



**PURCHASE ORDER TERMS AND CONDITIONS
(INDIRECT PROCUREMENT AND INTERNAL USE SOFTWARE PROCUREMENT)**

GUIDELINES FOR USE

When to Use to Purchase Hardware:

- A Provider may be engaged simply under a Purchase Order with the Terms and Conditions generated by Ariba attached if:
 - an MRA or a Short Form Agreement is NOT required under the Indirect Procurement Contract Requirement Policy;
 - in one transaction for a single type of Solution, Dell is purchasing Hardware, Software, SaaS or Hosting Services - NOT Services (purchases of Software, SaaS and Hosting Services are subject to the Internal Use Software Procurement Contract Requirement Policy here);
- AND
- Dell's anticipated annual spend with the Provider is less than \$500,000.

When to Use to purchase Software, SaaS or Hosting Services:

- A Provider may be engaged under a Purchase Order with the Dell Terms and Conditions generated by Ariba attached, if:
 - an MRA or a Short Form Agreement is NOT required under the Dell Internal Use Software Procurement Contract Requirement Policy;
 - in one transaction for a single type of Solution, Dell is purchasing a Software license, SaaS or Hosting Services – NOT Services;
 - Dell and Provider enter into a Software, SaaS and Hosting Schedule to Purchase Order
- AND
- Dell's anticipated annual spend with the Provider is less than \$500,000 USD.

INSTRUCTIONS FOR USE

When Dell issues a Purchase Order through Ariba, these Terms and Conditions will be generated with the Purchase Order.

The Data Protection Agreement is incorporated into, and a part of, the Purchase Order Terms and Conditions.

DO NOT DELETE DPA REFERENCES. DO NOT DELETE – AND DO NOT AGREE TO DELETE – ANY REFERENCES TO THE DATA PROTECTION AGREEMENT IN THE PURCHASE ORDER TERMS AND CONDITIONS UNDER ANY CIRCUMSTANCES. DO NOT AGREE TO REMOVE THE WEBSITE REFERENCE TO THE DPA, THE DEFINITION OF “DATA PROTECTION AGREEMENT” OR THE PROVISION INCORPORATING THE DPA BY REFERENCE.

DO NOT DELETE DPA CARVEOUT FROM THE LOL. DO NOT DELETE – AND DO NOT AGREE TO DELETE – THE FOLLOWING FROM SECTION 16 “EXCEPT FOR SUPPLIER’S INDEMNIFICATION OBLIGATIONS AND LIABILITIES AND/OR SUPPLIER’S CONFIDENTIALITY AND NON-DISCLOSURE OBLIGATIONS AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN ANY NON-DISCLOSURE OR CONFIDENTIALITY AGREEMENT BETWEEN THE PARTIES (THE “NDA”) AND ANY DPA”.

EXECUTABLE DPA FOR GERMANY AND AUSTRIA. PRINT THE DELL TEMPLATE “EXECUTABLE DPA” AND OBTAIN HARD COPY SIGNATURES IF THE PURCHASE ORDER WILL APPLY TO BUSINESS CONDUCTED IN GERMANY AND AUSTRIA.

PURCHASE ORDER TERMS AND CONDITIONS

1. **Terms and Conditions.** ACCEPTANCE OF THE OFFER REPRESENTED BY THIS PURCHASE ORDER IS EXPRESSLY LIMITED TO THE TERMS OF THIS PURCHASE ORDER. THIS ORDER AND ANY AGREEMENT (AS DEFINED BELOW) CONTAINS ALL THE TERMS AND CONDITIONS OF THIS TRANSACTION. ANY OF THE FOLLOWING ACTS BY SUPPLIER SHALL CONSTITUTE ACCEPTANCE OF THIS PURCHASE ORDER AND THE TERMS AND CONDITIONS BELOW: (A) SIGNING AND RETURNING A COPY OF THIS ORDER; (B) DELIVERING ANY OF THE PRODUCTS ORDERED; (C) INFORMING DELL IN ANY MANNER OF COMMENCEMENT OF PERFORMANCE; (D) SENDING SUPPLIER'S ORDER ACKNOWLEDGEMENT; AND (E) ACCEPTING PAYMENT FROM DELL FOR THE PRODUCTS ORDERED. NO TERM OR CONDITION, INCLUDING SUPPLIER'S BID PROPOSAL OR ORDER ACKNOWLEDGEMENT OR ANY ONLINE TERMS OR TERMS INCLUDED IN OR WITH LICENSED SOFTWARE PROVIDED HEREUNDER, MAY VARY OR SUPPLEMENT THIS PURCHASE ORDER UNLESS DELL SPECIFICALLY AGREES TO THE DIFFERENT OR SUPPLEMENTAL TERMS IN A SIGNED WRITING OR ON THE NON-PRE-PRINTED TERMS IN DELL'S ORDER. THESE TERMS AND CONDITIONS ARE AFFIXED TO AND INCORPORATED INTO THE PURCHASE ORDER (THE TERMS AND CONDITIONS AND THE PURCHASE ORDER TOGETHER, THIS "**ORDER**"). THIS ORDER FORMS A LEGALLY BINDING CONTRACT BETWEEN YOU (THE "**SUPPLIER**"), AND THE ENTITY IDENTIFIED ON THE FACE OF THIS ORDER, ON BEHALF OF DELL INC. AND DELL INC.'S DIRECT AND INDIRECT SUBSIDIARIES (TOGETHER, "**DELL**"), WITH RESPECT TO THE PURCHASE OF THE GOODS, LICENSES AND/OR SERVICES (THE "**PRODUCTS**") IDENTIFIED IN THIS ORDER. THIS ORDER MAY BE ISSUED UNDER A SEPARATE AGREEMENT (INCLUDING A MASTER AGREEMENT AND ANY RIDERS, SCHEDULES AND ATTACHMENTS THERETO) EXECUTED BY BOTH PARTIES (THE "**AGREEMENT**").

2. **Order of Precedence.** The Agreement shall govern in the event of a conflict between this Order and the Agreement. Notwithstanding the foregoing, this Order may prevail for purposes of the Agreement if (a) the Order expressly identifies and supersedes or modifies a provision in the Agreement and (b) this Order is signed by an authorized signatory of Dell.

3. **INSPECTION.** Dell or its designee may conduct "in-process" inspection of Product ordered at any place where work thereon is being performed. Supplier agrees to provide, and to require its vendors to provide all reasonable facilities and assistance for such inspection.

4. **NON-COMPLYING PRODUCT.** If any Product (including any rejected lot) does not conform to the representations, warranties in this Order or any other requirements of this Order ("**Noncomplying Product**"), Dell may, at its option and sole discretion, and without limitation of other remedies, deal with Noncomplying Product as follows: (a) return Product to Supplier at Supplier's expense and either (i) allow Supplier to send replacement conforming Product within an agreed delivery schedule or no later than ten (10) days after Dell's notice of noncompliance or (ii) cancel this Order and receive an immediate refund; (b) for services, either (x) require re-performance of non-conforming services or (y) cancel this Order for non-conforming services and receive an immediate refund; or (c) accept the defective Products at an equitable, agreed reduction in price. Supplier shall provide return authorization numbers to enable Dell to return rejected items. Dell reserves its inspection and acceptance rights for any substitute or

replacement items. Repaired or replacement Products shall be warranted by Supplier for the longer of: (a) ninety (90) days from delivery to Dell or (b) the remainder of the original warranty period. All Noncomplying Products, all Products exhibiting Epidemic Defects, all replacement or repaired Products with respect to any of the same, and all over-shipments, under-shipments, or early or late shipments returned by Dell to Supplier, shall be shipped at Supplier's risk and expense including packing and freight charges to and from Supplier, and Supplier shall reimburse Dell for any inspection costs incurred by Dell with respect to the same.

5. **PRICES.** Supplier shall sell to Dell the Products shown on this Order at the prices shown on this Order. Supplier shall comply with the quantity and delivery requirements of this Order; however, Dell shall not be bound by any forecasts or other information it may provide to Supplier, and any expenditures or commitments by Supplier in anticipation of Dell's requirements shall be at Supplier's sole risk and expense. Any price decreases shall be effective upon the date of Supplier's prompt announcement of any such decreases. Decreases will apply to any Products not yet paid for by Dell. Prices shall not be increased unless mutually agreed to by the parties. Supplier shall offer the unit prices and appropriate terms of this Order to any other corporate family member of Dell worldwide, including direct and indirect subsidiaries, for the same or equivalent items provided that such does not violate applicable laws. Supplier warrants that the prices charged for the Products in this Order are as low as the lowest prices charged by Supplier to any of its customers purchasing similar items in similar or smaller quantity(ies).

6. **FULFILLMENT AND DELIVERY.** TIME AND RATE OF DELIVERIES ARE OF THE ESSENCE FOR THIS ORDER.

6.1. **Packing.** Supplier will package all Product according to Dell's instructions set forth in this Order, and if none are provided, then according to good commercial practice to ensure safe arrival of the Product at the named destination. Supplier will be responsible for any loss or damage resulting from its failure to properly preserve, package, handle or otherwise secure the Product for shipping. Supplier will mark all containers with necessary lifting, handling and shipping information along with Order numbers, date of shipment and the names of the consignee and consignor. Each shipment must contain an itemized packing list, including a prominent reference to this Order number and the description, part number, revision level and unit quantity of the Product shipped, as applicable.

6.2. **Shipping.** Supplier must ship all Product according to Dell's instructions set forth in this Order, and if none are provided, then according to good commercial practice to ensure timely arrival of the Product at the named destination and by the time specified in this Order and according to any other instructions Dell may give to Supplier. Supplier will bear all other costs for shipping and delivery, including packing, handling, pre-delivery warehouse storage, and insurance, except where both parties agree otherwise in writing. Supplier will pay any cost increase for Product shipped other than as specified in this Order. Dell will pay charges for overnight or express delivery only if it requests expedited shipping or such shipping is designated in this Order; provided, however, that if a shipment will be late, Supplier will immediately notify Dell and Dell may change shipping to premium transportation, and Supplier will be responsible for the difference between the cost of such premium transportation and the original shipping cost. Supplier will pay the shipping costs for returns of any Product damaged in transit, damaged at delivery or not accepted according to this Order.

6.3. Delivery. Supplier shall deliver all Product by the delivery date FOB the Dell site designated in the Dell PO if that site is in the U.S., and DDP (Incoterms 2010) where that site is outside the U.S.

6.4. Risk of Loss; Title. If Supplier delivers the Product to Dell and does not provide installation, implementation or other services for the Product, then risk of loss will pass to Dell on delivery. If Supplier provides implementation, installation or other services for the Product, then risk of loss will pass to Dell upon the successful completion of such services. Title to the Product will pass from Supplier to Dell upon Dell's Acceptance of the Product.

7. PAYMENT

7.1. Payment by Dell. All invoices will be targeted to be paid by Dell on the Payment Date. The term "**Payment Date**" shall mean the first Thursday on or after the eightieth (80th) calendar day of Dell's receipt from Supplier of a Proper Invoice (as defined below). If, however, such Thursday due date is a Public Holiday, then the Payment Date shall be the next non-Public Holiday business day. The term "**Public Holiday**" shall mean a holiday recognized by the national, central, regional, state or local government in the country in which payment is to be made.

7.2. Proper Invoice. "**Proper Invoice**" means an invoice that (a) has been submitted to Dell within thirty (30) days after Supplier has the right to invoice Dell, (b) is not dated prior to the date the Products reflected in such invoice are received by Dell and (c) is not received by Dell more than ninety (90) days after Supplier has the right to submit such invoice. Unless otherwise directed by Dell, all Orders, invoices and payments will be processed and issued through Dell's designated invoice and payment system, which Supplier agrees to use at Supplier's expense. Supplier will have no recourse with respect to, and Dell will not be obligated to pay for, any charges if an original invoice has not been received by Dell within ninety (90) days after Supplier has the right to invoice such charges, regardless of whether Dell has approved those charges. Notwithstanding, Dell shall give Supplier an opportunity to escalate to Dell's Chief Procurement Officer or vice president designee for reconsideration of the non-payment of any invoice issued greater than ninety (90) days after such applicable invoice should have been submitted. If Dell pays Supplier any excess, improper or invalid charges, Supplier must reimburse Dell for such payments promptly upon discovery or request. Dell's payment of Supplier invoices does not waive or limit Dell's right to later challenge any or all charges in those paid invoices.

7.3. Rebates and Offsets. If Supplier issues credit memos to Dell in payment for, or is otherwise obligated to pay Dell for, rebates, incentives, or marketing funds, Dell, to the extent permitted by applicable law, may offset the amount Supplier owes Dell against all amounts payable by Dell to Supplier. In addition, if Supplier fails to pay any amounts owed to Dell within sixty (60) days of its receipt of an invoice from Dell, Dell, in its sole discretion, may, without further action of the parties hereto, offset such amounts against monies due to Supplier.

7.4. Currency; Taxes. Unless otherwise agreed, all prices charged for Products must be stated (and payments made) in United States ("**U.S.**") Dollars or in the applicable local currency for Dell entities located in countries outside of the United States and are exclusive of the applicable sales, use or similar taxes Dell is obligated to pay Supplier. Dell has no liability for any taxes based on Supplier's assets or income or for which Dell has an appropriate resale or other exemption. Dell has the right to withhold any applicable taxes from any royalties or other payments due if required by any government authority. All amounts payable shall be exclusive of value added tax ("**VAT**") or analogous taxes (if any), which Dell shall pay at the rate applicable thereto from time to time. Supplier shall provide Dell

with a valid VAT invoice (applicable in the country of supply). Supplier and Dell will cooperate to ensure so far as possible that the VAT treatment of this Order is accepted by the relevant tax authorities and each will produce all necessary invoices, records and other documentation for this purpose. In addition, upon Dell's request, Supplier shall bill Dell or its specified direct or indirect subsidiaries on a regional or local basis.

8. **TERM & TERMINATION.** This Order will continue until all services, Product warranties, or licenses have expired or been terminated (the "**Term**").

8.1. Termination for Convenience. Dell may terminate for its convenience all or any part of this Order at any time by written notice to Supplier. Supplier shall take all reasonable steps to mitigate its damages. IN NO EVENT WILL DELL BE LIABLE FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES ON ACCOUNT OF SUCH TERMINATION, NOR FOR DAMAGES IN EXCESS OF THE CONTRACT PRICE FOR THE PRODUCTS SO TERMINATED. Supplier agrees that the foregoing shall be its exclusive remedy for such termination.

8.2. Termination for Breach. Notwithstanding anything to the contrary in this Order, in the event that: (a) Supplier fails to comply with this Order; (b) Supplier fails to deliver Products by the delivery date; (c) Supplier fails to maintain insurance required by Dell; (d) Supplier fails to comply with any of Dell's procedures and regulations; or (e) Supplier makes an assignment for the benefit of its creditors, a receiver is appointed for Supplier, or any bankruptcy or insolvency proceedings are instituted by or against Supplier, Dell may (x) consider the same a breach of contract by Supplier, or (y) terminate this Order in whole or in part, without any liability or obligations to Supplier. Dell may require Supplier to transfer title, and deliver to Dell (x) any completed supplies, and (y) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights as Supplier has specifically produced or specifically acquired for the performance of this Order. Dell's rights and remedies stated herein are not exclusive and are in addition to any other rights and remedies at law or in equity.

9. RETURNS AND CHANGES.

9.1. Returns. Dell shall notify Supplier within thirty (30) days of the date of its receipt and inspection if Dell believes any part of its Order is missing, wrong or damaged. When Supplier has risk of loss, it will replace any Product lost or damaged in transit as soon as possible. The Product will be replaced at the same price and terms as reflected by any original Order. Unless otherwise agreed in writing by the parties, all Product may be returned within sixty (60) days from the date on the packing slip or invoice for a credit or a refund of the purchase price paid, less shipping and handling.

9.2. Changes to Order. Dell may, by written notice to Supplier, make changes to this Order. If such changes cause an increase or decrease in the amount due under this Order or in the time required for its performance, an equitable adjustment may be made. Dell must notify Supplier of any claim for adjustment in writing within ten (10) days from the date of Dell's notice of the change, and any adjustments by Supplier in response to Dell's changes must be approved by Dell in writing. Supplier shall not substitute other materials or revise specifications for those specified in this Order without Dell's prior written consent.

10. **EPIDEMIC DEFECTS AND HAZARDS.** Supplier is responsible for all loss, liability, cost and expense (whether inside or outside the warranty period) with respect to defects in design, manufacturing process or material that constitute epidemic defects ("**Epidemic Defects**"), including without limitation: (a) on-site service call costs; (b) all packaging, shipping and handling costs to and from Dell's location; and (c) costs of investigation and issue analysis. Defects are Epidemic

Defects when found in 0.5% of Product units delivered to Dell or its designee during any one-month period. If Supplier becomes aware of any information that reasonably supports a conclusion that a hazard may exist in any Product that has the potential to cause death or bodily injury to any person or property damage (a "Hazard"), Supplier shall promptly notify the other of the potential Hazard. Supplier shall pay the costs of the investigation and any recall, including, but not limited to, Dell's reasonable out-of-pocket costs directly related to the investigation and any field action.

11. LICENSE AND PASS-THROUGH WARRANTIES. Supplier hereby grants Dell a perpetual, irrevocable, non-exclusive, transferable, worldwide, fully paid-up, royalty-free license to use any Intellectual Property as it is embedded or incorporated in Product, or that is necessary for use of Product, including any bug fixes, updates or upgrades thereto developed by Supplier for the Product, except where such included Intellectual Property is subject to a separate license granted under a separate agreement. This license allows Dell to use such Intellectual Property as included in the Product in connection with the Product. Dell may transfer this license if it transfers the Product either to another Dell entity, a third-party service supplier or a successor owner by sale or lease. Supplier hereby assigns and passes through to Dell all of the third-party manufacturers' and licensors' warranties and indemnities for the Product.

12. REPRESENTATIONS AND WARRANTIES. In addition to any other express or implied warranties, Supplier represents and warrants during the Term of this Order: (a) Supplier has full corporate power and authority to enter into this Order and to carry out the provisions hereof and the person entering into this Order on behalf of Supplier is authorized to do so; (b) Supplier and the Products comply with all applicable laws, ordinances, administrative orders, rules and regulations; (c) this Order and the Products do not breach any other agreement to which Supplier is a party or bound; (d) Supplier will, at the time of delivery of any Product, have all the rights and licenses in such Product necessary to allow Dell to own, use and/or receive such Product without additional restrictions or charges; (e) Products do not infringe or misappropriate any copyright, patent, trademark, trade secret, or any other Intellectual Property rights of any third party; (f) Products will conform to Supplier's published specifications and documentation and will be free from defects in design, materials and workmanship including, without limitation, cosmetic defects, for a period of thirty-six (36) months from the date of delivery to Dell; (g) services performed by Supplier under this Order will be performed in a good, professional and workmanlike manner in accordance with applicable laws and industry standards; (h) Supplier and its employees and agents will be properly licensed certified or accredited and have sufficient skills, knowledge, and training to perform the services; (i) all Product will be new and unused and shall not contain used or repaired parts unless requested by Dell in writing, in which case such Product shall be clearly labeled as refurbished; (j) in the event that a Product incorporates any open source or other third party code ("**Third Party Code**") that subjects Dell to a third party license agreement ("**Third Party Agreement**"), (i) Provider and the Product are in compliance with such Third Party Agreement, including, but not limited to, any attribution or source code disclosure requirements thereunder and (ii) the Product does not include any Third Party Code subject to the Affero General Public License or a similar Third Party Agreement pursuant to which software transmissions or remote use constitute distribution of the Third Party Code; and (k) the Product shall not contain any harmful code, time bombs, viruses, worms, backdoors or similar software which may cause damage to any product or data, nor shall it contain any time-sensitive code or other disabling

devices, key lock or code that has potential or capability of causing any unplanned interruption of the operation of the Product. Supplier shall promptly notify Dell of any fact, event or circumstance that would make any representation or warranty provided by Supplier untrue or inaccurate in any respect.

13. INTELLECTUAL PROPERTY

13.1. Definitions. "**Intellectual Property**" means all intellectual property rights of every kind and description, including without limitation all U.S. and non-U.S. (a) rights in or to trademarks and service marks (whether or not registered), trade names and other designations of source of origin, together with all goodwill related to the foregoing, (b) patents and patent applications, (c) rights in or to copyrights, whether or not registered, (d) rights in or to trade secrets and confidential information, including without limitation know-how, technology methods, ideas and inventions, (e) rights in software and computer code (whether in source code, object code or any other form) and (f) all applications and registrations of any of the foregoing. "**Background IP**" means any Intellectual Property owned, created, developed, leased and/or licensed by a party prior to, outside of or independently from this Order. "**Work Product**" means all Intellectual Property and other materials uniquely created or developed for Dell under this Order.

13.2. Ownership. Each party shall own its Background IP. Dell shall exclusively own Work Product as of the date of its creation. Work Product is "work made for hire" under applicable copyright law and copyright and all other Intellectual Property rights therein will be owned exclusively by Dell. To the extent that any Work Product is not considered a "work made for hire", Supplier shall and hereby does irrevocably assign and transfer all of its right, title, and interest in and to the Work Product, including all Intellectual Property therein, to Dell. Supplier shall ensure that its employees, subcontractors, representatives, agents or other contractors engaged under this Order shall comply with the requirements of this Section. Where applicable, or at the request of Dell, Supplier shall deliver an executed, written assignment to Dell of the Work Product and all Intellectual Property therein.

13.3. License to Background IP. If and to the extent that any Background IP or a portion thereof is incorporated in the Work Product or is otherwise necessary for the use of the Work Product, Supplier hereby grants to Dell a perpetual, irrevocable, non-exclusive, worldwide, royalty-free, fully paid-up license, with the right to sublicense through multiple tiers, to use, make, sell, distribute, execute, adapt, translate, reproduce, display, perform, modify, and create derivative works of Supplier's Background IP in connection with the Work Product in which they are incorporated, and authorize others to do any, some, or all of the foregoing.

13.4. License to Dell Materials. To the extent Dell delivers to Supplier, or provides Supplier access to, any software, specifications, documentation, data, tools, know-how, methodologies, processes and/or any other materials, information or Intellectual Property owned, leased and/or licensed by Dell ("**Dell Materials**"), Supplier shall have the right to use such Dell Materials solely for Dell's benefit and solely for the purpose of performing its obligations to Dell under this Order. Supplier may not remove any Dell Materials from Dell's premises. In addition, Supplier will use the Dell Materials in compliance with any applicable use restrictions that are contained in agreements governing the use of any Dell Materials or otherwise provided by Dell to Supplier.

13.5. Documentation; Cooperation; Enforcement. Supplier will, as part of the Work Product, disclose promptly in writing to Dell all of the Work Product and document all Intellectual Property therein as Dell may direct. Supplier shall, upon request, provide to Dell all of the Work Product. Supplier agrees that it will not seek to enforce any of its Intellectual Property

rights (excluding trademark rights) against Dell in connection with Dell's independent development and use of any product, software, services and/or materials that are similar to the Products; provided however, the foregoing shall not prevent Supplier from otherwise enforcing this Order.

14. COMPLIANCE WITH LAWS

14.1. Provider must meet the standards and requirements specified in Dell's Provider Accountability Principles and Standards at www.dell.com/supplierprinciples, which are incorporated herein by reference ("**Provider Principles**"), including: (a) meeting or exceeding applicable laws and international standards; (b) adopting and meeting Dell's core policy commitments and supplier requirements; and (c) actively participating in Dell's Provider Engagement, Capability Building and Assessment Programs, all as described in the Provider Principles. Provider shall comply with the Provider Principles as they may be updated by Dell from time to time, provided Dell shall provide Provider written notice of any changes to the Provider Principles no less than annually. Dell and/or third-party agents may audit Provider, upon notice and in a non-disruptive fashion, to ensure compliance with applicable laws, this Order and the Provider Principles. Supplier shall reimburse Dell for all costs associated with investigation or mitigation of any suspected or alleged noncompliance; and for all costs related to an inquiry by any regulatory authority of any suspected issue, including but not limited to any issue relating to any Hazard (as defined above) or Product quality. Supplier will reimburse Dell for any fines, sanctions or penalties imposed by any regulatory agency, or qualifying body, for any alleged or actual failure of Product to comply with any applicable regulation or standard.

14.2. **This Order is subject to the requirements of Title 41 of the United States Code of Federal Regulations (CFR) §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), which are incorporated herein by reference.** To the extent Dell utilizes Products to perform its obligations under a U.S. Government prime contract or subcontract, Supplier certifies it will comply with the Federal Acquisition Regulation (FAR) clauses listed at 48 CFR 52.244-6 in effect on the effective date of this Order, which are hereby incorporated by reference and made a part of this Order as if fully set forth herein. The current list of clauses contained in FAR 52.244-6 is specified at Dell's Supplier Principles. Supplier further certifies that neither it nor any of its principals are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any U.S. federal agency and shall immediately notify Dell of any relevant change in status.

14.3. **Import/Export Requirements.** Supplier shall mark the Products with the appropriate country of origin marking sufficient to satisfy the requirements of the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to Dell. If any Products are imported, Supplier will, at Dell's request, either: (a) allow Dell to be the importer of record; or (b) provide Dell with any documents required to prove importation and to transfer duty drawback rights to Dell. Supplier acknowledges that the Products shipped, licensed, or sold under this Order, which may include technology and software, may be subject to the export control laws and regulations of the United States and other countries and Supplier agrees to abide by those laws and regulations.

14.4. **Records and Audits.** Provider shall keep and maintain complete and accurate books, records and accounts with respect to Provider's performance under this Order during the Term and for five (5) years thereafter or the period prescribed by applicable law or regulation if longer ("**Audit Period**"). During the Audit Period, Dell and/or third-party agents may audit Supplier, upon notice and in a non-disruptive fashion, to ensure compliance with applicable laws, this Order and the Provider Principles. Notwithstanding anything to the contrary in this

Order or NDA, Dell may, in its sole discretion, aggregate the data from audits and publically report the audit results, provided that the data shared publically will not be supplier-specific.

15. INDEMNIFICATION

15.1. **Indemnification Obligation.** Supplier shall defend, indemnify and hold harmless Dell and all its respective directors, officers, employees, agents, contractors, consultants, suppliers, customers and distributors ("**Indemnitees**") from and against any and all claims, actions, demands, legal proceedings, liabilities, damages, losses, judgments, authorized settlements, costs and expenses as incurred, including without limitation, attorney's fees, arising out of or in connection with any alleged or actual: (a) infringement by Supplier or the Products, alone or in combination with other goods and services, of any Intellectual Property rights of any third party; (b) bodily injury (including death) or damage to real or tangible personal property; (c) breach of any of Supplier's representations, warranties and covenants contained in this Order; (d) acts or omissions of Supplier; (e) acts or omissions that result in any violation by Supplier, by a Product or by Dell of any governmental laws, rules, ordinances or regulations; (f) failure to perform or comply with this Order; (g) breach of the DPA or the NDA; and (h) claim by or on behalf of Supplier's subcontractors, materialmen, Suppliers, employees or agents (each of the above, a "**Claim**"). Supplier's indemnification obligations in this Section shall not extend to the percentage of a claimant's Claims attributable to the Indemnitee's negligence or other fault, breach of contract or warranty, or to strict liability imposed upon Indemnitee as a matter of law.

15.2. **Claims and Cooperation.** In the event of any Claim, Dell shall: (a) notify Supplier; (b) tender to Supplier (i) sole control of the defense to the extent the Claim applies to the Products and (ii) defense of the Claim to the extent the Claim relates to Supplier's conduct, but Dell retains the right, at its option, to participate in such defense; and (c) at Supplier's expense, reasonably cooperate with Supplier in the defense thereof; and (d) not settle any such Claim without Supplier's prior written consent which Supplier shall not unreasonably withhold. Supplier shall keep Dell informed at all times as to the status of Supplier's efforts and consult with Dell (or Dell's counsel) concerning Supplier's efforts. Supplier shall not settle any such Claim without Dell's prior written consent which Dell shall not unreasonably withhold. Upon Dell's request, Supplier shall disclose to Dell the terms of any settlement of a Claim involving a Product. Notwithstanding the foregoing, in the event that Supplier fails to respond to a tender within ten (10) business days or Supplier refuses to accept tender, then Dell may proceed to settle or otherwise defend the Claim as Dell deems appropriate. In such instance, Supplier remains fully responsible for all costs and expenses incurred by Dell, including any amounts awarded by a court or other judicial body. Without limiting other remedies available to Dell, including joinder of Supplier in the underlying action, Dell may immediately offset expenses as they are incurred from amounts payable to Supplier.

15.3. **Infringement Remedies.** If an infringement Claim is made or appears likely to be made about a Product, Supplier shall, in addition to Supplier's indemnification obligations as set forth in this Section, at Dell's option, either (a) procure for Dell the right to continue to use, market and sell the Product, (b) modify the Product so that it is no longer infringing or (c) replace it with a non-infringing Product. If the parties determine that none of these alternatives is commercially reasonable, Dell shall return any infringing Products in inventory freight-collect to Supplier's designated location for a credit or refund of the purchase price.

16. **LIMITATION OF LIABILITY. EXCEPT FOR SUPPLIER'S INDEMNIFICATION OBLIGATIONS AND**

LIABILITIES AND/OR SUPPLIER'S CONFIDENTIALITY AND NON-DISCLOSURE OBLIGATIONS AND LIABILITIES, INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN ANY NON-DISCLOSURE OR CONFIDENTIALITY AGREEMENT BETWEEN THE PARTIES (THE "NDA") AND ANY DPA, NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER ANY PART OF THIS ORDER, EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A PARTY ASSERTS OR ESTABLISHES A FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS ORDER.

17. **DATA PROTECTION AGREEMENT.** Provider hereby agrees to and shall comply with the Data Protection Agreement at www.dell.com/supplierdataprotection ("DPA"), the terms of which are incorporated herein by reference, if Provider and/or the Products (a) have access to, collect, handle, maintain, destroy, modify, transmit, store or transfer any personal information or data on behalf of Dell and/or Dell's customers, including without limitation any Dell employee or customer personal information or data, phone number, email, system information, IP address, government issued ID, badge number, human resources and benefits information, records management, copy services, call recordings, credit card information, and financial account information; (b) come into contact with any health-related information pertaining to Dell employees or customers; (c) come into contact with payment card / credit card information, or any other financial data; (d) have access to Dell customer information, employee information, customer lists, or proprietary data belonging to Dell; (e) come into contact with Intellectual Property or Dell Materials, including customer email lists, software, product designs, trademarks, business strategy and websites; (f) host an application, website, data or system or collect, process, or analyze data on behalf of Dell or its customers; (g) provide or develop code used by or exposed to a Dell customer that is (i) custom-developed for Dell, (ii) Dell-branded, (iii) co-branded, or (iv) vendor-branded if Dell provides first or second level support; (h) will remotely connect into Dell or between Dell and Provider networks to provide the Products; (i) have access to Dell's network or a Dell customer network behind the firewall; (j) have unsupervised access to Dell premises or infrastructure in person; or (k) provide a Product that directly supports or faces a Dell customer or the Dell customer order and delivery processes. DELL AND PROVIDER AGREE THAT ANY OF THE FOLLOWING ACTS BY SUPPLIER SHALL CONSTITUTE ACCEPTANCE OF THE DPA: (A) SIGNING AND RETURNING A COPY OF THIS ORDER; (B) DELIVERING ANY OF THE PRODUCTS ORDERED; (C) INFORMING DELL IN ANY MANNER OF COMMENCEMENT OF PERFORMANCE; (D) SENDING SUPPLIER'S ORDER ACKNOWLEDGEMENT; AND (E) ACCEPTING PAYMENT FROM DELL FOR THE PRODUCTS ORDERED. The parties will sign the DPA in writing if the DPA will apply to the performance of this Order in the Federal Republic of Germany or the Republic of Austria.

18. **MISCELLANEOUS**

18.1. **Traceability.** Supplier shall maintain records of Products provided to Dell pursuant to this Order that shall be sufficient to allow accurate traceability of the Product from manufacturer, contract manufacturer of Supplier or Supplier's manufacturing line.

18.2. **Subcontracting.** Supplier agrees to obtain Dell's approval before subcontracting this Order or any portion thereof.

This limitation shall not apply to the purchase of standard commercial supplies or raw material.

18.3. **Insurance Requirements.** Supplier shall obtain and at all times during the Term maintain, at its own expense, with insurance companies rated "A-" or better by AM Best or similar local rating agency if not subject to AM Best, commercially reasonable insurance coverage. Dell reserves the right to review Supplier's insurance coverage and: (a) require reasonable adjustments to such coverage; and/or (b) require other types of coverage, in either case, as reasonably appropriate given the nature, volume and/or value of the Products provided under this Order.

18.4. **On-Site Requirements.** Supplier will ensure that while on Dell's premises, Supplier's personnel, agents and subcontractors will abide by any of Dell's environmental, health, safety and security requirements.

18.5. **Survival.** The provisions of Sections 10, 11, 15, 16 and 17 shall survive any termination or expiration of this Order and shall continue to bind the parties and their permitted successors and assigns.

18.6. **Confidential Information; Publicity.** Any confidential information that shall be disclosed by either party related to this Order (including the existence and terms of this Order) shall be subject to the NDA. If Supplier and Dell have not executed an NDA, then the terms of this Section shall apply. "**Confidential Information**" means information that is designated as confidential or should reasonably be understood to be confidential. Confidential Information may only be disclosed to the receiving party's personnel, professional advisors, agents, and subcontractors ("**Representatives**"), on a "need-to-know" basis in connection with this Order. Representatives shall be bound to treat the Confidential Information under terms at least as restrictive as those herein, and the receiving party shall be liable for unauthorized disclosures by its Representatives. Each party will use at least the same degree of care as it employs with respect to its own Confidential Information, but not less than a commercially reasonable standard of care. The foregoing shall not apply to information that (a) is independently developed without use of the other party's Confidential Information; (b) has been obtained from a source which is not under a confidentiality obligation; or (c) is or becomes publicly available without fault of the receiving party. If receiving party must disclose Confidential Information as required by law, it shall give reasonable prior notice to the disclosing party. These obligations shall continue for 3 years from the initial date of disclosure, except that obligations related to information about a party's Intellectual Property shall never expire. Supplier shall not use the name of Dell nor any Dell trademarks, trade names, service marks, or quote the opinion of any Dell employee in any advertising or otherwise.

18.7. **Independent Contractors.** The parties are independent contractors and neither party is an agent, servant, representative, partner, joint venturer or employee of the other or has any authority to assume or create any obligation or liability of any kind on behalf of the other.

18.8. **Notice.** Legal notices shall be made in writing to the Notice Address. Written notice made by facsimile, overnight courier, registered mail or certified mail and sent to the Dell Notice Address or Supplier Notice Address (or to successor individuals and addresses that have been properly noticed to the other party) are deemed to be effective upon sending. All other written communications, deliveries or business notices between Supplier and Dell required by, permitted by or pertaining to this Order shall be effective when received. The Supplier Notice Address shall be as set forth on this Order. The Dell Notice Address is: Dell USA L.P., Attn: Procurement Director, One Dell Way, Round Rock, TX 78682 with a copy to: Dell Inc., Attn:

General Counsel, RR1-33, One Dell Way, Round Rock, TX 78682 with a copy to Dell.Legal.Notices@Dell.com.

18.9. Governing Law; Venue. THIS ORDER WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUSIVE OF ANY PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS AND WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. SUPPLIER AND DELL IRREVOCABLY SUBMIT AND CONSENT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AND THE TEXAS STATE DISTRICT COURT IN WILLIAMSON COUNTY, TEXAS, AND HEREBY AGREE THAT SUCH COURTS SHALL BE THE EXCLUSIVE PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE ARISING IN CONNECTION WITH THIS ORDER.

18.10. Assignment; Waiver; Amendment. Provider may not assign or transfer this Order, in whole or in part, whether voluntarily, by contract or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order, or otherwise without the prior written consent of Dell. Any attempt to assign or transfer this Order other than in accordance with this section will be null and void. The Dell entity executing this Order may assign this Order without Provider consent

including, but not limited to, any other Dell entity. No waiver of any term or condition is valid unless in writing and signed by authorized representatives of both parties, and shall be limited to the specific situation for which it is given. No amendment or modification to this Order shall be valid unless set forth in writing specifically referencing this Order and signed by authorized representatives of both parties. No other action or failure to act (including inspection, failure to inspect, acceptance of late deliveries, or acceptance of or payment) shall constitute a waiver of any rights.

18.11. Entire Agreement; Counterparts. Except for the Agreement, which shall govern in the event of any conflicting, additional or supplemental terms herein, this Order, any DPA and the NDA, set forth the entire agreement and understanding of the parties relating to the subject matter herein, and replaces all prior or contemporaneous discussions and agreements between the parties, both oral and written. This Order may be executed in two or more counterparts, each of which shall be deemed an original for all purposes and together constitute one and the same document. The parties expressly consent and agree to sign this Order through an electronic or digital signature service and that such a signature represents the final and binding signature of the parties and the parties' acceptance and acknowledgement of this Order.