

# Gcom, Inc.

## Software Support Agreement

THIS AGREEMENT entered into by and between Gcom, Inc., an Illinois corporation with its principal place of business at 1800 Woodfield Drive, Savoy, Illinois 61874 (hereinafter referred to as "Gcom"), and \_\_\_\_\_ (an) \_\_\_\_\_ (state of incorporation) corporation with its principal place of business at \_\_\_\_\_

(hereinafter referred to as "LICENSEE"),

WITNESSETH:

WHEREAS, Gcom is willing and able to provide support for the **Gcom Software Suite** licensed to LICENSEE, and,

WHEREAS, LICENSEE desires to avail itself of such support upon the terms and conditions hereinafter set forth,

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained, as well as other good and valuable consideration, it is agreed as follows:

1. The following definitions apply to the support activities with which this Agreement is concerned:
  - 1.1 **Level 1 support:** Basic installation, setup, and operation. This level of support covers basic hardware and software installation, setup, and operation, including cabling and use of diagnostic tools. Level 1 support also covers upgrade installation and troubleshooting. Level 1 support must be performed onsite.
  - 1.2 **Level 2 support:** Basic configuration management. Level 2 support verifies that Gcom software is configured correctly for its intended usage. This level of support requires that Level 1 activities have been performed. Level 2 support diagnoses configuration problems by examining statistics and trace information. Level 2 support also diagnoses protocol problems with the remote device or network. No access to Gcom source code is required for Level 2 support; however, successfully resolving a Level 2 support problem may require reference to Gcom's user-level documentation.
  - 1.3 **Level 3 support:** In-depth configuration management and Gcom software bug evaluation. This level of support requires that Level 2 support activities have been performed but have not diagnosed the problem or provided a solution. Level 3 support examines traces with regard to specific protocols. If necessary, Level 3 support also includes activating debug masks in the kernel code for in-depth, internal, as opposed to protocol, traces. Level 3 support entails the ability to examine source code to see if drivers are executing correctly.
  - 1.4 **Level 4 support:** Gcom developer support. This level of support requires that Level 3 support activities have been performed but have not diagnosed the problem or

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provided a solution. Level 4 support entails the ability to design a fix for a problem, implement it, and test it.

- 1.5 **API support:** This support assists LICENSEE in the use and proper application of Gcom's Application Programming Interfaces. API support includes providing sample code for the use of Gcom APIs to assist in the implementation of LICENSEE applications.
  - 1.6 **Application design assistance:** This support includes assistance in the design of those portions of LICENSEE applications that interact with the Gcom API.
2. LICENSEE agrees to pay for support services on a per-unit-of-product basis according to the following schedule. Each communications adapter delivered to LICENSEE constitutes one unit of product for support purposes. Software-only licenses are based upon the number of systems upon which the software is installed. Support must be prepaid.
    - 2.1 **Basic support:** 3% of purchase price per year. LICENSEE receives regularly-scheduled software updates. Gcom accepts bug reports and feature requests by email only, and offers no assurances that specific bugs will be fixed or requested features implemented.
    - 2.2 **Premium support:** 15% of purchase price per year. LICENSEE receives offsite Level 3 and Level 4 support in the form of telephone support between the business day hours of 9:00 am. and 5:00 p.m. Central Standard Time during normal business days excluding standard American holidays. LICENSEE also receives an extended hardware warranty, if applicable. The hardware warranty is subject to price changes and availability. See Gcom Terms and Conditions for details.
    - 2.3 **Renewal charge** for an expired Software Support Agreement (or a new Software Support Agreement for previously purchased Gcom products) is pro-rated at 2% per month (24% per year) from expiration date or date of purchase, as appropriate.
  3. LICENSEE may subscribe to Professional Services as an add-on to the basic Software Support agreement according to the price schedule in this section of the Agreement or according to current Gcom Professional Services rates.
    - 3.1 The prepayment discount for Professional Services is 20%. Prepaid Professional Services are non-refundable. Onsite Professional Services have an eight (8) hour minimum.

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### 3.2 **OFFSITE** Professional Services:

Level 2 support	\$190/person/hour
API support	\$190/person/hour
Application design assistance	\$190/person/hour

### 3.3 **ONSITE** Professional Services, including:

Level 1 support	\$300/person/hour plus expenses
Level 3 support	\$300/person/hour plus expenses
Level 4 support	\$400/person/hour plus expenses
API support	\$300/person/hour plus expenses
Application design assistance	\$300/person/hour plus expenses

## 4. Gcom's obligations under this Support Agreement are as follows:

- 4.1. Gcom will assist LICENSEE in the use of the licensed software.
- 4.2. Gcom will perform troubleshooting in conjunction with LICENSEE, with the cooperation of LICENSEE appropriate for the level of support to which LICENSEE has subscribed.
- 4.3. Gcom will use its best efforts to fix bugs encountered in the use of the licensed software. A "bug" is so designated when it can be verified, using GCOM test software, or test software authorized by Gcom for this purpose, that the product does not perform according to Gcom's published specifications. Gcom's obligations are limited to providing LICENSEE with a revised version of the licensed software in which the bug is fixed.
- 4.4. Gcom will provide periodic upgrades for its software to LICENSEE at no additional charge. LICENSEE has the right to make as many copies of the upgrade of the licensed software as LICENSEE has valid software licenses. Installation of upgrades is the responsibility of LICENSEE.
- 4.5. Gcom will offer training at the Gcom facility on a fee basis to help LICENSEE personnel master the skills necessary to perform Level 1 Support, Level 2 Support, and use Gcom APIs.

## 5. LICENSEE's obligations under this Support Agreement are as follows:

- 5.1 LICENSEE will cooperate with Gcom personnel in performing diagnostic procedures and communicating information in order to facilitate troubleshooting.
- 5.2 LICENSEE will cooperate with Gcom personnel in testing updated versions of the software to determine whether a given problem has been solved.

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- 5.3. LICENSEE will cooperate with Gcom personnel in implementing workarounds intended to reduce the criticality of a given problem.
- 5.4. LICENSEE will make available, on an as-needed basis, a telephone line, or equivalent, that Gcom personnel can use to dial in to a given unit for purposes of performing their support functions.
- 5.5. When a problem reported by LICENSEE has been fixed by a later version of the software for the licensed product, LICENSEE will upgrade to the later version. Gcom has no obligation to maintain back-level versions of software.
- 5.6. LICENSEE will designate a person or persons as LICENSEE's Level 1 and Level 2 support personnel and ensure that such personnel are qualified to perform Level 1 and Level 2 support functions. Gcom may require LICENSEE's Level 1 and Level 2 support personnel to attend Gcom training at the Gcom facility at a fee to be determined by Gcom.

**Level 1 Support Qualifications:** Technical ability to configure and cable a system, basic operational capability, and ability to run diagnostic programs and accurately report results.

**Level 2 Support Qualifications:** Thorough knowledge of material contained in Gcom's user-level documentation, superficial knowledge of protocols, in-depth knowledge of parameters, ability to read and interpret trace output and statistical output from the supported software, knowledge of a variety of symptoms and their causes and fixes (missing clocks, improperly configured addresses, etc.).

6. This Support Agreement pertains to all copies of software licensed to LICENSEE and placed in service. LICENSEE may not selectively apply this Support Agreement to a subset of products or licenses except for licenses taken out of service. LICENSEE must cover all copies with the same level of support.
7. LICENSEE must keep this Support Agreement in effect continuously from time of original purchase of licensed software. This Support Agreement terminates if it is allowed to lapse for longer than 30 days due to non-payment of the support fee. In the event of a lapse or non-renewal of support, LICENSEE may reinstate the Support Agreement by paying Gcom the pro-rated support fee that would have been due under this Support Agreement from the date of lapse to the date of reinstatement. Upon payment of the support fees for the period of lapse, Gcom shall provide LICENSEE with the support, including releases, to bring the software up to the current version.

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8. Gcom warrants that it will perform its obligations hereunder in a good workmanlike manner.
9. APART FROM THE WARRANTY IN SECTION 8 HEREOF, GCOM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL GCOM BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, EVEN IF GCOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, OR THE WARRANTIES AND REMEDIES PROVIDED UNDER THIS AGREEMENT ARE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. IN NO EVENT WILL GCOM'S TOTAL LIABILITY IN ANY ACTION OR PROCEEDING EXCEED THE AMOUNTS THAT GCOM HAS RECEIVED FROM LICENSEE UNDER THIS AGREEMENT.
10. This Agreement constitutes the entire agreement with respect to its subject matter between the parties hereto and may be amended or modified only by a written document signed by both parties. THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE CUSTOM QUOTE SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS INCLUDED IN ANY PURCHASE ORDERS, ACKNOWLEDGMENTS, OR SIMILAR FORMS ISSUED WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT AND ANY SUCH TERMS INCLUDED IN SUCH FORMS SHALL BE NULL AND VOID AND WITHOUT EFFECT.
11. Should any dispute between the parties arise regarding the interpretation, application or enforcement of any of the terms of this Agreement, and such dispute cannot be resolved by the parties within thirty (30) days after either party hereto notifies the other of its desire to arbitrate the dispute, then the dispute will be settled by arbitration in Chicago, Illinois, in accordance with the then current rules of the American Arbitration Association and judgement upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. For arbitration of disputes of less than \$250,000 a single arbitrator will be chosen by the parties. If the parties cannot agree on an arbitrator within fifteen days then the American Arbitration Association shall appoint an arbitrator. Each of the parties will be responsible for the expenses incurred by the arbitrator and such expenses will be borne equally by the parties. For larger disputes each party shall select an independent arbitrator and those two arbitrators shall select a third arbitrator who shall act as chairman. The arbitrators shall have power to order preliminary and final injunctive relief. In addition, for breach of this Agreement, LICENSEE acknowledges that it will create irreparable injury and agrees Gcom may seek injunctive relief immediately from any court.
12. This Agreement becomes effective on the date upon which it is signed by both parties and has a term of one year. This Agreement shall be automatically renewed for additional terms of one year at the then-current support fees (as of the date of expiration of existing support) unless Gcom or Licensee has notified the other party at least sixty (60) days in advance of such expiration of its desire not to renew support. At any time following the expiration of the

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first year of support, Gcom may change the annual support fee. The annual support fee will not be increased by more than 10% per year from the original date of the agreement.

13. This Agreement shall be governed by the laws of the State of Illinois and shall be binding upon the heirs, representatives, successors, and assigns of the parties hereto. Each person executing this Agreement on behalf of a corporation, partnership or limited partnership warrants that he/she is duly authorized by said entity to execute this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year written below.

For GCOM,

For LICENSEE,

\_\_\_\_\_  
By

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By

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

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Title

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Title

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Date

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Date