

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

Contract Number

21-821

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative
Telephone Number

Dan Munsey

909-387-5779

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Dell EMC

Briefly describe the general nature of the contract: *This is a non-financial Agreement with Dell EMC Corporation, also known as Dell Technologies, including non-standard terms, for Dell EMC Corporation equipment and software providing backup and recovery environments for an indefinite period until terminated.*

FOR COUNTY USE ONLY

Approved as to Legal Form



Scott Runyan, Supervising Deputy County
Counsel

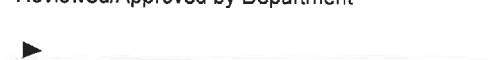
Date 10/21/21

Reviewed for Contract Compliance



Date

Reviewed/Approved by Department



Date

CHANNEL PARTNER END USER TERMS

(For use only in the United States & Canada)

These Channel Partner End User Terms (the "Agreement") establishes the terms under which SUPPLIERS offers to make available to an End User the license for Software and the warranty and Support Services for Equipment and Software. For purposes of this Agreement, an "End User" is a purchaser of Equipment or Software licenses and/or related Support Services from an SUPPLIERS Channel Partner, for use by the End User within the US or Canada, for its internal productive use and not for further resale or delivery of services to third parties. "SUPPLIERS" means EMC Corporation for Products purchased and used within the US and means EMC Corporation of Canada for Products used within Canada.

1. DEFINITIONS.

A. "Affiliate" means a legal entity that is controlled by, controls, or is under common control with SUPPLIERS or End User, respectively. "Control" means more than 50% of the voting power or ownership interests.

B. "Customer Support Tools" means any software or other tools made available by SUPPLIERS to End User to enable End User to perform various self-maintenance activities.

C. "SUPPLIERS Channel Partner" means a reseller, distributor or system integrator that is authorized by SUPPLIERS to sell Equipment, Software licenses and Support Services. The term shall also refer to any third party duly authorized by an SUPPLIERS Channel Partner to do the same.

C. "Documentation" means the then-current, generally available, written user manuals and online help and guides provided by SUPPLIERS for Products.

D. "Installation Site" means the ship-to address or other location identified in writing by the SUPPLIERS Channel Partner or End User as the site of installation and/or use of a Product, or a subsequent location approved by SUPPLIERS.

E. "Maintenance Aids" mean any hardware, software or other tools, other than Customer Support Tools, used by SUPPLIERS to perform diagnostic or remedial activities on Products.

F. "Products" mean "Equipment" (which is the hardware delivered to End User) and/or "Software" (which is any programming code made available by SUPPLIERS to End User as a standard product, also including microcode, firmware and operating system software). Products do not include any non SUPPLIERS branded third party products.

G. "Product Notice" means the Product and Services related information posted at the applicable SUPPLIERS website at the time that the SUPPLIERS Channel Partner orders the Products from SUPPLIERS. The website is currently located at http://www.Suppliers.com/products/warranty_maintenance/index.jsp.

H. "Services" mean (i) services for the support and maintenance of Products ("Support Services") as set forth in Attachment 1 to this Agreement; or (ii) consulting, installation, implementation, or other services that are not

Support Services ("Professional Services") as set forth in Attachment 2 to this Agreement.

I. "Software Release" means any subsequent version of Software provided by SUPPLIERS after the initial version of Software has been made available to End User, but does not mean a new Product.

J. "Service Brief" means a document agreed between End User and SUPPLIERS containing specifications and other transaction-specific details of the Professional Services to be provided by SUPPLIERS, and may take the form of a separately executed, long form services specification; or a short form service description with an accompanying SUPPLIERS model number identified on a quote provided by an SUPPLIERS Channel Partner.

K. "Supplier(s)" means an entity (other than End User) whose components, subassemblies, software and/or services have been incorporated into Products and/or Services.

2. DELIVERY AND INSTALLATION.

A. Product Installation and Acceptance. All Products will be deemed to be delivered and accepted ("Delivery") upon (i) delivery of the Equipment or physical media to a common carrier selected by SUPPLIERS at SUPPLIERS's designated point of shipment; or (ii) transmission of a notice of availability for download (accompanied by the license key when required by SUPPLIERS). Notwithstanding such acceptance, End User retains all rights and remedies set forth in the Section entitled "Product Warranty."

3. LICENSE TERMS.

A. General License Grant. Subject to End User's compliance with this Agreement, SUPPLIERS grants to End User a non-exclusive, non-transferable (except as specified in this Agreement) license to use the Software and the Documentation during the period of the license solely for End User's internal business operations. Unless otherwise indicated in this Agreement or the applicable SUPPLIERS quote to the Channel Partner, licenses granted to End User will be perpetual, will be for use of object code only, and will commence on Delivery. Use of Software may require End User to complete SUPPLIERS's then current product registration process, if any, to obtain and input an authorization key or license file.

B. Licensing Models. Software is licensed for use only in accordance with the commercial terms and restrictions of the Software's relevant licensing model, which are

stated in the Product Notice and/or SUPPLIERS quote to the Channel Partner. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with a certain piece equipment, CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software needed by the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.

C. Copying Permitted. End User may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.

D. License Restrictions. Without SUPPLIERS's prior written consent, End User must not, and must not allow any third party to: (i) use Software in an application services provider, service bureau, or similar capacity for the benefit of third parties; (ii) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of SUPPLIERS's Products done by or on behalf of End User; (iii) make available Software in any form to anyone other than End User's employees or contractors reasonably acceptable to SUPPLIERS and which require access to use Software on behalf of End User in a matter permitted by this Agreement; (iv) transfer or sublicense Software or Documentation to an Affiliate or any third party; (v) use Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in the Product Notice and/or SUPPLIERS quote; (vi) except to the extent permitted by applicable law, modify, translate, enhance, or create derivative works from the Software, or reverse assemble or disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Software; (vii) remove any copyright or other proprietary notices on or in any copies of Software; or (viii) violate or circumvent any technological restrictions within the Software or specified in this Agreement.

E. Software Releases. Software Releases shall be subject to the license terms applicable to Software.

F. Records and Audit. During the license term for Software and for two (2) years after its expiration or termination, End User will maintain accurate records of its use of the Software sufficient to show compliance with the terms of this Agreement. During this period, SUPPLIERS will have the right to audit End User's use of the Software to confirm compliance with the terms of this Agreement. That audit is subject to reasonable notice by SUPPLIERS and will not unreasonably interfere with End User's business activities. SUPPLIERS may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. End User will reasonably cooperate with SUPPLIERS and any third party auditor and will, without prejudice to other rights of SUPPLIERS, address any non-compliance identified by the audit by promptly procuring additional licenses. End User will promptly reimburse SUPPLIERS for all reasonable costs of the audit if the audit reveals either

underpayment of more than five (5%) percent of the Software fees payable by End User for the period audited, or that End User has materially failed to maintain accurate records of Software use.

G. Termination of License. SUPPLIERS may terminate licenses for cause if End User breaches the terms governing use of Software and fails to cure within thirty (30) days after receipt of SUPPLIERS's written notice thereof. Upon termination of a license, End User shall cease all use and return or certify destruction of applicable Software (including copies) to SUPPLIERS.

H. Reserved Rights. SUPPLIERS reserves all rights not expressly granted to End User and does not transfer any ownership rights in any Software.

I. Other License Terms. If a particular Product or component is provided with its own license terms ("**Separate License Terms**"), typically in the form of a (i) "click-to-accept" agreement included as part of the installation and/or download process, or (ii) "shrink-wrap" agreement included in the packaging for the Product, or (iii) notice indicating that by installation and/or use thereof the related license terms apply, then, in case of conflict with the terms of this Agreement, such Separate License Terms shall (a) prevail with regard to Products or components for which SUPPLIERS is not the licensor; and (b) not prevail with regard to a Product or component for which SUPPLIERS is the licensor.

4. PRODUCT WARRANTY.

A. Equipment and Software Media. SUPPLIERS warrants that (i) Equipment, and Equipment upgrades installed into Equipment, when purchased from an SUPPLIERS Channel Partner and operated with normal usage and regular recommended service; and (ii) the physical media, if any, on which Software is provided by SUPPLIERS or via an SUPPLIERS Channel Partner, shall be free from material defects in materials and workmanship, and perform substantially in accordance with Documentation provided for Equipment or the physical media until the expiration of the warranty period. Unless otherwise noted on the Product Notice, the warranty coverage for the microcode, firmware or operating system software that enables Equipment to perform as described in its Documentation shall be no less than that which applies to such Equipment. To the extent specified in the Product Notice, Support Services in the form of the Support Option noted on the Product Notice are included free of charge during the Equipment warranty period. In some cases, a Support Option upgrade during the Equipment warranty period may be available by separate purchase.

B. Equipment and Software Media Warranty Duration. The warranty period from SUPPLIERS for Products shall be as set forth at the Product Notice. Equipment warranty commences upon Delivery (as defined in Section 2.A above). Equipment upgrades and replacement parts are warranted in the same manner as the Equipment in which such are installed from Delivery thereof until the end of the warranty period for the Equipment into which such are

installed. The warranty for physical media for Software, if any, is ninety (90) days and commences upon Delivery.

C. Equipment and Software Media Warranty Remedies. SUPPLIERS's entire liability and End User's exclusive remedies under the Equipment and physical media for Software warranties described in this Section 5 shall be for SUPPLIERS, at its option, to remedy the non-compliance or to replace the affected Product, and if SUPPLIERS is unable to effect such within a reasonable time, then SUPPLIERS shall refund the amount paid by End User for the affected Product as depreciated on a straight line basis over a five (5) year period, upon return of such Product to SUPPLIERS. All replaced Products or portions thereof shall be returned to and become the property of SUPPLIERS. If such replacement is not so returned, End User shall pay SUPPLIERS's then current spare parts price therefore. SUPPLIERS shall have no liability hereunder after expiration of the applicable warranty period.

D. Software Warranty, Duration and Remedy. SUPPLIERS warrants to End User that the Software will, for a period of ninety (90) days following Delivery ("**Software Warranty Period**"), substantially conform to the applicable Documentation, provided that the Software: (i) has been properly installed and used at all times in accordance with the applicable Documentation; and (ii) has not been modified or added to by persons other than SUPPLIERS or its authorized representative. SUPPLIERS will, at its own expense and as its sole obligation and End User's exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to SUPPLIERS by End User in writing during the Software Warranty Period. If SUPPLIERS determines that it is unable to correct the error or replace the Software, SUPPLIERS will refund to End User the amount paid by End User for that Software, in which case the license for that Software will terminate.

E. Exclusions. Warranty does not cover problems that arise from (i) accident or neglect by End User or any third party; (ii) any third party items or services with which the Product is used or other causes beyond SUPPLIERS's control; (iii) installation, operation or use not in accordance with SUPPLIERS's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than SUPPLIERS or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. SUPPLIERS has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without SUPPLIERS's consent or whose original identification marks have been altered or removed.

F. Service Enabled Channel Partners. Certain SUPPLIERS Channel Partners may provide their own warranty services, which may include remote service and/or onsite repair. Where End User orders SUPPLIERS Products from such a service enabled SUPPLIERS

Channel Partner (confirm status with your SUPPLIERS Channel Partner), the terms of this Section 5, subparts A-E shall not apply to such Products, and End User shall look solely to the service-enabled SUPPLIERS Channel Partner for warranty claims.

G. Disclaimer of Warranty. OTHER THAN THE WARRANTIES SET FORTH IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIERS AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS AGREEMENT, AND DISCLAIM ALL 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. SUPPLIERS AND ITS SUPPLIERS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET END USER'S REQUIREMENTS.

5. INDEMNITY. SUPPLIERS shall (i) at its own expense, defend End User against any third party claim that a Product as provided by SUPPLIERS to End User infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against End User by a court of competent jurisdiction to the extent that such are the result of the third party claim, or pay the amounts stated in a written settlement negotiated and approved by SUPPLIERS. The foregoing obligations are subject to the following: End User (a) notifies SUPPLIERS promptly in writing of such claim; (b) grants SUPPLIERS sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an SUPPLIERS request for assistance and information; and (d) is not in material breach of this Agreement. Should any such Product become, or in SUPPLIERS's opinion be likely to become, the subject of such a claim, SUPPLIERS may, at its option and expense, (1) procure for End User the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; or (3) if, in SUPPLIERS's opinion, neither of the foregoing are reasonably available, SUPPLIERS shall notify End User to return the Product and, upon receipt thereof, SUPPLIERS shall refund the price paid by End User, less straight-line depreciation based on a five (5) year useful life for Products. SUPPLIERS shall have no obligation or liability to the extent that the alleged infringement arises out of or relates to: (A) combination, operation or use of a Product as Delivered by SUPPLIERS with any products, services, items, or technology that (i) were not provided by SUPPLIERS; or (ii) were provided by SUPPLIERS but were obtained by SUPPLIERS from a third party (such as an SUPPLIERS Select Product, Brokerage Product or any other technology, item or service not developed, performed or manufactured by SUPPLIERS), except if provided by SUPPLIERS as an embedded component of an SUPPLIERS Product; (B) use for a purpose or in a

manner for which the Product was not designed or use after SUPPLIERS notifies End User to cease such use due to a possible or pending claim of infringement; (C) any modification made by any person other than SUPPLIERS or its authorized representatives; (D) any modifications to a Product made by SUPPLIERS pursuant to instructions, designs, specifications or any other information provided to SUPPLIERS by or on behalf of End User; (E) use of any version of a Product when an upgrade or newer iteration of the Product made available by SUPPLIERS would have avoided the infringement; (F) services provided by End User and/or any revenue End User derives therefrom; or (G) any data or information which End User or a third party records on or utilizes in connection with Products. THIS SECTION STATES END USER'S SOLE AND EXCLUSIVE REMEDY AND SUPPLIERS'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS PERTAINING TO PRODUCTS.

6. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS PURSUANT TO SECTION 5 ABOVE, SUPPLIERS'S TOTAL LIABILITY AND END USER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY SUPPLIERS'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US\$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID TO SUPPLIERS FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF SUPPLIERS'S INTELLECTUAL PROPERTY RIGHTS, NEITHER END USER NOR SUPPLIERS SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

C. Regular Back-ups. As part of its obligation to mitigate damages, End User shall take reasonable data back-up measures. In particular, End User shall provide for a daily back-up process and back-up the relevant data before SUPPLIERS performs any remedial, upgrade or other works on End User's production systems. To the extent SUPPLIERS's liability for loss of data is not anyway excluded under this Agreement, SUPPLIERS shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if End User had appropriately backed up its data.

D. Limitation Period. All claims must be made within (i) the time period specified by applicable law; or (ii) eighteen (18) months after the cause of action accrues if (a) no such period is specified at law; or (b) the

applicable law allows the parties to agree to a shorter period than that specified therein.

E. Suppliers. The foregoing limitations shall also apply in favor of SUPPLIERS's Suppliers.

7. LEASING TRANSACTIONS.

A. General. From time to time, End User may obtain "**Leased Products**" (meaning Products made available by SUPPLIERS through an SUPPLIERS Channel Partner to End User which may be subsequently leased to End User pursuant to a separate lease or financing agreement consisting of a "**Master Lease Agreement**" and related product specific lease supplements). However, the terms of this Agreement shall govern End User's use of Leased Products and any Services identified in the applicable lease supplement subject to the exceptions set forth immediately below.

B. Exceptions. For Leased Products: (i) no title shall pass to End User, but shall remain with SUPPLIERS or its designee; (ii) in lieu of a refund, if any, due from SUPPLIERS to End User pursuant to a claim under warranty or of indemnification for patent or copyright infringement, SUPPLIERS shall assume all of End User's remaining lease obligations for the affected Leased Products. Notwithstanding the termination terms of this Agreement or any applicable Service Brief, if Support Services fees and/or Professional Services fees are financed with SUPPLIERS under a Master Lease Agreement, payment of such fees shall be made in accordance with the terms of the Master Lease Agreement and applicable lease supplement and shall continue unabated in accordance with the terms and conditions thereof.

8. CONFIDENTIALITY. "Confidential Information" means any information that is marked "confidential" or "proprietary" or any other similar term or in relation to which its confidentiality should by its nature be inferred or, if disclosed orally, is identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, is summarized, appropriately labeled and provided in tangible form. Confidential Information does not include information that is (i) rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party; (ii) a matter of public knowledge; (iii) rightfully furnished to the receiving party by a third party without confidentiality restriction; or (iv) independently developed by the receiving party without reference to the disclosing party's Confidential Information. Each party shall (a) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this Agreement; and (b) protect from disclosure to any third parties, by use of a standard of care equivalent to that as used by recipient to protect its own information of a similar nature and importance, and, no less than the use of reasonable care, any Confidential Information disclosed by the other party. The obligation of confidentiality will apply for a period commencing upon the date of disclosure until three (3) years thereafter, except with respect to (1) End User data to which SUPPLIERS may have access

in connection with the provision of Services, which shall remain Confidential Information until one of the exceptions stated in the above definition of Confidential Information applies; and (2) Confidential Information that constitutes, contains or reveals, in whole or in part, SUPPLIERS proprietary rights, which shall not be disclosed by the receiving party at any time. Notwithstanding the foregoing, the receiving party may disclose Confidential Information (A) to its Affiliate for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such Affiliate complies with the foregoing; and (B) to the extent required by law (provided the receiving party has given the disclosing party prompt notice).

9. TRADE COMPLIANCE. All content, Services and the technology included therein (collectively the “Materials”) provided under this Agreement are subject to governmental restrictions on exports and imports including without limitation (i) exports from the U.S and the European Union as well as re-export from third countries in the form received; (ii) exports from other countries in which the Materials may be produced or located; (iii) disclosures of technology to non-U.S persons; (iv) exports from other countries of the same or products derivative of Materials; and (v) the importation and/or use the Materials outside of the U.S. or other countries (collectively, “Trade Laws”). End User must comply with all Trade Laws. Diversion contrary to U.S. law or other Trade Laws is expressly prohibited. In addition, End User shall not send or deliver to SUPPLIERS any data controlled by the International Traffic in Arms Regulations (“ITAR”), and shall not request Materials or Service from SUPPLIERS where an ITAR license is required in order for SUPPLIERS to provide such Materials or Service, unless the SUPPLIERS Global Trade Compliance Group Office has signed a specific agreement consenting to provide ITAR controlled Materials or Service to End User. End User represents and warrants that it is not (a) listed on any of the lists of restricted parties found at <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>; (b) located in any country subject to embargo by the U.S. (identified as an E:1 country in Supplement 1 to Part 740 of the United States Export Administration Regulations (“EAR”), as shown here and updated from time to time: <http://www.ecfr.gov/cgi-bin/text-idx?SID=7f51b38428b0614519eea4b4fdc8640e&node=15:2.1.3.4.25.0.1.21.28&rgn=div9>; or (c) engaged in the proliferation of weapons of mass destruction (i.e., nuclear, chemical or biological weapons or missiles). End User will not participate or ask SUPPLIERS to participate in any illegal boycott.

10. TERM AND TERMINATION.

A. Term of Agreement. The term of the Agreement begins on the Effective Date and continues until the Agreement is terminated (i) in accordance with this Section 10, or (ii) or until End User ceases to use or possess the Products or receive the Services (“Term”).

B. Termination of Agreement. The Agreement may be terminated by either party at any time, effective sixty (60) days after delivery of written notice to the other party. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including provisions relating to records and audit, confidentiality and liability.

11. MISCELLANEOUS.

A. References. SUPPLIERS may identify End User as a user of SUPPLIERS's Products and/or Services. Each party shall not, and shall not authorize or assist another to, originate, produce, issue or release any written publicity, news release, marketing collateral or other publication or public announcement, relating in any way to this Agreement, without the prior written approval of the other, which approval shall not be unreasonably withheld.

B. Notices. Any notices hereunder shall be in writing.

C. Entire Agreement. This Agreement, the Exhibits identified in subsection J below and each purchase order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in a writing with evidence of acceptance by both parties.

D. Force Majeure. Neither party 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. End User will not assign this Agreement or a purchase order or any right or obligation herein or delegate any performance without SUPPLIERS's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by End User will be void. SUPPLIERS may use its Affiliates or other sufficiently qualified subcontractors to provide Services to End User, provided that SUPPLIERS remains responsible to End User for the Services' performance.

F. Governing Law. This Agreement is governed by the laws of the State of Texas (excluding its conflict of law rules) and the federal laws of the United States. The U.N. Convention on Contracts for the International Sale of Goods does not apply. To the extent permitted by law, the state and federal courts located in Texas will have exclusive jurisdiction for any Disputes. Customer and Suppliers agree to submit to the personal jurisdiction of the state and federal courts located within Travis or Williamson County, Texas, and agree to waive any and all objections to the exercise of jurisdiction over the parties by those courts and to venue in those courts..

G. Waiver. Failure to enforce a provision of this Agreement will not constitute a waiver.

H. Independent Contractors. The parties shall act as independent contractors for all purposes under this Agreement. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other party, or both parties as joint venturers or partners for any purpose. Neither party shall be responsible for the acts or omissions of the other party, and neither party shall have authority to speak for, represent or obligate the other

party in any way without the prior written approval of the other party.

I. Severability. If any part of this Agreement, purchase order, quote or Statement of Work is held unenforceable, the validity of all remaining parts will not be affected.

J. Exhibits. The following Exhibits form part of this Agreement, and in the event of a conflict between an Exhibit and the main terms of this Agreement, the terms of the Exhibit shall prevail.

Attachment 1 – Support Services Exhibit

Attachment 2 – Professional Services Exhibit

Attachment 3 – Pivotal™ Products Exhibit

12. COUNTRY SPECIFIC TERMS.

A. CANADA. The terms in this subsection A apply only when SUPPLIERS means SUPPLIERS Corporation of Canada.

1. **Section 2.A (Delivery).** The first sentence is deleted in its entirety and replaced with: "All Products will be deemed to be delivered and accepted ("**Delivery**") upon the following (as applicable) (i) title and risk of loss to Equipment or physical media, if any, transfers to End User at the time and place that the Equipment or media, if any, clears Canadian Customs;

or (ii) transmission of a notice of availability for download (accompanied by the license key when required by SUPPLIERS)"

2. Section 12 (MISCELLANEOUS).

(a) **Section 12.F Governing Law.** The first and second sentences are deleted in their entirety and replaced with: "This Agreement is governed by the laws of the Province of Ontario, Canada, excluding its conflict of laws rules. To the extent permitted by law, the courts located in the Province of Ontario will be the exclusive jurisdiction for disputes arising out of or in connection with this Agreement.

(b) Add the following as new subsection K:

K. Language. The parties have required that this Agreement be drawn up in English and have also agreed that all notices or other documents required by or contemplated in this Agreement be written in English.

Les parties ont requis que cette convention soit rédigée en anglais et ont également convenu que tout avis ou autre document exigé aux termes des présentes ou découlant de l'une quelconque de ses dispositions sera préparé en anglais.

Attachment 1 to End User License and Support Services Agreement

Support Services Exhibit

This Support Services Exhibit (“**Exhibit**”) sets forth the terms governing the provision of Support Services ordered by End User from an SUPPLIERS Channel Partner who provides that the Agreement shall govern orders for Support Services performed by SUPPLIERS during or after the applicable warranty period.

1. DEFINITIONS.

A. All definitions set forth in the main body of the Agreement shall also apply to this Exhibit.

B. “SUPPLIERS Service Area” means the area that is within (i) one hundred (100) drivable miles of an SUPPLIERS service location; and (ii) the same country as the SUPPLIERS service location.

C. “Time and Materials Service” means any maintenance or support service that is provided by SUPPLIERS but not part of fixed-fee Support Services or other generally available service related offering from SUPPLIERS using a pre-established fee, but which will be separately charged to End User on a time and materials basis and may be made available under a separate set of Time and Materials Services 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, and unless otherwise indicated in the Product Notice, consist of (i) using commercially reasonable efforts to remedy failures of Products to perform substantially in accordance with SUPPLIERS’s applicable Documentation; (ii) providing English-language (or, where available, local language) help line service (via telephone or other electronic media); and (iii) providing, or enabling End User to download Software Releases and Documentation updates made generally available by SUPPLIERS at no additional charge to other purchasers of Support Services for the applicable Product. SUPPLIERS reserves the right to change the scope of Support Services on sixty (60) days’ prior written notice to End User.

B. Additional Support. SUPPLIERS reserves the right to charge for Support Services performed outside the time frames of the applicable Support Option as a Time and Materials Service. Time and Materials Service will be charged and invoiced by SUPPLIERS in accordance with terms governing each such Time and Materials Service engagement. Except to the extent that Support Services are independent of the Equipment’s location, SUPPLIERS will have no obligation to provide Support Services with respect to Equipment that is outside the SUPPLIERS 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 SUPPLIERS’s then-current end-of-service-life policy for the respective Product. SUPPLIERS shall have no obligation to provide Support Services for Software problems that cannot be reproduced at SUPPLIERS’s facility or via remote access to End User’s facility. Support Services do not include the supply of Equipment upgrades, if any, needed to utilize new features or functionality in a Software Release.

C. Exclusions. Support Services do not cover a problem that would have been excluded from coverage pursuant to Section 5 E in the main body of the Agreement had the problem arisen during the warranty period of the affected Product.

D. Re-Instatement of Support. If End User wishes to re-instate Support Services for a Product that is not then currently covered thereby, such re-instatement shall be subject to a certification at SUPPLIERS’s then current Time and Materials Service rates and conditions. Once so certified, Support Services shall commence upon payment to SUPPLIERS of (i) the charge for the above described Time and Materials Service; (ii) the amount SUPPLIERS would have normally charged had Support Services been in effect during the period of the lapse or discontinuation; and (iii) the charge for the next twelve (12) months of the newly commenced Support Services.

E. Channel Partner Provided Support. Certain SUPPLIERS Channel Partners may provide technical support, which may include remote service and/or onsite repair. Where End User orders SUPPLIERS Products from such an SUPPLIERS Channel Partner (confirm status with your SUPPLIERS Channel Partner), the terms of this Exhibit shall not apply to such Products, and End User shall look solely to that SUPPLIERS Channel Partner for any support on the Products.

3. END USER RESPONSIBILITIES.

A. Cooperation. End User shall (i) promptly notify SUPPLIERS when a Product fails and provide SUPPLIERS with sufficient details so that the failure can be reproduced by SUPPLIERS; (ii) allow SUPPLIERS remote and on-site (when deemed necessary by SUPPLIERS) 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 SUPPLIERS), information and assistance required to provide Support Services.

B. Support Contacts. Unless a specific number of authorized contacts are indicated on the Product Notice, End User shall designate in writing a reasonable number of authorized contacts, as determined by End User and SUPPLIERS, who shall initially report problems and receive Support Services from SUPPLIERS. Each End User representative shall be familiar with End User’s requirements and shall have the expertise and capabilities necessary to permit SUPPLIERS to fulfill its obligations. A change to the authorized support contacts by End User shall be submitted to SUPPLIERS in writing.

4. ADDITIONAL TERMS.

A. Maintenance Aids and Spare Parts for Equipment. End User authorizes SUPPLIERS to store Maintenance

Aids and spare parts at the Installation Site and agrees that such are for use only by SUPPLIERS authorized personnel. End User shall not, and shall not authorize any third party to, make any use thereof. SUPPLIERS is authorized, upon the conclusion of the Support Services or at any other time, upon reasonable notice to End User, to enter the Installation Site, or to use remote means, to remove and/or disable Maintenance Aids and spare parts. End User shall reasonably cooperate in this effort.

B. Customer Support Tools. SUPPLIERS may choose to make End User Support Tools available to assist End User in performing various maintenance or support related tasks. End User shall use End User Support Tools only in accordance with terms under which SUPPLIERS makes such available.

C. Equipment Replacements. All replaced Equipment (or portions thereof) shall become the property of SUPPLIERS upon End User's receipt of the corresponding replacement, and shall be returned promptly upon SUPPLIERS's request. If such replaced Equipment is not so returned within fifteen (15) days after SUPPLIERS's request, End User shall pay SUPPLIERS's then current spare parts list price therefore.

D. Data Security Options. End User is, at its own expense, fully responsible for the permanent erasure of all information, including without limitation all personally identifiable and other protected information placed on, and by use of a method that does not cause damage to, any replaced parts or any other items that End User provides to SUPPLIERS for repair, trade-in, or disposal, before such items are returned to SUPPLIERS. Descriptions and charges associated with SUPPLIERS's then currently offered data erasure services are available on request. SUPPLIERS is not responsible for any information contained on such items notwithstanding anything to the contrary herein.

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

F. Software Releases. Upon use of a Software Release, End User shall remove and make no further use of all prior Software Releases, and protect such prior Software Releases from disclosure or use by any third party. End User is authorized to retain a copy of each Software Release properly obtained by End User for End User's archive purposes and use as a temporary back-up if the current Software Release becomes inoperable. End User shall use and deploy Software Releases strictly in accordance with terms of the original license for Software.

G. Change of Equipment Location or Configuration. End User may change the Installation Site or configuration of a Product under Support Services by SUPPLIERS only after written notice to SUPPLIERS. If the new location is in a different country, such move is subject to SUPPLIERS's

prior written approval. End User shall promptly notify SUPPLIERS of any changes to the configuration, or movement of Equipment by anyone other than SUPPLIERS. SUPPLIERS reserves the right to inspect and evaluate the changes in configuration or location of affected Equipment at SUPPLIERS's then current Time and Materials Service terms, conditions and rates. Additional charges, if any, related to changes in configuration or location of Equipment shall apply from the date the change took place.

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

I. Remote Support Capability. As part of Support Services, SUPPLIERS makes various remote support capabilities available for certain Products in accordance with its then current policies and procedures. SUPPLIERS's warranty and Support Services fees are based on the availability and use of such remote support capabilities. End User has the option to not activate or to disable remote support capabilities, but it shall notify SUPPLIERS thereof without undue delay. If End User chooses to disable or to not activate the remote support capabilities, then, with regard to all Products affected by such disablement (i) SUPPLIERS may assess End User a surcharge in accordance with SUPPLIERS's then current standard rates; and (ii) agreed response times or other agreed service levels (if any) shall no longer apply.

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

K. Transfer of Equipment to Secondary Purchasers. If End User decides to sell, assign or otherwise transfer the use and/or ownership of Equipment to a Secondary Purchaser (meaning a bona fide end user that (i) is not considered, in SUPPLIERS's reasonable discretion, to be a competitor of SUPPLIERS; and/or (ii) has not had prior disputes with SUPPLIERS), to the extent SUPPLIERS resources reasonably permit, SUPPLIERS shall make available to End User, as a Time and Materials Service, de-installation services. In addition, and to the extent SUPPLIERS resources reasonably permit, SUPPLIERS shall 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 meeting the certification criteria.

L. 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 SUPPLIERS Equipment warranty, SUPPLIERS reserves the right to send End User written notice that SUPPLIERS has either chosen to discontinue or change the price for Support Services for such Software (with such price change effective as of the date the applicable Equipment ceases to be so covered). If SUPPLIERS sends a discontinuation notice, or if End User rejects or does not respond to the notice of a proposed price change within thirty (30) days after receipt, End User will be deemed to have terminated the Software Support Services for its convenience and the terms of Section 6 C 2 below shall apply.

5. WARRANTY ON SUPPORT SERVICES.

A. Support Services. SUPPLIERS shall perform the labor portion of Support Services in a workmanlike manner in accordance with generally accepted industry standards. End User shall notify SUPPLIERS of any failure to so perform as soon as reasonably possible, and in no event more than ten (10) days after the date on which such failure first occurs. A replacement part provided in connection with Support Services receives the remainder of the Product warranty or Support Services coverage applicable to the Product containing the replacement part.

B. End User Remedies. End User's exclusive remedy and SUPPLIERS's entire liability under the foregoing warranties shall be for SUPPLIERS 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 which become defective during the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part, or sixty (60) days after installation thereof, whichever occurs later; and (ii) if, after reasonable efforts, SUPPLIERS is not able correct such deficiencies, then End User has the right to terminate for breach in accordance with Section 6 D below.

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

6. TERM AND TERMINATION.

A. Software Support Services Term. Software related Support Services that are ordered at the same time as the license for such Software shall commence on the date of shipment of the physical media or electronic availability of the Software and continue for the period specified on the SUPPLIERS quote. Renewals of Software related Support Services shall commence and expire in accordance with the dates on the applicable SUPPLIERS 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 shall commence and expire in accordance with the dates on the applicable 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 set forth in the main body of the Agreement, the following apply to Support Services:

1. **By SUPPLIERS.** If SUPPLIERS terminates for its convenience, End User's sole and exclusive remedy and SUPPLIERS's sole and exclusive obligation shall be to refund to End User the portion of any pre-paid Support Services fee that corresponds to the period between the effective date of the termination for convenience and the end of the then current Support Services period.

2. **By End User.** If End User terminates Support Services for its convenience, End User's sole and exclusive remedy and SUPPLIERS's sole and exclusive obligation shall be to grant End User a credit that corresponds to the period between the effective date of the termination for convenience and the end of the then current Support Services period. Such credit may only be used against future purchases of Products or Support Services from SUPPLIERS and may be reduced to recapture unearned discounts (meaning discounts to a Support Services fee that were based on an End User obligation that can no longer be fulfilled due to the termination).

D. Termination for Breach. In addition to the term and termination provisions set forth in the Agreement, either party may terminate the Support Services for a specific Product for cause due to a material failure of the other party to comply with the terms of this Support Exhibit with regard to such Product, provided that the terminating party has given thirty (30) days' written notice specifying the failure and the other party has not remedied such failure within such time. If SUPPLIERS terminates the Support Services for any Product(s) affected by such a failure by End User, such termination shall be without further liability for SUPPLIERS and without any obligation to refund any fees already paid therefore. If End User terminates for SUPPLIERS's breach, End User's sole and exclusive remedy and SUPPLIERS's sole and exclusive obligation shall be to either issue a credit for use against current or future purchases of Products or Support Services or grant a refund (as selected by End User) 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.

Attachment 2 to End User License and Support Services Agreement

Professional Services Exhibit

This Professional Services Exhibit (“**Exhibit**”) sets forth the terms governing Professional Services ordered by End User from an SUPPLIERS Channel Partner who provides that the Agreement shall govern orders for Professional Services performed by SUPPLIERS.

1. DEFINITIONS.

A. All definitions set forth in the main body of the Agreement shall also apply to this Exhibit.

B. “Deliverables” means any reports, analyses, scripts, code or other work results which have been delivered by SUPPLIERS to End User within the framework of fulfilling obligations under the Service Brief.

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

2. PROFESSIONAL SERVICES.

A. Scope. Each project for Professional Services shall be governed by a separate Service Brief. Professional Services are provided as a separate and independent service to End User even if offered together with the sale or licensing of Products by an SUPPLIERS Channel Partner in the same quote or End User purchase order.

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

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

D. End User Responsibilities. End User shall provide SUPPLIERS personnel with timely access to appropriate facilities, space, power, documentation, networks (including internet and telephone), files, information, additional software (if needed), and skilled and authorized End User personnel to assist in the performance and who will cooperate with SUPPLIERS. End User shall also perform its specific obligations as described in the relevant Service Brief, and, if necessary, assist and support SUPPLIERS in the provision of the Professional Services as reasonably requested by SUPPLIERS, and shall provide all conditions in its business necessary for due performance of Professional Services by SUPPLIERS.

3. PROPRIETARY RIGHTS.

A. Grant of Copyright Rights in Deliverables. Subject to SUPPLIERS's receipt of payment of the applicable amounts due SUPPLIERS and to SUPPLIERS's Proprietary Rights

in the Deliverables or other materials used by SUPPLIERS to perform Professional Services, End User shall own all copyright rights to the portion of Deliverables that consists solely of written reports, analyses and other working papers prepared and delivered by SUPPLIERS to End User in the performance of SUPPLIERS's obligations under the Service Brief.

B. Grant of License Rights in Deliverables. For the portion of Deliverables that consists of scripts and code and subject to End User's compliance with the Agreement, SUPPLIERS grants End User a non-exclusive, non-transferable, perpetual right to use, copy and create derivative works from such (without the right to sublicense) for End User's internal business operations, as contemplated by the applicable Service Brief. The license granted in this section does not apply to (i) End User furnished materials, and (ii) any other Products or items licensed, or otherwise provided, under a separate agreement.

C. End User Furnished Materials. End User retains ownership any of its rights in materials it furnishes for use by SUPPLIERS in connection with the performance of Professional Services. Pursuant to End User's Proprietary Rights therein, End User grants SUPPLIERS a non-exclusive, non-transferable right to use such solely for the benefit of End User in fulfillment of SUPPLIERS's obligations under the Service Brief.

D. Reservation of Proprietary Rights. Each party reserves for itself all Proprietary Rights that it has not expressly granted to the other. SUPPLIERS shall not be limited in developing, using or marketing services or products which are similar to the Deliverables or Professional Services provided hereunder, or, subject to SUPPLIERS's confidentiality obligations to End User, in using the Deliverables or performing similar Professional Services for any other projects.

4. TRAINING SERVICES.

A. Courses. SUPPLIERS's standard training Services are available through the applicable catalogue or website. SUPPLIERS customized training Services are available pursuant to an Service Brief.

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

5. WARRANTY.

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

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

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

6. TERM OF PROFESSIONAL SERVICES.

A. Termination for Breach of Service Brief. Either party may notify the other in writing in case of the other's alleged breach of a material provision of the applicable Service Brief. The recipient shall have thirty (30) days from the date of receipt of such 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 shall have the option of sending a written notice of termination of the applicable Service Brief(s), which notice shall take effect upon receipt.