

JumpMind SymmetricDS Production Support Subscription Agreement

This JumpMind Production Support Subscription Agreement (“Agreement”) is entered into effective as of _____ by and between JumpMind, Inc., (hereinafter “JumpMind”) whose principal place of business is 8999 Gemini Parkway, Suite 100, Columbus, OH 43240 USA and _____, (“Customer”) whose principal place of business is _____. This Production Support Subscription Agreement (including Appendix A and B, below) and the associated Customer Order Form collectively make up the entire Agreement (the “Agreement”) and understanding of the parties. This Agreement is effective as of the above date.

1. DEFINITIONS.

“**Product**” means SymmetricDS or SymmetricDS Pro software, add-on components, enhancements, and upgrades, collectively.

“**JumpMind**” means JumpMind, Inc., an Ohio corporation with its principal place of business at 8999 Gemini Parkway, Suite 100, Columbus, OH 43240 USA. JumpMind is the developer and provider of the Product.

“**Customer**” means the entity purchasing Services from JumpMind.

“**Customer Order Form**” means Customer’s Support Subscription order information signed by Customer and JumpMind.

“**Effective Date**” means the date on which the Agreement was entered into by JumpMind and Customer.

“**Initial Term**” means the period set forth on the applicable Customer Order Form, beginning upon the Effective Date.

“**Renewal Term(s)**” means the successive time periods set forth on the applicable Customer Order Form, beginning after the Initial Term.

“**Subscription Fee**” means the fees set forth in the applicable Customer Order Form for Support Services.

“**GPL**” means GNU General Public License.

“**Node**” means an active installed instance of the Product or installed software instance utilizing Product API.

“**Support Service Level**” defines the type of Support Services JumpMind provides to Customer under this Agreement. The Support Service Levels are identified as “POC”, “Standard” and “Enterprise”, and “Managed” support.

“**Services**” means the assistance JumpMind provides to Customer for effective use of the Product as

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described in this agreement including JumpStart Services and Support Services.

“JumpStart Services” means mutually agreed upon time and materials based consulting services JumpMind provides to Customer for effective use of the Product including but not limited to design, development, and/or testing of Customer synchronization scenario and/or Product enhancements.

“Support Services” means Services provided to assist Customer with ongoing support of Product as detailed in Appendix A.

“Support Subscription Parameters” means the values provided on the Customer Order Form detailing the level of support required for Customer. These values include Support Service Level, Max Nodes, Max Rows Per Day, Max Tables and Support Tickets per Term. See Section 4. (Customer Order Form) for definitions of each parameter.

“Coverage” means the hours that Support Services will be available.

2. SCOPE

2.1 Customer and JumpMind are independent contractors. Nothing in this Agreement shall constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. Neither party shall be considered an agent or legal representative of the other for any purpose, nor shall either party nor any of their respective directors, officers, agents or employees be considered an agent or employee of the other. Neither Customer nor JumpMind has authority to assume or create any obligation or responsibility on behalf of the other or in the other's name, and neither party shall attempt to do so.

3. LICENSE

3.1 SymmetricDS is released as open source under GPL. A copy of the GPL can be obtained either by web (<http://www.fsf.org/licenses/gpl.html>) or by writing to Free Software Foundation, Inc., 59 Temple Place, Suite 330, Boston, MA 02111-1307 USA. This license permits anyone to study, change, and improve the Product, and to distribute the unmodified or modified Product.

3.2 SymmetricDS and SymmetricDS Pro are also licensed by JumpMind. As long as Customer maintains an active SymmetricDS Support Subscription Agreement with JumpMind, JumpMind grants Customer a license according to the SymmetricDS Pro License Agreement.

4. CUSTOMER ORDER FORM

4.1 The Customer Order Form will provide details about Customer’s Support Services including the following information:

- Customer Name – Name of Customer
- Customer Contact Information – Address and phone number for Customer
- Support Service Level – The level of Support Services for which Customer is contracting,

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- either “Proof of Concept” (POC), “Standard”, “Enterprise”, or “Managed”
- Max Nodes – The maximum number of Nodes permitted to be registered to synchronize using the Product
- Max Rows Per Day – The maximum cumulative number of rows from all database tables that are permitted to be synchronized by the product during a 24 hour period starting at midnight
- Max Tables – The maximum number of database tables that are permitted to be configured to synchronize using the Product
- Support Tickets per Term – The number of Support Tickets permitted to be created by Customer during the Term
- Included JumpStart Consulting Hours – The number of JumpStart consulting hours included with the Support Subscription
- Effective Date – The Effective Date for Support Services desired for this Customer
- Initial Term - The Initial Term for Support Services desired for this Customer
- Renewal Term – The Renewal Term for Support Services desired for this Customer
- Price – The Subscription Fee for Support Services for this Customer for each Term
- Marketing Agreement Discount (optional) – Value of any possible discount provided in return for Customer agreeing to Section 14.
- JumpStart Services requested by Customer

5. SERVICE DEFINITION

The scope of Support Services provided to Customer under this Agreement are detailed in Appendix A (SymmetricDS Support Subscription Services)

The scope of JumpStart Services provided to Customer under this Agreement will be detailed in the Customer Order Form.

6. TERMS AND TERMINATION

6.1 Support Services for Customer shall commence on the Effective Date of the Customer Order Form and continue for the Initial Term unless terminated earlier as set forth below. Thereafter, Support Services for Customers at the “Standard”, “Enterprise” or “Managed” Support Service Level shall renew for successive Renewal Terms (unless an alternative period is agreed in writing by the parties), unless JumpMind or Customer gives at least sixty (60) days notice of non-renewal prior to the expiration of the applicable Initial Term or Renewal Term. Support Services for Customers at the “POC” Support Service Level may renew for additional Terms by creation of a new Customer Order Form, agreed to and signed by JumpMind and Customer. JumpStart services will commence and terminate per the details in the Customer Order Form.

6.2 Customer use of a version of Product beyond the Production 3 End Date as set forth at www.jumpmind.com/services/support/end-of-life or such other location as JumpMind may designate, which terms and location JumpMind may update from time to time, shall be subject to an Extended Support fee based on their current Subscription Fee, calculated at 10% of the Customer’s Subscription Fees for each year beyond the Production 3 End Date. JumpMind may, at its sole discretion, cease providing Product Services once a Customer’s version is beyond the Production 3 End Date and is in

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Extended Support as set forth at www.jumpmind.com/services/support/end-of-life or such other location as JumpMind may designate, which terms and location JumpMind may update from time to time. In addition, JumpMind shall not be responsible for any loss of functionality due to use of an outdated Product.

6.3 If Customer terminates Services or does not renew, Customer may, at a later date, reinstate their subscription, subject to payment of the following: a fee equal to the then-current Subscription Fees for the applicable Product, plus (i) payment of back Subscription Fees by Customer calculated at JumpMind's then current fee for the applicable Product extending back to the date of expiration of the Product Services and (ii) a 20% penalty fee applied to the payment of back Subscription fees.

6.4 JumpMind may terminate Services for a Customer upon thirty (30) days written notice to Customer in the event of Customer's (a) unauthorized use of Product, or (b) failure to make timely payment to JumpMind, which has not been remedied within said 30 days period. In addition, JumpMind or Customer may terminate Services for Customer immediately in the event the other party commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of notice of material breach.

6.5 Upon termination of Services for Customer, Customer shall have no further rights to receive or use Services under this Agreement including rights to SymmetricDS Pro.

7. PRICE AND PAYMENT; TAXES

7.1 Subscription Fees for Support Services are based on the Support Subscription Parameters as defined in the Customer Order Form. JumpMind has the right to verify, and Customer must be able to provide, proof of the Support Subscription Parameters which Support Services are being provided under this Agreement. If at any time during a Term, Customer determines their utilization of Services is not in compliance with the Support Subscription Parameters specified in the Customer Order Form, Customer will contact JumpMind within thirty (30) days and pay JumpMind the Subscription Fees applicable for the new Support Subscription Parameters beginning from the first date of utilization of those Support Subscription Parameters. Subscription Fees for new Support Subscription Parameters during a Term shall be calculated at the then-current annual price prorated over the number of days remaining in such Term (based on 365 days per year).

7.2 Pricing for the Production Support Subscription is as detailed on the Customer Order Form. Support Subscription Fees are due upon the commencement of each Term as set forth in the Customer Order Form. JumpMind will typically invoice Customer for Support Subscription renewals approximately sixty (60) days prior to the commencement of each Renewal Term. Fees for any JumpStart Services will be invoiced periodically for hours worked during the invoice period.

7.3 All fees under this Agreement are due upon the date(s) set forth in this Agreement and are payable within thirty (30) days from receipt of JumpMind's invoice. Payment shall be made without any right of set-off or deduction. All payments made pursuant to this Agreement shall be made in the quoted currency and are nonrefundable.

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7.4 Subscription Fees for Renewal Terms may increase by a maximum of either 5% or the US CPI, whichever is greater, per year, and only once per year upon renewal.

7.5 Any amount not paid when required to be paid under this Agreement shall accrue interest at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) on the remaining amount required to be paid, or at the highest amount permitted by applicable law (if lower), such interest to accrue on a daily basis from the payable date until the remaining amount is paid.

7.6 All fees are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind. Customer shall be responsible for payment of such taxes and duties of any kind payable with respect to the Product and Services furnished pursuant to this Agreement, provided however that JumpMind shall be responsible for payment of taxes levied or imposed based upon JumpMind's net income. Without limitation, Customer will be responsible for all applicable sales taxes unless it first claims a sales tax exemption by providing JumpMind with an exemption certificate acceptable to the applicable authorities.

8. PROPRIETARY RIGHTS.

The intellectual property and proprietary rights of whatever nature in Product and related documentation, including derivative works, are and shall remain the exclusive property of JumpMind and/or its suppliers, and nothing in this Agreement should be construed as transferring any aspects of such rights to Customer or any other third party. JumpMind and its suppliers reserve any and all rights not expressly granted in this Agreement and the GPL License. SymmetricDS is a trademark of JumpMind, Inc., and shall not be used by Customer without JumpMind's express authorization.

9. WARRANTY AND DISCLAIMER.

JumpMind warrants that during each Term it will use its commercially reasonable efforts to ensure that Services are conducted in a workmanlike manner by qualified personnel. Except for the foregoing, Product and Services are provided to Customer "as is," without any warranties of any kind, including, but not limited to, warranties concerning the installation, use or performance of the Product and Services. JumpMind and its suppliers disclaim any and all warranties, either express or implied, including but not limited to any warranty of merchantability fitness for a particular purpose and/or non-infringement. JumpMind and its suppliers do not warrant that Product and Services will meet customer's requirements or that the operation thereof will be uninterrupted or error-free, or that errors will be corrected. Without limiting the generality of the foregoing disclaimer, Product is not specifically designed, manufactured or intended for use in the planning, construction, maintenance, control, or direct operation of nuclear facilities; aircraft navigation, control or communication systems; weapons systems; or direct life support systems.

10. CONFIDENTIALITY.

10.1 JumpMind and Customer will retain in confidence all information and know-how transmitted by the other party during each Term, and for a period of two (2) years beyond the Term, that is clearly designated as being proprietary and/or confidential or that, by the nature of the circumstances

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surrounding the disclosure, ought reasonably to be treated as proprietary and/or confidential, and will make no use of such information and know-how except to further the purposes set forth in this Agreement.

10.2 Notwithstanding Section 10.1, JumpMind and Customer shall not have an obligation to maintain the confidentiality of information that (a) is now or subsequently becomes generally known or available by publication, commercial use or otherwise through no fault of the recipient; (b) is known by the recipient at the time of disclosure and is not subject to restriction; (c) is independently developed by the recipient without use of the discloser's confidential information; (d) is not designated as proprietary and/or confidential or would not reasonably be considered as such; or (e) is lawfully obtained from a third-party who has the right to make such disclosure.

Further, the recipient may disclose confidential information as required by government or judicial order, provided the recipient gives the disclosing party written notice prior to such disclosure and complies with any protective order (or equivalent) imposed on such disclosure. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's confidential information.

11. LIMITATION OF LIABILITY.

11.1 In no event shall either party have any liability for consequential, exemplary, special, indirect, incidental or punitive damages; including (without limitation) any lost profit, lost data, or business interruption, even if it has been advised of the possibility of such damages.

11.2 In any event, and notwithstanding any other provision in this Agreement, the aggregate liability of either party for any reason and upon any cause of action under this agreement shall be limited to the amount paid to JumpMind by Customer during the twelve months prior to when the cause of action arose.

12. AUDIT RIGHTS.

During the term of this Agreement and for a two (2) year period following termination or expiration, JumpMind shall have the right (at JumpMind's own expense) to conduct periodic reviews of Customer's records relating to its use of the Services for the purpose of verifying Customer's compliance with the terms of this Agreement. JumpMind shall exercise this right upon no fewer than thirty (30) days' prior notice. Customer will provide JumpMind with reasonable accommodation for the review, including reasonable use of available office equipment and access to all relevant records during normal business hours. JumpMind shall deliver to Customer a copy of the results of any such review.

13. MISCELLANEOUS.

13.1 Severability. If any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision

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consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

13.2 Assignment. Neither party may assign this Agreement or its rights or obligations under this Agreement to any person or party, whether by operation of law or otherwise, without the nonassigning party's prior consent and any attempt by either party to assign this Agreement without the other party's prior consent, where such consent is required, shall be null and void. Subject to the foregoing conditions, this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns. There are no intended third party beneficiaries of this Agreement.

13.3 No Waiver; Limitations. Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy. To the extent permitted by applicable law, no action, regardless of form, arising out of this Agreement may be brought by Customer more than one (1) year after the cause of action has accrued.

13.4 Governing Law. This Agreement shall be governed by the laws of the State of Ohio, USA, without regard to the conflict of laws provisions thereof. In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act apply to, or govern, this Agreement. In the event either party initiates an action in connection with this Agreement or any other dispute between the parties, the exclusive venue and jurisdiction of such action shall be in the state and federal courts in the State of Ohio, USA.

13.5 Notwithstanding Section 13.4, either party may enforce any judgment rendered by such court in any court of competent jurisdiction, and JumpMind may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.

13.6 Any action brought under this Agreement shall be conducted in the English language.

13.7 Notices. Unless otherwise agreed to by the parties, any notice, authorization, or consent ("Notice") required or permitted to be given or delivered under this Agreement shall be in writing and addressed and delivered to the other party's address set forth on the Order Form, to the attention of "Legal". All notices sent pursuant to this Agreement shall be written in the English language. Notices to JumpMind must also be copied to JumpMind, Inc. at JumpMind Inc., PO Box 2012, Westerville, OH 43086-2012 USA, Attn: Legal Group. Notice shall be deemed to have been received by a party, and shall be effective: (a) on the fifth business day after which such Notice is deposited prepaid in the local postal system; or (b) on the day received, if sent with a reputable, expedited overnight or international courier or hand delivered. Either party may change its address for receipt of Notice purposes upon issuance of Notice thereof in accordance with this Section.

13.8 Marketing. Customer agrees to allow Customer name and logo to be shown on the JumpMind website as a customer of JumpMind.

13.9 Export Law Assurances. Customer acknowledges that Product may be subject to export and import control laws, and agrees to comply fully with those laws in connection with Product. Customer agrees that Product is not being and will not be acquired for, shipped, transferred, or re-exported, directly or

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indirectly, to proscribed or embargoed countries or their nationals.

13.10 Force Majeure. Except for performance of a payment obligation, neither party will be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of communications facilities or energy sources, acts of God, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or any causes beyond the reasonable control of that party.

13.11 Entire Agreement. This Agreement comprises the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. This Agreement may be amended or modified only in a writing executed by both parties. JumpMind's acceptance of any document submitted by Customer to JumpMind shall not be construed as an acceptance of provisions which are in any way in conflict or inconsistent with, or in addition to, this Agreement, unless such terms are separately and specifically accepted in writing by an authorized representative of JumpMind. This Agreement may be incorporated in other documents or executed via facsimile or via emailed PDF-format document (or other mutually agreeable document format), and a facsimile or emailed copy of either party's signature shall be deemed and be enforceable as an original thereof. This Agreement may be executed in counterparts, both of which taken together shall constitute one single Agreement between the parties.

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14. SIGNATURES

Customer:

On behalf of Customer, the undersigned agrees to the above terms and conditions.

Name:	
Title:	
Company Name:	
Address:	
Signature:	
Date:	

JumpMind, Inc:

JumpMind, Inc. agrees to use best efforts to provide a satisfactory level of service in accordance with the terms and conditions listed above.

Printed Name:	
Title:	
Signature:	
Date:	

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Appendix A – Production Support Subscription Levels

JumpMind Production Support Subscriptions provide multiple levels of support from which to choose:

POC Support – POC Support Subscriptions allow for detailed evaluation of the Product and Services. POC Support provides a fully functioning version of the Product for a limited time period to complete proof of concept testing in your environment, with your data. It also provides a basic level of Support Services and a limited number of hours of Consulting Services to help you get started on the right foot.

Standard Support - Standard Support Subscriptions equip you with the services needed to resolve technical issues. It includes web-based and email support, issue tracking, self-help forums, product releases, and updates. For Priority 1 issues, Standard Support Subscriptions include a six business-hour maximum initial response time. Standard Support Subscriptions also include bug fix requests, unlimited issue reporting, and version support.

Enterprise Support - Enterprise Support Subscriptions give you the level of coverage needed for business-critical applications with the addition of 24x7 phone-based coverage for Priority 1 incidents and 8am–5pm business-hours coverage for Priorities 2 – 4. Enterprise Support Subscriptions include everything from Standard Support along with shorter maximum initial response times.

Managed Support – Managed Support Subscriptions allow JumpMind to become an extension of your internal team. This subscription level includes the highest level of Support Services and adds named JumpMind resources to handle all of your Consulting and Support Services needs. Managed Support customers are guaranteed availability of their named resource(s) for consulting needs within 1 business day.

Support Service Levels:	POC	Standard	Enterprise	Managed
Software				
Production Deployment	No	Yes	Yes	Yes
Certified Version	Yes	Yes	Yes	Yes
Product Updates	Yes	Yes	Yes	Yes
Fixes Requests	Yes	Yes	Yes	Yes
Version Support	Latest Only	12 months	24 months	36 months
Service Level Agreements				
Support Access*	8am x 5pm	8am x 5pm	24 x 7 for Priority 1 (8 x 5 for Priority 2-4)	24 x 7 for Priority 1 (8 x 5 for Priority 2-4)
Priority 1 Response*	2 days	6 hours	2 hours	2 hours
Priority 2 Response*		1 day	6 hours	6 hours
Priority 3 Response*		2 days	1 day	1 day
Priority 4 Response*		2 days	1 day	1 day
Support Services				
Initial Contact via Phone	No	No	Yes	Yes
Web / Email Support	Yes	Yes	Yes	Yes
Issue Tracking	Yes	Yes	Yes	Yes
Customer Named Contacts	1	2	4	Unlimited
Named Support Representatives	No	No	No	Yes
Consulting Services				
Consulting Hours Included	Yes	No	No	Yes

* Times are in business days / hours, US Eastern time zone, except in the case of 24x7 Priority 1 issues for Enterprise Support

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Support Services

- **Certified Version and Maintenance Updates** – Customers have access to the latest version of the software that is certified for production use. Maintenance updates are provided that include enhancements, bug fixes, and performance tuning.
- **Requested Enhancements / Bug Fixes** – Customers can request to expedite reported enhancements or fixes.
- **Version Support Period** – If you aren't able to stay on the latest and greatest version of the software, your support subscription allows you to obtain support and fixes for prior minor versions (*e.g.*, all 2.x versions). An extended support period for major versions is available on request.
- **Incident Tracking** – Full incident tracking capabilities are provided to monitor your requests. During the resolution process, the customer and support engineers can add comments, upload attachments, and update status.
- **Web / Email / Phone Support** – Depending on the level of support, customers have access to support engineers through the web, email, or phone.

Issue Priorities

- **Priority 1 (Urgent)** – An Issue that results in a critical business impact for a Production System; may be assigned to an Issue where customer experiences (i) a complete or substantial loss of service when using a Production System, or (ii) real or perceived data loss or data corruption making an essential part of the Production System unusable, or (iii) the inability to use a mission critical application within a Production System.
- **Priority 2 (High)** – An Issue that results in a high business impact for a Production System or Development System; may be assigned to an Issue where customer experiences (i) the functionality of the software is adversely affected, but can be circumvented, or (ii) certain functions within the software are disabled, but the Software remains operable, or (iii) a complete or substantial loss of service when using a Development System.
- **Priority 3 (Medium)** – An Issue that results in a medium business impact for a Production System or Development System; may be assigned to an Issue where customer experiences (i) partial non-critical functionality loss and the Issue has no significant effect on the usability of the software, or (ii) time-sensitive Issue important to long-term productivity that is not causing an immediate work stoppage.
- **Priority 4 (Low)** – An Issue that results in a minimal business impact for a Production System or Development System; may be assigned to an Issue with no impact to quality, performance, or functionality of the software, or cases of general information requests, such as usage and configuration.

Consulting Services

- **POC and Additional JumpStart Hours (outside of Managed Support)** – Consulting hours provided as part of the POC Support Service Level or as “Additional JumpMind JumpStart” hours must be scheduled in advance with JumpMind sales. Sales will communicate availability and timing of JumpMind resources for these requests. Consulting services are available via business hours 8 am to 5 pm EST.
- **Managed Support** – Consulting hours provided as part of the Managed Support option can be scheduled directly with Customer’s named contact. JumpMind guarantees availability of Customer’s named resource for consulting purposes within 1 business day of the request. Consulting hours for Managed Support are “use it or lose it.” Remaining, unused hours cannot be rolled to the next Term. Consulting services are available via business hours 8 am to 5 pm EST.

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Support Services versus Consulting Services Examples

Support Services	Consulting Services
Requested through support ticket via email to support@jumpmind.com or the JumpMind support center web application	Requested to an individual within JumpMind
Specific questions about product functionality	Assisting the customer in configuring their specific synchronization scenario
Guidance to assist Customer in completing a specific task	Completing the task for the Customer
Questions about best practice's for synchronization performance	Performance Tuning of Customer's synchronization scenario
Bug fixes	Enhancement Requests

* Any Support Services request that is deemed to be Consulting Services will be discussed and approved in writing by JumpMind and Customer before being initiate