

Service and Maintenance Terms and Conditions

IF THERE IS A PRIOR WRITTEN AGREEMENT, EXECUTED BY DULY AUTHORIZED REPRESENTATIVES OF ENTERASYS NETWORKS, INC. (“ENTERASYS”) AND YOU (OR “CUSTOMER”), TO THE EXTENT THAT THE TERMS OF THAT PRIOR AGREEMENT CONFLICT WITH THESE SERVICE AND MAINTENANCE TERMS AND CONDITIONS (THESE “TERMS”), THE TERMS OF THAT PRIOR WRITTEN AGREEMENT SHALL GOVERN ALL SERVICES (AS THAT TERM IS DEFINED BELOW). IN ALL OTHER INSTANCES, ALL OFFERS FOR SALE OF SERVICES ARE SUBJECT TO THESE TERMS, AND ANY PROPOSED ADDITIONS TO OR MODIFICATIONS MADE BY YOU ARE HEREBY EXPRESSLY REJECTED.

Terms and Conditions: SupportNet

IMPORTANT—PLEASE READ: *Only Enterasys authorized partners are permitted to resell our SupportNet offerings. Please refer to the [Partner Locator](#) to find an authorized partner in your location. Your right to receive the services (the “Services”) offered under the contract you purchased (the “Contract”) is conditioned upon your acceptance of the following terms and conditions (the “Terms,” and collectively with the Contract, the “Agreement”). By accepting Services from Enterasys, you are agreeing to be bound by these Terms and the Contract.*

1. SERVICE ENTITLEMENT.

Your site(s), associated SupportNet Service(s), product(s) and quantities delineated under the Contract (“Covered Product”) determine your entitlement to Services. You are responsible for reviewing the Contract to be sure that the information is accurate and complete. If you request (i) services, which are not outlined in the Agreement, or (ii) coverage for product(s), site(s) and quantities, including any third-party product that is not listed on your Contract, such services or coverage may be provided on an “as available basis” and will be subject to additional fees. If there is any indication that support is being received on product for which the requirements of this Agreement have not been met, Enterasys reserves the right, upon reasonable notice, to perform an audit of your products and records. If Enterasys reasonably determines that unauthorized support is occurring, you may be charged the appropriate support fee as well as, without limitation, legal fees and audit fees and interest at the rate of one and a half percent (1 ½%) per month, calculated from the date on which unauthorized support was first received and compounded on each monthly anniversary date.

2. SERVICE TERM AND REGISTRATION.

- a. **Term.** The Enterasys SupportNet Services are provided for twelve (12) months or for the term contained in your SupportNet contract. Service must be purchased within sixty (60) days of the purchase of the Enterasys product to which they will be applied, or you may be charged a fee to inspect the product to determine its serviceability. You are responsible for all inspection and associated costs, including travel and related expenses, performed outside a fifty (50) mile radius of an Enterasys location.
- b. **Registration.** To establish service entitlement for Covered Product, you must identify a Contract Administrator to manage your Contract online (including initial product registration) and you must register all Covered Product serial numbers, site(s), and other required identifying information on Enterasys’ product registration Web page: <https://extranet.enterasys.com/mysupport/scm/pages/default.aspx> (“Product Registration”). Promptly after Product Registration on our Website, Enterasys will use

commercially reasonable efforts to stock appropriate depots to fulfill service levels. Only Enterasys products purchased directly from Enterasys or an Enterasys authorized distributor or other Enterasys authorized partner are eligible for Product Registration.

3. SERVICE PROVIDED.

SupportNet Technical Support Service

Enterasys SupportNet Technical Support provides remote technical assistance for issues associated with the operation and maintenance of Covered Products. Customers have telephone and web access to Enterasys' Global Technical Assistance Center (GTAC) 24 hours a day, 365 days a year to report problems, ask product-related questions and receive assistance for Enterasys hardware and firmware.

SupportNet Return to Factory Repair Service

Enterasys SupportNet Return to Factory Repair Service provides technical support plus return to factory replacement of a defective Field Replaceable Unit (FRU) with an equivalent FRU for Covered Products.

SupportNet Advance Replacement Services

Enterasys SupportNet Advance Replacement Services provide technical support plus advanced part replacement for Covered Products. Upon diagnosis of a reported failure, the replacement part will be delivered within the response time specified for the service level purchased.

SupportNet On-Site Services

Enterasys SupportNet Onsite Services provide technical support plus advanced parts replacement with on-site labor for Covered Products. Upon diagnosis of a reported failure, the replacement part and an on-site field technician will arrive within the response time specified for the onsite service level purchased.

SupportNet Security Network Appliance Advance Replacement Service

Enterasys SupportNet Security Network Appliance Advance Replacement Services provide technical support, advanced parts replacement and provides product software releases (upgrades) and minor releases (updates) for Covered Products. Access to Enterasys' Signature Database for Intrusion Detection System ("IDS") software is also provided. Upon diagnosis of a reported failure, the replacement part will be delivered within the response time specified for the service level purchased (see Service Levels).

SupportNet Security Network Appliance On-Site

Enterasys SupportNet Security Network Appliance Onsite Services provides technical support advanced part replacement, on-site labor and includes both minor (updates) and major (upgrades) software releases for Covered Products. Access to Enterasys' Signature Database for Intrusion Detection System ("IDS") software is also provided. Upon diagnosis of a reported failure, the replacement part and

Enterasys field technician will arrive within the response time specified for the onsite service level purchased.

SupportNet Software Application Service

Enterasys SupportNet Software Application Service provides product specific application software minor releases (updates) and major releases (upgrades), web access plus 24x7 telephone access to Enterasys' Global Technical Assistance Center (GTAC) for remote technical assistance and emergency recovery related to issues associated with the operation and maintenance of Enterasys software solutions for Covered Products.

4. CUSTOMER RESPONSIBILITIES

- a. Request technical assistance from Enterasys in diagnosing a fault prior to requesting parts replacement.
- b. Provide system information including serial number, configuration and system log when contacting Enterasys for support.
- c. Facilitate Enterasys remote-access diagnostics capability. To enable Enterasys to properly and efficiently diagnose issues, Customer shall provide broadband internet access (1 megabyte/second or higher throughput) as well as providing all necessary authorizations for remote access by Enterasys to the Customer's network. Remote connectivity must be operational prior to service activation.
- d. Advise Enterasys, in writing, of any change of location for Covered Products to ensure proper dispatch and delivery.
- e. Ensure that the Covered Products are used and maintained in accordance with the applicable product documentation. Failure to do so will exclude the hardware from coverage.
- f. The defective FRU must be returned to an authorized Enterasys repair facility within seven days of receipt. Enterasys provides pre-paid packaging and return of the FRU is paid for by Enterasys providing the customer uses the pre-paid packing provided by Enterasys. If the FRU is not received within the seven days, Enterasys reserves the right to invoice the customer the then-current published list price of the replaced FRU.
- g. Ensure that access is arranged to both the site and equipment for receiving the replacement FRU and to enable the field representative to perform the replacement. This may include making personnel available to accompany the field representative on site. Failure to do so will discharge Enterasys of its responsibilities.
- h. Use the versions of firmware currently supported by Enterasys. If the firmware or software is a version other than that which is currently supported, as identified in Enterasys' End of Sale and End of Service Life policy, the customer is required to purchase the required versions of the Covered Product to obtain support¹.
- i. For each customer site to be covered by the service, identifying location/address, any security access and maps/driving instructions if the site is located in a non-urban area.

¹ <http://www.enterasys.com/support/end-of-service-life.aspx>

(For locations requiring special access, such as government facilities or financial institutions, the customer needs to provide written documentation needed to obtain access).

- j. You are responsible for removing any add-on hardware and making backup copies of any operating software, as these may be lost or damaged in the repair process. The defective Covered Product must be in the as-shipped condition, with the exception of the claimed defect, when returned for repair or replacement and must be returned in the original packaging, or its equivalent, to provide the same

5. SERVICE RESTRICTIONS.

Restrictions on your service entitlement include the following:

- a. Enterasys is not responsible for supporting third-party hardware platforms on which application software resides.
- b. Enterasys services and any subsequent service renewal is subject to the terms and conditions of Enterasys' End-of-Sale and End-of-Service Life policy.¹
- c. Service availability is subject to geographical limitations as advised by Enterasys upon request. Enterasys will have no obligation to meet the response times outlined in the appropriate SupportNet Service Description if the customer's site is outside the geographical zone of service availability. If the customer purchases this service for locations outside Enterasys advised geographical limitations, Enterasys will be required only to use commercially reasonable efforts to replace FRUs as soon as practical after receipt of a request from the Customer for Covered Products.
- d. Enterasys' support obligations are expressly conditional upon the Covered Products not being (i) subject to unusual mechanical stress or unusual electrical or environmental conditions; (ii) subject to misuse, accident or disaster including, without limitation, fire, flood, water, wind, lightning or other acts of God; or (iii) altered or modified unless performed or authorized by Enterasys.

6. SERVICES EXCLUDED.

The following services are not provided by Enterasys:

- a. Any customization or installation of hardware or software. Should you request services not included in the service level purchased, you must provide a purchase order or credit card information covering time and materials prior to Enterasys dispatching a Field Representative or otherwise providing such excluded services.
- b. Support or replacement of a Covered Product that is altered, modified, mishandled, destroyed, damaged by natural causes, electrical power, abnormalities or environmental conditions, or damaged due to a negligent or willful act or omission or use other than as specified in Enterasys' specifications, or resolution of Covered Product problems resulting from third party-products or causes beyond Enterasys' control.
- c. Services not included in your Contract and support or replacement of Covered Products not included in your Contract.

- d. Coverage for (i) consumable items and supplies that are “used up” during normal product operation (such as printer ribbons, light bulbs, fuses and filters, etc.); (ii) Original Equipment Manufacturer (OEM) products/vendor equipment and customer’s third-party equipment not furnished by Enterasys; (iii) cable plant; (iv) miscellaneous network hardware furnished by Enterasys (such as monitors, printers, modems, etc.); (v) power equipment (such as fuse panel, batteries, miscellaneous hardware, racks, cabling, etc.) (vi) major system assemblies (such as frames, bays, shelves and line drawers, etc.); and (vii) equipment not purchased from an Enterasys authorized agent.
- e. Services such as upgrades to hardware and those not covered under the Service Provided section of this document are excluded from the scope of this service and should be ordered separately.
- f. Unless elsewhere agreed between the customer and Enterasys, this service does not include root-cause analysis, the provision of fault reports or lead-time/performance metrics.

7. PAYMENT, RENEWAL FEES, TAXES, AND CUSTOMS REQUIREMENTS.

- a. Payment. Payment terms are net thirty (30) days from date of invoice. A finance charge at a compound rate of the lesser of one and one-half percent (1 1/2%) per month or the maximum rate permitted by law shall accrue and be payable on all past due sums. You agree to reimburse Enterasys for all collection and legal fees incurred due to your late payment or failure to make payment. In the event, and to the extent, that you are not purchasing Services directly from Enterasys, the foregoing shall not apply; provided, however, that you acknowledge and agree that Enterasys shall be entitled to, at its option, suspend its performance of Services hereunder or terminate this Agreement upon the provision of fourteen (14) days prior written notice in the event that (i) the party from whom you purchased Services is in default of its payment obligations to Enterasys with regard to your Contract; or (ii) you are in default of your payment obligations to such party. In either event, your sole recourse with respect to such suspension or termination of Services shall be against the party from whom you purchased the Services and you expressly release Enterasys from the same.
- b. Renewal Fees. You must renew your Contract prior to its expiration or Enterasys will have the right to charge a reinstatement fee of fifteen percent (15%) of the renewal fee. Enterasys may, in its discretion, change its support Service availability and fee for a Contract upon its renewal.
- c. Taxes. You are liable for any taxes, public charges, tariffs and export and import duties however designated, and any interest and penalties thereon, arising from the Contract or on the Service or use of any products, or any action taken hereunder, exclusive of taxes based upon Enterasys' net or gross income. Any such charges shall be in addition to charges specified for support services provided hereunder. To the extent that you are tax exempt, this Section shall not apply.
- d. Customs Requirements. You must meet any customs requirements necessary for importation of replacement products hereunder, including payment of import duties, taxes, and fees (including storage) where applicable and securing any import documentation required (including, but not limited to, import permits and licenses) before requesting replacement

products. Enterasys is not responsible for delays due to customs, duties, or other local governmental or administrative imposed restrictions on the importation of products.

8. LIMITATION OF LIABILITY.

IN NO EVENT SHALL ENTERASYS OR ITS AFFILIATES, DISTRIBUTORS, RESELLERS, OTHER PARTNERS, SUPPLIERS, OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES (COLLECTIVELY, "RELEASED PARTIES") BE LIABLE TO YOU FOR ANY (I) INDIRECT, INCIDENTAL, SPECIAL, PUNATIVE, OR CONSEQUENTIAL DAMAGES, OR (II) LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOSS OF DATA, MESSAGES OR USE. THE FOREGOING LIMITATION SHALL APPLY REGARDLESS OF THE CAUSE OF ACTION UNDER WHICH SUCH DAMAGES ARE SOUGHT AND EVEN IF ENTERASYS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE RELEASED PARTIES' AGGREGATE TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT DURING THE TWELVE

(12) MONTH PERIOD FOR WHICH ANY FEE PAID RELATES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, IS LIMITED TO THE AMOUNT PAID FOR PROVISION OF THE SERVICES IN RELATION TO THAT PERIOD.

9. FORCE MAJEURE.

Enterasys shall not be liable or deemed in default for any delay in performance under the Agreement resulting directly or indirectly from acts of God, war, insurrection, national emergency, fires, strikes, labor disputes, or any other cause beyond the reasonable control of Enterasys.

10. TERMINATION.

The Agreement may be terminated by Enterasys:

- a. Immediately if you (i) breach any term herein and fail to cure such breach within thirty (30) days of written notice of such breach, (ii) become insolvent, file bankruptcy or have a receiver or other similar officer appointed, or (iii) undergo a change in ownership or control.
- b. Upon fourteen (14) calendar days' prior written notice if Enterasys determines, in its sole discretion, that you are detrimentally affecting Enterasys' ability to adequately support you by refusing or neglecting to (i) implement Enterasys' recommendations for corrective action to resolve any on-going problem or (ii) install updates or upgrades. In such event, previously paid support services fees shall not be refunded.
- c. Upon five (5) calendar days' prior written notice in the event you do not pay applicable support services fees or any other monies due to Enterasys in full within thirty (30) days of Enterasys' invoice.

You may only terminate the Agreement:

- a. If Enterasys materially fails to perform in accordance with these terms and conditions, and such failure is not cured within thirty (30) days of written notice of such failure. Upon any

such termination, any unused previously paid support service fees shall be refunded to you on a pro-rata basis based on the number of months remaining under the Agreement.

- b. With the mutual consent of Enterasys for the purpose of entering into a new agreement resulting from the purchase, upgrade or consolidation of Enterasys equipment.

11. CONFIDENTIAL INFORMATION.

Confidential information ("Information") means all business, technical, marketing and financial information, data, trade secrets, know-how, intellectual property, and computer programs of Enterasys and its suppliers whether clearly marked as confidential, proprietary or the like or not. You shall at all times, both during the term of the Agreement and thereafter, hold all Information in confidence and shall not disclose any Information to anyone except to those of your employees, agents, or contractors with a need to know for purposes of carrying out the Agreement and who are bound by obligations of confidentiality. Upon the expiration or termination of the Agreement, you shall return to Enterasys all Information (including any copies thereof) in your possession, custody, or control. You will indemnify Enterasys for any misuse of Information.

12. GENERAL.

- a. Export Controls. You acknowledge that the products, Services and other deliverables supplied to you hereunder are subject to export controls under the laws and regulations of the United States. You agree to comply with such laws and regulations governing use, export, re-export, and transfer of such products, Services and deliverables, and will obtain all required United States and local authorizations, permits, or licenses.
- b. Entire Agreement. The Agreement, including any attachments, constitutes the entire and only agreement between Enterasys and you with respect to the furnishing of Services for the Covered Products included on the Contract, and supersedes all prior or contemporaneous discussions, representations, understandings or agreements, whether oral or in writing, between the parties with respect to the subject matter of the Agreement. Unless otherwise expressly provided herein, no modifications to the Agreement or any attachments shall be binding on either party unless made in writing and signed by duly authorized representatives of both parties.
- c. Governing Law. The Agreement shall be governed in accordance with the laws of the Commonwealth of Massachusetts. Any legal action brought pursuant to the Agreement shall be brought only in the State or Federal courts of Massachusetts and shall be initiated within a period of one (1) year following the discovery by the party bringing such action of the event giving rise to the cause of action. Both parties waive any objection to the personal jurisdiction of such courts.
- d. Waiver. The waiver by either party of a breach of any of the terms and conditions of the Agreement must be in writing and will not be construed as a waiver of any subsequent breach of such term or condition or the waiver of the provision itself. A party's performance after the other party's breach shall not be construed as a waiver of that breach.
- e. Assignment. This Agreement shall inure to the benefit of the parties' successors and assigns. You may not assign or otherwise transfer, in whole or in part, the Agreement without the prior written consent of Enterasys. Enterasys may assign or otherwise transfer the Agreement in its sole discretion.

- f. Severability. In the event that any of the terms of the Agreement become or are declared to be illegal or otherwise unenforceable by a court of competent jurisdiction, such terms shall be null and void but all remaining terms shall remain in full force and in effect.
- g. Notices. Any notices given hereunder must be in writing and shall be effective upon mailing if mailed via certified mail or overnight courier or upon transmission if transmitted via facsimile or electronic mail.

13. AUTHORIZATION.

The individual accepting the terms and conditions of the Agreement acknowledges that he/she is an authorized representative and has read and agrees to the terms and conditions of the Agreement.