



Service Agreement – Terms and Conditions Hardware Service Agreement

BY ACCEPTING THE SERVICES AND SUPPORT DESCRIBED ON YOUR INVOICE, YOU AGREE TO BE BOUND BY AND ACCEPT THE TERMS AND CONDITIONS HEREIN. PLEASE READ THIS AGREEMENT IN ITS ENTIRETY. THESE TERMS AND CONDITIONS (THE "AGREEMENT") WILL SUPPLEMENT THE TERMS AND CONDITIONS OF ANY APPLICABLE OVERRIDING SIGNED AGREEMENT BETWEEN YOU AND STONEFLY, INC. REFERRED TO HEREIN AS STONEFLY (INCLUDING WITHOUT LIMITATION, STONEFLY'S STANDARD KEY CUSTOMER PURCHASE AGREEMENT), OR IN THE ABSENCE OF SUCH AN AGREEMENT, STONEFLY'S STANDARD INVOICE TERMS AND CONDITIONS OF SALE. THIS CONTRACT IS BETWEEN YOU AND THE STONEFLY ENTITY ("STONEFLY" OR "OUR") AS SPECIFIED IN THE AFOREMENTIONED SIGNED AGREEMENT OR STONEFLY'S STANDARD INVOICE TERMS AND CONDITIONS. ALL CAPITALIZED TERMS AND CONDITIONS NOT DEFINED HEREIN SHALL HAVE THE MEANING SPECIFIED IN THE AFOREMENTIONED SIGNED AGREEMENT OR STONEFLY'S STANDARD INVOICE TERMS AND CONDITIONS.

1. **Services that STONEFLY Will Supply:** For your one-time payment to us of the price shown on your Invoice (the "Total Price") plus any applicable sales taxes, STONEFLY ("we", "us" or "STONEFLY") will provide you with the warranty and services you purchased pursuant to the following terms and conditions:

- 1.1 **Scope of Services:** STONEFLY agrees to deliver to you the services and applicable Terms and Conditions described herein. STONEFLY reserves the right to change or modify any of the terms and conditions contained in the Terms and Conditions at any time and from time to time at its sole discretion, and to determine whether and when any such changes apply to both existing and future customers. A third party service provider, under subcontract with STONEFLY, may provide some or all of the Technical Support Services.

Product Support:

Products Covered ("Covered Product"): Hardware Support covers any hardware that is factory installed by STONEFLY. When we refer to "System(s)" in this Agreement, we mean STONEFLY-branded software and hardware that is sold as new, in a standard configuration(s) at the time of purchase for the following equipment: STONEFLY computers, StoneFusion, server systems, and data storage units. Excluded from this agreement are any additional items sold through STONEFLY or integrated by custom factory integration. The System covered under this agreement is described on your invoice.

This contract is valid on System(s) purchased in the United States only. The Services to be provided under this agreement apply only to the United States. References to the United States include the continental United States, Alaska, and Hawaii.

Limits of Support Services: THIS AGREEMENT IS OF LIMITED DURATION AND COVERAGE. This Agreement extends only to original purchasers of the Warranty shown on the Invoice and located within the United States as determined by STONEFLY. Except as stated below, the services STONEFLY agrees to provide under this Agreement are repair services that are necessary because of any existing defect or a defect occurs in materials or workmanship in STONEFLY's Supported System or in any System component covered by this Agreement. Preventive Maintenance is not included. Installation, de-installation, or relocation services and operating supplies are not included. **Repairs resulting from alteration, adjustment, or repair by anyone other than STONEFLY (or its representatives) are not included.** STONEFLY is not obligated to



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repair any STONEFLY System or System component which has been damaged as a result of: (i) accident, misuse, or abuse of the System or 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) the moving of the Covered System from one geographic location to another or from one entity to another.

With regard to any warranty plans that are not within the coverage of this Agreement, it will be within STONEFLY's discretion whether to perform the services, and if STONEFLY elects to perform the services, the services will be subject to additional time and material charges to be paid by you.

Type of Service Plans: The extended service type (**Bronze, Silver, Gold, Titanium or Platinum Warranty Plans**) you have chosen is recorded on your invoice. PPM means the principal period of maintenance or the principal hours during which Services are rendered for a service plan.

Bronze Warranty Plan: Systems older than three (3) years may qualify for the Bronze Warranty Plan. With the Bronze Warranty Plan, STONEFLY provides 24x7 telephone support and Next Business Day replacement of a complete Modular Storage Concentrator system with a comparable refurbished system. This Warranty Service is managed at the STONEFLY facility in Hayward. To request Bronze Warranty Service, you must contact STONEFLY's Customer Technical Support at 1-888-786-6335 within the limited warranty period, Monday through Friday 8:00 a.m. to 6:00 p.m. Pacific Standard Time. You may email our technical support team at Support@StoneFly.com.

Silver Warranty Plan: Systems you purchase from STONEFLY come with one year Silver Warranty Service providing 24x7 telephone support, advanced parts replacement and depot repair. Additional years of Silver Warranty Service may be purchased and they will be listed on your invoice. During the one-year period beginning on the invoice date, or if additional Silver Warranty Service years were purchased for the duration listed on your invoice, STONEFLY will repair or replace parts or products returned to a STONEFLY facility. This Warranty Service is managed at the STONEFLY facility in Hayward. To request Silver Warranty Service, you must contact STONEFLY's Customer Technical Support at 1-888-786-6335 within the limited warranty period, Monday through Friday 8:00 a.m. to 6:00 p.m. Pacific Standard Time. You may email our technical support team at Support@StoneFly.com.

Gold Warranty Plan: Our invoice to you will indicate whether you purchased the Gold Warranty Plan providing 24x7 telephone support and Next Business Day on-site support in addition to other quality services listed in the Silver Warranty Plan. ***On-site support is for hardware only. All software support is provided by telephone only.*** For after hours support, call us at 1-858-678-2430. Your request would be escalated to the appropriate support engineer who will contact you within one hour. You may also email us anytime: Support@StoneFly.com. The support engineer will diagnose your problem and help you to resolve it on the phone. If he/she determines that you have a part that needs to be changed and if the support engineer determines that the defective part is a "FRU," you may receive such component to install without a service engineer arriving on-site. STONEFLY will



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provide replacement parts on an exchange basis. You will be asked to fill out an RMA Form. Please see “RMA” and “Advanced RMA” section. If the service engineer cannot resolve your problem using the methods explained above, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service by the next business day after dispatch during your Principal Period of Maintenance (PPM), Monday through Friday 8:00 a.m. to 5:00 p.m. excluding regularly observed holidays. If the request is dispatched after 12:00 p.m. Pacific Standard Time, the service technician may not arrive at your location until the next business day.

Titanium Warranty Plan: Modular Storage Concentrators sold after 4/1/2008 will be covered with 24x7 telephone support and Next Business Day (NBD) exchange of the entire system if required. For after hours support, call us at 1-858-678-2430. Your request will be escalated to appropriate support engineer who will contact you within an hour. You may also email us anytime: Support@StoneFly.com. The support engineer will diagnose your problem and help you to resolve it over the phone. If he/she determines that your system needs to be replaced STONEFLY will ship a replacement system to arrive the NBD. You will be asked to fill out an RMA Form. Please see “RMA” and “Advanced RMA” section.

Platinum Warranty Plan: Our invoice to you will indicate whether you purchased Platinum Warranty Plan providing 24x7x4 on-site support in addition to other quality services listed in the Silver and Gold Warranty Plan. ***On-site support is for hardware only. All software support is provided by telephone only.*** A Care Kit must be purchased with your system as part of Platinum Warranty Plan. For after hours support, call us at 1-858-678-2430. Your request would be escalated to appropriate support engineer who will contact you within an hour. Your request would be escalated to appropriate support engineer who will contact you within an hour. You may also email us anytime: Support@StoneFly.com. The support engineer will diagnose your problem and help you to resolve it over the phone. If he/she determines that you have a part that needs to be changed and If the support engineer determines that the defective part is “FRU,” you may receive such component to install without a service engineer arriving on-site. STONEFLY will provide replacement parts on an exchange basis. You will be asked to fill out an RMA Form. Please see “RMA” and “Advanced RMA” section. If the service engineer cannot resolve your problem using the methods explained above, a service engineer will be dispatched within 4 hours after determining the hardware problem.. Four-hour response times may not be available in all locations. The Care Kit must be available to the technician when he/she arrives on-site. STONEFLY will not be responsible for replacing these items if they have been lost or misplaced.

Standard RMA: If a STONEFLY engineer determines that a part(s) must be replaced, you will be asked to fill out a Return Material Authorization (RMA) form and STONEFLY will issue you an RMA Number. You must ship the products back to STONEFLY at your expense in their original or equivalent packaging. Mark the RMA number on the box, prepay shipping charges, and insure the shipment or accept the risk of loss or damage during shipment. STONEFLY will ship the repaired or replacement parts to you freight prepaid if your address is in the continental United States, where applicable. Shipments to other locations will be made freight collect.

Advanced RMA: You may choose to have parts sent to you before you ship STONEFLY parts in need of repair. You may do this by choosing the “Advanced RMA” option on the RMA form you will fill out to request an RMA number. In this case



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STONEFLY will generally ship parts via Federal Express next day delivery (freight prepaid) if your address is in the continental United States, where applicable. Shipments to other locations will be made freight collect. For Advanced RMA, a completed RMA form must be received by STONEFLY no later than 2:00 p.m. Pacific Standard Time. Replacement parts are new or reconditioned. STONEFLY may provide replacement parts made by various manufacturers when supplying parts to you. The limited warranty term for a replacement part is the remainder of the limited warranty term. If you choose the Advanced RMA option, you will be asked to provide STONEFLY a credit card number. You will be required to pay STONEFLY for replacement parts when the replaced part is not returned to STONEFLY. The process for returning replaced parts, and your obligation to pay for replacement parts if you do not return the replaced parts to STONEFLY, will be in accordance with STONEFLY's RMA Policy in effect on the date of the exchange. If a unit is shipped to you and the defective unit is not returned to STONEFLY within thirty (30) days, you agree to pay STONEFLY for the replacement unit upon receipt of invoice. Failure to honor the invoice within ten (10) days after receipt will cause the cancellation of this agreement and may result in other legal steps.

Field Replaceable Units "FRU": If STONEFLY elects to replace a component; the replacement will be made in accordance with STONEFLY's RMA Policy in effect on the date of the exchange. In any instance in which STONEFLY issues a Return Material Authorization Number, STONEFLY must receive the part(s) for repair prior to the expiration of the limited warranty period in order for the repairs to be covered by the limited warranty. "FRUs" are components that are easily uninstalled and reinstalled, such as removable Hard Disk Drives, Hard Drive Trays, Hot-swap Power supplies, Fans, or any other component designated from time to time as a component that may be replaced by the customer. You may receive such component to install without a service technician arriving on-site.

Exchange: If STONEFLY elects to exchange a System, the exchange will be made in accordance with STONEFLY's Exchange Policy in effect on the date of the exchange. In any instance in which STONEFLY issues a Return Material Authorization Number, STONEFLY must receive the product(s) for repair prior to the expiration of the limited warranty period in order for the repairs to be covered by the limited warranty. You accept full responsibility for your software and data. STONEFLY is not required to advise or remind you of appropriate backup and other procedures.

NOTE: Before you ship the product(s) to STONEFLY, back up the data on the hard-disk drive(s) and any other storage device(s) in the product(s). Remove any removable media, such as diskettes, CDs, or PC Cards. STONEFLY does not accept liability for lost data or software.

STONEFLY owns all parts removed from repaired products. STONEFLY uses new and reconditioned parts made by various manufacturers in performing limited warranty repairs and building replacement products. If STONEFLY repairs or replaces a product, its limited warranty term is not extended.

Parts Ownership: All Service parts removed from your System become the property of STONEFLY. You will be obligated to pay at the current retail price (s) for any service parts removed from your System and retained by you. STONEFLY uses new



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and reconditioned parts made by various manufacturers in performing warranty repairs.

LIMITATION OF REMEDY: YOUR EXCLUSIVE REMEDY AND STONEFLY'S ENTIRE, COLLECTIVE LIABILITY IN CONTRACT, TORT OR OTHERWISE, UNDER THIS AGREEMENT IS THE REPAIR OF THE DEFECTIVE SYSTEM OR COMPONENTS IN ACCORDANCE WITH THIS AGREEMENT. IF STONEFLY IS UNABLE TO MAKE SUCH REPAIR, YOUR EXCLUSIVE REMEDY AND STONEFLY'S ENTIRE LIABILITY WILL BE THE PAYMENT OF ACTUAL DAMAGES NOT TO EXCEED THE CHARGE PAID BY YOU TO STONEFLY AT TIME OF PURCHASE, OR IF NO CHARGES WERE PAID, THE THEN-CURRENT PUBLISHED CHARGES FOR THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL STONEFLY BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, 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 THIS AGREEMENT, OR OUT OF THE INSTALLATION, DE-INSTALLATION, USE OF, OR INABILITY TO USE THE SYSTEM, OR OUT OF THE USE OF ANY SERVICE MATERIALS PROVIDED HEREUNDER.

Neither STONEFLY nor you may institute any action in any form arising out of this agreement more than eighteen (18) months after the cause of action has arisen, or in the case of nonpayment, more than eighteen (18) months from the date of last payment.

With regard to any services that are not within the coverage of this agreement, it will be within STONEFLY's discretion whether to perform the services, and if STONEFLY elects to perform the services, the services will be subject to an additional charge to be paid by you.

1.2 Third Party Products Not Covered: Technical support services do not include warranty or repair service or any other services for third party products. STONEFLY is not responsible for warranty or services for those third party systems. STONEFLY is not responsible for the performance of other vendors' products and services. You hereby indemnify and hold STONEFLY harmless for any claims related to those third party products.

1.3 Exclusions: Unless otherwise expressly provided in the applicable Service Description, Support Service does not cover warranty or troubleshoot a) accessories, supply items, peripherals, and certain parts such as batteries, and covers b) service of equipment damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by you, removal or alteration of equipment or parts identification labels, or failure caused by a product for which STONEFLY is not responsible.

2. DISCLAIMER OF ALL WARRANTIES: STONEFLY 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 STONEFLY MAY MAKE,



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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 SYSTEM THAT MAY RESULT FROM THE IMPLEMENTATION OF ANY RECOMMENDATION STONEFLY MAY PROVIDE. NOTHING IN THIS AGREEMENT OR ANY OTHER WRITTEN DOCUMENTATION OR ANY ORAL COMMUNICATIONS WITH CUSTOMER MAY ALTER THE TERMS AND CONDITIONS OF THIS PARAGRAPH.

3. Your Responsibilities:

To receive service and support, you are responsible for complying with the following:

- a) Valid Service Contract: STONEFLY must have received payment for Support within the time limit set on your invoice noted as “Due Date.” Customer must pay an additional fee of 3% for late payments per month for invoices not paid within such period. If support is not renewed within 6 months after the expiration date, a re-certification fee of \$500 will be charged in addition to a compounded late payment fee. The systems are subject to re-evaluation for service maintenance six months past the expiration date. If you are currently not entitled to support, then you should submit a valid credit card number to purchase appropriate support for the covered product.
- b) Prepare for the Call: Please provide the technician or the customer service representative with your name, company name, and phone number first in case you get disconnected. You will help us serve you better if you have the following information and materials ready when you call:
 - Your System’s invoice number
 - Date of purchase
 - Your System’s serial number
 - Your System’s model number
 - Current version of software you are running
 - Description and symptoms of the problem(s)

Your System must be located in our database before we can provide you with support, so if you don’t have your invoice number it may take us a while to find your unit and we may need to call you back.

- c) Call For Assistance: For service support call the following number between 9:00 a.m. to 6:00 p.m. Pacific Standard Time, Monday through Friday, excluding regularly observed holidays:
Technical Support & Customer Service: 1-888-786-6335
- d) Explain Your Problem to the Technician: Now you are ready to describe the problem you are having with your System. 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.
- e) 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.
- f) If the technician is unable to resolve the problem over the phone and determines that a part needs to be replaced or your System needs to be returned to a depot, or if you have an on-site warranty and a technician must be dispatched, the following standard procedures apply. STONEFLY cannot accept Systems or



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parts that are not returned in accordance with the shipping instructions listed below.

- 1) **Software/Data Backup:** You understand and agree that we are not responsible for any loss of software or data. You should back up the software and data on your System's hard disk drive and on any other storage device(s) in the System.
- 2) **Obtain a Return Authorization Number (RMA#):** If the technician determines that a part in your unit needs to be replaced, you will need to fill out an RMA form. Either print it from our web site, or have the technician email or fax it to you. You must then fill it out and fax it back to 510-265-1565. Once we receive it, we will issue an RMA#. For all advanced RMAs no matter what kind of Service Warranty you have, you must provide a credit card number. You will be responsible to STONEFLY for replacement parts when the replaced part isn't returned to STONEFLY within 30 days of the date the replacement part was shipped by STONEFLY and for parts used to repair Systems not covered under this agreement. Parts will be priced at STONEFLY's then-current standard prices. If a payment due from customer is late (but not because it is disputed in good faith), STONEFLY may, at its discretion, refuse to ship parts or respond to technical and support inquiries until the late payment is made.
- 3) **Display The Return Authorization Number (RMA #):** Please print the RMA# you obtain from STONEFLY customer service clearly and conspicuously on the outside of the shipping box. STONEFLY will refuse to provide service and will return to you any shipment of parts or Systems that do not clearly and conspicuously display the authorization number on the packaging.
- 4) **Explain the problem in writing:** Please enclose a brief description of the problem encountered, the error message received, and the suspected defect you discussed with the technician over the phone.
- 5) **Packaging:** You will be responsible for ensuring that the System or parts you will be shipping to us are properly packaged and you will bear the full risk of loss or damage for any System or part that is returned improperly packaged. If you are shipping a System with removable drives, we request that you remove all drives with their drive trays and place them in static sensitive bags and ship them in a separate box. If you are shipping a hard drive only, remove it from the tray, place it in a static sensitive bag and pack it so it has thick foam cushioning on all four sides. The drive must not be able to move inside the box. All Systems must be double boxed with enough cushioning on all four sides. Loose fill is not acceptable cushioning inside the box. Systems or parts must not move inside the box. If you don't have the original boxes and are not able to secure the system in a shipping box, please ask STONEFLY for proper shipping boxes.
- 6) **Shipping:** You will be responsible to pay freight for the parts, units, or Systems to be shipped back to STONEFLY. Please use Federal Express 1, 2, or 3-day service. If you use UPS, please ship UPS AIR. Please make sure that you insure the package you return to us for the full cost of replacement.
- 7) **Permission to Access Your System and Information It contains:** You represent and warrant to STONEFLY that you have obtained permission for both you and STONEFLY to access and use your System, the data on it, and all hardware and software components included in it, for the purpose of providing the Technical Support Services. If you do not already have that permission, it is your responsibility to obtain it, at your expense, before you ask STONEFLY to perform the On-Site Warranty or any Technical Support Services.
- 8) **Accessing Hardware or Software That are Not Manufactured by STONEFLY:** Some of the On-Site Warranty or Technical Support Services may require STONEFLY to access hardware or software that is not manufactured by



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STONEFLY. Some manufacturers' warranties may become void if STONEFLY or anyone else, other than the manufacturer or its authorized representative, works on the hardware or software. It is your responsibility to look at your warranty, and to ensure that STONEFLY's performance of On-Site Warranty or Technical Support Services will not affect the warranty, or if it does, that the effect will be acceptable to you. STONEFLY DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE STONEFLY SERVICES MAY HAVE ON THOSE WARRANTIES.

UNTIL YOU HAVE COMPLIED WITH THE ABOVE PROCEDURES, STONEFLY CANNOT PROVIDE TECHNICAL SUPPORT OR DISPATCH A TECHNICIAN (IF IT APPLIES TO YOU) TO PERFORM ON-SITE REPAIRS.

The hours of support do not include regular holidays as follows: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day, and the days after Thanksgiving and Christmas Day. STONEFLY is not liable for any failure or delay in performance due to any cause beyond its control. If STONEFLY's ability to render support services is impaired by circumstances beyond STONEFLY's control, STONEFLY may terminate this contract, and you will receive a refund for any unused portion of your service term for which you had paid.

4. **LIMITATION OF LIABILITY:** UNDER NO CIRCUMSTANCES WILL STONEFLY OR ITS SUBCONTRACTORS BE LIABLE FOR ANY OF THE FOLLOWING: 1) THIRD PARTY CLAIMS AGAINST YOU FOR DAMAGES; 2) SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE, INCLUDING BUT NOT LIMITED TO PRODUCTS OR SYSTEMS BEING UNAVAILABLE FOR USE, LOST PROFITS OR SAVINGS, OR LOSS OF DATA OR CORRUPTED DATA OR SOFTWARE, OR FOR ANY DAMAGES FOR PERSONAL INJURY OR DEATH, WHETHER DIRECT, INDIRECT OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, OR ARISING OUT OF THE RESULTS OR OPERATION OF ANY SYSTEM RESULTING FROM IMPLEMENTATION OF ANY RECOMMENDED PLAN OR DESIGN, EVEN IF STONEFLY OR ITS SUBCONTRACTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGE, AND EVEN IF YOU ASSERT OR ESTABLISH A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL STONEFLY BE LIABLE TO YOU FOR ANY AMOUNT IN EXCESS OF THE ON-SITE WARRANTY OR TECHNICAL SUPPORT SERVICES FEES ACTUALLY RECEIVED BY STONEFLY UNDER THE APPLICABLE SERVICE DESCRIPTION FOR THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THAT STONEFLY IS NOTIFIED BY YOU OF ANY CLAIM OF LIABILITY. THIS LIMITATION OF LIABILITY APPLIES TO ALL TYPES OF LEGAL THEORIES, INCLUDING CONTRACT, TORT (INCLUDING NEGLIGENCE), PROFESSIONAL LIABILITY, PRODUCT LIABILITY, WARRANTY, OR ANYTHING ELSE. THIS LIMIT ALSO APPLIES TO ANY STONEFLY SUBCONTRACTOR. THE FEES ACTUALLY RECEIVED ARE THE MAXIMUM AMOUNT FOR WHICH STONEFLY AND ITS SUBCONTRACTORS ARE RESPONSIBLE.

5. **General Terms:**

- 5.1 **Term and Renewal:** Prior to the expiration of your service contract, you may upgrade your service level or extend your service period based on available options then in effect. Any upgrades will not apply to conditions pre-existing the effective date of the upgrade.



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- 5.2 **Claims of Confidentiality or Proprietary Rights:** You agree that any information or data disclosed or sent to STONEFLY, over the telephone, electronically or otherwise, is not confidential or proprietary to you.
- 5.3 **Cancellation:** You may cancel this Agreement by providing to STONEFLY at least thirty (30) days written notice of your decision to cancel. STONEFLY will issue a refund to you for any unused portion of the service term for which you have paid. If more than thirty (30) days have transpired for the current contract year, then a refund will not be paid for that current contract year.
- 5.4 **Entire Agreement:** This contract is the entire agreement between you and STONEFLY with respect to its subject matter and none of STONEFLY's employees or agents may orally vary the terms and conditions of this contract.
- 5.5 **FORMS:** All preprinted terms and conditions stated on any forms (such as purchase orders) that you have sent to STONEFLY or which you may send to STONEFLY in the future will not alter or supplement this agreement.
- 5.6 **Assignment:** STONEFLY reserves the right to assign its right and obligations under this agreement to a qualified third party designated by STONEFLY without notice to you. In the event of such an assignment, STONEFLY will no longer be responsible for any performance obligations under this agreement or any other liability associated with this agreement.
- 5.7 **Governing Law and Forum:** THE CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING ANY EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION (WHETHER OF THE STATE OF CALIFORNIA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF CALIFORNIA SUBJECT TO DISPUTE RESOLUTION. ANY LEGAL ACTION UNDERTAKEN UNDER THIS AGREEMENT SHALL BE BROUGHT ONLY IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN HAYWARD, ALAMEDA COUNTY, CALIFORNIA. THE PARTIES HEREBY SUBMIT TO THE JURISDICTION OF ALL STATE AND FEDERAL COURTS IN HAYWARD, ALAMEDA COUNTY, CALIFORNIA AND HEREBY AGREE THAT ANY SUCH COURT SHALL BE A PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE HEREUNDER, SUBJECT TO THE DISPUTE RESOLUTION PROVISIONS BELOW.
- 5.8 **Dispute Resolution:** The parties will attempt to resolve any claim or dispute or controversy (whether in contract, tort or otherwise) against STONEFLY, its agents, employees, successors, assigns, or affiliates (collectively for purposes of this paragraph, "STONEFLY") arising out of or relating to this Agreement, STONEFLY's advertising, or any related purchase (a "Dispute") through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or



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prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this paragraph.

5.9 **Order of Precedence:** If any inconsistencies or conflicts arise between the provisions of this Agreement, any Service Description, Supplemental Terms and Conditions, any other applicable Customer signed agreement, or Invoice, the following order of precedence shall apply in order of priority:

- a. This Agreement
- b. Supplemental Terms and Conditions
- c. Service Description
- d. Any applicable customer signed agreement
- e. Invoice

5.10

Limitation of Actions: Neither you nor STONEFLY will bring a legal action related to the STONEFLY Technical Support Services more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

5.11

Force Majeure: Neither you nor STONEFLY is responsible for failure to fulfill any obligation due to causes beyond its control. If STONEFLY's ability to render Technical Support Services is impaired by circumstances beyond STONEFLY's control, STONEFLY may terminate this Agreement, in which event, provided that circumstances resulting in STONEFLY's impaired ability to provide such services did not result from your actions or inaction, you will receive a refund for any unused portion of your service term for which you have paid.

5.12

Transfer of this Agreement: Subject to the limitations set forth in this Agreement, you may transfer this Agreement to anyone who buys your entire System before the Termination Date of this Agreement, provided you are the original purchaser of the System and this Agreement, or you have purchased the System and this Agreement from its original owner (or a previous transferee) and have complied with all the transfer rules in this Agreement.

Please note that if you move your System to a geographic location in which the Service coverage is not available at the same price as you paid for this Agreement, you may incur an additional charge to maintain the same categories of Service coverage at the new location. If you choose not to pay such additional charge, your Service may be automatically changed to categories of Service that are available at such price or a lesser price in such new location with no refund available. Additionally, if (i) you transfer your Agreement to a buyer who will move the System to a geographic location in which the Service coverage is not available at the same price as you paid for this Agreement, or (ii) if the transferee (i.e., the buyer) of this Agreement wishes to change the Service coverage, then you may incur an additional charge for such transfer fee discussed above.

5.13

Savings Clause: In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

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5.14

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End Of Life: STONEFLY uses the latest technology in it's product and from time to time components and technologies become obsolete and may inhibit our ability to support previous products beyond our reasonable practices. Our standard policy is as follows:

5.14.1 **End Of Availability:** Three years after the shipment of the original unit (Exact system configuration will not be available for sale)

5.14.2 **End Of Support :** Five years after the shipment of the original unit (Special arrangement must be made to support the unit on an as needed basis)

5.14.3 **End Of Life:** Six years after the original shipment of the unit there will be no parts, services or support available.

***** END *****