

# Dell | Cloud Solutions Agreement

## 1. Your Relationship with Dell.

This Cloud Solutions Agreement is entered into between you and Dell and governs your use of and access to the Solution. The term “**Agreement**” refers collectively to these terms and conditions and, as applicable, (i) the Solution Description for the applicable Solution; (ii) any Order Form referencing the Solution Description (an “**Order Form**”); (iii) our Acceptable Use Policy (“**AUP**”), a copy of which is provided with this Agreement either as an attachment or online at [www.Dell.com/terms](http://www.Dell.com/terms); and (iv) the attached **Regional Addendum**, if any.

This Agreement is effective upon your execution of a Solution Description or an Order Form, or you otherwise agree to be bound by this Agreement through your acceptance pursuant to an online order process that references this Agreement. “**You**,” “**your**” or “**Customer**” means the customer entity identified in the applicable Solution Description, Order Form or online order process. “**Dell**,” “**us**,” “**we**” or “**our**” means Dell Marketing L.P., on behalf of itself and its suppliers and licensors, or the Dell entity identified on your Solution Description or Order Form. You agree that your purchases of Solutions pursuant to this Agreement will be solely for your own internal business use and not for resale.

## 2. Definitions.

“**Activation Instructions**” means any instructions, user ID’s and/or passwords that we may provide you in respect of specific Solutions to enable you to activate and/or access the Solution.

“**Confidential Information**” means (i) for you, information provided to us on any Order Form; (ii) for us, pricing and other Solution terms, Activation Instructions, marketing and sales information, “know-how,” audit and security reports, product development plans, data center designs (including non-graphic information you may observe on a tour of a data center), or other proprietary information or technology provided to you; and (iii) for both you and us, Trade Secrets or any information designated as Confidential. Information developed without reference to another party’s Confidential Information, or that is a part of or enters the public domain or otherwise is made available to a party other than through violation of confidentiality, will not be Confidential Information. For the avoidance of doubt, information transmitted to us or stored as part of the Solution will not be considered Confidential Information.

“**Cloud**” means a combination of hardware, services, software and networking elements made available by us under a Solution Description that comprise an information technology system. Depending on the Solution purchased, the Cloud may consist of a dedicated system for your use only, the right to use certain parts of a shared system maintained for multiple customers, or a combination of some dedicated elements and some shared elements.

“**End User**” means each individual whom the Customer has authorized to access and use the Solution. End Users may include you and your affiliates’ employees and independent contractors that agree to be bound by terms and conditions no less restrictive than those contained in this Agreement and are acting on behalf of you and not a third-party.

“**Intellectual Property**” means all patents, applications for patents, copyrights, moral rights, author’s rights, rights of publicity, mask works, Trade Secrets, know-how, contract rights, licensing rights and/or any other intellectual or proprietary rights recognized by any jurisdiction, whether now existing or hereafter arising. Intellectual

Property also includes corporate names, trade names, trademarks, service marks, or other proprietary designations.

“**Services**” means any and all services performed by us as described in one or more Solution Descriptions, including our providing access to and use of the Cloud.

“**Software**” means any software, library, utility, tool, or other computer or program code, as well as the related documentation, provided by us in connection with the Services. Software includes software locally installed on your systems and software accessed through the Internet or by other remote means including websites, portals, and “cloud-based” solutions to utilize a Service in accordance with this Agreement.

“**Solution**” means the combination of the Services performed and Software provided by us to you pursuant to a Solution Description.

“**Solution Description**” means (i) a statement of work, service description, solution description or other agreement that references this Agreement, or (ii) a specification sheet referenced in an Order Form.

“**Third-Party Products**” means any non-Dell software or services provided, made available or otherwise used by us in connection with the Solution, including Customer provided software.

“**Trade Secret**” means any information not commonly known or available to the public, which (i) derives economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

## 3. Payment.

We will charge amounts for Solutions as set forth in the applicable Solution Description or Order Form or, if not specified, the current list pricing provided on our website. The number of systems, units (e.g., mailboxes, recipients, minutes, etc.), and End Users for which you have purchased Solution(s) is indicated on the Order Form. Usage in excess of these numbers or for a period of time longer than the Term will result in additional costs. The additional costs per billing period will be determined by multiplying the excess usage by the contracted fee per system, unit, or End User in the original Order Form. Payment must be made by credit card, wire transfer or other prearranged payment method unless we agree in writing to credit terms. Solutions are invoiced monthly beginning on the Activation Date. Invoices are due and payable within thirty (30) days from the invoice date. We reserve the right to charge a late payment fee of 1.5% per month against overdue amounts, or the maximum rate permitted by law, whichever is less. Late payment fees are recalculated every thirty (30) days based on your current outstanding balance, which may include any previously accrued and unpaid penalty amounts.

You are responsible for the payment of all taxes and fees assessed or imposed on the Solution provided or amounts charged under this Agreement, including any sales, use, excise, value-added, or comparable taxes, but excluding taxes for which you have provided a valid resale or exemption certificate. Should any payments become subject to withholding tax, you will deduct these taxes from the amount owed and pay the taxes to the appropriate tax authority in accordance with applicable tax laws. You will promptly provide us with receipts or documents evidencing these tax payments. We are not

liable for any withholding tax, penalty or interest due as a result of your failure to withhold any applicable tax.

#### 4. **Activation.**

With respect to certain Solutions, after our receipt and acceptance of an order, you will receive Activation Instructions. The date Activation Instructions are transmitted or, in the event Activation Instructions are not required, the effective date of the applicable Solution Description is the “**Activation Date.**” You are responsible for providing, maintaining and monitoring one dedicated email address for the receipt of notices and other communications related to the Solution.

#### 5. **Term; Renewals.**

The “**Term**” for any Solution begins on the Activation Date and extends for the period indicated in the Solution Description or Order Form. Unless you decline auto-renewal in writing at least thirty (30) days prior to the expiration of the Term or unless auto-renewal is explicitly disclaimed in a Solution Description or an Order Form, we may automatically renew this Agreement and the related Solution(s) for a successive Term at our then-current list price. By continuing to use the Solution(s) beyond the expiration of the applicable Term, you renew this Agreement and the related Solutions) for a successive Term at our then-current list price.

#### 6. **Termination.**

Either party may terminate this Agreement if the other party commits a material breach and the breach is not cured within ninety (90) days of receipt of written notice describing the nature of the breach. If you purchased multiple Solutions, termination of an individual Solution will not terminate this Agreement unless the circumstances giving rise to termination generally affect all purchased Solutions. Notwithstanding the foregoing, we may terminate this Agreement or the affected Solutions upon written notice to you if (i) you are delinquent on your payment obligations for thirty (30) days or more; (ii) you violate the AUP; (iii) a change in our relationship with a third-party Software or technology provider has had a material adverse effect on our ability to provide the Solution; or (iv) you declare bankruptcy, are adjudicated bankrupt or a receiver or trustee is appointed for you or substantially all of your assets.

Upon expiration of the Term for all Solutions purchased pursuant to this Agreement, either party may terminate this Agreement by providing thirty (30) days written notice. Upon termination of this Agreement, all rights and obligations under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.

#### 7. **Assignment.**

You may not assign this Agreement or any rights or obligations under this Agreement to a third-party without our prior written consent. We may assign, sell or otherwise transfer our rights to a business, product line or substantially all of our assets, provided the transferee agrees to perform the obligations under this Agreement. We may subcontract or delegate in whole or in part this Agreement, provided that we remain responsible for the performance of the Solution. For purposes of this Agreement, any change of control will be deemed an assignment.

#### 8. **Proprietary Rights.**

Except for information created or otherwise owned by you or licensed by you from third-parties, including all information provided by you to us through the Solution or for use in connection with the Solution, all right, title, and interest in the Intellectual Property embodied in the Solution, including the know-how and methods by which the Solution is provided and the processes that make up the Solution, will belong solely and exclusively to us or our licensors, and you will have no rights in any of the above, except as expressly granted in this Agreement. The Services and the Software used to provide the Solution embody valuable Trade Secrets and proprietary rights of Dell and/or our licensors and are protected by copyright laws and international copyright treaties, as well as other intellectual property

laws and treaties. Any Intellectual Property developed by us during the performance of the Solution will belong solely and exclusively to us and our licensors.

#### 9. **Suspension, Deletion, and Modification.**

We may suspend all or part of the Solution or your access to or use of data stored in the Cloud (i) if you are delinquent on your payment obligations for fifteen (15) days or more; (ii) upon receipt of a subpoena or law-enforcement request; or (iii) when we have a commercially reasonable belief that you have breached this Agreement or that your use of the Solution poses an imminent security risk or may subject Dell to liability. We will use commercially reasonable efforts to give you at least twelve (12) hours notice of a suspension unless we determine in our commercially reasonable judgment that a suspension on shorter or contemporaneous notice is necessary to protect us or our customers.

We may delete your data stored in the Cloud (a) sixty (60) days following any termination by us pursuant to Section 6 of this Agreement, or (b) if you fail to renew an applicable Solution Description within sixty (60) days of expiration.

We may modify the functionality or features of the Solution at any time; provided that the modification does not materially denigrate the functionality of the Solution (as described in the applicable Solution Description) during the Term. We will not be liable to you or any third-party for any such modification.

It may be necessary for us to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Software, which may temporarily degrade the quality of the Solution or result in a partial or complete outage of the Solution. Although we cannot guarantee that you will always receive advance notice of repairs or maintenance, we will endeavor to provide at least seven (7) days notice of scheduled updates and patches.

#### 10. **Access and Use.**

To the extent Software is provided as a part of the Solution, such Software is provided subject to the following terms:

**A. License.** For the applicable Term, we grant you a non-exclusive, non-transferable, non-sublicensable, limited, revocable license under our Intellectual Property rights to access and use the applicable Software as permitted by this Agreement.

**B. Restrictions.** Unless otherwise expressly permitted in this Agreement, without our prior written consent, you will not:

- (i) permit any third-party to use or copy the Software, unless such third-party is an authorized End User;
- (ii) modify, translate, alter, adapt, publish, transmit, reverse engineer, decompile, disassemble, reproduce, distribute, display, create derivative works, compilations or collective works based on, or otherwise exploit any of the Software;
- (iii) merge the Software with any other software;
- (iv) sell, sublicense, rent, lease, grant a security interest in, or otherwise transfer rights to the Software;
- (v) benchmark the performance of the Software or Solution without our prior written consent; or
- (vi) use the Software to operate in or as a time-sharing, outsourcing, or service bureau environment or in any way allow third-party access to the Solution.

You acknowledge and agree that you are liable for any breach of this Agreement by any End User.

**C. Rights Reserved.** THE SOFTWARE IS LICENSED, NOT SOLD. Except for the license expressly granted herein, Dell, on behalf of itself and its licensors and suppliers, retains all right, title, and interest in and to the Software and in all related Intellectual Property and its derivative works, including

registrations, applications, renewals, and extensions of such rights (the "Works"). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereinafter developed and any use other than as contemplated herein, including the reproduction, modification, distribution, transmission, adaptations, translation, display, re-publication or performance of the Works, except as specifically permitted herein, is strictly prohibited. Dell, on behalf of itself and its licensors and suppliers, retains all rights not expressly granted herein.

**D. Customer Provided Licenses.** If, in order to provide the Solution, we are required to install, patch, manage or otherwise use or access software that you license from a third-party software vendor, then you represent and warrant that you have obtained a written license agreement with the vendor that permits us to perform these activities.

**E. Open Source Software.** A portion of the Software may contain or consist of open source software, which you may use under the terms and conditions of the specific license under which the open source software is distributed.

## 11. Privacy.

For information about our privacy practices, please read our global and country specific privacy policies at [www.Dell.com/Privacy](http://www.Dell.com/Privacy). These policies explain how we treat your personal information and protect your privacy. If your Solution Description specifies the region in which your data will be stored, we will not move the data from the specified region without notifying you other than as required by law or pursuant to lawful requests from government entities.

## 12. Security and Acceptable Use Policy

We have designed the Cloud to help safeguard against unauthorized access to customer's data consistent with our Security Statement, a copy of which is attached.

You must use reasonable security precautions in connection with your use of the Solution and comply with the AUP and laws and regulations applicable to your use of the Solution. You must cooperate with our reasonable investigation of Service outages, security issues, and any suspected breach of this Agreement. We may revise the AUP to add or modify restrictions on our customers' use of the Services, provided that the changes are commercially reasonable, consistent with industry norms and apply to all customers.

## 13. Customer Obligations.

You are responsible for keeping your account permissions, billing, and other account information up to date. You must pay when due the amounts for the Solution stated in the applicable Solution Description or other agreement between you and Dell.

You are responsible for the use of the Solutions by any End User and any person who gains access to your data or the Solution as a result of your failure to use reasonable security precautions, even if the use was not authorized by you. You will ensure that End Users comply with your obligations under this Agreement.

You are responsible for selecting, obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Solution and for ensuring that the equipment is compatible with the Solution.

You are responsible for the data and software you use or store in the Cloud, including its maintenance, operation and compatibility in and with the Cloud, and any third-party claims regarding the same. You understand and agree that we have no control over the content of the data processed by us and that we perform the Services on your behalf. You are responsible for properly configuring and using the Solution and taking your own steps to maintain appropriate security, protection and back-up of your data and software, including the use of appropriate encryption, back-up and archiving. You remain responsible

for properly handling and processing notices claiming that your data or software violates a person's rights.

You acknowledge that the Solutions are not intended to replace and do not replace the need for you to maintain regular data back-ups or redundant data archives. You are responsible for maintaining back-up copies of your data that may be stored or processed by us in the course of our provision of Solutions. You understand and agree that we are not responsible for any loss of your data. WE WILL HAVE NO LIABILITY FOR LOSS OR RECOVERY OF DATA OR PROGRAMS or loss of use of system(s) arising out of the Solutions.

In our performance of the Solution, we may obtain information related to your use of the Solution. You agree that we may use such information in an aggregated, anonymized form to assist in improving and optimizing various aspects of the Solution or in support of generic marketing activities related to the Solution.

## 14. High-Risk Disclaimer.

The Software and Services are not fault-tolerant and are not designed or intended for use and may not be used in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines, or any other application in which the failure of the Solutions could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High-Risk Activities**"). We expressly disclaim any liability or express or implied warranty of fitness for High-Risk Activities.

## 15. Important Additional Information.

NOTHING IN THIS SECTION WILL EXCLUDE OR LIMIT OUR WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. AS SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO YOU IN YOUR JURISDICTION WILL APPLY TO YOU, AND IN SUCH EVENT OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

**A. Limited Warranty.** THE SOLUTION IS PROVIDED "AS IS." DELL (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS (COLLECTIVELY AND TOGETHER WITH DELL, THE "**DELL PARTIES**"), MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SOLUTION OR ANY OF THE SOFTWARE OR SERVICES INCLUDED THEREIN, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (1) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, OR NON-INFRINGEMENT; (2) RELATING TO THE PERFORMANCE OF SOFTWARE (INCLUDING WHETHER THE SOFTWARE IS OR WILL BE SECURE, ACCURATE, COMPLETE, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS OR OTHER HARMFUL COMPONENTS OR PROGRAM LIMITATIONS, OR THAT ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED) OR OUR PERFORMANCE OF THE SERVICES (INCLUDING WHETHER THE SERVICES ARE OR WILL BE UNINTERRUPTED, TIMELY OR WITHOUT ERROR) OR THE SECURITY OF THE SOLUTION; (3) REGARDING THE RESULTS TO BE OBTAINED FROM THE SOFTWARE OR SERVICES (INCLUDING THE ACCURACY, QUALITY, RELIABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF ANY REPORTS, DATA, RESULTS OR OTHER INFORMATION OBTAINED OR GENERATED BY YOU RELATED TO YOUR USE OF THE SOFTWARE) OR THE RESULTS OF ANY RECOMMENDATION BY US; OR (4) ARISING OUT OF ANY COURSE OF DEALING OR TRADE USAGE.

ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER. ALL THIRD-PARTY PRODUCTS AND OPEN SOURCE SOFTWARE ARE PROVIDED BY US "AS IS."

WITH RESPECT TO YOUR USE OF THE SOFTWARE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH PROBLEMS OR VIRUSES ARE THE DIRECT RESULT OF OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

YOU AGREE THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SOLUTIONS, INCLUDING TELEPHONE, COMPUTER NETWORKS, AND THE INTERNET, OR FOR TRANSMITTING INFORMATION CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF THE SOLUTIONS. WE WILL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF YOUR ACCESS TO OR USE OF THE SOLUTIONS OR THE IMPACT SUCH INTERFERENCE OR PREVENTION MAY HAVE ON OUR ABILITY TO PERFORM THE SOLUTIONS.

**B. Limitation of Liability.** THE DELL PARTIES WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE OR SERVICES PROVIDED HEREUNDER. EXCEPT FOR YOUR BREACH OF SECTION 10, NEITHER PARTY WILL HAVE LIABILITY FOR THE FOLLOWING, (1) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS; (2) LOST OR CORRUPTED DATA OR SOFTWARE OR THE RECOVERY OF SUCH; (3) LOSS OF USE OF A SYSTEM OR NETWORK OR THE RECOVERY OF SUCH; (4) LOSS OF BUSINESS OPPORTUNITY; (5) BUSINESS INTERRUPTION OR DOWNTIME; OR (6) SERVICES, SOFTWARE OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE.

OUR TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING WITH RESPECT TO ANY SOFTWARE OR SERVICES PROVIDED HEREUNDER) IN ANY 12-MONTH PERIOD WILL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER DURING THE PRIOR TWELVE (12) MONTHS OF THIS AGREEMENT FOR THE SPECIFIC SOFTWARE OR SERVICE GIVING RISE TO SUCH CLAIM(S).

THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS WILL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR OUR SALE OF SOFTWARE OR SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

**C. Confidentiality.** Confidential Information may not be disclosed except to affiliates, employees, agents and subcontractors who “need-to-know” it and who have agreed in writing to treat the Confidential Information under terms at least as restrictive as those in this Agreement. Each party agrees to take the necessary precautions to maintain the confidentiality of the other party’s Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. If a recipient is required by a court or government agency to disclose Confidential Information, the recipient will provide reasonable advance notice to other party before making the disclosure.

**D. Indemnification.** We will defend and indemnify you from and against any claims, damages, liabilities, losses, costs and expenses (including reasonable attorneys’ fees) arising out of or relating to any third-party claim or action that the Solution (excluding Third-Party Products and

open source software) infringes or misappropriates that third-party’s Intellectual Property rights enforceable in the country in which the Solution is sold to you. In addition, if we receive prompt notice of a claim that, in our reasonable opinion, is likely to result in an adverse ruling, then we will, at our option, (i) obtain a right for you to continue using the Software or that allow us to continue performing the Services; (ii) modify the Software or Services to make them non-infringing; (iii) replace the Software or Services with a non-infringing equivalent; or (iv) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonably depreciated or pro rata refund for the allegedly infringing Software. Notwithstanding the foregoing, we will have no obligation under this Section for any claim resulting or arising from (1) modifications of the Software or Services that were not performed by or on behalf of us; (2) the combination, operation, or use of the Software or Services in connection with a Third-Party Product (the combination of which causes the claimed infringement); or (3) our compliance with your written specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by you. This Section states Customer’s exclusive remedies for any third-party Intellectual Property claim or action, and nothing in this Agreement or elsewhere will obligate us to provide any greater indemnity to Customer.

You will defend and indemnify the Dell Parties from and against any claims, damages, liabilities, losses, costs and expenses (including reasonable attorneys’ fees) arising out of or relating to any third-party claim or action relating to your (x) failure to obtain or maintain any appropriate license, Intellectual Property rights, or other permissions, regulatory certifications or approvals associated with technology or data provided by you, or associated with Software, Third-Party Products or other components directed or requested by you to be installed or integrated as part of the Services; (y) your breach of this Agreement or violation of any applicable law, regulation or order; and (z) your use of the Solution.

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 this Agreement.

**E. Indemnification Procedure.** The indemnified party will (i) promptly notify the indemnifying party in writing of any claim; (ii) grant the indemnifying party sole control of the defense and resolution of the claim; and (iii) cooperate with the indemnifying party, at the indemnifying party’s expense, in defending and resolving the claim. Failure to provide prompt notice, however, will not affect the indemnifying party’s obligations to the extent the failure does not materially prejudice the indemnifying party’s ability to defend the claim.

In no event will an indemnifying party consent to the entry of any judgment or enter into any settlement with respect to any third-party claim without the prior written consent of the indemnified party (not to be unreasonably withheld) unless the judgment or settlement involves only the payment of money damages, without admission of fault, and expressly and unconditionally releases the indemnified party from all liabilities and obligations with respect to the claim.

**F. Independent Contractor Relationship; No Third-Party Beneficiaries.** The parties are independent contractors. No provision of this Agreement creates an association, trust, partnership, or joint venture or imposes fiduciary duties, obligations, or liability between you and us. Neither party will have any rights, power, or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this Agreement. This Agreement does not and is not intended to confer any rights or remedies, express or implied, upon any person other than the parties hereto.

**G. Force Majeure.** Neither party will be liable to the other for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which the performance is delayed by circumstances beyond its reasonable control, such fire, explosion,

power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government or law enforcement that impact the delivery of the Solution) authority (a “**Force Majeure**”). The delayed party will promptly provide the other party with written notice of the Force Majeure. The delayed party’s time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure lasts longer than thirty (30) days, then the other party may immediately terminate, in whole or in part, this Agreement or the applicable Solution Description by giving written notice to the delayed party. In the case of a Force Majeure, Customer acknowledges and agrees that its data may not be recoverable and accepts responsibility for re-entry of such data.

**H. Export Compliance; Excluded Data.** You will comply with all applicable import, re-import, export, and re-export control laws and regulations (“**Control Laws**”), including the Export Administration Regulations, the International Traffic in Arms Regulations (“**ITAR**”), and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Solution, including your transfer and processing of data or software, the provision of data or software to End Users, and any Control Laws of the country in which the Services or Software are rendered or received. Data or software that you provide in connection with the Solution will not (i) be classified or listed on the United States Munitions list; (ii) contain defense articles or defense services; or (iii) contain ITAR-related data.

**I. Regulatory Requirements.** We are not responsible for determining whether any Third-Party Product used in the performance of the Solution satisfies the local regulatory requirements of the country in which the Third-Party Product is delivered, and we are not obligated to provide any Software or perform any Services where we become aware that the resulting Software or Services do not satisfy the local regulatory requirements.

**J. Revision to Online Terms.** Any revisions to this Agreement (other than to the AUP) (“**Revisions**”) are not effective until the underlying Solution Description or Order Form is renewed or extended following the date we publish the Revisions on our website.

**K. Order of Precedence.** If there is a conflict between the terms of any of the documents that comprise this Agreement, the documents will govern in the following order: Regional Addendum (if any), these terms and conditions, the Solution Description or Order Form (unless terms are specific to a Solution Description or Order Form, in which case, such terms will take precedence over all other terms), the AUP.

**L. Entire Agreement; Severability.** This Agreement is the entire agreement between you and Dell with respect to its subject matter and supersedes all prior oral and written understandings, communications, or agreements between you and Dell for the Solution. Except as otherwise provided for in Section 15.K, no amendment to or modification of this Agreement, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of this Agreement should be found to be void or unenforceable, the provision will be stricken or modified, but only to the extent necessary to comply with the law, and the remainder of this Agreement will remain in full force and will not be terminated.

**M. U.S. Government Restricted Rights.** The Software and documentation provided with the Software and Services are “commercial items” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as these terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the Software and documentation with only those rights set forth herein. Contractor/manufacturer is Dell Products L.P., One Dell Way, Round Rock, Texas 78682.

**N. Governing Law.** This Agreement and ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN YOU AND DELL (including any affiliates, contractors, and agents, and each of their respective employees, directors, and officers) arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, any relationships which result from this Agreement (including, to the full extent permitted by applicable law, relationships with third-parties who are not signatories to this Agreement), Dell’s advertising, or any related service (a “**Dispute**”) shall be governed by the laws of the State of Texas, without regard to conflicts of law. **Jurisdiction and Venue.** The parties agree that any Dispute will be brought exclusively in the state or federal courts located in Travis or Williamson County, Texas. The parties further agree to submit to the personal jurisdiction of the state and federal courts located in Travis or Williamson County, Texas, and agree to waive any objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.

**O. Bench Trial.** The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.

**P. No Class Actions.** NEITHER CUSTOMER NOR DELL WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OF A CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

**Q. Limitation Period.** NEITHER PARTY WILL BE LIABLE FOR OR ASSERT ANY CLAIM MORE THAN TWO YEARS AFTER CLAIM FIRST AROSE.

**R. Waiver.** The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers must be in writing to be effective.

**S. Notices.** Notice to us under this Agreement must be in writing and sent by overnight courier or certified mail to Dell Marketing L.P., Attn: Contracts Manager, RR3-40, One Dell Way, Round Rock, Texas 78682

#### Supplemental Terms and Conditions:

##### DELL | ACCEPTABLE USE POLICY

This Acceptable Use Policy (the “AUP”) sets forth certain limitations and restrictions required in connection with your use of the Services. We may revise the AUP from time to time to add or modify restrictions on your use of the Services. If you violate the AUP, we may suspend or terminate your use of the Services.

Terms used in the AUP that are capitalized and not otherwise defined have the meanings set forth in the Cloud Solutions Agreement.

You are prohibited from (1) attempting to use or gain unauthorized access to our or to any third-party’s networks or equipment; (2) permitting other individuals or entities to copy the Services; (3) providing unauthorized access to or use of Activation Instructions; (4) attempting to probe, scan, or test the vulnerability of the Services or of a system, account, or network of Dell or any of our customers or suppliers; (5) interfering or attempting to interfere with service to any user, host, or network; (6) engaging in fraudulent, offensive or illegal activity of any nature or any activity that infringes the intellectual property rights or privacy rights of any individual or third party; (7) transmitting unsolicited bulk or commercial messages; (8) intentionally distributing worms, Trojan horses, viruses, corrupted files or any similar items; (9) restricting, inhibiting, or otherwise interfering with the ability of any other person, regardless of intent, purpose, or knowledge, to use or enjoy the Services (except for tools with safety and security functions); or (10) restricting, inhibiting, interfering with, or otherwise disrupting or causing a performance degradation to any Dell (or Dell

Service supplier) facilities used to deliver the Services. Dell may in its sole discretion determine whether your use of the Services is a violation of this AUP.

We may investigate suspected violations of the AUP. We may report suspected violations of the AUP to applicable law-enforcement authorities or third-parties and may cooperate with any investigation of illegal activities associated with your use of the Services, the system or network, or any violation of this AUP.

(Rev. 102511)

**END OF DOCUMENT**