



# Customer Master Services Agreement

THIS CUSTOMER MASTER SERVICES AGREEMENT (“**MSA**”) is entered into by you (“**Customer**”) as evidenced by your use of the Services (defined below). “**Customer**” shall include Customer’s corporate subsidiaries, as well as corporate parents, affiliates, and other related companies (collectively, “**Affiliates**”) approved by Dell to receive Services under this MSA. For purposes of this MSA the term “**Dell**” shall mean Dell Marketing L.P. or, when applicable, the Dell entity identified on Customer’s invoice. Dell and Customer agree to the following terms and conditions:

## 1. Services

All services provided by Dell under this MSA (the “**Services**”) will be described in one or more Service Agreements. “**Service Agreements**” are order forms or service contracts that incorporate the terms of this MSA, including “**Service Descriptions**” and “**Subscription Agreements**” available at [www.Dell.com/ServiceContracts](http://www.Dell.com/ServiceContracts), “**Technical Specification Forms**”, “**Statements of Work**”, and any such mutually agreed upon document. The MSA and each Service Agreement will be interpreted as a single agreement, independent of each other Service Agreement, so that all of the provisions are given as full effect as possible. In no event will the description of Services under any Service Agreement be deemed by implication or otherwise to exclude any Services described in this MSA or another Service Agreement.

In the event of a conflict between the terms of the MSA and a Service Agreement, the terms of these documents will be interpreted according to the following order of precedence: (1) Service Agreements and (2) the MSA.

## 2. Terms of Purchase

**2.1. Requests for Service; Quotes and Orders.** All orders for Services must specify Dell’s quotation (if any), and reference the Service(s) requested and invoice address. All orders are subject to acceptance by Dell. If Customer orders on-line, Dell may issue to Customer user names and passwords (the “**Purchase Codes**”). By accepting and using the Purchase Codes, Customer acknowledges the validity of an electronic order, which shall be deemed to be a writing for all purposes hereunder, and agrees to be responsible for full payment of any Services ordered using Customer’s Purchase Codes. Customer is responsible for keeping the Purchase Codes confidential and controlling their use.

**2.2. Prices.** The prices charged for Services purchased under this MSA will be Dell’s “then-current” charges for such services in each geographic region or as quoted by Dell. Dell reserves the right to revise pricing if prices for Services are expressly contingent upon assumptions, which are determined inaccurate. All prices are exclusive of all applicable country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes. If the Services are being performed on a time and materials basis, any estimates provided by Dell are for planning purposes only. Any required deposits are non-refundable.

**2.3. Additional Fees; Taxes.** Customer shall be responsible for all applicable taxes and fees assessed or imposed upon the Services provided or the amounts charged under this MSA, including any sales, use, excise, value-added, or comparable taxes, but excluding taxes related to Dell’s net assets or net income or for which Customer has provided a valid resale or exemption certificate. Should any payments to Dell become subject to withholding tax, then Customer shall deduct these taxes from the amount owed to Dell and pay the taxes to the appropriate tax authority in accordance with the laws thereof. Customer shall promptly provide Dell with receipts or other applicable evidence of substantiating the payments as required under the laws of the applicable taxing authority. Dell shall not be liable for any withholding tax, penalty, or interest due as a result of Customer’s failure to withhold any applicable tax.

**2.4. Invoicing and Payment.** Customer’s payment terms will be net thirty (30) days from the date of invoice, subject to continuing credit approval by Dell. Customer will pay Dell in US dollars or in the currency of the country in which the Dell affiliate that supplied the Services is domiciled, as invoiced by Dell or an affiliate of Dell. Additional charges may apply if Customer requests services that are performed outside contracted hours or are beyond the normal coverage for the particular service.

**2.5. Nonpayment.** For invoices not paid within thirty (30) days of the invoice date, Dell reserves the right to charge Customer a late penalty charge of one and a half percent (1.5%) per month applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. In addition, Dell, without waiving any other rights or remedies to which it may be entitled, shall have the right to suspend or terminate the Services until such payment is received and may decide not to accept additional orders from Customer and/or seek collection of all amounts due, including reasonable legal fees and costs of collections. Dell shall have no liability to Customer for any such suspension or termination of Services, or non-acceptance of orders.

**2.6. Purchases by Affiliates.** Unless otherwise agreed in writing, any Affiliate who submits an order to Dell shall agree to abide by the terms of this MSA. Dell, in its sole discretion, may discontinue selling Services to any Affiliate or may require additional payment and/or credit conditions for such Affiliate.

**2.7. Purchases from a Third-Party Reseller.** This Section 2.7 shall not apply to Customers who purchase Services directly from Dell. If Customer purchases from a party other than Dell (each a “**Reseller**”), then Customer acknowledges that its payment for the Services is subject to the agreement between the Customer and the Reseller (the “**End-User Reseller Agreement**”). Otherwise, Customer agrees that this MSA, except for the “**Terms of Purchase**” provisions above, shall apply to such Customer’s use of the Services notwithstanding anything to the contrary in the End-User Reseller Agreement. Dell shall not be liable to Customer for any representations, warranties, indemnities or damages beyond those set forth in this MSA. Customer acknowledges that to the extent Dell does not receive payment for the Services from the Reseller; Dell shall have the right to suspend or terminate the Services until such payment is received. Dell shall have no liability to Customer for such suspension or termination of Services and Customer shall look solely and exclusively to the Reseller for any and all damages and liability associated with such suspension or termination of the Services.



### 3. Term & Renewal

This MSA will begin on the earlier of the date on Customer's invoice with Dell, the date on which Service delivery begins or the date on which your use of the Service begins. Each Service Agreement will continue for the term stated therein, unless otherwise terminated pursuant to this MSA. In addition, Dell may, at its option, propose to renew the Service by sending Customer an invoice or continuing to make the Service available to Customer. Customer may (where permitted by law) agree to such renewal of the Service by paying such invoice by its due date or by continuing to use the Service. If Customer renews a Service Agreement by continued use of the Service, Customer will be invoiced in a manner substantially similar to their initial term of Service.

### 4. Termination

Either party may terminate this MSA for convenience by providing at least thirty (30) days prior written notice to the other. Termination of this MSA for convenience will not terminate any outstanding Service Agreement that provides for a specific term over which the Services are to be provided. In such case, this MSA, as incorporated into the Service Agreement, and the Service Agreement that provides for a specific term will remain in effect for the remainder of such term. Upon termination of this MSA, all rights and obligations of the parties under this MSA 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.

Either party may terminate an individual Service Agreement if the other party commits a material breach of such agreement and the breach is not cured within thirty (30) days of receipt of written notice from the injured party. Termination of one or more Service Agreements will not terminate this MSA.

### 5. Third-Party Products & Warranties

"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 Dell or anyone else, other than the manufacturer or its authorized representative, provides services for or works on the hardware or software (such as providing maintenance and repair services). DELL DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE DELL SERVICES MAY HAVE ON THOSE WARRANTIES. Except as agreed to in writing between Customer and Dell, Third Party Products shall be exclusively subject to terms and conditions between the third party and Customer. Dell shall have no liability for Third Party Products and Customer shall look solely and exclusively to the third party provider for any damages or liability with respect to the provision of such Third Party Products.

Except as otherwise specifically agreed to in a Service Agreement, Customer authorizes Dell (or otherwise obtains the rights for Dell) to copy, install and modify, when necessary and as required by the Service Agreement, all Third Party Products, including software, to be used in the Services or to be copied or stored for subsequent re-installation of a backup system or data. Customer warrants to Dell that it has obtained any licenses, consents, regulatory certifications or approvals required to give Dell and its subcontractors or employees such rights or licenses to access, copy, distribute, use and/or modify (including creating derivative works) or install any Third Party Products to be used in the Services, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products.

### 6. Proprietary Rights

**6.1. Deliverables.** Except as otherwise specifically agreed to in a Service Agreement, Dell will retain exclusive ownership in all Deliverables created by Dell hereunder and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed by Dell under this MSA. Subject to payment in full for the applicable Services, Dell grants Customer a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country(ies) in which Customer does business and solely for Customer's internal use. "Deliverables" means the tangible and intangible materials, including reports, studies, base cases, drawings, findings, manuals, procedures and recommendations that are prepared by Dell or its subcontractors in the course of performing the Services.

**6.2. Tools & Software.** Dell will retain all intellectual property rights with respect to the processes, tools and software related to the Services. Any use by Customer, including the execution, reverse engineering, decompilation, reproduction, modification, distribution, transmission, republication, display, transfer or performance, except as specifically permitted by Dell during the term of Services is prohibited.

### 7. Customer Use of Software and Datacenter Hosted or Online Services, Platforms, Tools, and Applications

Customer use of software and datacenter hosted or online services, platforms, tools, and applications ("Software-Enabled Services") in connection with the Services is pursuant to the terms of 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 Software-Enabled Services, in any manner whatsoever, Customer agrees to be bound by the terms of the AUP.

### 8. Customer Responsibilities

It is the Customer's responsibility to backup data on Customer's system(s). Customer acknowledges that Dell's performance and delivery of the Services are contingent upon: (A) Customer providing safe and hazard-free access to its personnel, facilities, equipment, hardware, software, network and information for Services to be performed at Customer's location, and (B) Customer's timely decision-making, notification of relevant issues or information and granting of approvals or permissions. Customer will promptly obtain and provide to Dell any required licenses, approvals or consents necessary for Dell's performance of the Services.

### 9. Confidentiality

In the performance of the Services, Customer and Dell may have access to or be exposed to information of the other party not generally known to the public, including, but not limited to software, product plans, marketing and sales information, customer lists, "know-how," or trade secrets which may be designated as being confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "Confidential Information"). Each party shall only use such Confidential Information disclosed hereunder in connection with its performance of this MSA. Each party agrees to take the necessary precautions to maintain the confidentiality of Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a like-kind nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality, and shall only make such information available to its employees on a "need-to-know" basis. The foregoing shall not include information, which, (A) was known by one party prior to its receipt from the other or is or becomes public knowledge without the fault of the recipient, (B) is received by the recipient from a source other than a party to this MSA, or (C) a party is required to disclose in response to an order by a court or governmental agency, provided that advance notice of the



disclosure is provided to other party. The obligations with respect to Confidential Information shall continue for three (3) years from the date of termination of this MSA.

## 10. Support Services

When Services consist of repair of Dell-branded systems, such Services shall be those repair services that are necessary because of any existing defect or a defect occurs in materials or workmanship in the system or in any system component covered by this MSA. Preventive maintenance is not included. Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Dell (or its representatives) are not included. Unless otherwise expressly provided in a Service Agreement, Services do not include repair of any system or system component which has been damaged as a result of: (A) accident, misuse, or abuse of the system or component (such as, but not limited to, use of incorrect line voltages, use of incorrect 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), (B) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes, or (C) the moving of the system from one geographic location or entity to another.

## 11. LIMITED WARRANTY & LIMITATION OF LIABILITY; HIGH-RISK DISCLAIMER

**11.1. Limited Warranty.** DELL WARRANTS THAT SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCE, DELL (INCLUDING ITS AFFILIATES, SUBSIDIARIES, SUPPLIERS, LICENSORS, SUBCONTRACTORS, DISTRIBUTORS, SERVICES PARTNERS, AGENTS AND MARKETING PARTNERS) AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS AND OFFICERS (COLLECTIVELY, THE "DELL PARTY(IES)") MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ANY OF THE SERVICES OR DELIVERABLES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT; ANY WARRANTY RELATING TO THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES; ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING SERVICES; OR ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR THE RESULTS OF ANY RECOMMENDATION THE DELL PARTIES MAY MAKE.

**11.2. Limitation of Liability.** NEITHER THE DELL PARTIES NOR CUSTOMER WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY DELL. NEITHER PARTY SHALL HAVE LIABILITY FOR (A) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS, WHETHER DIRECT OR INDIRECT, (B) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK, OR THE RECOVERY OF SUCH, (C) LOSS OF BUSINESS OPPORTUNITY, (D) BUSINESS INTERRUPTION OR DOWNTIME, OR (E) SERVICES, DELL PRODUCTS OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE BY CUSTOMER. EXCEPT FOR CLAIMS THAT THE SERVICES (EXCLUDING THIRD-PARTY SERVICES) CAUSED BODILY INJURY (INCLUDING DEATH) DUE TO THE DELL PARTIES' NEGLIGENCE OR WILLFUL MISCONDUCT, THE DELL PARTIES' TOTAL LIABILITY, WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE OR TORT, ARISING OUT OF, OR IN CONNECTION WITH THE SERVICES OR THIS MSA SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SPECIFIC SERVICE(S) GIVING RISE TO SUCH CLAIM DURING THE PRIOR TWELVE MONTH PERIOD.

EACH PARTY ACKNOWLEDGES THAT THESE LIMITATIONS APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE AND THAT, WITHOUT THESE LIMITATIONS, THE FEE FOR THE SERVICES PROVIDED HEREUNDER WOULD BE HIGHER.

**11.3. High-Risk Application Disclaimer.** The Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the 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.

## 12. Indemnification

Customer shall defend, indemnify and hold Dell harmless from, any third-party claim or action arising out of (A) the failure of Customer to obtain the appropriate license, intellectual property rights, or any other permissions, regulatory certifications or approvals associated with Customer-provided technology, software or other components related to the Service, as well as software directed or requested by Customer to be installed or integrated as part of Services, or (B) any inaccurate representations regarding the existence of an export license or any allegation made against Dell due to Customer's violation or alleged violation of applicable export laws, regulations, and orders.

Dell shall defend, indemnify and hold harmless Customer from any third-party claim or action that the Services or any Deliverables 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(ies) in which the Services or Deliverables are sold to Customer by Dell ("Indemnified Claims"). In addition, if Dell receives notice of a claim that, in Dell's reasonable opinion, is likely to result in an adverse ruling, then Dell shall at its option, (A) obtain a right for Customer to continue using such Service or Deliverable; (B) modify such Service or Deliverable to make it non-infringing; (C) replace such Service or Deliverable with a non-infringing equivalent; or (D) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated refund for the allegedly infringing Deliverable. Notwithstanding the foregoing, Dell shall have no obligation under this Section for any claim resulting or arising from (A) Customer's modifications of the Service or Deliverable that were not approved by Dell; (B) the combination, operation or use of the Service or Deliverable in connection with a third-party product or service (the combination of which causes the infringement); or (C) Dell's compliance with Customer's written specifications or directions, including the incorporation of any software or other materials or process provided by or requested by Customer.

Each party agrees to indemnify and hold harmless the other party from any third-party claim or action for personal bodily injuries, including death, resulting from the indemnifying party's gross negligence or willful acts or omissions resulting from the Services (excluding third-party services) provided hereunder. This section states each party's exclusive remedies for any third-party claim or action, and nothing in this MSA or elsewhere will obligate either party to provide any greater indemnity to the other.



**13. Export; Regulatory Requirements**

**13.1. Export.** Customer acknowledges that the Services sold under this MSA, which may include technology and software, are subject to the customs and export control laws and regulations of the United States ("U.S.") and may also be subject to the customs and export laws and regulations of the country in which the Services are rendered and/or received. Customer agrees to abide by those laws and regulations. Customer further represents that any software provided by Customer and used as part of the Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. If Customer cannot make the preceding representation, Customer agrees to provide Dell with all of the information needed for Dell to obtain export licenses from the United States government and to provide Dell with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Customer is solely responsible for obtaining any specific licenses relating to the export of software if a license is needed. Dell may also require export certifications from Customer for Customer-provided software. Dell's acceptance of any order for Services is contingent upon the issuance of any applicable export license required by the United States Government; Dell is not liable for delays or failure to deliver Services or a product resulting from Customer's failure to obtain such license or to provide such certification.

**13.2. Regulatory Requirements.** Dell is not responsible for determining if Third Party Products to be used in performance of the Services satisfy the local regulatory requirements of the country to which the products are to be shipped, nor shall Dell be obligated to perform any Services where the resulting products or software do not satisfy the local regulatory requirements.

**14. Important Additional Terms**

**14.1. Independent Contractor Relationship; MSA 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 MSA. Dell has the right to directly or indirectly assign, subcontract or delegate in whole or in part this MSA, or any rights, duties, obligations or liabilities under this MSA, by operation of law or otherwise, provided that Dell shall remain responsible for the performance of Services under this MSA. Otherwise, neither party may assign this MSA without the permission of the other.

**14.2. Entire Agreement; Severability.** This MSA and Service Agreements is the entire agreement between Dell and Customer with respect to its subject matter and supersedes all prior oral and written understandings, communications or agreements. No amendment to or modification of this MSA, 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 MSA is void or unenforceable, the remainder of this MSA will remain in full force and will not be terminated.

**14.3. Force Majeure.** Neither party shall be liable to the other party for any failure to perform any of its obligations (except payment obligations) under this MSA during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, 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 events lasts longer than thirty (30) days, the other party may immediately terminate the applicable Service Agreement by giving written notice to the delayed party.

**14.4. Notices.** Notice to Dell under this MSA 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 (incl. facsimile or electronic) as specified in writing and will be effective upon receipt.

Dell Marketing L.P., ATTN: Mgr Contracts  
One Dell Way  
Round Rock, Texas 78682

**14.5. Governing Law, Venue and Language.** THE CONSTRUCTION AND PERFORMANCE OF THIS MSA SHALL BE GOVERNED BY THIS SECTION. Section headings are for reference only and shall not affect the meaning or interpretation of this MSA. This MSA will be interpreted and construed in accordance with the English language. For disputes arising out of Services performed in the following Regions, the following laws shall apply without regard to choice of law provisions:

<u>Region</u>	<u>Choice of Law &amp; Venue</u>
North America (excluding Canada), Latin America & South America	Texas
Canada	Ontario
Europe, the Middle East and Africa	English
China	Chinese
Japan	Japanese
Asia/Pacific	Singapore

**14.6. Dispute Resolution.** Customer and the Dell Parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) arising out of or relating to this MSA, Dell's advertising, or any related purchase (a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, 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 court of competent jurisdiction 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 equity.

**14.7. Limitation Period.** Neither party may institute any action in any form arising out of this MSA more than two (2) years after the cause of action has arisen, or in the case of nonpayment, more than two (2) years from the date of last payment.

**14.8. Updates.** Dell reserves the right to update this MSA at any time, effective upon posting an updated version at [www.Dell.com/CMSA](http://www.Dell.com/CMSA); however, Customer's rights and obligations shall be as provided in the version of the MSA available to Customer at the time of Customer's purchase or, when applicable, renewal of Services.

**14.9. Counterparts.** If a signature block is appended hereto, this MSA may be executed in counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.