

1. Scope. Pursuant to the written offer (the "**Quote**") to sell certain hardware and/or software products (the "**Products**") which references these Product Sale Terms (these "**Sale Terms**"), Trace3, LLC, a California limited liability company ("**Trace3**"), hereby offers to sell to the client named in the Quote ("**Client**") such Products referenced therein.
2. Acknowledgment. CLIENT ACKNOWLEDGES AND AGREES THAT: (A) THE SIGNED QUOTE AND ANY WRITTEN ORDER TO PURCHASE THE PRODUCTS (A "**PURCHASE ORDER**") PROVIDED BY CLIENT TO TRACE3 IN RESPONSE TO SUCH QUOTE IS MADE SUBJECT TO THESE SALE TERMS; (B) THESE SALE TERMS WILL GOVERN THE RELATIONSHIP BETWEEN TRACE3 AND CLIENT AND PREVAIL NOTWITHSTANDING ANY VARIANCE OR CONFLICT WITH ANY TERMS CONTAINED IN ANY PURCHASE ORDER, STATEMENT OF WORK OR OTHER AGREEMENT OR INSTRUMENT SUBMITTED BY CLIENT TO TRACE3; (C) ANY PRE-PRINTED OR OTHER TERMS OR CONDITIONS INCLUDED WITH OR IN ANY OF THE DOCUMENTS REFERENCED IN ITEM (B) WILL HAVE NO EFFECT WHATSOEVER; (D) TRACE3 RESERVES THE RIGHT TO REJECT OR ACCEPT ANY PURCHASE ORDER SUBMITTED BY CLIENT, IN ITS SOLE DISCRETION; AND (E) TRACE3'S ACCEPTANCE OF ANY PURCHASE ORDER IS MADE SUBJECT TO CLIENT'S ACCEPTANCE OF THESE SALE TERMS.
3. Delivery. Trace3 will accept Client's Purchase Orders under these Sale Terms for requested delivery of Products up to two months after the date of a Purchase Order.
4. Prices. Prices for Products will be as stated in the Quote and will be billed to Client in one or more invoices submitted by Trace3 to Client (the "**Invoices**") for payment. Quoted Prices for Products may be changed by Trace3 upon 30 days prior written notice to Client (the "**Notice Period**"). Purchase Orders received by Trace3 (a) before commencement of the Notice Period and which are not shipped prior to the expiration of the Notice Period, and (b) during the Notice Period which specify a delivery date within 30 days following the expiration of the Notice Period, will be invoiced at the previously existing lower price for such Products.
5. Payment Terms. Subject to approval by Trace3's credit department, Client commits to make payments within 30 days of the date of issuance of the Invoice by Trace3 to Client. ~~Trace3 reserves the right to charge Client interest on any delinquent balance. This interest is computed on a daily basis for each day the payment is delinquent at the lesser of (x) 18% per year, or (y) the maximum rate permitted by law.~~ Trace3 reserves the right to refuse shipment of Products to Client if any delinquent Invoices are outstanding. Trace3 reserves the right to invoice Client upon the shipment of purchased Products to Client, including whole or partial orders and regardless of whether such Products is shipped to Client by Trace3 or a Products distributor ("**Distributor**") or manufacturer ("**OEM**"), and payment will be due 30 days after the date of issuance of such Invoice. Trace3 may refuse to ship Products on credit for any reason or for no reason whatsoever. Trace3 further reserves the right to refuse payment terms if, in Trace3's sole discretion, such terms would create an unreasonable credit risk for Trace3. In such event, deliveries of Products to Client will be available only on a C.O.D. or cash-in-advance basis. No payment by Client or receipt by Trace3 of an amount lesser than the entire amount of an Invoice will be deemed to be other than on account of the earliest due amount, nor will any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction, and Trace3 may accept such check or payment without prejudice to Trace3's right to recover the balance of any amount due or pursue any other remedy provided for in these Sale Terms. In connection with the foregoing, Trace3 will have the absolute right in its sole discretion to apply any payment received from Client to any account of Client then not current and due and delinquent. Payment via Visa, Mastercard, American Express, other credit card, virtual card (e.g., American Express BIP), or any card or program similar to any of the foregoing will be accepted only if preapproved by Trace3 in writing. Any such payments will be subject to a processing fee of at least 3% of the total fees paid via such payment method.
6. Standard Order Procedure. Products may only be ordered by Client by mailed, e-mailed or faxed Purchase Orders referencing these Sale Terms and stating the quantity, specific Products, applicable price, shipping instructions and requested delivery date. Client acknowledges and agrees that in the event any Purchase Order fails to reference these Sale Terms, these Sale Terms will nevertheless govern the relationship between Trace3 and Client. Purchase Orders will be subject to written acceptance by Trace3 and delivery schedules will be established in accordance with Products availability and Client's credit status.
7. Change Requests, Cancellation and Rescheduling. Any and all changes to previously submitted Purchase Orders sought to be made by Client must be provided in writing by Client via mail, e-mail or fax notice and are subject to approval by Trace3. All requests to cancel Purchase Orders and return Products must be pre-authorized by Trace3 in writing. Trace3 may accept returns for Products then-currently held in Trace3 inventory within 30 days of purchase. Purchase Orders for Products not held in Trace3 inventory (including, but not limited, Products shipped directly from third party OEMs or Distributors) and software may not be cancelled or returned except under special circumstances and only upon pre-authorization by Trace3. If Client is permitted by Trace3 to cancel all or any portion of a Purchase Order and/or return Products, it will pay a restocking charge equal to (a) the amount of any restocking charge imposed by the applicable OEM or Distributor, if any, or (b) 30% of the purchase price for any Products shipped from Trace3's inventory. If Trace3 is unable to meet the requested delivery schedule, it will provide notice to Client as soon as it is reasonably aware of such situation. No Products may be returned except in the event Client and Trace3 have mutually agreed in writing.
8. Delivery; Title & Risk of Loss. Delivery of Products is "F.O.B. ~~Origin, freight~~ ^{Destination} and insurance prepaid and added." Risk of loss or damage for Products will pass to Client on delivery of such Products by Trace3 or a Products Distributor or OEM, as applicable, to Client's common carrier. Products are deemed accepted by Client for risk of loss purposes upon delivery to Client's common carrier. Client is responsible for all costs relating to the shipment and insurance of any Products. Trace3 will make reasonable efforts, but will not be obligated, to deliver the Products in accordance with Client's

shipping instructions and choice of carrier. Trace3 will make commercially reasonable efforts to deliver all Products on or before the due date as specified in any Purchase Order for such Products. Trace3 will make reasonable efforts to expedite delivery of any "ASAP orders." Title to Products will pass to Client only once payment is received in full for such Products.

9. Taxes and Duties. All fees for Products will be exclusive of all national, federal, state, local, international (with respect to Products provided outside of the United States), property or any other governmental use, sales, excise, occupational, ad valorem, VAT or import (with respect to Products provided outside of the United States) taxes and duties, and any other similar taxes or duties. If any such tax, fee or charge is imposed on a transaction subject to these Sale Terms, such tax will be paid by Client in addition to the invoiced fees. If Trace3 is required to pay any such tax, fee or charge Client will reimburse Trace3 for such payment. All taxes, fees and charges with respect to Trace3's income or gross receipts derived from its provision of Products hereunder (including franchise, employment and income taxes of Trace3), will be the obligation of and paid by Trace3.
10. Exports. The Parties acknowledge that Products and/or related confidential information provided under this Agreement may be subject to U.S. and applicable foreign export laws and regulations. Each party will comply with all applicable U.S. and foreign export laws and regulations and anti-boycott laws.
11. Warranties. Client acknowledges and understands that Products provided under these Sale Terms may be manufactured by one or more third parties (and not Trace3). Accordingly, Trace3's sole responsibility to Client with respect to such Products or components and parts thereof provided under these Sale Terms will be to pass through to Client such original Product OEM's available product warranty, if any. The Inventory Product Warranty Policy attached hereto as Annex A will apply to any Products provided out of Trace3 inventory ("Inventory Products"). EXCEPT WITH RESPECT TO INVENTORY PRODUCTS AND AS SET FORTH ON ANNEX A, CLIENT ACKNOWLEDGES AND AGREES THAT TRACE3 DOES NOT PROVIDE ANY WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
12. LIMITATION OF LIABILITY. IN NO EVENT, WHETHER BASED IN CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, FOR BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) WILL TRACE3 BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFIT, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THESE SALE TERMS, AND/OR THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION OF PRODUCTS SOLD UNDER THESE SALE TERMS. NOTWITHSTANDING ANY OTHER PROVISION OF THESE SALE TERMS, TRACE3'S MAXIMUM LIABILITY FOR DAMAGES HEREUNDER WILL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS PURCHASED WHICH IS THE SUBJECT OF THE CLAIM FOR SUCH DAMAGES. THIS DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREUNDER FAILS. CLIENT HAS ACCEPTED THIS DISCLAIMER OF LIABILITY FOR DAMAGES AS PART OF A BARGAIN TO LOWER THE PRICE OF THE PRODUCTS AND UNDERSTANDS THAT THE PRICE OF THE PRODUCTS WOULD BE HIGHER IF TRACE3 WERE REQUIRED TO BEAR ADDITIONAL LIABILITY FOR DAMAGES.
13. Products Changes. Trace3 reserves the right to change, improve or add any new Products or discontinue offering any Products at any time.
14. Indemnity. Client agrees to indemnify and hold Trace3 harmless from any claims or damages (inclusive of reasonable attorney's fees), including claims of infringement, made against Trace3 as a result of alleged negligence, misrepresentation, error or omission on the part of Client or its affiliates, directors, officers, employees, agents or representatives.
15. Entire Agreement. These Sale Terms are the complete, final and exclusive statement of the terms and conditions of sale for the Products between Trace3 and Client and supersedes any and all other agreements between them relating to the subject matter hereof. These Sale Terms may not be modified except in a writing executed by both parties. These Sale Terms will prevail notwithstanding any variance or conflict with any terms contained in any Purchase Order statement of work or other agreement or instrument submitted by Client to Trace3.
16. Force Majeure. Trace3 will not be liable to Client for any alleged loss or damages resulting from the delivery of the Products being delayed by acts of Client, acts of civil or military authority, governmental priorities, fire, floods, epidemics, quarantine, energy crises, strikes, labor trouble, war, riots, accidents, shortages, delays in transportation, or any other causes beyond the reasonable control of Trace3.
17. Waiver. A waiver of any default, or of any of these Sale Terms, will not be deemed to be a waiver of any other default or of any other term or condition, but will apply solely to the instance to which such waiver is directed. The exercise of any right or remedy provided in these Sale Terms will be without prejudice to the right to exercise any other right or remedy provided by law or equity.
18. Severability. In the event any provision of these Sale Terms is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.
19. Assignment. Assignment of these Sale Terms by either party will be prohibited without the express written consent of the other party; provided, that (a) Trace3 reserves the right to subcontract any support or maintenance obligation in connection with the sale of such Products, (b) Trace3 may assign these Sale Terms and any of its rights hereunder in connection with its financing activities in the ordinary course of business, and (c) either party may assign these Sale Terms and its rights and obligations hereunder upon written notice to the other party in connection with a merger or sale of

substantially all of its assets or capital stock. Any other attempted assignment in violation of this provision will be null and void.

20. Governing Law; Venue. These Sale Terms will be construed in accordance with, and all disputes hereunder will be governed by, the laws of the State of ~~California~~, without regard to principles of conflict of laws. Both parties agree that any action, suit or proceeding arising out of or relating to the Products or these Sale Terms will be initiated

and prosecuted in the state and federal courts located in ~~Orange County, California~~, and the parties irrevocably submit to the jurisdiction of any such court.

21. Attorney's Fees. In any action to enforce these Sale Terms, the prevailing party will be awarded all court costs and attorney's fees incurred.

Annex A – Inventory Product Warranty Policy

FOR THE AVOIDANCE OF DOUBT, THIS WARRANTY POLICY ONLY APPLIES TO INVENTORY PRODUCTS (E.G., PRODUCTS PROVIDED OUT OF TRACE3 INVENTORY) AND EXPLICITLY EXCLUDES PRODUCTS SOLD BY TRACE3 AND PROVIDED DIRECTLY FROM AN OEM OR DISTRIBUTOR.

1. **Warranty.** Trace3 warrants that Inventory Products purchased by Client from Trace3 will be free from defects in materials and/or workmanship when utilized in normal use for the Warranty Period (as defined below). This warranty is not transferable and applies to purchases directly by Client from Trace3 within the United States and Canada. Trace3 reserves the right to exclude specific products from this warranty.

For the Warranty Period, Trace3's sole warranty obligation will be to provide replacement parts and materials necessary to maintain the Inventory Products in good operating condition. Inventory Products serial numbers must match Trace3 records for a warranty to be honored. If Trace3 provides replacement parts and the defective Inventory Product returned does not match Trace3's serial number records, Client hereby agrees to pay Trace3 for the replacement parts based on the original purchase price.

2. **Warranty Period.** The warranties provided under this Warranty Policy will extend for the following periods (the "**Warranty Period**") from the shipment date from Trace3 (the "**Purchase Date**"):
 - a. Three years for all Dell EMC PowerEdge and HPE ProLiant branded Inventory Products;
 - b. 90 days for Inventory Products comprised of (i) complete systems or integrated technologies, and (ii) tape drives, cache/controller batteries and consumable media; and
 - c. 30 days for individual or loose (e.g., non-complete systems or unintegrated parts) purchased by entities that resell or transfer ownership of Trace3 Inventory Products, or for such Inventory Products purchased by and delivered to Clients outside of the United States and Canada.
3. **Warranty Process.** To obtain warranty service under the Trace3 warranty, Client must, within the Warranty Period, contact Trace3 with the part number and serial number of the Inventory Products. Trace3 will determine what items are covered under (x) the OEM warranty, and/or (y) the Trace3 warranty provided herein.
 - a. **Inventory Product with OEM Warranty** – For Inventory Products purchased from Trace3 with an OEM warranty, the OEM's warranty will supersede, control and take precedence over any Trace3 warranty. At the Client's request, Trace3 will help facilitate the OEM warranty process. Trace3's remaining warranty, if any, will take

effect after the OEM's warranty period has expired. For example, if the OEM's warranty period is two years and Trace3's applicable Warranty Period is three years, then Trace3's warranty will apply for the one-year following expiration of the OEM's warranty period. Should Trace3, at its sole discretion, replace OEM's warranted Inventory Product on Client's behalf during the OEM's warranty period, Client will return the OEM provided replacement products to Trace3.

- b. **Inventory Product without OEM Warranty** – For Inventory Products purchased from Trace3 without an OEM's warranty (or which are outside of an OEM's warranty but still under Trace3's Warranty Period), Trace3 will attempt parts service using remote diagnosis or other service delivery methods at Trace3's sole discretion. If such parts service is unable to resolve the issue, Trace3 will provide advance parts replacement (e.g., providing replacement product to Client in advance of receiving back the defective Inventory Product). This warranty does not cover hardware or software installation or maintenance costs for the replacement products. At Trace3's sole discretion, Trace3 may repair or replace defective Inventory Products (a) with new, refurbished or previously used Products or parts equivalent to new Products or parts in performance and reliability, or (b) with equivalent Products to an original Inventory Product that has been discontinued. Trace3 reserves the right to replace with equal or better technology without any incremental charges to Client. Replacement Products or parts are warranted to be free from defects for the remainder of the applicable Warranty Period. All component parts or hardware Products returned by Client to Trace3 under this warranty will become the property of Trace3. Trace3 will pay for ground shipping related to return of the repaired or replaced Product to Client.
- c. **Defective Inventory Product** – All defective Inventory Products must be returned to Trace3 within the specified timeframe after the replacement Product has been provided. Client is responsible for returning defective Inventory Products using the original or comparable packaging and for the safe transit of such Inventory Products. If such defective Inventory Product is not returned to Trace3 within the specified timeframe, Client will be invoiced for the replacement Product.
- d. **General**
 - i. Client agrees to provide reasonable cooperation to Trace3 to facilitate and/or receive warranty services and replacement Product or parts. The Warranty Period is not extended as a result of (x) purchasing any additional Products from Trace3, (y) upgrading any purchased Products, or (z) Trace3 providing any

- ii. replacement Product or parts. Client is responsible for backing up data and operating system software before returning any Inventory Products that may have proprietary information. Trace3 assumes no responsibility for lost data.
 - iii. For warranty claims not protected under the Advance Replacement Warranty, the defective Inventory Product will be treated as a depot repair which requires time for Trace3 to perform proper diagnostics and/or provide replacement of Products or parts.
 - iv. Trace3 assumes no responsibility for defective Inventory Product or replacement Product or parts during shipment from Client to Trace3 or from Trace3 to Client, whether within or outside of the Warranty Period.
 - v. For depot repairs not covered by this warranty, Client is responsible for all labor, materials and shipping costs.
4. Exclusions. The warranty provided hereunder does not cover:
- a. any Products not provided out of Trace3's inventory, including, without limitation, OEM or third-party software, software licensing & support, ownership transfer fees, revision level or software compatibility issues; or
 - b. any damages or defects to Inventory Products purchased from Trace3 caused under the following conditions: acts of God, terrorism, abuse, neglect, accident, misuse, power fluctuations, usage of parts or components not supplied by Trace3, unsupported components, shipping damage, failure to perform preventative maintenance, or damage caused by peripherals, software, viruses or from other external causes.
5. Extended Warranty Options.
- a. At Trace3's sole discretion, extended warranty options may be made available to Client. Trace3 offers Clients a multi-year "Advance Replacement Warranty" for parts that extend the advance replacement warranty beyond the original 90-day Warranty Period. Such extended warranty options will be noted on Trace3's Quote, to the extent applicable. The Advance Replacement Warranty option is currently available for the following brands: Cisco, Dell EMC, Hewlett Packard Enterprise and Nimble. Other brands may be covered at Trace3's sole discretion.
 - b. No extended warranty options are available for tape drives, cache/controller batteries and consumable media purchased from Trace3.
6. GENERAL. THE WARRANTIES SET FORTH HEREIN ARE CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE INVENTORY PRODUCT. TRACE3 DISCLAIMS ALL OTHER WARRANTIES,

EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. IN NO EVENT, WHETHER BASED IN CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, FOR BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) WILL TRACE3 BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFIT, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THIS WARRANTY, AND/OR THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION OF INVENTORY PRODUCTS SOLD BY TRACE3. TRACE3'S MAXIMUM LIABILITY FOR DAMAGES RELATED TO THIS WARRANTY WILL NOT EXCEED THE PURCHASE PRICE OF THE INVENTORY PRODUCTS PURCHASED WHICH IS THE SUBJECT OF THE CLAIM FOR SUCH DAMAGES. THIS DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREUNDER FAILS. CLIENT HAS ACCEPTED THIS DISCLAIMER OF LIABILITY FOR DAMAGES AS PART OF A BARGAIN TO LOWER THE PRICE OF THE INVENTORY PRODUCTS AND UNDERSTANDS THAT THE PRICE OF THE INVENTORY PRODUCTS WOULD BE HIGHER IF TRACE3 WERE REQUIRED TO BEAR ADDITIONAL LIABILITY FOR DAMAGES.