

APEX Data Processing Addendum

This APEX Data Processing Addendum (“**ADPA**”) to the Agreement shall apply where the provision of APEX Services or Related Services (as each are defined in the Agreement) by Dell to you (“**Customer**”) involves the Processing of Personal Data which is subject to Privacy Laws and Dell acts as Processor on behalf of the Customer as the Controller. This ADPA does not apply where Dell is the Controller or where a third party acts as Processor on behalf of the Customer, under an alternative form of data processing agreement. In the event of conflict between this ADPA and the Agreement, this ADPA shall control with respect to its subject matter.

1. **Definitions.**

Terms not defined herein have the meanings set forth in the Agreement. The following words in this ADPA have the following meanings:

1.1 “**Agreement**” means the APEX Agreement.

1.2 “**Controller**” means an entity which, alone or jointly with others, determines the purposes and means of the Processing of the Personal Data.

1.3 “**GDPR**” means the General Data Protection Regulation (EU) 2016/679.

1.4 “**Model Clauses**” means, as applicable:-

(i) the Standard Contractual Clauses for the transfer of personal data (Decision 2021/914/EU), as they may be amended or replaced from time to time, in respect of transfers from the European Economic Areas (“**EEA**”) to third countries ;

(ii) the International Data Transfer Addendum to the European Commission’s Standard Contractual Clauses for international data transfers or the International Data Transfer Agreement, each as issued under Section 119A of the Data Protection Act 2018 in respect of transfers from the United Kingdom (“**UK**”) to countries which are not subject to an adequacy decision under the UK GDPR; and/or

(iii) the Standard Contractual Clauses for the transfer of personal data (Decision 2021/914/EU), as they may be amended or replaced from time to time and as specifically amended for use under the Swiss Federal Data Protection Act by the amendments announced by the Swiss Federal Data Protection and Information Commissioner on 27 August 2021, in respect of transfers from Switzerland to third countries.

1.5 “**Personal Data**” means any information relating to an identified or identifiable natural person which is Processed by Dell in the performance of the Agreement.

1.6 “**Personal Data Breach**” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data Processed under this ADPA.

1.7 “**Privacy Laws**” means any data protection and privacy laws to which a party to this ADPA is subject and which are applicable to the APEX Services or Related Services provided, including where applicable, the GDPR, UK GDPR, the California Consumer Privacy Act (“**CCPA**”) and other similar laws.

1.8 “**Processing**” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.9 “**Processor**” means an entity which Processes the Personal Data on behalf of the Controller.

1.10 “**Subprocessor**” means any Processor engaged by Dell for the provision of the APEX Services or the Related Services.

1.11 “**UK GDPR**” means the GDPR as retained under UK domestic law further to the exit of the UK from the European Union, to be read alongside the UK Data Protection Act 2018, as may be amended from time to time.

2. **Processing of Personal Data.**

2.1 Roles of the Parties.

Dell may Process Personal Data under the Agreement as a Processor acting on behalf of the Customer as the

Controller.

2.2 Instructions.

Dell will Process Personal Data in accordance with Customer's documented instructions. Customer agrees that this ADPA, the Agreement and any subsequent statements of work or service orders, and any configurations by Customer or its authorized users, comprise Customer's complete instructions to Dell regarding the Processing of Personal Data. Any additional or alternate instructions must be agreed between the parties in writing, including the costs (if any) associated with complying with such instructions. Dell is not responsible for determining if Customer's instructions are compliant with applicable law. However, if Dell is of the opinion that a Customer instruction infringes applicable Privacy Laws, Dell shall notify Customer as soon as reasonably practicable and shall not be required to comply with such infringing instruction. Neither Dell nor any Subprocessor shall be liable for any claim brought by Customer or a third party arising from any action or omission by Dell and/or Subprocessors to the extent such action or omission resulted from compliance with Customer's instructions.

2.3 Details of Processing.

Details of the subject matter of the Processing, its duration, nature and purpose, and the type of Personal Data and data subjects are as specified in the Agreement and Annex 1.

2.4 Compliance.

Customer and Dell agree to comply with their respective obligations under Privacy Laws applicable to the Personal Data that is Processed in connection with the APEX Services or the Related Services. Customer has sole responsibility for complying with Privacy Laws regarding the lawfulness of the Processing of Personal Data prior to disclosing, transferring, or otherwise making available, any Personal Data to Dell.

3. Subprocessors.

3.1 Use of Subprocessors.

Dell may use Subprocessors with the Customer's general or specific written consent. Customer agrees that Dell may appoint and use Subprocessors to process the Personal Data in connection with the applicable APEX Services and/or Related Services, provided that Dell puts in place a contract in writing with each Subprocessor that imposes obligations that are: (i) relevant to the services to be provided by the Subprocessors and (ii) materially similar to the rights and/or obligations imposed on Dell under this ADPA. Subprocessors may include third parties or any member of the Dell group of companies. Where a Subprocessor fails to fulfil its data protection obligations as specified above, Dell shall be liable to the Customer for the performance of the Subprocessors' obligations.

3.2 List of Subprocessors.

A list of Subprocessors that Dell engages to support the provision of the APEX Services and/or Related Services is made available by Dell on www.dell.com/subprocessors.

4. Security.

4.1 Technical and organisational security measures.

Taking into account industry standards, the costs of implementation, the nature, scope, context and purposes of the Processing, and any other relevant circumstances relating to the Processing of the Personal Data on Dell systems, Dell shall implement appropriate technical and organizational security measures to ensure security, confidentiality, integrity, availability and resilience of processing systems and services involved in the Processing of the Personal Data are commensurate with the risk in respect of such Personal Data. Customer agrees that the technical and organisational security measures described in the APEX Information Security Measures provide an appropriate level of security for the protection of Personal Data to meet the requirements of this clause. Dell will periodically (i) test and monitor the effectiveness of its safeguards, controls, systems and procedures and (ii) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of the Personal Data. Customer is responsible for implementing, configuring and maintaining privacy and security measures for services and products that Customer provides or controls.

4.2 Technical Progress.

The [APEX Information Security Measures](#) are subject to technical progress and development and Dell may modify these provided that such modifications do not degrade the overall security of the services provided under

the Agreement.

4.3 Access.

Dell shall ensure that persons authorized to access the Personal Data (i) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and (ii) access the Personal Data only upon documented instructions from Dell, unless required to do so by applicable law.

5. **Personal Data Breach.**

Dell will notify the Customer without undue delay after becoming aware of a Personal Data Breach in relation to the services provided by Dell under the Agreement and will use reasonable efforts to assist the Customer in mitigating, where possible, the adverse effects of any Personal Data Breach.

6. **International Transfers.**

Dell is authorized, in connection with the provision of the APEX Services or Related Services, as applicable, or in the normal course of business, to make worldwide transfers of Personal Data to its affiliates and/or Subprocessors. When making such transfers, Dell shall ensure appropriate protection is in place to safeguard the Personal Data transferred under or in connection with this Agreement. Where the provision of services under the Agreement involves the transfer of Personal Data from the EEA or the UK or Switzerland to countries outside the EEA or the UK or Switzerland (which are not subject to an adequacy decision under applicable Privacy Laws) Dell agrees that it will use the applicable Model Clauses along with appropriate supplemental measures or other appropriate data transfer mechanisms in accordance with applicable Privacy Laws and, in particular, such transfers shall be subject to: (a) Dell having in place intra-group agreements with its affiliates which may have access to the Personal Data, which agreements shall incorporate the relevant Model Clauses and (b) Dell having in place agreements with its Subprocessors that incorporate the relevant Model Clauses as appropriate.

7. **Deletion of Personal Data.**

Upon termination of the APEX Services and/or Related Services (for any reason), the parties agree to adhere to data deletion mechanism as set out in the Agreement.

8. **Cooperation.**

8.1 Data Subject Requests.

Dell shall promptly inform Customer of any requests from individuals exercising their data subject rights under Privacy Laws. Customer is responsible for responding to such requests. Dell will reasonably assist Customer to respond to data subject requests to the extent that Customer is unable to access the relevant Personal Data in the use of the APEX Services and/or Related Services.

8.2 Third party requests.

If Dell is required by a subpoena, court order, agency action, or any other legal or regulatory requirement to disclose any Customer's Personal Data, Dell will provide Customer with notice and a copy of the demand as soon as practicable, unless Dell is prohibited from doing so pursuant to applicable law. If Customer requests, Dell will, at Customer's expense, take reasonable steps to contest any required disclosure.

8.3 Privacy Impact Assessment and Prior Consultation.

To the extent required by Privacy Laws, Dell shall provide reasonable assistance to Customer to carry out a data protection impact assessment in relation to the Processing of Personal Data undertaken by Dell and/or any required prior consultation(s) with supervisory authorities.

9. **Demonstrating Compliance.**

Dell agrees to supply, upon Customer request for an audit, the Standardized Information Gathering ("**SIG**") questionnaire ("**Security Questionnaire**") related to the security practices and posture of Dell's organization. The Security Questionnaire is reviewed annually, mapped to Dell policies and standards, and updated with relevant and current US and international regulatory and privacy standards, such as, NIST 800-53r4, NIST CSF 1.1, CIS Top 20, or ISO 27001, where applicable. To the extent Customer's audit requirements under the Standard Contractual Clauses or applicable Privacy Laws cannot reasonably be satisfied through the Security Questionnaire, documentation or compliance information Dell makes generally available to its customers, Dell will promptly respond to Customer's additional audit instructions. Before the commencement of an audit, Customer and Dell will mutually agree upon the scope, timing, duration, control and evidence requirements, and fees for the audit, provided that this requirement to agree will not permit Dell to unreasonably delay performance

of the audit. To the extent needed to perform the audit, Dell will make the processing systems, facilities and supporting documentation relevant to the processing of Personal Data by Dell available. Such an audit will be conducted by an independent, accredited third-party audit firm, during regular business hours, with reasonable advance notice to Dell, and subject to reasonable confidentiality procedures. Neither Customer nor the auditor shall have access to any data from Dell's other customers or to Dell systems or facilities not involved in the relevant APEX Services or Related Services. Customer is responsible for all costs and fees related to such audit, including all reasonable costs and fees for any and all time Dell expends for any such audit, in addition to the rates for services performed by Dell. If the audit report generated as a result of Customer's audit includes any finding of material non-compliance, Customer shall share such audit report with Dell and Dell shall promptly cure any material non-compliance.

10. CCPA.

If Dell is Processing Personal Data within the scope of the CCPA, Dell will Process Personal Data on behalf of Customer and will not retain, use, or disclose that Personal Data for any purpose other than for the purposes set out in the ADPA and as permitted under the CCPA. In no event will Dell sell any Personal Data.

Annex 1
Data Processing Description

1. Subject matter and duration of the Processing.

The subject matter and duration of the Processing shall be according to the service(s) contracted under the Agreement.

2. Purpose of Processing.

Personal Data will be Processed for the purpose of providing the APEX Services and/or the Related Services, as relevant and defined by the selected service levels and support options. The Agreement and the relevant service descriptions and statements of work ("**Service Offering Descriptions**") shall apply for the specifics and possible additional services.

3. Nature of Processing.

The nature of the Personal Data Processed is described in the relevant Service Offering Descriptions and statements of work.

4. Categories of Data Subjects.

The data subjects are Customer's end users, employees, contractors, suppliers and other third parties relevant to the APEX Services and/or Related Services.

5. Types of Personal Data.

The type of Personal Data that may be submitted by the Customer are described in the relevant Service Offering Descriptions and statements of work. Unless otherwise specified, Dell does not Process Special Categories of Data, and Customer shall not provide Special Categories of Data, Personal Health Information, or other similar Personal Data.