

Aculab GroomerII Support Service Agreement

THIS ACULAB GROOMERII SUPPORT SERVICE AGREEMENT ('Agreement') by and between ACULAB PLC, with offices at Lakeside, Bramley Road, Milton Keynes MK1 1PT United Kingdom ('Aculab') and those customers (individually 'Customer') that purchase Aculab's GroomerII support service ('GroomerII Support') is effective as of the date Customer is invoiced by Aculab ('Effective Date') following receipt of Customer's purchase order ('PO') for GroomerII Support. The parties hereby agree that the following terms and conditions shall apply to GroomerII Support more particularly described in Exhibit A ('Service Description') and Schedule 1 ('Supported GroomerIIs') and provided by Aculab to Customer:

1. Scope

- 1.1 This Agreement shall cover GroomerII Support provided by Aculab to Customer, as specified in Service Description and Supported GroomerIIs.

2. Term

- 2.1 This Agreement shall remain in effect for a term of one (1) full year from the Effective Date ('Term'). It shall terminate automatically upon expiry of Term unless otherwise terminated as set forth in Section 6 below or renewed as set forth in Section 2.2 below.
- 2.2 In order to ensure continuity of support through expiry of Term, Customer is required to renew this Agreement by submitting a PO for GroomerII Support, where such PO must be received by Aculab at least thirty (30) days in advance of the expiry of Term. Upon receipt of such PO, Aculab shall immediately issue an invoice ('Renewal Invoice') to Customer for GroomerII Support under the terms of this Agreement and for a further Term, and in which case the Effective Date shall become the date of issuance of the Renewal Invoice.
- 2.3 At least forty (40) days prior to expiry of Term, Aculab shall send a renewal notice to Customer, identifying: the renewal premium; the expiry date of this Agreement and Term; the new Effective Date and resultant expiry date of Term should this Agreement be renewed; and other details pertaining to Customer's purchase of GroomerII Support, such as current, applicable PO number, invoice or Renewal Invoice number and Aculab's sales order reference number.

3. Notices

- 3.1 Any notice or other communication required to be given hereunder from any party to the other party, shall be given in writing to the other party. Any notice to Aculab shall be sent to Lakeside, Bramley Road, Milton Keynes MK1 1PT United Kingdom and any notice to Customer shall be sent to the address specified in its purchase order for GroomerII Support. Notices shall be deemed accepted immediately when hand delivered or sent by courier or five (5) days after having been mailed via prepaid registered mail. Either party may change its address for notices by providing written notice to the other party.

4. Payment

- 4.1 If credit terms have been agreed, Customer shall pay Aculab in full within thirty (30) days of the date of invoice or Renewal Invoice the applicable Total Annual Charge for GroomerII Support for all GroomerIIs listed in Supported GroomerIIs. If no credit terms exist, payment must be received by Aculab in advance. GroomerII Support shall not be provided otherwise.

5. Confidentiality

- 5.1 In order for Aculab to deliver GroomerII Support and for Customer to satisfy its obligations hereunder, it may become necessary for either party to receive or have access to information of the other party or its affiliates that is considered proprietary or confidential ('Confidential Information'). Such information shall be considered Confidential Information if it is:
- 5.1.1 In tangible form and bears a 'confidential,' 'propriety,' 'secret,' or similar legend; and/or
 - 5.1.2 Provided during discussions relating to such tangible information whether those discussions occur prior to, concurrent with, or following disclosure of such information.
- 5.2 Confidential Information shall be treated as confidential pursuant to the terms of any non-disclosure agreement ('NDA') between Customer and Aculab. If there is no NDA in place, the party receiving Confidential Information ('Receiving Party') shall maintain the confidentiality of the Confidential Information of the other party and its affiliates (collectively 'Disclosing Party') with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances.
- 5.3 The Disclosing Party shall not assert any claims for breach of this Section 5 or misappropriation of trade secrets against the Receiving Party arising from the Receiving Party's disclosure of the Disclosing Party's Confidential Information made more than five (5) years from the date of the disclosure, regardless of the termination of this Agreement. However, unless at least one of the exceptions set forth in paragraph 6.4 has occurred, the Receiving Party shall continue to treat such Confidential Information as the Confidential Information of the Disclosing Party and only disclose any such Confidential Information to affiliates or to third parties under the terms of an NDA.
- 5.4 The Receiving Party shall not be liable for the disclosure of any Confidential Information which is:
- 5.4.1 Rightfully in the public domain other than by a breach of this Agreement; or
 - 5.4.2 Rightfully received from a third party without any obligation of confidentiality; or
 - 5.4.3 Rightfully known to the Receiving Party without any limitation on use or disclosure prior to its receipt from the Disclosing Party; or
 - 5.4.4 Independently developed by employees of the Receiving Party; or
 - 5.4.5 Generally made available to third parties by the Disclosing Party without restriction on disclosure.
- 5.5 Title or the right to possess Confidential Information, including all intellectual property rights, shall remain with the Disclosing Party.

- 5.6 The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop products without the use of Confidential Information of the other party.
- 5.7 Except as expressly set forth herein, no license is granted by Aculab with respect to any patents, trademarks, copyrights, mask work protection rights and other intellectual property rights.

6. Termination

- 6.1 Other than in the case of automatic termination or renewal as per Section 2 above, Customer may terminate this Agreement, subject to payment of accrued charges, if Aculab fails to perform or observe any material term or condition of this Agreement for reasons not attributable to Customer or force majeure conditions (as described in Section 7) and such failure continues un-remedied for thirty (30) days after Aculab's receipt of written notice thereof from Customer.
- 6.2 No fees paid hereunder shall be refunded by Aculab in the case of early termination for any reason.
- 6.3 Customer shall be in default of this Agreement if Customer fails to pay any charge to Aculab when due or fails to perform or observe any other material term or condition of this Agreement.
- 6.4 Aculab may terminate this Agreement and exercise any applicable rights, if:
 - 6.4.1 The failure to pay Aculab any charge when due continues un-remedied for ten (10) days; or
 - 6.4.2 The failure to rectify any other breach continues un-remedied for thirty (30) days from receipt of written notice by Aculab; and
 - 6.4.3 In the event of such termination by Aculab, Customer shall be liable to pay Aculab for any accrued charges.
- 6.5 Either party may terminate this Agreement by notice in writing in the event that the other:
 - 6.5.1 Makes an assignment for the benefit of creditors; or
 - 6.5.2 Admits in writing an inability to pay debts as they mature; or
 - 6.5.3 A trustee or receiver of the other of any substantial part of the other's assets, is appointed by any court; or
 - 6.5.4 A proceeding is instituted under any provision of an applicable bankruptcy act by the other, or against the other, and is acquiesced in or is not dismissed within sixty (60) days, or results in adjudication in bankruptcy.

7. Force Majeure

- 7.1 Neither party shall have liability for damages due to: fire; explosion; lightning; pest damage; power surges or failures; strikes or labour disputes; water; acts of God; the elements; war; civil disturbances, acts of civil or military authorities or the public enemy; inability to secure raw materials, products or transportation facilities; fuel or energy shortages; acts or omissions of communications carriers; or other causes beyond such party's control, whether or not similar to the foregoing.

8. Warranty Disclaimer

- 8.1 ACULAB AND ITS AFFILIATES, SUBCONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED UNDER THIS AGREEMENT, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. Exclusive Remedies and Limitations of Liability

- 9.1 For purposes of the exclusive remedies and limitations of liability set forth in this Section 9, Aculab shall be deemed to include Aculab Plc and its directors, officers, employees, agents, representatives, subcontractors and suppliers and Customer shall be deemed to include Customer and/or any subsidiaries, affiliated entities and the directors, officers, employees, agents, representatives, subcontractors and suppliers of all of them; and 'Damages' shall be deemed to refer collectively to any and all claims, injuries, damages, losses, costs or expenses incurred.
- 9.2 ACULAB'S ENTIRE LIABILITY TO CUSTOMER AND CUSTOMER'S ENTIRE LIABILITY TO ACULAB AND BOTH PARTIES' EXCLUSIVE REMEDIES ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT OTHER THAN PAYMENT OBLIGATIONS (INCLUDING WITHOUT LIMITATION THE PERFORMANCE OR NON-PERFORMANCE OF GROOMERII SUPPORT UNDER THIS AGREEMENT) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, SHALL BE AS FOLLOWS:
- 9.2.1 IN NO EVENT SHALL ACULAB OR CUSTOMER BE LIABLE FOR ANY INDIRECT DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT OR GROOMERII SUPPORT PROVIDED HEREUNDER INCLUDING BUT NOT LIMITED TO INCIDENTAL, SPECIAL, EXEMPLARY, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF ACULAB OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2.2 Other than for damages arising as a result of the breach of the confidentiality obligations hereunder and payment obligations and customer's indemnity obligations under section 9.2.5 below, in no event shall Aculab or Customer's cumulative liability to the other party for any and all claims relating to this Agreement or GroomerII Support provided hereunder exceed the amount paid or owed by Customer to Aculab for GroomerII Support for a Term during which the damages arose.
- 9.2.3 Aculab shall have no liability for delays with respect to any response times specified in Service Description.
- 9.2.4 Customer represents that it shall not use GroomerII Support or any Confidential Information or other materials obtained from Aculab pursuant to this Agreement, in aviation, process control, medical applications or other ultra hazardous activities. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CUSTOMER AGREES THAT ACULAB SHALL HAVE NO LIABILITY FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM SUCH ACTIVITIES.
- 9.2.5 Aculab shall have no liability related to products sold or licensed by Customer or to any services provided by Customer under any circumstances regardless of whether GroomerII Support was provided by Aculab related to such products or

services. Customer agrees to defend, indemnify and hold Aculab harmless from and against any and all loss, damage, liability or expense (including attorney's fees) resulting from any claim related to Customer products or GroomerII Support, including intellectual property claims.

10. General

- 10.1 If any paragraph, clause or sub-clause of this Agreement be held to be invalid or unenforceable in any jurisdiction in which this Agreement applies, then the meaning of such paragraph, clause or sub-clause shall be construed so as to render it enforceable to the extent feasible; and if no feasible interpretation would save such paragraph, clause or sub-clause, it shall be severed from this Agreement and the remainder will remain in full force and effect. However, in the event such paragraph, clause or sub-clause is considered an essential element of the Agreement, the Parties will promptly negotiate a replacement thereof.
- 10.2 If either Party fails, at any time, to enforce any right or remedy available to it under this Agreement, that failure shall not be construed to be a waiver of the right or remedy with respect to any other breach or failure by the other Party.
- 10.3 The construction, interpretation and performance of this Agreement will be construed in accordance with and governed by the laws of the United Kingdom.
- 10.4 Exhibit A and Schedule 1 are incorporated herein by reference.
- 10.5 All disputes arising directly under the express terms of this Agreement or the grounds for termination thereof shall be resolved as follows:
 - 10.5.1 A legal and business representative of Aculab and Customer shall meet to attempt to resolve such disputes. If the representatives cannot resolve the disputes, either party may make a written demand for formal dispute resolution and specify therein the scope of the dispute.
 - 10.5.2 Within thirty (30) days after such written notification, the parties agree to meet for one (1) day with an impartial mediator and consider dispute resolution alternatives other than litigation. If an alternative method of dispute resolution is not agreed upon within thirty (30) days after the one-day mediation, either party may begin litigation proceedings.
- 10.6 This Agreement shall not prevent Aculab from performing GroomerII Support or any similar service for others.
- 10.7 Aculab may assign its rights or delegate its obligations, or any part thereof under this Agreement without prior consent from Customer.
- 10.8 Customer shall not be entitled to assign or transfer this Agreement nor any of its rights or obligations hereunder without the prior written consent of Aculab.
- 10.9 Customers that purchase GroomerII Support shall be deemed to have agreed with and accepted the terms and conditions set out in this Agreement in the same manner as if the Agreement was executed in writing.
- 10.10 THIS IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO GROOMERII SUPPORT PROVIDED HEREUNDER AND SUPERSEDES ALL PRIOR AGREEMENTS, PROPOSALS OR UNDERSTANDINGS, WHETHER WRITTEN OR ORAL.

Exhibit A – Service Description

GroomerII Support Service

1. Scope and Definitions

- 1.1 **Authorised Contact(s)** shall mean any person(s) nominated by Customer who shall have received Initial Training and shall be responsible for providing first and second level support for GroomerII to Customer and/or its customer(s), and who shall communicate directly with Aculab's technical support team via phone or email.
- 1.2 **Business Hours** shall mean the hours between 9:00 a.m. and 5:00 p.m. daily, Monday through Friday, with the exception of public holidays.
- 1.3 **Commencement Date** shall mean a date appearing in Supported GroomerIIs that shall identify the date from which GroomerII Support is first provided for a GroomerII.
- 1.4 **Electro-static Discharge Protection Measures ('ESD')** shall mean the procedures followed and devices worn by anyone handling GroomerII in order to protect electronic components from damage due to static electricity.
- 1.5 **Escalation** shall mean that an Incident reported by Authorised Contacts may be escalated by Aculab. Incidents that involve a system outage or software crash on a GroomerII are escalated. Incidents that need further action or require urgent action and/or engineering design input for a resolution are also escalated. Aculab shall have the right at its sole reasonable discretion to determine whether an Incident is escalated or not.
- 1.6 **Excluded services** shall mean those services provided separately by Aculab and that may be purchased under a variety of different arrangements by Customer. In addition, GroomerII Support expressly excludes: PBX, SS7, PSTN, TCP/IP network or other configuration and integration support that is external to GroomerII; installation and deployment services; on-site support; requests for change; and all forms of training except Initial Training.
- 1.7 **G-number** shall mean a number issued by Aculab and attached to a GroomerII in order to uniquely identify it for the purposes of providing GroomerII Support.
- 1.8 **GroomerII** shall mean the standard, unmodified, generally available version of Aculab's GroomerII software at the then current version level in a supported revision 1U, 2U or 6U GroomerII server chassis together with any pre-installed GroomerII expansion modules. Supported chassis are identified in GroomerII software release notes, which are updated on release of each new version of software. GroomerII specifically excludes Alpha, Beta or custom software versions, hardware not provided by Aculab and unsupported server chassis.

- 1.9 **GroomerII Support** shall mean the third level assistance provided to Authorised Contacts by Aculab's technical support team and which shall include investigation, identification, isolation and resolution of Incidents, including advice on actions and checks to be carried out by Customer for the rectification of the problem and the delivery of action plans and possible workarounds, arising from the installation, configuration and deployment of a GroomerII listed in Supported GroomerIIs. Aculab shall have the right at its sole discretion to determine whether or not a reported issue shall be classed as an Incident and logged as an SCR.
- 1.10 **Incidents** shall mean an unlimited number of requests for GroomerII Support within each of the Initial Term or any Renewal Term.
- 1.11 **Initial Training** shall mean one (1) day instruction provided on one (1) single occasion by Aculab at its premises for up to a maximum of four (4) Authorised Contacts per GroomerII listed in Supported GroomerIIs. The content of such instruction shall be instructional modules prevailing at the time of delivery on the installation and use of GroomerII.
- 1.12 **Return Materials Authorisation number ('RMA Number')** shall mean a unique number that is used for tracking the return of a GroomerII to Aculab.
- 1.13 **Support Case Record ('SCR')** shall mean information maintained by Aculab in a database that contains pertinent details about a particular Incident related to a GroomerII as reported by Authorised Contacts. Information may include: SCR number; Authorised Contact information; GroomerII configuration information; problem description provided by Authorised Contacts; actions taken by Aculab's technical support team; actions requested of and taken by Authorised Contacts; and a record of all Customer contact events regarding the SCR.
- 1.14 **Support Case Record number ('SCR Number')** shall mean a unique number that is used for tracking the continuing status of an ongoing SCR.
- 1.15 **Supported GroomerII** shall mean a GroomerII listed in Supported GroomerIIs and uniquely identifiable by its G-number.
- 1.16 **Updates and Enhancements** shall mean any modifications or fixes to GroomerII software that correct errors, support new hardware architecture, operating systems or input/output devices, are intended to improve general operation and performance of pre-existing features and capabilities, or provide other incidental or minor changes and corrections. Updates and Enhancements may be in the form of software patches, engineering releases, maintenance releases, minor or major releases and such provision shall be at Aculab's sole discretion whereupon Aculab shall automatically grant to Customer its standard non-exclusive licence to use the software.
- 1.17 **Warranty** shall mean the time period under which a GroomerII is covered by the manufacturer's hardware warranty provided by Aculab. The standard Warranty commences from the date of shipment of a GroomerII from Aculab and is for one (1) year. Warranty shall not cover lightning strikes, power surges, or physical damage to a GroomerII.

2. Service Description

- 2.1 Aculab's technical support team shall use reasonable commercial efforts to provide GroomerII Support to Customer as follows:

- 2.1.1 Provide GroomerII Support from its Commencement Date for a Supported GroomerII to Authorised Contacts who have received Initial Training or GroomerII training provided otherwise by Aculab at Customer's expense;
- 2.1.2 Acknowledge within four (4) Business Hours each initial e-mail or phone inquiry for GroomerII Support;
- 2.1.3 Log each Incident as an SCR and provide the associated SCR Number to Authorised Contact for future reference;
- 2.1.4 Carry out investigations or problem-specific diagnostic procedures via Customer provided remote access facilities where practicable and/or test cases as it deems appropriate to isolate and reproduce reported problems and configuration files to demonstrate correct operation and programming of GroomerII;
- 2.1.5 If the diagnostic procedure demonstrates that a GroomerII under Warranty may be defective, authorise its return and provide Authorised Contact with an RMA Number to return the GroomerII for repair;
- 2.1.6 At its sole discretion, provide Escalation, which may include the delivery of action plans and proposed workarounds and/or possible system restorations for Incidents reported by Authorised Contact;
- 2.1.7 At its sole discretion, provide Updates and Enhancements and provide notification of the availability of Updates and Enhancements;
- 2.1.8 Provide information and follow-up on SCRs until such time as the Incident is closed; and
- 2.1.9 Verify that an Incident is resolved to Customer's reasonable satisfaction before closing the SCR.
- 2.2 Aculab provides no commitment with regard to timescales for investigation and resolution of Incidents other than the response time quoted in paragraph 2.1.2 above.
- 2.3 GroomerII Support shall not include Excluded Services.

3. Customer's Responsibilities

- 3.1 It is the responsibility of Customer to:
 - 3.1.1 Nominate Authorised Contacts and ensure that they receive Initial Training or GroomerII training provided otherwise by Aculab at Customer's expense;
 - 3.1.2 Advise Aculab of any changes to Authorised Contacts and ensure any untrained personnel receive GroomerII training at its expense;
 - 3.1.3 Provide first and second level support for GroomerII to Customer and/or its customer(s);
 - 3.1.4 Provide a comprehensive description of each problem reported and the circumstances in which the problem is occurring;
 - 3.1.5 When necessary, develop simple demonstration cases to help reproduce reported problems;
 - 3.1.6 Where possible provide Aculab's technical support team with remote access to GroomerII;
 - 3.1.7 Implement or follow any actions or diagnostic procedures requested or recommended by Aculab's technical support team to the largest extent possible in order to help isolate or resolve any Incident, including, without limitation, the collection of Aculab debugging logs;

- 3.1.8 Ensure that all Updates and Enhancements are adopted installed and applied if directed by Aculab as a means of resolving problems;
- 3.1.9 Resolve any non-Aculab or third party related problems; and
- 3.1.10 Exercise proper ESD care when handling GroomerII.
- 3.2 Customer is responsible at its cost for the upgrade replacement or installation of any hardware or software including operating system software necessary to meet the minimum requirements specified by Aculab for the satisfactory operation of GroomerII software versions or Updates and Enhancements.

4. Notification of changes

- 4.1 Aculab reserves the right to make changes to the Service Description at any time and will provide notice of any such changes via its website at www.aculab.com
- 4.2 Aculab shall provide Customer with a new issue of Supported GroomerIIs on each occasion Customer purchases GroomerII Support for a new GroomerII.

Schedule 1 – Supported GroomerIIs

GroomerII Support Service

Aculab reference number			
GroomerII chasis (1U, 2U or 6U)	G-number	Commencement Date	Annual Charge

Total Annual Charge	
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