6WIND VSR - END USER - SOFTWARE MAINTENANCE AGREEMENT

THIS AGREEMENT (the "Maintenance Agreement") is made and entered into by and between 6WIND S.A., a company duly organized and existing under the laws of France and having offices at Immeuble Le Carré, 3 avenue des Prés, 78180 Montigny-le-Bretonneux, France ("6WIND") and the End User.

WHEREAS, the Parties have agreed on 6WIND End User Perpetual License Agreement (the "License Agreement");

WHEREAS, End User elects to receive 6WIND's services for maintenance of the Software under the terms of this Maintenance Agreement,

6WIND PROVIDES THE MAINTENANCE SERVICES SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT END USER ACCEPTS AND COMPLIES WITH THEM.

IF END USER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, 6WIND WILL NOT PROVIDE THE MAINTENANCE SERVICES TO END USER.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. DEFINITIONS

The capitalized terms used in this Maintenance Agreement and not otherwise defined herein shall have the same meaning assigned to them in the License Agreement.

"Standard Support" means Maintenance Services are delivered during standard French business hours. The level of support selected by Licensee is defined in the Purchase Order. If selected, Standard Support shall apply to all the Units of Software used by End User.

"Extended Support" means Maintenance Services are provided with enhanced service level agreement. For instance, maintenance services for critical cases are provided 24 hours a day, 7 days per week. The level of support selected by End User is defined in the Purchase Order. If selected, Extended Support shall apply to all the Units of Software used by End User.

2. SCOPE. STATUS OF THE PARTIES

2.1. 6WIND shall provide the Maintenance Services to End User in accordance with the terms and conditions of this Maintenance Agreement. Only a Point of Contact may contact 6WIND for Maintenance Services. Maintenance Services can be accessed through 6WIND customer service Web portal.

2.2. (a) The following actions shall negate 6WIND's obligation to provide Maintenance Services and are expressly prohibited under this Maintenance Agreement:

    i. Use of the Software for purposes other than those set forth in the Documentation.
    ii. Unauthorised access to the Software by End User or a third party.
    iii. Unauthorised use of License Keys.
    iv. Usage by the End User of the Software in excess of its Capacity or of a Hot Standby Instance or a Warm Standby Instance not paired with an Active Instance of the Software for High Availability Configuration.
    v. Modifications made to End User's environment rendering it incompatible with the system environment for which 6WIND supplied the Software initially.
    vi. End User's failure to comply with its obligations under this Maintenance Agreement.

(b) In addition to the actions described in Section 2.2(a) above, which shall negate any obligation under this Maintenance Agreement or create liability for failure to supply Maintenance Services to End User hereunder, 6WIND shall not be responsible for any Modifications, additions or other changes made to the Software by End User.

2.3. 6WIND provides no warranty as to the compatibility of the Software or new versions of the Software with new versions of third-party applications with which the Software was compatible as at the initial date of delivery. In addition, End User acknowledges and agrees that nothing herein shall obligate 6WIND in any manner hereunder with respect to any hardware or software product or any part thereof, any other code or file of End User not supplied to End User by 6WIND.

3. ENGINEERING CONSULTING SERVICES ("ECS")

3.1. ECS is not a standard service and is only available after End User purchases such option.

3.2. ECS comprise consultation services about the Software provided by 6WIND that are not directly related to an Error in Software. ECS shall be available to aid in the review and use of the Software. ECS shall not include development related services by 6WIND commonly known as professional services. ECS are not part of Maintenance Services and are not included in this Maintenance Agreement unless expressly provided by 6WIND to End User under a separate appendix solely for these purposes.

3.3. ECS shall be available primarily via email during normal working hours based in Paris, France

3.4. ECS does not include on-site support or travel by 6WIND.

4. UPDATING & UPGRADING SERVICE

4.1. Updating Service shall include licensing of the new Maintenance and Minor Releases ("Updates") of the Software released by 6WIND during the term of this Maintenance Agreement. Updating Service is included in this Maintenance Agreement.

4.2. 6WIND estimates it will release at least two (2) Minor Releases versions in each calendar year.

4.3. A Minor Release is maintained for a period of two years. This duration can be extended with a separate agreement.

4.4. Upgrading Service includes licensing of the new Major Releases of the Software ("Upgrades") released by 6WIND. Upgrading Service is included in this Maintenance Agreement.

4.5. 6WIND will inform End User of the availability of Updates and Upgrades, if any, by email. Updates and Upgrades may be downloaded by End User from 6WIND's website together with any relevant Documentation.

4.6. End User is solely responsible for installing the Updates and Upgrades in the Software.

4.7. The Parties expressly agree that each Update or Upgrade (and the respective Documentation, if any) that is provided to End User in accordance with this Maintenance Agreement, shall without further actions become, on the date of receipt of said Update or Upgrade by End User, part of the Software governed by the License Agreement in effect between the Parties. For the avoidance of doubt, End User is not required to utilize all of or any part of an Update or Upgrade provided by 6WIND.

5. ERROR CORRECTION

5.1. 6WIND will use commercially reasonable efforts to correct Errors or provide viable workaround for Errors occurring when using the Software. Typical response time is given in the Section 7.10 and 7.11 of this Maintenance Agreement. Nothing herein shall be deemed to guarantee 6WIND's ability to correct all Errors.

5.2. Error Correction shall comprise inspection of an Error in Software reported by End User according to provisions of Section 5.4 below ("Error Report") as well as delivery of Confirmation and Repair by 6WIND to End User.

5.3. 6WIND shall provide Error Correction for a maximum of two (2) maintained Minor Releases of the Software.

5.4. End User shall inform 6WIND of an Error in Software by a written report in electronic format compatible with 6WIND customer support tool including the following information:

    i.   release number of the Software;
    ii.   the License Usage Report as defined in the License Agreement;
    iii.   instructions on how to reproduce the Error on the Reference Platform;
    iv.   any other necessary and/or useful information relating to locating the reported Error; and

        v. End User's view on the Severity Level (refer to the Section 6 of this Maintenance Agreement for Severity Levels definition) of the reported Error.

5.5. Error Correction will only be provided on Software that is (i) used in accordance with the specifications given in the Documentation, and (ii) reproduced on the Reference Platform. Once all these conditions are met, Error Correction process is described in a Case ("Case").

6. SEVERITY LEVELS

The "Severity Levels" for Cases are defined hereafter:

Severity Level	Description
Critical	The Software cannot be used at all in End User's product or system, or the Software disrupts the functionality of End User's product to the extent that End User's product cannot be used, and there is no known workaround.
High	The functionality of the Software in End User's product or system is seriously affected; a function in the Software cannot be used although other functions remain unaffected; or the Software as a whole works but certain functions are somewhat disabled, give incorrect results, or deviate significantly from the specifications as stated in the user documentation.
Medium	A minor defect with no existing workaround available, an intermittent defect causing inconvenience, or a usability issue having frequent minor end user impact.
Low	A minor defect with an existing workaround available, a cosmetic or low impact item, a general usage question, or a documentation omission or discrepancy.

7. TREATMENT OF CASES

7.1. Submission: End User shall submit a Case to 6WIND through 6WIND customer service Web portal. For Critical Cases under Extended Support, End User shall use the phone tool available under the portal to contact 6WIND support.

7.2. Acknowledgement: 6WIND will acknowledge the receipt of the Submission of a Case by email except for Critical Cases under Extended Support that will be acknowledged first by phone and confirmed by email. When acknowledged, the Error Report has been accepted as covered by the Maintenance Agreement. All necessary information has been provided using the written report in electronic format compatible with 6WIND customer support tool leading a Case. The Acknowledgement will include the tracking number and the assigned Severity Level for the Case.

7.3. Confirmation: If 6WIND requires further information to reproduce or diagnose the Error, 6WIND will request the information and may recommend actions to help in analysis. 6WIND will confirm the Error upon receiving sufficient information to reproduce or diagnose the Error.

7.4. Remedy: A Remedy is the capability to restore operations of End User's system with a possible degradation of performance or service. It is provided only for Critical Cases under Extended Support. A Remedy can be for instance the restoration of a previous version of the Software or the replacement of defaulting hardware. Remote access by 6WIND on End User's system shall be required to provide a Remedy on time. Providing a Remedy decreases the Severity Level of a Critical Case to High under Extended Support.

7.5. Workaround: A Workaround is a temporary solution to correct an Error. A Workaround can be for instance a temporary Software patch or an alternate way to configure the Software. Providing a Workaround may decrease the Severity Level of a given Case. 6WIND will deliver Workarounds with a defined response time (refer Section 7.11) only for Critical Cases under Extended Support.

7.6. Resolution: 6WIND will make commercially reasonable efforts to resolve the Error in accordance with the target response times below. Resolution may consist of a) providing a Minor Release when applicable, b) providing a

Maintenance Release, c) providing a fix or a workaround, d) providing a plan for addressing the Error and an estimate of the time required to provide a correction or workaround. Any resolution provided to End User must be sufficiently tested and confirmed by 6WIND prior to being delivered to End User.

7.7. Daily Update: For Critical and High Cases, 6WIND will provide on the customer service Web portal a daily report including the status of the Case and information about the progress on the Resolution of the Case.

7.8. A Case can have the following status:

    i. New: Case is received but not acknowledged
    ii. Working: Case is acknowledged, reproduction in progress
    iii. Wait: additional information is expected to reproduce/resolve the Case
    iv. Stand By: on a common agreement, Case is excluded from the present Maintenance Agreement, no further work is done
    v. Developing: Case is reproduced and R&D team is working on it
    vi. Pending: a workaround has been provided
    vii. Check: final solution is delivered (official release)
    viii. Closed: final solution is acknowledged

7.9. Connection between Case status and resolution steps:

    i. Acknowledgement time is measured between New Status to Working Status
    ii. Remedy time (Extended Support only) is measured between New Status and the change of Severity from Critical to High for Critical Cases
    iii. Confirmation of Error time is measured between Working Status to Developing Status
    iv. Workaround time (Extended Support only) is measured between Working Status and Pending Status for Cases for which a Workaround has been provided
    v. Resolution time is measured between Developing Status to Pending Status
    vi. Time spent in Wait status is not accountable

7.10. 6WIND typical response time for Standard Support in business days including Acknowledgement, Confirmation of Error and Resolution are set forth in the following table.

Severity Level	Acknowledgement time after Submission	Confirmation of Error time after Acknowledgment	Resolution time after Confirmation of Error
Critical	1 day	2 days	5 days
High	1 day	3 days	7 days
Medium	1 day	5 days	25 days
Low	1 day	10 days	50 days

7.11. 6WIND typical response time for Extended Support in hours or days including Acknowledgement, Remedy, Confirmation of Error, Workaround and Resolution are set forth in the following table.

Severity Level	Acknowledgement time after Submission	Remedy time after Acknowledgement	Confirmation of Error time after Acknowledgment	Workaround time after Confirmation	Resolution time after Confirmation of Error
Critical 24*7*365	1 hour including Confirmation of Error (Submission shall be done by phone)	4 hours (providing a Remedy decreases the Severity Level to High)	NA	NA	NA
High 8*5 during business hours	4 hours	NA	1 day	2 days	7 days
Medium 8*5 during business hours	1 day	NA	5 days	NA	25 days
Low 8*5 during business hours	2 days	NA	10 days	NA	50 days

8. MAINTENANCE FEE

8.1. The amount of the Maintenance Fee, and associated payment terms, payable by End User to 6WIND for services performed under this Maintenance Agreement is specified in the Purchase Order, and may be amended if additional items are added for maintenance during the maintenance period. The Maintenance Fee shall be reviewed on an annual basis, and is subject to change, depending on any changes to the software and/or hardware placed under maintenance.

8.2. The Maintenance Fee shall thereafter be paid in advance for each twelve (12) month period respectively.

8.3. All sums payable to 6WIND under this Maintenance Agreement shall be paid in the currency as specified in the Purchase Order.

8.4. End User is responsible for all taxes on transactions between 6WIND and End User under this Maintenance Agreement other than taxes based on 6WIND's income. All payments shall be made free and clear without deduction for any and all present and future taxes imposed by any taxing authority. In the event that End User is prohibited by law from making such payments unless such deductions are made or withheld there from, then End User shall be entitled to withhold these amounts, provided however that End User duly proves to 6WIND that these deductions are indeed income tax payments made on behalf of 6WIND, and that End User provides 6WIND with an official receipt issued and stamped by the relevant Tax Authorities.

8.5. In the event of late payment, 6WIND reserves the right to suspend performance of its obligations until the Maintenance Fee has been paid in full by End User without prejudice to any other course of action 6WIND may have.

9. WARRANTIES

9.1. 6WIND represents and warrants to End User that the Maintenance Services will be provided in a professional and workmanlike manner. As End User's sole and exclusive remedy for a breach of the foregoing warranty, 6WIND agrees to re-perform any Maintenance Services not in compliance with this warranty brought to its attention within thirty (30) days after those services are performed.

9.2. EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, THE MAINTENANCE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND 6WIND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. 6WIND DOES NOT WARRANT THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR FREE FROM ERRORS, BUGS OR DEFECTS OR THAT ALL PROBLEMS OR ERRORS WILL BE RESOLVED.

10. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATED TO THE LOSS OF USE, DATA, BUSINESS OR PROFITS, GOODWILL, WORK STOPPAGE, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF THE OTHER PARTY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING FROM AN ACTION OF CONTRACT, TORT, OR OTHER LEGAL THEORY. IN NO EVENT SHALL 6WIND'S LIABILITY FOR DIRECT DAMAGES WITH RESPECT TO THIS AGREEMENT, THE SOFTWARE OR SERVICES EXCEED FEES PAID BY END USER FOR THE SOFTWARE OR SERVICE WHICH GIVES RISE TO THE CLAIM. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY OR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. TERM AND TERMINATION

11.1. This Maintenance Agreement shall enter into force on the Effective Date. It shall remain in force for an initial period of one year and be renewed thereafter every year by the Parties until terminated according to Sections 11.2 or 11.3.

11.2. Both Parties shall have the right to terminate this Maintenance Agreement with three (3) months written notice prior to the renewal date to the other Party. 6WIND may not, however, use the above right within twenty-four (24) months of Effective Date of the License Agreement, unless the License Agreement is sooner terminated.

11.3. This Maintenance Agreement may be terminated by the non-defaulting Party with immediate effect by written notice to the other Party in the events specified in Sections 6.2i and 6.2ii of the License Agreement.

11.4. In the event of termination of this Maintenance Agreement for any reason, End User shall cease to use, and 6WIND shall cease providing, the Maintenance Services on the date of such termination and End User's right to download and install Updates and Upgrades will cease.

12. MISCELLANEOUS CLAUSES

12.1. Headings. The section headings used in this Maintenance Agreement are for convenience of reference only. They will not limit or extend the meaning of any provision of this Maintenance Agreement, and will not be relevant in interpreting any provision of this Maintenance Agreement.

12.2. Severability. If any provision in this Maintenance Agreement is held invalid or unenforceable by a body of competent jurisdiction, such provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability. The Parties agree to negotiate in good faith a valid, enforceable substitute provision that most nearly affects the Parties' original intent in entering into this Maintenance Agreement or to provide an equitable adjustment in the event no such provision can be added. The other provisions of this Maintenance Agreement will remain in full force and effect.

12.3. Relations of the Parties. No agency, partnership, joint venture, collaboration, or employment is created as a result of this Maintenance Agreement. Neither Party shall have any authority to bind the other Party to any obligation nor to represent the other Party in any circumstance and both Parties agree not to so bind or represent the other.

12.4. Force Majeure. 6WIND may not be held liable for delays or breaches in performance of any contractual obligations, where such delays or breaches result from events due to force majeure or unforeseeable accident, including, without limitation: strikes, blocking of transport and supply routes for any reason whatsoever, natural disasters, blocking of telecommunications including the national switched network, computer breakdown, failure of the public electricity network, and all other cases outside the control of 6WIND which prevent it performing its obligations normally. However, nothing herein shall be interpreted to allow End User to be excused from making any payments under this or any ancillary agreements, regardless of a force majeure event. In the event of a case of force majeure affecting performance in accordance with this Maintenance Agreement, 6WIND agrees to inform End User as soon as it has knowledge thereof and as soon as practicable. In the event of a force majeure event lasting for a period in excess of three (3) months, either Party may terminate this Maintenance Agreement.

12.5. Entire Agreement / Amendments. This Maintenance Agreement sets forth the entire agreement and understanding of the Parties relating to the object hereof and merges all prior discussions and agreements of the matter hereof between them. No purchase order, or other ordering or confirming document or any handwritten or typewritten text issued by End User which purports to modify or supplement the text of this Maintenance Agreement shall add to or vary the terms of this Maintenance Agreement. The Parties agree that this Maintenance Agreement may be amended only by a separate agreement, signed by duly authorized representatives of both Parties, referring to this Maintenance Agreement and identifying the agreed amendment(s).

12.6. Notices. All notices, requests and other communications called for by this Agreement shall be deemed to have been given if sent by regular or certified mail, return receipt requested or U.S. Postal Service Express Mail or Federal Express, UPS or other similar recognized private overnight delivery service, prepaid to the notified Party at the addresses set forth above in the introduction or to such other addresses as either Party shall specify in writing to the other.