



## Service Agreement – Terms and Conditions Hardware Service Agreement

---

BY ACCEPTING THE SERVICES AND SUPPORT DESCRIBED ON YOUR INVOICE, YOU AGREE TO BE BOUND BY AND ACCEPT THE TERMS AND CONDITIONS HEREIN. PLEASE READ THIS AGREEMENT IN ITS ENTIRETY. THESE TERMS AND CONDITIONS (THE "AGREEMENT") WILL SUPPLEMENT THE TERMS AND CONDITIONS OF ANY APPLICABLE OVERRIDING SIGNED AGREEMENT BETWEEN YOU AND DYNAMIC NETWORK FACTORY, INC. dba DNF STORAGE, REFERRED TO HEREIN AS DNF (INCLUDING WITHOUT LIMITATION, DNF'S STANDARD KEY CUSTOMER PURCHASE AGREEMENT), OR IN THE ABSENCE OF SUCH AN AGREEMENT, DNF'S STANDARD INVOICE TERMS AND CONDITIONS OF SALE. THIS CONTRACT IS BETWEEN YOU AND THE DNF ENTITY ("DNF" OR "OUR") AS SPECIFIED IN THE AFOREMENTIONED SIGNED AGREEMENT OR DNF'S STANDARD INVOICE TERMS AND CONDITIONS. ALL CAPITALIZED TERMS AND CONDITIONS NOT DEFINED HEREIN SHALL HAVE THE MEANING SPECIFIED IN THE AFOREMENTIONED SIGNED AGREEMENT OR DNF'S STANDARD INVOICE TERMS AND CONDITIONS.

1. **Services that DNF Will Supply:** For your one-time payment to us of the price shown on your Invoice (the "Total Price") plus any applicable sales taxes, DNF ("we," "us" or "DNF") will provide you with the warranty and services you purchased pursuant to the following terms and conditions:

- 1.1 **Scope of Services:** DNF agrees to deliver to you the services and applicable Terms and Conditions described herein. DNF reserves the right to change or modify any of the terms and conditions contained in the Terms and Conditions at any time and from time to time in its sole discretion, and to determine whether and when any such changes apply to both existing and future customers. A third party service provider, under subcontract with DNF, may provide some or all of the Technical Support Services.

### **Product Support:**

**Products Covered ("Covered Product"):** Hardware Support covers any hardware that is factory installed by DNF. When we refer to "System(s)" in this Agreement, we mean DNF-branded software and hardware that is sold as new, in a standard configuration(s) at the time of purchase for the following equipment: DNF computers, server systems, and data storage units. Excluded from this agreement are any additional items sold through DNF or integrated by custom factory integration. The System covered under this agreement is described in your invoice.

This contract is valid on System(s) purchased in the United States only. The Services to be provided under this agreement apply only to the United States. References to the United States include the continental United States, Alaska, and Hawaii.

**Limits of Support Services:** THIS AGREEMENT IS OF LIMITED DURATION AND COVERAGE. This Agreement extends only to original purchasers of the Warranty shown on the Invoice and located within the United States as determined by DNF. Except as stated below, the services DNF

agrees to provide under this Agreement are repair services that are necessary because of any existing defect, or a defect occurs in materials or workmanship in DNF's Supported System or in any System component covered by this Agreement. Preventive Maintenance is not included. Installation, de-installation, or relocation services and operating supplies are not included. **Repairs necessitated as a result of alteration, adjustment, or repair by anyone other than DNF (or its representatives) are not included.** DNF is not obligated to repair any DNF System or System component which has been damaged as a result of: (i) accident, misuse, theft, or abuse of the System or components (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than DNF (or its representatives), (ii) an act of God such as, but not limited to, lightning, fire, flooding, tornados, earthquakes, explosion and hurricanes, (iii) acts of war, terrorist attack, rebellion or sabotage, or (iv) the moving of the Covered System from one geographic location to another or from one entity to another.

With regard to any warranty plans that are not within the coverage of this Agreement, it will be within DNF's discretion whether to perform the services, and if DNF elects to perform the services, the services will be subject to an additional time and material charge to be paid by the customer.

**Type of Service Plans:** The extended service type (**Silver, Gold or Platinum Warranty Plans**) you have chosen is recorded on your invoice. PPM means the principal period of maintenance or the principal hours during which Services are rendered for a service plan.

**Silver Warranty Plan:** Systems you purchase from DNF come with a one-year Silver Warranty Service. Additional years of Silver Warranty Service may be purchased and they will be listed on your invoice. During the one-year period beginning on the invoice date, or if additional Silver Warranty Service years were purchased for the duration listed on your invoice, DNF will repair or replace parts or products returned to DNF's facility. This Warranty Service is depot at DNF's facility in Hayward, California. To request Silver Warranty Service, you must contact DNF's Customer Technical Support at 1-510-265-1122 extension 211 within the limited warranty period Monday through Friday 8:00 a.m. to 5:00 p.m. Pacific Standard Time. You may email our technical support team at [Support@DNFstorage.com](mailto:Support@DNFstorage.com)

**Gold Warranty Plan:** Our invoice to you will indicate whether you purchased the Gold Warranty Plan providing extended phone technical support hours and 9x5 Next Business Day on-site support in addition to other quality services listed in the Silver Warranty Plan. For after hours support, call us at 1-510-265-1122 option 9. ***On-site support is for hardware only. All software support is provided by telephone only.*** Your request will be escalated to the appropriate support engineer who will contact you within four hours. You may also email us anytime at [Support@DNFstorage.com](mailto:Support@DNFstorage.com). The support engineer will diagnose your problem and help you to resolve it on the phone. If the support engineer determines that you have a part that needs to be changed and if he/she determines that the defective part is a "FRU," you may receive such component to install without a service engineer arriving on-site. DNF will provide exchange basis replacement parts. You will be asked to fill out an RMA Form. Please see the "RMA" and "Advanced RMA" sections. If the service engineer cannot resolve your problem using the methods explained above, a service technician will in most cases be dispatched to arrive at your location for On-Site Service by the next business day after dispatch (during your Principal Period of Maintenance (PPM)), Monday through Friday 8:00 a.m. to 5:00 p.m. excluding regularly observed holidays. If the request is dispatched after 12:00 p.m. Pacific Standard Time, the service technician may not arrive at your location until the next business day.

**Platinum Warranty Plan:** Our invoice to you will indicate whether you purchased the Platinum Warranty Plan providing 24x7x4 on-site support in addition to other quality services listed in the Silver and Gold Warranty Plan. A Basic Care Kit must be purchased with your system as part of the Platinum Warranty Plan. ***On-site support is for hardware only. All***

**software support is provided by telephone only.** For after hours support, call us at 1-510-265-1122 Option 9. Your request will be escalated to the appropriate support engineer who will contact you within four hours. You may also email us anytime at [Support@DNFstorage.com](mailto:Support@DNFstorage.com). The support engineer will diagnose your problem and help you to resolve the issue over the phone. If the support engineer determines that you have a part that needs to be changed and he/she determines that the defective part is a “**FRU**,” you may receive such component to install without a service engineer arriving on-site. DNF will provide an exchange basis replacement part. You will be asked to fill out an RMA Form. Please see the “RMA” and “Advanced RMA” sections. If the service engineer cannot resolve your problem using the methods explained above, a service engineer will be dispatched within 4 hours after determining the hardware problem. Four hour response may not be available in all locations. The Basic Care Kit must be available to the technician when he/she arrives on-site. DNF will not be responsible for replacing these items if they have been lost or misplaced.

**Standard RMA:** If a DNF engineer determines that a part(s) must be replaced, you will be asked to fill out a Return Material Authorization (RMA) form, and DNF will issue you an RMA Number. You must ship the products back to DNF at your expense in their original or equivalent packaging, mark the RMA number on the box, prepay shipping charges, and insure the shipment or accept the risk of loss or damage during shipment. DNF will ship the repaired or replacement parts to you freight prepaid if you use an address in the continental United States, where applicable. Shipments to other locations will be sent freight COD.

**Advanced RMA:** You may choose to have parts sent to you prior to shipping the failed component back to DNF. You may do this by selecting the “Advanced RMA” option on the RMA form when request the RMA number. In this case, DNF will ship replacement parts to you freight prepaid if you use an address in the continental United States, where applicable. Shipments to other locations will be sent freight collect. For Advanced RMA, a completed RMA form must be received by DNF no later than 2:00pm Pacific Time. Replacement parts are new or reconditioned. DNF may provide replacement parts made by various manufacturers when supplying parts to you. The limited warranty term for a replacement part is the remainder of the limited warranty term for the System. If you choose the Advanced RMA option you will be asked to provide DNF a credit card number. You must pay DNF for replacement parts if the replaced part is not returned to DNF. The process for returning replaced parts, and your obligation to pay for replacement parts if you do not return the replaced parts to DNF will be in accordance with DNF's RMA Policy in effect on the date of the exchange. If in any event a part is shipped to you and the defective unit is not returned to DNF within thirty (30) days, you agree to pay DNF for the replacement unit upon receipt of invoice. Failure to honor the invoice within ten (10) days after receipt will cause the cancellation of this agreement and may result in other legal steps.

**Field Replaceable Units “FRU”:** If DNF elects to replace a component; the replacement will be made accordance with DNF's RMA Policy in effect on the date of the exchange. In any instance in which DNF issues a Return Material Authorization Number, DNF must receive the part(s) for repair prior to the expiration of the limited warranty period in order for the repairs to be covered by the limited warranty. A “**FRU**” is a component that is easily uninstalled and reinstalled, such as removable Hard Drives, Hard Drive Trays, Hot Swap Power Supplies, Fans, or any other component designated from time to time as a component that may be replaced by the customer. You may receive such component to install without a service technician arriving on-site.

**Exchange:** If DNF elects to exchange a System, the exchange will be made in accordance with DNF's Exchange Policy in effect on the date of the exchange. In any instance in which DNF issues a Return Material Authorization Number, DNF must receive the product(s) for repair prior to the expiration of the limited warranty period in order for the repairs to be covered by the limited warranty. You accept full responsibility for your software and data. DNF is not required to advise or remind you of appropriate backup and other procedures.

*NOTE: Before you ship the product(s) to DNF, back up the data on the hard disk drive(s) and any other storage device(s) in the product(s). Remove any removable media, such as diskettes, CDs, or PC Cards. DNF does not accept liability for lost data or software.*

**Parts Ownership:** All Service parts removed from your System become the property of DNF. You will be obligated to pay at the current retail price(s) for any service parts removed from your System and retained by you. DNF uses new and reconditioned parts made by various manufacturers in performing warranty repairs. DNF owns all parts removed from repaired products. DNF uses new and reconditioned parts made by various manufacturers in performing limited warranty repairs and building replacement products. If DNF repairs or replaces a product, its limited warranty term is not extended.

**LIMITATION OF REMEDY:** YOUR EXCLUSIVE REMEDY AND DNF'S ENTIRE, COLLECTIVE LIABILITY IN CONTRACT, TORT OR OTHERWISE, UNDER THIS AGREEMENT IS THE REPAIR OF THE DEFECTIVE SYSTEM OR COMPONENTS IN ACCORDANCE WITH THIS AGREEMENT. IF DNF IS UNABLE TO MAKE SUCH REPAIR, YOUR EXCLUSIVE REMEDY AND DNF'S ENTIRE LIABILITY WILL BE THE PAYMENT OF ACTUAL DAMAGES NOT TO EXCEED THE CHARGE PAID BY YOU TO DNF AT TIME OF PURCHASE OR, IF NO CHARGES WERE PAID, THE THEN-CURRENT PUBLISHED CHARGES FOR THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL DNF BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, EXPENSES, COST, PROFITS, LOST SAVINGS OR EARNINGS, LOST OR CORRUPTED DATA, OR OTHER LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR OUT OF THE INSTALLATION, DE-INSTALLATION, USE OF, OR INABILITY TO USE THE SYSTEM, OR OUT OF THE USE OF ANY SERVICE MATERIALS PROVIDED HEREUNDER.

Neither DNF nor you may institute any action in any form arising out of this agreement more than eighteen (18) months after the cause of action has arisen, or in the case of nonpayment, more than eighteen (18) months from the date of last payment. With regard to any services that are not within the coverage of this agreement, it will be within DNF's discretion whether to perform the services, and if DNF elects to perform the services, the services will be subject to an additional charge to be paid by the customer.

**1.2 Third Party Products Not Covered:** Technical support services do not include warranty or repair service or any other services for third party products. DNF is not responsible for warranty or services for those third party systems. DNF is not responsible for the performance of other vendors' products and services. You hereby indemnify and hold DNF harmless for any claims related to those third party products.

**1.3 Exclusions:** Unless otherwise expressly provided in the applicable Service Description, Support Service does not cover warranty or troubleshoot a) accessories, supply items, peripherals, and certain parts, such as batteries, and covers b) service of equipment damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by you, removal or alteration of equipment or parts identification labels, or failure caused by a product for which DNF is not responsible.

**2. DISCLAIMER OF ALL WARRANTIES:** DNF MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO: ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING SERVICES, OR ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR

THE RESULTS OF ANY RECOMMENDATION DNF MAY MAKE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES CONCERNING THE PERFORMANCE, MERCHANTABILITY, SUITABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF THE DELIVERABLES OR OF ANY SYSTEM THAT MAY RESULT FROM THE IMPLEMENTATION OF ANY RECOMMENDATION DNF MAY PROVIDE. NOTHING IN THIS AGREEMENT OR ANY OTHER WRITTEN DOCUMENTATION OR ANY ORAL COMMUNICATIONS WITH THE CUSTOMER MAY ALTER THE TERMS AND CONDITIONS OF THIS PARAGRAPH.

### **3. Your Responsibilities:**

To receive service and support, you are responsible for complying with the following:

- a) Valid Service Contract: DNF must have received payment for Support within the time limit set on your invoice noted as of the "Due Date." Customer shall pay an additional fee of 3% late payment fee per month for invoices not paid within such period. If support is not renewed prior to the warranty expiration date, a \$200 reinstatement fee will be charged and warranty charges must be backdated to the expiration. If support is not renewed within six months after the expiration date, a re-certification fee of \$500 will be charged in addition to backdated warranty coverage charges and a compounded late payment fee. Any components that fail during any lapse in service coverage must be replaced at the sole cost of the customer before warranty coverage can be extended. The systems are subject to re-evaluation for service maintenance six months past the expiration date. If you are currently not entitled to support, then you should submit a valid credit card number to purchase the appropriate support for the covered product.
- b) Prepare for the Call: Please provide the technician or the customer service representative with your name, company name, and phone number first. This is in case you get disconnected. You will help us serve you better if you have the following information and materials ready when you call:
  - Your System's invoice number.
  - Date of purchase.
  - Your System's serial number.
  - Your System's model number.
  - Current version of software you are running.
  - Description and symptoms of the problem(s).

Your System must be located in our database before we can provide you with support; thus, if you do not have your invoice number, we may not be able to locate your unit information immediately, and we may need to call you back.

- c) Call For Assistance: For service support call the following number between 8:00 a.m. and 5:00 p.m. Pacific Time, Monday through Friday, excluding regularly observed holidays;  
Technical Support & Customer Service 1-510-265-1122
- d) Explain Your Problem to the Technician: Now you are ready to describe the problem you are having with your System. Let the technician know what error message you are getting and when it occurs; what you were doing when the error occurred; and what steps you may have already taken to solve the problem.
- e) Cooperate with the Technician: Experience shows that most System problems and errors can be corrected over the phone as a result of close cooperation between the user and the technician. Listen carefully to the technician and follow the technician's directions.
- f) If the Technician is Unable to Resolve this Issue Over the Phone and Determines:
  - A part needs to be replaced.
  - The system requires in-house service.
  - A technician needs to be dispatched on-site.

DNF regrets that it cannot accept Systems or parts that are not returned in accordance with the shipping instructions listed below.

- 1) **Software/Data Backup:** You understand and agree that we are not responsible for any loss of software or data. You should backup the software and data on your System's hard disk drive and on any other storage device(s) in the System.
- 2) **Obtain a Return Authorization Number (RMA#):** If the technician determines that a part in your unit needs to be replaced, you will need to fill out an RMA form. Either submit the online form at <http://dnfstorage.com/rma-form.asp> or print the PDF form from our web site and fax the completed information to 510-265-1565. Once we receive it, we will issue a RMA number. For all advanced RMAs, no matter what kind of Service Warranty you have, you must provide a credit card number. You must pay DNF for replacement parts when the replaced part is not returned to DNF within 30 days of the date the replacement was shipped by DNF and for parts used to repair Systems not covered under this agreement. Parts will be priced at DNF's then-current standard prices. If a payment due from the customer is late and not because it is disputed in good faith, DNF may, at its discretion, refuse to ship parts or respond to technical and support inquiries until the late payment is made.
- 3) **Display The Return Authorization Number (RMA #):** Please Print the RMA# you obtain from DNF customer service clearly and conspicuously on the outside of the shipping box. Unfortunately, DNF will have to refuse service, and will return to you, any shipment of parts or Systems that do not clearly and conspicuously display the authorization number on the packaging.
- 4) **Explain the Problem in Writing:** Please enclose a brief description of the problem encountered, the error message received, and the suspected defect you discussed with the technician over the phone.
- 5) **Packaging:** You will be responsible for ensuring that the System or parts you will be shipping to us are properly packaged and you will bear the full risk of loss or damage for any System or part that is returned improperly packaged. If you are shipping a System with removable drives, we request that you remove all drives with their drive trays, place them in static-sensitive bags and ship them in a separate box. If you are shipping a hard disk drive only, remove it from the tray, place it in a static-sensitive bag and pack it so it has thick foam cushioning on all four sides--the drive must not be able to move inside the box. All Systems must be double boxed with sufficient cushioning on all four sides. Loose fill is not acceptable cushioning for an inside box. Systems or parts must not move inside the box. If you don't have the original boxes and are not able to secure the system in a shipping box, please purchase proper shipping boxes from DNF.
- 6) **Shipping:** You will be responsible for all freight costs for any system or component shipped to DNF for repair or replacement. Please ship any package via 'air' methods using FedEx 1, 2, 3 day service or UPS Air. Please make sure that you insure the package you return to us for the full cost of replacement.
- 7) **Permission to Access Your System and Information It Contains:** You represent and warrant to DNF that you have obtained permission for both you and DNF to access and use your System, the data on it, and all hardware and software components included in it, for the purpose of providing the Technical Support Services. If you do not already have that permission, it is your responsibility to obtain it, at your expense, before you ask DNF to perform the On-Site Warranty or any Technical Support Services.
- 8) **Accessing Hardware Or Software That Are Not Manufactured By DNF:** Some of the On-Site Warranty or Technical Support Services may require DNF to access hardware or software that are not manufactured by DNF. Some manufacturers' warranties may become void if DNF or anyone else other than the manufacturer or its authorized representative works on the hardware or software. It is your responsibility to look at your warranty, and to ensure that DNF's performance of On-Site Warranty or Technical Support Services will not affect the warranty, or if it does, that the effect will be acceptable to you. DNF DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE DNF SERVICES MAY HAVE ON THOSE WARRANTIES.

UNTIL YOU HAVE COMPLIED WITH THE ABOVE PROCEDURES, DNF CANNOT PROVIDE TECHNICAL SUPPORT OR DISPATCH A TECHNICIAN (IF IT APPLIES TO YOU) TO PERFORM ON-SITE REPAIRS.

The hours of support shall not include regular holidays that include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and the days after Thanksgiving and Christmas Day. DNF is not liable for any failure or delay in performance due to any cause beyond its control. In any event, if DNF's ability to render support services is impaired by circumstances beyond DNF's control, DNF may terminate this contract, you will receive a refund for any unused portion of your service term for which you have paid.

4. **LIMITATION OF LIABILITY:** UNDER NO CIRCUMSTANCES WILL DNF OR ITS SUBCONTRACTORS BE LIABLE FOR ANY OF THE FOLLOWING: 1) THIRD PARTY CLAIMS AGAINST YOU FOR DAMAGES; 2) SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE, INCLUDING BUT NOT LIMITED TO PRODUCTS OR SYSTEMS BEING UNAVAILABLE FOR USE, LOST PROFITS OR SAVINGS OR LOST OR CORRUPTED DATA OR SOFTWARE, OR FOR ANY DAMAGES FOR PERSONAL INJURY, OR DEATH, WHETHER DIRECT, INDIRECT OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, OR ARISING OUT OF THE RESULTS OR OPERATION OF ANY SYSTEM RESULTING FROM IMPLEMENTATION OF ANY RECOMMENDED PLAN OR DESIGN, EVEN IF DNF OR ITS SUBCONTRACTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGE, AND EVEN IF YOU ASSERT OR ESTABLISH A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL DNF BE LIABLE TO YOU FOR ANY AMOUNT IN EXCESS OF THE ON-SITE WARRANTY OR TECHNICAL SUPPORT SERVICES FEES ACTUALLY RECEIVED BY DNF UNDER THE APPLICABLE SERVICE DESCRIPTION FOR THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THAT DNF IS NOTIFIED BY YOU OF ANY CLAIM OF LIABILITY. THIS LIMITATION OF LIABILITY APPLIES TO ALL TYPES OF LEGAL THEORIES, INCLUDING CONTRACT, TORT (INCLUDING NEGLIGENCE), PROFESSIONAL LIABILITY, PRODUCT LIABILITY, WARRANTY, OR ANYTHING ELSE. THIS LIMIT ALSO APPLIES TO ANY DNF SUBCONTRACTOR. IT IS THE MAXIMUM AMOUNT FOR WHICH DNF AND ITS SUBCONTRACTORS ARE RESPONSIBLE.

5. **General Terms:**

5.1 **Term and Renewal:** Prior to the expiration of your service contract, you may upgrade your service level or extend your service period based on available options then in effect. Any upgrades will not apply to conditions pre-existing the effective date of the upgrade.

5.2 **Claims of Confidentiality or Proprietary Rights:** You agree that any information or data disclosed or sent to DNF, over the telephone, electronically or otherwise, is not confidential or proprietary to you.

5.3 **Cancellation:** You may cancel this Agreement by providing to DNF at least thirty (30) days written notice of your decision to cancel. (DNF will issue a refund to you for any unused portion of the service term for which you have paid. If more than thirty (30) days have transpired for the current contract year, then a refund will not be paid for that current contract year.)

5.4 **Entire Agreement:** This contract is the entire agreement between you and DNF with respect to its subject matter and none of DNF's employees or agents may orally vary the terms and conditions of this contract.



- 5.5 **Forms:** All preprinted terms and conditions stated on any forms (such as purchase orders) that you have sent to DNF or which you may send to DNF in the future will not alter or supplement this agreement.
- 5.6 **Assignment:** DNF reserves the right to assign its right and obligations under this agreement to a qualified third party designated by DNF without notice to you. In the event of such an assignment, DNF will no longer be responsible for any performance obligations under this agreement or any other liability associated with this agreement.
- 5.7 **Governing Law and Forum:** THE CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING ANY EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION (WHETHER OF THE STATE OF CALIFORNIA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF CALIFORNIA SUBJECT TO DISPUTE RESOLUTION. ANY LEGAL ACTION UNDERTAKEN UNDER THIS AGREEMENT SHALL BE BROUGHT ONLY IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN HAYWARD, ALAMEDA COUNTY, CALIFORNIA. THE PARTIES HEREBY SUBMIT TO THE JURISDICTION OF ALL STATE AND FEDERAL COURTS IN HAYWARD, ALAMEDA COUNTY, CALIFORNIA AND HEREBY AGREE THAT ANY SUCH COURT SHALL BE A PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE HEREUNDER, SUBJECT TO THE DISPUTE RESOLUTION PROVISIONS BELOW.
- 5.8 **Dispute Resolution:** The parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against DNF, its agents, employees, successors, assigns, or affiliates (collectively for purposes of this paragraph, "DNF") arising out of or relating to this Agreement, DNF's advertising, or any related purchase (a "Dispute") through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this paragraph.
- 5.9 **Order of Precedence:** If any inconsistencies or conflicts arise between the provisions of this Agreement, any Service Description, Supplemental Terms and Conditions, any other applicable Customer signed agreement, or Invoice, the following order of precedence shall apply in order of priority:
- a. This Agreement;
  - b. Supplemental Terms and Conditions;
  - c. Service Description;
  - d. Any applicable customer signed agreement;
  - e. Invoice.
- 5.10 **Limitation of Actions:** Neither you nor DNF will bring a legal action, related to the DNF Technical Support Services, more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.
- 5.11 **Force Majeure:** Neither you nor DNF is responsible for failure to fulfill any obligation due to causes beyond its control. If DNF's ability to render Technical Support Services is impaired by circumstance beyond DNF's control, DNF may terminate this Agreement, in which event, provided that circumstances resulting in DNF's impaired ability to provide such services did not



result from your actions or inaction, you will receive a refund for any unused portion of your service term for which you have paid.

5.12 **Transfer of this Agreement:** Subject to the limitations set forth in this Agreement you may transfer this Agreement to anyone who buys your entire System before the Termination Date of this Agreement, provided you are the original purchaser of the System and this Agreement, or you have purchased the System and this Agreement from its original owner (or a previous transferee) and have complied with all the transfer rules in this Agreement.

Please note that if you move your System to a geographic location in which the Service coverage is not available at the same price as you paid for this Agreement, you may incur an additional charge to maintain the same categories of Service coverage at the new location. If you choose not to pay such additional charge, your Service may be automatically changed to categories of Service that are available at such price or a lesser price in such new location with no refund available. Additionally, if (i) you transfer your Agreement to a buyer who will move the System to a geographic location in which the Service coverage is not available at the same price as you paid for this Agreement, or (ii) if the transferee (i.e., the buyer) of this Agreement wishes to change the Service coverage, then you may incur an additional charge for such transfer fee discussed above.

5.13 **Savings Clause:** In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

\*\*\*\*\* END \*\*\*\*\*