

WARRANTY SERVICE AGREEMENT



This is an agreement for software and hardware maintenance services for the Products for the one year period beginning on the date that the Products are delivered to Purchaser by DatCard. The services (“Services”) are more specifically described below. Capitalized terms used in this Warranty Service Agreement, unless otherwise defined, have the same meaning as in the Agreement.

- 1.0 TERM:** The Term of this Warranty Service Agreement is one (1) year beginning on the date the Products referred to in the Purchase Order are delivered to Purchaser by DatCard.
- 2.0 PRODUCTS:** DATCARD agrees to provide the Services under this Warranty Service Agreement for the Products described in the Purchase Order.
- 3.0 PRICE:** The Services during the Term are included in the Purchase Price of the Products. Unless this Warranty Service Agreement is extended, upon expiration of the Term, the Purchaser will then be invoiced for current and future services on a time and materials basis at DATCARD’s standard hourly rate of \$375.00/hour, \$150.00/hour travel, and \$400.00/hour for onsite support not including any required travel and additional expenses.
- 4.0 SERVICES:** During the Term, subject to the provisions of this Section 4.0, DATCARD will provide telephone support and remote diagnosis of the Products from 6:00 a.m. to 6:00 p.m., Monday through Friday, Pacific Standard Time (PST) (“Service Hours”). DATCARD will further provide the Services set forth below. Service calls placed during the Service Hours will be responded to within four (4) hours. Service Hours do not include the following holidays: New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

4.1 **Rapid Exchange:**

During the Term, Purchaser will be allowed to participate in the DATCARD “Rapid Exchange” program. Under the Rapid Exchange program, DATCARD will provide the following services:

- 4.1.1 Upon receiving a request from Purchaser for the replacement of a non-conforming or non-performing Product, DATCARD will conduct an evaluation of the Product(s) within one (1) business day after receipt of the request. Thereafter, if DATCARD determines that the Product or any part thereof, needs to be exchanged, DATCARD will ship a replacement device or component (the “Replacement Product”) to Purchaser. If a request for replacement is made by Purchaser prior to 2:00 p.m. (PST) during Service Hours and DATCARD thereafter determines that the Product or any part thereof should be exchanged, all in stock Replacement Product will be shipped to Purchaser by close of business the next business day. If a request for replacement is made by Purchaser after 2:00 p.m. (PST) during Service Hours and DATCARD thereafter determines that the Product or any part thereof should be exchanged, DATCARD will use its best efforts to ship all in stock Replacement Product to Purchaser by close of business the next business day, but if this cannot be done, by the second business day after the request is made;

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- 4.1.2 DATCARD shall pay for all associated shipping costs related to shipment of the Replacement Product to Purchaser for those Products covered by this Warranty Service Agreement;
- 4.1.3 DATCARD will use its best efforts to provide Replacement Product(s) that are the same make and model as the Products or any component thereof. Purchaser acknowledges that other than the Software, DATCARD does not manufacture the Products or Replacement Products and must rely on third party manufacturers for the hardware components and parts thereof. If DATCARD cannot provide Replacement Product(s) that are the same make and model as the Products or any component thereof, DATCARD reserves the right to provide a Replacement Product that is not the same make and model as the Products, but which is of substantially the same quality and functionality (“Substitute Product”).
- 4.1.4 If the Replacement Product is the same make and model as the Product, Purchaser shall keep the Replacement Product in lieu of the Product. If DATCARD is unable to provide a Replacement Product that is the same make and model as the Product, DATCARD will use its best efforts to repair and return the Product (the “Repaired Product”) and the customer must return the Substitute Product to DATCARD once it receives the Repaired Product. If DATCARD cannot repair the Product, and cannot provide Purchaser with a Replacement Product, Purchaser shall keep the Substitute Product.
- 4.1.5 All Substitute Products remain the property of DATCARD unless they are retained by Purchaser due to DATCARD’s inability to provide Purchaser with a Repaired Product. The Substitute Products must be returned to DATCARD by Purchaser within five (5) business days following Purchaser’s receipt of the Repaired Product from DATCARD. If Purchaser fails to return a Substitute Product to DATCARD within five (5) business days of receipt of the Repaired Product, DATCARD will notify Purchaser of the default. If Purchaser thereafter fails to cure the default within five (5) business days, DATCARD shall invoice the Purchaser the current list price of the Substitute Products not returned. The invoice shall be due and payable within thirty (30) days of the date of the invoice.
- 4.1.6 Component parts, assemblies or subassemblies may be replaced with new or refurbished items at DATCARD’s discretion. If part(s) replacement is required due to causes other than normal wear and tear, DATCARD will invoice the Purchaser for such parts and all reasonable associated expenses.
- 4.1.7 Purchaser is responsible for packaging non-functioning devices and parts and expediting shipment back to DATCARD.



4.2 **General Information on All Services:**

- 4.2.1 DATCARD reserves the right to perform a Rapid Exchange on the original control center, robot or printer. DATCARD **will not** be responsible for items installed by Purchaser in or on the control center.
- 4.2.2 Third party software or hardware may not be installed on the Products without prior written authorization of DATCARD. Purchaser assumes the risk of all use of any part, hardware, software, or accessory that is not a factory authorized or compatible part and is not approved in writing by DATCARD. Where the use of any such part or accessory causes failure of the Product(s), repair to the Product(s) due to failures caused by the use of non-authorized parts is the sole responsibility of the Purchaser, and is not covered under this Warranty Service Agreement. DATCARD shall not be held responsible for the loss of any third party applications or files caused by the installation or re-installation of DATCARD software.
- 4.2.3 This Warranty Service Agreement includes coverage for the Control Center.
- 4.2.4 All Services are provided in DATCARD' sole discretion either on- site where the Products are located and /or via a remote connection. As a condition precedent to DATCARD performing Services under this Warranty Service Agreement, Purchaser must provide DATCARD with a remote access connection to all Products.
- 4.2.5 Software enhancements or upgrades will be made available to Purchaser by DATCARD on an on-going basis during the Term of this Agreement. Software enhancements shall be installed only if the enhancement or upgrade is compatible with the Purchaser's current hardware. If the software upgrade or enhancement is not compatible with the Purchaser's existing hardware, as a condition to DATCARD providing the software upgrade or enhancement, it shall be the Purchaser's sole responsibility to upgrade the hardware at its cost to a compatible solution. DATCARD shall be under no obligation to make any changes or modifications to the software upgrades and/or enhancements to make it compatible with the Purchaser's existing hardware.
- 4.2.6 The monitor, mouse and, keyboard are considered peripheral replacements and exchanges are not performed on-site.

4.3 **Exclusions:** (The Services do not include)

- 4.3.1 The electrical/data wiring external to the connection of the Products;
- 4.3.2 Maintenance of accessories, attachments, equipment or other devices not furnished by DATCARD;
- 4.3.3 Repair of damages resulting from accident, neglect or misuse, major fluctuations of temperature or humidity, failure of electrical power, or causes other than ordinary use, or resulting from maintenance or

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repair of the Products by persons other than DATCARD' authorized representatives;

- 4.3.4 Painting or refinishing of the Products, making specific changes, or performing services connected with relocation of Products;
- 4.3.5 Services rendered impractical due to alterations to the Product by Purchaser;
- 4.3.6 DATCARD does not perform the following on-site installation(s) or service(s), each of which is the responsibility of Purchaser:
 - a. Installation of the printer ribbon, CD's, DVD's, or Ink Cartridges,
 - b. Printer Alignment,
 - c. Door alignment,
 - d. Hardware button diagnostics;
 - e. Installation of Quick-Release/Hot-Swappable Recorders.

4.4 **Hardware Services**

- 4.4.1 DATCARD agrees to provide remote diagnosis of the hardware components of the Products during Service Hours. On-site Services of the hardware components of the Products will be provided to Purchaser only after DATCARD has determined, in its sole discretion, that on-site Service is necessary. For all on-site Services, a service contractor or hardware manufacturer service representative will be dispatched by DATCARD ("Contractors"). Dell components which are part of the Products, Substitute Products, or Replacement Products may be serviced by Authorized Dell Representatives. Purchaser acknowledges that the hardware components are not manufactured by DATCARD and that DATCARD reserves the right to contract with independent Contractors to make the repairs. Such independent Contractors are not employees of DATCARD.
- 4.4.2 Every effort is made to ensure the parties performing on-site Services will have all required spare parts available to service the Products. In the event the required spare part(s) are not readily available, DATCARD will make a good faith effort to ship the required spare parts via overnight mail, next day delivery. If DATCARD deems it advisable to have a technician visit Purchaser's facility for inspection or maintenance purposes, such trip will be initiated by DATCARD and approved in advance by Purchaser. All costs and expenses related to the on-site visit will be paid for by DATCARD. If, however, it is determined by DATCARD upon such inspection that any problem with the Products necessitating the on-site visit developed from Purchaser's neglect or misuse, use of products not approved by DATCARD, or damages caused by other than normal wear and tear, Purchaser shall be responsible for all costs and expenses associated with the on-site visit.
- 4.4.3 The hardware and electrical components of the Original Products are manufactured by third parties. Purchaser is responsible for reading all



documentation relating to the hardware and electrical components to determine the proper use of the hardware and electrical components, and to apprise Purchaser of any limitations or use restrictions the manufacturers may have placed on the use of the hardware and/or electrical components. Such limitations, warnings, or use restrictions may be found in the manufacturers' product manuals and documentation provided to Purchaser with the Original Products or which appear on the manufacturers' websites.

4.5 **Software**

- 4.5.1 DATACARD resolves to work toward providing software availability approaching one hundred percent. To accomplish this, DATACARD requires remote access connectivity to the Products to rectify Product software issues. Direct modem dial-up, RAS connection or connection via VPN must be available for remote connection. Access permissions will be customized to Purchaser's facility requirements. Remote connection will enable DATACARD, as necessary, to make software diagnosis, changes, upgrades, and patches to the system as needed. If at any time during the Term, remote access is unavailable to DATACARD for any reason, other than the fault of DATACARD, DATACARD shall have no obligation during those periods of time that remote access is unavailable to DATACARD to perform the Services under this Agreement.
- 4.5.2 Ghosting, copying, reproduction, transfer, third party sharing, or duplication of any DATACARD software, enhancement, and/or upgrade, including without limitation ghosting, copying, reproduction, use, or duplication of any DATACARD software, enhancement, and/or upgrade onto another system, is prohibited and considered an infringement and breach of this Agreement and, in addition to other remedies available to DATACARD, constitutes a default under this Agreement and voids all of DATACARD' obligations to provide the Services.
- 4.5.3 Connecting the Products to the Internet or an Intranet may result in Purchaser's Product(s) being subjected to breaches of security. DATACARD shall not be liable for any such breaches of security nor shall DATACARD be liable for any virus, bugs, tampering, interruption, defect, deletion, delay in operation or transmission, computer line failure or any other technical malfunction caused by such connection to the internet or by connection or installation of any software or hardware created by a third party that is not installed or authorized by DATACARD. Virus protection software is installed on all DATACARD solutions, and it is the Purchaser's responsibility to keep updated any/all virus protection software definitions.

5.0 **CHANGES**

- 5.1 DATACARD reserves the right to modify or delete any term of this Agreement. Any such changes will be posted on DCS' website and it is Purchaser's responsibility to keep apprised of the changes.



6.0 GENERAL

- 6.1 Force Majeure: DatCard shall have no liability to fulfill its obligations hereunder, nor be responsible for any failure or delay in performance, by reason of or on account of strikes, riots, fires, explosions, acts of God, war, labor disputes, extreme weather, pandemic, epidemic, governmental action, including without limitation tariff increases, transportation, shipping and/or telephone line difficulties, inability to obtain equipment, manufacturers' parts or materials sufficient to meet its obligation or other cause, which is beyond the reasonable control of DCS. The time for performance of DatCard's obligations hereunder shall be extended for a commercially reasonable period of time in the event of any delay or default for such cause(s).
- 6.2 Assignment: Any or all DATCARD rights or obligations under this Agreement may be assigned by DATCARD with notice to the Purchaser. Purchaser may not assign any license rights of the Products, including any upgrades and enhancements.
- 6.3 LIMITATION OF LIABILITY AND DAMAGES. NEITHER DATCARD NOR ANY OF ITS SHAREHOLDERS, DIRECTORS, EMPLOYEES OR AGENTS (HAS OR SHALL HAVE ANY LIABILITY TO PURCHASER, ANY SUB-COMPANY, ANY CLIENT, CUSTOMER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, LOSS OF DATA, BUSINESS INTERRUPTIONS, LOSS OF BUSINESS INFORMATION, LOSS OF GOODWILL, COMPUTER MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES), WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE DATCARD PRODUCTS AND SERVICES, OR DATCARD' PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF THE BASIS OF THE CLAIM AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DATCARD'S LIABILITY FOR DAMAGES SHALL BE STRICTLY LIMITED TO THE REFUND OF ANY PAYMENTS MADE BY THE PURCHASER UNDER THE AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE CLAIM.
- 6.4 Limitations of Action: No action arising out of the performance of services under this Agreement, whether in contract or tort, including negligence, may be brought by either party more than (3) years after the cause of action accrues; provided, however, that the action for non-payment may be brought at any time within the applicable statute of limitations period.
- 6.5 Governing Law; Jurisdiction: This Agreement shall be governed by the laws of the State of California, without regard to conflict of law principles. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act (UCITA) will apply in any respect to this Agreement.
- 6.6 Termination: This Agreement may be terminated for cause in the event there is a breach or default of any term of this Agreement. Prior to terminating this



contract, the non-defaulting party shall provide written notice of termination to the defaulting party. After being notified of the default, the defaulting party shall have thirty (30) days to cure the default. If the default is not cured within the thirty (30) days, the non-defaulting party may immediately terminate the Agreement without further notice.

- 6.7 Relationship of the Parties: The relationship between DATCARD and Purchaser is that of vendor and vendee, and it shall not be construed as being a partnership, joint venture, franchiser/franchisee, or employer/employee. This Warranty Service Agreement is a commercial agreement between businesses, not a consumer agreement. Purchaser has no authority, apparent or otherwise, to contract for or on behalf of DATCARD, or in any other way legally bind DATCARD in any fashion, nor shall Purchaser be authorized to make any representations about DATCARD or DATCARD Products and Services other than to set forth DATCARD' responsibilities as outlined in this Agreement.
- 6.8 Severability. If it is determined by a court of competent jurisdiction that any provision contained in this Agreement is illegal or unenforceable, such determination shall solely affect such illegal or unenforceable provision and shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 6.9 Binding Effect. This Agreement and the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, but subject to the limitations on assignment set forth above.
- 6.10 Entire Agreement and Modifications. This Warranty Service Agreement and the Agreement sets forth the entire agreement and understanding between the parties and merges all prior discussion between them, and supersedes all prior negotiations, understandings and agreements between the parties hereto concerning the warranty services to be provided by DATCARD. Except as provided in this Warranty Service Agreement, this Agreement may not be modified except by the written agreement of both parties.
- 6.11 Headings. The headings used in connection with the paragraphs and subparagraphs of this Warranty Service Agreement are inserted only for purposes of reference. Such headings shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this Warranty Service Agreement, nor shall such headings otherwise be given any legal effect.
- 6.12 Waiver. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of any party thereafter to enforce each and every such provision, and the single or partial exercise of any right hereunder by any party shall not preclude any other or further exercise of such right or any other right by such party or the other party.