



Symantec Brightmail 8160 / 8360 / 8380 Appliance
HARDWARE WARRANTY AGREEMENT

ATTENTION: PLEASE READ THE TERMS AND CONDITIONS OF THIS HARDWARE WARRANTY AGREEMENT (“WARRANTY AGREEMENT”) CAREFULLY BEFORE USING THE HARDWARE. THIS IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN YOU AS THE INDIVIDUAL, THE COMPANY, OR THE LEGAL ENTITY THAT WILL BE UTILIZING THE HARDWARE (REFERENCED BELOW AS “YOU” OR “YOUR”) AND SYMANTEC CORPORATION AND/OR ITS AFFILIATES (“SYMANTEC”). BY OPENING THE HARDWARE PACKAGE, BREAKING THE HARDWARE SEAL, LOADING THE HARDWARE, USING THE HARDWARE, OR OTHERWISE INDICATING ASSENT, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS WARRANTY AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT OPEN THE HARDWARE PACKAGE, BREAK THE HARDWARE SEAL, OR LOAD THE HARDWARE AND INDICATE YOUR REFUSAL BY MAKING NO USE OF THE HARDWARE.

1. **HARDWARE/SOFTWARE.** The hardware (“Hardware”) that accompanies this Warranty Agreement is to be used only with the Licensed Software. “Licensed Software” means the Symantec software product, in object code form, that is pre-loaded, pre-installed, or included as a media kit accompanying the Hardware, including any documentation provided with such software. You may not use the Licensed Software unless You have purchased a separate license for such Licensed Software. Your use of the Licensed Software shall comply with the terms and conditions of the end user license agreement that accompanies the Licensed Software and the License Instrument applicable for such Licensed Software. “License Instrument” means one or more of the following applicable documents which further defines Your license rights to the Licensed Software: a Symantec license certificate or a similar license document issued by Symantec, or a written agreement between You and Symantec, that accompanies, precedes or follows the end user license agreement for the Licensed Software.

2. **OWNERSHIP.** The Licensed Software is the proprietary property of Symantec or its licensors and is protected by copyright law. Symantec and its licensors retain any and all rights, title and interest in and to the Licensed Software, including in all copies, improvements, enhancements, modifications and derivative works of the Licensed Software. Your rights to use the Licensed Software shall be limited to those expressly granted in this Warranty Agreement. All rights not expressly granted to You are retained by Symantec and/or its licensors.

3. **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. 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.

4. **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 4, 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.**

5. **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) Same Day Service or (b) Return Merchandise Authorization Services as detailed below in this Section 5. 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 6 and 9 below, which may be updated from time to time without notice to You, You:

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



- B. **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 4, 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.

6. **HARDWARE WARRANTY SERVICE PREQUISITES.** In order to exercise any of the warranty rights contained in this Warranty 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.

7. **HARDWARE WARRANTY SERVICE RESTRICTIONS/EXCLUSIONS.** The warranties contained in this Warranty 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 Warranty 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.

8. **WARRANTY DISCLAIMERS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH IN SECTION 4 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 HARDWARE WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OR USE OF THE HARDWARE WILL BE UNINTERRUPTED OR ERROR-FREE. YOU MAY HAVE OTHER WARRANTY RIGHTS, WHICH MAY VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.**

9. **YOUR OBLIGATIONS: 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 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 5, 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.

10. **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 WARRANTY 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 HARDWARE GIVING RISE TO THE CLAIM. NOTHING IN THIS 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 HARDWARE.

11. **U.S. GOVERNMENT RESTRICTED RIGHTS.** This Hardware appliance You have purchased may include or can be used with the Licensed Software developed by Symantec Corporation. If so, the Licensed Software is deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Licensed Software - Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Licensed Software or Commercial Computer Licensed Software Documentation", as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of the Licensed Software by the U.S. Government shall be solely in accordance with the terms of this Warranty Agreement.

12. **EXPORT REGULATION.** You acknowledge that the Hardware, Licensed Software and related technical data and services (each or 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.

13. **GENERAL.**

13.1. **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 Hardware.

13.2. **GOVERNING LAW; SEVERABILITY; WAIVER.** If You are located in North America or Latin America, this Warranty Agreement will be governed by the laws of the State of California, United States of America. If you are located in China, this Warranty Agreement will be governed by the laws of the Peoples Republic of China. Otherwise, this Warranty 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 Warranty Agreement is found partly or wholly illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and remaining provisions of this Warranty Agreement shall remain in full force and effect. A waiver of any breach or default under this Warranty Agreement shall not constitute a waiver of any other subsequent breach or default.

13.3. **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.

13.4. **ENTIRE AGREEMENT.** This Warranty Agreement and the applicable License Instrument (if any) are the complete and exclusive agreement between You and Symantec relating to the Hardware and supersede any previous or contemporaneous oral or written communications, proposals, and representations with respect to this subject matter. This Warranty 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. In the event of any conflict between the Hardware user documentation, this Warranty Agreement and/or the License Instrument, the documents shall govern in the following order: License Instrument, this Warranty Agreement and the user documentation. This Warranty Agreement may only be modified by a signed written agreement between You and Symantec that accompanies or follows this Warranty Agreement.

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