



## EXFO Professional Services and Support Terms

These EXFO Professional Services and Support Terms (“**Professional Services and Support Terms**”) together with Standard Terms apply to Customer’s purchases of EXFO’s Solution(s) and Professional Services and form an integral part of contract between the Customer and EXFO.

1. **DEFINITIONS.** Capitalized expressions used in these Professional Services and Support Terms shall have the meanings respectively assigned to them herein or in the Standard Terms.

- 1.1 “**Acceptance Test Protocol**” or “**ATP**” means the acceptance testing included in a SOW and described in Section 6 herein.
- 1.2 “**Release**” or “**Solution Release**” means a version of Licensed Software products which allows activation of new features and capabilities.
- 1.3 “**Response Time**” means the time from Customer submission of a support request to EXFO until the time EXFO responds to Customer (time used to log the problem and give an acknowledgment).
- 1.4 “**Restore Time**” means the time from Customer submission of a support request to EXFO until the time EXFO provides a restoration (solution to go back to an operational state).
- 1.5 “**Resolution Time**” means the time from Customer submission of a support request to EXFO until the time EXFO provides a Resolution for the Incident.
- 1.6 “**Restore**” or “**Restoration**” means a condition where the applicable item is operational, possibly in a degraded mode, but a permanent Resolution to an incident has not yet been implemented. Restoration may take the form of a workaround or a service pack, which has been implemented to correct the defect partially and temporarily.
- 1.7 “**Resolve**” or “**Resolution**” means that a permanent solution to the incident has been implemented to Customer's reasonable satisfaction. In any case, the Resolution will cause the applicable item to be operational.
- 1.8 “**RMA**” means for return merchandise authorization.
- 1.9 “**SLA**” means service level agreement and defines the type of service provided by EXFO in term of maintenance and support to Customer.
- 1.10 “**Solution(s)**” means as the case may be a set of Licensed Software, Hardware, Software Service, Professional Services and/or customization sold to the Customer.
- 1.11 “**Solution Release Upgrade**” means an upgrade to a new version of the Solution Release on the Customer environment.
- 1.12 “**Statement of Work**” or “**SOW**” means a separate document signed by the Parties to the Agreement and described in Section 2.3 herein.
- 1.13 “**Workaround**” means a temporary solution that EXFO has implemented to fix an incident, or enabled Customer to implement, so that the Solution is operational.

## 2. SUPPORT AND PROFESSIONAL SERVICES

- 2.1 If a support program is purchased by Customer, EXFO shall provide support to the extent set forth in the corresponding Support Program Specific Terms attached to these Professional Services and Support Terms as exhibits during the coverage period determined in EXFO’s proposal or subsequent renewal notices. Performance of the support program is contingent on the Customer’s system meeting the minimum requirements as specified in the site specification document, offer specifications, otherwise known as “dimensioning”, or any documentation that specifies prerequisites to be provided to EXFO for proper execution of the support program.



- 2.2 EXFO, or its subcontractors, shall provide Professional Services on a fixed fee or time and material basis, to the extent set forth in EXFO's Purchase Order confirmation of each applicable Purchase Order of the Customer.
- 2.3 If required by the type of Professional Services to be performed by EXFO, the Parties may enter into a Statement of Work ("**SOW**"). SOW refers to the technical solution proposed by EXFO to Customer. Each SOW shall include a description of the scope of Professional Services to be provided and, where applicable, the resulting Work Product to be delivered, pricing for performance of these Professional Services, time frame for execution, acceptance conditions, and the responsibilities of the Customer. EXFO designs the SOW based on information received from the Customer prior to the performance of Professional Services. Customer acknowledges it has reviewed the SOW proposed and shall inform EXFO of any necessary modifications prior to signature. The Parties acknowledge that adjustments to the SOW may be necessary in the event of unforeseen circumstances or Customer's inability to fulfill any of its responsibilities. Customer acknowledges that any changes to the planned SOW executed by the Parties that may become necessary or that may be requested by Customer are subject to EXFO's written acceptance, the application of additional charges that will be invoiced separately and EXFO may delay or suspend the performance of Professional Services accordingly.
- 2.4 EXFO shall assign personnel of appropriate skills, qualifications and experience to perform the Professional Services. The Professional Services dates shall be agreed by the Parties upon receipt of the Purchase Order. Unless otherwise provided in a SOW, in no event shall the Professional Services completion date be later than ninety (90) calendar days following shipping of the Hardware Product and/or the Licensed Software. In the event EXFO cannot perform the Professional Services within such delay because of Customer's default, namely but not limited to Customer's failure to provide access to Customer's site and/or to provide an appropriate site, then the Professional Services rendered up to that date shall be deemed accepted by Customer and EXFO shall issue an invoice for payment of the rendered Professional Services, the Hardware Product, the Licensed Software and the Support Program, as applicable. In addition, Customer shall support any additional costs incurred by EXFO resulting of EXFO's inability to perform the Professional Services due to Customer's default.
- 2.5 In those cases where the activities of EXFO or a responsibility of EXFO, called for by a schedule or otherwise, are dependent on an activity or responsibility of Customer, or is dependent on receiving information or approval from Customer, and the activity, responsibility, information or approval is not given or notified to EXFO by the scheduled date or time, then the activity or responsibility of EXFO may be delayed a corresponding amount of time and may result in an increase to the fees and expenses to be paid to EXFO.

### 3. CHANGE NOTICES

In the event the Parties agree to expand or change the scope of the project or pricing estimates, the Parties shall prepare and sign a change notice ("**Change Notice**"). No Change Notice shall be effective until signed by both Parties and EXFO reserves the right to refuse a Change Notice.



#### 4. ORDERS, DELIVERY, FEES AND PAYMENTS

- 4.1 Orders, fees and payments shall be subject to the EXFO's Sales Agreement and Standard Terms, as the case may be, available at [www.exfo.com/how-to-buy/sales-terms-conditions](http://www.exfo.com/how-to-buy/sales-terms-conditions) or on request.
- 4.2 EXFO shall invoice Customer in accordance with the pricing structure and payment terms as set forth in EXFO's quotation or each individual SOW for the Professional Services rendered to Customer, as the case may be.
- 4.3 Payment terms established by EXFO will start from the invoice date.
- 4.4 Customer shall reimburse EXFO for pre-approved travel expenses and out-of-pocket costs necessary for the provision of Professional Services.

#### 5. ACCEPTANCE

- 5.1 **Acceptance of Licensed Software and Hardware Product.** The Licensed Software shall be deemed accepted upon delivery (including electronic delivery) by EXFO, or its Affiliate; and the Hardware Product shall be deemed accepted upon shipment by EXFO, or its Affiliate, unless otherwise agreed by the Parties in a SOW which includes acceptance conditions, including but not limited to, an Acceptance Test Protocol ("**ATP**"), as the case may be. Notwithstanding anything else to the contrary herein or in a SOW or ATP, the Licensed Software and the Hardware Product shall also be deemed accepted immediately if Customer starts using the Licensed Software or the Hardware Product in a production or lab environment.
- 5.2 Professional Services or Solution shall be deemed accepted upon their completion and will not require an Acceptance Test Protocol (ATP) or any other acceptance mechanism/criteria, unless otherwise provided in a SOW. In such event, an ATP shall be performed in accordance with Section 6.2 below.
- 5.3 When Professional Services or Solution are subject to an acceptance, Professional Services or Solution shall be deemed accepted by Customer upon delivery of signed ATP in accordance with Section 6.1 below or proof of delivery and EXFO shall be entitled to invoice Customer for such Professional or Solution according to the invoicing terms in the SOW or otherwise under this Agreement. Acceptance shall not waive any other rights or remedies of Customer under the Agreement.
- 5.4 In the event that the Solution cannot be completed in full within ninety (90) calendar days of the confirmation by EXFO of the Purchase Order due to delays attributable to the Customer, including but not limited to unresponsiveness, failure to provide necessary information, or any other reason within the Customer's control, the Solution shall be deemed accepted in full by EXFO. Upon such deemed acceptance, EXFO shall issue an invoice for payment of any outstanding Professional Services, Hardware Product, Licensed Software, Support Program, Software Service and customization as applicable in accordance with each Purchase Order issued for the Solution. Furthermore, the Customer shall bear any additional costs incurred by EXFO resulting from EXFO's inability to perform Professional Services due to the Customer's fault. This deemed acceptance shall not waive any other rights or remedies available to EXFO under this Agreement.



## 6. ACCEPTANCE TEST PROTOCOL

- 6.1 When Professional Services or Solution are subject to acceptance in accordance with Sections 5 above, the ATP shall be set forth in a SOW. The ATP performed by EXFO shall demonstrate that the Professional Service or Solution conforms to the test plan agreed by the Parties in the SOW and following the completion, Customer shall provide written confirmation to EXFO by signing the ATP within a period not exceeding ten (10) calendar days from the receipt of the acceptance document submitted by EXFO.
- 6.2 Upon completion of any Professional Service or Solution requiring an ATP, EXFO shall notify Customer of readiness for the ATP. Commencing upon such notification, EXFO shall have a mutually agreed period to conduct the ATP ("**Acceptance Period**") in the presence of a Customer's representative, if prior requested by the Customer. Upon successful completion, Customer shall provide the signed ATP to EXFO. In the event Customer determines the Professional Service or Solution does not meet the specifications agreed by the Parties in the SOW, notwithstanding any provision in the Agreement to the contrary, EXFO shall correct the situation, at no cost to Customer, within a time period agreed to by the Parties and reperform the ATP per this Section.
- 6.3 A deemed acceptance of the Professional Services and/or Solution will be declared in the following cases:
- Customer uses the Professional Services and/or Solution prior the acceptance testing phase;
  - Customer does not comply with the pre-requisites, as described by EXFO, necessary for the performance of the acceptance testing, within ten (10) calendar days after the receipt the signed ATP by EXFO);
  - as set out in Section 5.4;
  - Unless otherwise agreed and defined in EXFO invoicing conditions, invoicing as well as maintenance period will be triggered following this deemed acceptance milestone.

## 7. LIMITED WARRANTIES AND DISCLAIMER

- 7.1 EXFO warrants that the provision of Professional Services under these Professional Services and Support Terms will be provided in a professional and workmanlike manner and, if applicable, the Solution shall comply with these Professional Services and Support Terms and the requirements set forth in the SOW. If a breach of the warranty set forth in this Section 7.1 occurs, Customer's sole and exclusive remedy is that EXFO will correct the errors in the and/or re-perform the Professional Services, provided EXFO is notified in writing within the period of thirty (30) calendar days following completion of the Professional Services and/or delivery of the Solution according to Sections 5 and 6.
- 7.2 Except as specifically provided in these Professional Services and Support Terms, the Professional Services, Solution, the EXFO Products and all materials, content, and other Intellectual Property provided hereunder by the applicable Party is provided "as-is" without any express or implied warranties of any kind. EXFO makes no representations and extends no warranties of any kind (other than those set forth in Section 7.1), and assumes no responsibility or liability with respect to (i) the use, sufficiency or accuracy of the Professional



Services, Work Product, Solution, (ii) any network delay, outage, interruption or malfunction, which may occur in the Customers' network as a consequence of any Professional Services, work or testing done by EXFO or its subcontractors and as mandated by the Customer; (iii) any Third Party Hardware and Third Party Software. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF COMPATIBILITY, SECURITY, ACCURACY, FUNCTIONALITY, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, EVEN IF EXFO HAS BEEN MADE AWARE OF SUCH PURPOSE, AND THE WARRANTY AGAINST INFRINGEMENT OF PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS.

- 7.3 The warranty shall be null and void if the Work Product, and /or Solution has been tampered with, patched, fixed, or worked upon by unauthorized individuals or non-EXFO personnel.

## **8. INTELLECTUAL PROPERTY**

- 8.1 EXFO shall retain all Intellectual Property in or related to the performance of Professional Services and Solution under these Professional Services and Support Terms, and any Intellectual Property that could result from any alterations, attachments and improvements made to them by either party. Customer agrees that all Work Product and all other deliverables which are made, created, developed, written or reduced to practice in any form, at any stage of creation and on any medium by EXFO or its subcontractors resulting from Professional Services shall be the sole and exclusive property of EXFO.
- 8.2 Notwithstanding any other provision in these Professional Services and Support Terms or in the Agreement, EXFO is not transferring or granting to Customer any right, title, or interest in or to (or granting to Customer any license or other permission in or to) the EXFO Products as a result of the Professional Services. The sole exception to the foregoing reservation of rights is that EXFO hereby grants Customer a limited, nonexclusive, non-transferable license (that shall automatically terminate upon the termination or expiration of this Agreement), under any rights owned by EXFO, to use the EXFO Products solely as instructed by EXFO subject further to the terms and conditions of this Agreement.

## **9. INDEPENDENT CONTRACTOR**

EXFO and Customer expressly recognize and agree that the personnel to be provided hereunder will be deemed independent contractors and that Customer shall have no right to control or direct them in such manner and detail so as to adversely affect the independent contractor status of EXFO. These Professional Services and Support Terms and the Agreement shall not constitute or be construed as a partnership, employer-employee relationship or agency agreement between the Parties hereto, and neither of the Parties hereto nor any of their employees or agents shall have the power or authority to bind or obligate the other Party in any respect. EXFO shall not have the right or authority to assume or create any obligations or to make any representations, warranties, or commitments on behalf of the Customer, whether express or implied, or to bind in any respect whatsoever the Customer. EXFO shall have the right to enter into agreements with other clients to perform similar services provided such agreements do not adversely impact EXFO's performance under these Professional Services and Support Terms and the Agreement.



## **10. NON-SOLICITATION**

Customer shall not, directly or indirectly, employ or recruit for employment any EXFO employees who worked on the Professional Services during the term of this Agreement and for one (1) year thereafter without prior written consent of EXFO. In the event an employee is hired without prior written consent during the time period specified in this Section, Customer shall pay EXFO an amount equal to (one hundred percent) 100% of the annual salary of the employee as liquidated damages, not as a penalty, for expenses associated with replacing and training a new employee.

## **11. SURVIVAL**

The provisions of Section 7 (Limited Warranties and Disclaimer), Section 8 (Intellectual Property), this Section 10 (Survival) and Section 12 (Incorporated Terms) of these Professional Services and Support Terms will survive the termination or expiration of the Agreement. All other Sections that by their sense and context are intended to survive the execution, delivery, performance and termination of the Agreement, will survive and continue in effect.

## **12. INCORPORATED TERMS**

Unless otherwise agreed by the Parties, the terms and conditions of the Standard Terms are incorporated herein by reference as well as the following exhibit(s):

- EXHIBIT A – EXFO Software Platform Support Program



## EXHIBIT A

### EXFO Software Platform Support Program

If the EXFO Software Platform Support Program is purchased by Customer, this Exhibit A forms an integral part of the EXFO Professional Services and Support Terms.

#### 1. SUPPORT TERM

**Support Term.** For purposes of these Support Program Specific Terms and subject to EXFO's rights to terminate or discontinue the EXFO Support Program, EXFO shall provide the EXFO Support Program for an initial term of twelve (12) months from (i) the date EXFO delivers the initial Release of the Licensed Software; or (ii) the date of acceptance to the extent applicable ("**Initial Support Term**"). Thereafter, the term may be renewed for an additional twelve (12) month period (each, a "**Renewal Support Term**") if agreed by the Parties. The Initial Support Term and Renewal Support Term shall together be deemed to be the "**Support Term**".

#### 2. EXFO SUPPORT

The support warranty shall commence upon the later of the delivery or acceptance of the Hardware and Licensed Software. In cases where an Acceptance Test Protocol (ATP) is specified, the support warranty shall begin upon successful completion of the ATP. If no ATP is specified, the support warranty shall begin upon deemed acceptance as defined in this Agreement. This clause ensures that the support warranty period is aligned with the actual usage and acceptance of the Hardware and Licensed Software

##### 2.1 Support Services

###### 2.1.1 Technical Assistance consists of:

- (a) Assistance on the use and operation of the customer's EXFO Solution and access to the EXFO Support Portal; and
- (b) Service Restoration and incident Resolution
  - Licensed Software incidents shall be Restored either by a Workaround or a service pack.
  - Hardware incident Restoration may require repair or exchange of the defective equipment.

Technical Assistance Center (TAC) availability is based upon the contracted service level.

###### **Support – Advanced and Basic**

5 days/week (from Monday to Friday), 8 hours/day – 8 a.m. to 5 p.m. Customer Local Time (excluding public holidays)



### **Support – Premium**

7 days/week 24 hours/day – 365 days/year – For service restoration and first level investigation of customer Critical (Severity P1) events. On-site intervention for hardware repair is not included.

24/7 support is available as an option for Advanced Support

- 2.1.2 Software Assurance.** Releases are maintained during one (1) year with- Service Packs containing bug fixes applied only to the most current Solution Release and the previous major release. Once an EXFO Solution is declared End of Life (EOL) no new Releases are delivered for installation or upgrade. Ongoing support will be provided via Service Pack delivery until the End of Maintenance (EOM) date.

Updated Documentation and Release notes will highlight the modifications for each delivered update and will be made available in electronic format.

Solution Release Upgrade delivery and support are provided with Premium support and are optional with Advanced and Basic support. However, a Release is no longer maintained after one year and a Solution Release Upgrade option must be purchased.

Solution Upgrades are mandatory for EXFO Solution deployed on EXFO cloud in a SaaS model.

- 2.1.3 Hardware Assurance.** Service on Hardware Product purchased by the Customer will be based upon the contracted service level.

**EXFO-manufactured Hardware Product.** Service on EXFO-manufactured Hardware Product is limited to 5 years from end of life declaration (Last Time Buy notification).

**Third Party or commercial off-the-shelf (“COTS”) Hardware Product in an EXFO solution.** Hardware Product, Service on Third Party or COTS Hardware Product might differ from EXFO’s policy, and will follow manufactures terms and conditions.

In any case, EXFO and the Customer shall have the option to provide and procure, respectively, a non-standard service as separately agreed to by both Parties in writing.

### **Support – Advanced and Basic**

Hardware Repair – Warranty coverage (when included in the offered support renewal plan). Following the remote troubleshooting, the faulty hardware is sent to EXFO on an RMA, for repair and shipped to Customer within fifteen (15) Business Days from EXFO receipt, except for external switches (OTAU and MOTAU). Customer is responsible for all shipping costs including customs clearance.

### **Support – Premium**

Hardware Advanced Replacement –Two Business Day Shipment of Replacement units. Two Business Day Shipment can only be guaranteed in certain countries and regions; in some areas of the world shipment time will be best effort. Faulty hardware is sent to EXFO under a return number within a period no longer than thirty (30) calendar days



Failure to return the faulty unit to EXFO within such period, Customer shall pay the invoiced Hardware Advanced Replacement.

Customer is responsible for all shipping costs including customs clearance fees. EXFO and Customer will make all the reasonable efforts to quickly provide the documents and information needed for the shipment and the customs clearance of the Hardware.

Incidents opened due to the following reasons are excluded from maintenance conditions and are subject to separate invoicing:

- Abnormal use (breaking, operator error),
- External or accidental events (lightning, defective energy source, connection to external equipment not specified in the user manual, defective ventilation),
- Attempts to repair, adjunctions or modifications by personnel not authorized by EXFO.

a) Resolution Timeframes and Performance Requirements

SERVICE LEVEL AGREEMENT	PERFORMANCE REQUIREMENTS*				
		CRITICAL (P1)	MAJOR (P2)	MINOR (P3)	ASSISTANCE/REQUEST (P4)
PREMIUM	Respond	1 hour	1 hour	1 hour	1 hour
	Restore*	24 hours	2 days	N/A	N/A
	Resolve	30 days	30 days	180 days	Service Pack
ADVANCED	Respond	1 hour	1 hour	3 hours	1 day
	Restore*	2 days	5 days	N/A	N/A
	Resolve	30 days	30 days	180 days	Service Pack
BASIC	Respond	4 hours	1 day	3 days	3 days
	Restore*	4 days	10 days	N/A	N/A
	Resolve	60 days	60 days	Service Pack	Service Pack

\* Hour = Clock Hour

\* Day = Business Day

The above SLA excludes hardware repair

For specific Fiber Monitoring deployments an optional support plan is available with a “Best Efforts” Service Level Agreement.

The Restoration time can be suspended according to one of the following conditions:

- An on-site intervention is required by the Customer
- EXFO needs information and Customer does not respond to the information request
- EXFO is awaiting remote access to the system in order to conduct its troubleshooting procedures
- In case of Hardware replacement (advanced replacement or RMA), shipment transit time to and from customer site, repair time and customs clearance interval are not included in the Restore Time

The service Restoration may be partial: The Incident is not considered as restored but the severity can be modified to the lower level (critical to major or minor for example). In this case, the new severity SLA is applied. The severity change shall be notified to Customer by EXFO.



ESCALATION LEVEL	
CRITICAL (P1)	Critical business impact on customer operations
MAJOR (P2)	Major impact on customer operations
MINOR (P3)	Minor issue, resolved in next maintenance release
ASSISTANCE / REQUEST (P4)	General product use or configuration questions

**2.2** Support does not include on-site support, operating supplies or accessories, application engineering support or support of Third Party Products, applications written by Customer, or non-current Solution Releases of the Licensed Software. Further, EXFO shall have no obligation to provide EXFO Support due to:

- a) Problems that do not arise out of a failure of the Licensed Software to conform in any material respect to its related Documentation;
- b) Licensed Software that has been altered, damaged, modified or incorporated with or into other software except as performed or authorized in writing by EXFO;
- c) Errors caused by negligence, abuse or misapplication, attempt to maintain the Licensed Software or use of the Licensed Software other than as set forth in the EXFO Support Program, by Customer or any Third Party; or
- d) Failure of associated computer equipment not maintained or supplied by EXFO.

### **2.3 CUSTOMER OBLIGATIONS**

To ensure any of the above levels of support, the following pre-requisites must be respected:

- Provide a permanent 1Mbit/s remote and dedicated network connection to the EXFO Solution to perform remote support activities (investigations, files transfers, software updates, etc...)
- Assist EXFO support personnel in providing remedial corrective action, if needed
- Notify EXFO of any major network changes that could affect the EXFO Solution
- An Administration Server shall be connected locally with all EXFO Equipment
- A SMTP relay server to send alarms and automatic reports by e-mail to the Certified Administrator
- Provide EXFO with a complete description of the network topology and architecture of each Site
- Appoint a System Manager and Alternate; this point of contact shall act as primary contact between Parties for all technical communications

### **3. FEES AND EXPENSES**

**3.1** Within thirty (30) calendar days from EXFO's electronic delivery of the Licensed Software to Customer, Customer shall pay EXFO the Initial Support Term fee for the EXFO Support provided during the Initial Support Term.

**3.2** For each Renewal Support Term, EXFO will invoice Customer the applicable EXFO Support fee upon purchase order receipt by EXFO and Customer shall pay the fee according with payment term established by EXFO and indicated in the invoice. Additional products purchased during the Support Term will be added to the main support plan at the same service level and will be billed



for the annual service cost for the items purchased. At the annual renewal of the main support plan, the renewal date of the additional products purchased will be synchronized to the main support plan. Accordingly, the cost of any overlap of service due to additional purchases will be credited against the annual renewal cost for the main support plan.

- 3.3** If EXFO incurs expenses (namely travel and living expenses) in its performance of EXFO Support or if EXFO provides additional support not required by this EXFO Support Program or Addendum, EXFO will bill, and Customer will pay the cost of such additional support at the EXFO then current time and materials rate according with payment term established by EXFO and indicated in the invoice .
- 3.4** If Customer fails to return a Hardware Product that was replaced under the Support service within thirty (30) calendar days from Customer's receipt of the Replacement unit, Customer will pay the cost of the Hardware Product at actual list price within thirty (30) calendar days from the date of the EXFO invoice.
- 3.5** If Customer fails to pay the fees for the EXFO Support when due, EXFO shall have no further obligation to continue to provide EXFO Support following the date such payment was due.
- 3.6** Following a lapse in support coverage, Customer can request to have Licensed Software and Hardware Product put back under an EXFO Support Program within a 90-day period. EXFO will require the contract to be paid in arrears. Beyond ninety (90) calendar days, penalties or additional service charges may also apply, at EXFO's sole discretion.