

# NETGEAR Onsite Hardware Replacement Service Agreement

## Terms and Conditions

1. **Support Services:** Subject to the terms and conditions of this Service Agreement (the "Agreement"), NETGEAR, Inc. ("NETGEAR"), either directly or through its authorized agents or third party service providers, will provide support services (the "Services") for the NETGEAR product registered for such Services (the "Product"), as described in this Service Agreement (the "Agreement").

2. **Customer:** As used herein "Customer" means an end-user who purchases the Services directly from NETGEAR or indirectly from an authorized NETGEAR reseller or distributor located in the following countries:

Australia  
Belgium  
Canada  
France  
Netherlands  
Ireland  
Luxembourg  
United Kingdom  
United States

For the complete and updated list of covered countries, please refer to the URL: <http://onsite.netgear.com>

3. **Eligibility for Services:** To be eligible for the Services, the Customer must register the applicable Product with NETGEAR in accordance with the Product's registration instructions accompanying the Product's documentation within 90 days after the purchase.

Furthermore, the applicable Product shall not, as of commencement of the Services, be damaged by or subject to accident, physical, electrical or electromagnetic stress, neglect, misuse, improper installation, modification or alteration by persons other than NETGEAR or NETGEAR's authorized representatives, or software programs made by the Customer or other parties.

#### 4. Scope of Services

4.1 **Onsite Hardware Replacement:** Monday through Friday, 8 AM to 5 PM local time, excluding NETGEAR holidays. See <http://onsite.netgear.com> for any exclusion.

4.2 **Targeted Response Time (Hardware Replacement):** Customer calls must be received before 2 PM (local time) during the Onsite Hardware Replacement period set forth in Section 4.1 for NETGEAR to provide the target next business day onsite response. For locations beyond 100 miles (North America only) of an NETGEAR service location, NETGEAR will use commercially reasonable efforts to respond in a timely manner. On occasion, due to shipping delays or transportation problems, NETGEAR may not be able to meet the targeted response time. In such instances, NETGEAR shall make a commercially reasonable effort to provide support at the targeted levels. Notwithstanding anything herein to the contrary, Customer acknowledges that NETGEAR may not be able to provide onsite services at the targeted response time during the first 30-day period after the activation of the support contract. The targeted response time during the first 30-day period will be based on a commercially reasonable efforts basis.

#### 4.3 The Onsite Replacement Service consists of the followings:

4.3.1 Replacement of hardware Product or Subsystem(s) which do not materially conform to the applicable NETGEAR specifications.

4.3.2 NETGEAR may replace the failed Product or Subsystem(s) with a refurbished, restored or reconditioned product or subsystem(s). NETGEAR, by its sole determination, reserves the right to replace the failed Product with models which are deemed equivalent or higher in functionality.

#### **5. Limited Warranty; Extended Warranty Coverage:**

5.1 Replaced hardware Product provided as part of the Services shall be subject to the limited warranty terms provided for the original Product purchased by the Customer. If NETGEAR receives notice of defective replaced Product during the limited warranty period applicable to such replaced Product, NETGEAR will provide the same warranty remedies as were provided under the original limited warranty for the Product. THE ABOVE WARRANTY IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. NETGEAR SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**6. Limitations of Liability and Remedies:** IN NO EVENT SHALL COMPANY'S LIABILITY UNDER THIS AGREEMENT ARISING OUT OF ANY EVENT EXCEED USD\$1.00. NETGEAR shall not be liable for performance delays or for nonperformance due to causes beyond its reasonable control. The Services do not assure uninterrupted operation of the Customer's equipment and network. EXCEPT AS INDICATED ABOVE, IN NO EVENT WILL NETGEAR, ITS AFFILIATES, ITS SUBCONTRACTORS, OR SUPPLIERS BE LIABLE FOR LOSS OF DATA OR FOR DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING DOWNTIME COSTS, LOST DATA OR LOST PROFIT), OR OTHER DAMAGE WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES AGREE THIS PROVISION REPRESENTS A REASONABLE ALLOCATION OF RISK BETWEEN THEM. NETGEAR AT ITS SOLE DISCRETION RESERVES THE RIGHT AT ANY TIME WITHOUT PRIOR NOTICE TO DISCONTINUE THE ONSITE REPLACEMENT SERVICES PROVIDED HEREIN WITHOUT LIABILITY.

**7. Limitations of Service:** NETGEAR does not provide support for products not supplied by NETGEAR, NETGEAR products which are not covered under the Services or for Product that the Customer does not allow NETGEAR to incorporate modifications. The Customer is responsible for removing any products not eligible for support to allow NETGEAR to perform the Services. Hardware replacement covers only the Product serial number which has been registered under this Service Agreement. The Services do not cover hard drive failure or any damage or failure caused by:

- (i) Other products;
- (ii) Site conditions that do not conform to NETGEAR's site specifications for the Product;
- (iii) Neglect, improper use, fire or water damage, electrical disturbances, transportation by the Customer or a third party, or work on or modification to the Product by people other than NETGEAR employees or subcontractors, or other causes beyond NETGEAR's control;
- (iv) Inability of products not manufactured by NETGEAR to correctly process, provide or receive data. Complete resolution of some problems may be beyond the control of NETGEAR and thus outside the scope of the Services.

**8. Supported Software Versions:** NETGEAR provides the Services only for the then-current and one (1) immediately preceding version of Product software.

**9. Non-NETGEAR Products:** NETGEAR is not liable for the performance or nonperformance of third party vendors, their products, or their support services. NETGEAR is not responsible for problems caused by products not covered by this Service Agreement on the Customer's network and the design of the Customer's network.

#### **10. Customer Responsibilities:**

10.1 The Customer is responsible for the security of its proprietary and confidential information.

10.2 The Customer shall backup software images and configuration files on a regularly scheduled basis and provide the images and files to NETGEAR's On-Site Engineer (OSE) in connection with the Services. In the event that NETGEAR has to provide installation and configuration support from "scratch" due to lack of back-up images and files, NETGEAR reserves the right to charge the Customer for the installation and configuration support at the prevailing time and materials rate (2 hour minimum).

10.3 The Customer shall provide product serial number(s) and shipment contact information: contact name, title, address, telephone number and email address when calling NETGEAR for service. Incorrect information may delay the timely arrival of the replacement Product thus prolonging the downtime.

10.4 The Customer shall report error message(s) and/or conditions to the assigned NETGEAR Customer Support Engineer (CSE). The Customer shall explain the problem(s) in as much detail as possible and the steps that have been taken to solve them.

10.5 The NETGEAR CSE(s) will work with the Customer over the phone to resolve the problem(s) quickly. If necessary, the Customer will provide Internet connection to the Product for NETGEAR Technical Support to remotely configure network features and troubleshoot problems.

10.6 In the event the product is diagnosed to be defective and require a replacement, the Customer shall provide valid credit card information as a security deposit for NETGEAR advanced shipping of a replacement product to the Customer. The credit card will not be charged unless the Customer fails to return the defective Product within the specified time period.

10.7 The Customer shall make necessary copies of data from storage devices prior to the arrival of the NETGEAR OSE. NETGEAR is not responsible for maintaining Customer's data from a data storage device that has been replaced and returned to NETGEAR or any of the third-party vendors.

#### 10.8 Onsite Dispatch (Hardware Replacement)

10.8.1 Onsite dispatch of a NETGEAR OSE is at the discretion of the CSE. In general, NETGEAR dispatches an OSE to replace a failed hardware Product. The CSE may elect to continue with phone support if it is deemed to be the best way to resolve the issue.

10.8.2 In the event of an onsite dispatch, the Customer will be contacted by the NETGEAR OSE for a mutually agreeable appointment time.

10.8.3 The Customer shall provide NETGEAR with contact phone numbers (office and/or cell) so that the NETGEAR OSE can confirm the arrival of necessary replacement unit prior to making a trip to the Customer's premise.

10.8.4 The Customer shall provide NETGEAR OSE with safe and reasonable access, working space and facilities, including heat, light, ventilation, electric current and outlets, Internet and local telephone access.

10.8.5 The Customer shall provide the dispatched NETGEAR OSE safe access to a NETGEAR Product under the Service coverage. If a NETGEAR OSE has to make a repeated onsite visit due to lack of safe access, the Customer may be charged for the return onsite visit at the prevailing time and materials rate.

10.8.6 The Customer shall provide access to its network(s), system(s), data and relevant information, necessary, to allow NETGEAR to perform the Services.

10.8.7 The Customer shall allocate appropriate resources and use all commercially reasonable efforts to avoid delay.

10.8.8 The Customer must return the original Product to NETGEAR FOB NETGEAR's shipping location, using the prepaid shipping label and the replacement Product packaging materials, within ten (10) business days of receipt of replacement Product.

If the Customer fails to return the original Product within the specified time period, NETGEAR will charge the Customer for replacement Product at the current list price.

10.8.9 In the event that a dispatched NETGEAR OSE determines that the hardware problem is NOT due to the product under the Service coverage, NETGEAR reserves the right to charge the customer for the onsite dispatch at the prevailing time and materials rate (2 hour minimum). To avoid such a situation, the Global Support Center CSE will closely work with the customer to pinpoint the hardware problem before dispatching a NETGEAR OSE.

#### **11. Transfer of Service and Relocation:**

11.1 This Agreement, and NETGEAR's Services provided under this Agreement, is valid only to the original Customer who purchased the product. The service is not transferable in the event the Customer sells the covered Product to another party except when the Customer is a NETGEAR product reseller.

11.2 The Customer must notify NETGEAR when a Product under coverage has moved to a new location within thirty (30) days of such relocation. Please be aware that the Targeted Response Time (Hardware Replacement) may be impacted for up to 30 days after the receipt of Customer's notification.

**12. Term:** This Agreement, and the Services provided under this Agreement, shall take effect upon the registration and activation for the Services and shall initially be for a period of three (3) years. Thereafter, NETGEAR may offer Customer the opportunity, and Customer may then choose to renew, this Agreement for additional year renewal term(s) at NETGEAR's then applicable annual renewal fee. If the Customer allows this Agreement to expire and does not renew, NETGEAR shall have no obligation to resume the Services to the Customer except upon payment of a re-enrollment fee plus the then-current annual fee for the resumed Services. All fees will be due and payable at the start of the Service term. Notwithstanding the foregoing, NETGEAR may terminate this Agreement with thirty (30) days prior written notice to Customer in the event that Customer is in breach of its obligations under this Agreement or if Customer attempts to fraudulently obtain support coverage for Products that are not in fact covered under this Agreement. NETGEAR may in its discretion utilize third party agents or subcontractors to perform NETGEAR's obligations hereunder.

**13. Governing Law and Venue:** Any disputes arising in connection with this Agreement will be governed by the laws of the State of California, USA. NETGEAR and Customer each hereby irrevocably (a) agrees that any suit, action or other legal proceeding arising from or relating to this Agreement shall be brought in a court of competent jurisdiction in Santa Clara County, California, which court shall have exclusive jurisdiction over any controversy arising from or related to this Agreement; (b) consents to the jurisdiction of such court in any such suit, action or proceeding; and (c) waives any objection it may have to the laying of venue of any such suit, action or proceeding in such court and waives any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Service of process in any suit, action or proceeding may be made in any manner permitted by law.

**14. Attorney's Fees:** The prevailing party in any litigation between the parties relating to this Agreement shall be entitled to recover its reasonable attorney's fees and court costs, in addition to any other relief it may be awarded, from the other party.

**15. Force Majeure:** NETGEAR shall not be liable by reason of any failure or delay in the performance of its obligations on account of strikes, riots, insurrection, fires, flood, storm, earthquake, explosions, war, acts of terrorism, governmental action or regulation, labor shortages, material shortages or any other cause which is beyond the reasonable control of NETGEAR.

**16. Entire Agreement:** The terms and conditions of this Agreement constitute the entire understanding between the parties relating to the provision of Services and supersede any previous communication, representation or agreement between the parties or between the Customer and any third party regarding the Services, whether oral or written. The Customer's preprinted terms and conditions on its purchase orders are not valid or applicable. The Customer's acceptance of this Agreement is deemed to occur

upon the Customer's initial purchase of the Services by payment in advance of the initial Services fees. No change of any of the terms and conditions will be valid unless in writing signed by an authorized representative of each party.

### **Support Activation**

Important!

Please register online to activate the onsite replacement support contract.

1. Go to the following NETGEAR® registration Web site on the Internet: <http://www.netgear.com/register>
2. Log in if you already have an account. If you don't have an account, you have to register to obtain a Username and a Password.
3. Select the "Register a new product" link after logging in. Fill in the required information on the page and click the "Register" button.
4. You will get a confirmation stating that your product is now covered by the onsite replacement support.
5. Important! After the product registration, go to "Update your profile" link to make sure that your contact information (address, phone numbers and email address) are complete and accurate. Incomplete information will negatively impact NETGEAR's ability to provide onsite replacement support at the targeted response time.