

DELL SYSTEM INTEGRATOR AGREEMENT - SOUTH ASIA

TERMS AND CONDITIONS

1. DEFINITION

As used herein, the following terms shall have the following meanings:

Annual Commitment means SI's binding commitment to purchase a minimum annual dollar amount of Products. SI's Annual Commitment is stated in the Schedule.

Approved Accounts means the accounts listed in the Schedule.

Intellectual Property means all patents, applications for patents, copyrights, mask works, layout-design rights, trade secrets, trademarks, registered designs, know-how and any other intellectual or proprietary rights recognized by any jurisdiction.

Products means computer hardware and related products, including Software and Third Party Products as set out in the Schedule. Such Software may be subject to third party licensing agreements.

SI means the System Integrator named in the Schedule.

Service Offerings means the different service options offered by Dell for the Products or any parts thereof as set out in Dell's published literature.

Software means all device drivers, firmware and all other software.

Territory means the country or countries specified in the Schedule.

Third Party Products means Software and Products sold by Dell which are not manufactured or assembled or authored by Dell Computer Corporation or any of its subsidiary companies but supplied by third parties.

2. SCOPE OF PARTIES' RELATIONSHIP

2.1 Appointment. Dell hereby appoints SI to resell and remarket Products to Approved Accounts in the Territory. SI agrees not to solicit or take orders for the Products from persons other than the Approved Accounts and persons who are situated outside the Territory.

2.2 Modification of Approved Accounts. The Approved Accounts shall not be modified, added or deleted in all cases except in writing signed by both parties. SI agrees to comply with Dell's then prevailing application process to so modify the Approved Accounts. Approval of such application shall be in Dell's absolute discretion and subject to such terms and conditions as Dell may require. No reasons whatsoever shall be assigned by Dell for any rejection of any such application submitted by SI.

2.3 List of Customers. Subject to clause 13.1, SI will maintain a list of Approved Accounts acquiring Products sold by Dell to SI and will make the list available to Dell upon request so as to enable Dell to notify such Approved Accounts of any information concerning the Products, in the event that Dell is generally required to notify all other customers of such Products.

2.4 Product Content Value Add. SI warrants to Dell that the business it will derive from the Products will be based on adding product content value to them or integrating them into or with other products or services, and then marketing the resultant value-added products or services. SI will not remarket the Products by themselves or remarket Products when the only added value is installation of devices that Dell markets as part of its systems, such as disks, tape drives and monitors.

2.5 Distribution of Products. SI may not use distributors, third party sales agents or other remarketers to sell the Products without Dell's prior written approval. SI also agrees not to market any Products through any retail outlets including any online web stores.

2.6 Non-Exclusivity. This Agreement is not exclusive. Dell may appoint other SIs to sell or may directly market Products to anyone, including without limitation Approved Accounts in the Territory.

2.7 Document Delivery. SI will provide all Approved Accounts with Product warranty statements, registration cards,

Software license agreements and other materials that Dell includes with its shipments of Products to SI. In addition, SI is responsible for providing Approved Accounts with all similar information related to its value-added modifications of the Products.

2.8 Relationship of the Parties. Dell and SI are independent contractors. Neither Party will make any warranties or representations or assume any obligations on the other Party's behalf. Neither Party is nor will claim to be a legal representative, partner, franchisee, agent or employee of the other Party.

3. PRICES

3.1 Product Prices. The price at which Dell will sell the Products to SI is based on a discount off Dell's then standard list prices for the Products. Dell's standard list prices are those that Dell generally makes available to the public in the Territory. SI's discounts are listed in the Schedule and are based on SI's Annual Commitment. With fourteen (14) days' prior notice, Dell may adjust SI's discounts if SI's purchases do not meet SI's Annual Commitment as measured on a prorated quarterly basis.

3.2 Calculation of Discounts. SI's discounts are calculated as a reduction off standard list prices before the addition of shipping and handling charges and any taxes, duties or such additional sums associated with the sale of the Products. SI's discounts are not available for special Product promotions or pricing and cannot be combined with other offers.

3.3 Discount Level. Unless you and Dell have agreed to a different discount, Dell's standard pricing policy for Dell-branded systems, which include both hardware and services in one discounted price, allocates the discount off list price applicable to the service portion of the system to be equal to the overall calculated percentage discount off list price on the entire system.

3.4 Taxes. SI agrees to pay all sales, goods and services, business, value added and other transactional taxes associated with the sale of the Products.

4. ORDERS, DELIVERY AND ACCEPTANCE

4.1 Ordering Products. Dell's obligation to sell under this Agreement arises when SI offers, and Dell accepts, an order for Products.

4.2 Accepted Orders Binding. Once orders have been accepted by Dell, SI is not entitled to cancel any orders without the express written consent of Dell's.

4.3 Form of Orders. SI must place all orders in writing. All orders must contain the following information: (a) a description of the Product; (b) quantity; (c) price; (d) requested delivery schedule; (e) ship to address and (f) name of end-user.

4.4 Shipping Dates, Delivery, Title and Risk. Dell will estimate a ship date for all orders Dell accepts. Ship dates are estimates only and do not guarantee a delivery date to SI or bind Dell to meet any specific delivery schedule. Dell may, at its discretion, deliver the Products by instalments in any sequence. Where the Products are so delivered by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by Dell in respect of any one or more instalments shall vitiate this Agreement in respect of Products previously delivered or undelivered products. Title and risk in the Products passes from Dell to SI when the Products are delivered by Dell to SI at the "ship to" address set out in SI's orders.

4.5 Unless SI notifies Dell to the contrary on the day of delivery and such notification is confirmed in writing within two days, the products shall be deemed to have been accepted by SI as being in good condition and in accordance with this Agreement. SI shall not be entitled to withhold payment of

all or any of the price of the Products whilst any claim is being investigated by Dell.

5. PAYMENT

- 5.1 **Invoice and Payment Terms.** Unless credit terms have been expressly agreed by Dell, payment for the Products shall be made in full before physical delivery of the Products to SI (or SI's customer). Time for payment is of the essence. Dell reserves the right to charge interest on sums overdue, on a day to day basis, as well after as before any judgment, from the due date for payment thereof to the date of actual payment (both days inclusive) at the rate of 15% per annum. Such interest shall be payable on demand.
- 5.2 **Other Effects of Non-Payment.** In addition, without waiving any other rights and remedies at law or under this Agreement, if an invoice is overdue, Dell may (a) refuse to accept additional orders under this Agreement; (b) terminate this Agreement; (c) refuse to ship ordered Products; and/or (d) seek collection from SI, including all legal fees and other costs of collection.

6. WARRANTY

- 6.1 **General Warranty.** Unless specified otherwise, Dell warrants to SI that Dell branded Products (excluding Third Party Products), will be free from defects in materials and workmanship affecting normal use for a period of one year from invoice date ("Standard Warranty"). This Standard Warranty does not cover damage, fault, failure or malfunction due to external causes, including accident, abuse, misuse, problems with electrical power, servicing not authorized by Dell, usage and/or storage and/or installation not in accordance with Product instructions, failure to perform required preventive maintenance, normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence; any attempt by any person other than Dell personnel or any person authorised by Dell, to adjust, repair or support the Products and problems caused by use of parts and components not supplied by Dell. The Standard Warranty does not cover any items that are in one or more of the following categories: software; external devices; accessories or parts added to the Product after the Product is shipped from Dell; accessories or parts added to the Product through Dell's Custom Factory Integration (CFI) program; accessories or parts that are not installed in the Dell factory; or third party products purchased under Dell Software & Peripherals (S&P) Program.
- 6.2 **Warranty Service.** During the one-year period beginning on the invoice date, Dell will repair or replace Products in accordance with the provisions of clause 8 below.
- 6.3 **Warranty Term for Replacement Parts.** The warranty term for a spare part used in repairing Products ("Replacement Part") is 90 days from its installation in the Product or the remainder of the warranty term for the Product into which it is installed, whichever is longer. Dell owns all parts removed from repaired Products. Dell uses new and/or reconditioned parts made by various manufacturers in performing warranty repairs and building replacement Products. For the avoidance of doubt, the warranty term of a Product is not extended after its repair or replacement. SI will pay Dell for a Replacement Part when the part replaced is not returned by SI or its customer to Dell within 10 days after the date the Replacement Part was delivered by Dell. Prices of the part replaced will be at Dell's then current standard price in the Territory.
- 6.4 **Exclusions.** Dell does not give any warranty that the Products are fit for any particular purpose and this Standard Warranty is given in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, trade usage, course of dealing or otherwise including warranties or conditions of merchantability, fitness for purpose, satisfactory quality and/or compliance with description, all of which are hereby excluded to the fullest extent permitted by law.
- 6.5 **Service Offerings.** If SI has chosen any Service Offering available in the Territory or the Products purchased by SI are sold bundled with a Service Offering in addition to the Standard Warranty, such Service Offering will be listed on

SI's invoice, and the provisions of that Service Offering shall apply in addition to the Standard Warranty.

- 6.6 **Third Party Products.** SI agrees that, in relation to Third Party Products purchased through Dell, where such of the Third Party Products are covered by a relevant manufacturer's warranty, then the Standard Warranty shall not extend to such Third Party Products and such manufacturer's warranty shall be the sole warranty in respect of such Third Party Products. The SI shall utilise that warranty for the support of such Third Party Products and in any event not look to Dell for such warranty support.
- 6.7 **SI's Warranty to Its Customers.** SI agrees to only pass on to SI's customers Dell's limited warranties within the scope of this Clause 6 and SI will be liable for any greater warranty that SI purposely or inadvertently transfers to SI's customers. SI will indemnify, defend and hold Dell harmless for any damages or other costs that arise because of SI's failure to properly inform SI's customers of Dell's current limited warranties.

7. SOFTWARE

- 7.1 **General.** All Software provided under this Agreement are furnished subject to the terms and conditions of the license agreement relating to that Software. Software license agreements may be packaged with the Software, may be separately provided to SI or its customer for signature or may require on-screen acceptance. SI agrees that SI and all its customers are bound by and will abide by such license agreements. SI acknowledges that Dell does not warrant any Software under this Agreement. All Software is warranted in accordance with the license agreement that governs its use.
- 7.2 **Rights, Title and Interests in Software.** Where the terms "sale" and "purchase" are used herein in relation to Software, such terms shall mean the sale and purchase of the license to use the Software. All rights, title or interest in respect of the Intellectual Property rights in the Software remain with Dell or the third party licensor of the Software at all times. SI shall not remove any copyright, trademark or other proprietary notices from the Software or any part thereof.

8. SERVICE AND TECHNICAL SUPPORT

- 8.1 **Service Offerings.** Dell shall provide the following standard Service Offerings in respect of the Products:-
- (a) **Dell Telephone Support.** Dell shall provide lifetime hardware fault diagnosis over the telephone ("Telephone Support") for SI at no additional charge. For the purposes of this clause, "lifetime" refers to the lifetime of the Product.
- (b) **Remedial Support.** During the term of the Standard Warranty, upon receipt of notification from SI that the Products have failed or are malfunctioning (not excluded by clause 6), and in the event that the fault is unable to be rectified using Dell Telephone Support, Dell undertakes to use all reasonable endeavours during Dell's normal service hours to make such corrections, repairs or adjustments to or replace such parts of the Products as may be necessary to restore the Products to their proper operating condition. The extent of such remedial support and whether this is achieved remotely or by an on-site visit depends upon the particular Service Offering chosen and purchased by SI (as evidenced on SI's quotation/Invoice) or the specific Service Offering sold bundled with the Product. Product upgrades are not eligible for on-site service unless the whole Product is under warranty or service coverage.
- 8.2 **Response Time for On-site Service.** For on-site service, Dell undertakes to use all reasonable endeavours to despatch a suitably qualified service engineer to arrive at the SI's or the SI's customer's premises within the response time specified by the Service Offering purchased by SI or bundled with the Product. Response times commence from the time the Dell Telephone Technical Support engineer decides that an on-site remedial support is necessary. Unless otherwise specified in the relevant Service Offering, a response time measured in hours includes only business hours within Dell's normal service hours.

- 8.3 **Exceptions.** The Service Offerings do not include: (a) provision of Services at places other than ship to address as set out in SI's orders unless Dell specifically agrees otherwise; (b) the correction or avoidance of software defects or errors or the loading or re-loading of SI's (or its customer's) application software or the SI's (or its customer's) data or any re-configuration of the Products beyond loading the operating system software as carried out before shipment; and (c) repair or replacement of diskettes, printing ribbons, typefaces or other consumable supplies.
- 8.4 **Replacement.** Dell reserves the right to replace the whole of the Products or any part or parts thereof which may be found to be faulty or in need of investigation even where only a part of the Products are faulty or in need of investigation. Dell, in effecting such replacement, is under no obligation to supply Products or any parts thereof which are identical in all respects to the faulty Products. Dell reserves the right to supply used or reconditioned parts or Products. Dell shall ensure that any Products or parts thereof used in replacement shall have substantially the same fittings and at least an equivalent specification to the faulty Products or parts thereof. Dell reserves the right to supply Products or parts thereof manufactured by whomsoever it shall, from time to time, deem appropriate. The products or parts supplied to replace the Products or any part thereof shall become the property of SI. The Products or any part or parts thereof removed shall become the property of Dell. Any part or parts removed must be returned to Dell by SI within ten (10) days of the replacement in accordance with 6.3 above which provisions apply.
- 8.5 **Product Relocation.** Warranty coverage for Products purchased from a Dell Asia Pacific subsidiary may be transferred within the Dell Asia Pacific region (subject to the availability of the service coverage of the country to which the Warranty is to be transferred), if an Equipment Transfer Form is submitted to Dell within 10 days of the relocation date. Warranty coverage for Products which were not purchased from a Dell Asia Pacific subsidiary cannot be transferred to the Dell Asia Pacific region unless the Product has been validated by Dell to be in full warranty condition whereupon SI will be given a new warranty for a period of not more than 3 years from the original invoice date. The validation service will be performed, at SI's request, on a chargeable basis, and any extension of existing warranty service period to the maximum of 3 years will be charged.
- 8.6 **Termination of Service** If SI breaches any or all of the provisions under this Agreement or the applicable Service Offering or if Dell, on reasonable grounds, suspects that SI is in breach of the said provisions, the service provisions under this Agreement and the applicable Service Offering shall be terminated and SI shall have no right to make any claims thereunder against Dell in any manner whatsoever.

9. INDEMNIFICATION

- 9.1 **Dell's Indemnity for Infringement of Third Party Intellectual Property Rights.** Dell will indemnify SI from any third party claim, demand, cause of action, debt or liability that Dell-branded Products infringe, misappropriate or otherwise violate any Intellectual Property rights of a third party in the Territory (**Indemnified Claim**). Dell will not indemnify SI or bear any responsibility for any claim, demand, cause of action, debt or liability based, in whole or part, upon SI'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 hereunder is contingent upon Dell receiving prompt notice of an Indemnified Claim and Dell's right to solely control resolution of the Indemnified Claim. SI'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 SI; or (c) accept return of the Product freight collect and provide a reasonable depreciated refund for the Product. This 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 SI.

- 9.2 **Indemnity from SI to Dell.** SI 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 SI's modifications of and/or additions to the Products infringe on, misappropriate or otherwise violate the Intellectual Property of a third party; (b) by SI's customers other than an Indemnified Claim described above; or (c) that the Products sold to SI under this Agreement damage a third party to the extent such Claim is based on (1) SI's misuse or abuse of the Products, negligence, omission, or wilful misconduct of SI, its employees, agents or sub-contractors or breach of any provision in this Agreement; (2) failure of SI to abide by all applicable laws, rules, regulations and orders that affect the Products; or (3) SI or SI's customers cause intentional harm to any person or property. SI's duty to indemnify, defend and hold harmless under this Clause is contingent upon SI receiving prompt notice of any claim, demand, cause of action, debt or liability for which SI must indemnify Dell and SI's right to solely control the defense of all matters for which SI is liable under this Clause.

10. LIMITATION OF LIABILITY

- 10.1 **Liability Cap.** Dell's total liability under this Agreement shall not exceed the total dollar amount of Products purchased by SI pursuant to this Agreement during the twelve months immediately preceding the date Dell is notified by SI of any claim or liability.
- 10.2 **Injury or Death.** Where injury or death of any person arises, the liability of Dell shall be limited as stated in 10.1 above or to the minimum limit (including no limit) allowed by law in the country where such injury or death occurs. Where the law of a country does not allow a limitation with respect to the injury or death of any person, this clause shall be read as if no limit applies.
- 10.3 **Loss of Data, Profits and Consequential Damages.** Dell shall not be liable or responsible for Products not being available for use, or for data or software which is lost, corrupted, deleted or altered. Dell shall not be liable 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 Dell has been advised, knew of or should have known of the possibility thereof. SI further agrees that it shall include in all agreements selling, leasing, or transferring ownership of the products, a provision similar to the above disclaiming as to Dell's liability for incidental, indirect, special, or consequential damages.

11. CONFIDENTIAL INFORMATION

- 11.1 **Definition of Confidential Information.** Confidential information is any and all current and future Product 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, or information which by its nature is clearly confidential, however and wherever acquired (**Confidential Information**). Confidential Information excludes any information which was (1) known to the recipient Party (**Recipient**) before receipt from the disclosing Party; (2) publicly available through no fault of Recipient; (3) rightly received by Recipient from a third party without a duty of confidentiality; (4) disclosed by disclosing Party to a third party without a duty of confidentiality on the third party; (5) independently developed by Recipient without breach of this or any other confidentiality agreement; or (6) disclosed by Recipient after prior written approval from the disclosing Party.
- 11.2 **Obligations of Confidentiality and Remedies.** Recipient will protect, for a period of three (3) years from the date of disclosure, 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. The disclosure of Confidential Information required by a government body or court of law is not a violation of this Clause if the Recipient gives prompt notice of the required disclosure to the disclosing Party.

- 11.3 Return of Other Party's Confidential Information. Upon any termination of this Agreement, each Party will promptly return to the other Party all Confidential Information of the other Party in its possession or control (including all media or physical evidence thereof).

12. PUBLICITY, TRADEMARKS, RETENTION OF INTELLECTUAL PROPERTY RIGHTS AND ADVERTISING

- 12.1 Publicity. SI may not publicly release any information relating to this Agreement, including the existence of this Agreement, without first receiving Dell's prior written approval.
- 12.2 Trademarks. SI agrees not to alter, obscure, remove, interfere with or add to any of the trade or service marks, trade names, markings or notices affixed to any of the Products, to the Product packaging or to the documentation delivered together with the Products.
- 12.3 Retention of Intellectual Property Rights. All Intellectual Property rights in the Products shall at all times remain vested in Dell or the third party licensor, regardless of any references or usages to the contrary in this Agreement.
- 12.4 Indemnity. SI agrees to, in accordance with the indemnification provisions of this Agreement, indemnify, defend and hold Dell harmless from any and all damages that accrue to Dell due to SI's failure to comply with the provisions in this Agreement.

13. COMPLIANCE

- 13.1 General Regulatory Compliance. SI represents and warrants and undertakes to Dell that it will, at its own expense, comply with all applicable laws, orders and regulations of any governmental authority with jurisdiction over its activities in connection with this Agreement including all laws relating to personal data and privacy. If requested by Dell, SI will furnish to Dell any information required to enable Dell to comply with applicable laws and regulations related to the Products.
- 13.2 Import/Export Compliance. SI acknowledges that the Products licensed or sold hereunder, which may include technology and software, are not only subject to the export control laws and regulations of the United States ("U.S.") but may also be subject to the export and control laws and regulations of the country in which the Products are received. SI agrees to abide by all applicable export control laws and regulations. Under such laws and regulations, the Products purchased may not be sold, leased or otherwise transferred to restricted end-users or to restricted countries. In addition, the Products may not be sold, leased or otherwise transferred to, or utilized by, an end-user engaged in activities related to weapons of mass destruction, including but not necessarily limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. SI understands that applicable requirements or restrictions may vary depending on the Products delivered and may change over time and that, to determine the precise controls applicable to the products acquired, it may be necessary to refer to relevant laws and regulations.
- 13.3 Foreign Corrupt Practices Act. SI acknowledges that it is familiar with the Foreign Corrupt Practices Act of the U.S. ("the FCPA") and the FCPA's prohibitions regarding the payment or giving of anything of value, either directly or indirectly, to an official of a foreign government or political party for the purpose of influencing an act or decision in his official capacity or inducing the official to use his or his party's influence with that government, to obtain or retain business involving Products. SI agrees to not violate or knowingly let anyone violate the FCPA with respect to the sale, licensing and use of the Products.

- 13.4 Illegal or Unethical Practices. SI shall not by itself or with others participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, disparagement of the Products or Dell or any of its affiliate companies or other practices which may be detrimental to the Products or Dell.

14. TERM AND TERMINATION

- 14.1 One Year Term. The term of this Agreement is one (1) year beginning on the Commencement Date. This Agreement will automatically renew for consecutive additional one (1) year terms unless either Party notifies the other Party of its intent to terminate this Agreement at least thirty (30) days before the end of the then-current term.
- 14.2 Thirty Day No Cause Termination. Dell may terminate this Agreement in Dell's sole discretion, with or without cause, upon at least thirty (30) Days prior written notice to SI.
- 14.3 Termination for Cause. Either Party may at its option, and upon written notice to the other Party, immediately terminate this Agreement if: (a) a material violation or breach of this Agreement by the other Party is not remedied within ten (10) Days after the breaching Party's receipt of written notice of the violation or breach; (b) the other Party admits in writing its inability to pay its debts generally as they become due, files a petition for bankruptcy or executes an assignment for the benefit of creditors or similar document; (c) a receiver, trustee in bankruptcy or similar officer is appointed for the other Party's property; or (d) a majority interest of the equity or assets of the other Party is transferred to an unrelated third party or this Agreement is assigned by SI without Dell's prior written consent.
- 14.4 Effect of Termination. Upon any termination of this Agreement, the provisions of this Agreement shall continue to apply to all orders accepted by Dell prior to the effective date of such termination. Termination of this Agreement shall not relieve SI of any obligation to make payments that are owed to Dell under the terms of this Agreement. Upon termination of this Agreement, SI shall promptly return any tooling, loaned equipment or test fixtures provided by Dell to SI.
- 14.5 Survival. The following clauses of this Agreement shall survive any termination or expiration of this Agreement and shall continue to bind the Parties and their permitted successors and assigns: "Warranty," "Indemnification" "Limitation of Liability," "Confidential Information," "Compliance" and "General".

15. NOTICES

- 15.1 Notices in Writing. All notices which are required to be given shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with the provisions herein. A copy of any notice to Dell which affects or may affect the validity or existence of this Agreement shall also be delivered to Dell Computer Asia PL, 180 Clemenceau Avenue, #06-01 Haw Par Centre, Singapore 239922 (Attn: Legal Department).

16. GENERAL

- 16.1 Entire Agreement. This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire Agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made in writing signed by both parties.
- 16.2 Execution. This Agreement may be executed in one or more counterpart(s), all of which together shall constitute a single Agreement. A facsimile copy may be treated, accepted and admissible as the original and shall have equal force of law.
- 16.3 Forbearance and Waiver. No forbearance, delay or indulgence by either party in enforcing the provisions herein shall prejudice or restrict the rights of that party, nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power, or remedy herein conferred upon or reserved for either party, is exclusive of any other right, power or remedy available to that party and

each such right, power or remedy shall be cumulative, unless where otherwise expressly stipulated in this Agreement.

- 16.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Singapore and shall be subject to the non-exclusive jurisdiction of the Singapore court.
- 16.5 Assignment. This Agreement may not be assigned by SI in whole or in part, even by operation of law, in a merger or stock or asset sale, without the express written permission of Dell. Any attempt to assign this Agreement without Dell's written consent will render this Agreement null and void.
- 16.6 Force Majeure. Neither Party shall be liable to the other Party for any failure to perform any of its 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.

- 16.7 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable by any law, rule, order or regulation of any government, or by the final determination of any state, federal or other court, such invalidity shall not affect the enforceability of any other provisions not held to be invalid.
- 16.8 Rights of Third Parties. Save as expressly provided in this Agreement, these Terms and Conditions shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

THESE TERMS AND CONDITIONS ARE TO BE READ IN CONJUNCTION WITH THE DELL SYSTEM INTEGRATOR AGREEMENT - SOUTH ASIA, THE SCHEDULE