



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) if you purchased directly from Dell, any order form referencing the Solution Description (an “**Order Form**”); and (iii) the attached or referenced Acceptable Use Policy (“**AUP**”).

This Agreement is effective upon your (a) execution of a Solution Description or an Order Form; (b) acceptance of these terms pursuant to an online order process; (c) accessing or using the Solution; or (d) acceptance of terms between you and a reseller that reference this Agreement, if you purchased through a reseller. “**You**,” “**your**” or “**Customer**” means the customer entity (or end-user entity, if you purchased through a reseller) identified in the applicable Solution Description, Order Form or online order process. “**Dell**,” “**us**,” “**we**” or “**our**” means Dell Canada Inc., 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 purchase of the Solution is solely for your internal business use which may include providing a Customer Solution to an End User for that End User’s internal business use. The Solutions purchased under this Agreement are not for resale.

2. Definitions.

“**Activation Instructions**” means any instructions, user IDs, software license keys or passwords that we may provide you in respect of specific Solutions to enable you to activate or access the Solution.

“**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 (whether located on a Dell site or on the Customer’s site), 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.

“**Confidential Information**” means (i) for you, information provided to us on an 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 (including Software); 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 a 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.

“**Customer Solution**” means any non-Dell hardware, software, service or a combination thereof provided by Customer to an End User with, through or using the Solution.

“**End User**” means each individual or entity that Customer has authorized to access and use a Solution or Customer Solution, including any individual or entity that purchases a Customer Solution through a reseller.

“**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, in object (binary) or source-code form, as well as the related documentation, provided by us in connection with a Solution. 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 Solution 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, including use of the Cloud in connection with the provision of a Solution.

“**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 any Customer Solution or any other Customer provided software, hardware or services.

“**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. Quotes, Ordering and Payment.

If you purchased a Solution through a reseller, the terms and conditions of sale (including pricing) for the purchase will be as agreed between you and the reseller. This Section 3 applies to direct sales only.

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. Quoted prices will remain in effect only until the expiration date of the quote. All orders are subject to our acceptance. 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. We, or our local affiliate(s), will invoice you locally, per the billing address(es) you provide, in the applicable currency. 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 (or 18% per year) 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 late payment fees.

The charges stated in any Order Form or invoice will exclude GST, HST, PST or other similar VAT, sales or use tax. You are responsible, on behalf of yourself and your affiliates, for the payment of all taxes and fees assessed or imposed on the Solution in any geography in which you or an End User receives the benefit of the Solution, 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 or your affiliates 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 (whether placed directly with Dell or through a reseller), 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 or the date an online order is executed 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 (or, if you purchased through a reseller, the applicable period in your order with the reseller). If you purchased directly from Dell, 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, we may renew this Agreement and the related Solution(s) in our discretion for a successive Term at our then-current list price. If you purchased through a reseller, the terms and conditions of renewal for the purchase will be as agreed between you and the reseller.

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; (iv) you declare bankruptcy, are adjudicated bankrupt or a receiver or trustee is appointed for you or substantially all of your assets; or (v) you purchased through a reseller and as applicable: the agreement between you and such reseller expires or is terminated, the agreement between Dell and such reseller expires or is terminated or your reseller is delinquent on its payment obligations to Dell. In the event we terminate pursuant to this Section 6, we will not be liable to you.

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 (or your reseller, if you purchased through a reseller) are delinquent on 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 (or your reseller, if you purchased the Solution from a reseller) 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. From time to time, we may change the location where the Solution is provided; provided, however, we will remain responsible for the delivery of the Solution.

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 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, and subject to the restrictions below, we grant you a non-exclusive, 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, remove, 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) except in connection with providing a Customer Solution to an End User, 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) except in connection with providing a Customer Solution to an End User, 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, adaptations and translations, 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. 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 (for Canada's policy, please see www.dell.ca/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. Acceptable Use Policy.

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 use of the Solutions, 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. If you purchased directly from Dell, you must pay when due the amounts for the Solution stated in the applicable Solution Description or other agreement between you and Dell. If you purchased from a reseller, you must pay when due the amounts for each Solution stated in the applicable agreement between you and the reseller.

You represent, warrant and covenant that you have obtained all rights, permissions and consents necessary to use and transfer any Customer data or End User data within and outside of the country in which you are located in connection with our performance of the Service or your use of the Software (including providing adequate disclosures and obtaining legally sufficient consents from your employees, agents, contractors and End Users).

You will be deemed to have taken any action that you permit, enable or facilitate any person or entity to take related to this Agreement, any Customer Solution or use of any Solution. You are responsible for the use of the Solutions and any Customer Solution by any End User and any person who gains access to your or any End User's 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 are responsible for any Customer Solution, including (i) controlling the access to, and use and security of, the Customer Solution and the data residing in or processed via the Customer Solution, and (ii) maintaining the security of the passwords and other measures used to protect access to any end-user account. You will ensure that End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement and are legally enforceable. If you become aware of any violation of your obligations under this Agreement by an End User, you will immediately terminate such End User's access to the Solution and any Customer Solutions. Unless indicated otherwise in the Solution Description, Services will be provided from facilities located outside of Canada and any data, or information you provide through the Services (including personal information) will be transmitted and stored outside of Canada. You will be responsible to ensure that you have obtained all rights, permissions, and consents or have provided notices necessary to use and transfer such data and information outside of Canada in conjunction with Dell's performance of the Services. You will also be responsible to ensure that you are permitted to disclose or transfer data and information outside of Canada under any laws that may be applicable to your business, including the data and information collected and used by or in the course of conducting your business.

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, software and any Customer Solution, including the use of appropriate encryption, back-up and archiving. You remain responsible for properly handling and processing notices claiming that your data, software or any Customer Solution 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 or corruption of your data or software.

In connection with certain Solutions, we may provide you with hardware, software, equipment or other property ("**Equipment**"). The Equipment is our sole property and we may immediately take possession of the Equipment following the termination or expiration of this Agreement. You will (a) keep the Equipment free and clear of any lien and not pledge as security or otherwise encumber the Equipment; (b) use the Equipment only to access the Solution and comply with our reasonable Equipment use instructions; (c) not remove, relocate or move the Equipment from the specific location where it was first installed without our prior written approval; (d) provide adequate, secure and proper space at your facility to install Equipment, it being agreed that we are not obligated to install Equipment in poorly ventilated, air conditioned or inadequately maintained room(s); (e) be responsible for risk of loss and damage to the Equipment equal to the present value of the Equipment's fair market value; (f) not remove, cover or alter plates, labels or other markings on the Equipment; and (g) provide a secure link such as a static IP address for the Equipment.

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. Customer License Grant.

Customer grants to Dell the necessary rights to operate any Customer-provided software, including a non-exclusive, royalty-free license (which shall terminate upon termination of the applicable Solution) to install, deploy, use, execute, reproduce, display, translate, perform and run such software (including, without limitation, guest operating systems and



application programs), as are reasonable or necessary for Dell to perform or provide the Solution. As between you and Dell, you are responsible for providing, updating, uploading and maintaining any Customer-provided software and paying all fees associated therewith, including any software license and maintenance fees. 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.

Customer grants to Dell a non-exclusive, royalty-free license to access, use, reproduce, modify, perform, translate, display and distribute Customer and End User data as is reasonable or necessary for Dell to perform or provide the Solution. It is Customer's responsibility to obtain, at its own expense, all licenses, consents and approvals required to grant to Dell the rights and licenses in this Agreement.

15. High-Risk Disclaimer.

The Solutions 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.

16. Important Additional Information.

A. Limited Warranty. THE SOLUTION, TOGETHER WITH ALL THIRD-PARTY PRODUCTS AND OPEN SOURCE SOFTWARE PROVIDED BY DELL, 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**"), PROVIDES NO EXPRESS OR IMPLIED WARRANTY OR CONDITION AND DISCLAIMS ALL WARRANTIES AND CONDITIONS, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOLUTION OR ANY OF THE SOFTWARE OR SERVICES INCLUDED THEREIN, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR CONDITION (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 SOLUTION (INCLUDING THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, 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 IN RESPECT OF A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER OR ORIGINAL MANUFACTURER.

WITH RESPECT TO YOUR OR END USER'S 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 OR END USER'S 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 SOLUTIONS PROVIDED HEREUNDER. EXCEPT FOR YOUR BREACH OF SECTION 10, NEITHER PARTY WILL HAVE LIABILITY FOR (1) LOSS OF REVENUE, INCOME, PROFIT OR SAVINGS OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (2) LOST OR CORRUPTED DATA, PROGRAMS 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 SOLUTIONS PROVIDED HEREUNDER) IN ANY 12-MONTH PERIOD WILL NOT EXCEED THE TOTAL AMOUNT RECEIVED BY DELL DURING THE PRIOR TWELVE (12) MONTHS OF THIS AGREEMENT FOR THE SPECIFIC SOLUTION GIVING RISE TO SUCH CLAIM(S).

THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO ALL CLAIMS FOR DAMAGES OR OTHERWISE, 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 AND PERFORMANCE OF THE SOLUTION TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY 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 Canada or the United States. 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 D 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 D 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 or other remedies 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 (a) your 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 Solution; (b) your breach of this Agreement or violation of any applicable law, regulation or order; (c) any inaccurate representation regarding the existence of an export license or any allegation made against the Dell Parties due to your violation or alleged violation of applicable Control Laws; (d) you providing any Excluded Data to Dell; (e) tax liabilities that are your responsibility pursuant to Section 3; (f) your use of the Solution; (g) the failure of any End Users to comply with your obligations under this Agreement; and (h) your provision of your own services, software, technology or solution, including, without limitation, any Customer 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 performance is delayed by circumstances beyond its reasonable control, such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, riot, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers or actions or omissions of regulatory or governmental authorities (including the passage of laws or regulations or other acts of government or law enforcement that impact the delivery of the Solution) (a "**Force Majeure**"). The delayed party will promptly provide the other party with written notice

of the Force Majeure. The delayed party's 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 Canadian and U.S. import, re-import, export and re-export control laws, orders and regulations ("**Control Laws**"), including the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations ("ITAR") and country-specific economic sanctions programs implemented by the U.S. Office of Foreign Assets Control, or by Canadian domestic authorities including the Attorney General of Canada and the Canadian Department of Foreign Affairs and International Trade. For clarity, you are solely responsible for compliance relating to the manner in which you choose to use the Solution, including your transfer and processing of data or software, the provision of data, software or any Customer Solution to End Users and any Control Laws of the country in which the Services or Software are rendered or received. Data, software or any Customer Solution that you provide in connection with the Solution will not (i) be classified or listed on the U.S. Munitions list; (ii) contain defense articles or defense services; or (iii) contain ITAR-related or other similar data (items (i) – (iii) collectively, the "**Excluded Data**").
- I. Regulatory Requirements.** We are not responsible for determining whether any Third-Party Product used in the performance of the Solution satisfies the Canadian regulatory requirements or 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 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 16.J, 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 following will be applicable only to the extent to have enabled End-Users located in the U.S. 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/manufacture 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

Dell | Cloud
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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 province of Ontario and the federal laws of Canada applicable therein, without regard to conflicts of law.

- O. Jurisdiction and Venue.** The parties agree that any Dispute will be brought exclusively in the courts located in Toronto, Ontario. The parties further agree to submit to the personal jurisdiction of courts located in Toronto, Ontario, and agree to waive any objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.
- 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.
- Q. Limitation Period.** NEITHER PARTY WILL BE LIABLE FOR OR ASSERT ANY CLAIM MORE THAN TWO YEARS AFTER THE 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 Canada Inc., Attn: Contracts Manager, 155 Gordon Baker Rd. Suite 501, North York, Ontario M2H3N5.



DELL | ACCEPTABLE USE POLICY

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

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 Solutions; (3) providing unauthorized access to or use of Activation Instructions; (4) attempting to probe, scan or test the vulnerability of the Solutions 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 Solutions (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 supplier) facilities used to deliver the Solutions. Dell may in its sole discretion determine whether your use of the Solutions 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 Solutions, the system or network, or any violation of this AUP.