

**SUPPLEMENTARY TERMS FOR INFRASTRUCTURE PRODUCTS –  
SALES TO FEDERAL GOVERNMENT CUSTOMERS**

These Supplementary Terms for Infrastructure Products (“**Supplementary Terms**”) apply specifically to the ordering activity (“Customer” or “you”) purchase of Infrastructure Products (as defined below) from Dell Marketing L.P. or Dell Federal Systems L.P. (“Dell”). If there is a conflict between these Supplementary Terms and your existing purchase agreement with Dell regarding Infrastructure Products (“Contract”), these Supplementary Terms shall prevail.

**1. DEFINITIONS**

Unless otherwise expressly defined herein, all capitalized terms used in these Supplementary Terms shall have the meanings ascribed to them in the Contract. The definitions below shall also apply to the purchase and sale of Infrastructure Products.

a. “**Customer Support Tools**” means any software or other tools which Dell makes available to you enable certain service features of Infrastructure Products (as applicable) and to enable you to perform various self-maintenance activities.

b. “**Dell Service Area**” means the area that is within: (i) one hundred drivable miles of a Dell service location for Infrastructure Products; and (ii) the same country as the Dell service location.

c. “**Delivery**” for Equipment occurs when Dell provides the Equipment to a carrier at Dell’s designated point of shipment. “Delivery” for Software occurs when Dell provides physical media to a Dell-designated carrier at Dell’s designated point of shipment or the date Dell notifies you that Software is available for electronic download.

d. “**Documentation**” means Dell’s then-current, generally available user manuals and online help for Infrastructure Products.

e. “**Equipment**” means “Dell”, “EMC”, or “Dell EMC”-branded hardware that Dell provides under these Supplementary Terms.

f. “**Independent Software**” means “Dell”, “EMC” or “Dell EMC”-branded software that can operate on hardware other than Equipment.

g. “**Infrastructure Products**” means Equipment that comprises data storage and converged function data management products and their related Software, including but not limited to PowerMAX/VMAX, Unity, SC, Vblock, VxBlock, VxRail, Data Domain DD3300, and IDPA DP4400 Products and Independent Software (e.g., backup and recovery software). Certain Infrastructure Products (including Vblock, VxBlock and VxRail) contain components that are subject to Cisco Systems, Inc. (“Cisco”) terms and conditions, and your purchase of such Infrastructure Products with Cisco components are subject to additional terms and conditions which you must agree to in writing before you may purchase such Infrastructure Products under this Contract.

h. “**Installation Site**” means the ship-to address or other location identified on Dell’s quote or order confirmation or other Dell-prepared document as the Infrastructure Product site of installation, use, or both.

i. “**Maintenance Aids**” mean any hardware, software or other tools, other than Customer Support Tools, that Dell uses to perform diagnostic or remedial activities on Products.

j. “**Product Notice**” means the information related to Products and Services posted at a Dell or EMC website at the time of the Dell quote, currently located at [http://www.EMC.com/products/warranty\\_maintenance/index.jsp](http://www.EMC.com/products/warranty_maintenance/index.jsp). To locate the applicable information related to the SC Series Products, please see the applicable service description listed at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global). The Product Notice informs you of Infrastructure Product-specific use rights and restrictions, unit of measure (if any), warranty periods, warranty upgrades and Support Services terms. The Product Notice in effect as of the date of Dell’s quote will apply to Infrastructure Products, and is deemed

incorporated into that quote and related purchase order by this reference. Upon request, Dell will provide a copy of the applicable Product Notice or attach it to the relevant quote.

k. **“Service Agreements”** means service contracts, including service descriptions available at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global), service briefs, statements of work, services specifications and any other similar mutually agreed documents.

l. **“Software”** means “Dell”, “EMC” or “Dell EMC”-branded generally available application, microcode, firmware and operating system software in object code format that is licensed by Dell or EMC.

m. **“Software Release”** means any subsequent, generally available version of Software or Independent Software provided after initial Delivery of such software, but does not mean a new product.

n. **“Support Services”** when used in these Supplementary Terms and applied to Infrastructure Products means the Services identified on the table located at <http://www.emc.com/collateral/warranty-maintenance/h4276-emc-prod-warranty-maint-table.pdf>. Support Services for SC Series Products are stated at <http://www.dell.com/learn/us/en/uscorp1/campaigns/global-commercial-service-contracts?c=us&l=en&s=corp>.

o. **“Labor Hour Service”** means any maintenance or support service that Dell provides but is not part of fixed-fee Support Services or other Dell generally available service-related offering using a pre-established fee. Dell charges separately for Labor Hour Services on an hourly rate based upon its approved Contract labor rates basis consistent with the Contract’s provisions.

## 2. INSTALLATION

You must ensure that: (i) the Installation Site meets the specifications for Infrastructure Products including, without limitation, the Equipment’s specifications for power and cooling; (ii) the surfaces over which the Equipment will travel at Customer’s location between the carrier delivery point and the final location at the Installation Site meet the weight specifications for the Equipment; and (c) Dell has the contact information for a responsible single point of contact at the Installation Site.

## 3. SUPPORT SERVICES

Dell will provide Support Services to you subject to your compliance with the provisions of these Supplementary Terms and the Agreement.

a. **Scope.** The contents of Support Services for each Infrastructure Product (the **“Support Option”**) are set forth in the Product Notice or the Service Agreements, and unless otherwise indicated in the Product Notice or Service Agreements, consist of: (i) using commercially reasonable efforts to remedy failures of Infrastructure Products to perform substantially in accordance with Dell’s applicable Documentation; (ii) providing English-language (or, where available, local language) help line service via telephone or other electronic means; and (iii) enabling you to download Software Releases and Documentation updates that Dell makes generally available at no additional charge to other purchasers of Support Services for the applicable Infrastructure Product. Dell reserves the right to change the scope of Support Services for Infrastructure Products on sixty days’ prior written notice.

b. **Additional Support.** Dell reserves the right to charge for Support Services performed outside the time frames of the applicable Support Option as a Labor Hour Service. Except to the extent that Support Services are independent of the Equipment’s location, Dell will have no obligation to provide Support Services for Infrastructure Products with respect to Equipment that is outside the Dell Service Area. Support Services do not apply to any Software other than the current and the immediately prior Software Release. Support Services are subject to Dell’s then-current “End-of-Service-Life” policy for the respective Infrastructure Product, if applicable. Dell will have no obligation to provide Support Services for Software and problems that cannot be reproduced at Dell’s facility or via remote access to Customer’s facility. Support Services do not include the supply of Equipment upgrades, if any, needed to utilize new features or functionality in a Software Release.

c. **Exclusions.** Support Services do not cover a problem that would have been excluded from coverage pursuant to section 8.d (“**Warranty Exclusions**”) had the problem arisen during the warranty period of the affected Infrastructure Product.

d. **Reinstatement of Support.** You may request that Dell reinstate Support Services for an Infrastructure Product for which Support Services have lapsed. Dell may do so at its discretion and reinstatement will be subject to a certification at Dell’s then-current Contract labor rates. Once the Infrastructure Product is certified, Support Services will commence when you pay: (i) the charge for the above-described Labor Hour Service; (ii) the amount Dell would have normally charged had Support Services been in effect during the period of the lapse or discontinuation; and (iii) the charge for the next twelve months of the newly-commenced Support Services.

#### 4. SOFTWARE

Software is subject to the manufacturer’s license terms. Some products are provided with a “clickwrap” agreement included as part of the installation and/or download process, or a “shrinkwrap” agreement included in the packaging for the product. For Infrastructure Products, the terms of the EMC Corporation end user license agreement approved by GSA and listed on GSA’s Approved IT Schedule 70 Agreements dated 4/1/2019 shall apply. With regard to third-party licenses, if any, upon request of the Contracting Officer the terms of such third-party clickwrap or shrinkwrap agreement shall be provided to the Contracting Officer.

#### 5. YOUR RESPONSIBILITIES

a. **Cooperation.** You will: (i) promptly notify Dell when an Infrastructure Product fails and provide Dell with sufficient details so that Dell can reproduce the failure; (ii) allow Dell remote and on-site (when deemed necessary) access to the Infrastructure Product to provide Support Services; and (iii) furnish necessary facilities (which for on-site access means suitable work space, computers, power, light, phone, internet network availability, software, and equipment reasonably required by Dell), information, and assistance required to provide Support Services. Customer will provide Dell with timely access to and use of all Customer proprietary and third party equipment, software and systems required for Dell to perform its obligations under these terms. With respect to all third party hardware or software operated by or on behalf of Customer, Customer warrants that it shall, at no expense to Dell, obtain all consents, licenses and sublicenses necessary for Dell to perform under the Service Agreement(s) and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses.

b. **Support Contacts.** Unless a specific number of authorized contacts are indicated on the Product Notice or the applicable Service Agreement(s) requires that the Customer be in physical possession of the Equipment at the time a support request is submitted, Customer will designate in writing a reasonable number of authorized contacts, as determined by the parties, who will initially report problems and receive Support Services from Dell. Each Customer representative will be familiar with Customer’s requirements and will have the expertise and capabilities necessary to permit Dell to fulfill its obligations. Customer will provide changes to authorized support contacts to Dell in writing.

#### 6. ADDITIONAL SUPPORT SERVICES TERMS

a. **Maintenance Aids and Spare Parts for Equipment.** You authorize Dell to store Maintenance Aids and spare parts at the Installation Site and agree that these items are only for Dell’s use. You will not authorize any third party to use these items. Dell is authorized, upon the conclusion of the Support Services or at any other time, upon reasonable notice to you, to enter the Installation Site, or to use remote means to remove or disable Maintenance Aids and spare parts, as applicable. You will reasonably cooperate in this effort.

b. **Customer Support Tools.** Dell may choose to make Customer Support Tools available to assist you in performing various maintenance or support related tasks. You may use Customer Support Tools only in accordance with terms under which Dell makes them available.

c. **Service Data.** In connection with the performance and use of the Support Services, and Dell’s remote support capabilities detailed in section 6.h (“**Remote Support Capability**”) below, Dell may obtain and receive, data or information, including Infrastructure Product-specific, service-related data such as Infrastructure Product diagnostics, configurations, usage characteristics, performance data, and deployment location (collectively, “**Service Data**”). You explicitly consent to Dell’s collection, storage and use of this Service Data. You acknowledge and agree that Dell will: (i) use, compile, display, store, process, reproduce, or create reporting and other services-

related materials from the Service Data solely to provide the Support Services, including remotely accessing Infrastructure Products to install, maintain, monitor, support, receive alerts and notifications from and change certain internal system parameters of Infrastructure Products in Customer's environment in fulfillment of Dell's Support Services obligations; (ii) provide Customer with visibility to Customer's actual Infrastructure Product usage and consumption patterns and make recommendations to Customer regarding improvements to Customer's environment and utilization of the Services; (iii) utilize the Service Data in connection with predictive analytics and usage intelligence to consult with and assist Customer to optimize Customer's future planning activities and requirements; (iv) aggregate and use the Service Data in an anonymous manner with that of others in the development and improvement of future products; and (v) copy and maintain the Service Data on Dell's systems as necessary to provide the Support Services. Dell agrees that the Service Data is subject to the confidentiality provisions in the Agreement.

d. **Data Security Options.** You must, at your own cost, permanently erase all information, including without limitation all personally identifiable, confidential, and any other protected or sensitive information placed on Infrastructure Products before returning them to Dell for trade-in, repair, or disposal. You must use a method that does not cause damage to the Infrastructure Products or any replaced parts or any other items that Customer provides to Dell for repair, trade-in, or disposal. Dell offers data erasure services and Dell will provide the descriptions and charges associated with Dell's then current data erasure services upon request. You agree that Dell has no responsibility for any information that you fail to erase that is on items sent to Dell.

e. **Proactive Product Changes.** Dell may, at its expense, implement changes to the Infrastructure Products upon reasonable notice to you: (i) when the changes do not adversely affect interchangeability or performance of the Infrastructure Products; (ii) when Dell reasonably believes the changes are required for purposes of safety or reliability; or (iii) when Dell is required by law to do so. You will give Dell reasonable access to the Infrastructure Products for these purposes.

f. **Software Releases.** When Customer begins using a Software Release for a particular Infrastructure Product, Customer must remove and make no further use of all prior Software Releases for that Infrastructure Product and protect the prior Software Releases from disclosure or use by any third party. Customer is authorized to retain a copy of each Software Release that the Customer properly obtains for archive purposes and use them as a temporary back-up if the current Software Release becomes inoperable. Customer will use and deploy Software Releases only in accordance with terms of the original license for Software.

g. **Change of Equipment Location or Configuration.** Customer may change the Installation Site or configuration of Equipment under Support Services only after written notice to Dell, and subject to the terms and conditions in this section. If the new location is in a different country, the move is subject to Dell's prior written approval and additional fees may apply. Customer must promptly notify Dell of any changes to the configuration, or movement of the Equipment by anyone other than Dell. To determine if the Infrastructure Products remain eligible for Support Services, Dell reserves the right to inspect and evaluate the changes in configuration or location of the affected Equipment, and to re-certify the Equipment at Dell's then current Labor Hour rates. Additional charges, if any, related to changes in configuration or location of the Equipment will apply from the date the change took place.

h. **Remote Support Capability.** As part of Support Services, Dell makes various remote support capabilities available for certain products in accordance with its then-current policies and procedures. Dell's warranty and Support Services fees are based on the availability and use of the remote support capabilities. Customer may elect not to activate or to disable remote support capabilities, but must notify Dell of this election without undue delay. If you choose to disable or to not activate the remote support capabilities, then, with regard to all products affected by this choice: (i) Dell may assess you a surcharge in accordance with Dell's then-current standard rates; and (ii) agreed response times or other agreed service levels (if any) will no longer apply.

i. **Alterations and Attachments to Infrastructure Products.** Dell does not restrict Customer from making alterations to, or installing other products in or with the Equipment at Customer's own expense; provided that Customer is responsible for any inspection fees, additional charges, or both, resulting from such activities. If the alterations or attachments prevent or hinder Dell from performing Support Services, then you shall, upon Dell's

request, take corrective action. Your failure to take appropriate corrective action shall be deemed a breach of this Agreement.

j. **Transfer to Secondary Purchasers.** If Customer decides to sell, assign, or otherwise transfer the use, ownership, or both, of Equipment to a “**Secondary Purchaser**” (meaning a bona fide end-user that (1) is not considered, in Dell’s reasonable discretion, to be a Dell competitor and (2) has not had prior disputes with Dell), to the extent Dell resources reasonably permit, Dell will make available to you, as a Labor Hour Service, de-installation services. In addition, and to the extent Dell resources reasonably permit, Dell will make available directly or indirectly to the Secondary Purchaser: (a) Equipment installation and re-certification services as a Labor Hour Service; and (b) Support Services for Equipment that Dell has determined and notified the Secondary Purchaser meets Dell’s certification criteria upon receipt of payment of Dell’s then current Support Services fees. A Secondary Purchaser of Infrastructure Products must obtain, directly or indirectly, the appropriate Software license from Dell and pay any applicable Software license fees.

k. **Software Support Services affected by Change in Equipment Status.** For Software used on or operated in connection with Equipment that ceases to be covered by Support Services or the Dell Equipment warranty, Dell reserves the right to send you a written notice that Dell has either chosen to discontinue or change the price for Support Services for the Software (with the price change effective as of the date the applicable Equipment ceases to be covered). If Dell sends a discontinuation notice, or if you reject or do not respond to the notice of a proposed price change within thirty days after receipt, you will be deemed to have terminated the Software Support Services for convenience and the terms of section 7(c) below will apply.

l. **Third Party Products Provided to Dell.** If you provide or make available third party products, including any intellectual property developed by you, for Dell to use in connection with Services, you will: (a) authorize Dell to use the third party products as needed to provide the Support Services; (b) warrant that you have all consents, licenses, and sublicense rights as may be necessary to make these third party products available to Dell; and (c) agree that Dell is not liable to you if Dell’s authorized use causes warranties or other services contracts for these third party products to become void.

m. **Pricing.** The fee for Support Services for Infrastructure Products will be as set forth on the applicable Dell quote or order confirmation. Additions to the Products as specified in the relevant Dell quote or order confirmation may result in additional Support Services fees. Dell will charge and invoice for Labor Hour Service in accordance with terms governing each service engagement.

## 7. TERM AND TERMINATION

a. **Software Support Services Term.** Independent Software or Software related Support Services that are ordered at the same time as the license for such Independent Software or Software shall commence on the date of shipment of the physical media or electronic availability of the Software and continue for the period specified on the Dell quote or order confirmation. Renewals of such Support Services shall commence and expire in accordance with the dates on the applicable Dell quote or order confirmation.

b. **Equipment Support Services Term.** Support Services (including Support Option upgrades, if applicable) for Equipment are provided during the Equipment warranty period set out in the relevant Product Notice or stated in a Dell quote or order confirmation. Renewals of such Support Services shall commence and expire in accordance with the dates on the applicable Dell quote or order confirmation. Support Services for hardware upgrades installed into Equipment are coterminous with the Support Services that are then in effect for the Equipment into which such upgrades are installed.

c. **Termination.** These Supplementary Terms may be terminated (i) for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4(l).

## 8. INFRASTRUCTURE PRODUCT WARRANTIES, EXCLUSIONS, AND DISCLAIMERS

The following warranties and warranty exclusions and disclaimers apply for Infrastructure Products.

a. **Equipment and Software Media Warranty.** Unless stated otherwise in the Product Notice, Dell warrants that: (i) the Equipment and upgrades installed into that Equipment, when purchased from Dell and operated with

normal usage and regular recommended service; and (ii) any physical media for Software, will be free from material defects in materials and workmanship, and will perform substantially in accordance with the applicable Documentation until the expiration of the warranty period stated in the Product Notice or, for SC Series Products, stated in the Dell quote or confirmation. Unless otherwise noted on the Product Notice or the Dell quote or order confirmation, the warranty coverage for the microcode, firmware and operating system software that enables Equipment to perform as described in its Documentation will be no less than that which applies to the applicable Equipment. To the extent specified on the Product Notice and unless stated otherwise in the Dell quote or order confirmation, Support Services in the form of the Support Option noted on the Product Notice are included free of charge during the warranty period for Equipment. In some cases, Dell may offer an upgrade option for Support Services during the Equipment warranty period for separate purchase.

1) **Equipment Warranty Duration.** The warranty period for Equipment is stated on the Product Notice unless the Dell quote or order confirmation provides a different warranty period. The Equipment warranty commences upon Delivery. Upgrades to Equipment are warranted in the same manner as the Equipment in which the upgrades are installed from Delivery of the upgrade until the end of the warranty period for the Equipment into which the upgrades are installed.

2) **Software Media Warranty Duration.** The warranty for any physical media for Software and Independent Software is ninety days and commences upon Delivery.

3) **Equipment and Software Media Warranty Remedies.** If Customer notifies Dell of a warranty claim during the applicable warranty period, then Dell will, at its option, either remedy the non-compliance or replace the affected Equipment with new or refurbished parts at Dell's discretion or applicable Software or Independent Software media. If Dell is unable to repair or replace the affected Equipment or media within a reasonable time, then Customer will return the Equipment or media to Dell, and Dell will provide to Customer a refund of the amount Dell received for the affected Equipment or media as depreciated on a straight line basis over a five year period. You must return to Dell the applicable defective Equipment or media, or portions of those items, and those items become Dell's property. If Customer receives a replacement but does not return the defective item to Dell, then Customer must pay Dell's then-current spare parts price for the replacement item. Dell has no liability under these warranty terms for defects in Equipment and media after expiration of the applicable warranty period. This subsection 8.a(1) states Dell's entire liability and Customer's exclusive remedies under warranties for the Equipment and Software and Independent Software media described in section 8.a.

b. **Independent Software Warranty, Duration, and Remedy.** Dell warrants that the Independent Software will, for ninety days following Delivery ("**Independent Software Warranty Period**"), substantially conform to the applicable Documentation. This limited warranty is not transferable. Customer must report errors to Dell during the Independent Software Warranty Period to invoke this warranty. In response to Customer's error notice, Dell will, at its own expense, either replace that Independent Software or correct any reproducible error. If Dell determines that it is reasonably unable to correct the error or replace the Independent Software, Dell will refund to you the amount you have paid for that Independent Software, and Customer's license for that Independent Software will terminate. This section 8.b states Dell's sole obligation and your exclusive remedy under the Independent Software warranty. This disclaimer of warranty may not be valid in some jurisdictions, and Customer may have warranty rights under law which may not be waived or disclaimed. Any law-based warranty extends only for thirty days from the date of Delivery (unless local law provides a different duration).

c. **Infrastructure Product Support Services Warranty and Remedy.** Dell will perform the labor portion of Support Services for Infrastructure Products in a workmanlike manner in accordance with generally accepted industry standards. Customer will notify Dell of any failure to perform as soon as reasonably possible, and in no event more than ten (10) days after the date on which such failure first occurs. A replacement part receives the remainder of the warranty or Support Services coverage applicable to the Infrastructure Product containing the replacement part. Customer's exclusive remedy and Dell's entire liability to Customer for Infrastructure Product Support Services shall be for Dell to, at its option, (1) use reasonable efforts to (a) re-perform the deficient labor services within a reasonable time, or (b) replace any replacement parts which become defective during the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part, or sixty (60) days after installation thereof, whichever occurs later; and (2) if, after reasonable efforts, Dell is not able to correct such deficiencies, then Customer may terminate in accordance with section 7.c above.

d. **Warranty Exclusions.** The warranties in this section 8 do not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Infrastructure Product is used or other causes beyond Dell's control; (iii) installation, operation or use not in accordance with Dell's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Infrastructure Product was not designed; (v) modification, alteration or repair by anyone other than Dell or its authorized representatives; or (vi) in case of Equipment only, causes attributable to normal wear and tear. Dell has no obligation whatsoever for (1) Software or Independent Software installed or used beyond the licensed use, (2) Equipment which was moved from the Installation Site without Dell's consent, (3) Infrastructure Product whose original identification marks have been altered or removed, or (4) any Software or Independent Software for which payment has not been received. Infrastructure Products and Dell Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the Infrastructure Products or Dell Services could lead directly to death, personal injury, or physical or property damage (collectively, "High-Risk Activities"). Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

e. **Warranty Disclaimer.** Other than the warranties set forth in this section 8, and to the maximum extent permitted by applicable law, Dell and its affiliates, and their providers/suppliers: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance or usage of trade.

## 9. EQUIPMENT REPLACEMENTS

All replaced Equipment (or portions of Equipment) from any Infrastructure Products will become Dell's property upon Customer's receipt of the corresponding replacement. Customer must return the replaced Equipment (or portions of Equipment) promptly upon Supplier's request. If Customer does not return the replaced Equipment or replaced portions within fifteen days after receipt of Supplier's request, then Customer must pay Supplier's then-current spar