

**Clearswift Standard Support Agreement**  
**All Clearswift Products**  
**Issue Date August 2010**

THIS CLEARSWIFT STANDARD SUPPORT AGREEMENT SETS OUT THE TERMS AND CONDITIONS THAT RELATE TO THE PROVISION OF THE SERVICES BY THE CLEARSWIFT GROUP COMPANY INDICATED ON THE SUPPORT CERTIFICATE ("CLEARSWIFT"). THE SERVICES SHALL BE LIMITED TO THE CLEARSWIFT PRODUCT(S) INDICATED ON THE SUPPORT CERTIFICATE AND ANY UPGRADES AND/OR PATCHES PROVIDED IN ACCORDANCE WITH THIS AGREEMENT (THE "CLEARSWIFT PRODUCT").

FROM THE EFFECTIVE DATE, CLEARSWIFT SHALL PROVIDE THE SERVICES IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET OUT BELOW TO THE CUSTOMER INDICATED ON THE RELEVANT INVOICE (THE "CUSTOMER"). CLEARSWIFT RESERVES THE RIGHT TO AMEND THIS CLEARSWIFT STANDARD SUPPORT AGREEMENT FROM TIME TO TIME. ANY REVISIONS SHALL BE INDICATED BY A CHANGE IN THE ISSUE DATE AND THE VERSIONS CONTAINING THE MOST RECENT ISSUE DATE SHALL BE THE THEN CURRENT CLEARSWIFT STANDARD SUPPORT AGREEMENT. ANY REVISED CLEARSWIFT STANDARD SUPPORT AGREEMENT SHALL BECOME EFFECTIVE FROM THE DATE WHEN CUSTOMER COMMENCES OR RENEWS THIS CLEARSWIFT STANDARD SUPPORT AGREEMENT IN ACCORDANCE WITH THE TERMS BELOW. THE SUPPORT CERTIFICATE SHALL BE THE DOCUMENT ISSUED BY CLEARSWIFT REGARDING THE SERVICES TO BE PROVIDED TO CUSTOMER.

THE ISSUING OF A PURCHASE ORDER BY CUSTOMER FOR THE SERVICES SHALL INDICATE CUSTOMER'S ACCEPTANCE OF THIS CLEARSWIFT STANDARD SUPPORT AGREEMENT.

The parties hereby agree that:

## 1 DEFINITIONS

In this Agreement the following capitalized words and phrases shall mean:

**Agreement:** means this Clearswift Standard Support Agreement, the Support Certificate, the Service Description and any schedules, appendices, exhibits or addendums; **Clearswift Product:** means the product identified on the Customers invoice and license record and supplied to the Customer by Clearswift; **Documentation:** means the user manuals that are supplied with the Software; **Category:** means the Incident category as described in the Service Description; **Effective Date:** means the date indicated on Customer's purchase order for the Services; **Enhancement:** means any changes to the functionality, performance or scope of the Software that is not directly related to an Incident; **Expiry Date:** means the date indicated as such on the Support Certificate; **Gateway:** means the Hardware and any pre-installed Clearswift Products; **Hardware** means the server supplied as part of the Gateway; **Help Desk:** means Clearswift's telephone or email help desk, the contact details of which are given in the Service Description; **Incident:** means any issue relating to the Software and/or the Hardware raised with Clearswift by Customer in accordance with this Agreement; **License Agreement:** means the Clearswift Limited license agreement that relates to the particular Clearswift Product installed and being used by Customer, as the same may be amended from time to time; **Patch:** means a release of the Software where the first two digits of the version number have not been changed (e.g. 5.1.2 to 5.1.3) ; **Services:** means the services provided by Clearswift to Customer as set forth in this Agreement; **Service Hours:** means the hours when the Help Desk is open as described in the Service Description; **Service Levels:** means the service levels to be provided by Clearswift as detailed in the Service Description; **Service Description:** means the document setting out the level of service to be provided under this Agreement; **Software** means the software that is provided either alone, as a virtual (VMware) image or as part of a Gateway as identified on the license record and/or support certificate that relates to the Clearswift Product; **Technical Contact:** means the individuals as described in clause 2.1; **Upgrade:** means a release of the Software where either of the first two digits of the version number have changed (e.g. version 5.1 to 5.2 or 4.1 to 5.1); **Workaround:** means any of the following: (i) a resolution of an Incident through the normal support process; (ii) an existing Patch for the Incident; (iii) a temporary by-pass of an Incident; (iv) a statement that the Incident will be considered for correction in a future Upgrade or Patch.

## 2 TECHNICAL CONTACTS

2.1 Customer is responsible for nominating at least two employees per individual Clearswift Product to be Technical Contacts and informing Clearswift of the name of the Technical Contacts prior to the Effective Date. In the event of a change to the Technical Contact(s), including without limitation change in their employment status, Customer shall provide Clearswift with the name of a new Technical Contact, in writing, within 5 working days of such change.

2.2 Customer's Technical Contacts only are entitled to telephone the Help Desk during Service Hours and/or email Clearswift at any time.

Clearswift reserves the right to not accept any Help Desk enquiries that are not made by a Technical Contact. Clearswift shall allocate a Category to each Incident and a log of existing Incidents will be maintained.

2.3 Customer's Technical Contacts may request Enhancements via the Help Desk. All Enhancement requests will be reviewed and evaluated for possible inclusion in future Patches or Upgrades. An Enhancement request will be acknowledged but Clearswift will be under no obligation to implement any specific request.

## 3 PROVISION OF SERVICES

3.1 Commencing on the Effective Date, Clearswift shall endeavour to provide the Services in accordance with the Service Levels. Clearswift shall determine, in its sole discretion, if an Incident relates to an item of Hardware or relates to the Software.

3.2 Customer shall be entitled to access the Clearswift support web-site. Access to the support web-site shall be subject to the support web-sites terms and conditions.

3.3 Nothing contained herein shall oblige Clearswift to provide a Workaround to a Customer, or to include the relevant Workaround in any subsequent Upgrade or Patch.

3.4 Provided that this Agreement is valid and current, Clearswift shall, from time to time, release Upgrades and Patches to Customer. Clearswift reserves the right to issue a New License Agreement for an Upgrade which shall govern Customer's use of such Upgrade.

3.5 In the event that Customer wishes Clearswift to access the Software remotely then Customer shall take all appropriate steps to maintain the security of data on its system and the security of its own system including, without limitation, taking back-ups of such data. Clearswift shall not be responsible for any loss of data, loss of performance, adverse impact on Customer's system the Software or other software or hardware or any security breaches of the Customer's systems as a result of any remote access of the Software.

3.6 Customer may be requested to use certain diagnostic tools in relation to assessing an Incident. Clearswift cannot be responsible for any Service Level delays caused by Customer's delay in using or failure to use such diagnostic tools.

3.7 In relation to an Incident, Clearswift may require that relevant third parties, such as the original Hardware manufacturer, contact Customer directly on Clearswift's behalf. Such contact by relevant third parties shall not reduce or remove Clearswift's obligation as set forth herein, provided that Customer treats and responds to such relevant third party as if they were Clearswift as provided for in this Agreement.

3.8 Continuation of Services under this Agreement may require Customer to Upgrade to a new release of the Software or to a currently supported version of the Software. Clearswift shall not be responsible for any loss or damage caused by any incidents arising in whole or in part due to a failure by Customer to Upgrade when required.

3.9 Services do not include the provision of installation walk-throughs or security design or systems architecture consultations.

#### **4 CUSTOMER RESPONSIBILITIES**

4.1 Customer shall identify, document and report each Incident and supply Clearswift with all necessary documentation and assistance to demonstrate and diagnose an Incident.

4.2 Customer shall ensure that any personnel having access to the Software are properly trained.

4.3 Customer shall be responsible for the loading, implementation, integration and applicable testing of all Workarounds, Patches and/or Upgrades.

#### **5 LIMITATIONS OF SERVICE**

5.1 On-site Software support is not part of this Agreement. If requested, Clearswift can provide on-site Software support, subject to Clearswift's standard terms, during normal working hours at the then current daily rates.

5.2 Services include support for the current version of the Software and the immediately preceding Upgrade only.

5.3 Third party software products (of whatever nature) not licensed by Clearswift or its affiliate are not covered by this Agreement.

5.4 Clearswift shall have no obligation whatsoever to provide the Services:

a regarding Incidents caused by (i) Customer's modifications to the Software, (ii) merger (in whole or in part) of the Software with any other software, or (iii) use of the Software in a manner or form other than defined and described in this Agreement, the License Agreement or the Documentation.

b regarding any functionality not directly related to the Software;

c regarding Incidents caused by hardware, software, networks, firmware or media not supplied, serviced or supported by Clearswift;

d regarding Incidents caused by persons not directly employed or retained by Customer; and/or

e regarding Incidents caused by any accident or disaster affecting the Software including but not limited to fire, flood, lightning or vandalism.

5.5 Clearswift support does not include any upgrades or replacement of the Hardware.

5.6 Clearswift does not provide Hardware support. This shall be provided subject to the terms of the applicable Hardware support agreement between Customer and the Hardware supplier. Clearswift shall however provide initial Hardware support where Customer has purchased Hardware from Clearswift as part of a Gateway.

5.7 Customer may re-schedule any on-site Hardware support, however Clearswift shall not be responsible for any failed Service Levels resulting from such re-scheduling.

#### **6 DURATION**

6.1 This Agreement will terminate on the Expiry Date.

6.2 Clearswift will use its reasonable endeavours to notify Customer of the Expiry Date and request renewal of this Agreement.

#### **7 TERMINATION**

7.1 This Agreement may be terminated by either party effective immediately upon written notice if the other party:

a commits any material breach of this Agreement and has not remedied such breach within thirty (30) days of written request to remedy same; or

b the other party becomes insolvent, is adjudged bankrupt or becomes the subject of dissolution, liquidation or bankruptcy proceedings whether voluntarily or involuntarily (which are not

dismissed within sixty (60) days), is subject to the appointment of a receiver or examiner, applies for judicial or extra-judicial settlement with its creditors, makes an assignment for the benefit of creditors, or otherwise discontinues business.

7.2 In the event of termination of the License Agreement for any reason then this Agreement shall immediately terminate.

7.3 In the event of termination of this Agreement in accordance with clauses 7.1 or 7.2 or if this Agreement is not renewed then (i) Clearswift shall cease providing the Services, and, (ii) all relevant amounts owed by one party to the other shall become payable immediately.

#### **8 LIMITATION OF LIABILITY**

8.1 NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, DATA, GOODWILL OR OTHER PECUNIARY LOSS), UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY ARISING OUT OF THE PROVISION, IMPERFECT PROVISION OR FAILURE TO PROVIDE THE SERVICES, IRRESPECTIVE OF WHETHER EITHER PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8.2 NEITHER PARTY'S TOTAL LIABILITY FOR ANY CLAIM, DEMAND OR ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES CONTEMPLATED HEREBY SHALL IN ANY CASE EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER HEREUNDER DURING THE PREVIOUS 12 MONTHS.

#### **9 CONFIDENTIALITY**

Should any confidential information whatsoever regarding one party's business be acquired by the other party in the course of Clearswift providing the Services, such confidential information shall not be divulged to unauthorized third parties without the prior written consent of the disclosing party.

#### **10 ENTIRE AGREEMENT**

10.1 Failure of either party to insist in any instance upon strict performance by the other party of any provision of this Agreement shall not be construed or deemed to be a permanent waiver of such provision or any other provision of this Agreement.

10.2 This Agreement constitutes the complete and exclusive contract between the parties and supersedes all prior contracts, agreements, proposal or other communications concerning the subject matter of the Agreement.

10.3 This Agreement shall be governed by and construed in accordance with (i) the laws of the State of New York, USA, if Customer's Support Certificate is with Clearswift Corporation, or (ii) the laws of the State of New South Wales, Australia if Customers Support Certificate is with Clearswift(Asia/Pacific)pty Ltd, or (iii) the laws of Japan if Customers Support Certificate is with Clearswift KK, or (iv) the laws of England and Wales if Customers License Agreement is with Clearswift Ltd.

10.4 This Agreement may not be assigned by Customer without the prior written permission of the Clearswift.

10.5 In the event of any conflict or inconsistency between this Agreement, the Support Certificate, the Service Description or any other document describing all or part of the Services then the order of precedence shall be (i) this Agreement, (ii) the Service Description, (iii) the Support Certificate and (iv) any other document.

10.6 Neither party shall be responsible or liable to the other for its failure to comply with the requirements of this Agreement if such failure was due to force majeure events which shall include, but not be limited to, Acts of God, unusually severe weather, war (whether declared or not), fire or flood.