

## WYSE TECHNOLOGY SERVICE AGREEMENT TERMS AND CONDITIONS

Wyse Technology or its authorized Third Party Service Provider (hereafter collectively referred to as "Wyse") and Customer agree that equipment installation and maintenance services (hereafter referred to as "Services") shall be performed exclusively pursuant to the fees, terms and conditions set forth in this Service Agreement.

1. **TERM OF AGREEMENT.** This Service Agreement shall commence on the date on which Wyse accepts this Agreement as specified on the contract confirmation that Wyse sends to Customer and shall continue thereafter for twelve (12) months. This Agreement may thereafter be renewed for additional terms of one year each by mutual written agreement. Prices for the initial term and each renewal term shall be fixed for the entire term each time at Wyse's then current published price in effect at the commencement of each such term. Wyse may modify its published maintenance prices at any time at Wyse's sole discretion.
2. **CANCELLATION.** Customer may cancel this Agreement by notifying, in writing, Wyse Technology Customer Service at: 3471 N. First St., San Jose, CA 95134. If Customer cancels this Agreement within thirty (30) days of Wyse's receipt of the signed contract, Customer will receive a full refund less the cost of any repairs performed. If Customer cancels after thirty (30) days of receipt of the signed contract, Customer will receive a pro rata refund based on the time expired less a cancellation fee of \$25 or 20 percent of the pro rata amount (whichever is less) and less the cost of any repairs performed.
3. **ELIGIBILITY.** In the event the Equipment is not under warranty or under an existing Wyse Service Agreement, the Equipment may be subject to inspection by Wyse to determine if it is in good operating condition. The inspection and any repairs, adjustments, or hardware updates deemed necessary by WYSE shall be made at the relevant rates and terms then in effect. Customer will be charged for such repairs, adjustments, or hardware updates prior to commencement or continuation of Service. In lieu of an inspection, the contract coverage period may be postdated so that Wyse's Service obligations relative to such Equipment shall not commence until thirty (30) days after acceptance of this Agreement by Wyse.
4. **STANDARD MAINTENANCE SERVICES.** Wyse agrees to perform such maintenance and remedial repairs as are necessary to keep the Equipment in, or to restore the Equipment to, good operating condition. Services will be performed on an "as needed" basis and will include replacement of unserviceable parts with new or serviceable parts. All parts that are replaced by Wyse shall become the property of Wyse. Parts provided by Wyse in performance of Services may be new or refurbished parts that are functionally equivalent to new parts and may be from sources other than the original equipment vendor. Services will be performed under the Service Plan chosen by the Customer on the enclosed form as follows:
  - A. **Return-to-Depot (RTD) Warranty Extension.** To initiate a service call, Customer agrees to call Wyse at 800-800-9973 and request an RMA number. After obtaining an RMA number, Customer shall ship the Equipment F.O.B. destination at Customer's expense to the assigned Wyse Service Center stated in the RMA documentation. The RMA number must be prominently displayed on the outside of the manufacturer's shipping container or equivalent. After Wyse has completed the necessary repairs, the unit will be returned to Customer F.O.B. origin at Wyse's expense by a carrier of Wyse's choice. All non-Wyse equipment, accessories, attachments, and modifications must be removed from the covered Equipment before it is delivered or mailed in for service. Wyse shall not be responsible for items that are not removed.
  - B. **Advance Replacement Service (ARS) Warranty Upgrade/Extension.** To initiate a service call, Customer agrees to call Wyse at 800-800-9973 and request an RMA number. Wyse will express ship a new or factory refurbished equivalent unit upon Customer's request for service and the verification of a covered defect. If Customer's call is received before 1:000 p.m. Pacific time, a replacement unit will be shipped to arrive by the next Wyse business afternoon. If the call is received after 1:00 p.m. Pacific time, the replacement unit will be shipped to arrive the 2nd business afternoon. Customer is obligated to return the defective unit, in the same configuration as the replaced unit, within ten (10) business days or Customer will be invoiced for the replacement unit at current list price, plus taxes and freight. If upon further inspection of the returned Product Wyse determines that the failure was not due to a covered defect, then Customer will be invoiced for the replacement unit at current list price, plus taxes and freight.
5. **TIME AND MATERIALS.** Services performed at Customer's request, which are outside those specified herein shall be on a flat rate basis at Wyse's prices

in effect at the time such Service(s) or material(s) are provided. Provision of such Services shall be at the discretion of WYSE and shall be subject to the availability of personnel and parts.

6. **PRICES AND PAYMENT.** Prices shall be the price set forth on the face of the agreement. All sales, property, excise and other federal, state and local taxes (other than those based upon Wyse's net income) shall be paid by Customer. Customer shall pay yearly maintenance fees in advance. All invoices are due and payable within thirty (30) days of the date of the invoice. Customer shall make such arrangements for payment as Wyse may require, and Wyse may suspend performance under this Service Agreement until such arrangements are made. Past due amounts shall be subject to an interest charge of one and one-half percent (1-1/2%) per month or the highest rate permitted by law, whichever is less. Should the Customer default in the payment of any sum of money due beyond the thirtieth (30th) day after the same is due, then Wyse may at its option proceed with the following: (1) terminate this Agreement on written notice and/or (2) take appropriate legal action to collect any unpaid charges for any and all Services rendered to Customer under this Agreement and other amounts due hereunder. The rights afforded Wyse under this paragraph will not be deemed exclusive, but shall be in addition to any rights or remedies provided by law. Wyse reserves the right to adjust the Service fee in conformity with Wyse's standard fees in the event Customer changes the Equipment or attaches additional features or equipment after the date hereof.
7. **SITE PREPARATION.** Customer shall, at Customer's expense prepare and maintain the installation site in accordance with equipment manufacturer's published specifications for operating environments. Customer assumes the full responsibility to back-up and/or otherwise protect its data against loss, damage or destruction before Services are performed. Customer also agrees to permit prompt access to Equipment and/or software consistent with Customer's standard security requirements and to provide reasonable assistance and facilities so as to expedite the performance of Services.
8. **RECONDITIONING.** In the event, in Wyse's reasonable opinion, any unit of Equipment must be factory reconditioned because normal repair or replacement of parts cannot keep such unit in satisfactory operating condition, Wyse shall submit a quotation for the required reconditioning to Customer. In the event Customer declines to authorize such reconditioning, Wyse may delete such item of Equipment from this Service Agreement with no further obligation thereon.
9. **ADDITIONAL CHARGES.** Services performed as a result of any of the following conditions shall be subject to, and Customer agrees to pay Wyse for additional charges for labor, transportation, and parts: alterations to equipment not authorized in writing by Wyse; expendable supply items; damage resulting from fire, flood or other catastrophes, improper use, in-transit damage, accident, neglect, power surge or failure, operating environment or the use of supplies or accessories that are not in conformance with the equipment vendor's published specifications; site surveys; maintainability inspections, or any events other than normal wear and tear.

The replacement of cathode ray tubes (CRT) is limited to failure of such parts and does not include occurrences such as fading or burnt phosphor of the CRT screen. If Customer wishes, Customer may authorize replacement of the CRT, and Wyse will bill Customer for such replaced parts at Wyse's then prevailing rates. This Agreement will then continue in effect for the balance of the term hereof.

10. **EXCLUSIVE WARRANTY AND REMEDY.** Wyse's exclusive warranty is that Services will be performed in a workmanlike fashion and all parts provided by Wyse shall be free of defects in materials and workmanship at the time of installation. In the event Wyse breaches this warranty, Wyse's sole obligation, and Customer's exclusive remedy, shall be for Wyse to make all necessary adjustments, repairs or replacement of parts which were defective at the time of installation. There are no other express or implied warranties concerning any Services, parts, supplies or expendable items provided hereunder. Wyse does not guarantee that the operation of the equipment will be uninterrupted or error-free. WYSE DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING SHALL BE THE SOLE REMEDY OF CUSTOMER FOR BREACH OF WARRANTY.
11. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL WYSE BE LIABLE IN CONTRACT, TORT OR OTHERWISE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOST BUSINESS PROFITS OR DAMAGE OR

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DESTRUCTION OF DATA, EVEN IF WYSE HAS BEEN ADVISED OF SAME. Except as to personal injury, Wyse's maximum liability shall be limited in any event to the actual direct damages incurred by Customer that are caused solely by the acts or omissions of Wyse, subject to a maximum liability of the greater of the amount paid for the Services performed under this Service Agreement during the twelve (12) months immediately preceding the damage or \$10,000. Customer agrees to provide Wyse with prompt written notification as to the specifics of any claim for damages and to provide Wyse with a reasonable opportunity to investigate. NO LIMITATION TO DAMAGES FOR PERSONAL INJURY IS INTENDED.

12. **MAINTENANCE AIDS.** Maintenance Aids, including, but not limited to, software or documentation furnished by Wyse are either Wyse's property or property of third parties and are confidential and proprietary. Customer agrees to keep Maintenance Aids confidential and to use its best efforts to prevent their unauthorized disclosure and use. Customer agrees that it will not allow copies of any Maintenance Aids furnished by Wyse to be made without Wyse's prior written consent except that Customer may make necessary copies of Maintenance Aids installed as part of Customer's operating system software subject to Customer's obligations under this Service Agreement. Proprietary notices and legends must appear on all copies in the same manner and form as they appear in the original. The existence of a copyright notice will not cause or be construed as causing any Maintenance Aids to be published copyrighted work or to be in the public domain. Customer shall return or destroy Maintenance Aids provided by WYSE upon termination of this Service Agreement.
13. **NOTICES.** All notices shall be in writing and all notices and payments shall be sent to the recipient at its respective address shown on the face of this Service Agreement.
14. **FORCE MAJEURE.** Neither party shall be liable for any delay or failure to perform its obligations due to any cause beyond its reasonable control.
15. **LIMITATION OF ACTIONS.** No action, regardless of form or basis arising out of transactions related to this Service Agreement or the Services performed or to be performed may be brought by either party more than two (2) years after the cause of action has accrued except that an action for nonpayment may be brought within two (2) years after the date of last payment.
16. **WAIVER.** Waiver of either party's breach of this Service Agreement shall not constitute a waiver of any other breach. Wyse may elect to continue performance notwithstanding such breach by Customer but such performance shall not constitute a waiver of such breach nor otherwise limit Wyse's remedies.
17. **NON-ASSIGNABILITY.** Customer agrees that its rights and obligations under this Agreement may not be transferred or assigned directly or indirectly without the prior written consent of Wyse. Wyse retains all rights to transfer or assign directly or indirectly its rights and obligations under this Agreement.
18. **ENTIRE AGREEMENT.** This Service Agreement shall be construed in accordance with the laws of the State of California. This Service Agreement constitutes the entire agreement between the parties and may only be modified by a written instrument executed by Customer and an authorized officer of Wyse. Any term or condition of an offer set forth on any purchase order or other document submitted by Customer which is inconsistent with any term or condition of this Service Agreement shall be of no force or effect whatsoever. Neither Customer nor Wyse shall be bound by any oral agreement or representation irrespective of by whom or when made. Customer may not assign this Service Agreement without the prior written consent of Wyse.