

Terms and Conditions

WARRANTY AND SERVICE TERMS AND CONDITIONS

Unless specifically agreed to in writing by WINCHESTER SYSTEMS, upon acceptance and use of any product or service from WINCHESTER SYSTEMS the following terms and conditions shall immediately take effect and shall supersede any previous written or oral terms and agreements including but not limited to any terms or conditions set forth in customer's preprinted forms such as purchase orders:

LIMITATION OF LIABILITY

In no event shall WINCHESTER SYSTEMS be liable for any damages whatsoever (including, without limitation, any direct, indirect, general, special, incidental or consequential damages) arising out of the use of or inability to use any WINCHESTER SYSTEMS product, including, but not limited to, damages resulting from (i) loss of data or data use or data being rendered inaccurate, or (ii) losses sustained by a customer or third parties, or (iii) failure of the product to operate with any other programs or product, or (iv) loss of revenues or profits, or (v) work stoppage, or (vi) computer failure or malfunction, regardless of the legal theory on which such damages are based.

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.

WINCHESTER SYSTEMS SHALL NOT BE LIABLE FOR LOST OR ALTERED FILES, DATA OR PROGRAMS, EVEN IF CAUSED BY THE NEGLIGENCE OF WINCHESTER SYSTEMS OR ITS AGENTS OR EMPLOYEES. DIAGNOSTIC AND REPAIR SERVICES ARE PROVIDED WITHOUT ANY OBLIGATION OF CONFIDENTIALITY OR NON-DISCLOSURE ON THE PART OF WINCHESTER SYSTEMS, ITS EMPLOYEES OR AGENTS.

SUPPORT

Support provided under warranty or service contract extends to the ultimate end users and covers only products purchased as new or certified factory refurbished in standard or approved configurations, whether purchased directly or through a partner organization. Support for third party products that are not WINCHESTER SYSTEMS branded disk array products, including but not limited to host bus adapters, network and SAN switches, servers and software

will include the original manufacturer's standard warranty unless upgraded warranty or service contracts are purchased from WINCHESTER SYSTEMS. Custom factory integration, if any, will be supported as quoted. Preventative maintenance is generally unnecessary and not included, however, customer will be provided with firmware upgrades to controllers and disk drives, as necessary, to be installed by WINCHESTER SYSTEMS remotely or by customer with phone support from WINCHESTER SYSTEMS and best practices dictate that data should be currently backed up before installing upgrades. On-site installation of upgrades is available at extra cost. Installation, de-installation, or relocation services and operating supplies are purchased separately and not included.

WINCHESTER SYSTEMS is not obligated to repair, warranty or troubleshoot repairs resulting from improper maintenance, modification, removal or alteration of any component or parts identification labels, adjustment, or repair by anyone other than WINCHESTER SYSTEMS (or its representatives). WINCHESTER SYSTEMS is not obligated to repair, warranty or troubleshoot any product which has been damaged as a result of: (i) accident, misuse, or abuse of any product or its 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), (ii) an act of God such as, but not limited to, lightning, flooding, tornados, earthquakes, and hurricanes, or (iii) unsuitable physical or operating environment or transfer of product(s) from one geographic location to another or from one entity to another.

LIMITATION OF REMEDY

CUSTOMER'S EXCLUSIVE REMEDY AND WINCHESTER SYSTEMS' ENTIRE, COLLECTIVE LIABILITY IN CONTRACT, TORT OR OTHERWISE, UNDER THIS AGREEMENT IS THE REPAIR OF THE DEFECTIVE WINCHESTER SYSTEMS PRODUCTS(S) OR COMPONENTS IN ACCORDANCE WITH THESE TERMS AND CONDITIONS. IF WINCHESTER SYSTEMS IS UNABLE TO MAKE SUCH REPAIR, YOUR EXCLUSIVE REMEDY AND WINCHESTER SYSTEMS' ENTIRE LIABILITY WILL BE THE PAYMENT OF ACTUAL DAMAGES NOT TO EXCEED THE CHARGE PAID BY CUSTOMER TO WINCHESTER SYSTEMS AT TIME OF PURCHASE. UNDER NO CIRCUMSTANCES WILL WINCHESTER SYSTEMS BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY DAMAGES, INCLUDING WITHOUT LIMITA-

TION, 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 THESE TERMS AND CONDITIONS, OR OUT OF THE INSTALLATION, DEINSTALLATION, USE OF, OR INABILITY TO USE THE WINCHESTER SYSTEMS PRODUCT, OR OUT OF THE USE OF ANY SERVICE MATERIALS PROVIDED HEREUNDER.

Neither WINCHESTER SYSTEMS nor customer may institute any action in any form more than 12 months after the cause of action has arisen, or in the case of nonpayment, more than 12 months from the date of last payment. With regard to any services that are not specified here, it will be within WINCHESTER SYSTEMS' discretion whether to perform the services, and if WINCHESTER SYSTEMS elects to perform the services, the services will be subject to an additional charge to be paid by customer.

INDEMNITY AND DISCLAIMER

Customer hereby indemnifies and holds WINCHESTER SYSTEMS harmless for any claims related to third party products.

WINCHESTER SYSTEMS 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 WINCHESTER SYSTEMS

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 WINCHESTER SYSTEMS PRODUCT(S) THAT MAY RESULT FROM THE IMPLEMENTATION OF ANY RECOMMENDATION WINCHESTER SYSTEMS MAY PROVIDE. NOTHING STATED HERE OR IN ANY OTHER WRITTEN DOCUMENTATION OR ANY ORAL COMMUNICATIONS MAY ALTER THE TERMS AND CONDITIONS OF THIS PARAGRAPH.

INHERENTLY DANGEROUS APPLICATIONS

WINCHESTER SYSTEMS PRODUCTS ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS OR FOR USE IN AVIATION, NUCLEAR OR ANY OTHER INHERENTLY DANGEROUS APPLICATION WITHOUT THE EXPRESS WRITTEN APPROVAL OF WINCHESTER SYSTEMS. END USER AGREES TO DEFEND, INDEMNIFY AND HOLD WINCHESTER SYSTEMS HARMLESS FROM AND AGAINST ANY CLAIMS FOR LOSSES, COSTS, DAMAGES, OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE USE OF WINCHESTER SYSTEMS PRODUCTS IN ANY SUCH DEVICE, SYSTEM OR APPLICATION.

WINCHESTER SYSTEMS reserves the right to change or modify any of these terms and conditions at any time and from time to time in its sole discretion, and to determine whether and when any such changes shall apply to both existing and future customers.