STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT

AVC NO. 09-002

FILED

32 JAN 13 2009

Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

In the Matter of:

DELL, INC, and DELL FINANCIAL SERVICES, LLC.,

Respondents.

ASSURANCE OF VOLUNTARY COMPLIANCE

APPROVED this JAN 13 2009 day of January, 2009.

RECOMMENDED FOR APPROVAL

Judge, Marion County Circuit Court

COMMISSIONER

APPROVED AND ORDERED

In the Matter of:
Dell, Inc. and Dell Financial Services, LLC

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana (hereinafter "State") acting by and through Attorney General Gregory F. Zoeller and Dell, Inc. and Dell Financial Services, LLC. (hereinafter "Dell" and "DFS," respectively), respectfully submit the following Assurance of Voluntary Compliance (hereinafter "AVC" or "Assurance") for the Court's approval and filing in accordance with the Deceptive Consumer Sales Act ("DCSA"), Ind. Code § 24-5-0.5-1 *et seq.*

I. BACKGROUND

Dell is a Delaware corporation with its headquarters located in Round Rock, Texas. DFS is a wholly owned subsidiary of Dell with its headquarters located in Round Rock, Texas. The parties hereby have agreed to resolve issues raised by the State during its inquiry by entering into this Assurance. Dell and DFS are entering this Assurance solely for the purpose of settlement and nothing contained herein may be taken or construed to be an admission or concession of any violation of law, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Dell and DFS expressly deny. No part of this Assurance constitutes or shall constitute evidence against Dell and/or DFS in any action brought by any person(s) or entity or other party of any violation of any federal or state statute or regulation or the common law, except in an action by the State, to enforce the terms of this Assurance. However, failure to comply with the terms of this Assurance is prima facie evidence of a violation of the DCSA.

II. DEFINITIONS

As used in this Assurance, the following definitions shall apply:

1. "Clear and Conspicuous" and "Clearly and Conspicuously" shall mean, when referring to a statement, disclosure, or any other information, that such statement, disclosure or other information, by whatever medium communicated, is readily understandable and presented in such size, color, contrast, location, and audibility, compared to other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. If such statement, disclosure or other information is necessary as a modification, explanation or clarification of other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner that is readily noticeable and understandable. Further, a disclosure of information is not Clear and Conspicuous if, among other things, it is obscured by the background against which it appears or there are other distracting elements. Statements of limitation must be set out in close conjunction with the benefits described, or with appropriate captions of such prominence that statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading. Nothing contrary to, inconsistent with, or in mitigation of, any disclosure shall be permitted. For disclosures in credit advertisements, "Clear and Conspicuous" and "Clearly and Conspicuously" shall have the meaning set forth in Section 226.17(a) of Regulation Z and 15 U.S.C. § 1632(a).

2. "Dell Credit Account" shall mean any financing offered by a financial institution, Dell, or DFS for which the consumer may apply at the point of sale, whether on the telephone, online or otherwise, and which may be used solely to purchase Dell products and services.

Qualification for a Dell Credit Account can be based upon the credit criteria of the financial institution, Dell or DFS.

3. "Effective Date" shall mean January 12, 2009.

4. "Financing Promotion(s)" shall mean any deferred-interest feature (including, but not limited to, "No Interest for 90 Days") offered as part of a Dell Credit Account

5. "Conditional Financing Promotion" shall mean any Financing Promotion that is offered to some but not all consumers who otherwise qualify for a Dell Credit Account. Any Financing Promotion that is offered to all consumers who otherwise qualify for a Dell Credit Account, including a promotion that requires purchase of a specific model of a computer or television, is not a Conditional Financing Promotion simply because some consumers choose not to make such a purchase.

III. AGREEMENT AND ASSURANCE

Based solely on the negotiations of the parties to this Assurance, without admitting any liability in any pending or threatened action, and to resolve all concerns raised by the States, Dell and DFS agree that:

Dell Credit Account

6. In all advertisements for a Dell Credit Account, Dell and DFS shall Clearly and Conspicuously disclose all terms required by all applicable State and federal laws, including, but not limited to, the Truth in Lending Act, 15 U.S.C. § 1601 et seq.

7. In all advertisements referring to any Conditional Financing Promotions associated with a Dell Credit Account, Dell and DFS shall Clearly and Conspicuously disclose: (i) the fact that most consumers who apply for this credit account will not qualify for and will not receive the annual percentage rate ("APR") available to the 'most qualified borrower'; and (ii)

the range of the initial APRs that most consumers who are not the 'most qualified borrowers' are likely to receive.

8. No later than sixty (60) days after the Effective date prior to a consumer's submission of an application for a Dell Credit Account over the telephone, online or otherwise, Dell and DFS shall Clearly and Conspicuously, and in close proximity to the credit application, disclose all of the following:

a. That the application is for a revolving open credit account;

b. The range of APRs provided to consumers in accordance with Section 226.16(b) of Regulation Z, 12 C.F.R. 226.16(b), and that the APRs may increase or decrease, if such is the case;

c. The requirement that minimum monthly payments must be made, including the amount of such payment, if known, or the method of calculating the amount;

d. The mode of calculation of finance charges;

e. Any and all penalties imposed for late payments, failure to pay the entire minimum monthly amount, prepayment of any amount, or any other occurrence that triggers enhanced or increased interest, additional fees, charge, or penalties; and

f. Whether subsequent purchases using the Dell Credit Account will be subject to the same or different terms from any financing terms offered to the consumer pursuant to any Financing Promotions.

9. For online applications for a Dell Credit Account, if the disclosures contained in Paragraph 8(a) through (f) are made through the use of a hyperlink, the hyperlink shall be Clear

and Conspicuous and in close proximity to the application for the Dell Credit Account, and shall be labeled with a term that conveys the subject matter and importance of the information contained on the hyperlinked page and indicates that the consumer should review it before completing the application. Furthermore, the hyperlinked page shall contain only the disclosures required by Paragraph 8.

10. Prior to a consumer's submission of an application for a Dell Credit Account over the telephone, online or otherwise during any period in which Dell and DFS are offering any Conditional Financing Promotions, Dell and DFS shall Clearly and Conspicuously disclose to consumers that approval for a Dell Credit Account does not guarantee that the consumer will also qualify for any Conditional Financing Promotions.

11. When a consumer submits an application for a Dell Credit Account–over the telephone, online or otherwise during a period in which Dell and DFS are also offering any Conditional Financing Promotions, Dell and DFS shall, when disclosing the decision concerning the application, Clearly and Conspicuously disclose whether or not the consumer has also qualified for any Conditional Financing Promotions, and, if so, precisely which Conditional Financing Promotion(s) the consumer has qualified for, the specific interest rate for which the consumer qualified, and the terms and conditions of the Conditional Financing Promotion(s) for which the consumer has qualified.

12. When a consumer submits an application for a Dell Credit Account online during a period in which Dell and DFS are also offering any Conditional Financing Promotions, any communication indicating the decision whether the consumer has qualified for any Conditional Financing Promotions shall precede, and be in a different color and larger font than, any communication indicating whether the consumer has qualified for the Dell Credit Account. If

the decision whether the consumer has qualified for any Conditional Financing Promotions appears in the same communication as the decision indicating that the consumer has qualified for the Dell Credit Account, the decision whether the consumer has qualified for any Conditional Financing Promotions shall appear first when viewing the communication from top to bottom and shall be in a different color and larger font.

13. When a consumer submits an application for a Dell Credit Account over the telephone during a period in which Dell and DFS are also offering any Conditional Financing Promotions, Dell and DFS shall verbally disclose Clearly and Conspicuously to the consumer whether he or she has qualified for any Conditional Financing Promotions and, if so, precisely which Conditional Financing Promotions the consumer has qualified for, and the specific interest rate for which the consumer qualified, prior to disclosing the decision whether the consumer has qualified for the Dell Credit Account.

14. After a consumer is provided with the decision regarding whether he or she has qualified for a Dell Credit Account over the telephone, online or otherwise, Dell and DFS shall Clearly and Conspicuously disclose that if the consumer purchases a product using a Dell Credit Account, he or she has a three-day right to cancel the order that commences after the consumer receives:

a. final credit approval;

b. the written terms and conditions of the credit offer; and

c. the procedures the customer must follow to reject the offer.

15. After making the disclosures required by Paragraph 14, Dell and DFS shall require, obtain, and make a record of, an acknowledgment from each consumer that the consumer fully understands that he or she has a three-day right to cancel the order and shall, in

the case of telephone orders, provide consumers with written notice of the right to cancel the order prior to or at the time of providing the written terms of the offer, as required by Paragraph 14 herein.

16. Dell and DFS shall mail, or ensure that the financing institution mails, to the consumer the terms and conditions of the final credit offer within two (2) business days of a final decision on a consumer's submission of an application for a Dell Credit Account, whether submitted over the telephone, online or otherwise.

17. Dell and DFS shall, within sixty (60) days of the Effective Date, implement written policies and procedures to ensure compliance with the terms of this Assurance, including, but not limited to, policies and procedures regarding:

a. informing the consumer of his or her right to cancel his or her Dell Credit Account within three days after receiving final credit approval and the written terms and conditions of the credit offer;

b. communication and coordination between Dell and DFS when a consumer who purchases a product on a Dell Credit Account returns the product within Dell's designated return period;

c. removing consumer accounts from collection agencies;

d. updating reports sent to credit-reporting agencies; and

e. correcting erroneous reports sent to credit-reporting agencies.

Dell and DFS shall, at such time as the policies and procedures are finalized, disseminate copies thereof to all managers, directors, and pertinent employees, and send copies thereof to the State.

18. Dell and DFS shall implement policies and procedures to ensure that Dell and DFS issue credits or refunds–for authorized returned items within fifteen (15) days of Dell's

receipt of the returned item(s), or, in any event, no later than by the next billing cycle after Dell's receipt of the returned item(s).

Warranties and Service

19. Dell-shall not represent to consumers at the point of sale that it provides service, including, but not limited to, warranty or on-site repair or technical support service, unless it discloses Clearly and Conspicuously whether telephone-based troubleshooting, or any other similar activity, including, but not limited to, remote diagnosis, is required prior to obtaining such service.

20. Dell shall not represent in advertising to consumers that it provides service, including, but not limited to, warranty or on-site repair or technical support service, unless it discloses Clearly and Conspicuously whether telephone-based troubleshooting, or any other similar activity, including, but not limited to, remote diagnosis, is required prior to obtaining such service.

21. Dell shall disclose Clearly and Conspicuously to the consumer prior to finalization of the sale what constitutes telephone-based troubleshooting, or any other similar activity, including, but not limited to, remote diagnosis, if it: (a) represents to the consumer that it provides service, including but not limited to, warranty or on-site repair or technical support service, and (b) requires the consumer to engage in telephone-based troubleshooting, or any other similar activity, including, but not limited to, remote diagnosis, before receiving such service.

22. Dell shall not represent to consumers that it provides "next day service" by using the phrase "next day service" or terms of similar import or meaning unless service is provided within that time; provided however, that nothing in this Paragraph shall be interpreted to hold

Dell in violation of this requirement if it makes good-faith efforts to fulfill its obligations within that time but cannot because, for example: (1) replacement parts are not available; or (2) the customer did not agree to have service scheduled on the next business day, or requested service on another day.

23. Dell shall fulfill its warranty obligations within thirty (30) days from the date that it receives notice of a warranty claim from a consumer or, in cases where the product must be sent to Dell, within thirty (30) days of Dell's receipt of the product; provided, however, that if Dell makes good-faith efforts to fulfill its warranty obligations within this thirty (30) day time period, nothing in this Paragraph shall be interpreted to hold Dell in violation of this requirement if further repairs or replacement parts are required after the thirty (30) day period.

24. In cases where a consumer has made a warranty claim within the warranty period, Dell shall fulfill its obligations under the warranty regardless of whether the service is performed after the expiration of the warranty period.

25. Dell shall honor all implied warranties to the extent required by applicable State law.

26. DFS shall comply fully with all federal and state debt-collection and credit-reporting laws. Without limitation thereto, DFS shall not report any late payments to collection agencies if a consumer has alleged that the debt is invalid and has offered documentation supporting his or her allegation.

27. Dell shall not use the term "award winning," or similar language, in describing its customer service unless the award was received within eighteen (18) months of the date of any published use of such term.

28. Dell and DFS shall not make any claims relating to the promptness, reliability, and/or quality of its customer service without possessing, and providing to the Attorney General of Indiana, if it is requested, substantiation of the claim(s).

Rebates

29. Dell shall provide or make available to consumers all required rebate documentation prior to, or at the time the relevant product is delivered; or, for service, at the time the service is provided or promptly thereafter.

30. Dell shall not make any representation, in any manner, expressly or by implication, about the time in which any rebate will be mailed, or otherwise be provided to purchasers unless, at the time the representation is made, Dell has a reasonable basis for such representation.

31. Dell shall mail any rebate payment to the consumer within a reasonable period of time, which shall mean the time specified in the rebate documentation provided to the consumer pursuant to paragraph 29, or, if no time is specified, the earlier of: (1) within thirty (30) days of receiving a properly completed request for such rebate; or (2) such other time period as required by law.

A. Process for Handling Consumer Complaints

32. With respect to consumer complaints received on or after the Effective Date, Dell and DFS shall:

a. Provide the State with a proper mailing address, fax number, and e-mail address to which consumer complaints may be forwarded by the State;

b. Thoroughly and expeditiously review and resolve any complaint forwarded by the State and respond to such complaint in writing to the State within

twenty (20) business days, if such a complaint was sent to the mailing address, fax number or email address provided pursuant to in sub-part (a) of this Paragraph;

c. Maintain all such complaints and responses thereto for a period of at least three (3) years after receipt of such complaints; and

d. Where applicable, send corrections or updates to the consumer credit-reporting agencies.

IV. CONSUMER REDRESS AND PAYMENT

33. Within-twenty (20) business days after the Effective Date, Dell and DFS shall pay the sum of Twenty Five Thousand Dollars ($25,000) into an escrow account to be maintained by counsel for Dell and DFS for the purposes set forth in this AVC. Such payment shall be used by the State for attorneys' fees and other costs of investigation and litigation, and/or consumer redress, disgorgement, and penalties, as permitted by state law, and/or be placed in, or applied to, a consumer protection enforcement fund, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the State's inquiry leading to this Assurance ("Consumer Protection Purposes"), and/or for any other uses permitted by State law, at the sole discretion of the State. Following the State's administration of the consumer restitution program pursuant to this Paragraph, Dell and DFS shall draw funds from the escrow account to provide refunds to consumers as directed by the State. One hundred (100) days following the distribution of refund checks in accordance with Paragraph 34, Dell and DFS shall provide the State with a spreadsheet containing (1) the names and addresses of consumers who have been provided refund checks and who cashed such checks ("Claimed Funds"); and (2) the names and addresses of any consumers whose checks were either (a) returned in the mail; or (b) not cashed as of one

hundred (100) days following distribution of the refund checks in accordance with Paragraph 32 ("Unclaimed Funds"). Any Unclaimed Funds shall be distributed by Dell and DFS to the State as the State designates and shall be used by the State either as required by State law if applicable or for the same purposes and in the same manner as provided in Paragraph 32 above or any other purpose permitted by State law. Any sum remaining in the escrow account after the Unclaimed Funds have been distributed, along with any interest earned by the escrow account, shall be distributed by Dell and DFS to the State as the State designates and shall be used by the State for Consumer Protection Purposes as provided above.

34. Consumers may submit claims for restitution for a period of ninety (90) days from the Effective Date ("Claim Period"). The State shall forward to Dell and DFS a spreadsheet containing the names, addresses, and refund amounts for each Eligible Claim, as defined in Paragraph 35, submitted during the Claim Period. Within ten (10) days of receipt of the spreadsheet from the State, Dell and DFS shall mail by U.S. mail refund checks drawn from the escrow account established pursuant to Paragraph 33, along with a cover letter approved by the State, but no other inserts or promotional materials, to all identified consumers.

35. To apply for restitution, the consumer must complete, sign, and submit a claim form designed by the State within the Claim Period. Consumers may obtain claim forms from the Office of the Attorney General of Indiana. In order to be eligible for restitution, the claim must meet the following requirements: (1) the claim must concern a consumer transaction(s) with Dell or DFS that occurred between April 1, 2005, and the end of the Claim Period; (2) the claim must be a consumer complaint about (i) a DFS Conditional Financing Promotion, (ii) a rebate that the consumer applied for but did not receive, (iii) warranty service that Dell did not perform as promised or as required by the State's implied warranty law, or (iv) extended

warranty or next-business-day service that was not provided as promised; and(3) the consumer must have suffered a verifiable out-of-pocket (monetary) loss ("Eligible Claims"). The determination of whether a claim meets the foregoing requirements shall be in the sole discretion of the State.

IV. GENERAL PROVISIONS

36. Time shall be of the essence with regard to Dell's and DFS' obligations hereunder.

37. Any failure of the State to exercise any right under this Assurance shall not constitute a waiver of any rights hereunder of that State or any other State.

38. Counsel for Dell and DFS hereby state that they are authorized to enter into and execute this Assurance by and on behalf of Dell and DFS.

39. This Assurance shall bind Dell and DFS hereto and their future purchasers, merged parties, parents, affiliates, subsidiaries, agents, employees, successors, assigns and all other persons acting on their behalf, directly or indirectly, or through any corporate device.

40. Dell and DFS further agree to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance.

41. Nothing contained in this Assurance shall be construed to waive or limit any right of action by any consumer, person, or entity, or by any local, state, federal, or other governmental entity.

42. This Assurance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts

of this Assurance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

43. Dell and DFS understand and agree that if Dell and DFS have made any false statement in or related to this Assurance, that such statement is made pursuant to and under penalty of any and all State laws relating to unsworn falsifications to authorities, and shall further constitute prima facie evidence of a violation of applicable state consumer protection laws.

44. This Assurance sets forth all of the promises, covenants, agreements, conditions and understandings between the Parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

45. Dell and DFS are represented by legal counsel and have been advised by their legal counsel of the meaning and effect of this Assurance.

46. Nothing in this Assurance shall be construed as relieving Dell and DFS of their obligations to comply with all state and federal laws, regulations, and rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation, or rule.

47. Dell and DFS shall not state or imply or cause to be stated or implied that the State has approved, sanctioned, or authorized any practice, act, or conduct of Dell and DFS.

48. The Parties hereby consent to entry of the foregoing Assurance, which shall constitute a settlement in this matter. The State acknowledges by its execution hereof that this

Assurance shall constitute a complete settlement and release of all consumer protection claims on behalf of the State against Dell and DFS, and all of their officers, directors, employees, agents, representatives, and their successors and assigns with respect to all claims and causes of action which were asserted or could have been asserted prior to the Effective Date under the above-cited consumer protection statutes and which were based upon a Dell Credit Account, service contract, extended warranty, warranty service, or rebate. The release provision of this Paragraph shall take effect upon the fulfillment by Dell and DFS of their obligations under Paragraphs 32-35.

49. To the extent that the provisions of this Assurance conflict with any state, local, or federal law that now exists, or is later enacted or amended, such law and not this Assurance shall apply only to the extent such conflict exists. For purposes of this Assurance, a conflict exists if conduct prohibited by this Assurance is required by such state, local, or federal law, or if conduct required by this Assurance is prohibited by such state, local, or federal law.

50. Dell and DFS waive any further notice of submission to and filing with any Court and agree to accept service of a conformed copy by first-class mail.

51. The State agrees that if it believes that Dell or DFS has engaged in a practice that violates a provision of this Assurance, then the State shall notify Dell or DFS in writing of such belief and identify with particularity the provision of this Assurance that the State believes has been violated. Dell and DFS shall have twenty (20) business days (the "Cure Period") to respond to the notification; provided, however, that the State may take action where it concludes that a threat to the health or safety of the public requires immediate action. Dell's and/or DFS' good-faith written response to the notification during the Cure Period shall contain either:

a. a statement explaining why it believes it is in compliance with the Assurance; or

b. a detailed explanation of how the alleged violation occurred, and

i. a statement explaining that the alleged violation has been cured and how; or

ii. a statement that the alleged violation cannot be reasonably cured within twenty (20) business days from receipt of the notice, but Dell and/or DFS: (1) have begun to take corrective action to cure the alleged violation (2) are pursuing such corrective action with reasonableness and due diligence; and (3) have provided the State with a reasonable timetable for curing the alleged violation.

52. Nothing herein shall prevent the State from agreeing in writing to provide Dell and/or DFS with additional time beyond the Cure Period to cure the alleged violation. Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Assurance after the Effective Date, to compromise the authority of the State to initiate a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of a court to punish as contempt any violation of this Assurance. Furthermore, nothing herein shall be construed to limit the authority of the State to protect the interests of the State or the people of the State. Notwithstanding the foregoing, the State agrees that it will not initiate an enforcement proceeding relating to the practices at issue in the notice provided under this Paragraph during the Cure Period unless a threat to the health or safety of the public requires immediate action.

53. To seek a modification of this Assurance for any reason, Dell or DFS shall send a written request for modification to the State. The State shall give such petition reasonable consideration and shall respond to Dell or DFS within thirty (30) days of receiving such request. At the conclusion of this thirty (30) day period, Dell and DFS reserve all rights to pursue any legal or equitable remedies that may be available to them.

54. All notices, requests, demands or other communications required by this Assurance or given pursuant to its terms must be in writing. For any such communication to be considered delivered, it must be delivered by hand, mailed by registered or certified mail, postage prepaid; or sent by an overnight courier service to the State as listed in the signature pages of this Assurance, or to Dell and DFS at:

Dell Inc.
One Dell Way
Round Rock, TX 78682
ATTN: General Counsel

with a copy to:

Lewis Rose
Kelley Drye & Warren LLP
3050 K Street, NW
Washington, DC 20007
202-342-8821 (voice)

AGREED ON THIS THE 13th DAY OF JANUARY, 2009.

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

Dell Inc.:	Dell Financial Services, LLC:	Counsel for Dell Inc. and Dell Financial Services, LLC:
Andrew Sacks Andrew Sacks, Esquire Dell Inc. Vice President, Legal One Dell Way, MS RR1-33 Round Rock, TX 78682	James Howicz, Esquire Legal Director 12234 N. IH35 Plaza 35B Austin, TX 78753 512-728-4948 James_Howicz@Dell.com	Lewis Rose, Esquire Kelley Drye & Warren LLP 3050 K Street, NW, Suite 400 Washington, DC 20007 202-342-8821 lrose@kelleydrye.com