

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

NOTICE OF RIDER CONTRACT

TO: DELL MARKETING L.P. 9505 ARORETUM BOULEVARD AUSTIN, TEXAS 78759	DATE ISSUED: CURRENT REFERENCE NO:	<u>MARCH 2, 2021</u> <u>21-DTS-R-396</u>
	CONTRACT TITLE:	<u>FOR THE PROVISION OF DELL OWNED & DISTRIBUTED PRODUCTS & SERVICES</u>

**THIS IS A NOTICE OF A RIDER CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE
VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.**

Arlington rides the Lead Agency's contract referenced below for the goods and services so referenced. The contract documents consist of this notice and terms and conditions of the Lead Agency Agreement including any attachments or amendments thereto.

LEAD AGENCY NAME: VIRGINIA HIGHER EDUCATION PROCUREMENT CONSORTIUM (VHEPC)

LEAD AGENCY CONTRACT NUMBER: UVA845196

EFFECTIVE DATE: SEPTEMBER 15, 2019

EXPIRES: MARCH 30, 2024

RENEWALS: NONE

COMMODITY CODE(S): 96728

LIVING WAGE: N

ATTACHMENTS:

ATTACHMENT A – VHEPC CONTRACT NUMBER UVA845196

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: SANDRA GIAKOUMATOS

VENDOR TEL. NO.: (240) 444-6687

EMAIL ADDRESS: SANDRA.GIAKOUMATOS@DELL.COM

COUNTY CONTACT: ISHAI TRANI (DTS AND TECHNOLOGY)

COUNTY TEL. NO.: (703) 228-3408

COUNTY CONTACT EMAIL: ITRANI@ARLINGTONVA.US

ATTACHMENT A
AGREEMENT

This Agreement, effective September 15, 2019, is by and between the Rector and Visitors of the University of Virginia (the “University”) and Dell Marketing L.P. and EMC Corporation (“EMC”), collectively “Dell” or “Selected Firm”. This Agreement replaces the original agreement between the parties dated March 30, 2009.

TERM

The term of this Agreement is until March 30, 2024, which coincides with the original agreement’s Term end date.

WITNESS

By its Request for Proposal (RFP) #SH122107 for the Virginia Computing Initiative dated December 21, 2007, the University requested proposals from firms to provide those goods and services necessary for the University to achieve its goals as requested in the RFP. In response to the RFP, Dell submitted a written proposal dated February 4, 2008, resulting in an agreement dated March 30, 2009 (the “Original Agreement”).

In 2018, the University, on behalf of the Virginia Higher Education Procurement Consortium (“VHEPC”) (collectively the “University” or “Member”) and Dell agreed to renegotiate the Original Agreement to better meet the needs and requirements of the VHEPC membership. Therefore, the parties, having renegotiated concerning the Goods and Services, wish to express in this Agreement the basis on which Dell will provide the Goods and Services to the University and VHEPC.

Accordingly, and in consideration of the mutual premises and provisions hereof, the parties hereby agree as follows:

I. Contents

These documents are hereby incorporated into this Agreement:

- A. Agreement Attachment A, Contractual Provisions
- B. Agreement Attachment B, Products & Services / Discounts & Pricing
- C. Agreement Attachment C, VHEPC Membership Benefits
- D. Agreement Attachment D, Dell General Terms;
- E. The original Agreement documentation, by reference, as outlined in Section 1, Contents, of the original Agreement.

To the extent that the terms of the various Agreement documents are in conflict, the following order of precedence will prevail:

- o This Agreement

- Agreement Attachment A
- Agreement Attachment B
- Agreement Attachment C
- Agreement Attachment D
- Original Agreement documentation

For further clarity, any term/provision associated with Attachment D that would be deemed to be unlawful, void or for any reason unenforceable against the University due to rules, regulations, or policy, will not apply to the University and will be deemed severable from this Agreement. Dell specifically acknowledges that the University is subject to the Virginia Freedom of Information Act. Nothing within Attachment D will be construed as a waiver of the sovereign immunity of the Commonwealth of Virginia.

II. Specific Provisions

A. **Products & Services / Pricing & Discounts**

Dell will make available products and services from all Dell owned companies, to include EMC Corporation and Dell Marketing L.P., in addition to other manufactures products that Dell distributes. See Attachment A for the listing of products, services and associated minimum discounts. Dell's Premier website will incorporate and reflect these discounts, which will be available to the University and all VHEPC Members.

B. **Dell Partners / Resellers**

Products and Services available on this Agreement can be procured through Authorized and Approved Value Added Resellers. Only Partners/Resellers approved by Dell can be used. A list of these Partners/Resellers can be found at: <https://www.dell.com/learn/us/en/12/slg/contract-selection-virginia>

Partners may also include complimentary solutions and services with the written approval of all parties (e.g. Dell, customer, VHEPC, third parties). These products and or services will be acquired under those partners terms and conditions and are not subject to the terms and conditions of this agreement.

C. **Customer Support**

Dell shall provide a single point of contact plus a backup for each Member. This individual may support multiple members. Members shall have access to their corresponding customer service representative during normal business hours of every business day (8am to 5pm local time).

D. **Order Fulfillment**

Order Accuracy rate shall be maintained at 98% or greater. Order Accuracy rate is defined as "the number of items delivered as ordered divided by the total number of items delivered per calendar quarter." Order Fill rate shall be maintained at 95% or greater, evaluated quarterly. Order Fill rate is defined as

“the number of items on an order filled completely as ordered divided by the total number of lines on an order.”

Dell, within two (2) business days after receiving a purchase order, shall notify the Member of any potential delivery delays. The following information regarding backorder(s) shall be provided to the Member:

- PO Number, if applicable
- Item ID
- Item Name & Description
- Reason for shortage as made available to Dell by manufacturer
- Plan of action (when delivery may be expected or suggested replacement)

E. Substitutions

No substitutions of alternate items for products ordered are permitted without the express prior written approval of the Member. Any and all remanufactured or refurbished products are not acceptable, in lieu of a new product, unless authorized by the Member.

F. Minimum Orders

No minimum order charges or conditions shall apply for any purchases made under this Agreement.

G. Supplemental Charges

Dell shall be required to state all supplemental charges that may be assessed in addition to the pricing for the goods and/or services provided including additional shipping charges, cost of goods, delivery, freight fuel surcharges, installation or any other charges incurred by the Member. If Dell offers multiple pricing options (i.e.: drop ship, inside delivery, delivered and installed) they must be specified within a quote and explicitly accepted by Member prior to order.

H. Delivery

Deliveries to Members range from, but are not limited to: (1) one central receiving location, (2) multi-campus locations, (3) campus building(s), or (4) department(s). Frequency of delivery may range from: (1) daily, (2) weekly, (3) monthly, or (4) as needed to assure that institutions' needs are met. Delivery may be based on storeroom delivery, Just-in-Time agreements, drop shipments, and delivered and installed. Normal delivery of orders must be accomplished at established times as set by the Member. Order Fill rate shall be maintained at 95% or greater as defined in Section D, above. Dell(s) shall have the capability of expediting the delivery of orders to assure no shortage of product during installation. Title and risk of loss shall pass to the Member at the F.O.B. destination point. The title and risk of loss of the goods shall not pass to

a given Member until receipt of the goods at the point of delivery. All orders are to be shipped FOB Destination, freight included, unless special shipping instructions are requested. Orders may be placed that require special handling, which incur an additional charge. Examples of special delivery are "Inside Deliver", "Excessive Weight", or "Overnight Delivery". The cost for these orders will be provided by Dell with the quote. Dell will prepay these charges and include as a separate line item on the invoice. Selection of a carrier for shipment will be Dell's option unless otherwise specified by the Member. If special delivery or handling charges are applicable they shall be pre-approved by the Member. Dell shall maintain records evidencing the delivery of goods and upon request by the Member provide such proof of delivery.

I. Packaging and Labeling

Shipments are to have packing and packaging which is environmentally sensitive and state of the art. Stuffing (e.g. "popcorn", etc.) is to be biodegradable. INSTAPAK will not be used. Wrapping, boxing and crating are to be minimized. Dell will make best efforts to ensure that recycled cardboard is to be used in place of new cardboard. Large shipments (skids, etc.) are to be shrink-wrapped. Pallets will be standard wood four-way. Dell must work with OEMs, distributors and authorized resellers so that direct ship and pass through shipments are packaged with the same considerations.

Dell is expected to look for cutting edge packaging innovations for delivery options, such as exchangeable packs, bags, or other similar containers that would eliminate as much traditional packaging materials as possible.

Each packaged order shall have a packing label affixed indicating the order number, order date, ship to name & address, delivery zone (if requested), and any additional information requested by the ordering Member. In addition, each order shall have a packing list.

J. Tracking Lost and Damaged Shipments

Dell relies upon various carriers to deliver products to Members. In the event that a carrier or shipper fails to deliver or delivers products incorrectly, upon receipt of notification from the Member, Dell shall take immediate corrective action to make the correct delivery at no cost to Member.

Should any action on the part of Dell or a subcontractor cause visible damage to the facilities during transport, Dell is required to immediately contact Member and forward a confirming damage report detailing the damages. Dell shall be able to track all shipments and provide order status to members.

K. Returns – Defective and Non-Conforming Goods or Services

See the warranties section in Attachment D.

After the Warranty Period, Dell will be responsible to ensure, if requested, that service agreements are available to the University. Dell, the manufacturer or an authorized third party may provide the maintenance.

L. Reasons for Return or Credit

See the warranties section in Attachment D.

M. Replacement Parts

If Dell offers replacement parts, then a separate category of “Replacement Parts” pricing should be added to the proposed discount structure.

N. Evaluation Units

If requested, Dell shall make available evaluation units of products, subject to manufacturer’s evaluation program terms. It is preferred that units for evaluation be provided free of charge and that the quantity of any evaluation unit requested will be reasonable but sufficient to undertake an appropriate evaluation. Dell shall provide Member with return instructions as appropriate.

O. Business Review Meetings

In order to maintain a partnership between the University and Dell, the University may require business review meetings. These meetings shall be held on a quarterly basis, if not more frequently. The business review meeting shall include, but not be limited to, the following:

- Review of Dell performance
- Review of minimum required reports (as described in the following section)
- Review of new technologies, industry trends

P. Reporting Requirements

1. Dell will provide recommendations for cost reductions and process efficiencies in regards to product offering, ordering, delivery, etc. throughout the Agreement term.
2. Dell will to provide a semi-annual report of all standard configurations by school
3. Dell will provide purchasing data on all transactions (catalog and non-catalog) for the University. This data will include to following:
 - a. University Name
 - b. University Name Shipping
 - c. Dell Customer Number
 - d. PO Number
 - e. Dell Order Number
 - f. Master Invoice Number

- g. Invoice Number
- h. Group Description
- i. Product Description
- j. Brand Description
- k. Item Number
- l. Item Long Name
- m. System Qty
- n. Order Qty
- o. Total Revenue Retail
- p. Total Revenue Discount
- q. Order Status Description
- r. Order Date
- s. Ship By Date
- t. Shipped Date
- u. Invoice Date

4. Dell will collect data relating to rebates for each University. This data will include the following;
 - a. Rebates earned by each University along with detailed data to back up rebate totals.
 - b. Dell payment of rebates, including date of rebate issuance and date of rebate payment.
 - c. Non-Member purchases.
 - d. 3rd Party purchases and rebate totals.
5. Dell will provide a report to the University each quarter containing the data collected. Reports will be due before the end of the month in March, June, September and December of each year of the Agreement.
6. Dell will provide a quarterly report of all non-member and 3rd party spend on this contract with the same level of detail as the Dell member purchases above.

Q. Invoicing

Standard payment terms are Net 30 but each Member may negotiate their own payment terms and method with Dell to meet their requirements.

R. Membership Addendum

Each Member of VHEPC may negotiate their own Addendum with Dell to meet specific Member requirements. Any such Addendum will incorporate this Agreement by reference but will be maintained and administered solely between the VHEPC Member and Dell.


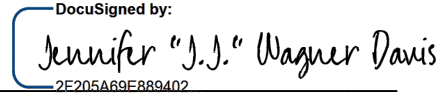
S. Contract Administration

1. Primary Administration: Individual University departments and VHEPC members are the point of contact for day-to-day operations under this Agreement. Individual University departments or VHEPC cannot approve amendments to this Agreement or price changes.
2. Secondary Administration: Dell will channel all Contract Administration questions not pertaining to a specific service or departmental / VHEPC members request through the VHEPC and University's Procurement & Supplier Diversity Service department, and specifically the individuals named below:

- a. **VHEPC**
Ryan Balber
Director, VHEPC
Carruthers Hall, 1001 N. Emmet Street
Charlottesville, Virginia 22904-4202
Phone: 434-297-6099; Mobile 217-649-9700
Email: rb7pq@virginia.edu
- b. **University of Virginia**
Michael Warlick, Senior Buyer
Procurement & Dell Diversity Services
University of Virginia
Carruthers Hall, 1001 N. Emmet Street
PO Box 400202
Charlottesville, Virginia 22904-4202
Phone: 434-924-8918; Email: warlick@virginia.edu

— SIGNATURE PAGE FOLLOWS —

ACCEPTANCE

<p>Dell Marketing L.P., on behalf of itself and EMC Corporation</p> <p>By (Sign): <u></u></p> <p>Loretta Ortman, SLED Counsel</p> <p>Date: <u>8/20/19</u></p>	<p>For the Rector and Visitors of the University of Virginia</p> <p>By (Sign): <u></u></p> <p>Jennifer "J.J." Wagner Davis EVP-COO</p> <p>Date: <u>9/20/2019</u></p> <p>Tracking #: UVA845196</p>
--	---

Agreement #: UVA845196

ATTACHMENT A CONTRACTUAL PROVISIONS

A. Nondiscrimination

During the performance of this Agreement, Selected Firm will comply with the contract provisions contained in Section 2.2-4311 (1) & (2) of the Code of Virginia or any successor provisions which may be applicable to this Agreement. Also, in accordance with Section 2.2- 4343.1, the University does not discriminate against faith-based organizations.

B. Conflict of Interests

Selected Firm represents to the University that its entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (Va. Code 2.2-3100 *et seq*), the Virginia Ethics In Public Contracting Act (Va. Code 2.2-4367 *et seq*), the Virginia Governmental Frauds Act (Va. Code 18.2-498.1 *et seq*) or any other applicable law or regulation.

C. Independent Selected Firm

Selected Firm is not an employee of the University, but is engaged as an independent Selected Firm. Selected Firm will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to Selected Firm's performance of this Agreement. Nothing in this Agreement will be construed as authority for Selected Firm to make commitments which will bind the University, or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.

D. Workers' Compensation and Employers' Liability

The Selected Firm will (i) maintain Employers Liability coverage of at least \$100,000 and (ii) comply with all federal or state laws and regulations pertaining to Workers' Compensation Requirements for insured or self-insured programs.

E. Drug-Free Workplace

Selected Firm, its agents and employees are prohibited, under the terms of this Agreement, Code of Virginia Section 2.2-4312, and the Commonwealth of Virginia, Department of Human Relations Management Policy Number 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

During the performance of this Agreement, Selected Firm agrees to 1) provide a drug-free workplace for Selected Firm's employees; 2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Selected Firm's workplace and specifying the actions that will be taken against employees for violations of such prohibition; 3) state in all solicitations or advertisements for employees placed by or on behalf of Selected Firm that it maintains a drug-free workplace; and 4) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Selected Firm or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific agreement awarded to a Selected Firm, the employees of whom are prohibited from engaging in the unlawful manufacturing, sale,

distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

F. Information Technology Access Act

In accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology agreements:

NON-VISUAL ACCESS TO TECHNOLOGY: All information technology (the "Technology") which is purchased or upgraded by the University will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement:

- Effective, interactive control and use of the Technology will be readily achievable by non-visual means;
- Technology equipped for non-visual access will be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- Non-visual access technology will be integrated into any networks used to share communications among employees, program participants or the public; and
- Technology for non-visual access will have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards will not be required if the Director of Procurement and Supplier Diversity Services, University of Virginia determines that 1) the Technology is not available with non-visual access because the essential elements of the Technology are visual and 2) non-visual equivalence is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information will permit the installation and effective use of non-visual access software and peripheral devices.

If requested, the agreement must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

G. Unauthorized Alien Use

Selected Firm warrants that it does not knowingly employ an "unauthorized alien," as such term is defined in the federal Immigration Reform and Control Act of 1986. Selected Firm furthermore agrees that, during the term of this Agreement, it will not knowingly employ an unauthorized alien.

H. Assignment

Neither party to this Agreement will have the right to assign this Agreement in whole or in part without the prior written consent of the other.

I. Amendments

No amendment of this Agreement will be effective unless it is reduced to writing and executed by the University's Director of Procurement and Supplier Diversity Services and by the individual signing Selected Firm's proposal or by other individuals named by either party as specified in Section E, Notices below. If Selected Firm deviates from the terms of this Agreement without a written amendment, it does so at its own risk.

J. Notices

Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt, or (4) if sent by facsimile, when received (as verified by sender's machine) if delivered no later than 4:00 p.m. (receiver's time) on a business day or on the next business day if delivered (as verified by sender's machine) after 4:00 p.m. (receiver's time) on a business day or on a non- business day. All such notices will be addressed to a party at such party's address or facsimile number as shown below.

If to the University:

John McHugh, Interim Director
Procurement and Supplier Diversity Services
University of Virginia
P.O. Box 400202
Charlottesville, Virginia 22904-4202
Phone: 434-924-4019
Fax: 434-982-2690

If to Selected Firm:

The person signing Selected Firm's proposal in response to the University's RFP, at Selected Firm's address indicated in such proposal; or to such other person or address as either may designate for itself in writing and provide to the other.

K. eVA Registration / Transaction Fee

The eVA Internet electronic procurement solution is the Commonwealth of Virginia's comprehensive electronic procurement system. The portal is a gateway for firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA and all firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution.

Selected Firm is required to register in the eVA Internet e-procurement solution as a condition of award and remain eVA registered during the term of this Agreement. Selected Firm will be subject to an eVA transaction fee, for which Selected Firm will be invoiced by Commonwealth of Virginia, Department of General Services. Additional information is available at www.eva.virginia.gov

L. Waiver

No waiver of any right will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right will prevent a later exercise of such or any other right.

M. Indemnification

To the extent permitted by the laws of the Commonwealth of Virginia, the University will be responsible for the acts or omissions of its agents and employees causing harm to persons not a party to this agreement. Nothing herein will be construed as a waiver of the sovereign immunity of the Commonwealth of Virginia.

N. Termination

This Agreement may be terminated by either party by providing 45 days' notice. The University remains responsible for payment of all products and services it has implemented, used or purchased through the time of termination.

- O. Non-Appropriation
Funding for any Agreement between the University and a Selected Firm is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then this Agreement may be terminated by the University effective the last day for which appropriated funding is available.
- P. Right of Audit
The University reserves the right to audit or cause to be audited Selected Firm's books and accounts regarding the University's account solely related to this agreement at any reasonable time during the term of this Agreement and for three years thereafter. Selected Firm will make available to the University all books and records relating to performance of this Agreement as may be requested during said period. This specifically includes, but is not limited to, the right of the University to require that Selected Firm perform self-audits within reasonable parameters established by the University.
- Q. Contractual Claims
The Virginia Acts of Assembly of 2007, Chapter 943, Chapter 3, Exhibit P and its attachments requires Selected Firms with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, written notice of the Selected Firms intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. The University's procedure for deciding such contractual claims can be found at: <http://www.procurement.virginia.edu/main/publicpostings/rfp/resolution.pdf>
- R. Insurance
Listed below is the insurance Selected Firm must maintain under any Agreement resulting from this RFP. In no event should Selected Firm construe these minimum required limits to be its limit of liability to the University. Selected Firm will maintain insurance which meets or exceeds the requirements of the University with insurance companies that hold at least an A-financial rating with A.M. Best Company. No Agreement will be executed by the University until Selected Firm satisfies the insurance requirements of the University. Selected Firm may be required to provide the University with a valid Certificate of Insurance before providing any goods or services to the University. The University reserves the right to approve any insurance proposed by Selected Firm.

The scope of goods or services does not include product installation or setup, maintenance service and the delivery is limited to a central delivery point, the minimum level of coverage will be:

Commercial General Liability:

Selected Firm and any Subcontractor will maintain a minimum combined single Limit of Liability for bodily injury and property damage of \$1,000,000 per occurrence, with coverage for premises and operations.

Automobile Insurance:

Selected Firm and any Subcontractor will provide a minimum combined single Limit of Liability for bodily injury and property damage of \$1,000,000 per accident on all owned, hired, and non-owned vehicles operated by its employees.

Additional Insured:

The University will be named as an Additional Insured, and the proper name is: "The Commonwealth of Virginia, and the Rector and Visitors of the University of Virginia, its officers, employees, and agents."

S. Use of Agreement by Third Parties

It is the intent of this Agreement to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institution, or any University related foundation may access this Agreement if authorized by Selected Firm.

Participation in this cooperative procurement is strictly voluntary. If authorized by Selected Firm, this Agreement may be extended to the entities indicated above to purchase at fees in accordance with this Agreement. Selected Firm will notify the University in writing of any such entities accessing this Agreement. No modification of this Agreement or execution of a separate agreement is required to participate. Selected Firm will provide semi-annual usage reports for all entities accessing this Agreement. Participating entities will place its own orders directly with Selected Firm and will fully and independently administer its use of this Agreement to include contractual disputes, invoicing and payments without direct administration from the University. The University will not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by Selected Firm to extend this Agreement. It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of this Agreement no matter the circumstances.

Use of this Agreement does not preclude any participating entity from using other agreements or competitive processes as the need may be.

T. The University's Authorized Representatives

The only persons who are or will be authorized to speak or act for the University in any way with respect to this Agreement are those whose positions or names have been specifically designated in writing to Selected Firm by the University's Director of Procurement and Supplier Diversity Services.

U. Purchasing Manual

This Agreement is subject to the provisions of the Commonwealth of Virginia "Purchasing Manual for Institutions of Higher Education and Their Vendors" and any subsequent revisions, which is available at this web site: <https://vascupp.org/hem.pdf>

V. Small, Women-owned and Minority-owned (SWAM) Business Reporting

Selected Firm will identify and fairly consider SWAM firms for subcontracting opportunities when qualified SWAM firms are available to perform a given task in performing for the University under the resulting Agreement. Selected Firm will submit a quarterly SWAM business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January. Selected Firm will submit the quarterly SWAM business reports to:

Lorie Strother
SWAM Contract Administrator
Procurement and Supplier Diversity Services
E-mail: <mailto:ljs8n@virginia.edu>

The quarterly SWAM business reports will contain this information:

- a. SWAM firm's name, address and phone number with which Selected Firm has contracted over the specified quarterly period.

- b. Contact person at the SWAM firm who has knowledge of the specified information.
- c. Type of goods and/or services provided over the specified period of time.
- d. Total amount paid to the SWAM firm as it relates to the University's account.

Selected Firm's failure to provide SWAM reports on a quarterly basis which contain the information required by this section and/or Selected Firm's failure to comply with the plan for utilizing SWAM businesses submitted by Selected Firm as part of its proposal and/or negotiation response may be grounds for debarment pursuant to Section 9. G. 4 of the "Purchasing Manual for Institutions of Higher Education and their Vendors."

W. Ordering Procedures

The University does not place verbal orders for the Goods and Services. The University may only place orders for the Goods and Services by issuing a formal written Purchase Order in advance of Selected Firm's provision of the Goods and Services. Accordingly, at the University's request, Selected Firm will issue a proposal/quotation listing the Goods and Services desired by the University and the corresponding fees and/or fee estimates. After any necessary discussions and/or revisions, the University will issue a corresponding Purchase Order for a specified fee amount. This specified fee amount cannot be exceeded by Selected Firm unless a new formal written Purchase Order or Purchase Order revision is issued by the University authorizing a specific additional fee amount. Under no circumstances does the University authorize Selected Firm to provide the Goods and Services before receipt of a formal written Purchase Order corresponding to its proposal/quotation. If Selected Firm provides Goods and Services prior to receipt of a formal written Purchase Order, or incurs costs in excess of authorized purchase order fee amounts, it does so at its own risk.

X. Future Goods and Services

The University reserves the right to have Selected Firm provide additional goods and/or services that may be required by the University during the Term of this Agreement. Any such goods and/or services will be provided under the same terms and conditions of this Agreement. Such additional goods and services may include other products, components, accessories, subsystems or services provided by Selected Firm. These additional goods and services will be provided to the University at Favored Customer pricing.

Y. Marketing

The University encourages Selected Firm to appropriately and specifically market itself to applicable end-using University departments that may be interested in Selected Firm's Goods and Services. However, Selected Firm will not use non-specific mass marketing formats; such as, but not limited to, spam, emails and junk mail. In the event that Selected Firm engages in non-specific mass marketing formats, the University, in its sole discretion, may choose to terminate this Agreement.

Z. Compliance

Selected Firm will comply with all applicable laws and industry standards in performing services under this Agreement. Any Selected Firm personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to Selected Firm upon request.

AA. Intellectual Property Rights

Each party will retain all patents (including reissues, divisions, continuations and extensions thereof), utility models, and registered and unregistered designs including mask works, copyrights and any other form of protection afforded by law to inventions, models, designs or technical information, and applications therefore (collectively, "Intellectual Property Rights"),

that it owned or controlled prior to the date of this Agreement, or Intellectual Property Rights that result from activities independent of the Services performed pursuant to this Agreement (“Background IP”). In addition, subject to payment in full for the applicable Services, for the portion of deliverables that consists of scripts and code, Dell shall grant to the University a perpetual, non-exclusive, non-transferable, full paid right and license to use the deliverable solely for the University to use the deliverables as specified by the terms of this Agreement.

Work Product: Subject to payment in full for the applicable Services, the University shall own all copyrights in the portion of any deliverable that consists solely of written reports, designs, charts, plans, specifications, data, documentation and information, analyses and other working papers unique to the University’s environment, and specifically in whatever form, including the Intellectual Property Rights embodied therein, specifically produced or created by Dell for the University as a result of the Services which are provided to the University by Dell in connection with this Agreement and specifically identified in a Work Order (“Work Product”).

Utilities; Residual IP: Notwithstanding the foregoing, the University acknowledges that Dell will retain all right, title and interest in and to all Intellectual Property Rights in or related to the Services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software or development tools used in performing the Services (collectively, the “Utilities”), and (b) ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates or output which are developed, created or otherwise used by or on behalf of Dell in the course of performing the Services or Creating the Work Product, which do not specifically incorporate proprietary or Confidential Information or data of the University (the “Residual IP”), whereby such Utilities and Residual IP shall be considered Dell Background IP even if embedded in the Work Product.

Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

BB. Force Majeure

Neither the University or Selected Firm (individually, a “Party”) will be deemed in default or otherwise liable hereunder due to its inability to perform by reason of any fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or any municipal, county, state, national or international ordinance or law or any executive, administrative, judicial or similar order, including orders from any governing body (which order is not the result of any act or omission to act which would constitute a default under this Agreement), or any failure or delay of any transportation, power, or other essential thing required, or similar causes beyond the Party’s control. Any delay in performance will be no greater than the event of force majeure causing the delay. If an event of force majeure continues uninterrupted for a period exceeding six calendar months, either Party may elect to terminate this Agreement upon notice to the other, but such right of termination, if not exercised, will expire immediately upon the discontinuance of the event of force majeure.

CC. Data and Intellectual Property Protection

Sensitive, non-public “[University Data](#)” is strictly regulated by state or federal law. Such data includes but is not limited to: business, administrative and financial data, intellectual property, and patient, student and personnel data. If the Selected Firms providing goods or services to the University will receive, create, or come into non-incident contact with University Data, the Selected Firm agrees to abide by the terms and conditions of the [Data Protection Addendum](#).

Further, if the Selected Firm providing goods or services to the University will receive, create, or come into non-incidental contact with patient or UVa health plan participant Protected Health Information as that term is defined in 45 C.F.R. § 160.103, the Selected Firm is a Business Associate, and agrees to abide by the terms and conditions of the [Business Associate Addendum](#) in addition to the Data Protection Addendum.

DD. Accessibility

Selected Firm warrants and represents that all Goods and Services provided hereunder will be in accordance with University's Policy IRM-008: University Information Technology Accessibility (<https://uvapolicy.virginia.edu/policy/IRM-008>) requiring compliance with the Web Content Accessibility Guidelines (WCAG) version 2.0 / Level AA (<http://www.w3.org/WAI/intro/wcag.php>) and Section 508 of the Rehabilitation Act of 1973. Selected Firm will monitor and maintain compliance with the Policy and referenced standards throughout the term of Agreement. Before any system launches, and at each major version change, Selected Firm will provide verification of compliance by submitting a WCAG 2.0 Compliance Checklist and a VPAT (Voluntary Product Accessibility Template) for all products/modules under consideration, completed as a self-assessment by a technician with a background in accessibility testing or by a third party jointly chosen by Selected Firm and the University.

EE. UCC Support

- a. Selected Firm agrees to commercial reasonable ability to support University Career Center ("UCC") by:
- b. Utilizing University student internships as needed
- c. Selected Firm will make public full-time employment positions, regardless of location, that become available, where a new University graduate would be an ideal candidate.
- d. Selected Firm will participate in at least one UCC events per year, which may include career fairs or information sessions.

FF. Governing Law

This Agreement and all aspects of the Service will be governed by and construed in accordance with the internal laws of the Commonwealth of Virginia.

GG. Entire Agreement

This is the entire agreement between the University (including University employees and other End Users) and Selected Firm. In the event that Selected Firm enters into terms of use agreements or other agreements or understanding, whether electronic, click-through, verbal or in writing, with University employees or other End Users, such agreements shall be null, void and without effect, and the terms of this Agreement shall apply.

HH. Agreement Signature

This Agreement may be executed in counterparts, each of which will be deemed an original, and both of which taken together will constitute one and the same document. Electronically transmitted signatures will be deemed originals for all purposes relating to the agreement.

ATTACHMENT B
Products & Services / Discounts & Pricing

<u>Client Computing</u>	Minimum Discount Off List Price
○ Desktop	34
○ Laptop	34
○ VR/AR Systems	34
○ Rugged	34
○ Thin Clients	34
○ PC As A Service	15
○ Virtualized Desktops	10
○ Monitors and Displays	10
○ Peripherals	10
○ Collaboration Solutions	15
<u>Enterprise Computing</u>	Minimum Discount Off List Price
○ Servers	40
○ Storage	40
○ Converged Systems	25
○ Hyper-Converged Systems	25
○ Networking	25
○ Data Protection	25
○ Replication	15
○ Virtualization	15
○ Business Continuity Solutions	15
○ Application Development Platforms	15
○ Security	15
○ Cloud Computing	15
○ Compliance Solutions	15
○ Anti-Virus	15
○ Data Analytics Platforms	15
○ Encryption	15
○ IoT Solutions	15
○ Public Safety	15
○ Video Surveillance	15
○ Data Center Solutions	15
○ Power Solutions	15
○ Technology Furniture	15
○ High Performance Computing	40
❖ Machine Learning	
❖ Artificial Intelligence	

Professional Services	Minimum Discount Off List Price
○ ProDeploy for Client	5*
○ ProDeploy for Enterprise	5*
○ ProSupport for Client	5*
○ ProSupport for Enterprise	5*
○ Converged Support Services	5
○ Residency/Staffing Services	5
○ Non-Tied Services	5
○ Consultancy Services	5
○ Partner Delivered Services	5
○ Assessment Services	5
○ Windows as a Service	5
○ Migration Services Data (enterprise)	5
○ Migration Services Workloads	5
○ Migration Services Client	5
○ Performance/Assessment Services	5
○ SW Upgrade Services	5
○ Hardware Expansion Services	5
○ Data Erasure Services	5
○ Project Management	5
○ Autopilot enrollment	5
○ Managed Services (Help Desk etc.)	5
○ Factory Configuration Services	5*
○ Cyber Security Consulting	5
○ Image Build and Deployment	5*
○ Asset Recovery Services	5
○ Cloud Design and Implementation	5
An Asterisk (*) denotes that the service will be discounted at the same rate as the device when purchased together	

Additional Manufacturers Available on Contract

The following manufacturers and solution providers are available to be accessed on this contract. Additional Manufacturers may also be available for purchase on this contract.

- Data Center Infrastructure: APC, Eaton, Legrand, Vertiv, Tripp Lite, Motivair
- High Performance Computing: Bull/Attos, DDN, Mellanox
- Networking / Cameras: Emulex, Ipinfusion, Riverbed, Silverpeak, Palo Alto, Fortinet, Pelco
- Load Balancing: Kemp, F5
- Virtual Desktop Infrastructure: Amulet_Hotkey, Safeconnect, Netscout
- WAN Optimization: Big Switch, Cumulus, Pluribus, Drive Scale, Nexenta
- Solid State Drives: Gemalto, Fusion Io, Hgst, Axiom

Additional Software Manufacturers Available on Contract

The following additional manufacturers, publishers and solution providers are available to be accessed on this contract, and others not explicitly listed below may also be available.

1E	CrowdStrike	Kronos Software	SAP
2X Software	Digital Arts	LANDesk Software	Serif
4Ward/Coreview	DocuSign	Laplink Software	Shavlik Technologies
6Wind	Double-Take Software	Lexmark Enterprise Software	SIOS Technology
Absolute Software	Dropbox	LifeKeeper	Sky
Access Data	Echo360	Lifesize	SolarWinds
Acronis	Electronic Arts	Lightspeed Systems	SonicWALL
Activision	Erwin Inc	Liquidware Labs	Sony Creative Software
Adobe Systems	ESET	Magix	Soundtrap
Altova (renewals only)	E-Soft	Malwarebytes	Square Enix
AppSense	Experian Marketing Solutions	McAfee	Stratus Technologies
Appspace	Explain Everything	Mesosphere	Sunrise Systems
Articulate Global	Fantoo	Metalogix Software	SUSE
ASG Technologies	Faronics	Micro Focus Software	Sybase (SAP)
Atlantis Computing	FileMaker	MICROSOFT	Symantec
Attachmate	Flexera	Mindjet	Syncsort
Autodesk	Forcepoint	Modius	Take 2 Interactive
Avaya	Foxtit	Morisawa & Company	Team Venti
AVG	Freedom Scientific	MPS/Selectsoft	Techsmith
BDA	GFI Software	Nanonation	Telerik
Bethesda Softworks	Globalscape	Nero	Thales E-Security
Bluescape	GoGuardian	Netmotion Wireless	ThreatTrack Security
BMC	Good Technology	Nintendo	Titus Labs
Bomgar	Google	Novel	Trend Micro
Boomi	GrauData	NUIX	Tricerat Software
Bright Computing	Guidance Software	Nvidia	Tripwire
Business Objects	H&R Block	Open Text	TriTech Software Systems
CA	HEAT Software	OpenLabs	Tyler Technologies
Canonical	IBM	Oracle Corporation	Ubisoft
Capcom	Idera	Papercut Software	Unidesk
Caradigm	Illuminari	Paragon	UMS
Carbonite Inc	Informatica	Parallels	Vandyke Software
Citrix	iNovar	PC America	Varonis Systems Inc
Clickfree	Intel	Planview Delaware	Veeam
Cloudera	Intuit	Quark	Veritas
Code42	Invincea	Quest Software	VFO
CommVault Systems	Iolo technologies	Rapid7	VMware
Conduv (Diskeeper)	Ipswitch	Rave mobile safety	Vormetric
Corel	ITS Learning	Red Gate Software	Warner Brothers
CoreMobile Networks Inc	IVANTI	RED HAT	Webroot Software
CrossTec	Jetbrains	Research-In Motion (RIM)	WeVideo
CyberLink	JustSystems	Rose Data Systems	WinHong
Cycle Computing	Kaspersky Labs	Rosetta Stone	Xangati
DataCore	Kingsoft	Roxio (Corel)	Zerto
Datawatch	Kofax Inc	SanDisk (Flashsoft SAN)	Zimbra
Dell Software	Konami	Sega	Zoho Corporation

ATTACHMENT C VHEPC MEMBER BENEFITS ONLY

The benefits in this Attachment and the Member Rebate Program are available only to VHEPC Members and not available to any other purchasers

Dell EMC Member Benefits

- Aggregated Negotiation
- Dedicated Inside Sales Representative
- Technology Service Manager Assigned to each Member Organizations
- Sustainability and EPEAT reporting
- Individualized Rebate Programs for qualifying purchases
- Access to 2,000+ Technology Solutions on contract
- Preferred Dell Financial Services Terms
- Access to Executive Briefing Centers
- Access to Remote Lab Equipment
 - Hyper-Converged Infrastructure
 - High Performance Computing Innovation
 - Workstation, Operating Systems, and Applications Testing
- Local Dell Day Events
- Sponsorship of Association of Collegiate Computing Services Annual Conference
- Sponsorship of Member Organization Functions and Events
- Seed Program to provide systems throughout the year for test and review
- Try and Buy Programs for Proof of Concept Validation
- Quarterly Contract Discount and Revenue review
- Member Purchase Program providing employee discounts
- Data Center Utilization and Efficiency reviews and documentation
- Onsite Engineering is available for pre-sales, strategy, and best practices interactions
- Complimentary Subscription to Dell TechDirect Lifecycle Management Program

This Member Rebate Program for qualifying purchases is available only to VHEPC Members and not available to any other purchasers.

VHEPC members will receive the 3% quarterly payment on “qualifying purchases” for good faith efforts to meet Minimum Participation Requirements. Schools may individually negotiate a higher percentage for a more strategic relationship. Schools with current individual agreements will maintain current levels but may also negotiate Strategic Participation Options for additional benefits.

➤ **Minimum Participation Requirements:**

- Semi-Annual VHEPC Procurement Reviews
- Technology Demonstration Events
- Quarterly Support Utilization / Tech Direct Utilization Reviews
- VHEPC Provided Marketing and Support

➤ **Strategic Participation Options:**

- Annual Executive Leadership Planning and Business Reviews
- Case Studies and Whitepaper development
- Partnership Press Release
- Semi-Annual on Campus Dell Day

- Provide Classroom Speaking Opportunities
- eSports partnership/sponsorship Opportunities
- On Campus Office Space for Dell use on designated days

Note: “Qualifying purchases” are defined as those products offered by Dell Marketing LP marked with the “Dell” brand only, including all standard components thereof; and excludes all Services and Third Party Products. Orders not eligible for the Rebate include: (a) Dell EMC or EMC branded products or High Performance Computer Cluster ((HPCC) orders) and (b) consumer products including, but not limited to, Inspiron, “EMC” branded products and other products as may be added.

ATTACHMENT D DELL GENERAL TERMS

1. DEFINITIONS

- A. **"Affiliate"** means, with respect to Suppliers, Dell Inc. or Dell Inc.'s direct or indirect subsidiaries; and with respect to Customer, a legal entity that is controlled by, controls, or is under common control with Customer. "Control" means more than 50% of the voting power or ownership interests.
- B. **"Delivery"** for Equipment occurs when Supplier provides the Equipment to a carrier at Supplier's designated point of shipment. **"Delivery"** for Software and Independent Software occurs either when Supplier provides physical media to a Supplier-designated carrier at Supplier's designated point of shipment, or the date Supplier notifies Customer that Software or Independent Software is available for electronic download.
- C. **"Documentation"** means Supplier's then current, generally available user manuals and online help for Products.
- D. **"Order"** means (i) a Customer purchase order that references a Supplier quote and, if applicable, contract code; (ii) Supplier order forms executed by Customer; or (iii) Customer's order of Products or Services, through either www.Dell.com or other online process.
- E. **"Products"** means collectively: (i) **"Equipment"** (which is the hardware that Supplier provides to Customer under the AGREEMENT); and (ii) **"Software"** (which is Suppliers' generally available application, microcode, firmware and operating system software that Supplier licenses to Customer under the AGREEMENT); and (iii) **Independent Software** (which is Supplier's software that can operate on hardware other than Equipment). Terms applicable to specific Products are further discussed in the Product Schedules referenced below. Products exclude Services and Third Party Products.
- F. **"Providers"** means entities (other than Customer) whose components, subassemblies, software, services, or some combination of these items have been incorporated into Products, Services, or both.
- G. **"Service Agreements"** means service contracts, including service descriptions available at www.Dell.com/servicecontracts/global, service briefs, statement of work, services specifications, and any other similar mutually agreed documents.
- H. **"Services"** means collectively: (i) services for the support and maintenance of Products (**"Support Services"**) as set forth in Service Schedule referenced in Section 9 below, and applicable Product Schedules; and (ii) consulting, installation, implementation, and other services that are not Support Services (**"Professional Services"**) further discussed in the Service Schedule referenced in Section 9 below.
- I. **"Software Release"** means any subsequent, generally available version of Software or Independent Software provided after initial Delivery of Software or Independent Software, but does not mean a new Product.
- J. **"Third Party Products"** means hardware, software, or services that are not "Dell" branded, "EMC" branded, or "Dell EMC" branded. Third Party Products may include, without limitation, products and services manufactured, created, licensed, or performed by or on behalf of Supplier or its Affiliates, and may include hardware or software installed on a Product in the course of performing a Service.

2. BUYING PRODUCTS AND SERVICES

- A. **Quotes and Orders.** Acceptance of one Order is independent from any other Order. Quoted prices are effective until the expiration date of the Supplier's quote, but may change due to shortages in materials or resources, increase in the cost of manufacturing, or other factors. Orders may contain charges for shipping and handling.
- B. **Changed or Discontinued Products or Services.** Supplier may revise or discontinue products, services, and Third Party Products at any time, including after Customer places an Order, but prior to Supplier's shipment or performance. As a result, products and services Customer receives may differ from those ordered. However, Dell branded, EMC branded, and Dell EMC branded Products will materially meet or exceed all published specifications for the Products. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned.
- C. **Cancellation, Returns and Acceptance.** Orders for are subject to availability and are cancellable only by Supplier except as expressly permitted in a Product Schedule. Supplier is not responsible for pricing, typographical, or other errors in any offer and may cancel Orders affected by such errors. Customer may only return Products to the Supplier that are permitted to be returned pursuant to the return policy located at www.Dell.com/returnspolicy. All Equipment, Software and Independent Software are deemed accepted by Customer upon Delivery. Even though Customer accepts Products as stated in the prior sentence, Customer retains all rights and remedies set forth in the applicable Product warranty.
- D. **Risk of Loss; Title.** Risk of loss for sold Equipment and licensed Software and Independent Software transfers to Customer upon Delivery. Title to Equipment passes to Customer upon Delivery. Title to Software and Independent Software does not pass to Customer. Software and Independent Software are only licensed to Customer and not sold. Unless otherwise agreed, Supplier will choose the common carrier. Customer must notify Dell within twenty-one days of the invoice date if Customer believes any Product or Software included in its Order is missing, wrong, or damaged.
- E. **Taxes.** Customer is responsible for payment of any sales, use, value added, GST, and any other similar taxes or governmental fees associated with Customer's Order, except for taxes based on Supplier's net income, gross revenue, or

employment obligations. Customer must also pay all freight, insurance, and applicable taxes (which may include but shall not be limited to import or export duties, sales, use, value add, and excise taxes). If Supplier is obligated by applicable law to collect and remit any taxes or fees, then Supplier will add the appropriate amount to Customer's invoices as a separate line item.

If Customer qualifies for a tax exemption, Customer must provide Supplier with a valid certificate of exemption or other appropriate proof of exemption. If Customer is required by law to make a withholding or deduction from payment, Customer will make payments to Supplier net of the required withholding or deduction, and will provide to Supplier satisfactory evidence (e.g., official withholding tax receipts) that Customer has accounted to the relevant authority for the sum withheld or deducted. If Customer does not provide the information within sixty days of remittance to the applicable tax authority, Supplier will charge Customer for the amount that Customer deducted for the transaction.

F. **Orders Submitted Through Channel Partners.** If Customer's purchase is made through a reseller, then the foregoing sections 2A, 2C, 2D, 2E, and 2F do not apply and all credit, invoicing, payment, returns, ordering, and cancellation terms for the purchase will be as agreed between Customer and the reseller.

G. **Third Party Products, EMC Select and Brokerage Products.** Customer may purchase Third Party Products through Suppliers. The terms governing Customer's use of Third Party Products are as follows:

H (1). The third party manufacturer's standard end-user terms, including warranty, indemnification, and technical support and maintenance terms and conditions, apply unless Customer has an applicable separate negotiated agreement with the third party manufacturer for the Third Party Product, in which case that negotiated agreement will govern.

Suppliers have no liability to Customer for any damages that arise out of or relate to Third Party Products. **Suppliers provide Third Party Products "AS IS", make no express warranties, and disclaim all implied warranties, including merchantability, fitness for a particular purpose, title, and non-infringement as well as any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade.**

H (2). Select and Brokerage Products. Suppliers sell certain products and services designated as "Select" or "Brokerage." Select and Brokerage products and services generally include Third Party Products, but may also include products manufactured by Supplier or its affiliates. Select products and services are designated "SEL" in the Supplier quote and are provided pursuant to the applicable terms identified for each manufacturer of Select products and services at this website: www.EMC.com/partnersalliances/programs/select.jsp Brokerage products and services are designated "Brokerage" or similar descriptor in the Supplier quote and provided pursuant to the applicable terms and conditions accompanying such Brokerage products and services.

Notwithstanding the above, Supplier will be responsible under the AGREEMENT for Select and Brokerage products and services that are: (i) "Dell", "EMC" or "Dell EMC" branded, or (ii) provided by an affiliate of Supplier and expressly described in a Product or Service Schedule to this Attachment 5.

3. SOFTWARE LICENSE TERMS

Independent Software is subject to the terms stated in Product Schedule 1 to this Attachment 5 ("Infrastructure Product Terms"). However, if no such Infrastructure Product Terms are included in the Attachment 5 or if the software provisions contained in the Infrastructure Product Terms were removed in their entirety by mutual agreement among Supplier and Customer then Independent Software is subject to the terms at www.Dell.com/eula Software that Supplier provides pre-installed on or that only operates on Equipment is subject to the end user license agreement that is included in or with the Software (e.g., in the box for the Product or in the Software's installer interface). If there is no end user license agreement included in or with the Software, then the Software is subject to the applicable end-user license agreement at www.Dell.com/eula

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

B. **Third Party Software License Terms.** Software for which Supplier is not the licensor ("Third Party Software") may come with its own license terms ("**Separate License Terms**"), such as a: (i) "click-to-accept" agreement included as part of the installation or download process; (ii) "shrink-wrap" agreement included in the Product packaging; or (iii) a notice indicating that by installing or using a Product or the component, the related license terms apply. The Separate License Terms govern Customer's use of Third Party Software. **Suppliers provide Third Party Software "AS IS", make no express warranties, and disclaim all implied warranties, including merchantability, fitness for a particular purpose, title, and non-infringement as well as any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade.**

4. EQUIPMENT WARRANTY, EXCLUSIONS, AND DISCLAIMERS

- A. **Equipment Warranty.** The warranties for Equipment are stated in the applicable Product Schedules to Attachment 5.
- B. **Equipment Warranty Exclusions.** Equipment warranties do not cover problems that arise from: (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Equipment is used or other causes beyond Supplier's control; (iii) installation, operation, or use not in accordance with Supplier's instructions or applicable Documentation; (iv) use in an environment, in a manner, or for a purpose for which the Equipment was not designed; (v) modification, alteration, or repair by anyone other than Supplier or its authorized representatives; or (vi) causes attributable to normal wear and tear. Supplier has no obligation for Software installed or used beyond the licensed use, for Equipment that Customer moved from the Installation Site without Supplier's consent when applicable, or Product whose original identification marks have been altered or removed or for any Software for which payment has not been received. Products and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the Products or Services could lead directly to death, personal injury, or physical or property damage (collectively, "High-Risk Activities"). Suppliers expressly disclaim any express or implied warranty of fitness for High-Risk Activities.
- C. **Equipment Warranty Disclaimer. Other than the warranties set forth in this Section 4 and the Product and Service Schedules, and to the maximum extent permitted by applicable law, Suppliers and Affiliates, and their Providers: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title, and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade.**

5. INDEMNITY

- A. **Supplier Indemnity.** Supplier will: (i) defend Customer against any third-party claim that Products and Support Services (but excluding Third-Party Products, any Products provided for evaluation or without charge pursuant to a Schedule, and open source software) infringe that party's patent, copyright, or trade secret enforceable in the country where Customer purchased the Product from Supplier ("**Claim**"); and (ii) indemnify Customer by paying: (ii)(a) the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (ii)(b) the amounts stated in a written settlement negotiated and approved by Supplier.

In addition, should any Product or Support Service become, or in Supplier's opinion be likely to become, the subject of a Claim, Supplier may, at its expense and in its discretion: (i) obtain a right for Customer to continue using the affected Product or Support Service; (ii) modify the affected Product or Support Service to make them non-infringing; (iii) replace the affected Product or Support Service with non-infringing substitutes; (iv) provide a reasonable depreciated or pro rata refund for the affected Product; or (v) discontinue the Support Services and refund the portion of any pre-paid Support Service fees that corresponds to the period of Support Services discontinuance. Except as otherwise provided by law, this Section 6 states Customer's exclusive remedies for any third party intellectual property claim relating to Products and Support Services, and nothing in this Attachment or elsewhere will obligate Supplier to provide any greater indemnity.

- B. **Exclusions from Indemnity.** Supplier has no obligation under Section 5A above: (i) if Customer is in material breach of Agreement; or (ii) for any Claim resulting or arising from:
- (ii)(a) any combination, operation or use of a Supplier-branded Product or Support Service with any other products, services, items, or technology, including Third-Party Products and open source software;
 - (ii)(b) use for a purpose or in a manner for which the Product or Support Service was not designed, or use after Supplier notifies Customer to cease such use due to a possible or pending Claim;
 - (ii)(c) any modification to the Product or Support Service made by any person other than Supplier or its authorized representatives;
 - (ii)(d) any modification to the Product or Support Service made by Supplier pursuant to instructions, designs, specifications or any other information provided to Supplier by or on behalf of Customer;
 - (ii)(e) use of any version of a Product when an upgrade or newer iteration of the Product or Support Service made available by Supplier would have avoided the infringement;
 - (ii)(f) services provided by Customer (including Claims seeking damages based on any revenue Customer derives from Customer's services); or
 - (ii)(g) any data or information that Customer or a third party records on or utilizes in connection with the Supplier-branded Products (collectively, the "**Excluded Claims**").
- C. **Indemnification Process.** A party's duty to defend and indemnify under this section is contingent upon the party seeking indemnity: (i) sending prompt written notice of the matter to the party providing indemnity and taking reasonable steps to mitigate damages; (ii) granting to the party providing indemnity the sole right to control the defense and resolution of the matter; and (iii) cooperating with the party providing indemnity in the defense and resolution of the matter and in mitigating any damages.
- D. **Excluded Data.** "**Excluded Data**" means: (i) data that is classified, used on the U.S. Munitions list (including software and technical data) or both; (ii) articles, services, and related technical data designated as defense articles and defense services; and (iii) ITAR (International Traffic in Arms Regulations) related data. Customer acknowledges that products and services provided under the AGREEMENT are not designed to process, store, or be used in connection with

Excluded Data. Customer is solely responsible for reviewing data that will be provided to or accessed by Suppliers to ensure that it does not contain Excluded Data.

Furthermore, products in their default configurations may not be optimized to process, store or transmit personally identifiable information that is subject to heightened security requirements as a result of Customer's internal policies or practices or by law. Customer is solely responsible for compliance with heightened security requirements mandated by its own internal policies and by law.

6. LIMITATION OF LIABILITY

- A. **Limitations on Damages.** The limitations, exclusions and disclaimers stated below apply to all Disputes (as defined in below in the Section titled "Governing Law; Informal Dispute Resolution; Attorney's Fees". The terms of this Section are agreed allocations of risk constituting part of the consideration for Suppliers' and its Affiliates' sale of products and services to Customer and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless whether a party has been advised of the possibility of the liabilities.
- A. (1). **Limitation on Direct Damages.** Except for Customer's obligations to pay for products and services, Customer's violation of the restrictions on use of products and services or Supplier's or its Affiliates' intellectual property rights, or a party's indemnity obligation stated in the Section above titled "Indemnity", each party's total liability arising out of any Dispute or any matter under this agreement, is limited to the amount Customer paid to Supplier during the twelve months before the date that the matter or Dispute arose for the product, services, or both that are the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes.
- A. (2). **No Indirect Damages.** Except for Customer's payment obligations and violation of Suppliers' or its Affiliates' intellectual property rights, neither Supplier nor Customer has liability to the other for special, consequential, exemplary, punitive, incidental, or indirect damages, or for lost profits, loss of revenue, loss of data, or loss of use, or procurement of substitute products or services.
- B. **Regular Back-ups.** Customer is solely responsible for its data. Customer must back up its data before Supplier performs any remedial, upgrade, or other work on Customer's production systems. If applicable law prohibits exclusion of liability for lost data, then Supplier will only be liable for the cost of the typical effort to recover the lost data from Customer's last available back-up.
- C. **Limitation Period.** Except as stated in this Section, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within eighteen months after the cause of action accrues.

7. CONFIDENTIALITY

"**Confidential Information**" is any information, technical data, or know-how furnished, whether in written, oral, electronic, website-based, or other form, by the discloser to the recipient that: (i) is marked, accompanied, or supported by documents clearly and conspicuously designating the documents as "confidential", "internal use", or the equivalent; (ii) is identified by the discloser as confidential before, during, or promptly after the presentation or communication; or (iii) should reasonably be known by recipient to be confidential.

This AGREEMENT imposes no obligation upon a recipient with respect to information designated as confidential which: (i) the recipient can demonstrate was already in its possession before receipt from the discloser; (ii) is or becomes publicly available through no fault of the recipient or its Representatives (defined below); (iii) is rightfully received by the recipient from a third party who has no duty of confidentiality; (iv) is disclosed by the discloser to a third party without a duty of confidentiality on the third party; or (v) is independently developed by the recipient without a breach of the AGREEMENT.

If a recipient is required by a government body or court of law to disclose Confidential Information, to the extent permitted by law, the recipient agrees to give the discloser reasonable advance notice so that the discloser may contest the disclosure or seek a protective order. Recipient will use Confidential Information only for the purpose of and in connection with the evaluation of a potential, or continuation of, a business transaction or relationship between the parties. Recipient may disclose Confidential Information to its directors, officers, employees, and employees of its Affiliates, as well as its and its Affiliates' contractors, advisors, and agents, so long as those individuals have a need to know in their work for recipient in furtherance of the potential or continued business transaction or relationship, and are bound by obligations of confidentiality at least as restrictive as those imposed on recipient in this AGREEMENT (collectively, "**Representatives**"). Recipient is fully liable for any breach of this AGREEMENT by its Representatives. Recipient will use the same degree of care, but no less than reasonable care, as the recipient uses with respect to its own similar information to protect the Confidential Information. Recipient may only disclose Confidential Information as authorized by this AGREEMENT. The terms of this AGREEMENT do not restrict the right of recipient to independently design, develop, acquire, market, service, or otherwise deal in, directly or indirectly, products or services competitive with those of the discloser so long as the recipient does not use any of the discloser's Confidential Information for those activities. Unless the parties otherwise agree in writing, a recipient's duty to protect Confidential Information expires three years from the date of disclosure. However, subject to the terms of this Section, the obligation to protect technical information about a discloser's current products and services and all information about possible unreleased products or services never expires. Upon the discloser's written request, recipient will promptly return or destroy all Confidential Information received from the discloser, together with all copies. Notwithstanding the above, recipient's professional advisors (e.g., lawyers and accountants) may retain in confidence one file copy of their respective work papers and final reports in accordance with their professional and ethical obligations.

8. MISCELLANEOUS

- A. **References.** Supplier may identify Customer as a user of Products, Services, or both, as applicable.
- B. **Customer and System Data.** In connection with Supplier's performance or Customer's use of the Services and Service Software, Supplier may obtain, receive, and/or collect data, including system-specific data (collectively, the "Data"). Customer grants Suppliers: (i) a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to provide the Services or use the Service Software; (ii) a license to aggregate and use the Data in an anonymous manner in support of Supplier's marketing and sales activities; and (iii) the right to copy and maintain the Data on Supplier's or its suppliers' servers as necessary to provide the Services. Customer represents and warrants that it has obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which Customer is located.
- C. **Notices.** The parties will provide all notices under this AGREEMENT in writing. Customer must provide notices to Suppliers, at the Dell email address on the first page of the AGREEMENT and, if applicable, Supplier or its Affiliate's address as stated in a Schedule.
- D. **Excused Performance.** Except for payment of amounts due and owing, neither Supplier nor Customer will be liable for failure to perform its obligations during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond that party's reasonable control.
- E. **Assignment.** Customer may not assign the Agreement, a Supplier's quote, or an Order, or any right or obligation under the Attachment, or delegate any performance, without Supplier's prior written consent, which will not be unreasonably withheld (except an assignment of Customer's Order to Dell Financial Services, LLC, which does not require consent).
- F. **Trade Compliance.** Customer's purchase of Products or Services and access to related technology (collectively, the "Materials") are for its own use, not for resale, export, re-export, or transfer. Customer is subject to and responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions. Materials may not be used, sold, leased, exported, imported, re-exported, or transferred except with Supplier's prior written authorization and in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use, and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States or other applicable jurisdictions.
- G. **U.S. Government Restricted Rights.** The software and documentation provided with the products and services are "commercial items" as that term is defined at 48 C.F.R. 12.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth herein. Contractor/manufacturer of Dell-branded Software and Dell-branded Products is Dell Products L.P., One Dell Way, Round Rock, Texas 78682.
- H. **Entire Agreement.** The Attachment 5 (including the General Terms and Product and Service Schedules, and other online terms referenced in the Attachment 5), and, if Customer is directly purchasing from Supplier, the Supplier's quote, and each Order: (i) comprise the complete statement of the agreement of the parties with regard to its subject matter; and (ii) may be modified only in a writing signed by Customer and Supplier. All terms of any Customer Order, including but not limited to (a) any terms that are inconsistent or conflict with this AGREEMENT, a Supplier quote, or both, and (b) any pre-printed terms on any Customer Order or other Customer form, have no legal effect and do not modify or supplement the Attachment 5, even if Supplier does not expressly object to those terms when accepting a Customer Order. Each Service Agreement will be interpreted independent of any other Service Agreement. Hardware, software and service schedules, including but not limited to those identified below, may be introduced to this Agreement upon express agreement of Supplier(s) and Customer.
- Product Schedules:**
- Product Schedule 1 – Infrastructure Product Terms
 - Product Schedule 2 – Networking Product and Server Product Terms
 - Product Schedule 3 – Client Product Terms
 - Product Schedule 4 – Pivotal Product Terms
- Service Schedules:**
- Service Schedule A – General Support Services Terms
 - Service Schedule B – General Professional Services Terms
 - Service Schedule C - Pivotal Professional Services Terms
- I. **Conflicts.** If there is a conflict between any Service Agreement and this Attachment 5, the terms of the Service Agreement will take precedence, and in the event of any conflicts between a Product or Service Schedule and the General Terms, the Product or Service Schedule will prevail. In the event that a subject is addressed in both the Supplier Software license agreement provided in or with the Software and the Attachment or in any Product or Service Schedule, then the corresponding provision of the Supplier Software license agreement will prevail. No party is relying upon the representations of statements of the other that are not fully expressed in this Agreement, and each party expressly

disclaims reliance upon any representations or statements not expressly set forth in this Agreement. Cloud services (includes any service made available to users through the Internet from a computing provider's servers as opposed to being provided from Customer's own on-premises servers), such as software-as-a-service and storage-as-a-service, that Customer orders from Supplier are provided pursuant to the Cloud Services Terms of Services located at www.Dell.com/dellemcloudterms or Customer's separate signed cloud services agreement with Supplier, when applicable, and not this Attachment 5.

PRODUCT SCHEDULE 1

Infrastructure Product Terms

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

1. DEFINITIONS

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

- A. **"Infrastructure Products"** means Equipment that comprises data storage and converged function data management products and their related Software, including but not limited to PowerMAX/VMAX, Unity, SC, Vblock, VxBlock, VxRack, and VxRAIL Products, and Independent Software (e.g., back-up and recovery software).
- B. **"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.
- C. **"Product Notice"** means the information related to Equipment, Software, Independent Software, and Services posted at an EMC 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 Customer 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 Customer 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.
- D. **"Support Services"** when used in this Schedule and applied to Infrastructure Products means the Services identified on the table located at <http://www.emc.com/collateral/warranty-maintenance/h4276-emc-prod-warranty-maint-table.pdf> Support Services for SC Series Products are stated at www.dell.com/servicecontracts/global Support Services for Infrastructure Products that are "Converged Infrastructure Products" are stated at <http://www.dellemc.com/en-us/converged-infrastructure/support/support-service-descriptions.htm>

2. INDEPENDENT SOFTWARE LICENSING

- A. **General License Grant.** Subject to Customer's compliance with the terms of the AGREEMENT, Supplier grants to Customer a non-exclusive, non-transferable (except as stated in section 3A ("Movement of Software") below) license to use the Independent Software and Documentation during the period of the license for Customer's internal business operations. Unless otherwise indicated in this AGREEMENT or the applicable Supplier quote or invoice, licenses for Independent Software are perpetual for use of object code only, and commence on Delivery. Use of Independent Software may require Customer to complete Supplier's then-current product registration process and input a license key. Software Releases are subject to the license terms applicable to Independent Software. Supplier reserves all rights not expressly granted.
- B. **Copying Permitted.** Customer may copy the Independent Software and Documentation as necessary to install and run the quantity of copies licensed and for back-up and archival purposes.
- C. **License Restrictions.** Without the applicable Supplier's prior written consent, Customer must not, and must not allow any third party to: (i) use Independent Software in an application services provider, service bureau, or similar capacity; (ii) disclose to any third party the results of any comparative or competitive analyses of Independent Software done by or on behalf of Customer; (iii) make available Independent Software to anyone other than Customer's employees or contractors who will use the Independent Software on behalf of Customer in a manner permitted by this AGREEMENT; (iv) transfer or sublicense Independent Software or Documentation to an affiliate or any third party; (v) use Independent Software in conflict with the terms and restrictions specified in this Schedule and Service Schedules and the Supplier quote or invoice; (vi) except to the extent permitted by applicable law, modify, translate, enhance, or create derivative works from the Independent Software, or reverse assemble or disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Independent Software; (vii) remove any copyright or other proprietary notices on or in any copies of Independent Software; (viii) violate or circumvent any technological use restrictions in the Independent Software; (ix) use the Independent Software to create a competitive offering; or (x) create Internet "links" to the Independent Software or "frame" or "mirror" the Independent Software.
- D. **Records and Audit.** During the Independent Software license term and for two years after its expiration or termination, Customer will maintain accurate records of its use of the Independent Software sufficient to show compliance with this AGREEMENT. During this period, Supplier or its auditors may request that Customer certify in writing that its use of the Independent Software is in compliance with this AGREEMENT, audit Customer's use of Independent Software to confirm compliance, or both. Supplier will provide Customer with reasonable notice and conduct the audit during Customer's normal business hours and will not unreasonably interfere with Customer's business activities when performing the audit. Supplier

may conduct no more than one audit in any twelve-month period. Customer must reasonably cooperate with the audit and must, without prejudice to Supplier's other rights, promptly procure additional licenses needed to put Customer in compliance with the AGREEMENT. Customer must promptly reimburse Supplier for all reasonable costs of the audit if the audit reveals either that Customer underpaid Independent Software fees by more than five percent for the period audited, or that Customer did not maintain substantially accurate Independent Software use records.

- E. **Termination of License.** Supplier may terminate licenses for cause if Customer breaches the terms governing use of Independent Software and fails to cure within thirty days after receipt of Supplier's written notice of breach. Customer must cease all use, and return or certify destruction of, all terminated Independent Software licenses.
- F. **Licensing Models.** Supplier licenses Independent Software for use only in accordance with the commercial terms and restrictions of the Independent Software's relevant software licensing model, which are stated in the Product Notice, the Supplier quote, or both. For example, the licensing model may provide that Independent Software is licensed for use solely: (i) for a certain number of licensing units; (ii) on or in connection with a certain piece of equipment, CPU, network, or other hardware environment; or (iii) for a specified amount of storage capacity.

3. ADDITIONAL TERMS FOR INFRASTRUCTURE PRODUCTS

- A. **Movement of Software.** If Customer is current in the payment of the applicable Support Services fee, Customer may, to the extent technologically compatible and not otherwise prohibited by the licensing terms, discontinue all use of the Software or Independent Software on the hardware or network environment for which it was originally licensed and begin the corresponding use of that Software or Independent Software on a different, Customer-owned or controlled hardware or network environment, provided that Customer: (i) gives Supplier advance, written notice of the move; and (ii) pays the applicable transfer fee, upgrade fee, or both that Supplier may assess for the move.
- B. **Equipment Replacements.** All replaced Equipment (or portions of Equipment) from any Infrastructure Products will become Supplier's property upon Customer's receipt of the corresponding replacement. Customer must return the replaced Equipment (or portions of Equipment) promptly upon Supplier's request. If Customer does not return the replaced Equipment or replaced portions within fifteen days after receipt of Supplier's request, then Customer must pay Supplier's then-current spare parts list price for the Equipment or portions that Customer failed to return.
- C. **Installation.** Customer must ensure that: (i) the Installation Site meets the specifications for Infrastructure Products including, without limitation, the Equipment's specifications for power and cooling; (ii) the surfaces over which the Equipment will travel at Customer's location between the carrier delivery point and the final location at the Installation Site meet the weight specifications for the Equipment; and (iii) Supplier has the contact information for a responsible single point of contact at the Installation Site.

4. WARRANTIES

The limited warranties stated below are subject to the exclusions and disclaimer stated in section 6 of the AGREEMENT.

- A. **Equipment and Software Media Warranty.** Unless stated otherwise in the Product Notice, Supplier warrants to Customer that: (i) Equipment and upgrades installed into that Equipment, when purchased from Supplier and operated with normal usage and regular recommended service; and (ii) any physical media for Software or Independent 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 Supplier's quote. Unless otherwise noted on the Product Notice or Supplier quote, the warranty coverage for the microcode, firmware and operating system software that enables Equipment to perform as described in its Documentation will be no less than that which applies to the applicable Equipment. To the extent specified on the Product Notice and unless stated otherwise in the quote, Support Services in the form of the Support Option (as defined in Service Schedule A to this AGREEMENT) noted on the Product Notice are included free of charge during the warranty period for Equipment. In some cases, Supplier may offer an upgrade option for Support Services during the Equipment warranty period for separate purchase.

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

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

A. (3). Equipment and Software Media Warranty Remedies. If Customer notifies Supplier of a warranty claim during the applicable warranty period, then Supplier will, at its option, either remedy the non-compliance or replace the affected Equipment with new or refurbished parts at Supplier's discretion or applicable Software or Independent Software media. If Supplier is unable to repair or replace the affected Equipment or media within a reasonable time, then Customer will return the Equipment or media to Supplier, and Supplier will give Customer a refund of the amount Customer paid for the affected Equipment or media as depreciated on a straight line basis over a five year period. Customer must return to Supplier the applicable defective Equipment or media, or portions of those items, and those items become Supplier's property. If Customer receives a replacement but does not return the defective item to Supplier, then Customer must pay Supplier's then-current spare parts price for the replacement item. Supplier has no liability under these warranty terms for defects in Equipment and media after expiration of the applicable warranty period. This section states Supplier's entire liability and Customer's exclusive remedies under warranties for the Equipment and Software and Independent Software media described in section 4A and its sub-parts.

- B. **Independent Software Warranty, Duration, and Remedy.** Supplier warrants to Customer that the Independent Software will, for ninety days following Delivery (“**Independent Software Warranty Period**”), substantially conform to the applicable Documentation. This limited warranty is not transferable. Customer must report errors to Supplier during the Independent Software Warranty Period to invoke this warranty. In response to Customer’s error notice, Supplier will, at its own expense, either replace that Independent Software or correct any reproducible error. If Supplier determines that it is reasonably unable to correct the error or replace the Independent Software, Supplier will refund to Customer the amount Customer paid for that Independent Software, and Customer’s license for that Independent Software will terminate. This section states Supplier’s sole obligation and Customer’s exclusive remedy under the Independent Software warranty. This disclaimer of warranty may not be valid in some jurisdictions, and Customer may have warranty rights under law which may not be waived or disclaimed. Any law-based warranty extends only for thirty days from the date of Delivery (unless local law provides a different duration).
- B. (1). Independent Software Warranty Exclusions.** Independent Software warranties do not cover problems that arise from: (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Independent Software is used or other causes beyond Supplier’s control; (iii) installation, operation or use not in accordance with Supplier’s instructions or applicable Documentation; (iv) use in an environment, in a manner, or for a purpose for which the Independent Software was not designed; or (v) modification, alteration, or repair by anyone other than Supplier or its authorized representatives. Supplier has no obligation for Software installed or used beyond the licensed use, for Equipment that Customer moved from the Installation Site without Supplier’s consent when applicable, or whose original identification marks have been altered or removed.
- B. (2). Independent Software Warranty Disclaimer.** *Other than the warranties set forth in this section and the Product and Service Schedules, and to the maximum extent permitted by applicable law, Suppliers and their Affiliates, and their Providers: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title, and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade.*

5. EVALUATION, RENTAL, AND LOAN TRANSACTIONS FOR INFRASTRUCTURE PRODUCTS

- A. **General.** This section 5 applies unless Customer has a specific agreement with Supplier for the purpose of evaluating, renting or loaning Infrastructure Products, in which case the specific agreement will apply. The AGREEMENT applies to “**Evaluation Products**” (meaning Infrastructure Products that Supplier makes available directly to Customer for a limited period of time at no charge to enable Customer to evaluate the Infrastructure Products prior to making a final decision on licensing or purchasing), “**Loaned Products**” (meaning Infrastructure Products that Supplier makes available directly to Customer for a limited period of time at no charge), subject to the following provisions, and “**Rental Products**” (meaning Infrastructure Products that Supplier makes available directly to Customer for a limited period of time at a specific charge for that period of time).
- B. **Schedule Content.** The Infrastructure Products, period of use, Installation Site, and other transaction-specific conditions will be stated in an evaluation, loan, or rental schedule referencing this AGREEMENT.
- C. **Right to Use.** Customer may use Evaluation Products and Loaned Products free of charge, but, in the case of Evaluation Products, solely for the purpose of evaluating those Products and not in a production environment. Customer may use Rental Products for Customer’s lawful internal business purposes for an agreed-upon monthly rental fee. ***Evaluation, Loaned, and Rental Products are provided “AS IS” and without any warranty.*** If Customers put any Customer data into Evaluation, Loaned, or Rental Products, then Customer is responsible for backing up that data.
- D. **Title.** Supplier retains title to Evaluation, Loaned, and Rental Products. Notwithstanding any deviating terms in a “click-to-accept” or “shrink-wrap” license, all licenses to use Software and Independent Software expire at the end of the evaluation, loan, or rental period.
- E. **Risk of Loss.** The risk of loss or damage to any Evaluation, Loaned, and Rental Product passes to Customer upon Delivery and remains with Customer until these Products arrive at Supplier’s specified return location. Customer is solely responsible for Customer’s data and bears all risk of data loss. Customer is also responsible, at its cost, for de-installation of any data storage devices placed into Customer’s existing Infrastructure Products and for erasure of any data stored in Evaluation, Loaned, and Rental Products. Customer must provide reasonable insurance coverage for Evaluation, Loaned, and Rental Products during the period in which Customer bears the risk of loss.
- F. **Return.** Customer must promptly return Evaluation, Loaned, and Rental Products upon expiration of the agreed period or within thirty days of Supplier’s notice of termination for convenience, whichever occurs first. Supplier will automatically invoice Customer for the purchase price of any Evaluation, Loaned, or Rental Products that Customer does not return on time. Before Customer returns Evaluation, Loaned, and Rental Products to Supplier, Customer must permanently erase any Customer data that Customer put in those Products. Customer may purchase Evaluation Products any time prior to the end of the evaluation period.
- G. **Exclusion.** The SC brand storage products are not subject to the terms of this section 5. Customer should contact the applicable Supplier sales representative regarding evaluation of the SC brand storage products.

PRODUCT SCHEDULE 2

Networking Product and Server Product Terms

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

1. DEFINITIONS

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

- A. **“Configuration and Deployment Services”** means (i) standard deployment services, such as Basic Deployment Services, ProDeploy or ProDeploy Plus services, as described in the corresponding Service Descriptions, available at 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, Asset Reporting, standard System Configuration services (BIOS Settings, Hard Drive Partitioning, Application Installation and Operating System Settings). Configuration and Deployment Services for Networking Products and Server Products are subject to the applicable Service Agreement(s).
- B. **“Networking Products”** means the Dell-branded Equipment and Software, including Networking Products listed at <http://www.dell.com/en-us/work/shop/networking/sc/networking-products> purchased in a standard configuration, unless otherwise specified in any applicable Product-specific Documentation or Service Agreement(s), as set forth on the Supplier quote.
- C. **“Server Products”** means the Dell-branded Equipment and Software, including select PowerEdge Products listed at <http://www.dell.com/en-us/work/shop/dell-poweredge-servers/sc/servers>
- D. **“Support Services”** when used in this Schedule and applied to Networking Products and Server Products, means services to be performed by or on behalf of Supplier necessary to repair a defect in materials or workmanship of the applicable Product(s), and as further defined and described in the applicable Service Agreement(s).

2. WARRANTIES

The limited warranties for the Equipment portion of Networking Products and Server Products can be found at www.dell.com/warrantyterms or in the applicable Documentation.

3. ADDITIONAL TERMS

- A. **Service Agreements.** Support Services and the Configuration and Deployment Services are subject to the additional terms contained in the applicable Service Agreement(s). If there is a conflict between the terms of this Exhibit, the General Terms of the AGREEMENT, and any Service Agreement(s), the following order of precedence will apply: (i) the Service Agreement; (ii) this Exhibit; and (iii) the General Terms.
- B. **Whole Unit Replacement; Failure to Return; Service Part Ownership.** If Supplier determines that a component of the defective Networking Product or Server Product is one that is easily removed and replaced or disconnected and reconnected, or if the Supplier analyst determines that the Networking Product or Server Product is one that should be replaced as a whole system, Supplier reserves the right to send Customer 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 Customer, Customer must return the defective Networking Product, or Server Product, or component, as applicable, to Supplier within ten days of receiving the replacement, unless Customer has purchased “Keep Your Hard Drive” for the affected Networking Product or Server Product. In that event, Customer 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 Customer returns to Supplier. If Customer keeps a component or whole Networking Product or Server Product after Supplier has replaced it, then Customer must pay Supplier the then-current retail price for the component or whole Networking Product or Server Product, as applicable, that Customer keeps (except for hard drives from Networking Product or Server Products covered by “Keep Your Hard Drive” service). Supplier will invoice Customer for the whole Networking Product, Server Product, or components that Customer keeps and Customer will pay Supplier’s invoice within ten days of receipt. If Customer 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 Customer. Supplier uses and Customer expressly authorizes the use of new and reconditioned parts made by various manufacturers in performing repairs.
- C. **Parts Stocked; Mission Critical Parts.** Supplier currently stocks parts in various locations throughout the world. Selected parts may not be stocked in the location closest to Customer’s site. If a part that is needed to repair the Product is not available from a Supplier facility near Customer’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, Customer must purchase a corresponding Support Service Agreement that supports mission critical parts delivery, and the Product must be located within the Supplier-designated supported coverage area.
- D. **Other Service Exclusions.** In the course of performing Support Services, Supplier will not be responsible for: (i) providing performance assistance or administrative assistance, installation, de-installation, relocation, preventative maintenance, training assistance, remote administration, or any activities or services not expressly described in the applicable Service Agreement(s); (ii) providing media replacement, operating supplies, cosmetic accessories or parts such as frames, and cover or support on those items; (iii) removing malicious software; (iv) providing data backup; (v) providing advanced wireless networking or remote installation, set-up, or optimization and configuration of applications beyond those described

in the Service Agreement(s); (v) scripting, programming, database design and implementation, web development, or recompiled kernels; (vi) repairing damage or defects in Networking Products and Server Products which are purely cosmetic and do not affect device functionality; (vii) providing repairs that are necessary because: (a) Customer previously installed a Customer replaceable unit; or (b) someone other than Supplier or an authorized service provider previously altered, adjusted, or repaired the Networking Product or Server Product.

PRODUCT SCHEDULE 3

Client Product Terms

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

1. DEFINITIONS

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

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

2. CLIENT EQUIPMENT WARRANTY

The limited warranties for the Equipment portion of Client Products can be found at www.dell.com/warrantyterms or in the applicable Documentation for the specific Client Product.

3. ADDITIONAL TERMS

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

Customer expressly authorizes the use of new and reconditioned parts made by various manufacturers in performing repairs and in providing replacement parts. The obligation to return Supplier components removed from the Client Products do not apply to Customers that retain hard drives who have purchased "Keep Your Hard Drive" for the affected Client Product. In that event, Customer's service levels and obligations are governed by the Keep Your Hard Drive Service Agreement.

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

PRODUCT SCHEDULE 4

Pivotal Product Terms

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

1. DEFINITIONS

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

- A. **"Open Source Software"** means software components provided under a license approved by the Open Source Initiative or similar open source or freeware license and that are included in, embedded, utilized by, provided, or distributed with Pivotal Products.

- B. **“Pivotal Product(s)”** means (i) **“Pivotal Software”** which is any programming code that Supplier provides to Customer as a standard product. Pivotal Software will be designated in a Supplier quote using “Pivotal,” “PV,” or another identifier to indicate that the software is Pivotal Software; and (ii) **Pivotal Support Services** (defined below), or both.
- C. **“Pivotal Support Services”** means the services available from Supplier or its designee that: (i) contain the designation of “Pivotal,” “PV,” or another identifier on the quote to indicate support of Pivotal Software; and (ii) provide Software Releases and support and maintenance of Pivotal Software as set forth at <http://www.pivotal.io/support> The Pivotal Support Services terms at this link may be updated from time to time.
- D. **“Software Subscription”** consists of: (i) access to Pivotal Software and Documentation, subject to the licensing terms and restrictions set forth in the applicable Product Guide (defined below); and (ii) Pivotal Support Services, which include any new Pivotal Product and upgrades introduced with respect to the Software Subscription set forth in the quote on a “when-and-if-available” basis during the Subscription Period.
- E. **“Subscription Period”** means the period commencing on the date that Supplier either: (i) ships the physical media to Customer; or (ii) sends a notification that the Pivotal Software is available for electronic download, and continues for the period specified on the quote.

2. ADDITIONAL TERMS

- A. **License Provisions.** The parties incorporate by reference the applicable terms of the product-specific use rights and restrictions of the Pivotal Product’s relevant licensing model, currently located at <http://www.pivotal.io/product-guide> (**“Product Guide”**). Even if Supplier delivers Open Source Software to Customer, that Open Source Software is subject solely to its applicable third party licensor’s own license terms, which can be found in the open_source_licenses.txt file included in the Pivotal Software, the Documentation, or as applicable, the corresponding source files for the Pivotal Software currently available at www.network.pivotal.io/open-source Customer is responsible for complying with any third party licensor terms and conditions applicable to the Open Source Software.
- B. **Subscription Provisions.** If a quote or order includes a Software Subscription (which is subject to a non-cancelable and non-refundable fee), then the terms in this section 2B also apply. At least sixty days before expiration of the Subscription Period, Supplier will notify Customer of its option to renew for one additional year. At Customer’s option, Customer can renew the Software Subscription at the end of the Subscription Period for one additional year at the same annual rate stated in the quote or order plus 5%. If Customer does not notify Pivotal at least thirty days before expiration of the Subscription Period of Customer’s intent to renew, the Software Subscription will expire at the end of the Subscription Period. Customer agrees to cease using Pivotal Software at the expiration of the Subscription Period (plus any renewal) and will certify cessation of use to Supplier.

3. AMENDED TERMS

For purposes of this Section 3, references to Supplier are deemed to include Supplier’s subsidiaries and affiliated companies currently known as Pivotal Software, Inc., Pivotal Software International, or both.

- A. Section 6B of the AGREEMENT, entitled “Exclusions from Indemnity,” is amended by adding the following to the list of circumstances for which Pivotal, as a Supplier, disclaims liability for infringement:
“any Open Source Software (collectively, the **“Excluded Claims”**).”
- B. Section 7A(1) of the AGREEMENT, entitled “Limitation on Direct Damages” is amended by adding the following sentence at the end of the section:
“Supplier’s infringement indemnity to Customer regarding Pivotal Products arising under this AGREEMENT will be limited to an amount not to exceed US one million dollars.”

SERVICE SCHEDULE A

General Support Services Terms

This Schedule states the terms governing the provision of Support Services that apply to all Products other than Pivotal Products during or after the applicable warranty period, and are supplemented by terms stated in the Product Schedules attached to this Attachment 5 (as applicable to the Product type) or the applicable Service Agreement(s) for Networking, Server and Client Products only. The General Terms are incorporated by reference into this Exhibit. If there is a conflict between this Schedule and the General Terms, this Schedule controls. If there is any conflict between this Schedule and a Product Exhibit, the Product Schedule controls.

1. DEFINITIONS

All definitions set forth in the General Terms and in the Product Schedules apply to this Exhibit, in addition to the definitions stated below.

- A. **“Customer Support Tools”** means any software or other tools Supplier makes available to Customer to enable certain service features of Products (as applicable) and to enable Customer to perform various self-maintenance activities.
- B. **“EMC Service Area”** means the area that is within: (i) one hundred drivable miles of an EMC service location for Infrastructure Products; and (ii) the same country as the EMC service location.
- C. **“Maintenance Aids”** mean any hardware, software or other tools, other than Customer Support Tools, that Supplier uses to perform diagnostic or remedial activities on Products.
- D. **“Time and Materials Service”** means any maintenance or support service that Supplier provides but is not part of fixed-fee Support Services or other Supplier generally available service-related offering using a pre-established fee. Supplier charges separately for Time and Materials Services on a time and materials basis and may include a separate set of Time and Materials terms and conditions.

2. SUPPORT SERVICES

- A. **Scope.** The contents of Support Services for each Product (the **“Support Option”**) are set forth in the Product Notice or the Service Agreement(s), and unless otherwise indicated in the Product Notice or Supplemental Support Terms, consist of: (i) for Infrastructure Products, using commercially reasonable efforts to remedy failures of Infrastructure Products to remedy failures to perform substantially in accordance with Supplier’s applicable Documentation; (ii) for Client Products, Server Products, and Networking Products, using commercially reasonable efforts to repair or replace defects in workmanship or materials; (iii) providing English-language (or, where available, local language) help line service via telephone or other electronic means; and (iii) enabling Customer 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 days’ prior written notice to Customer, and to change the scope of Support Services for Server Products, Networking Products, and Client Products without notice.
- B. **Additional Support.** Supplier reserves the right to charge for Support Services performed outside the time frames of the applicable Support Option as a Time and Materials Service. Except to the extent that Support Services are independent of the Equipment’s location, Supplier will have no obligation to provide Support Services for Infrastructure Products with respect to Equipment that is outside the EMC 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 Customer’s facility. Support Services do not include the supply of Equipment upgrades, if any, needed to utilize new features or functionality in a Software Release.
- C. **Exclusions.** Support Services do not cover a problem that would have been excluded from coverage pursuant to section 4B (“Equipment Warranty Exclusions”) of General Terms had the problem arisen during the warranty period of the affected Product.
- D. **Reinstatement of Support.** Customer 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 Customer 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 months of the newly-commenced Support Services.

3. CUSTOMER RESPONSIBILITIES

- A. **Cooperation.** Customer will: (i) promptly notify Supplier when a Products 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. Customer will provide Supplier with timely access to and use of all Customer 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 Customer, Customer warrants that it shall, at no expense to Supplier, obtain all consents, licenses and sublicenses necessary for Supplier to perform under the Service Agreement(s)

and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses. Customer 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 Customer to obtain the consents, licenses or sublicenses necessary for Supplier to perform under the Service Agreement(s).

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

4. ADDITIONAL TERMS

- A. **Maintenance Aids and Spare Parts for Equipment.** Customer authorizes Supplier to store Maintenance Aids and spare parts at the Installation Site and agrees that these items are only for Supplier's use. Customer 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 Customer, to enter the Installation Site, or to use remote means to remove or disable Maintenance Aids and spare parts, as applicable. Customer will reasonably cooperate in this effort.
- B. **Customer Support Tools.** Supplier may choose to make Customer Support Tools available to assist Customer in performing various maintenance or support related tasks. Customer will use Customer Support Tools only in accordance with terms under which Supplier makes them available.
- C. **Service Data.** In connection with the performance and use of the Services, and Supplier's remote support capabilities detailed in section 3H ("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**"). Customer acknowledges and agrees 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 Customer's environment in fulfillment of Supplier's Support Services obligations; (ii) provide Customer with visibility to Customer's actual Product usage and consumption patterns and make recommendations to Customer regarding improvements to Customer's environment and utilization of the Services; (iii) utilize the Service Data in connection with predictive analytics and usage intelligence to consult with and assist Customer, directly or through the Supplier channel partner involved in supplying 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 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.
- D. **Data Security Options.** Customer must, at its own cost, 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. Customer must use a method that does not cause damage to Products or any replaced parts or any other items that Customer 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 Customer fails to erase that is on items sent to Supplier.
- E. **Proactive Product Changes.** Supplier may, at its expense, implement changes to the Products upon reasonable notice to Customer: (i) when 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. Customer will give Supplier reasonable access to the Products for these purposes.
- F. **Software Releases.** When Customer begins using a Software Release for a particular Product, Customer 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. Customer is authorized to retain a copy of each Software Release that Customer properly obtains for Customer's archive purposes and use them as a temporary back-up if the current Software Release becomes inoperable. Customer will use and deploy Software Releases only in accordance with terms of the original license for Software and Independent Software.
- G. **Change of Equipment Location or Configuration.** Customer may change the Installation Site or configuration of a Product under Support Services only after written notice to Supplier, and subject to the terms and conditions on this subsection. If the new location is in a different country, the move is subject to Supplier's prior written approval and additional fees may apply. Customer 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 conditions and rates. Additional charges, if any, related to changes in configuration or location of Equipment will apply from the date the change took place.
- H. **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. Customer may elect not to activate or to disable remote support capabilities, but Customer must notify Supplier of this election without undue delay. If Customer chooses to

disable or to not activate the remote support capabilities, then, with regard to all Products affected by this choice: (i) Supplier may assess Customer a surcharge in accordance with Supplier'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 Equipment.** For Infrastructure Products, Supplier does not restrict Customer from making alterations to, or installing other products in or with, the Equipment at Customer's expense. For Client Products, Server Products and Networking Products, Customer may only install Third Party Products or components that Supplier provides or otherwise authorizes for installation in those Products. If Customer installs items contrary to the immediately preceding sentence, then Supplier may not be able to provide Support Services. For all Products, Customer is responsible for any inspection fees, additional charges, or both resulting from the activities described in this section. If the alterations or attachments prevent or hinder Supplier from performing Support Services, then Customer will, upon Supplier's request, take corrective action. Customer's failure to take appropriate corrective action will be deemed a breach of this Exhibit.
- J. **Transfer of Equipment to Secondary Purchasers.** If Customer decides to sell, assign, or otherwise transfer the use, ownership, or both of Equipment to a "**Secondary Purchaser**" (meaning a bona fide end user that: (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 Customer, 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.
- K. **Software Support Services affected by Change in Equipment Status.** For Software used on or operated in connection with Equipment that ceases to be covered by Support Services or the Supplier Equipment warranty, Supplier reserves the right to send Customer 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 Customer rejects or does not respond to the notice of a proposed price change within thirty days after receipt, Customer will be deemed to have terminated the Software Support Services for its convenience and the terms of section 7 C 2 below will apply.
- L. **Third Party Product Provided to Supplier.** If Customer provides or makes available Third Party Products, including any intellectual property developed by Customer, for Supplier to use in connection with Services, Customer: (i) authorizes Suppliers to use the Third Party Products as needed to provide the Support Services; (ii) warrants that it has all consents, licenses, and sublicense rights as may be necessary to make these Third Party Products available to Suppliers; and (iii) agrees that Suppliers are not liable to Customer if Supplier's authorized use causes warranties or other services contracts for these Third Party Products to become void.

5. PRICING

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

6. SUPPORT SERVICES WARRANTY

- A. **Support Services.** Supplier will perform the labor portion of Support Services in a workmanlike manner in accordance with generally accepted industry standards. Customer will notify Supplier of any failure to perform as stated in the prior sentence as soon as reasonably possible, and in no event more than ten days after the date on which the failure first occurs. A replacement part receives the remainder of the warranty or Support Services coverage applicable to the Infrastructure Product containing the replacement part.
- B. **Customer Remedies.** Customer's exclusive remedy and Supplier's entire liability under the warranty stated in sub-section A above will be for Supplier to, at its option: (i) use reasonable efforts to (a) re-perform the deficient labor services within a reasonable time; or (b) replace any replacement parts that become defective during the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part, or sixty days after installation, whichever occurs later; and (ii) if, after reasonable efforts, Supplier is not able correct the deficiencies, then Customer has the right to terminate for breach in accordance with section 7D below.
- C. **No Further Warranties.** *Except as expressly stated in Attachment 5 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 Exhibit, 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 Customer's requirements.*

7. TERM AND TERMINATION

- A. **Software Support Services Term.** Support Services for Software and Independent Software that Customer orders at the same time as the license for those items will commence on Delivery and continue for the period specified on the Supplier

quote. Renewals of these Support Services will commence and expire in accordance with the dates on the applicable Supplier quote.

- B. **Equipment Support Services Term.** Support Services (including Support Option upgrades, if applicable) for Equipment are provided during the warranty period. Renewals of Equipment-related Support Services will commence and expire in accordance with the dates on the applicable Supplier quote. Support Services for hardware upgrades installed into Equipment are coterminous with the Support Services that are then in effect for the Equipment into which such upgrades are installed.
- C. **Termination for Convenience.** In addition to the term and termination provisions stated in the General Terms, the following apply to Support Services:
- C. (1). By Supplier.** If Supplier terminate Support Services for its convenience, Customer's sole and exclusive remedy and Supplier's sole and exclusive obligation will be to refund to Customer the portion of any pre-paid Support Services fee that corresponds to the period between the effective date of the termination for convenience and the end of the then-current Support Services period.
- C. (2). By Customer.** If Customer terminates Support Services for Infrastructure Products for its convenience, Customer's sole and exclusive remedy and Supplier's sole and exclusive obligation will be to grant Customer 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. Customer 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 Customer obligation that can no longer be fulfilled due to the termination). If Customer terminates Support Services for Client Products, Networking Products, or Server Products, Customer will not receive any credit for unused Support Services.
- D. **Termination for Breach.** In addition to the term and termination provisions stated in General Terms, either Supplier or Customer 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 Customer'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 Customer terminates for Supplier's uncured, material breach, Customer's sole and exclusive remedy and Supplier's sole and exclusive obligation will be, at Customer'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.

SERVICE SCHEDULE B

General Professional Services Terms

This Schedule states terms that apply specifically to Professional Services (excluding Pivotal Professional Services). Pivotal Professional Services terms are stated in Service Schedule C. The General Terms are incorporated by reference into this Exhibit. If there is a conflict between this Schedule and the General Terms, this Schedule controls.

1. DEFINITIONS

All definitions set forth in the General Terms apply to Professional Services, in addition to the definitions stated below.

- A. **"Deliverables"** means any reports, analyses, scripts, code, or other work results that Supplier delivers to Customer within the framework of fulfilling obligations under a Service Agreement document.
- B. **"Proprietary Rights"** mean all patents, copyrights, trademarks, trade secrets, or other intellectual property rights of a party.

2. PROFESSIONAL SERVICES

- A. **Scope.** Each project for Professional Services will be governed by a separate Service Agreement document. Each Service Agreement document will state the pertinent business parameters, including, but not limited to, a detailed description of the Professional Services to be provided. In case of conflict between the Service Agreement and the terms of the AGREEMENT, the Service Agreement will normally take precedence. However, to the extent that the Service Agreements contain terms that conflict with terms in the AGREEMENT pertaining to any one or more of the following topics: proprietary rights, indemnification, warranty (including remedies and disclaimers), and limitation of liability, the conflicting terms in the Service Agreement will supersede those in the AGREEMENT only if the Service Agreement clearly indicates that the parties are intentionally overriding the terms in the AGREEMENT solely for purposes of that Service Agreement document. Professional Services are provided as a separate and independent service to Customer even if Supplier offers them together with the sale or licensing of Products in the same Supplier quote or Customer purchase order.
- B. **No Legal or Regulatory Advice.** The Professional Services and resulting Deliverables may include advice and recommendations, but Customer agrees that all decisions whether to implement, in whole or in part, any

Deliverables, advice, or recommendations are solely Customer's responsibility. Supplier is not providing legal or regulatory advice in any Professional Services.

- C. **Placement of Supplier Personnel.** Supplier will be solely responsible 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 will, without undue delay, use reasonable efforts to provide a qualified replacement as soon as reasonably possible. Supplier's contact person responsible for liaising with Customer will be Customer's exclusive point of contact for the project. Customer and Supplier do not intend to form, and do not form, an employee/employer relationship under any Service Agreement document.
- D. **Standard Work Day.** Unless otherwise provided in an applicable Service Agreement document, the standard work day is any eight hour period of work, between 8:00 AM and 6:00 PM, Monday through Friday, excluding public holidays, at the Supplier location providing the Professional Services.
- E. **Customer Responsibilities.** Customer agrees to provide Supplier with the full cooperation it needs to perform the Professional Services. This includes timely access to Customer office accommodations, facilities, network, computer systems, and storage equipment. Customer also agrees to provide assistance and complete and accurate information and data from officers, agents, project sponsors, subject matter experts, and employees as Supplier may request, in addition to suitably configured, licensed, and operational computer and storage products involved in delivery of the Professional Services. If Customer fails to provide the requisite cooperation on a timely basis, Supplier will be relieved of any schedule, milestone, or financial commitments associated with the Professional Services. Customer remains responsible for the physical and network security of Customer's environment.

3. PROPRIETARY RIGHTS

- A. **Grant of License Rights in Deliverables.** Subject to Customer's compliance with the terms of the AGREEMENT, any applicable Service Agreement(s), and Supplier's Proprietary Rights incorporated into any Deliverables, Supplier grants Customer a non-exclusive, non-transferable, non-sublicensable license to use, copy, and create derivative works from the Deliverables for Customer's internal business operations, as contemplated by the applicable Service Agreement(s). The license granted in this section does not apply to: (i) Customer-furnished material; (ii) any Products; (iii) any Third Party Products; or (iv) items licensed or otherwise provided under a separate agreement.
- B. **Customer Furnished Materials.** Customer retains its Proprietary Rights in materials it furnishes to Supplier for use in connection with the performance of Professional Services. Customer grants Supplier a non-exclusive, non-transferable right, under Customer's Proprietary Rights, to use the Customer-provided materials solely for the benefit of Customer in fulfilling Supplier's obligations under the Service Agreement(s).
- C. **Reservation of Proprietary Rights.** Each party reserves for itself all Proprietary Rights that it has not expressly granted to the other. Supplier is not limited in developing, using, or marketing services or products that are similar to the Deliverables or Professional Services provided under any Service Agreement(s), or, subject to Supplier's confidentiality obligations to Customer, in using the Deliverables or performing similar Professional Services for any other projects.
- D. **Third Party Products.** Customer grants Supplier a non-exclusive, non-transferable right to use Third Party Products that Customer provides for Supplier's use to perform the Professional Services described in an applicable Service Agreement(s) document. Any configuration or modification that Supplier makes to any Customer-provided Third Party Products or work product incorporating Third Party Products is subject to Customer's agreement with the applicable third party.

4. PAYMENT AND INVOICING

Supplier will submit invoices for fees and reimbursable costs and expenses. Customer will pay Supplier as stated in the applicable Service Agreement(s), and in accordance with the terms of the AGREEMENT.

5. WARRANTY

Supplier will perform Professional Services in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify Supplier of any failure to perform within ten calendar days after the performance of the applicable portion of Professional Services. Supplier's entire liability and Customer's sole remedy for Supplier's failure to perform is for Supplier to, at its option: (i) correct the failure; or (ii) terminate the applicable Service Agreement(s) and refund that portion of any fees received that correspond to the failure to perform.

6. TERM OF PROFESSIONAL SERVICES

- A. **Term of Service Agreements.** Each Service Agreement document begins on the date stated in the Service Agreement, and, unless terminated for breach, continues in accordance with its terms. A party may terminate a Service Agreement document for convenience only if that is allowed by the terms of that document. If the

AGREEMENT is terminated for convenience, all then-existing Service Agreements documents will remain in force in accordance with their applicable terms and will continue to be governed by the terms of the AGREEMENT until they are completed or otherwise terminated.

- B. **Termination for Breach of Service Agreements.** If either Supplier or Customer believes a material breach of the terms of a Service Agreement document has occurred, then the party will notify the other in writing of the other's alleged breach. The recipient will have thirty days from the date of receipt of the notice to effect a cure (the "**Cure Period**"). If the recipient of the notice fails to effect a cure within the Cure Period, then the sender of the notice may send a written notice of termination of the applicable Service Agreement document, which notice will take effect upon receipt.

7. EDUCATION SERVICES

- A. **Courses.** Supplier's standard education Professional Services are available through the applicable catalogue or website. Supplier customized education Professional Services are available pursuant to the applicable Service Agreement.
- B. **Cancellation and Refunds.** Unless otherwise specified in a Service Agreement document, a quote, or on the Dell EMC Education Services catalogue or website, if Customer prepays and subsequently cancels standard education Professional Services, Supplier will provide: (i) a full refund, if Supplier receives written notice of cancellation two or more weeks before the scheduled start date; or (ii) a 50% refund, if Supplier receives written notice of cancellation less than two weeks before, but prior to, the scheduled start date. Cancellation charges for customized education Professional Services will be as mutually agreed between the parties in the applicable Service Agreement document.

This Schedule states terms that apply specifically to Professional Services (excluding Pivotal Professional Services). Pivotal Professional Services terms are stated in Service Schedule C. The General Terms are incorporated by reference into this Exhibit. If there is a conflict between this Schedule and the General Terms, this Schedule controls.

8. DEFINITIONS

All definitions set forth in the General Terms apply to Professional Services, in addition to the definitions stated below.

- C. **"Deliverables"** means any reports, analyses, scripts, code, or other work results that Supplier delivers to Customer within the framework of fulfilling obligations under a Service Agreement document.
- D. **"Proprietary Rights"** mean all patents, copyrights, trademarks, trade secrets, or other intellectual property rights of a party.

9. PROFESSIONAL SERVICES

- F. **Scope.** Each project for Professional Services will be governed by a separate Service Agreement document. Each Service Agreement document will state the pertinent business parameters, including, but not limited to, a detailed description of the Professional Services to be provided. In case of conflict between the Service Agreement and the terms of the AGREEMENT, the Service Agreement will normally take precedence. However, to the extent that the Service Agreements contain terms that conflict with terms in the AGREEMENT pertaining to any one or more of the following topics: proprietary rights, indemnification, warranty (including remedies and disclaimers), and limitation of liability, the conflicting terms in the Service Agreement will supersede those in the AGREEMENT only if the Service Agreement clearly indicates that the parties are intentionally overriding the terms in the AGREEMENT solely for purposes of that Service Agreement document. Professional Services are provided as a separate and independent service to Customer even if Supplier offers them together with the sale or licensing of Products in the same Supplier quote or Customer purchase order.
- G. **No Legal or Regulatory Advice.** The Professional Services and resulting Deliverables may include advice and recommendations, but Customer agrees that all decisions whether to implement, in whole or in part, any Deliverables, advice, or recommendations are solely Customer's responsibility. Supplier is not providing legal or regulatory advice in any Professional Services.
- H. **Placement of Supplier Personnel.** Supplier will be solely responsible 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 will, without undue delay, use reasonable efforts to provide a qualified replacement as soon as reasonably possible. Supplier's contact person responsible for liaising with Customer will be Customer's exclusive point of contact for the project. Customer and Supplier do not intend to form, and do not form, an employee/employer relationship under any Service Agreement document.
- I. **Standard Work Day.** Unless otherwise provided in an applicable Service Agreement document, the standard work day is any eight hour period of work, between 8:00 AM and 6:00 PM, Monday through Friday, excluding public holidays, at the Supplier location providing the Professional Services.

- J. **Customer Responsibilities.** Customer agrees to provide Supplier with the full cooperation it needs to perform the Professional Services. This includes timely access to Customer office accommodations, facilities, network, computer systems, and storage equipment. Customer also agrees to provide assistance and complete and accurate information and data from officers, agents, project sponsors, subject matter experts, and employees as Supplier may request, in addition to suitably configured, licensed, and operational computer and storage products involved in delivery of the Professional Services. If Customer fails to provide the requisite cooperation on a timely basis, Supplier will be relieved of any schedule, milestone, or financial commitments associated with the Professional Services. Customer remains responsible for the physical and network security of Customer's environment.

10. PROPRIETARY RIGHTS

- E. **Grant of License Rights in Deliverables.** Subject to Customer's compliance with the terms of the AGREEMENT, any applicable Service Agreement(s), and Supplier's Proprietary Rights incorporated into any Deliverables, Supplier grants Customer a non-exclusive, non-transferable, non-sublicensable license to use, copy, and create derivative works from the Deliverables for Customer's internal business operations, as contemplated by the applicable Service Agreement(s). The license granted in this section does not apply to: (i) Customer-furnished material; (ii) any Products; (iii) any Third Party Products; or (iv) items licensed or otherwise provided under a separate agreement.
- F. **Customer Furnished Materials.** Customer retains its Proprietary Rights in materials it furnishes to Supplier for use in connection with the performance of Professional Services. Customer grants Supplier a non-exclusive, non-transferable right, under Customer's Proprietary Rights, to use the Customer-provided materials solely for the benefit of Customer in fulfilling Supplier's obligations under the Service Agreement(s).
- G. **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 that are similar to the Deliverables or Professional Services provided under any Service Agreement(s), or, subject to Supplier's confidentiality obligations to Customer, in using the Deliverables or performing similar Professional Services for any other projects.
- H. **Third Party Products.** Customer grants Supplier a non-exclusive, non-transferable right to use Third Party Products that Customer provides for Supplier's use to perform the Professional Services described in an applicable Service Agreement(s) document. Any configuration or modification that Supplier makes to any Customer-provided Third Party Products or work product incorporating Third Party Products is subject to Customer's agreement with the applicable third party.

11. PAYMENT AND INVOICING

Supplier will submit invoices for fees and reimbursable costs and expenses. Customer will pay Supplier as stated in the applicable Service Agreement(s), and in accordance with the terms of the AGREEMENT.

12. WARRANTY

Supplier will perform Professional Services in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify Supplier of any failure to perform within ten calendar days after the performance of the applicable portion of Professional Services. Supplier's entire liability and Customer's sole remedy for Supplier's failure to perform is for Supplier to, at its option: (i) correct the failure; or (ii) terminate the applicable Service Agreement(s) and refund that portion of any fees received that correspond to the failure to perform.

13. TERM OF PROFESSIONAL SERVICES

- C. **Term of Service Agreements.** Each Service Agreement document begins on the date stated in the Service Agreement, and, unless terminated for breach, continues in accordance with its terms. A party may terminate a Service Agreement document for convenience only if that is allowed by the terms of that document. If the AGREEMENT is terminated for convenience, all then-existing Service Agreements documents will remain in force in accordance with their applicable terms and will continue to be governed by the terms of the AGREEMENT until they are completed or otherwise terminated.
- D. **Termination for Breach of Service Agreements.** If either Supplier or Customer believes a material breach of the terms of a Service Agreement document has occurred, then the party will notify the other in writing of the other's alleged breach. The recipient will have thirty days from the date of receipt of the notice to effect a cure (the "**Cure Period**"). If the recipient of the notice fails to effect a cure within the Cure Period, then the sender of the notice may send a written notice of termination of the applicable Service Agreement document, which notice will take effect upon receipt.

14. EDUCATION SERVICES

- C. **Courses.** Supplier's standard education Professional Services are available through the applicable catalogue or website. Supplier customized education Professional Services are available pursuant to the applicable Service Agreement.
- D. **Cancellation and Refunds.** Unless otherwise specified in a Service Agreement document, a quote, or on the Dell EMC Education Services catalogue or website, if Customer prepays and subsequently cancels standard education Professional Services, Supplier will provide: (i) a full refund, if Supplier receives written notice of cancellation two or more weeks before the scheduled start date; or (ii) a 50% refund, if Supplier receives written notice of cancellation less than two weeks before, but prior to, the scheduled start date. Cancellation charges for customized education Professional Services will be as mutually agreed between the parties in the applicable Service Agreement document.

SERVICE SCHEDULE C TO AGREEMENT

Pivotal Professional Services Terms

This Schedule sets forth the terms and conditions under which Supplier may sell Pivotal Services pursuant to an SOW (as defined below) between Supplier and Customer. The General Terms are incorporated by reference into this Exhibit, and in the event of conflict, this Exhibit shall take precedence over the General Terms. Supplier's Affiliate, Pivotal Software, Inc. ("**Pivotal**") will provide Pivotal Services described in an SOW as a subcontractor to Supplier. Each SOW will be signed by the Supplier and Customer and incorporate by reference this Exhibit.

1. DEFINITIONS

All definitions set forth in the General Terms will apply to Pivotal Professional Services, in addition to the definitions stated below.

- A. "**Claim**" means any third party claim, notice, demand, action, proceeding, litigation, investigation, or judgment.
- B. "**Course Materials**" means any intellectual property or materials that Pivotal provides to Customer during Training Services.
- C. "**Excluded Materials**" mean Pivotal Materials, OSS, and Third Party Materials.
- D. "**Feedback**" means any comments or suggestions given by either Supplier or Customer voluntarily in relation to the other's products or services.
- E. "**Open Source Software**" means software components licensed under a license approved by the Open Source Initiative or similar open source or freeware license and included in, embedded in, utilized by, provided or distributed with the Work Product.
- F. "**Pivotal Materials**" means any materials developed by Pivotal: (i) prior to the effective date of the applicable SOW; (ii) other than in performance of this Exhibit; (iii) that are generally applicable to Pivotal's products and services and are not unique to the Customer's business or the SOW; (d) that are improvements to Pivotal Software or Pivotal's internal processes; or (e) Course Materials.
- G. "**Pivotal Services**" means Professional Services and Training Services.
- H. "**SOW**" means a signed written statement of work between Customer and Pivotal containing project-specific details of the Pivotal Services.
- I. "**Third Party Materials**" means materials, including tools that are used to deliver the Professional Services, that are not owned or created by Pivotal and that are not OSS.
- J. "**Training Services**" means certain education services that may be offered from time to time.
- K. "**Work Product**" means the works of authorship or other products developed or created and delivered by Pivotal to Customer in the course of performing Professional Services described in Section 2A (Ownership).

2. ADDITIONAL TERMS

- A. **Ownership.** Other than the Excluded Materials, Customer shall own all intellectual property rights associated with the Work Product, as well as Customer's derivative works of the Work Product, subject to Customer's payment in full under the applicable SOW and subject to Pivotal's rights in the underlying intellectual property embodied in the Work Product or used by Pivotal to perform the Professional Services.

- B. **Pivotal Materials License.** Pivotal Materials may be included in, or necessary for Customer to use, the Work Product but are excluded from Customer's ownership rights set forth in section 2A (Ownership). Customer agrees that Pivotal Materials are the sole property of Pivotal. Subject to payment in full under the applicable SOW, Pivotal hereby grants to Customer a worldwide, perpetual, royalty-free license to use Pivotal Materials solely as necessary for use as part of the Work Product. Customer may not record, reproduce or distribute any Course Materials. No other grants of licenses or rights to Customer will be implied from the provisions stated in this Agreement. Customer must not obliterate or remove, and must reproduce, Pivotal's intellectual property notices contained in the Pivotal Materials. Customer must not reverse engineer, decompile, or otherwise attempt to derive source code from any portions of the Pivotal Materials.