



## SOFTWARE LICENSE AND RESELLER AGREEMENT

This Agreement is made as of \_\_\_\_\_, 20\_\_ (the "**Effective Date**") between **XSILVA SYSTEMS INC.**, a Canadian corporation ("**Company**"), and \_\_\_\_\_, a \_\_\_\_\_ company ("**Reseller**"), with the intent to be legally bound.

### 1. PURPOSE

The purpose of this Agreement is to establish the terms and conditions by which Reseller will license and distribute the Software (as defined below). As more specifically provided below, the parties intend that Reseller will market and sublicense the Software to one or more end-user clients (the "**Customers**") and may provide any subscribing and paying Customers with ongoing maintenance and support, as the case may be. Except as otherwise specifically provided below, the parties intend that Company will not have any direct contact with, or obligations to, any Customers.

### 2. SOFTWARE

The computer software initially subject to this Agreement is listed on Exhibit A. Company has the right, in its sole discretion, to modify, delete, add or remove additional software to Reseller's appointment hereunder. All of such software, and all modifications thereto, all related program documentation including user guides, operating manuals and specifications (the "**Documentation**") is referred to in this Agreement as the "**Software**".

### 3. APPOINTMENT AS RESELLER

Company appoints Reseller, and Reseller agrees to act, as a non-exclusive independent distributor of the Software.

### 4. GRANT OF LICENSES

In order for Reseller to perform its obligations under this Agreement, it is necessary for Company to grant to Reseller the following rights relating to the Software (the "**Licenses**"), each of which is limited, non-exclusive and nontransferable:

(a) **Distribution License**

Company grants to Reseller a license to distribute the Software to Customers who have executed a sublicense agreement with Reseller which requires the consent and approval of the Company (a "**Customer License Agreement**").

(b) **Installation, Maintenance, Marketing and Training License**

Company grants to Reseller a non-expiring demonstration license of the Software in order to provide installation, support and maintenance services to Customers, to market the Software, to demonstrate the Software and to train Customers on the Software.

(c) **Documentation License**

Company grants to Reseller a license to reproduce and distribute to Customers the Documentation which relates to the Software.

**5. SOFTWARE MAINTENANCE AND SUPPORT**

The obligations of the parties with respect to maintenance and support of the Software are as set forth on Exhibit C.

**6. OTHER RESPONSIBILITIES OF RESELLER**

(a) **Marketing**

Reseller will (i) use its best efforts to market the Software, including by regularly contacting and visiting existing and potential Customers, (ii) maintain an adequate and properly trained marketing staff, and (iii) promptly follow-up marketing leads supplied by Company.

(b) **Training**

Reseller will cause its relevant and designated personnel to be adequately trained in the use and operation of the Software. Adequate training includes attending or using all training courses and materials offered or distributed by Company and any training courses provided in connection with the release of new Versions of the Software.

(c) **Installation, Maintenance and Support**

Reseller is solely responsible to Customers for the installation, maintenance and support of the Software and will maintain an adequate and properly trained staff for such purposes. Company is available for additional support and assistance where required.

(d) **Record Keeping**

Reseller will keep accurate books and records in reasonable detail regarding its marketing and sublicensing of the Software. Company has the right to audit such books and records at its sole expense. Such audit right is limited to once per year unless Reseller is in default under this Agreement.

(e) **Problem Reporting**

Reseller will promptly inform Company, in reasonable detail, of problems relating to the Software.

(f) **Protection of Proprietary Rights**

Reseller will take all reasonable steps necessary or desirable to protect Company's proprietary rights in the Software and will cooperate with Company in protecting such rights.

(g) **Third Parties**

Company has chosen Reseller to distribute the Software because Reseller has represented to Company that it has sufficient ability and expertise to properly carry out its duties under this Agreement. Without the prior written consent of Company, Reseller will not engage any person or entity other than its own employees to carry out any of its duties under this Agreement. Company may condition its consent on, among other things, the execution by such third parties of such licenses, nondisclosure agreements and other agreements as Company may reasonably require in order to adequately protect its rights.

(h) **Compliance with Laws**

Reseller will comply with all applicable laws and regulations in connection with its performance of this Agreement. If Reseller learns that any provision of this Agreement is unenforceable or illegal in any jurisdiction it will promptly inform Company of such fact.

(i) **Marketing Materials; Use of Marks**

All marketing and packaging materials for the Software used by Reseller (other than materials provided by Company) will be submitted to Company for its approval prior to being distributed to Customers. Reseller agrees that all marketing and packaging materials will prominently feature the words "XSILVA Lightspeed" and/or such other names or marks as Company may require. Reseller has no right to use Company's name or marks without Company's prior approval.

(j) **Copying Software**

This Agreement does not grant to Reseller any right to make copies of any of the Software and Reseller will not make any such copies; provided, if Reseller has its own copy pursuant to section 4(b), Reseller may make a single back-up copy of the Software solely for archival purposes.

7. **INSTALLATIONS AND LICENSE FEES**

(a) **Installations**

Each order for Software will be accompanied by an End User Agreement in proper form (as per Exhibit B) and provided to the Customer who is sublicensing such Software. Company has no obligation to accept any order. If Company accepts an order, it will transmit Software for such Customer, which conforms to the information contained in the End User Agreement. If any purchase order submitted by Reseller or any invoice submitted by Company contains any terms or conditions which are inconsistent with or in addition to those set forth in this Agreement, the terms of this Agreement shall prevail.

(b) **License Fees**

License fees payable for each transmission of Software pursuant to an order ("**License Fees**") in effect as of the date of this Agreement are as set forth on Exhibit E. Payment for License Fees are due immediately upon transmission of the Software to the Reseller. Company reserves the right, in its sole discretion, to modify License Fees at any time upon 60 days' prior written notice to Reseller.

8. **FORCE MAJEURE**

Company is in no way be liable to Reseller or any Customer for any failure or delay of Company in supplying or delivering any Software or any maintenance, support or other services which is caused by an event of Force Majeure. "Force Majeure" means any circumstance whatsoever which is not within the reasonable control of the Company, including an act of God, war, insurrection, riot, strike or other labor dispute, shortage or delay in delivery of materials, fire, explosion, flood, government requisition or allocation, breakdown of or damage to plant, equipment or facilities, interruption or delay in transportation, fuel supplies or electrical power, embargo, boycott, order or act of civil or military authority, legislation, regulation or administrative rules, or any inability to obtain or maintain any governmental permit or approval. Company will give prompt notice to Reseller of any event of Force Majeure.

## 9. **WARRANTIES**

### (a) **Title.**

The Company warrants that the Software is original and owned by the Company or the Company has acquired legally valid rights, title or interest in the Software to perform under this Agreement.

### (b) **Software Warranty.**

The Company warrants that the Software, provided to Reseller will operate substantially in conformance with the applicable Documentation for such Software for a period of thirty (30) days from the date of transmission of such Software to Reseller. The Company warrants that the media on which the Software is delivered to be free of defects in material and workmanship for a period of thirty (30) days following transmission to Reseller.

The warranty above is voided by (i) use of the Software if the user does not maintain the recommended operating requirements set forth in the applicable Documentation or (ii) use of modified Software unless such modification is certified in writing by the Company.

### (c) **Limited Remedy.**

Reseller's sole and exclusive remedy for breach of the foregoing warranties shall be either replacement of the defective materials or, at the Company's sole discretion, (i) repair or replacement of the nonconforming Software(s) or (ii) a refund of the amounts paid for the nonconforming Software(s). Reseller must notify the Company within the applicable warranty period and provide a reasonable opportunity to the Company to cure any breach.

## 10. **WARRANTY DISCLAIMER**

EXCEPT AS EXPRESSLY STATED HEREIN, THE COMPANY MAKES NO WARRANTIES CONCERNING THE SOFTWARE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN LIEU OF A WARRANTY, COMPANY IS PROVIDING MAINTENANCE AND SUPPORT SERVICES FOR THE SOFTWARE AS PROVIDED IN THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL COMPANY BE LIABLE TO RESELLER OR ANY OTHER PERSON OR ENTITY FOR ANY LOSS, INJURY OR DAMAGE, DIRECT OR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, WHICH ARISES OUT OF THE SOFTWARE IN ANY MANNER.

## 11. **LIMITATION OF LIABILITIES**

THE CUMULATIVE LIABILITY OF COMPANY TO RESELLER FOR ALL CLAIMS RELATING TO THE SOFTWARE AND ANY SERVICES PROVIDED UNDER THIS

AGREEMENT, WHETHER IN TORT, CONTRACT OR OTHERWISE, ARE LIMITED TO THE TOTAL OF ALL CONSIDERATION RECEIVED BY SERVICE PROVIDER UNDER THIS AGREEMENT. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, CONTINGENT OR PUNITIVE DAMAGES AS A RESULT OF A BREACH OF THIS AGREEMENT OR AS A RESULT OF ANY INDEMNIFICATION OBLIGATIONS. THE COMPANY WILL NOT BE LIABLE FOR ANY AMOUNTS OUTSTANDING OR DUE TO THE RESELLER FROM THEIR CUSTOMERS.

## **12. INDEMNIFICATION**

- (a) Reseller will indemnify Company against any costs incurred by Company (including attorneys' fees and court costs) incurred in collecting any amounts due under this Agreement and any losses it incurs as a result of (i) any claim that any software used by Reseller in connection with the Software infringes on the rights of a third party, (ii) any claim asserted against Company by any Customer or (iii) any violation by Reseller of its obligations under Section 15 (Reseller Exemption Certificate).
- (b) Company will indemnify Reseller against any losses it incurs as a result of any claim that the Software infringes on the rights of a third party, but only if (i) Reseller promptly notifies Company of such claim, (ii) any enhancements supplied by Company intended to cure or avoid such infringement have been properly installed by Reseller and its Customers and (iii) the claim does not arise out of any modification of the Software (by anyone other than Company) or out of the unauthorized use of the Software.
- (c) The Company shall indemnify, defend, or at its option settle, any claim or suit against Reseller on the basis of infringement of any patent, trademark, copyright or trade secret by the Software or use thereof and the Company shall pay any final judgment entered against Reseller in any such proceeding, provided the Company has sole control of such defense and/or settlement and Reseller promptly notifies the Company and gives the Company all related information known to Reseller. If any part of the Software is, or may become, the subject of any such proceeding, the Company may and in the event of any adjudication that any part of a Software does infringe or if the licensing or use of the Software or any part thereof is enjoined, the Company shall at its expense and option do one of the following things: procure for Reseller the right to use the Software; replace the Software with other suitable programs; modify the Software to make it non-infringing; or if none of the foregoing are commercially reasonable, refund the amounts paid by Reseller for the Software or the affected part thereof, less reasonable amortization for use. The Company shall have no obligations under this Section 12(c) with respect to any claim to the extent it is based upon (i) the use of any version of the Software other than a current, unaltered release of the Software if such infringement would have been avoided by the use of a current, unaltered release; (ii) the combination, operation, or use of the Software with software or hardware other than as specified by the Company, if such infringement would have been avoided in the absence of such combination, operation or use; or (iii) the use of the Software on or in

connection with a computer system other than the recommended hardware and the operating system.

**13. NON SOLLICITATION; CONFIDENTIALITY**

(a) **Non Sollicitation**

During the term of this Agreement, and for a period of one year following the termination of this Agreement, neither party will induce or attempt to induce (i) any customer or supplier of the other party to reduce the business done by such customer or supplier with the other party or (ii) any employee, consultant, sales representative or distributor of the other party to leave the employ of, or otherwise terminate its relationship with, the other party.

(b) **Confidentiality**

Reseller acknowledges that, in the course of performing its obligations under this Agreement, certain Confidential Information of Company may be disclosed to it, and agrees that it will not, except as otherwise specifically contemplated by this Agreement, disclose to any person or entity or use for its own benefit any such Confidential Information. "Confidential Information" means all information concerning or related to the business, operations, financial condition or prospects of the Company, regardless of the form in which such information appears and whether or not such information has been reduced to tangible form, and specifically includes: (i) all information regarding the officers, directors, employees, equity holders, customers, suppliers, distributors, sales representatives and licensees of Company, in each case whether present or prospective; (ii) all inventions, discoveries, trade secrets, processes, techniques, methods, formulae, ideas and know-how of Company; and (iii) all financial statements, audit reports, budgets and business plans or forecasts of Company. Confidential Information does not include information, which is or becomes generally known to the public through no act or omission of Reseller or information, which is lawfully obtained by Reseller from a source other than Company, so long as such source has no obligation of confidentiality to Company.

(c) **Injunctive Relief and Reformation**

The parties acknowledge that each other would be irreparably damaged if any of the provisions of this Section are not performed by them in accordance with their specific terms. Accordingly, the other party is entitled to an injunction or injunctions to prevent breaches of this Section by the other party and has the right to specifically enforce this Section against the other party in addition to any other remedy to which it may be entitled at law or in equity. If any court determines that the restraints provided in this Section are too broad as to time or subject matter, the time or subject matter may be reduced to whatever extent the court deems reasonable and appropriate, and the covenants contained in this Section will be enforced as to such reduced time or subject matter. The obligations of each of the parties under this Section will survive any

termination of this Agreement.

#### **14. INTELLECTUAL PROPERTY**

All right and title in and to the Software and the Documentation, all know-how, methodologies and improvements associated with any of the foregoing and all trade names, trademarks and service marks used by Company in connection with any of the foregoing (collectively, the "Intellectual Property") are owned by Company or its affiliates. The Intellectual Property is protected by intellectual property laws and international treaty provisions. This Agreement in no way entitles Reseller to claim any ownership interest or other proprietary right in the Intellectual Property and, except as otherwise expressly set forth in this Agreement, Reseller may not copy or otherwise use the Intellectual Property. Reseller will not dispute or contest for any reason whatsoever, during the term of this Agreement or thereafter, the validity, ownership or enforceability of any of the Intellectual Property, nor attempt to acquire or damage the value of the goodwill associated with any of the Intellectual Property.

#### **15. RESELLER EXEMPTION CERTIFICATE**

Reseller is liable for all taxes (other than Company's income taxes) arising out of the licensing or sublicensing of the Software. Reseller certifies that it holds, or will acquire prior to offering the Software for distribution, a valid "Reseller Exemption Certificate" issued by each taxing body in each market where Reseller intends to distribute the Software (where such certificate is required as a condition for the avoidance of applicable sales or use taxes). Reseller will provide Company with a copy of each such certificate upon Company's request.

#### **16. INDEPENDENT CONTRACTOR**

It is expressly agreed and understood between Company and Reseller that Reseller, in entering into this Agreement and carrying out its obligations hereunder, is an independent contractor working for itself and is not, will not be deemed to be and will not hold itself out as an agent, representative or employee of Company. Reseller is not granted any right or authority to assume or to create any obligation, liability or responsibility, express or implied, on behalf of or in the name of Company, to bind Company in any manner to any contractual or other undertaking whatsoever or to accept payment from any party of any obligation owing to Company. Reseller is responsible for all costs it incurs in performing its obligations under this Agreement, and Company has no liability for any debts or other obligations which Reseller may incur in rendering such performance, except as expressly stated herein.

#### **17. TERM AND TERMINATION**

The term of this Agreement commences on the date hereof and will continue indefinitely until terminated as provided below. All termination notices will be sent by registered or certified mail, return receipt requested, or by applicable overnight delivery service, and will be effective upon delivery (or upon the recipient refusing delivery), as set forth in the records of the party delivering the same.



(a) **By Either Party**

Either party has the right to terminate this Agreement on any anniversary of the date of this Agreement commencing with the second anniversary for any or no reason on 90 days' prior written notice to the other to such effect.

(b) **By Company**

Company has the right to terminate this Agreement immediately upon written notice to Reseller to such effect if Reseller fails to perform or observe any material obligation of Reseller under this Agreement and such failure is not cured within 30 days after written notice of the same from Company; provided, that Reseller will not have the benefit of such cure period for any default that occurs more than twice in any 12-month period.

(c) **By Reseller**

Reseller has the right to terminate this Agreement immediately upon written notice to Company to such effect if Company fails to perform or observe any material obligation of Company under this Agreement and such failure is not cured within 30 days after written notice of the same from Reseller; provided, that Company will not have the benefit of such cure period for any default that occurs more than twice in any 12-month period.

(d) **Bankruptcy, etc.**

This Agreement will automatically terminate if:

- (i) a proceeding is instituted against Reseller seeking a declaration that Reseller is insolvent, or seeking dissolution, winding-up, charter revocation or forfeiture, liquidation, reorganization, arrangement, adjustment, composition or other similar relief with respect to Reseller, its assets or its debts under any law relating to bankruptcy, insolvency, relief of debtors, protection of creditors, termination of legal entities or other similar law, or seeking appointment of a receiver, trustee, custodian, liquidator or other similar official for Reseller or any substantial portion of its assets, and such proceeding remains undismissed or unstayed for a period of 30 consecutive days; or
- (ii) Reseller makes a voluntary assignment for the benefit of creditors, institutes a proceeding or appointment described in clause (i) above or consents to any proceeding or appointment described in clause (i) above.

(e) **Return of Materials**

Upon any termination of this Agreement, Reseller will (a) promptly return to Company all Intellectual Property and Confidential Information which is in Reseller's possession and (b) be deemed to have transferred back to Company all rights in the Intellectual Property and Confidential Information it may possess pursuant to this Agreement or

otherwise.

**18. ASSIGNMENT**

Reseller will not assign, pledge or otherwise transfer any of its rights, interest or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of Company. Company has the right to assign its rights and obligations under this Agreement to any transferee of its rights in the Software. Notwithstanding the foregoing, the Reseller may assign this Agreement or any End-User Agreement to any successor of all or substantially all of its assets and business, upon written consent by Company, which will not be unreasonably withheld.

**19. VENUE FOR DISPUTE RESOLUTION**

The parties agree that any dispute arising out of this Agreement that cannot be resolved will be submitted to any court sitting in Montreal, Quebec, Canada, and each of them hereby submit to the jurisdiction of such courts for such purpose.

**20. NOTICES**

Any notices or other communications required or permitted under this Agreement are to be sent to the addresses of the parties set forth on the signature page or to such other address as either party may inform the other of upon five days' prior written notice.

**21. MISCELLANEOUS**

This Agreement: (a) may be amended only by a writing signed by each of the parties; (b) may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument; (c) contains the entire agreement of the parties with respect to the transactions contemplated hereby and supersedes all prior written and oral agreements, and all contemporaneous oral agreements, relating to such transactions; (d) will be governed by, and construed and enforced in accordance with, the laws of the Canada and the province of Quebec; (e) has headings and sections for convenience of reading only and may not be used for interpretative purposes; and (f) is binding upon, and will enure to the benefit of, the parties and their respective successors and permitted assigns.

**22. CURRENCY**

All of the dollars amounts mentioned in this Agreement or in the Schedules hereto shall be in US funds, unless otherwise specifically denominated.

**23. SURVIVAL**

The provisions of Sections 9, 10, 11, 12, 13 and 23 shall survive the expiration or earlier termination of this Agreement.

**SIGNATURE PAGE TO**  
**SOFTWARE LICENSE AND RESELLER AGREEMENT**

**XSILVA SYSTEMS INC.**

Signed: \_\_\_\_\_

By:

Title:

Address: 1423 De La Visitation, Montreal,  
QC, Canada. H2L 3B7

Phone: (514) 907-1801

Fax:

E-mail: [dax@xsilva.com](mailto:dax@xsilva.com)

\_\_\_\_\_

Signed: \_\_\_\_\_

By:

Title:

Address:

Phone:

Fax:

E-mail:

## **EXHIBIT A**

### **SOFTWARE**

Xsilva LightSpeed is a multi-user sales system designed to automate retail and inside sales in a small business. Whether set up as a point of sale system in a retail environment or deployed to power an inside sales team, Xsilva LightSpeed harnesses the most powerful OS X and SQL-based technologies to deliver unparalleled performance and reliability under its crisp, polished OS X interface.

Built on a high-performance, solid, scalable OpenBase SQL foundation, Xsilva LightSpeed offers dynamic Sales, Service, Tracking and Purchasing tools that employ lightning fast SQL searches, natively multi-user operation and intelligent workflows designed to streamline and empower small business. It also features robust Administration and Reporting tools so business owners can manage and optimize their operations.

With enough raw capacity to satisfy any demanding small business, Xsilva LightSpeed goes a final step further and frames its functionality in a compelling OS X interface that users find both easy to learn and a joy to behold.

#### **Key Technologies**

Polished OS X Interface with Low Learning Curve

High-Performance, Solid, Scalable OpenBase SQL Foundation

Designed from the ground up for Multi-user Operation

#### **Target Market**

Ideal for Automating Sales Growth in Small Businesses like Retail Stores, Call Centres, Consultants, Light Manufacturers, Professional and Small Offices

#### **Feature List**

Products, Customers, Quoting, Ordering, Invoicing, Point of Sale, SROs, Purchase Orders, Inventory, Reporting, Jobs/Timesheets, Data Migration and Management Tools

**EXHIBIT B**  
**END USER AGREEMENT**

**Xsilva Systems Inc. ("XSILVA")**

**END USER LICENCE AGREEMENT FOR Xsilva Lightspeed SOFTWARE**

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***IMPORTANT***

PLEASE READ CAREFULLY BEFORE OPENING THE XSILVA SOFTWARE PRODUCT

This XSILVA End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and XSILVA for the XSILVA's SOFTWARE(s) identified above, which includes the User's Guide, any associated SOFTWARE components, any media, any printed materials other than the User's Guide, and any "online" or electronic documentation ("SOFTWARE"). By installing, copying, or otherwise using the SOFTWARE, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not install or use the SOFTWARE.

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**SOFTWARE PRODUCT LICENSE**

We agree and confirm that this Agreement is entered into by both parties for good and valuable consideration.

1. **LICENCE**. The SOFTWARE is licensed, not sold. XSILVA grants you a personal and non-exclusive limited license only for the use of the SOFTWARE, for which the proper fees have been paid.
2. **PROPERTY OF XSILVA**. The SOFTWARE is the confidential property of XSILVA. All right, title and interest, including without limitation, copyright, in and to the SOFTWARE is the sole and exclusive property of XSILVA. For greater certainty, the SOFTWARE shall include all parts and aspects of the SOFTWARE, including without limitation any images, graphic user interface, design elements, order of operation, so-called "look and feel", data organization, ideas, concepts, photographs, animations, text

and "applets" that are incorporated into the SOFTWARE, all accompanying printed material of the SOFTWARE.

3. GRANT OF LICENSE. The SOFTWARE is licensed as a single product. Its component parts may not be separated for use on more than one server. You may use this SOFTWARE on one single server and as many client workstations as you have purchased licenses for. Under no other circumstances may the SOFTWARE be operated at the same time on more than the number of computers for which you have paid a separate license fee. After you have purchased the license for SOFTWARE, and have received the file enabling the registered copy, you are licensed to copy the SOFTWARE only into the memory of the number of computers corresponding to the number of licenses purchased, regardless of the computer network architecture on which the SOFTWARE is stored and operated. XSILVA shall have the right, at any time, to audit and verify your compliance with this Agreement, including entry upon your premises to inspect your information technology and related records.

4. TERMINATION AND TRANSFER. You may terminate this license at any time by destroying the original and all copies of the SOFTWARE in whatever form. You may permanently transfer all of your rights under this EULA provided you transfer all copies of the SOFTWARE (including copies of all prior versions if the SOFTWARE is an upgrade) and retain none, and the recipient agrees to the terms of this EULA. It shall be a condition precedent of any transfer of the SOFTWARE and your rights under this EULA that the party to whom you transfer agrees to be bound by the terms of this EULA.

Without prejudice to any other rights, XSILVA may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE.

5. RESTRICTIONS. You may not modify, enhance, revise, alter, reverse engineer, decompile, or disassemble the SOFTWARE. You may not sublicense, rent, lease, or lend either the SOFTWARE or your rights under this EULA. You may not use the SOFTWARE to perform any unauthorized transfer of information, including without limitation, any transfer of files in violation of a copyright, or for any illegal purpose. You shall have the right to make a single copy of the SOFTWARE for storage on a single computer provided that such copy is only used for backup or archival purposes, except that you may not reproduce the printed materials included in the SOFTWARE PRODUCT. No proprietary or intellectual right, title or interest in or to any trademark, logo or trade name of XSILVA or its licensors is granted under this EULA.

6. UPGRADES. Future SOFTWARE that XSILVA labels as an upgrade shall replace and / or supplement the SOFTWARE that constitutes the basis of this EULA. You may use the resulting upgraded SOFTWARE only in accordance with the terms and conditions of this EULA unless amended by the terms of that upgrade.

7. SUPPORT SERVICES. Xsilva Systems Inc may provide you with support services

related to the SOFTWARE. Use of support services is governed by XSILVA policies and programs described in the user manual, in online documentation, and/or other XSILVA-provided materials, as they may be modified from time to time. Any supplemental SOFTWARE code provided to you as part of the support services shall be considered part of the SOFTWARE and subject to the terms and conditions of this EULA. With respect to technical information you provide to XSILVA as part of the support services, XSILVA may use such information for its business purposes, including for product support and development. XSILVA will not utilize such technical information in a form that personally identifies you.

8. INTELLECTUAL PROPERTY. The SOFTWARE is protected by Canadian and United States Intellectual property law and international treaty provisions governing intellectual property. You acknowledge that no title to the intellectual property in the SOFTWARE is transferred to you. You further acknowledge that title and full ownership rights to the SOFTWARE will remain the exclusive property of XSILVA and you will not acquire any rights to the SOFTWARE except as expressly set forth in this license. You agree that any copies of the SOFTWARE will contain the same proprietary notices which appear on and in the SOFTWARE.
9. EXPORT RESTRICTIONS. You agree that you will not export or re-export the SOFTWARE to any country, person, entity, or end user subject to Canadian or U.S.A. export restrictions. Restricted countries currently include, without limitation, Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. You warrant and represent that neither the U.S.A. Bureau of Export Administration nor any other federal agency has suspended, revoked or denied your export privileges.
10. LIMITED WARRANTY. XSILVA warrants to you that for a period of thirty (30) days from the date that you licensed, and paid for, the SOFTWARE (as evidenced by a copy of such payment receipt), the SOFTWARE will materially perform in accordance with the written materials that are enclosed with the SOFTWARE. Except for the foregoing, the SOFTWARE PRODUCT is provided "AS IS".
11. CUSTOMER REMEDIES. XSILVA and its suppliers' sole and absolute liability, and your exclusive remedy, under this EULA shall be, at XSILVA's sole discretion, to either repair or to replace the SOFTWARE that does not meet XSILVA's limited warranty stated in section 10, or refund the fee paid by you for such SOFTWARE upon receipt by XSILVA of the SOFTWARE with a copy of your payment receipt. The limited warranty in section 10 is void if any failure of the SOFTWARE to operate has resulted from misuse, breach of this EULA, accident, abuse or misapplication by any person other than XSILVA. Any replacement of the SOFTWARE will be warranted, on the same terms and conditions as stipulated herein, and for the same period as stipulated under Section 10.
12. DISCLAIMER OF WARRANTY. UNLESS SPECIFIED IN THIS EULA, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ARE DISCLAIMED, EXCEPT TO THE EXTENT THAT THESE DISCLAIMERS ARE HELD TO BE LEGALLY INVALID.

13. LIMITATION OF LIABILITY. IN NO EVENT SHALL XSILVA, XSILVA'S SUPPLIERS OR ITS LICENSORS BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, OR FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL DAMAGES, ARISING OUT OF, OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF XSILVA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall XSILVA's liability to you, whether in contract, tort (including negligence), or otherwise, exceed the greater of CDN\$1.00 or the amount paid by you for the SOFTWARE under this EULA. You agree and confirm that: you shall not apply for or seek any punitive or exemplary damages against XSILVA in any connection with this EULA, the SOFTWARE or the conduct of XSILVA; and, the provisions of sections 10, 11, 12 and 13 have induced XSILVA to enter into this EULA and that XSILVA would not have entered into this EULA but for such provisions. Sections 10, 11, 12 and 13 shall survive any termination of this EULA for any reason whatsoever.
14. U.S. GOVERNMENT RESTRICTED RIGHTS. The SOFTWARE is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer SOFTWARE clause of DFARS 252.227-7013 or subparagraphs (c)(i) and (2) of the Commercial Computer SOFTWARE-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Xsilva Systems Inc / 1423 De La Visitation / Montreal, QC, Canada. H2L 3B7.
15. GOVERNING LAW. This EULA shall be governed and interpreted in accordance with the laws of the Province of Quebec, Canada. The parties submit, attorn and consent to the non-exclusive jurisdiction of the courts in Montreal, Quebec, Canada.
16. SEVERABILITY. If any term, clause, paragraph or article of this EULA is held to be invalid or unenforceable, for any reason, it shall not affect, impair, invalidate or modify the remainder of this EULA, but the effect shall be confined to the term, clause, sentence or article of this EULA judged to be invalid or unenforceable.
17. ENFORCEABILITY. The failure or delay of any party to enforce at any time or any period of time any of the provisions of this EULA shall not constitute a present or future waiver of such provisions nor the right of either party to enforce each and every provision.
18. LANGUAGE. The parties acknowledge that they require that this EULA be drawn up in the English language only. Les parties reconnaissent qu'ils ont exigé que la présente convention soit rédigée en langue anglaise seulement.
19. ENTIRE AGREEMENT. This EULA is the entire EULA between you and XSILVA relating to its subject matter. It supersedes all prior or contemporaneous oral or written



communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgement, or other communication between the parties relating to its subject matter during the term of this EULA. No modification of this EULA will be binding, unless in writing and signed by an authorized representative of each party.

Should you have any questions concerning this EULA, or if you desire to contact Xsilva Systems Inc for any reason, please contact Xsilva Systems Inc by mail at: 1423 De La Visitation, Montreal, QC, Canada. H2L 3B7., by telephone at: (514) 907-1801 or by electronic mail at: [dax@xsilva.com](mailto:dax@xsilva.com).

## EXHIBIT C

### SUPPORT OBLIGATIONS

#### 1. Company's Obligations.

##### a. Basic Maintenance. Company will provide to Reseller:

- i. Notification of all Upgrades and Updates (defined below), promptly after the same are available, and related Documentation.

"Upgrade" means a set of a Software product which introduces substantial new functions or other substantial changes and which is identified by a change in the second digit of the Version number (e.g., Version 1.2.0 < Version 1.3.0); and "Update" means a set of a Software product which contains corrections of defects or minor functional improvements and which is identified by a change in the third digit of the Version number (e.g., Version 1.2.0 < Versions 1.2.1).

- ii. Telephone or e-mail assistance at support@xsilva.com during Company's standard hours of service with respect to the Software, including

1. clarification of functions and features of the Software,
2. clarification of the Documentation,
3. guidance in the operation of the Software and
4. error verification, analysis and correction.

Company's standard hours of service are Monday through Friday, 9:00 a.m. to 6:00 p.m., Eastern Standard Time, except for statutory holidays as observed by Company.

Reseller's support request should state the problem or question with as much particularity as possible.

##### b. Upgrades and Updates. Maintenance and support services will be provided with respect to Upgrades and Updates as follows:

- i. An Upgrade will be supported until the latter of date of deliverance of the next Upgrade or the second anniversary of its initial deliverance to Reseller, provided that Reseller accepts and utilizes all Updates to that Upgrade; and
- ii. An Update will be supported until the deliverance of the next Update to Reseller.

- c. Circumstances Not Attributable to Company. Company has no obligation to provide maintenance and support services required as a result of circumstances not attributable to Company. If Company does provide maintenance and support services in such circumstances, Reseller will be billed for such services at Company's then-current rates. Circumstances, which are not attributable to Company, include:
    - i. accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electrical power, air conditioning or humidity control; failure of rotation media not furnished by Company; excessive heating; fire and smoke damage; operation of the Software with other media and hardware, software, network or telecommunication interfaces; or causes other than ordinary use;
    - ii. improper installation by Reseller or Customer or use of the Software that deviates from any operating procedures established by Company in the applicable Documentation;
    - iii. modification, alteration or addition or attempted modification, alteration or addition of or to the Software undertaken by persons other than Company's representatives; and
    - iv. software programs made by Reseller or other parties.
  - d. Services to Customers. Company will provide support services to Customers when a support case is escalated by the Reseller. Resellers will attempt to use their own support resources and support materials provided by the Company to resolve Customer support cases before escalating them to the Company support team.
  - e. Marketing Materials. Company will provide Reseller with Xsilva LightSpeed marketing materials, available in the Reseller Area of the Xsilva.com website. Reseller may purchase additional materials as they become available at Company's cost.
  - f. Training. Paid Training may be offered to Resellers, please check the Training section on Xsilva.com for specifics on dates and rates.
2. Reseller Obligations. Company's provision of maintenance and support services to Reseller is subject to the following:
- a. Training. Reseller will properly train its personnel in the use and application of the Software and equipment on which it is used.
  - b. Services to Customers. Company will provide support services to Customers when a support case is escalated by the Reseller. Resellers will attempt to use their own support resources and support materials provided by the Company to

resolve Customer support cases before escalating them to the Company support team.

- c. Documentation and Reporting. Reseller will document and promptly report to Company all errors or malfunctions of the Software. Reseller will take all steps necessary to carry out procedures to rectify errors or malfunctions within a reasonable time after a description of such procedures have been received from Company.

**EXHIBIT D**

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## **EXHIBIT E**

### **LICENSE FEES**

License fees and license structure for Xsilva LightSpeed are changed periodically. Refer to the Reseller Area of the Xsilva.com website for the latest fees and structure. Xsilva Resellers receive a log in user name and password to access the Reseller Area of Xsilva.com.