

Custom Factory Integration Services Agreement

This Custom Factory Integration Services Agreement (this "Agreement") between Dell Marketing L.P. ("Dell") and _____ ("Customer") is made as of _____, 200__. Dell and Customer agree to the following terms and conditions:

I. SERVICES. This Agreement shall apply each time Customer engages Dell to provide Custom Factory Integration Services (the "Services") as more fully set forth, in each case, on the "Technical Specification" form or "Statement of Work" ("SOW") to be executed by Customer and Dell for each Service requested.

"Custom Factory Integration Services" may include:

- ⇒ Installation or integration of Customer's custom software image, which may include industry standard and/or custom software (in each case, a "CFI Configuration");
- ⇒ Installation or integration of a pre-configured bundle of third party hardware and/or software in a Dell system ("Order Ready"); and
- ⇒ Asset tagging hardware integration or other system integration services.
- ⇒ Development and validation by Dell of the Customer-specific CFI Configuration ("Image Management"); and
- ⇒ Notification of changes to those portions of a CFI Configuration that are Dell-branded and that are originally listed on Dell's standard parts lists ("Dell Standard Products") ("Image Maintenance Service").

II. CUSTOM FACTORY INTEGRATION SERVICES

1. Terms. At Customer's request, Dell may deliver to Customer a CFI Configuration for a per-system fee to be determined between the parties. Customer is responsible for determining the technical specifications for each CFI Configuration and for ensuring that those technical specifications are properly documented to Dell on the Technical Specification form or SOW. Customer's purchase of Dell Standard Products in connection with Custom Factory Integration Services will, in each case, be governed by either (i) the purchase agreement between Dell and Customer, or, in the absence of such an agreement, (ii) Dell's local standard terms and conditions, as reflected on the invoice, quotation, or order acknowledgement received by Customer, or, in absence of the foregoing, as posted on-line at <http://www.dell.com>; (in either case of (i) or (ii), a "Purchase Agreement"). If the terms and conditions of this Agreement differ from the terms of the Purchase Agreement, this Agreement shall control with regard to the Custom Factory Integration Services.

2. Purchase of Third Party Elements, Software Installation.

"Third Party Elements" means any hardware, software, or services other than Dell Standard Products, that are part of the Services, whether provided by Customer or procured for Customer by Dell. Customer shall be responsible for procuring any Third Party Elements included in the Services; however Customer may request that Dell procure the Third Party Elements. If Customer elects to have Dell procure such Third Party Elements, Customer shall provide to Dell a firm purchase order for the number of CFI systems to be ordered for which Dell is requested to procure such elements. In the event the Third Party Elements procured by Dell are not used for CFI orders within a reasonable time, not to exceed 90 days following purchase of such elements by Dell, the Third Party Elements will be shipped and invoiced to Customer and Customer will pay for these elements within thirty (30) days after the date of invoice. Dell is not responsible for any revision or engineering changes in any Third Party Elements included in CFI Services. Customer will provide Dell with any custom software to be installed in a CFI Configuration and Customer authorizes Dell to copy, install and modify, if necessary, all

software to be installed in any CFI Configuration or to be recorded in electronic media for subsequent re-installation of backup. Customer warrants to Dell that it has obtained any licenses, consents, or approvals required to give Dell and its subcontractors or employees the right or license to access, copy, distribute, use and/or modify (including creating derivative works) the Third Party Elements and all custom software to be included in the CFI Configuration, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such elements. Certain Third Party Elements may be covered by the CFI Parts Replacement Program. See

http://www.dell.com/us/en/gen/services/service_cfclientsupportservices.htm for more details.

III. IMAGE MANAGEMENT/IMAGE MAINTENANCE SERVICES

1. Terms. Dell will assign a Project Manager to each Image Management Services transaction. The Project Manager will work with Customer to establish a SOW for each transaction and coordinate the scheduling and performance of the work on Customer's site. Customer may request that Dell implement a change in the scope of the Image Management Services performed under a specific SOW, including the performance of an out-of-scope service (a "Change in Scope"). In addition, one of the following events may result in a Change of Scope (i) an act or omission by Customer that impacts Dell's performance of the Image Management services including, without limitation, an error or change in information provided to Dell by Customer or (ii) a change of law or other unanticipated event, including, without limitation, a "force majeure" event. Customer changes to the factory-installed CFI Configuration, including adding new software applications to the core hard drive image or transitioning a hard drive image to a new software platform or a new CFI Configuration will require the development of a new hard drive image and will be treated as a separate Image Management Services transaction (requiring an additional SOW), not a Change of Scope. Any Change of Scope must be documented and approved in writing by both parties. Any time spent by Dell investigating the feasibility of a Change of Scope will be billed at the rate specified in the SOW, whether or not the Change of Scope is put into effect.

2. Customer Responsibilities. Customer acknowledges that Dell's performance and delivery of the Image Management Services are contingent upon: i) Customer providing access to its personnel, facilities, equipment, hardware, software, network and information and (ii) Customer's timely decision-making, notification of relevant issues or information and granting of approvals and/or permission. Customer will promptly obtain and provide to Dell any required consents necessary for Dell's performance of the Image Management Services described in the applicable SOW.

3. Image Maintenance Service. Dell will revise the CFI Configuration to address Covered Hardware Transitions. A Covered Hardware Transition is (i) any hardware transitions or hardware end-of-life applying to Dell standard hardware parts installed during Dell's manufacturing process; (ii) changes to processors and motherboards installed at Dell's factory; and (iii) changes to drivers installed by Dell at Dell's factory. This service does not include changes in the hardware or software platform.

IV. MISCELLANEOUS

1. Technical Specification Form, SOW. Customer represents and warrants the facts set forth on the Technical Specification form, SOW or any other document provided by Customer. Dell shall be

entitled to rely on the Technical Specification form or SOW. Dell is not responsible for the operation or suitability of any Service provided in accordance with the Technical Specification form or SOW. Dell is not responsible for liability or damage arising from the installation of a CFI Configuration or Service performed in accordance with the Technical Specification form, SOW, and/or Customer's instructions, whether oral or written. If Dell is of the reasonable view that the proposed Services are not technically feasible, Dell reserves the right to refuse to proceed with the development of such CFI Configuration or the performance of such Services at any time. Dell will be relieved of the performance of any Technical Specification form or SOW if, in its reasonable view, Customer has breached any of the representations and warranties in this Agreement.

2. Export. Customer acknowledges that the CFI Configurations and services licensed or sold under this Agreement are subject to the export control laws and regulations of the United States and/or the country from which they are supplied and intended to be used. Customer confirms that with respect to the Dell Standard Products, CFI Configurations, Third Party Elements, or other items provided by Customer (collectively, "Products"), it will not export or re-export them, directly or indirectly, except in accordance with such applicable laws and regulations. Customer confirms that such Products, will not be destined for a prohibited chemical, biological or nuclear weapon or missile use. Customer represents and warrants that software provided by Customer and included in any CFI Configuration contains no encryption or, to the extent that it contains encryption, the software is approved for export without a license. If Customer cannot make the preceding representation, Customer agrees to provide Dell with all of the information needed for Dell to obtain export licenses and classification from the United States government and to assist Dell in obtaining such licenses and classifications, as required. Dell's acceptance of any order for a CFI Configuration is contingent upon the issuance of any applicable export license required by the United States Government, and in no event shall Dell be liable for delays or failure to deliver a product or service resulting from Customer's failure to obtain such license or provide needed information. Customer further represents and warrants that any the CFI Configurations, software, and services provided by Dell on behalf of Customer are not controlled under the International Traffic in Arms Regulations.

3. Regulatory Requirements. Dell shall not be under any obligation to perform any Technical Specification form or SOW or to install any Third Party Elements as part of the CFI Configuration or proceed with a CFI Configuration if such Third Party Elements, or the resulting CFI Configuration, do not satisfy the local regulatory requirements of the country to which the CFI Configuration is to be shipped.

4. No Warranties. **DELL MAKES NO WARRANTIES RELATING TO THIRD PARTY ELEMENTS INCLUDED IN ANY CFI CONFIGURATION OR WITH THE SERVICES. DELL DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE SERVICES OR SUCH THIRD PARTY ELEMENTS.**

5. Limitation of Liability. **NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY DELL EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DELL'S TOTAL**

LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, ANY EVENT OR SERIES OF CONNECTED EVENTS OCCURRING IN CONNECTION WITH THIS AGREEMENT, SHALL NOT EXCEED THE AMOUNT OF FEES PAID UNDER THIS AGREEMENT FOR THE AFFECTED SERVICES DURING THE PRIOR YEAR.

6. Indemnification Customer accepts responsibility for, and agrees to indemnify and hold Dell harmless from, any and all liability, damages, claims, or proceedings arising out of (i) the failure of Customer to obtain the appropriate license or other intellectual property rights to support any Technical Specification form or SOW or the installation of the CFI Configuration, including the right to make any copies or reproductions of the software, (ii) any inaccurate representations regarding the existence of an export license or the eligibility for export of software without a license or (iii) any failure to provide information needed to obtain such a license.

7. Assignment. Customer may not assign this Agreement without the prior written consent of Dell, except that any wholly-owned subsidiary or affiliated company under common control with Customer may obtain Services from Dell or any wholly-owned subsidiary or affiliate of Dell under the authority of, and in accordance with, the terms and conditions of this Agreement.

8. Notices. All communications provided for hereunder shall be sent by postage prepaid first-class mail, receipted courier service, facsimile telecommunication or electronic mail to the address which appears below each party's signature below or to such other address as any party shall specify by notice in writing to the other party.

9. Section Headings. The section headings contained in this Agreement are inserted for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

10. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Texas without reference to conflict of laws provisions.

11. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

