

**McDATA
Customer Support Services
Product Warranty
Terms and Conditions**



Dear Valued Customer,

Thank you for choosing McDATA. We will provide you with services of the highest quality. Telephone support for your McDATA products is available **24 hours, 7 days a week** during the warranty period, or with the purchase of an extended warranty option or maintenance contract as applicable.

If, at any time, you are not completely satisfied or if you require technical assistance, please contact:

Remote Call Center Support

Call Center Support is available 24x7x365, to troubleshoot hardware and microcode failures with respect to defects and malfunctions identified by Customer.

Support for Intrepid Directors and Sphereon Switches

US and Canada: 1-800-752-4572 or 720-558-3910¹

Email: support@mcddata.com

Support for Eclipse, UltraNet, Intrepid Ficon Converter (IFC), & SpectraNet

US and Canada: 1-800-752-8061 or 1-763-268-6600

Email: support@cnt.com

The enclosed McDATA service package contains the following information:

- Product Service Offerings
- Standard Terms and Conditions for Support Services
- Limited Warranty and Disclaimer Statement

Please read the Standard Terms and Conditions for Support Services carefully. By requesting these Support Services you have agreed to these Terms and Conditions for support. If you do not agree with the terms and conditions stated in this document, please contact McDATA in writing at: GC_Contracts@mcddata.com within ten (10) business days of receiving this service package.

Regards,

McDATA Customer Support Team

¹ Service outside the United States and Canada is handled by an in-country local Service Center. Contact the McDATA Solution Center for international Service Center phone numbers. Also, a list of international Service Center numbers is included in this package.



Included in this Service Package you will find a detailed description of the standard Hardware and Software Warranty description and the Maintenance Services available with McDATA's products. If you wish to upgrade your warranty or extend the support of your equipment beyond the warranty period, please contact the McDATA Maintenance Contracts group via email at maintcontracts@mcdata.com.

Standard Hardware Maintenance Service Levels during the Warranty Period

Hardware Product Warranty. For thirteen (13) months from the date of shipment, McDATA warrants that, such product(s) will, as delivered and under normal use, substantially conform to McDATA's published specifications in effect at the time of shipment. If, during the Warranty Period, the product(s) fails to conform to McDATA's published specifications, McDATA shall, at its sole option and expense, either repair or replace such non-conforming item in order to satisfy this warranty.

McDATA does not warrant that the product(s) will meet end user customer's requirements; that it will operate in the combinations which end user customer may select for use; that the operation of the product(s) will be uninterrupted or error free; or that all firmware programming errors will be corrected.

Firmware. The firmware (E/OS) is covered under the hardware warranty. Upon expiration of the Warranty Period, firmware support will be provided in accordance with the maintenance service you elect to purchase. McDATA will correct errors, malfunctions or defects that affect the firmware's conformance to the published specifications. In addition, McDATA will provide, at no charge, minor firmware updates as are made generally available to other commercial customers. Maintenance and support for McDATA Software Products (currently EFCM and SpectraNet) requires the purchase of a software maintenance contract.

The standard maintenance during the Warranty Period for your McDATA products is described below. If you upgraded your maintenance during the Warranty period or purchased extended maintenance services, see the Service Level Descriptions section below.

McDATA Product Portfolio Families:

- Intrepid Directors** - ED6140, ED10000
- Eclipse SAN Routing** - IN1620, IN2640,
- Sphereon SAN Switches**- ES3232, ES4300, ES4400, ES4500, ES4700
- UltraNet** - UltraNet Storage Director eXtended (USD-X), UltraNet Edge Storage Router
- IFC** – Intrepid FICON Converter
- SpectraNet Appliances**- WDS Accelerator, Replicator
- Matrix** - 2700/2800/29XX series
- P-CWDM** - Passive Coarse Wave Division Multiplexer
- Software** - Enterprise Fabric Connectivity Manager (EFCM) & SANavigator

STANDARD PRODUCT WARRANTY SERVICE LEVELS

WARRANTY COVERAGE	Intrepid Directors	Eclipse & Sphereon	UltraNet & IFC	SpectraNet	Matrix 2700 /2800/2900	EFCM & SANav
Call Center Support - 13 Months from date of shipment						
7x24 remote support	X	X	X	(1)	X	(1)
Hardware Support - 13 months from date of shipment						
On-site support within 4 hours by McDATA	X				X	
Replacement parts within 4 hours	X				X	
On-site support provided by customer		X	X	X		
Limited (Advanced Replacement) return of defective parts			X	X		
Mail-in (Return to Factory) Repair and/or Replace		X				
Software Support - from date of shipment						
13 month coverage of maintenance and minor software releases (EOS & firmware only)	X	X	X	(2)	X	(2)
90 day coverage of Software media only						X

- (1) 7 x 24 phone support for EFCM and SpectraNet requires the purchase of a maintenance contract.
- (2) Maintenance and software releases for EFCM and SpectraNet products require the purchase of a maintenance contract.



McDATA Product Service Offering Descriptions– Hardware

Standard Warranty Period

The warranty period for Hardware is thirteen (13) months from the date of shipment.

Hardware Service Levels:

Mail-in (Return to Factory) Service Level - Available for all Sphereon™ Switch and Eclipse™ SAN Router Products: The unit must be returned to McDATA under the Return Material Authorization (RMA) repair process. Contact the McDATA Solution Center at 1-800-752-4572 or 720-558-3910 for RMA instructions. The unit will be repaired or replaced within 10 business days of receipt and returned to you. Installation of the repaired or replaced unit is your responsibility. This repair service is available at no charge during the warranty period. Upon warranty expiration, mail-in service is available for a fee. Replaced mail-in units will be either new or equivalent to new.

Limited (Advance Replacement) Service Level - Available for UltraNet and Intrepid Ficon Converter (IFC) products: "Advance Replacement" is defined as the shipment of replacement Field Replaceable Units (FRU(s)) in advance of receipt of failed/defective FRU(s). McDATA will use commercially reasonable efforts to ship an Advance Replacement to arrive at your site the next business day, provided McDATA's determination of the failure has been made before 3:00 pm End User Customer local time. If your request is after 3:00 pm local time, McDATA will ship on the next business day for arrival at your site the day following the date of shipment. Please note that for countries outside the United States, the destination country importation, compliance with US export controls, and customs processes may impact actual delivery times. Installation of the repaired or replaced unit is your responsibility. Advance Replacements will be either new or equivalent to new. If your product's standard warranty is 'mail-in' (Sphereon), upgrading to Advance Replacement is available for a fee.

If you have received an Advance Replacement, you agree to return to McDATA the failed/defective Field Replaceable Unit ("FRU") within thirty (30) calendar days of your receipt of the Advance Replacement. If you fail to return such FRU within the thirty-day period, you will be charged, and agree to pay, the list price of the FRU. When you are returning a failed/defective FRU, you are responsible for (a) proper packaging, (b) providing a description of the failure, (c) insuring such package for the replacement value of the FRU, and (d) shipping such FRU to McDATA.

Next Business Day (NBD) - Available for all Intrepid® Sphereon™ UltraNet™ and Eclipse™ Products: NBD service is available within the **Principal Area of Maintenance ("PAM")**. PAM is defined as an area situated within a specified radius of the business center of a city in which a McDATA authorized service center is located. Please contact McDATA to determine if your location is eligible. If McDATA determines on-site support is required, McDATA shall dispatch a service engineer on-site within 24 hours of your request, unless such dispatch would fall on a weekend or McDATA holiday, in which case the representative will be dispatched on the next McDATA business day. In response to a call placed during normal business hours (8:00 -5:00pm End User Customer local time) a representative will arrive at your site before 5:00pm the next business day. Any call received after normal business hours as defined above will be handled as if it were received the next day. Upon warranty expiration, NBD service is available for a fee. If your product's standard warranty is 'mail-in', (Sphereon) upgrading to NBD is available for a fee.

24x7 (Available for all Intrepid® Sphereon™ UltraNet™ and Eclipse™ Products): If McDATA determines on-site support is required, McDATA will use commercially reasonable efforts to dispatch a representative to arrive on-site within approximately four hours of the time of dispatch. 24x7 services are available in most major cities, within the Principal Area of Maintenance (PAM). This level of service is available on both Sphereon and Intrepid product classes for a fee.

Services- Available for all Intrepid® Sphereon™ UltraNet™ and Eclipse™ Products:

Telephone Support: Telephone support is available 24x7 at no charge during the warranty period or with the purchase of an extended warranty/maintenance contract. Contact the McDATA Solution Center at 1-800-752-4572 or 720-558-3910. Service outside the United States and Canada is handled by an in-country local Service Center. Contact the McDATA Solution Center for international Service Center phone numbers. Also, a list of international Service Center numbers is included in this package.

Call Home Monitoring: If you have opted for Enterprise Fabric Connectivity Manager (EFCM) software with Element Manager, and provide a dial-up phone line, Call Home unit monitoring is available 24x7 at no charge during the warranty period or with the purchase of an extended warranty/maintenance contract.

Hardware Upgrades: Mandatory upgrades to the product hardware are provided at no charge during the warranty period or with the purchase of an extended warranty/maintenance contract.

Installation: Customer is responsible for hardware installation and upgrade installation. Installation of the hardware products may be performed by McDATA personnel or authorized representative. Please contact McDATA if you would like a quote for hardware installation services. Installation can include attaching End User Customer-supplied cabling to the products, configuring product, attaching and testing the Call Home Monitoring feature, and ensuring that the products are operating properly.

Additional Services:

Network Monitoring Services (NMS): NMS provides 24x7 remote network monitoring and management of customer networks running on qualified McDATA equipment. McDATA engineers monitor your network real-time, providing



ongoing analysis of storage network quality and availability. If there are problems, McDATA engineers identify the bottleneck and problem points and deliver proactive network assistance to maintain the network availability. In addition, NMS provides web access to network statistics for future capacity planning and network optimization.

NMS is included with the Mission Critical Maintenance option. If NMS is ordered with Mission Critical service at the time of shipment, the service commences upon the date of shipment. If purchased as an upgrade to complement an existing maintenance contract, the service commences upon receipt of a purchase order.

Change Management Services (CMS): McDATA's customer service staff provides planning, dedicated project management and cross-functional communication to ensure that moves, adds and changes to your network are performed efficiently and with minimal downtime. Change control management and documentation provide proactive communication and status updates.

CMS is included with the Mission Critical Maintenance option. If CMS is ordered with Mission Critical service at the time of shipment, the service commences upon the date of shipment. If purchased as an upgrade to complement an existing maintenance contract, services commence upon receipt of purchase order.

Hardware Support Services Standard Terms and Conditions

The following McDATA Hardware Support Services Standard Terms and Conditions cover all business transactions regarding the McDATA product maintenance services you have purchased. By purchasing such support services, you have agreed to these Terms and Conditions for support. If you do not agree to these Standard Terms and Conditions please contact McDATA in writing at GC_Contracts@mcdata.com within ten (10) business days of receiving this service package.

Support Services and Limitations.

McDATA may repair the failed product or component or replace it at our discretion. Replacement parts may be new or equivalent to new. Other available services are described on the applicable McDATA Product Service Offering. When the level of service requires that you deliver the failing product to McDATA, you agree to ship the product suitably packaged (prepaid unless we specify otherwise) to a location we designate. After we have repaired or exchanged the product, we will return it to you at our expense unless we specify otherwise. We are responsible for loss of or damage to, your product while it is in our possession or in transit in those cases where we are responsible for the transportation charges.

From time to time, as they are available, McDATA will install engineering changes which are required for safety or regulatory compliance of the product ("Field Change Orders" or "FCOs").

Services will not include repair or replacement of any product

- which has been damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
- which has been used in combination with other equipment or software which are not recommended for use with such product in McDATA's written specifications;
- which has been moved, installed, uninstalled, altered or repaired by anyone other than McDATA or McDATA's authorized representative;
- on which the original identification marks have been removed; or
- which fails because of a product for which we are not responsible; or
- not purchased from McDATA or its authorized distribution channel unless McDATA has accepted the product under its Field Qualification services.

If McDATA provides services which are covered by any of the limitations described above, you agree to pay McDATA for such services at our then-current Time and Materials rates.

Other Responsibilities:

The Customer agrees to:

- promptly notify McDATA of any material failure, malfunction or error in the products which you detect, and provide McDATA with a description of the problem and the conditions under which it occurred;
- allow McDATA support personnel access to your premises, resources, equipment and personnel as we reasonably require to perform the services;
- for all applicable products, provide a dedicated analog modem phone line for remote diagnostics;
- properly care for the products, as specified in the documentation for the products, including maintaining a proper site environment (temperature, humidity, power, etc.);
- ensure that all of your product software and data files used in connection with the products are routinely archived and documented;
- notify McDATA if, during the contract term(s), you wish to relocate product(s) from the initial installation site to a new location. Such notification will be in writing, ninety (90) days prior to the relocation date. Upon receipt of such notification, McDATA may, at its option, prepare the products for such relocation, and reinstall the products at McDATA's then-current rates;
- if you have received an Advance Replacement Field Replaceable Unit ("FRU"), return to McDATA the failed/defective FRU within thirty (30) days of your receipt of the Advance Replacement. If you fail to return such FRU within the thirty-day period, you will be charged, and agree to pay, the list price of the FRU. When you are returning a failed/defective FRU, you are responsible for (a) proper packaging, (b) providing a description of the failure; (c) insuring such package for the replacement value of the FRU, and (d) shipping such FRU to McDATA.

Limitation of Liability

Circumstances may arise where, because of a default on our part or other liability, you are entitled to recover damages from us. IN EACH INSTANCE, REGARDLESS OF THE BASIS ON WHICH YOU ARE ENTITLED TO CLAIM DAMAGES FROM US (INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, MISREPRESENTATION, OR OTHER CONTRACT OR TORT CLAIM), WE ARE LIABLE FOR NO MORE THAN: DAMAGES FOR BODILY INJURY (INCLUDING DEATH) AND DAMAGE TO REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY; AND THE AMOUNT OF ANY OTHER ACTUAL DIRECT DAMAGES UP TO THE LESSER OF \$100,000 OR THE ANNUAL FEES PAID BY YOU FOR SERVICES. THIS LIMIT ALSO APPLIES TO ANY OF OUR SUBCONTRACTORS. IT IS THE MAXIMUM FOR WHICH WE AND OUR SUBCONTRACTORS ARE COLLECTIVELY RESPONSIBLE.

UNDER NO CIRCUMSTANCES ARE WE OR OUR SUBCONTRACTORS LIABLE FOR ANY OF THE FOLLOWING: THIRD PARTY CLAIMS AGAINST YOU FOR DAMAGES (OTHER THAN THOSE UNDER "LIMITATION OF LIABILITY" ABOVE); LOSS OF, OR DAMAGE TO, YOUR RECORDS OR DATA; OR SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF WE ARE INFORMED OF THEIR POSSIBILITY.

The foregoing limitations will not apply to claims by either party for personal injury or damage to personal property.

THE WARRANTIES, IF ANY, PROVIDED IN THIS AGREEMENT OR AS PROVIDED WITH THE PRODUCTS ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED.

Governing Laws: This Agreement is governed by the laws of the State of Colorado, without reference to its conflict of law principles.

HARDWARE WARRANTY:

Hardware Product Warranty. McDATA warrants that, throughout the specific Warranty Period identified in the McDATA Product Service Offering for the product(s) ordered hereunder, such product(s) will, as delivered and under normal use, substantially conform to McDATA's published specifications in effect at the time of shipment. If, during the Warranty Period, the product(s) fails to conform to McDATA's published specifications, McDATA shall, at its sole option and expense, either repair or replace such non-conforming item in order to satisfy this warranty.

Maintenance Services during the Warranty Period. McDATA offers standard maintenance services during the Warranty period and maintenance upgrade options as specified in the enclosed McDATA Product Service Offering(s).

Limitations. This warranty shall not apply if repair or parts replacement is required because of accident, neglect, abuse or misuse, failure of electrical power, air conditioning or humidity control, theft, fire or water damage, or causes other than ordinary use, or maintenance performed by the customer or persons other than a McDATA-authorized service representative in a manner which McDATA reasonably determines to have adversely affected performance or reliability.

McDATA does not warrant that the product(s) will meet end user customer's requirements; that it will operate in the combinations which end user customer may select for use; that the operation of the product(s) will be uninterrupted or error free; or that all software programming errors will be corrected.

McDATA shall not be required to adjust or repair any product if it would be impractical or hazardous to do so because of unauthorized alterations in the product or its connection by mechanical or electrical means to equipment or devices not identified as compatible in McDATA product specifications.



McDATA Product Service Offerings – SOFTWARE

This **McDATA Product Service Package** provides specific information regarding warranty and maintenance services available for your McDATA software.

Software Warranty

The warranty period for software shall be for the period stated below commencing from the date of shipment from McDATA.

- a) EOS and firmware – 13 months Maintenance Releases only¹.
- b) EFCM and SANav – 90 days media coverage only.

Software is provided to customer on an "as is" basis. McDATA does not warrant that the product(s) will meet end user customer's requirements; that it will operate in the combinations which end user customer may select for use; that the operation of the product(s) will be uninterrupted or error free; or that all software programming errors will be corrected.

Maintenance & Support Services:

The following Maintenance and Support Services are available with the purchase of a one, two, or three year Maintenance contract:

Telephone Support: Telephone support is available 24x7 through the McDATA Technical Support Center. Contact the McDATA Technical Support Center at 1-800-752-4572 or 720-558-3910. Service outside the United States is handled by an in-country local Service Center. Contact the McDATA Technical Support Center for international Service Center phone numbers.

Software Upgrades: Maintenance Releases¹ to the software are available upon request. McDATA reserves the right to charge an additional fee for Functional Releases².

Call Home Monitoring: If you have opted for Enterprise Fabric Connectivity Manager (EFCM) software with Element Manager, and provide a dial-up phone line, Call Home unit monitoring is available 24x7.

Installation Services:

Customer is responsible for software installation and upgrade installation. Installation of the software products may be performed by McDATA personnel or authorized representative. Please contact McDATA if you would like a quote for software installation.

Definitions:

¹ **Maintenance (Minor) Release:** Software "fixes" for known problems with internal product microcode.

² **Functional (Major) Release:** New releases to software providing new features or functionality.

Software Support Services Standard Terms and Conditions

In accordance with the terms and conditions set forth below, McDATA Corporation (collectively "McDATA") shall provide Maintenance and Support for its Software to End Users who have paid the applicable maintenance and support fees.

1. Definitions

a. **"Confidential Information"** means the Software, Documentation and all information (in whatever medium, written or oral, tangible or intangible) which is marked as confidential or proprietary or is identified as confidential or proprietary at the time of disclosure or by its very nature would lead a reasonable person to believe it to be confidential.

b. **"Documentation"** means any and all information, written or otherwise, provided to End User describing the Software, its operation and matters related to its use, such as current user manuals, operating instructions, and installation guides. In addition to such published written material, Documentation shall include such information communicated by electronic networks in text, data, voice and/or machine code.

c. **"End User"** means an entity that has paid the applicable License Fees for SANavigator Software and/or EFCM and is in compliance with the applicable end user license agreement for either SANavigator [only need the mark on the first use] Software or EFCM.

d. **"Error"** means a failure of the Software to conform to the specifications set forth in the Documentation, resulting in the inability to use, or material restriction in the use of, the Software.

e. **"First Year Maintenance"** means the one year mandatory Maintenance and Support purchased



contemporaneously with End User's initial Software license, and pro-rated on a monthly basis for subsequent purchases made within the original Maintenance & Support term.

f. **"License Fee"** means the one-time fee for purchasing a perpetual license for use of the Licensed Programs. Unless expressly stated otherwise, End User must pay a License Fee for each Port discovered, monitored, controlled or displayed by the Software.

g. **"Licensed Programs"** means the Software programs and related Documentation, if any, selected by End User for which End User has paid a License Fee.

h. **"Maintenance"** means the patches, bug fixes, Updates, and Upgrades to the Software made available by McDATA to the End User pursuant to the terms contained herein. New products, modules and add-ons that add additional features and/or functionality to the Software that are offered by McDATA to its customers generally for an additional fee are NOT included in Maintenance.

i. **"Maintenance Release"** means the patches, bug fixes, and Updates to the Software designed to correct or bypass reported Errors made available to End User pursuant to the terms contained herein.

j. **"Port"** means a single storage network port (director, fabric switch, hub, etc.) which the Software can discover, monitor, control, and display. "Port" does not include ports on Host Bus Adapters, storage devices, or other nonswitch/hub devices.

k. **"Update"** means either a new release of an existing software product that usually adds relatively minor new features to the product or corrects Errors found after the program was released. Updates may be denoted by a change to the right of the first decimal point (e.g., v2.5 to v2.6).

l. **"Upgrade"** means the new version of an existing software product that usually includes major changes to the software product and is denoted by a change to the left of the first decimal point (e.g., v2.5 to v3.0).

m. **"Software"** means the object code version of the Licensed Programs and may include associated media, printed materials, containers, and online or electronically transmitted documentation. "Software" also includes any patches, bug fixes, Updates, or Upgrades to the Licensed Programs provided to End User. Unless McDATA expressly state otherwise, new products, modules, and add-ons that add additional features and/or functionality are licensed separately for an additional License Fee and Support Fee and are included in the definition of "Software" only if End User pays such additional fees, and/or McDATA has granted a license.

n. **"Support"** or **"Support Services"** means the telephone support and Maintenance provided to End User for the Licensed Programs for an additional annual support fee pursuant to the then-current support terms for end user licenses.

o. **"Support Fees"** are the annual fees for Maintenance and Support for the Licensed Programs, payable in advance.

p **"Technical Support Contacts"** are the two employees designated by End User to contact McDATA for Support Services.

2. McDATA Support Services

a. **Support Services.** First Year Maintenance and Support must be purchased. Upon End User's payment of the applicable Support Fees and designation of two of End User's employees as Technical Support Contacts, McDATA will provide, or cause to be provided, Support Services for the Licensed Programs in accordance with the terms herein. Maintenance and Support includes Updates, Upgrades, telephone support and Maintenance Releases. Maintenance and Support also includes one (1) machine executable copy of the object code for Maintenance Releases, Updates, and Upgrades, when and if available. Maintenance and Support does NOT include new products, modules, and add-ons that add additional features and/or functionality that are licensed separately for an additional license fee and support fee unless End User pays such additional license and support fees. All Support is provided in English only.

b. **Telephone Support.** If the Software or a Software function fails, either of End User's Technical Support Contacts may telephone McDATA for problem resolution. McDATA telephone support is available 24 x 7. Upon notice from End User's Technical Support Contact of a Software problem, McDATA shall use reasonable efforts to correct or circumvent the problem; provided that McDATA shall have no obligation to Support the Software for other than authorized use, or to Support the Software in the event End User modifies the Software without the prior written



approval of McDATA. McDATA will use reasonable efforts to provide Support for a previously released version of the Licensed Programs for a period of 12 months after the introduction of a new generally available release.

c. **Maintenance Releases.** McDATA will make commercially reasonable efforts to provide patches, bug fixes and Updates designed to solve or bypass a reported Error. During the Maintenance and Support term, if an Error has been corrected in a Maintenance Release, McDATA shall make the Maintenance Release available to the End User if, as and when McDATA makes any such Maintenance Release generally available to its end user licensees. End User must install and implement the applicable Maintenance Release. Otherwise, McDATA may provide the Update in the form of a temporary fix, procedure or routine, to be used until a Maintenance Release containing the permanent Update is available. If a question arises as to whether a product offering is a Maintenance Release or a new product, module or add-on with new functionality licensed separately for an additional license fee and support fee, McDATA's opinion will prevail provided that McDATA treats the product offering as a separately licensed new product, module or add-on for its end user licensees generally.

d. **Upgrades.** During the Maintenance and Support term for End User, McDATA shall provide Upgrades to the Licensed Programs, when and if available, to End User. If a question arises as to whether a product offering is an Upgrade or a new product, module or add-on with new functionality licensed separately for an additional license fee and support fee, McDATA's opinion will prevail provided that McDATA treats the product offering as a separately licensed new product, module or add-on for its end user licensees generally.

3. Support Severity Levels and Response Time

a. McDATA recognizes three severity levels of Software Errors or issues:

(i) Level One – Critical.

End User cannot use the Software or there is a critical impact on End User's operations. McDATA will begin work on the Software Error within one hour of notification and will engage development staff until an acceptable workaround is achieved.

(ii) Level Two – Severe. End User can use the Software, but an important Software function is unavailable or the Software Error severely impacts End User's operations. If applicable, McDATA will provide standard fixes and known workarounds.

(iii) Level Three – Minor. End User can circumvent the Error or use the Software with some functional restrictions and the impact on End User's operations are minor. If appropriate, McDATA will consider a workaround or enhancements for inclusion in a subsequent release.

b. McDATA responds to all customer support requests in accordance with the following timetable:

Severity Level Technical Response Time

Critical 1 hour
Severe 1 hour
Minor 1 business day*

c. McDATA will provide a status update to End User for the reported Software Error in accordance with the following timetable:

Severity Level Status update to End User:

Critical 1 business day*
Severe 2 business days*
Minor 14 business days*

**Business day is based on McDATA's corporate office hours of operation.*

d. McDATA will provide End User with a single copy of the fix or workaround on suitable media or via electronic download. End User will distribute the fix or workaround to the Licensed Programs as necessary.

4. Support Fees and Payment Terms

a. Support Services will be provided on an annual basis for the then-current support fees for the Licensed Programs for each Port licensed. Support Fees are due and payable in advance. Payment terms are net thirty (30) days from date of invoice. All payment shall be made in United States dollars. All sums paid are nonrefundable. McDATA will not provide Support Services for a Licensed Program unless End User has paid the Support Fees. End User may reinstate lapsed Support Services for any then-currently supported Software by paying all Support Fees in



arrears, the then current annual Support Fee, and all time-and-travel expenses, if any, incurred in updating the Software to the current version.

b. All shipments shall be Ex Works (Incoterms 2000) McDATA point of origin. End User is responsible for all shipping charges including but not limited to expediting, in-transit insurance, duties, taxes, etc. If End User does not provide shipping instructions, McDATA will select the method of shipment. McDATA will have no liability to End User due to McDATA's selection of shipping method. Risk of loss shall pass to End User upon shipment. Title to Software shall at all times remain with McDATA.

c. End User will pay all sales, use, VAT, and other transaction taxes, personal property taxes and other taxes (other than those based on McDATA's net income) unless End User furnishes satisfactory proof of exemption. Interest shall be charged at the rate of one and one-half percent (1.5%) per month, or, if lower, the maximum rate allowed by law, on all overdue amounts.

5. Term

First Year Maintenance and Support Services are provided for a term of one (1) year from the date the Software is shipped to End User under the initial Software License purchase. Thereafter, End User may purchase Support Services for the Licensed Programs for subsequent years at McDATA's then current fees and policies by submitting a purchase order to McDATA or to an authorized McDATA reseller.

6. Conditions for Providing Support

McDATA's obligation to provide Support Services is contingent upon End User: (a) making reasonable efforts to solve the problem after consulting with McDATA; (b) providing McDATA with sufficient information and resources to correct the problem; (c) promptly installing and implementing all Maintenance Releases; and/or (d) procuring, installing and maintaining all equipment, telephone lines, communication interfaces and other hardware necessary to operate the Software.

7. Exclusions from McDATA's Support Services

- a. McDATA shall have no obligation to provide Support Services if End User fails to pay the required Support Fees when due or otherwise elects to discontinue Support Services.
- b. McDATA shall have no obligation to support (i) altered, changed, damaged or modified Software; (ii) Software that is not the then-current or previous sequential release; (iii) Software problems caused by End User's negligence, hardware malfunction or other causes beyond the control of McDATA; (iv) Software problems caused by a third-party software not licensed through McDATA; (v) Software installed in an operating environment for which the Software has not been licensed.
- c. McDATA shall have no obligation to support or maintain any version of the Software except the then-current version of the Software and the immediately preceding version of the Software for a period of twelve (12) months after it is first superseded.

8. Support Contacts

- a. **McDATA Contacts.** The telephone number(s) for customer support are 1-800-752-4572 or 720-558-3910, or End User may contact McDATA customer support by sending e-mail to support@mcddata.com.
- b. **End User Technical Support Contacts.** End User will designate two Technical Support Contacts for receipt of and participation in the Support Services.

9. Limitation of Liability

McDATA's LIABILITY FOR DIRECT DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY END USER TO McDATA FOR THE SUPPORT SERVICES AS TO WHICH THE CLAIM AROSE. IN NO EVENT SHALL McDATA OR END USER BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, COVER, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, HOWEVER ARISING, WHETHER BASED IN CONTRACT, TORT, OR ANY LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY RISK SET FORTH IN THIS SECTION 9. The foregoing limitations shall not apply to claims by one party against the other party for bodily injury or death or physical damage to personal or real property directly caused by the other party's gross negligence or willful misconduct. Additionally, the limitation of



liability set forth in this Section 9 shall not apply to claims for violations of a party's intellectual property rights or for breach of a party's non-disclosure obligations under Section 10.

10. Confidentiality

a. **Non-disclosure Obligation.** The parties acknowledge that they may have access to each other's Confidential Information. Each party agrees that for a period of three (3) years following the disclosure of Confidential Information, it (i) will not use, directly or indirectly, or reproduce the Confidential Information of the other party for any purpose except in accordance with the terms herein; (ii) will not disclose the Confidential Information of the other party to any third parties except as expressly permitted herein; and (iii) will use reasonable care, but in all events at least the same degree of care that it uses to protect its own information of similar importance, to protect and maintain the

confidentiality of all Confidential Information of the other party in its possession or control. Each party agrees not to disclose Confidential Information to its employees or agents unless (i) such employees or agents have a "need to know" and (ii) have agreed in writing to be bound by confidentiality obligations relating to the use and disclosure of such Confidential Information at least as restrictive as those contained herein. Each party agrees to use reasonable care to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Section 10.

b. **Exclusions.** Notwithstanding any provision contained herein, neither party shall be required to maintain in confidence any of the following information: (i) information which, at the time of disclosure to the receiving party, is in the public domain; (ii) information which, after disclosure, becomes part of the public domain, except by breach of this Section 10; (iii) information which the receiving party can demonstrate was in the receiving party's possession at the time of disclosure, and which was not acquired, directly or indirectly, from the disclosing party; (iv) information which the receiving party can demonstrate resulted from its own research and development, independent of disclosure from the disclosing party; (v) information which the receiving party receives from third parties, provided such information was not obtained by such third parties from the disclosing party on a confidential basis; or (vi) information which is produced in compliance with applicable law or a court order, provided the other party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production or obtain a protective order.

c. **Injunctive Relief.** Each party acknowledges that its breach of this confidentiality provision shall cause the other party irreparable injury for which there may be inadequate remedies at law and that such other party will be entitled to obtain equitable relief, in addition to all other remedies available to it.

11. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado excluding its choice of law provisions. Any action brought in connection with this Agreement may be brought in the state or federal courts of Colorado. In any such action, End User submits to the personal jurisdiction of such courts. The UN Convention on Contracts for the International Sale of Goods (CISG) and the Uniform Computer Information Transactions Act (UCITA) are specifically excluded and shall not be applicable to any transaction contemplated herein.

12. Export Controls

End User agrees to comply fully with all relevant U.S. export laws and regulations, including but not limited to the Export Administration Act of 1979, as amended, and successor legislation, the Export Administration Regulations passed by the Department of Commerce, and the Foreign Corrupt Practices Act. End User expressly agrees that it shall not, and shall cause its representatives to agree not to, export, directly or indirectly, re-export, divert, or transfer the Licensed Programs or any direct product thereof to any destination, company or person restricted or prohibited by U.S. Export Controls.

13. Third Party Components

Software may be distributed with certain freeware, open source or other third party components ("Open Source Software") which, if included, are provided pursuant to the terms of the applicable Open Source License governing its use and distribution. Please see the Supplemental Terms distributed with the Software, if any, or <http://www.mcdata.com/> for such additional terms. McDATA THEREFORE PROVIDES SUCH OPEN SOURCE SOFTWARE ON AN "AS IS" BASIS WITHOUT ANY WARRANTY WHATSOEVER AND HEREBY EXPRESSLY DISCLAIMS WITH RESPECT TO ANY OPEN SOURCE SOFTWARE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (A) ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; AND (B) ALL LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, COVER, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING



WITHOUT LIMITATION LOST DATA OR LOST PROFITS, HOWEVER ARISING, WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, EVEN WHERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Use of Personal Data

McDATA will use your personal data as necessary to fulfill your service offering. Personal data includes but is not limited to Name, Company Address, Email, Phone Number, and Fax Number. To provide you with the service offering it may be necessary for McDATA to contract with third parties. By purchasing and subsequently requesting support services you hereby agree to allow McDATA to transfer your personal data to third parties as necessary to fulfill your service offering. Third parties will be required by McDATA to apply appropriate measures to protect personal data. For further information on the collection, use and transfer of personal data, please refer to McDATA's Privacy Policy, Web Privacy Policy and EU Data Safe Harbor Policy which can be found at www.mcdata.com.

15. General Provisions

The terms and conditions contained herein constitute the entire agreement between McDATA and End User with respect to the subject matter hereof, and supersede all prior and contemporaneous oral or written representations, proposals or agreements concerning the subject matter herein. Unless explicitly agreed to in writing by the parties, the terms and conditions herein take precedence over any additional or different terms, from whatever source, including End User's purchase order or other correspondence, to which objection is hereby made by McDATA. End User may not assign this Agreement (by operation of law or otherwise) without the prior written consent of McDATA. Any prohibited assignment shall be null and void. McDATA will not be liable for any failure or delay in its performance under these terms and conditions due to any cause beyond its reasonable control, including but not limited to acts of God, strikes, walkouts, riots, acts of war, embargoes, epidemics, governmental regulations, power failure(s), earthquakes, or other disasters. None of the foregoing terms and conditions will be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is made in writing and signed by authorized representatives of both parties. No waiver of rights contained herein by either party shall constitute a subsequent waiver of such rights or any other rights hereunder. If any term contained herein is found to be invalid or unenforceable by a proper authority having jurisdiction, such term shall be deemed null and void and the remaining provisions will remain in full force and effect.

LIMITED WARRANTY AND DISCLAIMER STATEMENT

SOFTWARE WARRANTY:

The Limited Warranty and Disclaimer Statement for McDATA software may be found on the End User License Agreement (EULA) accompanying your McDATA product(s).

DISCLAIMER:

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. McDATA'S LIABILITY FOR BREACH OF ANY WARRANTY SET FORTH HEREIN SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE AFFECTED ITEM.

LIMITATION OF LIABILITY:

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL McDATA OR ITS SUPPLIERS BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR COVER DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, HOWEVER ARISING, WHETHER BASED IN CONTRACT, TORT, OR ANY LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. McDATA's LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY END USER CUSTOMER TO McDATA FOR THE PRODUCT(S) AS TO WHICH THE CLAIM AROSE.

International Customer Support Phone List

International Support for all former CNT products outside US and Canada:

Products include: ADVA, Edge, USD-X, IFC, and Matrix Switch 27/28/2900

Country:	Phone Number:
France (French, English)	+33 (1) 69.89.86.90
Germany (German, English)	(0800) 46723643
Italy (Italian, English)	+39 (06) 51.49.32.14
Switzerland (German, English, French, Italian)	+41(22) 3185379

International Support of Intrepid and Sphereon products (outside US and Canada):

For service of Intrepid and Sphereon products outside the United States and Canada, calls will be handled by an in-country local Service Center.

Note: International Support for the Eclipse product is handled by calling the local McDATA Technical Support Center at 1-800-752-4572 or 720-558-3910

Europe, Middle East, and Africa (EMEA)

Country	Country Code	Phone Number I Dial 011 then:	Phone Number II Dial 011 then:	After Hours
Austria	43	43 1 21145 4610		
Belgium	32	32 7023 3392		32 7023 3392
Croatia	385	38516110095		385 1 6308 200
Czech Republic	420	420 2 7213 ext. 1316		
Denmark	45	45 4523 5415	45 701 05150	
Finland	358	358 800 14260		
France	33	33 810631213		
Germany	49	49 1805253553		
Ireland	353	353 1 8811444		
Italy	39	39 0270309526		
Netherlands	31	31 20 513 3939		31 20 513 3939
Norway	47	47 8152 1550		
Poland	48	48 228786999		
Portugal	351	351 218927115		
Spain	34	34 901100000		
Sweden	46	46 8793 1000	47 815 21550	46771171040
Switzerland	41	41 800 555 454		
United Kingdom	44	44 8705 500 900	44 1 25 63 41 490	
South Africa	27	27 11 302 8888		

Asia Pacific & Latin America

Country	Country Code	Phone Number I Dial 011 then:	Phone Number II Dial 011 then:	After Hours
Australia	61	61 2 9354 7779 opt. 4		
China	86	86 10 64981188 x5100	86 800 810 6677	
Hong Kong	852	852 2515 4333		
Japan	81	81 0120 03 5555		
Philippines	63	63-2-9952225		
S. Korea	82	82 02 3781 5800	82 080 781 5800	
New Zealand	64	64 2 9354 7779 opt. 4		
Singapore	65	840-9911		
Taiwan	886	886 02 2729 3300	886 080 055 055	
Thailand	66	02-273-4000		
Argentina	54	54 11 4341 5608		54 11 4717 7200 ext. 1
Mexico	52	52 5270 5900		