



RESALE TERMS AND CONDITIONS

THESE Resale Terms and Conditions apply to and govern all resale agreements entered into between you, the buyer ("Buyer") and us, the reseller, T-Systems North America, Inc. (or its affiliates, as the case may be) ("T-Systems"). These Resale Terms and Conditions read with T-Systems' written acceptance of a Buyer Order for Products, as well as all and any Product descriptions, Product restrictions, Product obligations policies, exhibits, addendums, annexes, and Manufacturer End User License Agreements, and any security agreements (if any), will together constitute a resale agreement (herein for all purposes "the Agreement" or "an Agreement"). By submitting an Order for Products, Buyer accepts and agrees to these Resale Terms and Conditions to the absolute exclusion of all other terms or conditions of the Buyer contained in any purchase order, document, or other communication whatsoever ("the Buyer terms") notwithstanding T-Systems' failure specifically to object to such other Buyer terms. Buyer terms will not apply, and will be disregarded, regardless of whether they are in conflict with, supplementary to or complementary to the Agreement.

RECITALS

WHEREAS, T-Systems is in the business of reselling certain products (the "Products") manufactured by third parties (the "Manufacturer"). Products may include (without limitation) hardware, software or a combination of hardware and software; and

WHEREAS, Buyer desires to purchase such Products from T-Systems; and

WHEREAS, the parties intend exclusively for this Agreement to apply to transactions arising out of the Products being purchased by or for the benefit of the Buyer (the "Opportunity"); and

WHEREAS, the parties, to this end, desire to define their respective rights and obligations under the Agreement;

NOW, THEREFORE, in consideration of the premises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Orders -- Unless otherwise stated on the T-Systems quote or invoice, T-Systems' quotes are invitations to tender and are subject to change at any time without notice. All Buyer purchase orders, communications or other documents expressing Buyer's intention to enter into a resale agreement ("Orders") are offers by Buyer to T-Systems to enter into an Agreement, and are subject to acceptance by T-Systems. All submitted Orders for Products are final and binding on Buyer,

and are non-cancelable during their term unless rejected by T-Systems.

2. Scope of Work -- Pursuant to the terms and conditions of this Agreement, T-Systems sells to Buyer, and Buyer purchases from T-Systems such Products as Buyer may order from time to time, and as such Orders may be accepted by T-Systems. All Products are covered only and exclusively under the Manufacturer's warranty, if any.

3. Effective Date -- Contracts between Buyer and T-Systems are formed upon T-Systems' acceptance. T-Systems may decline any Order for any reason at any time prior to acceptance. An Agreement shall become effective and binding on the date of T-Systems' acceptance of an Order (the "Effective Date").

4. Manufacturer Terms -- By purchasing the Products, Buyer acknowledges that the Manufacturer's standard end-user terms will apply to the Products as set forth at on the Manufacturer's documentation, or on its website or as otherwise provided to Buyer by the Manufacturer. T-Systems provides no warranties, guarantees or representations of any kind in respect of the Products other than passing through to Buyer the Manufacturer's warranties, guarantees or representations in respect of the Products to the extent that it is able to do so.

5. Delivery

a. T-Systems shall use commercially reasonable efforts to meet requested delivery times but does not guarantee delivery by a stated time and is not responsible for any damages due to delays or the failure to meet a stated delivery schedule. T-Systems reserves the right to make deliveries in installments. Delayed delivery of one installment will not entitle Buyer to cancel other installments

b. Except as otherwise stated in this Agreement or in any Manufacturer terms, Buyer shall immediately inspect the Products after delivery and notify T-Systems as soon as reasonably possible of any defect or damage to the packaging or to the Products.

c. Failure by the Buyer to report that either the packaging or the Products were delivered in damaged condition, with signs of damage ascertainable by means of careful visual inspection, within 5 (five) business days of receipt, will raise the rebuttable inference that the Products were delivered in good condition and repair. Buyer agrees at all times to adhere to any applicable Manufacturer's End User License Agreement or Product restrictions and obligations policies. Buyer may not alter or modify the Products in any way or combine the Products with any other product, software or material not authorized by T-Systems and by Manufacturer. Products may have specific restrictions on their distribution or use. Buyer is solely responsible for ensuring its adherence to any and all such



restrictions (whether imposed by this Agreement, by the Manufacturer, by applicable law, order by lawful authority or otherwise).

6. Software -- Software is a machine readable (object code) version of computer programs. Buyer's use of Software and any related documentation shall be governed by the Software's applicable license agreements. Software embedded in or bundled with hardware must be used solely with the device for which it was intended, in the manner in which it was intended, for the purpose for which it was designed, and may not be transferred separately. Software licenses will be granted directly to the Buyer by the relevant software licensor.

7. Warranty

a. Buyer and T-Systems each mutually warrant that each has the right to enter into an Agreement and other documents comprising the Agreement, and that its performance of the Agreement shall not violate the terms of any other contract, obligation, order by lawful authority, law, regulation, or ordinance to which it is or becomes subject and shall obtain all approvals and permits required by law in order for it to perform its obligations.

b. T-Systems covenants, guarantees and warrants that: T-Systems will convey clear title to all Products sold to Buyer or its affiliates. Without derogating from any other provision of these Resale Terms and Conditions, T-Systems does not warrant that the Products or any portion thereof are error-free.

c. Buyer understands and acknowledges that T-Systems is not the manufacturer of the Products, but is a reseller of the Products only. T-Systems is not involved in the design, packaging, labelling, testing, manufacture or transportation of the Products or any other related activities in any way. To the extent transferable, T-Systems will pass through to Buyer any warranties, indemnities, and remedies extended by Manufacturer, and, when applicable, Buyer shall, in turn, pass such warranties, indemnities, and remedies onto the End User. Such manufacturer warranties, if any, are as specified in this Agreement.

d. EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY SECTION, T-SYSTEMS MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL. ALL OTHER WARRANTIES ARE HEREBY SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

e. THIS LIMITED WARRANTY DOES NOT COVER LOSS OR DAMAGE FOR ANY (i) MODIFICATION OR REPAIR OF THE PRODUCTS BY BUYER, END USER, OR THIRD PARTY, (ii) FAILURE

OR INCOMPATIBILITY OF THE PRODUCTS WITH HARDWARE OR OTHER SOFTWARE, OR (iii) ACCIDENT, NEGLIGENCE, FAILURE OF ELECTRIC POWER, SHORTAGE OR USE IN IMPROPER OR ADVERSE ENVIRONMENTAL CONDITIONS, MISUSE, NEGLIGENCE, CATASTROPHE, OPERATOR ERROR, OR CAUSES OTHER THAN ORDINARY AND INTENDED COMMERCIAL USE.

f. Product information (for example, statements or advice (technical or otherwise) advertisement content, and information related to a Product's specifications, features, export/import control classifications, uses or conformance with legal or other requirements) is provided by T-Systems on an "AS IS" basis and does not form a part of the properties of the Product. T-Systems makes no representation as to the accuracy or completeness of the Product information, and DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND LIABILITIES UNDER ANY THEORY WITH RESPECT TO THE PRODUCT INFORMATION. T-Systems recommends Buyer validate any Product Information before using or acting on such information. All Product information is subject to change without notice. T-Systems is not responsible for typographical or other errors or omissions in Product information.

8. Confidential Information

a. "Confidential Information": any and all information or materials provided by one party to the other which are in tangible form and labeled "confidential" or the like, or any other information, observed when at a facility of the other or a third party, that a reasonable business person would understand to be not publicly available.

b. Confidential Information shall not include information or materials, that were, on the Effective Date of this agreement, generally known to the public; or become generally known to the public after the Effective Date other than as a result of the act or omission of the receiving party; or were rightfully known to the receiving party prior to that party receiving such information from the disclosing party; or are or were disclosed by the disclosing party to a third party generally without restriction on disclosure; or the receiving party lawfully received from a third party without that third party's breach of agreement or obligation of trust; or are independently developed by the receiving party.

c. A party receiving Confidential Information as defined above from the other party, shall protect this information against disclosure to third parties for a period of three (3) years from receipt thereof, by means of the same standard of care as used by the receiving party to protect its own information of a similar nature and importance, and no less than reasonable care. The party receiving the Confidential Information may use same for the performance of its contractual obligations or to exercise its contractual rights only. Confidential Information may only be disclosed to those persons within the party's own organization or to sub-contractors who require them to provide services and



who have agreed in writing to protect the Confidential Information. The party receiving the Confidential Information must immediately notify the other party of any breach of this obligation to observe secrecy or any suspicion in this respect.

d. Acknowledgement. Buyer hereby acknowledges that the Products contain trade secrets that are confidential and that any rights in them are the sole property of the manufacturer and/or its licensors. Except as may be provided specifically herein, the parties are not granted any rights to patents, copyrights, trade secrets, trade names, trademarks, or any other rights or licenses in the Products.

9. Indemnification -- Buyer agrees to indemnify, defend and hold harmless T-Systems, T-Systems' affiliates and subsidiaries, and its and their directors, officers, employees and agents, from and against all claims, liability, loss, cost, damage or expense, including reasonable counsel fees, arising from or by reason of: (1) Buyer's or End User's failure to comply with any applicable federal, state and local legislation, laws, statutes, orders, ordinances, codes, regulations and executive orders; (2) any unauthorized or tortious acts or omissions by Buyer or End User; (3) claims from Buyer's End User's arising from the breach of this Agreement or any misconduct or wrongful omission of Buyer, (4) Buyer's or End User's use of the Products, (5) Buyer's or End User's violation of this Agreement, or (6) Buyer's or End User's violation of Manufacturer's terms and conditions.

10. Limitation of Remedy and Liability -- T-Systems will have no liability for: (i) failure to allocate or reserve any Product for Buyer; (ii) failure to deliver Products within a specified time period; (iii) availability and/or delays in delivery of Products, (iv) discontinuation of Products, product lines, or any part thereof; or (v) cancellation of any orders.

IN NO EVENT SHALL T-SYSTEMS BE LIABLE TO BUYER FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST BUSINESS OR FOR ANY LOST PROFITS, HOWEVER ARISING, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCLUDING LIABILITIES ARISING FROM T-SYSTEMS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL T-SYSTEMS' AGGREGATE LIABILITY FOR DIRECT DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY OR IN TORT (INCLUDING NEGLIGENCE), TO BUYER UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY BUYER TO T-SYSTEMS UNDER THIS AGREEMENT.

11. Disclaimer of End User Damages -- IN NO EVENT WILL T-SYSTEMS AND ITS SUPPLIERS BE LIABLE TO BUYER'S END USER(S) OR OTHER THIRD PARTIES FOR ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO (i) DAMAGES CAUSED BY OR ARISING OUT OF BUYER'S FAILURE TO PERFORM ITS

COVENANTS AND RESPONSIBILITIES, UNLESS CAUSED BY T-SYSTEMS OR ITS REPRESENTATIVES GROSS NEGLIGENCE OR WILLFULL MISCONDUCT; (ii) DAMAGES CAUSED BY REPAIRS OR ALTERATIONS TO PRODUCT DONE WITHOUT T-SYSTEMS'S WRITTEN APPROVAL; OR (iii) DAMAGES DUE TO PRODUCT DETERIORATION DURING PERIODS OF STORAGE BY ANY END USER.

12. Shipment and Delivery -- All freight, handling and other costs incurred in connection with shipment or delivery shall be paid by Buyer. Unless otherwise stated, risk of damage, destruction or loss of in kind shall pass from Manufacturer or an authorized distributor to Buyer upon delivery to the common carrier. Any claims for shortages or damages are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier, Manufacturer and/or the authorized distributor. T-Systems is not liable for any delays in delivery or for partial or early deliveries.

13. Terms of Payment -- Unless otherwise provided, terms for payment on all invoices will be net 30 (thirty) days from Buyer's receipt of T-Systems' invoice in U.S. currency without offset or any deduction for withholding taxes or otherwise. On any past due invoice, T-Systems may charge interest from the payment due date to the date of payment at 1.5% per month or the maximum amount allowed by applicable law. If Buyer defaults on any payment, T-Systems may reschedule or cancel any outstanding delivery or Order and declare all outstanding invoices due and payable immediately. Unless otherwise provided by applicable law, Buyer credits provided by T-Systems will expire if unused within 12 months.

14. Prices -- Unless otherwise stated on T-Systems quote, proposal, or invoice, prices are for Products only and do not include taxes, freight, duties or any other charges or fees for additional services (collectively, "Additional Fees"). Unless otherwise stated on T-Systems' quote, proposal, or invoice, Buyer is responsible for any and all Additional Fees.

15. Export and import -- Certain Products and related technology sold by T-Systems are subject to export control regulations of the United States, the European Union, and/or other countries ("Export Laws"). Buyer shall comply with such Export Laws and obtain any license or permit required to transfer, export, re-export or import the Products and related technology. Buyer shall not export or re-export the Products and related technology to any country or entity to which such export or re-export is prohibited, including any country or entity under sanction or embargoes administered by the United States, European Union or other countries. Buyer shall not use the Products and related technology in relation to chemical, biological or nuclear weapons, rocket systems (including ballistic missile systems, space launch vehicles and sounding rockets) or unmanned air vehicles capable of delivering same, or in the development of any weapons of mass destruction.



16. Relationship -- Buyer and T-Systems are independent contractors. Nothing stated in this Agreement will be construed as creating the relationship of employer/employee, franchisor/franchisee, partners or principal/agent between the parties. Neither party will make any warranty, guarantee or representation, whether written or oral, on the other party's behalf.

to time) shall not apply to this Agreement or any transactions relating thereto.

17. Survival -- The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive; including, without limitation, sections 2 - 12.

18. Force Majeure -- If the performance of any obligation under this Agreement is prevented by catastrophe, labor dispute, conflict or similar force majeure occurrence beyond the reasonable control of the parties, the party so affected shall promptly notify the other party of all resulting consequences and disabilities. Upon such notice, the disabled party shall, for the duration of the disability, be excused from the performance of such obligations.

19. Assignment -- Buyer may not assign this Agreement without T-Systems' prior written consent. T-Systems' affiliates may perform T-Systems' obligations under this Agreement. This Agreement is binding on successors and assigns.

20. Entire Agreement; Amendment and Modification -- This Agreement supersedes all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of this Agreement shall be binding upon either party unless made in writing and signed on their behalf by their duly authorized representatives. No conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the parties. All typographical or clerical errors are subject to correction. This Agreement may only be modified in writing signed by authorized representatives of both T-Systems and Buyer.

21. No Waiver -- Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

22. Governing Law; Venue -- The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the laws of the State of New York, USA without regard to its conflict of law principles. The parties agree that the proper venue for all actions arising in connection herewith shall be deemed exclusively proper only in state court in New York, NY and the parties agree to submit to such jurisdiction. Further, the United Nations Convention on the International Sale of Goods (1980) (as amended from time