

Terms and Conditions of Sale, Service and Technical Support

Dell (China) Company Limited Terms and Conditions of Sale, Service and Technical Support ("Terms and Conditions") For Resellers in the People's Republic of China (exclude Hong Kong, Macao and Taiwan)

1. DEFINITIONS

"Seller" means Dell (China) Company Limited.

"Buyer" means the Seller designated party, who is identified in Seller's Quotation or Invoice and purchasing products and/or services from Seller, and resells the products and/or services to the third parties.

"End User" means the individual or entity that purchases products for the purpose of its own use.

"Sales Contract" means the contract in accordance with which Seller supplies products to Buyer, which shall include Dell's Terms and Conditions of Sale, Service and Technical Support (for Resellers) in addition to (a) a quotation made by Seller, accepted by Buyer and finally confirmed by Seller, or (b) an order made by Buyer and accepted by Seller. Sales Contract will be governed by the relevant agreements¹ (if applicable) which were signed by both parties and in which Buyer was designated as Seller's reseller.

2. FORMATION OF CONTRACT

2.1 A Sale Contract shall come into existence only when Seller has notified Buyer of Seller's acceptance of Buyer's order and such notification shall be by email or by other means as agreed to by the parties. Seller may choose not to accept any order due to shortage of supply, pricing or other error, incompatible configuration or for any other reasons, even if Buyer has made payment to Seller.

2.2 Buyer warrants that it will resell Seller's products only in accordance with relevant agreements between it and Seller, which were signed by Buyer as Seller's designed reseller. Notwithstanding the foregoing, unless Buyer received the explicit authorization or approval from Seller in written, Buyer shall not resell Seller's products via internet or any other e-commerce channels. Notwithstanding the foregoing, if Buyer is a storage products tier 1 solution provider ("Storage Tier 1") in the Dell Technologies Partner Program, when Buyer purchases from Seller and resells Specialty Products, (a) Buyer must resell the products directly to End User; and (b) unless Buyer received the explicit authorization or approval from Seller in written, Buyer shall not resell such products to any reseller, distributor or third-party sales agent, even if the purpose of such resale is to resell the products to End User that Buyer disclosed to Seller. The list of Specialty Products is announced and updated by Buyer from time to time. Buyer may also contact Seller to obtain the list.

2.3 Any quotation from Seller, whether confirmed by Buyer or not, shall not constitute an offer but an invitation for offer by Seller. The quotation shall constitute an order from Buyer to Seller when returned in writing to Seller with Buyer's signature and/or legally authorized chop.

3. ORDERS, PRICE AND PAYMENT

3.1 The prices, payment terms and configurations of products and/or services are as expressly agreed in writing in the Sales Contract.

3.2 Unless credit terms have been expressly agreed by Seller, payment for the products or services shall be made in full before physical delivery of products or provision of services. If Buyer does not pay any due payments in accordance with stipulated payment terms, for each overdue day, a default penalty of 0.03% of the overdue amount shall be paid; the foregoing default penalty, together with the overdue amount, shall be consolidated and paid by Buyer upon Seller's urging of payment. Until Buyer fully discharges any outstanding amounts which are due and owing, Seller shall have discretion to withhold delivery of products and/or provision of services. Seller reserves the right to demand immediate payment for any products and/or services that have already been dispatched.

3.3 Unless otherwise agreed in writing by Buyer and Seller, Buyer shall make payments to Seller in accordance with the chronological order of transactions undertaken, and Seller shall have discretion to apply any amounts received from Buyer in satisfaction of any sums due and payable by Buyer (including outstanding accounts receivables).

4. SOFTWARE

Both parties confirm that all software provided is subject to the terms and conditions of the license agreement relating to that software. The warranty obligations of all software shall be determined in accordance with the license agreement that governs its use.

5. TITLE AND RISK

Title to and risk in the products shall pass to Buyer upon Delivery (as defined in section 6 below) of the products to Buyer. Risk of loss or damage that occurs during shipping by a carrier selected by Buyer is Buyer's responsibility. There is no title transfer on Software. Buyer agrees that Software is licensed by Seller or third parties to the End User.

6. DELIVERY

6.1 Seller shall, in accordance with stipulations in the Sales Contract, deliver the products at the place of delivery ("Place of Delivery").

6.2 Unless otherwise agreed by the parties, the hardware products shall be deemed to have been delivered to Buyer upon the products reaching the designated Place of Delivery. The software products shall be deemed to have been delivered to Buyer either upon Seller's provision of physical media (or the hardware product on which it is installed) at the Place of Delivery, or upon Seller's notification to Buyer that Software is available for electronic download.

6.3 Seller may modify products and/or discontinue the production of products at any time without notice as part of Seller's policy of on-going product up-date and modification. Modified or updated products will have the functionality and performance of the products ordered. Buyer accepts that Seller's policy may result in differences between the specification of products delivered to Buyer and the specification of products ordered.

7. ACCEPTANCE OF PRODUCTS

7.1 Buyer shall be deemed to have accepted the Products upon Delivery. Notwithstanding the acceptance of the Products by the Buyer, the Buyer retains all rights and remedies set forth in section 8 (Standard Warranty) below. 7.2 For the avoidance of doubt, Buyer's acceptance of the Products pursuant to section 7.1 above or otherwise shall not constitute a condition for any rights of Seller, including Seller's right to be paid for the Invoice and/or other sums due to Seller pursuant to the Sales Contract.

8. STANDARD WARRANTY

8.1 Unless specified otherwise, Seller warrants to Buyer that Dell branded products (excluding third party products and software), will be free from defects in materials and workmanship affecting normal use for a period of one year from invoice date ("Standard Warranty"). During this period, if Dell branded products cannot meet the Standard Warranty, Seller will be responsible for the repair or replacement of such products that have been returned from Buyer to Seller's facility.

8.2 Notwithstanding anything herein, to the extent applicable, Seller will undertake to comply with the published regulations of the People's Republic of China which are relevant to the warranty of products and after sale services and as otherwise consistent with the applicable industry standards.

8.3 This Standard Warranty does not cover damage, fault, failure or malfunction due to external causes, including accident, abuse, misuse, problems with electrical power, usage and/or storage and/or installation not in accordance with product instructions, failure to perform required preventive maintenance, normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence; any attempt by any person other than Seller's personnel or any person authorized by Seller, to adjust, repair or support the products and problems caused by use of parts and components not supplied by Seller. The Standard Warranty does not cover any non-Dell branded products.

8.4 Buyer agrees that, in relation to non-Dell branded products purchased through Seller, where such of the products are covered by the originating manufacturer's warranty, then the Standard Warranty shall not extend to such products and such originating manufacturer's warranty shall be the sole warranty in respect of such products. Buyer shall utilize that warranty for the support of such products.

8.5 In accordance with the Law on Promotion of Sustainable Economy of the People's Republic of China, and in support of worldwide sustainability, recycling and environment protection initiatives, Products may contain qualified refurbished or reconditioned parts that meet all relevant test specifications and are functionally equivalent to new parts. Supplier's applicable warranty terms apply equally to new, equivalent-to-new, refurbished or reconditioned parts. Parts used in repairing or servicing Products may also be new, equivalent-to-new, refurbished or reconditioned.

9. ADDITIONAL SERVICE AND TECHNICAL SUPPORT

If Buyer purchases additional service to be provided by Seller, Seller will, in addition to the above Standard Warranty, provide service to Buyer in accordance with the specific terms and conditions in the additional service contract between Seller and Buyer. Seller has no obligation to provide services until Seller has received full payment for the product or service contract for which service or technical support is requested. Specific terms and conditions of service and technical support are available via the Internet on Seller's Web site at [//www.dell.com/learn/cn/zh/cncorp1/terms-conditions/html-terms-technical-reseller-en?c=cn&l=zh&s=corp&cs=cncorp1](http://www.dell.com/learn/cn/zh/cncorp1/terms-conditions/html-terms-technical-reseller-en?c=cn&l=zh&s=corp&cs=cncorp1) or upon request.

10. LIABILITY

10.1 Unless otherwise specified by law, Seller's total liability herein in respect of each event or series of connected events shall not exceed the total price paid for the purchase of products and/or services under these Terms and Conditions.

10.2 Seller shall not be liable to Buyer for any consequential damages arising out of or in connection with the purchase, use or performance of products or services (including in circumstances where data or software is lost, corrupted, deleted or altered, etc.)

10.3 Both parties agree: Seller may in respect of any typographical error, clerical error or other omission in sales literature, quotations, price lists acceptances of orders, invoices or other documents or information issued by Seller, carry out corrections and the documents after correction shall govern.

11. Customs, Export Controls, and Sanctions Compliance

11.1 Seller's acceptance of any order for any products or services is contingent upon Buyer's compliance with the provisions of this clause. Buyer shall require its end users to agree to terms no less restrictive than those contained in this Section 11.

11.2 Buyer agrees to abide by, and to assume sole responsibility for obtaining, and complying with the requirements of, all required export, re-export, in-country transfer, and import licenses, registrations, and other government authorizations relating to the products and services provided under orders or these Terms and Conditions.

11.3 Buyer agrees that, in connection with the products and services supplied to it by Seller and any goods or services that Buyer provides to Seller, Buyer will not contract with or otherwise do business with any individual, company, organization or other entity, or with, in or involving any country or territory (including without limitation, North Korea, Cuba, Iran, Syria, Crimea, and the regions known as Donetsk People's Republic and Luhansk People's Republic), that is the subject or target of any U.S. or other government sanctions or trade embargoes or otherwise identified on a list of prohibited, sanctioned, debarred, or denied parties, including but not limited to those imposed, administered or enforced from time to time by the U.S. government through the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, the Bureau of Industry and Security ("BIS") of the U.S. Department of Commerce, or the U.S. Department of State, the European Union, or Her Majesty's Treasury of the United Kingdom (collectively, "Sanctions"), without having first obtained any required license or other government authorization or in any manner which would result in a violation of Sanctions by Buyer or Seller.

11.4 Neither Buyer nor any of its subsidiaries nor any of Buyer's or its subsidiaries' directors, administrators, officers, board of directors (supervisory and management), members or employees is the subject or target of any Sanctions.

11.5 Buyer has adequate controls and systems in place to screen, and is fully responsible for screening, transactions of all other third parties who may assist, benefit from, or provide goods or services to, or receive goods or services from, it and to ensure compliance with applicable laws pertaining to Sanctions.

11.6 Buyer has appropriate procedures in place to comply with (and to ensure timely reporting under) the requirements of the anti-boycott laws and regulations of the United States and other jurisdictions in which Seller does business.

11.7 Buyer has adequate policies and procedures in place to ensure that, and will ensure that, the products, software and services provided in connection with this Dell Standard Sales Terms will not be exported, re-exported, sold, leased or otherwise transferred to, or utilized by, an end user engaged in any of the following activities: (i) activities related to weapons of mass destruction, including any activities related to the design, development, production or use of: (A) nuclear weapons, materials or facilities; (B) missiles or the support of missile projects; or (C) chemical or biological weapons; (ii) terrorist activities; (iii) military end uses in or connected with certain government owned or controlled corporations of such countries as identified by U.S. and other applicable government licensing authorities; (iv) exploration or production of oil and gas in Arctic, deepwater (greater than 500

feet), or shale formations in Russia or in, by, or with Russian companies, territories, or any other entities as identified by BIS and/or OFAC.

11.8 Unless prohibited by law or compulsory governmental process, Buyer agrees to provide notice to Seller in a commercially reasonable manner (if not herein elsewhere stated with specificity) of any government action or communication that Buyer receives or becomes aware of concerning Sanctions or trade compliance relating to the products, software and/or services provided herein by or to Buyer and to or by Seller.

11.9 Any goods, software, technology, or source or object code provided by Buyer and installed on, exported with, or used as part of the products, software or services that contain encryption are authorized for export, re-export, or transfer pursuant to an export license obtained by Buyer or is otherwise covered by a license exception.

11.10 Buyer is responsible for accurately reporting and providing all applicable export license, product classification information, end-user and end use statements, and destination control statements required by applicable customs, export controls, and sanctions laws.

11.11 Nothing in this clause is to be construed as authorization by Seller for Buyer to market or resell products, software and services in violation of the provisions of these Terms and Conditions.

11.12 To the extent this clause applies, Buyer is not authorized to import to or export out of the Territory under Ex Works terms unless Buyer has received written approval from Seller (at a Sales Vice President level or higher) and Buyer has signed an Ex Works addendum with Seller and complies with such addendum.

12. USE OF LOGO

Buyer may use Dell's name or Dell's product names (including trademarks, service marks, logos and copyrighted documents, etc.) as agreed by Seller only for the purpose of accurately identifying Dell branded products purchased and resold by Buyer under a Sales Contract. If Seller deems that Buyer inaccurately, misleadingly or corruptly uses Dell's name, trademark, service mark, logo or any copyrighted document in connection with any literature or activity, Seller may request Buyer to make modification or cease using. Buyer agrees to immediately make modifications or cease using in accordance with Seller's requirements and bear all relevant costs. Buyer shall not use Dell's name or Dell's product names for any other purpose. Buyer shall not at any time use any other Dell's name, trademark, service mark, logo or copyrighted document. Buyer shall not register or use any domain name or trade name that contains Dell's name or logo or may lead to confusion as a consequence of its similarity to Dell's name or logo.

13. GOVERNING LAW

These Dell Standard Sales Terms shall be governed by and construed in accordance with the laws of the People's Republic of China. Any dispute arising in connection with these Dell Standard Sales Terms shall to the extent possible be settled through friendly consultations between the parties. If the dispute cannot be settled through consultations, either party may refer the dispute to a competent People's Court where Seller is located to resolve through litigation.

14. MISCELLANEOUS

14.1 Buyer shall not by itself or with others participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, disparagement of Seller's products or Seller or any of its subsidiary companies or affiliates or other practices which may be detrimental to the products or the public interest.

14.2 Buyer shall not make any promises or representations or give any warranties or guarantees in respect of the products except such as are consistent with those in the product documentation or which otherwise accompany the products or as expressly authorized by Seller in writing. Seller shall not be held liable for any promise, representation, warranty or guarantee made or given by Buyer to its customers.

14.3 Except in respect of proper use, Buyer shall not alter or modify the products or the product documentation.

14.4 All intellectual property rights in or relating to the products and the product documentation are and shall remain the property of Seller, its parent or affiliates or its licensors, as the case may be.

14.5 Buyer shall indemnify, defend and hold harmless Seller and its shareholders, directors, officers, employees, agents, representatives, successors and assigns (collectively, the "Dell Parties") from and against any and all claims, demands, obligations, liabilities, actions, suits, proceedings, judgments, decrees, losses, damages, costs, charges and expenses (including without limitation reasonable expenses of investigation and reasonable attorneys' fees and reimbursements in connection with any of the foregoing whether involving a third party or solely between the parties) which any of the Dell Parties may sustain or incur, or which may be brought or established against any

of the Dell Parties by any person and which in any case arise out of or in relation to or by reason of, directly or indirectly: (1) the negligence, recklessness or willful misconduct of Buyer in the performance of any of its obligations including but not limited to, in connection with the storage, marketing, supply, installation or maintenance of the products; (2) any unauthorized action or omission of Buyer or its agents, representatives and employees; (3) the manner in which Buyer markets and sells the products; (4) the independent supply by Buyer of any products or services for use in conjunction with or in relation to the products; (5) any breach or alleged breach of any applicable laws or regulations relating to the use, marketing or sale by Buyer or any of its customers of the products; (6) neglect to follow any recommendations made by Seller relating to the use, marketing or sale by Buyer of Dell's products; or (7) any breach by Buyer of the Sales Contract, or any representation or warranty made or given by it to Seller.

14.6 Unless otherwise mutually agreed by the parties in writing, any alteration or amendment to or in connection with the Sales Contract shall be presented in writing and takes effect only after written confirmation by signature and/or legally authorized chop.

Appendix 1

Supplementary Terms for Infrastructure Products

These Supplementary Terms for Infrastructure Products (“**Supplementary Terms**”) apply specifically to the purchase and use of Infrastructure Products (as defined below) and should be read in conjunction with and incorporated into any agreement entered into by a Customer (“**you**”) and a Dell entity (“**Dell**”) referenced in the relevant agreement which references these Supplementary Terms (the “**Agreement**”). If there is a conflict for the purpose of the Infrastructure Products between these Supplementary Terms and the Agreement, these Supplementary Terms shall prevail.

1. DEFINITIONS. In addition to the definitions set forth in the Agreement, the definitions below shall apply to the purchase and use of Infrastructure Products.

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

“**Dell Service Area**” means the area that is within: (i) one hundred drivable miles of a Dell service location for Infrastructure Products (except SC, ME, MD, NX series); and (ii) the same city as the Dell service location. In case of any conflict between this definition and Product Notice, this definition shall prevail.

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

“**Hardware**” means the computer-based hardware including all components embedded before shipping.

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

“**Infrastructure Product**” means any Dell product that comprises data storage, back-up and converged function data management products, including but not limited to PowerMAX/VMAX, Unity, SC, Vblock, VxBlock, VxRack, and VxRAIL Products, and independent software (e.g., back-up and recovery software).

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

“**Product**” means the Infrastructure Products supplied by Dell to You under these Supplementary Terms.

“**Product Notice**” means the information related to Products and Services posted at the website at the time of the Dell Order Confirmation, currently located at 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. The Product Notice informs you of Infrastructure Product-specific use rights and restrictions, unit of measure (if any), warranty periods, warranty upgrades and Support Services terms. The Product Notice in effect as of the date of Dell’s quote will apply to Infrastructure Products, and is deemed incorporated into that quote and related purchase order by this reference. Upon request, Dell will provide a copy of the applicable Product Notice or attach it to the relevant quote.

“**Services**” means collectively: (i) services for the support and maintenance of Products (“Support Services”) as set forth in section 5 – 7 of this Supplementary Terms; and (ii) consulting, installation, implementation, and other services that are not Support Services (“Professional Services”) to be contracted through a separate service agreement between you and Dell.

“**Software**” means any software, library, utility, tool, or other computer or program code, in object (binary) or source-code form, as well as related documentation, provided by Dell to you, and may include third party manufactured software titles. Software includes software (1) provided by Dell and locally installed on Hardware or (2) made available by Dell and accessed by you through the internet or other remote means (such as websites, portals, and “cloud-based” solutions).

“**Software Release**” means any subsequent, generally available version of Software provided after initial Delivery of Software, but does not mean a new Product.

“**Support Services**” when used in these Supplementary Terms and applied to Infrastructure Products means the Services identified on the table located at <http://www.emc.com/collateral/warranty-maintenance/h4276-emc-prod->

[warranty-maint-table.pdf](http://www.dell.com/learn/us/en/uscorp1/campaigns/global-commercial-service-contracts?c=us&l=en&s=corp). Support Services for SC Series Products are stated at <http://www.dell.com/learn/us/en/uscorp1/campaigns/global-commercial-service-contracts?c=us&l=en&s=corp>.

“**Time and Materials Service**” means any maintenance or support service that Dell provides but is not part of fixed-fee Support Services or other generally available service-related offering using a pre-established fee. Dell 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. DELIVERY, TITLE, RISK OF LOSS

Unless otherwise agreed by the parties, the Hardware shall be deemed to have been delivered to you upon the products reaching the designated Place of Delivery. The Software shall be deemed to have been delivered to you either upon Dell’s provision of physical media (or the Hardware on which it is installed) at the Place of Delivery, or upon Dell’s notification to you that the Software is available for electronic download. As to the Infrastructure Product ordered via MyQuote system, delivery of Hardware occurs when Dell provides the Hardware to a Dell-designated carrier at Dell’s designated point of shipment. Delivery of Software occurs either when Dell provides physical media (or the Hardware on which it is installed) to a Dell-designated carrier at Dell’s designated point of shipment, or when Dell notifies you that Software is available for electronic download. Title and risk of loss for both Hardware and physical media containing Software shall transfer to you upon Delivery.

3. ACCEPTANCE

All Products will be deemed to be delivered and accepted, meaning that Product operates in substantial conformity to the Product’s Documentation upon (i) Delivery of the Hardware or physical media; or (ii) transmission of a notice of availability for download (accompanied by the license key when required by Dell). Notwithstanding such acceptance, you retain all rights and remedies set forth in section 10 (“Warranties”) below.

4. INSTALLATION

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

5. SUPPORT SERVICES

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

B. Additional Support. Dell reserves the right to charge for Support Services performed outside the time frames of the applicable Support Option as a Time and Materials Service. Except to the extent that Support Services are independent of the Hardware’s location, Dell will have no obligation to provide Support Services for Infrastructure Products with respect to Hardware that is outside the Dell Service Area. Support Services do not apply to any Software other than the current and the immediately prior Software Release. Support Services are subject to Dell’s then-current “End-of-Service-Life” policy for the respective Infrastructure Product, if applicable. Dell will have no obligation to provide Support Services for Software and problems that cannot be reproduced at Dell’s facility or via remote access to your facility. Support Services do not include the supply of Hardware 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 10D (“Warranty Exclusions”) had the problem arisen during the warranty period of the affected Infrastructure Product.

D. Reinstatement of Support. You may request that Dell reinstate Support Services for an Infrastructure Product for which Support Services have lapsed. Dell may do so at its discretion and reinstatement will be subject to a certification at Dell’s then-current Time and Materials Service rates and conditions. Once the Infrastructure Product is certified, unless otherwise agreed, Support Services will commence when you pay: (i) the charge for the above-described Time and Materials Service; (ii) the amount Dell would have normally charged had Support

Services been in effect during the period of the lapse or discontinuation; and (iii) the charge for the next twelve months of the newly-commenced Support Services.

6. YOUR RESPONSIBILITIES

A. Cooperation. You will: (i) promptly notify Dell when a Infrastructure Products fails and provide Dell with sufficient details so that Dell can reproduce the failure; (ii) allow Dell remote and on-site (when deemed necessary) access to the Infrastructure Product to provide Support Services; and (iii) furnish necessary facilities (which for on-site access means suitable work space, computers, power, light, phone, internet network availability, software, and equipment reasonably required by Dell), information, and assistance required to provide Support Services.

B. Support Contacts. For the Infrastructure Product other than SC, ME, MD and NX series, unless a specific number of authorized contacts are indicated on the Product Notice or the applicable Service Document requires that you are in physical possession of the Hardware at the time a support request is submitted, you will designate in writing a reasonable number of authorized contacts, as determined by the parties, who will initially report problems and receive Support Services from Dell. Each representative will be familiar with your requirements and will have the expertise and capabilities necessary to permit Dell to fulfill its obligations. You will provide changes to authorized support contacts to Dell in writing.

7. ADDITIONAL SUPPORT SERVICES TERMS

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

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

C. Service Data. In connection with the performance and use of the Services, and Dell's remote support capabilities detailed in section 7H ("**Remote Support Capability**") below, Dell 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**"). You acknowledge and agree that Dell will: (i) use, compile, display, store, process, reproduce, or create reporting and other Services-related materials from the Service Data solely to provide the Services, including remotely accessing Infrastructure Products to install, maintain, monitor, support, receive alerts and notifications from and change certain internal system parameters of Infrastructure Products in your environment in fulfillment of Dell's Support Services obligations; (ii) provide you with visibility to your actual product usage and consumption patterns; (iii) utilize the Service Data in connection with predictive analytics and usage intelligence to consult with and assist you, directly or through the Dell channel partner involved in supplying Infrastructure Products to Customer, to optimize Customer's future planning activities and requirements; (iv) aggregate and use the Service Data in an anonymous manner with that of others in the development and improvement of future products; and (v) copy and maintain the Service Data on Dell's systems as necessary to provide the Support Services. Dell agrees that the Service Data is subject to the confidentiality provisions in the Agreement. You represent and warrant that you have obtained all rights, permissions, and consents necessary to allow Dell to use and transfer the Service Data within and outside of the country in which you are located.

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

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

F. Software Releases. When you begin using a Software Release for a particular Product, you must 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. You are authorized to retain a copy of each Software Release that you properly obtain for your archive purposes and use them as a temporary back-up if the current Software Release becomes inoperable. You will use and deploy Software Releases only in accordance with terms of the original license for Software.

G. Change of Hardware Location or Configuration. For the Infrastructure Product other than SC, ME, MD, NX series, you may change the Installation Site or configuration of Hardware under Support Services only after written notice to Dell, and subject to the terms and conditions on this sub-section. If the new location is in a different city, the move is subject to Dell's prior written approval) and additional fees may apply. You will promptly notify Dell of any changes to the configuration, or movement of the Hardware by anyone other than Dell. To determine if the Hardware remains eligible for Support Services, Dell reserves the right to inspect and evaluate the changes in configuration or location of the affected Hardware, and to re-certify the Hardware at Dell's then current Time and Materials Service conditions and rates. Additional charges, if any, related to changes in configuration or location of the Hardware will apply from the date the change took place.

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

I. Alterations and Attachments to Hardware. Dell does not restrict you from making alterations to, or installing other products in or with, the Hardware at your expense; provided that you are responsible for any inspection fees and/or additional charges resulting from such activities. If the alterations or attachments prevent or hinder Dell's performance of Support Services, you shall, upon Dell's request, take corrective action. Your failure to take appropriate corrective action shall be deemed a breach hereof.

J. Transfer of Hardware to Secondary Purchasers. If you decide to sell, assign, or otherwise transfer the use, ownership, or both of Hardware to a "Secondary Purchaser" (meaning a bona fide end user that: (i) is not considered, in Dell's reasonable discretion, to be a competitor of Dell; and (ii) has not had prior disputes with Dell), to the extent Dell resources reasonably permit, Dell may, at its sole discretion, make available to you, as a Time and Materials Service, de-installation services. In addition, and to the extent Dell resources reasonably permit, Dell may, at its sole discretion, make available to the Secondary Purchaser: (a) Hardware installation and re-certification services as a Time and Materials Service; and (b) Support Services for Hardware that Dell has determined and notified the Secondary Purchaser meets Dell's certification criteria upon receipt of payment of Dell's then current Support Services fees. A Secondary Purchaser of Infrastructure Products must obtain the appropriate Software license from Dell and pay any applicable Software license fees.

K. Software Support Services affected by Change in Hardware Status. For Software used on or operated in connection with Hardware that ceases to be covered by Support Services or the Dell Hardware warranty, Dell reserves the right to send you a written notice that Dell has either chosen to discontinue or change the price for Support Services for the Software (with the price change effective as of the date the applicable Hardware ceases to be covered). If Dell sends a discontinuation notice, or if you reject or do not respond to the notice of a proposed price change within thirty days after receipt, you will be deemed to have terminated the Software Support Services for its convenience and the terms of section 9 C 2 below will apply.

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

M. PRICING. The fee for Support Services for Products will be as set forth on the applicable Dell quote. Additions to the Products as specified in the relevant Dell quote or Order Confirmation may result in additional Support Services fees. Dell will charge and invoice for Time and Materials Service in accordance with terms governing each Time and Materials Service engagement.

8. SERVICE FLOW-DOWN TERMS

- A.** You will only resell Services to End-Users who agree to be bound to (i) Dell's Commercial Terms of Sale set forth at www.dell.com/cts" ("CTS"), if the End-User is located and Services will be delivered in China; and (ii) all applicable service agreement(s).
- B.** You shall notify End-User in your end-user agreement that the provision and performance of Services are subject to and will be governed by, as applicable, service agreements and CTS (collectively, "Services Flow-down Terms"). Additionally, you acknowledge and agree that (i) Dell may present or, if requested by Dell, you shall present, the Services Flow-down Terms directly to the End-User and (ii) Dell is not required to provide or perform any Services for such End-User unless and until such End-User has agreed to be bound by the Services Flow-down Terms, as may be determined in each case by Dell in its sole discretion. You shall immediately notify Dell if you become aware of any End-User's violation of any of the Services Flow-down Terms. Dell reserves the right, in its sole discretion, to suspend or terminate the provision of any one or more of the Services to an End-User in response to such End-User's violation, or suspected violation, of any of the Services Flow-down Terms, and Dell will have no liability to you or End-User as a result of any such suspension or termination.
- C.** End-User Documentation. You will provide each End-User with appropriate product warranty statements, registration cards, software license agreements and other materials that Dell includes with its shipments of Products to you. In addition, you are responsible for providing all similar information related to your addition or modification to the Products. Your End-User agreement will include terms in accordance with this Supplementary Terms and Clause 11 of main body of the Terms and Conditions of Sale, Service and Technical Support. You acknowledge and agree that Dell is a third-party beneficiary of the End-User agreement and may enforce the provisions thereof directly against the End-User or through you, and you shall require the End-User to acknowledge and agree to such in the End-User agreement.

9. TERM AND TERMINATION.

- A. Software Support Services Term.** Software related Support Services that are ordered at the same time as the license for such Software shall commence on the date of shipment of the physical media or electronic availability of the Software and continue for the period specified on the Order Confirmation. Renewals of Software related Support Services shall commence and expire in accordance with the dates on the applicable Order Confirmation.
- B. Equipment Support Services Term.** Support Services (including Support Option upgrades, if applicable) for Hardware are provided during the warranty period. Renewals of Hardware related Support Services shall commence and expire in accordance with the dates on the applicable Order Confirmation. Support Services for hardware upgrades installed into Hardware are coterminous with the Support Services that are then in effect for the Hardware into which such upgrades are installed.
- C. Termination for Convenience.** In addition to the term and termination provisions set forth in the Agreement, the following apply to support Services:

 - 1. By Dell.** If Dell terminates for its convenience, your sole and exclusive remedy and Dell's sole and exclusive obligation shall be to refund you 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.
 - 2. Your termination.** If you terminate for convenience, your sole and exclusive remedy and Dell's sole and exclusive obligation shall be to grant you 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. Such credit may only be used against future purchases of Products or Support Services from Dell and may be reduced to recapture unearned discounts (meaning discounts to a Support Services fee that were based on your obligation that can no longer be fulfilled due to the termination).
- D. Termination for Breach.** In addition to the term and termination provisions set forth in the Agreement, either party may terminate the Support Services for a specific Product for cause due to a failure of the other party to comply with these Supplementary Terms with regard to such Product, provided that the terminating party has given thirty (30) days' written notice specifying the failure and the other party has not remedied such failure within such time. If Dell terminates the Support Services for any Product(s) affected by such a failure by you, such termination shall be without further liability for Dell and without any obligation to refund any fees already paid therefore. If you terminate for Dell's breach, your sole and exclusive remedy and Dell's sole and exclusive obligation shall be to either issue a credit for use against current or future purchases of Products or Support Services or grant

a refund (as selected by you) 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.

10. WARRANTIES

A. Hardware and Software Media Warranty. Unless stated otherwise in the Product Notice, Dell warrants that: (i) the Hardware and upgrades installed into that Hardware, when purchased from Dell and operated with normal usage and regular recommended service; and (ii) any physical media for Software, will be free from material defects in materials and workmanship, and will perform substantially in accordance with the applicable Documentation until the expiration of the warranty period stated in the Product Notice or, for SC Series Products, stated in the Order Confirmation. Unless otherwise noted on the Product Notice or the Order Confirmation, the warranty coverage for the microcode, firmware and operating system software that enables Hardware to perform as described in its Documentation will be no less than that which applies to the applicable Hardware. To the extent specified on the Product Notice and unless stated otherwise in the Order Confirmation, Support Services in the form of the Support Option (as defined in section 5A above) noted on the Product Notice are included free of charge during the warranty period for Hardware. In some cases, Dell may offer an upgrade option for Support Services during the Hardware warranty period for separate purchase.

A. (1). Hardware Warranty Duration. The warranty period for Hardware is stated on the Product Notice unless the Order Confirmation provides a different warranty period. The Hardware warranty commences upon Delivery. Upgrades to Hardware are warranted in the same manner as the Hardware in which the upgrades are installed from Delivery of the upgrade until the end of the warranty period for the Hardware into which the upgrades are installed.

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

A. (3). Hardware and Software Media Warranty Remedies. If you notify Dell of a warranty claim during the applicable warranty period, then Dell will, at its option, either remedy the non-compliance or replace the affected Hardware or applicable Software media. If Dell is unable to repair or replace the affected Hardware or media within a reasonable time, then you will return the Hardware or media to Dell, Dell may, at its sole discretion, provide you with a refund of the amount you have paid for the affected Hardware or media as depreciated on a straight line basis over a five year period. You must return to Dell the applicable defective Hardware or media, or portions of those items, and those items become Dell's property. If you receive a replacement but do not return the defective item to Dell, then you must pay Dell then-current spare parts price for the replacement item. Dell has no liability under these warranty terms for defects in Hardware and media after expiration of the applicable warranty period. This section states Dell's entire liability and your exclusive remedies under warranties for the Hardware and Software media.

B. Software Warranty, Duration, and Remedy. Dell warrants that the will, for ninety days following Delivery ("**Software Warranty Period**"), substantially conform to the applicable Documentation. This limited warranty is not transferable. You must report errors to Dell during the Software Warranty Period to invoke this warranty. In response to your error notice, Dell will, at its own expense, either replace that Software or correct any reproducible error. If Dell determines that it is reasonably unable to correct the error or replace the Software, Dell will refund you the amount you have paid for that Software, and your license for that Software will terminate. This section states Dell sole obligation and your exclusive remedy under the Software warranty.

C. Support Services Warranty and Remedy. Dell shall perform the labour portion of Support Services in a workmanlike manner in accordance with generally accepted industry standards. You shall notify Dell of any failure to so perform as soon as reasonably possible, and for the Infrastructure Product other than SC, ME, MD, NX series, in no event more than ten (10) days after the date on which such failure first occurs. A replacement part receives the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part. Your exclusive remedy and Dell's entire liability under the foregoing warranties shall be for Dell to, at its option, (i) use reasonable efforts to (a) re-perform the deficient labour services within a reasonable time, or (b) replace any replacement parts which become defective during the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part, or sixty (60) days after installation thereof, whichever occurs later; and (ii) if, after reasonable efforts, Dell is not able correct such deficiencies, then you have the right to terminate for breach in accordance with Section 9.C above.

D. Exclusions. Warranty does not cover problems that arise from (i) accident or neglect by you or any third party; (ii) any third party items or services with which the Infrastructure Product is used or other causes beyond Dell's control; (iii) installation, operation or use not in accordance with Dell's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Infrastructure Product was not designed; (v) modification, alteration or repair by anyone other than Dell or its authorized representatives; or (vi) in case of Hardware only, causes not attributable to normal wear and tear. Dell has no obligation whatsoever

for Software or Software installed or used beyond the licensed use, for Hardware which was moved from the Installation Site without Dell's consent or whose original identification marks have been altered or removed.

E. INDEMNITY. Dell shall (i) at its own expense, defend you against any third party claim that a Product as provided by Dell infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against you by a court of competent jurisdiction to the extent that such are the result of the third party claim, or pay the amounts stated in a written settlement negotiated and approved by Dell. The foregoing obligations are subject to the following: You (a) notify Dell promptly in writing of such claim; (b) grant Dell sole control over the defense and settlement thereof; (c) reasonably cooperate in response to a Dell request for assistance and information; and (d) are not in material breach of this Agreement. Should any such Product become, or in Dell's opinion be likely to become, the subject of such a claim, Dell may, at its option and expense, (1) procure the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; or (3) if, in Dell's opinion, neither of the foregoing are reasonably available, Dell shall notify you to return the Product and, upon receipt thereof, Dell shall refund the price paid by you, less straight-line depreciation based on a five (5) year useful life for Products. Dell shall have no obligation or liability to the extent that the alleged infringement arises out of or relates to: (A) combination, operation or use of a Product as provided by Dell to you with any products, services, items, or technology that (i) were not provided by Dell to you; or (ii) were provided by Dell to you but were obtained by Dell from a third party, except if provided by Dell to Customer as an embedded component of a Dell Product; (B) use for a purpose or in a manner for which the Product was not designed or use after Dell notifies you to cease such use due to a possible or pending claim of infringement; (C) any modification made by any person other than Dell or its authorized representatives; (D) any modifications to a Product made by Dell pursuant to instructions, designs, specifications or any other information provided to Dell by or on behalf of your; (E) use of any version of a Product when an upgrade or newer iteration of the Product made available by Dell would have avoided the infringement; (F) services provided by you and/or any revenue you derive therefrom; or (G) any data or information which you or a third party records on or utilizes in connection with Products. THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDY AND DELL'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS PERTAINING TO PRODUCTS.