**SERVICE LEVEL AGREEMENT**
for
**DATABASE SUPPORT SERVICES**

**Agreement No. 2013-05-01**

Revised: April 2, 2013 (for Client: City of St. Catharines)

This Service Level Agreement ("Agreement") for Database Support Services is between the Client printed below ("Client") and Kalware Microsystems Inc. ("KALWARE"). KALWARE agrees to follow the terms and conditions within this Agreement in administering the Services covered herein. The Client agrees to the terms and conditions herein by either signing below, or by issuing a purchase-order for the Services and/or remitting payment to KALWARE based on the corresponding Quotation(s) and/or Invoice(s) for Services.

**Purpose**
The purpose of this Service Level Agreement (SLA) is to formalize an arrangement between KALWARE and the Client to deliver specific services in respect of the Client's ORACLE Database(s) and/or Application Server(s). This document is intended to provide details of the provision of these services to the Client.

**Background**

KALWARE offers emergency and consultative support services related to the maintenance of one or more ORACLE Database(s). The ORACLE Database(s) are hosted (reside) on the Client's server(s), and KALWARE must access the ORACLE Database(s) remotely via the internet, or in-person on a site-visit.

**Scope of Agreement**
This agreement provides the Client with access to its own ORACLE Database(s), the following support services, and support in response to requests from the Client to KALWARE.

**Introduction**

This Service Level Agreement (SLA) describes the general framework for hourly projects and retainer contracts provided by KALWARE for its Client under the category of Database Support Services. It details the responsibilities of both KALWARE and the Client. The terms and conditions of this Agreement may be altered in the Quotation(s) and/or Invoice(s) for the specific Services provided.

**Products Supported**: KALWARE specifically supports the ORACLE Database and Application Server products. No support is provided for other databases or products (eg. Microsoft SQL Server).

**Description of services**

Hourly and retainer services offered by KALWARE on billable basis are described below. Specific services provided under a contract will be written into the contract, as specified in the corresponding Quotation for Services and related Invoice(s) for these Services.

**Retainer and Hourly Database Support**

Database Support services not covered by KALWARE's administrative contracts may be provided by an hourly or retainer contract. Hourly and retainer contracts are similar, but they differ in the following ways:


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- Hourly contracts are generally appropriate for one-time services that will likely require little or no follow-up once the initial work is completed.
- Retainer contracts are generally appropriate for ongoing Database Support Services (which may include monitoring, and emergency support services).

KALWARE provides hourly and retainer contracts to its Client(s) when requirements for a particular job cannot be met by other KALWARE contract types. A KALWARE consultant will assess the Client's needs and provide an estimate of the total hours of work to be performed over a certain period.

Below are examples of hourly support:

- One-time configuration of a Client's PC workstation to access the ORACLE Database.
- Attempted disaster-recovery from an emergency.

Below are examples of retainer support:

- Maintaining Databases (installations, upgrades, patches, migrations, performance tuning, etc.).
- On-call emergency services.

The Retainer and Hourly Database Support program in general assumes the following:

- All work must be performed via remote-access via the Internet to the Client's Database Server(s) from KALWARE's computer(s). On-site visits will be charged extra, and only as scheduled. Normally, no on-site visits will be required for handling Database emergencies.
- On-site visits are charged extra for travel-time and mileage at a minimum of $0.50/km, with overnight accommodations provided as necessary.
- Hourly and retainer contracts for Database support services will be provided as mutually arranged by the Client and KALWARE.
- The Client is responsible for payment of hardware and software licenses for any required hardware and software installed on their own computers (servers and client workstations).
- Clients have their own ORACLE Database license(s) with full transaction logging and security enabled on those Database(s) and/or servers.
- There are no guarantees implied or offered in any hourly work. All work is performed strictly on an hourly basis; a contract buys KALWARE's time to work on a particular project. Every hour KALWARE works on a project, for whatever reason, will be billed to the Client, as set out in the Quotation for Services and corresponding Invoice(s) for Services.


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**DEFINITIONS**

The definitions in the General Terms and Conditions are incorporated by reference herein. The additional terms are defined as follows:

**Agreement:** means this Service-Level Agreement (SLA).

**After-Hours:** means any time not covered by Normal Business Hours including weekends and KALWARE holidays.

**Application**: The computer Database program used by the Client to maintain the data in the Database. This is usually a set of electronic files and processes that directly manipulate the data inside the Database. This Database is usually provided by a third-party Application Vendor.

**Application Server**: The ORACLE Internet Application Server product, as separate from the ORACLE Database (RDBMS) product(s). The Application Server refers to all programs and configuration files required to operate an installation of the ORACLE Internet Application Server product.

**Application Vendor**: A 3rd party company, external to this Agreement, who provides the Application Database to the Client, including support and upgrades for that Database. The Client may have many Application Vendors for different Applications hosted on Databases that are supported by the Services covered under this Agreement.

**Archivelogs**: The log of transactions that have occurred on the Database. Each Archivelog normally takes the form of a binary file created by the RDBMS that can be backed up to tape or offline storage. Archivelogs are usually required to facilitate Database recoveries.

**Availability**
Outside of regular office hours, emails voice messages may be left on the Help Desk answering service for a return call the following business day. The Client may also email requests for support to the KALWARE support email address (see Appendix Z).

**Client**: Any Client (person, company, corporate entity) who contracts KALWARE to perform Services.

**Consultant**: The person or persons assigned by KALWARE to perform the Services for the Client. The Consultant may be an employee of KALWARE or a sub-contractor. KALWARE will endeavour to employ or contract Consultants who are Certified (OCP = ORACLE Certified Professional, or OCA = ORACLE Certified Associate). All consultants will be well-versed with communication skills in English.

**Database**: The electronic program-files and data-files residing on the Client's Server hard-disk, and computer processes running in memory associated with the operation of the Client's electronic files. KALWARE exclusively provides Services on the ORACLE Database (RDBMS) from ORACLE Corporation. Under this Agreement, Database refers to a Production Database as opposed to a Database used for Testing or Development purposes, except where specifically noted.

**Database Support Services** means the enhanced Database Support services as described herein, whether provided for a fixed retained fee or at an hourly rate, exclusive of standard Maintenance.

**Database Support** means assistance in solving problems with the use of the Database, providing an Incident remedy (if available) through error correction, patches, hot-fixes, workarounds, replacement deliveries, or any other type of Database corrections or modifications exclusive of Database upgrades or updates provided under standard Maintenance.


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**Emergency**: Any failure of the Database to perform such that it results in production interruptions or loss of data. An incident where the Database may require prompt attention by KALWARE to recover the Database from errors (eg., hard-disk media failure, Server hardware failure, human-error causing deletion of data in the Database or Database files).

**Emergency Response Time**: KALWARE will endeavour to respond within the target response time (see Priority levels below) after receipt of notification by the Client (by phone or email) that an Emergency has occurred related to the Database. Target Response Time may be different as set out in the Quotation and Invoice(s) for Services provided hereinunder.

**Hot-fix** means a customized quick-fix or "workaround" for a Database issue.

**Incident** means a reported failure of the Database to operate according to the normal daily business operations requirements of the Client where such failure substantially impacts operational or functional performance.

**Incident Severity** means the type of business operation interruption experienced as a result of the Incident. The levels of Incident Severity are identified as Priority levels below.

**Invoice**: An invoice corresponding to Services performed under this Agreement. Invoices are fully payable to KALWARE within 30 days from receipt by the Client, unless otherwise specified on the invoice. Overdue accounts will be subject to interest at the rate(s) specified in the Invoice(s). KALWARE reserves the right to suspend services or support for overdue accounts.

**Maintenance** means Database Support and Database upgrades and updates, patches, and if applicable, updated Data and Documentation provided by KALWARE.

**Normal Business Hours** means the KALWARE business hours of Monday through Friday, from 6:00am to 6:00pm Eastern Standard Time, excluding KALWARE holidays and weekends.

**Network**: The Local Area Network maintained by the Client on which the Database is accessible, which normally includes the Client's VPN.

**OFA**: ORACLE's Optimal Flexible Architecture. OFA is a standardized arrangement of ORACLE programs and data files in specific folders on a computer's file-system.

**Programs**: SQL scripts provided as electronic files or binary executable files or any other Database or process that manipulates data in the Database, or interacts in any way with the Database or the Server.

**Purchase Order**: A written order (sent by email, fax, or mail) from the Client to KALWARE to provide the Services for the cost and terms specified in the Quotation.

**Quotation**: An estimate in time and cost for the Services requested by the Client. The Quotation may include details or terms and conditions of the Services in addition to those specified in this Agreement.

**Services**: The specific services and/or support set out in the Quotation and/or Invoice related to the work requested by the Client from KALWARE. Under this Agreement, Services refer to ORACLE Database Support Services. Services may include support services for the ORACLE Internet Application Server.

**SLA Objective**: The objective of this Agreement is to ensure quality of Services provided by KALWARE and codify Client expectations for the Services provided.


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**SLO (Service-Level Objective)**: The Client and KALWARE recognize the goal and objective of Services provided under this Agreement is to ensure continued operation of the Client's Database(s).

**Server**: The host computer (hardware) on which the Database is installed for daily operation by the Client.

**Service Request**: A request by the Client to KALWARE to perform one or more support tasks (normally submitted via email). If submitted by phone, one or more follow-up emails will be sent from KALWARE to the Client to confirm the Service Request.

**Support Office Hours**
The KALWARE Help Desk is operated between 6am and 6pm, Monday to Friday (excluding Bank Holidays). Calls for emergency support after these hours should be directed to the KALWARE mobile phone number (see Appendix Z).

**Support Request**
For the purposes of this agreement, a Support Request is generally defined as a request for support to resolve an issue with the Database(s) or its operation, or a request for support that involves no modifications to the Database, such as a question.

**VPN**: Virtual Private Network: The network or gateway through which the Client may provide secure access credentials to KALWARE in order to access the Client's server(s) remotely via the Internet.


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## TERMS and CONDITIONS

### Term of Agreement

This agreement is in effect upon the date of acceptance of this agreement and ends one calendar year after the date of acceptance.

### Organizations

This Agreement is between KALWARE and the Client, as named in the Quotation for Services and/or Invoice(s) for Services.

**Effective Date**: This Agreement is in effect from the start of Services for the Client, as indicated on the corresponding invoice(s) for Services.

**Duration of Services**: The Duration of Services provided under this Agreement is set out in the Invoice(s) issued by KALWARE to the Client.

**Application Support**: KALWARE provides no Application Support Services. The Application Vendor may provide SQL scripts (Database programs) to be executed by KALWARE on the Database(s). KALWARE provides no warranty, express or implied, on scripts or programs provided by other parties (including Application Vendors), or the results of applying such scripts or programs.

**Payment for Services**: The Client will remit payment to KALWARE for the Services associated with the Agreement according to the terms specified on the Invoice(s) issued by KALWARE to the Client for such Services. Services that are invoiced as pre-paid contracts are non-refundable.

**Acts of Sabotage**: KALWARE will consider any activity or evidence thereof whereby the Database, the configuration of the Database (programs and data), or administration scripts created and maintained by KALWARE are modified, moved or deleted by anyone other than KALWARE, including the Client's representatives, without KALWARE's prior consent or knowledge to be an "Act of Sabotage" in direct violation of this Agreement. KALWARE reserves the right to charge the Client extra for damages or services required to attempt to resolve any damage to the Database(s) caused by Acts of Sabotage.

### Conditions of Acceptance of Product or Service

KALWARE's Support Services are deemed to be accepted by the Client upon issuance of a purchase-order and/or payment by the Client based on the corresponding Quotation and/or Invoice(s) for Services.

## CLIENT Responsibilities

**General Responsibilities of the Client**: The Client has the following general responsibilities under this agreement:
- The Client users, clients, and/or suppliers using the ORACLE Database will use the appropriate KALWARE help desk to request support.
- The Client will use their own appropriate help desk to provide initial support, including raising support calls with the KALWARE Help Desk.
- The Client will provide all information required to open a support request.
- The Client will assign severity codes adhering to the correct usage of these codes as defined in this SLA.
- Once a support request has been submitted, the Client will make themselves available to work with the KALWARE consultant assigned to the support request.


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**Exclusive Contract**: The Client commits to contracting KALWARE as the exclusive provider of support services for the Database(s). The Client will not permit any other party to maintain the Database(s) or provide Database Administration to the Databases without the prior written consent of KALWARE. KALWARE recognizes that the Client must maintain an updates and support with ORACLE Corporation for its databases.

**Tape/Offline Backups**: KALWARE will not be responsible for administering, creating, maintaining, or monitoring tape backups or offline storage media. KALWARE may assist the Client's IT staff in specifying which Database-related folders and files on the Server(s) should be included/excluded in/from the tape/offline backups.

**Directions given by KALWARE to the Client**: KALWARE will not be responsible for any resulting damage to the Database or related programs, data, systems, etc., if directions provided by KALWARE to the Client are not followed. Directions may be given verbally (eg., by phone) or in writing (via email, fax, documentation, etc.).

**Network Access for KALWARE**: The client must maintain a reasonable degree of up-time for online remote-access by KALWARE to the client's server(s). This includes after-hours access, and may be through a Virtual Private Network. KALWARE will not be responsible for any guaranteed level of service or response time if any networking point between its own computers and the Client's Database Server(s) is down or experiencing connection difficulties, or slow network performance. KALWARE reserves the right to charge extra for time spent on excessively slow networks.

**Security**: It is assumed that only KALWARE consultants will provide Database support for servers covered under the Support Services, and that the relevant database and networking passwords are known only to KALWARE and to privileged Client representative(s) made known to KALWARE.

KALWARE is not responsible for strength or uniqueness of passwords. Passwords remain the sole responsibility of the client. KALWARE can assist at any time with assessing and reporting on the strength of current passwords of userids stored in the Database. KALWARE is under no obligation to provide continual or regular assessments of password strengths or monitoring of passwords or the strength or security thereof.

KALWARE will ensure the safeguard and safe-keeping of passwords kept in its possession. The client must inform KALWARE if any Database or Network passwords are changed for those userids/accounts required by Kalware for accessing, monitoring, or maintaining the Client's Database systems. If those passwords are changed without notice, KALWARE cannot guarantee any ability to support the Database(s).

**Licenses**: The Client is responsible for acquiring and maintaining any and all Database licenses required to operate their Database and/or Server, and any other related computer systems. KALWARE is not responsible for acquiring or maintaining any Database licenses, except those of its own internal computer systems.

**KALWARE Responsibilities**

**Databases Supported**: KALWARE supports the Client's existing ORACLE databases only, as identified in the quotation(s) and/or invoice(s). New ORACLE databases installed by the client, or requested to be serviced by KALWARE may result in additional Quotations for Services and extra charges.

**Database Backups**: As required by the type of Services performed under this Agreement, KALWARE will ensure regular (eg., daily/weekly) Logical and Physical Database Backups are performed. Database Backups will be performed to local disk/online storage only. Logical Database Backups will be provided using the native ORACLE Database Export utility. Physical Database Backups will be provided primarily using the native ORACLE RMAN (Recovery Manager) utility. Physical Database Backups may also be provided as "cold" backups with the Database being shutdown during cold-backups for a regularly-scheduled window of time, as specified by the Client.


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**Database Monitoring**: KALWARE will create and maintain programs/scripts residing on the Server(s) that communicate via email/pager to notify KALWARE and the Client of any runtime errors occurring on the Database as part of normal daily operations. Email notifications may also accompany the completion of regularly scheduled Database Backups.

**Database Restores/Recoveries**: If required by the Client, KALWARE will make best efforts to attempt to recover the Database (in whole or in part) from available Database Backups (including those provided by available tape/offline storage media). Backups from offline/tape media must first be restored by the Client to a location specified by KALWARE to facilitate the Database Recovery.

**High Water Marks** – KALWARE will monitor the performance and growth of the Database for the duration of the Services, and advise the Client if more hardware capacity is required to accommodate future growth of the data (eg., additional hard-disk, RAM, CPU, etc.).

**Consulting Advice**: The Client may request consulting advice from KALWARE at any time throughout the duration of the Services provided hereinunder. KALWARE reserves the right to quote extra charges for such advice.

**Communication Skills:** - All Support Requests will be addressed by a KALWARE consultant with good English communications skills.

**Database Alerts**: KALWARE will configure the Database to automatically report critical errors in the form of alerts sent by email/pager to KALWARE and the Client within five (5) minutes of occurrence. KALWARE will endeavour to respond to Database Alerts within one (1) hour of receiving the Alert by email/pager.

**Liaison**: KALWARE may liaison by phone and email (and in person when requested for on-site visits) with one or more designated Client representatives on a regular and/or as-needed basis to enable the provision of the Services described herein.

**Refresh of Test Databases**: If requested by the Client, KALWARE will perform the necessary steps to refresh (via Export/Import or RMAN utilities) the Test Database from the Production Database (or vice-versa). Database Refreshes are considered non-Production operations (non-emergency), and will be scheduled at the earliest convenience, or at the time(s) specified by the Client in advance to KALWARE.

**Maintenance**

KALWARE will maintain existing ORACLE databases. Production databases are given priority over Test/Development databases. KALWARE may decline to maintain databases not created by KALWARE or databases built on unsupported Database platforms.

**Warranty on Services:**

- KALWARE will not be held responsible or accountable for changes made to the Database by any party.
- KALWARE cannot guarantee any particular response time if network access to the client's server(s) is unavailable, or unexpectedly slow.

**Supported Server Hardware**

The KALWARE team can normally provide support for the ORACLE Database on the following operating systems:

- Unix (Sun Solaris, HP-UX, AIX)
- Linux (RedHat Enterprise Linux, ORACLE Enterprise Linux, SUSE, CentOS, etc.)


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- Microsoft Windows Server 2000, 2003, XP

**Responsibilities**: Clients should consult KALWARE before making hardware or software purchases related to the operation of the Database(s). Some hardware or software may be unsupportable, and KALWARE's planning assistance can reduce the likelihood of compatibility problems with existing hardware or software or having to deal with unreliable vendors. For any new Server, Clients are strongly urged to choose an operating system from the above list.

**Client workstation setup and installation**

If requested by the Client, KALWARE may install and configure ORACLE software on new client-workstations for supported Clients wishing to connect to the Database(s).

KALWARE will not be responsible for the following:

* Unpacking and connecting computer components.
* Configuring operating systems for network connectivity.
* Installation of operating system patches or updates.
* Installation of applications.
* Network management.
* Network information services, e.g., Sun NIS, NFS, LDAP, etc.
* Moving computers from one location to another.
* Providing storage space for new or old machines.
* Clearing off the space needed for a computer setup.
* Installing or configuring network routers, switches, or hubs.

**Data Transfer/Import**: At the request of the Client, KALWARE may be responsible for transfer of data from an existing Database/Server to a new Database/Server via native ORACLE utilities only (eg., Export/Import, RMAN, SQL*Loader, or SQL*Plus). Data conversions must be performed by the Application Vendor or appointee.

**Responsibilities**:

* The Client should consult KALWARE prior to any new hardware or software purchases related to the operation of the Database(s).
* The Client must notify KALWARE as far in advance as possible, to schedule a workstation or server setup.
* The Client may need to be present at certain points during the installation process for a new Server, typically at the beginning or end of the process.
* The Client must provide KALWARE with all available network access/configuration information (i.e., IP address, router address, subnet mask, etc.).
* Licenses and media for any commercial applications to be installed must be provided by the Client.
* Clients are responsible for moving computers from one location to another, providing storage space for new or old machines, and clearing off the space needed for a setup.

**Maintenance**

KALWARE will provide comprehensive maintenance services for supported Databases. Typical Database maintenance includes the following:

* Monitoring vendor and web resources for database and security patches.
* Installation of Database updates and patches.
* Disk usage monitoring of the Database for growth, tablespace and datafile sizes.


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**Responsibilities**:

* The Client should report to KALWARE any problems that they may be experiencing in the form of a Support Request.
* In some cases, it may be necessary for users to purchase licenses for certain Database upgrades.

**Troubleshooting**

KALWARE will troubleshoot problems with the Database and its programs only. The Client will troubleshoot problems with any other infrastructure surrounding the Database (eg., operating system, network connectivity, hardware performance and operability, etc.).

**Responsibilities**: Clients should request KALWARE services as described below and herein.

**Database support**

KALWARE will provide assistance with the regular operation of the Database. This assistance can include the following services:

* Installation and updating of Database.
* Troubleshooting of common Database problems.
* Help with basic usage of the Database.

**Limitations** to KALWARE's Database Support include the following:

* KALWARE will provide assistance with the Database on a "best effort" basis.
* KALWARE will provide no support for discouraged or prohibited applications.
* Support for advanced features or complex configurations of the Database is limited.
* KALWARE will not perform the job functions of the user (eg., data-entry via Applications). KALWARE will not create documents, or design databases or web pages for users.

**Responsibilities**:

* Clients should request KALWARE services as described below and herein.
* Clients should utilize manuals, online help systems, and other training resources for the applications they use frequently.
* Clients are responsible for purchasing Database licenses and having media available when required.

**Network support**

KALWARE provides no network support. When necessary, KALWARE will act as liaison with the Client’s IT staff in resolving network problems when related to accessibility of the Database by client-workstations. KALWARE does not maintain the Client’s network and will refer problems it experiences with the network itself to the Client.

**Responsibilities**: KALWARE will, on request, maintain records regarding network access/configuration information (i.e., IP addresses, hostnames, subnet masks, and router addresses).

**Backup support**

KALWARE highly recommends that the Client arrange for its data to be backed up to magnetic tape, or utilize some other type of offline and/or off-site storage. KALWARE will not be responsible for any Database or user data that is not backed up or available to assist in Database restores/recoveries.


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**Client Responsibilities**: The Client is responsible for either providing a suitable backup device, or subscribing to an external off-site backup service.

**KALWARE Responsibilities**: When needed, KALWARE will act as a technical liaison with the Client's IT staff and outside vendors. KALWARE will not contact vendors on behalf of Clients to resolve technical problems, unless requested by the Client. KALWARE will not normally act as liaison for issues that are not of a technical nature (placing or picking up orders for Database or equipment, resolving billing issues, etc.).

**Responsibilities**: Clients should contact KALWARE, as needed, regarding technical issues involving outside vendors.

**Hardware support**

KALWARE provides no hardware support.

**Requesting service**

To request services provided under the Database Support program, Clients should send email to the appropriate address as specified herein.

Other methods of requesting service (such as sending email to the personal addresses of consultants, calling consultants' personal phone lines, or visiting a consultant's office in person) may result in delays in service. At any given time an individual consultant may be with another Client, or absent for personal reasons. In cases where email is not operational, Clients may call the appropriate KALWARE consultant directly, but the above caveats still apply.

Responsibilities:

* Clients should always request service using the KALWARE Support email address.
* Requests regarding specific Database problems should include the following information:
    o The name, office address, phone number, and department of the person needing assistance.
    o The exact error messages, if any, that appeared on the user's screen (Print-Screen as email attachment).
    o Information on any applications that may have been running on the machine when the problem occurred.
    o What the user did immediately prior to the occurrence of the problem.
    o Information regarding any applications or programs that may have been installed recently, or any changes made by anyone besides KALWARE.
    o Information about the request's priority; for example, is it the sort of issue that can wait until another day or does it need to be looked at as soon as possible?

**KALWARE responsibilities**

For newly-requested work outside of any existing retained project hours, KALWARE will provide a written estimate describing the work to be done and the approximate number of hours to complete the work. The estimate will be as accurate as possible; however, the estimates are not binding. KALWARE will contact the Client if, during the course of work, the amount of work required will be more than 20% higher than the original estimate. Regardless of the original estimate, all work KALWARE performs will be billed on an hourly basis. Major changes to the scope or definition of a project may require signing a separate Change Order agreement.

**Client responsibilities**


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The Quotation must be approved by the Client's IT or Finance manager or person with funding authority where the work is to be performed, and a purchase-order or Signed Quotation issued to KALWARE corresponding to the Quotation for Services.

**Requesting service**

Under normal circumstances, the Client should send electronic mail (email) to KALWARE's email address.

**KALWARE responsibilities**

Upon approval of the project proposal by the Client representative with funding authority, KALWARE will perform the necessary work.

**Client responsibilities:**

Clients should always request service using the KALWARE email address whenever possible, or by phone or mobile for emergencies. KALWARE must be given a defined list of Client representatives who can request service.

**Billing and Renewals**

For hourly services contracts, KALWARE will send invoice(s) following the completion of the services, or on a schedule as set out in the Quotation for Services. Retained services contracts, by definition, are invoiced and paid in advance.

All Retained Services Contracts expire at the end of each calendar year (31 December), unless otherwise specified in the Quotation for Services and/or Invoice(s) for Services. Retained contracts are automatically invoiced as due for obligatory renewal with the Client unless KALWARE is notified otherwise within thirty (30) days prior to the expiration date of the contract for services. Hourly Services contracts are not renewed unless requested by the Client, and in those cases would normally be renewed as retainer contracts. KALWARE's hourly rates are subject to change at least at each calendar year boundary (January 1); rate changes affect all existing and new contracts. KALWARE will strive to ensure any rate change has a minimal impact on existing contracts.

**Database Availability**

**Downtime during Emergencies**: KALWARE cannot guarantee a specific time to recover the Database(s) from an emergency. Downtime will be dependent on a number of factors, including but not limited to: network response time, remote-access and VPN availability, the availability of tape/offline backups required to restore the database to the required point in time prior to the emergency or failure, number of Archivelogs to apply to facilitate Database recovery, etc.

Unless otherwise specified in the Quotation for Services and/or corresponding Invoice(s) for Services, the Production ORACLE Database is a 24/7 application with minimum approximate availability levels of 99.5% per month. This figure does not include scheduled downtime where notice is given to the Client, or where the Client's database is taken offline due to client-requested work (e.g. carrying out a bespoke data conversion).

Scheduled downtime where a Database or Server is taken offline (e.g. for a quarterly database maintenance or software upgrade) is normally less than 4 hours per quarter and would usually take place outside of regular office hours or on a weekend. In all circumstances, the Client is given as much notice as possible of any scheduled downtime.

**Disaster Recovery**

In the event of a disaster occurring at the Client's data centre (i.e. the Databases or servers located at that data centre


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will be unavailable for more than 24 hours), KALWARE (at the direction and approval of the Client) will restore the Client's database to another server provided by the Client via remote-access to KALWARE within 24 hours, where possible. The Database restore will use the last available offsite copy of the Database backup.

NOTE: A Disaster-Recovery Site (DR) is not included in the Services provided by KALWARE to the Client, unless otherwise specified in the Quotation for Services and/or corresponding Invoice(s) for Services.

**REQUESTS FOR SUPPORT**

A request for support will require the client to either call or email the KALWARE Help Desk. The following services are provided in response:

**1. Corrective maintenance**

Defined as activities associated with root-cause analysis and bug-fix isolation and resolution.

**2. Root-cause analysis**

Analysis of the root causes of problems. Problems will be reviewed to determine their root causes, measures will be taken to correct the sources of the problems, and reports will be prepared and distributed to the Client in a timely fashion.

**3. Issue Resolution**

Defined as the emergency repair of any ORACLE Database that does not comply with expected Database operation. This includes Database errors, "hung" or halted Databases, or unexpected results within the Database that render it unusable for the purpose for which it was designed. This does NOT include bug-fixes to Application programs.

**4. Assistance with Database usage**

Advice about how to use ORACLE Database. No advice will be provided on the use of any Vendor Application.

**5. Assistance with Database environment support**

Advice on the client-workstation environment required to connect to the ORACLE Database, where applicable.

**AUTOMATED SERVICES**

**Backups**

Daily backups of the Client’s ORACLE Database will be taken to local disk/online storage.

**Database monitoring**

Every effort will be made to conduct regular monitoring of the ORACLE Database to assess Database availability.

**Database Software Upgrades**

All Database software upgrades will be performed when required. Normally, upgrades or patches will not be performed more often than quarterly.

**Database Server Upgrades**

All upgrades to the Server(s) hosting the ORACLE Database(s) will be performed by the Client’s networking support staff, and not by KALWARE. Notice of such upgrades will be given to KALWARE in advance, in case any Database preparation must be made to accommodate the Server upgrade.

**Knowledge management**

Recording, storing, and retrieval of information to assist in the resolution of Database problems will be established and maintained by KALWARE.


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**Requests for Services NOT Covered Under This Agreement**
This agreement does not cover the following requests. However, KALWARE would be pleased to provide a separate statement of work in proposing services to address any of the following:

**1. Training**
KALWARE can provide standard and bespoke training on ORACLE, but this is not included within this Agreement.

**2. Assistance with application usage when unsupported or non-standard hardware or Database is involved**
Use of unsupported or non-standard hardware or Database often results in unexpected behaviour of otherwise reliable systems.

**3. New development**
Any change in a database or system that involves functionality not within the current release, even if the new functionality would seem to be an improvement over the old one.

**4. Data conversion**
Any data conversion or data export/import that cannot be carried out by the standard facilities available within the ORACLE Database products and utilities.

**KALWARE is not responsible for:**

- Management of network user accounts (except the password for its own network account).
- Tape or Offline-Storage Media Backups.
- ORACLE tablespaces or datafiles created by any other person, entity, or program, if not created in standard OFA locations.
- Anti-virus software or security of servers or client PC's or the network.
- Application Programming Support. KALWARE will not provide application programming support. However, individual KALWARE consultants may be able to answer questions about ORACLE Database-related programming languages and tools.
- Transaction Response Time. KALWARE cannot guarantee specific response-times of Database transactions, as that will depend on many factors including, but not limited to: network performance, hardware performance (disk speed, CPU speed), and the design of the application(s) using the Database.
- Database Design and Development. KALWARE will not be required to provide any database design or development of Database Applications by the Client.
- Training and Knowledge Transfer. KALWARE will not be required to provide training or knowledge transfer of Database Support Services related activities to the Client, unless specified in the Quotation and/or Invoice(s) for the Services.
- Data Entry. With the exception of performing the import of data from other applications or databases to the Database, KALWARE will not perform data entry.

**KALWARE Responsibilities**

KALWARE has the following general responsibilities under this agreement:

- KALWARE will log all information from the Client required to establish contact information, document the nature of the problem and the Client's hardware/network environment (as applicable).

**KALWARE Roles**

There are two roles deployed within KALWARE that are integral to the provision of support services to the Client. These


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roles include the following:

1. **KALWARE Database Support Consultant**
   The KALWARE Database Support Consultant will provide the activities of the support services, and will negotiate with the Client's support manager regarding the classification of enhancements and the scheduling of tasks. His or her duties will include:

   - Ensuring SLA targets are met (coordinating all activities to ensure all tasks are performed in a consistent manner and on schedule).
   - Ensuring all work is performed according to terms of this SLA.
   - Acting as point of escalation for issues beyond usual scope.
   - Participating directly in the production of the associated deliverables.
   - Liaising with Client managers (negotiating with client's support managers regarding the classification of and the scheduling of tasks, and coordinating the presentation of deliverables to the Client).
   - Performing resource management and scheduling, including provision of overall direction of the activities of the support services.
   - Conducting continuous process improvements.
   - Assessing the workload for each support request.
   - Dedicated help desk personnel.
   - Conducting all root-cause analysis and bug fix isolation and resolution activities, and associated documentation for the individual tasks.
   - Acting as a point of contact for all Database issues.
   - Identifying all tasks associated with each support request and deriving estimates for the completion of each task.
   - Responsibility for responding to and updating support requests.
   - Providing knowledge transfer to the backup support specialist on regular basis.
   - Preparing status reports.

2. **KALWARE Backup Support Specialist**
   KALWARE will maintain at least one (1) qualified backup support specialist to provide relief support to the Primary Consultant during vacations, illness, or absences scheduled or otherwise. KALWARE will notify the Client at least 24 hours in advance of scheduled absences and provide current contact information of the Backup Support Specialist to the Client by email.


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## ARTICLE 1—TERM AND FEE

In consideration of the Client's payment of the applicable Database Support Services fees, KALWARE will provide Database Support Services to the Client in accordance with the provisions of this Agreement. The initial term of this Agreement shall begin on receipt of order (renewal date) and shall continue for twelve (12) consecutive months at the fee(s) noted in the KALWARE Quotation for Database Support Services. Thereafter, the Client may extend this Agreement for consecutive one (1)-year terms effective as of the renewal date at the then current quoted fee(s). Should the Client decide to extend this Agreement, the Client shall issue a purchase order in advance of the renewal date at the quoted price. Payment is due annually in advance, except as stated in Article 2, Section 2.2b (Block of Time at an Hourly Rate). The Client agrees to pay KALWARE invoices within thirty (30) days of receipt.

## ARTICLE 2—DATABASE SUPPORT SERVICES

### 2.1 Database Support Services Availability

Database Support Services are available from KALWARE to the Client. Client must order standard ORACLE Database Maintenance and Database Support from ORACLE Corporation to qualify for Database Support Services. KALWARE reserves the right to make service substitutions and modifications to support services at any time provided they do not cause a materially adverse effect in overall service performance.

### 2.2 Standard Database Support Services

KALWARE will support the licensed Database(s) by providing the Client with email and telephone support and other services described below. Certain Add-On Premium Services described in Section 2.4 below are available when ordered. KALWARE does not provide Database Support for hardware, graphics cards, monitors, plotters, graphics printers, digitizers, modems, and so forth, except to answer questions of how standard supported devices interface with the Database(s). Database Support and Maintenance are available only for commercially released current versions of the Database. Database upgrades and updates are provided only for standard hardware platforms and operating systems supported by KALWARE as described earlier in this Agreement. The Client is responsible for making or arranging for upgrades or updates to interfaces for nonstandard devices or custom applications. KALWARE supports users with the installation and maintenance of the ORACLE Database, and assistance in solving problems arising from the use of the Database. If KALWARE develops and provides to the Client a Hot-fix, patch, or other intellectual property ("IP") under, as a result of, or related to this Agreement, KALWARE shall retain sole ownership of such IP, which shall be subject to the terms of the applicable KALWARE license agreement. Standard Database Support Services does not include on-site support, but such support is available as Add-On Premium Services. Standard Database Support Services are available either for an annual fee payable in advance, or in blocks of time as described below:

- **Annual Fee.** If the Client elects to pay the annual fee in advance, the Client has the right to receive standard Database Support Services for twelve (12) consecutive months.

- **Block of Time at an Hourly Rate.** Alternatively, the Client may elect to order blocks of time in minimum blocks of four (4) hours to be used during Normal Business Hours over the term of the Agreement. KALWARE will invoice the Client for the block of hours payable on a net 30-day basis. If the Client does not promptly pay the undisputed amount due, the Client agrees KALWARE may discontinue logging incidents and all ongoing work shall cease. No block of hours will carry forward into the next year. At time of invoice, KALWARE will provide a summary of the incident(s), allocated hours billed to the nearest quarter hour (15 minutes) for each incident, and tasks associated with the billed time. The Client may request to have a support request covered under normal maintenance, subject to normal queue, response, and resolution times provided. The Client advises KALWARE of its intent when it first calls or contacts KALWARE Support for the incident. All time spent working on incidents by KALWARE will be billed against the block of time, regardless of the type or outcome of the call, including reported Database program code errors ("bugs").


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### 2.3 Database Support Services Functions

The following functions are provided as part of the Database Support Services:

- **Assigned Consultant.** Pursuant to the Client's request, KALWARE will assign a consultant to the Client as the assigned consultant. The assigned consultant will work directly with the Client's named contacts to ensure that the Client's Database Support needs are met.
- **Point of Contact for Database Issues.** The KALWARE assigned consultant will be a liaison between Client and KALWARE to resolve issues promptly and effectively. The assigned consultant will determine when and how this contact is made between KALWARE and the Client.
- **One (1)-Hour Response Time.** KALWARE will endeavour to respond within one (1) hour to emergency calls/emails received by KALWARE's Technical Support Help Desk during Normal Business Hours. Non-emergency calls/emails may have longer response times.
- **Two (2) Authorized Callers.** Client may designate two (2) specific callers who can contact KALWARE, thereby building technical and business knowledge by both parties to improve services.
- **KALWARE Support Phone-Number and Email Address.** The Client will receive email and telephone support for all current KALWARE-supported Database problems during Normal Business Hours. The Client may request support by email (info@kalwaremicro.com) or by telephone at 519-846-9663
  (Emergency mobile phone: 519-240-9663).

### 2.4 Add-On Premium Services

Subject to receipt of order and payment of applicable fee(s) for each additional service listed below, KALWARE will provide the services described as elected by Client.

- **On-Site Support.** When needed, KALWARE personnel will travel to Client's domestic location(s) to work toward resolution of an Incident. KALWARE reserves the right to schedule the on-site support at times it deems reasonable, based on the priority level of the Incident, the type of support necessary to resolve the Incident, and other factors.

- **Quarterly Teleconference Meeting.** KALWARE and the Client may schedule a quarterly teleconference meeting to discuss Client's current support issues. KALWARE will make available the primary consultant, and any other necessary staff for the meeting.

- **Twenty-Four/Seven (24/7) Emergency After-Hours Pager Support.** The Client may contact KALWARE for Emergency support on Priority 1 issues only after-hours, seven (7) days per week. The Emergency After-Hours pager support is available outside Normal Business Hours, Monday through Friday (6:00pm through 6:00am), weekends, and KALWARE holidays. (Note: 24/7 Emergency After-Hours pager support is the only add-on Premium Support Service that may also be purchased independent of procurement of Database Support Services.) Emergency After-Hours pager support includes:
  - The Client may name two (2) authorized callers for Emergency After-Hours access.
  - KALWARE will assign senior consultants with expertise in each specialty selected.
  - KALWARE will provide the Client with a unique telephone number with pager service access.
  - KALWARE will respond within four (4) hours of contact by the authorized callers.

- **Limitations.** Resolution and resolution-time for reported issues or incidents is not guaranteed. Client is responsible for determining that the fault is not with its application before calling, whether during Normal Business Hours or for Emergency After-Hours pager support. The 24/7 Emergency After-Hours support is *limited to Emergency calls for Production Databases only*.


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### 2.6 Database Support Services Restrictions and Exclusions

- **ORACLE Database Releases.** Client will receive support for the ORACLE Database family of products and other authorized KALWARE programs related to the administration of the Database(s). This may include support for the ORACLE Internet Application Server (OAS).

- **Excluded Database.** Database Support Services are not provided for third party Database(s) (eg., Microsoft SQL Server). KALWARE is not responsible for errors attributable to third party Database(s) or programs used in conjunction with or built upon the ORACLE Database. Database Support Services are available only for Database(s) that is/are current on KALWARE maintenance contracts.

- **Acknowledgment.** Client acknowledges and agrees that report of an error or defect with the Database to KALWARE is not a guarantee that it can or will be corrected. At KALWARE's sole discretion, Database issues will be addressed on a priority basis and is subject to schedules determined by KALWARE.

## ARTICLE 3—CLIENT RESPONSIBILITIES

### 3.1 Cooperation and Restriction on Transfer

Client shall use reasonable efforts to cooperate with KALWARE in resolving Database Support issues. Client agrees to use all reasonable efforts to determine whether the incident is due to the Database, third party software, hardware, incorrect installation, or integration with other non-ORACLE applications prior to contacting KALWARE for Database Support. Client shall not transfer, sell, lease, loan, distribute, or otherwise provide the KALWARE Database Support documents and information sent to the Client during Incident resolution to any third party, unless expressly agreed to in writing and in advance by the parties.

### 3.2 Responsibilities for Contacts and Incident Reporting

Client acknowledges and agrees to assume responsibility for the following:

a. **Authorized Contacts.** The Client shall provide a maximum of two (2) authorized support contacts possessing reasonably sufficient knowledge and skill to interact with KALWARE consultants upon execution of this Agreement. The Client shall advise KALWARE in writing of any changes in such support contacts, and agrees to substitute personnel of equivalent knowledge and skill. The authorized contacts shall serve as the central and only point of contact between Client and KALWARE consultants.

b. **Incident Information.** The Client acknowledges that the authorized contacts are required to provide KALWARE with a valid customer number in order to demonstrate service entitlement prior to service delivery. The contact shall provide the following information for each Incident:
   - The Database name and version number, if applicable
   - The exact wording of any messages that appeared on the Client's screen
   - What happened and what the Client was doing when the problem occurred
   - How the Client tried to solve the problem
   - The priority or Incident Severity classification for the Incident as defined in Article 4—Database Support Services Priority and Response Time. However, after receiving and logging an Incident, the priority/severity classification may be changed by mutual agreement of the Client and KALWARE.

   Note: Failure of Client to provide the above information may result in the delay of KALWARE's investigation of the incident.


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c. **Preparation.** The named Client contact will be at his/her computer and, in addition to the above information, have the appropriate Database Documentation on hand when the call is placed for Database Support Services.

d. **Electronic Data Capability.** In order to receive electronic documents, the Client is required to procure and provide an appropriate network gateway including equipment and communications facilities, including an SMTP mail server for Database-related email notifications to/from KALWARE. The Client is also required to have access to File Transfer Protocol (FTP) capabilities for transfer of data, if necessary.

e. **System Maintenance.** The Client shall comply with KALWARE requests to perform prescribed operating system and/or hardware maintenance including, but not limited to, patch updates, file-system maintenance, and provision of proactive diagnostic information.

f. **Prior Testing.** The Client will conduct testing of Database applications prior to filing a support call. Specifically, testing shall include functional testing. KALWARE must receive from the Client a reproducible case of any given problem. It is the Client's responsibility to provide this reproducible case or to provide the steps necessary to reproduce the given problem. KALWARE must be able to identify the error and reproduce the error to effectively and efficiently work on resolution of reported incidents.

g. **Participation.** In the event that the Client is entitled to receive additional services, the Client will actively participate in all planning and review of all activities requested by KALWARE.

h. **Response Time.** Client shall contact KALWARE during Normal Business Hours to ensure the target response time. If Client calls a consultant or anyone else directly, then the target response is not guaranteed.

i. **Maintenance in Effect.** KALWARE is not obligated to perform the services described in this Agreement unless Client has Maintenance and Database Support services currently in effect with KALWARE and has received an order confirmation from KALWARE accepting the purchase order or electronic order of payment for the support services.

## ARTICLE 4—DATABASE SUPPORT SERVICES PRIORITY AND TARGET RESPONSE TIME

### 4.1 Defined Priorities

Only authorized Client contacts may request support. KALWARE will assign support priority, subject to concurrence by the Client. The Client and KALWARE will jointly determine the initial severity rating for a call. KALWARE management may then negotiate with the Client to modify this severity after the report is elevated to them. Following are the Database Support Services priority levels:

1. **Priority 1—Database Down.** The Production Database is not operational. Target Response Time: one (1) hour.

   Some examples of Priority 1 calls include:
   - Database hung (unable to save work in progress by all users).
   - Database functionality failure causes data losses or Database unusable.
   - Functionality failure renders system ineffective.
   - Database malfunction causes mission-critical applications to stop/halt.

2. **Priority 2—Database Impaired.** The Production Database is not operating with full capability but is still operational. Target Response Time: four (4) hours.

   Some examples of Priority 2 calls include:


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- Impaired or broken functionality with significant impact to applications and/or Database(s)
- Frequent application failure but no data loss
- Serious but predictable management system failure
- Significant system performance degradation
- Networking issues preventing a majority of users from connecting to the Database

3. **Priority 3—System Operation Normal.** Database is up and running with limited or no significant impacts. Target Response Time: 24-48 hours.

   Some examples of Priority 3 calls include
   - Bugs that cause limited or no direct impact to performance and functionality
   - Request to replace a bug work-around
   - Limited impact defective functionality
   - System performance support questions and issues
   - Networking issues preventing one or more of users from connecting to the Database

**4.2 Response Time Expectancy/Target**

KALWARE response time is determined by the type of contract and the specifics of the contract, as set out in the Quotation for Services and/or the corresponding Invoice(s) for Services. KALWARE's goal is to respond to all requests for service as quickly as possible. KALWARE will make all reasonable efforts to respond to support calls for Priority 1 issues reported within one (1) hour of determination of the problem provided the call has been made through KALWARE's Database Support Call Reception Centre. The response times stated above for Priority 1 through Priority 3 problems apply to Database problems that are mutually agreed upon by the Client and KALWARE consultant.

KALWARE prioritizes requests as they are reported, using the following general guidelines:

* Urgent requests are those that meet one or more of the following criteria:
  - o The security of one or more machines is compromised.
  - o Multiple users are affected.
  - o The Production Database is not functional.
  - o The Production Database is not accessible.
  - o The Client is working under a deadline or on a time-sensitive task requiring Database Support assistance.
* Normal requests typically fall into the following categories:
  - o The request is specified as not urgent by the Client.
  - o The user is experiencing an application problem that does not interfere with critical functions.
  - o The user has an informational question (e.g., "How do I...?").
* Planned requests are those that require scheduling, research, or other advance preparation.
  Examples of planned requests might include the following:
  - o Hardware or Database recommendations.
  - o Computer setups or moves.
  - o Database installation or upgrades.
  - o Requests for other services (e.g., hourly or retainer contracts).

Note that the boundaries among categories are not absolute. For example, there are times when a request that would normally fall into the "Normal" category might in fact be urgent.

**Responsibilities**: In order for the above response times to apply, Clients must request service using the appropriate KALWARE email address. If email is unavailable, requests can be made via telephone.


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**CONFIDENTIALITY**

The Client will notify KALWARE immediately if it learns of a security breach concerning access to the Database (including VPN userids and passwords). KALWARE will store and maintain in a secure manner the relevant connection information required to provide remote-administration of the Client's Database(s). This may include IP addresses, VPN details, userids, passwords, etc. KALWARE will notify the Client immediately if it has become aware of any security breach of the connection information so that the Client may change any passwords as required to mitigate undesired access by third parties. KALWARE will assist the Client from time to time in changing Database passwords where possible, as required by the Client.

The parties acknowledge that, in order to perform the services called for in this Agreement, it may be necessary for KALWARE or the Client to disclose to the other party certain trade secret(s) or confidential information. The parties further acknowledge that Database updates, upgrades, patches, and hot-fixes may incorporate, of necessity, such trade secret(s) or confidential information. Each party agrees that it shall not disclose, transfer, use, copy, or allow access to any such trade secret(s) or confidential information of the disclosing party to any employees or third parties, except those who have a need to know such trade secret(s) or confidential information of the disclosing party consistent with the requirements of this Agreement and who have undertaken an obligation of confidentiality by signing a written agreement to that effect. In no event shall the receiving party disclose any such trade secret(s) or confidential information of a disclosing party to any competitors of the disclosing party.
The parties further agree that neither party shall use for its account or permit use for the account of a third party such trade secret(s) or confidential information of a disclosing party. Any disclosure, sale, or loan of the identified information is strictly prohibited. Identification of the proprietary, confidential, or privileged nature of the trade secret(s) or confidential information of KALWARE or Client may be made in writing or verbally, followed by written identification, in any media.
As used herein, the term "trade secret(s)" shall mean any scientific or technical data, information, design, process, procedure, formula, or improvement that is commercially valuable to the disclosing party and not generally known in the industry. As used herein, the term "confidential information" shall mean any business or trade information that is imparted in secret, treated as private; not for publication; or, if disclosed to unauthorized persons or entities, would likely cause substantial harm to the competitive position of the disclosing party. The obligations set forth in this Article, as they pertain to trade secret(s), shall survive this Agreement and continue for as long as the material remains a trade secret(s).

**Non-Disclosure Agreement**

KALWARE acknowledges that it may be required to sign a Non-Disclosure Agreement (NDA) with the Client, separate to this Agreement. Any such NDA shall be attached as an addendum to this Agreement.

**LIMITATION OF LIABILITY AND EXCLUSIVE REMEDIES**

KALWARE will use reasonable efforts to provide corrections or work-around solutions for any errors reported by the Client for the term of this Agreement. KALWARE reserves the right to make service substitutions and modifications to support services at any time provided they do not cause a materially adverse effect in overall service performance to the Client.
EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTY, KALWARE DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. KALWARE DOES NOT WARRANT THAT THE DATABASE OR DOCUMENTATION WILL MEET THE CLIENT'S NEEDS, OR THAT THE CLIENT'S OPERATION OF THE SAME WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED.
KALWARE shall not be responsible for any error or nonconformities attributable to a modification to the Database made by or at the direction of the Client, or without prior consent of KALWARE.


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If KALWARE fails to fulfill its obligations under this Agreement, Client's sole and exclusive remedy is the right to terminate this Agreement according to the Termination clause for the affected Service(s).
IN NO EVENT SHALL KALWARE BE LIABLE TO CLIENT FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DATABASE(S) OR DOCUMENTATION, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT KALWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**Disclaimer of Warranties**

All Services provided by KALWARE to the Client in accordance with this Agreement are provided on a “best efforts” basis, without any other representations, warranties or conditions, express or implied, written or oral, including, but not limited to, warranties of merchantable quality, satisfactory quality, merchantability or fitness for a particular purpose, or those arising by law, statute, usage of trade, course of dealing or otherwise. The Client assumes the entire risk as to the use of the services or the downloading or other acquisition of any information, content or materials provided by KALWARE, and the Client agrees to be solely responsible for any damage to its computers or databases or loss of data that results from such activities.

Without limited the foregoing, KALWARE makes no warranty that: (i) the Services will meet all the Client’s requirements; (ii) the Client’s use of the Database(s) will be uninterrupted, timely, secure or error-free; (iii) the results the Client may obtain from using the Database(s) will be effective, accurate or reliable; (iv) the quality of any products, services or information purchased or obtained by the Client will meet the Client’s expectations; (v) any errors in the Database and its software programs will be corrected; and (vi) the Database(s) or the servers that host the Database(s) are free of viruses or other harmful components.

**Limitations on Liability**

KALWARE may make changes to the Services or materials involved in providing the Services, including, without limitation, the prices and descriptions of any listed Services at any time and without notice. The Client releases and saves harmless KALWARE and its consultants, representatives, and assigns from responsibility for errors or omissions in the Services or materials provided. References to other corporations' sites, services and products are provided "as is" without warranty of any kind, either express or implied.

In no event shall KALWARE, its suppliers or licensors have any liability to the Client or any other person or entity for any indirect, incidental, special or consequential damages whatsoever, including, but not limited to, loss or revenue or profit, lost or damaged data, or other commercial or economic loss, even if KALWARE has been advised of the possibility of such damages or they are foreseeable. KALWARE is not responsible for claims by a third party. **In no event shall KALWARE’s (or its suppliers’ or licensors’) maximum aggregate liability to the Client for damages, losses and causes of action, whether in contract, tort (including, but not limited to, negligence) or otherwise exceed the value amount of this Agreement payable by the Client.** The limitations in this section shall apply whether or not the alleged breach or default is a breach of a fundamental condition or term, or a fundamental breach.

**Indemnification**

By using the Services provided by KALWARE, the Client agrees to indemnify, defend and hold harmless KALWARE and its affiliates, partners, third-party content providers and licensors, and each of their respective directors, officers, employees and agents, from and against any and all claims, actions, suits, proceedings, judgments, damages, losses, liabilities, costs and expenses (including, without limitation, legal fees and related disbursement costs) arising directly or


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indirectly out of or in connection with: (i) the Client's breach of these Terms of Use; (ii) any content uploaded, posted or transmitted by the Client to KALWARE via email, fax, phone, or other medium; and/or (iii) the Client's activities in connection with the Services.

**Privacy Policy Statement**

The terms of KALWARE's Privacy Policy Statement ("Privacy Policy") are incorporated into the Terms of Use by reference. By accepting the Terms of Use, the Client acknowledges that he/she has read, understood and agrees to be bound by the Privacy Policy.

**TERMINATION**

The Client may terminate this Agreement by providing thirty (30) days' advance written notice to KALWARE, or immediately for material breach of this Agreement by KALWARE provided KALWARE is given a reasonable opportunity to resolve such a breach.
KALWARE may terminate this Agreement by providing thirty (30) days' advance written notice to the Client, or immediately for material breach of this Agreement by the Client provided the Client is given a reasonable opportunity to resolve such a breach.

**FORCE MAJEURE**

If the performance of this Agreement, or any obligation except the making of payments, is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, terrorist act, cyber-attack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, or interference.

**APPLICABLE LAWS**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

**ENTIRE AGREEMENT**

This Agreement and corresponding Quotation for Services and Invoice(s) for Services, and any attached signed Addendums constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to the Services. The Agreement terms and conditions shall remain in effect and are incorporated herein by reference.

**Revisions to this Agreement**: KALWARE reserves the right to update or revise this Agreement at any time. A current version of this Agreement is available upon request from Kalware, and electronically on Kalware's website www.kalwaremicro.com.

**Amendment to Agreement**
The Client may request a specific amendment to the Terms and Conditions of this agreement, which requires the written approval of the Client and KALWARE. The amendment of the agreement would take place through an addendum and the recording of that addendum in Appendix A of this agreement.

The parties have agreed to these terms and have executed this Agreement on the date last signed below.


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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the last date written below.

| | |
|---|---|
| KALWARE MICROSYSTEMS INC.<br>(KALWARE)<br>Box 2896<br>Elora, ON N0B 1S0<br>Phone/Fax: 519-846-9663<br>Mobile: 519-240-9663<br>Email: info@kalwaremicro.com<br><br>Signature:<br><br>Printed Name:<br><br>Title:<br><br>Date:<br><br>KALWARE Quotation/Invoice No.: Invoice #1070 | **Client Contact Information**<br>Client Corporate Name:<br>Contact Person:<br>Installation Address:<br>City, Province:<br>Postal Code:<br>Telephone:<br>Fax:<br>E-mail:<br><br>Signature:<br><br>Printed Name:<br><br>Title:<br><br>Date: |


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