

Cloud Service Offerings Agreement - Canada

Last Updated: May 16, 2024

The Cloud Service Offerings Agreement (the “**Agreement**”) applies to the Service Offerings, including Evaluation Services, ordered by you, on behalf of your company (“**Customer**” or “**You**”) and will be binding on You and the Dell Technologies entity which invoices You for the Service Offerings (“**Dell**”) when Dell makes any of these available for Your use. Each Service Offering may have a Service Offering Description, which is incorporated into the Agreement by reference. The “**Effective Date**” of the Agreement is the earlier of the date You accepted the Agreement or the date You first used the Service Offering.

1. Definitions.

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

“**Content**” means data (including all text, sound, video, and image files), software (including machine images), and other information.

“**Customer Content**” means Content You or Your End Users load or use on the Service Offering. Customer Content does not include configuration, performance, and/or usage data that Dell collects in connection with the Service Offering.

“**End Users**” means Your customers or other third parties to whom You may provide a service using the Service Offering.

“**Evaluation Service**” means any Service Offering, or a feature or functionality of a Service Offering, that Dell offers on an evaluation or trial basis. If You are participating in a separate Dell technical preview or beta program, then the terms of that program will apply to that preview or beta program.

“**Login Credentials**” means any passwords, authentication keys, or security credentials that enable Customer’s access, management to the Service Offering, or both.

“**Order**” means the internet order page, where applicable, or other ordering document, that evidences Your use of the Service Offering on a subscription or an on-demand basis.

“**Reseller**” means a participant in the Solution Provider Track of the Dell Technologies Partner Program who purchases the Service Offering either directly from Dell or from a Dell-authorized distributor and resells the Service Offering to You. If You ordered the Service Offering from a Reseller, then “Dell” means the Dell Technologies entity that invoices the Reseller for the Service Offering.

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

“**Service Offering**” means the Dell-branded cloud service offering, which may include software (including microcode, firmware, operating systems or applications) (“**Software**”) used to operate the cloud service offering, specified in Your Order. “Service Offering” may include an Evaluation Service.

“**Service Offering Description**” means the then-current version of the Dell document or portal/web page that describes the Service Offering You ordered; as revised by Dell from time to time.

“**Subscription Term**” means the initial term of Your authorized use of the Service Offering, as set forth in the applicable Order, together with any renewal terms (if applicable, as may be set forth in the Service Offering Description). The initial term begins on the earlier of: (i) the date on which You start using the Service Offering or (ii) the date You complete the registration process; or as otherwise specified in the Order or in the applicable Service Offering Description. For purposes of any on-demand Service Offering, “Subscription Term” means the period during which You have access to the Service Offering, for which You will be billed, as specified in the applicable Order, and as may be further defined in the Service Offering Description.

“Third-Party Claim” means any third-party allegation, claim, action, demand, or lawsuit arising from or relating to: (a) Customer Content or Third-Party Products; (b) Your, or Your End Users’, use of any Service Offering in violation of the Agreement; (c) Your misrepresentation of facts regarding an export license or any allegation made against Dell, including our Affiliates, due to Your violation or alleged violation of applicable export laws or other provisions of Clauses 17.2 (Trade Compliance) and 17.3 (Your Responsibility); (d) combination of the Service Offering with non-Dell products or Content, including any Customer Content and/or any Third-Party Products; or (e) Your, or Your End Users’, infringement or misappropriation of Dell, Dell Affiliates’ or third parties’ intellectual property rights.

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

2. **The Service Offering.**

2.1 **Scope.** The Agreement applies to the Service Offering You ordered as of the Effective Date. The Agreement will also apply to subsequent Orders for additional services, features, functionality, and capacity for that same Service Offering during the Subscription Term (**“Subsequent Order”**). Orders for other separate Service Offerings will be governed by the Agreement then in effect and accepted by You at the time of the separate Order. Subject to Clause 9 (Reseller Transactions) below, Your acceptance of the Agreement also applies if You order the Service Offering (including Subsequent Orders) from a Reseller.

2.2 **Service Offering Description.** The scope and details of the Service Offering are provided in the Service Offering Description.

2.3 **Use and Ownership of the Service Offering.**

- A. **Access and Use.** You may access and use the Service Offering only: (a) during the Subscription Term; (b) for Your internal business purposes (which may include providing services to Your End Users if permitted in the Service Offering Description); and (c) in accordance with the Agreement. You may stop using a Service Offering at any time, but You will remain liable for all fees and charges otherwise due during the applicable Subscription Term.
- B. **Software Use.** You may receive Software from Dell, which must be installed in Your environment to enable You to use the Service Offering. If the Service Offering includes Software that is licensed by Dell to You, then You will only use such Software: (i) in connection with Your use of the Service Offering and as provided in the Agreement; (ii) for the Subscription Term; and (iii) in accordance with Dell’s [End User License Agreement \(“EULA”\)](#). You must not: (1) resell or rent the use of the Service Offering; or (2) use the Service Offering in support of an offering, or for a purpose, which is intended to compete with Dell’s Service Offering business.
- C. **Customer Content.** If Dell believes a problem with the Service Offering is caused by, or results from, Customer Content, or Your use of the Service Offering, then You agree to cooperate with Dell in order to identify and resolve the problem.
- D. **Ownership.** You agree that Dell owns all rights, titles, and interests in and to the Service Offering and all improvements, enhancements, modifications, and derivative works, and all intellectual property rights in all of these. Your rights to use the Service Offering are limited to those specifically stated in writing in the Agreement. You agree that You do not have any other implied rights in, or to, the Service Offering. Dell reserves all rights not granted to You in the Agreement.

3. **Modifications.**

3.1 **Generally.** Dell may modify the Service Offering from time to time. Modifications may include optional new features for the Service Offering, which You may use subject to the then-current Service Offering Description or changes to components of the Service Offering. Dell will give You notification of material modifications, including their effective date, either by email, through a portal as applicable, or directly through the Service Offering. Your continued use of the Service Offering after the date of any modification will be considered as Your acceptance of the modified Service Offering.

3.2 **Material Modifications.**

A. **Option to Terminate.** If Dell removes a material feature or materially reduces the functionality of the Service Offering, then Dell will notify you through the relevant portal or by email and You will have the right to terminate the Order for the Service Offering by notifying Dell within 30 days from the date of Dell's modification notice. If You elect to terminate that Order, then termination occurs on: (a) the date Dell receives Your notice of termination; or (b) any later date You specify in Your notice (though this date must not occur more than 90 days after the date Dell receives Your termination notice).

B. **Right to Refund.** You remain responsible for the payment of all fees incurred through the termination date. Dell will promptly refund any prepaid fees for the Service Offering that will not be provided as a result of the termination by You under Section 3.2.A (Option to Terminate). Except to the extent otherwise required under applicable law, you are not entitled to any other remedies once You are in receipt of the refund from Dell.

4. Orders, Payment, Taxes and Invoice Errors.

4.1 Orders.

A. **Order Confirmation.** Your Orders are subject to Dell's confirmation. An Order is confirmed upon the earlier of: (a) Dell's written or electronic confirmation; or (b) as otherwise provided in the Service Offering Description. Dell is not required to provide the Service Offering until You have provided all information Dell needs to process the Order and provision the Service Offering. Unless otherwise stated in the Agreement, all Orders are non-refundable and non-cancellable.

B. **Payment of Fees.** You must pay all Service Offering fees You incur. Fees may consist of a committed amount as well as additional amounts, including fees for add-on features that You order or enable, and fees based on actual usage of the Service Offering. Prior to placing an Order, You must establish a method of payment to cover all fees.

C. **Credit Card Payments.** If You pay for the Service Offering using a credit card (to the extent available), then: (a) You authorize Dell to periodically charge Your credit card for the Service Offering fees; (b) You will be subject to any additional terms presented to You by the third-party credit card payment processor (which will be the merchant of record for that transaction); and (c) You are responsible for keeping Your credit card information up to date. You agree that Dell may request that Your credit card payment issuer pre-authorize and hold an amount equal to the next recurring fee (or an estimate if the fee is variable) for the Service Offering in advance of its due date.

D. **Additional Fees.** Dell may invoice You directly for any additional fees, even if You ordered the Service Offering from a Reseller. You agree that Dell may invoice You for fees even if a corresponding purchase order was not received from You or a Reseller.

4.2 **Payment Terms.** Except for credit card payments charged by Dell on the invoice date, You must pay all Service Offering fees within 30 days from the date of invoice and in the currency agreed to in the Order. Interest on late payments will accrue after the due date at the lesser of 1.5% per month (equivalent to 18% per annum) or the highest lawful rate. If You default on payments for the Service Offering, then Dell may suspend the Service Offering.

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

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

5. Suspension.

5.1 **Generally.** Dell may suspend all Service Offerings subject of a current Order: (a) if You are in material breach of the Agreement (including failure to pay invoices when due) and have not cured that breach within 10 days from Dell's notice; or (b) with immediate effect if You breach Dell's [Acceptable Use Policy](#), including all Dell updates to the Acceptable Use Policy during the Subscription Term ("AUP") or (c) as provided in the Service Offering Description. Dell will give You notice before suspending the Service Offering(s) if permitted by law or unless Dell reasonably believes that providing notice presents a risk of harm to the Service Offering(s), to other users of the Service Offering(s), or to any person or property, in which case, Dell will notify You as soon as feasible or permitted. Dell will use best efforts to suspend Your access only to the Service Offering that is the subject of the issue giving rise to the suspension; however, if suspension only to the affected Service Offering is not possible, then Dell is allowed to suspend all the Service Offering(s). Dell will promptly reinstate the Service Offering(s) once Dell agrees that the issue(s) causing the suspension has been resolved.

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

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

6. Term and Termination.

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

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

6.3 **Effects of Termination.**

A. **Generally.** When the Service Offering expires, terminates, or is rejected for any reason, You must: (a) stop using the Service Offering; and (b) return or, if requested by Dell, destroy, any of Dell's Confidential Information in Your possession or under Your control (other than information that applicable law requires You to retain). The Service Offering Description will state when Dell will delete any Customer Content. You are responsible for making sure that You have copies of all Customer Content You require prior to the date of any termination.

B. **Refunds.** You may be entitled to a refund of pre-paid fees for the Service Offering that will not be provided as a result of a termination in the following cases: (a) If Dell terminates the Service Offering under Clauses 8.1(b) (Service Offering Limited Warranty) or 16.2(2) (Indemnification by Dell); and/or (b) If You terminate the Service Offering under Clauses 3.2 (Material Modifications) or 6.2 (Termination). Any other termination/rejection of the Service Offering will not entitle You to any refunds, credits, or exchanges. If Dell terminates the Service Offering due to Your material breach or following Dell's suspension of the Service Offering, then You will promptly pay Dell all fees due for the Service Offering through the remainder of the Subscription Term.

C. **Survival.** The provisions relating to payment of outstanding fees, confidentiality, liability, and the DPA (as defined in Clause 12.2 (Data Processing)) so long as Dell continues to process Your "**Personal Data**" (as defined in the DPA), all rights of action accruing prior to termination, along with any other provision of the Agreement that, expressly, or by its nature and context, is intended to survive, will survive termination.

7. Support Services.

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

7.2 **Access to Customer Content.** When providing Support Services, Dell will not access or use any Customer Content unless You have authorized Dell to do so.

8. **Warranty.**

8.1 **Service Offering Limited Warranty.** Dell warrants that the Service Offering will be provided in material conformance with the Service Offering Description during the Subscription Term, provided that the Service Offering has at all times been used in accordance with the Agreement. If the Service Offering does not comply with this warranty, Dell's entire liability and Your exclusive remedies are as follows: (a) Dell will make reasonable efforts to correct the non-conformance within a reasonable period of time or as provided in the Service Offering Description; and (b) if Dell is unable to correct the non-conformance for reasons for which Dell is responsible, then Dell may terminate the Service Offering and refund You any pre-paid fees for the Service Offering that will not be provided as a result of the termination. You must promptly notify Dell in writing of any non-conformance claims covered by this warranty.

8.2 **Limitations.** The warranty set forth in this Clause 8 (Warranty) does not apply to any Evaluation Service or Service Offering provided free of charge and does not cover problems caused by: (a) accident or neglect by You or any third party; (b) any Third-Party Products, or other third party items or services with which the Service Offering is used; (c) operation or use not in accordance with Dell's instructions and the applicable documentation; (d) use in an environment, in a manner or for a purpose for which the Service Offering was not designed; (e) modification, alteration or repair by anyone other than Dell; or (f) other causes beyond Dell's control. The Service Offering is not fault-tolerant and is not designed for, and must not be used in, hazardous environments requiring fail-safe performance, including any application where the failure of the Service Offering could lead to death, bodily injury, or physical or property damage (collectively, "**High-Risk Activities**"). Dell expressly disclaims any express or implied warranty or condition of fitness for High-Risk Activities.

8.3 **Warranty Disclaimer. Other than the warranty set forth in this Clause 8 (Warranty), and to the maximum extent permitted by applicable law, Dell: (a) makes no other express warranties or conditions; (b) disclaims all implied warranties and conditions, including merchantable quality, 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. Dell does not warrant that the use of Service Offering will be uninterrupted or free from defects or errors, or that the Service Offering will meet (or is designed to meet) Customer's business requirements. Dell is not liable for delays, interruptions, service failures, or other problems inherent in use of the internet and electronic communications. You agree that You are not relying on delivery of future functionality, public comments or advertising by Dell, or product roadmaps when ordering the Service Offering.**

9. **Reseller Transactions.** Notwithstanding anything to the contrary herein, if You order the Service Offering through a Reseller: (a) All references and terms related to fees, payments, cancellation or termination rights, or similar financial terms (the "**Financial Terms**") in the Agreement (including, without limitation, the following Clauses: 3.2.B (Right to Refund), 4.1.A (Order Confirmation), 4.1.B (Payment of Fees), 4.1.C (Credit Card Payments), 4.2 (Payment Terms), 4.3 (Taxes), 4.4 (Invoice Errors), 6.3.B (Refunds), 17.8 (Assignment and Subcontracting)) will not apply to You. Financial Terms in Your agreement with the Reseller will apply instead. (b) All notices in the Agreement required from You to Dell will also be required from You to Reseller. (c) In the event that You or Reseller (i) become insolvent, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or (ii) become subject to control of a trustee, receiver, or similar authority, or to any bankruptcy or insolvency proceeding, You consent to the assignment of Your agreement with Reseller for the Service Offering to Dell if such assignment is permitted under Dell's agreement with the Reseller.

10. **Evaluation Use.** If You use any Evaluation Service, the terms of this Section 10 govern that use, and control over any conflicting provision of this Agreement. The term "Service Offering" includes an Evaluation Service in all provisions of this Agreement that are not in conflict with the provisions of this Section 10. This section does not apply to Service Offerings before they become generally available.

A. You may use an Evaluation Service only (a) for internal testing and evaluation or trial purposes, and (b) for a period of 30 days (unless Dell specifies otherwise) beginning on the date Dell provides You Login Credentials for or access to the Evaluation Service. You will not have access to the Evaluation Service or to any data or Content in the Evaluation Service after Your authorized use period ends.

B. Use of an Evaluation Service may be subject to additional terms from a third-party service provider.

C. You may use the Service Offering Description provided with an Evaluation Service solely in support of Your

authorized use of the Evaluation Service.

D. Dell may provide the Evaluation Service for a particular Service Offering: (a) “AS IS” and (b) without indemnification, warranty, or condition of any kind. No service level commitment will apply to the Evaluation Service.

E. The Data Processing Addendum does not apply to Your use of (i) an Evaluation Service or (ii) any feature within an Evaluation Service, that is not generally available to Dell’s customers.

F. You must not put production data or data regulated by law or regulation into an Evaluation Service. If You put that data into an Evaluation Service, You do so at Your own risk and Dell will not be responsible for the consequences of that use.

G. Certain features or functionality of a Service Offering may not be available in an Evaluation Service. Providing any Evaluation Service, or any feature or functionality in an Evaluation Service, does not constitute Dell’s commitment to offer the Evaluation Service or that feature or functionality on a generally available basis.

H. Dell may modify or terminate an Evaluation Service at any time, and any modification or termination will not be deemed a material, detrimental change.

I. The aggregate liability (excluding indirect damages, for which Dell expressly disclaims all liability) of Dell, and its affiliates and suppliers, for any claim arising from Your use of an Evaluation Service will not exceed \$5,000 CAD.

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

12. Data Protection.

12.1 Security Measures. Without limiting Dell’s obligations under this Data Protection Clause, Dell will provide the Service Offering in compliance with reasonable and appropriate security measures stated in the [Information Security Measures Addendum](#), including all updates during the Subscription Term (“**ISMA**”). The ISMA and the applicable Service Offering Description define the administrative, physical, technical and other safeguards applied to Customer Content residing in the Service Offering. Except to the extent otherwise provided in the Service Offering Description, You are responsible for applying appropriate security measures to Customer Content which may include: (a) controlling access You provide to your personnel and/or End Users; (b) configuring the Service Offering appropriately; (c) securing Customer Content (e.g., through encryption) while it is in transit and at rest; and (d) backing up Customer Content consistent with the requirements of Clause 15.2 (Prevention and Mitigation). You acknowledge that You are solely responsible for ensuring that You have implemented appropriate security measures for Customer Content and Your intended use of the Service Offering. You acknowledge that uploading Customer Content to the Service Offering does not constitute a disclosure by You of Your Confidential Information to Dell.

12.2 Data Processing. The [Cloud Service Offerings Data Processing Addendum](#), including all updates during the Subscription Term, (“**DPA**”) describes the parties’ respective roles for the processing and control of Personal Data that You may provide to Dell as part of the Service Offering. Dell will act as Your authorized data processor in respect of the data processing activities related to the Service Offering, as specified in the Agreement, the DPA and the Service Offering

Description. You are responsible for providing any necessary legal notices to your personnel and/or End Users and obtaining any legally required consents related to Your use, collection, disclosure, sharing, cross border data transfer, and processing of Personal Data.

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

13. **Confidentiality.**

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

13.2 **Protection.** The receiver will: (a) use Confidential Information of the discloser only for the purposes contemplated in the Agreement; and (b) protect Confidential Information from unauthorized disclosure to third parties for the following time periods: (i) indefinitely with respect to technical information about a discloser’s products and services (including the Service Offering) or any information about unreleased products or services; and (ii) 3 years from the date of receipt for all other Confidential Information. The obligations under this Clause will survive any termination of the Agreement. Nothing in the Agreement limits either party’s ability to seek equitable relief.

13.3 **Exceptions.** Either party may disclose Confidential Information: (a) to an Affiliate or to a subcontractor used by Dell to provide the Service Offering provided that they comply with the foregoing; and (b) if required by a government body or court of law, provided that the receiver gives the discloser reasonable notice, if permitted by law, so that the discloser may contest the disclosure or seek a protective order.

13.4 **Feedback.** Any feedback, enhancement requests, corrections, or suggestions that You provide to Dell in connection with an Evaluation Service or the Service Offering (“**Feedback**”) is Dell’s Confidential Information. You agree that Dell may use the Feedback without any restriction from You or compensation to You, and You assign to Dell all rights in, and to, Feedback.

14. **Monitoring & Telemetry.** The Service Offering monitors and collects telemetry data relating to Your use thereof. Dell may collect certain information related to the Service Offering through a telemetry collector (“**Collector**”). Such information may include, without limitation, diagnostics, configurations, usage data, performance, deployment location information, and system information sent to Dell automatically by Dell’s systems and tools (“**System Data**”).

By utilizing the Service Offering, Customer permits Dell to use the Collector to collect and use System Data for the following purposes (“**Permitted Purposes**”):

- to provide Customer with the Service Offering, including to fulfill applicable warranty and support obligations, to remotely monitor performance and modify Service Offering configurations, and to bill Customers (as applicable);
- to provide either end Customers or Dell Channel Partners (as defined below) with metrics regarding Customer’s Service Offering usage and consumption patterns and as specified in the Service Offering Description;
- to create predictive analytics and usage intelligence to optimize Customer’s future planning activities and requirements;
- for sales and marketing, including sales and marketing research;
- to secure and protect Dell’s assets, rights and interests, including where appropriate to investigate, prevent, or take action regarding suspected illegal activity or fraud;

- to comply with Dell's legal obligations, including in response to a court order, warrant, subpoena, regulatory or law enforcement demand, or other legal process;
- for provision, research, support, or enhancement of Dell products, services and offerings; and
- for any other legally permitted purpose.

Dell does not intend for the Collector to access, view, process, copy, modify, or handle Customer's data stored via the Service Offering. Dell will treat any personal information collected through the Collector in accordance with the applicable jurisdiction's Dell Privacy Statement, all of which are available at www.dell.com/localprivacy and each of which is hereby incorporated by reference.

Customer agrees that Dell may share the System Data with the following categories of third-parties for the Permitted Purposes:

- Dell third-party service providers; and
- Dell channel partners, including but not limited to resellers, distributors, channel service partners, and OEM partners (collectively, "**Dell Channel Partners**").

Dell owns all anonymized System Data ("**Dell System Data**"). Dell System Data will not contain any personal information, and will be de-identified such that it will not disclose the identity of Customer to any third party. Such obligations shall survive the expiration or termination of the Agreement. Customer acknowledges and agrees that the Collector and Dell System Data is Dell's Confidential Information. Nothing herein grants Customer a license, express or implied, by estoppel, inducement, or otherwise, to use the Collector for any purpose.

Additional requirements and implementation details concerning the collection and use of System Data may be found in the offering documentation, including the Service Offering Description, for the Service Offering. To the extent this Section 14 (Monitoring & Telemetry) conflicts with any other agreement between Dell and Customer, the terms of this Section shall control.

15. Limitation of Liability.

15.1 Limitation on Damages. The maximum liability of each party (including Dell's suppliers) for all disputes arising under the Agreement is limited to the greater of: (a) \$50,000 CAD; or (b) the amount You paid to Dell or Dell's Reseller for the Service Offering during the 12 months immediately before the events giving rise to any dispute. In addition, neither party shall be liable to the other for any special, consequential, exemplary, punitive, incidental, or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use, or procurement of substitute products or services, even if the party alleged to be liable has knowledge of the possibility of such damages. The foregoing limitations and exclusions do not apply to:

(i) Your obligation to pay for the Service Offering, (ii) Your violation of the restrictions on use of the Service Offering, (iii) a party's indemnity obligations in the Agreement, (iv) a party's violation or misappropriation of the other party's intellectual property rights, or (v) where prohibited by applicable law. Dell (and Dell's suppliers) has no liability for any damages resulting from Your use or attempted use of Third-Party Products, or Free Software or Development Tools (both as defined in the EULA).

15.2 Prevention and Mitigation. You are solely responsible for Customer Content. You will implement IT architecture and processes enabling You to prevent and mitigate damages in line with the criticality of the Customer Content for Your business and its data protection requirements, including a business recovery plan. You will: (a) provide for a backup process on a regular (at least daily) basis and backup relevant data before Dell performs any remedial, upgrade or other works on the Service Offering or Your IT systems; (b) monitor the availability and performance of Your IT environment, including the Service Offering; and (c) promptly react to messages and alerts received from Dell or through notification features of the Service Offering and immediately report any issue You identify to Dell. To the extent that Dell has any liability for loss of Customer Content, Dell will only be liable for the cost of commercially reasonable and customary efforts to recover the lost Customer Content from Your last available backup.

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

16. **Indemnities.**

16.1 **Indemnification by You.** Subject to the remainder of this Clause 16 (Indemnities), You will: (a) defend Dell and its suppliers against any Third-Party Claim; and (b) indemnify Dell and its suppliers by paying (i) the resulting costs and damages finally awarded against Dell or its suppliers by a court of competent jurisdiction to the extent such are the result of the Third-Party Claim; or (ii) the amounts stated in a written settlement negotiated and approved by You. You may not, without Dell's prior written consent, settle any Third-Party Claim if that settlement obligates Dell or its suppliers to admit any liability, to make any monetary payment, or to undertake any material obligation, or if that settlement would affect any Service Offering or Dell's business practices or policies.

16.2 **Indemnification by Dell.** Subject to the remainder of this Clause 16 (Indemnities), Dell will: (a) defend You against any claim made by a third party to the extent it alleges that the Service Offering used by You in compliance with the Agreement infringes that party's patent, copyright, or trade secret enforceable in the country where You ordered the Service Offering from Dell or its Reseller (in this Clause "**Dell Indemnified Claim**"); and (b) indemnify You by paying: (i) the resulting costs and damages finally awarded against You by a court of competent jurisdiction to the extent they result from the Dell Indemnified Claim; or (ii) the amounts stated in a written settlement negotiated and approved by Dell. In addition, should any Service Offering become, or in Dell's opinion be likely to become, the subject of a Dell Indemnified Claim, Dell may, at its option: (1) modify or replace the affected Service Offering with a non-infringing substitute; or (2) terminate the Service Offering and refund any prepaid fees for the portion of Service Offering that will not be provided as a result of the termination. Dell will not be liable for any claims or damages due to Your continued use of a Service Offering that Dell has modified, replaced, or terminated as provided herein. Except as otherwise provided by law, this Clause 16.2 (Indemnification by Dell) states Your exclusive remedies for any Dell Indemnified Claim relating to the Service Offering. Nothing in the Agreement or elsewhere will obligate Dell to provide You any greater indemnity.

16.3 **Limitations.** Dell will have no obligation under Clause 16.2 (Indemnification by Dell): (a) if You are in material breach of the Agreement; or (b) for any Dell Indemnified Claim resulting or arising from: (i) any combination, operation or use of the Service Offering with any other products, services, items, or technology that are not Dell-branded, including Third-Party Products and open source software; (ii) Customer Content, Third-Party Products, Evaluation Services, or Service Offerings provided free of charge; (iii) use for a purpose or in a manner for which the Service Offering was not designed, or use after Dell notifies You to cease this use due to a possible or pending Dell Indemnified Claim; (iv) any modification to, or customized configuration of, the Service Offering performed by any person other than Dell or Dell's authorized representatives; (v) any modification to, customized configuration of, the Service Offering performed by Dell pursuant to Your instructions, designs, specifications or any other information You provided; (vi) use of any version of the Service Offering when an upgrade or newer iteration of the Service Offering made available by Dell would have avoided the infringement; (vii) services You provide (including Dell Indemnified Claims seeking damages based on any revenue or value You derive from Your services or Customer Content); or (viii) any data or information that You or a third party records on or utilizes in connection with the Service Offering.

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

16.5 **Indemnification Process.** A party's duty to defend and indemnify under the Agreement is contingent upon the other party: (a) sending prompt written notice of the Indemnified Claim to the indemnifying party and taking reasonable steps to mitigate damages; (b) granting to the indemnifying party the sole right to control the defense and resolution of the Indemnified Claim; and (c) cooperating with the indemnifying party in the defense and resolution of the Indemnified Claim and in mitigating any damages. "Indemnified Claim" in this Clause 16.5 (Indemnification Process) means any and all claims indemnified by a party under this Clause 16 (Indemnities). The parties' respective rights to Indemnified Claims under this Clause 16 (Indemnities) are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights, if allowed by applicable law.

17. **General.**

17.1 **Governing Law; Jurisdiction.** The Agreement and all disputes in connection with the Agreement and/or the Service Offering are governed by the laws of the province of Ontario and the federal laws of Canada applicable therein; and (b) to the extent permitted by law, the applicable federal or provincial courts located in Ontario will have exclusive jurisdiction for any dispute. Both parties agree to irrevocably submit to the personal jurisdiction of the applicable federal and provincial courts located Toronto, Ontario, 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. The U.N. Convention on Contracts for the International Sale of Goods will not apply to the Agreement or any dispute.

17.2 **Trade Compliance.** 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 (collectively, "Applicable Trade Laws"). The Service Offerings are for Customer's authorized use under this Agreement, and may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with the Applicable Trade Laws. Customer represents and warrants that it is not the subject or target of, or located in a country or territory that is the subject or target of economic sanctions under the Applicable Trade Laws. For further information about geographical restrictions and compliance with Applicable Trade Laws, visit [Dell Trade Compliance](#).

17.3 **Your Responsibility.** You agree that You will obtain all necessary rights, permissions and consents associated with: (a) technology or data (including personal data) that You provide to Dell; and (b) non-Dell software or other components that You direct or request that Dell use with, install, or integrate with the Service Offering. 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.

17.4 **Language.** The parties have required that this Agreement be drawn up in English and have also agreed that all notices or other documents required by or contemplated in this Agreement be written in English. Les parties ont requis que cette convention soit rédigée en anglais et ont également convenu que tout avis ou autre document exigé aux termes des présentes ou découlant de l'une quelconque de ses dispositions sera préparé en anglais.

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

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

17.7 **Assignment and Subcontracting.** Neither party will assign, transfer or novate the Agreement, or any right or obligation or delegate any performance without the other party's prior written consent, which consent will not be unreasonably withheld. Notwithstanding the foregoing: (a) Dell may use Affiliates or other qualified subcontractors to perform its obligations, provided that Dell will remain responsible for their performance; and (b) Dell may assign rights to payments arising from the Service Offering without Your consent.

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

17.9 **Notices.** The parties will provide all notices under the Agreement in writing. You must provide notices to the local Dell entity which invoices for the Service Offering, or, if Your Order is not with a Dell entity, by e-mail to Dell_Legal_Notices@dell.com. You consent to receiving notices from Dell through the relevant portal, other automated notification system or as otherwise provided in the Agreement.

17.10 **Entire Agreement, Conflict and Order of Precedence, Modifications.** The following are part of the Agreement: (a) the AUP; (b) the DPA; (c) the ISMA; (d) the Service Offering Description; and (e) the Order. In the event of conflict, they will prevail in the following order: (i) the Service Offering Description (and all documents incorporated into it); (ii) the Agreement; (iii) the AUP; (iv) the DPA; (v) the ISMA; and (vi) the Order. You acknowledge that You have read the Agreement, that You understand it, that You agree to be bound by its terms, and that the Agreement, is the complete and exclusive statement of the agreement between You and Dell regarding the Service Offering You are purchasing now (and subsequent add-ons to that Order). All previous representations, discussions, and writings are superseded by this Agreement and the parties disclaim any reliance on them. All content referenced in the Agreement by hyperlink is incorporated into the Agreement in its entirety and is available to 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 Dell do not apply to the Service Offering. You represent that You did not rely on any representations or statements that do not appear in the Agreement when accepting the Agreement. The Agreement may only be modified in writing signed by both parties; provided, however, that Dell may, in its sole discretion update the AUP, the ISMA, and the DPA at any time. Dell will provide written notice if any such updates result in a material modification under Clause 3.2 (Material Modifications).

17.11 **Cloud Service Provider Partners.** Notwithstanding Clause 2.3 (Use and Ownership of the Service Offering), or the EULA, if You are a partner in good standing in the Cloud Service Provider Track of the Dell Technologies Partner Program and unless prohibited by the Service Offering Description, then You shall be entitled to use the Service Offering, including any Software licensed by Dell, to provide services to Your End Users during the Subscription Term. This license right is a nonexclusive and nontransferable right to use Software solely in order to utilize, process and manipulate the information, data and records of the End User stored on, controlled by or accessed through the Service Offering.