

## RESELLER TERMS OF SALE

(Applies to all purchases of Products and Services that you intend to resell to others)

These Reseller Terms of Sale, including all applicable terms referenced herein, (collectively, this “**Agreement**”) apply to your purchase (whether from Dell or from a Dell distributor in the United States or Canada) and resale of (a) any Dell-branded products and licensed software products (each, a “**Dell Product**”), (b) any non-Dell-branded products, licensed software products, and services (each, a “**Third Party Product**”) (Dell Products and Third Party Products are collectively referred to herein as “**Products**”), and (c) any Dell services (each, a “**Service**”), unless you have a separate written agreement with Dell that expressly applies to your purchase and resale of such Products and Services. This Agreement does not apply to you if you are buying Products and Services for your own internal end-use. “**Dell**” means the direct or indirect affiliate or subsidiary of Dell Inc. named on your invoice, order confirmation, or other sales documents. “**You**” or “**your**” means the entity that places an order for Products and/or Services with Dell for purpose of resale to an End-User (defined below).

**By placing your order, you accept and are bound to the terms and conditions of this Agreement.**

### 1. APPOINTMENT

**A. General.** Subject to the terms and conditions of this Agreement and your compliance therewith, you may resell certain Products and Services to End-Users. “**End-User**” means any entity purchasing or otherwise obtaining Products and/or Services from you for its own internal end-use and not for reselling, distributing, or sub-licensing to others. You shall not market, resell, or use Products or Services other than as expressly permitted in this Agreement. You understand that not all Products and Services may be purchased for resale under this Agreement.

**B. Restrictions to Appointment.** Notwithstanding Section 1.A., and unless and to the extent that you are expressly granted such rights under the Dell PartnerDirect Program, you shall not market or resell Products or Services (a) to any consumers, resellers, distributors, or third-party sales agents; (b) through retail storefronts or auction-type websites; or (c) to any government (including federal, provincial, state, or local government), healthcare, or education end-users. You shall not market or resell Products or Services to anyone outside the United States or Canada, whichever is the country covered by the Dell entity from which you purchased such Products and Services.

**C. Non-Exclusive.** This Agreement is not exclusive. Dell may appoint third parties (including those who may compete with you) to sell or market Products and Services to anyone. Dell may sell or market (whether directly or indirectly through a third party) Products and Services at any price Dell chooses without any obligation or liability to you. This Agreement does not guarantee that you will make any sales of Products or Services.

**D. Additional Requirements.** Your eligibility to resell certain Products and Services may be subject to additional obligations or conditions not outlined in this Agreement, including additional training, specialization requirements, contractual agreements, and other conditions. Dell may require you to meet such additional obligations or conditions prior to your resale of any Products and Services. Such obligations and conditions will be disclosed to you prior to your purchase of Products and Services for resale. You agree to provide Dell with information and reports pertinent to your relationship with Dell as may reasonably be requested by Dell.

### 2. PRICING & TAX

**A. Pricing.** Prices for Products and Services will be as specified on Dell’s website, in a written quote to you for such Products and Services, or as specified in the applicable Dell invoice or Service Agreement (defined below) relating to such Product or Service. Except as otherwise expressly set forth in Dell’s quote, Dell’s quoted price is valid for thirty (30) days from the date of the quote. Before Dell issues a quote, Dell may require you to provide information concerning the End-User and you agree to provide such information. Dell reserves the right to modify pricing (including quotes) due to shortage of materials or products, increase in costs, pricing or other error, or any event beyond Dell’s control, without liability to you. Taxes, shipping and handling charges and any government mandated environmental disposal surcharges are not included in prices for Products and Services, unless expressly indicated at the time of sale.

**B.** Unless you and Dell have agreed to a different discount structure, Dell’s standard pricing policy for a solution that includes products, software, and services in one discounted price, allocates the discount off list price applicable to the services portion of the solution to be equal to the overall percentage discount off of the list price of the entire solution. If you breach the provisions of this Agreement or the terms of any offer, Dell may charge or re-debit your account or credit card the full list price for your purchase (in lieu of a discounted or special price included in the offer). If Dell offers you certain discounts off of Dell’s standard list price, such discounts do not apply to special product promotions and cannot be combined with other offers.

**C. Taxes.** You are responsible for all applicable taxes, duties, fees and other charges, including sales or use and/or similar taxes, imposed by any federal, state, provincial or local governmental entity on Services and Products provided by Dell under this Agreement, except for taxes based on Dell’s net income, gross revenue or employment obligations. If Dell is obligated by applicable law or regulation to collect and remit any taxes or fees relating to the Services or Products, then Dell will add the appropriate amount to your invoices as a separate line item. You may qualify for tax exemptions from time to time in which case Dell requests that you provide to Dell a valid certificate of exemption or other appropriate documentary proof of exemption.

**D. Reseller Pricing.** You are free to determine and set your resale pricing of Products and Services.

### 3. PURCHASE ORDERS

**A. Orders.** Each order must reference Dell’s quote (if any), the requested Products and Services, the End-User’s name and address, and any other information requested by Dell. If requested by Dell, you shall submit Orders on Dell designated order form(s). You shall place orders for Products and Services in the country where the End-User is located. All orders and transactions are subject to acceptance or

cancellation by Dell, in Dell's sole discretion. Each accepted order will be interpreted as a single agreement, independent of any other orders.

**B. Shipping, Title and Risk of Loss.** Title to Products (except title to software which remains with the applicable licensors) passes from Dell to you upon shipment to you. Loss or damage that occurs during shipping by a carrier selected by Dell is Dell's responsibility. Loss or damage that occurs during shipping by a carrier selected by you is your responsibility. Selecting your carrier of choice may not be available in certain geographic locations. Shipping and delivery dates are provided as estimates only and Dell is not responsible for any early or delayed shipment or delivery. Dell may ship parts of an order separately. You must notify Dell within twenty-one (21) days from the date of your invoice or acknowledgement if you believe any part of your order is missing, wrong, or damaged.

**C. Cancellation.** Orders for Third Party Products, Products that have been discontinued or have reached the end of their product lifecycle, and formerly standard parts that are no longer regularly used in Products, may not be changed or cancelled without Dell's prior written approval. If you purchase a multi-year software license and related support or maintenance, and you and Dell (and, if applicable, the third-party licensor of the software) agree to make installation payments of the purchase price over the term of the license, then you shall make all such installation payments in full and such purchase is non-cancellable over the term of the license. Dell is not responsible for pricing, typographical, or other errors in any offer or quote, and reserves the right to cancel any order arising from such errors. In addition, Dell may cancel orders due to shortage of products or materials, increases in the costs of manufacturing, or any event beyond Dell's control.

**D. No Return.** All sales are final. Neither you nor any of your End-Users may return Products to Dell, except as expressly permitted in Section 5 below or to the extent that you are expressly granted return rights under the Dell PartnerDirect Program.

**E. Security Interest.** You hereby grant Dell, and Dell hereby retains, a first priority security interest and lien on any and all of your rights, title, and interest in Products, wherever located, and all replacements or proceeds of the Products, until the invoice for the applicable Products is paid in full, including any late payment fees and costs of collection. You agree Dell may file any financing statements or related filings for protecting this security interest as Dell reasonably deems necessary or appropriate.

#### 4. INVOICING, AND PAYMENT

**A. Invoices.** Dell may invoice parts of an order separately, or may invoice purchases of Products and Services in one invoice. Additional charges will apply if you request customized invoicing, consolidated invoicing, or other special billing arrangement or statements. Dell reserves the right to change the method of delivery of all documentation. You agree that all invoices will be deemed accurate unless you advise Dell in writing of a bona fide, material error within fourteen (14) days from the date of such invoice. In the event you advise Dell of a material error, (a) payment of any amounts corrected or modified by Dell in writing will be due, and you shall pay such amounts, within fourteen (14) days of such correction, and (b) you shall pay all other amounts by the invoice due date. In the event you withhold payment of any invoiced amounts upon an assertion that such amounts are erroneous, and Dell subsequently concludes that such invoiced amounts are accurate, then you shall pay a late payment fee as described in Section 4.C., from the due date, for such invoiced amounts, until Dell's receipt of those amounts. In no event will you be entitled to offset, defer or deduct any invoiced amounts that Dell determines are not erroneous following the notification process described in this paragraph. If you do not receive an invoice or acknowledgement in the mail or with your Products and/or Services, information about your purchase may be obtained at [www.support.dell.com/DellCare/Index.aspx](http://www.support.dell.com/DellCare/Index.aspx) (or in Canada at [www.dell.ca/support](http://www.dell.ca/support)) or by contacting your Dell sales representative.

**B. Payment.** Invoices are due and payable within the time period noted on your invoice, or if not noted, then within thirty (30) days measured from the date of the invoice, subject to continuing credit approval by Dell (such approval may be revoked without notice from Dell). Payment shall be made in the currency as invoiced by Dell. Payment for Products and Services must be made by credit card, automated clearing house, wire transfer, electronic funds transfer or some other prearranged payment method, unless credit terms have been agreed to by Dell. You shall make payment to Dell for Products and Services to the account indicated by Dell (as may be amended from time to time). Timely payment is of the essence. Your assignment of a purchase order to a third-party financing company (other than Dell Financial Services, LLC, or Dell Financial Services Canada Ltd., as applicable) must be approved in advance in writing by Dell, and in no case will any such approval excuse you from your obligations hereunder.

**C. Late Payment.** Dell reserves the right to charge you a late payment fee of 1.5% per month applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. Late payment fees will be recalculated every thirty (30) days thereafter based on your current outstanding balance. In addition, Dell may, without waiving any other rights or remedies to which it may be entitled, take any one or more of the following actions: (a) not accept additional orders from you; (b) suspend or terminate its provision of software licenses, maintenance, warranty service, technical support, or any other Service; and (c) seek collection of all amounts due, including reasonable attorney or legal fees, expenses and costs of collection. Dell will have no liability to you or to any End-User for any such suspension or termination or for any refusal of additional orders.

#### 5. SOFTWARE

**A.** You agree that all software distributed with or for the Products ("Software") is subject to the separate end-user software license agreement that is shipped with, included in (e.g., part of a product installer or an executable document), made available by download, or otherwise accompanies such software or Products. If no such agreement is shipped with, included in, made available by download, or otherwise accompanies the Software, and there is no separate license agreement between End-User and the manufacturer or owner of such software, then the Software shall be governed by and subject to the applicable license agreement at [www.dell.com/softwarelicenseagreement](http://www.dell.com/softwarelicenseagreement) ("Dell EULA"). You shall pass on the end-user software license agreement to the End-User to which you resell such Products, and you are responsible for ensuring that the End-User agrees to abide by the terms of the end-user software license agreement. For Dell Software, you shall require the End-User to agree that if End-User does not agree to be bound by the end-user software license agreement then the End-User shall not download, install, activate or otherwise use the Dell Software and shall promptly return the Dell Software (including media, written materials and packaging) and any hardware to which such software is attached,

for a full refund from you. If you accept such return and provide a full refund to End-User you will be entitled to return the same to Dell and obtain a refund of your purchase price; provided, however, your right to return and obtain a refund, as permitted in this Section, expires twenty-one (21) days from the date of Dell's invoice to you, and further provided that Dell may require documentation from End-User of its objection to the software license agreement and its receipt of refund from you.

**B.** If you are installing, downloading, or otherwise using the Software on behalf of the End-User, you shall obtain the End-User's written authorization prior to accepting the terms of the end-user software license agreement on behalf of the End-User and you shall comply with the terms of the software license agreement.

## 6. SERVICES

**A. Dell Terms and Conditions Applicable to End-Users.** You will only resell Services to End-Users who agree to be bound to:

(a)(i) if the End-User is purchasing Services other than Dell's cloud solutions, (x) if the End-User is located in the U.S., Dell's Commercial Terms of Sale set forth at [www.dell.com/terms](http://www.dell.com/terms) (the "U.S. CTS"), (y) if the End-User is located in Canada, Dell's Commercial Terms of Sale (Canada) set forth at [www.dell.ca/terms](http://www.dell.ca/terms) (the "Canada CTS"), or (z) such other written agreement as Dell may designate; and (ii) if the End-User is purchasing any of Dell's cloud solutions, Dell's Cloud Solutions Agreement set forth at [www.dell.com/terms](http://www.dell.com/terms) (the "CSA"), in each of cases (i) and (ii) including all terms and conditions incorporated by reference therein; and

(b) all applicable service contracts associated with such Services, including service descriptions available at [www.dell.com/servicecontracts](http://www.dell.com/servicecontracts) ("Services Descriptions"), any statements of work, and any other service contracts designated by Dell (all such documents referenced in the foregoing clauses (a) and (b), collectively, the "Service Agreements").

You shall communicate to the End-User in writing (in each quote and in your own agreement with such End-User for the sale of Services (such agreement, the "End-User Agreement")) that the provision and performance of such Services are subject to and will be governed by the applicable Service Agreements. You acknowledge and agree that Dell is a third party beneficiary of the End-User Agreement and may enforce the provisions thereof directly against the End-User or through you, and you shall require the End-User to acknowledge and agree to such in the End-User Agreement. Additionally, you acknowledge and agree that (x) Dell may present or, if requested by Dell, you shall present, all applicable Service Agreements directly to the End-User and (y) Dell is not required to provide or perform any Services for such End-User unless and until such End-User has agreed to be bound by all such Service Agreements, as may be determined in each case by Dell in its sole discretion. You shall immediately notify Dell if you become aware of any End-User's violation of any of the Service Agreements. Dell reserves the right, in its sole discretion, to suspend or terminate the provision of any one or more of the Services to an End-User in response to such End-User's violation, or suspected violation, of any of the applicable Service Agreements, and Dell will have no liability to you as a result of any such suspension or termination.

**B. Services Delivery.** All Services will be performed by Dell or its subcontractors. You may not use, provide, or perform any Services, including in your capacity as a Managed Services Provider, absent a separate written agreement with Dell expressly authorizing the same.

## 7. WARRANTIES

**A. Limited Warranty on Dell Products and Services.** DELL MAKES NO WARRANTIES EXCEPT THOSE EXPRESSLY STATED (A) WITH RESPECT TO DELL HARDWARE PRODUCTS: IN THE END USER DOCUMENTATION PROVIDED WITH THE DELL PRODUCTS OR DELL'S APPLICABLE LIMITED WARRANTY STATEMENT IN EFFECT ON THE DATE OF THE INVOICE, PACKING SLIP, OR ACKNOWLEDGEMENT FOUND AT [WWW.DELL.COM/WARRANTY](http://WWW.DELL.COM/WARRANTY) (or in Canada at [www.dell.ca/warranty](http://www.dell.ca/warranty)), (B) WITH RESPECT TO DELL SOFTWARE: IN THE APPLICABLE SOFTWARE LICENSE AGREEMENT FOUND AT [WWW.DELL.COM/SOFTWARELICENSEAGREEMENT](http://WWW.DELL.COM/SOFTWARELICENSEAGREEMENT); OR (C) WITH RESPECT TO SERVICES: IN THE APPLICABLE SERVICE AGREEMENT. You shall not make any warranty on Dell's behalf. You are solely responsible for, and you shall indemnify and hold Dell harmless from any claims related to, any warranty you grant that is beyond the Dell limited warranty provided in this paragraph.

**B. Third Party Products.** Third Party Products may carry with them a limited warranty from the third-party publisher, provider or original manufacturer of such Third Party Products. Dell is not responsible for fulfillment of any Third Party Product warranty or for problems attributable to the use of Third Party Products. Dell does not warrant that any Product will function in any specific configuration that includes any Third Party Products, or that any Product will function to produce a particular result, even if the specific configuration or the result has been discussed with Dell. ALL THIRD PARTY PRODUCTS ARE PROVIDED BY DELL ON AN "AS IS" BASIS.

**C. Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.A., AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, DELL (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, SUCCESSORS AND ASSIGNS), ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS (COLLECTIVELY AND TOGETHER WITH DELL, THE "DELL PARTIES"), DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCTS AND SERVICES, INCLUDING IMPLIED WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

**D. Hardware Support Services/Tag Transfer.** You shall transfer the asset/service identification number (e.g. the Service Tag or Asset Number) to the End-User that is associated with the Dell Products you have purchased for resale in accordance with this Agreement. The process to complete such transfer may be found at [www.support.dell.com](http://www.support.dell.com) (or in Canada at [www.dell.ca/support](http://www.dell.ca/support)), which process Dell may change from time to time. It is your responsibility to ensure compliance with the latest version of the posted process. You acknowledge that your failure to properly transfer the asset/service identification number of the Dell Products will result in the End-User's inability to receive hardware support services from Dell for such Dell Products, and Dell will not be liable to you or to any End-User for any such failure. The parts used in repairing or servicing Products and spare parts may be new, equivalent-to-new, or reconditioned.

**8. HIGH RISK APPLICATIONS.** You understand that Dell Products have been designed, manufactured, and tested by Dell or its suppliers for use in general-use office/business environments. Dell has not tested or certified Dell Products for use in any high-risk applications, including the operation of nuclear facilities, aircraft navigation, air traffic control, emergency communications systems, life support machines, weapons systems, or any other application where the failure or malfunction of any Dell Products can reasonably be expected to result in death, personal injury, severe property damage or severe environmental harm (“**High Risk Applications**”). The Services are not fault-tolerant and are not designed or intended for use in, and you shall not use any Services in, any hazardous environments requiring fail-safe performance or in any High Risk Applications. You understand and agree that Dell makes no warranties or assurances that the Products and Services are suitable for any High Risk Applications and you shall defend and indemnify Dell from any claims made by third parties resulting from any such High Risk Applications. As between you and Dell, you are responsible for the design and implementation of configurations, systems, networks, and services suitable for the risks involved in the End-User applications and operating environments into which you sell.

## **9. INTELLECTUAL PROPERTY**

**A. Trademarks and Copyrights.** You may use the “Dell” name and the names of Dell Products and Services (collectively, “**Names**”) solely for the purpose of accurately identifying the Dell Products and Services you market or sell under this Agreement. You shall not use any of the Names for any other purpose, and shall not use any other Dell trademarks, service marks, or copyrighted works, unless and to the extent you are expressly granted such usage right under the Dell PartnerDirect Program. You agree to change or correct, at your own expense, any materials or activity that Dell decides is inaccurate, objectionable or misleading, or is a misuse of any of the Names, trademarks, service marks, logos, or copyrighted works. You are prohibited from using Dell’s logos, referring to yourself as an authorized reseller of Dell, or creating the impression that Dell is affiliated with you, other than as expressly permitted by the terms of the Dell PartnerDirect Program. You shall not claim or imply that you and Dell are legal partners or that Dell has sponsored, authorized, approved, or endorsed your business or any offer or marketing, advertising, or promotion thereof in any manner. You will clearly and prominently identify yourself in all your offers and advertising, marketing, and promotional materials. You may not register or use any domain name or business name containing or confusingly similar to any name or mark of Dell’s. Additionally, you may not use any Names or Dell marks in search engine advertising, either as a keyword or in advertisements appearing on search engines, without Dell’s prior written permission.

**B. Intellectual Property Ownership and Reservation of Rights.** All right, title and interest in and to the intellectual property rights in Dell Products and Services, including technology and trade secrets embodied therein and any customer developments created or provided in connection with or related to this Agreement, and any derivative works thereof, belong solely and exclusively to Dell or its licensors or suppliers, and you have no rights whatsoever in any of the foregoing other than the rights expressly set forth in this Agreement. Nothing in this Agreement or otherwise will be deemed to grant to you an ownership interest in any of the intellectual property rights in or to any Dell Products or Services, in whole or in part.

**C. Discontinued or Changed Products or Services; Service Parts.** Dell reserves the right to revise or discontinue any Product or Service offering at any time without notice to you or the End-User. Changes to Dell Products or Services may occur after you place an order but before Dell ships the Dell Product, before Dell performs the Services, or before the end of the Service subscription. As a result, any Dell Products or Services that you or an End-User receive might display minor differences from the Dell Products and Services ordered, but Dell Products and Services will meet or exceed all material specifications of such Dell Products and Services that were ordered.

**D. Confidential Information.** The term “Dell Confidential Information” means any confidential or proprietary information pertaining to or provided by Dell, including, without limitation, product plans, software, pricing, marketing and sales information, business plans, customer and supplier data, financial and technical information, “know-how,” trade secrets, and other information, whether such information is in written, oral, electronic, web-based, or other form. You will keep all Dell Confidential Information confidential for a period of three years from the date of Dell’s disclosure to you, and use at least the same degree of care as you use to protect your own confidential information but no less than reasonable care. Notwithstanding anything to the contrary in this Agreement, your confidentiality obligations with respect to customers’ personally-identifiable information and Dell trade secrets shall never expire. You may not disclose Dell Confidential Information to any third party without Dell’s prior written consent. You may share Dell Confidential Information with only your employees who have a need to know and who are subject to legally binding obligations of confidentiality no less restrictive than those imposed by this Agreement. These confidentiality obligations do not apply to any Dell Confidential Information that (a) you can demonstrate was in your possession before receipt from Dell; (b) is or becomes publicly available through no fault by you; or (c) you rightfully received from a third party without a duty of confidentiality. If you are required by a government body or court of law to disclose any Dell Confidential Information, you agree to give Dell reasonable advance notice so that Dell may contest the disclosure or seek a protective order. You may use the Dell Confidential Information solely for the purpose of, and in connection with, your business relationship with Dell. No license or conveyance of any rights under any patent, copyright, trade secret, trademark or any other intellectual property right to Dell Confidential Information is granted under this Agreement except the limited rights to use the Dell Confidential Information as expressly set forth in this paragraph. Dell makes no warranties as to the accuracy or completeness of the Dell Confidential Information. ALL DELL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS”. To the extent permitted by law, Dell disclaims all express, implied and statutory warranties and conditions, and assumes no liability to you for any damages of any kind in connection with the Dell Confidential Information or any intellectual property in them. Upon Dell’s written request, you will promptly return all Dell Confidential Information, together with all copies, or certify in writing that all such Dell Confidential Information and copies thereof have been destroyed. You acknowledge that damages for improper disclosure of Dell Confidential Information may be irreparable and that Dell shall be entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available at law or in equity. You agree to adhere to all applicable United States, Canadian and foreign export control laws and regulations and will not export or re-export any technical data or products, to any proscribed country listed in the U.S. Export Administration regulations, or foreign national thereof, unless properly authorized by the U.S. Government.

**10. YOUR RESPONSIBILITIES.** In addition to your other obligations set forth in this Agreement, you are responsible for the following:

**A. End-User Documentation.** You will provide each End-User with appropriate product warranty statements, registration cards, software license agreements and other materials that Dell includes with its shipments of Products to you. In addition, you are responsible for providing all similar information related to your addition or modification to the Products.

**B. Business Conduct.** At all times you shall conduct business in a manner which reflects favorably on the Products, Services, and goodwill and reputation of Dell. In your marketing and sales of Products and Services, you will use best efforts to conduct your business in an ethical manner and to avoid any business practices that may be perceived as deceptive, misleading, or otherwise improper. You shall not make any false or misleading statement concerning Dell or any Products or Services in any of your advertising, marketing or promotional materials or in any content. Furthermore, you shall not make any representations, warranties, or guarantees with respect to the specifications, features or capabilities of Dell Products or Services that are inconsistent with or absent from Dell's published product specifications at [www.dell.com](http://www.dell.com) (or [www.dell.ca](http://www.dell.ca) for Canada) or service descriptions at [www.dell.com/servicecontracts](http://www.dell.com/servicecontracts). You shall comply with all laws and regulations applicable to your activities in connection with this Agreement, including your marketing and resale of Products and Services. You shall comply with the anti-bribery and anti-corruption laws of the countries in which you operate, including the U.S. Foreign Corrupt Practices Act and Canada's Corruption of Foreign Public Officials Act of 1999. You shall not (a) offer, promise or give any item of value to any individual for an improper purpose or with a corrupt intent to obtain or retain business or any other improper business advantage; (b) request, receive or accept any item of value offered with a corrupt intent; (c) engage any third party to represent you in the sale of Dell Products or Services if there is any concern that the third party may engage in bribery; nor (d) offer, promise or give a facilitation payment of any kind in relation to the sale, delivery or performance of Dell Products or Services, regardless of whether such payments are permitted by law or are common and expected under local custom.

**C. Insurance.** You will obtain and maintain comprehensive general liability, including products liability, insurance in an amount appropriate for your business, but in no event less than \$1,000,000.00 (US), with an insurance company having a Best rating of A or better. You will name Dell as an additional insured on all commercial general liability insurance policies procured in accordance with this paragraph. Upon request, you will provide to Dell a certificate of the above-mentioned insurance, including any new or amended certificates of insurance.

## 11. INDEMNIFICATION

**A. IP Indemnity.** Dell shall defend and indemnify you against any third-party claim or action (provided that such third party is not affiliated with you) that the Dell Products and Services prepared or produced by Dell and delivered pursuant to this Agreement infringe or misappropriate that third party's U.S. (or, if you are in Canada, Canadian) patent, copyright, trade secret, or other U.S. (or, if you are in Canada, Canadian) intellectual property rights (collectively, "Indemnified Claims"). In addition, if Dell receives prompt notice of an Indemnified Claim that, in Dell's reasonable opinion, is likely to result in an adverse ruling, then Dell shall, at its option and expense: (a) obtain a right for End-User to continue using such Dell Products or allow Dell to continue performing the Services; (b) modify such Dell Products or Services to make them non-infringing; (c) replace such Dell Products or Services with a substantially comparable, non-infringing product or service; or (d) terminate any allegedly infringing Service and the applicable Service Agreement, and refund any pre-paid fees for such allegedly infringing Service on a pro rata basis for the period of time that such Service has not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Dell Products. Notwithstanding the foregoing, Dell shall have no responsibility for, and no obligation to defend or indemnify you for, any claim resulting or arising from (1) any Third Party Products; (2) any open source software; (3) modifications of the Dell Products or Services that were not performed by or on behalf of Dell; (4) the combination, operation, or use of any of the Dell Products or Services with any Third Party Product (where such combination, operation or use causes the claimed infringement); (5) Dell's compliance with any of your written specifications or directions, including the incorporation of any materials, processes, or Third Party Products provided by or requested by you; or (6) any circumstance for which you are required to indemnify any Dell Party. Dell's duty to indemnify and defend under this paragraph is contingent upon: (i) Dell receiving prompt written notice of the third-party claim or action for which Dell must indemnify you, (ii) Dell having the right to solely control the defense and resolution of such claim or action, and (iii) your cooperation with Dell in defending and resolving such claim or action. Dell has no obligation to defend or indemnify any End-User or any other third party. This paragraph states your exclusive remedies, and Dell's sole liability, 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 you.

**B. Your Indemnity to Dell.** You shall defend and indemnify the Dell Parties against any third-party claim or action resulting from or relating to (a) your failure to obtain or maintain any appropriate license, intellectual property rights, or other permissions, regulatory certifications or approvals associated with any product, software, data or other materials you provide, request or direct to be installed or integrated as part of the Products or Services; (b) your misuse or modification of any Products or Services; (c) your combination, operation, or use of any of the Products or Services with any Third Party Product, where such combination, operation or use infringes or misappropriates any intellectual property right or trade secret of a third party; (d) your fraud, misrepresentation, gross negligence, willful misconduct, or breach of any provision of this Agreement; or (e) the provision of your own products, software, or services.

## 12. LIMITATION OF LIABILITY

**A. DELL WILL NOT BE LIABLE FOR (A) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, (B) LOSS OF REVENUE, INCOME, PROFIT, SAVINGS OR BUSINESS OPPORTUNITY, (C) BUSINESS INTERRUPTION OR DOWNTIME, (D) LOST OR CORRUPTED DATA OR SOFTWARE, OR (E) LOSS OF USE OF ANY PRODUCTS OR SERVICES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ON DELL'S WEB SITE TO THE CONTRARY, DELL IS NOT RESPONSIBLE FOR INFORMATION OR DATA YOU PROVIDE TO US UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT TO THE CONTRARY. DELL DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH IN THIS AGREEMENT.**

**B. DELL'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY PRODUCTS OR SERVICES SHALL NOT EXCEED (A) IN THE CASE OF PRODUCTS, THE AGGREGATE DOLLAR AMOUNT YOU PAID TO DELL UNDER THIS AGREEMENT FOR SUCH PRODUCTS THAT CAUSED THE LIABILITY OR (B) IN THE CASE OF SERVICES, THE AGGREGATE DOLLAR AMOUNT YOU PAID TO DELL**

UNDER THIS AGREEMENT FOR SUCH SERVICES THAT CAUSED THE LIABILITY IN THE PREVIOUS 12 MONTHS PRIOR TO SUCH CLAIM FOR LIABILITY. The existence of more than one claim will not increase or otherwise alter these limitations on Dell's liability.

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

**13. EXPORT.** If any Products or Services are resold in violation of the restrictions in this Section 13, Dell is not obligated to provide any warranty service or technical support. Nothing in this Section 13 shall be construed as authorization by Dell for you to market or resell Products and Services in violation of Section 1.B.

A. You acknowledge that the Products and Services provided under this Agreement are subject to the customs and export control laws and regulations of the United States, and may also be subject to the customs or export control laws and regulations of the country(ies) in which the Products or Services are purchased, provided, manufactured, incorporated, transferred, used or received. You agree to abide by those laws and regulations, including any requirements to obtain export licenses or other government authorizations. The Products and Services may not be exported, re-exported, 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," the U. S. Department of the Treasury, Office of Foreign Assets Control "Specially Designated Nationals List," and other U.S. government lists of denied parties) or to countries subject to a U.S. export embargo (currently Cuba, Iran, North Korea, Sudan, and Syria). In addition, the Products and Services may not be exported, re-exported, sold, leased or otherwise transferred to, or utilized by, an end-user engaged in any activities related to weapons of mass destruction, including any activities related to the design, development, production or use of (a) nuclear weapons, materials, or facilities, (b) missiles or the support of missile projects, or (c) chemical or biological weapons. You agree to apply the requirements of Section 13.A. to any agreement you enter with any party for the resale or distribution of the Products or Services provided under this Agreement.

B. You represent that any software provided by you and installed on or used as part of the Products or Services contains no encryption or, to the extent that it contains encryption, such software is authorized for export without a license or that you have obtained any export licenses as may be necessary. Dell may require export certifications from you concerning the export control classification and licensing status of any software provided by you.

C. You are solely responsible for obtaining any necessary licenses or other authorizations relating to the export of the Products and Services provided under this Agreement, and you are responsible for ensuring compliance with the requirements of any such licenses or other authorizations. Dell's acceptance of any order for any Products 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 any Products or Services resulting from your failure to obtain such license or to provide certification to Dell that any necessary license has been obtained.

D. You shall indemnify, defend, and hold Dell harmless from any claims, causes of action, or legal proceedings (including any investigations or proceedings by a governmental agency or entity) arising out of or in connection with your inaccurate representation regarding the existence of an export license or your violation or alleged violation of any applicable customs or export control laws or regulations.

E. If an End-User exports or acquires Products for export, you will use commercially reasonable efforts to ensure that the End-User complies with all applicable customs and export control laws and regulations. If any Dell-branded hardware Product is moved outside of the United States or Canada, as applicable, to a geographic location in which such Product's warranty support service contract ("**Warranty Support Service**") is not available, or is not available at the same price as you paid to Dell for the Warranty Support Service, the End-User 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, in Dell's sole discretion the Warranty Support 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. You shall inform all End-Users of the foregoing limitations prior to or at the time an End-User places its order with you for any Warranty Support Services for any Dell-branded hardware Products.

**14. DISPUTE RESOLUTION - ARBITRATION. YOU AND DELL ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR, WHERE APPLICABLE, TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT, SUCH AS ACCESS TO DISCOVERY, MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.**

A. The parties will attempt to resolve any claim, dispute, or controversy (whether in contract, tort or otherwise, whether pre-existing, present or future, and including statutory, consumer protection, common law, intentional tort and equitable claims) between you and Dell Parties arising from or relating to this Agreement or any Service Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from such written agreements (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), the Dell PartnerDirect program, the reseller or channel partner program, Dell's advertising, or any related purchase (each a "**Dispute**") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator.

B. If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time after written notice from one party to the other that a Dispute exists, the Dispute SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION administered by the International Institute for Conflict Prevention and Resolution (CPR), the American Arbitration Association (AAA), or JAMS (for Canadian resellers, arbitration will be at ADR Chambers pursuant to the general ADR Chambers Rules for Arbitration located at [www.adrchambers.com](http://www.adrchambers.com)). Arbitration proceedings shall be governed by this Dispute Resolution – Arbitration section and the applicable

procedures of the selected arbitration administrator in effect at the time the claim is filed. The arbitration will be limited solely to the individual dispute or controversy between you and Dell.

**C.** You agree to arbitration on an individual basis. Where enforceable, NEITHER YOU NOR DELL SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER RESELLERS OR PARTNERS, OR ARBITRATE ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER, OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced (but in no case shall there be a class arbitration).

**D.** The arbitration hearing shall take place in Austin, Texas (unless the arbitrator orders otherwise), and will be governed by the United States Federal Arbitration Act to the exclusion of any inconsistent state laws. The arbitrator shall base its award on the terms of any written Agreement(s), and will follow the law and judicial precedents that a United States District Judge sitting in the Western District of Texas would apply to the Dispute. (For Canadian entities: the arbitration hearing shall take place in Toronto, Ontario (unless the arbitrator orders otherwise), and will be governed by the Arbitration Act of Ontario and the applicable laws of Ontario and Canada). The arbitrator shall render its award in writing and will include the findings of fact and conclusion of law upon which the award is based. Judgment upon the arbitration award may be entered by any court of competent jurisdiction. For information on CPR, call (212) 949-6490; on AAA, call (800) 778-7879; on JAMS, call (800) 352-5267. 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 or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this Dispute Resolution – Arbitration section.

**15. GOVERNING LAW.** You agree that this Agreement, any purchase hereunder and any Dispute will be governed by the laws of the State of Texas (or for Canadian entities, the Province of Ontario), without regard to its conflict-of-laws rules or to the United Nations Convention on Contracts for the International Sale of Goods.

#### **16. MISCELLANEOUS**

**A. Headings, Interpretation and Language.** The section headings used herein are for convenience and reference only and are not to be considered in construing or interpreting this Agreement. All references herein to “Sections” will be deemed references to sections of this Agreement. The words “include” and “including”, and other variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words “without limitation”. The parties confirm that it is their wish that this Agreement, as well as other documents relating to this Agreement, including all notices, have been and will be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s’y rattachent, soient rédigés en langue anglaise.

**B. Independent Contractors.** No provision of this Agreement will be deemed to create an association, trust, partnership, joint venture or other entity or similar legal relationship between you and Dell, or impose a trust, partnership, or fiduciary duty, obligation, or liability on or with respect to such entities. You and Dell are independent contractors. Neither party will make any representations or warranties, or assume any obligations, on the other party’s behalf. Neither party is or will claim to be a legal representative, franchisee, agent or employee of the other party. Each party is responsible for the direction and compensation, and is liable for the actions, of its employees and subcontractors.

**C. Audit.** You will maintain accurate and legible records for a period of three years and will grant to Dell, or its designee, reasonable access to and copies of, any information reasonably requested by Dell to verify compliance with the terms of this Agreement.

**D. U.S. Government End Users.** The software and documentation provided with Products 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/manufacturer of Dell software and Dell Products is Dell Products L.P., One Dell Way, Round Rock, Texas 78682.

**E. No Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Agreement is intended to, or will be deemed or construed to, create any rights or remedies in any third party.

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

**G. Assignment; Subcontracting.** You shall not assign this Agreement, in whole or in part, whether by operation of law, merger or stock or asset sale, or otherwise, without the prior written consent of Dell. Any attempt to assign this Agreement without Dell’s written consent will render the purported assignment null and void. 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 will remain responsible for the performance of Services under this Agreement.

**H. Force Majeure.** Dell shall not be liable to you for any delays or failure to perform any of its obligations under this Agreement during any period in which such performance is delayed or prevented by circumstances beyond its reasonable control including fire, flood, war, embargo, strike, riot or the intervention of any governmental authority.

**I. Waiver.** Failure by Dell to enforce any provision of this Agreement will not operate or be construed as a waiver of any future enforcement of that or any other provision of this Agreement. No waiver will be effective against Dell unless in writing and signed by an authorized representative of Dell.

**J. Severability.** If any provision of this Agreement is declared or found to be illegal, invalid or unenforceable, then such provision will be stricken or modified to the extent necessary to make it legal, valid, and enforceable while preserving the parties' original intent to the maximum extent possible. The remaining provisions of this Agreement will remain in full force and will not be terminated.

**K. Entire Agreement.** This Agreement (including all online terms referenced herein) constitutes the entire integrated agreement between you and Dell regarding its subject matter, and supersedes all prior or contemporaneous, written or oral understandings, communications or agreements between you and Dell regarding such subject matter. This Agreement may not be altered, supplemented or amended by you via the use of any other document(s) unless otherwise agreed to in a separate written agreement signed by an authorized representative of Dell. Any use of your pre-printed forms, such as purchase orders, are for convenience only, and any pre-printed terms set forth therein that are in addition to, inconsistent or in conflict with the terms of this Agreement shall be given no force or effect.

**L. Agreement Updates.** Dell reserves the right to update this Agreement (including all applicable terms referenced herein) at any time, effective upon posting an updated version to the Dell website, in the case of (a) the Reseller Terms of Sale, available at [www.dell.com/terms](http://www.dell.com/terms), (b) the U.S. CTS and the CSA, available at [www.dell.com/terms](http://www.dell.com/terms), (c) the Canada CTS, available at [www.dell.ca/terms](http://www.dell.ca/terms), (d) Services Descriptions, available at [www.dell.com/servicecontracts](http://www.dell.com/servicecontracts), and (e) the Dell EULA, available at [www.dell.com/softwarelicenseagreement](http://www.dell.com/softwarelicenseagreement). You shall monitor the revision date/version number, and any change to its posted date/version number will be deemed notice to you that the terms have been updated. However, subject to Section 9.C., your rights and obligations with respect to any particular Products or Services will be as provided in the version of this Agreement executed by you or available to you at the time of your purchase of such Products or Services or, when applicable, at the time of renewal of any Services or software license.

**M. Notices.** Any notice to Dell relating to this 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 by Dell in writing, and will be effective upon receipt. Notice from Dell may be sent to you by postage prepaid first-class mail, receipted courier service, facsimile telecommunication or electronic mail to the address and contact information provided by you to Dell in connection with this Agreement.

Dell Marketing L.P. (U.S.)  
Attention: Contracts Manager  
One Dell Way  
Round Rock, TX 78682

Dell Canada Inc. (Canada)  
Attention: Contracts Manager  
155 Gordon Baker Rd. Suite 501  
North York, ON M2H3N5

**17. SUPPLEMENTAL TERMS FOR OEM CUSTOMERS ONLY.** The following terms in this Section 17 will apply to you only if you are an OEM Customer (as defined below). To the extent there is a conflict, the terms of this Section 17 will take precedence and govern over the terms in Sections 1-16, including any terms referenced therein.

**A. Definitions.** "OEM Customer" means you in your capacity as an original equipment manufacturer that is purchasing Dell Products and Services from the Dell OEM Solutions (or its successor) business group for an OEM project. In general, an OEM Customer (a) embeds or bundles such Dell Products in or with OEM Customer's proprietary hardware, software or other intellectual property, resulting in a specialized system or solution with industry or task-specific functionality (such system or solution an "OEM Solution") and (b) resells such OEM Solution under OEM Customer's own brand. With respect to OEM Customers, the term (1) "Dell Products" includes Dell Products that are provided without Dell branding (*i.e.* unbranded OEM-ready system), and (2) "End-User" means any entity purchasing an OEM Solution for its own end-use and not for reselling, distributing or sub-licensing to others.

**B. Appointment.** Notwithstanding Section 1.B., and subject to the other terms and conditions of this Agreement and your compliance therewith, you (whether directly or through distributors, resellers, or sales agents in your distribution channel (collectively, "OEM Representatives")) may resell certain Dell Products to End-Users only as part of your OEM Solution and after you have added value to the Dell Product through the addition of hardware, software or services. You may use OEM Representatives to resell OEM Solutions, provided that the agreement between you and such OEM Representatives is as comprehensive and as restrictive as the terms of this Agreement. You shall include in all agreements selling, leasing, or transferring ownership of Dell Products or selling Services, a limitation of liability provision similar to Section 12, including a disclaimer as to Dell's liability for incidental, consequential, special, indirect, exemplary, and punitive damages; loss of revenue, income, profit, or savings; lost or corrupted data or software; and loss of use of products or services. Dell's pricing and discounts offered to you are considered Dell's confidential information, and you shall not show such pricing or discounts as a separate line item to any OEM Representatives or End-Users or otherwise disclose such information to any third party without Dell's prior written permission.

**C. Additional Fees and Taxes.** Dell's prices do not include, and you are responsible for paying, all import or export fees, duties, tariffs, insurance or other charges associated with exporting or importing any Products from Dell's or its contractor's manufacturing facility.

**D. Product Labeling.** Except as otherwise agreed between you and Dell in a Service Agreement, you must resell all Dell Products with their original markings. In no event shall you (or any others on your behalf) remove or change safety or agency certification labels or other manufacturers' labels on any Products without the appropriate agency or manufacturer written approval.

**E. Customization Services.** If your order includes Services (including custom factory integration (CFI) services and custom fulfillment services (CFS) services) to customize the Dell Product portion of your OEM Solution, such Services will be performed subject to (a) the U.S. CTS (if your order is placed in the U.S.) or to the Canada CTS (if your order is placed in Canada) and (b) all other applicable Service Agreements. You are solely responsible for (1) determining technical specifications for such customized project; (2) ensuring that those technical specifications are properly documented in the applicable Service Agreement; (3) testing of prototype(s) to verify that the prototype(s) meet applicable specifications and that all hardware and software are compatible, before you place any production order for the customized configuration; and (4) obtaining all necessary licenses and other rights for Dell to perform the Service, including all rights to copy, install, modify and distribute any Third Party Products and any software or hardware provided or requested by you. Regardless of any tests that may be performed by Dell, Dell is not responsible for the suitability of the customized configuration, for any effect any Dell



Services may have on any warranty or service contract for Third Party Products, for the compatibility of any Third Party Products or your software or hardware with any of the Dell Products, or for any liability or damage arising from the installation or customization of a configuration in accordance with a Service Agreement or your instructions. Any additional regulatory and safety compliance required due to the integration of non-Dell hardware or software into the configurations shall be your sole responsibility. To the extent you require Dell to affix or label any non-Dell name, logo, trademark, artwork or images on any of the Dell Products, you hereby grant Dell a non-exclusive, royalty-free, fully paid-up, transferable and sublicensable license to use, reproduce and distribute such name, logo, trademark, artwork and images solely in connection with such purpose and you shall enter into a trademark license agreement if requested by Dell.

**F. Warranty Exclusions.** Dell's express limited warranty does not cover: (a) any components that are added to any Dell Products after such products are shipped from Dell or that are added through Services (e.g., custom factory integration services or custom fulfillment services) at your request; (b) any problems caused by such components or any Third Party Products; (c) any repairs necessitated by any software problems or as a result of alteration or repair by anyone other than Dell or its representatives; or (d) any damage or problems due to any external causes, including accident, abuse, misuse, neglect, problems with electrical power, acts of God, usage not in accordance with product instructions, or normal wear and tear.

**G. Regulatory Compliance.** You shall ensure the Dell Products remain compliant with regulatory and agency approvals after such products are shipped from Dell.

(a) If you (or others on your behalf) make any modifications or additions to the Dell Product (including adding logos or markings) after the Dell Products are shipped from Dell, you are solely responsible for obtaining all necessary regulatory approvals and other authorizations for each country where you or your OEM Representatives will sell or ship such products.

(b) The regulatory compliance marks on Dell Products may vary, depending on where such products are manufactured and sold to you. You understand that the Dell Products sold from the United States generally contain regulatory compliance marks that are required to ship into the United States, Canada, and European Union (EU) countries. Additional regulatory compliance marks are required to ship to other locations. You are solely responsible for obtaining any such additional marks that may be required.

(c) You shall ensure that each OEM Solution complies with all regulatory requirements for its target market and locations and is properly labeled.

**H. Independent Efforts.** Nothing in this Agreement precludes Dell from independently developing, manufacturing, marketing or selling any products or services in competition with those offered by OEM Customer, provided that OEM Customer's confidential information is not used by Dell.

(Rev 011712)