

nAPPLIANCE SUPPORT SERVICES LICENSING AGREEMENT

- A. **AGREEMENT.** The following are the terms and conditions under which nAppliance Networks Inc. (“nAppliance”) agrees to provide support to you (“Customer”) for certain internet networking, security and storage appliances, firmware and software. Subjected to your payment of applicable maintenance and support fees, nAppliance agrees to support, maintain, repair or replace the nAppliance products (s) properly registered and entitled subject to these terms and conditions (“Agreement”). **By accessing support service in any way, you agree to be bound by the terms and conditions below.**
- B. **TERM.** Coverage under this Agreement will commence on the earlier of (a) (30) days after the date the Product is shipped from the manufacturing facilities of nAppliance, or (b) the date the Product is received by Customer, or (c) the date the covered Product is activated with nAppliance. Customer support agreements will automatically renew for additional one year terms unless either Customer or nAppliance provides written notice of termination at least 30 days prior to the end of any such term. Each renewal will be at nAppliance’s then-current rate. Services pricing will be charged for all nAppliance product platform and add-on software purchases. The total service price will be calculated as a percentage of total list prices, appropriate to the level of service purchased. Either party may terminate this Customer support agreement upon 30 days’ notice in the event of a material breach by the other party, provided such breach is not cured by the end of such 30 day period.
- C. **DEFINITIONS.** For the purposes of this Agreement, the following definitions shall apply

1. **Customer Support Center** or **CSC** means a nAppliance-authorized location where service requests are routed for telephone or electronic mail technical support and problem resolution.
2. **Support Engineer** means a nAppliance-authorized technician who provides support services under this Agreement.
3. **Local Time** means the local time at the facility where the Product is registered.
4. **Product** means the nAppliance network security, email security, secure remote access or backup and recovery appliance, associated firmware, software and security services.
5. **Software** means the application component of the Covered Product.
6. **Hardware** means the appliance on which the Software is installed and runs.
7. **Updates** means new releases of the software or firmware supported under the terms of this Agreement.
8. **Covered Products** means those nAppliance products that include both Software and Hardware as specified in one of the following documents: (a) invoice from nAppliance to Customer, or (b) executed sales quotation between Customer and nAppliance, or (c) a purchase order from Customer to nAppliance.
9. **Resolution** means that nAppliance has provided the Customer with a workable solution for the problem or question submitted.
10. **Term** mean the length of the support agreement is valid for the term described in the applicable product invoice or product documentation. If Customer has multiple Covered Products, nAppliance reserves the right to change the length of a particular term, and prorate Support Fees as necessary, so that the terms for all Covered Products begin and start on the same date.
11. **Territory** means the location or locations in which Products are registered.
12. **Third-party Product** means a hardware device or software product produced by a company other than nAppliance.

D. nAPPLIANCE RESPONSIBILITIES FOR SUPPORT SERVICES

1. **Principal Period of Maintenance.** Support is provided during the hours and for the period described in the applicable Service Product Description, product invoice or product documentation. The scope of the support services will vary based on the level of support purchased and it will be provided in accordance with nAppliance’s support policy guidelines available at:
www.nappliance.com/support

2. **Hardware Services.** These services include the repair or replacement of failing hardware returned to nAppliance factory. Customer will receive Standard Depot Repair or Premium Advance Replacement Plan as indicated in its order for the customer support services.
- 2.1 **Limited Hardware Warranty.** Each new purchaser of a nAppliance product receives a (1) one year Limited Warranty for defects in quality, Customer is entitled to one (1) year of hardware maintenance at no charge, a separate agreement must be executed to extend the warranty and for Technical Support to be extended beyond one (1) year.
- a. **No Cost Depot Repair Service.** nAppliance will provide depot repair services for any product or component that fails during the term of Customer's support agreement at no cost to Customer, provided that Customer contacts the nAppliance technical support center to report the nature of failure, provides written instructions as how to reproduce the problem and complies with nAppliance's return policies. Upon remote diagnosis of a hardware failure, nAppliance's Support Engineer will issue the Customer Representative with an RMA number and provide him/her with instructions for returning the failed hardware to nAppliance for depot repair service.
- b. **Customers Responsibility.** (a) If a defective product is returned, the cost of incoming freight and insurance is the responsibility of the Customer. (b) Products returned to nAppliance must be preauthorized by nAppliance with a Return Material Authorization (RMA) number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for safe shipment. (c) Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by nAppliance's receiving department. All other packages will be rejected. (d) All products to be returned must be in the original manufacturer's undamaged packaging with all accessories shipped with the original product including cables, handles and manuals. If you did not retain the original packaging materials please contact nAppliance Customer Service department at 408-895-5000 or Support-at-nAppliance.com. There is a charge for replacement packaging. (e) nAppliance may invoice the Customer for any failed products or components (1) with respect to which the damage to such Products or components is attributable to actions taken by Customer or any of its agents (including but not limited to the categories set forth in Section 4 below); (2) missing parts or (3) a product returned for repair but found to be in good working order will be charged a \$200 "No Trouble Fee". (4) Customers' credit card number (American Express, Visa, or MasterCard) will be required. (f) The Customer is responsible for all customs fees, taxes or VAT that may be due (excluding income taxes).
- c. **nAppliance Responsibility.** (a) The received product will be repaired or replaced, and shipped back to Customers within 14 days of its receipt. (b) If replaced, the product may be new, refurbished like-new. In the event of product obsolescence, nAppliance reserves the right to replace failing product with a product of like or better features and functionality. (c) The cost of return freight is the responsibility of nAppliance (d) nAppliance uses new and reconditioned parts made by various manufactures when performing warranty repairs and building replacement products. nAppliance will retain ownership of all parts removed from repaired systems. (e) Repair or replacement of a part or product will not extend the Limited Warranty. (f) Title to any returned products or components will transfer to nAppliance upon receipt. (g) nAppliance will replace defective media or documentation or, at its option, undertake reasonable efforts to modify the software to correct any substantial non-conformance with the specifications. (h) nAppliance will receive and ship the repaired or replacement units from its customer support center and repair depot facilities in San Jose, California or from Buckinghamshire in the UK for units registered in EMEA.
- 2.2 **Premium Advance Replacement Hardware Service Plan.** Advance replacement is an optional service upgrade and must be purchased and executed, when in effect this contract extends the Limited Warranty to the term of this contract.
- a. nAppliance will, at its sole option, repair or replace any product or component that fails during the term of Customer's support agreement at no additional cost to Customer, provided that Customer contacts the nAppliance technical support center to report the nature of failure, provides written instructions as how to reproduce the problem and complies with nAppliance's return policies.
- b. nAppliance's Support Engineer will issue the Customer Representative with an RMA number following diagnosis of hardware failure and provide him/her with instructions for returning the failed hardware to nAppliance.

- c. nAppliance will ship an advance replacement product or component to the Customer on the first business day for Next-Day delivery following nAppliance's confirmation of the failure of the original product or component via remote troubleshooting. The replacement product may be new, refurbished like-new. In the event of product obsolescence, nAppliance reserves the right to replace failing product with a product of like or better features and functionality. nAppliance will ship a replacement unit to Customer based on contracted principal period of support. Replacement units will be shipped from nAppliance's facilities in San Jose, California or from Buckinghamshire in the UK for units registered in EMEA. The Customer is responsible for all customs fees, taxes or VAT that may be due (excluding income taxes).
 - d. Customer will return the failed product or component to nAppliance under the RMA number issued by nAppliance upon receipt of the replacement. nAppliance will be responsible for all freight charges for returned Products or components provided Customer uses nAppliance designated carrier. Products returned to nAppliance must be preauthorized by nAppliance with a Return Material Authorization (RMA) number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for safe shipment. Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by nAppliance's receiving department. All other packages will be rejected. All products to be returned must be in the original manufacturer's undamaged packaging with all accessories shipped with the original product including cables, handles and manuals. If you did not retain the original packaging materials please contact nAppliance Customer Service department at 408-895-5000 or Support-at-nAppliance.com. There is a charge for replacement packaging. nAppliance may invoice the Customer for any failed products or components (a) with respect to which the damage to such Products or components is attributable to actions taken by Customer or any of its agents (including but not limited to the categories set forth in Section F below); or (b) missing parts; or (c) a product returned for repair but found to be in good working order will be charged a \$300 "No Trouble Fee" or (b) not returned within ten (10) days of shipment of the replacement unit(s), Customer will be charged the full retail price of the product. Customers' credit card number (American Express, Visa, or MasterCard) will be required.
 - e. Title to any returned products or components will transfer to nAppliance upon receipt. nAppliance uses new and reconditioned parts made by various manufactures when preparing refurbished units or performing warranty repairs and building replacement products. nAppliance will retain ownership of all parts removed from repaired systems. Repair or replacement of a part or product will not extend the Limited Warranty.
3. **Help Desk Technical Support - Telephone and Web-Based Email Support Plan.** Technical support contracts are optional service upgrade and must be purchased and executed, when in effect this contract extends the Limited Warranty to the term of this contract. (a) nAppliance provides interactive technical assistance during coverage hours by telephone, or Web-based email, or through Web-based support tools. A nAppliance technical specialist will work with a Customer representative remotely to diagnose and identify software and hardware not performing to documented specifications. (b) Support also includes general assistance regarding usage, documentation and configuration on a limited basis. (c) nAppliance support contracts and warranty support do not include installation; If a Customer needs installation, nAppliance will refer the Customer to a certified value-added reseller or offer one of nAppliance's Consulting Services. (d) Please note that Support in the Americas, Asia Pacific, EMEA and Japan is provided in English only. (e) A separate agreement must be executed to extend the warranty and for Technical Support. (f) nAppliance reserves the right to cancel Technical Support Contracts for which payment has not been received. (g) Customer will receive Silver, Gold or Platinum service as indicated in its order for the customer support services.
- 3.1 **Web-Based Email Support, 8x5 Silver Technical Support Plan.** This service offers Technical Support for troubleshooting the installation and maintenance of the product as well as software updates. Technical Support is available 8 am to 5 pm Monday through Friday (except holidays) in your local time zone via email.
 - 3.2 **Phone and Web-Based Email Support, 8x5 Gold Technical Support Plan.** This service offers Technical Support for troubleshooting the installation and maintenance of the product as well as software updates. Technical Support is available 8 am to 5 pm Monday through Friday (except holidays) in your local time zone via telephone or email.

- 3.3 **Phone and Web-Based Email Support, 24x7 Platinum Technical Support Plan.** This service offers Technical Support for troubleshooting the installation and maintenance of the product as well as software updates. Technical Support is available 24 x 7 in your local time zone via telephone or email.
4. **Software/Firmware Support.** nAppliance will log, track, prioritize and resolve software, firmware and/or documentation bug reports and enhancement requests for software/firmware support under this agreement. Subscription services support does not include issues related to the operation of the appliance, firmware or software updates/upgrades or hardware replacement.
5. **Software/Firmware Update Service.** All software and firmware maintenance releases and updates are included in this agreement. nAppliance will notify Customer via electronic mail of new updates. The updates will be delivered exclusively via the Web.
6. **Subscription Services Support.** nAppliance will provide telephone and Web-based support for appliances based upon the contracted principal period of support. Support for subscription services, such as Gateway Anti-Virus, Anti-Spam, Anti-Spyware and Intrusion Prevention and Content Filtering, are provided for the length of the subscription services contract for that service. Subscription services support does not include issues related to the operation of the appliance, firmware or software updates/upgrades or hardware replacement.
7. **Support Tools.** This agreement includes unlimited access to nAppliance's Web-based support tools, including FAQs, documentation and Knowledgebase systems.

E. CUSTOMER RESPONSIBILITIES FOR SUPPORT SERVICES

1. **It is the Customer's responsibility To:** (a) Provide complete information to and cooperate with the Support Engineer in resolving the problem Customer is experiencing. Information required by the Support Engineer may include, but not be limited to, the type of hardware you are using, the complete text of error messages and description of the problem for which you seek support and additional software or hardware you are using that falls outside the scope of coverage of this Agreement. Customer understands and agrees that the completeness and accuracy of the information provided to nAppliance may affect nAppliance's ability to assist you. (b) Cooperate with the Support Engineer to resolve the problem you are experiencing. Among other things, the Support Engineer may require that you reload firmware or configuration information or help perform the tests or to reproduce the problem in order to diagnose problems. (c) Maintain the equipment in a location that conforms to the environmental conditions required of the nAppliance product.
2. **Lapsed Service Fee.** If Customer purchases an annual Maintenance Agreement for a Product for which maintenance was never originally purchased or for which maintenance has lapsed, Customer will be charged a "Lapsed Service" fee in addition to the then-current standard maintenance fee pro-rated for the time period during which no maintenance was in effect from the date the product was first received by Customer.
3. **Recertification.** Requests for maintenance on equipment purchased from sources other than a nAppliance VAR or directly from nAppliance (i.e. used or gray market systems - like EBAY) will first be subject to an inspection by a representative of nAppliance at the rate of \$3,500 per unit. The inspection will determine if the unit is at a maintainable state. The following criteria will be used.
- (a) The original invoice for the system must be paid in full
 - (b) Unit must comply with nAppliance end-of-life policy
 - (c) Hardware platform must support nAppliance current software version
 - (d) Hardware is in good working order

If the inspection determines that the unit is not at a maintainable state nAppliance will:

- (a) Repair or replace the defective hardware
- (b) Upgrade software to current supported versions
- (c) Hourly charges for time spent bringing the unit to a maintainable state and cost of materials will be billed to the Customer.

Once the unit has passed inspection, a maintenance contract and additional services may be purchased at the current published rates.

4. **Prices and Payment.** Fees for the initial or any subsequent term of Customer's support agreement will be due and payable net 30 days from date of invoice, and all payments will be made in US dollars. nAppliance may accept payment in any amount without prejudice to its right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere will be construed as an accord or satisfaction. Overdue payments may be charged interest at the lesser of 1.5% per month or the maximum interest allowed by law. If nAppliance is required to retain a collection agency or attorney to collect overdue payment, all reasonable collection costs, including attorney fees, will be payable by Purchaser.
5. **Applicable Taxes and Other Charges.** All charges are exclusive of all foreign, federal, state, municipal, or other government excise, duty, sales, use or occupational taxes or charges now in force or enacted in the future, and therefore are subject to an increase equal in amount to any taxes or charges nAppliance may be required to collect or pay upon the services performed or materials provided hereunder whether during the service coverage period or otherwise.

F. EXCLUSIONS AND LIMITATIONS

(a) This Service Agreement is valid during the Term and in the Territory only. (b) Support Services are strictly limited to telephone and electronic support only. Customer acknowledges and understands that no software is perfect or error-free and that, despite its commercially reasonable efforts, nAppliance may be unable to provide answers to or resolve some or all requests for software support. nAppliance makes no promises, guarantees or assurances of any kind that it will be able to provide resolution to problems that you report. Support Services will be provided only on the official current release, and the most recent prior release, of the firmware or software. Support Services do not include configuration of third-party hardware, general solution provider services, general network maintenance or any on-site service. (c) Installation, de-installation or relocation services are not covered by this Agreement. nAppliance is not obligated under this Agreement to repair or replace (i) Product that has been Damaged by abuse, accident, act of God, external causes, misuse, misapplication, improper installation or shipment or the like; or (ii) Product that has been modified or on which the serial number has been removed or altered. (d) nAppliance is not obligated to repair or replace product damaged by accident, catastrophe, neglect, theft, misuse, transportation, modification, unauthorized maintenance, or damage from faulty external factors (e.g. electrical power, temperature or humidity).

G. WARRANTY DISCLAIMER

IN CONNECTION WITH THIS AGREEMENT, SERVICES RENDERED HEREUNDER AND PARTS SUPPLIED PURSUANT HERETO, nAPPLIANCE MAKES NO WARRANTY, EITHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NONINFRINGEMENT. nAPPLIANCE'S SOLE OBLIGATION AND CUSTOMER'S SOLE REMEDY SHALL BE LIMITED TO nAPPLIANCE'S REASONABLE COMMERCIAL EFFORTS TO REPAIR OR REPLACE ANY DEFECTIVE PRODUCT.

ANY SOFTWARE FURNISHED TO YOU HEREUNDER ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NONINFRINGEMENT.

H. LIMITATION OF LIABILITY

nAPPLIANCE'S LIABILITY IN CONNECTION WITH THIS AGREEMENT, RENDERED HEREUNDER WHETHER FOR BREACH OF CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO A REFUND OF THE PRO RATA CHARGES PAID FOR THE SPECIFIC SUPPORT SERVICES INVOLVED IN THE CLAIM, OR \$1000, WHICHEVER IS LESS.

nAPPLIANCE SHALL NOT BE LIABLE TO CUSTOMER NOR TO ANY THIRD PARTY FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, USE, DATA, SOFTWARE, GOODWILL OR PROPERTY DAMAGE), WHETHER FORESEEABLE OR NOT, EVEN IF nAPPLIANCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, ACCEPTANCE, PERFORMANCE, POSSESSION, OPERATION OR USE OF THE PRODUCT, HARDWARE, SOFTWARE OR SERVICES FURNISHED HEREUNDER.

I. GENERAL PROVISIONS

1. Force Majeure. nAppliance shall not be liable for its failure to perform its obligations under this Agreement for causes beyond its reasonable control.
2. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding its choice of law rules. In the event that any dispute or controversy between the parties arises out of or is related to this Agreement, and/or the performance or termination thereof, such dispute or controversy shall be subject to the exclusive jurisdiction of the California state courts in and for Santa Clara County, California (or, if there is federal jurisdiction, the U.S. District Court for the Northern District of California) and the prevailing party shall recover all of its costs, including reasonable attorneys' fees.
3. Transferability. nAppliances' Limited Warranty Depot Service, Advance replacement service plan and Technical Help Desk Support Service Contracts are extended to the original purchaser, or the original End User only. Proof of purchase is required. The warranty and contract are personal to the purchaser or End User and are non-transferable. Sale of the product terminates the Limited Warranty and all service contracts.
4. Complete Agreement; Amendments. This Agreement is the complete and exclusive agreement between Customer and nAppliance regarding Support Services of your Product(s) and supersedes all proposals, oral or written, all negotiations, conversations or discussions between the parties relating to this Agreement or industry custom.
5. Unenforceable Provisions. If any term of this Agreement is found to be illegal or unenforceable, the remaining portions of this Agreement shall remain in effect.
6. Compliance with Export Control Laws and Regulations. The Products, the Operating System, the Software Services and the Hardware Services are subject to the export regulations of the United States, including but not limited to regulation under the U.S. Export Administration Regulations. Customer agrees that you will not directly or indirectly export, re-export, transfer or disclose any Product except in strict compliance with applicable U.S. laws and regulations.

AGREED:

nAppliance Networks, Inc.

Customer (Company):

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____