



## OEM TERMS OF SALE

These OEM Terms of Sale, including all applicable terms referenced herein, (“Agreement” or “OTS”) only applies to you, if you are an OEM as defined below:

“OEM” means you in your capacity as an original equipment manufacturer that is purchasing Products (as defined below) from the Dell EMC OEM Solutions (or its successor) business group to create an OEM Product (defined below). For clarity, an OEM (a) combines a Standard Product with OEM’s proprietary hardware, software or other intellectual property, resulting in a specialized system or solution with industry or task-specific functionality and (b) resells the Product as part of, in conjunction with, or for use with the OEM Product under OEM Customer’s own brand.

This Agreement governs OEM’s purchase of Products and Services (collectively “Offerings”) ordered directly from one of the entities below, as applicable for your country of purchase (“Supplier”):

### **Argentina:**

DELL AMERICA LATINA CORP. SUCURSAL ARGENTINA., Juana Manso 1069 Piso 4, Ciudad de Buenos Aires, (C1107CBU), Argentina and  
EMC COMPUTER SYSTEMS ARGENTINA S.A., Juana Manso 1069 Piso 4, Ciudad de Buenos Aires, (C1107CBU), Argentina

### **Brazil:**

DELL COMPUTADORES DO BRASIL LTDA., empresa com sede em Eldorado do Sul, Rio Grande do Sul, na Av. Industrial Belgraf, 400, Bairro Industrial, inscrita no CNPJ sob o nº 72.381.189/0001-10;

### **Chile:**

DELL COMPUTER DE CHILE LIMITADA., Av. Ricardo Lyon 222 Piso 11, Comuna de Providencia, Región Metropolitana, Santiago; and  
EMC CHILE S.A., sociedad anónima, (), Rol Único Tributario N° 87.986.700-2, Av. Ricardo Lyon 222 Piso 11, Comuna de Providencia, Región Metropolitana, Santiago

### **Colombia:**

DELL COLOMBIA INC., Carrera 7 No.113-43, Of. 1401, Bogotá, D.C, and  
EMC INFORMATION SYSTEMS COLOMBIA LTDA., Carrera 7 No.113-43, Of. 1401, Bogotá, D.C, Colombia

### **México:**

DELL MÉXICO, S.A. DE C.V., Av. Javier Barros Sierra 540 Torre 1, piso 10, Colonia Lomas de Santa Fe, Álvaro Obregón, C.P. 01219, Ciudad de México, México, con RFC DME9204099R6; and  
EMC COMPUTER SYSTEMS MÉXICO, S.A. DE C.V., Paseo de la Reforma 505 Piso 39 Cuauhtémoc, C.P. 06500, Ciudad de México, con RFC ECS990412CZ6;

### **Perú:**

DELL PERÚ S.A.C., Av. Navarrette, N°501, Piso18, SanIsidro, Lima, Perú.; and  
EMC DEL PERU S.A, Avenida Republica de Panama 353, San Isidro, Peru

### **“Indirect countries” or “LatAm countries not listed above”:**

DELL WORLD TRADE L.P., One Dell Way, Round Rock TX 78682, United States; y  
EMC INFORMATION SYSTEMS INTERNATIONAL, Ovens, County Cork, Ireland

In this OTS, OEM may be referred to as “you” or “your”, and Supplier and OEM may be referred to individually as a “Party” or collectively as the “Parties”.

The OTS consists of the main body setting forth the general terms and conditions applicable to all Offerings (“General Terms”) and may be supplemented by additional schedules and exhibits (“Schedules”), which shall form an integral part of this OTS. Schedules will be offering-specific and contain terms applicable only to those certain Offerings.

By (i) issuing an Order to Supplier that references a Supplier quote to OEM; or (ii) signing such quote and returning it to Supplier, or (iii) otherwise by placing your Order, you accept and are bound to the terms of this Agreement. For the avoidance of doubt, in the event of an existing agreement that covers the scope of the Offering, such agreement will apply.

## GENERAL TERMS

### 1. DEFINITIONS

- A. **"Affiliate"** means, with respect to Supplier, Dell Inc. or Dell Inc.'s direct or indirect subsidiaries; and with respect to OEM, a legal entity that is controlled by, controls, or is under common control with OEM. "Control" means more than 50% of the voting power or ownership interests.
- B. **"Delivery for Equipment"** occurs when Supplier delivers the Equipment at OEM's indicated address.
- C. **"Delivery for Software"** and Independent Software occurs either when Supplier provides physical media to OEM's indicated address, or the date Supplier notifies OEM, or it's End-User that Software or Independent Software is available for electronic download.
- D. **"Documentation"** means Supplier's then current, generally available user manuals and online help for Products.
- E. **"End-User"** shall mean a customer of OEM or OEM Representatives (defined in 2.A.) to whom OEM Products are offered and/or sold to customer for the customer's own internal use.
- F. **"OEM Product"** shall mean OEM's appliance or value-add solution which Product is incorporated into or utilized as a part thereof. OEM Products have functionality different than Products and are marketed by OEM (as OEM's solution) to End-Users.
- G. **"Order"** means (i) a OEM purchase order that references a Supplier quote and, if applicable, contract code; (ii) Supplier order forms executed by OEM; or (iii) OEM's order of Offerings, through either [www.Dell.com](http://www.Dell.com) or other online process.
- H. **"Product"** shall mean any Standard Product and Third-Party Product that are offered for sale by Supplier to OEM under this Agreement.
- I. **"Provider"** means entities (other than OEM) whose components, subassemblies, software, services, or some combination of these items have been incorporated into Products, Services, or both.
- J. **"Service Agreements"** means service contracts, including service descriptions available at <https://www.dell.com/learn/us/en/uscorp1/campaigns/global-commercial-service-contracts?c=us&l=en&s=corp>, service briefs, statement of work, services specifications, and any other similar mutually agreed documents.
- K. **"Services"** means service to be performed by or on behalf of Supplier as described in this Agreement or applicable Product Notice or Service Agreement.
- L. **"Software"** means any software, library, utility, tool, or other computer or program code, in object (binary) or source-code form. Software includes software delivered electronically, pre-installed on an appliance or equipment, or locally installed on hardware systems, and includes software accessed through the internet or other remote means (such as websites, portals and "cloud-based" solutions) and "Services Software" (which is software that Supplier may make available in connection with Services).
- M. **"Software Release"** means any subsequent, generally available version of Software or Independent Software provided after initial Delivery of Software or Independent Software but does not mean a new Product.
- N. **"Standard Products"** means collectively: (i) **"Equipment"** (which is the hardware that Supplier provides to OEM under the OTS including Equipment without Supplier branding (i.e. generic "oem-ready" box)); and (ii) **"Supplier Software"** (which is Supplier-branded Software that Supplier licenses to OEM under the OTS and any updates and copies thereof); and (iii) **"Independent Software"** (which is the Supplier's Software that can operate on hardware other than Equipment). Terms applicable to specific Products are further discussed in the Product Schedules referenced below. Standard Products exclude Services and Third Party Products.
- O. **"Third Party Products"** means hardware, software, or services other than Standard Products and Services. Third Party Products may include, without limitation, products and services manufactured, created, licensed, or performed by or on behalf of Supplier or its Affiliates, and may include hardware or software installed on a Standard Product in the course of performing a Service.
- P. **"Unique Part"** shall mean any part or component integrated into or attached to OEM Products that is not a standard component or part in the current Standard Product. Parts that are formerly standard but no longer regularly used in current Standard Product, or that were standard in Standard Products that have been discontinued or reached the end of their product life cycle, will be deemed to be "Unique Parts".

### 2. SCOPE OF THE PARTIES RELATIONSHIP UNDER THIS AGREEMENT

- A. **Appointment.** Subject to OEM's compliance with this Agreement, OEM (directly or through distributors, third party sales agents, or other remarketers in its distribution channel (collectively "OEM Representatives") may resell Standard Products only as part of OEM Products and only after OEM has added value to the Standard Products through the addition of hardware, software, or services. OEM may use OEM Representatives to resell OEM Products, provided that the agreement between OEM and such OEM Representatives are as comprehensive and restrictive as this Agreement.
- B. **Non-Exclusivity; OEM's Pricing Freedom.** This Agreement is not exclusive. Supplier may market (directly or through third parties) the Products, Supplier Services, and/or other products and services to anyone, including OEM's customers, without any obligation or liability to OEM. Supplier reserves the right to change its distribution channels for Products and appoint, add or



terminate other original equipment manufacturers, distributors, third party sales agents or other remarketers to sell Products, including distributors, third party sales agents and other remarketers who may compete with OEM or OEM Representatives. This Agreement does not guarantee that OEM will make any sales of the Products. It is agreed and understood that OEM will, at all times, determine and/or set its resale pricing. Dell Technologies Partner Program is separate and distinct from the execution of this Agreement and appointment as an OEM, and as such any purchase made under this Agreement is not eligible for Dell Technologies Partner Program's benefits. No employee or representative of Supplier or anyone else has any authority to determine or otherwise restrict OEM's resale prices for OEM Products or Services.

- C. **Recordkeeping/Document Delivery.** OEM will provide all its End-Users with appropriate product warranty statements, registration cards, software license agreements and other materials that Supplier includes with its shipments of Products (or otherwise makes available) to OEM. In addition, OEM is responsible for providing all similar information related to its value-added modifications of the Products. OEM shall maintain complete distribution records by End User and by Standard Product serial number (as applicable) for all sales of OEM Products. OEM shall cooperate with Supplier in the event of any recall or corrective action regarding the Standard Products.

**3. BUYING PRODUCTS AND SERVICES**

- A. **Quotes and Orders.** Orders are subject to credit approval and are subject to Supplier acceptance. All Orders will be subject to this Agreement and must contain the following information: (a) a description of the Product, including Product number, if applicable; (b) quantity; (c) price; (d) delivery schedule, (e) product purpose (resale, manufacturing or use), and (f) shipping address. Each Order must include the correct name of OEM, and be placed with the Supplier entity that provided the applicable quote. Should Dell and EMC jointly submit a Quote to OEM, it is hereby established that such Quote shall expressly define the Dell Scope and the EMC Scope in exact terms, for payment purposes and for assigning responsibilities, obligations and contractual rights, each one covering their specific and respective scopes. In this sense, each Supplier, either Dell or EMC, shall be responsible for fulfilling the respective obligations with regard to the provision of their respective Products and Services covered by this Agreement and the applicable Quote. Supplier will not be responsible or liable to you or the End-User for any delays caused by incorrect information in an Order. Quoted prices are effective until the expiration date of the Supplier's Quote but may change due to industry-wide shortages in materials or resources, increase in the cost of manufacturing, or other factors outside the control of Supplier. Orders may contain charges for shipping and handling. OEM acknowledges Supplier's pricing and discounts to OEM are considered Supplier's confidential information, and OEM shall not show such pricing or discounts as a separate line item to OEM Representatives or End-Users or otherwise disclose such information to any third party.
- B. **Changed or Discontinued Products or Services.** Supplier may revise or discontinue Products and Services at any time, including after OEM places an Order. As a result, Products and Services OEM receives may differ from those ordered. However, Supplier branded Products will materially meet or exceed all published specifications for the Products.
- C. **Cancellation Returns and Acceptance.** OEM may not change or cancel an order after Supplier's acceptance of the order. Supplier is not responsible for pricing, typographical, or other errors in any offer and may cancel Orders affected by such errors. All Equipment, Software and Independent Software are deemed accepted by OEM upon Delivery. OEM agrees and understands that Supplier's return policy is not available to OEM representatives, and/or End-Users. Even though OEM accepts Products as stated in the prior sentence, OEM retains all rights and remedies set forth in the applicable Product warranty. OEM shall notify Supplier's Customer Care according Dell Country Return Policy below if OEM believes any Standard Product included in its Order is missing, wrong, or damaged.

	Dell Country Return Policy*- Missing, wrong and damage products
Argentina	10 calendar days after delivery
Chile	10 calendar days after delivery
Brazil	30 calendar days after the delivery
Colombia	(**)5 business days after delivery
Mexico	(**)5 business days after delivery
Peru	(**)7 calendar days after delivery

\* Product may only be returned for Missing/Wrong/Damaged reasons only, and only if discovered within the stated time period. In those countries in which no Return Rights policy is applicable, Dell will use commercially reasonable efforts to accept returns on a limited number of systems or other required equipment.

- D. **Shipment.** Unless otherwise agreed, Supplier shall arrange for shipment of the ordered Products to the ship-to address indicated in the Order, through a common carrier designated by Supplier. Delivery dates are indicative. Software may be provided by delivery of physical media or through electronic means. Cost of transit insurance, if applicable, (provided by Supplier on behalf of OEM) shall be included in the total price stated on the Quote.
- E. **Risk of Loss.** Risk of loss for sold Equipment and licensed Supplier Software and Independent Software transfers to OEM upon Delivery. Title to Equipment passes to OEM upon Delivery. Title to Software and Independent Software does not pass to OEM. Software and Independent Software are only licensed to OEM and not sold.

- F. **Security Interest.** In order to secure Supplier's rights to receive payments for Products, Supplier may retain title in the Equipment until full payment is received and hold title to the Equipment on a fiduciary basis as Supplier's bailee but may resell the Products in the ordinary course of your business.
- G. **Procurement of Unique Parts.** Supplier may purchase Unique Parts and long lead-time components to support the manufacture of customized configurations for OEM. If (i) such materials are not used within ninety (90) days of receipt of Unique Parts because of a change in OEM's forecast, reschedule or cancellation of any purchase order, or other reasons, and (ii) Supplier is unable to resell such materials to others at a reasonable price or unable to cancel its order for the materials, then in its sole discretion Supplier may invoice and deliver the materials to OEM. OEM shall pay Supplier for the materials and any stocking fees Supplier may incur as a result of holding such materials in its inventory longer than ninety (90) days.
- H. **Packaging.** Unless otherwise stated, prices quoted by Supplier include standard packaging for shipment. OEM will submit custom packaging requests to Supplier for review and price estimate. Supplier will not be responsible for delays resulting from custom packaging requested by OEM.
- I. **End of Life (EOL) of Products.** At the end of life of Standard Products, Supplier will notify OEM before discontinuing a product or version of product (generally, ninety (90) days' notice). During that time period of notice and the discontinue date Supplier will sell both the former and the new Standard Products.

**4. INVOICING AND PAYMENT TERMS**

- A. **Payment.** OEM must pay Supplier's invoices in full and in the same currency as Supplier's quote, or if required by law or agreed between parties, in the Supplier's country of residence currency calculated with the exchange rate of the payment day as certified by the local National Authority, within the time noted on Supplier's invoice, or if not noted, then within thirty (30) days after the date of the invoice. Supplier may invoice parts of an Order separately or together in one invoice. All invoice terms will be deemed accurate unless OEM advises Supplier in writing of a material error within ten days following receipt. If OEM advises Supplier of a material error, (i) any amounts corrected by Supplier in writing must be paid within fourteen days of correction, and (ii) all other amounts shall be paid by OEM by the due date. If OEM withholds payment because OEM believes an invoiced amount is incorrect, and Supplier concludes that the amount is accurate, OEM must pay interest as described in this Section from the due date for the amount until Supplier's receipt of payment. OEM may not offset, defer or deduct any invoiced amounts that Supplier determines are correct following the notification process stated above. Supplier, without waiving any other rights or remedies and without liability to OEM, may suspend any or all Services until all overdue amounts are paid in full.

**A (i)** In the case of unpredictable elements that bring about excessive burdens upon one of the Parties and that change the fundamental financial-economic conditions existing at the time this Agreement and Schedule are signed, the Parties shall in good faith readjust the contractual conditions that shall guarantee the restoration of the amounts effectively set in the Quote(s), aiming at the maintenance of its financial-economic balance, subject to local legislation (if applicable) and sufficient proof of the occurrence of the change to the fundamental financial-economic conditions. Should the Parties fail to reach an agreement in the renegotiation of the contractual conditions, either Party may terminate the respective Quote immediately, without cause and without right of the other party to claim any type of economic compensation.

**A (ii)** Considering that a large portion of parts used in the Products and Services are imported, dollar exchange rate variations is a key factor for maintaining the financial and economic balance of this Agreement. Should there be a dollar rate variation over 3%, calculated based on the official US dollar exchange conversion rate published and released by the local Central Bank on the date of each Supplier Affiliate quote: (i) Supplier Affiliate may submit a new quote, if OEM has not yet given its acceptance within the validity term of the quote; (ii) the Parties may renegotiate the prices, taking into account the exchange rate variation occurred until the day of placing the Order, if OEM has accepted the quote within the validity term and as long as it is still in effect. Should the Parties fail to reach an agreement in the renegotiation of the prices of the item referenced in item (ii) above, either Party may terminate the respective Quote immediately, without cause and without right of the other party to claim any type of economic compensation.

- B. For the purchases of Product and Services under the CSG Product Addendum and the Networking and Server Product Addendum ("CSG Scope"), the invoicing shall be carried out exclusively by Dell, independently of EMC. Also, payments shall be made by OEM to Dell, the same reasoning being applied to all Products and Services under the ISG Product Addendum ("ISG Scope"), which invoicing shall be carried out exclusively by EMC and payments made by OEM to EMC.

- C. Regardless of notice, in the event of late payment, interest and fines might apply to OEM, according to the following:

<b>Argentina and Peru</b>	Interest of 8% on top of the interest rate established by the respective Central Bank
<b>Chile</b>	Current interest for non-adjustable operations set for more than 90 days, in local currency, for amounts over 200 unidades de fomento and below 5000 unidades de foment.
<b>Brazil</b>	A penalty of 2% on the overdue amount will apply, in addition to interest of 1% per month, calculated on a pro rata basis at the time of payment

<b>Mexico</b>	A penalty of 2% on the overdue amount will apply, in addition to interest of 1% per month, calculated on a pro rata basis at the time of payment
<b>Colombia</b>	Maximum interest rate permitted by law.
<b>Other LatAm countries not listed herein</b>	Payment Terms. These will be determined unilaterally by DELL and/or EMC and may be modified at any time by a written communication sent by DELL and/or EMC to Customer informing such modifications.

In the event of late payment, Supplier may, without prejudice to other rights, reject new Orders or refuse to execute current Orders until the situation is regularized by OEM.

D. **Taxes.** For any Latam country except Brazil, the prices for the Products and Services do not include taxes under Latam Supplier Affiliate responsibility. Taxes should always be added to said price, in accordance with local legislation, and paid in full by the OEM, as stated in the corresponding invoice(s).

<b>Brazil</b>	<p>i. Products and/or Services, with the exception of Professional Services, are not subject to tax withholding (at federal and/or municipal level) pursuant to the legislation currently in effect, in addition to the ones expressly included in the invoices. Those taxes must, therefore, be paid in full by OEM.</p> <ul style="list-style-type: none"> <li>• In the event of a withholding requirement regarding the full or partial price of the Products and/or Services, due to specific legislation or changes that are contrary to the legal basis presented by Dell and/or EMC, and whenever OEM fails to previously notify Dell and/or EMC, OEM shall be responsible for the full payment of the invoice and the collection of such withholding tax.</li> <li>• The copies of Software and Independent Software distributed by Dell and/or EMC are standardized and distributed in large-scale, therefore considered as merchandise. Their commercialization, by means of download or physical media, do not change this tax classification and will follow each State taxation rules.</li> </ul> <p>ii. In the event of increase and/or creation of taxes levied on the subject matter of this Agreement, each Party will be responsible for the taxes on to them imposed.</p>
<b>Argentina, Peru and Chile</b>	<p>i. Taxes are not included in the Price and Customer shall pay or reimburse Dell and or EMC all taxes related to the purchase of the Products and Services, such as VAT and other related, except for those based on net worth, gross income and labor obligations.</p> <p>ii. If Customer is eligible for tax benefits, Customer must present to Dell and or EMC a valid tax-exempt certificate according to tax regulation, within 7 days of the date of the purchase order.</p> <p>In the event of an withholding requirement regarding the full or partial price of the Products and/or Services, due to specific legislation or changes that are contrary to the legal basis presented by Dell and/or EMC, and whenever Customer fails to previously notify Dell and/or EMC, Customer shall be responsible for the full payment of the invoice and the collection of such withholding tax.</p>
<b>Colombia</b>	<p>i. In the event in which taxes caused according to this Agreement are not included in a specific quotation and/or SOW, OEM shall pay or reimburse to de Dell and/or EMC all and any taxes caused due to the purchase and/or services provided, except for taxes based in net profit, gross income or labor obligations of Dell and /or EMC.</p> <p>ii. If OEM is a beneficiary of tax exemptions, the Customer must provide Dell and/or EMC with a valid exemption certificate or other appropriate documentation for proving the exemption within one week of the date of the Customer Purchase Order.</p> <p>iii. If OEM is obliged to make a tax withholding, the Customer must provide to Dell and/or EMC enough evidence (e.g. official receipts of</p>

	<p>payment of tax withholdings) to prove that the Customer has justified, before the authority, the sum withheld or deducted within 15 days of the transfer to the corresponding tax authority. Otherwise, Dell and/or EMC will charge the Customer the amount deducted from said operation.</p>
<p><b>Mexico</b></p>	<p>i. The taxes derived from this Agreement are not included, and OEM must pay or reimburse Supplier, any tax resulting from the OEM's purchase (such as value added tax (VAT), sales and use tax, general sales tax, taxes on specific goods, national, provincial and municipal collection regimes, among others), except for taxes based on net earnings, gross income or labor obligations of Supplier.</p> <p>ii. If OEM is a beneficiary of tax exemptions, OEM must provide Supplier with a valid exemption certificate or other documentation that corresponds to prove the exemption within one week of the date of OEM's Order.</p> <p>iii. If OEM is obliged to make a withholding tax, in that case, OEM must provide Supplier with sufficient proof (e.g. official receipts for payment of withholding taxes) that prove that OEM has justified before the corresponding authority, the amount withheld or deducted within fifteen (15) days of the draft / payment to the corresponding tax authority; otherwise, Supplier will charge OEM the amount deducted from said operation.</p>
<p><b>Other LatAm countries not listed herein</b></p>	<p>i. The charges due under this Agreement are not included, and OEM must pay or reimburse Dell and/or EMC all taxes resulting from OEMs purchase (such as value added tax (VAT), sales and use taxes, general sales taxes, taxes on specific goods, municipal, provincial and national reclamation regimes, among others), except for taxes based on net profits, gross income or labor obligations of Dell and/or EMC.</p> <p>ii. If OEM is a beneficiary of tax exemptions, the Customer must provide Dell and/or EMC with a valid exemption certificate or other appropriate documentation for proving the exemption within one week of the date of the Customer Purchase Order.</p> <p>iii. If OEM is obliged to make a tax withholding, the Customer must provide to Dell and/or EMC sufficient evidence (e.g. official receipts of payment of tax withholdings) to prove that the Customer has justified, before the corresponding authority, the sum withheld or deducted within 15 days of the transfer to the corresponding tax authority. Otherwise, Dell and/or EMC will charge the Customer the amount deducted from said operation.</p>

## 5. SOFTWARE LICENSE TERMS

Unless otherwise established in the Product Schedules:

- A. **License Grant of Software.** Subject to OEM's compliance with the terms of this Agreement, Supplier grants to OEM a non-exclusive, non-transferable, license to resell and distribute the Software to End-Users for their internal business operations only. The quantity of Software and any other usage restrictions and/or descriptions (e.g., 'pool' or 'enterprise' licensing arrangements) shall be accurately detailed and agreed upon between Supplier and OEM (provided in the Quote and Product Notice), as well as the OEM and its End-User (in the OEM documentation provided to the End-User). Any reference to Software or Documentation be "sold" or "purchased" shall mean licensed.
- B. **License Grant of Documentation.** Subject to OEM's compliance with the terms of this Agreement, Supplier hereby grants to OEM a royalty-free, non-exclusive, non-transferable, license to distribute the then-current, generally available Documentation to End-Users in conjunction with the distribution of the applicable ordered Products solely for the purpose of supporting End User's use of the applicable ordered Products.
- C. **License Restrictions.** Except for any Software license expressly granted to OEM in this Agreement, no rights are granted, and none shall be implied. All Software licenses are for use of object code only. Without Supplier's prior written consent, OEM shall not, and OEM shall not permit any third party to, do any of the following: (i) sublicense any Supplier Software, (ii) cause or permit the copying or reproduction of Software; (iii) translate, adapt, enhance, supplement, vary or modify the Software or Documentation; (iv) disassemble, decompile, or reverse engineer the Software or create any derivative works based thereon; (v) use the Software to

refurbish Supplier Products; (vi) use Software in a service bureau, application service provider or similar capacity; or (vii) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of Supplier Products performed by, or on behalf of, OEM or End-Users. For clarity and notwithstanding anything contrary in this Agreement, Software and Documentation are only licensed, and are not sold to OEM.

- D. **OEM and End-User Compliance.** Use of Software by the End-User is subject to and governed by the end user software license agreement that is delivered with, included in, made available by download, or otherwise accompanies the Software or Products, such as (i) “click-to-accept” agreement included as part of the installation or download process, (ii) “shrink-wrap” agreement included in the Product packaging, or (iii) a notice indicating that by installing or using a Product or component, the related license terms apply. If no license agreement is shipped with, included in, made available by download, or otherwise accompanies the Software or Products, and there is no separate license agreement between End-User and the manufacturer or owner of such software, then OEM will notify End-User the Supplier Software shall be governed by and subject to the applicable license agreement at [www.dell.com/licenseagreements](http://www.dell.com/licenseagreements) (“Supplier EULA”). Any updates to the Supplier EULA shall be posted here.
- E. For certain Third Party Software transactions, if requested by Supplier, OEM will notify End-User in OEM’s End-User agreement that the Third Party Software is subject to and governed by its own license terms or found at the Offering Specific Terms Table, found at <https://www.dell.com/learn/us/en/uscorp1/offering-specific-terms-table> (“Separate License Terms”) and OEM will ensure the End-User agrees and accepts the Separate License Terms. OEM’s may not modify in any way the Supplier EULA, The Separate License Terms or the quantity or other usage restrictions and/or descriptions.
- F. OEM’s will immediately notify Supplier if OEM becomes aware of any End-User’s violation of a Supplier EULA or Separate License Terms Supplier may, without waiving any other rights or remedies and without liability to OEM or End-User, suspend or terminate the provision of any one or more of the Software to End-User in response to End-User’s violation or suspected violation.
- G. **Prohibited/Limited Use of License.** OEM’s may not use, install or download Supplier Software for OEM’s internal use. Before OEM installs, downloads, or otherwise uses Software on behalf of an End-User, OEM shall (i) obtain the End-User’s written authorization to accept the end-user software license agreement on behalf of the End-User, (ii) comply with the software license agreement with regard to OEM’s use of the Software, and (iii) for Canadian based End-Users, OEM shall obtain End-User’s consent as required by applicable law to install the Software on End-User’s system.
- H. **Activation Codes.** If OEM receives activation or registration codes or license keys (“Activation Codes”), OEM shall distribute the Activation Codes as directed by Supplier and to activate (i) only the particular Software copy for which the Activation Codes are intended by Supplier to be used and (ii) only as many copies of the Software as licenses OEM have purchased and resold to an End-User. OEM’s shall not reuse Activation Codes for multiple End-Users or for multiple Software copies for the same End-User.

## 6. SERVICE AND SUPPORT

Unless otherwise established in the Product Schedules:

- A. **Support Services.** OEM shall establish and maintain Support Services for its End-Users with respect to the OEM Product and shall train its personnel to satisfy such obligation. OEM may contract Support Services from Supplier for Standard Products, and depending on the Standard Product, Supplier may allow OEM to provide Support Services on Standard Products only after Supplier designated certifications and qualifications are obtained. Support Services will be performed in accordance with the applicable Service Agreement, or as outlined in the Product Addendum and with all published and available technical documentation and specifications that Supplier releases concerning the Standard Product. A transfer of Support Services, if allowed on such Product, must be done in accordance with the applicable Services Agreement (or as outlined in the Product Addendum), and may depend on geographical availability of the Support Services.
- B. **Resell.** OEM may resell Support Services (as defined and outlined in the Product Schedule) only with Standard Products and only to End-Users who agree to be bound by Services Agreements that apply to such Services. OEM will incorporate in an enforceable manner the Service Agreement, including terms and conditions incorporated by reference (“Services Flowdown Terms”), into its own agreement with End-Users (“End-User Agreement”). OEM acknowledges and agrees that Supplier is a third party beneficiary of the End-User Agreement and OEM will require the End-User to acknowledge and agree as to such in the End-User Agreement. Supplier reserves the right, in its sole discretion, to suspend or terminate the provision of any one or more of the Services to you or an End-User in response to such violation, or suspected violation, of any of the Services Flowdown Terms, and Supplier will have no liability to you or End-User as a result of any such suspension or termination.
- C. **Customization Services.** This section shall apply whether OEM or Supplier performs engineering changes or configuration Services to customize the Standard Product portion of the OEM Product subject to a Service Agreement. OEM is responsible for (a) determining technical specifications for each customized configuration; (b) ensuring that those technical specifications are properly documented in the applicable Service Agreement; (c) testing of prototype(s) to verify the prototype(s) meet applicable specifications and are compatible with any Unique Parts or OEM’s software, before OEM places production orders for the customized configurations of Standard Products; and (d) obtaining all necessary licenses or other rights enabling Supplier to copy, install, modify and distribute software for OEM. Regardless of manufacturing integration tests that may be performed by Supplier, Supplier is not responsible for the suitability of the customized configuration, for any revision or engineering changes in any third-party products included in such configuration, for the compatibility of any Unique Parts or third-party or OEM software with the configuration, or for any liability or damage arising from the installation of a configuration in accordance with the Service Agreement

or OEM's instructions. Additional regulatory and safety compliance required due to the integration of Unique Parts into the configurations shall be OEM's responsibility. To the extent OEM purchases certain services requiring Supplier to affix or label OEM's name, logo or trademark on the Products, OEM hereby grants Supplier a non-exclusive, royalty-free license to use such name, logo, or trademark solely in connection with such purpose and agrees to enter into a trademark license agreement if requested by Supplier.

- D. Services Software.** "Services Software" is software that Supplier may make available to OEM in connection with Services. Services Software may be hosted by Supplier or installed on OEM's computers. OEM agrees that it shall (i) only use the Services Software in connection with the Supplier's Services, (ii) use any Services Software hosted by Supplier in a lawful manner, without interfering with other Supplier customer's use of the Services Software, and without attempting to disrupt the security or operation of the network or systems used to provide the Services Software; and (iii) not misappropriate, disclose, or otherwise violate Supplier's or its Providers' intellectual property rights in the Services Software. It may be necessary for Supplier to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Services Software, which may temporarily degrade the quality of the Services or result in a partial or complete outage of the Services Software. **OEM AGREES THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SERVICES SOFTWARE, INCLUDING TELEPHONE, COMPUTER NETWORKS, AND THE INTERNET, OR TO TRANSMIT INFORMATION, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF SUCH SERVICES SOFTWARE. SUPPLIER SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF CUSTOMER'S ACCESS TO OR USE OF THE SERVICES SOFTWARE.**

## 7. WARRANTY, EXCLUSIONS, AND DISCLAIMERS

- A. Warranties.** The warranties for Standard Products and Services are stated in the applicable Product Schedules to the OTS.
- B. Equipment Warranty Exclusions.** Equipment warranties do not cover problems that arise from: (i) accident or neglect by OEM or any third party; (ii) any third party items or services with which the Equipment is used or other causes beyond Supplier's control; (iii) installation, operation, or use not in accordance with Supplier's instructions or applicable Documentation; (iv) use in an environment, in a manner, or for a purpose for which the Equipment was not designed; (v) modification, alteration, or repair by anyone other than Supplier or its authorized representatives; or (vi) causes attributable to normal wear and tear. Supplier has no obligation for Software installed or used beyond the licensed use, for Equipment that OEM moved from the Installation Site without Supplier's consent when applicable, or Product whose original identification marks have been altered or removed or for any Software for which payment has not been received. Products and 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 Products or Services could lead directly to death, personal injury, or physical or property damage (collectively, "High-Risk Activities"). Supplier expressly disclaims any express or implied warranty of fitness for High-Risk Activities and you shall defend and indemnify Supplier from any claims made by third parties resulting from any such High-Risk Activities. As between OEM and Supplier, OEM is responsible for the design and implementation of configurations, systems, networks, and services suitable for the risks involved in the End-User applications and operating environments into which OEM sells.
- C. Equipment Warranty Disclaimer. Other than the warranties set forth in this Section 7 and the Product and Service Schedules, and to the maximum extent permitted by applicable law, Supplier and Affiliates, and their Providers: (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.**
- D.** The warranty period for Standard Products constitutes the total warranty period and it already includes the contractual and statutory warranties. Standard Products upgrade are incorporated into the Standard Product and will have the same technical support and for the same period of the Standard Product into which such upgrades are installed.
- E.** Supplier does not warrant that Products will function in any specific configuration that includes non-Supplier hardware or software or will function to produce a particular result, even if the specific configuration or the result has been discussed with Supplier. As between Supplier and OEM, OEM is responsible for the design and implementation of configurations, systems and networks suitable for the risks involved in the End-User applications and operating environments into which OEM sells
- F. Warranty Remedies.** Supplier's sole obligations is, at its option, to repair or replace Standard Products that do not conform to the Warranty, using new or refurbished parts or Products, or to provide a reasonable depreciated refund to OEM. Supplier assumes no obligation to repair Third Party Products, non-warranted defects in Standard Products, or any defects in Standard Products after the warranty or support period has expired.
- G. Third Party Product Warranty.** Third Party Products may carry with them a warranty from the original manufacturer or licensor ("Third Party Warranty"). Supplier is not responsible for fulfillment of any Third-Party Warranty or for problems attributable to the use of Third-Party Products. OEM will rely solely on the issuer of any Third-Party Warranty for all obligations under the Third-Party Warranty.



## 8. TERM; TERMINATION OR SUSPENSION

- A. The term of this Agreement is one (1) year beginning on the Effective Date. This Agreement will automatically renew for consecutive additional one (1) year terms unless either Party notifies the other Party of its intent to terminate this Agreement at least thirty (30) days before the end of the then-current term.
- B. No Cause Termination. Either Party may terminate this Agreement in such Party's sole discretion, with or without cause, upon at least thirty (30) days prior written notice to the other Party, which termination will not entitle the other Party to compensation hereunder.
- C. Termination for Cause. Either Party may immediately terminate this Agreement upon written notice to the other Party when: (i) a violation and/or breach of this Agreement by the other Party is not remedied within thirty (30) days after the breaching Party's receipt of written notice of the violation breach; (ii) either Party becomes insolvent, has its bankruptcy adjudicated, files for in-court reorganization or court-ordered dissolution or out-of-court winding up, regardless of the applicable penalties, and (iii) OEM's ownership framework is changed in a manner which, at Dell's sole discretion, may interfere with the continuity of this Agreement.
- D. The term and termination provisions for Support Services are contained in the applicable Product and Services Schedules.
- i. **Suspension or Modification of Services.** Supplier may suspend, terminate, withdraw, or discontinue all or part of the Services or stop delivery of Products when Supplier believes, in its sole judgment, that OEM is involved in any fraudulent or illegal activities.
  - ii. Either party may terminate a Service Agreement, or license for Software or Independent Software: (i) for a material breach by the other party that is not cured within thirty days of the breaching party's receipt of written notice of the breach; or (ii) if a party declares bankruptcy or is adjudicated bankrupt or a receiver or trustee is appointed for substantially all of its assets. In addition, Supplier may terminate one or more Service Agreements or software licenses with ten days' written notice if: (i) OEM does not make payment as required by the OTS or the applicable Schedule (where the payment is not subject to a good faith dispute); (ii) OEM fails to make the payment within ten days after receiving written notice of the past due amount; (iii) OEM purchased through a reseller and, as applicable, (iii)(a) the agreement between OEM and the reseller expires or is terminated; (iii)(b) the agreement between Supplier and the reseller expires or is terminated; or (iii)(c) the reseller is delinquent on its payment obligations to Supplier. Supplier may terminate some or all of the Schedules immediately if OEM is acquired by or merged with a competitor of Supplier or any of its Affiliates. Termination of a Service Agreement will not terminate other Service Agreements, and termination of all Service Agreements will not terminate this OTS.
- E. **Survival.** The provisions relating to payment of outstanding fees, records and audit, confidentiality, and liability, all rights of action accruing prior to termination, along with any other provision of the OTS that, expressly, or by its nature and context, is intended to survive, will survive termination.

## 9. INDEMNITY

- A. **Supplier Indemnity.** Supplier will: (i) defend OEM against any third-party claim that Products or Support Services (but excluding Third-Party Products, any Products provided for evaluation or without charge pursuant to a Schedule, and open source software) infringe that party's patent, copyright, or trade secret enforceable in the country where OEM purchased the Product from Supplier ("**Claim**"); and (ii) indemnify OEM by paying: (ii)(a) the resulting costs and damages finally awarded against OEM by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (ii)(b) the amounts stated in a written settlement negotiated and approved by Supplier.
- B. In addition, should any Product or Support Service become, or in Supplier's opinion be likely to become, the subject of a Claim, Supplier may, at its expense and in its discretion: (i) obtain a right for OEM to continue using the affected Product or Support Service; (ii) modify the affected Product or Support Service to make them non-infringing; (iii) replace the affected Product or Support Service with non-infringing substitutes; (iv) provide a reasonable depreciated or pro rata refund for the affected Product; or (v) discontinue the Support Services and refund the portion of any pre-paid Support Service fees that corresponds to the period of Support Services discontinuance. Except as otherwise provided by law, this Section 9 states OEM's exclusive remedies for any third-party intellectual property claim relating to Products and Support Services, and nothing in this OTS or elsewhere will obligate Supplier to provide any greater indemnity.
- C. **Exclusions from Indemnity.** Supplier has no obligation under Section 9A above: (i) if OEM is in material breach of this OTS; or (ii) for any Claim resulting or arising from:
- (ii)(a) any combination, operation or use of a Supplier-branded Product or Support Service with any other products, services, items, or technology, including Third-Party Products and open source software;
  - (ii)(b) use for a purpose or in a manner for which the Product or Support Service was not designed, or use after Supplier notifies OEM to cease such use due to a possible or pending Claim;
  - (ii)(c) any modification to the Product or Support Service made by any person other than Supplier or its authorized representatives;
  - (ii)(d) any modification to the Product or Support Service made by Supplier pursuant to instructions, designs, specifications or any other information provided to Supplier by or on behalf of OEM;
  - (ii)(e) use of any version of a Product when an upgrade or newer iteration of the Product or Support Service made available by Supplier would have avoided the infringement;

(ii)(f) services, products or software provided by OEM (including Claims seeking damages based on any revenue OEM derives from OEM's services); or

(ii)(g) any data or information that OEM or a third-party records on or utilizes in connection with the Supplier-branded Products or Support Services (collectively, the "**Excluded Claims**").

- D. **OEM Indemnity.** OEM will defend and indemnify Supplier and its Affiliates against any third-party claim resulting or arising from:
- (i) OEM's failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications, or approvals associated with technology or data that OEM provides to Supplier or its Affiliates, or with non-Supplier software or other components that OEM directs or requests that Supplier or its Affiliates use with, install, or integrate as part of the Products or Services;
  - (ii) OEM's violation of Supplier's or its Affiliates' proprietary rights;
  - (iii) failure of OEM or OEM Representatives to abide by all applicable laws, rules, regulations and orders that affect the Products and Section 11 Compliance below;
  - (iv) any warranties or representations made by OEM or OEM Representatives which differ from those provided by Supplier;
  - (v) OEM's misuse or abuse of the Products, negligence, or breach of any provision in this Agreement;
  - (vi) OEM's transfer or provision of access to Excluded Data (defined below) to any Supplier or its Affiliates; or
  - (vii) the Excluded Claims.
- E. **Mutual Indemnity.** Each party shall defend and indemnify the other party against any third-party claim or action for personal bodily injury, including death, to the extent directly caused by the indemnifying party's gross negligence or willful misconduct in the course of performing its obligations under this OTS.
- F. **Indemnification Process.** A party's duty to defend and indemnify under this section is contingent upon the party seeking indemnity: (i) sending prompt written notice of the Claim to the party providing indemnity and taking reasonable steps to mitigate damages; (ii) granting to the party providing indemnity the sole right to control the defense and resolution of the Claim; and (iii) cooperating with the party providing indemnity in the defense and resolution of the Claim and in mitigating any damages.

## 10. LIMITATION OF LIABILITY

- A. For all claims of either Party to the other for damages under or in connection with this Agreement or any Proposal or Service Description hereunder, whatever the legal basis (including tort) may be, the following shall apply:
- i. **Limitations.** Neither Party shall be liable for: (a) loss of profit, income or revenue; (b) loss of use of systems or networks; (c) moral damages and loss of goodwill or damages to image or reputation; (d) loss of, corruption of or damage to data, software or media; (e) recovery or reinstallation of data or programs; and/or (f) special, indirect or consequential loss or damage.
  - ii. **Liability Cap.** Supplier's total liability before OEM shall not exceed 100% of the total fees invoiced and paid by OEM to Supplier in the last 12 months preceding the occurrence of the damage and under the respective Proposal(s) and/or Service Description(s) giving rise to the liability.
  - iii. **Exceptions.** Nothing in this Agreement shall exclude or limit the Parties' liability for: (a) infringement of intellectual property rights of the other Party or its Affiliates; or (b) any other liability that cannot be excluded by law.
  - iv. **Prevention and Mitigation.** OEM shall implement IT architecture and processes enabling OEM to prevent and mitigate damages in line with the criticality of the systems and data for Customer's business and its data protection requirements, including a business recovery plan. In that regard, OEM shall: (a) provide for a back-up process on a regular basis and back-up relevant data before Dell and/or EMC performs any remedial, upgrade or other works on Customer's IT systems; (b) monitor the availability and performance of its IT during the performance of Services; and (c) promptly react on messages and alerts received from Dell and/or EMC or through notification features of the Products and immediately report any identified issue to Dell and/or EMC. Dell and/or EMC shall in case of data losses only be liable for reasonable commercial efforts to recover available and recoverable data.
  - v. **Limitations on claims.** Any claim under this Agreement, including but not limited to an indemnification claim, must be filed during the 12-month period following the event(s) that allegedly gave rise to such claim, or before the prescription period stated by local law, if such period exists OEM agrees that it shall include in all agreements selling, leasing, or transferring ownership of the Products, a limitation of liability provision similar to the above, including disclaiming as to Supplier liability for incidental, indirect, punitive, special or consequential damages; loss of income, profit or savings; lost or corrupted data or software; or loss of use.

## 11. COMPLIANCE

- A. **General Regulatory Compliance.** OEM, at its own expense, will comply with all applicable laws, orders and regulations of any governmental authority with jurisdiction over its activities in connection with this Agreement. Supplier will furnish to OEM any reasonably available information required to enable OEM to comply with applicable laws and regulations related to the Products. The regulatory compliance marks on Standard Products may vary, depending on where such products are manufactured and sold to OEM. OEM understands that the Standard Products sold from the United States, Canada, and European Union (EU) countries contain regulatory compliance marks that are required to ship into the United States, Canada, and European Union (EU) countries, respectively. Additional regulatory compliance marks are required to ship to other locations. OEM is solely responsible for obtaining any marks that may be required. OEM shall be responsible for continued regulatory compliance, including, but not limited to compliance to electrostatic discharge and radiated emissions standards, for any modifications or additions made to the Standard Product after the Standard Products are shipped from Supplier.
- B. **Product Labeling.** Except as otherwise agreed between Supplier and OEM in a Service Agreement, all Products re-sold by OEM under the authority of this Agreement shall be re-sold only with their original markings. If OEM removes or moves any Supplier marks or logos on the Standard Products after such products have shipped, and applies other marks or logos (including any marks or names belonging to OEM) to such products, then OEM is responsible for obtaining all necessary regulatory approvals or other authorizations for each country where such modified products will be sold and shipped by OEM. In no event shall OEM remove or change safety and agency certification labels or other manufacturers' labels on Products without the appropriate agency or manufacturer written approval
- C. **Trade Compliance.** OEM is subject to and responsible for compliance with the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions. Materials may not be used, sold, leased, exported, imported, re-exported, or transferred except with Supplier's prior written authorization and in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use, and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States, European Union or other applicable jurisdictions.
- D. **Environmental**
- i. OEM shall comply with all applicable producer responsibility laws and regulations that may include but are not limited to; electronics, batteries and packaging in all applicable jurisdictions.
  - ii. Compliance with producer responsibility laws and regulations includes, but is not limited to, obligations related to importing, placing on the market, declarations and regulatory filings, take back, environmentally appropriate treatment and other obligations as designated by the applicable laws and regulations.
- E. **Disposal**
- iii. OEM shall comply with all applicable laws and regulations regarding disposal of electronic waste, and all non-functional and functional Products of which OEM chooses to dispose (collectively "Electronic Waste") shall be done in accordance with applicable law.
  - iv. OEM will use approved electronic waste vendors in the disposal of Electronic Waste, will maintain an audit process on those vendors and will require certification of vendors at such time as industry certification programs are available. As part of OEM's disposal process for Electronic Waste, including disk drives and solid-state drives, Software and data will be sanitized or physically destroyed using a process no less stringent than the guidelines contained in NIST SP 800-88r1 and applicable law.
  - v. For all Electronic Waste that is disposed of by OEM, Supplier trademarks and trade names will be removed and/or destroyed.
- F. **Anti-Corruption Law Compliance.**
- i. As used herein, "Anti-Corruption Laws" means the anti-corruption or anti-bribery laws in effect in jurisdictions where OEM markets or sells Supplier products or services, and Anti-Corruption Laws specifically include the Foreign Corrupt Practices Act of the United States and UK Bribery Act 2010. OEM shall not, in connection with this Agreement directly or indirectly (a) offer, promise, authorize or transfer to, or (b) request, solicit, or demand from any person or Government Official (as defined below) anything of value to improperly influence, induce or reward any act, decision, or omission to obtain or retain business or secure any improper advantage.
  - ii. Government Official means an officer or employee of a government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public organization.
  - iii. Each party agrees that in the event that it subcontracts the provision of any element of this Agreement to any person, or receives any services in connection with its performance of this Agreement from any person (each such person being an "Associated

Person"), it shall impose upon such Associated Person Anti-corruption obligations that are no less onerous than those imposed in this Agreement.

- iv. Each party represents that, as of the effective date of this Agreement, it and any of its officers or employees with decision making under this Agreement have not been convicted of any offense involving bribery, corruption, fraud or dishonesty.
- v. Each party shall (a) maintain and enforce, throughout the duration of dealings between the parties, its own anti-corruption policies and procedures, including without limitation, adequate procedures designed to ensure that it and its Associated Persons comply with the Anti-Corruption Laws.; (b).Each party shall maintain proper, accurate, and complete accounting books and records relating to all of its activities under this Agreement. Each party shall provide information, documentation and reasonable assistance to the other party and its authorized representatives for purposes of ensuring its compliance with the Anti-Corruption Laws or to support an inquiry or investigation of a suspected violation of those laws.
- vi. A party may suspend its performance under this Agreement if it has reasonable belief the other party breaches, or if the other party refuses to provide information to confirm its compliance with, this Section 11.E of the Agreement.

## 12. DATA PRIVACY

- A. **Compliance with Laws.** The Parties shall comply with all privacy laws and regulations that are applicable in relation to the processing of personal data under this Agreement. In this clause, "personal data", "controller" and "processing" shall have the meaning set out in the General Data Protection Regulation (EU) 2016/679 ("GDPR") and other local applicable privacy legislation which will prevail in case of conflict with the GDPR.
- B. **Data Processing Conditions.** Generally, Dell and/or EMC does not require access to OEM's data in order to perform any Services. To the extent that Dell and/or EMC processes any personal data on behalf of OEM when performing under this Agreement, Dell and/or EMC shall only process personal data as required to fulfil its legal obligations under applicable laws and regulations and in accordance with its country-specific privacy policies, available at <https://www.dell.com/learn/us/en/uscorp1/policies-privacy-country-specific-privacy-policy>.
- C. **Disclosures to Supplier.** OEM agrees that it will obtain all necessary rights, permissions and consents prior to disclosing any personal data to Supplier.
- D. **Excluded Data.** "Excluded Data" means: (i) data that is classified, used on the U.S. Munitions list (including software and technical data) or both; (ii) articles, services, and related technical data designated as defense articles and defense services; and (iii) ITAR (International Traffic in Arms Regulations) related data. OEM acknowledges that products and services provided under the OTS are not designed to process, store, or be used in connection with Excluded Data. OEM is solely responsible for reviewing data that will be provided to or accessed by Supplier to ensure that it does not contain Excluded Data. Furthermore, products in their default configurations may not be optimized to process, store or transmit personally identifiable information that is subject to heightened security requirements as a result of OEM's internal policies or practices or by law. OEM is solely responsible for compliance with heightened security requirements mandated by its own internal policies and by law.

## 13. PUBLIC RELEASE OF INFORMATION, IP, TRADEMARKS, AND CONFIDENTIALITY

- A. **Public Release of Information.** Within ninety (90) days of the execution of this Agreement, Supplier may, in its sole discretion, request OEM to participate in a news release or other publicity ("Publicity") announcing OEM's selection of Supplier's OEM Product. OEM agrees to participate in such Publicity and authorizes Supplier to use OEM's name, trademark, logo, images of OEM Product and other identifying marks in the Publicity, provided that Supplier will obtain OEM's approval of the Publicity content prior to the first public release of the Publicity. Supplier shall have the right to publish, use, reference and display the final, approved Publicity, in whole or through unedited excerpts, in all forms of media. Except as expressly agreed in this Section, neither Supplier nor OEM may publicly release any information relating to this Agreement, including the existence of this Agreement, without first receiving the prior written approval of the other party. Relative to Supplier, such prior written approval must be obtained from Supplier's public relations department.
- B. **IP Ownership Rights.** All right, title and interest in and to the intellectual property rights in Standard Products and Supplier Services, including technology and trade secrets embodied therein and any custom developments created or provided in connection with or related to this Agreement, and any derivative works thereof, belong solely and exclusively to Supplier or its licensors or suppliers, and OEM has no rights whatsoever in any of the foregoing other than the rights expressly set forth in this Agreement. Nothing in this Agreement or otherwise will be deemed to grant to OEM an ownership interest in any of the intellectual property rights in or to any Standard Products or Supplier Services, in whole or in part.
- C. **Trademarks.** OEM is permitted to use the "Dell" or "Dell EMC" name and Standard Product names (collectively, the "Approved Names"), solely for the purpose of accurately identifying the Products OEM is marketing. OEM's use of Approved Names shall comply with Supplier's trademark usage guidelines, which may be updated at any time by Supplier in its sole discretion. OEM may not use the Approved Names more prominently or more frequently than necessary for this purpose. OEM may not use any logo of Supplier's or any name or mark of Supplier's other than the Approved Names, except and only to the extent of Supplier's prior, written permission. OEM agrees to ensure that its use of the Approved Names will not likely create the impression that Supplier is affiliated with OEM or has sponsored, authorized, approved or endorsed OEM's business, OEM Products, any OEM offer, or any marketing, advertising or promotion thereof. OEM agrees to change or correct, at OEM's expense, any advertising, publicity, material, or activity which Supplier, in its sole judgment, decides is inaccurate, objectionable, misleading, or a misuse of Supplier's names, marks, or logos. OEM acquires



no right, title or interest in any Supplier marks, names and logos, except for the limited, non-exclusive right to use the Approved Names as provided in this Section. This limited right ends with termination of this Agreement.

**D. Confidential Information.**

- i. **“Confidential Information”** is any information, technical data, or know-how furnished, whether in written, oral, electronic, website-based, or other form, by the discloser to the recipient that: (i) is marked, accompanied, or supported by documents clearly and conspicuously designating the documents as "confidential", "internal use", or the equivalent; (ii) is identified by the discloser as confidential before, during, or promptly after the presentation or communication; or (iii) should reasonably be known by recipient to be confidential.
- ii. This OTS imposes no obligation upon a recipient with respect to information designated as confidential which: (i) the recipient can demonstrate was already in its possession before receipt from the discloser; (ii) is or becomes publicly available through no fault of the recipient or its Representatives (defined below); (iii) is rightfully received by the recipient from a third party who has no duty of confidentiality; (iv) is disclosed by the discloser to a third party without a duty of confidentiality on the third party; or (v) is independently developed by the recipient without a breach of the OTS.
- iii. If a recipient is required by a government body or court of law to disclose Confidential Information, to the extent permitted by law, the recipient agrees to give the discloser reasonable advance notice so that the discloser may contest the disclosure or seek a protective order. Recipient will use Confidential Information only for the purpose of and in connection with the evaluation of a potential, or continuation of, a business transaction or relationship between the parties. Recipient may disclose Confidential Information to its directors, officers, employees, and employees of its Affiliates, as well as its and its Affiliates' contractors, advisors, and agents, so long as those individuals have a need to know in their work for recipient in furtherance of the potential or continued business transaction or relationship, and are bound by obligations of confidentiality at least as restrictive as those imposed on recipient in this OTS (collectively, **“Representatives”**). Recipient is fully liable for any breach of this OTS by its Representatives. Recipient will use the same degree of care, but no less than reasonable care, as the recipient uses with respect to its own similar information to protect the Confidential Information. Recipient may only disclose Confidential Information as authorized by this OTS. The terms of this OTS do not restrict the right of recipient to independently design, develop, acquire, market, service, or otherwise deal in, directly or indirectly, products or services competitive with those of the discloser so long as the recipient does not use any of the discloser's Confidential Information for those activities. Unless the parties otherwise agree in writing, a recipient's duty to protect Confidential Information expires three years from the date of disclosure. However, subject to the terms of this Section, the obligation to protect technical information about a discloser's current products and services and all information about possible unreleased products or services never expires. Upon the discloser's written request, recipient will promptly return or destroy all Confidential Information received from the discloser, together with all copies. Notwithstanding the above, recipient's professional advisors (e.g., lawyers and accountants) may retain in confidence one file copy of their respective work papers and final reports in accordance with their professional and ethical obligations.

**14. MISCELLANEOUS**

- A. **Insurance.** OEM agrees to obtain and maintain during the term of this Agreement, commercial general liability, including products liability, insurance in a minimum amount of at least One Million Dollars (\$1,000,000.00) with an insurance company having a Best rating of A- or better. Upon Supplier's request, OEM shall provide to Supplier a certificate of the above-mentioned insurance and shall provide copies of any new or amended certificates of insurance to Supplier. In addition, OEM shall name Supplier as an additional insured on all commercial general liability insurance policies procured in accordance with this section. OEM shall give Supplier at least thirty (30) days prior written notice of any cancellation or termination of insurance required by this section.
- B. **References.** Supplier may identify OEM as a user of Products, Services, or both, as applicable.
- C. **Notices.** The parties will provide all notices under this OTS in writing. OEM must provide notices to Supplier, at the Supplier email address on the first page of the OTS and, if applicable, Supplier or its Affiliate's address as stated in a Schedule.
- D. **Force Majeure.** Except for payment of amounts due and owing, neither Supplier nor OEM will be liable for failure to perform its obligations during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond that party's reasonable control.
- E. **Assignment and Subcontracting.** Neither party shall assign this OTS nor a Purchase Contract or any right or obligation herein or delegate any performance without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing: (i) Supplier may use Affiliates or other qualified subcontractors to perform its obligations hereunder, provided that the relevant party to the Purchase Contract shall remain responsible for the performance thereof; and (ii) either party may assign payment obligations arising under any Purchase Contract without consent of the other party.
- F. **Governing Law; Dispute Resolution.** The OTS, and any dispute, claim, or controversy (whether in contract, tort, or otherwise) related to or arising out of the OTS or any quote or Order (**“Dispute”**) arising out of the regions below shall be governed by the associated jurisdiction listed under the Choice of Law:

LatAm Supplier Affiliate Location	Jurisdiction	Governing Laws
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<b>Argentina</b>	Ordinary Courts of The City of Buenos Aires, Argentina	Laws of the Republic of Argentina
<b>Brazil</b>	Federal and State Courts of São Paulo, Brazil, and Central District of São Paulo as appropriate.	Laws of the Republic of Brazil
<b>Chile</b>	Ordinary Courts of The City and County of Santiago De Chile	Laws of the Republic of Chile
<b>Colombia</b>	Ordinary Courts of The City of Bogotá, Colombia	Laws of the Republic of Colombia
<b>Mexico</b>	Mexico, Mexico City Courts	Laws of Mexico
<b>Peru</b>	Courts and Judges of Lima Cercado	Laws of the Republic of Peru
<b>Other LatAm countries not listed herein – Dell entity</b>	Ordinary courts in and for Travis or Williamson County, Texas	Laws of the State of Texas
<b>Other LatAm countries not listed herein -EMC entity</b>	Courts of the Republic of Ireland	Laws of the Republic of Ireland

- G. **Waiver.** Failure to enforce a provision of the OTS will not constitute a waiver of that or any other provision of the OTS.
- H. **Independent Contractors.** The parties are independent contractors for all purposes under the OTS and cannot obligate any other party without prior written approval. The parties do not intend anything in the OTS to allow any party to act as an agent or representative of a party, or the parties to act as joint venturers or partners for any purpose. No party is responsible for the acts or omissions of any other.
- I. **Severability.** If any part of the OTS or document that incorporates the OTS by reference is held unenforceable, the validity of all remaining parts will not be affected.
- J. **Entire Agreement.** This OTS (including the General Terms and Products and Services Schedules) and each Purchase Contract hereunder comprise the complete statement of the agreement of the parties regarding the subject matter thereof and may be modified only by written agreement. **Conflicts.** If there is a conflict between any Service Agreement and the OTS, the terms of the Service Agreement will take precedence, and in the event of any conflicts between a Product or Service Schedule and the General Terms, the Product or Service Schedule will prevail. In the event that a subject is addressed in both the Supplier Software license agreement provided in or with the Software and the OTS or in any Product or Service Schedule, then the corresponding provision of the Supplier Software license agreement will prevail.

## PRODUCT SCHEDULE 1 TO OTS

### Infrastructure Product Terms

This Schedule states terms that apply specifically to Infrastructure Products. The General Terms are incorporated by reference into this Schedule. If there is a conflict between this Schedule and the General Terms, this Schedule controls.

The attached Exhibits are incorporated into this Product Schedule and apply to Infrastructure Products:

- Exhibit A – OEM Support Exhibit
  - o Addendum A-1 – Support Services Exhibit
- Exhibit B – Professional Services Agreement

#### 1. DEFINITIONS

All definitions set forth in the General Terms apply to the Infrastructure Products, in addition to the definitions stated below.

- A. **“Configuration and Deployment Services”** means for Networking Products and Server Products (i) standard deployment services, such as Basic Deployment Services, ProDeploy or ProDeploy Plus services, as described in the corresponding Service Descriptions, available at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global); or (ii) standard configuration services, including the service features and offerings described in the corresponding Service Agreements(s), available at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global) or from the Supplier sales representative, as applicable, such as Static and Dynamic Imaging, Asset Tagging, Asset Reporting, standard System Configuration services (BIOS Settings, Hard Drive Partitioning, Application Installation and Operating System Settings). Configuration and Deployment Services for Networking Products and Server Products are subject to the applicable Service Agreement(s).
- B. **“Infrastructure Products”** means Equipment that comprises server, networking, storage, converged, and hyper-converged products, and data protection appliances products and their related Software, whether pre-installed or licensed separate and apart from such products
- C. **“Installation Site”** means the ship-to address or other location identified on Supplier’s quote or other Supplier-prepared document as the Equipment site of installation, use, or both.
- D. **“Product Notice”** means the information related to Equipment, Software, Independent Software, and Services posted at an Supplier website at the time of the Supplier 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 OEM 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 Supplier’s quote will apply to Infrastructure Products, and is deemed incorporated into that quote and related OEM purchase order by this reference. Upon request, Supplier will provide a copy of the applicable Product Notice or attach it to the relevant Supplier quote.
- E. **“Support Services”** when used in this Schedule and applied to Infrastructure Products means the Services described in Service Exhibit A and A-1 to this Product Schedule and identified on the table located at <http://www.emc.com/collateral/warranty-maintenance/h4276-emc-prod-warranty-maint-table.pdf>; Support Services for networking products listed at <http://www.dell.com/en-us/work/shop/networking/sc/networking-products> (“Networking Products”), [Supplier-branded servers](http://www.dell.com/en-us/work/shop/dell-poweredge-servers/sc/servers) found at <http://www.dell.com/en-us/work/shop/dell-poweredge-servers/sc/servers> (“Server Product”) and SC Series Products are stated at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global), Support Services for Infrastructure Products that are “Converged Infrastructure Products” are stated at <http://www.dell.com/en-us/converged-infrastructure/support/support-service-descriptions.htm>.

#### 2. WARRANTIES

The limited warranties stated below are subject to the exclusions and disclaimer stated in the Warranty section of this Agreement.

- A. **Product Warranty.** Supplier warrants that Equipment, under normal usage and with regular recommended service, will be free from material defects in material and workmanship, and that Equipment will perform substantially in accordance with the corresponding standard product documentation issued by Supplier. The limited warranties for the Equipment portion of Products are found at <https://www.dell.com/learn/us/en/uscop1/terms-of-sale-commercial-and-public-sector-warranties?c=us&l=en&s=corp> or in the applicable documentation or Product Notice for the specific Equipment.
- B. **Customer’s Remedies.** Supplier’s entire liability under the warranties for Products described above shall be for Supplier, at its option and cost, to repair or to replace the affected Product, and, if Supplier is unable to effect such within a reasonable time, then Supplier will refund the amount Customer paid for the affected Product as depreciated on a straight-line basis over a five year period, upon return of such Product to Supplier.

#### 3. ADDITIONAL TERMS

- A. **Change Orders:**

- i. **Mandatory Engineering Change Orders.** From time to time (e.g., for product safety reasons) Supplier may issue mandatory engineering change orders (“MECOs”). As to any affected Standard Products in OEM’s inventory or control, or already dispositioned by OEM, OEM shall obtain access to the Standard Products to permit Supplier or Supplier’s agents to install such MECOs.
  - ii. **Engineering Change Orders.** Supplier reserves the right to make substitutions and modifications in the specifications and design of any Standard Products that do not materially, adversely affect form, fit or function. Substitutions and modifications do not create or imply any obligation to make substitutions or modifications to any Standard Products previously provided.
- B. Networking Products and Server Products.** The following will apply to Networking Products and Server Products:
- a. **Service Agreements.** For Networking Products and Server Products, Support Services and the Configuration and Deployment Services are subject to the additional terms contained in the applicable Service Agreement(s). If there is a conflict between the terms of this Schedule, the General Terms of the OTS, and any Service Agreement(s), the following order of precedence will apply: (i) the Service Agreement; (ii) this Schedule; and (iii) the General Terms.
  - b. **Whole Unit Replacement; Failure to Return; Service Part Ownership.** If Supplier determines that a component of the defective Networking Product or Server Product is one that is easily removed and replaced or disconnected and reconnected, or if the Supplier analyst determines that the Networking Product or Server Product is one that should be replaced as a whole system, Supplier reserves the right to send OEM a component or whole replacement Networking Product or Server Product, as applicable. If Supplier delivers either a whole replacement Networking Product, Server Product, or a component of either to OEM, OEM must return the defective Networking Product, or Server Product, or component, as applicable, to Supplier within ten days of receiving the replacement, unless OEM has purchased “Keep Your Hard Drive” for the affected Networking Product or Server Product. In that event, OEM may retain the respective hard drive(s). Supplier will own all Supplier components removed from the Networking Products or Server Products and whole Networking Products or Server Products that OEM returns to Supplier. If OEM keeps a component or whole Networking Product or Server Product after Supplier has replaced it, then OEM must pay Supplier the then-current retail price for the component or whole Networking Product or Server Product, as applicable, that OEM keeps (except for hard drives from Networking Product or Server Products covered by “Keep Your Hard Drive” service). Supplier will invoice OEM for the whole Networking Product, Server Product, or components that OEM keeps and OEM will pay Supplier’s invoice within ten days of receipt. If OEM does not pay Supplier’s invoice within ten days after receipt, in addition to any other legal rights and remedies available to Supplier, Supplier may terminate the applicable Service Description by providing written notice to OEM. Supplier uses and OEM expressly authorizes the use of new and reconditioned parts made by various manufacturers in performing repairs.
  - c. **Parts Stocked; Mission Critical Parts.** Supplier currently stocks parts in various locations throughout the world. Selected parts may not be stocked in the location closest to OEM’s site. If a part that is needed to repair the Product is not available from a Supplier facility near OEM’s location and must be transferred from another facility, it will be shipped as soon as is commercially reasonable. Certain Supplier parts locations stock mission critical parts, as Supplier determines, to supply parts for same business day response times. A mission critical part is one that, upon failure, may prevent the Product from performing its basic functions. Supplier may ship these parts using overnight delivery. In order to receive parts on a two- or four-hour basis, OEM must purchase a corresponding Support Service entitlement that supports mission critical parts delivery, and the Product must be located within the Supplier-designated supported coverage area.
  - d. **Other Service Exclusions.** In the course of performing Support Services, Supplier will not be responsible for: (i) providing performance assistance or administrative assistance, installation, de-installation, relocation, preventative maintenance, training assistance, remote administration, or any activities or services not expressly described in the applicable Service Agreement(s); (ii) providing media replacement, operating supplies, cosmetic accessories or parts such as frames, and cover or support on those items; (iii) removing malicious software; (iv) providing data backup; (v) providing advanced wireless networking or remote installation, set-up, or optimization and configuration of applications beyond those described in the Service Agreement(s); (v) scripting, programming, database design and implementation, web development, or recompiled kernels; (vi) repairing damage or defects in Networking Products and Server Products which are purely cosmetic and do not affect device functionality; (vii) providing repairs that are necessary because: (a) OEM previously installed a OEM replaceable unit; or (b) someone other than Supplier or an authorized service provider previously altered, adjusted, or repaired the Networking Product or Server Product.



## EXHIBIT A OEM SUPPORT EXHIBIT

### 1. SCOPE

- a. Unless Support Services for Infrastructure Products are available to be procured at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global) and resold as outlined in Section 6 of the General Terms, this OEM Infrastructure Product Support Schedule (“Support Schedule”), along with any separate, applicable agreement enabling OEM to perform Support for Infrastructure Products, reflects the overall agreement of the parties to fulfil OEM’s support obligations for Infrastructure Products.
- b. OEM must establish and maintain Support Services for its End-User and be the initial point of contact for each End User’s Support Services request.
  - A. OEM may provide Support Services for Infrastructure Products directly, only if OEM:
  - B. Successfully completes the all required training courses in the appropriate category of Support Services,
  - C. Executes any additional required terms and conditions required by Supplier to perform Support Services
  - D. Receives official Supplier authorization and/or certification by Supplier to perform such Support Services,
  - E. Provides continuous and ongoing and continued compliance with the require terms and conditions; and
  - F. Maintains continued compliance with the OEM Support Guide (defined below)
- c. Support Services may be provided by Supplier directly to End User(s) if upon request of OEM, or if OEM is not enabled to perform Services as required (and outlined in 1.2.).
- d. If Supplier is to perform the Support Services, acting as a Subcontract, OEM must:
  - A. Execute agreement with End User for Support includes terms that are substantially similar to the corresponding Supplier Support Services terms set forth in Support Services (below);
  - B. Comply with terms of the Agreement; and
  - C. Maintain up to date payment obligations of Supplier’s Support Fees
- e. If there is a conflict between this Support Schedule, the Product Schedule and the General Terms, this Schedule controls, then the Product Schedule, and then the General Terms.

### 2. DEFINITIONS

- A. **“OEM Support Guide”** means the Supplier Support Partner Guide provided on the Supplier website and other Supplier provided handbook, guideline or documentation that define the operational relationship between OEM and Supplier including, but not limited to points of contact, installation and warranty service notification, service call flow, call escalation, service event tracking process, support requirements, spare parts logistics and training
- B. **“Product Maintenance”** means the service which consists of Supplier Technical Support (as defined below) and Software Releases (as defined in this Exhibit A)
- C. **“Parts”** means each individual hardware component in Equipment supplied by Supplier to OEM, or OEM’s End User, or listed in the then current Supplier parts listing, a copy of which shall be made available to OEM and periodically updated by Supplier; shall be new or repaired like-new parts (provided that repaired like-new parts shall not evidence substantially diminished performance of the Equipment in which it is properly installed); and, when provided as a replacement for a component returned by OEM to Supplier in accordance with Supplier’s standard returns process shall either be the same as, or interchangeable with, the component sent to Supplier.
- D. **“Problem”** means a failure by a Product to perform in substantial conformance with the applicable Supplier published specifications.
- E. **“Supplier Service Area”** means a location that is within (i) a one hundred (100) drivable mile radius of an Supplier service location in North America & EMEA and (ii) in the country in which the Installation Site is located.
- F. **“Technical Support”** means those Services as defined in the below 2.G., 2.H., 2.I., and 2.J. of this OEM Support Exhibit.
- G. **“Level 0 Technical Support”** means the services offering made available to End Users by OEM personnel located at support centers and in the field (unless otherwise purchased and agreed to by Supplier and OEM in writing). The Level 0 Technical Support activities shall include but not be limited to: (i) initial point of contact for End User(s) regarding any Support requests or related inquiries; (ii) isolation and identification of Problems and in some cases using tools provided by Supplier; and (iii) escalation of Problems, as applicable, to the Supplier for Problem resolution. Level 0 Technical Support personnel shall use their generally acquired education, experience and specific knowledge resources made available from Supplier to provide Level 0 Technical Support.
- H. **“Level 1 Technical Support”** means the Technical Support offering made available to End User(s) by support personnel located at support centers and in the field. Such Level 1 Technical Support activities shall include, but not be limited to: (i) provision of

general product information (pre-sales and post-sales) about the Products and processes relating to configuration, installation, updates and feature set support; (ii) regular Error resolution status reports to End User(s); (iii) resolution of Errors previously identified and addressed through documentation available through Supplier Web Support; (iv) basic support on the standard protocols and features of Products; and (v) collection of relevant Error determination information for escalation to Level 2 Technical Support. Level 1 Technical Support personnel shall use their generally acquired education, experience and specific knowledge resources made available from Supplier to resolve the Problem by working directly with the impacted End User(s), dispatch appropriately trained personnel to the Installation Site for Problem investigation or resolution or escalate the Problem to the Level 2 Technical Support team.

- I. "Level 2 Technical Support" means the Technical Support made available to End-User(s) by support personnel located at support centers and in the field. Such Level 2 Technical Support activities shall include, but not be limited to: (i) managing configuration Problems through troubleshooting; (ii) determination and resolution of most Equipment and Software Problems; (iii) in the event a Problem requires simulation steps for resolution, doing the initial Problem isolation and re-creation on a best efforts basis to determine if the apparent Problem resides with the Equipment or Software; (iv) defining an action plan for Problem troubleshooting/resolution; (v) providing advanced support on all Equipment and Software protocols and features; (vi) having the ability to analyze and diagnose Problems remotely to the extent possible using available tools; (vii) providing Supplier with known End User environment variables for assistance in parallel reproduction of a Problem; and (viii) working with Level 3 Technical Support to resolve all Problems escalated by Level 2 Technical Support. Level 2 Technical Support personnel shall use their generally acquired education and experience and the specific knowledge resources made available from Supplier to resolve the Problem by (i) using all knowledge resources to expertly address field installation and break/fix issues; (ii) performing iterative procedures with field service personnel to understand and correct Problems; and (iii) resolving the Problems directly or, for those Problems that have not been resolved by Level 2 Technical Support personnel, escalating Problems to Level 3 Technical Support personnel for assistance. Escalations shall include all knowledgebase searches tried as well as a transferable zip file containing all applicable logs, the H/W platform and base code revision of the array and steps used to recreate the problem.
- J. "Level 3 Technical Support" shall be delivered by Supplier and means the same as Level 2 Technical Support but with the additional capabilities of (i) performing engineering diagnostic activities such as resolving Problems in respect of which (a) no documentation exists within Supplier's knowledgebase, websites or other format; or (b) documentation does exist but does not resolve the Problem; (ii) collaborating with Supplier's engineering department on Problem re-creation and root cause analysis; (iii) resolving Problems associated with an identified bug that is not yet published on Supplier's website; (iv) fixing and generating clear and concise documented End User performable workarounds; (v) validating that all proposed Problem resolutions are tested prior to release to the Level 2 Technical Support personnel; (vi) providing access to Level 2 Technical Support for tracking Problem descriptions, bug fixes, case status, and case root cause analysis; and (vii) working with authorized Level 2 Technical Support personnel to supply additional Problem resolution information that may not be available on Supplier's website.
- K. At Supplier's discretion, Level 3 Technical Support personnel may be available to travel to Installation Sites. If Supplier and OEM mutually agree that such a visit is warranted, Supplier shall not charge OEM or OEM's End User therefore. If Supplier does not agree that such a visit is necessary but conducts such a visit at the request of OEM, such visit shall be subject to Supplier's then current time and materials terms, conditions and pricing. OEM shall accompany Supplier on all on-site visits to Installation sites without charge to Supplier. "Installation Site(s)" means the ship-to address or other location identified on the Supplier quote, approved Sales Order or other document prepared by Supplier as the site of installation and/or use of a Product, or a subsequent location provided by OEM.

### 3. Product Installation and Deployment Services

- L. Installation of Products – Supplier is not responsible for installation of Products as part of Supplier Support. Supplier may agree, in its sole discretion, to install Equipment at the End-User's Installation Site location located within a Supplier Service Area at Supplier's current installation charge, provided that: (i) OEM or End-User shall promptly notify Supplier of receipt the Equipment and permit Supplier access thereto during Supplier's normal business hours; and (ii) such Products have not been modified without Supplier's written consent, or subjected to unusual physical or environmental stress, accident, misuse or other damage, not caused by Supplier.
- M. Installation Services – Except for those Products which Supplier indicates in its published specifications and/or Product Notice as "customer installable", OEM shall offer to provide installation services for the Products (as described in this Section 3. B. and Section 3.D. below) to End Users or subcontract these services to Supplier, if agreed to by Supplier and located within a Supplier Service Area. Installation services shall be performed at the Installation Site and shall include set-up, connection, Equipment verification and any pre-production or acceptance testing required by the End Users. Installations are to be performed only by Supplier, employees of OEM, or a pre-approved OEM designee, who have been trained and certified by Supplier's Customer Service and Training organizations on the Products being installed. Installation services are to be performed in accordance with Supplier site preparation and installation procedures and other related documents or procedures made available by Supplier.
- N. Installation Fees – Should OEM request and Supplier elect, in its sole discretion, to provide installation assistance to OEM, Supplier shall invoice OEM for such assistance and related expenses in accordance with Supplier's then current terms, conditions, pricing and policies. Payment of such invoice(s) shall be due within thirty (30) days after the date of the invoice. Except for those instances where Supplier specifically agrees in writing to provide installation services, Supplier shall have no

obligation to provide any installation or on-site assistance to OEM for the Products identified in this Agreement.

- O. Installation Obligations – In providing the installation services described in Section 3.B. above, the providing party shall:
- i. use only Supplier trained personnel that have successfully completed the applicable Supplier training courses;
  - ii. follow all of the applicable guidelines in the OEM Support Guide;
  - iii. notify Supplier of the final installation location of the product within ten (10) days of installation. Notification can be accomplished by using the product’s registration utility or the notification tool on the Supplier Services Partner web site;
  - iv. be responsible for the End User’s host system configuration requirements and installation/implementation of the relevant Software; and
  - v. use all Parts, Software Releases, and Problem resolutions provided hereunder solely to provide support to End Users for the Products specified above which are obtained by OEM from Supplier under this Service Schedule.

#### 4. OEM’s Ongoing Support Obligations

- P. Pre-Staging of Products – In the event that the OEM’s integrated solution requires a centralized staging process prior to Supplier’s installation at the End-User’s Installation Site, such arrangement, training requirements and associated charges will be detailed in a support plan executed between OEM and Supplier. If applicable and once the integrated solution is complete, the OEM is responsible to ensure that each integrated solution is re-packaged and re-shipped, at the OEM’s expense, to the End-User in the same manner and condition in which the Product(s) was originally received from Supplier.
- Q. Support Services – During the warranty period provided by OEM to its End User(s), and during any subsequent, post-warranty maintenance term between OEM and its End User(s), OEM, at a minimum, shall provide the services set forth in Section 2. above and in the Exhibit A-1 Support Service Exhibit.
- i. Within a Supplier Service Area – OEM’s written arrangement with the End User for Support shall: (i) contain warranty and maintenance terms that are substantially similar to Supplier’s Support Services terms as contained in Services Exhibit A-1; (ii) clearly set forth the OEM supplied warranty for any products provided by OEM that are not Supplier Products and indicates that OEM has sole responsibility for such portions; and (iii) provide that if Product Maintenance has lapsed, at OEM’s ’s or End User’s request, all service delivered by Supplier shall be provided and charged for on a “per event” basis, or on a re-activated, continuous basis after a certification is performed at Supplier’s then current rates and/or a Software reinstatement fee.
  - ii. Outside a Supplier Service Area – Except to the extent that Supplier furnishes Support which is independent of the Equipment’s location, Supplier shall have no obligation to provide any installation, on-site services, warranty, Support services or to offer any post-warranty support to End Users located outside a Supplier Service Area. Without limiting the foregoing, the following shall apply for all Products to be installed or located outside of a Supplier Service Area:
    - (A) OEM shall not offer Supplier furnished Support to End Users unless otherwise agreed in advance by Supplier in writing. OEM shall have sole responsibility for providing End User with OEM’s own warranty and post-warranty support for such Products and fulfilling its obligations thereunder. If Supplier should be contacted directly by the End User, Supplier shall refer the End User back to OEM and OEM shall thereafter have full responsibility for responding. OEM must receive Supplier certification to provide Support Services and train all OEM personnel delivering OEM’s own warranty and post-warranty support for Products outside a Supplier Service Area; and
    - (B) If Supplier determines that Support outside a Supplier Service Area is available from an Supplier servicing partner, Supplier may, in its sole discretion, contract directly with the servicing partner to provide Support if there are no additional costs to Supplier. If additional costs would be incurred by Supplier for such Support, Supplier will offer OEM the option of paying additional costs or contracting directly with the Supplier servicing partner for such Support. Support outside a Supplier Service Area would in most cases require OEM to purchase spare parts from Supplier.
  - iii. Subcontracting of OEM’s Support Obligations to a Third Party – OEM may subcontract its obligation to provide support only to those third-party subcontractors that have been pre-approved by Supplier in writing, in its sole discretion, and have received comparable training from Supplier. OEM shall be fully responsible to Supplier for any violation or breach by a subcontractor of any OEM Support obligations or other OEM obligations contained in this Agreement.
- R. Staffing & Training – OEM and Supplier shall determine the initial staffing levels of trained OEM personnel for field locations, integration/staging site(s) and centralized support center(s) to enable OEM to provide support to its End Users. If OEM personnel require training, OEM and Supplier shall enter into a separate agreement to identify the specific training to be provided, along with pricing and other terms generally included by Supplier in its training related contracts. The Parties shall periodically meet to re-examine the staffing and training levels in light of the current and future business environment and Products.
- S. Business Review - Supplier and OEM shall formally review the results and records of OEM and Supplier Technical Support including Support Center and End- User satisfaction issues that resulted in increased time to resolution, Parts transactions (as

applicable), product and feature updates, quality issues, call escalation metrics, training conducted under the terms of the Agreement and all other items that the parties agree are relevant. As part of this review, OEM shall allow Supplier to (i) audit a sample of its End Users to determine whether End User satisfaction results are similar to those obtained when Supplier provides service directly; and (ii) assess the skills and competencies of OEM's personnel. Failure by OEM's personnel to achieve results which are satisfactory to Supplier shall be deemed a default under the Agreement and Supplier shall have the option of increasing the Supplier Technical Support Fees, terminating this Exhibit A or terminating the Agreement.

- T. Support and Escalation Process - For each Problem that the Technical Support personnel determines is related to Products obtained by OEM from Supplier hereunder, typically OEM shall first utilize OEM's Level 0 Technical Support organization unless otherwise specified in a separate agreement between OEM and Supplier. Thereafter, the escalation process shall be from the Level 0 Technical Support team to Level 1 Technical Support, then to Level 2 Technical Support, and finally to Supplier Level 3 Technical Support all in accordance with the criteria set forth in Section 2. above.
- U. Parts and Technical Support Usage - All Parts and Supplier Technical Support provided hereunder shall be used solely for the delivery of Support for Equipment, Parts, and Software (including all Software Releases related thereto) obtained by OEM from Supplier under this Exhibit A to the Product Schedule.
- V. Returns or Replacements – OEM agrees for itself and shall take all steps necessary to ensure that OEM's End-User(s) agree, that all OEM and/or End User rights in replaced Parts shall terminate immediately upon replacement. All replaced Parts are deemed to be the property of Supplier and, except as otherwise specifically stated in the Agreement, such Parts shall be returned to Supplier in the manner specified by Supplier. If such replaced Parts are not so returned, OEM shall pay Supplier's then current spare parts price therefore in accordance with the payment terms specified in the Agreement.

## 5. Exclusive Obligations

In no event shall Supplier be obligated to provide Support beyond the scope set forth in this Section 5 unless otherwise agreed in advance by Supplier in writing. The resale and sublicensing of Products by OEM to an End-User in accordance with this Agreement does not extinguish Supplier's obligations to OEM as described herein.

## 6. Product Maintenance Ordered By OEM

- W. Pricing for Product Maintenance – OEM may order Product Maintenance at Supplier's prices in effect at the time of the purchase order less any discount OEM may be entitled. Supplier will provide Product Maintenance to the End User, but the agreement for Product Maintenance shall be between OEM and Supplier. OEM may not create any obligations with the End User on behalf of or in the name of Supplier. OEM's order for Product Maintenance must contain the following information: (i) support level (identifying the level of service ordered); (ii) Product description; (iii) serial number; (iv) End-User name and Installation Site; (v) term of service; (vi) start date of term; and (vii) charges. Supplier shall charge OEM, and OEM shall pay Supplier in accordance with the payment terms specified in the Agreement, Supplier's then Supplier Technical Support prices in effect at the time of the order less any discount OEM may be entitled, if any ("Supplier Technical Support Fees").
  - i. OEM shall order Maintenance services from Supplier for its End Users in the event that any of the following applies:
  - ii. OEM charged its own End User's for such Maintenance, or
  - iii. OEM's distributors or resellers charged the End User for and paid OEM for Maintenance
  - iv. OEM's service partner or the End User asks Supplier for support for the Product(s)
  - v. To be eligible to receive bug fixes and updates.
- X. Renewal of Product Maintenance – Supplier shall provide OEM with one-hundred and twenty (120) days' notice prior to the end of a warranty period or Product Maintenance term, as applicable. If OEM has not placed an order for Product Maintenance within sixty (60) days after such notice, Supplier shall have the right to solicit the End User directly for the End User's Product Maintenance business.

## 7. Field Change Orders

- Y. Equipment Revisions and Software Releases – When so determined by Supplier, Supplier shall provide OEM or End User with the applicable Equipment, Parts or Software Releases needed for safety related or other such Field Change Orders designated by Supplier as "mandatory". OEM shall provide Supplier with a purchase order to enable the Supplier to bill the OEM for the FCO material. OEM shall be credited back the cost of the FCO material once Supplier has received the replaced parts back into Supplier inventory.
- Z. Where OEM is responsible for onsite support delivery, OEM shall promptly implement/install such Field Change Orders with its End Users at no charge to Supplier. Supplier reserves the right to increase its charges for installation assistance and/or Supplier Technical Support for Products in which OEM has failed to implement such Field Change Orders. OEM shall keep accurate records of change activity for periodic review and audit by Supplier for a minimum period of ten (10) years.

## 8. Parts Availability Options

Non-Supplier Parts; Parts Pricing – OEM acknowledges that Supplier's fees and any other pricing contained in this Section 8 for

Parts and Supplier Technical Support are based on OEM's use of Parts obtained directly from Supplier. The quality and reliability of any parts obtained from other sources is not known. Supplier shall have no obligation to provide any Supplier Technical Support or installation services for any Problems that result from parts obtained from other sources. Supplier reserves the right to terminate its obligations under this Section 8 and/or to assess charges on OEM in accordance with Supplier's then current practices should Supplier learn that it provided installation assistance or Supplier Technical Support for problems that involved parts obtained from other sources. OEM shall pay such assessed charges in accordance with the payment terms specified in the Agreement.

## **9. Maintenance Aids and Maintenance Related Diagnostics and Tools**

- AA. Ownership and License – Maintenance Aids shall also include any maintenance related tools and diagnostics made available to OEM by Supplier to assist OEM in performing onsite support. Maintenance Aids are owned by or licensed to Supplier. Maintenance Aids may be placed, at Supplier's discretion, at the Installation Site for use solely by Supplier, Supplier designated personnel or OEM subject to OEM's compliance with the terms of this Exhibit A and the Agreement. Supplier grants OEM a limited, personal, revocable, non-transferable, non-assignable, and non-sublicensable right to use the Maintenance Aids installed by Supplier at plant of manufacture, and any other Maintenance Aids to which Supplier provides OEM with access, solely for the purpose of providing OEM Support to its End Users during the period for which OEM has paid, or agreed to pay, Supplier the applicable Supplier Technical Support Fees. If such Supplier Technical Support Fees are not paid when due or in the event that OEM violates the terms of this Exhibit A or the Agreement, such license shall automatically terminate and OEM shall make prompt arrangements for Supplier to disable or remove the Maintenance Aids from the affected Equipment and/or return to Supplier or discontinue accessing and using all maintenance related tools and diagnostics previously provided to OEM. Supplier is authorized, upon the conclusion of the Supplier Technical Support or at any other time, upon reasonable notice to OEM, to enter the Installation Site, or to use remote means, to remove and/or disable Maintenance Aids and OEM shall reasonably cooperate in this effort. Except as expressly stated in this Section, OEM shall have no rights in and shall make no use of Maintenance Aids whatsoever. OEM shall not copy Maintenance Aids, shall protect them from disclosure to anyone else by use of the same standard of care as OEM uses to protect its own information of a similar nature and importance, and no less than reasonable care, and shall not disclose such to any third party, including but not limited to OEM's subcontractors, unless Supplier, in its sole discretion, pre- approves disclosure of Maintenance Aids to OEM's subcontractors in writing and so long as such subcontractors agree in writing with OEM to comply with the requirements of this Exhibit A and OEM shall be fully responsible to Supplier for any misuse thereof. Supplier may grant such access to those designated personnel of OEM who have completed Supplier required training and to whom Supplier has assigned any applicable user names and passwords necessary to use such tools. Supplier may change such user names, passwords and security privileges from time to time. OEM will promptly notify Supplier of the termination or reassignment of any employee, contractor, subcontractor or agent who has been granted access to such tools.
- BB. SUPPLIER (INCLUDING ITS SUPPLIERS) PROVIDES MAINTENANCE AIDS "AS IS" AND MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.
- CC. OEM acknowledges that improper use of Maintenance Aids may cause damage to OEM, End Users and/or Supplier. OEM shall defend, indemnify and hold Supplier harmless from and against any liabilities, damages, costs, expenses and settlement amounts related to third party claims alleging that OEM's acts or omissions related to use of the Maintenance Aids caused such third-party damages. Any limitation of or cap on damages stated in the Agreement shall not apply to the foregoing indemnity. Any services or efforts required to remedy, repair or replace Products arising out of or in connection with OEM's misuse of Maintenance Aids are not included within the scope of Supplier Technical Support or this Exhibit A. Should OEM request and should Supplier elect, in its sole discretion, to provide such services or assistance to OEM, Supplier shall invoice OEM for such services/assistance in accordance with Supplier's then current time and materials terms, conditions and pricing, and OEM shall pay such invoices in accordance with the payment terms specified in the Agreement.
- DD. Modifications and Customizations – Promptly after the commencement of the Agreement, and thereafter on an "as needed" basis, Supplier and OEM shall arrange to make modifications and customizations to the Maintenance Aids to enable the remote support capabilities (available for certain Products) to contact OEM instead of Supplier and to enable OEM to perform such other activities as are agreed in writing between Supplier and OEM.

## **10. Supplier Technical Support Services to OEM**

- EE. General Description – During the period(s) covered by OEM's payment of the Supplier Technical Support Fees described in Section 10.A. of this Exhibit A to the Product Schedule, Supplier shall make available the following Supplier Technical Support to OEM as more fully described in the OEM Support Guide:
- i. Level 1 and Level 2 onsite and/or remote Technical Support, when contracted for by OEM as set forth in the OEM Support Guide or successor operational documentation. Supplier Level 3 Technical Support shall be provided in accordance with the escalation process set forth in Services Exhibit A, in the English language, via live chat, web portal, telephone or other electronic media (with on-site visits only as specifically agreed by Supplier, in its sole discretion, on a case-by-case basis for Supplier Level 3 Technical Support), for the purpose

of bringing the Equipment and related Parts and Software into substantial conformance with the applicable Supplier published operating specifications. Supplier may, at its sole discretion, remotely monitor, diagnose and test the performance and operation of and distribute bug fixes for Software; and

- ii. Copies of subsequent Software Releases of Software, in quantities reflective of the amount of licenses purchased by OEM from Supplier, as they are made generally available by Supplier provided always that Supplier reserves the right to charge an additional fee for new or substantially improved functionality of features not considered by Supplier (at its sole discretion) to be a subsequent Software Release of the applicable Software. Any Software Releases supplied by Supplier to OEM hereunder shall be used by OEM only to update licenses for Software obtained by OEM from Supplier under this Exhibit A and for which OEM has paid Supplier the applicable Supplier Technical Support Fees. Such Software Releases shall only be made available by OEM pursuant to a license agreement with the applicable End-User that conforms to the requirements set forth in the Agreement. OEM shall keep track of such Software Releases and the End Users to whom OEM provides such Software Releases.

FF. Additional Support during Warranty Period - During the warranty period for the applicable Hardware, Supplier may also make available additional support services, such as remote and/or on-site remedial and preventative services to maintain conformance with Supplier published specifications and/or access to help-line services and subsequent releases of the applicable Software. The availability and extent to which these additional services are made available for a specific Product, either as part of the warranty or as a warranty upgrade to separately chargeable maintenance, shall be made known to OEM by such means of the Product Notice.

GG. Non-Standard Configurations - For Products that are not configured to meet Supplier's then current guidelines for technical compatibility and for connectivity to non-Supplier products, Supplier has the right to restrict its diagnostic and corrective procedures to those problems that originate entirely within such Products and do not arise out of or in connection with the Products' interoperation with any other non-Supplier products.

HH. Time & Materials Service – Supplier shall be entitled to charge OEM for any service, maintenance or support beyond the scope of or excluded from this Section 10, and OEM shall pay any such invoices in accordance with the payment terms specified in the Agreement. Such service, maintenance or support may be made available by Supplier, at its discretion, in accordance with Supplier's then current terms and conditions and charges applicable thereto.

II. Effects of Termination – Should Supplier cease to provide Supplier Technical Support to OEM, the Parties shall promptly meet (before the effective date of such cessation, if possible) and make good faith efforts to develop a transition plan to minimize the impact on End Users. Without limiting the "Survival" terms specified in the Agreement, this Section shall survive the expiration or termination of the Agreement.

**EXHIBIT A-1**  
**SUPPORT SERVICE EXHIBIT**  
**General Support Services Terms**

This Support Services Exhibit (the “**Exhibit**”) sets forth the basic provisions under which Supplier makes available Support Services (as defined below) to OEM or, upon OEM’s request, directly to End User in place of OEM as OEM’s subcontractor subject to OEM’s compliance with the provisions of Exhibit A and this Exhibit A-1.

NOW, THEREFORE, in consideration of the premises and obligations contained herein, it is agreed as follows:

1. Definitions.

“**End-User Support Tools**” means any software or other tools Supplier makes available to OEM or directly to End User to enable certain service features of Products (as applicable) and to enable OEM or End User to perform various self-maintenance activities.

“Maintenance Aids” mean any hardware, software or other tools, other than End-User Support Tools, that Supplier uses to perform diagnostic or remedial activities on Products.

“**Time and Materials Service**” means any maintenance or support service that Supplier provides but is not part of fixed-fee Support Services or other generally available service-related offering from Supplier using a pre-established fee. Supplier charges separately for Time and Materials Services on a time and materials basis and may include a separate set of Time and Materials terms and conditions.

2. SUPPORT SERVICES

A. **Scope.** The contents of Support Services for each Product (the “Support Option”) are set forth in the Product Notice or the Service Agreement(s), and unless otherwise indicated in the Product Notice or Service Agreement(s), consist of: (i) using commercially reasonable efforts to remedy failures of Infrastructure Products to perform substantially in accordance with Supplier’s applicable Documentation; (ii) providing English-language (or, where available, local language) help line service via telephone or other electronic means; and (iii) enabling OEM or End-User to download, Software Releases and Documentation updates that Supplier makes generally available at no additional charge to other purchasers of Support Services for the applicable Product. Supplier reserves the right to change the scope of Support Services for Infrastructure Products on sixty (60) days’ prior written notice to OEM.

B. **Additional Support.** Supplier reserves the right to charge for Support Services performed outside the time frames of the applicable Support Option as a Time and Materials Service. Except to the extent that Support Services are independent of the Equipment’s location, Supplier will have no obligation to provide Support Services for Infrastructure Products with respect to Equipment that is outside the Supplier 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 Supplier’s then- current “End-of-Service-Life” policy for the respective Product, if applicable. Supplier will have no obligation to provide Support Services for Software and Independent Software problems that cannot be reproduced at Supplier’s facility or via remote access to OEM and/or End-User’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 7B (“Equipment Warranty Exclusions”) or as outlined in the General Terms had the problem arisen during the warranty period of the affected Product.

D. **Reinstatement of Support.** OEM may request that Supplier reinstate Support Services for a Product for which Support Services have lapsed. Supplier may do so at its discretion and reinstatement will be subject to a certification at Supplier’s then-current Time and Materials Service rates and conditions. Once the Product is certified, Support Services will commence when OEM pays: (i) the charge for the above-described Time and Materials Service; (ii) the amount Supplier 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 (12) months of the newly-commenced Support Services.

3. OEM RESPONSIBILITIES

A. **Cooperation.** OEM will, or ensure End-User will (i) promptly notify Supplier when a Infrastructure Product fails and provide Supplier with sufficient details so that Supplier can reproduce the failure; (ii) allow Supplier remote and on-site (when Supplier deems necessary) access to the 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 Supplier) in compliance with all applicable laws and regulations, as well as information, and assistance required to provide Support Services.

OEM will provide Supplier with timely access to and use of all OEM proprietary and third party equipment, software and systems required for Supplier to perform its obligations under this Agreement. With respect to all third party hardware or software operated by or on behalf of OEM, OEM warrants that it shall, at no expense to Supplier, obtain all consents, licenses and sublicenses necessary for Supplier to perform Support Service and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses. OEM shall indemnify, defend, and hold Supplier harmless from and against all third party claims and expenses, including reasonable attorneys’ fees and expenses, arising by reason of any failure or delay by OEM to obtain the consents, licenses or sublicenses necessary for Supplier to perform Support Services.

B. **Support Contacts.** Unless a specific number of authorized contacts are indicated on the Product Notice or the applicable Service Agreement(s) require that the OEM be in physical possession of the Equipment at the time a support request is submitted, OEM will designate in writing a reasonable number of authorized contacts, as OEM and Supplier may determine, who will initially report problems



and receive Support Services from Supplier. Each OEM representative will be familiar with OEM's and End Users' requirements and will have the expertise and capabilities necessary to permit Supplier to fulfill its obligations. OEM will provide changes to authorized support contacts to Supplier in writing.

#### 4. **ADDITIONAL TERMS**

A. **Maintenance Aids and Spare Parts for Equipment.** OEM (and you will cause End-User to) authorizes Supplier to store Maintenance Aids and spare parts at the Installation Site and agrees that these items are only for Supplier's use. OEM will not, and will not authorize any third party, to use these items. Supplier is authorized, upon the conclusion of the Support Services or at any other time, upon reasonable notice to OEM, to enter the Installation Site, or to use remote means to remove or disable Maintenance Aids and spare parts, as applicable. OEM will reasonably cooperate, and have End-User cooperate, in this effort.

B. **End-User Support Tools.** Supplier may choose to make various End-User Support Tools available to assist OEM or End User (as applicable) in performing various maintenance or support related tasks. OEM shall use, and shall ensure that End User uses, End User Support Tools only in accordance with terms under which Supplier makes them available.

C. **Service Data.** In connection with the performance and use of the Services, and Supplier's remote support capabilities detailed in section 4I ("Remote Support Capability") below, Supplier may obtain and receive, data or information, including Product-specific, Service-related data such as Product diagnostics, configurations, usage characteristics, performance data, and deployment location (collectively, "Service Data"). OEM acknowledges and agrees, and will require End-User acknowledge and agree, that Supplier will: (i) use, compile, display, store, process, reproduce, or create reporting and other Services-related materials from the Service Data solely to provide the Services, including remotely accessing Products to install, maintain, monitor, support, receive alerts and notifications from and change certain internal system parameters of Products in OEM's or End-User's environment in fulfillment of Supplier's Support Services obligations; (ii) provide OEM with visibility to End-users actual Product usage and consumption patterns and make recommendations to OEM regarding improvements to End-Users environment and utilization of the Services; (iii) utilize the Service Data in connection with predictive analytics and usage intelligence to consult with and assist End-User, directly or through the OEM, to optimize End-Users 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 Supplier's systems as necessary to provide the Support Services. Supplier agrees that the Service Data is subject to the confidentiality provisions in this Agreement and shall have similar confidentiality provisions in place with End-User for these purposes. OEM (and OEM will cause End-User to) represent and warrant that you have obtained all rights, permissions, and consents necessary to allow Supplier to use and transfer the Service Data within and outside of the country in which End-User or you are located.

D. **Data Security Options.** OEM must, at its own cost, (and OEM will cause End-User at its own cost to) permanently erase of all information, including without limitation all personally identifiable, confidential, and any other protected or sensitive information placed on Products before returning Products to Supplier for trade-in, repair, or disposal. OEM must use (and must cause End-User at its own cost) a method that does not cause damage to Products or any replaced parts or any other items that OEM provides to Supplier for repair, trade-in, or disposal. Supplier offers data erasure services and Supplier will provide the descriptions and charges associated with Supplier's then current data erasure services upon request. Supplier has no responsibility for any information that OEM fails to erase that is on items sent to Supplier.

E. **Equipment Replacements and Data Security Options.** All replaced Equipment (or portions thereof) shall become the property of Supplier upon OEM's or End User's receipt of the corresponding replacement, and OEM shall promptly return such replaced Equipment (or portions thereof) upon Supplier's request. If such replaced Equipment is not so returned, OEM shall pay Supplier's then current spare parts price therefore. OEM is responsible for removing or ensuring that End User has removed all information from any replaced parts, or any other items that OEM and/or End User releases to Supplier as a trade-in or for disposal, before such are released to Supplier. Supplier is not responsible for any information contained on such items notwithstanding anything to the contrary. In order to assist in securing any data, OEM can request a quote from Supplier for Supplier's then currently available disk retention or data erasure offering.

F. **Proactive Product Changes.** Supplier may, at its expense, implement changes to the Products upon reasonable notice to OEM or End-User when (i) the changes do not adversely affect interchangeability or performance of the Products; (ii) when Supplier reasonably believes the changes are required for purposes of safety or reliability; or (iii) when Supplier is required by law to do so. OEM shall give Supplier, or require End-User to give Supplier, reasonable access to the Products for these purposes.

G. **Software Releases.** When End-User begins using a Software Release for a particular Product, OEM shall, and shall ensure that its End-Users, remove and make no further use of all prior Software Releases for that Product, and protect the prior Software Releases from disclosure or use by any third party. OEM is authorized to retain a copy of each Software Release properly obtained by OEM for OEM's archive purposes and use them as a temporary back-up if the current Software Release becomes inoperable. OEM shall, and shall ensure that its End-Users, use and deploy Software Releases only in accordance with terms of the original license for Software and Independent Software.

H. **Change of Equipment Location or Configuration.** OEM or End User may change the Installation Site or configuration of a Equipment under Support Services only after written notice to Supplier, and subject to the terms and conditions in this paragraph. If the new location is in a different country, the move is subject to Supplier's prior written approval and additional fees may apply. OEM will promptly notify Supplier of any changes to the configuration, or movement of Equipment by anyone other than Supplier. To determine if the Product remains eligible for Support Services, Supplier reserves the right to inspect and evaluate the changes in configuration or location of affected Equipment, and to re-certify the Equipment at Supplier's then current Time and Materials Service terms and rates. Additional charges, if any, related to changes in configuration or location of Equipment shall apply from the date the change took place.



I. **Movement of Software.** If OEM is current in the payment of the applicable Support Services fee, End User may, to the extent technologically compatible, discontinue all use of the Software on the hardware or network environment for which it was originally licensed and begin the corresponding use thereof on a different End User owned or controlled hardware or network environment provided that OEM (i) provides Supplier with advance, written notice of such move; and (ii) pays the applicable transfer and/or upgrade fees assessed by Supplier for such a move (if any).

J. **Remote Support Capability.** As part of Support Services, Supplier makes various remote support capabilities available for certain Products in accordance with its then-current policies and procedures. Supplier's warranty and Support Services fees are based on the availability and use of the remote support capabilities. OEM or End-User has the option to have Supplier activate or disable remote support capabilities, but OEM shall notify Supplier of this election without undue delay. If the remote support features are disabled by anyone other than Supplier, then, with regard to all Products affected by such disablement (i) Supplier may assess OEM a surcharge in accordance with Supplier's then-current standard rates; and (ii) agreed response times or other agreed service levels (if any) shall no longer apply.

K. **Alterations and Attachments to Equipment.** For Infrastructure Products, Supplier does not restrict OEM or End-Users from making alterations to, or installing other products in or with, the Equipment at OEM's or End User's expense; provided OEM is responsible for any inspection fees and/or additional charges resulting from such activities. If the alterations or attachments prevent or hinder Supplier from performing Support Services, OEM shall, upon Supplier's request, take or cause End User to take corrective action. OEM's failure to take appropriate corrective action shall be deemed a breach of this Agreement.

L. **Transfer of Equipment to Secondary Purchasers.** If End User 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: (i) is not considered, in Supplier's reasonable discretion, to be a competitor of Supplier; and (ii) has not had prior disputes with Supplier), to the extent Supplier resources reasonably permit, Supplier will make available to OEM, as a Time and Materials Service, de-installation services. In addition, and to the extent Supplier resources reasonably permit, Supplier will make available to the Secondary Purchaser: (a) Equipment installation and re-certification services as a Time and Materials Service; and (b) Support Services for Equipment that Supplier has determined and notified the Secondary Purchaser meets Supplier's certification criteria upon receipt of payment of Supplier's then current Support Services fees. A Secondary Purchaser of Infrastructure Products must obtain the appropriate Software license from Supplier and pay any applicable Software license fees.

M. **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 Supplier Equipment warranty, Supplier reserves the right to send OEM written notice that Supplier 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 Supplier sends a discontinuation notice, or if OEM rejects or does not respond to the notice of a proposed price change within thirty days after receipt, OEM will be deemed to have terminated the Software Support Services for its convenience and the terms of section 7.(C)(2) below will apply.

N. **Third Party Product Provided to Supplier.** If OEM or End-User provides or makes available Third Party Products, including any intellectual property developed by OEM or End-User, for Supplier to use in connection with Services, OEM will, or cause End-User to: (i) authorize Supplier to use the Third Party Products as needed to provide the Support Services; (ii) warrant that it has all consents, licenses, and sublicense rights as may be necessary to make these Third Party Products available to Supplier; and (iii) agree that Supplier are not liable to OEM or End-User if Supplier's authorized use causes warranties or other services contracts for these Third Party Products to become void.

5. **PRICING.** The fee for Support Services for Products will be as set forth on the applicable Supplier quote. Additions to the Products on the Supplier quote may result in additional Support Services fees. Supplier will charge and invoice for Time and Materials Service in accordance with terms governing each Time and Materials Service engagement.

## 6. SUPPORT SERVICES WARRANTY

A. **Support Services.** Supplier will perform the labor portion of Support Services in a workmanlike manner in accordance with generally accepted industry standards. OEM shall notify Supplier of any failure to perform as stated in the prior sentence as soon as reasonably possible, and in no event more than ten days after the date on which the 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.

B. **OEM Remedies.** OEM's exclusive remedy and Supplier's entire liability under the warranty stated in sub-section A above will be for Supplier to, at its option: (i) use reasonable efforts to (a) re-perform the deficient labor services within a reasonable time; or (b) replace any replacement parts that become defective during the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part, or sixty days after installation, whichever occurs later; and (ii) if, after reasonable efforts, Supplier is not able correct the deficiencies, then OEM has the right to terminate for breach in accordance with section 7D below.

C. **No Further Warranties.** Except as expressly stated in the Agreement or the applicable Schedules, and to the maximum extent permitted by applicable law, with regard to Products, Support Services and any other items, Services, or matters arising under this OTS, Supplier (including its Providers) makes no other express warranties, written or oral, and disclaims all implied warranties. Insofar as permitted under applicable law, all other warranties are specifically excluded, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, and any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade, Supplier and its Providers do not warrant that the Software will operate uninterrupted or that it will be free from defects or that it will meet OEM's requirements.

## 7. TERM AND TERMINATION

- A. **Software Support Services Term.** Support Services for Software and Independent Software that OEM orders at the same time as the license for those items will commence on Delivery and continue for the period specified on the Supplier quote. Renewals of these Support Services will commence and expire in accordance with the dates on the applicable Supplier quote.
- B. **Equipment Support Services Term.** Support Services (including Support Option upgrades, if applicable) for Equipment are provided during the warranty period. Renewals of Equipment-related Support Services will commence and expire in accordance with the dates on the applicable Supplier quote. 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 for Convenience.** In addition to the term and termination provisions stated in the General Terms, the following apply to Support Services:
- C. (1). **By Supplier.** If Supplier terminates Support Services for its convenience, OEM's sole and exclusive remedy and Supplier's sole and exclusive obligation will be to refund to OEM the portion of any pre-paid Support Services fee that corresponds to the period between the effective date of the termination for convenience and the end of the then-current Support Services period.
- C.(2). **By OEM.** If OEM terminates Support Services for Infrastructure Products for its convenience as described in Section 4(M) of this Addendum A-1, OEM's sole and exclusive remedy and Supplier's sole and exclusive obligation will be to grant OEM a credit that corresponds to the period between the effective date of the termination for convenience and the end of the then-current Support Services period for any Support Services. OEM may only use the credit against future purchases of Products or Support Services from Supplier. Supplier may reduce the credit to recapture unearned discounts (meaning discounts to a Support Services fee that were based on a OEM obligation that can no longer be fulfilled due to the termination).
- D. **Termination for Breach.** In addition to the term and termination provisions stated in General Terms, either Supplier or OEM may terminate the Support Services for a specific Product if a party materially breaches this Schedule and fails to cure the breach within thirty days' receipt of written notice specifying the failure. If Supplier terminates the Support Services for OEM's material, uncured breach, that termination will be without further liability for Supplier and without any obligation to refund any fees already paid for Support Services. If OEM terminates for Supplier's uncured, material breach, OEM's sole and exclusive remedy and Supplier's sole and exclusive obligation will be, at OEM's election, to either issue a credit for use against current or future purchases of Products or Support Services or grant a refund for that portion of any pre-paid Support Service fee that corresponds to the period between the effective date of the termination for breach and the end of the then-current Support Services period.

## EXHIBIT B PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (PSA) sets forth the general terms and conditions under which OEM may periodically engage Supplier to provide certain professional, educational/training, operational and technical services (“**Professional Services**”) on a project basis pursuant to a Statement of Work (“**SOW**”) to be entered into between Supplier and OEM for each engagement.

### 1. DEFINITIONS.

**A. “Affiliate”** means a legal entity that is controlled by, controls, or is under common control with Supplier or OEM, respectively. “Control” means more than 50% of the voting power or ownership interests.

**B. “Deliverables”** means any reports, analyses, scripts, code or other work results that Supplier delivers to OEM within the framework of fulfilling obligations under the SOW.

**C. “Proprietary Rights”** mean all patents, copyrights, trademarks, trade secrets, or other intellectual property rights of a party.

**D. “Statement of Work” or “SOW”** means a document agreed between OEM and Supplier containing specifications and other transaction-specific details of the Professional Services to be provided by Supplier. SOWs may, among other things, consist of (i) a separately executed, long form services specification; or (ii) a short form service description (called a “**Service Brief**”) with an accompanying Supplier model number identified on a quote.

### 2. PROFESSIONAL SERVICES.

**A. Scope.** Each project for Professional Services shall be governed by a separate SOW. Each SOW (excluding a Service Brief) shall (i) be signed by the parties; (ii) incorporate by reference this Agreement; and (iii) state the pertinent business parameters, including, but not limited to, pricing, payment, expense reimbursement, and a detailed description of the Professional Services to be provided. In case of conflict between the SOW and the terms of this Agreement, the SOW shall normally take precedence. However, to the extent that the SOW contains terms that conflict with terms in the Agreement pertaining to intellectual property and/or proprietary rights, indemnification, warranty (including remedies and disclaimers), and/or limitation of liability, the conflicting terms in the SOW shall supersede those in the Agreement only if the SOW clearly indicates that the parties are intentionally overriding the terms in the Agreement solely for purposes of such SOW. Professional Services are provided as a separate and independent service to OEM even if offered together with the sale or licensing of Products by Supplier in the same Supplier quote or OEM purchase order.

**B. Placement of Supplier Personnel.** Supplier shall have the sole responsibility for personnel placement as well as for all other human resources issues (e.g. vacation). Supplier will only utilize employees or contractors that are sufficiently qualified. If specific Supplier personnel cease to perform due to illness, resignation or any other reason, Supplier shall without undue delay use reasonable efforts to provide a substantially equivalent replacement as soon as reasonably possible. Supplier’s contact person responsible for liaising with OEM will exclusively be the person identified by Supplier as being responsible for the project. No employee/employer relationship is intended or shall be established by any SOW.

**C. Standard Workday.** The standard workday is any eight (8) hour period of work, between 8:00 AM and 6:00 PM, Monday through Friday, excluding public holidays at the Supplier location providing Professional Services.

**D. OEM Responsibilities.** OEM shall provide Supplier personnel with timely access to appropriate facilities, space, power, documentation, networks (including internet and telephone), files, information, additional software (if needed), and skilled and authorized OEM personnel to assist in the performance and cooperate with Supplier. OEM shall also perform its specific obligations as described in the relevant SOW, and, if necessary, assist and support Supplier in the provision of the Professional Services as reasonably requested by Supplier, and shall provide all conditions in its business necessary for due performance of Professional Services by Supplier. Supplier shall not be responsible for any failure to perform, or delay in performing, any of its obligations, if such failure or delay is caused by (i) OEM’s failure to provide or delay in providing such access or (ii) failure or delay in the performance of other OEM obligations or responsibilities under this Agreement and/or the applicable SOW.

### 3. PROPRIETARY RIGHTS.

**A. Grant of License Rights in Deliverables.** Subject to OEM’s compliance with the terms of the OTS, this PSA, OEM’s payment of applicable amounts due, and Supplier’s Proprietary Rights in any underlying intellectual property incorporated into the Deliverables, or used by Supplier to perform Professional Services, Supplier grants OEM a non-exclusive, non-transferable, non-sublicensable, revocable (in case of non-payment or breach of the OTS, PSA or SOW) license to use the Deliverables for OEM’s internal business operations, as contemplated by the applicable SOW. The license granted in this section does not apply to (i) OEM furnished materials, (ii) any other Products, (iii) any Third Party Products; or (iv) items licensed, or otherwise provided, under a separate agreement.

**B. OEM Furnished Materials.** OEM retains its Proprietary Rights in materials it furnishes to Supplier for use in connection with the performance of Professional Services. OEM grants Supplier a non-exclusive, non-transferable right, under OEM’s Proprietary Rights, to use the OEM-provided materials solely for the benefit of OEM in fulfillment of Supplier’s obligations under the SOW.

**C. Reservation of Proprietary Rights.** Each party reserves for itself all Proprietary Rights that it has not expressly granted to the other. Supplier is not limited in developing, using or marketing services or products which are similar to the Deliverables or Professional Services provided under any SOW, or, subject to Supplier’s confidentiality obligations to OEM, in using the Deliverables or performing similar Professional Services for any other projects.

**D. Third Party Products.** OEM grants Supplier a non-exclusive, non-transferable right to use Third Party Products that OEM provides for Supplier's use to perform the Professional Services described in a SOW. Any configuration or modification that Supplier makes to any OEM-provided Third Party Products or work product incorporating Third Party Products is subject to OEM's agreement with the applicable third party.

**5. Purchasing.**

**A. Purchasing.** Each SOW (excluding the Service Brief) becomes binding on both parties when it is signed by Supplier and OEM countersigns and returns the SOW to Supplier (along with a purchase order if so required in the SOW). Supplier shall submit invoices for fees and reimbursable costs and are expenses and be paid in the manner specified in the applicable SOW.

**6. TRAINING SERVICES.**

**A. Courses.** Supplier's standard training Services are available through the applicable catalogue or website. Supplier customized training Services are available pursuant to an SOW.

**B. Cancellation and Refunds.** If OEM prepays and subsequently cancels standard training Services, Supplier shall provide (i) a full refund, if Supplier receives written notice of cancellation two (2) or more weeks before the scheduled start date; or (ii) a 50% refund, if Supplier receives written notice of cancellation less than two (2) weeks before, but prior to, the scheduled start date. Cancellation charges for customized training Services shall be as mutually agreed between the parties in the applicable SOW.

**7. WARRANTY.**

**A. Professional Services.** Supplier shall perform Professional Services in a workmanlike manner in accordance with generally accepted industry standards. OEM must notify Supplier of any failure to so perform within ten (10) days after the performance of the applicable portion of Professional Services.

**B. OEM Remedies.** Supplier's entire liability and OEM's sole remedy for Supplier's failure to so perform shall be for Supplier to, at its option, (i) correct such failure; and/or (ii) terminate the applicable SOW and refund that portion of any fees received that correspond to such failure to perform.

**C. No Further Warranties.** EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, PROFESSIONAL SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, Supplier (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

## PRODUCT SCHEDULE 2 TO OTS

### Client Product Terms

This Schedule states terms that apply specifically to Client Products. The General Terms are incorporated by reference into this Schedule. If there is a conflict between this Schedule and the General Terms, this Schedule controls.

#### 1. DEFINITIONS

All definitions set forth in the General Terms apply to the Client Products, in addition to the definitions stated below.

- A. **“Client Products”** means the Dell branded commercial computer products intended for use by a single user, and generally include notebook, desktop, and tablet platforms listed at [www.dell.com](http://www.dell.com), for example: Dell OptiPlex™, Latitude™, Venue™, Inspiron™, Precision™, Vostro™, XPS™, Gateway Edge, Embedded PCs, Dell Wyse™, Dell printers, and Dell monitors as listed on the Supplier quote, and in a standard configuration unless otherwise stated on the Supplier quote.
- B. **“Configuration and Deployment Services”** means: (i) standard deployment services, such as Basic Deployment Services, ProDeploy or ProDeploy Plus services, as described in the corresponding Service Descriptions, available at <https://www.dell.com/learn/us/en/uscorp1/campaigns/global-commercial-service-contracts>; or (ii) standard configuration services, including the service features and offerings described in the corresponding Service Agreement(s), available at <https://www.dell.com/learn/us/en/uscorp1/campaigns/global-commercial-service-contracts>, or from the Supplier sales representative, as applicable, such as Static and Dynamic Imaging, Asset Tagging, Asset Reporting, standard System Configuration services (BIOS Settings, Hard Drive Partitioning, Application Installation and Operating System Settings). Configuration and Deployment Services for Client Products are subject to the applicable Service Agreement(s).
- C. **“Support Services”** when used in this Schedule and applied to Client Products, means services to be performed by or on behalf of Supplier necessary to repair a defect in materials or workmanship of the applicable Client Product(s), and as further defined and described in the applicable Service Descriptions stated at <https://www.dell.com/learn/us/en/uscorp1/campaigns/global-commercial-service-contracts>.

#### 2. CLIENT EQUIPMENT WARRANTY

The limited warranties for the Equipment portion of Client Products can be found at <https://www.dell.com/learn/us/en/uscorp1/campaigns/global-commercial-service-contracts> local Dell website or in the applicable Documentation for the specific Client Product.

#### 3. ADDITIONAL TERMS

- A. **Service Agreements.** Support Services and the Configuration and Deployment Services are subject to the additional terms contained in the applicable Service Agreement(s). If there is a conflict between the terms of this Schedule, the General Terms of the OTS, and any Service Agreements(s), the following order of precedence will apply: (i) the Service Agreement(s); (ii) this Schedule; and (iii) the General Terms.
- B. **Removable Media.** OEM is responsible for removing any removable media such as SIM cards, CDs, or PC cards before returning Client Products or parts from Client Products, regardless of whether an on-site technician is also providing assistance. Supplier will have no liability for lost programs or other software installed on the Client Products prior to Supplier performing any Support Services, loss of system use or network use, damaged or lost removable media, or data or voice charges incurred as a result of OEM failing to remove SIM cards or other removable media inside Client Products that OEM returns to Supplier. Supplier will not be responsible for the restoration or reinstallation of any programs or data. When returning Client Products or part of a Client Product, OEM will only include the Client Product or part that the Supplier Support Services technician requested.
- C. **Whole Unit Replacement; Failure to Return; Service Part Ownership.** If Supplier determines that a component of the defective Client Product is one that is easily disconnected and reconnected, or if the Supplier analyst determines that the Client Product is one that should be replaced as a whole Client Product, Supplier reserves the right to send OEM a component or whole replacement Client Product, as applicable. If Supplier delivers either a whole replacement Client Product or a component of a Client Product to OEM, OEM must return the defective Client Product or component to Supplier within ten days of receiving the replacement, unless OEM has purchased “Keep Your Hard Drive” for the affected Client Product. In that event, OEM may retain the applicable hard drive(s). Supplier will own all Supplier components removed from the Client Products and whole Client Products that OEM returns to Supplier. If OEM keeps a component or whole Client Product after Supplier has replaced it, then OEM must pay Supplier the then-current retail price for the component or whole Client Product, as applicable, that OEM keeps (except for hard drives from Client Products covered by “Keep Your Hard Drive” service). Supplier will invoice OEM for the whole Client Product or components that OEM keeps and OEM will pay Supplier’s invoice within ten days of receipt. If OEM does not pay Supplier’s invoice within ten days after receipt, in addition to any other legal rights and remedies available to Supplier, Supplier may terminate the applicable Service Description by providing written notice to OEM. Supplier uses and OEM expressly authorizes the use of new and reconditioned parts made by various manufacturers in performing repairs and in providing replacement parts. The obligation to return Supplier components removed from the Client Products do not apply to OEMs that retain hard drives who have purchased “Keep Your Hard Drive” for the affected Client Product. In that event, OEM’s service levels and obligations are governed by the Keep Your Hard Drive Service Agreement.

- D. **Parts Stocked; Critical Parts.** Supplier currently stocks parts in various locations throughout the world. Selected parts may not be stocked in the location closest to OEM's site. If a part that is needed to repair the Client Product is not available from a Supplier facility near OEM's location and must be transferred from another facility, it will be shipped as soon as is practical and commercially reasonable. Certain Supplier parts locations stock critical parts, as determined by Supplier, to supply parts for same business day response times. A critical part is one that, upon failure, may prevent the Client Product from performing its basic functions. Supplier may, in its discretion, ship these parts using overnight delivery. In order to receive parts on a two- or four-hour basis, OEM must purchase a corresponding Service entitlement that supports same day response times for critical parts delivery and the Product must be located within the Supplier-designated supported coverage area. Parts Supplier deems non-critical include, but are not limited to: software, media drives, modems, speakers, sound cards, zip drives, monitors, keyboards, and mice.
- E. **Other Service Exclusions.** In the course of performing Support Services, Supplier will not be responsible for: (i) providing performance, training, or administrative assistance, installation, de-installation, relocation, preventative maintenance, remote administration, or any activities or services not expressly described in the applicable Service Agreement(s); (ii) providing media replacement, operating supplies, cosmetic accessories or parts such as frames, and cover or support on those items; (iii) direct third party product support or collaborative assistance of versions not currently supported by the manufacturer, vendor, or partner; (iv) support for the hardware, software, or both pre-installed or post-installed by a third party OEM, unless it is covered by a separate Service Agreement between Supplier and OEM; (v) removing malicious software; (vi) providing data backup; (vii) providing advanced wireless, networking or remote installation, set-up, or optimization and configuration of applications beyond those described in the Supplemental Services Term; (viii) repairing damage or defects in Client Products that are purely cosmetic and do not affect device functionality; (ix) providing repairs that are necessary because: (a) OEM previously installed a OEM replaceable unit; or (b) someone other than Supplier or an authorized service provider previously altered, adjusted, or repaired the Client Product.
- F. **Transferability.** OEM has the limited right to transfer Software on a permanent basis as part of the sale or transfer of the hardware system on which the Software is loaded, provided that: (i) OEM retains no copies of any version of the Software; and (ii) the transfer includes the most recent update and all prior versions of the Software.
- G. **Terms Applicable to Dell Wyse Products**
- H. (1). Use Rights and Restrictions.** Dell Wyse Windows Embedded Thin Clients are intended to be used as thin clients only and not as personal computers. Supplier is not responsible for and will not warrant, support, repair or replace any thin client device or component that is not used for its intended purpose. As an example, and without limitation, any operation of a Dell Wyse Windows Embedded Thin Client with the write filter turned off during regular use (except as required for image upgrades, applying security patches, registry changes, and application installation) is beyond the scope of the intended purpose, will prematurely wear out the Flash/SSD storage and will invalidate the thin client product warranty. In addition, enabling the Windows Page File is beyond the scope of the intended purpose and will invalidate the thin client product warranty.
- H. (2). Adobe and Microsoft Software.** Certain Dell Wyse Thin Clients include software that is subject to the license terms for Adobe Systems Incorporated/Adobe Systems Software Ireland Limited located at [https://www.adobe.com/products/eulas/pdfs/PlatformClients\\_PC\\_WWEULA-MULTI-20110809\\_1357.pdf](https://www.adobe.com/products/eulas/pdfs/PlatformClients_PC_WWEULA-MULTI-20110809_1357.pdf) Adobe and Flash are trademarks or registered trademarks of Adobe Systems Incorporated in the United States, other countries or both. Certain Supplier Wyse Thin Clients may also include software that is licensed by Microsoft under terms that prohibit Customer from locally running Desktop Functions on Thin Client Devices. For purposes of these terms, "Thin Client Device" means a OEM system that depends heavily on some other computer (such as a server) to fulfill its computational roles; and "Desktop Functions" means consumer or general purpose tasks or processes (such as using word processing, spreadsheet, or slide show presentation software) performed exclusively or primarily by a PC device.