



## Dell Channel Partner Agreement

### 1. What is this document?

- 1.1 This document (“**Agreement**”) forms a contract between Dell Corporation Limited, Dell House, The Boulevard, Cain Road Bracknell RG12 1LFVAT No. GB 635823528 and companies that trade in reselling Dell provided computer hardware, including hardware, software and associated products (including printers and consumables) (collectively “**Products**”) and various Hardware Support Services, Custom Factory Integration Services, Stand-Alone Services (collectively the “**Services**”) and Insurance Products, each as defined in 1.7 below, to other businesses and consumers, in circumstances where the Dell Products, Services and Insurance Products (collectively ‘**Dell Offerings**’) are resold ‘as is’ and without modification and where those other businesses or consumers will be the end users. Your focus territory will be United Kingdom (the “**Territory**”).
- 1.2 If your business wants to buy Dell Offerings from Dell to resell in the way described in section 1.1, then this Agreement (and any other documents referred to within this document) applies to the relationship between your business and Dell and – we will refer to your business as “**you/your**” throughout the document and to applicable Dell group companies as “**we/us/Dell**”. We may also refer to a “**Party**” to the Agreement -meaning you or us or “the **Parties**” to the Agreement – meaning you and us – when appropriate.
- 1.3 This Agreement and the other documents explicitly referred to in this Agreement form your contractual relationship with Dell and record the basis upon which you may purchase Dell Offerings from us and resell those Dell Offerings. These documents collectively replace all previous written and oral agreements, understandings and commitments between you and us. Both Parties accept that they have relied only on the content of this Agreement and the other documents explicitly referred to in this Agreement in making a decision to enter into this Agreement.
- 1.4 This Agreement and provisions of all documents referred to within it shall take precedence over any standard Dell documentation and over any standard terms and conditions that may be attached to your or to our standard order requests, order confirmations or invoices.
- 1.5 In case of discrepancies between the below documents, they shall unless otherwise stated apply in the following order, and, if applicable, where the latter version prevails over any former version:
- this Agreement
  - Appendices;
  - Dell Service Descriptions and Product Descriptions as defined at section 1.7 (together “**Dell Offering Specifications**”); and
  - any other documents referred to in this Agreement,
- save that in the event of any discrepancy between an Appendix or a Dell Offering Specification and the Agreement, an Appendix or such Dell Offering Specification shall prevail over this Agreement with respect to the subject matter of such document.
- 1.6 Each Dell Offering is further defined as follows and in relevant Dell Offering Specifications:-
- “**Products**” has the meaning set out in section 1.1 and as further detailed in the relevant product description (“**Product Description**”) and includes hardware manufactured by or on behalf of Dell and bearing the Dell brand (“**Dell Branded Products**”),
  - “**Hardware Support Services**” means Dell-branded services and extended warranties attaching to Products, made available by Dell from time to time as more specifically defined in the relevant service offering/ warranty description document (a “**Dell Services Description**”);
  - “**Stand-Alone Services**” means Dell-branded services not tied to specific Products as may be made available by Dell from time to time and as more specifically defined in a Dell Services Description e.g. security services and modular services as further detailed in Appendix 4;
  - “**Custom Factory Integration Services**”/“**CFI Services**” means bespoke Dell imaging services which Dell may perform to customise Products;
  - “**Insurance Products**” means Dell-branded insurance -based products, including ‘Accidental Damage’, which will be tied to specific Products, as may be made available by Dell from time to time and as further detailed in a Dell Services Description;
- 1.7 If you want to and you are certified by Dell (as relevant) to resell:
- Hardware Support Services, sections 9.5 and 9.6 and **Appendix 3** shall apply in addition to all other terms of this Agreement;
  - Stand-Alone Services, section 9.9 and **Appendix 4** shall apply in relation to the relevant Stand-Alone Service in addition to all other terms of this Agreement;
  - Insurance Products, **Appendix 5** will apply to such resale in addition to all other terms of this Agreement; and/or
  - any of the Dell Offerings across multiple countries or outside of the Territory, a separate agreement may be necessary, please contact your account manager for detail.
- 1.8 For the avoidance of doubt Dell may, in its sole discretion, decide whether Partner will be offered specific Dell Offerings for onward sale and may require additional training and certification to ensure that onward sale of such Dell Offerings provide optimum end customer experience. You shall market any Dell Offering in line with its description by Dell and where relevant subject to the specific pass through terms detailed in this this Agreement.
- 1.9 This Agreement becomes effective between us when you place your first order request with us and remains effective until terminated in one of the ways specified in section 15 below.



## 2. Relationship

- 2.1 You will be a reseller of relevant Dell Offerings focussing on sales in the Territory to business end users, save that in respect of Insurance Products (subject to relevant certification), you are appointed as Dell's billing agent, in accordance with the terms and conditions of Appendix 5 of this Agreement. Partner is free to set its own sell out pricing, however in relation to the Insurance Products where Partner acts as agent of Dell in accordance with Appendix 5, such Insurance Products may be subject to a maximum end user price as stipulated by the relevant insurance company. You are not authorised by Dell to sell Dell Offerings outside the European Economic Area. If you directly or indirectly supply, or and end user moves, the Products to a geographic location in which Dell warranty support service is not available or not available at the same price as you paid for such service, you will inform end users that they may not have coverage or may incur an additional charge to maintain the same categories of support coverage at the new location. If you or the end user choose not to pay such additional charges, service may be automatically changed to categories of support which are available at such price or a lesser price in such new location, with no refund available. Some locations have no services available from Dell. Any bespoke services that do not form part of the standard Dell Offering may be purchased if agreed by Dell and subject to a mutually agreed bespoke statement of work.
- 2.2 Where you have accepted these terms as a result of applying to be a member of the Dell "PartnerDirect" Program ("**Program**") and you are successful, you will be referred to as a Dell Partner (a "**Partner**"). As a Dell Partner, you will be able to place orders through your account manager or direct online via Dell's "Premier Pages" our online order placement system. You are responsible for keeping your relevant password or code confidential.
- 2.3 This Agreement will combine with Dell Offering specifications and pricing from time to time to form our entire contractual relationship with you in relation to each Dell Offering which you order from us.
- 2.4 You agree that your company details (e.g. company name, address, phone number, web address, partnership level, practice areas and contact names) may be made available publicly via our web pages to customers seeking a Dell reseller, by means of a 'Partner Locator' or similar online tool.

## 3. About "Partnership"

We use the term 'Partner' for some of our relationships but you and we agree that this Agreement does not create the obligations that apply to a legal partnership or similar relationship, and you and we will both continue to be independent contractors.

## 4. Using our "Partner Logo" and Dell Copyright Images

You will be entitled, subject to the applicable Dell terms and conditions of use, to use the appropriate Dell Partner Logo, Dell Copyright Images and other Dell branded material for your specified level of participation in the Program, free of charge for the period of our contractual relationship. You must comply at all times with the Terms and Conditions of Logo Use and/or Terms and Conditions of Dell Copyright Image Use, as applicable. You will find these terms and conditions on the Portal currently at [http://partnerdirect.dell.com/sites/channel/en\\_uk/Documents/EMEA\\_TC.pdf](http://partnerdirect.dell.com/sites/channel/en_uk/Documents/EMEA_TC.pdf) and [http://partnerdirect.dell.com/sites/channel/en-em/documents/partnerdirect-brand-compliance-mini-guide\\_en.pdf](http://partnerdirect.dell.com/sites/channel/en-em/documents/partnerdirect-brand-compliance-mini-guide_en.pdf) or if you are not a member of the Program then you must ask us for a copy of the guidelines when requesting approval to use our logos or images.

## 5. Respecting intellectual property

- 5.1 The "Dell" Brand and our "intellectual property" including, but not limited to, all copyright, trademarks, service marks, patents, database rights, design rights, and domain names, whether registered or not) is very important to us. You may only use our intellectual property in ways that we have expressly told you in writing are acceptable to us. You will find those instructions on the Portal or if you are not a member of the Program then you must ask us for a copy of the instructions when requesting approval to use our intellectual property. When requesting approval to use our copyright Product images, you will be required to accept and comply with the Terms and Conditions of Dell Copyright Image Use.
- 5.2 We do not claim any rights to your intellectual property. Each of you and us will indemnify the other for claims made by others resulting from our respective use of their intellectual property. Thus (except to the extent we are obligated to indemnify you under section 5.3), you will defend, indemnify and hold harmless Dell from and against all claims by a third party (including end-customers) against Dell related to: (i) Your or any end-customer's use of any of the Dell Offerings; (ii) Your use of Dell's licenced proprietary indicia, trademarks, service marks, trade names, logos, symbols and/or brand names in any manner other than as permitted under this Agreement; (iii) Your or any end-customer's marketing, promotion or sale of the Dell Offerings in a manner that is not authorised or permitted under this Agreement; (iv) any claims or allegations that any Dell Offerings infringe the intellectual property rights and/or privacy rights of any third party; (v) any breach of your representations and warranties hereunder; or (vi) your or any end-customer's unauthorised modification of the Dell Offering or related software or documentation or unauthorised combination of anything provided under this Agreement with any hardware, software, products, data or other materials not specified or provided by Dell.
- 5.3 Our Indemnification Obligations. Dell will defend, indemnify and hold you harmless from and against all claims by a third party against you arising from or relating to: (i) any claims or allegations that the Dell Offering as provided by Dell infringes any valid patent copyright, trade secret, or other intellectual property right of a third party enforceable under the laws of the Territory; or (ii) our use of your licensed proprietary indicia, trademarks, service marks, trade names, logos, symbols and/or brand names in a manner not permitted under this Agreement. Notwithstanding the foregoing, we will have no obligation to indemnify to the extent a claim arises from or relates to: equipment, software or



services not provided by us; or (y) modifications to the Dell Offering and ancillary software and documentation made by or at the direction of you or an End-customer.

5.4 If a claim of infringement under Section 5.2 occurs, or if we determine that a claim is likely to occur, we will have the right, in our sole discretion, to either: (i) procure for you, at no additional cost to you, the right or licence to continue to use the infringing material, free of the infringement claim; or (ii) replace or modify the infringing material to make it non-infringing. If these remedies are not reasonably available to us, we may, at our option, terminate this Agreement or any relevant order without any additional liability hereunder.

5.5 If you have the right to use and deal with any third party intellectual property then your use of that intellectual property is based solely on any permissions granted by the third party and it is your sole responsibility to obtain such permission from the owners of those rights. Use of our CFI services, for adaptation of Products in accordance with customer requirements, are subject to you agreeing to our terms and conditions for that service which are available on request.

## **6. Order placement, confirmation of orders and Fitness for purpose**

6.1 If you order on-line, Dell will issue to you user names and passwords (the “Purchase Codes”). By accepting and using the Purchase Codes, you acknowledge the validity of an electronic order, and agree to be responsible for full payment in respect of any Dell Offering ordered using such Purchase Codes. You are responsible for keeping the Purchase Codes confidential and controlling their use. If you believe that an unauthorised transaction has occurred on your account, please notify your Dell sales representative.

6.2 All orders shall be regarded as requests for relevant Dell Offerings will not be binding upon us unless and until we have issued a formal order confirmation to you. Our Dell Offerings are subject to availability and we reserve the right to make detailed changes to Dell Offering specifications on an ongoing basis. Once an order confirmation has been issued by Dell, you are not entitled to cancel an order or part of it without our prior written consent, save where section 15.3 applies. Any variation in an order must be agreed in writing by the Parties. In relation to any orders for Stand Alone Services, you shall provide to us a service order signed by you, detailing the name of each end-customer, end-customer address and the applicable Stand Alone Service ordered. You shall submit such information on the designated Dell service order form if requested. Dell will promptly notify you if any order cannot be processed due to incomplete information; orders containing incomplete information shall not be processed until completed. Stand Alone Services that have service term duration periods and renewals may be invoiced to you monthly (renewals are new orders subject to the then current prices for such renewals).

6.3 We cannot warrant fitness for any particular purpose. In particular our Dell Offerings are not designed to be used in any application or environment where absolute reliability is critical to performance of a process or to the safety of humans, animals, intellectual property or real property. You understand and agree that Dell makes no assurances or warranties that the Dell Offerings are suitable for any high-risk uses. Any intended application of this kind must be agreed to expressly in writing by us prior to the confirmation of the order for those Dell Offerings.

6.4 If we help you to configure and to provision your order then this guidance will be provided as non-binding suggestions only for which we will not accept liability unless agreed within specific parameters and in writing for individual orders with one of our Directors on a case by case basis. Consequently you must check and validate the suitability of all such suggestions and guidance yourself before placing the order.

6.5 When fulfilling an order for Dell Offerings we reserve the right to substitute with Dell Offerings that are equivalent in all respects to or enhanced from the Dell Offering that you have ordered, however we will not make any significant variations to the Dell Offering ordered without your agreement. We reserve the right to supply reconditioned parts for use as spares or repair items and may also sell complete reconditioned Products to you – provided that we are clear about the reconditioned state of the Product to you on or prior to the time when we fulfil the order.

## **7. Delivery and Returns in relation to Products**

7.1 We will build, supply, and deliver the Products to you as set out in the order confirmation, using Dell’s standard build and delivery processes or otherwise as may be agreed in writing between the Parties. In doing so, Dell is entitled to substitute the Product’s components for components of equivalent or better specification. Delivery timing and lead time information provided by Dell at order confirmation is indicative only and Dell shall not be bound by delivery dates unless specifically agreed in writing between the Parties.

7.2 “Delivery” of a Product will take place when the Product is ready for unloading at the “Delivery Location” specified in the order confirmation or such other location agreed between the Parties in writing (including in circumstances where we have agreed to deliver to an end customer on your behalf). On Delivery you will unload the Product from the vehicle that delivered the Product. Products shall be at your risk or that of your representative from the time of Delivery. Dell retains title to the Products until full payment for such Products is received. Until full payment is received, you will hold the Products on a fiduciary basis as Dell’s bailee but may resell the Products in the ordinary course of your business. If, before title to the Products passes to you, you become subject to any of the events detailed in section 15.2, or Dell reasonably believes that such event is about to happen and notifies you accordingly, then, provided that the Products have not yet been resold or irrevocably incorporated into another Product, and without limiting any other right or remedy that Dell may have, Dell may at any time require you to deliver up the Products and, if you fail to do so promptly, enter any or your premises or those of any third party where the Products are stored, in order to inspect and/or recover them. Accordingly you grant Dell, its agents and employees an irrevocable licence at any time to enter without restriction any premises where the Products are or may be stored without prior notice in order to inspect them, or, where your right to possession has terminated, to recover them. Dell shall be entitled to maintain an action against you for the price of Products notwithstanding that title to and property in the Products has not passed to you.



- 7.3 You agree to notify us within 48 (forty-eight) hours of Delivery in the case of missing or damaged Products or Product cartons. You will notify us within 7 (seven) days if the any Product(s) or Product cartons comprising a Delivery is/are otherwise not in conformity with the relevant order, specifying the non-conformity details. If you do not notify us accordingly, you will be deemed to have accepted the Products on Delivery. Where there is any such notified non-conformity by you to us, we shall redeliver conforming Products, being the equivalent of such non-conforming Products, to the Delivery Location or as otherwise agreed between the Parties and in accordance with Dell's standard lead times for the relevant Product. Any repeat deliveries arising due to no fault of Dell will incur additional delivery charges. If you do not accept Delivery of the Products despite such Products conforming with the order confirmation, we shall charge (at cost) to you the cost of Delivery, handling and storage of the such Products. If you do not accept such conforming Products within 4 (four) weeks from the date of Delivery, you agree that we may (on 1 (one) week's notice to you and at our sole option) reprocess the affected Products and sell such reprocessed Products to any third party on your behalf and account for monies received from such sale. Despite our reprocessing of such Products, you shall remain obliged to pay us for the Products.
- 7.4 You will not seek or be entitled to impose any penalties or other financial charges on Dell in respect of indicative delivery timing failures or delays or any other alleged delivery related non-conformance.
- 7.5 Dell's standard direct purchase return policies are not available to you or your customers and all Dell Offerings sold to your customers are subject to your returns policy, if any. Dell will not accept returns of Products or cancellation of Services or (subject to section 7.7) Insurance Products from you or your customers and any Products not rejected in accordance with section 7.3 shall be deemed accepted by you and, subject to section 7.6, may not be returned to us. In particular, you will be responsible for handling, collecting, and dealing with any Products returned to you by your customers or Services cancelled by your customers, whether or not these are returned respectively cancelled as "Cooled-off Products/Services" under your cooling-off processes or the United Kingdom's Consumer Protection (Distance Selling) Regulations 2000 or equivalent national legislation and any updates thereof.
- 7.6 You may, on behalf your customers, request an exchange for any missing, wrong or defective or dead on arrival Product, within 30 (thirty) days from the date of Delivery. Products returned to Dell for exchange under this section shall be shipped from your facility with title and risk of loss or damage passing to Dell (or the Dell designated carrier) upon physical delivery and Dell shall pay all freight charges. Any defect issues arising after this initial period shall be dealt with by Dell direct with the end user under the Product Warranty (as defined in section 9 below and meaning that Dell shall repair, in the first instance, or, if repair is not reasonably practicable, replace such Product direct for your customer, within a reasonable period and within the parameters of the Warranty). You shall not be entitled to return Product for exchange or credit other than in accordance with this section 7.6 and section 7.3. Freight damage claims for damage occurring between you and your customer or end user are your sole responsibility and any requirement for exchange of Products damaged due to your freight issues will be dealt with as above but with you being responsible for all Product replacement costs and freight charges.
- 7.7 In the event that an Insurance Product is cancelled by your customer in accordance with a statutory cooling off period or other cancellation right, Dell will reimburse you for any premium repaid to your customer.

## 8. Compliance with laws

- 8.1 You must comply with all applicable laws and regulations relating to your participation in the Program. This includes the following very important areas:
- a) **Export:** Products, software and technology covered by this Agreement may be subject to export control laws and regulations in the European Union ("EU"), the United States and in other Europe, Middle East and Africa countries. You must comply with such export control laws and regulations – fuller details of this requirement are given below in **Appendix 1**;
  - b) **Environmental:** The deposit or recycling of Products may be subject to application of environmental laws and regulations. You must therefore comply with any of such environmental laws and regulations applicable to you including, but not limited to, under the relevant national application of the Waste Electrical and Electronic Equipment Directive 2002/96/EC as amended by Directive 2003/108/EC (the "**WEEE Directive**") – fuller details may be found below in Appendix 1;
  - c) **Corrupt Practices:** You must comply with applicable corrupt practices or anti-bribery provisions and take appropriate steps to avoid any form of bribery or corruption – full details of this requirement are given below in Appendix 1;
  - d) **Taxes:** You must pay all taxes applicable to you. You may qualify for tax exemptions from time to time in which case we request that you provide us with a certificate of exemption or other appropriate documentary proof of exemption; and
  - e) **Regulatory Compliance:** You understand that the Dell Products sold from the United States, Canada, and EU countries contain regulatory compliance marks that are required to ship into the United States, Canada, and EU countries. Additional regulatory compliance marks are required to ship to other locations. You are solely responsible for obtaining any additional marks that may be required. You shall be responsible for continued regulatory compliance, including but not limited to compliance to electrostatic discharge and radiated emissions standards, for any modifications or additions made to the Dell Products after they are shipped from Dell. For example, if you make bezel design changes, you are responsible for ensuring that the bezel meets all applicable electromagnetic compatibility (EMC), product safety, and environmental compliance requirements for each country where such products will be shipped. You shall ensure the Dell Products remain compliant with those regulatory and agency approvals after the Products are shipped from Dell.
- 8.2 The Parties shall each comply with the regulatory compliance and other obligations on them as set out in Appendix 1.

## 9. Contractual and legal warranties and Services

- 9.1 We will expect you to fulfil all legal obligations in your country of a trade seller of Dell Offerings to business and/or consumer end users,





including fulfilling the statutory and/or contractual rights of your consumer customers, where relevant.

- 9.2 Unless the Parties agree otherwise, Dell will provide a standard contractual manufacturer's Product warranty (a "**Warranty**") on all Products in accordance with the provisions of **Appendix 2**.
- 9.3 In addition to standard Warranties, you may be able, in respect of business end user targeted products only, to purchase additional Hardware Support Services, for resale in respect of Products, and, in respect of business or consumer end user targeted products, to purchase standard Warranty extensions, such support and service provisions and any standard Warranty extensions being specifically related to the purchased Products, by individual asset tag number, and detailed on the relevant Dell order confirmation.
- 9.4 In consideration of the provision of a Product Warranty, you agree to:-
- a) provide us with regular and up to date inventory and sell out reporting data, in accordance with our reasonable requests; and
  - b) in respect of consumer end users, use best endeavours to assist Dell in ensuring appropriate communication to the consumer end user of the status of and conditions attaching to the Product Warranty provided by Dell, together with the relevant details required by the consumer end user as to how to avail of its rights under the Warranty.
  - c) Ensure that, where you process Personal Data in accordance with the end user's instructions, you shall do so only by way of a written agreement with the end user which imposes the same obligations on you as are imposed on a data processor in accordance with the obligations set out under the Standard Contractual Clauses set out in Decision 2010/87/EC for transfers of personal data between controllers and processors.
- 9.5 This section 9.5 applies only to purchases of Hardware Support Services. You hereby subcontract the delivery to your end users of such Hardware Support Services to Dell and you shall and agree to ensure that your contract with your customers includes the pass through terms detailed in Appendix 3.
- 9.6 This section 9.6 applies only to purchases of Hardware Support Services. You shall ensure that the end user is aware that Dell's obligations to provide such Hardware Support Services are subject to the relevant Dell Offering Specification, typically the service description(s) in respect of the specific Hardware Support Service. You will comply with such of Dell's guidelines in respect of the resale of Hardware Support Services as may be published by Dell from time to time. Dell may, at its discretion, revise its general and optional service or support programs and the terms and conditions that govern those programs without prior notice to you. Dell has no obligation to provide service or support to you or your customers until Dell has received full payment for the Dell Offering that you purchased.
- 9.7 Dell Offerings are generally delivered by an entity within the Dell-group of companies or its third party providers or sub-contractors. In the event of an agreement between us in respect of you selling, to business end users, services, whether in respect of specific Products or otherwise, which are co-branded and/ or to be co-delivered by you or a third party service provider with Dell, or a Dell Offering to be delivered by you with no element sub-contracted back to Dell, you agree to enter into a form of Dell Master Services Agreement or other appropriate services co-delivery agreement and/or will comply with guidelines (to be provided by Dell as appropriate) in respect of the relevant service provision, to be provided to business end users by you or your third party service provider together with or on behalf of Dell.
- 9.8 This section 9.8 is only relevant to you if you are buying Stand Alone Services
- a) **Licence Grant.** Dell grants to you during the term of the relevant service delivery a non-exclusive, non-transferable, revocable right and licence to: (i) sub-licence software and documentation provided by Dell and related to the Stand Alone Services directly to the end-customers that purchase the Stand Alone Services from you and (ii) display and use such software and documentation for the purpose of demonstrating the Stand Alone Services and providing the Stand alone Service to end-customers as contemplated under this Agreement. Except for products purchased by end-customer, you will require end-customer to return to Dell, any equipment or hardware used in the provision of the Stand Alone Services ("Dell Owned Equipment"), upon the expiration or termination of the term of the relevant Stand Alone Services. If end-customer does not return such Dell Owned Equipment to Dell in good and marketable condition, you will be responsible for the then-current replacement costs of such equipment.
  - b) **Licence Restrictions.** You shall not appoint any other person, firm or entity as a sub-reseller or agent for the Stand Alone Services. You shall not, for yourself, any affiliate or any third party, nor permit any end-customer to (i) sell, sub-licence, assign, or transfer any software, equipment or any documentation relevant to the Stand Alone Services, except as permitted under this Agreement; (ii) decompile, disassemble, or reverse engineer or copy any equipment, software or documentation relevant to the Stand Alone Services; (iii) remove from any equipment, software or documentation relating to the Stand Alone Services any language or designation indicating the confidential nature thereof or the proprietary rights of Dell or its suppliers in such items. In addition, you will not, and will not permit any end-customer to: (I) use any part of the Stand Alone Services to operate in or as a time-sharing, outsourcing, service bureau, hosting, application service provider or managed service provider environment; (II) alter or duplicate any aspect of any part of the Stand Alone Services, except as expressly permitted under this Agreement; or (III) assign, transfer, distribute, or otherwise provide access to any of the software, equipment and documentation relating to the Stand Alone Services to any third party or otherwise use any of the Stand Alone Services for the benefit of any third party; or (VI) make the Stand Alone Services available outside of the countries in which they have been validated for use by Dell.
  - c) **Software and Dell Stand Alone Services.** As between Dell and you or any end-customer, Dell shall own all right, title and interest in and to the Stand Alone Services software and documentation. You acknowledge that such software and documentation constitutes proprietary information and trade secrets which are the sole and exclusive property of Dell or its licensors.



- d) End-customer Terms and Conditions. The Stand Alone Services shall be provided to the end customer by Dell on your behalf in accordance with the relevant Dell Service Description as may be updated from time to time (the most recent version is on the Partner Portal) and subject to you paying to Dell any and all amounts due under this Agreement in a timely manner and subject to the terms of this Agreement and you incorporating into your written agreement between you and an End-customer at a minimum, the relevant terms and conditions set forth in Appendix 4 (each, an “End-customer Agreement”). and in relation to Modular Services obtaining also agreement and signature to the Acceptable Use Policy from the end customer as further described in Appendix 4 as may be updated from time to time by Dell You shall provide to Dell proof of such incorporation if requested by Dell. The Parties agree that there shall be no cross warranties, liabilities or obligations established with or for any end-customer, and each Party shall be solely accountable for any warranties, liabilities or obligations it establishes, incurs or undertakes with any end-customer. You, without the express written approval of Dell, will not make any representations, warranties or statements regarding the Stand Alone Services or as to quality, merchantability, compatibility, fitness for purpose, non-infringement or other matter, other than those contained in the sales and marketing literature and promotional materials that may be provided to you by Dell, without the prior written approval of Dell.
- f) Work on End-customer or your Premises. If and to the extent the Stand Alone Services require Dell to be present at the end-customer’s and/or your premises (where this is not stated in the Service Description), Dell shall communicate the same and you shall reimburse Dell for all reasonable, actual out-of-pocket expenses, including but not limited to shipping, travel expense, hotel and meals, incurred in connection with the implementation, performance or delivery of the Stand Alone Services.
- g) Support. In relation to Stand Alone Services that are Dell/Dell SecureWorks-branded managed security services (“Security Services”) you will be the primary point of contact for end-customers with respect to questions and problems regarding the Security Services and will pass to Dell any questions or problems relating to the delivery of the Security Services to the extent carried out by Dell on your behalf. In particular, you will reasonably attempt to troubleshoot requests and inquiries from end-customers regarding the Security Services.
- h) Authorisations. You shall, at your own expense, make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, reports, licences, permits and authorisations required under applicable law, regulation or order required for you to perform your obligations under this Agreement.

## **10. Our Obligations to You**

- 10.1 We will indemnify you against claims, demands, losses, damages, liabilities, costs, and expenses (including legal and other professional costs and expenses), provided such costs and expenses are reasonably and demonstrably incurred, which you suffer from any infringement of any third party intellectual property rights, as a result of the provision, receipt, use or possession of our Dell Offerings, provided that such infringement or alleged infringement is not as a result of:-
- a) altering or tampering with the Dell Offering;
  - b) using or combining the Dell Offering with any equipment, programs, or materials not supplied by or approved for such use or combining by Dell;
  - c) arising from materials that you have supplied to us for a pre-packaged value application (e.g. CFI services).
- 10.2 We will have no liability to you for refusing you entry to the Program, for the level of registration which we give to you within the Program, for raising, lowering or removing you from the Program.
- 10.3 The Program will need to adjust over time to reflect changes in us, you, other Partners or resellers and the market. Consequently we reserve the right without any liability to you arising to vary or adjust the terms, benefits, levels, access requirements in and to the Program, obligations of Partners and to withdraw the Program altogether provided that at least one month’s written notice is given to you on either the Portal, the Premier Page or by email. If you are unhappy with the alterations that are to be made then you may withdraw from the level of the Program within which you are participating or from the Program altogether before the changes come into effect.

## **11. Your Obligations to Us**

- 11.1 You will indemnify us from and against all claims, demands, losses, damages, liabilities, costs, and expenses (including legal and other professional costs and expenses), provided such costs and expenses are reasonably and demonstrably incurred, which we suffer as a result of: (i) you not complying with your data protection obligations in accordance with Appendix 1, (ii) intellectual property obligations, (iii) confidentiality obligations, (iv) making unauthorized alterations to our Products, supplied software or Services, (v) supplying us with infringing intellectual property rights for a pre-packaged value Custom Factory Image; (vi) not complying with your waste disposal obligations (including, but not limited to, your obligations under the relevant national application of the WEEE Directive and any updates of these regulations that may be current from time to time) or (vii) you failing to duly and correctly inform your customers and end-users about the specifications of any Products, Services, or Insurance Products or other Dell Offerings, including but not limited to the limitations to such Dell Offerings and end-customer’s obligations in relation to obtaining such Dell Offerings, by supplying your customers with (information equivalent to) any relevant Dell Offering Specifications including relevant Service Descriptions available from [www.dell.com/servicecontracts](http://www.dell.com/servicecontracts) making clear to your customers and end-users that you and not Dell is the contractual party to any agreement regarding resale and delivery of the Dell Offering to your customers; (viii) you failing to include any minimum terms required in your End- customer Agreements and/or (ix) you providing incorrect or misleading information to end users.
- 11.2 You will also be liable to us if your acts or omissions cause the Program or Dell more generally to be damaged, commercially disadvantaged or brought into commercial disrepute – including, in particular, but not limited to, through the release of pricing, specification data, technical support and other information made available to you through the Portal, the Premier Pages or otherwise to third parties.



- 11.3 If and where the Parties have agreed that Dell will provide you with marketing development funding (either in accordance with a standard scheme through the Program or otherwise), such funding will be offered only on the basis of a marketing services Addendum to this Agreement or a separate marketing services agreement or commitment letter and you agree to provide Dell with all applicable proof of marketing execution documentation, as reasonably requested by Dell, and you will issue to Dell a valid invoice for the relevant marketing funds payable, in each case as set out in the relevant Addendum /agreement / commitment letter.

## 12. Process for fulfilling these Obligations

The indemnities given in sections 10 and 11 above shall not be limited by section 13 of this document below. Each indemnity above is given by you to us or us to you as the “Indemnifying Party” to the other Party out of you or us -the “Indemnified Party” subject to:

- a) the Indemnified Party giving written notice to the Indemnifying Party of any claims or legal or similar proceedings as soon as reasonably practicable following written receipt of them;
- b) the Indemnified Party making no admission of liability;
- c) the Indemnified Party taking the Indemnifying Party’s reasonable instructions in relation to the defence or settlement of the claims or proceedings at the Indemnifying Party’s cost and expense, provided however that the Indemnified Party shall not be required to defend or settle the claim in a way that is prejudicial to the Indemnified Party; and
- d) where the Indemnified Party is you, you complying with, and procuring that its employees and contractors comply with, all of Dell’s reasonable instructions.

## 13. Limits On Obligations

- 13.1 The Parties’ total liability to each other under, or in relation to, the Agreement, or in relation to the subject matter of the Agreement (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) is set out in this Section 13.
- 13.2
- a) Neither Party excludes or limits liability to the other party for (1) death or personal injury resulting from negligence, (2) fraud or (3) fraudulent misrepresentation or (4) any other liability that cannot be excluded by law.
  - b) Subject to section 13.2(a), each Party’s liability to the other, howsoever arising out of or in connection with the Agreement, whether for negligence or breach of contract or otherwise, shall be the lesser of 125% of the price payable by you for the individual Dell Offering order which is affected or £500,000 (five hundred thousand pounds) / €500,000 (five hundred thousand Euro) or the equivalent amount in the currency of the country in which you are located, using the Dell currency conversion rate applicable on the date of order confirmation.
- 13.3 Notwithstanding the responsibilities and limitations detailed in section 13.2 and subject to section 13.2(a) and unless otherwise provided in this Agreement, neither Party is responsible for:
- a) indirect or consequential loss;
  - b) loss of business profits, salary, revenue, savings, customers or contracts;
  - c) loss avoidable by a Party through reasonable conduct and /or in accordance with Dell’s advice or instructions;
  - d) any loss arising out of failure by the suffering Party to keep full and up-to-date security copies of computer programs and data;
  - e) all items excluded from the warranty;
  - f) loss of or damage to reputation; or
  - g) damage caused by a Force Majeure event.

These limitations are reasonable in the context of the Dell –Partner relationship on the basis of clear communication of terms and reasonable expectations of the Parties in each of the above circumstances.

- 13.4 In addition to the limitations in 13.3 above, Dell is not responsible for:
- a) damage remedied or repaired by Dell within a reasonable time; or
  - b) loss which arises as a consequence of Dell using Customer provided or specified materials or instructions (e.g. CFI services).
- 13.5 In addition to the responsibilities detailed in 13.2, Dell is liable to you for (and such liability shall not be limited by section 13.2(b)):
- a) direct claims from end users relating to statutory Product liability issues (provided that they are handled in accordance with the Regulatory appendix – Appendix 1 below); and
  - b) any direct costs and expenses of administering a Product recall (handled in accordance with Appendix 1)
- except, in both cases, to the extent that the claim, cost or expense has arisen from your contributory negligence and subject to your compliance with the processes documented in the last paragraph of this section 13 or Dell’s reasonable instructions.
- 13.6 Subject to any limitations imposed by law as detailed in the first paragraph of this section 13, any liability of you to us or of us to you (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) will be reduced to the extent that the other Party (i.e. you or us) that is harmed has failed to take all reasonable steps to mitigate its losses. Where we or you being the “Claiming Party” want to make a claim against the other you or us being the “Defending Party” for any liability arising out of, or in connection with, an order (including any issue arising under the Agreement in relation to that order), the Claiming Party shall notify the Defending Party in writing of the claim as soon as reasonably practicable and for it to be a “Valid Claim” include: full details of the Claiming Party’s claim against the Defending Party including all causes of action; full details of the losses being claimed for by the Claiming Party; and all supporting documentation required by the Defending Party to substantiate the Claiming Party’s claim(s). A Party shall not be entitled to bring a claim for any liability arising out of this Agreement as detailed in this section 13, unless that Party makes a Valid Claim before the date falling on 6 (six) months from the date on which the incident or event giving rise to the claim in question, occurred or on which the notifying Party first became aware if later.



- 13.7 You shall maintain adequate insurance cover to meet its liabilities under this Agreement and shall produce proof of the level of such insurance within ten (10) working days of a request by Dell for such proof. The maintenance of adequate insurance cover as aforesaid is a condition of this Agreement.

#### **14 Prices and Payments**

- 14.1 The order confirmation specifies the price to be paid by you for building, supplying, and delivering the relevant Dell Offering, and any charges for additional services. The price and any charges exclude VAT, any applicable levies and other taxes, which shall be paid by you.
- 14.2 Where agreed between the parties, either in writing signed on behalf of both Parties or by means of standard schemes available to all Partners through the Program, you may be entitled to rebates or discounts on Dell Offering purchases. Discounts will be applied at the point of order but rebates will generally be applied by means of credit note issued to you, for adjustment against future orders. Any marketing development funding agreed between the Parties to be payable by Dell in respect of Dell Offering marketing initiatives, will be payable by Dell only on the basis of a valid invoice issued to Dell in accordance with Section 11.3.
- 14.3 Unless otherwise agreed in writing by Dell and subject to allocated credit based upon our assessment of your corporate strength, payment terms will be 30 days from date of invoice. Late payment interest charges at 4% above the EURIBOR 3 month rate quoted on the date of invoice will apply to overdue sums. Dell reserves the right to pass your debts to third parties for collection. Dell reserves the right to withhold delivery of future orders in case of late or non-payment of an invoice.
- 14.4 You have 14 (fourteen) days from date of invoice to raise any queries or disputes, otherwise the invoice will be deemed accurate and due for payment on the 30<sup>th</sup> day after the date of invoice. Disputed parts of invoices or entirely disputed invoices will not be due for payment until 14 (fourteen) days after the date when the dispute is resolved. Undisputed parts of invoices must be paid as indicated above.
- 14.5 You shall not be entitled to make any set-offs, deductions, or deferments to the sums due under an invoice, whether or not in respect of any disputes or claims whatsoever (in respect of which section 14.4 will apply).
- 14.6 We provide you with specific pricing and other assistance and support and this pricing and assistance and support is conditional (unless expressly otherwise agreed in writing) on the relevant Dell Offering being onward sold directly to a business for their own use rather than being resold again, used by you, being supplied to a private individual for personal use or being supplied to a different end user from the one that you informed us about. Where you seek to avail of Dell's deal registration process for particular end user deals, you will ensure that, in each case, the end user is a business customer and has provided you with consent to pass their full company details to Dell for the purposes of the deal registration application evaluation and in accordance with Appendix 1. Company data collected by these means will not be used by Dell for any other purposes.
- 14.7 Deliberately, repeatedly or negligently misrepresenting information in order to gain benefits or access to deal registration, assistance and or support may be treated as a material breach of this Agreement. If you mislead us in order to get a lower price than the price to which you are entitled or to get support or assistance to which you are either not entitled or at a price which you are not entitled to obtain that support or assistance, then Dell reserves the right to invoice you for the price discrepancy or the normal cost or price of the provision as Dell reasonably regards as appropriate. Any such invoice will be payable on receipt and, as a valid debt between the partner and Dell, may be subject to late payment interest charges or court collection action.
- 14.8 You are responsible for all applicable taxes, duties, fees or other charges, including sales or use and/or similar taxes, imposed by any federal, state or local governmental entity on Dell Offerings under this Agreement, except for taxes based on Dell's net income, gross revenue, property or employment obligations. You acknowledge that you are responsible for the payment of all taxes and fees assessed or imposed on Dell Services Offerings in any geography in which you or an end user receive the benefit of the Services. You will indemnify Dell on demand from and against any claims, demands, actions, losses, expenses, liabilities, judgments, settlements, damages and costs incurred by Dell or its affiliates arising out of or in connection with any charges, tax liabilities and/or fees under this section 14 which are not paid by you. If Dell is obligated by applicable law or regulation to collect and remit any taxes or fees relating to the Dell Offerings, then Dell will add the appropriate amount to your invoices as a separate line item.
- 14.9 Dell will provide you with a valid invoice if VAT is chargeable in respect of any amount payable under this Agreement and meets all statutory requirements and conditions necessary to allow you to obtain relief from VAT if a relief procedure is available ("**Tax Invoice**"). You will, upon receipt of the Tax Invoice, pay to Dell the VAT properly chargeable, in respect of that payment.
- 14.10 If Dell has incorrectly determined the amount of VAT chargeable to you, then the invoice will be corrected promptly upon notification to Dell. In case of overpayment by you, Dell will repay this amount to you via the issue of a credit note. In case of underpayment, you will pay the outstanding amount to Dell within 15 days upon receipt of a valid Tax Invoice.
- 14.11 In the event that you are required by law to make a withholding or deduction in respect of the price payable to Dell, You will make relevant payments to Dell net of the required withholding or deduction. You will supply to Dell evidence, to the reasonable satisfaction of Dell that you have accounted to the relevant authority for the sum withheld or deducted and will provide all such assistance, as may be requested by Dell, in recovering the amount of the withholding. In the event that a double taxation treaty applies, which provides for a reduced withholding tax rate, you will only withhold and pay the reduced tax amount. Dell will not be responsible to you for any penalties, interest or other charges arising from any act or omission by you in respect of tax compliance.





## **15 Ending the Agreement**

- 15.1 Either Party may end this Agreement, and you may therefore withdraw from the Program, at any time on one month's notice in writing. Except where the provisions of the next paragraph of this Agreement apply, termination will not relieve either Party of its obligations to complete commitments entered into between the Parties on or prior to the termination date including in particular, but not limited to, commitments relating to fulfilling orders placed, making payments due, complying with data protection, intellectual property, confidentiality and liability obligations.
- 15.2 Dell may refuse to accept new orders at any time (including without limitation to impose minimum order requirements as part of any Dell program, policy or practise ) and an order will not be binding upon us unless and until confirmed in accordance with section 6. Further, Dell may refuse to fulfil remaining obligations under existing orders placed under this Agreement if you:
- a) commit a material and irremediable breach of this Agreement (including but not limited to, deliberately, repeatedly or negligently misleading us in order to gain pricing, support or assistance to which you are not entitled);
  - b) commit a material and remediable breach of this Agreement and fail to remedy it following the provision of a reasonable period of written notice within which to remedy the breach;
  - c) fail to make payments when they fall due – unless otherwise pre agreed in writing;
  - d) become insolvent or seek protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any proceeding is instituted against you;
  - e) act in a way which in Dell's reasonable discretion is damaging to Dell or to the Program including, in particular, but not limited to, through the release of pricing, specification data, technical support and other information made available to you through the Portal, the Standard PP or the Partner PP or otherwise to third parties – including on an aggregate basis to data collection and analysis agencies.
- 15.3 Dell may end this Agreement with immediate effect upon notice in writing to you, if you breach the export compliance or anti-corruption provisions set out section 8 and in Appendix 1.
- 15.4 You may cancel orders in the event that Dell:
- a) commits a material and remediable breach of this Agreement and fails to remedy it following the provision of a reasonable period of written notice within which to remedy the breach; or
  - b) other than as part of a bona fide corporate restructure or reorganisation, becomes insolvent or seek protections under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding.

## **16 Force Majeure**

Neither Party shall be obliged to seek to perform their obligations under this Agreement or liable for their failure to do so to the extent that they are precluded from doing so by either events beyond their own reasonable control such as fire, flood, war, embargo, strike, unforeseen shortage of materials, transport delay or interruption or act of government or by the act or omission of the other Party ("Force Majeure Events") provided that the affected Party notifies the other Party promptly in writing and takes all reasonable steps to resolve the Force Majeure Event promptly. Should performance (other than in respect of payment of sums due) be impossible for a period in excess of 30 days then either Party may write to the other Party to terminate the Agreement in respect of the affected order(s) without incurring liability to the other Party for this action.

## **17 Some general provisions**

- 17.1 No variation to this Agreement shall be effective unless it is either (i) communicated by Dell to you via the Premier Pages or the Portal and you do not withdraw from the Program within the reasonable time period provided by Dell in the relevant communication of the Agreement variation; or (ii) in writing and signed by or on behalf of an authorised representative of each of the Parties. For the avoidance of doubt, Dell may, in its sole discretion, vary any other aspects of the Program, including but not limited to the Product and Services specifications available to you, the pricing and pricing mechanisms applicable to you, any rebate or other incentive schemes offered by Dell to Partners from time to time, the Program Guide, the contents and method of operation of the Premier Pages and/ or the Portal and any conditions or requirements applying to registration or certification as a Partner. The Parties are independent contractors dealing independently of each other and no partnership, agency, representative or other function is intended or implied between the Parties under this Agreement.
- 17.2 Notices under this may be sent by email or registered post to the legal departments of the respective Parties and shall be deemed effective when a non automated response or a delivery signature is obtained respectively.
- 17.3 The failure of either Party to enforce or exercise, at any time or for any period of time, any term of or any right arising under this Agreement does not give rise to a waiver of that term or right and shall in no way affect that Party's right later to enforce or to exercise it.



- 17.4 If either Party fails to enforce at any time any of the applicable legal provisions, this will not be taken as a waiver of any of their respective rights.
- 17.5 We may assign or transfer our obligations or rights to a competent third party or our associated companies in whole or in part. Our agreement to work with you is based on certain selection criteria used by us such as (but not limited to) those which relate to credit limits or export compliance. Therefore, you may not assign your obligations or rights, in whole or in part, without our written consent. Further, we have obligations to you under the terms of this Agreement and we will have obligations to Product end users by means of Warranties. However, our obligations to you are not assignable or transferable without our written consent and therefore any third parties to whom you may resell Products and who are not end users of the Products will not be entitled to enforce these obligations against Dell. Warranties are transferable only in accordance with Dell's standard asset tag registration and transfer processes.
- 17.6 Our and your rights and obligations will be governed by English law and, in the unlikely event of a dispute (contractual or non-contractual), we and you agree the exclusive jurisdiction of the courts of England shall apply to the resolution of the dispute. The Vienna Convention on Contracts for the International Sales of Goods is excluded.
- 17.7 If any provision of this Agreement is found to be invalid or unenforceable, that provision will be limited or eliminated or rewritten to the minimum extent necessary so that this Agreement can otherwise remain in full force and effect.
- 17.8 This Agreement is not intended to be for the benefit of or to be enforceable by, any person other than a Party.



## APPENDIX 1: DATA PROTECTION, PRODUCT SAFETY & RECALL, CONFIDENTIALITY, EXPORT COMPLIANCE AND WEEE, BATTERY AND PACKAGING COMPLIANCE

### A. DATA PROTECTION

- 1 Each Party shall comply with the provisions and obligations imposed by applicable data privacy legislation to the extent required by that legislation of each of us. In circumstances where the Partner passes Personal Data to Dell in relation to this Agreement, Dell will be acting as the data processor. As data controller, Partner confirms that it has obtained all necessary consents for lawful processing, prior to passing the Personal Data to Dell. Partner authorises Dell to collect, use, store and transfer the Personal Data Partner provides to Dell for the purpose of performing Services and for any additional purposes described, pursuant to the Agreement and associated scopes of work. Dell may, in the normal course of business, make worldwide transfers of 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. When making such transfers, Dell shall ensure appropriate protection is in place to safeguard Personal Data transferred under this Agreement, and has entered into an agreement with each such third party regarding ongoing compliance with applicable data privacy laws.
- 2 Partner acknowledges Dell is reliant on the Partner for direction as to the extent to which Dell is entitled to use and process the Personal Data. Consequently, Dell will not be liable for any claim brought by the Partner or a data subject arising from any action or omission by Dell to the extent that such action or omission resulted from the Partner's instructions.

### B. CONFIDENTIALITY

- 1 In this paragraph B, "**Confidential Information**" means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a Party being the "**Disclosing Party**" to the other Party being the "**Receiving Party**" whether before or after the date that this Agreement becomes effective between the Parties including, without limitation, information relating to the Disclosing Party's customers, operations, processes, plans or intentions, Product information, know-how, design rights, trade secrets, market opportunities, finances, and business affairs.
- 2 All information supplied on or through Standard PP or Partner PP, the Portal or data sources that can be accessed only through the Portal shall be treated as Confidential Information even though it may also be seen by other resellers and shall not be disclosed to third parties without the explicit prior consent of Dell in writing.
- 3 The Receiving Party shall: not use Confidential Information for a purpose other than for the performance of its obligations under the Agreement; and not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or as set out in paragraphs 4 and 5 below.
- 4 The Receiving Party may disclose Confidential Information to a "**Recipient**" being any of its directors, other officers, employees, professional advisors and contractors to the extent that such disclosure is necessary for the purposes of the Agreement. The Receiving Party shall ensure that each Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality and restriction on use under the Agreement as if the recipient was a Party to the Agreement.
- 5 The Receiving Party may disclose Confidential Information to the extent required by law, regulation or any mandatory order of a regulatory body having jurisdiction over it provided that it shall use its reasonable endeavours to reduce the extent of such disclosure and to protect the confidentiality of any Confidential Information disclosed.
- 6 Paragraphs 4 and 5 above do not apply to Confidential Information which: is at the date of the Agreement, or at any time after that date becomes, publicly known other than by the Receiving Party's or Recipient's breach of the Agreement; or can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party.
- 7 Neither Party shall make or authorise any press release in relation to the Agreement (including to, but not limited to, the London Stock Exchange, the NASDAQ, any other applicable stock exchange, and / or any regulators) without the prior written consent of the other Party.
- 8 Any information obtained by you under the Agreement, including information relating to Dell, Intel, Microsoft or McAfee, must not be used by you, directly or indirectly, in any future tenders, bids, or negotiations with Intel, Microsoft, McAfee, or any other third party. Any information obtained by Dell under the Agreement, including information relating to you, must not be used by Dell, directly or indirectly, in any future tenders, bids, or negotiations with any third party.

### C. PRODUCT SAFETY AND RECALL

- 1 The Parties will comply with their respective Product safety and recall obligations in relation to the Products.
- 2 Where there are any Product safety or recall issues with the Products, you will assist Dell in contacting the end users of the Products and recalling the Products. Dell will be responsible for all reasonable, demonstrable and necessarily incurred costs by you in complying with Dell's explicit

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instructions made pursuant to this section. Costs incurred by you independently of any Product recall guidance from Dell will not be recoverable, save to the extent that the Parties may agree on a case by case basis.

#### D. RECORD KEEPING AND AUDIT REQUIREMENTS

The Parties shall maintain accurate and legible records by following statutory requirements and shall grant to the other Party reasonable access to any of its premises, and inspection and copies of any information reasonably requested by that Party with respect to the Party's performance under the Agreement, including, without limitation, information relating to invoicing, accounting requirements, efforts to comply with Section B(Confidentiality), and that as may be reasonably required to resolve disputes with third parties.

#### E. EXPORT COMPLIANCE

- 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.
- 2 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.
- 3 The Parties acknowledge that the Products licensed or sold under the Agreement are subject to the export control laws and regulations of the United States and EU laws and may also be subject to the customs and export laws and regulations of the country in which the products are manufactured and/or received and you agree to fully abide by those laws and regulations.
- 4 For the avoidance of doubt any Products, software, or technology used by Dell under your instruction as part of the Custom Factory Image shall be your sole and exclusive responsibility, and you hereby indemnifies Dell accordingly in respect of all regulatory and export compliance obligations and liabilities subject to notice procedures referred to above.
- 5 Under the laws and regulations noted in section 3 above, Products purchased under the Agreement may not be sold, leased or otherwise transferred to restricted end-users (including those on the U.S. Department of Commerce, Bureau of Industry and Security "Entity List" and other lists of denied parties) or to restricted countries (currently Cuba, Iran, North Korea, Sudan, and Syria). In addition, the Products may not be sold, leased or otherwise transferred to, or utilised by, an end-user engaged in activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear weapons, materials or facilities, or missiles or support of missile projects, or chemical or biological weapons.
- 6 You agree to indemnify, defend and hold Dell harmless from any loss, expense, penalty, claim, demand or cause of action against Dell due to your violation or alleged violation of any such applicable laws, regulations and orders. If purchased goods are resold in violation of the foregoing restrictions, Dell shall not be obligated to provide any warranty service or technical support.

#### F. CORRUPT PRACTICES

- 1 The Parties agree to comply with the Foreign Corrupt Practices act of the United States (the "**FCPA**"), the UK Bribery Act 2010 and any country specific anti-bribery or anti-corruption laws ("**Anti-bribery Laws**") and will not offer any payment or other gift or promise, or authorise the giving of anything of value, for the purpose of influencing an act or decision of an official of any Government or of an employee of any company in order to assist either Party in obtaining, retaining or directing any business.
- 2 The Parties represent and warrant that neither they nor their personnel will, in connection with the Agreement, make, offer or promise to make any payment or transfer anything of value, directly or indirectly, to any (i) government official or employee (including employees of government-owned and government-controlled corporations and public international organisations); (ii) political party, official of a political party or candidate (iii) intermediary for payment to any of the foregoing or (iv) other person or entity if such payment or transfer would violate the laws of the country in which it is made.
- 3 You agree to:-
  - 3.1 maintain, throughout the duration of dealings between yourself and Dell, your own anti-bribery policies and procedures, including without limitation, adequate procedures designed to ensure that you and your Associated Persons (as defined in F 4) comply with the Anti-bribery Laws;
  - 3.2 provide a copy of such policies and procedures to Dell on request; and
  - 3.3 monitor and enforce such policies and procedures as appropriate.
- 4 In the event that you subcontract the provision of any element of this Agreement to any person, or receive any services in connection with your performance of the Agreement from any person, (each such person being an "**Associated Person**"), you shall impose upon such Associated Person anti-bribery obligations that are no less onerous than those imposed upon you in this clause. You warrant and represent that neither you nor any of your officers, employees or Associated Persons has been convicted of any offence involving bribery, corruption, fraud or dishonesty or, to the best of your knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or





regulatory body regarding any offence or alleged offence under the Anti-Bribery Laws. You shall immediately notify Dell if you discover that you or any of your officers, employees or Associated Persons, have engaged in any behaviour that may be in contravention of Anti-bribery laws. The parties will meet promptly, as appropriate, in light of a potential Anti-bribery Laws concern being discovered.

#### G. WEEE, BATTERY AND PACKAGING COMPLIANCE

Dell complies with the requirements of any and all applicable environmental laws and regulations including but not limited to the WEEE Directive, the Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators, amended by Directive 2008/12/EC and Directive 2008/103/EC (“**Battery Directive**”) and the Directive 94/62/EC on Packaging and Packaging Waste, as amended by Directive 2004/12/EC (“**Packaging Directive**”) as implemented and where appropriate in each European Member State. You will comply with the requirements of any such applicable environmental laws, rules, regulations and requirements of any government body and all applicable codes of conduct and other similar principles laid down by any representative body of the industry whether voluntary or mandatory, including the above Directives as transposed and implemented in each Member State and any other environmental law applicable to the disposal and recycling of the products, batteries and packaging and will provide evidence of compliance to Dell on request. In particular, the Parties agree that:-

1. Where Dell imports and delivers Products to you or your representative in a country to which the above Directives apply and which is a Dell direct country\*, Dell takes responsibility for compliance with the above Directives as amended or superseded from time to time, including but not limited to: reporting of equipment, Batteries and Packaging placed on the market, display of Visible Fees and payment of fees to the appropriate authority as required and take back of product at Dell provided collection facilities in accordance with the WEEE Directive as transposed in national legislation. Products deposited at Dells collection facilities will be recycled by Dell in accordance with the WEEE Directive.
2. Where Dell delivers Products to you or your representative in circumstances where you will import the Products into a country in which the above Directives apply, you will take responsibility for compliance with the WEEE, Battery and Packaging Directives, including but not limited to: reporting of equipment, batteries and packaging placed on the market, payment of Eco-fees to the appropriate authority where required and take back of product in accordance with the WEEE Directive as transposed in national legislation.
3. Where you are onward shipping product to another country, you will take responsibility for any applicable compliance with the above Directives or applicable legislation, code of conduct or principles in that applicable country; and
4. Dell categorises all reseller purchases of business equipment in Dell direct countries\* as sales of non-household EEE and will report to the appropriate authority as such in relevant Member States. In all other Member States the sale will be declared as dual use product, as appropriate.
  - 4.1 Where you sell business equipment to a consumer/home user and where applicable in each Member State, you (or your customer) takes responsibility for all necessary environmental legislation, including but not limited to; compliance scheme membership, reporting of EEE, Batteries/Substances and Packaging placed on the market, display, collection & payment of Eco-fees to the appropriate authority, take back & treatment of product in accordance with the regulations.

\*

list of Dell direct countries (all other countries are indirect): United Kingdom, Germany, France, Austria, Belgium, Denmark, Finland, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, Czech, Poland, Slovakia, Netherlands, Norway and Switzerland.



## APPENDIX 2: END USER BASE SERVICE/WARRANTY –

### A. WARRANTY AND SUPPORT PROVISIONS – ALL END USERS

1. Dell-branded hardware Products will conform to the Dell specifications current when the Product is shipped and will, as a minimum, benefit from Dell's 'Basic Hardware Support' warranty for any particular Product and for the Warranty Period detailed in paragraphs B2 and C2 below, depending upon the nature of the Product end user. Details of the Basic Hardware Support warranty can be provided upon request or are available at <http://support.euro.dell.com/support/>, depending upon the country to which the Product was shipped (and the location of the end user if different).
2. The Product Warranty does not cover damage due to external causes, including but not limited to accident, abuse, misuse, heat, humidity or other environmental conditions, problems with electrical power, service (including installation or de-installation) not performed or authorized by Dell, usage not in accordance with Product instructions, normal wear and tear, and problems caused by use of parts and components not supplied by Dell.
3. The Warranty does not cover accessories or parts added to a Dell system after the system is shipped from Dell or non-Dell-branded accessories or parts added to a Dell system through CFI services.
4. The Warranty does not cover consumables, such as ink cartridges.
5. We will not honour a warranty when the end user or you have made unauthorized or unapproved alterations or repairs to the Product(s) that we have supplied – including, but not limited to, using repair or replacement components and/or software which we, acting reasonably, do not regard as safe and /or suitable for use in or with the Product that we have supplied to you. If you open, alter or repair Products that we have supplied then we will not accept responsibility to you or to the end user for any safety or compliance issues resulting unless you or the end user was only acting in accordance with our written or oral instructions (via Technical Support or other Dell support method) in carrying out the opening, alteration or repair.
6. **"Dell-branded"** means computer hardware products that are marked with the "Dell" brand, including all standard components thereof, but does not include any of the following items: (i) software, sound cards, speakers, external devices, accessories or parts added to the Dell-branded hardware products after they are shipped from Dell; (ii) accessories or parts added to the Dell-branded hardware products through Dell's CFI services at your request; (iii) accessories or parts that are not installed in the Dell factory; (iv) third party software and peripheral products; or (v) monitors, keyboards and mice, to the extent that they are not included on Dell's standard price list.
7. Unless the Parties otherwise agree in writing, batteries that are included with Dell-branded Products will carry a one (1) year limited warranty.
8. We will not warrant software or Products which we supply to you but which are licensed by or manufactured by third parties. It is your responsibility to verify that the warranties and licences provided by those third parties are adequate for your and your customers' needs. We may ask third party contractors and or software licensors to fulfil Dell's and/or any software licensor's legal obligations to you and/or to the end user that we have relating to the supply of the Products and/or the licensor's software.
9. Dell has not tested or certified its Products for use in high risk applications including, but not limited to, medical life support, nuclear power, mass and air transportation control or any other potentially life critical uses. You agree that Dell makes no assurances or warranties that the Products are suitable for any high-risk uses.
10. Dell reserves the right to supply reconditioned parts for use as spares or repair items.
11. Spare parts or components used in the service or repair of Products will be warranted for 90 (ninety) days from the date of delivery or for the remainder of the Warranty Period in respect of the Product in question, whichever is longer.
12. Dell becomes the owner of any and all replaced or collected Products or components, unless otherwise agreed between the Parties. If Products that have been replaced and are due for return to Dell aren't returned within a reasonable time after Dell's request, Dell reserves the right to invoice you (or the end user direct if appropriate) for such Products.
13. Dell does not accept responsibility for the safety and /or confidentiality of any data stored on any Product before or during the provision of services under the Warranty.
14. If Products purchased under this Agreement are sold by you outside of the country to which the Products were shipped by Dell, you acknowledge that the Product Warranty may, at Dell's discretion, no longer be valid or the level of support that may be offered by Dell may differ, depending upon the country in which the end user seeking support is located.
15. The duration and the scope of Dell warranty may vary, depending upon the country to which the Product was shipped and the country in which the end user is located, if different.
16. Dell Product support and service will be provided by Dell or our service partners. Repair or replacement of Products under Warranty will be undertaken by Dell or its service partners within a reasonable time.

### B. BUSINESS END USER WARRANTY AND SUPPORT

1. Each Product sold by you to a business end user (or another reseller) will benefit from:
  - a) any statutory national legislation in relation to manufacturer's obligations (as opposed to seller's obligations) for Products sold to business end users in the country to which the Products are shipped by Dell. For the avoidance of doubt, any statutory warranty obligations owed either to you or to end users by manufacturers in the country to which the Products are shipped and which may be legally excluded by the manufacturer are excluded by Dell for the purposes of this Agreement; and
  - b) subject to the provisions of this Appendix 2, Dell's standard Warranty (as further detailed in this section B) with the **"Warranty Period"** commencing from the date of purchase by the business end user, for the period specified in paragraph B2 below.



2. The Warranty Period for each Product sold to a business end user shall be as detailed in the relevant Product purchase order confirmation on a per individual Product (SKU) basis but, in the event that such Warranty Period is not specified in the order confirmation, the Warranty Period shall be **12 (twelve) months** on all Products from the date of purchase by the business end user, including any demonstration Products.
3. Any additional warranties or commitments offered or made by you or your customer to a business end user in respect the Products is a contractual commitment between you / your customer and the end user only. Dell is not a party to such agreement and such terms are not binding upon us.
4. Unless otherwise agreed by means of an order confirmation on a per individual Product (SKU) basis, the Products will benefit from Dell's standard contractual Warranty (also being in compliance with mandatory legislation for sale of Products (including services) to business customers) in line with Dell's standard warranty service descriptions which can be found at <http://support.euro.dell.com/support/>, depending upon the country to which the Product was shipped and the location of the business end user. Dell's warranty limits and replaces, to the extent permitted by law, any and all other warranties whether granted by law or not. Under the Warranty:-
  - a) if there is a fault with that Product within the Warranty Period, the end user may contact Dell direct (via Dell's "**Technical Support**" service, the details of which will be made available to the end user) and Dell will carry out a telephone diagnostic and, where it decides it is necessary, Dell will repair or replace that Product, provided that:
    - i. business end users will need to pass our export compliance checks and register the Products' asset tag(s) in order for Dell to fulfil these contractual rights to them; and
    - ii. Dell has been adequately notified of the Product's fault through Technical Support during the Warranty Period.
  - b) If, following notification of the Product's fault through Technical Support, it is found that the Product asset tag has not been registered and such Product is within its Warranty Period, then subject to export compliance checks, Dell shall register the Product asset tag and process the fault report under the Warranty accordingly. Upon registering the asset tag with Dell's Technical Support team, the end user will be required to accept Dell's standard Terms & Conditions of Support Services, which can be found at <http://support.euro.dell.com/support/>, depending upon the country to which the Product was shipped and the location of the business end user.
  - c) Except as may specifically be provided for in a written agreement between you and Dell relating to servicing or support of the Products by yourselves or your nominee(s), if you carry out any works, repairs or alterations to or in any way tamper with or dismantle the Products, any such action shall invalidate the relevant Product Warranty. Dell will provide Technical Support in line with Dell's standard Service Descriptions, only where that Product's asset tag number has been successfully registered with Dell by using Dell's online Product asset tag registration service or through Technical Support.
  - d) Dell's Technical Support service will provide Dell's standard technical support for the Product (offered by Dell to its direct business customers in the same country as that to which the Products are shipped). Technical Support's opening hours may vary by country but are generally available at least in office hours during applicable local times from Monday to Friday (excluding all applicable national public holidays). All support requests on Product related issues will be routed to a Dell technical support agent who will endeavour to resolve the issue by following Dell's standard practices. Applicable support options, opening hours and contact details are set out at <http://support.euro.dell.com/support/>. Dell will also use reasonable endeavours to provide continuous web based self help online support which can be accessed 24 (twenty four) hours a day at <http://support.euro.dell.com/support/>.

#### C. CONSUMER END USER WARRANTY AND SUPPORT

1. Each Product sold by you to a consumer end user will benefit from:
  - a) any statutory national legislation in relation to manufacturer's obligations (as opposed to seller's obligations) for Products sold to consumer end users in the country to which the Products are shipped by Dell. For the avoidance of doubt, any statutory warranty obligations owed either to you or to end users by manufacturers in the country to which the Products are shipped and which may be legally excluded by the manufacturer are excluded by Dell for the purposes of this Agreement; and
  - b) subject to the provisions of this Appendix 2, Dell's standard Warranty (as further detailed in this section C) with the "**Warranty Period**" commencing from the date of purchase by the consumer end user, for the period specified in paragraph C2 below, which does not affect the consumer's statutory rights.
2. The Warranty Period for each Product sold to a consumer end user shall be as detailed in the relevant Product purchase order confirmation on a per individual Product (SKU) basis but, in the event that such Warranty Period is not specified in the order confirmation, the Warranty Period shall be **12 (twelve) months** on all Products, including any demonstration Products.
3. you must advertise and market the Warranty Period on all Products sold to consumer end users, as a period from the date of purchase by the end user. you must not market or advertise any other warranty in respect of Products without Dell's prior knowledge. Any additional warranties or commitments offered or made by you or your customer to a consumer end user in respect the Products is a contractual commitment between you / your customer (as seller of the Product) and the consumer end user only. Dell is not a party to such agreement and such terms are not binding upon us.



4. Unless otherwise agreed by means of an order confirmation on a per individual Product (SKU) basis, the Products will benefit from Dell's standard 'consumer' Warranty (offered by Dell to its direct consumer customers in the same country as that to which the Products are shipped). Under the Warranty:-
- a) if there is a fault with that Product within the Warranty Period, the end user may contact Dell direct (via Dell's "**Technical Support**" service, the details of which will be made available to the end user) and Dell will carry out a telephone diagnostic and, where it decides it is necessary, Dell will repair or replace that Product, provided that:
    - i. the Product's asset tag number has been successfully registered with Dell by using Dell's online Product asset tag registration service or through Technical Support; and
    - ii. Dell has been adequately notified of the Product's fault through Technical Support during the Warranty Period.
  - b) If, following notification of the Product's fault through Technical Support, it is found that the Product asset tag has not been registered and such Product is within its Warranty Period, Dell shall register the Product asset tag and process the fault report under the Warranty accordingly. Upon registering the asset tag with Dell's Technical Support team, the end user will be required to accept Dell's standard Terms & Conditions of Support Services, which can be found at <http://support.euro.dell.com/support/>, depending upon the country to which the Product was shipped and the location of the consumer end user.
  - c) Except as may specifically be provided for in a written agreement between you and Dell relating to servicing of the Products by yourselves or your nominee(s), if you carry out any works, repairs or alterations to or in any way tamper with or dismantle the Products, any such action shall invalidate the relevant Product Warranty.
  - d) Dell will provide the Technical Support by phone, email and online chat depending upon the relevant Product and in line with Dell's standard support offerings (offered by Dell to its direct consumer customers in the same country as that to which the Products are shipped), only where that Product's asset tag number has been successfully registered with Dell by using Dell's online Product asset tag registration service or through Technical Support.
  - e) Dell's Technical Support service will provide Dell's standard technical support for the Product (offered by Dell to its direct consumer customers in the same country as that to which the Products are shipped). Technical Support's opening hours may vary by country but are generally available at least in office hours during applicable local times from Monday to Friday (excluding all applicable national public holidays). All support requests on Product related issues will be routed to a Dell technical support agent who will endeavour to resolve the issue by following Dell's standard practices. Applicable support options, opening hours and contact details are set out at <http://support.euro.dell.com/support/>. Dell will also use reasonable endeavours to provide continuous web based self help online support which can be accessed 24 (twenty four) hours a day at <http://support.euro.dell.com/support/>.
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### **APPENDIX 3 – HARDWARE SUPPORT SERVICES**

Terms and Conditions for resale of Hardware Support Services that you agree to include in your agreements with end users and procure that your resellers include in their agreements with their end users.

These terms shall apply as between the entity purchasing Hardware Support Services (“the Customer”) from you (“Seller”). Customer and Seller agree to the following terms and conditions:

1. All Hardware Support Services provided will be described in detail in a service description for the relevant Service. Service descriptions for Hardware Support Services are available at [www.dell.com/servicecontracts](http://www.dell.com/servicecontracts). Customer agrees that Seller, not Dell, is the contracting entity in relation to Customer’s purchase of the Services from Seller.
2. Hardware Support Services shall be those repair services that are necessary to fix a defect in materials or construction of any Dell-branded Products. Preventive maintenance is not included and Seller 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 description, 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 on behalf of Seller (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 on behalf of Seller; (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, reconditioned or remanufactured.
3. “Third Party Products” means any third-party hardware, services or software. Some manufacturers’ warranties or service contract terms and conditions for Third Party Products may become void if Seller 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). To the extent permitted by mandatory applicable law, SELLER DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY PRODUCT WARRANTIES OR FOR ANY EFFECT THAT THE DELL-BRANDED SERVICES MAY HAVE ON THOSE WARRANTIES.
4. Customer hereby authorises Seller and/or Seller’s service provider as appropriate (“Service Provider”) to use or access any Customer provided Third Party Products as necessary or as requested by Customer in the performance of the Services, including without limitation, copying, storing, and reinstalling a backup system or data. Customer shall defend, indemnify, and hold Seller and the Service Provider 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).
5. Software license provided by Dell. Customer use of Software in connection with the Services is pursuant to the terms accompanying the Software. “Software” includes software locally installed on the end customer’s systems and software remotely accessed by the end customer through the Internet or other means (including, but not limited to websites and Internet portals). In the absence of such terms, Customer use of Software is pursuant to the Dell Services License Agreement & Acceptable Use Policy (“AUP”) available at [www.Dell.com/AUP](http://www.Dell.com/AUP). By accessing, downloading, installing, activating or otherwise using such Software, Customer agrees to be bound by the terms of the AUP.
6. **Data Protection; Processing of Personal Data.** The terms used in this Section 6 shall have the same meanings as defined in Article 2 of the European Data Protection Directive 95/46/EC and the following terms shall have a more specific meaning:

“**Data Protection Law**” means the Directive 95/46/EC and any amendments, revisions, re-enactments or consolidations thereof or any other applicable data protection legislation.

“**Dell Personnel**” means any employee, officer, agent or consultant or subcontractor of Dell engaged to provide the Services.

Customer shall provide personal data to Seller and Service Provider and Dell Personnel together with such other information as may reasonably be required in order to provide the Services.

Dell may, in the normal course of business, make worldwide transfers of 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. When making such transfers, Dell shall ensure appropriate protection is in place to safeguard Personal Data transferred under this Agreement, and has entered into an agreement with each such third party regarding ongoing compliance with applicable data privacy laws.

Customer acknowledges that Seller and Service Provider and Dell are reliant on Customer for direction as to the extent to which Dell is entitled to use and process the personal data. Consequently, Seller, Service Provider and Dell will not be liable for any claim brought by Customer or a data subject arising from any action or omission by Seller, Service Provider or Dell Personnel to the extent that such action or omission resulted from Customer’s or the end customer’s instructions.

### **APPENDIX 4 –STAND-ALONE SERVICES**



Terms and Conditions for resale of Stand Alone Services that you agree to include in your agreements with end users (“End-customer Agreements”) and procure that your resellers include in their agreements with their end users. Thus the terms shall apply between you and the entity purchasing the Stand Alone Services from you.

Please note section A is required to apply to all your contracts with end users and relevant subsections within section B applies per relevant service (as stated).

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#### **A. Generic terms to be included for all Stand Alone Services**

In the following ‘Dell’ shall be Dell Corporation Limited and ‘Partner’ shall be [insert Partner entity] and ‘End Customer’ shall be [insert end customer entity] located at [insert end customer address].

1. Partner has sold the following Dell stand alone services [insert the Dell service] (“Services”) to End Customer. Dell provides certain of the stand alone services to End Customer on behalf of Partner. The parties agree to observe and comply with the below provisions in relation to the Services.

#### **2. End-customer Responsibilities**

- 2.1 End-customer will provide Partner, Dell or anyone acting on their behalf, including subcontractors and consultants with the cooperation, access and detailed information reasonably necessary for Dell to implement and deliver the Services, including (i) test time on End-customer’s computer systems and networks sufficient for Partner and/or Dell to provide the Services and (ii) one employee who has substantial computer system and network and project management experience reasonably satisfactory to Dell to act as project manager and as a liaison between End-customer and Dell. Partner and Dell will be excused from its failure to perform the Services to the extent such failure is caused by End-customer’s delay or failure to perform its responsibilities under this End-customer Agreement.
- 2.2 If and to the extent Dell is providing Services hereunder on behalf of Partner, the obligations of Dell to comply with the the relevant service specification applicable to the Services are dependent on Dell’s (or anyone acting on behalf of Dell’s) ability to connect directly to the End-customer devices on the End-customer’s network through an authenticated server in Dell’s secure operations center or where the service so stipulated physically on site. If and to the extent Dell is required to connect to End-customer devices via End-customer’s VPN or other indirect or nonstandard means, then to the extent that Dell is required to make adds, moves, or changes to or otherwise access such devices in connection with any incident response or help desk request, Dell (i) can make no guarantees or give any assurances of compliance with the service specification with respect thereto and (ii) shall have no responsibility or liability for any failure to perform or delay in performing its obligations or meeting the exact service specification and any SLA related therewith.
- 2.3 Dell will take all reasonable precautions to minimise negative impact end-customer’s computer systems and network; however, End-customer acknowledges that performance of such service may temporarily degrade operation of End-customer’s computer systems and network. End-customer hereby releases Dell from any and all losses, damages, expenses, or actions, which End-customer may incur in connection with the Services.

#### **3. Intellectual Property Rights**

- 3.1 End-customer represents and warrants that it has the necessary rights, power and authority to transmit End-customer Data (as defined below) to Dell and any of Dell’s contractors, agents or subcontractors performing all or part of the Services under this Agreement. During the Term, End-customer grants to Dell a limited, non-exclusive licence to use the End-customer Data solely for all reasonable and necessary purposes contemplated by this End-customer Agreement and for Dell and Partner to perform the Services as contemplated hereunder. This End-customer Agreement does not transfer or convey to Dell or any third party any right, title or interest in or to the End-customer Data or any associated intellectual property rights, but only a limited right of use revocable in accordance with this End-customer Agreement.
- 3.2 As between End-customer and Dell, Dell or its third party licensors will own all right, title and interest in and to the relevant software, Services, Service related products and documentation. This End-customer Agreement does not transfer or convey to End-customer or any third party any right, title or interest in or to such or any associated intellectual property rights, but only a limited right of use revocable in accordance with this End-customer Agreement. Dell will retain ownership of all copies of relevant Services documentation. In addition, End-customer agrees that Dell is the owner of all right, title and interest in all intellectual property rights as well as all ideas, inventions, methods, processes, computer programs (including any source code, object code, enhancements and modifications), together with all files (including input and output materials), all documentation related to the foregoing, all media upon which any of the foregoing are located (including tapes, disks and other storage media) and other documentation or example of any of the foregoing, in each case, developed by Dell in connection with the performance of any Services provided by Dell before or after the date of the End-customer Agreement and End-customer hereby assigns to Dell all right, title and interest in such copyrights and other proprietary rights; provided however, that such related material shall not include information or data belonging or pertaining to End-customer, as described in Section 3.1.



3.3 Upon termination of this End-customer Agreement, each party will, at the request of the other party and to the extent practicable, return, or upon the other party's request, destroy, all copies of the other party's intellectual property in such party's possession, custody or control. For any equipment not purchased by the End-customer but used by the end customer and provided by Dell as part of the Services pursuant to the Service Order, End-customer shall erase, destroy and cease use of all Dell provided software located on such equipment upon the expiration or termination of the End-customer Agreement.

4. **Third Party Beneficiary.** Dell shall be an intended third party beneficiary under this End-customer Agreement.

5. **Limited Warranty.**

PARTNER WARRANTS THAT DURING THE TERM OF THIS END-CUSTOMER AGREEMENT, THE SERVICE SHALL SUBSTANTIALLY CONFORM TO THE RELEVANT DELL SERVICE DESCRIPTION AS IT MAY BE AMENDED FROM TIME TO TIME BY DELL IN ITS SOLE DISCRETION. END-CUSTOMER'S SOLE REMEDY FOR VIOLATION FOR SUCH SLAS SHALL BE THE SERVICE CREDITS, IF ANY SET FORTH THEREIN. PARTNER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANCIALLY EQUIPMENT PROVIDED TO THE END-CUSTOMER FOR USE DURING THE SERVICES ONLY, BUT WILL PASS THROUGH WARRANTIES FROM THE APPLICABLE THIRD PARTY VENDOR, IF ANY. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, ARE HEREBY EXCLUDED. EXCEPT AS EXPRESSLY SET FORTH IN THE FIRST SENTENCE OF THIS SECTION 5.1, PARTNER DOES NOT WARRANT THAT USE OR OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS IN ANY SOFTWARE OR EQUIPMENT WILL BE CORRECTED.

6. **Remedies Limitation of Liability.**

END-CUSTOMER'S SOLE REMEDY FOR BREACH OF THE FOREGOING LIMITED WARRANTY SHALL BE, AT PARTNER'S OPTION, EITHER: REFUND THE PRORATED FEES FOR THE SERVICE PAID TO PARTNER; OR (II) REPAIR OR REPLACEMENT OF THE NON-CONFORMING EQUIPMENT AND/OR RE-PERFORMANCE OF THE NON-CONFORMING SERVICE. IN NO EVENT SHALL DELL/PARTNER/RESELLER OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR DAMAGES IN EXCESS OF THE FEES PAID FOR ANY EQUIPMENT AND SERVICE IN THE SIX (6) MONTHS PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT WHICH GAVE RISE TO THE CLAIM.

7. **Damages Exclusion.**

SUBJECT TO ANY FRAUD OR PERSONAL INJURY, IN NO EVENT WILL DELL, PARTNER OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, EARNINGS OR BUSINESS OPPORTUNITY) ARISING OUT OF THE SUBJECT MATTER OF THIS END-CUSTOMER AGREEMENT OR FOR LOSS OR CORRUPTION OF DATA, IRRESPECTIVE OF WHETHER PARTNER OR DELL HAVING BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION, IN THE AGGREGATE, APPLIES TO ALL CAUSES OF ACTION, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THE LIMITATION OF DAMAGES SET FORTH IN THIS END-CUSTOMER AGREEMENT.

8. **Data Protection.**

8.1 In this Section 8, the terms "**data controller**", "**data processor**", "**personal data**" and "**processing**" shall be as defined in the European Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("**Directive**") as amended or superseded from time to time.

8.2 To the extent End-customer and Partner are data controllers for the purpose of any personal data processed under or in connection with the End-customer Agreement, each party shall comply with the provisions and obligations imposed by the Directive.

8.3 As data controller, End-Customer confirms that it has obtained all necessary authorisations for lawful processing, prior to passing personal data to Partner and/or Dell. To the extent Partner and/or Dell processes personal data as a data processor for End-customer under or in connection with the End-customer Agreement, Partner and/or Dell shall ensure appropriate protection is in place to safeguard such personal data.

8.4 Customer authorises Partner and/or Dell to collect, use, store and transfer the personal data End-customer provides to Partner and/or Dell for the purpose of performing the Services under the End-customer Agreement.

8.5 Dell may, in the normal course of business, make worldwide transfers of 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. When making such transfers, Dell shall ensure appropriate protection is in place to safeguard personal data transferred under or in connection with the delivery of the Services.

8.6 Neither Partner nor Dell shall not be liable for any claim brought by End-customer or a data subject arising from any action or omission by Partner or Dell to the extent that such action or omission resulted from compliance with End-customer's instructions.



## 9. Employment

End-customer acknowledges and agrees that no individuals (such as employees of End-customer or of a previous service provider) were fully or predominantly dedicated to running an equivalent service for the benefit of End-customer prior to the provision of the Services by Dell on behalf of Partner. End-customer will ensure that no individual will transfer to Dell and no individual will be deemed to be an employee of Dell in accordance with any applicable legislation, as the case may be. End-customer hereby undertakes to fully indemnify and hold Dell harmless from any claim brought upon Dell, including but not limited to claims from transferred, ingoing or outgoing End-customer or third party employees, as well as any cost or expense, reasonable attorney's fees or other financial liability on Dell arising out of or in relation to such employees transfer to Dell or Dell's sub-suppliers as a result of Dell's delivery of the Services on behalf of the Partner.

### *B. Specific additional minimum terms to be included for specific Stand Alone Services*

#### **B (1) Modular Services**

*No additional minimum terms to be included in your End-Customer Agreement in relation to Modular Services, instead you agree to:*

- **the** Modular Services provisions in Schedule A below apply between Dell and you in relation to the resale and provision of Modular Services on a subscription basis to End Customers also referred to in Schedule A to this Appendix 4 B(1) as “**MSR End-Users**”; and
- **ensure each End-Customer accepts the AUP contained in Schedule B below and return such signed AUP to Dell or if available click accepts the AUP online – service provision by Dell is dependent on the End Customer agreeing to the AUP**

#### *Schedule A to the Appendix 4 – B (1) - Modular Services Provisions*

By purchasing these Modular Services from Dell or engaging in a demonstration, trial period or evaluation program including these Modular Services, you agree to be bound by all terms and conditions set forth in this Schedule A including its Attachments in addition to the rest of this Agreement. The number of systems and MSR End-Users for which you have purchased any one or more of the modular services made available to you for onward sale from time to time (the “**Modular Services**”), the subscription rate or price, and the applicable length of the relevant Modular Services (as defined in paragraph 3 below) for each is indicated on your invoice from Dell, order acknowledgment or purchase order. You agree that renewing, modifying, extending or continuing to resell the Modular Services beyond the initial term (see Terms of Subscription Service in paragraph 3 below) is subject to these terms (as may be updated from time to time).

#### **Dell Services Licence Agreement & Acceptable Use Policy**

MSR End-Users' use of subscription Modular Services resold by you in is limited to the term (see paragraph 3 below) and is subject to execution/electronic acceptance, as made available by Dell from time to time, by the MSR End User of Dell's Modular Reseller License Agreement and Acceptable Use Policy (see Schedule B to this Appendix 4 B1). It is your responsibility to ensure the MSR End User has duly executed/electronically accepted the Dell Modular Reseller Licence Agreement and Acceptable Use Policy. Where electronic acceptance by MSR End-Users is not possible via the Portal you must return the duly executed Modular Reseller License Agreement and Acceptable Use Policy to Dell prior to Dell's commencement of delivery of the Modular Services.

#### **Attachments**

Only the specific Modular Services identified on your invoice, order acknowledgment or purchase order are included in your purchase of Modular Services.

#### **Optional Services**

Additional services (including, optional services or related consulting, managed, professional, support or training services) may be available for purchase separately (defined in a separate statement of work or other signed agreement between the parties).

#### **Precedence of documents**

In the event of any conflict between the various documents referred to above, such documents shall be construed in the following order of priority with regards to the subject matter of these Modular Services:

- 1 These Modular Services Provisions
- 2 Dell Modular Reseller Licence Agreement and Acceptable Use Policy
- 3 The Agreement





In the following 'Customer' is 'you'

1. **Acceptance of Terms & Conditions.** When necessary, Customer will enable Dell to provision, distribute and deploy the Modular Services and related software (the “**Service-Enabling Software**”) to supported devices within MSR End-Users’ IT infrastructure (each a “**System**”) and to each MSR End-User. Dell shall not have any obligation to a MSR pursuant to this Appendix or any order for Modular Services so far as it relates to any MSR End-User unless and until such MSR End-User acknowledges and confirms to Dell in a form acceptable to Dell (the “**Acknowledgement**”) that its use of and access to the Modular Services is subject to its acceptance of the Modular Reseller License Agreement and Acceptable Use Policy which acknowledgement and duly signed acceptance Customer must procure from the MSR End-User in line with the process described in paragraph 3 below. For the avoidance of doubt, the exercise by Dell of any its rights pursuant to the Modular Reseller License Agreement and Acceptable Use Policy shall not constitute a breach of this Agreement by Dell. Dell shall endeavour to give Customer prior notice of the exercise of such rights.
2. **Sensitive Personal Data.** You and any MSR End-User shall not use these Modular Services where the processing of sensitive personal data is required, including but not limited to details of an individual's race or ethnic origin, health data or sexual orientation. Should You or MSR End-User require Dell to collect and process sensitive personal data or have a request outside of the scope of the Modular Services please contact us and we shall discuss possible alternative solutions. The parties agree that if one party is held liable for a violation of this clause committed by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred.
3. **Activation Date & Term of Subscription Service.** After receipt and acceptance of an order and Dell’s receipt of duly signed Modular Reseller License Agreement and Acceptable Use Policy as per paragraph 1 above, Dell will email the Customer and/or MSR End-User instructions for enabling the provision of applicable Modular Service(s). The date upon which Dell finalises provision of the Modular Service(s) and ‘Operational Acceptance Readiness’ sheet is acknowledged by MSR End-User the “**End-User Activation Date**” of the purchased Modular Services, unless a different End-User Activation Date has previously been agreed to in writing by the parties. The applicable “**Term of Subscription Service**” (e.g. 12 months) is indicated on Customer’s invoice, order acknowledgement or purchase order. On the End-User Activation Date the MSP End-User can start using the Modular Services pursuant to this Agreement.
4. **Trial Period & Evaluation Programs.** Unless otherwise stated in trial period or evaluation program terms, Customers who do not provide notice of their intent to cancel the Modular Service prior to the expiration of a trial period or evaluation program period will, upon expiration of their trial or evaluation period, be automatically enrolled in 12 month Term of Subscription Service, as applicable to the trial or evaluation program in which you are participating.
5. **Termination.** Subject to the termination provisions of this Agreement and except as provided by applicable law which may not be varied by agreement, Customer may not cancel a Modular Service prior to the expiration of its Term of Subscription Service. Dell may cancel a Modular Service at any time during the Term of Subscription Service for any of the following reasons:
  - Customer fails to pay the total price for this Modular Service(s) in accordance with the invoice terms;
  - Customer and/or MSR End-User refuse 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 Agreement.
  - MSR End-User breaches the terms of the Modular Reseller License Agreement and Acceptable Use Policy

If Dell cancels a Modular Service, Dell will send Customer and MSR End-User 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 and MSR End-User, unless applicable law requires other cancellation provisions that may not be varied by agreement. IF DELL CANCELS THIS MODULAR SERVICE PURSUANT TO THIS PARAGRAPH 5, CUSTOMER OR MSR END-USER SHALL NOT BE ENTITLED TO ANY REFUND OF FEES PAID OR DUE TO DELL.

6. **Transfer of Service.** Customer may resell the Modular Service(s) to a MSR End-User but otherwise not transfer this Modular Service(s) or any rights conferred to MSR by this Schedule to a third party. Self-service transfers of an MSR provided Modular Service among MSR End-Users (within the same country) and systems within an MSR End-User’s IT infrastructure that do not require additional support from Dell are permitted. However, any transfers, imports or migrations of the Modular Service that require additional support by Dell beyond the standard scope of an initial deployment are only available upon a separate purchase (defined in a separate statement of work or other signed agreement between the parties).
7. **Dell Partners.** Dell may utilise affiliates and subcontractors to perform the Modular Services. From time to time, Dell may change the party performing the Modular Services; provided however, Dell shall remain responsible to Customer for the delivery of the Modular Services.
8. **Supported Products.** Supported devices and operating systems are identified at [www.Dell.com/ModularServices](http://www.Dell.com/ModularServices). Notwithstanding inclusion on the published supported devices and operating systems list, products or versions of products that are no longer supported by the device manufacturer or software publisher are not supported.
9. **System Configuration Data Collected by Dell.** During and continuing after the Term of Subscription Service, any installed Service-Enabling Software will collect and compile system configuration data obtained from Customer and MSR End-Users and transmit such data to Dell. Dell shall have the right to use such data solely to provide services to Customer, to inform Customer about our products and services and fulfil Customer’s orders and service requests. At any point, Customer or its MSR End-Users may uninstall the Service-Enabling Software in order to disable the collection of system configuration data by Dell. However, uninstalling the Service-Enabling Software from a System during the Term of Subscription Service will result in a disruption of Modular Service until the Service-Enabling Software is restored. Upon expiration and/or



termination of the Term of Subscription Service, any Service-Enabling Software which Customer or MSR End-Users do not uninstall will continue to collect, compile and transmit system configuration data to Dell.

10. **Device Count Billing.** The number of systems, units (e.g., mailboxes, recipients, minutes, etc.) and end users for which Customer has purchased Modular Services in respect of each MSR End-User and the applicable Term of Subscription Service for each Modular Service is indicated on Customer's invoice, order acknowledgment or purchase order. Usage in excess of this number or for a period of time longer than the applicable Term of Subscription Service will result in additional fees to Customer. The additional fees per billing period will be determined by multiplying the excess usage by the contracted fee per System, unit, or the end user fee in the original Customer invoice, if applicable.
11. **LIABILITY TO MSR END-USERS.** THE PARTIES ACKNOWLEDGE AND AGREE THAT, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT AND WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING, MSR END-USER'S ACCEPTANCE OF THE DELL MODULAR SERVICES RESELLER LICENCE AGREEMENT & ACCEPTABLE USE POLICY AS PROVIDED FOR IN THIS AGREEMENT, DELL PROVIDES THE MODULAR SERVICES TO CUSTOMER FOR CUSTOMER'S SOLE BENEFIT AND FOR RESALE BY CUSTOMER AND THAT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SAVE AS EXPRESSLY SET OUT IN THE DELL MODULAR SERVICES RESELLER LICENCE AGREEMENT & ACCEPTABLE USE POLICY, DELL SHALL NOT INCUR ANY LIABILITY TO ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION TO ANY MSR END-USER.
12. **Indemnity to Dell.** To the fullest extent permitted by law, you will indemnify, defend, and hold harmless Dell, including Dell's officers, directors, agents, employees, subsidiaries, affiliates, parents, successors and assigns, from any claim, demand, cause of action, debt, or liability (including reasonable attorneys' or legal fees, expenses, and court costs) that relate to: (1) your or MSR End-Users' 's modification of or addition to the Modular Services; (2) your breach of this Schedule; (3) your omission, misrepresentation, or negligence; (4) without prejudice to any rights you might have against Dell pursuant to this Agreement and Dell's obligations to the MSR End-User under the Modular Reseller License Agreement and Acceptable Use Policy, any claim relating to the Modular Services made against Dell by any MSR End-User; and (5) damage to a third party by Modular Services used by you to the extent such claim is based on (i) your modification of or addition to the Modular Services, misuse or abuse of the Modular Services, or breach of any provision in this Agreement; (ii) you failure to abide by all applicable laws, rules, regulations, and orders that affect the Modular Services; (iii) your omission, misrepresentation, or negligence, including but not limited to your failure to duly and correctly inform MSR End-Users about the specifications of the Modular Service(s) which they are purchasing from You, the limitations to such Modular Service(s) and MSR End-Users' obligations in relation to obtaining such Modular Service(s), by supplying MSR End-Users with (information equivalent to) any relevant service description available from [www.dell.com/Servicecontracts](http://www.dell.com/Servicecontracts), making it clear that You, and not Dell, are the contractual party to any agreement about resale of Dell's Modular Service(s) to MSR End-Users under this Agreement; or (iv) intentional harm to any person or property caused by you.
13. **Representations.** MSR shall make no representations or warranties with regard to the provision of the Modular Services (or any part of them) to any MSR End-User by Dell.

## Your Responsibilities

### You shall:

- Duly and correctly inform MSR End-Users about the specifications of the Modular Service(s) which they are purchasing from You, the limitations to such Modular Service(s) and MSR End-Users' obligations in relation to obtaining such Modular Service(s), by supplying MSR End-Users with (information equivalent to) any relevant service description available from [www.dell.com/Servicecontracts](http://www.dell.com/Servicecontracts), making it clear that You, and not Dell, are the contractual party to any agreement about resale of Dell's Modular Service(s) to MSR End-Users under this Agreement. Provide Dell with access to appropriate MSR End-User personnel necessary to support deployment of the Modular Services by Dell and provide a single point of contact that will serve as the primary MSR End-User counterpart for coordinating services.
- Ensure that MSR End-User Systems meet minimum hardware requirements defined in accompanying product manuals, are properly configured for the Modular Services and have sufficient access to the Internet.
- Ensure that MSR End-User has active subscriptions or licenses for any third-party software used or managed by the Modular Service.
- Install or, when applicable, facilitate remote distribution or MSR End-Users' own installation of Service-Enabling Software to its MSR End-Users and Systems, as well as facilitate uninstalling Service-Enabling Software at the expiration of the Term of Subscription Services.
- Procure MSR End-User Acknowledgement of as well as acceptance by any individual MSR End-User to the Dell Modular Reseller License Agreement and Acceptable Use Policy as a pre-condition to such MSR End-User's use of and access to the Modular Services.

## Schedule B to Appendix B(1) – Modular Services

### Modular Reseller License Agreement and Acceptable Use Policy

## LICENSE AND ACCEPTABLE USE POLICY

This License Agreement & Acceptable Use Policy ("Agreement ") sets forth the terms and conditions upon which you may use Software in connection with Dell Services and is intended to be read in conjunction with the terms and conditions of sale for the products, Services or Software purchased from Dell and any applicable service contract(s), available online at [www.Dell.com/ServiceContracts](http://www.Dell.com/ServiceContracts). Software may be provided to or otherwise made available

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to you in order to facilitate Dell's performance of Services, as a feature of a Service, to enable you to access hosted, online or remote software-enabled Services (e.g. "software-as-a-service" and "cloud-based" offerings), or to enhance your experience with Dell's products (capitalized terms defined below).

## 1. Your Relationship with Dell.

- a. **Introduction.** This is a legal agreement between you, the user of the Software (as defined herein), a corporation, partnership, sole proprietor, or other business entity ("**you(r)**" or "**Customer**") and Dell Products L.P. or Dell Global B.V. or, if applicable, the Dell entity identified on Customer's invoice ("**Dell**") with whom an order for Software or Services is placed. By placing an order for Software or Service or downloading, installing, activating or otherwise using the Software you agree to be bound by the terms of this Agreement. If you are entering this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "**you**", "**your**" or "**Customer**" shall refer to such entity. If you do not have such authority, or if you do not agree with these terms and conditions, do not accept this Agreement or use the Software. **In instances where Customer purchases through a reseller or distributor, final prices and terms and conditions of sale will be as agreed between Customer and the third party from which Customer makes such purchases; however, the terms set forth herein are applicable to your use of Software and the performance of Services by Dell.**
- b. **Definitions.** "**Services**" means any and all services provided by Dell as described in one or more Service Agreements. "**Software**" means any software, library, utility, tool, or other computer or program code, in object (binary) or source-code form, as well as the related documentation, provided by Dell to you. Software includes software locally installed on your systems and software accessed by you through the Internet or other remote means (such as websites and "cloud-based" applications). "**Deliverables**" means the tangible and intangible materials, including reports, studies, base cases, drawings, findings, manuals, procedures, and recommendations prepared by Dell or its suppliers, licensors, or subcontractors in the course of performing the Services. "**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. "**Third-Party Products**" means any non-Dell-branded products, software, or services.
- c. **Additional Agreements.** This Agreement, together with the Service Agreements (as defined below), form a legally binding contract between you and Dell in relation to your purchase and use of Software, and Dell's performance of Services. In the event of a conflict between these agreements, the terms of these documents will be interpreted in the following order of precedence: (1) Service Agreement; and (2) this Agreement.

## 2. Service Agreements.

Dell may provide Services, Software, or Deliverables to you in accordance with one or more "**Service Agreements**". "**Service Agreements**" are service contracts, including "**Service Descriptions**" available at [www.Dell.com/ServiceContracts](http://www.Dell.com/ServiceContracts), "**Statements of Work**", and any other such mutually agreed upon documents. Each Service Agreement will be interpreted as a single agreement, independent of any other Service Agreement, so that all of the provisions are given as full effect as possible.

## 3. Term; Auto-Renewal; Termination.

- a. **Term; Auto-Renewal.** This Agreement commences on the date you place your order and continues until all Services and Software licenses have expired or been terminated. Each Service and license to Software will continue for the term stated in the Service Agreement, unless otherwise terminated.
- b. **Termination of Services and Software License.** Unless renewed in accordance with this Agreement, this Agreement will terminate automatically upon the expiration of the agreed term of Services and Software license. Dell may terminate this Agreement immediately, including prior to the expiration of the term of Services or Software license, if (1) you fail to make any payment when due; (2) you declare bankruptcy or are adjudicated bankrupt; or (3) a receiver or trustee is appointed for you or substantially all of your assets. Upon termination of this Agreement, all rights and obligations of the parties under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.

## 4. Proprietary Rights.

All right, title, and interest in the intellectual property (including all copyrights, patents, trademarks, trade secrets, and trade dress) embodied in the Materials, including the methods by which the Services are performed and the processes that make up the Services, shall belong solely and exclusively to Dell or its licensors, and you shall have no rights whatsoever in any of the above, except as expressly granted in this 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, in whole or in part.

## 5. Deliverables.

Dell and its applicable suppliers or licensors will retain exclusive ownership of all Deliverables, and will own all intellectual property rights, title, and interest in any ideas, concepts, know-how, documentation, and techniques associated with such Deliverables. Subject to payment in full for the



applicable Services, Dell grants you a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country or countries in which you do business, solely for your internal use, and solely as necessary for you to enjoy the benefit of the Services as stated in the applicable Service Documents.

## 6. Suspension or Modification of Software or Services.

Dell may suspend, terminate, withdraw, or discontinue all or part of the Services or your access or one or more users' access to the Software upon receipt of a subpoena or law-enforcement request, or when Dell believes, in its sole discretion, that you (or your users) have breached any term of this Agreement or an applicable Service Agreement, or are involved in any fraudulent, misleading, or illegal activities.

Dell may modify the Software or Services, at any time, with or without prior notice to you. You agree that Dell shall not be liable to you or any third party for any modification of the Software or Services.

It may be necessary for Dell to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the software installed on its and your computer system(s), which may temporarily degrade the quality of the Services or result in a partial or complete outage of the Software. Dell provides no assurance that you will receive advance notification of such activities or that the Software or Services will be uninterrupted or error-free. Unless otherwise agreed to in writing between you and Dell, any degradation or interruption in the Software or Services shall not give rise to a refund or credit of any fees paid by you.

YOU AGREE THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SOFTWARE, INCLUDING COMMUNICATION BY PUBLIC ELECTRONIC COMMUNICATIONS NETWORKS, PRIVATE COMPUTER NETWORKS, AND BY OTHER PUBLIC ELECTRONIC COMMUNICATIONS SERVICE PROVIDERS' NETWORKS, OR TO TRANSMIT INFORMATION, WHETHER OR NOT SUPPLIED BY YOU OR DELL, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF THE SOFTWARE. DELL SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF YOUR ACCESS TO OR USE OF THE SOFTWARE.

## 7. Software License from Dell.

- a. **License.** Software is subject to the separate software license agreement(s) accompanying the software media, along with any product guides, operating manuals, or other documentation presented to Customer during the installation or use of the Software. In the absence of such terms, Dell hereby grants Customer a personal, non-exclusive license to access and use the Software provided by Dell. Software provided or otherwise made available to Customer by Dell may be used only during the term of the Services and solely as necessary for Customer to enjoy the benefit of the Services as stated in the applicable Service Agreements.
- b. **Restrictions.** Customer may not copy, modify, or create a derivative work, collective work, or compilation of the Software, and may not reverse engineer, decompile or otherwise attempt to extract the code of the Software or any part thereof. Customer may not license, sell, assign, sublicense, or otherwise transfer or encumber the Software; may not use the Software in a managed-services arrangement; and may not use the Software in excess of the authorized 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.

Customer is further prohibited from (1) attempting to use or gain unauthorized access to Dell or to any third party's networks or equipment; (2) permitting other individuals or entities to use the Software or copy the Software or Services; (3) 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; (4) interfering or attempting to interfere with service to any user, host, or network; (5) engaging in fraudulent activity of any nature; (6) transmitting unsolicited bulk or commercial messages; (7) 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 (8) restricting, inhibiting, interfering with, or otherwise disrupting or causing a performance degradation to any Dell (or Dell Service supplier) facilities used to deliver the Services.

- c. **Audit.** You hereby grant Dell, or an agent designated by Dell, the right to perform an audit of your use of the Software during normal business hours; you agree to cooperate with Dell in such audit; and you agree to provide Dell with all records reasonably related to your use of the Software. The audit will be limited to verification of your compliance with the terms of this Agreement.
- d. **Open Source Software.** A portion of the Software may contain or consist of open source software, which you may use under the terms and conditions of the specific license under which the open source software is distributed.

THIS OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY REGARDING TITLE OR AGAINST INFRINGEMENT. IN NO EVENT SHALL DELL, THE COPYRIGHT HOLDERS, OR THE CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF





THE POSSIBILITY OF SUCH DAMAGE.

8. **Privacy.**

For information about Dell's privacy practices, please read Dell's global and country-specific privacy policies at [www.Dell.com/Privacy](http://www.Dell.com/Privacy). These policies explain how Dell treats your personal information and protects your privacy.

9. **Customer Data.**

In Dell's performance of the Services or in connection with your use of the Software, it may be necessary for Dell to obtain, receive, or collect data or information, including system-specific data (collectively, the "Data"). In such cases, you grant Dell a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to facilitate the performance of Services by Dell or your use of the Software. In addition, you grant Dell a license to aggregate the Data for use in an anonymous manner in support of Dell's marketing and sales activities. You also grant Dell the right to copy and maintain such material and content on Dell's servers (or the servers of its suppliers) during the term of this Agreement. You represent and warrant that you have obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which you are located in conjunction with Dell's performance of the Services or your use of the Software (including providing adequate disclosures and obtaining legally sufficient consent from your employees, agents, and contractors).

10. **High-Risk Disclaimer.**

The Products, Software, and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as 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, or Services could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High-Risk Activities**"). Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

11. **Important Additional Information.**

NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT DELL'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. SOME JURISDICTIONS DO NOT ALWAYS ENFORCE CLASS ACTION OR JURY WAIVERS, AND MAY LIMIT FORUM SELECTION CLAUSES AND STATUTE OF LIMITATIONS PROVISIONS, AS SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO YOU IN YOUR JURISDICTION WILL APPLY TO YOU, AND DELL'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

a. **Limited Warranty.**

THE LIMITED WARRANTIES FOR DELL-BRANDED PRODUCTS CAN BE FOUND AT [www.Dell.com/Warranty](http://www.Dell.com/Warranty) OR IN THE DOCUMENTATION DELL PROVIDES WITH SUCH PRODUCTS. DELL WARRANTS THAT THE SERVICES WILL BE PROVIDED IN MATERIAL ACCORDANCE WITH THE SERVICE AGREEMENTS. IN THE ABSENCE OF A SERVICE AGREEMENT, THE SERVICES WILL BE PROVIDED IN A GOOD AND SKILLFUL MANNER. DELL HAS THE RIGHT TO GRANT THE LICENSES TO THE SOFTWARE LICENSED UNDER THIS AGREEMENT, AND SUCH SOFTWARE WILL SUBSTANTIALLY CONFORM TO THE FUNCTIONAL SPECIFICATIONS AND CURRENT DOCUMENTATION PROVIDED BY DELL. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCES OF THIS PARAGRAPH, DELL, (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS (COLLECTIVELY, THE "**DELL PARTIES**") MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SOFTWARE OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (1) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (2) RELATING TO THIRD-PARTY PRODUCTS, SOFTWARE, OR SERVICES; (3) RELATING TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE, OR DELL'S PERFORMANCE OF THE SERVICES; OR (4) REGARDING THE RESULTS TO BE OBTAINED FROM THE SOFTWARE, SERVICES, OR THE RESULTS OF ANY RECOMMENDATION BY DELL.

WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, MISUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY DELL (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH PRODUCT OR SOFTWARE INSTRUCTIONS, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE PRODUCTS, SOFTWARE, OR SERVICES. **THESE WARRANTIES DO NOT APPLY TO THIRD-PARTY PRODUCTS.** ANY WARRANTY ON A THIRD-PARTY PRODUCT IS



PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER. ALL THIRD-PARTY PRODUCTS ARE PROVIDED "AS IS."

WITH RESPECT TO YOUR USE OF THE SOFTWARE (1) NEITHER DELL NOR ANY OF THE DELL PARTIES MAKES ANY EXPRESS OR IMPLIED WARRANTY THAT SOFTWARE PROVIDED TO YOU IN CONNECTION WITH THIS AGREEMENT IS OR WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS; OR THAT ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED; (2) YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH ERRORS OR VIRUSES ARE THE DIRECT RESULT OF DELL'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (3) DELL AND THE DELL PARTIES, JOINTLY AND SEVERALLY, DISCLAIM AND MAKE NO WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF ANY REPORTS, DATA, RESULTS, OR OTHER INFORMATION OBTAINED OR GENERATED BY YOU RELATED TO YOUR USE OF THE SOFTWARE; AND (4) USE OF THE SOFTWARE IS ENTIRELY AT YOUR OWN RISK AND NEITHER DELL NOR THE DELL PARTIES SHALL HAVE ANY LIABILITY RELATING TO SUCH USE.

**b. Limitation of Liability**

DELL WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, OR SERVICES PROVIDED HEREUNDER. WHETHER DIRECT OR INDIRECT, NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING, (1) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS; (2) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK OR THE RECOVERY OF SUCH; (3) LOSS OF BUSINESS OPPORTUNITY; (4) BUSINESS INTERRUPTION OR DOWNTIME; OR (5) SERVICES, DELL PRODUCTS, OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE.

DELL'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER) IN ANY 12-MONTH PERIOD SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER DURING THE PRIOR 12 MONTHS OF THIS AGREEMENT FOR THE SPECIFIC SOFTWARE OR SERVICE GIVING RISE TO SUCH CLAIM(S).

THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. THE PARTIES AGREE THAT THESE LIMITATION OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR DELL'S SALE OF SOFTWARE OR SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

- c. Confidentiality.** In connection with this Agreement, each party may have access to or be exposed to information of the other 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 (collectively, "**Confidential Information**"). Confidential Information may not be shared with third parties unless such disclosure is to the receiving party's personnel, including employees, agents, and subcontractors, on a "need-to-know" basis in connection with this Agreement, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein. Each party agrees to take the necessary precautions to maintain the confidentiality of the other party's Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that (1) was known by one party prior to its receipt from the other or is or becomes public knowledge through no fault of the recipient; or (2) is rightfully received by the recipient from a third party without a duty of confidentiality. If a recipient is required by a court or government agency to disclose Confidential Information, the recipient shall, subject to any applicable lawful restrictions, provide advance notice to other party before making such a disclosure. The obligations with respect to Confidential Information shall continue for two years from the date of disclosure.
- d. Indemnification.** Dell shall defend and indemnify you against any third-party claim or action that Products, Software, or Services (excluding Third-Party Products and open source software) prepared or produced by Dell and delivered pursuant to this Agreement infringe or misappropriate that third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the country in which such Software or Services are sold to you by Dell ("**Indemnified Claims**"). In addition, if Dell receives prompt notice of a 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 you to continue using such Products or Software or allow Dell to continue performing the Services; (2) modify such Software or Services to make them non-infringing; (3) replace such 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 Software. Notwithstanding the foregoing, Dell shall have no obligation under this Section for any claim resulting or arising from (1) modifications of the Software or Services that were not performed by or on behalf of Dell; (2) the combination, operation, or use of the Software or Services in connection with a third-party product, software, or service (the combination of which causes the claimed infringement); or (3) Dell's compliance with your written specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by you. This Section states Customer's exclusive remedies for any third-party intellectual property claim or action, and nothing in this Agreement or elsewhere will obligate Dell to provide any greater indemnity to



Customer.

You shall defend and indemnify Dell against any third-party claim or action arising out of (1) your failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications, or approvals associated with technology provided by you, or associated with software or other components directed or requested by you to be installed or integrated as part of the Services; (2) your breach of Dell's proprietary rights as stated in this Agreement; or (3) any inaccurate representation regarding the existence of an export license or any allegation made against Dell due to your violation or alleged violation of applicable export laws, regulations, or orders.

Each party shall defend and indemnify the other party against any third-party claim or action for personal bodily injury, including death, to the extent directly caused by the indemnifying party's gross negligence or willful misconduct in the course of performing its obligations under this Agreement.

- e. **Independent Contractor Relationship; Assignment; Subcontracting.** The parties are independent contractors. Neither party will have any rights, power, or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this Agreement. Dell has the right to assign, subcontract, or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, by operation of law or otherwise, provided that Dell shall remain responsible for the performance of Services under this Agreement. Otherwise, neither party may assign this Agreement without the permission of the other.
- f. **Force Majeure.** Neither party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "**Force Majeure**"). In such event, however, the delayed party must promptly provide the other party with written notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure event lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, this Agreement or the applicable Service Agreement by giving written notice to the delayed party.
- g. **Export Compliance.** You acknowledge that the Software and Services provided under this Agreement, which may include technology and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."), may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which you or your system is located, and may also be subject to the customs and export laws and regulations of the country in which the Software or Services are rendered or received. You agree to abide by those laws and regulations. You further represent that any software provided by you and used as part of the Software or Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. If you cannot make the preceding representation, you agree to provide Dell with all of the information needed for Dell to obtain export licenses 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, you are solely responsible for obtaining any necessary licenses relating to the export of software. Dell also may require export certifications from you for software. Dell's acceptance of any order for Software or Services is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government; Dell is not liable for delays or failure to deliver Software or Services resulting from your failure to obtain such license or to provide such certification. Each Party agrees to indemnify, defend and hold the other harmless from any third-party claims, demands, or causes of action against the other due to the indemnifying party's violation or alleged violation of the applicable export laws, regulations or orders.
- h. **Regulatory Requirements.** Dell is not responsible for determining whether any Third-Party Product to be used in the Products, Software, or performance of the Services, satisfies the local regulatory requirements of the country to which such Products, Software, or Services are to be delivered, and Dell shall not be obligated to provide any Product or Software or perform any Services where the resulting Products, Software, or Services do not satisfy the local regulatory requirements.
- i. **Entire Agreement; Severability.** This Agreement is the entire agreement between you and Dell with respect to its subject matter and supersedes all prior oral and written understandings, communications, or agreements between you and Dell. No amendment to or modification of this Agreement, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of this Agreement should be found to be void or unenforceable, such provision will be stricken or modified, but only to the extent necessary to comply with the law, and the remainder of this Agreement will remain in full force and will not be terminated.
- j. **Updates.** Dell reserves the right to update this Agreement at any time, effective upon posting an updated version at [www.Dell.com/Terms](http://www.Dell.com/Terms); however, your rights and obligations shall be as provided in the version of this Agreement executed by you or available to you at the time of your purchase of Software or Services or, when applicable, renewal of Software or Services.
- k. **U.S. Government Restricted Rights.** The software and documentation provided with the Software and Services are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth herein. Contractor/manufacture is Dell Products L.P., One Dell Way, Round Rock, TX 78682.



## I. DATA PROTECTION & PROCESSING PROVISIONS APPLICABLE ONLY TO CUSTOMERS WITH OPERATIONS IN THE EUROPEAN ECONOMIC AREA (EEA)

- i. **Data Protection & Processing of Personal Data.** The terms used in this Section shall have the same meanings as defined in Article 2 of the European Data Protection Directive 95/46/EC and the following terms shall have a more specific meaning:

**"Data Protection Law"** means the Directive 95/46/EC and any amendments, revisions, re-enactments or consolidations thereof together with any other applicable data protection legislation.

**"Dell Personnel"** means any employee, officer, agent or consultant of Dell engaged to provide the Services.

You shall provide personal data to Dell Personnel together with such other information as may reasonably be required in order to provide the Services.

Dell shall (A) ensure that only Dell Personnel who may be required to assist in meeting Dell's obligations under this Agreement shall have access to the personal data; (B) process the personal data only in accordance with the Data Protection Law and the terms of this Agreement; and (C) if it shall become necessary to transfer personal data from one location to another within its own organization or to third parties contracted to provide the Services, undertake such transfer with appropriate security measures being implemented in compliance with Data Protection Law.

Dell will maintain appropriate organizational and technical processes and procedures to safeguard against unauthorized access, accidental loss, destruction, theft, use or disclosure of the personal data.

You acknowledge that Dell is reliant on you for direction as to the extent to which Dell is entitled to use and process the personal data. Consequently, Dell will not be liable for any claim brought by you or a data subject arising from any action or omission by Dell Personnel to the extent that such action or omission resulted from your instructions.

- ii. **Employment Indemnity.** You shall keep Dell or any of its subcontractors fully indemnified against any claims, costs, demands, awards, compensation or other liability of any nature arising out of the termination of the employment rights (by way of redundancy or otherwise) or deemed transfer of any employment rights of any employees of you, or the previous supplier providing the Services for you, resulting from the entering into or termination of any Services Agreement (in whole or in part) for whatsoever reason.

In the event that any member of Dell personnel (whether employed or engaged by Dell or one of its contractors, agents or consultants) brings a claim against Dell as a result of any act or omission of you or any of your employees, contractors, agents or consultants (including any claim arising from a request by you that the individual be removed from providing any part of the Services), you shall cooperate with Dell in defending any such proceedings and shall indemnify and hold Dell harmless in respect of any award of compensation or other payment made by a court or tribunal or any monies paid in respect of any settlement and all legal costs and any disbursements incurred by Dell in dealing with any such claim.

## 2. GENERAL PROVISIONS APPLICABLE TO DELL CUSTOMERS WITH OPERATIONS OUTSIDE OF THE UNITED STATES.

- i. **Governing Law, Jurisdiction, Venue & Language.** The governing law and which courts can adjudicate any dispute arising out of or in connection with this MSA depends on where Customer is domiciled. Each party agrees to the applicable governing law below, without regard to choice or conflicts of law rules or the United Nations Convention on the International Sale of Goods, and to the exclusive jurisdiction of the applicable courts below.

If Customer is domiciled in:	The governing law is:	The courts having jurisdiction are:
Latin & South America	State of Texas	Exclusive jurisdiction of Williamson or Travis County, Texas
Canada	Ontario	Exclusive jurisdiction of Toronto, Ontario
Europe, the Middle East or Africa	English	Exclusive jurisdiction of English courts



China	Laws of People's Republic of China	Exclusive jurisdiction of the People's Court in Xiamen
Japan	Laws of Japan	Exclusive jurisdiction of the Tokyo District Court of Japan
Hong Kong	Laws of Hong Kong	Non-exclusive jurisdiction of the courts of Hong Kong
Taiwan	Laws of People's Republic of China	Non-exclusive jurisdiction of the Taipei District Court in the ROC
Korea	Laws of Korea	Non-exclusive jurisdiction of the Seoul Central Regional Court
Malaysia	Laws of Malaysia	Non-exclusive jurisdiction of the courts of Malaysia
Singapore	Laws of Singapore	Non-exclusive jurisdiction of the courts of Singapore
Thailand	Laws of Thailand	Non-exclusive jurisdiction of the courts of Thailand
India	Laws of India	Non-exclusive jurisdiction of the courts in Bangalore
Australia	Laws of New South Wales	Non-exclusive jurisdiction of the courts of New South Wales
New Zealand	Laws of New Zealand	Non-exclusive jurisdiction of the courts of New Zealand
Any other country in the Asia Pacific & Japan region	Laws of Singapore	Non-exclusive jurisdiction of the courts of Singapore

This Agreement will be interpreted and construed in accordance with the English language. The parties have required that this Agreement and all documents relating thereto be drawn-up in English. Preceding sentence translated to French (France) and applicable to Canadian customers only: Les parties ont demandé que cette convention ainsi que tous les documents qui s'y rattachent soient rédigés en anglais.

- ii. **Notices.** Notice to Dell under this Agreement or any related Service Agreement must be in writing and sent by postage prepaid first-class mail or receipted courier service to the address identified on Customer's invoice for the purchase of Software or Services or to such other address (including facsimile or e-mail) as specified in writing, and will be effective upon receipt.
- iii. **Limitation Period.** Neither party will institute an action in any form arising out of this Agreement more than two (2) years after the cause of action has arisen.

### 3. GENERAL PROVISIONS APPLICABLE TO DELL CUSTOMERS WITH OPERATIONS IN THE UNITED STATES.

- i. **Governing Law.** This Agreement, any related Service Agreement, and ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND DELL, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from this Agreement (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), Dell's advertising, or any related purchase (a "**Dispute**") shall be governed by the laws of the State of





Texas, without regard to conflicts of law.

- ii. **Venue.** The parties agree that any Dispute shall be brought exclusively in the state or federal courts located in Travis or Williamson County, Texas. Customer and Dell agree to submit to the personal jurisdiction of the state and federal courts located within Travis or Williamson County, Texas, and agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.
- iii. **Bench Trial.** The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.
- iv. **No Class Actions.** NEITHER CUSTOMER NOR DELL SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.
- v. **Limitation Period.** DELL SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CLAIM BROUGHT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.
- vi. **Dispute Resolution.** Customer and Dell will attempt to resolve any Dispute through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mediator agreed to by the parties, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a state or federal court in Travis or Williamson County a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within 30 days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or in equity.
- vii. **Notices.** Notice to Dell under this Agreement or any related Service Agreement must be in writing and sent by postage prepaid first-class mail or receipted courier service to the address below or to such other address (including facsimile or e-mail) as specified in writing, and will be effective upon receipt.

## ***B (2) Security Services***

The below terms shall apply to any Dell/Dell SecureWorks-branded managed security services (“Security Services”) sold by Partner to End-customer.

### **1 Sublicence; Sublicence Restrictions**

- 1.1 Except for equipment purchased by End-customer, End-customer will and Partner shall request the return to Dell of any equipment or hardware provided by Partner or Dell (“Equipment”) upon the expiration or termination of the term as set out in the applicable Service order document(s). End-Customer is responsible for the Equipment and risk of loss of the Equipment from delivery of the Equipment to End-customer’s location and until the Equipment has been safely returned to Dell. Title to the Equipment remains with Dell at all times. End-customer accepts responsibility for insuring the Equipment against all risk, including those arising from transit and storage as well as insurance against any third party claims. End-customer furthermore agrees to maintain and return the Equipment on good condition. End-customer shall not alter the Equipment in any way. If such Equipment is not returned by End-customer, End-customer will be responsible for the then-current replacement costs of such Equipment.
- 1.2 Partner will provide to End-customer access and use of the software, in object code format only, necessary to receive the Security Services (the “Security Software”) and the applicable written directions and/or policies relating to the Security Services, which may be in paper or electronic format, as required by the End-customer to receive the Security Services. Partner grants End-customer a limited, nontransferable and nonexclusive licence to access and use, during the term as set out in the applicable Service order, the Security Services and the Security Software, together with any documentation relating to the Security Services delivered to End-customer, subject to the following restrictions:
  - a) End-customer will use the Security Software, Security Services and relevant documentation for End-customer’s internal security purposes only, and
  - b) End-customer will not, for itself, any affiliate of End-customer or any third party (i) sell, rent, licence, assign, distribute, or transfer any of the Security Software, Security Services, Equipment (as defined below) or any related documentation; (ii) decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any source code of underlying ideas, algorithms, file formats, programming, or interoperability interfaces of any of the Security Services; (iii) copy or virtualise any element of the Security Services, except that End-customer may make a reasonable number of copies of the relevant documentation for backup purposes (provided End-customer reproduces on such copies all proprietary notices of Dell or its suppliers); or (iv) remove any language or designation indicating the confidential nature thereof or the proprietary rights of Dell or its suppliers.



Without limiting the foregoing, if and to the extent that End-customer is provided with, or otherwise purchases Equipment, (a) End-customer shall not, and shall have no authority or right to, virtualise the Equipment and/or the Security Software loaded on such Equipment; and (b) violation of the foregoing shall be deemed to be a material breach hereunder and shall invalidate all Security Services being provided by and/or through such Equipment and/or Security Software. In addition, End-customer will not and will not permit third parties to, (I) use any Security Service to operate in or as a time-sharing, outsourcing, service bureau, hosting, application service provider or managed service provider environment; (II) alter or duplicate any aspect of any Security Service, except as expressly permitted under this End-customer Agreement; or (III) assign, transfer, distribute, or otherwise provide access to any of the Security Service to any third party or otherwise use any Security Service with or for the benefit of any third party. By purchasing Security Services, you are agreeing to receive critical program and business updates by email as part of the service. This does not affect your right to opt out of receiving promotional or marketing emails.

This limited licence shall automatically terminate upon the expiration or termination of this End-customer Agreement for any reason.

## **2. National Security Matters**

End-customer will not without fully complying with all applicable laws and regulations (including all United States laws and regulations with respect to export and/or re-export of encrypted technology and any applicable laws of the destination country regarding the same) export any Security Service, software or equipment. End-customer represents and warrants that neither it nor any affiliates or agents receiving Security Service is, (or at any time during the Term will be), any person, company, or entity identified in (c) (i) through (iv) below.

If and to the extent that Security Services, software and equipment are being provided to End-customer or its Affiliates located outside the United States of America, End-customer further agrees that; (a) End-customer shall bear all cost and expense (including but not limited to shipping, customs, licence and other professional fees and expenses incurred by Dell or any of its affiliates) in connection with such delivery of such outside the United States in compliance with the laws and regulations of the United States and the destination location related to the export or import of technical data and products produced from such data; (b) in the provision of the Security Services by Dell, End-customer Data may be transferred outside of the country in which such End-customer location is situated and therefore become subject to the laws of the United States of America (e.g. the Patriot Act) or other jurisdictions, which laws may require disclosure under such applicable laws; (c) certain Security Services, software and/or equipment to be provided hereunder as well as certain transactions hereunder may be subject to United States anti-boycott, export control, sanctions laws, and any applicable foreign export and import laws or regulations consistent with U.S. law, including but not limited to laws which may penalise or prohibit (i) transactions involving persons, companies, or entities involved in activities related to the proliferation of nuclear, missile, or chemical/biological weapons, or missiles that deliver such weapons; (ii) transactions involving any person, company, or other entity appearing on any applicable list of prohibited parties maintained by the United States Government; (iii) transactions involving countries against which the United States maintains economic sanctions or embargos under statute, Executive Order, or regulations issued by the Office of Foreign Assets Control (“OFAC”), 31 C.F.R. Subtitle B, Chapter V, as amended from time-to-time; and (iv) transactions involving any person, company, or entity acting or purporting to act, directly or indirectly, on behalf of, or an entity owned or controlled by, any party identified in (i) through (iii) above; and (d) End-customer will comply with all such applicable laws and regulations described above and will require each affiliate and agent of End-customer to comply with the foregoing. If Dell becomes aware of any violation or alleged violation of any of the foregoing requirements of clause (c) or (d) above, Dell will have the right to terminate End-customer’s right to receive Security Services for cause without affording End-customer an opportunity to cure such non-compliance.

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## APPENDIX 5: – INSURANCE PRODUCTS (Accidental Damage)

- 1.1 Appointment as Agent: Dell hereby appoints Partner as its billing agent in respect of the Territory to sell and promote the sale of the Insurance Products to Partner's customers/end users with effect from the start date in accordance with the terms and conditions of this Appendix which is subject to the terms of Channel Partner Agreement entered into between the parties and Partner agrees to such appointment and to act in that capacity.
- 1.2 Partner acknowledges its appointment by Dell in Dell's role as an agent of the insurer, London General Insurance Company Limited, registered number 1865673, registered address Integra House, Vicarage Road, Egham, Surrey TW20 9JZ ("LGI" or "the Insurer") to act as a sub-agent of the Insurer to conduct sales of the Insurance Products strictly in accordance with the terms set out in this Appendix.
- 1.3 Binding Authority: Dell confirms that it has been granted authority by the Insurer to bind the Insurer to an insurance policy with an eligible customer. Dell hereby delegates this binding authority to Partner, but Partner shall have no authority, express or implied:
- a) to bind the Insurer to any Insurance Product whose terms or conditions are not strictly the same as those agreed between Dell and the Insurer; or
  - b) to agree or purport to agree to amend, vary or waive the eligibility requirements for an Insurance Product, the scope of Insurance cover, the exclusions, or any other term or condition of such insurance; or
  - c) to represent to a customer or to a potential customer the terms and conditions of an Insurance Product differ from those agreed between Dell and the Insurer; or to describe the cover and benefits provided by an Insurance Product differently from those agreed between Dell and The Insurer; or
  - d) to delegate such binding authority to any other party.
- 1.4 Sales and Marketing Materials: All sales and/or marketing materials shall include a notice stating that the Insurance Product is underwritten by LGI and the customer shall be entering into a direct contractual relationship with LGI should they decide to purchase the Insurance Product.
- a) Prior to any sales and/or marketing materials promoting or describing the Insurance Product being printed they shall be approved by the Insurer.
  - b) The Insurance Product is only available for Dell-branded Products which have a valid, tied, Dell Hardware Support Service in place.
- 1.5 Revocation of Partner's capacity: Dell may, further to a request of the Insurer acting in its sole discretion, revoke or suspend the binding authority granted in section 1.3 above. Dell shall implement such revocation or suspension forthwith.
- 1.6 The Gross Premium (including local relevant insurance premium tax) for each Insurance Product will be shown in each Customer's insurance policy documentation. The sell out price of the Insurance Products by Partner is subject to a maximum of 5% (or such other percentage as Dell and The Insurer may determine from time to time) over and above the price showing on Dell's invoice to Partner in relation to the Insurance Product ("**the maximum sell out price**"). The maximum sell out price shall not be varied or adjusted by either party, without the consent of The Insurer and specifically:-
- a) The Partner is free to sell at a lower charge or at no additional charge if he so wishes but shall not charge more than the maximum sell out price. The reason for this is to reflect the gross premium and related taxes to be accounted for by the Insurer and appearing in the Customer's insurance documentation. The gross premium shall not be deemed to be varied by any commission, discount or any adjustment to the aggregate price payable by Partner to Dell for the combined package of Dell Products and the Insurance Product.
  - b) Partner is however, authorised to adjust the aggregate amount payable by its customer(s) for the package of the Dell Products and the Insurance Product, provided that Partner shall always disclose the gross insurance premium (inclusive of taxes) to each insured customer regardless of how such premium is funded.
  - c) Notwithstanding the above the accounting arrangements shall remain the same as per the Agreement between Dell and Partner
- 1.7 Compliance: The parties undertake as follows:
- If the prevailing insurance regulations or their interpretation are modified such that Dell or the Partner require any authorisation in connection with the sale of any Insurance Policy, then:



- a) The parties shall secure all necessary consents and licences to discharge their respective obligations under this Appendix pending the acquisition of such consents and licences the Insurer or Dell may suspend the Partner's authority to act as a sub agent of the Insurer; or
- b) The parties shall execute such amendments to this Agreement or take such other actions as are proposed by the Insurer in order to comply with the prevailing regulations.
- c) The parties agree to ensure that all staff are appropriately trained and competent to perform the duties and functions in which they engage in respect of the Insurance Product including, but not limited to, training to provide the highest standards of service on the telephone and in written communication.
- d) The parties agree to notify all other parties to this Appendix and the Insurer of any potential breach of their regulatory obligations with immediate effect so as to ensure appropriate remediate action can be applied to mitigate such potential breach and related risks.
- e) Insofar as they are relevant to their obligations under this Appendix and the sale of the Insurance Product hereunder, the parties agree to adhere to the prevailing insurance regulations and principles specified by the relevant insurance regulators from time to time. In particular they will ensure that they pay due regard to the interests of the Partner's customers and treat them fairly.

Any failure to comply with the provisions of this section 1.7 shall constitute a material breach of this Appendix that is not capable of remedy and shall entitle and may cause Dell to terminate the Appendix and the Channel Partner Agreement in accordance with section 15.2 of the Channel Partner Agreement.