

# SYMANTEC MAIL SECURITY APPLIANCE LICENSE AND WARRANTY AGREEMENT

## (Symantec Mail Security 8100 Series Appliance)

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### 1. License:

#### 1.1 You may, subject to Your compliance with the terms and conditions of this License Agreement:

- A. use the Licensed Software solely as part of the Appliance to shape network traffic sent to and from Your Users via an email mailbox account or an email address hosted by Your Email Service and in no more than the number of Users as have been licensed to You under the applicable License Instrument. You must have a license for each User for whom You use the Licensed Software to shape network traffic. "User" means an individual person and/or device who is authorized by You to use and/or benefits from the use of the Licensed Software, or is an individual person and/or device who actually uses any portion of the product or service. "Email Service" means Your email services provided to Your Users for the purposes of conducting Your internal business and which are enabled via Your mail transfer agent. Your rights to use the Licensed Software shall end on the end date indicated on the applicable License Instrument. The License Instrument shall constitute proof of Your right to use the Licensed Software as part of the Appliance in the quantity specified therein. If no License Instrument accompanies, precedes, or follows this license, You are not authorized to use the Licensed Software;
- B. use the Restore Software solely to restore the Appliance to its original factory functionality in the event the Licensed Software preloaded on the Appliance is corrupted or becomes unusable; and
- C. make copies of the user documentation which accompanies the Appliance as necessary to support Your authorized use of the Appliance.

#### 1.2 You may not, without Symantec's prior written consent, conduct, cause or permit the:

- A. copying of the user documentation that accompanies the Licensed Software unless expressly permitted herein;
- B. use, copying, modification, rental, lease, sublease, sublicense, or transfer of the Licensed Software except as expressly provided in this License Agreement;
- C. creation of any derivative works based on the Licensed Software;

- D. reverse engineering, disassembly, or decompiling of the Licensed Software (except that You may decompile the Licensed Software for the purposes of interoperability only to the extent permitted by and subject to strict compliance under applicable law);
- E. use of the Licensed Software in connection with service bureau, facility management, timeshare, service provider or like activity whereby You operate or use the Licensed Software for the benefit of a third party;
- F. use of the Licensed Software by any party other than You;
- G. use of a later version of the Licensed Software other than the version that accompanies this License Agreement unless You have separately acquired the right to use such later version through a License Instrument or Support Certificate;
- H. use a previous version or copy of the Licensed Software after You have received and installed an upgraded version. Upon upgrading the Licensed Software, all copies of the prior version must be destroyed;
- I. use the Restore Software for any purpose other than to restore the Appliance to the original factory functionality;
- J. use, if You received the Licensed Software distributed on an Appliance containing multiple Symantec products, any Symantec software on the Appliance for which You have not received a permission in a License Instrument; nor
- K. use the Licensed Software in any manner not authorized by this License Agreement or the applicable License Instrument.

**2. Content Updates:** Certain Symantec products use content that is updated from time to time, including but not limited to: updated anti-spyware definitions for anti-spyware products; updated antispam definitions for antispam products; updated virus definitions for antivirus and crimeware products; updated URL lists for content filtering and antiphishing products; updated firewall rules for some firewall products; updated intrusion-detection data for intrusion detection products; updated lists of authenticated web pages for website authentication products; updated policy compliance rules for policy compliance products; and updated vulnerability signatures for vulnerability assessment products. These updates are collectively referred to as "Content Updates". If You subscribe to a Symantec maintenance/support offering consisting of or including Content Updates, as separately described in the Symantec certificate for such subscription (the "Support Certificate"), You are granted the right to use, as part of the Licensed Software, the Content Updates included in such subscription to the extent they become generally available to Symantec's end user customers as part of such subscription, for any period for which You have purchased the appropriate maintenance/support, as indicated on the face of such Support Certificate. This License Agreement does not otherwise permit You to obtain and use Content Updates.

**3. Privacy; Data Protection:** As an essential function of the Appliance, the Appliance may collect and store IP addresses but does not correlate this information with any personally identifiable information of the end user. This information is collected and stored on Your side only and is not transmitted to Symantec.

**4. Geographic Use Location.** Prior to using the Hardware, You must register a service tag for such Hardware in the location You intend to use the Hardware ("Geographic Use Location"). In the event You wish to change Your Geographic Use Location, You must re-register the Hardware using the tag transfer process located at [http://www.symantec.com/business/support/contact\\_techsupp\\_static.jsp](http://www.symantec.com/business/support/contact_techsupp_static.jsp). Any change to the Geographic Use Location and/or any service request which requires Symantec to obtain additional information and/or validate information to acknowledge and approve warranty service entitlements may result in a delay in providing such warranty service entitlements.

## **5. Limited Warranty:**

**5.1 Licensed Software Limited Warranty:** Symantec warrants that the Licensed Software will perform on the Appliance in substantial compliance with the written documentation accompanying the Appliance for a period of ninety (90) days from the date of original purchase of such Licensed Software. Your sole remedy in the event of a breach of this warranty will be that Symantec will, at its option, repair or replace any defective Licensed Software returned to Symantec within the warranty period or refund the money You paid for the Appliance. **THE FOREGOING IS YOUR SOLE AND EXCLUSIVE REMEDY, AND SYMANTEC'S SOLE AND EXCLUSIVE LIABILITY FOR SYMANTEC'S BREACH OF THIS LIMITED WARRANTY.**

**5.2 Hardware Limited Warranty.** Symantec warrants that the Hardware shall be free from defects in material and workmanship under normal authorized use and service and will substantially conform to the written documentation accompanying the Hardware for a period of three (3) years from the date of original purchase of the Hardware ("Warranty Period"). Your sole and exclusive remedy for defective Hardware, or component thereof, shall be that Symantec, at its sole option and discretion, (a) upon confirmation of a defect or failure of a Hardware, or component thereof, to perform as warranted in this Section 5.2, and (b) depending on the then-current Geographic Use Location of the Hardware, shall, if notified within the Warranty Period:

- (i) repair or replace the defective Hardware, or component thereof, with either a new or refurbished replacement Hardware, or component thereof, as applicable;
- (ii) provide onsite repair services for any defective Hardware, or component thereof; or
- (iii) repair or replace any defective Hardware returned to Symantec through Symantec's Returned Merchandise Authorization Services process for Hardware.

All defective Hardware, or component thereof, which has been replaced, shall become the property of Symantec. All defective Hardware, or component thereof, which has been repaired shall remain Your property. **THE FOREGOING IS YOUR SOLE AND**

**EXCLUSIVE REMEDY, AND SYMANTEC'S SOLE AND EXCLUSIVE LIABILITY FOR SYMANTEC'S BREACH OF THIS LIMITED WARRANTY.**

**6. Limited Hardware Warranty Support Services.** Warranty support services will be provided in accordance with the then-current Symantec Enterprise Technical Support Policy, which may be revised and updated by Symantec from time to time without notice to You.

The Geographic Use Location of the Hardware will determine whether You are entitled to either warranty service consisting of (a) Next Business Day Service, (b) Same Day Service or (c) Return Merchandize Authorization Services as detailed below in this Section 6. Upon discovery of any failure of the Hardware, or component thereof, to conform to the applicable warranty during the Warranty Period, if You follow the service procedures identified by Symantec in Section 7 and 10 below, which may be updated from time to time without notice to You, You:

- A. **Next Business Day Service.** may initiate a request for next business day onsite repair services if You have purchased such services as part of Your warranty support. A service technician will, in most cases, be dispatched to arrive at Your location for onsite repair services on the next business day; Monday through Friday 8:00 AM to 6:00 PM local time, excluding regularly observed holidays. If the service technician is dispatched for onsite repair services after 5:00 PM local time, the service technician may take additional business day(s) to arrive at Your Geographic Use Location.

or if, for an additional fee and if offered in the then current Geographic Use Location, You have purchased the optional Same Day Service upgrade, You:

- B. **Same Day Service.** may initiate a request for same day onsite services. A service technician will, in most cases, be dispatched to arrive at Your location for onsite service within the same day after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays), provided the service location is between one hundred twenty-five (125) miles from the nearest parts stocking location;

or if Symantec does not have Next Business Day Service or Same Day Service available in Your then current Geographic Use Location or, if, Symantec determines in its sole discretion that Next Business Day or Same Day Service may not be appropriate, You:

- C. **Return Merchandise Authorization Process.** are required to contact Symantec within ten (10) days after such failure and seek a return material authorization ("RMA") number. Symantec will promptly issue the requested RMA as long as Symantec determines that You meet the conditions for warranty service. The allegedly defective Hardware, or component thereof, shall be returned to Symantec, securely and properly packaged, freight and insurance prepaid, with the RMA number prominently displayed on the exterior of the shipment packaging and with the Hardware. Symantec will have no obligation to accept any Hardware which is returned without an RMA number. Symantec reserves the right, in its sole option, to repair or replace defective Hardware, or component thereof. Transportation costs, if any, incurred in connection with the return of a defective Hardware, or component thereof, to Symantec, shall be borne by You. Symantec shall pay any transportation costs incurred with the redelivery of the repaired or replaced Hardware, or component thereof. If, however, Symantec reasonably determines that the Hardware, or component thereof, is functional, You shall pay any transportation costs. If Symantec determines, at its sole discretion, that the allegedly defective Hardware, or component thereof, is not covered by the terms of the warranty provided in Section 5.2, or that a warranty claim is made after the warranty period, the cost of repair by Symantec, including all shipping expenses, shall be borne by You.

**7. Hardware Warranty Service Perquisites.** In order to exercise any of the warranty rights contained in this License Agreement, You must:

- (a) have available an original sales receipt or bill of sale demonstrating proof of purchase with Your warranty claim;
- (b) separately procure and maintain during the entire Warranty Period, an active maintenance contract for the Licensed Software, as designated by Symantec and corresponding support ("Software Support and Maintenance");
- (c) identify for Symantec the then current Geographic Use Location for the Hardware, in accordance with Symantec's requirements.

**8. Hardware Warranty Service Restrictions/Exclusions.** The warranties contained in this License Agreement will not apply to any-Hardware which:

- (a) has been altered, supplemented, upgraded or modified in any way not authorized by Symantec;
- (b) has been repaired except by Symantec or its designee;

Additionally, the warranties contained in this License Agreement do not apply to repair or replacement caused or necessitated by: (i) events occurring after risk of loss passes to You such as loss or damage during shipment; (ii) acts of God including without limitation natural acts such as fire, flood, wind earthquake, lightning, or similar disaster; (iii) improper use, environment, installation or electrical supply, improper maintenance, or any other misuse, abuse or mishandling (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible, defective, or inferior devices, supplies, or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Symantec (or its representatives); (iv) governmental actions or inactions; (v) strikes or work stoppages; (vi) Your failure to follow applicable use or operations instructions or manuals; (vii) Your failure to implement, or to allow Symantec or its designee to implement, any corrections or modifications to

the Hardware made available to You by Symantec; (viii) the moving of the Hardware from one Geographic Use Location to another or from one entity to another or (ix) such other events outside Symantec's reasonable control.

#### 9. Warranty Disclaimers:

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH IN SECTION 5 ARE YOUR EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. SYMANTEC MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE LICENSED SOFTWARE, CONTENT UPDATES, UPGRADES OR HARDWARE WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OR USE OF THE LICENSED SOFTWARE, CONTENT UPDATES, UPGRADES, AND HARDWARE WILL BE UNINTERRUPTED OR ERROR-FREE. YOU MAY HAVE OTHER WARRANTY RIGHTS, WHICH MAY VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.**

**10. Your Obligation: Warranty Service Procedure. UNTIL YOU HAVE COMPLIED WITH THE PROCEDURES SET FORTH BELOW, SYMANTEC CANNOT PROVIDE WARRANTY SUPPORT SERVICES.**

- A. Prepare for the Call. You must have the following information and materials ready when You call the technician: Your system's invoice and serial numbers; the then current Geographic Use Location, the service tag number for the Hardware; model and model numbers; the current version of the operating environment You are using; and the brand names and models of any peripheral devices (such as a mouse and/or keyboard) You are using.
- B. Call For Assistance. For warranty service and support call the support telephone numbers provided upon purchase of Your Software Support and Maintenance.
- C. Explain Your Problem to the Technician. Now You are ready to describe the problem You are having with Hardware. 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.
- D. 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.
- E. Software/Data Backup. If the technician is unable to resolve the problem over the phone and determines that onsite support services as identified in Section 6, above, is necessary, the following standard procedure applies:

**Software/Data Backup.** You understand and agree that Symantec and its licensors are not responsible for any loss of software or data. You should back up the software and data on the hard disk drive of Your Hardware and on any other storage device(s) in the Hardware.

#### 11. Limitation of Liability:

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL SYMANTEC OR ITS LICENSORS, RESELLERS, SUPPLIERS OR AGENTS BE LIABLE TO YOU FOR (i) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES, LOSS OF PROFITS, LOSS OF USE, LOSS OF OR CORRUPTION TO DATA, BUSINESS INTERRUPTION, LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL, OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; OR (ii) ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THIS LICENSE AGREEMENT, EVEN IF SYMANTEC OR ITS LICENSORS, RESELLERS, SUPPLIERS OR AGENTS HAS BEEN ADVISED SUCH DAMAGES MIGHT OCCUR. IN NO CASE SHALL SYMANTEC'S LIABILITY EXCEED THE FEES YOU PAID FOR THE APPLIANCE GIVING RISE TO THE CLAIM. NOTHING IN THIS LICENSE AGREEMENT SHALL OPERATE SO AS TO EXCLUDE OR LIMIT SYMANTEC'S LIABILITY TO YOU FOR DEATH OR PERSONAL INJURY ARISING OUT OF NEGLIGENCE OR FOR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW. THE DISCLAIMERS AND LIMITATIONS SET FORTH ABOVE WILL APPLY REGARDLESS OF WHETHER OR NOT YOU ACCEPT THE LICENSED SOFTWARE OR THE APPLIANCE, CONTENT UPDATES OR UPGRADES**

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**13. Export Regulation:** You acknowledge that the Appliance and related technical data and services (collectively "Controlled Technology") are subject to the import and export laws of the United States, specifically the U.S. Export Administration Regulations (EAR), and the laws of any country where Controlled Technology is imported or re-exported. You agree to comply with all relevant laws and will not to export any Controlled Technology in contravention to U.S. law nor to any prohibited country, entity, or person for

which an export license or other governmental approval is required. All Symantec products, including the Controlled Technology are prohibited for export or re-export to Cuba, North Korea, Iran, Syria and Sudan and to any country subject to relevant trade sanctions. You hereby agree that You will not export or sell any Controlled Technology for use in connection with chemical, biological, or nuclear weapons, or missiles, drones or space launch vehicles capable of delivering such weapons.

#### **14. General:**

**14.1. Assignment.** You may not assign the rights granted hereunder or this License Agreement for the Licensed Software, in whole or in part and whether by operation of contract, law or otherwise, without Symantec's prior express written consent.

**14.2. INTERNATIONAL COMMERCE TERMS (INCOTERMS):** Delivery of all items shall be Ex Works (EXW) Symantec's shipping point – Incoterms 2000. For any tangible Symantec products, title passes to You when such items are made available to the carrier at Symantec's shipping point.

**14.3 Compliance with Applicable Law.** You are solely responsible for Your compliance with, and You agree to comply with, all applicable laws, rules, and regulations in connection with Your use of the Appliance.

**14.3. Audit.** An auditor, selected by Symantec and reasonably acceptable to You, may, upon reasonable notice and during normal business hours, but not more often than once each year, inspect Your records and deployment in order to confirm that Your use of the Licensed Software complies with this License Agreement and the applicable License Instrument. Symantec shall bear the costs of any such audit, except where the audit demonstrates that the Manufacturer's Suggested Reseller Price (MSRP) value of Your non-compliant usage exceeds five percent (5%) of the MSRP value of Your compliant deployments. In such case, in addition to purchasing appropriate licenses for any over-deployed Licensed Software, You shall reimburse Symantec for the auditor's reasonable actual fees for such audit.

**14.4. Governing Law; Severability; Waiver.** If You are located in North America or Latin America, this License Agreement will be governed by the laws of the State of California, United States of America. If you are located in China, this License Agreement will be governed by the laws of the Peoples Republic of China. Otherwise, this License Agreement will be governed by the laws of England. Such governing laws are exclusive of any provisions of the United Nations Convention on Contracts for Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. If any provision of this License Agreement is found partly or wholly illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and remaining provisions of this License Agreement shall remain in full force and effect. A waiver of any breach or default under this License Agreement shall not constitute a waiver of any other subsequent breach or default.

**14.5. Third Party Programs.** This Licensed Software may contain third party software programs ("Third Party Programs") that are available under open source or free software licenses. This License Agreement does not alter any rights or obligations You may have under those open source or free software licenses. Notwithstanding anything to the contrary contained in such licenses, the disclaimer of warranties and the limitation of liability provisions in this License Agreement shall apply to such Third Party Programs.

**14.6. Customer Service.** Should You have any questions concerning this License Agreement, or if You desire to contact Symantec for any reason, please write to: (i) Symantec Enterprise Customer Care, 555 International Way, Springfield, Oregon 97477, U.S.A., (ii) Symantec Enterprise Customer Care Center, PO BOX 5689, Dublin 15, Ireland, or (iii) Symantec Enterprise Customer Care, 1 Julius Ave, North Ryde, NSW 2113, Australia.

**14.7. Entire Agreement.** This License Agreement and any related License Instrument are the complete and exclusive agreement between You and Symantec relating to the Licensed Software and supersede any previous or contemporaneous oral or written communications, proposals, and representations with respect to its subject matter. This License Agreement prevails over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by You, even if signed and returned. This License Agreement may only be modified by a License Instrument that accompanies or follows this License Agreement.

**15. Additional Terms and Conditions.** Your use of the Licensed Software is subject to the terms and conditions below in addition to those stated above.

#### **15.1. Excluded Software:**

The Excluded Software consists of the open source code software known as Linux included with the Appliance. All Excluded Software is licensed under the GNU General Public License, Version 2, June 1991, a copy of which is included with the Licensed Software. The license entitles You to receive a copy of the source code for Linux only upon request at a nominal charge. If You are interested in obtaining a copy of such source code, please contact Symantec Customer Service at one of the above addresses for further information.

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