

Commercial Reseller Agreement

Between

Dell Marketing L.P.
 One Dell Way
 Round Rock, TX 78682
 "Dell"

 "VAR"
 VAR Customer No. _____
 Estimated Purchase Volume _____

1. Introduction

VAR wants to have non-exclusive rights to market and distribute in the United States only (the "Territory") products and services it purchases from Dell. Those products include Dell-branded Dimension and OptiPlex desktops, Latitude and Inspiron notebooks, Dell Precision workstations and Power Edge servers and services for them (the "Dell-branded Products"); non-Dell branded products manufactured by or for Dell (the "Solution Provider Direct Products") and software and peripherals manufactured by third parties ("S&P Products"). The Dell-branded Products, Solution Provider Direct Products and S&P Products are collectively referred to in this Agreement as "Products" and related services ("Services)". By signing this Agreement, Dell and VAR agree to abide by all the terms and conditions in it, including the attached Schedule A.

This Agreement runs for an initial one-year term, and it will thereafter renew automatically. Either party may terminate this Agreement sooner as provided for in the "Termination" section in the attached Schedule A.

2. Pricing

a. Dell-branded Products. VAR may purchase Dell-branded Products under two pricing programs: at a discount off of list price or special pricing. VAR cannot combine the programs for a single Products purchase.

i. Discount Pricing. VAR has estimated its initial annual purchase volume as set forth above. The initial discounts will be based on this purchase volume. For purchase volumes less than \$75,000 annually, there is no discount.

	I	II	III	IV	V	VI	
Category	\$75,000-\$99,999 annually	\$100,000-\$249,999 annually	\$250,000-\$499,999 annually	\$500,000-\$999,999 annually	\$1,000,000-\$2,499,999 annually	\$2,500,000-\$4,999,999 annually	Product Description (subject to change without notice)
A	1%	3%	4%	6%	6.5%	7%	OptiPlex Systems not listed in Category H, Workstations, Latitude C400, Latitude X200, Latitude C600, Latitude C610, Latitude C640, Latitude C810, Latitude C840, PowerEdge Products (excluding PowerEdge SC), PowerVault, PowerApps, Dell-branded Customer kits on Dell stocked accessories and options
H	1%	3%	4%	6%	6.5%	7%	OptiPlex GX50

OO	N	1%	3%	4%	6%	6.5%	7%	Future Products to be Determined Directline; Dell Open Manage FC storage software support; 4-hr Service for Servers/Storage (all years) ¹
	O	1%	3%	4%	6%	6.5%	7%	

*Discounts for purchases volumes over \$5,000,000 a year will be negotiated. Product categories and discount structure subject to change by Dell without notice provided such change is made for all similar commercial VARs.

Upon VAR written request, Dell will adjust discounts on all future orders in accordance with VAR's purchase volumes for the prior year as verified by Dell. Dell may, in its sole discretion, adjust or eliminate these discounts if VAR engages in misconduct; violates Dell resale policies or VAR's annual purchase commitment as measured on a pro-rated quarterly basis fails to meet the annual purchase commitment or if VAR has not purchased at least \$25,000 of Products within a six-month period.

Dell's standard list price for Products are those that Dell generally makes available to the public, and can change from time to time at Dell's sole discretion. The discount is applied before the addition of shipping and handling fees and any sales, value-added and other transactional taxes associated with the sale of Products. If Dell offers VAR special pricing on Products, VAR's discounts do not apply. VAR's discounts are not available for special Products promotions and cannot be combined with other offers, unless approved by Dell in writing.

ii. Special Pricing. Dell may offer to VAR special pricing on a limited number of configurations for a limited period of time. Special pricing is available based on VAR's commitment to purchase a certain quantity of the designated configurations. Add-ons or modifications to the designated configurations will be priced at the discount under the Discounts off of List. **Discounts and special pricing for Dell-branded Products are available at Dell's sole discretion for sales where VAR has identified the end-user or is limited to VAR's integrated solutions for a specific type of customer.**

b. Solution Provider Direct Products. There are currently no discounts or special pricing for Solution Provider Direct Products.

3. Resale Pricing

Neither Dell nor any employee of Dell has any authority to determine or set VAR's resale pricing of the Products.

4. Use of Dell's Name

VAR is specifically prohibited from referring to itself as an authorized reseller of Dell or in any way implying that VAR and Dell are partners. VAR may use Dell's trademark under the terms and conditions provided in the attached Schedule A.

AGREED:
"Dell"
DELL MARKETING LP

By _____

Title _____

Date _____

AGREED:
"VAR"

By _____

Title _____

Date _____

SCHEDULE A
to
COMMERCIAL RESELLER AGREEMENT

1. *Limitations on Appointment*

Dell grants VAR the non-exclusive right to resell and remarket Products to commercial end-user customers. Dell may appoint other resellers or may itself directly market and sell Dell-branded Products or S&P Products to anyone, including VAR's customers, without any liability to VAR. For Solution Provider Direct Products, Dell may appoint other resellers to market and sell to anyone, including VAR's customers, without any liability to VAR. Dell will endeavor to not knowingly market Solution Provider Direct Products directly to end-users.

For Dell-branded Products, VAR agrees to sell only to end-users disclosed to Dell. VAR also agrees that it may resell the Products to approved end-users only after VAR has added value to the Products through the addition of hardware, software or services. VAR may not use or sell to distributors, third party sales agents or other remarketers to sell the Products without Dell's prior written approval of each such distributor, third party sales agent or other remarketer. VAR also agrees that Dell may require that VAR meet certain obligations in order to sell certain Products. VAR agrees that it will incur the cost of meeting such obligations.

For end-users who have an existing relationship with Dell (i.e., the end-user has a Dell account team assigned to it; an account listed in Dell's relationship database; or an account currently listed by Dell as an acquisition account), VAR may resell to them only if the end-user provides a written request to Dell authorizing the VAR to resell to them.

VAR MAY NOT RESELL THE PRODUCTS TO STATE AND LOCAL GOVERNMENT, FEDERAL GOVERNMENT, EDUCATION AND/OR HEALTHCARE ENTITIES WITHOUT DELL'S PRIOR WRITTEN AUTHORIZATION. VAR'S ACCOUNT TEAM AT DELL WILL PROVIDE TO VAR THE CONTACT INFORMATION AND INSTRUCTIONS ON HOW TO APPLY FOR AUTHORIZATION FOR RESELLING TO THOSE ENTITIES.

2. *Term and Termination*

The term of this Agreement begins on the date on which the last party signs it (the "Effective Date") and ends twelve months later. It will renew automatically for successive periods of one year. Either party may terminate this Agreement for any reason, at any time, with no liability to the other by providing the other party at least thirty days' prior written notice. If either party breaches this Agreement, the non-breaching party may terminate this Agreement upon five days' written notice to the breaching party.

3. *How to Buy Products*

a. Ordering Products. VAR must submit a purchase order to Dell. The order is binding unless Dell informs VAR that Dell is not accepting the order or unless either party cancels or changes the order under the following Section 1(b).

b. Canceling or Changing Orders. VAR may change or cancel any order up until the time Dell has begun to manufacture the Products. Dell may, in its discretion, cancel any order it has accepted. Neither Dell nor VAR is bound by any terms and conditions printed or embedded with Orders, Order Acknowledgements or other communications between each other.

c. Shipping Dates, Title and Inspection. When Dell accepts an order, Dell will provide to VAR an estimated ship date(s) for all Products ordered. Title to Products, except software that is

subject to licensing agreements (See "Software" below), passes from Dell to VAR when Dell ships the Products from its manufacturing location.

d. Web-Based Orders. VAR may place orders on-line through its Dell-provided online tool under the Web-Based Order program. If VAR decides to participate in this program, Dell will issue user names and passwords (the "Purchase Codes") to VAR's designated contact person for placing orders electronically. The names and passwords, which Dell may revise from time-to-time, will allow VAR to access its Dell-provided online tool and place orders on-line. VAR agrees to keep the Purchasing Codes confidential and control their use. VAR also agrees that Dell is not responsible for, and hereby waives, any cause of action against Dell for misuse of the Purchase Codes. Dell will deactivate VAR's Purchase Codes, upon VAR's request. If electronic orders are placed using the Purchase Codes, VAR agrees that it will be responsible for full payment of any Products ordered electronically using this Web-Based Order program. When Products are ordered through the Dell web-based ordering tool and use of Purchase Codes, all of the terms and conditions of this Agreement apply, including but not limited to those related to order confirmation and limitation of liability.

4. Taxes, Shipping and Handling, and Returns

a. Sales and Other Transaction Taxes. Except for taxes assessed on the net income of Dell, VAR agrees to pay all sales, value added and other transactional taxes associated with the sale of Products and Services, unless VAR provides to Dell a valid tax exemption certificate.

b. Shipping and Handling Options and Pricing. At Dell's sole discretion, VAR may select from one of two shipping options: (1) VAR may direct Dell to ship Products using Dell's designated carrier or (2) VAR may designate another carrier. If VAR directs Dell to ship by using Dell's designated carrier, Dell will invoice VAR for shipping and handling costs, and Dell will bear the risk of loss of or any damage to the Products during shipping. If VAR directs Dell to ship by using VAR's designated carrier, Dell will ship Products via VAR's carrier, freight collect or freight prepaid by VAR, and VAR will bear the risk of loss of or any damage to the Products during shipping.

c. Returns. Dell's "total satisfaction" return policy is not available for VAR or VAR's end-users. VAR agrees to inform VAR's end-users that Dell's "total satisfaction" return policy is not available on Dell-branded Products or S&P Products sold to VAR under this Agreement. VAR will indemnify, defend and hold Dell harmless for any damages or other costs that arise because of VAR's failure to properly inform VAR's end-users that Dell's "total satisfaction" return policy is not available to VAR's end-users. (see "Indemnity from VAR to Dell").

5. Invoicing and Payment and Security Interest

a. Invoice. Dell will send invoices to VAR for Products at the time the Products are shipped or shortly after that.

b. Payment Terms. VAR's payment terms will be net thirty days from the invoice date, subject to continuing credit approval. For invoices not paid within thirty days of the invoice date, a late penalty charge of one percent (1%) per month (pro-rated daily) or the maximum rate allowed by applicable usury laws, whichever is greater, will be applied against overdue amounts. If amounts are overdue, Dell may, without waiving any other rights and remedies to which Dell may be entitled, decide not to accept additional orders from VAR, terminate this Agreement, refuse to ship ordered Products, cease to provide warranty or customer support and/or seek collection from VAR of all amounts due, including reasonable legal fees and costs of collection.

c. Security Interest. VAR hereby grants to Dell, and Dell hereby retains, a purchase money security interest and lien on any and all of VAR's right, 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 charges and costs of collection. VAR consents to Dell's use of this Agreement, as well as Product invoices, as financing statements for protecting this security interest and appoints Dell as VAR's agent for service of process.

6. Service and Support

VAR is responsible for and shall establish and maintain support services for its customers. VAR may also purchase Custom Factory Integration services from Dell as set forth in Attachment 2.

a. Dell-branded Products. For Dell-branded Products, VAR, may contract for on-site service similar to that which Dell markets to its customers generally. If VAR purchases on-site service for its end-user customers, Dell will provide the service in accordance with the then-current applicable services contract and then only after VAR has transferred the service contract from itself to its end-user customer and recorded that transfer with Dell. To transfer service, contact Customer Service or go to http://www.dell.com/us/en/dhs/topics/sbtopic_015_ccare.htm.

b. Solution Provider Direct Products. Dell technical support and limited parts replacement service are only available to VAR as set forth in Attachment 3.

7. Software

Dell may distribute Software, including Software licensed by Microsoft Corporation, with the Products. All Software distributed with the Products is subject to the license agreement shipped with the Software. VAR agrees that VAR and all of VAR's end-users of the Software are bound by, and will abide by, all Software licensing agreements if and when: (a) for preloaded Software, the Products are first used; or (b) for Software delivered with the Products, the Software packaging is opened or the seal on the Software package is broken. Any warranty provided on Software is provided by the licensor and may vary.

8. Warranties

a. General. The Products consist of hardware that is manufactured by Dell and other goods manufactured by other companies that are distributed to VAR by Dell. Dell-branded Products and Solution Provider Direct Products carry a limited warranty described below. Products manufactured by other companies may carry with them a limited warranty from the original manufacturer ("Third Party Warranty"). Dell is not responsible for fulfilling any Third Party Warranty. VAR will rely solely on the issuer of any Third Party Warranty for all obligations under the Third Party Warranty. Dell also may distribute Software to VAR, including Software licensed by Microsoft Corporation. All such Software is provided to VAR subject to specific Software licensing arrangements (see "Software"). Dell has not tested or certified its Products for use in high risk applications including medical life support, nuclear power, mass and air transportation control or any other potentially life critical uses. VAR understands and agrees that Dell makes no assurances that the Products are suitable for any high-risk uses. Dell may upgrade, revise, change the configuration of, or discontinue Products during the term of this Agreement. Product re-engineering may occur between the time VAR orders Products from Dell and when those Products are shipped to VAR. All Products shipped to VAR or on VAR's behalf, however, will meet or exceed all material specifications of the Products ordered.

b. Limited Warranty on the Products. Dell will indicate the limited warranty period for the Dell-branded Products and Solution Provider Direct Products on the invoice. The limited warranty period will begin on the earlier of the date that the Dell-branded Products or Solution Provider Direct Products are placed in service by VAR's end-user or three (3) days from the date such

Products are shipped from Dell's manufacturing location to the location designated by VAR. The terms and conditions of the limited warranties for Dell-branded Products are available at <http://www.dell.com/policy/legal/termsofsale.htm>, and the terms and conditions of the limited warranties for Solution Provider Direct Products are available at <http://www.SolutionProviderDirect.com/warranty>, although the exact terms may be revised from time-to-time at Dell's discretion. The limited warranty statement in place at the time of purchase is the limited warranty statement that will apply to the Products purchased. The limited warranty statement provided at the URLs or otherwise made available to VAR is the exclusive statement of the controlling terms and conditions of the limited warranties on Products. Nothing in this Agreement or any other written documentation or any oral communications with VAR or other parties may alter the terms and conditions of Dell's limited warranty statement. For Dell-branded Products, VAR agrees to only pass on to VAR's end-users Dell's limited warranties and VAR will be liable for any greater warranty that VAR purposely or inadvertently transfers to VAR's end-users. VAR will indemnify, defend and hold Dell harmless for any damages or other costs that arise because of VAR's failure to properly inform VAR's end-users of Dell's limited warranties (see "Indemnity from VAR to Dell").

c. Repairs for Dell-branded Products. Dell will complete warranty repairs according to the limited warranty applicable at the time VAR purchases Products from Dell. For Dell-branded Products for which VAR has transferred the limited warranty, Dell will complete warranty repairs only after VAR has recorded the transfer with Dell. To transfer warranties, contact Customer Service or go to http://www.dell.com/us/en/dhs/topics/sbtopic_015_ccare.htm. Dell assumes no obligation to repair non-warranted defects in Products or to repair Products after the warranty period has expired.

d. Parts Replacement for Solution Provider Direct Products. VAR's exclusive warranty remedy for Solution Provider Direct Products shall be parts replacement as set forth in Attachment 3. VAR's warranty for Solution Provider Direct Products shall not be honored if VAR fails to comply with Attachment 3. VAR agrees that Dell's limited warranty is not transferable, it shall not be passed on to VAR's end-users and VAR shall be solely responsible for providing and fulfilling any warranty it makes to VAR's end-users.

e. Warranty Disclaimers. DELL DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES ON PRODUCTS EXCEPT THOSE INCLUDED IN THE LIMITED WARRANTY STATEMENTS SHIPPED WITH PRODUCTS. THOSE LIMITED WARRANTY STATEMENTS ARE THE EXCLUSIVE CONTROLLING TERMS AND CONDITIONS OF THE LIMITED WARRANTIES FOR PRODUCTS, AND THERE ARE NO WARRANTIES FOR SERVICES. NOTHING IN THIS AGREEMENT OR ANY OTHER WRITTEN DOCUMENTATION OR ANY ORAL COMMUNICATIONS WITH VAR MAY ALTER THE TERMS AND CONDITIONS OF DELL'S LIMITED WARRANTY STATEMENTS OR DELL'S DISCLAIMER OF WARRANTY FOR SERVICES. DELL MAY, IN ITS SOLE DISCRETION, REVISE ITS LIMITED WARRANTIES FROM TIME TO TIME. NO CHANGE IN LIMITED WARRANTIES WILL AFFECT PRODUCTS ALREADY ORDERED BY VAR. WARRANTY SERVICE AND TECHNICAL SUPPORT MAY BE DISCONTINUED BY DELL FOR VAR'S NON-PAYMENT. OVERDUE INVOICE BALANCES WILL VOID DELL'S LIMITED WARRANTIES. **DELL DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** ANY WARRANTY PROVIDED ON SOFTWARE OR A S&P PRODUCT IS PROVIDED BY THE PUBLISHER OR ORIGINAL MANUFACTURER AND MAY VARY FROM PRODUCT TO PRODUCT.

9. Indemnification

a. Dell's Indemnity for Infringement of Third Party Intellectual Property Rights. Dell will indemnify VAR from any third party claim, demand, cause of action, debt or liability (including attorneys' fees and expenses) that Dell-branded Products or Solution Provider Direct Products infringe, misappropriate or otherwise violate any Intellectual Property rights of a third party in the

United States (an "Indemnified Claim"). Dell will not indemnify VAR or bear any responsibility for any claim, demand, cause of action, debt or liability based, in whole or part, upon VAR's modification of the Products or from any combination, operation or use of the Products with other products or services. Dell's duty to indemnify under this Section is contingent upon Dell receiving prompt notice of an Indemnified Claim and Dell's right to solely control resolution of the Indemnified Claim. VAR's sole remedy for an Indemnified Claim is as follows: Dell will, at its expense and in its discretion, either (a) resolve the Indemnified Claim in a way that permits continued ownership and use of the affected Product; (b) provide a comparable non-infringing replacement Product at no cost to VAR; or (c) accept return of the Product freight collect and provide a reasonable depreciated refund for the Product. This Section is an exclusive statement of Dell's liability and responsibility for Indemnified Claims and nothing in this Agreement or elsewhere will obligate Dell to provide any greater indemnity to VAR.

b. Indemnity from VAR to Dell. VAR will indemnify, defend and hold Dell, including Dell's partners, officers, directors, agents, employees, subsidiaries, affiliates, parents, successors and assigns, harmless from any claim, demand, cause of action, debt or liability: (a) that VAR's modifications of and/or additions to the Products infringe on, misappropriate or otherwise violate the Intellectual Property of a third party; (b) by VAR's end-users other than an Indemnified Claim described in "Dell's Indemnity for Infringement of Third Party Intellectual Property Rights" above; or (c) that the Products sold to VAR under this Agreement damage a third party to the extent such Claim is based on (1) VAR's misuse or abuse of the Products, negligence or breach of any provision in this Agreement; (2) failure of VAR to abide by all applicable laws, rules, regulations and orders that affect the Products; or (3) VAR or VAR's end-users cause intentional harm to any person or property. VAR's duty to indemnify, defend and hold harmless under this Section is contingent upon VAR receiving prompt notice of any claim, demand, cause of action, debt or liability for which VAR must indemnify Dell and VAR's right to solely control the defense of all matters for which VAR is liable under this Section.

10. *Limitation of Liability*

BOTH PARTIES EXPRESSLY AGREE THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND DAMAGES RESULTING FROM LOSS OF USE OR LOSS OF CORRUPTED DATA OR SOFTWARE, EVEN IF SUCH PARTY HAS BEEN ADVISED, KNEW OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY THEREOF. THE PARTIES EXPRESSLY WAIVE ANY CLAIMS DESCRIBED IN THIS SECTION. VAR FURTHER AGREES THAT IT SHALL INCLUDE IN ALL AGREEMENTS SELLING, LEASING, OR TRANSFERING OWNERSHIP OF THE PRODUCTS, A PROVISION SIMILAR TO THE ABOVE DISCLAIMING AS TO DELL LIABILITY FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. DELL WILL NOT HAVE ANY LIABILITY FOR ANY DAMAGES ARISING FROM THE USE OF THE PRODUCTS IN ANY HIGH RISK ACTIVITY, INCLUDING, BUT NOT LIMITED TO, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL SYSTEMS, LIFE SUPPORT, OR WEAPONS SYSTEMS.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, VAR AGREES THAT DELL'S, INCLUDING DELL'S AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, LIABILITY RELATED TO OR ARISING OUT OF THE PURCHASE OF PRODUCTS OR SERVICES PURSUANT TO THIS AGREEMENT IS STRICTLY LIMITED TO THE TOTAL DOLLAR AMOUNT OF PRODUCTS AND SERVICES PURCHASED AND PAID FOR BY VAR PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE DELL IS NOTIFIED BY VAR OF ANY CLAIM OF LIABILITY.

11. *Confidential Information, Public Release of Information and Advertising*

a. Confidentiality and Non-Disclosure. If a separate, written nondisclosure agreement exists between Dell and VAR, 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 VAR, the terms listed in Attachment 1 will apply to the confidential information the parties exchange with each other. In addition, VAR agrees to not disclose that Solution Provider Direct Products are manufactured by or for Dell without Dell's prior written approval.

b. Public Release of Information. Neither Party may publicly release any information relating to this Agreement, including the existence of this Agreement, without first receiving the prior written approval of the other Party. Relative to Dell, such prior written approval must be obtained from Dell's public relations department. No other department within Dell is authorized to consent to public releases of information.

c. Trademarks and Advertising. VAR is permitted to use the "Dell" name and Dell's product names (collectively, the "Approved Names"), solely for the purpose of accurately identifying the Dell-branded Products VAR is marketing and/or reselling. VAR may not use any logo of Dell's, and may not use any name or mark of Dell's other than the Approved Names, without Dell's prior, written permission. VAR may not register or use any domain name or business name containing or confusingly similar to any name or mark of Dell's. VAR agrees to ensure that its use of the Approved Names will not be likely to create the impression that Dell is affiliated with VAR or has sponsored, authorized, approved or endorsed VAR's business, any VAR offer or any marketing, advertising or promotion thereof. VAR will clearly and prominently identify itself in all offers and advertising, marketing and promotional materials relating to this Agreement. VAR acknowledges that Dell is the sole owner of all right, title and interest in and to Dell's marks, names and logos, including but not limited to the Approved Names, and that VAR acquires no right, title or interest in said marks, names and logos. VAR agrees that it will not at any time challenge the validity of Dell's rights in its marks, names and logos, including but not limited to the Approved Names.

12. About Our Relationship Under This Agreement

a. General Regulatory Compliance. Each party, at its own expense, will comply with all applicable laws, orders and regulations of any governmental authority with jurisdiction over its activities in connection with this Agreement. Each party will furnish to the other any information required to enable the other party to comply with applicable laws and regulations related to the Products.

b. Import/Export Compliance. VAR shall not, directly or indirectly, export, re-export or transship Products in violation of any applicable export control laws and regulations of any country having jurisdiction over the Products or the parties to this Agreement ("Export Laws"), including without limitation, the U.S. Export Administration Regulations, the Enhanced Proliferation Control Initiative (EPCI) Regulations, the Foreign Asset Control Regulations and any economic sanctions imposed by the United States Government upon any foreign country. VAR represents and warrants that the Products will not be destined for a prohibited chemical, biological or nuclear weapons or missile use. VAR agrees, at VAR's own expense, to comply with all applicable Export Laws and will, in accordance with the indemnification provisions of this Agreement, indemnify, defend and hold Dell harmless from any claim against Dell due to VAR's violation or alleged violation of the Export Laws.

13. Notice

To give notice under this Agreement, the notice must be in writing and will be effective when delivered to the other party at the addresses listed at the beginning of this Agreement. For notices to Dell, VAR will send a copy to Dell Marketing L.P., Attn: Contracts Manager, One Dell

Way, RR 2W, Box 8201, Round Rock, TX 78682. Any change of address must be sent to the other party in writing.

14. Miscellaneous

- a. General Assignments and Assignment for Third Party Leasing. Without the express written consent of the other, either party may not assign this Agreement, except that no consent shall be required for any assignments by Dell to its affiliates or subsidiaries. With Dell's prior approval, for the purpose of leasing Products, VAR may assign its rights to purchase Products under this Agreement to a third party on the terms listed in the Revocable Assignment for Third Party Leasing. VAR may obtain the Revocable Assignment for Third Party Leasing from its sales representative.
- b. Independence of Parties. No provision of this Agreement will or shall be deemed to create a partnership, joint venture or other combination between Dell and VAR.
- c. Entire Agreement. This Agreement (with attachments and Terms and Conditions of our service programs that are material terms of this Agreement, if applicable) is the entire agreement between Dell and VAR with respect to its subject matter and supersedes all prior verbal and written understandings, communications or agreements between Dell and VAR. No amendment to or modification of this Agreement, in whole or part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties.
- d. Severability. 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.
- e. Events Beyond Either Party's Control. Neither party will be liable for any delays resulting from circumstances or causes beyond the party's reasonable control.
- f. Governing Law. The laws of the State of Texas govern this Agreement, excluding its conflicts of laws rules and excluding the United Nations Convention on the International Sale of Goods.
- g. Insurance. VAR agrees to obtain and maintain during the term of this Agreement, comprehensive general liability, including products liability, insurance in a minimum amount of at least One Million Dollars (\$1,000,000.00) with an insurance company having a Best rating of A. Upon Dell's request, VAR will provide to Dell a certificate of the above-mentioned insurance and will provide copies of any new or amended certificates of insurance to Dell. In addition, upon Dell's request, VAR will name Dell as an additional insured on all comprehensive general liability and products liability insurance policies procured in accordance with this Section. VAR will give Dell at least thirty (30) days' prior written notice of any cancellation or termination of insurance required by this Section.
- h. Survival. The following sections of this Agreement will survive any termination or expiration of this Agreement and shall continue to bind the parties and their permitted successors and assigns: "How to Buy Products," "Returns," "Invoicing and Payment and Security Interest," "Warranties," "Indemnification" (but only to the extent explicitly provided for in that Section); "Limitation of Liability," "Confidential Information," "Import/Export Compliance," and "Miscellaneous."

**Attachment 1
to
Schedule A**

CONFIDENTIAL INFORMATION

For purposes of this Attachment 1, "party" or "parties" means Dell Computer Corporation and VAR, including their respective subsidiaries and affiliates who are providing information under this Agreement. The parties agree to maintain confidential information as follows:

- 1. Definition of Confidential Information.** The parties understand and agree that confidential information is any and all current and future Product and/or services information, roadmap, technical or financial information, customer names, addresses and related data, contracts, practices, procedures 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 ("Confidential Information"). Confidential Information excludes any information which would otherwise fall in the definitions above, but which was (a) known to the recipient of the information ("Recipient") before receipt from the disclosing party; (b) publicly available through no fault of Recipient; (c) rightly received by Recipient from a third party without a duty of confidentiality; (d) disclosed by disclosing party to a third party without a duty of confidentiality on the third party; (e) independently developed by Recipient without breach of this or any other confidentiality agreement; or (f) disclosed by Recipient after prior written approval from the disclosing party.
- 2. Obligations of Confidentiality and Remedies.** Recipient agrees to protect the disclosing party's Confidential Information with the same degree of care, but no less than a reasonable degree of care, as Recipient uses with respect to its own Confidential Information. Neither party has any obligation to exchange Confidential Information. Both parties acknowledge and agree that the disclosure of the other party's Confidential Information could cause irreparable harm. Therefore, an injured party is entitled to applicable equitable relief, including injunctions, in addition to other remedies, for such wrongful disclosure of Confidential Information. In addition, disclosure of Confidential Information required by a government body or court of law is not a violation of this Section if the Recipient gives prompt notice of the required disclosure to the disclosing party.
- 3. Term of Confidentiality Obligations.** Recipient's duty to protect Confidential Information expires three (3) years from the date of disclosure of the particular Confidential Information.
- 4. Cooperation Regarding Public Release of Information.** Both parties agree to cooperate with each other in the release of information, whether confidential or otherwise, relating to the Agreement. Each party may mention the other party's name in press releases or other public releases of information as long as they have first obtained the other party's permission, in writing, prior to the release of the information.
- 5. No Warranties on Confidential Information.** Neither party warrants or guarantees the accuracy of any Confidential Information transferred between the parties.

ATTACHMENT 2

Custom Factory Integration Services

Dell will provide factory integration services to Customer on the following terms and conditions:

CFI Services Purchased. This Attachment shall apply each time Customer engages Dell to provide CFI Services as more fully set forth, in each case, on the Technical Specification document to be executed by Customer for each CFI Configuration. CFI services may include:

1. Installation or integration of Customer's custom software image, which may include industry standard and/or custom software (in each case, a "CFI Configuration");
2. Installation or integration of a pre-configured bundle of third party hardware and/or software, in a Dell system ("Order Ready"), and
3. Asset tagging hardware integration or other system integration services.
4. Image Management Services, which may include development and validation by Dell of the Customer specific CFI Configuration.
5. Image Maintenance Services which include notification of changes to those portions of a CFI Configuration that are Dell-branded and that are originally listed on Dell's standard part lists.

Technical Specifications. Dell may, at Customer's request, deliver to Customer a "CFI Configuration", defined as products which include either (i) CFI Services or (ii) Order Ready bundles for a per-system fee to be determined between the parties. Customer is responsible for determining Customer technical specifications for each CFI Configuration and for ensuring that those technical specifications are properly documented to Dell in a verified and signed "Technical Specification" form. Dell is not responsible for the operation or suitability of any CFI Configuration or for any revision or engineering changes in any third party products ("Third Party Products") included in a CFI Configuration. Customer acknowledges that the CFI Configurations are of Customer's choosing. Customer is responsible for ensuring that all technical specifications are properly documented to Dell in a verified and signed "Technical Specification" form. Dell shall be entitled to rely on the Technical Specification form. Dell is not responsible for liability or damage arising from the installation of a CFI Configuration performed in accordance with the Technical Specification form and/or Customer's instructions. If Dell is of the reasonable view that the proposed CFI Configuration is not technically feasible, Dell reserves the right to refuse to proceed with the development of the configuration at any time.

Purchase of Third Party Products. Customer shall be responsible for procuring any Third Party Products included in a CFI Configuration, including items offered through Dell's Third Party Software and Peripherals group. If Customer elects to have Dell procure such Third Party Products, Customer shall provide to Dell a firm purchase order for the number of CFI Configurations to be ordered for which Dell is requested to procure such products. In the event the Third Party Products procured by Dell are not used for CFI Configuration orders within a reasonable time following purchase of the parts by Dell, the Third Party Products will be shipped and invoiced to Customer, and Customer will pay for these parts within thirty (30) days after the date of invoice.

Software Installation. Customer will provide to Dell custom software to be installed in a CFI Configuration and Customer authorizes Dell to copy, install and modify, if necessary, all software to be installed in any CFI Configuration or to be recorded in electronic media for subsequent re-installation of backup. Customer warrants to Dell that it has the right to make or authorize Dell to make copies, alterations, modifications or adjustments to any software included in a custom software image for purposes of installation of the CFI Configuration. Customer warrants to Dell that it has obtained the right to authorize Dell to copy and install any software included in an Order Ready Configuration.

Image Management Services. Image Management Services will be described in an SOW or Technical Specification. Customer changes to the CFI Configuration, including adding new software applications to the core hard drive image or transitioning a hard drive image to a new software platform or a new CFI Configuration will require the development of a new hard drive image and will be treated as a separate Image Management Services transaction.

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

Export. Customer represents and warrants the facts set forth on the Technical Specification form or any technical specification sheet or other document provided by Customer. Customer warrants that software provided by Customer and included in any CFI Configuration contains no encryption or, to the extent that it contains encryption, the software is approved for export without a license. If Customer cannot make the preceding representation, Customer agrees to provide Dell with all of the information needed for Dell to obtain export licenses from the United States government and to provide Dell with such additional assistance as may be necessary to obtain such licenses. Customer is solely responsible for obtaining any specific licenses relating to the export of CFI Configurations if a license is needed. Dell's acceptance of any order for a CFI Configuration is contingent upon the issuance of any applicable export license required by the United States Government; Dell is not liable for delays or failure to deliver a product resulting from

Customer's failure to obtain such license. **FOR THIRD PARTY SOFTWARE PROVIDED BY CUSTOMER FOR INTEGRATION BY DELL IN A CFI CONFIGURATION, CUSTOMER INDEMNIFIES DELL FOR INACCURATE REPRESENTATIONS REGARDING THE ELIGIBILITY FOR EXPORT OF SOFTWARE WITHOUT A LICENSE, AND FOR ANY FAILURE TO PROVIDE INFORMATION NEEDED TO OBTAIN A LICENSE.**

Regulatory Requirements. Dell shall not be under any obligation to install any Third Party Products as part of the CFI Configuration or proceed with a CFI Configuration if such Third Party Products, or the resulting CFI Configuration, do not satisfy the local regulatory requirements of the country to which the CFI Configuration is to be shipped. "Third Party Products" means any non-Dell-branded products sold and/or integrated by Dell with Dell-branded products, whether sold through Dell's Third Party Software and Peripheral program or otherwise; and any software purchased from Dell that is not created or developed by Dell.

Indemnification. Customer agrees to indemnify and hold Dell harmless from any and all liability, damages, claims or proceedings arising out of Customer's failure to obtain the appropriate license or other intellectual property rights to support the installation of the CFI Configuration or Order Ready Configuration, including the right to make any copies or reproductions of the software.

**ATTACHMENT 3 – PARTS REPLACEMENT
FOR SOLUTION PROVIDER DIRECT PRODUCTS ONLY**

1. Certified Training

- 1.1 Training. Dell requires the VAR to participate in a Dell certified training session for each platform family for products procured through Solution Provider Direct. Training must be successfully completed by a certification exam within 30 days of VAR's initial purchase of a Solution Provider Direct Product. Upon successfully completing training, the Solution Provider Direct Certified Technician ("SPD Certified Technician") will be randomly assigned a Technician ID and PIN by Dell.
- 1.2 Re-Testing-Fee: If a technician fails the first certification exam following the training session, there is a fee for resetting the test system for a second attempt. The fees to reset the exams are \$50.00 for the first reset and \$100.00 for the second and all subsequent resets.

2. Parts Replacement

- 2.1 Solution Provider Direct Technical Support. To obtain Parts Replacement, VAR must contact Solution Provider Direct ("SPD") Technical Support by calling:

1-877-861-3355

The VAR must have its Technical I.D. and PIN when contacting SPD Technical Support.
- 2.2 Onsite First Level Diagnosis. VAR is required to use an SPD Certified Technician to diagnosis, service and maintain Solution Provider Direct Products and such Products' components. In the event of a failure for any Solution Provider Direct Products or such Products' parts covered under the SPD limited warranty, the VAR, through its SPD Certified Technician, will perform a first level diagnosis and determine the components required or needed to repair the Solution Provider Direct Product(s). If replacement parts are needed, the VAR, through its SPD Certified Technician, shall contact the SPD Technical Support and provide the results of the diagnostic test and the parts needed to repair the Solution Provider Direct Product to SPD Technical Support Technician.
- 2.3 Additional Troubleshooting. Dell reserves the right to require troubleshooting steps to be performed with an SPD Technical Support Technician.
- 2.4 Component Replacement Installation: All parts under the SPD limited warranty must be replaced by a SPD Certified Technician. Upon the VAR's request, Dell will ship such replacement parts to the end user location. The VAR is solely responsible for replacing any SPD defective part or system at the end user's site.
- 2.5 Non-Dell Sourced Parts. For the Solution Provider Direct Products to continue to be covered by the SPD limited warranty during the warranty period, the VAR is required to use components sourced from Dell for all repairs on the Solution Provider Direct Products. Dell will not be liable for any damages sought by the end user against the VAR regarding parts not sourced from Dell and used by VAR to replace Solution Provider Direct Product components. If the VAR uses non-Dell sourced components or parts to enhance or upgrade Solution Provider Direct Products and damages to the Products) occur because of the non-Dell sourced parts, then the limited warranty on Solution Provider Direct Products and components therein will be void. .
- 2.6 Substitutions List/Table. Throughout the life cycle of a Solution Provider Direct Product platform and its components, Dell may develop and maintain substitution components. Dell will have the authority to send VAR a substitution part as a replacement part at all times. The VAR will be required to use such authorized substitutions as replacements as provided by Dell.
- 2.7 Next Business Day (NBD). If SPD Technical Support determines that a Solution Provider Direct Product or part is covered under the SPD limited warranty, in most cases Dell will dispatch a replacement part on the next business day. The VAR must call SPD Technical Support between the hours of 9:00 a.m. and 5:00 p.m., VAR's time zone. Calls after 5:00 p.m., will be processed the following business day.

3. Parts Return Management

- 3.1 Parts Return: SPD parts or Products diagnosed as defective by the VAR, through its SPD Certified Technician, and replaced by Dell must be returned to Dell by the VAR within five business days from confirmation of replacement part or Product being dispatched by Dell. If the VAR fails to timely return such parts or Products, Dell has the right and authority to invoice the VAR at Dell's standard list price for the replacement part or Product plus costs of additional administrative, handling, and transportation costs incurred in shipping the replacement parts or Products to VAR. Dell reserves the right to invoice the VAR for returns of non-Dell sourced components. Invoice fee will include, but not limited to, standard cost of the replacement parts or Products sent to the VAR, transportation (inbound and outbound), material handling, administrative, processing, disposal, and any other cost of the exchange function. Furthermore, Dell will not return any non-Dell components to the VAR.

3.2 CND and DNC. Failed parts returned by the VAR to Dell will be tested, if applicable. If said tests/screenings do not produce or manifest the same failure result(s) from the VAR's diagnostic testing, then returns will be considered CND's (Could Not Duplicate). The VAR will be allowed to send CND's parts that equal or below 10% of year-to-date Solution Provider Direct Product shipping volume (less returns) from Dell to the VAR during the prior twelve months. If the CND rate exceeds 10% during any twelve month period, Dell will invoice the VAR for the replacement of the CND part(s) replaced and also, but not limited to, applicable charges such as transportation (inbound and outbound), material handling, processing, administrative, testing/screening, and any other applicable expenditures or charges. The VAR will work to continuously improve the CND rate and if the parties mutually agree, such CND rate will be lowered to reflect such improvement.

Did Not Consume (DNC) returns represent replacement part(s) requested by the VAR that were returned back to Dell without being used or consumed. Upon Dell's request, VAR will mark each replacement part not consumed with an DNC label or tag based on Dell instructions.

3.3 Parts Per Dispatch. If a VAR exceeds the Dell parts per repair rate (return rate is based the platform family population) by 20%, Dell may terminate this agreement at its sole discretion. Subject to Dell's sole discretion and availability, the VAR will be permitted to purchase SPD replacement parts and Products from Dell. Lead-time of replacement parts and Products will be subject to availability.

2.4 System Return. Dell reserves the right to require the VAR to ship a Solution Provider Direct Product back to Dell for diagnostic testing if the particular system(s) has excessive service incidents. If Dell finds that the system(s) failure is due to damage caused by the VAR or end user, then the limited warranty for the system will be void. In such event, Dell reserves the right to invoice the VAR for any related testing/screening functions and any logistics cost.

4. Engineering Change Orders

4.1 ECO instructions. Dell may have engineering changes orders (ECO) for Solution Provider Direct Product platforms and their related components. If Dell furnishes such ECO instructions to the VAR, the VAR will be responsible for complying with any such furnished ECO instructions. The VAR is responsible for any ECO instructions due to safety issues with respect to the end user.

VAR is responsible for flashing the latest BIOS as notified by Dell. Dell reserves the right to invoice the VAR for all systems and/or components returned to Dell resulting from the incorrect BIOS.

5. Spares Sales

4.1 Spare Parts. Dell may sell replacement parts as spares to the VAR outside of the limited warranty on any Solution Provider Direct Products purchased by VAR from Dell. Delivery and lead-time for spare parts sales are not NBD and are not covered by the limited warranty for Solution Provider Direct Products. Spare sales will be subject to availability only. Parts purchased from Dell's Spare Parts Sales Department are sold as "reconditioned." Reconditioned parts carry a 90-day limited warranty. Under this limited warranty, Dell will replace the part if the part fails due to defects in materials or workmanship during the 90-day period beginning on the invoice date. The type of labor coverage (parts-delivery, on-site or return-to-Dell) is determined by the type of labor coverage for the system in which it is installed. Any reconditioned parts purchased that are listed as not covered under Dell's limited warranties are covered only by the original manufacturer's warranty.

4.2 Return Policy for Purchased Spare Parts. Reconditioned parts may be returned for a credit of the product/part purchase price within the first 10 business days from the invoice date. The credit will not include any shipping and handling charges shown on your invoice. If you are an organization who bought the product/part from Dell under a written agreement with Dell, there may be different terms for the return of product/parts under your agreement with Dell. To return a product/part, you must first call Dell Customer Service (at the telephone number listed in the chapter titled "Getting Help" in your Diagnostics and Troubleshooting Guide or the section titled "Contacting Dell" in your online System User's Guide) to receive a Credit Return Authorization Number and the correct shipping address. You must ship the products/parts to Dell in their original packaging, prepay shipping charges, and insure the shipment or accept the risk of loss or damage during shipment. Returned products/parts must be in as-new condition, and all of the manuals, diskette(s), CD(s), power cables, and other items included with a product/part must be returned with it. To expedite the processing of your credit, Dell expects that you will return the complete package to Dell, in the proper packaging, within five days after Dell issues the Credit Return Authorization Number. Returns arriving outside of the five-day window are subject to depreciation of the final refund/credit. Incomplete returns may not be credited.