

## REALNETWORKS ® SOFTWARE DEVELOPMENT SUPPORT AGREEMENT – LEVEL III

These Terms and Conditions for RealNetworks Software Development Support ("Agreement") are effective as of \_\_\_\_\_, by and between RealNetworks, Inc. with an address of 2601 Elliott Ave, Seattle WA 98121 ("RN") and \_\_\_\_\_ with an address of \_\_\_\_\_ ("Licensee"). The parties agree as follows:

### 1. DEFINITIONS.

1.1 In addition to the capitalized terms defined elsewhere in this Attachment, the following terms used herein shall have the meanings ascribed to them below:

(a) "Dedicated Weekly Hours" shall mean the maximum amount of dedicated support hours that Licensee is assured to receive per week for all Development Support requests. The number of Dedicated Weekly Hours is determined by dividing the total amount of Development Support Allocated Time purchased per contract year by 50 weeks. For example, if Licensee has purchased 200 hours of Development Support Allocated Time, then Licensee will be entitled to four Dedicated Weekly Hours of Development Support.

(b) "Development Support" shall consist of telephone, email and remote diagnostic support to Licensee contact (not directly to end users or other third parties) with regard to the development and integration of the Helix DNA Technology into the Licensee product

(c) "Development Support Allocated Time" shall mean up to 500 hours of Development Support for email, telephone and remote diagnostic Development Support.

(d) "Development Support Engineer" shall mean the individual who will provide Development Support to Licensee. The assigned Development Support Engineer will be based in Seattle, Washington or other locations at RN's sole discretion.

(e) "Documentation" shall mean any manuals, either hardcopy or softcopy, provided by RN that pertain to the Helix DNA Technology

(f) "Error" shall mean any instance in which the Ported Helix DNA Technology does not materially conform to the Documentation; provided, however, that an Error shall not include any material nonconformance that is due to hardware, software, or other equipment not referred to in the Documentation as being compatible with the Helix DNA Technology.

(g) "First Level Support" shall consist of accepting and handling end user calls and troubleshooting to the point of verifying that there is an Error and that the Error, if any, is in the Ported Helix DNA Technology.

(h) "Licensee Contact" shall mean an individual designated in writing by Licensee who is authorized to contact the TAM (as defined below) and Development Support Engineer for Development Support requests, and with whom the TAM coordinates Development Support. All Errors reported will subsequently be escalated to the assigned TAM. Licensee may substitute Licensee Contacts at any time upon written notice thereof to RN.

(i) “Ported Helix DNA Technology” shall mean the compilations and/or modifications of the Helix DNA Technology to allow the Helix DNA Technology to properly operate on Licensees product.

(j) “RN Corporate Headquarters” shall mean the RN facility or facilities from which support obligations are to be provided hereunder. As of the Effective Date, RN’s Corporate Headquarters is located at 2601 Elliott Avenue, Seattle, Washington 98121.

(k) “Helix DNA Technology” shall mean all Helix DNA source code, Helix Software Development Kit’s and/or other code that is currently available for licensing on [www.helixcommunity.org](http://www.helixcommunity.org).

(l) “Technical Account Manager” (“TAM”) shall mean the individual assigned to Licensee who works directly with the Licensee Contact to manage and coordinate the delivery of Development Support and the resolution of support requests to Licensee. The assigned TAM will be based in Seattle, Washington or other locations at RN’s sole discretion.

## **2. RN DEVELOPMENT SUPPORT OBLIGATIONS.**

2.1 RN shall provide Development Support to Licensee through the Development Support Engineer assigned to the Licensee.

2.2 The Development Support Engineer shall be available for English-only phone and email contact Monday through Friday, 9:00 AM to 5:00 PM Pacific Time, at RN’s Corporate Headquarters, exclusive of RN’s local holidays. The Development Support Engineer shall make every reasonable effort to provide an initial response to all Development Support requests within two (2) business days.

2.3 RN shall be obligated to provide Licensee each week with up to but not greater than the number of Dedicated Weekly Hours of Development Support. If Licensee desires to increase the Dedicated Weekly Hours of Development Support, then additional Development Support Allocated time can be purchased to increase the overall total amount of Dedicated Weekly Hours. RN may, at its sole discretion and at request of Licensee, provide more hours than the allocated Dedicated Weekly Hours in a given week, provided that Licensee has not exceeded its total Development Support Allocated Time for the given contract year.

2.4 RN shall not be obligated to provide on-site Development Support. If Licensee desires to receive on-site Development Support to resolve issues that arise in the development, integration and Error resolution of the Ported Helix DNA Technology into the Licensee product, such support shall be deducted from remaining Development Support Allocated Time and Licensee will reimburse RN for all related travel expenses (including transportation, accommodations and meals). The Development Support services specified herein do not include initial installation, onsite training, programming, creating new documentation or encoding content.

## **3. LICENSEE OBLIGATIONS.**

3.1 Licensee shall be responsible for providing First Level Support for the Ported Helix DNA Technology. RN shall not be required to have direct contact with Licensee’s end users with regard to Development Support.

3.2 Licensee shall ascertain the nature of each reported Error, and the circumstances under which such Error occurs. Licensee shall use reasonable commercial efforts to provide RN with information, traces, server access or documentation sufficient for RN to duplicate the Error. Upon RN's duplication of such Error, the parties shall mutually determine in good faith the reasonable resolution of such Error.

3.3 Licensee shall designate a primary Licensee Contact for communication with the TAM, Development Support Engineer and/or RN's representatives at RN's Corporate Headquarters. Licensee shall also designate a secondary Licensee Contact who may communicate with RN in the event the primary Licensee Contact is unavailable. All Licensee support requests must be made through a Licensee Contact. Each Licensee Contact shall have adequate technical expertise, training and experience to fulfill his or her responsibilities and shall make reasonable efforts to minimize redundancy in support requests. Licensee shall immediately provide RN with the name, title and email contact information for each Licensee Contact.

3.4 Licensee agrees that when requesting Development Support, it shall follow the following procedures: (i) Licensee shall submit a Development Support request via email to the TAM and Development Support Engineer; (ii) the email should include a brief synopsis of the problem, reproductions steps, a description of the equipment and operating environment used and if possible configuration, error and access logs; and (iii) if Licensee does not receive a response within the requisite time frame set forth in Section 2.2, or believes the response they have received is not adequate, Licensee shall contact the Manager of Helix Development Support.

3.5 Licensee agrees to provide RN on a royalty-free basis any necessary software development tools, including, but not limited to, SDK's (binaries only), compilers, linkers, emulators and associated documentation necessary for RN to provide the Development Support required with development, integration and Error resolution of the Helix DNA Technology into the Licensee product.

#### **4. TERM.**

4.1 The term of this Agreement is one (1) year from RN's receipt of Licensee's annual payment of the Development Support Fee (as defined in Section 5.1 below). Thereafter, Licensee may renew this Agreement for additional one (1) year periods, based on the then current Development Support terms and conditions and upon payment of the annual Development Support Fees. RN may terminate this Agreement if Licensee fails to pay the Development Support Fees due to RN hereunder. Licensee's unused Development Support Allocated Time does not carry over into the subsequent Term and will expire at the end of the applicable Term. As used herein, "Term" will mean the initial term and any subsequent renewal terms.

#### **5. PAYMENT.**

5.1 Licensee shall pay RN a total of one hundred and forty-nine thousand nine hundred and fifty dollars (\$149,950.00) for the total amount of Development Support Allocated Time specified in Section 1(c) above ("Development Support Fee"). During the initial twelve (12) month term of this contract, Licensee may purchase additional Development Support Time under the terms and conditions of this Agreement for two hundred dollars (\$200) per hour in twenty hour increments. RN will invoice Licensee for all Development Support Allocated Time purchased hereunder. All invoices are due in full thirty (30) days from the date of invoice. All fees paid shall be non-cancelable and non-refundable.

#### **6. DISCLAIMER.**

6.1 RN provides Development Support 'as is', and disclaims all warranties, either expressed or implied. RN SHALL NOT BE LIABLE TO LICENSEE OR ANY OTHER PERSON UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER ARISING OUT OF RN'S PROVISION OF DEVELOPMENT SUPPORT SERVICES HEREUNDER, INCLUDING DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF RN HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. FURTHER, IN NO EVENT SHALL RN'S LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT EXCEED THE ANNUAL DEVELOPMENT SUPPORT FEE PAID BY LICENSEE HEREUNDER.

## **7. NOTICE.**

7.1 All notices and demands under this Agreement will be in writing and will be delivered by personal service, express courier, or United States mail to the following addresses:

If to RN:

RealNetworks, Inc.  
P.O. Box 91123  
Seattle, WA 98111-9223  
Attention: General Manager, Helix

If by Personal Delivery:

RealNetworks, Inc.  
2601 Elliott Avenue, Suite 1000  
Seattle, WA 98121  
Attention: General Manager, Helix

If to Licensee, the notice will be sent to Licensee's address set forth above.

Either party may change their address set forth above by providing written notice to the other party. Notice will be effective on receipt.

## **8. NON-ASSIGNMENT.**

8.1 Licensee may not assign, sublicense, transfer, encumber or otherwise dispose of this Agreement without the prior written approval of RN. Any attempted assignment, sublicense, transfer, encumbrance or other disposal of this Agreement by Licensee in violation of this provision will constitute a material default and breach of this Agreement. Except as otherwise provided, this Agreement will be binding upon and inure to the benefit of the parties' successors and lawful assigns.

## **9. MISCELLANEOUS.**

9.1 This Agreement constitutes the final agreement between the parties, and supersedes and cancels all prior negotiations, understandings, correspondence and agreements, oral and written, express or implied, between the parties relating to the subject matter hereof, and thereof, and shall be binding only when executed by both parties hereto. No waiver, amendment or modification of any provision of this Agreement shall be effective unless it is in a document that expressly refers to this Agreement and is signed by both parties. Failure or delay by either party in exercising any rights or remedy under this

Agreement shall not operate as a waiver of any such right or remedy. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby. The titles and headings of each section are intended for convenience only and shall not be used in construing or interpreting the meaning of any particular clause or section. This Agreement shall be governed by the laws of the State of Washington, excluding that body of law known as conflicts of law.

9.2 These terms are subject to change at any time. RN will endeavor to notify Licensee of significant changes but shall not be liable for any suspension or substantial change of support provided to the Licensee based on policy changes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

**REALNETWORKS, INC.**

**LICENSEE**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_