

Please click [here for the Chinese version](#) of these terms. The English version is binding, and the Chinese is for reference only.

Dell APEX Distributor Agreement – Taiwan

Last Updated: May 11, 2023

This Dell APEX Distributor Agreement (the “**Agreement**”) applies to the Dell Technologies “**APEX**” branded service (“**APEX Service**”) and any other related the Dell Technologies service identified on a Quote (“**Related Service(s)**”) ordered by you, on behalf of your company, (“Distributor”) from the Dell Technologies entity which invoices Distributor for the APEX Service (“**Dell**”). By agreeing to Dell’s Quote (through physical signature, electronic signature or clicking to accept): (a) **Distributor agrees to be legally bound by the Agreement and also agrees that this Agreement and any documents to be executed hereunder (including but not limited to a Quote) may in the form of electronic document or record and may be electronically signed. The electronic signatures appearing on such documents are the same as handwritten signatures for the purpose of validity, enforceability, and admissibility; and (b) you represent to Dell that you are authorized to agree to the Agreement on behalf of Distributor.** The “**Effective Date**” of the Agreement is the earlier of the date Distributor agreed to the Quote referencing this Agreement or the date Customer first used the APEX Service and/or the Related Service.

1. Definitions.

“**Affiliate**” means (a) with respect to Distributor, any other entity that directly or indirectly controls, is owned by, controlled by or under common ownership or control with Distributor; and (b) with respect to Dell means Dell Inc. and its wholly-owned or wholly-controlled subsidiaries. “Control” means more than 50% of the voting power or ownership interests.

“**APEX System**” means the Dell-branded IT hardware (“**Equipment**”) and/or software (including microcode, firmware, operating systems, or applications) (“**Software**”) which are used to operate the APEX Service. References to the APEX Service include the APEX System.

“**Colocation Site**” means, where applicable, a third party Site.

“**Customer**” means a customer that purchases the APEX Service and any Related Service from Reseller for its own internal business purposes and not for resale. Customer includes a Cloud Service Provider partner purchasing from Distributor for its own internal business purpose and not for resale as described in Clause 2.1.D.

“**Customer Content**” means data (including but not limited to all text, sound, video, and image files), software (including machine images), and other information Customer or End Users store, use or make available to Dell on the APEX Service. Customer Content does not include System Data relating to Customer’s or End Users’ use of the APEX Service and which is described in the Service Offering Description.

“**Dell APEX Terms for Channel End Customers**” or “**Flow Down Terms**” means the terms and conditions that apply to a Customer’s access and use of the APEX Service and Related Service, including the applicable Service Offering Description. The Dell APEX Terms for Channel End Customers can be found at https://www.dell.com/learn/us/en/uscorp1/legal_terms-conditions_dellwebpage/apex-terms-for-channel-end-customers and may be updated from time to time.

“**End Users**” means Customer’s customers or other third parties to whom Customer may provide a service using the APEX Service.

“**Order**” means Distributor’s order for the APEX Service and any Related Services that is confirmed by Dell. Confirmation of Orders is described in Clause 4.1.A (Order Confirmation).

“**Quote**” means Dell’s written quotation or online quotation for an APEX Service and any Related Services. A “Quote” also includes an “APEX Subscription Quote” or an amendment to an APEX Subscription Quote

“**Reseller**” means a reseller appointed by Distributor who purchases the APEX Service from Distributor and resells the APEX Service to Customer.

“**Service Level Agreement**” or “**Service Level Objective**” means the then-current version of Dell’s performance commitments for the APEX Service. If applicable, these will be provided in the Service Offering Description.

“**Service Offering Description**” means the then-current version of the Dell document that describes the APEX Service Distributor ordered.

“**Site**” means the location where the APEX System is installed. The Site will be either Customer’s premises or a Colocation Site. Distributor will provide Dell with the required Site information.

“**Subscription Term**” means the period of each APEX Service in Distributor’s Order, and any extensions. The initial Subscription Term begins as specified in the Order and/or the Service Offering Description.

“**Territory**” means Taiwan, within which Distributor may purchase APEX Services and Related Services for resale to Customers in accordance with this Agreement

“**Third-Party Claim**” means any third-party allegation, claim, action, demand, or lawsuit arising from or relating to: (a) Customer Content or Third-Party Products; (b) Distributor’s use of any APEX Service or any Related Service in violation of the Agreement; (c) Customer’s or End User’s use of APEX Service and any Related Service in violation of the Dell APEX Terms for Channel Customers; (d) combination of the APEX Service with non-Dell products, non-Dell content including any Customer Content, and/or any Third-Party Products; or (e) Distributor’s infringement or misappropriation of Dell’s, Dell Affiliates’ or third parties’ intellectual property rights.

“**Third-Party Products**” means hardware, software, products, or services that are not Dell-branded. Third-Party Products are not embedded components of the APEX Service.

2. The APEX Service.

2.1 Scope; Right to Distribute.

A. The Agreement applies to the APEX Service and any Related Services Distributor ordered when Distributor agrees to the Quote. Orders for other APEX Services and other Related Services, including amendments to APEX Subscription Quotes, will be governed by the Agreement agreed by Distributor with the new Quote or amendment to the APEX Subscription Quote from Dell. The Agreement does not apply to any other Dell products and services Distributor purchases and distributes pursuant to a separate distribution agreement with Dell (each an “**Existing Distribution Agreement**”). The Agreement shall not be deemed to modify, supersede, or amend any Existing Distribution Agreement, and any Existing Distribution Agreement shall not apply to Distributor’s purchase and distribution of the APEX Service. Unless otherwise agreed in writing by Dell, this Agreement does not apply to the purchase of APEX Service and any Related Services for Distributor’s or Distributor Affiliate’s internal end-use.

B. Subject to compliance with local laws and the terms and conditions of this Agreement, Distributor is authorized to resell the APEX Service and Related Service to a Reseller that is located in the Territory and identified in the Order for resale to a Customer located in the Territory, agrees to the Flow Down Terms and is identified in the Order (the “**Distribution Right**”). In Distributor’s agreement with the Reseller (the “**Reseller Agreement**”) Distributor shall cause such resale by the Reseller to be described in a contract separately executed between the Reseller and Customer (the “**Customer Agreement**”). Distributor shall not market or distribute the APEX Service or Related Service (i) to any Reseller or Customer outside the Territory, (ii) to any consumers, or (iii) to any department, agency, division or office of the United States Government without Dell’s prior written approval. Dell may notify Distributor in writing of any Reseller to whom Dell does not want Distributor to sell APEX Service and Related Service (“**Reserved Reseller**”) and Distributor shall not sell, or shall cease to sell, APEX Service and Related Service to a Reserved Reseller, and Dell shall have the right to modify the list at its discretion. Dell may notify Distributor in writing of any Customer to whom Dell does not want APEX Service and Related Service to be resold (“**Reserved Customer**”) and Distributor shall not sell, or shall cease to sell, APEX Service and Related Service to any Reseller whom Distributor has reason to know intends to resell APEX Service or Related Service to a Reserved Customer, and Dell shall have the rights to modify the list at its discretion. Distributor will have fifteen (15) days from the date of Dell’s publication of either the Reserved Reseller list or the Reserved Customer list to comply with these prohibitions. Distributor shall not market, resell, distribute, or use the APEX Service or Related Service other than as expressly permitted in this Agreement.

C. Distributor shall ensure that the Customer Agreement, at a minimum and without contradiction, contains the Flow Down Terms and provisions that: (i) specify the APEX Service and any Related Service being ordered pursuant to this Agreement for resale by Reseller to Customer; (ii) are sufficient to enable Dell to access the Site to provide any warranty maintenance or support services, monitor and meter the APEX Service as described in this Agreement and the Service Offering Description, and to take possession of the APEX System in the event of any termination of, or default under, the Customer Agreement, the Reseller Agreement, or this Agreement or in the event of any Customer Bankruptcy or Customer Non-Payment Event; (iii) name Dell as a third party beneficiary to the Customer Agreement; (iv) state the Customer's obligation to pay Reseller for the APEX Service is unconditional by explicitly stating such obligations are "absolute, unconditional and non-cancellable and shall not be subject to any abatement, reduction, set off, defense, delay or counterclaim for any reason whatsoever"; (v) allow disclosure of the Customer Agreement to Dell, its Affiliates and funding partners; and (vi) are sufficient to satisfy Distributor's obligations contained herein including but not limited to those obligations to include certain provisions in the Customer Agreement and/or Reseller Agreement, and those obligations to ensure Reseller's and Customer's agreement, compliance and/or cooperation, throughout this Agreement. Distributor shall indemnify Dell from any damages or liability which arise from Distributor's failure to meet the requirements of this Clause 2.1.C.

D. Subject to compliance with local laws and the terms and conditions of this Agreement, Distributor is authorized to resell the APEX Service and Related Service to a Cloud Service Provider partner in the Dell Technologies Partner Program who is located in the Territory and identified in the Order and is purchasing for its own internal business purposes (including provision of IT as a service) and not for resale. Distributor shall cause such resale to be described in a contract separately executed between Distributor and the Cloud Service Provider partner, and such agreement shall comply with the Customer Agreement requirements herein and Distributor is deemed the "Reseller" in references to "Customer Agreement" in this Agreement.

2.2 Site Options and Requirements.

A. **Dell Colocation Site.** If Distributor Ordered a Dell offered Colocation Site option (where available), then (a) Dell will be responsible for arranging hosting of the APEX System in an appropriate data center environment; and (b) the following clauses of the Agreement will not apply: Clause 4.5 (Shipment), Clause 4.6 (Title to APEX System), Clause 4.7 (Risk of Loss), Clause 4.8 (Insurance), Clause 4.9 (Bankruptcy Rights), Clauses 6.4.A(b) (Generally) and 6.4.B (Additional Recovery Rights), Clause 7.2 (Site Access), and Clause 7.5 (Replaced Parts).

B. **Non-Dell Colocation Site.** If Distributor locates the APEX System at a non-Dell provided Colocation Site, then Distributor shall ensure that Reseller ensures that Customer will be responsible for ensuring that Dell has the level of access to the non-Dell provided Colocation Site required in Clause 7.2 (Site Access). Distributor agrees to hold Dell harmless from and against any and all disputes, claims or controversies (whether in contract, tort (including negligence) or otherwise) resulting from Distributor or Customer locating the APEX System at a non-Dell provided Colocation Site.

C. **Landlord Waiver.** If requested by Dell, Distributor will arrange (or Distributor will ensure that Reseller or Customer arranges) for Colocation Site landlord to sign a landlord waiver agreement confirming Dell's ownership of the APEX System and Dell's right to access the APEX System in connection with the APEX Service and this Agreement.

2.3 **Service Offering Description.** The scope and details of the APEX Service, including the Colocation Site option if ordered from Dell, are provided in the Service Offering Description. Unless otherwise defined in the Service Offering Description, the references in the Service Offering Description to "Customer" or "you" shall be understood as a reference to the Customer that is entitled to receive the APEX Service, except that for pricing, billing, refund, ordering (including without limitation, expansion, extensions, and add-ons), cancellation, and similar financial terms, the references to "Customer" or "you" shall mean Distributor.

2.4 Use and Ownership of the APEX Service and Related Services.

A. Distributor may access and use the APEX Service only: (i) during the Subscription Term; (ii) as necessary to exercise the Distribution Right; and (iii) in accordance with the Agreement.

B. Customer may access and use the APEX Service only: (i) during the Subscription Term; and (ii) as provided in the Flow Down Terms and the Service Offering Description. If the APEX Service includes Software that is licensed by Dell, then the Customer Agreement will require Customer to use the Software only: (a) in connection with Customer's use of the APEX Service and as provided in the Flow Down Terms; (b) for the Subscription Term; and (c) in accordance with Dell's [End User](#)

[License Agreement](#) (“**EULA**”). The Customer Agreement will also require that Customer must not: (1) resell or rent the use of the APEX Service; or (2) use the APEX Service in support of an offering, or for a purpose, which is intended to compete with Dell’s APEX Service business.

C. If Dell believes a problem with the APEX Service is caused by, or results from, Customer Content, or Distributor’s, Reseller’s, or Customer’s use of the APEX Service, then Distributor agrees to cooperate with Dell in order to identify and resolve the problem.

D. Distributor agrees that Dell owns all rights, titles, and interests in and to the APEX Service and any Related Services and all improvements, enhancements, modifications, and derivative works, and all intellectual property rights in all of these. Distributor’s rights to use the APEX Service are limited to those specifically stated in writing in the Agreement. Distributor agrees that Distributor does not have any other implied rights in, or to, the APEX Service or any Related Services. Dell reserves all rights not granted to Distributor in the Agreement.

3. Modifications.

3.1 **Generally.** Dell may modify the APEX Service from time to time. Modifications may include optional new features for the APEX Service, which Customer may use subject to the then-current Service Offering Description or changes to components of the APEX System. Dell will inform Distributor and/or Customer of modifications either by email, through the APEX Console, through a Dell sales representative, or directly through the APEX Service. Distributor’s continued sale of the APEX Service and/or its Customer’s continued use of the APEX Service after the date of any modification will be considered as Distributor’s and Customer’s acceptance of the modified APEX Service and any associated changes to the Service Offering Description.

3.2 Material Modifications.

A. **Option to Terminate.** If Dell removes a material feature or materially reduces the functionality of the APEX Service, then Distributor will have the right to terminate the Order for the APEX Service if Customer chooses to terminate its order for the APEX Service with Reseller and Reseller chooses to terminate its order of the APEX Service with Distributor by notifying Dell within 30 days from the date of Dell’s modification notice. If Distributor elects to terminate that Order, then termination occurs on: (a) the date Dell receives Distributor’s notice of termination; or (b) any later date Distributor specifies in its notice (though this date must not occur more than 90 days after the date Dell receives Distributor’s termination notice).

B. **Right to Refund.** Distributor remains responsible for the payment of all fees incurred through the termination date. Dell will promptly refund any prepaid fees for the APEX Service or Related Services that will not be provided as a result of the termination by Distributor under Clause 3.2.A (Option to Terminate). Distributor, Reseller, and Customer are not entitled to any other remedies from Dell once Distributor is in receipt of the refund from Dell.

4. Orders, Payment, Shipment, Title to APEX System, and Insurance.

4.1 Orders.

A. **Ordering Process.** Distributor may request a Quote for the APEX Service and any Related Services from Dell. Quoted prices are effective until the expiration date of the Quote but may change due to shortages in materials or resources, increase in the cost of manufacturing, or other factors. Distributor orders the APEX Service and Related Services which are subject of a Quote by agreeing to Dell’s Quote (through physical signature, electronic signature or clicking to accept) and issuing a purchase order that references Dell’s Quote. Distributor’s orders are subject to Dell’s confirmation, as provided in Clause 4.1.B (Order Confirmation), to Dell credit approval, and to availability, and are cancellable only by Dell. Dell is not responsible for pricing, typographical or other errors in any Quote and may cancel Orders affected by such errors.

B. **Order Confirmation.** Distributor’s Orders are subject to Dell’s confirmation. An Order is confirmed upon the earlier of: (a) Dell’s written confirmation; or (b) as otherwise provided in the Service Offering Description. Dell is not required to provide the APEX Service until (i) Distributor has provided all information Dell needs to process the Order and provision the APEX Service and any Related Services and (ii) the Customer has agreed to the Flow Down Terms. Unless otherwise stated in the Agreement, all Orders are non-refundable and non-cancellable.

C. **Payment of Fees.** Distributor must pay all APEX Service and Related Services fees Distributor or Customer incurs. Fees may consist of a committed amount as well as additional amounts, including fees for add-on features that Distributor

orders or Distributor, Reseller, or Customer enables, and fees based on actual usage of the APEX Service. Distributor must establish a method of payment to cover all fees when ordering an APEX Service and any Related Services.

D. Additional Fees. Dell may invoice Distributor directly for any additional fees arising from an Order. Distributor agrees that Dell may invoice Distributor for fees even if a corresponding purchase order was not received from Distributor.

E. Customer Evidence. Dell may request, and Distributor agrees to provide, evidence (excluding confidential terms and pricing) that a final binding purchase order has been placed by the Reseller and Customer for the APEX Services being ordered. Distributor's submitted evidence will be subject to Dell's approval and will not include letters of intent, purchases conditional on a future event, internal distributor documentation, or awards of public tender offers.

4.2 Payment Terms. Distributor must pay all fees within the time period noted on Dell's invoice or, if not noted, then within 30 days from the date of invoice, subject to maintaining credit approval with Dell, and in the currency agreed in the Order. Interest on late payments will accrue after the due date at the lesser of 1.5% per month or the highest lawful rate. If Distributor defaults on payments due under this Agreement, then Dell may suspend the APEX Service and Related Service.

4.3 Taxes. The fees invoiced for the APEX Service and any Related Services are exclusive of all taxes (including VAT, sales, use, or other equivalent taxes), governmental fees, levies, customs, and duties resulting from Distributor's Order (other than taxes on Dell's income or employees). If Dell is required to collect and remit any taxes, then Dell will add the appropriate amount to Distributor's invoices as a separate line item. Distributor agrees to pay the taxes to Dell in addition to the APEX Service and any Related Service fees. If Distributor is tax exempt, Distributor must promptly provide a valid tax exemption certificate or other appropriate proof of exemption at the time of onboarding to the APEX Console or at Dell's request. If Distributor is required to withhold taxes, Distributor will: (a) provide Dell with 10 days' notice of intent to withhold taxes and the applicable withholding tax rate based on local tax laws and relevant tax treaties; (b) provide Dell with satisfactory evidence (e.g., official withholding tax receipts) of withheld taxes within 60 days from the date Distributor remitted them to the applicable tax authority.

4.4 Invoice Errors. If Distributor finds a material error in an invoice, then Distributor must notify Dell in writing within 10 days from its receipt. Any amounts Dell and Distributor both agree in writing to correct must be paid before the later of: (a) 14 days following the date of Dell's corrected invoice; (b) the original due date; or (c) the due date as provided in the corrected invoice. If Distributor withholds payment on the basis that an invoice is incorrect and Dell finds that the amount is accurate, then Distributor must pay interest on the unpaid disputed amount from the invoice due date until Dell receives payment. Distributor may not offset, defer, or deduct any invoiced amounts that Dell determines are correct following completion of this process.

4.5 Shipment. Dell will ship the APEX System to the Site when included as part of the APEX Service. The terms and process for shipment and delivery of the APEX System will be stated in the applicable Service Offering Description.

4.6 Title to APEX System. Dell owns all rights, title, and interest in the APEX System (including any replaced parts), and the APEX System must be returned to Dell at the end of the Subscription Term (or promptly upon replacement with respect to replaced Equipment or parts). The APEX System will be identified as Dell's and Distributor, Reseller, or Customer will not remove, cover, or alter plates, labels or any other markings placed upon the APEX System by Dell. The APEX System is NOT subject to any of the liens and security interests of Distributor's, Reseller's, or Customer's lender(s). Further, Distributor, Reseller, or Customer cannot use the APEX System as collateral for a loan or as security against any debt. Distributor will immediately notify Dell in writing if Distributor's (or if Distributor is aware Reseller's or Customer's) lenders or creditors or other third parties claim any rights to, or seek to take possession of, the APEX System.

4.7 Risk of Loss. As between Dell and Distributor, the entire risk of loss, theft, damage or destruction of the APEX System transfers to Distributor upon Dell's delivery of such to the Site until the time the APEX System is returned to Dell. If any loss, theft, damage or destruction to the APEX System occurs during the time Distributor bears such risk, Dell shall be relieved of its APEX Service obligations to the extent such event impacts Dell's ability to provide such APEX Service until such time as the APEX System is repaired or replaced. Charges shall continue to accrue during this period of such interruption. If the APEX System is materially damaged, stolen or destroyed, Distributor shall ensure Dell is promptly notified.

4.8 Insurance. Distributor will insure (or cause to be insured) the APEX System with a reputable insurance company against all: (a) liability whatsoever to any third party arising from Distributor's, Reseller's or Customer's use of the APEX System; and (b) loss or damage to the APEX System from all insurable risks for its full replacement cost; and (c) other risks that a prudent person would reasonably insure. In regard to (a) and (b), Dell will be named as both additional insured and

loss payee respectively. When requested, Distributor will provide Dell with evidence that the required insurance is in effect. Distributor must immediately notify Dell of any loss claim and Distributor agrees not to settle any insurance claims without Dell's prior written agreement.

4.9 Bankruptcy Rights. If this Agreement is determined to be anything other than a services agreement from Dell to Distributor, then Distributor grants Dell a first priority security interest in the APEX System (and all proceeds thereof) and Dell retains the first lien and security interest in the APEX System and all proceeds. Distributor agrees that Dell may file protective documents with government or other authorities in Distributor's jurisdiction of incorporation or other applicable locations in order to inform third parties and lenders that Dell owns the APEX System at the Site (including UCC-1 filings if the Site is located in the United States of America). For the purpose of U.S. bankruptcy law, Distributor agrees that the Agreement is an "Executory Contract" with mutual obligations for both Distributor and Dell.

4.10 Financial Statements. Distributor agrees to (i) furnish Distributor's financial statements (prepared in accordance with generally accepted accounting principles) and other financial information, relating to the Agreement within five (5) business days as Dell may from time to time reasonably request and (ii) provide Dell with the Customer's financial statements (prepared in accordance with generally accepted accounting principles), and other financial information related to an Order for Customer that Dell may reasonably request ("**Customer Financial Information**"), prior to acceptance of an Order, and within five business days as Dell may otherwise reasonably request from time to time; the provision of (i) and/or (ii) being subject to the applicable confidentiality terms as provided for in the Agreement. Any determination by Dell, at any time, that any information provided pursuant to this paragraph is wrong, misleading, or not authentic, shall constitute an Event of Default pursuant to Clause 6.3.1.A of this Agreement.

4.11 Distributor Pricing. Distributor is free to determine and set its own resale pricing to the Reseller of the APEX Service and any Related Services.

5. Suspension.

5.1 Generally. Dell may suspend all APEX Services and any Related Services subject of a current Order if: (a) Distributor is in material breach of the Agreement (including failure to pay invoices when due) and has not cured that breach within 10 days from Dell's notice; (b) Customer is in material breach of the Flow Down Terms and has not cured that breach within 10 days from Dell's notice; or (c) with immediate effect if Distributor, Reseller, or Customer breaches [Dell's Acceptable Use Policy](#), including all Dell updates to the Acceptable Use Policy during the Subscription Term ("**AUP**"). Dell will give Distributor notice before suspending the APEX Service(s) and any Related Services if permitted by law or, unless Dell reasonably believes that providing notice presents a risk of harm to the APEX Service(s), to other users of the APEX Service(s), or to any person or property, in which case, Dell will notify Distributor as soon as feasible or permitted. Dell will promptly reinstate the APEX Service(s) and any Related Services once Dell agrees that the issue(s) causing the suspension has been resolved.

5.2 Effect of Suspension. Distributor must pay all applicable fees incurred before and during any suspension. Distributor will not be entitled to any service credits under an applicable Service Level Agreement or Service Level Objective during any suspension.

5.3 Termination for Suspension. If Dell has the right to suspend the APEX Service(s) and any Related Services under Clause 5.1(c) (Suspension - Generally), then Dell also has the right to terminate the APEX Service(s) and any Related Services: (a) immediately upon written notice to Distributor in the event of a breach of the AUP; or (b) as provided under Clause 6.2(c) (Termination) provided that the 30 day cure period is considered to start from the date of Dell's first notice under Clause 5.1(a) or Clause 5.1(b) (Suspension - Generally).

6. Term and Termination.

6.1 Agreement Term. This Agreement commences on the Effective Date and continues until terminated in compliance with this Clause.

6.2 Termination. Distributor may only terminate the Agreement (including any Order) as authorized in this Agreement. Either party may terminate the Agreement (including any Order) for cause, if: (a) the other party becomes insolvent, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (b) the other party becomes subject to control of a trustee, receiver, or similar authority, or to any bankruptcy or insolvency proceeding; (c) the other party commits a material breach of the Agreement and has failed to cure the breach within 30 days from the other

party's written notice.

6.3 Events of Default; Assignment of Customer Agreement

6.3.1 Events of Default; Remedies.

A. **Events of Default.** The occurrence of any of the following in connection with this Agreement shall constitute an Event of Default: (i) Distributor shall fail to pay the APEX Service and any Related Service fee within thirty (30) days of its due date; (ii) Distributor shall fail to perform any provision, covenant, condition or agreement, and such failure shall continue for thirty (30) days after notice thereof; (iii) bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings shall be instituted by or against Distributor, or Reseller, or all or any part of its property under applicable law or any state or jurisdiction in which such party is organized, and it shall consent thereto or shall fail to cause the same to be discharged within sixty (60) days; or (iv) bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings shall be instituted by or against Customer, or all or any part of its property under applicable law or any state or jurisdiction in which Customer is organized, and it shall consent thereto or shall fail to cause the same to be discharged within sixty (60) days ("**Customer Bankruptcy**").

B. **Remedies.** Except when the conditions for assignment of the Customer Agreement as set forth in Clause 6.3.2 below are met, if an Event of Default shall occur, then Dell may exercise any one or more of the following remedies: (i) immediately terminate the Agreement or any Order(s); (ii) by notice in writing to Distributor, declare immediately due and payable, and Distributor shall be obliged to pay immediately, (1) all past due APEX Service fees and other past due amounts plus (2) all APEX Service and Related Service fees for the remainder of the Subscription Term with clause (2) being discounted to present value using the discount rate of the Bank of Taiwan on the Effective Date of the Agreement and (iii) with notice, and in accordance with the applicable law, Dell may enter upon the Site where the APEX System is located, free from all claims by Customer; provided that the parties shall reasonably cooperate to enable Customer to migrate and erase its data and for Dell to recover the APEX System. Distributor shall ensure that the Reseller ensures that the Customer Agreement provides for Customer's consent to Dell's recovery of the APEX System in the circumstances and manner described in this Agreement. Distributor shall be responsible for the payment of the actual documented costs and reasonable attorneys' fees incurred by Dell in retaking possession of the APEX System and/or seeking to recover amounts due. Each remedy herein is cumulative and not alternative, and able to be enforced separately or together.

6.3.2 Assignment of Customer Agreement.

A. **Event of Assignment.** A Customer Agreement shall be assigned from Reseller to Dell, in accordance with the terms of this Clause 6.3.2., if any of the following occurs: **(i)** an Event of Default by Distributor or Reseller, pursuant to Clause 6.3.1.A.(i), (ii) or (iii) of this Agreement, is declared by Dell; **(ii)** Customer Bankruptcy as to the Customer that is party to the Customer Agreement; **(iii)** a Customer's uncured failure to pay for the APEX Service when due occurs within the first six (6) calendar months of the Subscription Term ("**Customer Non-Payment Event**"); **(iv)** Customer is in default of the Customer Agreement due to an uncured failure to make any payment when due and Dell has determined in its commercially reasonable discretion that its ability to collect from the Customer will be materially impacted by delaying any further, and Dell has requested and Distributor and Reseller have consented to such assignment; or, **(v)** if Dell, Distributor, and Reseller otherwise agree to such assignment of the Customer Agreement, and Customer consents to such assignment, in writing.

B. **Requirements for Assignment – Distributor's Default.** In order to provide Customer with uninterrupted services in the occurrence of an Event of Default caused by Distributor, Dell shall take assignment of a Customer Agreement pursuant to Clause 6.3.2.A.(i), only if the Customer Agreement meets the requirements set forth in Clause 6.3.2.E. (Requirements for Assignment – Generally), and the Customer is not in default or material breach of the terms of the Customer Agreement or Flow Down Terms.

C. **Requirements for Assignment – Customer Bankruptcy, or Customer Non-Payment Event.** Dell shall only be required to take assignment of a Customer Agreement in the event of a Customer Bankruptcy, or in a Customer Non-Payment Event pursuant to Clause 6.3.2.A.(ii) and (iii), if: (i) the Customer Agreement meets the requirements set forth in Clauses 2.1.C and 6.3.2.E. (Requirements for Assignment – Generally); (ii) Distributor has, or caused Reseller to have, if requested by Dell, promptly provided the Customer with a notice indicating the Customer Bankruptcy, or Customer Non-Payment Event, constitutes a default or material breach pursuant to the Customer Agreement; (iii) Distributor has provided Dell prompt notice of every instance of Customer's uncured failure to pay for the APEX Service and any Related Service; (iv) Distributor has provided, or caused Reseller to have provided, to Dell all applicable Customer contacts and any other

information necessary for Dell to conduct cash collection activities and any other associated activities; and, (v) Distributor is current on all, and have no outstanding overdue, payment obligations pursuant to this Agreement.

D. Requirements for Assignment – Customer Non-Payment Event (additional). Dell shall only be required to take assignment of a Customer Agreement in the event of a Customer Non-Payment Event pursuant to Clause 6.3.2.A.(iii), if: **(i)** the Reseller has received no payment from the Customer under the applicable Customer Agreement; **(ii)** Distributor has, or has caused Reseller to have, requested of Dell, in writing, that Dell take assignment of the Customer Agreement; **(iii)** the Reseller, immediately following any Customer Non-Payment Event, has provided to the Customer any notices of non-payment that may be required by the Customer Agreement, and has taken all reasonable steps necessary to collect overdue amounts; **(iv)** the Reseller provided timely and accurate invoices to the Customer in compliance with the terms of the Customer Agreement; and **(v)** any related Customer default or material breach caused by the Customer's uncured non-payment of amounts due is not related to a valid Customer dispute in regard to performance, or amounts invoiced, under the Customer Agreement or under any other agreement between Reseller and Customer.

E. Requirements for Assignment - Generally. Dell shall only be required to take assignment of a Customer Agreement pursuant to Clause 6.3.2.A.(ii), (iii) and (iv) if: **(i)** the applicable Customer Agreement: (a) unconditionally obligates the Customer to pay for the APEX Service and any Related Service in amounts that equal or exceed the amounts Distributor is obligated to pay Dell for the remainder of the Subscription Term; (b) states the Customer's obligation to pay for the APEX Service and Related Service is unconditional by explicitly stating such obligations are "absolute, unconditional and non-cancellable and shall not be subject to any abatement, reduction, set off, defense, delay or counterclaim for any reason whatsoever;" (c) has a payment structure substantially similar to the payment structure of this Agreement, including but not limited to, containing net 30 payment terms, and providing no ability to cure any non-payment which exceeds 30 days from the payment due date; (d) names Dell (or the affiliate of Dell which is the party to this Agreement) as a third party beneficiary; (e) states that Customer Bankruptcy, and uncured failure to pay amounts owed when due are each, separately, events constituting default, or material breach, of the Customer Agreement ("**Customer Default**"), that a Customer Default under any single Customer Agreement with the applicable Customer shall constitute a Customer Default under all Customer Agreements with that Customer, and that Reseller's rights in remedy of such Customer Default are equivalent to the rights Dell has in remedy against Distributor in an Event of Default, listed in Clause 6.3.1.B. above, each remedy being cumulative and not alternative, and able to be enforced separately or together; (f) includes Customer's consent to the assignment of the Customer Agreement to Dell, without notice, upon the occurrence of any Customer Default, such consent to assignment to explicitly include consent to Dell's right, upon such assignment, to directly receive payment and seek collections directly from, and exercise and enforce Reseller's remedies directly against, the Customer; (g) may not include the provision of, and, must be billed separately from, any products or services which are not included in the Order under this Agreement; and, (h) meets all the requirements of Clause 2.1.C. above; **(ii)** the Reseller Agreement provides that the Customer Agreement shall be assigned to Dell upon Dell's notice to the Customer that Dell intends to take assignment of the Customer Agreement pursuant to the conditions of this Clause 6.3.2.; and, **(iii)** Dell has not, in its sole discretion, determined that the Customer Financial Information provided pursuant to this Agreement is wrong, misleading, or is not authentic.

F. Giving Effect to Assignment. Dell shall not be required to take assignment of any Customer Agreement, pursuant to this Clause 6.3.2., if Distributor does not, if requested by Dell, provide to Dell a written agreement to such assignment from the Customer and/or Reseller. If assignment of the Customer Agreement pursuant to this Clause 6.3.2. is not possible, is determined to be invalid, or is blocked, delayed, or enjoined under any legal process then Dell may exercise any, or all, of its remedies pursuant to Clause 6.3.1.B (Remedies).

G. Requests for Assignment in Customer Non-Payment. If Dell has requested, in writing, assignment of the Customer Agreement pursuant to Clause 6.3.2.A.(iv) and Distributor and/or the Reseller, refuses such assignment, or does not respond to such request within 10 days, Dell shall not be required to take assignment of the Customer Agreement pursuant to Clause 6.3.2.A.(ii) or (iii).

H. Rights After Assignment. If Dell takes assignment of a Customer Agreement pursuant to this Clause 6.3.2.: (i) Distributor shall have no rights in, and Distributor shall ensure Reseller has no rights in, any amounts Dell receives or recovers from the Customer; (ii) Distributor shall be obligated to, and Distributor shall ensure Reseller is obligated to, immediately send to Dell any and all payments received from the Customer pursuant to the Customer Agreement after such assignment; (iii) Dell will excuse Distributor from Distributor's obligation to pay the APEX Service fee for the remainder of the Subscription Term and, by notice in writing to Distributor, declare immediately due and payable, and Distributor shall be obliged to pay immediately, all past due APEX Service and Related Service fees and other past due amounts related to this Agreement; (iv) Distributor, and Reseller, will have no further obligation to invoice or collect payment from Customer, or to recover or return the APEX System, provided that Distributor shall cooperate, and cause the Reseller to cooperate, with

Dell and provide all necessary assistance in Dell's efforts to both collect the fees owed by Customer and repossess the APEX System; (v) Distributor shall be obligated to pay Dell, within 30 days of such assignment, amounts equal to any or all financial incentives, fees, and/or rebates ("**Incentives**") Distributor received from Dell in relation to any Order or to entering into the Agreement, and Dell shall not be required to pay Distributor any Incentives related to any Order or the Agreement which have not yet been paid to Distributor; and (vi) if Dell subsequently determines that the Customer Financial Information provided pursuant to this Agreement is wrong, misleading, or is not authentic, Dell's consent to such assignment shall be revoked and/or void, and Dell may exercise any of its remedies pursuant to Clause 6.3.1.B.

6.4 **Effects of Termination.**

A. **Generally.** When the APEX Service and any Related Services expire, terminate, or are rejected for any reason, Distributor must: (a) stop using the APEX Service and any Related Services and ensure that the Reseller and Customer stop using the APEX Service and any Related Services; (b) return (or ensure that the Customer returns) the APEX System in compliance with the Service Offering Description, or if the Service Offering Description requires Dell to recover the APEX System, then Distributor will reasonably cooperate with Reseller and Customer to provide Dell with prompt access to the Site to recover the APEX System; and (c) return or, if requested by Dell, destroy, any of Dell's Confidential Information in Distributor's possession or under Distributor's control (other than information that applicable law requires Distributor to retain). The Service Offering Description will state when Dell will delete any Customer Content. Distributor is responsible for notifying Reseller, who should notify Customer, that the Customer is responsible for making sure that Customer has copies of all Customer Content that Customer requires prior to the date of any termination.

B. **Additional Recovery Rights.** Distributor agrees that upon expiration or termination for any reason: (a) Dell may seek a court order to enforce Dell's right to recover the APEX System from the Site and Distributor agrees to reasonably cooperate with Dell to enforce Dell's rights with Reseller and/or Customer under any such court order; and (b) Dell is entitled to recover from Distributor the reasonable attorney fees resulting from this enforcement action. Distributor is liable for any return costs and shall reimburse Dell for the reasonable value of the APEX System (or any part thereof) that is not returned or is returned in a condition that evidences damage in excess of reasonable wear and tear.

C. **Refunds.** Distributor may be entitled to a refund of fees Distributor pre-paid to Dell for the APEX Service and any Related Services that will not be provided as a result of a termination in the following cases: (a) If Dell terminates the APEX Service under Clause 8.1(b)(APEX Service Limited Warranty) or 15.2(2) (Indemnification by Dell); and/or (b) If Distributor terminates the APEX Service and/or any Related Services under Clauses 3.2 (Material Modifications) or, if applicable, 6.2 (Termination); or 16.6 (Force Majeure). Any other termination/rejection of the APEX Service and/or any Related Services will not entitle Distributor to any refunds, credits, or exchanges. If: (i) Dell terminates the APEX Service and/or any Related Services due to Distributor's material breach of the Agreement or Customer's material breach of Flow Down Terms or following Dell's suspension of the APEX Service; or (ii) Distributor, Reseller or Customer returns or surrenders the APEX System without Dell's prior permission before the end of the Subscription Term, then Distributor will promptly pay Dell all fees due for the APEX Service and any Related Services through the remainder of the Subscription Term.

D. **Survival.** The provisions relating to payment of outstanding fees, confidentiality, liability, and the Partner DPA (as defined in Clause 11.3 (Data Processing)) so long as Dell continues to process Distributor's "**Personal Data**" (as defined in the Partner DPA), all rights of action accruing prior to termination, along with any other provision of the Agreement that, expressly, or by its nature and context, is intended to survive, will survive termination.

7. **Support Services.**

7.1 **Generally.** The APEX Service includes the support and maintenance services described in the Service Offering Description ("**Support Services**").

7.2 **Site Access.** Dell requires the right to access the APEX System in a timely way and as provided in the Service Offering Description to provide the Support Services or as may be provided in the Quote with respect to any Related Services. Failure to provide (or failure to ensure that Reseller or Customer provides) Dell with timely access to a Site will relieve Dell of the Support Services or Related Service obligations and Dell may also, at Dell's discretion, suspend the APEX Service.

7.3 **Changes.** Distributor, Reseller, or Customer may not relocate the APEX System without Dell's prior written approval. If the applicable Service Offering Description allows Distributor, Reseller or Customer to perform the following actions, then Distributor must notify Dell before Distributor, Reseller or Customer doing so: (a) make changes to the APEX

System configuration; or (b) deactivate the remote support features of any components of the APEX System. Dell will review all requests and may approve or deny them in Dell's sole discretion. Additional fees may apply.

7.4 **Access to Customer Content.** When providing Support Services, Dell will not access or use any Customer Content stored on the APEX System unless Distributor, Reseller or Customer has authorized Dell to do so.

7.5 **Replaced Parts.** Distributor will notify Reseller, and require Reseller to notify Customer, that Customer is responsible for removing all Customer Content stored on replaced parts of the APEX System, before their return to Dell. Distributor agrees that Dell has no liability for any Customer Content that Customer did not remove. Distributor may purchase a data deletion service from Dell, if available.

8. **Warranty.**

8.1 **APEX Service Limited Warranty.** Dell warrants that the APEX Service will be provided in material conformance with the Service Offering Description. If the APEX Service does not comply with this warranty, Dell's entire liability and Distributor's, Reseller's and Customer's exclusive remedies are as follows: (a) Dell will make reasonable efforts to correct the non-conformance as provided in any applicable Service Level Agreement or Service Level Objective, or if none is provided, within a reasonable period of time; and (b) if Dell is unable to correct the non-conformance for reasons for which Dell is responsible, then Dell may terminate the APEX Service and refund Distributor any pre-paid fees for the APEX Service that will not be provided as a result of the termination. Distributor must promptly notify Dell in writing of any non-conformance claims covered by this warranty.

8.2 **Related Services Warranty.** Dell will perform Related Services in a workmanlike manner in accordance with generally accepted industry standards. Distributor must notify Dell of any failure to so perform within 10 days after the date on which such failure first occurs. In such case, Dell will use reasonable efforts to correct such failure within a reasonable period of time. If, after reasonable efforts, Dell is not able to correct such deficiencies for reasons for which Dell is responsible, then Distributor may terminate the part of the Order related to the Related Services for cause by providing written notice to Dell. Dell will refund Distributor any pre-paid fees for the Related Service that will not be provided as a result of the termination.

8.3 **Limitations.** The warranties set forth in this Clause 8 (Warranty) do not apply to any Trial Service or APEX Service provided free of charge and does not cover problems caused by: (i) accident or neglect by Distributor, Reseller, Customer or any third party; (ii) any Third-Party Products, or other third party items or services with which the APEX Service is used; (iii) installation, operation or use not in accordance with Dell's instructions and the applicable documentation; (iv) use in a manner or for a purpose for which the APEX Service was not designed; (v) modification, alteration or repair by anyone other than Dell; or (vi) other causes beyond Dell's control. Except where the APEX System is installed at a Dell provided Colocation Site, Dell has no obligation for any non-compliance caused by elements of the APEX System whose original identification marks have been altered or removed or if the APEX System is installed in an environment for which it was not designed. The APEX Service is not fault-tolerant and is not designed for, and must not be used in, hazardous environments requiring fail-safe performance, including any application where the failure of the APEX Service could lead to death, bodily injury, or physical or property damage (collectively, "**High-Risk Activities**"). Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

8.4 **Warranty Disclaimer. Other than the warranties set forth in this Clause 8 (Warranty), and to the maximum extent permitted by applicable law, Dell: (a) makes no other express warranties; (b) disclaims all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (c) disclaims any warranty arising by statute, operation of law, course of dealing or performance or usage of trade. Dell does not warrant that the use of APEX Service or performance of the Related Services will be uninterrupted or error-free. Dell is not liable for delays, interruptions, service failures, or other problems inherent in use of the internet and electronic communications or for issues related to non-Dell provided Colocation Sites. Distributor agrees that Distributor is not relying on delivery of future functionality, public comments or advertising by Dell, or product roadmaps when ordering the APEX Service.**

8.5 Distributor shall not make any warranty on Dell's behalf, and Distributor shall indemnify and hold Dell harmless from any claims related to any warranty Distributor grants that is beyond the warranties described in this Clause 8.

9. **APEX Trial Services.** Dell may provide Distributor with the ability to evaluate, or allow a Reseller to allow a Customer to evaluate, free of charge certain APEX Services or a feature of the APEX Service ("**Trial Service**"). Each Trial

Service commences on the date Dell first provides Distributor or Customer with access to the Trial Service and the duration of the Trial Service is stated at the time of the order (“**Trial Term**”). For the purpose of Distributor’s or Customer’s use of Trial Services, Distributor agrees, and will require Reseller to have Customer agree, that:

- (a) Use of a Trial Service is subject to the applicable Service Offering Description;
- (b) Distributor must not disclose to any third party the results of any comparisons that Distributor, Reseller, or Customer make between the Trial Service and any competitive offerings; and
- (c) Except as provided in this Clause 9 (APEX Trial Services) or otherwise stated in the Agreement, Trial Services are “APEX Services” for the purpose of other Clauses of the Agreement.

10. Third-Party Offerings. Dell may offer Third-Party Products for use with the APEX Service through an online marketplace, or using Dell’s then-current Third-Party Product resale programs (e.g. “Extended Technologies Complete”, “Software & Peripherals (S&P)”). Third-Party Products that Distributor orders from Dell through these resale programs are referred to as “**Third-Party Offerings**”. Distributor may offer Third-Party Offerings to Reseller to offer to Customer for Customer’s use, at Distributor’s option, if available. If Distributor chooses to offer Third-Party Offerings to Reseller for Reseller to offer to Customer for Customer’s use, Distributor, Reseller, and Customer are responsible for complying with any terms applicable to the Third-Party Offerings, including any separate fees imposed by the provider of that Third-Party Offering (whether payable to Dell or directly to the third-party provider). Distributor agrees to comply with the standard license, services, warranty, indemnity, and support terms of the third-party manufacturer/supplier (or an applicable direct agreement between Distributor and the third-party manufacturer/supplier) for the Third Party Offering. Even if Dell invoices for them, Dell does not provide support services for Third-Party Offerings. Distributor must contact the applicable third-party directly for support. **Third-Party Offerings are provided “AS IS”. Any warranty, damages or indemnity claims against Dell for Third-Party Offerings are expressly excluded.** Dell may suspend or terminate provision and hosting of any Third-Party Offerings at any time, and that suspension or termination will not be deemed a material change to the APEX Service for the purpose of Clause 3.2 (Material Modifications).

11. Data Protection.

11.1 Security Measures. Without limiting Dell’s obligations under this Data Protection Clause, Dell will provide the APEX Service or any Related Service as applicable in compliance with reasonable and appropriate security measures stated in the [APEX Information Security Measures Addendum](#), including all updates during the Subscription Term (“**AISMA**”). The AISMA and the applicable Service Offering Description define the administrative, physical, technical and other safeguards applied to Customer Content residing in the APEX Service. Distributor agrees, and will cause Reseller to cause Customer to agree, that Customer is responsible for applying appropriate security measures to Customer Content including: (a) controlling access Customer provides to Customer’s personnel and/or End Users; (b) configuring the APEX Service appropriately; (c) ensuring the security of Customer Content (e.g., through encryption) while it is in transit and at rest; and (d) backing up Customer Content consistent with the requirements of Clause 14.2 (Prevention and Mitigation). Distributor acknowledges, and will cause Reseller to cause Customer to acknowledge, that Customer is solely responsible for ensuring that Customer has implemented appropriate security measures for Customer Content and Customer’s intended use of the APEX Service. Distributor acknowledges, and will cause Reseller to cause Customer to acknowledge, that uploading Customer Content to the APEX Service does not constitute a disclosure by Customer of Customer’s Confidential Information to Dell.

11.2 Distributor Security Measures. Through the APEX Console, Distributor may have access to Reseller, Customer and/or End User data. Distributor agrees to implement commercially reasonable technical and organizational security procedures and measures, that are no less stringent than those required of Dell in the AISMA, to preserve the security and confidentiality of such data.

11.3 Data Processing. The Dell [APEX Partner Data Processing Addendum](#), including all updates during the Subscription Term (“**Partner DPA**”) describes the parties’ respective roles for the processing and control of Personal Data the parties may exchange in the performance of this Agreement. Distributor is responsible for providing any necessary legal notices to Distributor’s personnel and/or purchasers, Resellers, Customers, or End Users and obtaining any legally required consents related to Distributor’s use, collection, disclosure, sharing, cross border data transfer and processing of Personal Data.

11.4 **Required Disclosures.** If Dell is required by a government body or court of law to disclose any Customer Content, Dell will provide Distributor, Reseller or Customer, as appropriate, with notice and a copy of the demand as soon as practicable, unless prohibited by applicable law. Dell will take reasonable steps at Customer's expense to contest any required disclosure if requested by Customer.

12. **Confidentiality.**

12.1 **Scope.** Information disclosed by one party to another in connection with the Agreement will be treated as "Confidential Information" if it is marked or identified as "confidential" or similar designation, or should reasonably be known by the receiver to be confidential. Confidential Information does not include information that is: (a) rightfully in the receiver's possession without prior obligation of confidentiality from the discloser; (b) a matter of public knowledge; (c) rightfully furnished to the receiver by a third party without confidentiality restriction; or (d) independently developed by the receiver (including its Affiliates) without reference to the discloser's Confidential Information.

12.2 **Protection.** The receiver will: (a) use Confidential Information of the discloser only for the purposes contemplated in the Agreement; and (b) protect Confidential Information from unauthorized disclosure to third parties for the following time periods: (i) indefinitely with respect to technical information about a discloser's products and services (including the APEX Service) or any information about unreleased products or services; and (ii) 3 years from the date of receipt for all other Confidential Information. The obligations under this Clause will survive any termination of the Agreement.

12.3 **Exceptions.** Either party may disclose Confidential Information: (a) to an Affiliate, or to a subcontractor or supplier used by Dell to provide the APEX Service or the Related Service provided that they comply with the foregoing; and (b) if required by a government body or court of law, provided that the receiver gives the discloser reasonable notice, if permitted by law, so that the discloser may contest the disclosure or seek a protective order. In addition, Dell may disclose Confidential Information to relevant Dell resellers or Customers for the purpose of fulfilling Dell obligations to Distributor, Reseller, or Customer or in connection with the Dell Technologies Partner Program or channel sale or marketing activities associated with such program.

12.4 **Feedback.** Any feedback, enhancement requests, corrections, or suggestions that Distributor provides to Dell in connection with a Trial Service, the APEX Service, or a Related Service ("**Feedback**") is Dell's Confidential Information. Distributor agrees that Dell may use the Feedback without any restriction from Distributor or compensation to Distributor, and Distributor assigns to Dell all rights in, and to, Feedback.

13. **Monitoring.** Dell monitors the APEX Service and collects telemetry data relating to Distributor's, Reseller's, and/or Customer's use of the APEX Service as further provided in the Service Offering Description. For any telemetry data to which Distributor has access, Distributor will use the data in accordance with the Service Offering Description and this Agreement, including Clauses 11.2 (Distributor Security Measures) and 11.3 (Data Processing).

14. **Limitation of Liability.**

14.1 **Limitation on Damages.** The maximum liability of each party (including Dell's suppliers and Dell's Affiliates) for all disputes arising under the Agreement is limited to the greater of: (a) \$50,000 (or the equivalent in local currency); or (b) the amount Distributor paid to Dell for the APEX Service and any Related Services during the 12 months immediately before the events giving rise to any dispute. This limitation applies even if any limited remedy in the Agreement is found to have failed in its essential purpose. In addition, neither party shall be liable to the other for any special, consequential, exemplary, punitive, incidental, or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use, or procurement of substitute products or services, even if the party alleged to be liable has knowledge of the possibility of such damages. The foregoing limitations and exclusions do not apply to: (i) Distributor's obligation to pay for the APEX Service and any Related Services, (ii) Distributor's obligation to pay for damage to or loss of the APEX System, (iii) Distributor's violation of the restrictions on use of the APEX Service, (iv) a party's indemnity obligations in the Agreement, (v) a party's violation or misappropriation of the other party's intellectual property rights, or (vi) where prohibited by applicable law. Dell (and Dell's suppliers and Dell's Affiliates) has no liability for any damages resulting from Distributor's use or attempted use of Third-Party Products, or Free Software or Development Tools (both as defined in the EULA).

14.2 **Prevention and Mitigation.** In the Reseller Agreement, Distributor will require Reseller to notify Customer that Customer is solely responsible for Customer Content. Distributor will require Reseller to include in the Customer Agreement that Customer will implement IT architecture and processes enabling Customer to prevent and mitigate damages in line

with the criticality of the Customer Content for Customer's business and its data protection requirements, including a business recovery plan. Distributor will also require Reseller to include in the Customer Agreement that Customer will: (a) provide for a backup process on a regular (at least daily) basis and backup relevant data before Dell performs any remedial, upgrade or other works on the APEX Service or Customer's IT systems; (b) monitor the availability and performance of Customer's IT environment, including the APEX Service; and (c) promptly react to messages and alerts received from Dell or through notification features of the APEX Service and immediately report any issue Customer identifies to Dell. To the extent that Dell has any liability for loss of Customer Content, Dell will only be liable for the cost of commercially reasonable and customary efforts to recover the lost Customer Content from Customer's last available backup.

14.3 Limitation Period. Except as stated in this Clause, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within 18 months after the event(s) giving rise to a dispute occurs.

15. Indemnities.

15.1 Indemnification by Distributor. Subject to the remainder of this Clause 15 (Indemnities), Distributor will: (a) defend Dell against any Third-Party Claim; and (b) indemnify Dell by paying (i) the resulting costs and damages finally awarded against Dell by a court of competent jurisdiction to the extent such are the result of the Third-Party Claim; or (ii) the amounts stated in a written settlement negotiated and approved by Distributor. Distributor may not, without Dell's prior written consent, settle any Third-Party Claim if that settlement obligates Dell to admit any liability, to make any monetary payment, or to undertake any material obligation, or if that settlement would affect any APEX Service, Related Service or Dell's business practices or policies.

15.2 Indemnification by Dell. Subject to the remainder of this Clause 15 (Indemnities), Dell will: (a) defend Distributor against any claim made by a third party to the extent it alleges that the APEX Service purchased from Dell or used by Distributor in compliance with the Agreement infringes that party's patent, copyright, or trade secret enforceable in the country where Distributor ordered the APEX Service from Dell (in this Clause "**Dell Indemnified Claim**"); and (b) indemnify Distributor by paying: (i) the resulting costs and damages finally awarded against Distributor by a court of competent jurisdiction to the extent they result from the Dell Indemnified Claim; or (ii) the amounts stated in a written settlement negotiated and approved by Dell. In addition, should any APEX Service become, or in Dell's opinion be likely to become, the subject of a Dell Indemnified Claim, Dell may, at its option: (1) modify or replace the affected APEX Service with a non-infringing substitute; or (2) terminate the APEX Service and refund any fees Distributor prepaid to Dell for the portion of APEX Service that will not be provided as a result of the termination. Dell will not be liable for any claims or damages due to Distributor's continued sale or use of an APEX Service that Dell has modified, replaced, or terminated as provided herein. Except as otherwise provided by law, this Clause 15.2 (Indemnification by Dell) states Distributor's exclusive remedies for any Dell Indemnified Claim relating to the APEX Service. Nothing in the Agreement or elsewhere will obligate Dell to provide Distributor any greater indemnity.

15.3 Limitations. Dell will have no obligation under Clause 15.2 (Indemnification by Dell): (a) if Distributor is in material breach of the Agreement; or (b) for any Dell Indemnified Claim resulting or arising from: (i) any combination, operation or use of the APEX Service with any other products, services, items, or technology that are not Dell-branded, including Third-Party Products and open source software; (ii) Customer Content, Third-Party Products, Trial Services, or APEX Services provided free of charge; (iii) use for a purpose or in a manner for which the APEX Service was not designed, or use after Dell notifies Distributor, Reseller, or Customer to cease this use due to a possible or pending Dell Indemnified Claim; (iv) any modification to, or customized configuration of, the APEX Service performed by any person other than Dell or Dell's authorized representatives; (v) any modification to, customized configuration of, the APEX Service performed by Dell pursuant to Distributor's instructions, designs, specifications or any other information Distributor provided; (vi) use of any version of the APEX Service when an upgrade or newer iteration of the APEX Service made available by Dell would have avoided the infringement; (vii) services Distributor provides (including Dell Indemnified Claims seeking damages based on any revenue or value Distributor derives from Distributor's services or Customer Content); or (viii) any data or information that Distributor, Reseller, Customer, or a third party records on or utilizes in connection with the APEX Service.

15.4 Mutual Indemnity. Except to the extent that a claim arises from Distributor's non-compliance with the restriction on High-Risk Activities, each party will defend and indemnify the other party against any third party claim or action for personal bodily injury, including death, to the extent directly caused by the indemnifying party's gross negligence or willful misconduct in the course of performing its obligations under the Agreement.

15.5 Indemnification Process. A party's duty to defend and indemnify under the Agreement is contingent upon the other party: (a) sending prompt written notice of the Indemnified Claim to the indemnifying party and taking reasonable steps to mitigate damages; (b) granting to the indemnifying party the sole right to control the defense and resolution of the Indemnified Claim; and (c) cooperating with the indemnifying party in the defense and resolution of the Indemnified Claim and in mitigating any damages. "Indemnified Claim" in this Clause 15.5 (Indemnification Process) means any and all claims indemnified by a party under this Clause 15 (Indemnities). The parties' respective rights to Indemnified Claims under this Clause 15 (Indemnities) are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights, if allowed by applicable law.

16. General.

16.1 Governing Law; Jurisdiction. The Agreement and all disputes in connection with the Agreement and/or the APEX Service are governed by the laws of Taiwan (excluding the conflicts of law rules); and to the extent permitted by law, Taiwan Taipei District Court will have exclusive jurisdiction for any dispute. In any event, neither the U.N. Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act will apply to the Agreement or any dispute.

16.2 Trade Compliance. Distributor is subject to and responsible for compliance with the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions (collectively, "Applicable Trade Laws"). The APEX Service, Related Service, and any other services are for Distributor's authorized use and sale under this Agreement, and may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with the Applicable Trade Laws. Distributor represents and warrants that it is not the subject or target of, or located in a country or territory that is the subject or target of economic sanctions under the Applicable Trade Laws. For further information about geographical restrictions and compliance with Applicable Trade Laws, visit [Dell Trade Compliance](#).

16.3 Distributor's Responsibility. Distributor agrees that Distributor will obtain all necessary rights, permissions and consents associated with: (a) technology or data (including personal data) that Distributor provides to Dell; and (b) non-Dell software or other components that Distributor directs or requests that Dell use with, install, or integrate with the APEX Service or Related Service.

16.4 Independent Contractors, Third-Party Rights. The parties are independent contractors for all purposes under the Agreement and cannot obligate any other party without prior written approval. The parties do not intend anything in the Agreement to allow any party to act as an agent or representative of a party, or the parties to act as joint venturers or partners for any purpose. No party is responsible for the acts or omissions of any other. There are no third-party beneficiaries to the Agreement under any laws.

16.5 Audit and Record-Keeping. Distributor will maintain legible, accurate and complete books and records relating to the Agreement or the sale, licensing, delivery, or end-use of the APEX Service for a period of 5 years from the date of creation, unless mandatory local laws require a longer record retention period. At the end of the retention period, Distributor must dispose of all records appropriately. At Dell's request, Distributor must cooperate and assist Dell with any audit, review, or investigation ("**Audit**") that relates to (i) the Agreement or Distributor's compliance with law; (ii) Distributor's sale, distribution, licensing, or delivery of the APEX Service; (iii) any amounts payable by Dell; or (iv) any amounts due to Dell. In connection with an Audit, Distributor will deliver all records, information, and documents reasonably requested by Dell. Dell has the right to conduct onsite Audits, and Distributor will grant Dell and its employees and representatives reasonable access to information, records, personnel, and customers (including Reseller and Customer agreements and other agreements to verify Distributor's compliance with the Agreement), and provide entry and access to Distributor's premises or other locations (during normal business hours) where such information and records are located. Failure to cooperate with an Audit or provide the information or records requested by Dell is a material breach of this Agreement. Dell will pay the costs of an Audit except where a discrepancy of five (5) percent or more is discovered in the information disclosed by Distributor, in which case Distributor agrees to be responsible for all reasonable costs.

16.6 Force Majeure. Except for payment of fees, neither party will be liable for failure to perform its obligations during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond that party's reasonable control. If any delay or failure lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, the relevant APEX Service and/or any Related Services by giving written notice to the delayed party.

16.7 Assignment and Subcontracting. Neither party will assign, transfer or novate the Agreement, or any right or obligation or delegate any performance without the other party's prior written consent, which consent will not be

unreasonably withheld. Notwithstanding the foregoing: (a) Dell may use Affiliates or other qualified subcontractors to perform Dell's obligations, provided that Dell will remain responsible for their performance; and (b) Dell may assign rights to payments arising from the APEX Service and any Related Services without Distributor's consent.

16.8 Waiver and Severability. Failure to enforce a provision of the Agreement will not constitute a waiver of that or any other provision of the Agreement. If any part of the Agreement is held unenforceable, the validity of the remaining provisions will not be affected.

16.9 Notices. The parties will provide all notices under the Agreement in writing. Distributor must provide notices to the local Dell entity which invoices for the APEX Service. Distributor consents to receiving notices from Dell through the APEX Console or as otherwise provided in the Agreement. Distributor is responsible for collecting Customer input in a timely manner as necessary for Distributor to fulfill Distributor's notice obligations in the Agreement. For clarity, it is Distributor's obligation to notify Dell where required herein, including as provided in the Service Offering Description, regardless whether Reseller or Customer has separately notified Dell.

16.10 References. Distributor agrees that Dell may identify Distributor as an APEX Service and/or any Related Service distributor in promotional or marketing materials provided that such materials do not disclose any of Distributor's Confidential Information.

16.11 Entire Agreement, Conflict and Order of Precedence, Modifications. The following are part of the Agreement: (a) the AUP; (b) the Partner DPA; (c) the AISMA; (d) the Service Offering Description; and (e) the Order. In the event of conflict, they will prevail in the following order: (i) the Service Offering Description (and all documents incorporated into it); (ii) the Agreement; (iii) the AUP; (iv) the Partner DPA; (v) the AISMA; and (vi) the Order. Distributor acknowledges that Distributor has read the Agreement, that Distributor understands it, that Distributor agrees to be bound by its terms, and that the Agreement, is the complete and exclusive statement of the agreement between Distributor and Dell regarding the APEX Service and any Related Services that Distributor is purchasing now. All previous representations, discussions, and writings are superseded by this Agreement and the parties disclaim any reliance on them. All content referenced in the Agreement by hyperlink is incorporated into the Agreement in its entirety and is available to Distributor in hardcopy form upon Distributor's request. The pre-printed terms of Distributor's purchase order or any other document that is not issued or signed by Dell do not apply to the APEX Service and any Related Services. Distributor represents that Distributor did not rely on any representations or statements that do not appear in the Agreement when accepting the Agreement. The Agreement may only be modified in writing signed by both parties; provided, however, that Dell may, in its sole discretion update the AUP, the AISMA, the Flow Down Terms, and the Partner DPA at any time. Dell will provide written notice if any such updates result in a material modification under Clause 3.2 (Material Modifications).

[英文版本具有約束力，中文版本僅供參考。]

Dell APEX 代理商協議 – 台灣

上次更新日期：2023 年 5 月 11 日

本 Dell APEX 代理商協議 (下稱「協議」) 適用於 Dell Technologies 「APEX」品牌的服務 (下稱「APEX 服務」) 以及其他載明於報價單的相關 Dell Technologies 服務 (下稱「相關服務」) · APEXAPEX · 由您代表貴公司 (下稱「代理商」) 向 Dell Technologies 實體 (下稱「Dell」) 訂購，且由該實體向代理商開立 APEX 服務發票。同意 Dell 報價單 (透過親筆簽名、電子簽章或「點選接受」) 即表示：(a) 代理商同意受本協議約束，並且也同意本協議及根據本協議簽署之文件 (包括但不限於報價單) 得採取電子文件或紀錄形式，且得以電子簽章方式簽署。此類文件上的電子簽章之有效性、可執行性和可供證明性與手寫簽名相同；且 (b) 您向 Dell 聲明，您有權代表代理商同意本協議。本協議「生效日」為代理商同意受本協議約束之報價單之日，或客戶首次使用 APEX 服務和/或相關服務之日，以較早發生者為準。APEX。

1. 定義。

「關係企業」係指 (a) 就代理商而言，直接或間接控制代理商、由代理商擁有、控制或與代理商共同擁有或控制的其他實體；且 (b) 就 Dell 而言，係指 Dell Inc. 及其完全擁有或控制的子公司。「控制」係指擁有超過 50% 的投票權或所有權利益。

「APEX 系統」係指用於操作 APEX 服務的 Dell 品牌 IT 硬體 (下稱「設備」) 和/或軟體 (包括微碼、韌體、作業系統或應用程式) (下稱「軟體」)。對 APEX 服務之引用包含 APEX 系統。

「主機託管地點」在適用情況下係指第三方地點。

「客戶」係指購買 APEX 服務及任何相關服務用於其自身內部業務目的，而非用於轉售的經銷商客戶。客戶包括從代理商處購買 APEX 服務和任何相關服務，以用於其自身內部業務目的，而非用於轉售 (如第 2.1.D 條中所述) 的雲端服務提供商合作夥伴。

「客戶內容」係指客戶或終端使用者在 APEX 服務儲存、使用或向 Dell 提供的資料 (包括但不限於所有文字、聲音、影片及影像檔案)、軟體 (包括機器映像) 及其他資訊。客戶內容不包括有關客戶或終端使用者使用 APEX 服務的系統資料，如服務方案說明所述。

「通路終端客戶適用 Dell APEX 條款」或「下達條款」係指客戶存取並使用 Dell APEX 服務及相關服務的適用條款及條件，包括適用服務方案說明。得於 https://www.dell.com/learn/us/en/uscorp1/legal_terms-conditions_dellwebpage/apex-terms-for-channel-end-customers 參閱通路終端客戶適用 Dell APEX 條款，同時這些條款得不時更新。

「終端使用者」係指客戶的客戶或其他第三方，其中客戶得使用 APEX 服務向其提供服務。

「訂單」係指經 Dell 確認的代理商針對 APEX 服務及相關服務的訂單。第 4.1.A 條 (訂單確認) 規定有關訂單確認的內容。

「報價單」係指 Dell 對 APEX 服務及任何相關服務的書面報價單或線上報價單。「報價單」還包括「APEX 訂用方案報價單」或 APEX 訂用方案報價單的修訂版

「經銷商」係指從代理商處購買 APEX 服務，由代理商指定並向客戶銷售 APEX 服務的經銷商。

「服務等級協議」或「服務等級目標」係指 Dell 對 APEX 服務履行承諾的當時最新版本。在適用情況，服務方案說明將提供這些承諾。

「服務方案說明」係指用於描述代理商訂購之 APEX 服務的 Dell 文件的當時最新版本。

「地點」係指 APEX 系統之安裝地點。此地點得是客戶自己的場所或主機託管地點。代理商應提供 Dell 所需的地點資訊。

「訂用方案期限」係指代理商訂購之各 APEX 服務的期限及任何延長的期限。初始訂用方案期限從訂單和/或服務方案說明指定的日期開始。

「經銷地區」係指台灣，代理商得於該範圍內，按照本協議規定購買 APEX 服務及相關服務，以轉售給客戶。

「第三方主張」係指由以下內容或事項引起或與之有關的任何第三方指控、主張、控告、索求或訴訟：(a) 客戶內容或第三方產品；(b) 代理商違反本協議使用任何 APEX 服務或任何相關服務；(c) 客戶或終端使用者違反 Dell APEX 通路客戶條款使用 APEX 服務及任何相關服務；(d) 將 APEX 服務與非 Dell 產品、非 Dell 內容 (包括任何客戶內容) 和/或任何第三方產品組合使用；或 (e) 代理商侵犯或侵占 Dell、Dell 關係企業或第三方的智慧財產權。

「第三方產品」係指非 Dell 品牌的硬體、軟體、產品或服務。第三方產品非指 APEX 服務的嵌入式組件。

2. APEX 服務。

2.1 範圍；分銷權。

A. 本協議適用於代理商在同意報價單時訂購的 APEX 服務和相關服務。其他 APEX 服務及其他相關服務的訂單 (包括 APEX 訂用方案報價單的修訂版) 將受代理商隨 Dell 提供的新報價單或 APEX 訂用方案報價單修訂版一起接受的協議約束。本協議不適用於代理商根據與 Dell 簽訂的單獨代理協議 (個別簡稱為「既有代理協議」) 購買和分銷的其他 Dell 產品和服務。本協議不得視為修改、取代或修正任何既有代理商協議，且代理商對 APEX 服務的購買及代理不適用任何既有代理商協議。除非與 Dell 另有書面協議，對於代理商或代理商關係企業出於內部使用最終目的而購買 APEX 服務及任何相關服務，本協議並不適用。

B. 在遵守當地法律及本協議的條款與條件的前提下，授權代理商向下列經銷商轉售 APEX 服務和相關服務，該經銷商位於「經銷地區」內且於訂單指明可向「經銷地區」內的客戶轉售，同意下達條款並於訂單指明 (下稱「代理權」)。在代理商與經銷商的協議 (下稱「經銷商協議」) 中，代理商應促使在經銷商與客戶之間單獨簽訂的合約 (下稱「客戶協議」) 說明經銷商的此類轉售情形。未經 Dell 事先書面同意，代理商不得對 APEX 服務或相關服務進行下列情形的行銷或分銷：(i) 對象為超出經銷地區範圍的經銷商或客戶；(ii) 對象為消費者；或者 (iii) 對象為美國政府的任何部門、機構、分部或辦事處。若 Dell 不希望代理商向特定經銷商 (下稱「保留的經銷商」) 銷售 APEX 服務及相關服務，並以書面形式將此經銷商名單告知代理商，則代理商即不得向此類保留的經銷商銷售 APEX 服務及相關服務或應停止此類銷售活動，同時 Dell 有權自行修改名單。若 Dell 不希望向特定客戶 (下稱「保留的客戶」) 轉售 APEX 服務及相關服務，並以書面形式將此客戶名單告知代理商，對於有理由相信經銷商會向此類保留的客戶轉售 APEX 服務及相關服務銷售，則代理商即不得向下列經銷商銷售 APEX 服務及相關服務，或應停止該等銷售活動，同時 Dell 有權自行修改名單。自 Dell 發佈「保留的經銷商」名單或「保留的客戶」名單之日起，代理商將有十五 (15) 天緩衝期，之後便須遵守此類禁令。除本協議明確允許的情形外，代理商不得行銷、轉售、分銷或使用 APEX 服務或相關服務。

C. 代理商應確保客戶協議在沒有任何矛盾之處的前提，至少包含具有以下內容的下達條款及其他條款：(i) 明確指明根據本協議由經銷商轉售給客戶的 APEX 服務及任何相關服務的訂購內容；(ii) 足以允許 Dell 進入地點提供任何保固維護或支援服務、監視及計量本協議及服務方案說明所述的 APEX 服務，並於客戶協議、經銷商協議或本協議發生任何終止或違約情形，或出現客戶破產或客戶未付款事件時，允許 Dell 收回 APEX 系統；(iii) 將 Dell 列為客戶協議的第三方受益人；(iv) 明確指明客戶向代理商支付 APEX 服務費用的義務是無條件的，並明確表示這些義務為「絕對、無條件且不得取消的，並且不得基於任何理由減免、減少、抵銷、異議、延遲或反請求」；(v) 允許向 Dell、其關係企業及資金合作夥伴揭露客戶協議；以及 (vi) 足以滿足代理商在本協議所承擔的義務，包括但不限於在客戶協議 / 或經銷商協議包含特定條款的義務，以及確保經銷商及客戶同意、遵守和/或合作的義務。代理商應賠償 Dell 因代理商未遵守本第 2.1.C 條規定而產生之所有損失或責任。

D. 在遵守當地法律及本協議條款與條件前提下，授權代理商向 Dell Technologies 合作夥伴方案雲端服務供應商合作夥伴轉售 APEX 服務和相關服務，此類合作夥伴必須位於「經銷地區」內並於訂單指明，且購買 APEX 服務及相關服務係為用於其自身內部業務目的 (包括提供 IT 即服務)，而非用於轉售。代理商應確保在經銷商與雲端服務提供商合作夥伴之間單獨簽訂的合約說明對此類轉售情形，並且此類協議應符合本協議之客戶協議要求，並且在本協議所提之「客戶協議」，代理商被視為「經銷商」。

2.2 地點選項及要求。

A. **Dell 主機託管地點。**若代理商訂購 Dell 提供的主機託管地點選項 (若可用)，則 (a) Dell 將負責安排在適當資料中心環境內託管 APEX 系統；且 (b) 本協議的以下條款將不適用：第 4.5 條 (出貨)、第 4.6 條 (APEX 系統之所有權)、第 4.7 條 (損失風險)、第 4.8 條 (保險)、第 4.9 條 (破產權)、第 6.4.A(b) 條 (一般情形)、第 6.4.B 條 (其他取回權利)、第 7.2 條 (地點進出) 及第 7.5 條 (更換零件)。

B. **非 Dell 主機託管地點。**若代理商將 APEX 系統放置於非 Dell 提供的主機託管地點，則代理商應確保經銷商能夠確保由客戶負責確保 Dell 對非 Dell 提供的主機託管地點擁有第 7.2 條 (地點進出) 規定之進出權。對於因代理商或客戶將 APEX 系統放置於非 Dell 提供的主機託管地點而產生之爭議、主張或爭端 (無論是合約、侵權 [包括疏忽] 或其他爭議、主張或爭端)，代理商同意確保 Dell 免受損害。

C. **房東棄權。**應 Dell 之要求，代理商應安排 (或代理商確保經銷商或客戶得安排) 所租賃之主機託管地點房東簽署房東棄權協議，以確認 Dell 對 APEX 系統的所有權，以及 Dell 對與 APEX 服務及本協議有關之 APEX 系統的存取權。

2.3 **服務方案說明。**服務方案說明規定 APEX 服務的範圍及詳細資料 (包括從 Dell 訂購的主機託管地點選項)。除非在服務方案說明另有定義，否則服務方案說明提到的「客戶」或「您」應被理解為有權獲得 APEX 服務的客戶，但在價格、帳單、退款、訂購 (包括但不限於擴充、延伸及附加)、取消及類似的財務條款提及之「客戶」或「您」應表示代理商。

2.4 APEX 服務及相關服務之使用與所有權。

A. 代理商只得在以下情況下存取和使用 APEX 服務：(i) 在訂用方案期限內；(ii) 行使分銷權所必需；以及 (iii) 遵守本協議。

B. 客戶僅得於以下情況存取及使用 APEX 服務：(i) 在訂用方案期限內；(ii) 遵守下達條款及服務方案說明規定。若 APEX 服務包含 Dell 授權的軟體，則客戶協議要求客戶僅得於以下情況使用軟體：(a) 與客戶使用 APEX 服務有關聯並且符合下達條款規定；(b) 在訂用方案期限內；以及 (c) 遵守 Dell 的[終端使用者授權合約](#) (下稱「EULA」)。客戶協議還要求，客戶不得：(1) 轉售或出租 APEX 服務的使用權；或 (2) 將 APEX 服務用於支援旨在與 APEX 服務業務競爭之方案或目的。

C. 若 Dell 相信 APEX 服務的問題是由客戶內容，或代理商、經銷商或客戶對 APEX 服務的使用引起或導致，則代理商同意與 Dell 合作以確定及解決問題。

D. 代理商同意，Dell 擁有 APEX 服務及相關服務，以及所有改進、加強、修改及衍生作品之一切權利、所有權及利益，以及所有該等內容之智慧財產權。代理商對 APEX 服務的使用權僅限本協議明確書面規定之權限。代理商同意，代理商對 APEX 服務或任何相關服務沒有任何其他隱含的權利。Dell 保留本協議未授予代理商的所有權利。

3. 修改。

3.1 **一般情形。**Dell 得隨時修改 APEX 服務。修改得包括 APEX 服務選用新功能，客戶得根據當時最新的服務方案說明或 APEX 系統元件的變更來使用這些功能。Dell 得透過電子郵件、APEX Console、Dell 銷售代表或直接透過 APEX 服務，向代理商和/或客戶通知修改。代理商繼續銷售 APEX 服務和/或代理商的客戶在任何修改日期後繼續使用 APEX 服務，即被視為代理商和客戶接受修改後的 APEX 服務以及與服務方案說明相關的所有變更。

3.2 重大修改。

A. **終止選項。**若 Dell 移除 APEX 服務的重要功能或嚴重減少 APEX 服務的功能、客戶選擇就 APEX 服務終止與經銷商的訂單，且經銷商選擇就 APEX 服務終止與代理商的訂單，則代理商有權在 Dell 發出修改通知後的 30 天內，通知 Dell 終止 APEX 服務的訂單。若代理商選擇終止訂單，則訂單終止日為：(a) Dell 收到代理商的終止通知之日；或者 (b) 代理商在通知中指定的較晚的日期 (但此日期不得超過 Dell 收到代理商的終止通知後 90 天)。

B. **退款權。**代理商需負責承擔終止日前產生的所有費用。對於因代理商根據第 3.2.A 條 (終止選項) 終止，而不再提供的 APEX 服務或相關服務，Dell 應立即退還相應的預付費用。代理商收到 Dell 退款後，代理商、經銷商及客戶將無權再享受任何其他補償措施。

4. 訂單、付款、出貨、APEX 系統之所有權及保險。

4.1 訂單。

A. **訂購程序。**代理商得要求 Dell 就 APEX 服務及任何相關服務提供報價單。在報價單到期之前，報價價格均視為有效，但價格可能因原料或資源短缺、製造成本增加或其他因素而調整。代理商以同意 Dell 的報價單 (透過親筆簽名、電子簽章或「點選接受」) 並發出引用 Dell 報價單的訂單之方式，訂購報價單上的 APEX 服務及相關服務。代理商訂單需經 Dell 確認 (如第 4.1.B 條 [訂單確認] 所定)，並經 Dell 核准信用額度、視供應情況而定，且僅 Dell 得以取消。Dell 對任何報價單的價格、誤植與其他錯誤概不負責，且得取消因此類錯誤而受影響的訂單。

B. **訂單確認。**代理商的訂單需經 Dell 確認。訂單確認時間為以下兩個時間較早者：(a) Dell 書面確認；或者 (b) 服務方案說明規定的其他方式。在 (i) 代理商提供 Dell 處理訂單及提供 APEX 服務及任何相關服務所需的所有資訊，且 (ii) 客戶同意下達條款之前，Dell 不需要提供 APEX 服務。除非協議另有規定，所有訂單不得退款且不得取消。

C. **費用付款。**代理商必須支付因代理商或客戶使用 APEX 服務及相關服務產生的所有費用。費用得包含承諾的金額以及額外金額，包括代理商訂購或代理商、經銷商或客戶啟用的附加功能的費用，以及基於 APEX 服務的實際使用情況而產生的費用。訂購 APEX 服務及任何相關服務時，代理商必須建立一種支付方式來支付所有費用。

D. **其他費用。**Dell 得就訂單產生的額外費用直接向代理商開立發票。代理商同意，Dell 即使未收到代理商的相應訂單，亦得向代理商開立發票。

E. **客戶證明。**Dell 得要求代理商提供，且代理商同意提供證明 (不包括機密條款和價格)，證明經銷商和客戶已經為所訂購的 APEX 服務下達了有約束力的最終訂單。代理商提交的證明必須得到 Dell 的核准，且不包含意向書、以未來事件為條件的購買、內部代理商文件或公開招標要約之授予。

4.2 **付款期限。**代理商必須在 Dell 發票指定付款期限內 (若 Dell 發票未指定付款期限，則應在開立發票日期後 30 天內)，並維持在 Dell 核准的信用額度內，以訂單約定幣別支付所有費用。逾期款項將於到期日之後，以每月 1.5% 或最高法定利率 (以兩者較低者為準) 計息。若代理商未能按照本協議的付款期限進行付款，Dell 可能會暫停 APEX 服務和相關服務。

4.3 **稅金。**就 APEX 服務及相關服務的發票費用不包含任何稅金 (包括增值稅、銷售稅、使用稅或其他類似稅金)、政府費用、徵費、關稅以及因代理商的訂單產生的稅金 (與 Dell 的收入或員工相關的稅金除外)。若 Dell 需要收取及上繳任何稅金，則 Dell 將在代理商的發票以單獨明細項目加入相關金額。代理商同意在 APEX 服務及相關服務的費用之外，向 Dell 支付稅金。若代理商獲豁免繳納稅金，代理商應於開始使用 APEX Console 之時或應 Dell 要求，立即提供有效的稅務豁免證明文件或其他適當豁免證明。若代理商需要預扣稅金，代理商應：(a) 提前 10 天通知 Dell，說明代理商有意預扣稅金，並根據當地稅法及相關稅務協定提供適用預扣稅率；(b) 在代理商向相應的稅務機構匯繳預扣稅金後的 60 天內，向 Dell 提供使人信納的證據 (例如官方預扣稅收據)。

4.4 發票錯誤。若代理商在發票發現重大錯誤，則代理商必須在收到發票後 10 天內書面通知 Dell。Dell 及代理商雙方書面同意更正的金額必須在：(a) Dell 更正發票日期後 14 天；(b) 原到期日；或 (c) 正確發票所定到期日前支付，以較後發生者為準。若代理商以發票不正確為由扣留付款，而 Dell 發現金額是準確的，則代理商必須支付自發票到期日起未付款爭議金額的利息，直到 Dell 收到付款為止。於完成此過程後，代理商不得抵銷、推遲或扣除 Dell 判斷為正確的金額。

4.5 出貨。當 APEX 系統作為 APEX 服務之一部時，Dell 得將 APEX 系統運送至地點。有關 APEX 系統運送及交付之條款及流程規定於適用服務方案說明內。

4.6 APEX 系統之所有權。Dell 擁有 APEX 系統 (包括所有更換之零件) 的所有權利、所有權及利益，訂用方案期限結束時得將 APEX 系統歸還給 Dell (或在更換設備或零件時立即歸還給 Dell)。APEX 系統應標示為 Dell 所有，代理商、經銷商或客戶不得除去、覆蓋或更改 Dell 在 APEX 系統上放置的標誌、標籤或任何其他標記。APEX 系統不受代理商、經銷商或客戶的貸方的任何留置權及擔保權益的約束。此外，代理商、經銷商或客戶不能將 APEX 系統用作貸款的附屬擔保物或債務的擔保。若代理商的貸方、債權人或其他第三方 (或代理商知悉經銷商或客戶的貸方、債權人) 主張對 APEX 系統的任何權利，或尋求取得 APEX 系統的所有權，代理商應立即書面通知 Dell。

4.7 損失風險。在 Dell 與代理商之間，APEX 系統損失、竊盜、損害或毀損之所有風險，於 Dell 將其交付予安裝地點時移轉予代理商，至 APEX 系統歸還給 Dell 為止。若於代理商承擔風險期間，APEX 系統發生損失、竊盜、損害或毀損，則在該事件影響 Dell 提供 APEX 服務之能力範圍內，應免除 Dell 對 APEX 服務的相關義務，直到 APEX 系統修復或更換為止。於上述中斷期間應繼續計費。若 APEX 系統嚴重破壞、失竊或毀損，代理商應立即通知 Dell。

4.8 保險。代理商應確保 (或促使) 透過信譽良好的保險公司為 APEX 系統投保，以應對所有：(a) 因代理商、經銷商或客戶使用 APEX 系統而對任何第三方產生的責任；以及 (b) 因所有可保風險而導致 APEX 系統損失或損壞 (投保金額應足以支付全額購置成本)；及 (c) 審慎人士會合理投保的其他風險。關於 (a) 及 (b)，各應指定 Dell 為額外被保險人及保險受益人。如有要求，代理商需要向 Dell 提供證據，證明所需保險已生效。代理商應立即通知 Dell 任何損失主張，且未經 Dell 事先書面同意，代理商不應就任何保險理賠達成和解。

4.9 破產權。若本協議被判定不是 Dell 與代理商之間的服務協議，則代理商授予 Dell 對 APEX 系統 (及其所有收益) 的優先擔保權益，Dell 保留對 APEX 系統及其所有收益的第一留置權及擔保權益。代理商同意，Dell 得於代理商公司註冊成立所在之司法管轄區或其他適用地點，向政府或其他主管機關提交保護性文件，以通知第三方及貸方，Dell 在代理商地點擁有 APEX 系統的所有權 (若代理商的地點位於美國，包括提交 UCC-1 文件)。就美國破產法而言，代理商同意本協議係為「執行性合約」而代理商及 Dell 皆負有相互義務。

4.10 財務報表。代理商同意：(i) Dell 得隨時以合理方式要求其於五 (5) 個營業日內，提供與本協議相關的代理商財務報表 (依據公認會計原則所編製) 及其他財務資訊；及 (ii) 在接受訂單之前及 Dell 得以其他方式隨時合理要求其於五 (5) 個營業日內，提供 Dell 得以合理方式要求且與客戶相關的客戶財務報表 (依據公認會計原則所編製) 及其他財務資訊 (下稱「**客戶財務資訊**」)；依 (i) 和/或 (ii) 提供者，應適用本協議適用之保密條款的規範。於任何情況，若 Dell 認為依本條提供的資訊為錯誤、誤導性或不真實，將構成本協議第 6.3.1.A 條違約事件。

4.11 代理商定價。對於向經銷商提供 APEX 服務及相關服務，代理商得自由決定並設定轉售價格。

5. 暫停。

5.1 一般情形。若發生以下情形之一，Dell 得暫停目前訂單所涉全部 APEX 服務及任何相關服務：(a) 代理商嚴重違反本協議 (包括未能支付到期的發票款項) 且未能在 Dell 通知後 10 天內消除違約行為；(b) 客戶嚴重違反下達條款，且未能在 Dell 通知後 10 天內消除違約行為；或者 (c) 若代理商、經銷商或客戶違反 [Dell 接受的使用原則](#) (包括 Dell 在訂用方案期限內對接受的使用原則所做之全部更新) (下稱「**AUP**」)，Dell 得立即實施暫停。若法律允許，Dell 將在暫停 APEX 服務及任何相關服務前通知代理商，除非 Dell 合理認為提前通知可能會對 APEX 服務、APEX 服務的其他使用者，或任何人或財產

造成危害，Dell 將於此等情形在可行或允許的最短時間內通知代理商。一旦確認造成暫停的問題獲得解決，Dell 即行恢復 APEX 服務及任何相關服務。

5.2 暫停的影響。代理商得支付在暫停之前以及暫停期間產生的全部適用費用。在暫停期間，代理商無權根據適用服務等級協議或服務等級目標獲得任何服務信用額度。

5.3 暫停終止。若 Dell 有權根據第 5.1(c) 條 (暫停 - 一般情形) 暫停 Dell 服務及相關服務，則 Dell 亦有權在以下情形下終止 APEX 服務及相關服務：(a) 若代理商違反 AUP，則在書面通知代理商後，立即終止 Dell 服務及任何相關服務；或者 (b) 根據第 6.2(c) 條 (終止) 規定，自 Dell 根據第 5.1(a) 條或第 5.1(b) 條 (暫停 - 一般情形) 規定首次通知之日起算，在 30 天改正期間後，終止 APEX 服務及任何相關服務。

6. 期限與終止。

6.1 協議期限。本協議自生效日起生效，直到根據本條之規定終止為止。

6.2 終止。代理商僅得按照本協議授權的方式終止本協議 (包括任何訂單)。若出現以下情形，任一方均得終止本協議 (包括任何訂單)：(a) 他方破產，書面承認無力償還到期債務，或轉讓資產來保障債權人權益；(b) 他方受到受託人、接管人或類似機構的控制，或受到任何破產或無力清償債務的程序管轄；(c) 他方嚴重違反本協議且未能在另一方書面通知後 30 天內消除違約行為。

6.3 違約事件；轉讓客戶協議

6.3.1 違約事件；補償措施。

A. 違約事件。本協議發生下列任一情形時，應構成違約事件：(i) 代理商未於到期日起三十 (30) 日內支付 APEX 服務及任何相關服務的費用；(ii) 代理商未履行任何規定、承諾、條件或協議，而該違反情形經通知後仍持續達三十 (30) 日；或 (iii) 依據適用法律或此類當事方組織所在任一州或司法管轄區規定，代理商或經銷商就其全部或一部分財產提起或被提起破產、接管、無清償能力、重整、解散、清算或其他類似法律程序，而其對此表示同意或未於六十 (60) 日內排除之；或 (iv) 依據適用法律或代理商組織所在任一州或司法管轄區規定，客戶就其全部或一部分財產提起或被提起破產、接管、無清償能力、重整、解散、清算或其他類似法律程序，而客戶對此表示同意或未於六十 (60) 日內排除之 (下稱「客戶破產」)。

B. 補償措施。除符合下文第 6.3.2 條中規定的客戶協議轉讓條件外，若發生違約事件，則 Dell 得行使以下任一種或多種補償措施：(i) 立即終止本協議或任何訂單；(ii) 書面通知代理商，聲明款項立即到期應付，而代理商即有義務立即支付 (1) 所有逾期的 APEX 服務費用和其他逾期金額，加上 (2) 剩餘訂用方案期間內所有 APEX 服務和相關服務的費用，其中第 (2) 條以台灣銀行於本協議開始日期之貼現率折算現值；以及 (iii) 經通知且依據適用法律，Dell 得進入安置 APEX 系統的地點而不須為客戶的任何索賠請求負責；惟雙方應合理配合，以便讓客戶移轉與刪除客戶資料，並讓 Dell 得以取回 APEX 系統。代理商應確保，經銷商能夠確保客戶於客戶協議同意，Dell 得依本協議所規定之情況及方式取回 APEX 系統。代理商應負責支付 Dell 取回 APEX 系統和/或尋求催收到期金額所產生的實際費用與合理律師費。此處所述的各補償措施得累計且非擇一，亦可選擇單獨或合併執行。

6.3.2 轉讓客戶協議。

A. 轉讓事件。若發生下列任一情形，經銷商應依本協議第 6.3.2 條規定將客戶協議轉讓給 Dell：(i) 經 Dell 聲明，發生本協議第 6.3.1.A (i)、(ii) 或 (iii) 條相關代理商或經銷商違約事件；(ii) 客戶協議當事人客戶發生客戶破產；(iii) 客戶在訂用方案期限前六 (6) 個日曆月內，無法支付 APEX 服務款項 (下稱「客戶未付事件」)；(iv) 客戶因未支付到期款項而違反客戶協議，Dell 以商業合理判斷其客戶收款能力將因進一步延遲付款而受到重大影響，故而要求轉讓，且經銷商或代理商同意；或 (v) 若 Dell、代理商與經銷商另行協議轉讓客戶協議，而客戶書面同意轉讓。

B. 轉讓要件 – 代理商違約。為了向客戶提供不受干擾的服務，當發生由代理商造成的違約事件時，若客戶協議符合下文第 6.3.2.E 條規定之要件，且客戶未違約或未嚴重違反客戶協議或傳承協議條款，Dell 即應按照第 6.3.2.A (i) 條之規定受讓客戶協議。

C. 轉讓要件 – 客戶破產或客戶未付事件。當發生客戶破產或客戶未付款事件時，僅得於下列情形，依第 6.3.2.A (ii) 和 (iii) 條要求 Dell 受讓客戶協議：(i) 客戶協議符合第 2.1.C 條和第 6.3.2.E (轉讓要件 – 一般情形) 條規定之要件；(ii) 代理商應 Dell 要求，或促使經銷商應 Dell 要求立即通知向客戶說明，客戶破產或客戶未付款，按照客戶協議之規定已構成違約或重大違約；(iii) 代理商已就客戶未支付 APEX 服務或相關服務費用的每一個事件，及時通知 Dell；(iv) 代理商已向 Dell 提供所有適用的客戶聯絡方式，及 Dell 催收款項和相關活動所必要之其他所有資訊；及 (v) 代理商已履行本協議規定的所有付款義務，所有款項目前均已付清且無任何未清償的逾期款項。

D. 轉讓要件 - 客戶未付事件 (附加)。發生第 6.3.2.A (iii) 條的客戶未付事件時，Dell 僅得於下列情形，受讓客戶協議：(i) 代理商未收到適用客戶協議所述的客戶應付款項；(ii) 代理商已，或使經銷商，書面要求 Dell 受讓客戶協議；(iii) 在發生任何客戶未付事件後，代理商立即根據客戶協議向該客戶發出未付款通知，且就收取逾期款項已採取所有合理、必要措施；(iv) 代理商根據客戶協議的條款，及時、準確地向客戶提供發票；以及 (v) 因客戶未支付到期款項導致之相關客戶違約或嚴重違反協議情形，與現有客戶根據客戶協議或代理商與客戶之間的任何其他協議，就履行協議或發票金額提起的爭議無關。

E. 轉讓要件 - 一般情形。僅得於下列情形，根據第 6.3.2.A (ii)、(iii) 及 (iv) 條規定，要求 Dell 受讓客戶協議：(i) 該適用客戶協議：(a) 規定客戶無條件為 APEX 服務及相關服務支付的金額，等於或大於代理商在剩餘訂用方案期限內，應支付 Dell 之金額；(b) 為表明客戶就 APEX 服務及相關服務的付款義務為無條件的，而於協議明確規定該義務係「絕對、無條件且不得取消，且不得基於任何理由減免、減少、抵銷、抗辯、延遲或提出反訴」，(c) 付款結構與本協議付款結構實質相似，包括但不限於含有 net 30 付款條件及無力清償任何逾期 30 天之款項；(d) 指定 Dell (或作為本協議當事方的 Dell 關係企業) 為第三方受益人；(e) 規定客戶破產及未支付任何到期金額之情形，各自分別構成違約或嚴重違反客戶協議的事由 (下稱「客戶違約」)；任一客戶協議發生客戶違約，將構成該客戶之所有客戶協議均發生客戶違約；代理商對前述客戶違約之補償措施權，應等同 Dell 按上述第 6.3.1.B 條對代理商就違約事件主張之補償權，各補償措施得累計且非擇一，亦得選擇單獨或合併執行；(f) 包含客戶同意，於發生任何客戶違約時，無需通知即將該客戶協議轉讓予 Dell，該同意亦明文包含同意 Dell 於客戶協議轉讓時，即有直接向客戶收款與催款之權利，以及直接對其行使與執行代理商之補償權利；(g) 不包含提供本協議未包含的產品或服務，且應獨立計費；及 (h) 符合上述第 2.1.C 條的所有規定；(ii) 代理商於經銷商協議規定，在 Dell 通知客戶，Dell 有意根據本協議第 6.3.2 條的條件受讓客戶協議時，得將客戶協議轉讓給 Dell；及 (iii) 按照 Dell 之全權裁量，依本協議提供的客戶財務資訊未被判定有錯誤、有誤導性或不真實的情形。

F. 轉讓生效。若代理商未依 Dell 要求，向 Dell 提供從客戶和/或代理商進行受讓的書面協議，則不得依第 6.3.2 條規定要求 Dell 受讓客戶協議。若無法依第 6.3.2 條規定受讓終端客戶協議、受讓被確定為無效，或者受讓根據任何法律程序被阻止、延遲或禁止，則 Dell 可行使第 6.3.1.B 條 (補償措施) 規定之任何或所有補償措施。

G. 於客戶未付款事件時要求轉讓。若 Dell 已書面要求依據第 6.3.2.A (iv) 條轉讓客戶協議，而代理商和/或經銷商拒絕轉讓或未於 10 日內回覆時，則不得依第 6.3.2.A (ii) 或 (iii) 條規定要求 Dell 受讓該客戶協議。

H. 轉讓後之權利。若 Dell 依第 6.3.2 條受讓客戶協議：(i) 代理商無權，且確保經銷商無權取得 Dell 從客戶收取或收回的款項；(ii) 代理商有義務，且確保經銷商有義務於轉讓後，立即向 Dell 發出根據客戶協議從客戶收到的款項；(iii) Dell 將免除代理商的代理商義務，無須於適用剩餘訂用方案期間內支付 APEX 服務費用，並透過書面通知代理商，立即聲明逾期應付款項，且代理商有義務立即就 APEX 服務及相關服務支付所有逾期費用，以及其他本協議相關過去逾期金額；(iv) 代理商與經銷商將無義務進一步開立發票或向客戶收取費用，也無義務取回或歸還 APEX 系統，然而代理商應配合 Dell，或者促使經銷商配合 Dell 並提供一些必要協助，使 Dell 收取客戶所欠費用並取回 APEX 系統；(v) 代理商有義務於轉讓 30 天內，就 Dell 依任何訂單或簽訂本協議而向代理商發放的任何或所有財務獎勵、費用和/或部分退款 (下稱「獎勵」) 支付等同金額，並且 Dell 無需向代理商支付有關任何訂單或本協議但尚未支付給代理商的任何獎勵；以及 (vi) 若 Dell 隨後確認依本協

議提供之客戶財務資訊有誤、誤導或不真確，Dell 同意該轉讓應撤銷和/或無效，且 Dell 可行使第 6.3.1.B 條規定之任何補償措施。

6.4 終止效力。

A. **一般情形。**APEX 服務及相關服務到期、終止或因任何原因被拒絕時，代理商得：(a) 停止使用 APEX 服務及相關服務，且確保經銷商與客戶停止使用 APEX 服務及相關服務；(b) 根據服務方案說明規定，將 APEX 系統歸還 (或確保由客戶歸還) 給 Dell，或者在服務方案說明要求 Dell 取回 APEX 系統時，代理商將合理配合經銷商與客戶向 Dell 提供能夠及時進出地點的權限，以便 Dell 取回 APEX 系統；以及 (c) 應 Dell 之要求，歸還或銷毀代理商所持有或控制的任何 Dell 機密資訊 (適用法律要求代理商保留的資訊除外)。服務方案說明將就 Dell 刪除任何客戶內容規定時間。代理商負責通知經銷商，且經銷商應通知客戶，客戶有責任確保在任何終止日期之前擁有所有客戶內容的副本。

B. **其他取回權利。**代理商同意，因任何原因到期或終止時：(a) Dell 得尋求法院命令，以執行 Dell 從安裝地點取回 APEX 系統之權利，且代理商同意與 Dell 合理配合，以便 Dell 根據此等法院命令，強制向經銷商和/或客戶執行取回權利；以及 (b) Dell 有權向代理商追償因該執行產生的合理律師費用。代理商應負擔所有歸還費用，並對未歸還或已歸還但證明其損害狀態超過自然耗損的 APEX 系統 (或其任何部分)，應向 Dell 賠償 APEX 系統的合理價值。

C. **退款。**若因下列任一情形導致終止，則就因終止而無法提供之 APEX 服務及相關服務，代理商得有權就代理商向 Dell 預付的 APEX 服務及相關服務費用獲得退款：(a) Dell 根據第 8.1(b) 條 (APEX 服務有限保固) 或第 15.2(2) 條 (Dell 的賠償) 終止 APEX 服務；和/或 (b) 代理商根據第 3.2 條 (重大修改) 或適用時根據第 6.2 條 (終止)，或根據第 16.6 條 (不可抗力) 終止 APEX 服務和/或相關服務。代理商不得因任何其他終止/拒絕 APEX 服務和/或相關服務之情形獲得任何退款、信用額度或兌換的資格。若發生以下情形：(i) Dell 因代理商對於本協議之重大違約或客戶對於下達條款之重大違約，或在暫停 APEX 服務後終止 APEX 服務和/或相關服務；或者 (ii) 代理商、經銷商或客戶在訂用方案期限結束之前，未經 Dell 事先許可即歸還或交還 APEX 系統，則代理商得立即向 Dell 支付 APEX 服務及相關服務在訂用方案期限剩餘時間內的所有應支付費用。

D. **存續。**只要 Dell 繼續處理代理商「個人資料」(定義於合作夥伴 DPA)，有關未付款項目的付款、保密、責任及合作夥伴 DPA (定義於第 11.3 條 [資料處理]) 條款、於終止前產生之所有訴訟權，以及本協議明示規定或任何因其性質及文意脈絡而有意於終止後存續的條款，都將於本協議終止後仍然有效。

7. 支援服務。

7.1 **一般情形。**APEX 服務包含服務方案說明規定之支援與維護服務 (下稱「支援服務」)。

7.2 **地點進出。**Dell 有權及時存取 APEX 系統，以便按照服務方案說明所定方式，或按照可能於相關服務之報價單所定方式提供支援服務。若未及時向 Dell 提供 (或未能保證經銷商或客戶及時向 Dell 提供) 進出地點的權限，Dell 將不承擔支援服務或相關服務之義務，Dell 亦得自行決定暫停 APEX 服務。

7.3 **變更。**未經 Dell 事先書面同意，代理商、經銷商或客戶不得重新安置 APEX 系統。若適用服務方案說明允許代理商、經銷商或客戶執行以下動作，則代理商必須在代理商、經銷商或客戶執行這些動作前通知 Dell：(a) 變更 APEX 系統組態；或者 (b) 停用 APEX 系統任何元件之遠端支援功能。Dell 將審核所有請求，且得自行決定核准或拒絕這些請求。得產生額外費用。

7.4 **對客戶內容之存取權。**在 Dell 提供支援服務時，Dell 不會存取或使用儲存於 APEX 系統上之客戶內容，除非代理商、經銷商或客戶已授權 Dell 存取或使用這些內容。

7.5 **更換零件。**代理商應通知經銷商，並要求經銷商通知客戶，在將 APEX 系統之更換零件歸還 Dell 之前，客戶應負責移除儲存於這些零件的所有客戶內容。代理商同意，Dell 對客戶未移除的客戶內容不承擔任何責任。代理商得向 Dell 購買資料刪除服務 (若可提供)。

8. 保固。

8.1 **APEX 服務有限保固**。Dell 保證提供的 APEX 服務符合服務方案說明。若 APEX 服務未遵守此保固規定，則 Dell 的全部責任及代理商、經銷商或客戶的唯一補償措施如下：(a) Dell 將根據適用服務等級協議或服務等級目標，盡合理努力改正與規定不符之處，若無相關之適用服務等級協議或服務等級目標，則在合理期間內予以改正；以及 (b) 若 Dell 因自身原因而無法改正不符標準之處，則 Dell 得終止 APEX 服務，並向代理商退還因終止而無法提供之 APEX 服務的預付費用。代理商必須立即書面通知 Dell 因不符此保固規定而提出之請求。

8.2 **相關服務保固**。Dell 將依業界公認標準之技術執行相關服務。代理商得於首次發生無法以上述方式執行之日起十 (10) 天內，通知 Dell 無法執行的情況。在此情形下，Dell 將會在合理的期間內，盡合理努力修正此類失誤。若經過合理的努力後，Dell 因自身原因無法修正此類失誤，代理商得書面通知 Dell 終止訂單中與相關服務相關的部分。Dell 將向代理商退還因終止而無法提供之相關服務的預付費用。

8.3 **限制**。本協議第 8 條 (保固) 所定保固不適用試用服務或免費提供的 APEX 服務，並且不涵蓋以下原因引起的問題：(i) 代理商、經銷商、客戶或任何第三方之意外或過失；(ii) APEX 服務一起使用之第三方產品或其他第三方商品或服務；(iii) 未依照 Dell 指示或適用說明文件所為之安裝、操作或使用；(iv) 以不符合 APEX 服務設計之方式或目的而使用；(v) Dell 以外之第三人所為之修改、變更或維修；或者 (vi) 超出 Dell 控制之其他原因。除非 APEX 系統安裝於 Dell 提供之主機託管地點，否則對於因 APEX 系統元件之原始識別標記被變更或移除，或因 APEX 系統安裝在非設計環境而導致任何與規定不相符之處，Dell 無須負責。APEX 服務不具備容錯能力，其設計不適合且不得用於需要防故障效能之危險環境；如做此類應用，APEX 服務之故障可能造成傷亡、人身或財產損害 (合稱「高風險活動」)。Dell 明確拒絕針對高風險活動適用性負有任何明示或默示的保固責任。

8.4 **保固免責聲明**。除本協議第 8 條 (保固) 所定保固外，在適用法律允許最大範圍內，Dell：(a) 無其他明示保固；(b) 否認所有默示保固，包括適售性、特定用途的適用性、所有權及未侵權；以及 (c) 否認因法令、法律運作、交易過程或履約，或貿易慣例而產生的任何保固責任。Dell 不保證 APEX 服務的使用或相關服務的履約不會中斷或沒有錯誤。Dell 不對延遲、中斷、服務故障或使用網際網路及電子通信時固有的其他問題，或與非 Dell 提供之主機託管地點相關的問題承擔責任。代理商同意，在訂購 APEX 服務時，代理商不以未來交付的功能、Dell 的公開評論或廣告，或產品路線圖為決策依據。

8.5 代理商不得代表 Dell 提供任何保固，且對於由任何超出本協議第 8 條規定範圍之保固而產生的任何主張，代理商應賠償 Dell，且確保 Dell 免受損害。

9. **APEX 試用服務**。Dell 得允許代理商 (或允許經銷商允許客戶) 免費使用某些 APEX 服務或 APEX 服務的某項功能 (下稱「試用服務」) 以進行評估。每項試用服務開始於 Dell 首次向代理商或客戶提供試用服務訪問權之日，試用期間 (下稱「試用期限」) 將在訂購時列明。就代理商或客戶使用試用服務而言，代理商同意並要求經銷商確保客戶同意：

- (a) 使用試用服務應遵守適用服務方案說明；
- (b) 代理商不得向任何第三方揭露代理商、經銷商或客戶對試用服務與任何競爭產品進行比較的結果；且
- (c) 除非在本協議第 9 條 (APEX 試用服務) 有所定或在本協議另有規定，否則就本協議其他條款而言，試用服務屬於「APEX 服務」。

10. **第三方產品**。Dell 得透過線上市集或使用 Dell 當時最新的第三方產品轉售計畫 (例如「Extended Technologies Complete」、「Software & Peripherals [S&P]」) 提供與 APEX 服務搭配使用的第三方產品。代理商透過這些轉售計畫從 Dell 訂購的第三方產品稱為「第三方產品」。代理商得自行選擇向經銷商提供第三方產品，並由經銷商向客戶提供此第三方產品供客戶使用 (若可提供)。若代理商選擇向經銷商提供第三方產品使經銷商提供客戶使用，則代理商、經銷商及客戶有責任遵守適用第三方產品的任何條款，包括承擔任何由第三方產品提供商規定收取的獨立費用 (無論是支付給 Dell 還是直接支付給第三方提供商)。就第三方產品而言，代理商同意遵守第三方製造商/供應商的標準授權、服務、保固、賠償及支援條款 (

或代理商與第三方製造商/供應商簽署之適用直接協議)。即使 Dell 為第三方產品開立發票，Dell 亦不為第三方產品提供支援服務。代理商必須直接聯絡適用第三方提供商，以便獲取支援。**第三方產品依「現狀」提供。Dell 明確排除對第三方產品的任何保固、損害或賠償要求。**Dell 得隨時暫停或終止提供及託管任何第三方產品，並且該暫停或終止不被視為第 3.2 條 (重大修改) 規定之 APEX 服務重大變更。

11. 資料保護。

11.1 安全措施。在不限制本資料保護條款所定 Dell 義務的前提下，Dell 於提供 APEX 服務或相關服務時，將遵守 [APEX 資訊安全性措施附錄](#) (包括訂用方案期限內的所有更新 [下稱「AISMA」]) 之合理適當安全措施。AISMA 及適用服務方案說明針對存放於 APEX 服務的客戶內容定義了管理、物理、技術及其他保障措施。代理商同意並促使經銷商促使客戶同意，客戶有責任對客戶內容採取適當安全措施，包括：(a) 控制客戶向客戶的人員和/或終端使用者提供的存取權；(b) 適當地設定 APEX 服務；(c) 確保客戶內容在傳輸及靜止時的安全性 (例如透過加密)；以及 (d) 根據第 14.2 條 (預防及緩解) 之要求對客戶內容進行備份。代理商確認，並促使經銷商促使客戶確認，由客戶全權負責確保已針對客戶內容和客戶對 APEX 服務的預期用途實施了適當的安全措施。代理商確認，並促使經銷商促使客戶確認，將客戶內容上傳到 APEX 服務不構成客戶向 Dell 揭露客戶的機密資訊。

11.2 代理商安全措施。代理商得透過 APEX Console 存取經銷商、戶和/或終端使用者的資料。代理商同意實施安全性及保密性不低於 Dell 在 AISMA 要求的商業合理標準技術及組織安全程序與措施，以便保護這些資料的安全性及保密性。

11.3 資料處理。Dell 的 [Dell APEX 資料處理附錄](#) (包括訂用方案期限內的所有更新) (下稱「合作夥伴 DPA」) 說明了在處理及控制各方於履行本協議可能交換的個人資料方面，各方所擔任的角色。代理商有責任向代理商的人員和/或購買者、經銷商、客戶或終端使用者提供所有必要的法律通知，並就代理商使用、蒐集、揭露、共用、跨境資料傳輸及處理個人資料，依照法律徵得必要的同意。

11.4 必要的揭露。若政府機構或法院要求 Dell 揭露客戶內容，則除非適用法律禁止，Dell 將於適當情況盡快通知代理商、經銷商和/或客戶並提供要求的副本。Dell 得應客戶要求，採取合理步驟來對必要的揭露提出異議，費用由客戶承擔。

12. 保密。

12.1 範圍。一方揭露給另一方且與本協議相關之資訊，若被標記或標識為「機密」或類似標誌，或者接收方應合理地知道該資訊為機密，則該資訊將被視為「機密資訊」。機密資訊不包括下列資訊：(a) 由接收方合法持有，且無來自揭露方先前的保密義務；(b) 為公眾所知悉者；(c) 由第三方合法提供接收方無保密限制的資訊；或者 (d) 由接收方 (包括其關係企業) 獨立開發，而未參考揭露方的機密資訊者。

12.2 保護。接收方得：(a) 僅將揭露方的機密資訊用於本協議規定之目的；並且 (b) 於下列期間內保護機密資訊免於未經授權向第三方揭露：(i) 對於與揭露方的產品與服務 (包括 APEX 服務) 相關的技術資訊，或任何未發佈的產品或服務的資訊，應永久保密；以及 (ii) 對於所有其他機密資訊，保密期間為自接收之日起 3 年。本條款規定之義務在本協議終止後仍然有效。

12.3 例外。任一方得於以下情形揭露機密資訊：(a) 於提供 APEX 服務或相關服務時，向 Dell 使用的關係企業、外包廠商或供應商揭露 (前提是他們遵守上述規定)；以及 (b) 根據政府機構或法院要求而揭露機密資訊，前提是接收方在法律允許的情形給予揭露方合理通知，以便揭露方就此揭露提出異議或尋求保護令。此外，Dell 得向相關的 Dell 經銷商或客戶揭露機密資訊，以履行 Dell 對代理商、經銷商或客戶的義務、實施 Dell Technologies 合作夥伴方案，或開展與該方案相關的通道銷售或行銷活動。

12.4 意見反映。於試用服務、APEX 服務或相關服務時，代理商向 Dell 提供的任何意見反映、加強請求、更正或建議 (下稱「意見反映」) 均為 Dell 的機密資訊。代理商同意，Dell 得於沒有任何限制亦不必對代理商作出任何補償的情形下使用意見反映，並且代理商將所有意見反映的權利轉讓予 Dell。

13. 監控。 Dell 得監視 APEX 服務並收集有關代理商、經銷商和/或客戶使用 APEX 服務的遙測資料，詳細資訊請參閱服務方案說明。對於代理商得存取的任何遙測資料，代理商於使用這些資料時應遵守服務方案說明及本協議，包括第 11.2 條 (代理商安全措施) 與第 11.3 條 (資料處理)。

14. 責任限制。

14.1 損害賠償限制。 各方(包括 Dell 供應商及 Dell 關係企業) 就本協議之所有爭議的最高賠償責任為以下兩者較大者：**(a) 50,000 美元 (或等值當地貨幣)；或者 (b) 在任何爭議事件發生前 12 個月期間，代理商就 APEX 服務及相關服務已支付予 Dell 的金額。** 即使本協議的有限補償措施被認為未達其基本目的，此限制仍然適用。此外，對於任何特殊性、連帶性、懲戒性、懲罰性、偶然性或間接性的損害，或任何利潤損失、收入損失、資料損失或損壞、使用損失，或對於替代產品或服務的採購，任一方均無須對他方承擔賠償責任，即使被指稱對損害負責的一方知道存在此類損害的可能性亦然。上述限制及排除規定不適用以下情形：**(i) 代理商就 APEX 服務及相關服務之付款義務；(ii) 代理商就 APEX 系統損壞或損失承擔之付款義務；(iii) 代理商違反 APEX 服務使用限制的相關規定；(iv) 一方在本協議下之賠償義務；(v) 一方違反或侵害對方的智慧財產權；或者 (vi) 適用法律禁止者。** Dell (以及 Dell 供應商及 Dell 關係企業) 對代理商因使用或試圖使用第三方產品、免費軟體或開發工具 (定義均載於 EULA) 而產生的損害，不承擔任何賠償責任。

14.2 預防及緩解。 代理商得於經銷商協議要求經銷商向客戶通知客戶對客戶內容承擔全部責任。代理商得要求經銷商在客戶協議包含以下內容：客戶得實施 IT 架構和流程，以按照客戶內容對客戶業務的重要性及其資料保護要求 (包括業務恢復計畫) 來預防及緩解損害。代理商應同時要求經銷商於客戶協議要求客戶：**(a) 提供定期 (至少每天) 備份流程，在 Dell 就 APEX 服務或客戶 IT 系統執行任何更正、升級或其他工作之前，備份相關資料；(b) 監視客戶 IT 環境 (包括 APEX 服務) 可用性及效能；以及 (c) 針對從 Dell 或經由 APEX 服務通知功能收到的訊息及警報做出及時回應，並立即向 Dell 報告客戶發現的任何問題。** 針對客戶的內容損失，若 Dell 負有任何責任，Dell 負擔的費用僅限從客戶最後一個可用備份，以商業合理及慣常努力來恢復損失的客戶內容。

14.3 限制期間。 除本條款規定外，所有主張都必須在適用法律所定期限內提出。若法律允許當事人就提出主張指定較短期限，或者法律未規定時間，則須在爭議事件出現後 18 個月內提出主張。

15. 賠償。

15.1 代理商的賠償責任。 依照本協議第 15 條 (賠償) 中其他規定，代理商應：**(a) 就任何第三方主張，為 Dell 辯護；(b) 向 Dell 賠償，包括支付 (i) 由具有管轄權的法院最終判決的，Dell 因第三方主張而產生的費用及損害賠償金額；或者 (ii) 與代理商協商並經核准之書面和解所定金額。** 若和解協議需要 Dell 承認任何責任、支付任何金額或承擔任何重大義務，或會對任何 APEX 服務、相關服務或 Dell 的商業做法或原則產生影響，則未經 Dell 事先書面同意，代理商不得就任何第三方主張達成和解。

15.2 Dell 的賠償責任。 依照本協議第 15 條 (賠償) 中其他規定，Dell 應：**(a) 在第三方指稱代理商向 Dell 購買的 APEX 服務或根據本協議使用 APEX 服務侵害其在代理商向 Dell 訂購 APEX 服務的國家/地區得強制執行的專利權、著作權或商業秘密時，針對第三方的主張 (在本條，下稱「Dell 賠償主張」) 為代理商辯護；以及 (b) 向代理商賠償，包括支付：(i) 由具有管轄權的法院最終判決的，因 Dell 賠償主張而產生的費用及損害賠償金額；或者 (ii) 與 Dell 協商並經核准之書面和解所定金額。** 此外，若任何 APEX 服務已成為，或 Dell 認為可能成為 Dell 賠償主張的主體，Dell 得選擇：**(1) 修改受影響的 APEX 服務，或將其取代為非侵權替代品；或者 (2) 終止 APEX 服務，並就因終止而無法提供之 APEX 服務，退還代理商向 Dell 預付的部分費用。** 對於因代理商繼續銷售或使用 Dell 按本條款所述修改、取代或終止的 APEX 服務而導致任何主張或損害，Dell 將不承擔任何責任。除非法律另有規定，否則本協議第 15.2 條 (Dell 的賠償責任) 規定對於與 APEX 服務有關之 Dell 賠償主張，代理商能享有的唯一補償措施。本協議或其他地方的任何內容都不會要求 Dell 對代理商承擔更大的賠償責任。

15.3 限制。 在以下情形，Dell 不承擔第 15.2 條 (Dell 的賠償責任) 的義務：**(a) 若代理商嚴重違反本協議；或者 (b) 由以下原因引起或產生的 Dell 賠償主張：(i) 將 APEX 服務與非 Dell 品牌的其他產品、服務、項目或技術 (包括第三方產品及開放原始碼軟體) 搭配組合、操作或使用；(ii) 客戶內容、第三方產品、試用服務或免費提供的 APEX 服務；(iii) 以不符合設計**

之方式或目的使用 APEX 服務，或在 Dell 因可能存在或待處理的 Dell 賠償主張通知代理商、經銷商或客戶停止使用後，代理商繼續使用 APEX 服務；(iv) 由 Dell 或 Dell 授權代表以外的任何人員對 APEX 服務執行的修改或自訂組態；(v) 由 Dell 根據代理商的指示、設計、規範或代理商提供的任何其他資訊，對 APEX 服務執行的修改或自訂組態；(vi) 在 Dell 提供的升級或更新版本的 APEX 服務得避免侵權時，使用 APEX 服務的其他版本；(vii) 代理商提供的服務 (包括基於代理商從代理商的服務或客戶內容所獲得之收入或價值計算損害賠償的 Dell 賠償主張)；或者 (viii) 代理商、經銷商、客戶或第三方在使用 APEX 服務時記錄或使用的任何資料或資訊。

15.4 相互賠償責任。除了因代理商未遵守高風險活動限制而引起的主張之外，雙方就其在履行協議義務過程的重大過失或故意不當行為，所直接導致第三方個人身體損傷 (包括死亡) 主張或訴訟，應為另一方辯護並賠償。

15.5 賠償程序。各方依本協議抗辯與賠償之責任取決於另一方：(a) 是否立即向賠償方發出賠償主張的書面通知，並採取合理措施減輕損害；(b) 是否授予賠償方控制該賠償主張抗辯與解決的唯一權利；以及 (c) 是否與賠償方合作抗辯與解決該賠償主張，及減輕損害。本協議第 15.5 條 (賠償流程) 的「賠償主張」係指一方根據本協議第 15 條 (賠償) 賠償的所有主張。雙方各自根據本協議第 15 條 (賠償) 享有的賠償主張權取代任何普通法或法定賠償權或類似權利，若適用法律允許，各方放棄此等普通法或法定權利。

16. 一般規定。

16.1 準據法及司法管轄。本協議及有關本協議和/或 APEX 服務的所有爭議，應以台灣之法律為準據法 (排除法律衝突原則)，並且在法律允許的範圍內，台灣台北地方法院將對所有爭議享有專屬管轄權。於任何情況，本協議或任何爭議均不適用「聯合國國際貨物銷售合約公約」及「電腦資訊交易統一法」。

16.2 貿易法規遵循。代理商應遵循美國、歐盟及其他適用司法管轄區之出口管制及經濟制裁法律 (合稱為「適用貿易法」)，並對此負責。APEX 服務、相關服務及任何其他服務供代理商獲得授權的情形下根據本協議使用及銷售，除非符合適用貿易法律，否則客戶不得使用、出售、出租、出口、進口、再出口或轉讓此等服務。代理商聲明並保證其不是根據適用貿易法受到經濟制裁的對象或目標，且所在國家或地區並非受到經濟制裁的對象或目標。如需有關地域限制及遵循適用貿易法的更多資訊，請檢閱 [Dell 貿易法規遵循](#)。

16.3 代理商責任。代理商同意，代理商將獲得與以下內容相關的所有必要權利、權限及同意：(a) 代理商向 Dell 提供的技術或資料 (包括個人資料)；以及 (b) 代理商指示或要求 Dell 與 APEX 服務或相關服務搭配使用、安裝或整合的非 Dell 軟體或其他組件。

16.4 獨立當事人、第三方權利。就本協議所載之任何目的，雙方均為獨立當事人，且未經事先書面核准不得約束另一方。雙方無意使本協議任何事項允許任一方擔他方之代理人或代表，或雙方就任何目的擔任合資企業或合夥人。雙方對於另一方任何行動或疏漏均不負責。無論依據法律為何，本協議均不存在第三方受益人。

16.5 稽核與紀錄備存。對於本協議或 APEX 服務之銷售、授權、交付或最終使用，代理商應建立清晰、準確及完整的帳簿及紀錄，且此等帳簿及紀錄的備存期限為自建立之日起 5 年，除非當地法律強制要求更長的紀錄備存期限。於保留期限結束後，代理商應適當處置所有紀錄。經 Dell 要求，代理商應配合與協助 Dell 進行與下列事項有關的任何稽核、審查或調查 (下稱「稽核」)：(i) 本協議或代理商的法律遵循情況；(ii) 代理商銷售、分銷、授權或交付 APEX 服務；(iii) Dell 應付的任何金額；或是 (iv) 應付給 Dell 的任何金額。對於稽核，代理商將提供 Dell 合理要求的所有紀錄、資訊及文件。Dell 有權進行現場稽核，且代理商將讓 Dell 及其員工及代表合理查閱資訊、紀錄、人事及客戶 (包括經銷商與客戶協議及其他協議，以驗證代理商是否遵守本協議)，並讓他們 (在一般營業時間) 進入及存取代理商存放上述資料及紀錄的場所或其他地點。若未能配合稽核或提供 Dell 要求的資訊或紀錄，即視為對本協議的重大違約。Dell 將支付稽核費用，除非 Dell 在代理商揭露的資訊查出比例達百分之五 (5%) 以上不一致，則在此情況代理商同意負擔所有合理稽核費用。

16.6 不可抗力。除支付費用外，若任一方因超出其合理控制範圍之原因，而遲延或難以或不可能履行義務時，該方無論何時均無須對此負責。若延遲或未履行義務之情形超過 30 天，則他方得以書面通知延遲之一方，立即終止相關 APEX 服務和/或任何相關服務的全部或一部。

16.7 分派與外包。任一方未經他方事先書面同意，均不得轉讓、讓與或變更本協議或任何權利或義務，也不得委託他人履行協議或任何權利或義務，惟他方不得不合理拒絕同意。儘管有上述規定：(a) Dell 仍得使用關聯公司或其他有資質的外包廠商履行其義務，前提是 Dell 將為外包廠商履行 Dell 義務負責；以及 (b) Dell 得轉讓因 APEX 服務和相關服務而產生的款項權利，且無需取得代理商的同意。

16.8 棄權與分割性。若未能執行本協議內任一條款，不構成放棄該條款或本協議之其他條款。若本協議的任何部分被認為無法執行，其餘條款的有效性不受影響。

16.9 通知。雙方將根據本協議以書面方式提供所有通知。代理商必須將通知傳送至為 APEX 服務開立發票之當地 Dell 實體。代理商同意透過 APEX Console 或本協議規定提供的其他方式接收 Dell 的通知。代理商負責及時收集客戶的意見，以便代理商履行協議所定通知義務。為明確起見，特此說明，無論經銷商或客戶是否已另行通知 Dell，代理商均有義務根據本協議要求及服務方案說明，向 Dell 提供通知。

16.10 引用。代理商同意，Dell 得於宣傳或行銷資料將代理商指稱為 APEX 服務和/或任何相關服務的經銷商，前提是該資料不會揭露代理商的任何機密資訊。

16.11 完整協議、衝突及先後順序、修改。以下內容是本協議的組成部分：(a) AUP；(b) 合作夥伴 DPA；(c) AISMA；(d) 服務方案說明；以及 (e) 訂單。若有衝突，則以下列先後順序為準：(i) 服務方案說明 (及併入之所有文件)；(ii) 本協議；(iii) AUP；(iv) 合作夥伴 DPA；(v) AISMA；以及 (vi) 訂單。代理商確認，代理商已閱讀完本協議，並且理解及同意遵守其條款。另外，代理商確認本協議是代理商與 Dell 之間就代理商現在購買之 APEX 服務及任何相關服務所簽署之完整、唯一之協議。先前的所有聲明、討論及書面文件均被本協議取代，雙方放棄仰賴先前的所有聲明、討論及書面文件。本協議透過超連結引用之所有內容都會完整合併於本協議，並得應代理商要求以書面形式向代理商提供。代理商訂單的預列條款或未經 Dell 簽署或簽發的其他文件均不適用於 APEX 服務及任何相關服務。代理商聲明，於接受本協議時，代理商並未仰賴本協議未出現的聲明或陳述。本協議僅得以雙方簽署之書面方式加以修改，惟 Dell 得自行決定隨時更新 AUP、AISMA 下達條款及合作夥伴 DPA。若此類更新導致第 3.2 條 (重大修改) 所定之重大修改，Dell 將提供書面通知。