

Your use of this product is subject to and governed by Dell's applicable Terms of Sale and End User License Agreement, which are each presented below in the following order:

- U.S. Consumer Terms of Sale
- Commercial Terms of Sale
- End User License Agreement

By the act of clicking "I accept," you agree (or re-affirm your agreement to) the foregoing terms and conditions. For the avoidance of doubt, to the extent that Dell is deemed under applicable law to have accepted an offer by you: (a) Dell hereby objects to and rejects all additional or inconsistent terms that may be contained in any purchase order or other documentation submitted by you in connection with your order; and (b) Dell hereby conditions its acceptance on your assent that the foregoing terms and conditions shall exclusively control.

IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT USE YOUR PRODUCT AND RETURN IT TO DELL IN ACCORDANCE WITH DELL'S RETURN POLICY LOCATED AT [DELL.COM/RETURNPOLICY](http://DELL.COM/RETURNPOLICY).

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### U.S. Consumer Terms of Sale

**PLEASE READ THESE TERMS CAREFULLY! THEY INCLUDE AN ARBITRATION PROVISION REQUIRING INDIVIDUAL ARBITRATION OF DISPUTES INSTEAD OF JURY TRIALS OR CLASS ACTIONS. By submitting your order or accepting or using products, you acknowledge that you agree to these terms in their entirety.**

- 1. Application.** These Consumer Terms of Sale ("Terms") apply to all consumer purchases from Dell or of Dell products, software, services or support ("Product") in the United States.
- 2. Additional Terms.** The Terms consist of this document and Dell's:
  - a. [30-Day Return Policy](#),
  - b. [Consumer Warranties](#) (for Dell-branded hardware purchases),
  - c. [License Agreements](#) (for software purchases),
  - d. [Consumer Service Contracts](#) (for services purchases),
  - e. [Privacy Statement](#) (describing how Dell collects, uses and shares your personal information), and
  - f. [Terms of Use](#) (governing your use of Dell's website).
- 3. Orders, Acceptance and Cancellation.** Your order is an offer to buy. Dell may send an order confirmation email to acknowledge receipt of your order, but Dell does not accept your order until we send you notice that the Product has shipped. Dell may process payment for and ship parts of an order separately. Dell reserves the right at any time, even after we send you a confirmation email, to decline or cancel your order or to limit order quantities for any reason, including errors or suspected fraud.
- 4. Pricing and Availability.** Prices and promotions are subject to change. Dell strives to communicate accurate pricing and product information, but errors may occur. In the unlikely event that an error impacts your order, or a Product ordered is no longer available, we will either contact you for instructions or cancel your order.
- 5. Taxes and Fees.** Unless you provide Dell with a valid and correct tax exemption certificate, you are responsible for sales and other taxes associated with your order.
- 6. Shipping.** Product title passes to you when the Product ships. You are responsible for inspecting the package(s) upon delivery and must note any visible damage on the proof of delivery (POD) or other delivery receipt the carrier asks you to sign. Dell is not responsible for any visible shipping damages not noted on the delivery receipt.

7. **Warranty Disclaimer.** DELL INCORPORATES ITS CONSUMER WARRANTIES REFERENCED ABOVE WHICH APPLY TO PURCHASES OF DELL-BRANDED HARDWARE. DELL MAKES NO WARRANTIES FOR SERVICE, SOFTWARE, MAINTENANCE OR SUPPORT OR FOR NON-DELL BRANDED PRODUCT, WHICH ARE PROVIDED "AS IS," AND DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AND CONDITIONS AGAINST HIDDEN OR LATENT DEFECTS. SOME STATES DO NOT ALLOW LIMITATION OF WARRANTIES, SO THESE LIMITATIONS MAY NOT APPLY TO YOU.
8. **Receiving Warranty or Service Support.** IT IS YOUR RESPONSIBILITY TO BACK UP ALL EXISTING DATA, SOFTWARE AND PROGRAMS BEFORE RECEIVING SERVICES OR SUPPORT (INCLUDING TELEPHONE SUPPORT). DELL AND/OR YOUR THIRD-PARTY SERVICE PROVIDER WILL HAVE NO LIABILITY FOR LOSS OR RECOVERY OF DATA OR PROGRAMS, OR FOR LOSS OF USE OF SYSTEM(S) ARISING OUT OF THE SERVICES OR SUPPORT OR ANY ACT OR OMISSION, INCLUDING NEGLIGENCE, BY DELL OR YOUR-THIRD-PARTY SERVICE PROVIDER. Parts used in repairing or servicing Product(s) may be new, equivalent-to-new, or reconditioned.
9. **Telephone Communications.** Telephone communications with us, our agents or independent contractors may be monitored and/or recorded. You expressly consent, on behalf of yourself and other users of your phone number, to such monitoring or recording. By providing us with a phone number (including mobile) as your contact number, you expressly authorize us to contact you on that number via text message or telephone, including via prerecorded or auto-dialed calls. This consent is for non-telemarketing calls only.
10. **Limitation of Liability.** In no event will Dell be liable for any indirect, consequential, exemplary, incidental or punitive damages, including lost profits, even if Dell has been advised of the possibility of such damages. YOU AGREE THAT DELL'S LIABILITY IN ANY DISPUTE WILL BE CAPPED AT THE TOTAL AMOUNT YOU PAID FOR THE ORDER OR PRODUCT AT ISSUE. Some states do not allow limitation of certain damages, so these limitations may not apply to you. If you are a New Jersey resident, this provision will not apply to claims for damages caused by Dell's intentional, reckless or grossly negligent conduct.
11. **Purchases may not be resold or exported.** Your purchase is for your own use, not for resale, export, re-export or transfer. Your purchase is subject to and you are responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions ("Export Laws"). Your purchase may not be sold, leased, or transferred to restricted countries, restricted end users, or for restricted end uses according to the Export Laws.
12. **Governing Law.** THESE TERMS AND ANY DISPUTE BETWEEN YOU AND DELL WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAW.
13. **Dispute Resolution and Binding Arbitration.** YOU AND DELL AGREE TO RESOLVE ANY DISPUTES BETWEEN US EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ON AN INDIVIDUAL BASIS, WHICH MEANS YOU AND DELL WAIVE ANY RIGHT TO LITIGATE DISPUTES IN A COURT OR BEFORE A JURY, OR AS PART OF A CLASS ACTION, A REPRESENTATIVE ACTION, A CONSOLIDATED ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.
  - a. This arbitration requirement applies to any claim or dispute of any kind (whether in contract, tort, or otherwise, whether pre-existing, present, or future, and including statutory, common law, or equitable) between you and Dell, its agents, employees, successors, assigns, direct and indirect subsidiaries, and any third party providing any products or services to you in connection with your purchase ("Dell") that relates in any way to your purchase or Product, these Terms, or Dell's marketing or advertising ("Claims").
  - b. You still have the right to bring individual Claims in small claims court, to the extent that you qualify.
  - c. Dell will pay the arbitration/arbitrator fees.

- d. Arbitration shall be administered by either:
  - i. The American Arbitration Association (AAA), subject to its Consumer Arbitration Rules, available at (800) 778-7879 and <http://www.adr.org>; or
  - ii. JAMS, subject to the JAMS Comprehensive Arbitration Rules, available at (800) 352-5267 and [www.jamsadr.com](http://www.jamsadr.com).
- e. The arbitrator shall have exclusive authority to resolve any arbitrability issues including any dispute over these Terms or this arbitration provision's scope, application, meaning, and enforceability. The arbitrator shall be empowered to grant whatever relief would be available in court. Any award of the arbitrator(s) shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.
- f. You and Dell agree to arbitration only on an individual basis. Neither you nor Dell may join or consolidate claims of others or participate in any claim as a class representative or a class member. If any portion of this arbitration agreement is found unenforceable, the unenforceable portion shall be severed and the remaining arbitration terms shall be enforced (but in no event will there be a class arbitration). This Paragraph controls over any inconsistent term in any other agreement.
- g. This transaction shall be governed by the Federal Arbitration Act 9 U.S.C. sec. 1-16 (FAA).

US Consumer Terms of Sale (rev. 16AUG2019)

### **Commercial Terms of Sale**

These Commercial Terms of Sale ("CTS") apply to orders for hardware, software, and services by direct commercial and public sector purchasers and to commercial end-users who purchase through a reseller ("Customer"), unless Customer and Suppliers (defined below) have entered into a separate written agreement that applies to Customer's orders for specific products or services, in which case, the separate written agreement governs Customer's purchase and use of such specific products or services.

The term "Supplier(s)" means, as applicable:

EMC Corporation ("EMC")  
176 South Street  
Hopkinton, Massachusetts 01748  
and

Dell Marketing L.P. ("Dell")  
One Dell Way  
Round Rock, Texas 78682

Legal Notices:

[Dell\\_Legal\\_Notices@Dell.com](mailto:Dell_Legal_Notices@Dell.com)

### **1. Subject Matter and Parts of CTS.**

**1.1 Scope.** This CTS governs Customer's procurement and Supplier's provisioning of Products, Services and Third Party Products (if applicable) (collectively "Offerings"), for Customer's own internal use.

**1.2 Products and Services.** "Products" are either: (i) Supplier-branded IT hardware products

("Equipment") or (ii) Supplier-branded generally available software, whether microcode, firmware, operating systems or applications ("Software"). "Services" are: (a) Supplier's standard service offerings for maintenance and support of Products ("Support Services") and (b) consulting, deployment, implementation and any other services that are not Support Services ("Professional Services"). "Third Party Products" means hardware, software, products, or services that are not "Dell" or "Dell EMC" branded. Products exclude Services and Third Party Products.

**1.3 Framework.** This CTS consists of the main body with the terms and conditions applicable to all Offerings that are in scope, as may be supplemented by additional schedules, containing terms applicable to all or only specific Offerings and shall form an integral part of this CTS ("Schedule(s)"). This CTS does not establish a commitment of Customer to procure, nor an obligation of Supplier or Affiliate to supply, any Offerings unless the parties have agreed on an Order (as defined below).

**1.4 Affiliates.** Transactions under this CTS may also involve Dell Inc. or Dell Inc.'s direct or indirect subsidiaries ("Affiliates").

## **2. Quoting and Ordering.**

**2.1 Process.** Customer or its Affiliates based in the same country as Customer may request a quote from Supplier or its Affiliate (depending on the Offerings purchased), either in the form of a written quotation or online via [www.dell.com](http://www.dell.com) or any other online process ("Quote"). 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. Customer may order the Offerings quoted by: (i) issuing a Customer purchase order that references such Quote and, if applicable, contract code; (ii) executing Supplier or Affiliate order forms; (iii) ordering online through either [www.dell.com](http://www.dell.com) or other online process; or (iv) ordering through an authorized reseller. Orders are subject to credit approval and are subject to acceptance by Supplier; unless Supplier has already otherwise accepted an order, shipment of the Offerings shall be deemed Supplier's acceptance of the order. An accepted order is hereinafter referred to as an "Order." Supplier may split an Order into separate transactions, each of which will form an Order. Orders may contain charges for shipping and handling. Orders are subject to availability and are cancellable only by Supplier except as expressly permitted in a Schedule. Supplier is not responsible for pricing, typographical or other errors in any offer and may cancel Orders affected by such errors. Customer may change or cancel an Order only as expressly permitted in a Quote or Schedule.

**2.2 Orders Submitted Through Reseller.** If Customer's purchase is made through a reseller, then clauses 2.1, 3, and 6 do not apply and all credit, invoicing, payment, returns, ordering, pricing and cancellation terms for the purchase will be as agreed between Customer and reseller.

**2.3 Incorporation by Reference.** Each Order which covers the procurement and sale of any Offering that is within the scope of a Schedule listing certain specific Offerings and signed under this CTS shall be deemed to incorporate by reference the terms of this CTS.

**2.4 Product and Service-Specific Terms.** Scope and details of Services and Product-specific terms are specified in the applicable standard service description that is attached to or referred in a Schedule or

Quote, or is made available through the then-current Supplier website for product- or service-specific terms, currently located at [www.dell.com/offeringspecificterms](http://www.dell.com/offeringspecificterms). Such standard descriptions are from time to time referred to as “Service Description(s)”, “Product Notices” or “Service Briefs.” The version of the applicable document that is effective as of the date of the applicable Quote, shall be deemed incorporated into the Order. Scope and details of customized Professional Services not covered by such a standard description shall be documented in a mutually agreed Statement of Work (“SOW”).

**2.5 Order of Precedence.** This CTS including the documents referenced herein shall apply to the exclusion of all other general terms and conditions incorporated in or referred to in any documentation submitted by Customer to Supplier.

Subject to the foregoing, in case of any conflict or inconsistency the following order of precedence shall apply:

- A. The terms of the Order, where either: (i) this CTS expressly provides for the parties to optionally deviate from the relevant provision of this CTS; or (ii) where the Order states that the parties wish to deviate from the terms of this CTS for the purpose of the individual transaction and the parties expressly accept the deviation;
- B. The terms of any Schedule to this CTS; and
- C. The main body of this CTS.

**2.6 Revision of Offerings.** Supplier may revise its Offerings, including after Customer places an Order but prior to Supplier’s shipment or performance. As a result, Offerings Customer receives may differ from those ordered, as long as they still substantially meet or exceed the specifications as per the documentation of the originally ordered Offerings.

### **3. Product Delivery.**

**3.1 Shipment.** Unless otherwise agreed, Supplier shall arrange for shipment of the ordered Products to the ship-to address indicated in the Order, through a common carrier designated by Supplier. Delivery dates are indicative. Software may be provided by delivery of physical media or through electronic means. Customer shall notify Supplier within 21 days of the invoice date if Customer believes any Product included in its Order is missing, wrong, or damaged, and shall ensure that the intended installation site meets the specifications as per the product documentation.

**3.2 Transfer of Risk and Title; Costs.** Risk of loss for Equipment and for physical media containing licensed Software transfers to Customer upon Delivery. Title to sold Equipment passes to Customer upon Delivery. “Delivery” for Equipment occurs when Supplier provides the Equipment to the carrier at Supplier’s designated point of shipment; “Delivery” for Software occurs either when Supplier provides physical media (or the Equipment on which it is installed) to the carrier at Supplier’s designated point of shipment, or the date Supplier notifies Customer that Software is available for electronic download. Unless otherwise agreed, cost of transit insurance on behalf of Customer shall be included in the total price stated on the Quote.

**3.3 Acceptance.** All Products and Third Party Products will be deemed to be accepted upon Delivery. Notwithstanding such acceptance, Customer retains all rights and remedies under the warranty terms

stated below. Customer may only return Products to Supplier that are permitted to be returned pursuant to the return policy at [www.dell.com/returnspolicy](http://www.dell.com/returnspolicy).

#### **4. Software Licenses.**

Customer's rights to use the Software delivered by Supplier are governed by the terms of the applicable end-user license agreement. Unless different terms have been agreed between the parties, the terms posted on [www.dell.com/eula](http://www.dell.com/eula) (the "EULA") shall apply. Supplier will provide a hard copy of the applicable terms upon request. Unless expressly otherwise agreed, microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such Equipment.

#### **5. Services.**

##### **5.1 Support Services.**

**A. Scope and Term.** Supplier shall provide Support Services in accordance with the applicable Service Description or Product Notice, for the (initial or renewal) period agreed in the applicable Order. Unless otherwise agreed therein, the initial Support Services procured together with the purchase of a Product start on the commencement date of the applicable warranty period (as specified in clause 7).

**B. Support Availability and Release Cycles.** Availability of Support Services is governed by Supplier's "End-of-Service-Life" policies, to be made available to Customer upon request. Subject to such policies, Support Services for Software apply to the current and the immediately prior release of the Software.

**C. Limitations.** Support Services do not cover any of the following: (i) problems that are excluded from warranty coverage according to clause 7.5, below; (ii) problems that cannot be reproduced at Supplier's facility or via remote access to Customer's facility; (iii) onsite activities for Equipment that is located outside of the applicable service area (unless otherwise provided in a Service Description); (iv) providing media replacement, operating supplies, cosmetic accessories or parts such as frames, and cover or support on those items; or (v) repairing damage or defects in Equipment that are purely cosmetic and do not affect device functionality.

**D. Maintenance Tools and Spare Parts.** Supplier may, at its discretion, store tools and spare parts used by Supplier to perform diagnostic or remedial activities in connection with Products at the Customer's site or on Customer's systems, and Customer agrees that such are for use only by Supplier authorized personnel and further authorizes Supplier to remove and/or disable them when no longer needed by Supplier to provide its Services.

**E. Replacements.** All replaced Equipment or components thereof shall be returned to Supplier and become the property of Supplier upon receipt of the replaced Equipment or components at the specified Supplier facility unless specifically agreed otherwise in an Order. If Customer does not return a replaced component or Equipment within 15 days after receipt of Supplier's request, then Customer must pay Supplier at the then-current spare parts list price for the Equipment or portions that Customer has failed to return. If Supplier determines that a component of a defective Equipment product is "customer-replaceable", i.e. one that is easily disconnected and reconnected, or if the Supplier determines that the

Equipment should be replaced as a whole, Supplier reserves the right to send Customer a component or whole replacement Equipment for exchange.

**F. Data Responsibility.** Supplier shall not access or use any Customer production data stored on the Products, unless Customer has expressly authorized Supplier to do so. Unless a data deletion service is expressly ordered from Supplier, Customer is responsible for removing all information and data stored on replaced parts, or on any other items or Product before it is returned to Supplier.

**G. Customer-Initiated Changes.** If the Product is covered by Support Services and Customer intends: (i) to relocate Equipment to a different installation site (where applicable to the Product); (ii) to change the hardware configuration on its own; or (iii) to deny the activation or to disable remote support features of a Product, Customer shall notify Supplier in advance. Where any of such action limits Supplier's ability to provide Support Services for the affected Product or increases the Supplier's cost of providing Support Services, Supplier is entitled to make the continuation of Support Services dependent on Customer paying a reasonable adjustment of the ongoing fees and a reasonable charge for any re-certification services Supplier reasonably considers necessary for continued support; agreed upon proactive support capabilities, response times, or other service levels may no longer apply.

## **5.2 Professional Services.**

**A. Scope of Services.** Supplier shall provide Professional Services including any Deliverables (as defined below) in accordance with the applicable Service Description, SOW or other agreed upon documentation containing the specifics of such services ("Service Specification"). Professional Services are provided as a separate and independent service even if mentioned together with the sale or licensing of Products by Supplier in the same Order. Supplier is not providing legal or regulatory advice in any Professional Services.

### **B. Grant of License Rights in Deliverables.**

(1) "Deliverables" means any reports, analyses, scripts, code, or other work results that Supplier delivers to Customer within the framework of fulfilling obligations under a Service Specification. "Proprietary Rights" mean all patents, copyrights, trademarks, trade secrets, or other intellectual property rights of a party.

(2) Subject to Customer's compliance with the terms of this CTS and any applicable Service Specification, Customer's payment of applicable amounts due, and Supplier's Proprietary Rights in any underlying intellectual property incorporated into any Deliverables or used by Supplier to perform Professional Services, Supplier grants Customer a non-exclusive, non-transferable, revocable (in case of non-payment, or any breach of this CTS or any applicable Service Specification) license to use (without the right to sublicense) the Deliverables provided by Supplier for Customer's internal business purposes, only and solely in accordance with the applicable Service Specification and subject to this CTS. Customer may authorize its service providers to use the Deliverables, but solely on Customer's behalf, solely for Customer's internal business purposes, and Customer shall be responsible for service provider's compliance with these restrictions.

(3) Supplier reserves for itself all Proprietary Rights that it has not expressly granted to Customer herein.

The license granted in this clause 5.2B. does not apply to: (i) any Products; or (ii) items licensed or otherwise provided under a separate agreement. Supplier is not limited in developing, using, or marketing services or products that are similar to the Deliverables or Professional Services provided hereunder, any Service Specification, or, subject to Supplier's confidentiality obligations to Customer, in using the Deliverables or performing similar Professional Services for any other projects.

**C. Customer Furnished Materials.** Customer retains its Proprietary Rights in materials it furnishes to Supplier for use in connection with the performance of Professional Services. Customer grants Supplier a non-exclusive, non-transferable right, under Customer's Proprietary Rights, to use the Customer-provided materials solely for the benefit of Customer in fulfilling Supplier's obligations under this CTS.

**D. Responsibility for Personnel.** Supplier is solely responsible for personnel placement as well as for all other human resource issues (e.g. vacation) concerning its personnel.

**5.3 Customer Responsibilities.** In connection with Support Services or Professional Services (if applicable), at no charge to Supplier, Customer shall: (i) provide Supplier personnel with timely access to appropriate facilities, space, power, documentation, files, data, information, additional software (if needed); (ii) use skilled and authorized Customer personnel to assist and cooperate with Supplier in the provision of the Services as reasonably requested by Supplier; (iii) be responsible for physical and network security and all conditions in its business necessary for due performance of Services; (iv) allow Supplier remote and onsite access to the Products and Customer's infrastructure environment, as required; and (v) where applicable, promptly notify Supplier when Products fail and provide Supplier with sufficient details of the failure such that the failure can be reproduced by Supplier. For Professional Services, details may be set forth in the Service Specification.

**5.4 Termination of Services.** A termination for convenience of Services shall only be permitted if expressly agreed between the parties. Either party may terminate Services for material breach by the other party if such other party has failed to cure such breach within a reasonable grace period of no less than 30 days as set forth by the other party in writing.

## **6. Invoicing; Payment Terms and Taxes.**

**6.1 Invoicing.** Supplier shall invoice the Offerings to Customer in the currency agreed in the Order. If Supplier is obligated by applicable law to collect and remit any taxes or fees, then Supplier will add the appropriate amount to Customer's invoices as a separate line item in accordance with statutory requirements. Supplier may invoice parts of an Order separately or together in 1 invoice. All invoice terms will be deemed accurate unless Customer advises Supplier in writing of a material error within 10 days following receipt. If Customer advises Supplier of a material error, (a) any amounts corrected by Supplier in writing must be paid within 14 days of correction, and (b) all other amounts shall be paid by Customer by the due date. If Customer withholds payment because Customer believes an invoiced amount is incorrect, and Supplier concludes that the amount is accurate, Customer must pay interest on the unpaid disputed amount from the due date until Supplier's receipt of payment. Customer may not offset, defer or deduct any invoiced amounts that Supplier determines are correct following the notification process stated above.



**6.2 Payment Terms.** Customer shall pay Supplier's invoices in full and in the same currency as Supplier's invoice within the time noted on Supplier's invoice, or if not noted, then within 30 days after the date of the invoice, with interest accruing after the due date at the lesser of 1.5% per month or the highest lawful rate. In case of Customer's default in payment Supplier shall, until arrangements as to payment or credit have been established, be entitled to: (i) cancel or suspend its performance of such Order and/or (ii) withhold performance under this CTS.

**6.3 Taxes.** The charges due hereunder are exclusive of, and Customer shall pay or reimburse Supplier for all value added (VAT), sales, use, excise, withholding, personal property, goods and services and other similar taxes, governmental fees, levies, customs and duties resulting from Customer's purchase, except for taxes based on Supplier's net income, gross revenue, or employment obligations. If Customer qualifies for a tax exemption, Customer must provide Supplier with a valid certificate of exemption or other appropriate proof of exemption. If Customer is required to withhold taxes, then Customer will within 60 days of remittance to the applicable tax authority provide Supplier with satisfactory evidence (e.g., official withholding tax receipts) that Customer has accounted to the relevant authority for the sum withheld or deducted, otherwise Supplier will charge Customer for the amount that Customer has deducted for the transaction.

## **7. Warranty.**

**7.1 Equipment Warranty.** Supplier warrants that Equipment, under normal usage and with regular recommended service, will be free from material defects in material and workmanship, and that Equipment will perform substantially in accordance with the corresponding standard documentation issued by Supplier for the applicable Equipment. Unless provided otherwise in a Schedule, additional terms governing the limited warranties for Equipment are found at [www.dell.com/warrantyterms](http://www.dell.com/warrantyterms) or in the applicable documentation or Product Notice for the specific Equipment. Supplier's entire liability for a breach of this warranty shall be for Supplier, at its option and cost, to repair or to replace the affected Equipment, and, if Supplier is unable to effect such within a reasonable time, then Supplier will refund the amount Customer paid for the affected Equipment as depreciated on a straight-line basis over a 5 year period, upon return of such Equipment to Supplier.

**7.2 Software Warranty.** The following terms apply to the specific Software ("Warranted Software") listed in the table located at [www.dellemc.com/content/dam/digitalassets/active/en/unauth/manual-warranty-informations/h4276-emc-prod-warranty-maint-table.pdf](http://www.dellemc.com/content/dam/digitalassets/active/en/unauth/manual-warranty-informations/h4276-emc-prod-warranty-maint-table.pdf) (the "Software Warranty Table"). Supplier warrants that Warranted Software will substantially conform in all material respects to its then-current documentation during the applicable warranty period specified in the Software Warranty Table (the "Software Warranty Period"). Any breach of this warranty must be reported to Supplier during the Software Warranty Period. Customer's sole and exclusive remedy and Supplier's entire liability for a breach of this warranty is for Supplier, at its sole discretion, to either use commercially reasonable efforts to remedy the non-conformance or to terminate the license for the affected Software and provide a pro-rata refund of the license fees received by Supplier for such Software.

**7.3 Services Warranty.** Supplier will perform Services in a workmanlike manner in accordance with

generally accepted industry standards. Customer must notify Supplier of any failure to so perform within 10 days after the date on which such failure first occurs. In such case, Supplier will use reasonable efforts to correct such failure within a reasonable period of time. If, after reasonable efforts, Supplier is not able to correct such deficiencies for reasons for which Supplier is responsible, then Customer may terminate the affected Services for cause by providing written notice to Supplier.

**7.4 Limitations.** The warranties set forth in this clause 7 do not cover problems that arise from: (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond Supplier's control; (iii) installation, operation or use not in accordance with Supplier's instructions and the applicable documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than Supplier personnel or (vi) causes attributable to normal wear and tear. Supplier has no obligation for: (1) Software installed or used beyond the licensed use, or (2) Product whose original identification marks have been altered or removed. Products and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the Products or Services could lead to death, bodily injury, or physical or property damage (collectively, "High-Risk Activities"). Supplier expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

**7.5 Warranty Disclaimer. Other than the warranties set forth in this clause 7 and the Schedules, and to the maximum extent permitted by applicable law, Supplier and Supplier Affiliates: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance or usage of trade.**

## **8. Limitation of Liability.**

**8.1 Limitations on Damages.** The limitations, exclusions and disclaimers stated below apply to all disputes, claims or controversies (whether in contract, tort (including negligence) or otherwise) related to or arising out of the CTS or any Quote or Order ("Dispute"). The terms of this clause are agreed allocations of risk constituting part of the consideration for Supplier's and its Affiliates' sale of Products and Services to Customer and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities.

**A. Limitation on Direct Damages.** Except for Customer's obligations to pay for Offerings, Customer's violation of the restrictions on use of Products and Services or Supplier's or its Affiliates' intellectual property rights, Supplier's (including its suppliers) and Customer's total liability arising out of any Dispute or any matter under this CTS, is limited to the amount Customer paid to Supplier during the 12 months before the date that the matter or Dispute arose for the Product, Services or both that are the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. Notwithstanding anything otherwise set forth above, Supplier (and its suppliers) shall have no liability for any direct damages resulting from

**Customer's use or attempted use of Third Party Software, Free Software or Development Tools, all defined in the EULA described in clause 4 above, or Third Party Products.**

**B. Disclaimer of Certain Other Damages.** Except for Customer's payment obligations and violation of Supplier's or its Affiliates' intellectual property rights, neither Supplier (and its suppliers) nor Customer has liability to the other for 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.

**8.2 Prevention and Mitigation.** Customer is solely responsible for its data. Customer shall implement IT architecture and processes enabling Customer to prevent and mitigate damages in line with the criticality of the systems and data for Customer's business and its data protection requirements, including a business recovery plan. In that regard, Customer shall: (i) provide for a backup process on a regular (at least daily) basis and backup relevant data before Supplier performs any remedial, upgrade or other works on Customer's IT systems; (ii) monitor the availability and performance of its IT environment during the performance of Services; and (iii) promptly react to messages and alerts received from Supplier or through notification features of the Products and immediately report any identified issue to Supplier. To the extent that Supplier has any liability for data loss, Supplier shall only be liable for the cost of commercially reasonable and customary efforts to recover the lost data from Customer's last available backup.

**8.3 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 cause of action accrues.

## **9. Third Party Products.**

Supplier may offer to supply Third Party Products that are provided by a third party manufacturer/supplier, e. g. under Supplier's "Dell EMC Select" program, Supplier's "Brokerage" program or Supplier's Software & Peripherals (S&P) program, and may include offerings from Supplier Affiliates using different brands other than "Dell" or "Dell EMC". Notwithstanding any other provisions herein, such Third Party Products are subject to the standard license, services, warranty, indemnity and support terms of the third party manufacturer/supplier (or an applicable direct agreement between Customer and such manufacturer/supplier), to which Customer shall adhere. Even if support fees are invoiced through Supplier, such Third Party Products are not supported by Supplier and Customer shall contact such third party directly for support. Any warranty, damages or indemnity claims against Supplier in relation to such Third Party Products are expressly excluded. References to warranty and support information for Dell EMC Select products is currently available through [www.dell.com/offeringspecificterms](http://www.dell.com/offeringspecificterms).

## **10. Confidentiality.**

**10.1 Scope.** "Confidential Information" shall mean any information, pricing, technical data or know-how furnished in connection with the scope of this CTS, whether in written, oral, electronic, website-based, or

other form, by a Customer or a Customer Affiliate to Supplier or a Supplier Affiliate or vice versa and that: (i) is marked, accompanied or supported by documents clearly and conspicuously designating such documents as "confidential", "internal use" or the equivalent; (ii) is identified by the discloser as confidential before, during or promptly after the presentation or communication; or (iii) should reasonably be known by the recipient to be confidential. Confidential Information does not include information that is: (a) rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party; (b) a matter of public knowledge (or becomes a matter of public knowledge other than through breach of confidentiality by the other party); (c) rightfully furnished to the receiver by a third party without confidentiality restriction; or (d) independently developed by the receiver or its Affiliates without reference to the discloser's Confidential Information.

**10.2 Protection.** Each party shall ensure that, where it or one of its Affiliates is the receiver of Confidential Information hereunder, the receiver shall (a) use Confidential Information of the discloser only for the purposes of exercising rights or performing obligations in connection with this CTS or any Order hereunder; and (b) protect from disclosure to any third parties any Confidential Information disclosed by the discloser.

**10.3 Exceptions.** Notwithstanding the foregoing, either party and its Affiliates may disclose Confidential Information (1) to an Affiliate, or to a subcontractor used by Supplier to provide Services under this Agreement, as long as the Affiliate or subcontractor has a need-to-know and complies with the foregoing; (2) to either party's directors, officers, employees, and professional advisors and those of its Affiliates, and (3) if required by law or regulatory authorities provided the receiver has given the discloser prompt notice. For the purposes of this clause 10.3, "Affiliates" of Supplier include other members of Dell Technologies group.

## **11. Term and Termination of this CTS.**

This CTS is effective upon the earlier of an Order or Customer's acceptance of the CTS and continues until it is terminated in accordance with this clause. Either party may terminate this CTS for material breach by the other party if such other party has failed to cure the breach within a reasonable grace period of no less than 30 days as set forth by the other party in writing. A termination of this CTS shall not affect any previously placed Orders.

## **12. General.**

**12.1 Governing Law; Jurisdiction.** The CTS and any Dispute is governed by the laws of the State of Texas (excluding the conflicts of law rules) and the federal laws of the United States. The U.N. Convention on Contracts for the International Sale of Goods does not apply. To the extent permitted by law, the state and federal courts located in Texas will have exclusive jurisdiction for any Disputes. Customer and Supplier agree to submit to the personal jurisdiction of the state and federal courts located within Travis or Williamson County, Texas, and agree to waive any and all objections to the exercise of jurisdiction over the parties by those courts and to venue in those courts.

**12.2 Trade Compliance.** Customer's purchase of Offerings and access to related technology

(collectively, the “Materials”) are intended for its own use, not for resale, export, re-export, or transfer. Customer 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. Materials may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use, and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States, European Union or other applicable jurisdictions.

**12.3 Customer Responsibility.** Customer agrees that it will obtain all necessary rights, permissions and consents associated with: (a) technology or data (including personal data) that Customer and its Affiliates provide to Supplier or its Affiliates, and (b) non-Supplier software or other components that Customer and its Affiliates direct or request that Supplier or its Affiliates use with, install, or integrate as part of the Supplier’s Offerings. Customer is solely responsible for reviewing data that will be provided to or accessed by Supplier in the provision of the Offerings to ensure that it does not contain: (i) data that is classified, ITAR (International Traffic in Arms Regulations) related data, or both; or (ii) articles, services, and related technical data designated as defense articles and defense services. Customer will defend and indemnify Supplier and its Affiliates against any third party claim resulting from a breach of the foregoing, or from Customer’s infringement or misappropriation of intellectual property rights of Supplier, its Affiliates or third parties.

**12.4 Encryption.** Customer certifies that all items (including hardware, software, technology and other materials) it provides to Supplier for any reason that contain or enable encryption functions either (a) satisfy the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 of the Wassenaar Arrangement on Export Controls for Conventional Arms (Wassenaar Arrangement) and Dual-Use Goods and Technologies and Category 5, Part 2 of the U.S. Commerce Control List (CCL) or (b) employ key length of 56-bit or less symmetric, 512-bit asymmetric or less, and 112-bit or less elliptic curve or (c) are otherwise not subject to the controls of Category 5, Part 2 of the Wassenaar Arrangement and Category 5, Part 2 of the CCL. Supplier is not responsible for determining whether any third party product to be used in the products and services satisfies regulatory requirements of the country to which such products or services are to be delivered or performed. Supplier shall not be obligated to provide any product or service where the product or service is prohibited by law or does not satisfy the local regulatory requirements.

**12.5 U.S. Government Restricted Rights.** The software and documentation provided with the Products and Services are “commercial items” as that term is defined at 48 C.F.R. 12.101, consisting of “commercial computer software” and “commercial computer software documentation” as such 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 of Dell-branded Software and Dell-branded Products is Dell Products L.P., One Dell Way, Round Rock, Texas 78682.

**12.6 Entire Agreement.** This CTS, the Schedules and each Order hereunder comprise the complete statement of the agreement of the parties regarding the subject matter thereof and may be modified only by written agreement. Pre-printed terms on any Order or any term or condition on a Customer form, have no legal effect and do not modify or supplement the CTS, even if Supplier does not expressly object to those terms when accepting a Customer Order. The Schedule(s) and information which are incorporated by reference (including reference to information contained in a URL or policy) form an integral part of this CTS.

**12.7 Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any of its obligations (other than for the payment of fees) caused by Force Majeure. If such delay or failure lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, the relevant Order by giving written notice to the delayed party. "Force Majeure" refers to circumstances beyond a party's reasonable control including, without limitation, act of God, war, riot, civil commotion, terrorist acts, malicious damage, governmental or regulatory actions, accident, breakdown of plant or machinery, local or national emergency, explosions, fire, natural disasters, severe weather or other catastrophes, epidemics/pandemics, general import/export/customs process problems affecting supplies to Supplier or to Customer, shortages in materials, failure of a utility service or transport network, embargo, strike, lock out or other industrial dispute (whether involving Supplier's workforce or any other party), or default of suppliers or subcontractors due to any of the preceding events.

**12.8 Assignment and Subcontracting.** Neither party shall assign, transfer or novate this CTS, any Order, or any right or obligation thereunder or delegate any performance without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing: (i) Supplier may use Affiliates or other qualified subcontractors to perform its obligations hereunder, provided that the relevant party to the Order shall remain responsible for the performance thereof; and (ii) either party may assign rights to payments arising under any Order without consent of the other party.

**12.9 Independent Contractors.** The parties are independent contractors for all purposes under this CTS and cannot obligate any other party without prior written approval. The parties do not intend anything in this CTS 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.

**12.10 Third Party Rights.** There are no third party beneficiaries to this CTS or any Order under any laws.

**12.11 Waiver and Severability.** Failure to enforce a provision of this CTS will not constitute a waiver of that or any other provision of this CTS. If any part of this CTS or an Order is held unenforceable, the validity of the remaining provisions shall not be affected.

**12.12 Notices.** The parties will provide all notices under this CTS in writing. Customer must provide notices to Supplier at the Dell email address on the first page of the CTS.

Translated versions may be found at [www.dell.com/eula\\_translations](http://www.dell.com/eula_translations)

## **End User License Agreement**

This End User License Agreement (“EULA”) is between the individual consumer or business entity that will use the Software (“You”) and the applicable entity identified in the “Licensor Table” located at [www.dell.com/swlicensortable](http://www.dell.com/swlicensortable) (“Licensor”).

This EULA governs Your use of: (a) the object code version of Dell branded software that is preinstalled on Dell hardware or otherwise provided to You pursuant to a purchase contract, quote, order form, invoice or online procurement process (each, an “Order”); (b) associated software license keys, if any (“License Keys”); (c) updates to such software (“Updates”); (d) the documentation for such software; and (e) all copies of the foregoing (collectively, “Software”). If You accept this EULA, or if You install or use the Software, then You agree to this EULA unless You already have a signed agreement with Dell Marketing L.P. or one of its affiliates (“Dell”) that includes licensing terms that govern Your use of the Software (“Pre-Existing Agreement”). If You accept this EULA or install or use the Software on behalf of a business entity, then You represent that You have authority to take those actions, and this EULA will be binding on that business entity unless the entity already has a Pre-Existing Agreement. If You do not agree to this EULA, do not install or use the Software.

If You are a business entity and You purchase Software from a third party (“Reseller”) who sublicenses the Software to You under the terms of an agreement between You and such Reseller (a “Sublicense Agreement”), then the terms of Your Sublicense Agreement with the Reseller shall govern Your use of the Software and not this EULA. Resellers may only grant rights, and must pass through conditions, consistent with this EULA. Thus, even though Your Sublicense Agreement is between you and the Reseller, by installing or using the Software, You acknowledge and agree that: (a) any license rights in the Sublicense Agreement that are greater than the license rights in this EULA shall not apply; (b) any license conditions in this EULA that are not contained in the Sublicense Agreement apply to You; (c) the limitations of liability set forth in this EULA will apply in favor of Licensor, its affiliates and suppliers despite the existence of a Sublicense Agreement; and (d) Licensor is a third-party beneficiary of the Sublicense Agreement and is entitled to exercise and enforce all of the Reseller’s rights and benefits under that Sublicense Agreement.

If You purchase Software as an individual consumer, nothing in this EULA affects your statutory rights if the laws of your state or country do not permit it to do so.

### **1. License Grant.**

1.1. **Right to Use.** Subject to and in consideration of your full compliance with the terms and conditions of this EULA, Licensor grants to You a personal, non-exclusive license to use the Software during the period stated in the applicable Order (if no period is specified, You may use the Software perpetually). If You are an individual consumer, this license grant allows You to use the Software in connection with Your own personal use. If You are a business entity, this license grant allows You to use the Software in connection with the internal business operations of Your entity. In addition, You may make a reasonable number of copies of the Software solely as needed for backup or archival purposes. Additional license terms for certain Software may be included in the Offering Specific Terms Table located at [www.dell.com/offeringspecificterms](http://www.dell.com/offeringspecificterms) (“OST Table”), and additional terms for Software that is licensed to You for a limited time (“Subscription Software”) are located at [www.dell.com/subscription\\_terms](http://www.dell.com/subscription_terms) (“Subscription Terms”).

1.2. **Third Party Use.** If You are a business entity, You may allow Your contractors (each, a “Permitted Third Party”) to use the Software solely for the purpose of providing services to You, provided that such use is in compliance with this EULA. You are liable for any breach of this EULA by any Permitted Third Party.

1.3. **Rights Reserved.** The Software is licensed and not sold. Except for the license expressly granted in this EULA, Licensor, on behalf of itself and its affiliates and suppliers, retains all rights in and to the Software and in all related materials (“Works”). The rights in these Works are valid and protected in all forms, media and

technologies existing now or hereafter developed. Any use of Works other than as expressly set forth herein is strictly prohibited.

1.4. **Ownership.** Licensor, on behalf of itself and its affiliates, retains ownership of the Works and all related intellectual property rights. If Software is provided to You on removable media (e.g., CD, DVD or USB drive), You may own the media on which the Software is recorded.

## **2. License Conditions.**

2.1. You and Your Permitted Third Parties must do the following:

- A. Run the Software only on the hardware for which it was intended to operate, when applicable;
- B. Use License Keys (if applicable) only from Licensor or an authorized Dell License Key provider;
- C. Treat the Software as Dell confidential information;
- D. Use the Software only on as many computers or devices that You purchased, in such configurations permitted by Dell or Licensor, and/or in accordance with the applicable unit of measure, each as may be specified on Your Order. For Software licensed via a unit of measure, the terms and descriptions of each unit of measure are located at [www.dell.com/UCM/terms](http://www.dell.com/UCM/terms) ("UOM Terms");
- E. Abide by the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions. Under these laws, the Software must not be used, sold, leased, exported, imported, re-exported or transferred except in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. You represent and warrant that You are not the subject or target of, and that You are not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of economic sanctions of the United States, European Union or other applicable jurisdictions; and
- F. Comply with all Third Party Terms (as defined in Section 5 below).

2.2. Except as otherwise permitted by this EULA or by mandatory law (meaning a law that the parties cannot change by contract), You must not, and must not allow Your Permitted Third Parties, to do the following:

- A. Modify or remove any proprietary notices or markings on or in the Software;
- B. Transfer License Keys to any other person or entity;
- C. Download Updates from Licensor or an authorized provider unless You have a valid support agreement;
- D. Install Updates on Enterprise Products (e.g., server, networking, storage, integrated solutions, and data protection appliances) that have gone end of service life unless Licensor otherwise agrees in writing;
- E. Install and operate counterfeit versions of Software (i.e. software provided by anyone other than Dell or an authorized representative of Dell) on Dell hardware;
- F. Violate or circumvent any technological use restrictions in the Software;
- G. Sell, loan, rent, lease, sublicense, distribute or encumber (e.g., by lien, security interest, etc.) the Software;
- H. Use any trademarks or service marks of Licensor, its affiliates or suppliers;
- I. Provide access to the Software or allow use by any third party, other than Permitted Third Parties, without Licensor's prior written consent;
- J. Copy, republish, upload, post or transmit the Software in any way;
- K. Modify or create derivative works based upon the Software, or decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part;
- L. Attack or attempt to undermine the security, integrity, authentication or intended operation of the Software;
- M. Use the Software on a service bureau, rental or managed services basis;
- N. Create or permit others to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server, wireless or Internet-based device;



- O. Use the Software to create a competitive offering;
- P. Use the Software to create other software, products or technologies unless the Software contains Development Tools as described in Section 7;
- Q. Share or publish the results of any benchmarking of the Software without Dell's prior written consent;
- R. Use the Software for high risk activities, including without limitation online control systems, or use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, weapons systems or in any other device or system in which function or malfunction of the Software could result in death, personal injury or physical or environmental damage;
- S. Use the Software for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or support of missile projects, or chemical or biological weapons; and
- T. Assign this EULA, or any right or obligation under this EULA, or delegate any performance, without Dell's prior written consent, unless You are transferring the Software in accordance with the Transferability Section 3 below. Even if Dell consents to an assignment, You remain responsible for all obligations under this EULA that You incurred prior to the effective date of the assignment.

**3. Transferability.** If You are an individual consumer, You may transfer the Software on a permanent basis as part of the sale or transfer of the hardware system on which the Software is loaded, provided that You retain no copies of any version of the Software. If You are a business entity, You may not transfer the Software to another person or entity without the express written permission of Dell, unless allowed by applicable law stating that transfer may not be restricted (note that a transfer fee may be charged by Dell).

**4. Compliance Verification.** If You are a business entity, You must: (a) maintain and use systems and procedures that allow You to accurately track Your use of the Software; (b) certify to Dell in writing, at Dell's request, that Your use of Software fully complies with this EULA, indicating the number of Software licenses deployed at that time; and (c) cooperate fully and timely with Dell and its auditors if Dell notifies You that it will conduct an audit to confirm Your compliance with this EULA. Any such audit will be conducted during normal business hours. If Dell determines that You have over-deployed Software, You agree to immediately purchase licenses at the then-current list price to bring Your use into compliance. If You over-deployed Software by 5% or more, then You agree to pay the total cost of the audit, in addition to any other liabilities You may have.

**5. Third Party Software.** "Third Party Software" is software, including open source software, that is contained in or provided with the Software and is licensed by a third party under its own terms of use ("Third Party Terms"). Third Party Software is governed solely by the applicable Third Party Terms and not by this EULA. Third Party Terms may be provided with the Third Party Software or may be included in the OST Table. For certain open source software, the applicable Third Party Terms may entitle You to obtain the corresponding source files. You may find corresponding source files for such open source software at <https://opensource.dell.com/> or in the "About" or "Read Me" file of Software, or other locations that Licensor may specify.

**6. Free Software.** "Free Software" means Software that is provided to You without additional charge (e.g., scripts that enable customer installation; code that enables You to monitor Your use of Dell products; etc.). You may only use Free Software on or with equipment or in the operating environments for which Dell has designed that Free Software to operate. Licensor may terminate any license to Free Software at any time in its sole discretion. You may not transfer Free Software to anyone else.

**7. Development Tools.** If the Software includes development tools, such as scripting tools, APIs or sample scripts (collectively "Development Tools"), and unless there is a separate agreement between You and Dell or Licensor for the Development Tools, You may use such Development Tools to create new scripts and code for the purpose of customizing Your use of the Software (within the parameters set forth in this EULA and in the Development Tools themselves) and for no other purpose.

8. **Evaluation Software.** This EULA does not license use of Software for evaluation purposes (“Evaluation Software”) except to the extent these terms may be invoked by the separate license terms and conditions accompanying that Evaluation Software.

9. **Support Services Not Included.** If You purchase maintenance and support for Software, such services are identified in Your Order and will be provided under a separate services agreement.

10. **Termination.** For Subscription Software, this EULA automatically terminates at the end of Your subscription period unless You renew Your rights. Licensor may terminate this EULA if You or a Permitted Third Party commits a material breach of this EULA and fails to cure such breach within thirty (30) days following Your receipt of notice of the breach from Dell. This right to terminate applies accordingly if Dell or the Reseller from whom You made Your purchase does not receive timely payment for the licenses to the Software or for the hardware on which the Software is loaded, if any. When this EULA terminates, all licenses granted automatically terminate and You must immediately cease use of the Software and return or destroy all copies of the Software. Except as otherwise agreed by Dell, You will not get a refund from Dell if this EULA is terminated. Rights and obligations under Sections of this EULA that, by their nature should survive, will survive termination, as well as obligations for payment.

11. **Warranty Disclaimer.** Under this EULA, Licensor provides neither any warranties for the Software nor does it provide support for the Software. Your rights under any warranties and any support entitlements for Software acquired for a fee are solely between You and the Reseller or Dell entity from whom You procured the Software and related support, and are defined under the commercial terms agreed between You and such selling entity. Accordingly, except as otherwise offered by Dell, the Software is provided by Licensor under this EULA “As Is” without any warranties or conditions. To the maximum extent permitted by applicable law, Licensor, on behalf of itself and its affiliates and suppliers: (a) makes no express warranties or conditions related to the Software; (b) disclaims all implied warranties and conditions related to the Software, including merchantability, fitness for a particular purpose, title, and non-infringement; and (c) disclaims any warranty or condition arising by statute, operation of law, course of dealing or performance, or usage of trade. Licensor does not warrant uninterrupted or error-free operation of the Software. This Section does not affect or modify any of the statutory warranty rights that are available to consumers.

12. **Limitation of Liability.**

12.1. **Limitations on Damages.** The limitations, exclusions and disclaimers set forth in a Pre-Existing Agreement or Dell Terms of Sale that applies your Order (in each case, the “Order Terms”) shall apply to all disputes, claims or controversies (whether in contract, tort or otherwise) between You and Licensor or Dell related to or arising out of: (a) this EULA; (b) the breach, termination or validity of this EULA; or (c) any Orders (each, a “Dispute”). In the absence of applicable Order Terms, the terms set forth in this Section shall apply to all Disputes.

The terms of this Section are agreed allocations of risk constituting part of the consideration for Licensor’s licensing of Software to You and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities. If applicable law prohibits any portion of the limits on liability stated below, the parties agree that such limitation will be automatically modified, but only to the extent required to make the limitation compliant with applicable law.

- A. **Limitation on Direct Damages.** Except for Your obligation to pay for the Software, or for Your violation of the License Grant and License Conditions set forth herein or of Licensor’s or Dell’s intellectual property rights, the total liability of You and Licensor (including Licensor’s affiliates and suppliers) arising out of any Dispute is limited to the amount You paid for the Software that is the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. Notwithstanding anything otherwise set forth above, Licensor and its affiliates have no liability for any direct damages resulting from Your use or attempted use of Third Party Software, Free Software or Development Tools.

- B. Disclaimer of Certain Other Damages. Except for Your obligation to pay for the Software, or for Your violation of the License Grant and License Conditions set forth herein or of Licensor's or Dell's intellectual property rights, neither You nor Licensor (including Licensor's affiliates and suppliers) shall have any liability under this EULA for 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.**

12.2. Regular Backups. You are solely responsible for Your data. You must back up Your data before Licensor or a third party performs any remedial, upgrade or other work on Your production systems. You acknowledge that it is a best practice to have more than one back up copy of Your data. If applicable law prohibits exclusion of liability for lost data, then Licensor will only be liable for the cost of the typical effort to recover the lost data from Your last available back up.

12.3. Limitation Period. Except as stated in this Section, 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 cause of action accrues.

**13. Additional Terms.**

13.1. Notices. The parties will provide all notices under this EULA in writing. Unless provided otherwise in an Order, You must provide notices to the local Dell entity in Your Order, or, if Your Order is not with a Dell entity, by e-mail to [Dell.Legal.Notices@dell.com](mailto:Dell.Legal.Notices@dell.com).

13.2. Waiver and Severability. Failure to enforce a provision of this EULA will not constitute a waiver of that or any other provision of this EULA. If a court of competent jurisdiction determines that any part of this EULA or document that incorporates this EULA by reference is unenforceable, that ruling will not affect the validity of all remaining parts.

13.3. Modifications. This EULA may only be modified in writing signed by both parties; provided, however, that Licensor may, in its sole discretion, update the Licensor Table, the OST Table, the UOM Terms and the Subscription Terms at any time. Any changes that Licensor makes to the Licensor Table, the OST Table, the UOM Terms or the Subscription Terms will only apply to Orders that occur after Licensor posts those changes online.

13.4. Governing Law and Jurisdiction. If You obtained the Software directly from Dell, then the governing law and jurisdiction provisions set forth in Your Order Terms shall apply to this EULA. Otherwise the following shall apply:

- A. Subject to Section 13.4 D and 13.5, if You are domiciled in the United States or Canada: (1) this EULA and any Dispute is governed by the laws of the State of Texas (excluding the conflicts of law rules) and the federal laws of the United States; and (2) to the extent permitted by law, the state and federal courts located in Texas will have exclusive jurisdiction for any Dispute. Both parties agree to submit to the personal jurisdiction of the state and federal courts located within Travis or Williamson County, Texas, and agree to waive any and all objections to the exercise of jurisdiction over the parties by those courts and to venue in those courts.
- B. Subject to Section 13.4 D, if You are domiciled outside of the United States or Canada: (1) this EULA and any Dispute is governed by the substantive laws in force in the country in which the Licensor is located (as indicated in the Licensor Table located at [www.dell.com/swlicensortable](http://www.dell.com/swlicensortable)), without regard to its conflict of law rules; and (2) the exclusive place of jurisdiction for any Dispute shall be in such country.
- C. In any event, neither the U.N. Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act shall apply to this EULA or any Dispute.
- D. If You are an individual consumer, this Section 13.4 does not deprive You of the protection afforded to You by the provisions of mandatory consumer protections laws that are applicable to You, nor does it prevent you from seeking remedies or enforcing your rights as a consumer under such laws.

13.5. Dispute Resolution and Binding Individual (non-class) Arbitration. This Section only applies if You are an individual consumer that resides in (or obtained the Software in) the United States or Canada. **All Disputes shall be resolved exclusively and finally by binding individual arbitration.** This means You and Licensor waive any right to litigate disputes in a court or before a jury and neither You nor Licensor shall be entitled to join, consolidate, or include any claims belonging to or alleged or arising from, by or on behalf of any third party to an arbitration brought hereunder, or to arbitrate any claim as a class action, class representative, class member, or in a private attorney general capacity. If You reside in (or obtained the Software in) the United States, the arbitration will be administered by the American Arbitration Association (AAA), or JAMS. If You reside in (or obtained the Software in) Canada, arbitration will be at ADR Chambers pursuant to the general ADR Chambers Rules for Arbitration located at [www.adrchambers.com](http://www.adrchambers.com). The arbitration shall be conducted in the English language. The arbitration panel shall have exclusive authority to resolve any arbitrability issues including any dispute over this EULA or this arbitration provision's scope, application, meaning and enforceability. The arbitration panel shall be empowered to grant whatever relief would be available in court, including without limitation preliminary relief, injunctive relief and specific performance. Any award of the arbitration panel shall be final and binding immediately when rendered, and judgment on the award may be entered in any court of competent jurisdiction. If any portion of this arbitration agreement is found unenforceable, the unenforceable portion shall be severed and the remaining arbitration terms shall be enforced (but in no event will there be a class arbitration). Consumer claimants (individuals whose transaction is intended for personal, family or household use) may elect to pursue their claims in small-claims court rather than arbitration. Licensor will be responsible for paying any individual consumer's arbitration/arbitrator fees. Notwithstanding the foregoing, Licensor may apply to any relevant government agency or any court of competent jurisdiction to preserve its rights under this EULA and to obtain any injunctive or preliminary relief, or any award of specific performance, to which it may be entitled, either against You or against a non-party; provided, however, that no such administrative or judicial authority shall have the right or power to render a judgment or award (or to enjoin the rendering of an arbitral award) for damages that may be due to or from either party under this EULA, which right and power shall be reserved exclusively to an arbitration panel proceeding in accordance herewith.

13.6. Third Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

13.7 Entire Agreement. You acknowledge that You have read this EULA, that You understand it, that You agree to be bound by its terms, and that this EULA, along with the Order Terms into which this EULA may be incorporated (as applicable), is the complete and exclusive statement of the agreement between You and Licensor regarding Your use of the Software. All content referenced in this EULA by hyperlink is incorporated into this EULA in its entirety and is available to You in hardcopy form upon Your request. The pre-printed terms of Your purchase order or any other document that is not issued or signed by Licensor or Dell do not apply to Software. You represent that You did not rely on any representations or statements that do not appear in this EULA when accepting this EULA.

EULA (rev. 24FEB2020)