

Essentium, Inc.
TERMS AND CONDITIONS FOR SERVICES
Form ESS 001 (Rev. 1)

1.0 Acceptance - The provision of any Services related to Products provided by or for Essentium, Inc. or any of its affiliates (each a "Provider") to the party named on the Quote ("Client") is expressly conditioned on Client's assent to these Terms and Conditions for Services. Any acceptance of Provider's offer is expressly limited to assent to these Terms and Conditions for Services in accordance with Section 3 below. Provider expressly objects to any additional or different terms proposed by Client. No facility entry form of Client shall modify these Terms and Conditions for Services even if signed by Provider's representative. Any order to perform work and Provider's performance of work shall constitute Client's assent to these Terms and Conditions for Services, or any conduct of Client that recognizes the existence of a contract with respect to Services and Products described in the Quote to which these Terms and Conditions for Services are attached or referenced. Unless otherwise specified in the Quote, Provider's Quote shall expire 30 days from its date and may be modified or withdrawn by Provider before receipt of Client's conforming acceptance.

2.0 Definitions

2.1 "Products" means the system(s) ("System"), System parts ("Parts"), proprietary resins and thermoplastics and/or other consumables (collectively, "Consumables"), and/or other ancillary goods that are set forth in any Purchase Order.

2.2 "Provider Installed Products" means Product (including Software and parts) designated by Provider as requiring installation exclusively by Provider or its authorized representative.

2.3 "Purchase Order" means any purchase order or any other written purchase agreement approved by Provider tendered by Client to Provider.

2.4 "Quote" means Provider's written proposal to sell Products to Client.

2.5 "Supply Agreement" has the meaning set forth in Section 13.0 (Supply of Products) below.

2.6 "Service Level" means a level of performance at which the Provider will provide support services to Client under any Services Plan set forth in a Quote for Product, as further defined in Schedule 1 to these Terms and Conditions for Services.

2.7 "Services" means the services set forth in Schedule 1 attached to these Terms and Conditions identified in a Quote or Purchase Order related to the Products offered and provided by Provider from time to time.

2.8 "Services Plans" means the Essentium Support and Maintenance Service Plans set forth on Provider's webpage at <http://www.essentium3d.com/pages/serviceplans/>, which are summarized in the table attached to these Terms and Conditions for Services as Exhibit B, which plans may be updated or modified and posted by Provider on its webpage from time to time.

2.9 "Software" means program code provided by Provider to Client in connection with Products, together with applicable technical documentation containing specifications, instructions, and/or other information accompanying such software or made available by Provider from time to time.

3.0 Agreement - The agreement between Provider and Client ("**Services Agreement**") with respect to Provider's provision of Services described on the attached Quote shall consist of these Terms and Conditions for Services, any agreement between Provider and Client with respect to the sale of Products

and provision of Services, and the terms appearing on the attached Quote, Client's issued purchase orders as accepted by Provider (each a "**PO**"), it being understood and agreed that any purchase order or similar document issued by Client will be for the sole purpose of establishing a mechanism for payment of any sums due and owing hereunder, together with any additions or revisions of such terms mutually agreed to in writing by Provider and Client. Provider shall not be bound by any additional or different terms, whether printed or otherwise, in Client's purchase order or in any other communication from Client to Provider unless specifically agreed to by Provider in writing. This Services Agreement shall be for the benefit of Provider and Client and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Provider, to the extent they modify, add to or detract from this Services Agreement, shall not be binding on Provider. The rights and duties of the parties hereunder shall inure to the benefit of and be binding upon their respective successors and assigns. The failure to require strict compliance or performance of any one or more terms of this Services Agreement on one or more occasions shall not be deemed a waiver of that or any other term or condition on that or any other occasion. Any waiver of a right or remedy under this Services Agreement must be contained in a writing signed by the waiving party.

4.0 Term and Termination; Modification – The term of this Services Agreement ("**Services Term**") for Products described in a Quote shall commence upon delivery of the Products and renew automatically annually for the Services described in a Quote for the life of the Product unless terminated in accordance with these Terms and Conditions for Services. This Services Agreement and any PO issued under this Services Agreement may be modified or terminated only upon Provider's written consent. Provider may withdraw Services or support for a Product at any time. If all or part of this Services Agreement or PO is terminated by Client or by Provider for Client's breach, in the absence of contrary written agreement with Provider, Client shall pay Provider's actual direct costs for Services provided up until the date of termination and any unrecoverable costs reasonably incurred by Provider in consequence of Provider's obligation to perform this Services Agreement or PO prior to any such termination, provided that such costs were incurred by Provider in good faith to fulfill a PO in accordance with its terms.

5.0 Terms of Payment – Unless states otherwise provided in the Quote or agreed to in writing by the parties Client shall pay to Provider the following fees for support and maintenance of the Product ("**Support and Maintenance Fees**"):

a. Client shall pay Provider an initial fee for the first contract year of Services related to a Product described in a Quote within forty five (45) days after the date of Provider's acceptance of Client's order for the Product.

b. Each year on the anniversary of the shipment date of the Product described in a Quote, Provider may invoice Client, and Client shall promptly pay to Provider within forty five (45) days after the date of invoice, a fee for Services to support and maintain the Product for the following contract year according to the Services Plan set forth in the Quote.

The unpaid balance of any invoice shall bear interest at one and one half percent (1 ½ %) per months after 30 days, not to exceed the maximum rate or amount permitted by law. Pro rata payments shall become due as Services are provided. Provider may require full or partial payment in advance whenever in its opinion the financial condition of Client so warrants.

6.0 Taxes - Sales, use, occupation, excise, and other taxes upon the production, sale or use of the Products, Software or Services are not included in the price and such taxes or any costs in connection therewith, whenever levied and whether imposed before or after payment of invoice, shall be paid by Client.

7.0 Provision of Services; Warranty - Provider shall provide to Client the Services set forth in the Service Plan

specified in the Quote at the Service Level specified in the Services Plan. Provider warrants that Provider will provide such Services in accordance with the Quote using the care and skill ordinarily consistent with generally accepted industry standards. Provider does not warrant uninterrupted or error-free operation of any Product or Service or that Provider will correct all defects. Client shall provide timely written notice of any failure to comply with this warranty so that Provider can take corrective action. Client is responsible for selecting the Services that meet its needs and for the results obtained from the use of the Services, including Client's decision to implement any recommendation concerning Client's business practices and operations.

- 8.0 Extent of Warranty - **EXCEPT AS OTHERWISE PROVIDED IN THESE TERMS AND CONDITIONS FOR SERVICES, THE WARRANTY SET FORTH IN SECTION 7 ABOVE IS CLIENT'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NON-INFRINGEMENT. Provider provides to Client all materials and non-Provider services "AS-IS", WITHOUT WARRANTIES OF ANY KIND.** However, non-Provider suppliers may provide their own warranties to Client.
- 9.0 Remedies and Limitations of Liability - If Client claims Provider has breached any of its obligations under this Services Agreement, whether of warranty or otherwise, Provider may re-perform the Services forming the basis for the claim or reimburse to Client any charges paid by Client such Services, and, in either such event, Provider shall have no further obligation under this Services Agreement. The remedies contained in this and the preceding paragraph shall constitute the Client's sole remedy under this Services Agreement, whether of warranty or otherwise. In no event shall Provider be liable for consequential damages. Provider's liability for any claim for damages arising out of or connected with this Services Agreement or the provision of Services related to Products shall not exceed the charges for the Services and purchase price of the Products. Provider shall not be liable for failure to perform its obligations under this Services Agreement resulting directly or indirectly from circumstance beyond Provider's reasonable control.
- 10.0 Client Resources - If Client is making available to Provider any facilities, software, hardware or other resources not owned or controlled by Provider ("**Resources**") in connection with our performance of Services, Client shall obtain any licenses or approvals related to these Resources that may be necessary for Provider to perform the Services. If a third party claims that such Resources infringe that party's patent, copyright or other proprietary rights, Provider will be excused for any delay caused by Client's failure to promptly obtain such licenses or approvals and relieved of Provider's obligations under this Services Agreement. Client shall defend Provider against any claim made by a third party that Provider's access, use or modification of Resources infringes the third party's patent, copyright or other proprietary rights, at Client's expense, and pay all costs, damages and attorney's fees to defend Provider against such claim or that are included in a settlement approved in writing by Client. Client shall not enter into any settlement that would impose any liability or obligations on Provider without Provider's prior written consent. Unless otherwise agreed in this Services Agreement, Provider is not responsible for i) any data and the content of any database Client makes available to Provider in connection with a Service under this Services Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data.
- 11.0 Client Facilities. As reasonably required by Provider to fulfill its obligations under this Services Agreement, Client will provide Provider with sufficient and safe access (including remote access) to Client's facilities, systems, information, personnel, and resources, all at no charge to Provider, for use in supplying Services

to Client. Provider is not responsible for any delay in performing or failure to perform any Services caused by Client's delay in providing such access or performing other Client responsibilities under this Services Agreement.

12.0 Intellectual Property Rights

12.1 Provider shall retain and is the sole owner of all Intellectual Property and trade secrets that relate to the Services. No right or license in Intellectual Property is granted to Client by implication, estoppel or otherwise, unless, and only to the extent, expressly set forth herein or in other written documentation provided by Provider. All fixes, modifications and improvements to or adaptable for use with the Products and Software conceived of or made by Provider that are based, either in whole or in part, on Client's feedback, suggestions, or recommendations are the exclusive property of Provider and all right, title and interest in and to such fixes, modifications or improvements will vest solely in Provider. Client agrees that Provider may use any feedback, suggestions, or recommendations made by Client to implement fixes, modifications or improvements to the Products and Software without any payment to Client.

12.2 Nothing in this Services Agreement shall be deemed to prevent Provider from using during or after the Term of this Services Agreement any general knowledge or skills, whether acquired prior to the Term of this Services Agreement, or acquired or enhanced in performing the Services under this Services Agreement. Provider shall have no obligation to limit or restrict the assignment of its personnel or to pay royalties to perform work using general knowledge for third parties. Notwithstanding, the foregoing is not to be construed to grant to either party a license under any patent or copyright of the other party.

13.0 Supply of Products – The supply of Products is offered and provided by Provider at all times subject to, and in accordance with, this Services Agreement. Notwithstanding the foregoing, any supply of Products is also offered under, and made subject to, additional terms or conditions (including but not limited to the Terms and Conditions for Sale of Products) set forth in a separate agreement ("**Supply Agreement**"), which shall control and govern to the extent necessary to resolve any conflict with this Services Agreement.

14.0 Non-Solicitation - During the Term of this Services Agreement for two (2) years thereafter, neither Client nor any affiliate of Client shall hire or offer employment to any employee or former employee of Provider who has performed Services for Client under this Services Agreement, without the prior written consent of Provider. Provider's employees may be at Client's site for the purpose of performing the Services provided by Provider under this Services Agreement. Client will immediately pay to Provider upon its request the sum of up to \$50,000, as set forth in Provider's request, as liquidated damages and not as a penalty for any such employee of Provider that Client hires in breach of this Section 14.0.

15.0 Independent Contractors - The relationship of the parties established by this Services Agreement is that of independent contractors, and nothing contained in this Services Agreement will be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

16.0 Compliance with Laws - Provider is not responsible for determining the requirements of laws applicable to Client's business, including those relating to Services that Client acquires under this Services Agreement, or that Provider's provision of or Client's receipt of particular Services under this Services Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law. Each party will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users.

- 17.0 Dispute Resolution - Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Services Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Services Agreement.
- 18.0 Governing Law - The formation and performance of this Services Agreement shall be governed by laws of the State of Texas, without reference to its conflict of laws principles, and with respect to the intellectual property matters contained herein, in accordance with the federal patent statute and other intellectual property laws of the United States, except that questions affecting the construction and effect of any patent claim shall be determined by the law of the country in which the patent shall have been granted. The parties submit to personal jurisdiction and exclusive venue in the courts of the State of Texas. Any action for breach of this Services Agreement, including any breach of warranty, must be commenced within one (1) year after the cause of action as accrued.

Schedule 1

Services

1. INSTALLATION AND TRAINING

A. Client may install Products (including Software) that are designated by Provider as not requiring installation by Provider. Product (including Software and parts) designated by Provider as requiring installation by Provider ("**Provider Installed Products**") may only be installed by Provider or its authorized technical representative. Provider shall install Provider Installed Products at Client's designated facility following receipt of all applicable payments related thereto. Prior to such installation, Client, at its expense, shall complete all applicable site preparations for installation of the Product or parts, as specified by applicable Product documentation and as required by applicable law, including, without limitation, all health and safety laws, and shall thereafter provide such other assistance, services and facilities as may be requested by Provider (or its authorized technical representative) to complete such installation. Prior to and during the installation by Provider, the Provider Installed Products shall not be handled, operated, opened, dismantled or used at any time except in the presence and under the supervision of authorized Provider technical personnel. Where applicable and required by Provider, Provider (or its authorized technical representative) will perform a standard test of the Products and present Client with a certificate of installation ("COI") upon completion of the required installation. Product shall be deemed accepted by Client as installed and operating in all material respects with the applicable Product documentation unless Client provides Provider with notice of non-compliance (using the form attached to this Schedule 1 as Exhibit A) within 14 (fourteen) days after the date of Provider's completion of the installation or Provider's provision to Client of a COI for the installation, whichever is earlier.

B. TRAINING.

During any period of installation by Provider specified in the Quote for a Provider Installed Products, Provider shall make available at the site of installation of the Provider Installed Product to qualified personnel of Client basic training in the use and operation of the Provider Installed Products according to the applicable Product documentation. Provider may offer and provide training services from time to time, in its sole discretion, at material, travel and per hour labor rates to be quoted by Provider to Client.

2. SUPPORT SERVICES FOR PRODUCTS

Provider offers support for the Products under Service Plans which Client shall purchase that address: (i) diagnosis of problems or performance deficiencies of the Products, and (ii) resolution of reported and reproducible errors that cause problem or performance deficiencies of the Products. Provider shall provide telephone support on business days. A business day is defined as 8:00 AM through 5:00 PM central standard time, excluding holidays and weekends. Provider utilizes the following four (4) severity levels to categorize reported problems:

A. SEVERITY 1 CRITICAL BUSINESS IMPACT

The impact of the reported deficiency is such that the Client is unable to either use the Products or reasonably continue work using the Products.

B. SEVERITY 2 SIGNIFICANT BUSINESS IMPACT

Important features of the Products are not working properly and there are no acceptable, alternative solutions. While other areas of the Products are not impacted, the reported deficiency has created a significant, negative impact on the Client's productivity.

C. SEVERITY 3 SOME BUSINESS IMPACT

Important features of the Products are unavailable, but an alternative solution is available or non-essential features of the Products are unavailable with no alternative solution. The Client impact, regardless of product usage, is minimal loss of operational functionality or implementation resources.

D. SEVERITY 4 MINIMAL BUSINESS IMPACT

Client submits a Product information request, Product enhancement or documentation clarification which has no operational impact. The implementation or use of the Products by the Client is continuing and there is no negative impact on productivity.

With respect to severity one (1) reported deficiencies, Provider may, with the concurrence of the Client, elect to send senior support or development staff to the Client location to accelerate problem resolution. Provider will be responsible for the costs associated with this escalated problem resolution if the problem is determined to be related to Products supported under a Services Plan. If it is determined that the problem was not related to the Products supported under a Services Plan, the Client agrees to pay reasonable travel and lodging expenses in addition to Provider's standard labor rates. Travel time will be charged at travel rates.

3. SOFTWARE MAINTENANCE SERVICES

During the Term of the Services Agreement, Provider will provide the Client with copyrighted patches, updates, releases and new versions of the Software along with other generally available technical material. These maintenance materials including the Software may not be used to increase the licensed number of versions or copies of the Software. The Client agrees not to use or transfer the prior version but to destroy or archive the prior version of the Software. All patches, updates, release and new versions shall be subject to the License related to the Software set forth in the Supply Agreement.

Exhibit A

Certificate of Product Installation Compliance

This Certificate of Product Installation Compliance is being provided pursuant and subject to the Terms and Conditions for Services between Essentium, Inc. (ESS) and [Other Party] (“Agreement”). All capitalized terms used in this Notice but not otherwise defined herein shall have the meaning given to such terms in the Terms and Conditions for Services.

Notice of Product Installation Compliance

ESS hereby notifies [Other Party] pursuant to Section 1 of Schedule 1 to the Terms and Conditions for Services that ESS has completed its installation and review and evaluation of the installation of following Product provided by ESS, and that such Product as installed by or for ESS is operating in compliance with the applicable Product documentation:

[insert description of applicable Product]

Essentium, Inc.

By _____

[Name / Title]

Date

Notice of Noncompliance

[Other Party] hereby notifies ESS pursuant to Section 1 of Schedule 1 to the Terms and Conditions for Services that [Other Party] has completed its review and evaluation of the installation of following Product provided by ESS and that such Product as installed by or for ESS is operating in all material respects with the applicable Product documentation, except as follows:

[describe in reasonable detail the reasons why [Other Party] believes the Product does not comply with the Product documentation]

[Other Party]

By _____

[Name / Title]

Date

Exhibit B

Essentium Annual Support and Maintenance Service Plan

1. Essentium HSE180 Service Plans Chart*

Services Type	Service Description	Service Plan Options
SLA'S		
Phone Support Availability	Phone Technical Support Available Hours -8AM-5PM CST - During Business Days	Included
On-Site Support Availability	On-Site service calls (US Only) Based on US Time Zone	Included 8 AM–5 PM Monday–Friday. Limited to 1 visit per quarter. Labor & travel after.
Serviceable Parts	Replacement of all defective or worn machine parts (not including consumables)	Spare parts and PM parts included
Maintenance		
Preventive Maintenance Visit	Preventive maintenance performed by certified Essentium service representative at factory recommended maintenance intervals. PM procedures may be completed in conjunction with unscheduled or emergency visits.(US Only)	INCLUDED

1. Essentium HSE180 Service Plans Chart*

Services Type	Service Description	Service Plan Options
Hardware	Updates and modifications will be installed when available during the maintenance period	INCLUDED
Software	Software updates and technical support	Essentium-developed software maintenance releases provided throughout the maintenance period.
SUCCESS		
Training	Initial installation training and additional user training courses available at Essentium Tech Center or Essentium Partner locations	2-Day Onsite Training; Two (2) Persons Max During Platform Install. Future trainings at list price.
Site Studies	Customer receives Essentium personnel site-study to identify new use cases and business plans for scale.	Priced Separately
Multi-year Success Package	Customer will receive discount on multi-year success package if purchased up front. Multi-year packages will be paid up front.	5% discount
Material Discount	Customer will receive discounts if they use HSE Certified Materials only with the HSE platform	5% discount

**For services not covered in a Service Plan, a per hour labor rate will apply. Pricing is subject to change.*