

# Trisys Service Agreement and Hardware Limited Warranty

## 1. TERMS AND CONDITIONS

- 1.1 This Agreement sets out the terms and conditions governing the purchase and delivery of the support services (the "Services") and hardware limited warranty (the "Warranty") for Trisys' product(s) (the "Product");

## 2. TERM

- 2.1 The term of this Agreement shall be for one year following the purchase of the Product, unless extended by purchasing extended Services and Warranty;
- 2.2 The first year of the Services and Warranty is free of charge if the Product is properly registered;
- 2.3 Extended Services and Warranty can be purchased either during the initial purchase of the Product or ONLY while the Product is covered under the Services and Warranty that are in force, but not to exceed three (3) additional annual terms. If the initial or extended term of the Services and Warranty lapses, it is at Trisys's sole discretion to extend or not the Services and Warranty to a customer. If such extension is granted it will go retroactively back to the last expiration date of the Services and Warranty;

## 3. SUPPORT

- 3.1 This Agreement covers the Product identified at the time of the purchase only;
- 3.2 Customer is entitled to the Services for an unlimited number of incidents for the Product during term of this Agreement. The Services will be provided during the Trisys' normal business hours, which are Monday through Friday 9:00am to 6:00pm EST excluding all major national holidays and inclement weather conditions at Trisys corporate office location. The Services will be available via telephone or via remote computer assistance. If telephone support is requested and technical engineer is not immediately available, Trisys will respond with a callback within (4) hours of Customer's initial request. The Services will include assistance in the installation, use of the Product, as well as problem identification and resolution, including workarounds, when possible;
- 3.3 Trisys' technical engineers will provide quality technical support in accordance with generally recognized business practices and standards.

## 4. RIGHTS AND OBLIGATIONS

- 4.1 Periodically, a customer shall provide remote access to the Product as deemed necessary by Trisys' technical support in order to perform Services;
- 4.2 Only those clients having valid Product serial numbers, and deemed by Trisys' technical support to be within the term of this Agreement, will be provided with the Services;
- 4.3 Trisys will assign priority status to any open support issues;
- 4.4 Customer, if it's feasible, is advised to schedule the Services in advance for proper and timely provision of the Services.

## 5. SERVICE EXCLUSIONS

- 5.1 Any services outside the scope of this Agreement, including, but not limited to debugging issues on customer network, hardware and software (excluding Trisys' Product). Such additional services may be furnished on a time and materials basis at Trisys' then-current rates, subject to availability of Trisys' service personnel;



# Trisys Service Agreement and Hardware Limited Warranty

- 5.2 Any misuse or negligent use of the Product, replacement of parts or repair of damage without prior authorization from Trisys, any use other than its intended use;
- 5.3 Any services to the Product resulting from unusual external causes such as, but not limited to, power failure, power surges, air conditioning failure, humidity, improper input signals to the Product, accident, fire, explosion or Act of God;
- 5.4 Any third party products or software unless specifically identified by written amendment to this Agreement;
- 5.5 Conversion of existing data from prior versions of Product without prior authorization from Trisys.

## **6. PAYMENT TERMS**

- 6.1 The dollar amount charged for the Services ("Fees") can be obtained by calling Trisys' technical support. Unless covered by provisions in the paragraph 2, the Fees are payable at the time of request for such services by a credit card. If a particular support call continues past 1 hour, starting with the second hour the billing will be in ½ hour increments.
- 6.2 Except as otherwise specified herein, all prices are exclusive of any applicable taxes. Customer shall pay, indemnify and hold Trisys harmless from all sales use, value-added or other taxes of any nature including penalties, interest and collection or withholding costs associated therewith, and all government permit or license fees assessed upon or with respect to any Product sold or licensed and any services rendered to Customer in respect of this Agreement;
- 6.3 If any payment of any undisputed invoice from Trisys is delinquent for more than thirty (30) days, Trisys reserves the right to suspend the Services and Warranty or terminate this Agreement, without limiting any other rights it may have.

## **7. CONFIDENTIAL INFORMATION**

Certain information, which is confidential in nature, may be exchanged in connection with the provision of Services under this Agreement. Confidential information may not be divulged to any third party without the prior written consent of the disclosing party for a period of three (3) years. This obligation does not apply to information which: (i) is now, or becomes, generally known or available; (ii) is lawfully known to the recipient without an obligation of confidentiality; (iii) is lawfully furnished to the recipient by a third party without restriction on disclosure; (iv) is furnished to others by the disclosing party without restriction; (v) is independently developed by the recipient without use of the disclosing party's confidential information; or (vi) is required to be disclosed by a governmental agency or law, provided the recipient gives prompt notice to the other party prior to any disclosure.

## **8. HARDWARE LIMITED WARRANTY**

- 8.1 The Warranty insures a replacement for defective hardware components of the Product for one year following the purchase of the Product or during the term of extended Warranty. Trisys will provide a Return Material Authorization number (RMA) to allow the return of the defective Product. Customer has to return the defective Product to Trisys properly packaged and insured, original Operating System license included. The delivery costs are borne by a customer.
- 8.2 A repaired or replacement Product may be new or like kind (functionality and quality).

## Trisys Service Agreement and Hardware Limited Warranty

- The return ground delivery costs for the hardware Product will be borne by Trisys;
- 8.3 In case of the Product replacement and missing Operating System license for returned defective hardware Product, Customer agrees to pay for new Operating System license;
- 8.4 Trisys warrants that the repaired or replacement hardware Product will be free from defects in material and workmanship for the later of a period of ninety (90) days from the date of such repair or replacement, or the remainder of the original warranty period. Trisys' sole obligation under this limited warranty shall be, at Trisys' option, to repair or replace any defective hardware Product; Software upgrades are covered by the limited warranty accompanying those upgrades, if applicable, or the warranty accompanying the original version of the software;
- 8.5 In the event the defective Product is returned in an unacceptable condition, Customer agrees that Trisys has the right to identify the cause of the damage. Trisys can refuse replacement of the Product or its parts that wasn't properly packaged should it determine that a cause of damage was due to Customer or his agents' negligence, omission or improper exploitation. If it's determined that the defect of the Product is due to a fault of a Customer or a carrier, a Customer agrees to compensate Trisys for repairing the Product and associated labor costs as stated in the then-current Trisys price. The return delivery costs are borne by a customer;
- 8.6 TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SATISFACTORY QUALITY. TRISYS'S WARRANTIES CONTAINED HEREIN RUN ONLY TO CUSTOMER, AND ARE NOT EXTENDED TO ANY THIRD PARTIES. TRISYS NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT. TRISYS SHALL NOT BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED DEFECT IN THE EQUIPMENT OR SOFTWARE DOES NOT EXIST OR WAS CAUSED BY CUSTOMERS OR ANY THIRD PERSON'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO REPAIR OR MODIFY, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING OR OTHER HAZARD.
- 9. LIMITATION OF LIABILITY**
- 9.1 Trisys shall not be liable for any damages arising from performance or non-performance of the Product or for any damages caused by the failure of Customer to perform its responsibilities;
- 9.2 Trisys shall not be responsible for any software, firmware, information, or memory data of Customer contained in, stored on, or integrated with any Product returned to Trisys under this Agreement;
- 9.3 TO THE FULL EXTENT ALLOWED BY LAW THE PARTIES EXCLUDE ANY LIABILITY, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY

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KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. THE DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.

### 10. GENERAL

- 10.1 This Agreement constitutes the complete statement of the terms of the agreement between the parties, may be modified only in a writing signed by both parties, and shall supersede any and all other agreements and proposals, either oral or written, between them regarding such subject matter including any other written instrument provided by either party;
- 10.2 If either party is prevented from carrying out any of its obligations under this Agreement due to any circumstance beyond its reasonable control including, without limitation, act of government or God, interruption of power supplies, interference by a third party, industrial disputes, earthquake or other natural disaster, the party affected shall be excused from performance of such obligation for the duration and to the extent of such preventing circumstance;
- 10.3 A waiver of any defaults hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not be affected thereby;
- 10.4 Neither this Agreement nor any of the rights or obligations can be assigned or transferred without the prior written consent of the both parties. However, Trisys has the right (i) to assign all of its rights and obligations in the case of a merger, consolidation or sale of substantially all its assets or substantially all the assets of a particular product line or business line which is included within the terms of this Agreement and (ii) to assign the right to receive payment;
- 10.5 The validity, performance construction, and interpretation of this Agreement shall be governed by the laws of the State of New Jersey, excluding conflicts of laws principles;
- 10.6 In any legal action to enforce, or arising out of a sale subject to this Agreement, the prevailing Party shall be awarded all court costs and reasonable attorney's fees incurred;
- 10.7 By accepting the Product(s) and starting its exploitation, Customer signifies that all provisions of this Agreement were read and agreed to.



TRISYS INC.

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