

# Service Brief

## Dell EMC Data Sanitization for Enterprise

### Introduction

This document and its attachments (the “Service Brief”) outline the service features for Data Sanitization Services for Enterprise, (the “Service(s)”). Dell EMC<sup>1</sup> Services (“Dell”) is pleased to provide these Services in accordance with this Service Brief. Your quote, order form or other mutually-agreed upon form of invoice or order acknowledgment (as applicable, the “Order Form”) will include the name of the Service(s) and available service options that you purchased. For additional assistance or to request a copy of your service contract(s), contact Dell Technical Support or your sales representative. For additional assistance, or to request a copy of your governing agreement applicable to the Services (the “Agreement”), contact your Dell EMC sales representative. For a copy of your agreement with your applicable Dell EMC reseller, contact that reseller.

### Dell Services Terms & Conditions

This Service Brief is entered between you, the customer (“you” or “Customer”), and the Dell or EMC entity identified on your invoice for the purchase of this Service. This Service is provided subject to and governed by Customer’s separate signed master services agreement with Dell that explicitly authorizes the sale of this Service. In the absence of such agreement, depending on Customer’s location, this Service is provided subject to and governed by either Dell’s Commercial Terms of Sale or the agreement referenced in the table below (as applicable, the “Agreement”). Please see the table below which lists the URL applicable to your Customer location where your Agreement can be located. The parties acknowledge having read and agree to be bound by such online terms.

Customer Location	Terms & Conditions Applicable to Your Purchase of Dell Services	
	Customers Purchasing Dell Services Directly from Dell	Customers Purchasing Dell Services Through an Authorized Dell Reseller
United States	<a href="http://www.dell.com/CTS">www.dell.com/CTS</a>	<a href="http://www.dell.com/CTS">www.dell.com/CTS</a>
Canada	<a href="http://www.dell.ca/terms">www.dell.ca/terms</a> (English) <a href="http://www.dell.ca/conditions">www.dell.ca/conditions</a> (French-Canadian)	<a href="http://www.dell.ca/terms">www.dell.ca/terms</a> (English) <a href="http://www.dell.ca/conditions">www.dell.ca/conditions</a> (French-Canadian)
Latin America & Caribbean Countries	Local <a href="http://www.dell.com">www.dell.com</a> country-specific website or <a href="http://www.dell.com/servicesdescriptions/global">www.dell.com/servicesdescriptions/global</a> .*	Local <a href="http://www.dell.com">www.dell.com</a> country-specific website or <a href="http://www.dell.com/servicesdescriptions/global">www.dell.com/servicesdescriptions/global</a> .*
Asia-Pacific-Japan	Local <a href="http://www.dell.com">www.dell.com</a> country-specific website or <a href="http://www.dell.com/servicesdescriptions/global">www.dell.com/servicesdescriptions/global</a> .*	Service Briefs and other Dell service documents which you may receive from your seller shall not constitute an agreement between you and Dell but shall serve only to describe the content of Service you are purchasing from your seller, your obligations as a recipient of the Service and the boundaries and limitations of such Service. As a consequence hereof any reference to “Customer” in this Service Brief and in any other Dell service document shall in this context be understood as a reference to you whereas any reference to Dell shall only be understood as a reference to Dell as a service provider providing the Service on behalf of your seller. You will not have a direct contractual relationship with Dell with regards to the Service described herein. For the avoidance of doubt any payment terms or other contractual

<sup>1</sup> “Dell EMC”, as used in this document, means the applicable Dell sales entity (“Dell”) specified on your Dell Order Form and the applicable Dell EMC sales entity (“Dell EMC”) specified on your Dell EMC Order Form. The use of “Dell EMC” in this document does not indicate a change to the legal name of the Dell or Dell EMC entity with whom you have dealt.

Customer Location	Terms & Conditions Applicable to Your Purchase of Dell Services	
	Customers Purchasing Dell Services Directly from Dell	Customers Purchasing Dell Services Through an Authorized Dell Reseller
		terms which are by their nature solely relevant between a buyer and a seller directly shall not be applicable to you and will be as agreed between you and your seller.
<b>Europe, Middle East, &amp; Africa</b>	<p>Local <a href="http://www.dell.com">www.dell.com</a> country-specific website or <a href="http://www.dell.com/serviceBriefBriefs/global">www.dell.com/serviceBriefBriefs/global</a>.*</p> <p>In addition, customers located in France, Germany and the UK can select the applicable URL below:</p> <p>France: <a href="http://www.dell.fr/ConditionsGeneralesdeVente">www.dell.fr/ConditionsGeneralesdeVente</a></p> <p>Germany: <a href="http://www.dell.de/Geschaeftsbedingungen">www.dell.de/Geschaeftsbedingungen</a></p> <p>UK: <a href="http://www.dell.co.uk/terms">www.dell.co.uk/terms</a></p>	Service Briefs and other Dell service documents which you may receive from your seller shall not constitute an agreement between you and Dell but shall serve only to describe the content of Service you are purchasing from your seller, your obligations as a recipient of the Service and the boundaries and limitations of such Service. As a consequence hereof any reference to "Customer" in this Service Brief and in any other Dell service document shall in this context be understood as a reference to you whereas any reference to Dell shall only be understood as a reference to Dell as a service provider providing the Service on behalf of your seller. You will not have a direct contractual relationship with Dell with regards to the Service described herein. For the avoidance of doubt any payment terms or other contractual terms which are by their nature solely relevant between a buyer and a seller directly shall not be applicable to you and will be as agreed between you and your seller.

\* Customers may access their local [www.dell.com](http://www.dell.com) website by simply accessing [www.dell.com](http://www.dell.com) from a computer connected to the Internet within their locality or by choosing among the options at Dell's "Choose a Region/Country" website available at <http://www.dell.com/content/public/choosecountry.aspx?c=us&l=en&s=gen>.

Customer further agrees that by renewing, modifying, extending or continuing to utilize the Service beyond the initial term, the Service will be subject to the then-current Service Brief available for review at [www.dell.com/servicedescriptions/global](http://www.dell.com/servicedescriptions/global).

To the extent that any terms of this Service Brief conflict with any terms of the Agreement, the terms of this Service Brief will prevail, but only to the extent of the specific conflict, and will not be read or deemed to replace any other terms in the Agreement which are not specifically contradicted by this Service Brief.

By placing your order for the Services, receiving delivery of the Services, utilizing the Services or associated software or by clicking/checking the "I Agree" button or box or similar on the Dell.com website in connection with your purchase or within a Dell software or Internet interface, you agree to be bound by this Service Brief and the agreements incorporated by reference herein. If you are entering this Service Brief on behalf of a company or other legal entity, you represent that you have authority to bind such entity to this Service Brief, in which case "you" or "Customer" shall refer to such entity. In addition to receiving this Service Brief, Customers in certain countries may also be required to execute a signed Order Form.

## The Scope of This Service(s)

### A. Definitions.

1. "**Confirmation of Disposal**" will mean the document provided by Dell to the Customer which documents that all drives or network switches were sanitized in accordance with Section 4.2 of Dell's Responsibilities,
2. "**Data Sanitization**" will mean the certified data sanitization process for data bearing devices using methods aligned to the National Institute of Standards and Technology Special Publication 800-88 Revision 1 "Guidelines for Media Sanitization" ("**NIST 800-88 r1**").
3. "**Data Sanitization Summary**" will mean the serialized inventory list of the Equipment and Equipment drives attempted to be sanitized by Dell during each Site visit.
4. "**Data Sanitization Workspace**" will mean a safe and sufficient workspace at the Site where the Data Sanitization Services will be performed.
5. "**Equipment**" will mean all of the Pieces that the Customer has provided to Dell in connection with the Services.
6. "**Piece**" will mean each data bearing device or component (collectively referred to herein as "**Equipment**") as set forth on your Order Form.

7. **“Drive”** will mean all types of data storage, including but not limited to HDD & SSD variants, of enterprise products. See [Table 1.0](#) for drive information.

8. **“Serial Number”** will mean the unique identifier assigned to a Piece by the manufacturer.

9. **“Site”** will mean the Customer designated location at which the onsite Data Sanitization is to be performed.

**B. Services Expiration (4 Years After Purchase if purchased simultaneously with Equipment that is the subject of the Services on the same Order Form, or 12 months if purchased separately from the Equipment).** EXCEPT TO THE EXTENT APPLICABLE LAW REQUIRES OTHERWISE, YOU MAY USE THIS SERVICE DURING THE 4 YEAR PERIOD (IF PURCHASED WITH AND ON THE SAME ORDER FORM AS THE EQUIPMENT THAT IS THE SUBJECT OF THE SERVICES) OR 12 MONTHS (IF PURCHASED SEPARATELY FROM THE EQUIPMENT) FOLLOWING THE DATE OF ORIGINAL PURCHASE (AS APPLICABLE, THE “EXPIRATION DATE”). THE ORIGINAL PURCHASE DATE IS DEFINED AS THE EARLIER OF THE DATE OF THE INVOICE FOR THE SERVICE OR ORDER CONFIRMATION FROM DELL. DELL’S DELIVERY OF THE SERVICE WILL BE DEEMED SATISFIED AFTER THE EXPIRATION DATE EVEN IF YOU DO NOT USE THE SERVICE.

**C. Not Transferable.** The Service is not transferable by Customer.

**D. Service Change or Cancellation.** Two (2) business days of notice by the Customer prior to the scheduled date for Services is required for changes or cancellations to avoid additional fees. To cancel the Service, send the request to the Dell account team. If a Pickup has been scheduled by the Customer directly with Dell’s Logistics Provider, the Customer must also cancel the Pickup directly with such Dell Logistics Provider.

**E. No Returns.** Equipment cannot be returned once Pick Up occurs.

**F. Dell Providers.** Customer hereby acknowledges and agrees that Dell may utilize affiliates and providers to perform these Services, in whole or in part. From time to time, Dell may change the location where Services are performed and/or the party performing the Services; provided however, Dell shall remain responsible to Customer for the delivery of Services.

**G. No Contaminated Products.** The Service will not be provided for Equipment that is or has become contaminated or suspected of being contaminated with chemicals, biological agents or other substances that are not integral to the original new Equipment or otherwise associated with normal office environments. Customer is liable for all costs and expenses associated with not informing Dell of any such contamination.

**H. Software/Data Backup.** DELL HEREBY DISCLAIMS ANY AND ALL LIABILITY FOR ANY RESTORATION OF DATA OR SOFTWARE ON EQUIPMENT (INCLUDING ON ANY CUSTOMER PROVIDED FLASH DRIVE).

**I. United States’ Regulation of PHI.** For Customers with operations in the United States or who are otherwise subject to the US Health Insurance Portability and Accountability Act (“**HIPAA**”), Customer warrants and represents that prior to providing Dell access to Equipment which has been used for processing and/or storage of Protected Health Information as defined in 45 C.F.R. Section 160.103 (“**PHI**”), all PHI on such Equipment has been rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the U.S. Secretary of Health (“**Secretary**”) by either:

1. clearing, purging, or destroying PHI from any electronic media in a manner consistent with NIST Special Publication 800-88, Revision 1, Guidelines for Media Sanitization; or
  2. encrypting PHI as defined in 45 C.F.R. 164.304; or
- Customer shall be responsible for confirming any updated guidance from the Secretary on how to secure PHI in order to render it unusable, unreadable, or indecipherable, to unauthorized individuals and will comply with any applicable guidance as it relates to PHI found on equipment or materials submitted to Dell for processing.

**J. Commercially Reasonable Limits to Scope of Service.** Dell may refuse to provide Services if, in its opinion, the condition, size or location of the Equipment creates an unreasonable risk to Dell or Dell’s Service providers or is beyond the scope of Services. Dell is not liable for any failure or delay in performance due to any cause beyond its control.

**K. Optional Services.** Optional services (including point-of-need support, installation, consulting, managed, professional, support or training services) may be available for purchase from Dell and will vary by Customer location. Optional services may require a separate agreement with Dell. In the absence of such agreement, optional services are provided pursuant to this Service Brief.

**L. Cancellation.** Dell may cancel this Service at any time prior to the Expiration Date for any of the following reasons:

- Customer fails to pay the total price for this Service in accordance with the invoice terms;
- Customer is abusive, threatening, or refuses to cooperate with the assisting analyst or on-site technician; or
- Customer fails to abide by all of the terms and conditions set forth in this Service Brief.

If Dell cancels this Service, Dell will send Customer written notice of cancellation at the address indicated on Customer’s invoice. The notice will include the reason for cancellation and the effective date of cancellation, which will be not less than ten (10) days from the date Dell sends notice of cancellation to Customer, unless local law requires other cancellation provisions that may not be varied by agreement. If Dell cancels this Service pursuant to this paragraph, Customer shall not be entitled to any refund of fees paid or due to Dell.

**M. Geographic Limitations and Relocation.** These Services are not available at all locations. Service options, including service levels, technical support hours, and on-site response times will vary by geography and certain options may not be available for purchase in Customer’s location, so please contact your sales representative for these details.

**N. Limits of Data Sanitization.** Dell makes no recommendations regarding the Customer’s security needs or representations regarding the effectiveness of one method of data removal over another. It is the Customer’s responsibility to protect any confidential or sensitive information contained on its drives recovered by Dell. For more information, please see the [Dell Media Sanitization Statement](#).

**O. Service Hours.** Subject to local law relating to weekly work hours, unless otherwise listed below, these Services will be performed Monday through Friday during normal Dell business hours, which is from 8:00 AM to 6:00 PM Customer local time (“Business Hours”):

Country	Normal Dell Business Hours
St. Kitts, St. Lucia, St. Vincent, Trinidad, Virgin Islands, Rest of English speaking Caribbean	Monday thru Friday from 7:00 AM to 4:00 PM
Barbados, Bahamas, Belize, Costa Rica, Denmark, El Salvador, Finland, Grand Cayman, Guatemala, Honduras, Jamaica, Norway, Panama, Puerto Rico, Rep. Dominicana, Suriname, Sweden, Turks and Caicos	Monday thru Friday from 8:00 AM to 5:00 PM
Australia, Bermuda, China, Haiti, Hong Kong, Japan, Netherland Antilles, New Zealand, Singapore, Thailand	Monday thru Friday from 9:00 AM to 5:00 PM
Argentina, Ecuador, France, India, Indonesia, Italy, Korea, Malaysia, Mexico, Paraguay, Peru, Taiwan, Uruguay	Monday thru Friday from 9:00 AM to 6:00 PM
Bolivia, Chile	Monday thru Friday from 9:00 AM to 7:00 PM
Middle East	Sunday thru Thursday from 8:00 AM to 6:00 PM

No Service activities will take place outside normal Business Hours or during local holidays unless other arrangements have been made in advance in writing.

The following table lists the applicable system/site limitations for sanitization on Equipment specified below:

**Table 1.0**

Product	Number of Systems/Site	Within 1 System	Max Drive count
Dell EMC Atmos	1	16 Nodes	960
Dell EMC Avamar	1	16 Nodes	384
Dell EMC Centera	1	16 Nodes	64
Dell EMC CLARiiON	1	All Drives	960
Dell EMC Celerra	1	All Drives	960
Dell EMC Data Domain	1	All Drives	1080
Dell EMC ECS	1	4 Appliances or 16 Nodes	960
Dell EMC DLm	1	All Drives	1080
Dell EMC Isilon, PowerScale	1	16 Nodes	1920
Dell EMC Symmetrix PowerMax VMAX3 AF	1	All Drives	PMAX = 288 VMAX 400K=5670
Dell EMC Unity	1	All Drives	1000
Dell EMC VNX	1	All Drives	1000
Dell EMC VxRail	1	4 Appliances or 16 Nodes	384
Dell EMC VxFlex	1	16 Nodes	384
Dell EMC VxBlock	1	Order Sum of the Parts. Example: 1 Server;1 MR Storage, etc.	NA
Dell EMC XtremIO	1	4 Bricks	288
Dell EMC PowerOne	1	(1) MX7000 Compute Chassis and (1) Storage system (all drives)	288
Dell EMC IDPA	1	Up to 3 servers, 1 Data Domain system and 1 Avamar Cluster	Data Domain = 1080
Dell EMC PowerProtect X400	1	1 Core Cube, 4 Capacity Cubes	80
Dell PowerEdge Servers	1	16 Servers	384
Dell EqualLogic	1	16 Nodes	384
Dell PowerVault	1	7 drive bays max	336
Dell Compellent	1	16 Enclosure	500
Dell EMC PowerStore	1	All Drives	96
Network Switches	1	Network Switch (*)	N/A
Multivendor	1	Server, CI/HCI	384
	1	Data Protection, Mid-Range Storage, Unstructured Storage	500
	1	High End Storage	288

(\*) Dell Sales representative can confirm the specific network switch models in scope for this offer

## Dell's Responsibilities

### 1. Scheduling.

a. Dell will contact the Customer to schedule the Data Sanitization at each Site for a mutually agreeable time during Business Hours. Data Sanitization will generally be scheduled no earlier than ten (10) business days after the date of contact.

### 2. Data Sanitization

Dell shall:

- a. Arrive at the Site, contact the Customer's Site representative and proceed to the Data Sanitization Workspace;
- b. Record the following information on the Data Sanitization Summary for each System or switch: manufacturer, model number, properly seated and functional drive(s) serial number(s);
- c. Perform the Data Sanitization on each System or switch;
- d. For each System drive or switch on which Data Sanitization is attempted, designate on the Data Sanitization Summary whether the Data Sanitization was successful ("PASS") or unsuccessful ("FAILED");
- e. Remove any drive from a System for which the Data Sanitization was unsuccessful and return such drive to the Customer's Site representative; a tag will be attached to the switch or drive indicating date/time and reason for the failure (if known).
- f. If requested, provide the Customer with a PDF/CSV version of the Data Sanitization Summary on a flash drive (to be provided by the Customer) prior to leaving the Site;
- g. Provide a Data Sanitization Acknowledgement Form to the Customer's Site representative for their review and signature to certify that the Data Sanitization Summary provided in PDF/CSV (in step 2.1.f above) accurately reflects:
  - h. The Switches or System drives that were successfully sanitized ("PASS") and subsequently moved by Dell to a secured storage location designated by the Customer for future Pick Up; and/or
  - i. The Switches or System drives that were not successfully sanitized ("FAILED") and were subsequently returned to the Customer's Site representative for disposition by the Customer.

3. **Reporting:** Dell shall deliver to the Customer within thirty five (35) business days from the date of Pick Up the following reports via email:

- a. Disposition Report; and
- b. Confirmation of Disposal

## Customer Responsibilities

1. **General.** THE CUSTOMER SHALL BACKUP ANY DATA OR SOFTWARE THE CUSTOMER DESIRES TO RETAIN PRIOR TO EQUIPMENT BEING MADE AVAILABLE TO DELL. Service provided under this Service Brief does not include the restoration of any data or software from Equipment.

### 2. Data Sanitization

The Customer shall:

- a. a. Remove/disable all passwords and other access security features and terminate any theft deterrent or laptop tracking software contained within such Equipment from Systems designated for Data Sanitization Services prior to Dell's arrival;
- b. The Data Sanitization Workspace shall at a minimum include:
  - i. Table/desk space, chairs, electrical outlets with adequate lighting;
  - ii. Space adequate to perform concurrent data sanitizations;
  - iii. Sufficient access to electrical power at voltage as applicable for the service and country in scope, and as advised by Dell upon scheduling
- c. Consolidate and locate all Systems designated for Data Sanitization Services in the same immediate area as the Data Sanitization Workspace;



- d. Provide a Site representative each day Data Sanitization is scheduled to be performed to direct Dell to the Data Sanitization Workspace and designate the Systems on which Dell should perform the Data Sanitization;
- e. Provide monitors and external power supplies for use with Systems during the Data Sanitization (monitors not required for portable computers);
- f. Provide a secured storage location in the same immediate area as the Data Sanitization Workspace for storage of Systems that were successfully Data Sanitized;
- g. Review the Data Sanitization Acknowledgement form and sign such form to certify the Customer's agreement that the Data Sanitization Summary provided in PDF/CSV (as defined under Dell's Responsibilities, Section 2.1.f. above ) accurately reflects: (i) the System drives that were successfully sanitized ("PASS") (ii) the System drives that were not successfully sanitized ("FAILED") and were subsequently returned to the Customer's Site representative for disposition by the Customer;

**4. Customer Warranty.** The Customer represents and warrants as follows:

- a. The Customer has good title to the data bearing devices free and clear of all liens, claims and encumbrances of any kind;
- b. The Customer has removed all confidential, proprietary, sensitive or other non-public data from all data bearing devices
- c. The Customer is responsible for and has complied with the health and safety requirements and obligations applicable to it in relation to the Site(s) to which Dell or its providers are given access by the Customer, including the Data Sanitization Workspace
- d. If the Customer breaches any of its obligations or warranties outlined in this Service Brief, Dell shall not be obligated to provide the Services or liable for any damages resulting from the Customer's breach. Alternatively, the Customer may incur additional fees and expenses for any resulting additional time or materials, loss or damage incurred by Dell or its providers.

**C. Pricing and Payment Terms**

The Customer will be charged on a per Piece basis. Refer to Table 1 for per piece limitations.

Pick Up and/or recycling of the Customer's packaging/boxes are not included in the cost of this Service and will incur additional fees.

The Customer hereby agrees to pay the price for each Piece per the applicable Dell order confirmation, as well as any additional fees and costs set forth in this Service Brief. The Customer acknowledges and agrees that Dell shall be entitled to set off amounts due to Dell under this Service Brief against the amounts otherwise payable by Dell to the Customer hereunder.

**Additional Fees.**

- Services rendered by Dell for Pieces in excess of the amount ordered will be billed at the per Piece price for the associated Service.
- Locations** in offshore territories, islands and other remote or indirect locations will incur additional fees.
- Sites requiring access or vehicle restrictions, union labor, time specific or after normal Business Hours will incur additional charges.
- Sites requiring access or vehicle restrictions, union labor, time specific or after normal Business Hours will incur additional charges.
- If the Customer, the Site and/or the Equipment, does not conform to the requirements set forth in this

Service Brief, or the Customer is somehow otherwise not ready for the Data Sanitization to be undertaken as scheduled, the applicable Services may need to be rescheduled and/or additional fees will apply.

#### **D. Important Additional Terms**

**Title and Risk of Loss.** Dell or Dell's Logistics Provider will bear the risk of loss or damage to the Equipment after departure from the Pickup Site. Title will be deemed to pass to Dell or Dell's Logistics Provider upon receipt and possession of the Equipment by Dell or Dell's Logistics Provider.

**Warranty and Liability.** As it relates specifically to the Services provided under this Service Brief only, and despite any conflicting terms in the Agreement, the following terms and conditions apply:

1. **Warranty.** DELL WARRANTS THAT IT WILL PERFORM THE SERVICE WITH COMMERCIALY REASONABLE CARE. DELL MAKES NO OTHER WARRANTY AND DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2. **Limitation of Liability.** DELL'S AND ITS SERVICE PROVIDERS' LIABILITY FOR SERVICES PROVIDED IN ACCORDANCE WITH THIS SERVICE BRIEF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LIABILITY, WILL BE AT ALL TIMES SUBJECT TO THE FOLLOWING LIMITATIONS AND EXCLUSIONS:

a. IN NO EVENT SHALL DELL BE LIABLE (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ANY OF THE FOLLOWING: (I) LOST PROFITS, LOSS OR CORRUPTION OF DATA OR SOFTWARE, LOSS OF BUSINESS OR COMPLIANCE WITH THIRD PARTY REQUIREMENTS THAT MAY APPLY TO DATA ON EQUIPMENT, (II) CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE (IF APPLICABLE) DAMAGES, OR (III) ANY THIRD PARTY CLAIM.

b. DELL SHALL HAVE NO LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR THE SECURITY OR CONFIDENTIALITY OF DATA RESIDING ON EQUIPMENT EXCEPT FOR THE UNAUTHORIZED DISCLOSURE OF DATA FROM A SYSTEM DRIVE WHICH DELL AND/OR ITS SERVICE PROVIDERS' FAILED TO PROPERLY PERFORM THE DATA SANITIZATION AT CUSTOMER'S SITE IN ACCORDANCE WITH THE PROCESSES SET FORTH HEREIN AND SUBSEQUENTLY CERTIFIED SUCH DRIVE AS BEING SUCCESSFULLY SANITIZED ON THE DATA SANITIZATION SUMMARY. IN SUCH CASE DELL SHALL BE LIABLE TO CUSTOMER FOR DIRECT DAMAGES RESULTING FROM SUCH DISCLOSURE UP TO THE LIABILITY CAP SET FORTH IN SECTION D.2.d BELOW.

c. DELL'S MAXIMUM AND SOLE LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR IN CONNECTION WITH ANY CLAIM FOR LOSS OF ANY PHYSICAL ITEM OF EQUIPMENT SHALL IN NO EVENT EXCEED THE VALUATION THEREOF SET OUT IN THE UEPP FOR THE MONTH IN WHICH THE ITEM WAS FIRST DISCOVERED AS LOST.

d. DELL'S AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ANY AND ALL CLAIMS OF LIABILITY ARISING OUT OF, OR IN CONNECTION WITH THIS SERVICE BRIEF WITHIN ANY CALENDAR YEAR SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER UNDER THIS SERVICE BRIEF IN SUCH CALENDAR YEAR.

DELL DOES NOT LIMIT ITS LIABILITY FOR FRAUD, PERSONAL INJURY OR DEATH ARISING FROM ITS NEGLIGENCE OR ANY OTHER LOSS THAT CANNOT BE LIMITED UNDER APPLICABLE LAW. IN THE EVENT APPLICABLE LAW PROHIBITS IN ANY PART ANY LIMITATION OF LIABILITY IN THIS SERVICE BRIEF, THE PARTIES AGREE THAT SUCH LIMITATION SHALL BE MODIFIED, WITHOUT FURTHER ACTION OF EITHER PARTY, SO AS TO BROADLY APPLY TO THE MAXIMUM EFFECT ALLOWED BY APPLICABLE LAW.