

United States Time & Materials Support Request

Description of Work:

This Quote Acceptance Agreement is for remote support and on-site technical support when such on-site support is deemed necessary by Dell EMC (as defined below). Any parts and materials required will be charged at current list prices in addition to this Quote Acceptance Agreement.

All services and activities in connection with this Quote Acceptance Agreement are performed on a time and materials basis and billed on an hourly basis. **The information may be contained in this Quote Acceptance Agreement is an estimate only and is not a guarantee. Dell EMC shall provide a final invoice to customer indicating the actual hours worked and materials costs incurred in connection with this Quote.** Customer authorizes Dell EMC to invoice for and shall pay EMC for (i) actual time spent for all services performed by Dell EMC in connection with this Quote Acceptance Agreement at the applicable rates and minimum payments described herein (if applicable), and (ii) any parts and materials at Dell EMC's current list prices.

Quote Acceptance Agreement

Customer understands that this document will give Dell EMC the authority to arrange resources on customer's behalf, and to invoice accordingly. Service will be handled with reasonable effort based on resource availability and management discretion. **The services provided hereunder are subject to the terms and conditions specified in the applicable time and materials agreement between Dell EMC and customer or, if none, to Dell EMC's standard Terms and Conditions for Time and Materials Service specified below or on the back page of this document is referred to herein as the "T&M Agreement". Customer agrees that the T&M Agreement governs the service provided in connection with this document.**

Terms and Conditions for Time and Materials Service

These Terms and Conditions for Time and Materials Service ("Agreement") govern all repair related services, parts and Software provided either i) the applicable Dell Sales entity specified on your invoice, or ii) the applicable EMC Sales entity specified on your invoice (each, as applicable, "Dell EMC"¹) in connection with the incident and for the Customer identified on the applicable Dell EMC quote and/or other similar Dell EMC document referencing this Agreement.

NOW, THEREFORE, it is agreed as follows:

1.0 DEFINITIONS

- 1.1 **"Core Software"** means the programming, microcode and/or firmware (excluding source code, Enterprise Storage Software and Maintenance Aids), if any, and the related standard documentation therefor, if any, that is generally included by Dell EMC, at no additional charge, with the related Dell EMC supplied Equipment to enable it to perform its basic functions.
- 1.2 **"Enterprise Storage Software"** means the programming (excluding source code, Core Software and Maintenance Aids), and the related standard documentation therefor, that was obtained, directly or indirectly from Dell EMC and is used in connection with the Supported System.
- 1.3 **"Equipment"** means the data storage devices and the central processing unit, if any, that comprise Supported Equipment.
- 1.4 **"Supported System"** means the configuration of Equipment and Software identified on the applicable Dell EMC quote and/or other similar Dell EMC documentation referencing this Agreement.
- 1.5 **"Installation Site"** means the location identified as such on the applicable Dell EMC quote and/or other similar Dell EMC documentation referencing this Agreement.
- 1.6 **"Maintenance Aids"** means any hardware, programming and other tools and/or utilities used by Dell EMC to perform diagnostic or remedial activities hereunder.
- 1.7 **"Software"** means Core Software and Enterprise Storage Software, and subsequent releases thereof provided hereunder.
- 1.8 **"Time and Materials ("T&M") Service"** is as set forth in sub-section 2.2 below.

2.0 TIME AND MATERIALS SERVICE

- 2.1 **General** – T&M Service and the applicable fee for labor and travel, components and/or Software shall be as set forth on the applicable Dell EMC quote and/or other similar Dell EMC documentation referencing this Agreement.
- 2.2 **Description** - T&M Service consists of (i) identifying or confirming the problem (via remote and/or on-site resources) with regard to

the Supported System, and the use of good faith efforts to restore such to good operating condition in conformance with Dell EMC's applicable specifications; or (ii) performance outside the scope of the standard Dell EMC service agreement, if any, between Dell EMC and Customer. Equipment or Software provided hereunder, including that which is needed to utilize features or functionality in a later release of Software, are separately chargeable items.

- 2.3 **Remote Support Capability** – Customer authorizes Dell EMC to use remote support capabilities, which may include temporarily enabling the Equipment to directly contact an Dell EMC support center. Upon such contact, Dell EMC may call back to such Equipment to gather additional diagnostic data, conduct further tests and remotely perform certain repairs and/or adjustments. Dell EMC shall use stringent security measures, such as authentication and encryption, to prevent unauthorized access during this process.
- 2.4 **Customer Responsibilities** - Customer shall promptly, and without charge to Dell EMC, (i) allow Dell EMC access to the Supported System to perform T&M Service or implement the terms of this Agreement; and (ii) furnish necessary facilities (suitable work space, computers, power, light, phone, software and equipment reasonably required by Dell EMC).
- 2.5 **Payments** – Customer shall pay Dell EMC the applicable T&M Service fee and pay or reimburse Dell EMC for all related taxes or withholdings, except those based on Dell EMC's net income. Subject to Dell EMC credit approval, payment in the local currency is due net thirty (30) days from the date of invoice. If payment is delayed, Dell EMC may charge interest equal to the lesser of 1.5% per month, or the maximum lawful interest rate under applicable law, from the due date until receipt of payment in full.

3.0 ADDITIONAL TERMS

- 3.1 **Maintenance Aids** - Customer authorizes Dell EMC to store Maintenance Aids at the Installation Site and agrees that such are for use only by Dell EMC authorized personnel. Customer shall not make, and shall use reasonable care to prohibit its personnel or any third party from making, any copies, use, disclosure or

¹ The use of "Dell EMC" in this document does not indicate a change to the legal name of the Dell or EMC entity set forth on your invoice or with whom you have dealt previously.

transfer of Maintenance Aids. Dell EMC is authorized, at any other time, upon reasonable notice to Customer, to enter the Installation Site, or to use remote means, to remove and/or disable Maintenance Aids. Customer shall reasonably cooperate in this effort.

3.2 **Replacement Parts** - All hardware components replaced hereunder shall belong to Dell EMC and be returned promptly upon Dell EMC's request. If not so returned, Customer shall pay Dell EMC's then current spare parts price for such component.

3.3 **Software Releases** - All or any portion of any release of Core Software or Enterprise Storage Software provided hereunder shall be governed by the applicable licensing terms in the product ordering agreement then in effect between Dell EMC and Customer, or, in the absence thereof, by the applicable licensing terms in Dell EMC's then current standard agreement for ordering Dell EMC products (a copy of which is available upon Customer request).

4.0 WARRANTY

4.1 **Product Maintenance** - Dell EMC warrants that (i) it shall perform T&M Service in a workmanlike manner in accordance with generally accepted industry standards; and (ii) any components or Software provided hereunder shall perform in accordance with the applicable Dell EMC specification for thirty (30) days after installation. Customer's exclusive remedy and Dell EMC's entire liability under the foregoing warranties shall be for Dell EMC, at its option, to use reasonable efforts to re-perform any deficient services within a reasonable time, repair or replace any replacement components or Software that become defective within thirty (30) days after installation, or refund the amount paid by Customer.

4.2 **Disclaimer Of Warranties** - EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY SECTION, Dell EMC PROVIDES TIME AND MATERIALS SERVICE PRODUCT MAINTENANCE "AS IS" AND MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

5.0 PATENT AND COPYRIGHT INFRINGEMENT

5.1 All components and Software provided hereunder shall be governed by the patent and copyright infringement indemnity terms in the product ordering agreement then in effect between Dell EMC and Customer, or, in the absence thereof, by the patent and copyright infringement indemnity terms in Dell EMC's then current standard agreement for ordering Dell EMC products.

6.0 LIMITATIONS OF LIABILITY AND DISCLAIMER

6.1 EXCEPT AS PROVIDED OTHERWISE IN SECTION 4.0 OR 5.0 ABOVE, Dell EMC'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF THIS T&M SERVICE, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY Dell EMC'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US\$1,000,000 FOR DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY; OR (ii) THE PRICE PAID BY CUSTOMER TO Dell EMC FOR THE T&M SERVICE FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER. EXCEPT FOR A CLAIM BASED ON A VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY SHALL (a) HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF; AND (b) BRING ANY CLAIM BASED ON OR ARISING OUT OF T&M SERVICE MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

7.0 TERMINATION

7.1 **Survival Of Terms** - Any provision of this Agreement that by its very nature or context is intended to survive any termination, cancellation or expiration, including but not limited to provisions concerning payment of outstanding amounts, indemnities and limitations of liabilities, shall so survive.

8.0 GENERAL

8.1 **Independent Contractors** - Nothing contained herein shall be deemed to constitute (i) either party as an agent or representative of the other, or (ii) both parties as joint venturers or partners for any purpose. Neither party shall be responsible for the acts or omissions of the other, and neither party will have authority to speak for, represent or obligate the other party in any way without the prior written approval of the other party. Nothing

contained herein shall be construed as preventing either party from developing, acquiring, marketing, selling, supporting or maintaining products and/or services similar to those described herein, or from entering into similar agreements with other entities, provided that in so doing, there is no breach of any obligation of confidentiality set forth herein. Dell EMC may identify Customer for reference purposes.

8.2 **Entire Agreement** - This Agreement (i) is the complete statement of the agreement of the parties, and shall supersede all prior communications and agreements, either oral or written, with regard to the subject matter hereof; (ii) may be modified only by a writing signed by both parties; (iii) is governed by the law of the Commonwealth of Massachusetts, excluding its conflict of law rules and The U.N. Convention on Contracts for the International Sale of Goods; and (iv) shall not be amended by and shall control in case of an inconsistent or conflicting term set forth on any other document used by customer in connection with the T&M Service described on the applicable Dell EMC quote and/or other similar Dell EMC documentation referencing this Agreement. The waiver of any breach or default shall not constitute a waiver of (a) any other right or remedy hereunder; or (b) any subsequent breach or default. If any part of this Agreement is held unenforceable, the validity of the remaining provisions shall not be affected. Each party shall comply with and obtain all authorizations required by U.S. export control laws and all related regulations.