



Dell's Commercial Terms of Sales

1. Introduction

These terms and conditions ("Terms") apply to all Products, Software and/or Services purchased by or on behalf of customer (the legal person who agrees to buy the Products, Software and/or Services from Dell and is also identified in Dell's quotation or invoice) ("Customer") direct from Dell (China) Company Limited with its registered offices at No.2388, Jinshang Road, Xiamen, Fujian Province, China ("Dell") for its internal use only, not for re-sale purposes and to the exclusion of all other terms and conditions.

These Terms together with Dell's Order Documents and Service Documents (as defined below) form a legally binding contract between Customer and Dell for the purchase of Products, Software and Services ("the Agreement").

If Customer and Dell have a separate agreement in place for the purchase of Products, Software or Services, that agreement, along with relevant Order Documents and Service Documents (if any) shall apply instead of these Terms. The Customer acknowledges that it is aware of the contents of and agrees to be bound by these Terms. Neither Dell's acknowledgment of a purchase order nor its failure to object to conflicting, different, or additional terms and conditions in a purchase order shall be deemed an acceptance of such terms and conditions or a waiver of the provisions hereof. The Agreement shall not be deemed to have come into existence until the Customer's order has been accepted by Dell either by way of the order confirmation and/or the invoice sent by Dell to Customer which describes the Products, Software and/or Services purchased by Customer under the Agreement. The Products, Software sold and/or Services rendered are subject to the Agreement to the exclusion of any other terms and conditions stipulated or referred to by Customer, unless expressly agreed and accepted by Dell in writing. The Agreement documents will apply in following order of priority: (1) Order Documents; (2) Service Documents and (3) these Terms.

2. Definitions

(i) "Confidential Information" means collectively information of the disclosing party that is not generally known to the public, such as software, product plans, pricing, marketing and sales information, customer lists, "know-how," or trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential.

(ii) "Deliverables" means tangible and intangible materials including reports, studies, base cases, drawings, findings, manuals, procedures and recommendations prepared by Dell or its suppliers, partners, sub-contractors, licensors in the course of providing the Services.

(iii) "Dell-branded" means information technology hardware, software and related products and services which are marked with the Dell logo or sold under the Dell brand and components thereof, excluding (1) Third Party Products and (2) any parts or components added after delivery of the Products or through Dell's custom factory integration service.

(iv) "Intellectual Property Rights" means any patent, copyright, database right, moral right, design right, registered design, trade mark, service mark, domain name, metatag, utility model, unregistered design or, where relevant, any application for any such right, or other industrial or intellectual property right subsisting anywhere in the world and any intellectual property rights in know-how, documentation, and techniques associated with the Deliverables or Materials.

(v) "Materials" means all content and other items included with or as part of the Products, Services, Software, or Deliverables, such as text, graphics, logos, button icons, images, audio clips, information, data, photographs, graphs, videos, typefaces, music, sounds, and software.

(vi) "Order Documents" means the quotation and/or the order confirmation and/or the invoice sent by Dell to Customer which describes the Products, Software and/or Services purchased by Customer under the Agreement as well as prices, payment terms and other provisions.

(vii) "Products" means computer hardware and related products supplied by Dell under the Agreement.

(viii) "Services" means the services provided by Dell as described in any Service Documents.

(ix) "Service Descriptions" means description of services found at www.dell.com/servicecontracts1.

(x) "Service Documents" means the Service Descriptions available at www.dell.com/servicecontracts, Statements of Work and any other mutually agreed documents describing Services, Software or Deliverables.



(xi) “Software” means any software, library, utility, tool, or other computer or program code, in object (binary) or source-code form, as well as related documentation, provided by Dell to Customer. Software includes software (1) provided by Dell and locally installed on Customer’s hardware and/or equipment or (2) made available by Dell and accessed by Customer through the internet or other remote means (such as websites, portals, and “cloud-based” solutions).

(xii) “Statement of Work” means any mutually agreed statement of work describing specific Services and/or Deliverables as agreed between Customer and Dell.

(xiii) “Third Party Products” means any non-Dell-branded products, software, or services.

3. Ordering

3.1 Any quotes issued by Dell shall be valid for 15 days unless stated otherwise in the quote.

3.2 Prices for the Products, Software and/or Services shall be stated in the Order Documents or Service Documents issued by Dell. Where deliveries occur in instalments or phases Dell may need to adjust prices for Products, Software or Services due to changes in exchange rates, taxes, duties, freight, levies and purchase costs. Quotes provided by Dell exclude value added tax and any other taxes, levies, and shipping charges unless expressly set out in the quote. Such charges are payable by Customer in addition to the prices quoted and may appear as separate items on the Order Documents.

3.3 Unless credit terms have been expressly agreed by Dell, payment for the products, software or services shall be made in full before physical delivery of products, software or provision of services. Time for payment shall be of the essence. Customer’s payment terms are subject to credit checking by Dell. Dell shall be entitled to charge interest on any overdue amounts (computed from the due date to the date of actual payment) at a rate of the lesser of (a) one and half percent (1.5%) per month; or (b) maximum rate permitted by law. If any sum due from the Customer to Dell under the Agreement is not paid by the due date for payment then (without prejudice to any other right or remedy available to Dell), Dell shall be entitled to cancel or suspend its performance of the Agreement or any order including suspending deliveries of the Products and/or Software and suspending provision of the Services until arrangements as to payment or credit have been established which are satisfactory to Dell. Dell may invoice parts of an order separately. Unless credit terms have been expressly agreed by Dell or indicated in the Agreement documents, payment for the Products, Software or Services including applicable taxes shall be made in full before physical delivery of Products/Software or commencement of Services.

3.4 All payments made or to be made by Customer to Dell under the Agreement shall be made free of any restriction or condition and without any deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise.

4. Changes to Products, Software or Services

4.1 Changes in a Product, Software, or Service may occur after a Customer places an order but before Dell ships the Product or Software or performs the Service, and the Products, Software or Services the Customer receives might display minor differences from the Products, Software, or Services Customer orders but they will meet or exceed all material functionality and performance of the Products, Software or Services that were originally ordered.

4.2 Dell may revise and/or discontinue a Product, Software, or Service at any time without notice as part of Dell’s policy of ongoing Product, Software, or Service up-date and revision. Any revised or updated Product, Software, or Service will usually have the core functionality and performance of the Product, Software, or Service ordered unless otherwise intimated by Dell. The Customer accepts that Dell’s policy may result in differences between the specification of a Product, Software, or Service delivered to the Customer and the specification of a Product, Software, or Service ordered. There may be occasions when Dell confirms orders but learns that it cannot supply the ordered Product, Software, or Service, either at all or in the quantities ordered such as when the Product, Software, or Service no longer are being manufactured/provided or they otherwise become unavailable to Dell, or when Dell cannot source components for the configuration ordered, or when there is a pricing error etc. In such circumstances, Dell will contact the Customer to inform them about alternative Product, Software, or Service that might meet the Customer’s needs. However, if the Customer does not wish to order alternative Product, Software, or Service, Dell will cancel the order for a Product, Software, or Service that it cannot supply and will refund the purchase/order price paid by the Customer.

5. Products

5.1 Dell shall deliver the Products to Customer’s location as set out in the Order Documents, and the purchase of the Products shall be subject to the terms as per the Agreement. Delivery dates are non-binding and time for delivery shall not be of the



essence. If no delivery dates are specified, delivery shall be within a reasonable time. Delivery of Products may be made in instalments. Where the Products are so delivered by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by Dell in respect of any one or more instalments shall vitiate the contract in respect of Products previously delivered or undelivered Products. Dell shall not be liable for any loss (including loss of profits), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by Dell's negligence), nor will any delay entitle Customer to terminate or rescind the Agreement. Dell shall only be liable for any non-delivery of Products if Customer gives written notice to Dell within 7 days of the date when the Products would, in the ordinary course of events, have been delivered.

5.2 The title to and risk in the Products shall pass to the Customer or its representative upon delivery of the Product to the Customer or its representative. Notwithstanding any such delivery, Dell shall be entitled to maintain an action against Customer for any unpaid price of the Products without prejudice to any other right or remedy available to Dell either in law or under this Agreement).

5.3 If for any reason Customer does not accept delivery of any of the Products when they are ready for delivery, or Dell is unable to deliver the Products on time because Customer has not provided appropriate instructions, documents, licences or authorisations then the Products will be deemed to have been delivered, risk passing to Customer (including for loss or damage caused by Dell's negligence) and Dell may:

5.3.1 store the Products until actual delivery and Customer shall be liable for all related costs and expenses (including without limitation storage and insurance); or

5.3.2 sell the Products at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge Customer for any shortfall below the Price for the Products.

5.4 Except as agreed to in writing between Customer and Dell, Third Party Products shall be exclusively subject to terms and conditions between the third party and Customer.

6. Services, Software provided by Dell in connection with the provision of the Services & Deliverables

The below provisions in clauses 6, 7 and 8 shall be applicable if the Order Document reflects that the Customer has availed of Software and Services from Dell by paying the applicable charges for the same.

6.1 Dell shall provide Services, Software, or Deliverables to Customer in accordance with the Service Documents and the other applicable terms of the Agreement. Dell may, at its option, propose to renew the Service and the software licence by sending Customer an invoice or, subject to prior notification, continuing to perform the Service or make the Software available to Customer. Customer is deemed to have agreed to such renewal of the Service and software licence by paying such invoice by its due date or by continuing to order Services or use the Software. In case of such renewal, the Service Documents (or the Service Descriptions as the case may be (available at www.dell.com/servicecontracts) and other relevant terms of the Agreement as on the date of payment of the invoice or continuation of performing the service or making available the Software, shall be applicable.

6.2 All Intellectual Property Rights embodied in the Materials and Deliverables, including the methods by which the Services are performed and the processes that make up the Services, shall belong solely and exclusively to Dell, its suppliers or its licensors except as expressly granted in the Agreement. The Materials are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. You may not modify, remove, delete, augment, add to, publish, transmit, adapt, translate, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Materials or Deliverables, in whole or in part.

6.3 Subject to payment in full for the applicable Services, Dell grants Customer a non-exclusive, non-transferable, royalty-free right to use the Materials and Deliverables solely (1) in the country or countries in which Dell delivers the Services, (2) for its internal use, and (3) as necessary for Customer to enjoy the benefit of the Services as stated in the applicable Service Documents.

6.4 Dell may cancel or suspend its performance of the Services or Customer's access or any user access to the Software provided by Dell in connection with the provision of the Services where Dell is required to do so (1) by law, (2) by order of a court of competent jurisdiction, or (3) when Dell has reasonable grounds to believe that Customer (or Customer's users) are involved in any fraudulent or other illegal activities in connection with the Agreement.

6.5 It may be necessary for Dell to carry out scheduled or unscheduled repairs or maintenance, or remote patching or upgrading of the Software provided by Dell in connection with the provision of the Services and which is installed on Customer's computer system(s) ("Maintenance"), which may temporarily degrade the quality of the Services or result in a partial or complete outage



of the Software. Any degradation or interruption in the Software or Services during such Maintenance shall not give rise to a refund or credit of any fees paid by Customer or any other liability on Dell.

6.6 Customer agrees that the operation and availability of the systems used for accessing and interacting with the Software provided by Dell in connection with the provision of the Services (including telephone, computer networks and the internet) or to transmit information can be unpredictable and may from time to time interfere with or prevent access to, use or operation of the Software. Dell shall not be liable for any such interference with or prevention of Customer's access to, use or lack of operation of the Software.

6.7 During the performance of the Services or in connection with Customer's use of the Software provided by Dell in connection with the provision of the Services, it may be necessary for Dell to obtain, receive, or collect data or information, including system specific data (collectively, the "Data"). Customer grants to Dell a non-exclusive, worldwide, royalty-free, perpetual, irrevocable licence to:

6.7.1 use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely for the purposes set out in clause 6.7;

6.7.2 a licence to aggregate the Data with other data for use in an anonymous manner for Dell's marketing and sales activities; and

6.7.3 a right to copy and maintain such Data on Dell's servers (or the servers of its suppliers) during the term of the Agreement.

6.8 Customer represents and warrants that it has obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which Customer is located in connection with Dell's performance of the Services or Customer's use of the Software.

7. Services

7.1 Where the Services purchased consist of repair of Dell-branded Products, such Services shall be those repair services that are necessary to fix a defect in materials or construction of any Products covered by the Agreement. Preventive maintenance is not included and Dell shall not be responsible for repairs of Dell-branded Products caused by problems with Software or Customer provided Third Party Products. Unless expressly stated in a Service Document, Services do not include repair of any Products or Product component that has been damaged as a result of (1) work carried out by anyone other than Dell or its representatives (2) accident, misuse, or abuse of the Product or Product component (such as, without limitation, use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell or its representatives; (3) the moving of the Product from one geographic location or entity to another; or (4) an act of nature, including without limitation, lightning, flooding, tornado, earthquake, or hurricane. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned.

7.2 Customer authorises Dell to use or access any Customer provided Third Party Products as necessary or as requested by Customer in Dell's performance of the Services, including without limitation, copying, storing, and reinstalling a backup system or data. Customer warrants to Dell that it has obtained any licenses, consents, regulatory certifications or approvals required to give Dell and its subcontractors or employees such rights or licenses to access, copy, distribute, use and/or modify (including creating derivative works) or install any Third Party Products to be used in the Services, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products. Customer shall defend, indemnify, and hold Dell harmless from any third party claim or action arising out of Customer's failure to provide such authorisation (including without limitation, obtaining appropriate licenses, Intellectual Property Rights, or any other permissions, regulatory certifications, or approvals associated with technology, software, or other components).

8. Software

8.1 Software is subject to separate software licence agreements accompanying the software media and any product guides, operating manuals, or other documentation presented to Customer during the installation or use of the Software, in addition to any terms in the Order Document.

8.2 In the absence of licence terms accompanying the Software, the terms of the Agreement apply and Dell grants Customer a non-exclusive non-transferable licence to access and use the Software provided by Dell. However, all rights, title or interest in respect of the Intellectual Property Rights in the Software remain with Dell or the licensor of the Software at all times. Software provided or made available to Customer by Dell in connection with the provision of the Services may be used only during the term of the Services and solely as necessary for Customer to enjoy the benefit of the Services.



8.3 For Software provided by Dell in connection with the provision of the Services, the following clauses shall apply:

8.3.1 Customer shall not: (1) copy (save for making a back up copy), modify, adapt, or create a derivative work, collective work, or compilation of the Software, and shall not reverse engineer, decompile or otherwise attempt to extract the code of the Software or any part thereof; (2) licence, sell, assign, sublicense, or otherwise transfer or encumber the Software; (3) use the Software in a managed services arrangement; or (4) use the Software in excess of the authorised number of licensed seats for concurrent users, sites, or other criteria specified in the applicable Service Documents. In addition, Customer may not access the Software to monitor its availability, performance, or functionality, or for any other benchmarking or competitive purpose.

8.3.2 Customer is prohibited from (1) attempting to use or gain unauthorised access to Dell or to any third party's networks or equipment; (2) attempting to probe, scan, or test the vulnerability of Software or a system, account, or network of Dell or any of its customers or suppliers; (3) interfering or attempting to interfere with service to any user, host, or network; (4) transmitting unsolicited bulk or commercial messages; (5) restricting, inhibiting, or otherwise interfering with the ability of any other person, regardless of intent, purpose, or knowledge, to use or enjoy the Software (except for tools with safety and security functions); or (6) restricting, inhibiting, interfering with, or otherwise disrupting or causing a performance degradation to any Dell (or Dell's suppliers') facilities used to deliver the Services.

8.3.3 Customer grants Dell, or an agent designated by Dell, the right to perform an audit of its use of the Software during normal business hours. Customer agrees to cooperate with Dell in such audit and to provide reasonable access to all records related to the use of the Software. The audit will be limited to verification of Customer's compliance with the terms of usage relating to such Software under the Agreement.

8.4 Part of the Software may contain or consist of open source software, which is subject to the terms and conditions of the specific license under which the open source software is distributed.

8.5 Subject to clause 10.1, any open source software used by Dell in connection with the Agreement is provided "as is" without any warranty/condition, express, implied, or otherwise, including, without limitation, implied warranties/conditions as to satisfactory quality, merchantability or fitness for a particular purpose, or any warranty/condition regarding title or non-infringement. To the extent permitted by law, Dell, the copyright holders, or the contributors to such open source software shall not be liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including, without limitation, procurement of substitute goods or services; loss of use, data, or profits; or business interruption) however caused, whether in contract, strict liability, or tort (including negligence) or otherwise arising in any way out of the use of the open source software in connection with this Agreement.

9. Warranty

9.1 Subject to clause 9.2, Dell warrants that Dell-branded Products shall (1) conform to their product specification and (2) be free from material defects for a period of 12 months from the date of the invoice ("Warranty Period") and (3) that Dell-branded spare parts shall be free from defects for 90 days from the date of delivery or for the remainder of the Warranty Period, if longer. Performance of any one of the options set out at clause 9.2 below shall constitute an entire discharge of Dell's liability under the warranties given in this clause 9.1.

9.2 Dell shall at its own discretion, repair or replace Dell-branded Products that do not comply with the warranties set out in clause 9.1 provided Dell is notified in writing of the alleged defect within 7 days of the time when Customer discovers or ought to have discovered the defect and in any event within the Warranty Period. If Dell elects to replace Dell-branded Products or parts pursuant to the warranties set out in clause 9.1, Dell shall deliver the replacement Products or parts to Customer at Dell's own expense at the address to which the defective Dell-branded Products were delivered and the legal, equitable and beneficial title to the defective Products or parts which are being replaced shall (if it has vested in Customer) re-vest in Dell. Customer shall make any arrangements as may be reasonably necessary to deliver up to Dell the defective Products which are being replaced and Dell shall be entitled to charge Customer if such defective Product or parts are not returned on request.

9.3 Dell warrants that (1) the Services and Deliverables shall conform to the Service Documents and (2) the Services shall be performed with reasonable skill and care during the applicable service period.

9.4 Dell warrants that for a period of 90 days from the date of delivery Dell-branded Software will be capable of functioning in all material respects in accordance with the relevant specifications provided (1) Customer notifies Dell of any error or defects in the Software within 14 days of the time when Customer discovers or ought to have discovered the error or defect and (2) Customer provides Dell with documented examples of such error or defect. Dell provides no assurance or warranty that the Software will be free from minor errors. Dell's sole responsibility in respect of the warranty given in this clause 9.4 and Customer's sole remedy shall be the correction of any failure of the Dell-branded Software so that it functions in material respects in accordance with the relevant specifications.



9.5 All warranties, conditions and other terms implied by law, including but not limited to those regarding quality, fitness for purpose, or merchantability relating to the Products, Software and/or Services are to the fullest extent permitted by law, hereby specifically disclaimed and expressly excluded from the Agreement.

9.6 Dell shall not be liable under the warranties given in this clause 9 in respect of:

9.6.1 any defect arising from fair and normal wear and tear, wilful damage, damage, fault, failure or malfunction due to external causes, including accident, abuse, misuse, problems with electrical power, negligence, abnormal working conditions, failure to follow Dell's instructions (whether oral or in writing), misuse or alteration, modification, adjustment or repair of the Products and/or Software without Dell's approval, servicing not authorized by Dell, usage and/or storage and/or installation not in accordance with Product/Software instructions, failure to perform required preventive maintenance, act of God, fire, flood, war, act of violence or any similar occurrence; products with missing or altered service tags or serial numbers; any attempt by any person other than Dell personnel or any person authorised by Dell, to adjust, repair or support the Products/Software and problems caused by use of parts and components not supplied by Dell;

9.6.2 if the total Price for the Products, Software and/or Services have not been paid by the due date for payment;

9.6.3 for any Products, Software, Deliverables parts, materials or equipment not manufactured or produced by Dell, in respect of which Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or supplier to Dell to the extent that they are assignable by Dell to Customer;

9.6.4 any Software, Deliverables and Products manufactured, produced or provided by Dell pursuant to the Agreement in accordance with any design, specification, instruction or recommendation made to Dell by Customer;

9.6.5 any type of defect, damage or wear specifically excluded by Dell by notice in writing; and/or

9.6.6 if Customer makes any further use of the Products and/or Software after giving notice pursuant to clause 9.2.

9.7 Dell does not warrant that the Products, Software, Deliverables or Services will function (1) with any specific configuration not provided by Dell or (2) to produce a specific result even if the configuration or result has been discussed with Dell.

9.8 Some manufacturers' warranties or service contract terms and conditions for Third Party Products may become void if Dell or anyone else, other than the manufacturer or its authorized representative, provides services for or works on the hardware or software (such as providing maintenance and repair services). Dell does not take responsibility for third party warranties or for any effect that the Dell services may have on those warranties.

10. Liability

10.1 Dell shall not be liable in contract or in tort for any loss or damage suffered and Dell's liability is limited to those set out in the Agreement and under statute. Neither party excludes or limits liability to the other party for (1) death or personal injury, (2) property damages caused by or resulting from gross negligence or intentional conducts, (3) any other liability that cannot be excluded by law.

10.2 Dell shall not be liable for:

10.2.1 special, indirect, incidental or consequential loss or damages;

10.2.2 loss of business, opportunity, profit/anticipated profit, income or revenue;

10.2.3 loss of use of Customer's system(s) or networks;

10.2.4 loss of goodwill or reputation or contracts;

10.2.5 loss of, corruption of or damage to data or software;

10.2.6 loss arising out of business interruption;

10.2.7 loss arising out of or in connection with pollution or contamination; or



10.2.8 recovery of data or programs;

arising out of or in connection with the purchase, use or performance of Products/Software or Services.

To the maximum extent permitted by applicable local law, Dell shall have no liability for Third Party Products and Customer shall look exclusively to the third party provider for any damages or liability with respect to the provision of such Third Party Products.

To the extent permitted by law, Dell and Customer hereby agree that, at the time of entering into this Agreement, based upon the nature of the Products / Software/Services being sold and the industry involved, it is both reasonable and foreseeable that the Dell's total liability herein in respect of each event or series of connected events, including any expected profits to the Customer, shall not exceed the amount invoiced for the applicable total price paid for the purchase of Products, Software, Deliverable and/or Services under this Agreement, which give rise to such claim.

10.3 The Customer shall indemnify Dell and keep Dell fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Customer, its employees, agents or sub-contractors or by any breach of its contractual obligations arising out of the Agreement.

10.4 To the extent permitted by law, Dell and Customer agree that Dell will not be liable for Products not being available for use, or for data or software which is lost, corrupted, deleted or altered. Any service response times stated by Dell in Service Documents are approximate only.

10.5 To the extent permitted by law, any typographical, clerical or other error or omission in sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by Dell shall be subject to correction without any liability on the part of Dell.

11.High Risk Activities

Customer acknowledges that the Products, Software, Deliverables and Services are not designed or intended for use in hazardous environments requiring fail safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life support machines, or any other application in which the failure of the Products, Software, Deliverables or Services could lead directly to death, personal injury, or severe physical or property damage ("High Risk Activities"). Dell expressly disclaims any express or implied warranty of fitness for High Risk Activities.

12.Confidentiality

Each party must treat all Confidential Information received from the other party as it would treat its own confidential information generally, but with no less than a reasonable degree of care. Each party shall not disclose such information to any persons (other than their own employees, consultants and service agencies having a need to know and having been bound by a written agreement to protect the Confidential Information) without the other party's prior written consent. This clause shall not extend to information which is rightfully in the possession of such party prior to the receipt of the Confidential Information from the other party, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious. Each party shall ensure their employees and consultants understand and comply with this clause. The foregoing obligations as to confidentiality shall survive any termination of a deal between both parties.

13.Indemnities

13.1 Dell shall defend and indemnify Customer against any third-party claim or action that Dell-branded Products, Software, Deliverables or Services prepared or produced by Dell and delivered pursuant to the Agreement infringe or misappropriate that third party's Intellectual Property Rights enforceable in the country in which Dell delivers and the Customer is authorised to receive such Products, Software, or Services ("IPR Claim"). If Dell receives prompt notice of an IPR Claim that, in Dell's reasonable opinion, is likely to result in an adverse ruling, then Dell shall at its option, (1) obtain a right for Customer to continue using such Products, Deliverables or Software or allow Dell to continue performing the Services; (2) modify such Products, Deliverables, Software, or Services to make them non-infringing; (3) replace such Products, Deliverables, Software, or Services with a non-infringing equivalent; or (4) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Product, Deliverable or Software.

13.2 Notwithstanding clause 13.1, Dell shall have no obligation under clause 13.1 for any IPR Claim arising from (1) modifications of Dell-branded Products, Deliverables, Software, or Services that were not performed by or on behalf of Dell; (2) the combination, operation, or use of such Products, Deliverables, Software, or Services in connection with a third party product, software, or service (the combination of which causes the claimed infringement); (3) Dell's compliance with Customer's written



specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by Customer; or (4) infringement by any Third Party Product, whether supplied by Dell or not.

13.3 Clauses 13.1 and 13.2 set out Customer's sole and exclusive remedies for any IPR Claim.

13.4 Customer shall defend and indemnify Dell against any third party claim or action arising out of (1) Customer's failure to obtain any appropriate licence, Intellectual Property Rights, or other permissions, regulatory certifications, or approvals associated with technology or data provided by Customer; (2) associated with software or other components directed or requested by Customer to be installed or integrated as part of the Products, Deliverables, Software or Services; (3) Customer's breach of Dell's proprietary rights as stated in the Agreement; (4) any inaccurate representation regarding the existence of an export licence; or (5) any allegation made against Dell due to Customer's breach or alleged breach of applicable export laws, regulations, or orders.

14. Termination

14.1 Either party may (without prejudice to any other rights or remedies it may have against the other party) terminate the Agreement (as regards pending Service or Software continuing to be provided or non delivered Products) immediately if the other party:

14.1.1 commits a material breach of the Agreement and fails to remedy such breach within 30 days of written notice; or

14.1.2 ceases, or threatens to cease, to carry on business or, becomes insolvent.

14.2 Dell may terminate the Agreement with immediate written notice if Customer:

14.2.1 fails to pay undisputed sums properly due to Dell in accordance with the Agreement;

14.2.2 Customer breaches or Dell reasonably suspects Customer has breached export control laws;

14.2.3 Customer breaches any Intellectual Property Rights obligations, warranties and indemnities set out in the Agreement.

14.3 On termination of the Agreement, all rights and obligations of the parties relating to such order under the Agreement will automatically terminate except for rights of action accruing prior to its termination.

14.4 The following clauses shall survive termination of the Agreement and continue to bind the parties, their successors and assigns: 1 (Introduction); 2 (Definitions); 3.3 (Payment); 5 (Products); 6 (Services, Software & Deliverables); 7 (Services); 9 (Warranties); 10 (Liability); 11 (High Risk Disclaimer); 12 (Confidentiality); 13 (Indemnities); 14 (Termination); 15 (Force Majeure); 16 (Export Compliance); 17 (Data Privacy); and 18 (General).

15. Force Majeure

Neither party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under the Agreement during any period in which such performance is delayed by any circumstances beyond a party's reasonable control including, without limitation, fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority ("Force Majeure Event") provided that the delayed party shall provide the other party with prompt written notice of the Force Majeure Event. The delayed party's time for performance shall be excused for the duration of the Force Majeure Event, but if the Force Majeure Event lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, the Agreement by giving written notice to the delayed party.

16. Export Compliance

16.1 Each party, at its own expense, will comply with all applicable laws, orders and regulations of any governmental authority with jurisdiction over its activities in connection with the Agreement. Each party will furnish to the other party any information required to enable the other party to comply with applicable laws and regulations related to the Products, Software or Services. Dell and Customer acknowledge that the Products, Deliverables, Software, and Services provided under the Agreement, (which may include technology and encryption), (1) are subject to U.S. and European customs and export control laws, (2) may be rendered or performed in countries outside the U.S. or Europe, or outside of the borders of the country in which Customer or Customer's Products are located, and (3) may also be subject to the customs and export laws and regulations of the country in which the Products, Deliverables, Software, or Services are rendered or received. Under these laws and regulations, Products, Deliverables, Software, and Services purchased under the Agreement may not be sold, leased or otherwise transferred to



restricted end-users or to restricted countries. In addition, the Products, Deliverables, Software and Services may not be sold, leased or otherwise transferred to, or utilized by, an end-user engaged in activities related to weapons of mass destruction, including but not necessarily limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. Customer agrees to abide by those laws and regulations.

16.2 Customer represents that any software provided by it and used as part of the Products, Deliverables, Software, or Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a licence. If Customer cannot make the preceding representation, Customer agrees to provide Dell with all of the information needed for Dell to obtain export licences from the U.S. government or any other applicable national government and to provide Dell with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Customer is solely responsible for obtaining any necessary licenses relating to the export of software. Dell also may require export certifications from Customer for Software.

16.3 Dell's acceptance of any order for Products, Deliverables, Software, or Services is contingent on the issuance of any applicable export license required by the U.S. Government or any other applicable national government. Dell shall not be liable for delays or failure to deliver Products, Deliverables, Software, or Services resulting from Customer's failure to obtain such licence or to provide such certification.

16.4 Customer agrees to indemnify, defend and hold Dell harmless from any third party claims, demands, or causes of action against Customer's breach or alleged breach of the applicable export laws

17. Data Privacy

17.1 The Customer shall comply with the provisions and obligations imposed by all applicable laws and obtain all necessary authorisations and consents for lawful processing, prior to passing any personal data including all sensitive personal data of any natural person, to Dell. Such authorisations/consents shall also include specific authorisation for Dell to, in the normal course of its business, make worldwide transfers of personal data or sensitive personal data on its corporate systems, to other entities, agents or subcontractors in the same group of companies, or to other relevant business partners who may have incidental access to personal data or sensitive personal data.

17.2 To the extent Dell processes personal data or sensitive personal data for Customer under or in connection with the Agreement, Dell shall ensure compliance with applicable privacy laws of China.

17.3 Dell shall not be liable for any claim brought by Customer or a data subject arising from any action or omission by Dell to the extent that such action or omission resulted from compliance by Dell with Customer's instructions

18. General

18.1 Notices given under the Agreement must be in writing and shall be effective when delivered to the other party's relevant officer at the address stated on Dell's invoice.

18.2 Neither party may assign or transfer the Agreement without the prior written consent of the other party except that (1) no consent is required by Dell to assign to its affiliated companies and (2) Dell may subcontract its obligations under the Agreement but shall remain liable and responsible to Customer for such obligations.

18.3 The Agreement constitutes the entire agreement between the parties and each party acknowledges that in entering into the Agreement it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement.

18.4 Any changes to the Agreement or to any order placed pursuant to it shall not be valid or binding unless it is in writing and agreed by parties. If any provision of the Agreement should be found to be void or unenforceable, such provision will be struck out or modified to the extent necessary to comply with the law, and the remainder of the Agreement shall remain in full force and effect.

18.5 A waiver by either party of a breach of the Agreement or delay or failure to enforce a right under the Agreement shall not constitute a waiver of any subsequent breach of the Agreement.

18.6



The Agreement and any non-contractual obligations shall be interpreted according to the laws of the People's Republic of China without reference to its conflicts of law principles and the competent court in Xiamen, Fujian province, PRC shall have exclusive jurisdiction.

[1][The URL [//www.Dell.com/ServiceContracts](http://www.Dell.com/ServiceContracts) links Customer to Dell's global service contract webpage from where Customer will select their geographic region, preferred language (if applicable) and the appropriate business segment from which they purchased the Service (e.g. Large Enterprise, Small & Medium Business and/or Public Sector.). Customer will then be able to select the appropriate service contract for review.

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