

GATEWAY COMPANIES, INC.

PERSONALIZED HELP DESK SUPPORT SERVICES

THE FOLLOWING AGREEMENT AND TERMS AND CONDITIONS APPLY TO THE SERVICES OFFERED BY GATEWAY COMPANIES, INC. ("GATEWAY") UNDER ITS PERSONALIZED HELP DESK SERVICES ("PROGRAM"). THE PROGRAM IS DESIGNED TO PROVIDE FEE-BASED OPTIONAL UPGRADES IN TECHNICAL SUPPORT FOR USERS OF SPECIFIED PRODUCTS ("PRODUCTS"), PRIMARILY INTENDED FOR BUSINESS USERS OF THE PRODUCTS ("CUSTOMERS"). THE PROGRAM OFFERS CUSTOMIZED AND OTHER TECHNICAL SUPPORT IN ADDITION TO THOSE SERVICES PROVIDED UNDER THE LIMITED WARRANTY AND TERMS AND CONDITIONS AGREEMENT THAT WAS SHIPPED WITH THE PRODUCT.

THIS DOCUMENT CONTAINS A DISPUTE RESOLUTION CLAUSE. PLEASE SEE PARAGRAPH 8 BELOW.

- 1. DESCRIPTION OF SERVICES.** Under the Program, the Customer will be entitled to receive one or more of the services listed in 1A below during the term specified on the Customer's invoice. For service under the Program, call 1-800-237-0697.
 - A. Technical Support.** 24 hours per day, 7 days per week remote telephone and web-based technical support. Time or number of incidents does not limit use.
 1. Gateway PCs and Servers. Support is limited to Gateway servers, desktops and portables and the installed Windows-based operating system. Support does not include any third party hardware or software (except the previously mentioned operating system) or equipment connections with any network.
 2. Third-Party PCs and Servers. Support is limited to pre-determined brands and models of servers, desktops and portables, and the installed Windows-based operating system. Support does not include equipment connections with any network.
 3. Peripherals. Support is limited to pre-determined brands of monitors, printers, scanners, projectors, digital cameras and handhelds. Support does not include equipment connections with any network.
 4. Software Applications. Support is limited to pre-determined list of 3rd party software applications.
 - B. Set-up Period.** Set-up of the above-described programs requires the Customer to provide information about the supported systems or users via the registration process detailed in the Welcome Pack (see below). It will take approximately 30 days from the date of the order to establish the Customer profile, staffing and required infrastructure. Upon set-up completion, the Customer will be able to use the service(s) purchased.
 - C. Welcome Pack.** The Customer will receive a package that will contain information describing the registration process, including the registration web site and optional call-in phone number. This pack will also contain a Program guide explaining the features of the Program.
 - D. Subscription-specific Identification Number.** Upon calling the Program phone number, the Customer will be required to enter a Personal Identification Number (PIN) which will be used to provide access to the service(s) purchased. The Customer will be prompted to input this PIN by the Gateway automated answering system.
 - E. Call Report.** The Customer will receive a report, electronically and monthly, which will detail the performance statistics and issues of the remote services support as described in 1A above for the previous month.
 - F. Personal Greeting.** Each time the Customer calls, Gateway will make a reasonable effort to answer the call with the Customers specified greeting requested at the registration process.
- 2. AGREEMENT AND AUTHORIZATION TO PERFORM SERVICES.** Customer's purchase of and participation in one (1) or more features or options of the above-described Program shall constitute Customer's agreement to be bound by the terms and conditions of this Agreement and the Program and shall authorize Gateway to perform services in accordance with this Agreement and the Program. The scope of work performed under this Agreement may only be modified with the express written approval of Gateway. Gateway undertakes to use commercially reasonable efforts to resolve the Customer's issues. However, Gateway does not guarantee that it will be able to resolve every issue. Any warranty services provided as part of this Program shall be in accordance with the Product Limited Warranty except as otherwise provided herein.
- 3. LOST OR ALTERED COMPUTER FILES.** Customer is responsible for backing up all files and proprietary and confidential information on the Product and for maintaining a procedure external to the hardware products for the reconstruction of lost or altered files, data or programs. **GATEWAY SHALL NOT BE LIABLE FOR LOST OR ALTERED FILES, DATA OR PROGRAMS, EVEN IF CAUSED BY THE NEGLIGENCE OF GATEWAY OR ITS AGENTS OR EMPLOYEES. DIAGNOSTIC AND REPAIR SERVICES ARE PROVIDED WITHOUT ANY OBLIGATION OF CONFIDENTIALITY OR NON-DISCLOSURE ON THE PART OF GATEWAY, ITS EMPLOYEES OR AGENTS. CUSTOMER SHALL DELETE FROM THE PRODUCT ANY FILE OR DATA CONSIDERED TO BE PRIVATE, CONFIDENTIAL OR PROPRIETARY.**
- 4. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES.** Gateway warrants only that the services to be performed under this Agreement shall be performed in a professional and workmanlike manner. GATEWAY DOES NOT WARRANT SOFTWARE OR ANY PRODUCTS PROVIDED BY AN INDEPENDENT THIRD PARTY SUPPLIER. Customer must refer to the warranty provided by such independent third party supplier. The limited warranties made hereunder are not transferable. **ALL OTHER EXPRESS WARRANTIES ARE HEREBY DISCLAIMED. ANY IMPLIED WARRANTIES ARE LIMITED TO THE TERM OF THIS AGREEMENT. NO INFORMATION OR ADVICE (WRITTEN OR ORAL) PROVIDED TO CUSTOMER BY GATEWAY, ITS AGENTS OR EMPLOYEES, EXCEPT AS PROVIDED HEREIN, WILL CREATE A WARRANTY BY GATEWAY, OR INCREASE THE SCOPE OF THIS AGREEMENT. THIS AGREEMENT GIVES THE CUSTOMER SPECIFIC LEGAL RIGHTS, AND THE CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG IMPLIED WARRANTIES LAST, SO THE ABOVE LIMITATION MAY NOT APPLY.**

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5. **LIMITATION OF LIABILITY.** EXCEPT WHERE SUCH EXCLUSION IS CONTRARY TO PUBLIC POLICY, IN NO EVENT SHALL GATEWAY, ITS EMPLOYEES, AGENTS OR CONTRACTORS, BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR REVENUE, ECONOMIC LOSS, LOSS OF DATA, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE OR REPLACEMENT EQUIPMENT, FACILITIES OR SERVICES, DOWN TIME, CUSTOMER TIME, THE CLAIMS OF THIRD PARTIES, AND INJURY TO PROPERTY, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING BUT NOT LIMITED TO, BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, AND EVEN IF GATEWAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY. IF ANY PORTION OF THIS SECTION IS HELD INVALID OR UNENFORCEABLE, ANY LIABILITY OF GATEWAY, AND ITS SUPPLIERS AND SERVICE PROVIDERS UNDER THIS AGREEMENT IS EXPRESSLY LIMITED TO THE FEES THE CUSTOMER HAS PAID FOR THE SERVICE GIVING RISE TO THE CLAIM. THE CUSTOMER'S SOLE REMEDY AGAINST GATEWAY AND ITS SUPPLIERS AND SERVICE PROVIDERS IN ANY DISPUTE UNDER THIS AGREEMENT SHALL BE TO SEEK RECOVERY OF THE AMOUNTS THE CUSTOMER HAS PAID, UPON THE PAYMENT OF WHICH GATEWAY AND ITS SUPPLIERS AND SERVICE PROVIDERS SHALL BE RELEASED FROM AND DISCHARGED OF ALL FURTHER OBLIGATIONS AND LIABILITY TO THE CUSTOMER.
6. **ENTIRE AGREEMENT.** Except as otherwise provided herein, this Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements with regard to the subject hereof. No term or condition of any purchase order issued by the Customer inconsistent with this Agreement will be binding upon Gateway. Gateway Country Store personnel do not have the authority to alter the terms and conditions of this Agreement.
7. **GOVERNING LAW.** This Agreement is governed by the laws of the State of South Dakota, without giving effect to its conflicts of law rules.
8. **DISPUTE RESOLUTION.** You agree that any Dispute between You and Gateway will be resolved exclusively and finally by arbitration administered by the National Arbitration Forum (NAF) and conducted under its rules, except as otherwise provided below. The arbitration will be conducted before a single arbitrator, and will be limited solely to the Dispute between you and Gateway. The arbitration shall be held at any reasonable location near your place of business by submission of documents, by telephone, online or in person. Any decision rendered in such arbitration proceedings will be final and binding on each of the parties, and judgment may be entered thereon in any court of competent jurisdiction. Should either party bring a Dispute in a forum other than NAF, the arbitrator may award the other party its reasonable costs and expenses, including attorneys' fees, incurred in staying or dismissing such other proceedings or in otherwise enforcing compliance with this dispute resolution provision. **You understand that You would have had a right to litigate disputes through a court, and that You have expressly and knowingly waived that right and agreed to resolve any Disputes through binding arbitration.** This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1, *et seq.* For the purposes of this section, the term "Dispute" means any dispute, controversy, or claim arising out of or relating to (i) this Agreement, its interpretation, or the breach, termination, applicability or validity thereof, or (ii) the purchase or use of any service hereunder from Gateway; the term "Gateway" means Gateway, Inc, its subsidiaries, affiliates, directors, officers, employees, beneficiaries, agents or assigns; the term "You" means you, the original purchaser, your agents, beneficiaries, or heirs. Information may be obtained from the NAF on line at www.arb-forum.com, by calling 800-474-2371 or writing to P.O. Box 50191, Minneapolis, MN, 55405.
9. **SEVERABILITY.** If any provision contained in this Agreement is or becomes invalid, illegal, or unenforceable in whole or in part, such invalidity, illegality, or unenforceability shall not affect the remaining provisions and portions of this Agreement.
10. **GENERAL.**
- A. CUSTOMER MAY NOT ASSIGN THIS AGREEMENT OR ANY OF THE CUSTOMER RIGHTS HEREUNDER WITHOUT THE EXPRESS WRITTEN CONSENT OF GATEWAY.
- B. SERVICES PROVIDED BY GATEWAY UNDER THIS AGREEMENT MAY BE PROVIDED, AT GATEWAY'S OPTION, BY AN INDEPENDENT THIRD PARTY SERVICE PROVIDER. ANY SUCH SERVICES PROVIDED BY AN INDEPENDENT THIRD PARTY SERVICE PROVIDER ARE NOT WARRANTED BY GATEWAY. PLEASE REFER TO THE WARRANTY PROVIDED BY SUCH INDEPENDENT THIRD PARTY SERVICE PROVIDER.
- C. IN THE EVENT GATEWAY HIRES AN ATTORNEY TO COLLECT ANY SUMS OWED BY CUSTOMER UNDER THIS AGREEMENT OR TO OTHERWISE ENFORCE ITS RIGHTS HEREUNDER, CUSTOMER AGREES TO PAY THE REASONABLE FEES OF SUCH ATTORNEY AND ANY OTHER REASONABLE COSTS AND EXPENSES INCURRED BY GATEWAY IN ENFORCING ITS RIGHTS UNDER THIS AGREEMENT.
- D. ANY SUM NOT PAID BY CUSTOMER WHEN DUE AND OWING IS SUBJECT TO INTEREST AT A RATE EQUAL TO THE LESSER OF 1½% PER MONTH OR THE MAXIMUM RATE ALLOWED BY LAW.