



## **Hardware Support Terms and Conditions**

InfoVista and Client agree that the following terms and conditions shall govern the Hardware Support Services provided by InfoVista to Client with regard to the Hardware. Client is required to purchase one (1) year of Hardware Support Services with its initial license purchase. Hardware Support Services are only available for clients with a valid software support contract.

### **1. Definitions**

**"Agreement"** shall mean this terms and conditions including the Annexes, being the terms and conditions for the supply of Hardware Support Services

**"Day"** shall mean business day of the country in which the Support Service Center is located

**"Delivery"** shall mean the delivery as per the incoterm 2000 FOB shipping point

**"Client"** shall mean the company, corporation or other entity that purchased the Hardware Support Services

**"Hardware"** shall mean the computer hardware supplied by InfoVista or any of its authorized partners

**"Hardware Support Services"** shall mean the support services described in this Agreement

**"InfoVista"** shall mean InfoVista SA or any of its affiliates

**"Non-Covered Hardware"** shall mean Hardware that is not currently under a valid Hardware Support Service contract, is no longer under warranty or is no longer supported

**"Return Material Authorization"** or **"RMA"** shall mean InfoVista formal approval to return Hardware

**"Return Material Authorization Form"** or **"RMA Form"** shall mean the document that shall be filled out by Client prior any return shipment in the form of the template attached in Annex 1

**"Return Material Authorization Number"** or **"RMA Number"** shall mean the tracking number provided by InfoVista to Client for the return of Hardware to an InfoVista Support Service Center. RMA number will be used as a reference between Client and InfoVista for any repair or replacement operation.

**"Support Service Center"** shall mean an InfoVista support service center located as indicated in Annex 2



## **2. Hardware Warranty**

During twelve (12) months form the Delivery of the Hardware, InfoVista warrants that the Hardware is free from defect in material and workmanship under normal use Client remedies under this section shall be limited, at InfoVista's sole option, to (a) repair or (b) replacement of the defective Hardware without charge to Client.

Replacement Hardware may be new or refurbished but replacement Hardware will be at least equivalent in functionality as the original Hardware and will be warranted for the remainder of the original warranty.

During the warranty period, Client shall respect the Return Material Authorization Procedure defined below. Delivery charges are not included in the warranty.

## **3. Scope of the Hardware Support Services**

Upon payment of the related annual Hardware Support Services fees, InfoVista will provide to Client one of the following type of Hardware Support Services: Standard Support Service or Premium Support Service.

### **3.1. Standard Support Service**

Standard Support Service entitles Client to receive his repaired Hardware product after receipt by InfoVista of the defective Hardware.

Upon receipt of the RMA Number, Client will ship the defective Hardware to the Support Service Center located in its geographical area.

Within ten (10) Days from receipt of the defective Hardware at the Support Service Center, InfoVista will use commercially reasonable efforts to repair and ship back the Hardware to Client. InfoVista may dispatch a new Hardware with the same or equivalent functionality.

### **3.2. Premium Support Service\***

Premium Support Service entitles Client to receive replacement hardware product before that the defective Hardware is received at the Support Service Center.

InfoVista shall do its best effort to ship the replacement Hardware to Client site within two (2) Days from the issuance of RMA Number by InfoVista.

Within ten (10) Days from the receipt of the replacement Hardware, Client shall return the defective Hardware to its Support Service Center. In the event that the defective Hardware is not returned in due time or is returned in non acceptable conditions, InfoVista reserves the right to charge Client for the price of the replacement Hardware at InfoVista then current price list.

\*This service may not be available in some countries.



### **3.3. Exclusions**

Hardware Support Services does not include installation or configuration assistance or data uploading on the Hardware.

Hardware Support Services shall not be available for Hardware determined to be altered, or damaged by accident, misuse, or unauthorized modification, repair or installation.

Delays to repair or replace the Hardware do not include shipment. Any additional transit time due to international customs clearance are not InfoVista's responsibilities and Client can't claim any damages due to such delays.

### **4. Dead on Arrival Service ("DOA")**

For up to thirty (30) days from the Delivery, InfoVista will provide expedited replacement of Hardware that fail to operate within forty eight (48) hours of initial installation. For the purpose of this DOA Service, "fail to operate" shall mean a material failure to substantially perform in accordance with the Hardware's technical specifications and shall not include deficiencies that do not materially affect Hardware performance.

Within two (2) Days from the issuance of a RMA Number, InfoVista will do its best effort to ship a replacement Hardware to Client.

Client shall return the defective Hardware to InfoVista Support Service Center within thirty (30) Days of issuance of the RMA. InfoVista reserves the right to invoice Client for the price of the Hardware at InfoVista then current price list if Client fails to the delays.

### **5. Hardware Return Procedure**

This Hardware Return Procedure shall apply indiscriminately to the Hardware Support Services, Dead on Arrival Service and to the Warranty. Failure by Client to respect the Hardware Return Procedure will relieve InfoVista of any of its obligations hereunder.

#### **5.1 Return Material Authorization**

Should the Hardware be classified by InfoVista Support Service engineer as defective, Client will receive a Return Material Authorization Number for its reference. Client is responsible for contacting its Support Service Center to obtain a RMA Number before returning any Hardware to InfoVista.

Client may place a RMA Number request to its Support Services Center by email or by phone. Client shall communicate its Hardware Support contract number together with any information that may be reasonably requested by InfoVista.

All defective Hardware returned to InfoVista must reference a RMA Number.



## **5.2 Troubleshooting**

InfoVista reserves the right to perform a troubleshooting procedure remotely before issuing a RMA Number. Client shall give to InfoVista all reasonable information requested to allow InfoVista to conduct such procedure. If the troubleshooting confirms that the Hardware is defective, InfoVista will communicate a RMA Number to Client.

## **5.3 Return Shipment**

### 5.3.1 Packaging

Original packaging shall be used to minimize the risks of damages to the Hardware during the shipment. Client shall ensure that parts are placed in waterproofed ESD bags. Client shall pad corners of the chassis and any boards, components and any other fragile parts of the Hardware with foam or paper.

If Hardware is damaged during return shipment due to improper packaging, InfoVista may charge Client for the price of the Hardware at InfoVista then current price list.

The RMA Form duly completed by Client shall accompany the return of the defective Hardware and the RMA Number shall prominently be displayed on the shipping container.

InfoVista reserves the right to reject and return to Client, at Client's own costs, any Hardware for which no RMA Form and/or RMA Number appear on the shipping container.

### 5.3.2 Shipment

Client shall send the defective Hardware to the Support Service Center located in its geographical area as indicated in the Annex 2. InfoVista shall ship the Hardware to Client site as indicated in the RMA Form

All Hardware shall be sent via traceable means

### 5.3.3 Shipment Charges

Under Standard Support Service, Client is responsible for the organization and the payment of all charges related to the shipment to its InfoVista Support Service Center to the address indicated in Appendix 2. InfoVista will pay for the shipment of the replacement Hardware to Client.

Under Premium Support Service, InfoVista shall bear all costs related to shipment.

## **6. Non-Covered Hardware**

For Non-Covered Hardware, InfoVista may provide a quote to Client for the repair or replacement of the Hardware.



## **7. Parties Responsibilities**

### **7.1 Client's responsibilities:**

Client shall:

- maintain accurate and up to date records of the number, location and serial numbers of all Hardware supplied to Client under a license contract or InfoVista global license terms.
- cooperate with InfoVista support engineers in the diagnosis of any defect in the Hardware reported by Client through the RMA Procedure.
- make available to InfoVista all reasonable information and access required by InfoVista in order to perform the Hardware Support Service.
- install Hardware as per documentation
- make weekly back up of the configuration and Data
- re-install its configuration on the replacement Hardware

### **7.2 InfoVista's Responsibilities:**

InfoVista shall:

- Use its reasonable commercial efforts to ensure that the Hardware Support Service will be performed with reasonable skill and care, using appropriately trained and qualified personnel.

## **8. Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY INDIRECT, UNFORESEEABLE OR INCIDENTAL OR SPECIAL OR PUNITIVE DAMAGES; NOR SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL LOSS, LOSS OF PROFITS, LOSS OF DATA OR LOSS OF GOODWILL OR BUSINESS ARISING FROM A CLAIM UNDER THIS AGREEMENT.

CLIENT'S SOLE REMEDY IN THE EVENT OF A BREACH BY INFOVISTA OF ANY OBLIGATION HEREUNDER SHALL BE, AT INFOVISTA'S OPTION, FOR INFOVISTA EITHER TO RE-PERFORM THE NON-CONFORMING SERVICE OR TO REFUND AN APPROPRIATE PORTION OF THE FEES PAID BY THE CLIENT.

IN THE EVENT THAT INFOVISTA IS FOUND LIABLE IN RELATION TO THIS AGREEMENT, ITS AGGREGATE LIABILITY MAY NOT EXCEED, IRRESPECTIVE OF THE CAUSE OF LIABILITY, AN AMOUNT EQUAL TO THE HARDWARE SUPPORT SERVICES FEE PLUS TAX PAID BY THE CLIENT TO INFOVISTA FOR THE YEAR IN WHICH INFOVISTA IS FOUND LIABLE.

## **9. Confidential Information**

**9.1 Obligation of Confidence** During the performance of this Agreement, each party may receive Confidential Information (as defined below) from the other. Each party will treat Confidential Information as confidential and shall protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care as the recipient uses to protect its own Confidential Information, to prevent the unauthorized dissemination or publication of the Confidential Information. Neither party will disclose Confidential Information other than to those of its employees or agents who need to know such information for performance of each party's rights and obligations under this Agreement. Neither party will use Confidential Information for any purpose beyond the performance of its rights and obligations under this Agreement without the prior written consent of the other party. All Confidential Information shall remain the property of the disclosing party, and each party will return or destroy any tangible materials containing such Confidential Information upon request of the other party.

**9.2 Confidential Information** shall mean all information marked or identified as confidential or proprietary, or received under circumstances reasonably interpreted as imposing an obligation of confidentiality, that is disclosed in the context of the Support Services. It includes, but is not limited to intellectual property rights, trade secrets and business matters such as research and development information, Software Products, source codes, new Products, business opportunities, sales and marketing plans and financial and personnel information. Confidential Information does not lose its status as Confidential Information merely because it was known by a limited number of persons or entities or because it was not entirely originated by either party.

**9.3 Exclusions** The obligations of confidentiality and protection imposed by this paragraph shall not apply, or shall cease to apply, to any information that (a) was lawfully known by either party prior to its receipt hereunder; or (b) is or becomes publicly available without breach of this Agreement; or (c) is lawfully received by either party from a third party who does not have an obligation of confidentiality to either party; or (d) is developed independently; or (e) is required by law, regulations or court order or pursuant to regulations imposed by stock exchange authorities, providing that the party seeking to disclose the Confidential Information promptly informs the other party of its intended disclosure, which other party may then seek a preventive order to limit such disclosure.

**9.4** This article shall survive expiration or termination of this Agreement. The parties agree to comply with the obligations contained in this article throughout the entire term hereof and five (5) years following the expiration hereof.

## **10. General**

**Nullity.** In the event that any one of the provisions of this Agreement is found to be null and void, the other provisions shall retain their binding force and this Agreement may be partially performed while the parties agree on a new equivalent valid provision, which reflects their intention.

**Entire Agreement.** Except as expressly provided herein, the provisions of this Agreement contain the entire agreement entered into between the parties. They prevail over any prior



provision or agreement as well as any communication between the parties relating to the subject matter hereof. Any variation to this Agreement must be evidenced in writing and requires the signature of both parties.

**Waiver.** The fact that either of the parties has not demanded the application of any clause hereof whatsoever, whether permanent or temporary, may not in any case be considered as a waiver of its rights under said clause.

**Transfer.** The right to receive Hardware Support Services and its related obligations and responsibilities may not be transferred or assigned by the Client in any manner whatsoever except upon the prior written agreement of InfoVista.

**Limitation period.** Except where the local law stipulates a mandatory longer period, no action, irrespective of its form, in relation to this Agreement may be instituted by either of the parties more than two (2) years after the occurrence of the event giving rise to the cause of action.

**Governing Law and Jurisdiction.** The applicable governing law and jurisdiction shall be the one of the country where the InfoVista company supplying the Hardware is located.

**Annex 1 Return Material Authorization Form**



**Return Material Autorization**

**Customer Information**

Customer: \_\_\_\_\_  
 Contact: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Zip Code: \_\_\_\_\_  
 City: \_\_\_\_\_  
 Country: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email : \_\_\_\_\_

**Delivery Address**

Société : **INFOVISTA**  
 A l'attention de : See Annex2  
 Adresse : See Annex2  
 \_\_\_\_\_  
 Code Postal : See Annex 2  
 Ville : See Annex 2  
 Téléphone : See Annex 2  
 Fax: \_\_\_\_\_

**Filled in by Infovista**

Creation date: \_\_\_\_\_  
 RMA Number: \_\_\_\_\_

***Form to be sticked  
 outside the box***

**Problem description (Fields filled in by Infovista)**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Item	Réf.	Désignation	Qty

Comments: \_\_\_\_\_

\_\_\_\_\_



## Annex 2 InfoVista Support Service Centers

### EMEA

This Center covers Europe, Middle East and Africa.

Location	France, Les Ulis
Online services	<a href="http://www.fovista.com">www.fovista.com</a>
Support Number	+ 33 1 64 86 79 11
Main Number	+ 33 1 64 86 79 00
Support Fax Number	+ 33 1 64 86 79 79
Email address	<a href="mailto:support@fovista.com">support@fovista.com</a>
Support Hours (*)	8:00 am to 7:00pm Central European Time, Monday to Friday except public Holidays
Postal Address	InfoVista S.A. 6, rue de la Terre de Feu 91952 Courtaboeuf, France

### AMERICAS

This Center covers North America, Central America, South America and The Caribbean.

Location	Unites States, Herndon
Online services	<a href="http://www.fovista.com">www.fovista.com</a>
Support Number	1 703-435-5571
Main Number	1 703-435-2435
Support Fax Number	1 703-435-5122
Email address	<a href="mailto:support@fovista.com">support@fovista.com</a>
Support Hours (*)	9:00 am to 8:00 pm Eastern Standard Time, Monday to Friday except public holidays
Postal Address	InfoVista Corporation 12950 Worldgate Drive, Suite 250 Herndon, VA 20170 ,USA

### ASIA

This center covers Asia and Pacific regions (\*).

Location	Singapore
Online services	<a href="http://www.fovista.com">www.fovista.com</a>
Support Number	+ 65 6243 3763
Main Number	+ 65 6449 7641
Support Fax Number	+ 65 6449 3054
Email address	<a href="mailto:support@fovista.com">support@fovista.com</a>
Support Hours (*)	09:00 am to 6:00pm (Singapore Time), Monday to Friday, except public Holidays
Postal Address	750C Chai Chee Road, Unit#03-16/17, Technopark, Singapore 469003

(\*) Client may be required to contact the Australian Support Center



### Annex 3 Responsibilities of the Parties

#### 1. Standard Support Services

<b>Step</b>	<b>Task Description</b>	<b>Owner</b>
1	Troubleshoot Hardware failure	InfoVista
2	Confirm Hardware failure	InfoVista
3	RMA Form send to Client	InfoVista
4	Ship Hardware to InfoVista Support Center	Client
5	Repair or replace the Hardware	InfoVista
6	Ship working Hardware to Client site	InfoVista

#### 2. Premium Support Services

<b>Step</b>	<b>Task Description</b>	<b>Owner</b>
1	Troubleshoot Hardware failure	InfoVista
2	Confirm Hardware failure	InfoVista
3	RMA attribute to customer	InfoVista
4	Ship replacement appliance to Customer	InfoVista
5	Ship damaged appliance to InfoVista Support Center	Client