



## **Penguin Computing Service Exhibit**

These Penguin Computing Inc. ("Penguin Computing") Service Exhibit Terms govern the service and support provided by Penguin Computing and its sub-contractors to you ("Customer"). Unless Customer has another valid agreement with Penguin Computing, the following terms and conditions will apply.

### **A. Eligibility**

Penguin Computing offers Support as outlined in the Warranty provisions of the Sales Agreement, or Customers may elect to purchase upgraded or post-warranty support based on Penguin Computing's then-current Support offerings. Only hardware provided by Penguin Computing is supported, as originally configured at time of purchase.

Support does not include compatibility issues with third party product or software not provided by Penguin Computing. Technical support is limited to telephone and e-mail correspondence and does not include on-site support unless a separate on-site support contract is purchased. Technical support does not include training in the operation or administration of Penguin Computing systems.

Support may not include re-installation of the operating system or the installation and configuration of hardware not purchased from Penguin Computing. Penguin Computing does not offer support for dual boot systems or for the integration of Penguin Computing servers with non-Linux networks. Penguin Computing has no obligation to provide service or support until it has received payment in full for the product for which support is requested.

### **B. Prices**

Support prices are as quoted at time of purchase or renewal and invoiced in advance based on the term purchased. Penguin Computing may modify the prices and/or discounts set forth in a renewable Service Contract upon renewal. The stated charges are exclusive of the following, for which the Customer is responsible: transportation and insurance charges incurred as a result of providing support to remote Customer sites, costs of operating supplies and accessories, and any sales and other taxes.

### **C. Relocation**

Relocation of Customer equipment is Customer's responsibility, and is not supported unless performed using Penguin Computing installation guide or under the supervision of a Penguin Computing technician. Support of relocated Products or Products moved to another country is subject to local availability and may result in additional support charges, modified service response times, and may be subject to inspection and recertification of the relocated systems at Penguin Computing's applicable time and materials rate.

#### **D. Personnel**

Customer shall designate support contacts who possess the necessary expertise and training to assist in the diagnosis and resolution of system and software problems with direction by Penguin Computing. When contacting Penguin Computing Technical Support, contacts shall provide system serial number, diagnostic information, contents of system log files and other diagnostic information required to make an accurate diagnosis.

#### **E. Remote Services**

Customer agrees that Penguin Computing may access Products remotely at Customer's site for the purposes of diagnosis and repair, and may process and store information in order to remotely service products. All such information will be treated by Penguin Computing as Confidential under the terms of this Agreement. If Customer declines to make systems accessible, then Customer agrees to collect and provide information required to reproduce the error.

#### **F. Service During Warranty**

The standard service and support package during warranty entitles Customer's contacts to phone or e-mail support during normal business hours, 6:00 a.m. to 5:00 p.m. Pacific time. Upgrades to four-hour response time are available in some geographic areas, as designated by Penguin Computing from time to time. Supplemental and on-site service options are available for purchase at Penguin Computing's then-published rates.

#### **G. Service Post Warranty**

Customer may elect to purchase post-warranty support, at mutually-agreed upon prices and terms and conditions, on an annual contract or time and materials basis. For time and materials-based repair services, Customer agrees that the freight cost for returning products or components to Penguin Computing and from Penguin Computing to the Customer shall be borne by the Customer.

#### **H. Exclusions**

Support does not cover incidents due to the following conditions:

- Operator error, including improper handling and neglect
- Power surges, lightning damage, or other acts of nature
- Ancillary system/cabling issues (i.e. building cabling, phone lines, defective backup systems, etc.)
- Need for preventative maintenance
- Incorrect installation by Customer
- Improper ventilation
- Transportation from one physical location to another
- Software problems, including recovery of lost data

**H. Repair/Replacement Process**

Customer and Penguin Computing agree to follow the Return Material Authorization (RMA) Process as published at <http://penguincomputing.com>.

Customer agrees that any Product returned to Penguin Computing without a valid RMA number provided by Penguin Computing becomes the property of Penguin Computing, and Penguin Computing is not obligated to provide a refund or replacement for such returned Products.

**I. Response Time and Availability – Onsite Support**

Penguin Computing's on-site support package is designed to supplement existing Warranty provisions, or extend support coverage beyond the warranty period. Response times and service hours for on-site support are documented at <http://penguincomputing.com>. Quoted third party product on-site support may be provided directly by Penguin Computing, sub-contracted to a third party, or arranged directly with the third party manufacturer.

On-site Support Agreements extend only to the original purchasers of the hardware, and are not transferable.

**J. Backup/Problem Avoidance**

Customer agrees to be responsible for maintaining a procedure external to supported systems to enable Customer to reconstruct lost or altered files, data or programs, and to perform routine system preventative maintenance and cleaning.

**K. Termination and Withdrawal of a Service**

Either party may terminate a Service Exhibit immediately by written notice if the other party commits a non-remediable material breach of such Exhibit, or if the other party fails to cure any remediable material breach within thirty (30) days of being notified of such breach. Neither party may terminate a Service Contract during its initial term except as stated above.

**L. Service Warranty**

Penguin Computing warrants that services will be provided in a professional and workmanlike manner. Penguin Computing's entire liability for breach of the above warranty, and Customer's sole and exclusive remedy, shall be re-performance of the services.

Agreed to:  
Customer Company Name:

Agreed to:  
Penguin Computing Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_