



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; or (ii) standard configuration services, including the service features and offerings described in the corresponding Service Agreement(s), available at www.dell.com/servicecontracts/global or from the Supplier sales representative, as applicable, such as Static and Dynamic Imaging, Asset Tagging, Application 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. 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 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 found at <http://www.dell.com/en-us/work/shop/dell-powerededge-servers/sc/servers> (“Server Product”) and SC Series Products are stated at 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 the OTS.

- 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/uscorp1/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:

- i. **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.
- ii. **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.
- iii. **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.
- iv. **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); (vi) scripting, programming, database design and implementation, web development, or recompiled kernels; (vii) 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

- 1.1 Unless Support Services for Infrastructure Products are available to be procured at 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.
- 1.2 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)
- 1.3 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.).
- 1.4 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
- 1.5 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

- 2.1 "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
- 2.2 "**Product Maintenance**" means the service which consists of Supplier Technical Support (as defined below) and Software Releases (as defined in this Exhibit A)
- 2.3 "**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.
- 2.4 "**Problem**" means a failure by a Product to perform in substantial conformance with the applicable Supplier published specifications.
- 2.5 "**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.
- 2.6 "**Technical Support**" means those Services as defined in the below 2.7., 2.8., 2.9., and 2.10. of this OEM Support Exhibit.
- 2.7 "**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.

- 2.8 **“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.
- 2.9 **“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.
- 2.10 **“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.

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

- 3.1 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.
- 3.2 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. 2. and Section 3.4. 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.

- 3.3 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.
- 3.4 Installation Obligations – In providing the installation services described in Section 3.2. above, the providing party shall:
- A. Use only Supplier trained personnel that have successfully completed the applicable Supplier training courses;
 - B. Follow all of the applicable guidelines in the OEM Support Guide;
 - C. 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;
 - D. Be responsible for the End User's host system configuration requirements and installation/implementation of the relevant Software; and
 - E. 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

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 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:
- 4.5 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
- 4.6 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.
- 4.7 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.
- 4.8 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.
- 4.9 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.
- 4.10 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.
- 4.11 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.
- 4.12 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**
- 5.1 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**
- 6.1 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").
- A. OEM shall order Maintenance services from Supplier for its End Users in the event that any



of the following applies:

- B. OEM charged its own End User's for such Maintenance, or
 - C. OEM's distributors or resellers charged the End User for and paid OEM for Maintenance
 - D. OEM's service partner or the End User asks Supplier for support for the Product(s)
 - E. To be eligible to receive bug fixes and updates.
- 6.2 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

- 7.1 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.
- 7.2 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

- 8.1 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

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 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**
- 10.1 General Description – During the period(s) covered by OEM’s payment of the Supplier Technical Support Fees described in Section 10.1. 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:
- A. 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
 - B. 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.
- 10.2 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.
- 10.3 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' interoperability with any other non-Supplier products.

- 10.4 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.
- 10.5 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.

- 1.1 “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.
- 1.2 “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.
- 1.3 “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

- 2.1 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.
- 2.2 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.
- 2.3 Exclusions. Support Services do not cover a problem that would have been excluded from coverage pursuant to section 7B of the General Terms (“Equipment Warranty Exclusions”) or as outlined in the General Terms had the problem arisen during the warranty period of the affected Product.
- 2.4 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

- 3.1 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.
- 3.2 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.
- 3.3 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**
- 4.1 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.
- 4.2 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.
- 4.3 Service Data. In connection with the performance and use of the Services, and Supplier's remote support capabilities detailed in section 4.10. ("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.
- 4.4 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.
- 4.5 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.



- 4.6 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.
- 4.7 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.
- 4.8 Change of Equipment Location or Configuration. OEM or End User may change the Installation Site or configuration of 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.
- 4.9 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).
- 4.10 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.
- 4.11 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.
- 4.12 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.
- 4.13 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 7.3(B) below will apply.



- 4.14 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**
- 6.1 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.
- 6.2 OEM Remedies. OEM's exclusive remedy and Supplier's entire liability under the warranty stated in subsection 6.1 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 7.4. below.
- 6.3 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**
- 7.1 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.
- 7.2 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.
- 7.3 Termination for Convenience. In addition to the term and termination provisions stated in the General Terms, the following apply to Support Services:
- A. **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.
- B. **By OEM.** If OEM terminates Support Services for Infrastructure Products for its convenience as described in Section 4.13 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).
- 7.4 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.

- 1.1 “**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.
- 1.2 “**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.
- 1.3 “**Proprietary Rights**” mean all patents, copyrights, trademarks, trade secrets, or other intellectual property rights of a party.
- 1.4 “**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.

- 2.1 **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.
- 2.2 **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.
- 2.3 **Standard Work Day.** The standard work day 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.
- 2.4 **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.

- 3.1 **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.



- 3.2 **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.
- 3.3 **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.
- 3.4 **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.
- 4. Purchasing.**
- 4.1 **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.
- 5. TRAINING SERVICES.**
- 5.1 **Courses.** Supplier's standard training Services are available through the applicable catalogue or website. Supplier customized training Services are available pursuant to an SOW.
- 5.2 **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.
- 6. WARRANTY.**
- 6.1 **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.
- 6.2 **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.
- 6.3 **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.