

Customer Master Services Agreement

The terms of this **CUSTOMER MASTER SERVICES AGREEMENT** (the "**Agreement**"), made between the entity requiring services from Dell (the "**Customer**") and the Dell entity identified on the Customer's quote or invoice ("**Dell**") shall apply each time Dell accepts an order from the Customer for services as set out below. "Dell" shall (other than for the purpose of the contracting entities) include Dell's corporate parent, subsidiaries and affiliates that are majority owned by Dell, or its parent, or are under voting control of such entities and/or related companies (collectively, "**Dell Affiliates**"). Dell and the Customer agree to the following terms and conditions:

1. SERVICES

1.1 The terms of this Agreement shall apply (in the absence of any specific written agreement signed by both parties for the services required) each time the Customer engages Dell to provide services. All services provided will be described in one or more of the following: (i) a description of services or applicable services documents detailed in the applicable services documents found at <http://www.euro.dell.com/service-descriptions> ("**Service Descriptions**"); (ii) any mutually agreed statement of work ("**SOW**"); (iii) a form setting out the technical requirements of the Customer as completed by the Customer and agreed by Dell for Custom Factory Integration/CFI ("**Technical Specification Form**"), as applicable (the "**Services**"). The documents described in (i), (ii) and (iii) above shall be referred to as "**Service Documents**". "Services" does not include third party branded services ("**Third Party Services**") that may be purchased from a third party by the Customer or sold by Dell as sales agent (for example, but not limited to, extended warranty on third party branded peripherals offered by the manufacturer).

1.2 Dell is relying on the assumptions as may be set out in any Service Document ("**Assumptions**") and other information provided by the Customer to provide the Services on the terms set out in this Agreement and any of the Service Documents. During the provision of the Services, Dell may analyse the Customer's information technology environment and other factors relevant to the Services, and compare this with any data provided by the Customer and the Assumptions to determine whether this data and these Assumptions differ. If a material discrepancy with respect to the level of performance of the Customer's information technology environment, other information provided by the Customer, or the Assumptions is found, the parties shall meet to negotiate equitable changes to any affected Service Document, any agreed service levels and/or charges, as appropriate. Prior to agreeing any such changes, Dell retains the right to suspend the services, carry out such services as are reasonable considering the discrepancies or increase the charges to cover any increased costs it incurs as a result of such findings and any agreed service levels shall not apply.

1.3 Further, in the event that Dell is unable to commence the provision of all or part of the Services by any milestone specified in a Service Document due to any delay or default attributable to the Customer (which shall for these purposes include the delay or default of any Customer contractor), then the Customer shall defend, indemnify, and hold harmless Dell and its representatives from and against any and all losses arising out of or in connection with any such delay or default.

2. TERMS

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. The Customer may place orders in writing, by email, by telephone or by facsimile transmission. Telephone orders must be confirmed in writing or by facsimile. All orders are subject to acceptance by Dell. If the Customer orders on-line, Dell may issue to the Customer user names and passwords (the "**Purchase Codes**"). By accepting and using the Purchase Codes, the Customer acknowledges the validity of an electronic order and agrees to be responsible for full payment of any Services ordered using the Customer's Purchase Codes. The Customer and Dell are responsible, within their respective organisations, for keeping the Purchase Codes confidential and controlling their use. The terms of this Agreement shall apply each time an order for services is submitted and accepted by Dell.

2.2 **Prices.** The prices charged for Services purchased under this Agreement will be Dell's then current charges for such services in each Dell region or as quoted by Dell. If the Services are being performed on a time and materials basis, any estimates provided by Dell are for planning purposes only. In the event that a fixed price has been quoted by Dell and the Customer then requires additional work to be carried out this additional work shall be charged either as agreed with Dell or in the absence of such as agreement on a time and materials basis based on Dell's then current charges. Any required deposits are non-refundable. Unless otherwise stated in a written quote, all quotes provided by Dell shall be valid for 14 days from the quote date after which they shall become null and void.

2.3 **Additional Fees; Taxes.** Prices are exclusive of all country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes. Taxes imposed on Dell (other than taxes related to Dell's income) in connection with the Services purchased under this Agreement will be paid by the Customer and will appear as separate items on Dell's invoices. In the event that the Customer is required by law to make any deduction from the charges due to Dell withholding tax, the Customer shall pay such sums to the relevant tax authority and shall provide Dell with a certificate of such liability and any other information requested by Dell in respect of such withholding.

2.4 **Invoicing and Payment.** Unless stated otherwise in the Service Document the Services will be invoiced on a monthly basis. Details of actual charges or charge rates will be specified in each relevant Service Document. Where there are a number of Services being carried out for the Customer an invoice will be issued for each Service unless agreed otherwise with the Customer. The due date for payment by the Customer shall be specified in the applicable invoice and shall be subject to continuing credit approval by Dell. The Customer will pay Dell in the currency of the country in which the Dell contracting entity is domiciled, as invoiced by Dell or Dell Affiliate, unless otherwise agreed between the parties. Additional charges may apply if the Customer requests services that are performed outside contracted hours or are beyond the normal coverage for the particular service. For invoices not paid by the due date, Dell reserves the right to charge the Customer interest of one percent (1%) per month applied against overdue amounts and suspend the provision of any further Services. In addition, Dell may, without waiving any other rights or remedies to which it may be entitled, decide not to accept additional orders from the Customer and/or seek collection of all amounts due, including reasonable legal fees and costs of collection.

2.5 **Term.** Each Agreement will begin on the date an order is accepted by Dell and will continue until the Services have been completed during the term stated in the relevant Services document, unless otherwise agreed or terminated pursuant to this Agreement.

2.6 **Acceptance.** Where Dell and the Customer agree that the Customer shall have the right to test those Services which are specified in a Service Document as being subject to testing in accordance with the tests set forth in any such Service Document ("**Acceptance Tests**" and "**Acceptance Testing**" as applicable), the Customer shall complete the Acceptance Tests at the time specified in the Service Document or, if no such time is specified in the Service Document, within seven (7) days of notification from Dell that such Services are ready for testing. Dell shall provide the assistance in respect of such Acceptance Testing set out in the Acceptance Tests and Dell shall be permitted to be present at such Acceptance Tests. Where payment for some or all of the Services is linked to Acceptance Testing payment terms shall be set out in the Service Document. For the avoidance of doubt if there are no specific provisions for linking payment to Acceptance Testing then Dell shall have the right to invoice for the Services in accordance with Clause 2.4 above.

2.6.1 If the Services do not meet the agreed criteria for Acceptance Testing for those Services as stipulated in any Service Document the Customer must immediately notify Dell in writing. The Services shall be deemed to have passed the Acceptance Tests if no such notice is received from the Client within seven (7) calendar days of the date of completion of such Acceptance Tests or after notification from Dell that such Services are ready for testing if such Acceptance Tests are not carried out or where such Services have been put into live use by the Client.

2.6.2 If a Service does not pass an Acceptance Test, the Customer shall provide Dell with reasons for such failure, and Dell shall be given the opportunity to correct any errors in the Service concerned within a reasonable timescale and resubmit it to the Customer for testing in accordance with this Clause 2.6. In such circumstances, this Clause 2.6 shall also apply to such resubmission. In the event that the Services do not pass the Acceptance Tests on a third attempt, the Customer shall be entitled to a refund of fees due in relation to that Service but all other Services shall remain unaffected, and such refund shall be the sole and exclusive remedy that the Customer has against Dell in respect of such failure.

2.7 **Termination.** Either party may terminate this Agreement, in whole or in part, if the other party commits a material breach of this Agreement and the breach is not cured within thirty (30) days of receipt of written notice thereof from the injured party. Upon termination, 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.

2.8 **Non payment.** Dell shall be entitled to terminate this Agreement with immediate effect upon written notice to the Customer in the event that the Customer fails to pay any sums due to Dell and such sums remain outstanding thirty (30) days after written notice from Dell.

2.9 **Insolvency.** Either party shall be entitled to terminate this Agreement with immediate effect upon written notice to the other party in the event that: (i) the other party passes a resolution for its winding-up or the making by a court of an order for the winding-up or the dissolution of the other party (except for the purpose of a solvent amalgamation or reconstruction); (ii) the other party becomes subject to an administration order or receivership or has its assets possessed or sold by a secured party; or (iii) the other party makes an arrangement or composition with its creditors generally or makes an application to a court for protection from its creditors generally or such similar action in the applicable country.

3. THIRD PARTY PRODUCTS, THIRD PARTY SERVICES, SOFTWARE INSTALLATION

"Third Party Products" means: (i) any hardware other than products that are Dell branded, including standard components thereof, and originally listed on Dell's standard parts list; or (ii) software, computer operating systems, middleware or applications from a third party editor or licensor. Third Party Products and/or Third Party Services may be provided by the Customer or procured for the Customer by Dell, as described by the applicable Service. In the event the Third Party Products procured by Dell are not used for the Services within a reasonable time following purchase of the parts by Dell, the Third Party Products will be shipped and invoiced to the Customer and the Customer will pay for these parts within thirty (30) days after the date of invoice. Dell is not responsible for the specifications of Third Party Products selected by the Customer, including revisions or engineering changes. Some manufacturers' warranties or service contract terms and conditions may become void if Dell or anyone else, other than the manufacturer or its authorised representative, works on the hardware or software. 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 the Customer and Dell, Third Party Services and Third Party Products shall be exclusively subject to terms and conditions between the third party and the Customer. For software provided by the Customer, the Customer authorises Dell (or otherwise obtains the rights for Dell) to copy, install and modify, if necessary (and as required by the Technical Specification Form), all software to be used in the Services or to be recorded in electronic media for subsequent re-installation of backup. The Customer warrants to Dell that it has obtained any licences, consents, regulatory certifications or approvals required to give Dell and its subcontractors or employees the right or licence 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 licence rights (including patent and copyright) of the providers or owners of such products.

4. PROPRIETARY RIGHTS

4.1 Each party shall retain all rights in any and all current and future computer hardware or software products and/or Services information, roadmap, technical or financial information, customer names, addresses and related data, contracts, practices, procedures, methodologies and other business information, including software reports, strategies, plans documents, drawings, machines, tools, models, patent disclosures, samples, materials and requests for proposals that may be disclosed between the parties, whether written, oral, electronic or otherwise, however and wherever acquired ("**Intellectual Property Rights**") that it owned or developed prior to the commencement date of this Agreement, or acquired or developed after the date of this Agreement without reference to or use of the intellectual property of the other party. No licences shall be deemed to have been granted by either party to any of its Intellectual Property Rights except as otherwise expressly provided in this Agreement.

4.2 The Customer acknowledges that the Services do not involve the development of any significant intellectual property which is unique to the Customer or based upon Customer confidential information. The Customer therefore agrees that Dell: (a) shall own and retain all Intellectual Property Rights in or related to the Services, or tangible components thereof; (b) shall retain all right, title and interest in and to all Intellectual Property Rights used in performing the Services which are based on trade secrets or proprietary information of Dell or are otherwise owned or licensed by Dell (collectively, the "**Tools**"); (c) shall be free to use the ideas, concepts and know-how which are used, developed or created in the course of performing the Services (collectively, the "**Residual Technology**"), all of which constitute Intellectual Property Rights on the part of Dell in any technology which may be developed to facilitate delivery of the Services; (d) shall retain all right, title and interest in and to all repeatable processes and reusable forms, templates or output which are developed, created or otherwise used by or on behalf of Dell in the course of performing the Services without reference to or use of the Intellectual Property Rights of the Customer (collectively, the "**Generic Components**"); and (e) shall retain ownership of any Tools, Residual Technology or Generic Components that become embedded in any deliverables created in the performance of the Services.

4.3 Dell hereby grants to the Customer a royalty-free, non-transferable, non-exclusive licence to use any such embedded Tools, Residual Technology and Generic Components solely in connection with the Customer's use of the Services or tangible components thereof during the term of this Agreement.

4.4 Nothing herein shall prevent either party or Dell Affiliates from using the techniques, ideas, and other know-how gained during the performance of this Agreement in the furtherance of its business, to the extent that this does not result in disclosure of confidential information or unauthorised use of any Intellectual Property Rights of the other party. The Customer acknowledges that information, software, and documentation created by Dell in the course of delivering the Services which relate to Dell's internal processes and procedures may be used by Dell and its Affiliates to facilitate delivery of services to other customers.

4.5 USE OF SOFTWARE. To the extent Dell is required or deems it expedient to use software owned or used by the Customer to perform the Services ("**Customer Software**"), the Customer grants Dell a non-exclusive, worldwide, royalty-free licence to use Customer Software during the term of this Agreement solely for the purpose of providing the Services. In the event that Customer Software comprises or includes any third party software, the Customer shall ensure that Dell has the right to use such Software as necessary to perform the Services.

4.5.1 To the extent the Customer needs to use any software owned or used by Dell to receive the Services ("**Dell Software**"), Dell grants the Customer a non-exclusive, worldwide, royalty-free licence to use Dell Software during the term of this Agreement solely for the purpose of receiving the Services. In the event that the Dell Software comprises or includes any third party Software, Dell shall ensure that the Customer has the right to use such Software as necessary to receive the Services.

4.6 INTELLECTUAL PROPERTY INDEMNIFICATION. Dell agrees to defend, indemnify, and hold harmless the Customer and its representatives from and against any and all losses arising out of or in connection with any alleged or actual infringement of the Intellectual Property Rights of any third party in connection with the provision of the Services, provided that the Customer shall: (a) promptly notify Dell of the claim or likelihood of the claim; (b) co-operate with Dell in the defence thereof; and (c) not settle any such claims without Dell's consent. Dell shall keep the Customer informed at all times as to the status of Dell's efforts and consult with the Customer concerning Dell's efforts; and, Dell shall not settle the claim without the Customer's prior written consent.

4.6.1 In the event any claim is, or in Dell's reasonable opinion is likely to be, made pursuant to Clause 4.6 above, Dell may at its option: (a) obtain a right for the Customer to continue receiving the Services; (b) modify the Services to make them non-infringing; or (c) replace the Services with a non-infringing equivalent. In the event that the above solutions fail or are not possible Dell shall be entitled to discontinue the Services. However, Dell shall have no liability for any claim of infringement to the extent based upon: (a) modifications made by the Customer that were not made or approved by Dell; (b) use of the Services in connection with another product or service (the combination of which causes the infringement) not contemplated by this Agreement or approved by Dell; or (c) Dell's compliance with the Customer's written specifications or directions. These Clauses 4.7 and 4.6.1 are an exclusive statement of Dell's liability and responsibility for infringement claims.

4.6.2 The Customer agrees to defend, indemnify, and hold harmless Dell and its representatives from and against any and all losses arising out of or in connection with any alleged or actual infringement of the Intellectual Property Rights of any third party in connection with the use by Dell of Customer Assets or Customer Software for the purposes of this Agreement, provided that Dell shall: (a) promptly notify the Customer of the claim or likelihood of the claim; (b) cooperate with the Customer in the defence thereof; and (c) not settle any such claims without the Customer's consent. The Customer shall keep Dell informed at all times as to the status of the Customer's efforts and consult with Dell concerning the Customer's efforts; and, the Customer shall not settle the claim without Dell's prior written consent.

4.6.3 In the event any claim is, or in the Customer's reasonable opinion is likely to be, made pursuant to Clause 4.4.6.2 above, the Customer may at its option: (a) obtain a right for Dell to continue receiving Customer Assets or Customer Software; (b) modify Customer Assets or Customer Software to make them non-infringing; or (c) replace Customer Assets or Customer Software with a non-infringing equivalent. However, the Customer shall have no liability for any claim of infringement to the extent based upon: (a) modifications made by Dell that were not made or approved by the Customer; (b) use of Customer Assets or Customer Software in connection with another product or service (the combination of which causes the infringement) not contemplated by this Agreement or approved by the Customer; or (c) the Customer's compliance with Dell's written specifications or directions. These Clauses 4.6.2 and 4.6.3 are an exclusive statement of the Customer's liability and responsibility for infringement claims.

5. EXPORT; REGULATORY REQUIREMENTS

5.1 Export. The Customer acknowledges that the Services sold under this Agreement, which may include technology and software (e.g. subject to a third party licence direct with the Customer), are subject to the customs and export control laws and regulations of the United States and the European Union 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. The Customer agrees to abide by those laws and regulations. The Customer further represents that any software provided by the 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 licence. If the Customer cannot make the preceding representation, the Customer agrees to provide Dell with all of the information needed for Dell to obtain export licences from the United States government or any other applicable national government and to provide Dell with such additional assistance as may be necessary to obtain such licences. Notwithstanding the foregoing, the Customer is solely responsible for obtaining any specific licences relating to the export of software if a licence is needed. Dell may also require export certifications from the Customer for Customer provided software.

Dell's acceptance of any order for Services is contingent upon the issuance of any applicable export licence required by the United States Government or any other applicable national government; Dell is not liable for delays or failure to deliver Services or a product resulting from the Customer's failure to obtain such licence or to provide such certification.

5.2 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.

6. CUSTOMER RESPONSIBILITIES

6.1 It is the Customer's responsibility to backup data on the Customer's system. DELL IS NOT RESPONSIBLE FOR LOSS OF, COURRUPTION OF, OR DAMAGE TO DATA OR RECOVERY OF DATA, PROGRAMS OR LOSS OF USE OF SYSTEM(S) OR NETWORK. The Customer acknowledges that Dell's performance and delivery of the Services are contingent upon: (i) the Customer providing safe and hazard-free access to its personnel, facilities, equipment, hardware, software, network and information and (ii) the Customer's timely decision-making, notification of relevant issues or information and granting of approvals and/or permission. The Customer will promptly obtain and provide to Dell any required licences, approvals or consents necessary for Dell's performance of the Services.

6.2 If a separate, written nondisclosure agreement exists between Dell and the Customer, that agreement will control and will apply according to its terms and conditions to all confidential information the parties exchange with each other. If no separate written nondisclosure agreement exists between Dell and the Customer, the following terms listed below in this Section will apply to the confidential information the parties exchange with each other.

6.2.1 The Customer and Dell acknowledge that, in the course of dealings between the parties, each party may acquire information or materials about the other party, its business activities and operations, its technical information, customer information and trade secrets, and other proprietary information which are of a confidential or proprietary nature (whether written or oral). Information will be treated as confidential (i) if it is marked or accompanied by documents clearly and conspicuously designating them as "confidential" or the equivalent; (ii) if it is identified by the disclosing party as confidential before, during or promptly after the presentation or communication; or (iii) might reasonably be considered to be confidential given the nature of the information or the circumstances of disclosure. Each party shall use the same degree of care, but no less than a reasonable degree of care, as the party uses with respect to its own similar information to protect the information and to prevent (i) any use of information not authorised in this Agreement, (ii) dissemination of information to any employee of the party without a need to know, (iii) communication of information to any third party, or (iv) publication of such information. Each party shall ensure that its employees, to whom disclosure of such information has been made, shall be subject to similar obligations of confidentiality as those set out in this Section. Neither party shall, nor shall permit its employees to, use such information for any purpose other than in the performance of its obligations under this Agreement. These restrictions of confidentiality will not apply, however, to any information which (i) was known to the receiving party before receipt from the disclosing party; (ii) is or becomes publicly available through no fault of the receiving party; (iii) is rightfully received by the receiving party from a third party without a duty of confidentiality; (iv) is disclosed by the disclosing party to a third party without a duty of confidentiality on the third party; (v) is independently developed by the receiving party without a breach of this Agreement; or (vi) is disclosed by the receiving party with the disclosing party's prior written approval. If a receiving party is required by a government body or court of law to disclose information, the receiving party agrees to give the disclosing party reasonable advance notice so that the disclosing party may contest the disclosure or seek a protective order. Each party warrants that it has the right to disclose its confidential information. Each party agrees to return to the other party, or to destroy (and to certify the destruction in writing to the other party), all materials containing any confidential information of the other party, regardless of the media and regardless by whom prepared, within ten (10) days after demand for the materials or in any event within ten (10) days after termination or expiration of this Agreement. Each party agrees to return to the other party any other materials belonging to the other party, regardless of the media and regardless by whom prepared, within ten (10) days after demand for the materials or in any event within ten (10) days after termination or expiration of this Agreement. The parties further agree that this Section shall remain in effect for a period of three (3) years from the termination date of this Agreement. The terms and conditions of this Agreement shall be deemed to be confidential information. No press release or announcement of publicity concerning this Agreement or any matter arising under or pursuant to it shall be made by the Customer without the prior written consent of Dell's Corporate Communications Department.

6.3 The Customer shall pay Dell the charges in accordance with Clause 2 above.

6.4 The Customer shall perform all of Customer Responsibilities set out in the Service Documents. The Customer shall provide reasonable assistance, cooperation, timely decisions and support in connection with the provision of the Services by Dell. The Customer shall provide Dell with access to and use of all that information, data, and internal resources as is reasonably necessary to deliver the

Services. The Customer represents and warrants that all information and data supplied to Dell under this Agreement is current, complete and accurate.

6.5 The Customer shall provide, where applicable, secure access to adequate work space, supplies, facilities (including local and wide area networks), telephones, power, and lighting ("**Customer Facilities**") at no charge. Customer Facilities must be within reasonable proximity to where Services are to be performed. The Customer shall provide timely access and use of Customer Facilities and any assets belonging to the Customer or any assets which the Customer is entitled to use ("**Customer Assets**") to enable Dell to perform the Services. Dell may not use Customer Facilities and Customer Assets for any purpose other than the provision of Services under this Agreement without the prior written consent of the Customer.

6.6 The Customer shall ensure that, in the course of accessing or using Customer Facilities and Customer Assets, Dell shall not be exposed to any materials or conditions which are classified or identified as hazardous, toxic, or unsafe under applicable law and the Customer shall comply with all local health and safety law and regulations in respect of such Customer Facilities and Customer Assets and shall defend, indemnify, and hold harmless Dell and its representatives from and against any and all losses arising out of or in connection with any such claim against Dell or its representatives by any Dell employee, Dell sub-contractor or other third party.

6.7 The Customer shall be responsible for obtaining all consents, approvals, and licences required by the Customer's suppliers, the Customer's licensors, the Customer's lessors, the Customer's government regulators and other third parties which are necessary to support or permit the provision of Services by Dell under this Agreement, at no cost to Dell ("**Required Consents**"). In the event that one or more Required Consents cannot be obtained by the Customer, the parties shall cooperate with each other and take reasonable steps to resolve the matter, provided however that Dell shall not be liable for failure to provide Services or to achieve service levels under any SOW to the extent such failure is caused by result of the Customer's failure or inability to obtain any such Required Consents. Dell shall execute such non-disclosure agreements as the applicable suppliers, owners, licensors or lessors may reasonably request as a condition of providing Required Consents.

6.8 The Customer shall be responsible for carrying out equipment and technology upgrades, refreshes and replacements for any equipment and technology that is out of scope, as specified in accordance with the provisions of the Service Documents.

7. LIMITATION OF SERVICES

Except as stated below, 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 Agreement. 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.** For any Products purchased prior to the Customer purchasing the Services, Dell reserves the right to inspect such Products prior to agreeing to provide the Services. Unless otherwise provided in the SOW or Service Description, Services do not include repair of any system or system component which has been damaged as a result of: (i) 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), (ii) a Force Majeure event as described in Section 10.6 such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes, or (iii) the moving of the system from one geographic location to another or from one entity to another.

8. LIMITED WARRANTY & LIMITATION OF LIABILITY

8.1 **Limited Warranty.** Dell warrants that Services will be performed using reasonable skill and care and in accordance with such timelines as may be set out in the Services Documents. For the avoidance of doubt any such timelines shall be estimates that Dell shall use its reasonable endeavours to meet or exceed. Except as expressly stated in the preceding sentence, Dell makes no express or implied warranties, terms or conditions with respect to the Services, including but not limited to, any warranty, term or condition: (a) relating to Third Party Products or Third Party Services; (b) with respect to the performance of any hardware or software used in conducting Services; (c) concerning the results to be obtained from the Services or the results of any recommendation Dell may make; and (d) concerning the performance, satisfactory quality, merchantability, suitability, non-infringement or fitness for a particular purpose of any of the deliverables or of any system that may result from the implementation of any recommendation Dell may provide.

8.2 **Limitation of Liability.** Dell does not limit its liability for fraud, personal injury or death arising from its negligence or for fraud or any other loss that cannot be limited under applicable law and this section does not apply to such liability. In no event shall Dell be liable (whether in contract, tort or otherwise) for any incidental, indirect, special or consequential damages arising out of or in connection with the Services or products provided by Dell or its subcontractors or otherwise in connection with this Agreement even if advised of the possibility of such damages. Dell shall not have liability for whether direct or indirect (i) loss of income, profit, or savings, (ii) lost or

corrupted data or software. Dell's liability in any calendar year (whether in contract, tort or otherwise) arising out of, or in connection with this Agreement shall not exceed 110% of the amount of fees paid or payable by the Customer under this Agreement for the specific Service(s) giving rise to such claiming that calendar year.

8.3 High Risk Application Disclaimer. Dell has not tested or certified its products, Services or deliverables for use in high risk applications including medical life support, medical device, direct physical patient contact, water treatment, nuclear facilities, weapons systems, mass and air transportation control, flammable environments, or any other potentially life critical uses. The Customer understands and agrees that Dell makes no assurances that the products, Services or deliverables are suitable for any high risk uses.

9. INDEMNIFICATION

The Customer accepts responsibility for, and agrees to indemnify and hold Dell harmless from, any and all liability, damages, claims or proceedings arising out of (i) the failure of the Customer to obtain the appropriate licence, intellectual property rights, or any other permissions, regulatory certifications or approvals required to support any Service Description, SOW, or Technical Specification Form or Dell's performance of the Services, or (ii) any inaccurate representations regarding the existence of an export licence.

10. MISCELLANEOUS ITEMS

10.1 Data Protection. The terms used in this Clause 10.1 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;

"European Economic Area" means the Member States of the European Union from time to time plus Norway, Iceland and Liechtenstein.

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

10.1.2 PROCESSING OF PERSONAL DATA

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

10.1.3 Dell undertakes and warrants that:

- 10.1.3.1 it shall process the personal data in accordance which the Customer's lawful instructions from time to time and it shall not act on any instructions other than those of the properly designated representative or representatives of the Customer;
- 10.1.3.2 it shall ensure that only Dell Personnel who may be required to assist in meeting Dell obligations under this Agreement shall have access to the personal data;
- 10.1.3.3 it will process the personal data only in accordance with the Data Protection Laws and the terms of this Agreement;
- 10.1.3.4 if it shall become necessary to transfer personal data from one location to another within its own organisation or to third parties contracted to provide the Services, then that transfer shall be undertaken with appropriate security measures being implemented in compliance with Data Protection Laws;
- 10.1.3.5 it shall not disclose the personal data to a third party, other than those engaged in provision of the Services or as required by operation of law.

10.1.4 Dell warrants and undertakes that it has in place and will maintain appropriate operational and technological processes and procedures to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of the personal data.

10.1.5 .Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this agreement.

- 10.1.6 The Customer acknowledges that the Dell is reliant on the Customer 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 a data subject arising from any action or omission by Dell Personnel to the extent that such action or omission resulted directly from the Customer's instructions

10.2 **Employment Indemnity.**

10.2.1 The Customer shall keep Dell 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 the Customer, or the previous supplier providing the Services for the Customer, resulting from the entering into or termination of any Services, SOW or this Agreement (in whole or in part) for whatsoever reason.

10.2.2 In the event that any member of Dell personnel (whether employed or engaged by Dell or one of its contractors or agents) brings a claim against Dell as a result of any act or omission of the Customer or any of the Customer's employees, contractors or agents (including any claim arising from a request by the Customer that the individual be removed from providing any part of the Services), the Customer 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.

10.3 **Assignment; Subcontracting.** The Customer may not assign this Agreement without the prior written consent of Dell. Dell has the right to subcontract the performance of the Services provided under this Agreement (in full or in part) or to assign Services to Dell Affiliates.

10.4 **Entire Agreement; Order of Precedence; Severability.** This Agreement (with attachments) is the entire agreement between Dell and the Customer with respect to its subject matter and supersedes all prior oral and written understandings, communications or agreements between Dell and the Customer. 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 authorised representatives of both parties. In the event of a conflict between the terms of this Agreement and a Service Description, SOW, Technical Specification Form or Dell's standard Terms & Conditions of Sale and Service ("T's & C's"), the terms of these documents will be followed according to the following order of precedence: (1) this Agreement, (2) SOW or Technical Specification Form, (3) Service Descriptions, and (4) the T's & C's. If any provision of this Agreement is void or unenforceable, the remainder of this Agreement will remain in full force and will not be terminated.

10.5 **Independent Contractor.** 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.

10.6 **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 Agreement 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 Description, SOW or Technical Specification Form by giving written notice to the delayed party.

10.7 **Notices.** To give notice under this Agreement, the notice must be in writing and sent by postage prepaid first-class mail, receipted courier service, facsimile telecommunication or electronic mail to the address which appears on the Customer's invoice or to such other address as any party shall specify by notice in writing to the other party and will be effective upon receipt.

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

10.9 **Governing Law, Jurisdiction and Language.** This Agreement is subject to the laws of England and Wales and the exclusive jurisdiction of the English courts. The Agreement will be interpreted and construed in accordance with the English language.

10.10 **Dispute Resolution.** The parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against Dell, its agents, employees, successors, assigns, or Dell Affiliates (collectively for purposes of this paragraph, "**Dell**") arising out of or relating to this Agreement, Dell's advertising, or any related purchase (a "**Dispute**") through face to face negotiation with persons fully authorised to resolve the Dispute or through mediation utilising 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 thirty (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.

10.11 **Limitation Period.** The Customer may not institute any action in any form arising out of this Agreement more than two (2) years after becoming aware of the cause of action having arisen.

10.12 **Third Party Rights.** Save for any Dell Affiliates, the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no persons other than the parties to this Agreement shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it.