visara. You are responsible for freight costs to the depot repair facility, and any export taxes, customs duties, or any other charges associated with the transportation of the Product. Product which has been damaged, either in-transit or by the end-user, will not be covered under the warranty repair program. Visara will return Product to the contact name/address via surface freight pre-paid. You must pay any expedited freight, export taxes, customs duties, and taxes or any other additional charges associated with the transportation of the Product.</li> </ol>
<b>Console Display</b> Thin Client Console	<b>7</b>	<ol style="list-style-type: none"> <li>1. <b>Advance Exchange Service</b> is available only for Product purchased and located in the Continental United States or Canada.</li> <li>2. VISARA will make commercially reasonable efforts to ship your replacement within 24 hours of the time of your request. Unit will be shipped via surface freight. You must pay any expedited freight, export taxes, customs duties, and taxes or any other additional charges associated with the transportation of the Product.</li> <li>3. Customer must contact the VISARA Intellicenter at 1-888-542-7282 between 8:00 a.m. - 5:00 p.m. Eastern Standard Time, M-F, Holidays excluded, from any location in the Continental US or Canada. Be prepared to provide the Technical Analyst with the following information:               <ul style="list-style-type: none"> <li>- Company Name</li> <li>- Model and Serial # of Equipment</li> <li>- Brief Description of the Problem</li> <li>- Location/Address of the Equipment</li> </ul> </li> <li>4. The Technical Analyst will proceed with the Advance Exchange program as warranted.</li> <li>5. The software programs contained in or provided with the Product are warranted in accordance with the applicable Software License Agreement or are otherwise provided "AS IS".</li> <li>6. The original product must be returned to Visara within 14 days and must reference the RMA number issued by the Intellicenter. You are responsible for packaging the Product sufficiently to prevent damage in transit. Packaging is available for purchase from Visara. Product which has been damaged, either in-transit or by the end-user, will not be covered under the warranty repair program. Customer will be invoiced for any product not returned within 14 days. Customer is responsible for freight costs to Visara, and any export taxes, customs duties, or any other charges associated with the transportation of the Product.</li> </ol>

## 8. RESPONSE AND RESTORE TIME

**Response time:** For all on-site service the Visara approved service provider (ASP) will call the customer within two (2) hours of receiving a service request to establish an onsite ETA. The ETA will be based on the contracted SLA.

**Restore Time:** The Visara ASP technician will have the necessary parts to repair the equipment no longer than forty-eight (48) hours after required part(s) determination (SLA 1 & 2).

## 9. SERVICEABLE AREAS

Service will be available within Visara's then current Serviceable Areas. Visara will accept Service responsibility at additional locations thirty (30) days (plus required training time) following Visara's receipt of Customer's request therefor. If any Equipment is located outside the Serviceable Area, Customer will be notified prior to any assumption of Service, and upon written agreement by Customer, Visara will charge Customer for travel and other applicable expenses incurred by Visara at Visara's then currently hourly rates and terms, in addition to Visara's standard maintenance charges as set forth on the Schedule for Maintenance Service.

## 10. PAYMENT

The maintenance and/or installation charges described in the Schedule for Maintenance Services attached to this Agreement will be invoiced annually in advance. Payment must be made within thirty (30) days of the date of the invoice therefore. The prices listed on the Schedule for Maintenance Services are subject to change, with such change taking effect on the next anniversary date of this Agreement following notice thereof. The charges described in the Schedule for Maintenance Services covers all Equipment listed; said charges will be re-adjusted annually based on changes to the covered install base.

## 11. TAXES

Customer agrees to pay amounts equal to any applicable taxes, including, but not limited to, sales and use taxes, resulting from any transaction under this Agreement, excluding taxes based on Visara's net income.

## 12. TIME AND MATERIALS

For any service request that is outside the scope of this Service plan, except as agreed to in writing by the parties on a case-by-case basis, Visara will bill Customer the below rate:

Hours		Hourly Rates			
		Customer Engineer (CE)	Systems Engineer (SE)	Design/Sustaining Engineer (DSE)	IMAC Support
M-F	8am-5pm	\$175	\$250	\$325	\$125
All other hours		\$350	\$395	N/A	\$250

Note: Travel time, within a 120 mile radius from the nearest dispatch site to the customer site, is charged at ½ the M-F T&M hourly rate for the engineer level plus mileage at \$0.65 per mile. Travel outside 120 miles will be negotiated on a case-by-case basis.

Repair parts will be charged at Visara's current minimum sell pricing. Customer is responsible for all regular and expedited freight expenses.

## 13. RISK OF LOSS OR DAMAGE

Customer is responsible for loss of or damage to Equipment during the period the Equipment is in the possession of Customer and in transit to Visara except for such loss or damage to the extent caused by Visara's gross negligence or willful acts. Visara is responsible for loss of or damage to Equipment while in the possession of Visara and in transit to Customer except for such loss or damage to the extent caused by Customer's gross negligence or willful acts.

#### **14. EXCLUSIONS**

Services provided by Visara under this Agreement do NOT include 1) furnishing supplies, painting or refinishing the Equipment or furnishing material therefor; 2) electrical work external to the Equipment; 3) installation, maintenance or removal of alterations, attachments or other devices not furnished by Visara; 4) such service which is impractical for Visara to render because of alterations in, or attachments to, the Equipment; 5) services for accessories; 6) repair of Equipment damage, replacement of maintenance parts or increase in repair time caused by: a) neglect or misuse of the Equipment, including use of Equipment for purposes other than for which designed; b) transportation, vandalism or burglary of the Equipment, accident or disaster, including water, wind and lightning; or c) alterations, including any deviation from Equipment design or purposes other than for which it was designed.

#### **15. SERVICE LIMITATIONS**

Unless otherwise noted, Service does not include applicable travel charges, reconfiguration or coverage on locally observed Visara holidays. Visara reserves the right to terminate or suspend Service when, in Visara's opinion, conditions at the premises location represent a hazard to the safety or health of any Visara employee or Visara service provider or representative.

#### **16. WITHDRAWALS**

Visara may withdraw Equipment from this Agreement upon fifteen (15) days prior written notice to Customer 1) following Visara's determination that the equipment, or a part thereof, is non-serviceable due to any of the causes described in Section 14 above or 2) due to Visara's inability to support products that have reached their End of Service date.

#### **17. RIGHT TO SUBCONTRACT**

Visara may subcontract for the performance of Services provided the subcontractor meets the following conditions:

- (1) The subcontractor undertakes to perform such Services and to be bound by the terms and conditions of this Agreement in all respects as if it were a party to this Agreement;
- (2) Visara shall be fully responsible for the subcontractor's compliance with the terms and conditions of this Agreement; and
- (3) Visara hereby agrees to indemnify, defend and hold harmless Customer from and against any and all claims, suits, actions, damages and liabilities whatsoever arising from or related to the performance of the Services by the subcontractor.

#### **18. NON-SOLICITATION OF EMPLOYEES**

Customer will not employ or otherwise contract for the services of any present employee of Visara or employee hired by Visara during the term hereof until one (1) year after the earlier of: (a) the termination of such employee's employment and (b) the termination of this Agreement. No offer or other form of solicitation of employment will be made at any time when the employment of such person is prohibited by this Agreement. Inasmuch as it is impossible to fix the damages for breach of this provision, it is understood and agreed that upon default, Customer will pay to Visara, as liquidated damages, an amount equal to fifty percent (50%) of the affected employee's base annual salary for each breach of this provision. Customer agrees that this amount represents reasonable compensation to Visara for its costs of recruiting and training its employees and does not constitute a penalty. Such amount will be due and payable by the Customer within ten (10) days of receipt of written demand therefor from Visara. In addition to the above liquidated damages, Visara may seek equitable relief from Customer.

#### **19. CONFIDENTIALITY**

Both parties agree not to disclose to any third party, without prior written consent, any proprietary information received from the other, nor shall either party use such proprietary information for its own benefit or gain or that of any other party, except, to the extent allowed under this Agreement. The foregoing obligation shall not extend to information which: (i) is, or becomes, public knowledge without

the fault of the receiving party; (ii) is, or becomes available to the receiving party from a source other than the disclosing party; (iii) is independently developed by the receiving party; and/or (iv) is received after termination of this Agreement. No information shall be deemed proprietary information three (3) years after the termination or expiration of this Agreement.

Both parties agree that none of the details connected with this Agreement shall be published or disclosed to any third party (except as is necessary for the performance of this Agreement and to professional advisors or financing sources of each party) without the prior written permission of both parties hereto. Press releases or other like publicity of any nature regarding this Agreement shall be released only after the review and prior written approval of both parties. Notwithstanding the foregoing, neither party shall be prevented from releasing information necessary to conform to applicable laws and regulations.

## **20. PATENT INDEMNIFICATION**

Visara agrees to assign to Customer any Original Equipment Manufacturer (OEM) indemnification which Visara receives from the OEM regarding any claim that Visara's modification or enhancement to any replacement part provided hereunder infringes any patent, copyright, trade secret, or other proprietary right.

## **21. THIRD PARTY INDEMNIFICATION**

Visara shall indemnify, defend and hold the Customer harmless from any and all third party claims against Customer for losses, damages, and liabilities for injury to or death of any person and for damage to or destruction of real or tangible personal property, resulting from the gross negligence or willful misconduct of Visara or its employees in connection with the performance of the Services provided for herein. Customer shall notify Visara as soon as practicable of any such claim. Visara will control the defense of such claims and Customer agrees to cooperate fully in such defense.

## **22. DISCLAIMER AND LIMITATION OF LIABILITY**

VISARA'S OBLIGATIONS UNDER THIS AGREEMENT ARE IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED. VISARA WILL NOT BE LIABLE FOR INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR INCOME, OR LOSS OF USE OR OTHER BENEFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED UNDER THIS AGREEMENT.

Visara is relieved of responsibility for all loss of data contained in, dispensed by or associated with items of Equipment serviced hereunder. Customer shall save, or otherwise protect, data prior to contacting Visara for repairs.

In the event Customer enters a claim against Visara for any actual loss or damage (other than claims due to personal injury or damage to real property or tangible personal property), whether in contract, tort or otherwise, the amount of any such claim is limited to the lesser of \$50,000 or the amount paid to Visara by Customer under this Agreement.

In all cases, any claim covered by this Section 22 must be brought within twelve (12) months after the occurrence of the alleged act or omission.

## **23. INDEMNITY**

**a. Infringement Indemnity.** Visara agrees to defend at its expense any suits against Customer to the extent that such suit is based upon a claim that any Services or replacement parts or components (hereafter "Product" or "Products" ) furnished hereunder directly infringes a patent, copyright, trademark, trade secret or other proprietary right of any third party. Visara agrees to pay costs and damages finally awarded against Customer based upon such claim provided that Visara has been notified promptly in writing by certified mail, return receipt requested, and furnished copy of each communication, notice or other action relating to the alleged infringement and is given full control, authority, information and assistance necessary to defend or settle such claim. Customer shall have the right, at its expense, to participate in any such claim or action. Visara shall not be liable to indemnify Customer for payment of any damages or costs in any settlement unless Visara has given its express written consent to such settlement.

This indemnity does not extend to any suit based upon any infringement or alleged infringement of any U.S. patent, copyright arising out of:

1. the combination of any Product furnished by Visara with other elements;
2. any Product based on Customer's specifications or design;
3. any Product which has been modified by Customer; and/or
4. the use of such Product for purposes beyond those established by Visara or approved in writing by Visara.

Should the Products delivered by Visara hereunder become, or in Visara's opinion be likely to become, the subject of a claim of infringement then Visara may at its option: (i) procure for Customer the right to use the Products free of any liability for infringement, (ii) replace such Products with non-infringing substitutes or modify such Products to be non-infringing, or (iii) if options (i) and (ii) are not commercially reasonable, refund the price paid by Customer for infringing Product.

VISARA DISCLAIMS ALL LIABILITY FOR PATENT, COPYRIGHT, TRADEMARK OR OTHER ALLEGED INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES, EXCEPT AS PROVIDED HEREIN.

**b. General Indemnity.** Each party hereto agrees to defend and indemnify the other party against and from all claims, liabilities costs, expenses, and reasonable attorney's fees incident thereto, for any breach by the indemnifying party of its obligations under this Agreement. This indemnity shall not apply to the extent any such claims, damages, liabilities or causes of action are caused by the negligent or intentional misconduct of the party seeking such indemnification, its agents or employees.

## **24. INSURANCE**

Visara agrees to carry the following types of insurance: (a) Workers' Compensation insurance in an amount sufficient by virtue of the laws of the states where Customer does business; (b) General Liability insurance in which the limit of liability for injuries, including accidental death and property damage, is not less than U.S.\$1,000,000 for any one occurrence; and (c) Automobile Liability insurance in which the limit of liability for injuries, including accidental death, and property damage is no less than U.S.\$1,000,000 for any one occurrence.

## **25. TERMINATION**

Either Customer or Visara may terminate this Agreement at any time upon sixty (60) days prior written notice.

In the event Customer fails to make payment to Visara pursuant to this Agreement when such payment is due, and does not fully cure such failure within ten (10) business days after receipt of written notice thereof from Visara, Visara may, in addition to any other rights it may have under this Agreement, terminate this Agreement.

In the event either party fails to perform any of its material obligations hereunder, other than failure to make payments to Visara, and does not fully cure such failure within thirty (30) days after receipt of written notice from the non-defaulting party, the non-defaulting party may, in addition to any other rights it may have under this Agreement, terminate this Agreement.

If, at any time, Customer withdraws such quantity, models or types of Equipment that, in Visara's reasonable judgment, it is no longer economically feasible for Visara to continue servicing the remaining Equipment based upon the then current pricing and contractual terms, then Visara may terminate this Agreement upon thirty (30) days prior written notice.

If, at any time, Customer terminates this agreement prior to original expiration date, notification must be received in writing sixty (60) days prior to termination date. A credit will be issued to the Customer for the unused period less all previously applied discounts plus a 10% contract cancellation penalty.

**26. FORCE MAJEURE**

Service provided under this Agreement does not assure uninterrupted operation of Equipment. Neither Visara nor Customer will be responsible or liable in any way for its failure to perform or delay in performance of its obligations under this Agreement during any period in which performance is prevented or hindered by conditions reasonably beyond its control, including, but not limited to, acts of God, fire, flood, failure of public utilities, war, embargo, strikes, labor disturbances, explosions, riots and laws, rules, regulations and orders of any governmental authority. Any such delay shall not be deemed a breach of this Agreement, and the length of any such delay, as agreed in writing by both parties, shall extend the Services period.

**27. GENERAL**

Upon written notice, Visara may assign this Agreement and its rights hereunder to any parent, subsidiary or affiliate. In addition, either party may assign this Agreement upon the prior written consent of the other party, which shall not be unreasonably withheld. This Agreement may only be amended or modified in writing which is signed by each of the parties hereto. No provision of this Agreement may be waived other than in writing signed by each of the parties hereto.

Any notice or communications between the parties shall be in writing and forwarded to the respective address or fax number shown on the front of this Agreement. If forwarded by mail, notice will be deemed received on the third business day after mailing, or if by fax, the same business day.

All terms and conditions set forth in this Agreement are contingent upon Visara maintaining its current relationships with OEMs. In the event that those relationships change, Visara reserves the right to modify the terms and conditions contained herein.

This Agreement shall be governed by the laws of the State of Connecticut without regard to its conflict of laws principles.

If any conflict arises among the documents which comprise this Agreement, the following order of precedence shall govern: General Terms and Conditions; Schedules; Appendices; Addenda; Attachments. If any provision set forth in this Agreement conflicts with any Customer purchase order or other Customer document, the terms and conditions of this Agreement shall control.

Customer represents that Customer is either the owner of the Equipment or authorized, in writing by the owner, to include such Equipment under this Agreement.

Each party hereto represents that it has the authority to enter into this Agreement.

Upon execution of this Agreement by Customer and Visara (which may be done in counterparts and may be transmitted via facsimile), the parties shall be legally bound and agree to the terms of this Agreement and all of its Schedules, Addenda and/or Attachments as of the Effective Date.

Accepted by:	<b>Avenir Technologies, Inc.</b>	Accepted by:	_____
	<b><u>d/b/a Visara International</u></b>		_____
<b>BY:</b>	_____	<b>BY:</b>	_____
	(Authorized Signature)		(Authorized Signature)
<b>TITLE:</b>	_____	<b>TITLE:</b>	_____
	(Type or Print Name)		(Type or Print Name)
<b>DATE:</b>	_____	<b>DATE:</b>	_____