

# Lantronix LEVEL Technical Services Terms of Service

These Lantronix LEVEL Technical Services terms of service (this “**Agreement**”) contain the terms and conditions that govern your access to and use of each of the technical support services made available by us through <https://www.lantronix.com/level-technical-services-2/> (the “**LEVEL Technical Services Site**”), which includes but is not limited to 24/7 technical phone support, software updates, configuration assistance, limited lifetime warranty, and advanced hardware replacement (collectively, such technical services are referred to as the “**Services**”), and is an agreement between Lantronix, Inc. (“**Lantronix**”, “**we**”, “**us**” or “**our**”) and you or the entity you represent (“**Customer**”, “**you**” or “**your**”). This Agreement takes effect when you click an “I Accept” button or check box presented with these terms or, if earlier when you use any of the Services (the “**Effective Date**”). You represent to Lantronix that you are lawfully able to enter into contracts. If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have the legal authority to bind that entity.

## 1. Use of the LEVEL Technical Services.

- 1.1. **General.** You may access and use the LEVEL Technical Services in accordance with this Agreement. You will adhere to all laws, rules, and regulations applicable to your use of the Services, including this Agreement, the Acceptable Use Policy, and all restrictions described at the LEVEL Technical Services Site or Lantronix site (<https://www.lantronix.com/legal/>).
- 1.2. **Your Subscription Account.** To access LEVEL Technical Services, you must register with LEVEL Technical Services using a valid e-mail address, company name, and first and last name. The registration must include the serial numbers for all Lantronix devices purchased and to be covered by your LEVEL subscription. Please be aware that if the registration process is not completed your hardware will not be covered and will not be eligible for LEVEL Technical Services.
  - 1.2.1. In addition, you are responsible for all activities that occur under your subscription account, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents), and, we and our affiliates are not responsible for unauthorized access to your account.
- 1.3. **End Users.** You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, your data or use of the Services. You are responsible for the use of your data and the Services by any individual or entity that directly or indirectly through another user: (a) accesses or uses your data; or (b) otherwise accesses or uses the Services under your account (each, an “End User”). You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement by an End User, you will immediately terminate such End User’s access to your data and the Services.
- 1.4. **Your Usage.** You must comply with the current documentation applicable to the LEVEL Technical Services as posted by us and updated by us from time to time on the LEVEL Technical Services Site, the Lantronix Site, or this Terms of Service document. By using the LEVEL Technical Services, you agree that we may: (a) remotely install (push) software code onto registered devices to enable monitoring the status and performance of registered Lantronix products; (b) monitor the status and performance of registered Lantronix devices; and (c) remotely install (push) applicable firmware updates to registered Lantronix devices.

- 1.5. **Lantronix Devices.** For purposes of this Agreement, “Lantronix Device” means a Lantronix product or service with an assigned serial number that has been added to a LEVEL Technical Services subscription account. Lantronix products that are not under a LEVEL Technical Services account will not be eligible to receive technical support services.

## 2. Services.

- 2.1. **LEVEL Technical Services Description.** Lantronix offers three levels of support (LEVEL 1, LEVEL 2, and LEVEL 3). You will be provided Services based on the level of support you elect through your subscription. LEVEL 1 Services provides basic technical support services as outlined under Section 2.3. LEVEL 2 Services provides Level 1 Services, plus Extended Limited Lifetime Warranty and Advanced Hardware Replacement as outlined under Section 2.4. Level 3 Services provides a custom Service Level Agreement (“SLA”) contract as outlined under Section 2.5.
- 2.2. **Exclusions.** LEVEL Technical Services does not provide technical support for any Lantronix Software Development Kits or application programming interface (API) assistance. In addition, the LEVEL Technical Services hereunder do not include: (a) support of any non-Lantronix hardware or software; (b) on-site support; (c) non-Lantronix application installation or troubleshooting; (d) non-Lantronix operating system installation or troubleshooting; or (e) networking configuration.
- 2.3. **LEVEL 1 Technical Service.**
  - 2.3.1. **Online Help Service.** You will be granted access to our online resources center MyLantronix (<https://www.lantronix.com/technical-support/mylantronix/>), a technical support knowledge database where you can obtain technical resources related to Lantronix products and services, including quick-start setup and comprehensive user guides, software development kits and tools, software change notices, and training videos.
  - 2.3.2. **Ticket Portal.** You will be granted access to the Lantronix online Ticket Portal (“Ticket Portal”), which is accessed through the MyLantronix resource centre.
  - 2.3.3. **Phone Support.** You will have access to our global LEVEL Technical Services support team via a dedicated LEVEL Technical Services support phone line. The phone support line is available 24 hours a day, 7 days a week.
  - 2.3.4. **Ticket Submission.** To initiate support through the online Ticket Portal, you can either submit a Ticket (“Ticket”) using the Ticket Portal or you can send an email to [level-support@lantronix.com](mailto:level-support@lantronix.com) and a Ticket will be created in the Ticket Portal. You can submit help Tickets 24 hours a day, 7 days a week. Your Ticket must contain information related to the issue identified by the Help Ticket Portal. Failure to submit a Ticket or provide sufficient information may result in a delayed response time.
  - 2.3.5. **Global Technical Support Team.** Your Ticket will be handled by our global technical support team, which includes technical experts and specialists with extensive knowledge and experience in Lantronix product lines (“Support Team”). We reserve the right to determine which member(s) of our Support Team shall be assigned to your Ticket and to replace or reassign such personnel as needed. This may include assigning personnel outside of your local region, depending on the severity of the issue, level of experience required, availability, and any other factors deemed relevant by us.
  - 2.3.6. **Response Times.** We will use commercially reasonable efforts to provide an initial response within four (4) hours of when a Ticket has been submitted through the Ticket Portal. An initial response does not imply, promise, or guarantee a complete resolution within four (4) hours. Rather, the initial response time is intended to indicate an estimated target time interval in which the End User will be contacted by a member of our Support Team after a Ticket is

submitted. Failure to provide accurate contact information may result in a delayed response time.

2.3.7. **Software Updates.** From time to time, we may provide firmware releases throughout the product life cycle when technically feasible. In the event there is a security patch, you shall be notified. You agree that you may need to install security patches to continue accessing and using Lantronix Devices. You further agree to install any updates, when technically feasible, without any further notice, irrespective of whether such automatic update function is enabled or disabled on your Lantronix Device.

2.3.8. **Configuration Assistance.** The Lantronix support team is available to assist in configuring Lantronix devices for the initial deployment and answer any follow-up questions for configuration updates needed for new software updates.

2.3.9. **End-of-Life Policy.** You agree that our EOL Policy (<https://www.lantronix.com/lantronix-eol-policy/>) applies to your use of LEVEL Technical Services.

#### 2.4. **LEVEL 2 Technical Services.**

2.4.1. **Extended Limited Lifetime Warranty.** You agree that our Limited Lifetime Warranty Policy (<https://www.lantronix.com/level-technical-services/>), applies to your use of our LEVEL Technical Services. The Limited Lifetime Warranty for the Lantronix Device will be extended for up to five (5) years from the original purchase or as long as you maintain an active LEVEL 2 Technical Services subscription, or whichever is shorter.

2.4.2. **Advanced Hardware Replacement.** For Advanced Hardware Replacement, during the support term, Lantronix will replace supported products in advance of receiving the defective product. To request Advanced Hardware Replacement service, you must contact our LEVEL Technical Services support team. If we determine that Advanced Hardware Replacement service is required, we will issue an RMA Number for the Product. We will ship the replacement with a target to arrive at your location within two (2) business days. Lantronix will prepay shipping charges. You will return the defective Product to us in its original or equivalent packaging, and will bear the costs of shipping and insurance. You will bear risk of loss during shipment.

2.4.3. **Return Of Product.** If Lantronix provides Customer with replacement Product under the Advanced Hardware Replacement service (section 2.4.2) and the defective Product is not returned to Lantronix within twenty (20) business days of receipt of the replacement Product, Customer will pay Lantronix for the replacement Product at current list price upon receipt of invoice.

#### 2.5. **LEVEL 3 Technical Services.**

2.5.1. **Custom MSA and SLA Contract.** If you need technical support beyond the services as described here, LEVEL 3 Technical Services is available from Lantronix to create a custom Service Level Agreement. Please contact your Lantronix regional sales manager for further assistance.

2.6. **Changes to Services.** At any time, we may change, discontinue, or deprecate any of the Services (including the Services as a whole) or change or remove features or functionality of the Services.

### 3. **Audit.**

3.1. **Audit.** Lantronix reserves the right to audit the Customer's use of the Services for the Product(s) registered under the terms of this Agreement for purposes of verifying eligibility. The customer agrees to cooperate with verification of eligibility hereunder and to ensure compliance with the terms of this Agreement in a mutually agreeable manner.

## 4. Privacy and Security.

- 4.1. **Data Privacy.** We will not access or use your data except as necessary to maintain or provide the Services, or as necessary to comply with the law or a binding order of a governmental body. We will not disclose your data to any government or third party except as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, we will give you notice of any legal requirement or order referred to in this Section 4.1. We will only use information about you that you provide to us in connection with the creation or administration of your LEVEL Technical Services account, such as names, usernames, phone numbers, email addresses and billing information associated with your LEVEL Technical Services account, in accordance with the LEVEL Technical Services Privacy Policy, and you consent to such usage.

## 5. Subscription Fees and Payment.

- 5.1. **Per Device Subscription Basis.** All LEVEL Technical Services are purchased on a prepaid subscription basis through a Purchase Order. The length of the subscription shall be either a one-year, three-year, or five-year period (“Subscription Period”) and will commence on the date identified on the Purchase Order (“Start Date”), subject to your payment of all applicable fees and charges for the Services as noted in the Order Form (“Subscription Fees”). The Services will automatically renew for subsequent terms equal in length to the expiring Subscription Period, unless earlier terminated in accordance with Section 7 below. Each LEVEL subscription shall be tied to a specific Lantronix Device, where the Subscription Fees will be based off the length of the Subscription Period and the level of Services (LEVEL 1, LEVEL 2, or LEVEL 3) specifically purchased for that Lantronix Device. Your initial Subscription Fees must be paid in full prior to the Start Date, and in any event, before you use our Services. Thereafter, you will automatically be billed within thirty (30) days prior to the end date of a current Subscription Period for the Subscription Fees for the next Subscription Period, and all Subscription Fees must be paid in full to continue use of our Services. Subscription Fees are not refundable in the event of termination.
- 5.2. **Payment.** All payments must be through one of the payment methods we support. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding. Fees and charges for any new Service or new feature of a Service will be effective when we post updated fees and charges on the LEVEL Technical Services Site unless we expressly state otherwise in a notice. We may increase or add new fees and charges for any existing Services by giving you at least 30 days’ advance notice. We may charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments.
- 5.3. **Taxes.** Prices for the Services exclude all sales, value-added and other taxes and duties imposed with respect to the sale, delivery, or use of any Services covered hereby, all of which taxes and duties must be paid by you. If you claim any exemption, you must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

## 6. Temporary Suspension.

- 6.1. **Generally.** We may suspend your or any End User’s right to access or use any portion or all of the Services immediately upon notice to you if we determine:
  - 6.1.1. your or an End User’s use of or registration for the Services (i) poses a security risk to the Services or any third party, (ii) may adversely impact the Services or the systems or Content of any other Lantronix customer, (iii) may subject us, our affiliates, or any third party to liability, or (iv) may be fraudulent;
  - 6.1.2. you are, or any End User is, in breach of this Agreement, including if you are delinquent on your payment obligations for more than 15 days; or

- 6.1.3. you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.
- 6.2. **Effect of Suspension.** If we suspend your right to access or use any portion or all of the Services:
  - 6.2.1. you remain responsible for all fees and charges you have incurred through the date of suspension;
  - 6.2.2. you remain responsible for any applicable fees and charges for any Services to which you continue to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;
  - 6.2.3. you will not be entitled to any service credits under the Service Level Agreement for any period of suspension; and we will not erase any of your data as a result of your suspension, except as specified elsewhere in this Agreement.
  - 6.2.4. Our right to suspend your or any End User's right to access or use the Services is in addition to our right to terminate this Agreement pursuant to Section 7.2.

## 7. Term; Termination.

- 7.1. **Term.** The term of this Agreement will commence on the Effective Date and will remain in effect for the applicable Subscription Period. This Agreement shall be automatically renewed for subsequent terms equal in length to the expiring Subscription Period unless you give written notice to us at least ninety (90) days prior to the expiration of any Subscription Period of your intention not to renew.
- 7.2. **Termination.**
  - 7.2.1. **Termination for Convenience.** We may terminate this Agreement for any reason by providing you 30 days advance notice.
  - 7.2.2. **Termination for Cause.**
    - 7.2.2.1. **By Either Party.** Either party may terminate this Agreement for cause upon 30 days advance notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30-day notice period.
    - 7.2.2.2. **By Us.** We may also terminate this Agreement immediately upon notice to you (a) for cause, if any act or omission by you or any End User results in a suspension described in Section 6.1, (b) if our relationship with a third party partner who provides software or other technology we use to provide the Services expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, (c) if we believe providing the Services could create a substantial economic or technical burden or material security risk for us, (d) in order to comply with the law or requests of governmental entities, or (e) if we determine use of the Services by you or any End Users or our provision of any of the Services to you or any End Users has become impractical or unfeasible for any legal or regulatory reason.
- 7.3. **Effect of Termination.**
  - 7.3.1. **General.** Upon any termination of this Agreement:
    - 7.3.1.1. all your rights under this Agreement immediately terminate;
    - 7.3.1.2. you remain responsible for all fees and charges you have incurred through the date of termination, including fees and charges for in-process tasks completed after the date of termination;
    - 7.3.1.3. you will immediately return or, if instructed by us, destroy all LEVEL Technical Services content in your possession; and

- 7.3.1.4. Sections 5, 6.2, 7.3, 8 (except the license granted to you in Section 8.2), 9, 10, 11, 12, and 13 will continue to apply in accordance with their terms.
- 7.3.2. **Post-Termination Assistance.** Unless we terminate your use of the Services pursuant to Section 7.2.2, during the 30 days following termination:
  - 7.3.2.1. we will not erase any of your data as a result of the termination;
  - 7.3.2.2. you may retrieve your data from the Services only if you have paid any charges for any post-termination use of the Services and all other amounts due; and
  - 7.3.2.3. we will provide you with the same post-termination data retrieval assistance that we generally make available to all customers.
  - 7.3.2.4. Any additional post-termination assistance from us is subject to mutual agreement by you and us.

## 8. Proprietary Rights.

- 8.1. **Your Data.** As between you and us, you own all right, title, and interest in and to your data. Except as provided in this Section 8, we obtain no rights under this Agreement from you to your data, including any related intellectual property rights. You consent to our use of your data to provide the Services to you and any End Users. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to your data; and (b) and none of your data or End Users' use of your data or the Services will violate the Acceptable Use Policy.
- 8.2. **Services License.** As between you and us, we or our affiliates or licensors own and reserve all right, title, and interest in and to the Services. We grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to access and use the Services solely in accordance with this Agreement. Except as provided in this Section 8.2, you obtain no rights under this Agreement from us or our licensors to the Services, including any related intellectual property rights.
- 8.3. **License Restrictions.** Neither you nor any End User may use the Services in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any End User may, or may attempt to, (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Services (except to the extent software included in the Services are provided to you under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Services or apply any other process or procedure to derive the source code of any software included in the Services, (c) access or use the Services in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Services. All licenses granted to you in this Agreement are conditional on your continued compliance with this Agreement, and will immediately and automatically terminate if you do not comply with any term or condition of this Agreement. During and after the Term, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Services you have used.
- 8.4. **Usage Data.** Notwithstanding anything else in this Agreement or otherwise, we may monitor your use of the Services in an aggregate and anonymous manner, compile statistical and performance information related to the provision and operation of the Services ("Usage Data"), and may make such information publicly available, provided that such information does not identify you or any End User or any confidential information. Lantronix shall own all right, title and interest in and to the Usage Data.
- 8.5. **Suggestions.** If you provide any suggested improvements to the Services ("Suggestions") to us or our affiliates, we will own all right, title, and interest in and to the Suggestions, even if you have designated the Suggestions as confidential. We and our affiliates will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to us all right, title, and interest in and to the Suggestions and

agree to provide us any assistance we may require to document, perfect, and maintain our rights in the Suggestions.

## 9. Indemnification.

- 9.1. **General.** You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) your or any End Users' use of the Services (including any activities under your LEVEL Technical Services account and use by your employees and personnel); (b) breach of this Agreement or violation of applicable law by you or any End User; (c) your data or the combination of your data with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by your data or by the use, development, design, production, advertising or marketing of your data; or (d) a dispute between you and any End User. If we or our affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates.
- 9.2. **Process.** We will promptly notify you of any claim subject to Section 9.1, but our failure to promptly notify you will only affect your obligations under Section 9.1 to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your own choosing (subject to our written consent) to defend against any claim; and (b) settle the claim as you deem appropriate, provided that you obtain our prior written consent before entering into any settlement. We may also assume control of the defense and settlement of the claim at any time.

## 10. Disclaimers.

THE SERVICES ARE PROVIDED "AS IS." WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES, INCLUDING ANY WARRANTY THAT THE SERVICES BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

## 11. Limitations of Liability.

WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICES, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SLAS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, OUR AND OUR

AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

LANTRONIX SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES, IMPLIED OR EXPRESS, FOR USES REQUIRING FAIL-SAFE PERFORMANCE OR FOR USES THAT REQUIRE IMMEDIATE, MISSION-CRITICAL, REAL-TIME DATA WHERE FAILURE OR FAULT OF THE SERVICE COULD LEAD TO (A) PERSONAL INJURY OR DEATH, (B) PROPERTY DAMAGE OR (C) ENVIRONMENTAL DAMAGE. THIS DISCLAIMER APPLIES TO (BUT IS NOT LIMITED TO) USES INVOLVING LIFE SUPPORT, MEDICAL DEVICES WHERE FAILURE COULD RESULT IN INJURY OR DEATH, AIRCRAFT OR OTHER MODES OF HUMAN MASS TRANSPORTATION (WHILE IN TRANSIT), ANY FUNCTION REQUIRED FOR THE SAFE OPERATION OF CHEMICAL, PETROLEUM OR NUCLEAR FACILITIES, OR CRITICAL ASSET MONITORING. THE SERVICES ARE NOT DESIGNED FOR AND SHOULD NOT BE USED IN ANY OF THESE OR OTHER FAIL-SAFE APPLICATIONS.

## 12. Modifications to the Agreement.

We may modify this Agreement (including any Policies) at any time by posting a revised version on the LEVEL Technical Services Site or by otherwise notifying you in accordance with Section 13.6; provided, however, that we provide at least 90 days advance notice in accordance with Section 13.6 for adverse changes to any Service Level Agreement. Subject to the 90-day advance notice requirement with respect to adverse changes to Service Level Agreements, the modified terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Services after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the LEVEL Technical Services Site regularly for modifications to this Agreement. We last modified this Agreement on the date listed at the end of this Agreement.

## 13. Miscellaneous.

- 13.1. **Force Majeure.** We and our affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.
- 13.2. **Independent Contractors; Non-Exclusive Rights.** We and you are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other. Both parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other party and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other party's products or services.
- 13.3. **No Third Party Beneficiaries.** This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.
- 13.4. **U.S. Government Rights.** The Services are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services. If you are using the Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Services. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.



- 13.5. **Import and Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Services.
- 13.6. **Notice.**
- 13.6.1. **To You.** We may provide any notice to you under this Agreement by: (i) posting a notice on the LEVEL Technical Services Site; or (ii) sending a message to the email address then associated with your account. Notices we provide by posting on the LEVEL Technical Services Site will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.
- 13.6.2. **To Us.** To give us notice under this Agreement, you must contact Lantronix as follows: (i) by facsimile transmission to 949-453-3984; or (ii) by personal delivery, overnight courier or registered or certified mail to Lantronix, Inc., 48 Discovery, Suite 250, Irvine, California 92618. We may update the facsimile number or address for notices to us by posting a notice on the LEVEL Technical Services Site. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.
- 13.6.3. **Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language.
- 13.7. **Assignment.** You will not assign this Agreement, or delegate or sublicense any of your rights under this Agreement, without our prior written consent. Any assignment or transfer in violation of this Section 13.7 will be void. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.
- 13.8. **No Waivers.** The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.
- 13.9. **Severability.** If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.
- 13.10. **Governing Law; Venue.** The laws of the State of California, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between you and us. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 13.11. **Disputes.** Any dispute or claim relating in any way to your use of the Services, or to any products or services sold or distributed by Lantronix will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this Agreement. There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to Lantronix, Inc., 48 discovery Suite 250, Irvine, California, 92618, Attention: Legal. The arbitration will be conducted in Orange County,

California, for determination in accordance with the American Arbitration Association's ("AAA") Commercial Arbitration Rules. Payment of filing, administration and arbitrator fees will be governed by the AAA's rules. We and you agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration we and you waive any right to a jury trial. Subject to Section 9, we and you both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

- 13.12. **Entire Agreement;** English Language. This Agreement includes the Policies and is the entire agreement between you and us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement. Notwithstanding any other agreement between you and us, the security and data privacy provisions in Section 3 of this Agreement contain our and our affiliates' entire obligation regarding the security, privacy and confidentiality of your data. We will not be bound by, and specifically object to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document. If the terms of this document are inconsistent with the terms contained in any Policy, the terms contained in this document will control, except that the Service Terms will control over this document. If we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.
- 13.13. **Electronic Communications.** When you visit the LEVEL Technical Services Site or send e-mails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on the LEVEL Technical Services Site. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.
- 13.14. **Third Party Suppliers.** We may use third-party suppliers to perform all or any part of the Services.
- 13.15. **Service Evaluation and Beta Participation.** This Section describes the additional terms and conditions under which you may access and use certain features, technologies and services made available to you by Lantronix in connection with your evaluation of a Service without charge or at a reduced fee (each, an "Evaluation Service"), including "proof of concept" evaluations, "free trials," and access to features and services that are not yet generally available, including, but not limited to, any products, services, or features labeled "beta", "preview", "pre-release", or "experimental." During the term of the applicable Evaluation Service (as specified by Lantronix), you may access and use the Evaluation Service solely for internal evaluation purposes. You agree not to allow access to or use of any Evaluation Service by anyone other than your employees, who are bound by confidentiality obligations, and you will not disclose non-public information regarding the Evaluation Service to third parties. We may suspend or terminate your access to or use of any Evaluation Service at any time and for any reason. We may at any time cease providing any or all of any Evaluation Service in our sole discretion and without notice. Evaluation Services also may be unavailable and/or their performance may be negatively affected by scheduled and unscheduled maintenance. We will use reasonable efforts to notify you in advance of scheduled maintenance, but we are unable to provide advance notice of unscheduled or emergency maintenance. In consideration of being allowed to access and use an Evaluation Service, you agree to provide us with information relating to your access, use, testing, or evaluation of the Evaluation Service, including observations or information regarding the performance, features and functionality of the Evaluation Service, when and in the form reasonably requested by us ("Evaluation Observations"). We will own and may use and evaluate all Evaluation Observations for our own purposes. You will not use any Evaluation

Observations except for your internal evaluation purposes of the Evaluation Service. Notwithstanding anything to the contrary in the Agreement or these Services Terms, either you or we may terminate your participation in an Evaluation Service at any time for any reason upon notice to the other party. Notwithstanding anything to the contrary in the Agreement, after the conclusion of your participation in an Evaluation Service for any reason, you will not have any further right to access or use the applicable Evaluation Service. WITHOUT LIMITING ANY DISCLAIMERS IN THE SERVICE TERMS, LANTRONIX IS PROVIDING THE EVALUATION SERVICES TO YOU "AS IS." LANTRONIX AND ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE EVALUATION SERVICES, INCLUDING ANY WARRANTY THAT THE EVALUATION SERVICES AND EVALUATION MATERIALS WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, LANTRONIX AND ITS AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. LANTRONIX AND ITS AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY FOR ANY EVALUATION SERVICES WILL BE LIMITED TO THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE EVALUATION SERVICES THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.