



Dell EMC Cloud Services Terms of Service

Effective Date: October 16, 2017

These Dell EMC Cloud Services Terms of Service (“Terms”) apply to the Services, including Pre-GA and Evaluation Services, and will be binding on Customer and Dell EMC when Dell EMC makes any of these available for Customer’s use. Each Service has applicable Supplemental Terms, which are incorporated into the Terms by reference. Capitalized terms used in the Terms are defined in Section 16 or in the Section where they are first used.

1. Right to Use

1.1 Services. Subject to Customer’s compliance with these Terms, Dell EMC grants to Customer during the Service Period a limited, non-exclusive, non-transferable and revocable right to access and use solely for Customer’s own benefit the Services purchased by Customer from Dell EMC or an authorized channel partner, or that Customer has otherwise been authorized to use.

1.2 Software. Subject to Customer’s compliance with these Terms, Dell EMC grants to Customer during the Service Period a limited, non-exclusive, non-transferable and revocable license to use solely for Customer’s own benefit the Related Software, if any, provided by Dell EMC as part of a Service. Customer acknowledges that certain third-party software may be provided with the Services or Related Software and that the license terms accompanying that code will govern its use during the Service Period.

2. Customer’s Obligations

2.1 Compliance with Terms. Customer is solely responsible for its End Users’ compliance with these Terms and Dell EMC’s then-current Acceptable Use Policy located at www.dell.com/dellaup (“Acceptable Use Policy”). Dell EMC reserves the right to remove or refuse to post Customer’s Content at any time for violations of these Terms, the Acceptable Use Policy or applicable law.

2.2 Restrictions. Except as specifically permitted otherwise, Customer must not, nor will Customer permit another person, including End Users, to:

- Use the Services or Related Software to offer services to multiple, unrelated persons, such as for outsourcing, service bureau, or other similar business operations;
- Rent, lease, lend, resell, or transfer the Services or Related Software or any part of them to any third parties;
- Copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or work around technical limitations in the Services or Related Software, except as permitted by applicable law;
- Disable, tamper with, or otherwise attempt to circumvent any billing or monitoring mechanism related to the Services or Related Software;
- Remove, obscure, or alter any trademark, copyright, or other proprietary rights notices displayed in the Services or Related Software; or
- Disclose to any third party the results of any benchmark testing, comparative, or competitive analyses of the Services or Related Software done by or on behalf of Customer.

2.3 Updates. Customer agrees that any Related Software Customer may install on Customer’s infrastructure may periodically check with Dell EMC for Updates. Customer agrees that Dell EMC may automatically download and install any Updates to the Services and Related Software on Customer’s devices.

2.4 Account. Customer may need to register with Dell EMC to use the Services. If so, Customer agrees to keep its registration information accurate, complete, and up to date as long as Customer continues to use the Services. Customer agrees to pay the fees associated with its use of the Services.

2.5 Credentials and Security. Customer is responsible for keeping its passwords secure. Customer is solely responsible for any activity that occurs under its user names and Accounts. Dell EMC is not responsible for any misuse of Customer’s passwords. If Customer loses the passwords or encryption keys for its Accounts, Customer may not be able to access its Content. Customer must notify Dell EMC immediately of any unauthorized use of Accounts or any other security breach related to the Services. If Dell EMC determines that a security breach has occurred or is likely to occur then Dell EMC may suspend Accounts and require Customer to change user names and passwords.

3. Customer’s Content

3.1 License to Dell EMC. Dell EMC may use Content only to provide the Services. Dell EMC may use information derived from Content in aggregated form to assist Dell EMC in improving the Services. Customer hereby grants Dell EMC a worldwide, royalty-free, nonexclusive license to use Content for the above purposes without any compensation to Customer or others.

3.2 Rights in Content. Customer is solely responsible for any Content, and will secure and maintain all rights in any Content necessary for Dell EMC to provide the Services without violating the rights of any third party or otherwise obligating Dell EMC to Customer or to any third party.

3.3 Customer Responsibility. Dell EMC does not assume any obligations with respect to Content, or Customer's use of the Services, other than as specifically provided in these Terms or as required by applicable law.

4. Confidential Information

4.1 Use and Protection. Each party will use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with these Terms or any Order. In addition, the recipient may disclose Confidential Information to its Affiliates for the purpose of operating its business, fulfilling its obligations or exercising its rights under the Terms as long as its Affiliates comply with these Terms, and to a third party as required by applicable law, but the recipient must give the discloser prompt notice if permissible under applicable law. Other than as stated in the prior sentence, the recipient will not disclose the discloser's Confidential Information to third parties without authorization of the discloser. Each party will take reasonable steps to protect the other's Confidential Information. These steps must be at least as protective as those the party takes to protect its own Confidential Information from disclosure to any third parties.

4.2 Length of Obligation. Except as permitted above, neither party will use or disclose the other's Confidential Information for three years after termination or expiration of these Terms unless applicable law requires a longer period of protection. Confidential software code will remain Confidential Information in perpetuity.

4.3 Ownership of Confidential Information. The discloser retains ownership of its Confidential Information disclosed under these Terms. The recipient will promptly return or destroy the discloser's Confidential Information upon receipt of the discloser's request to do so. The discloser does not grant any licenses under its Intellectual Property Rights in the Confidential Information to the recipient.

5. Ownership Rights. Except as expressly set forth in these Terms, neither party grants to the other any rights to the other's tangible property. As between the parties, Customer retains all Intellectual Property Rights in Content, and Dell EMC retains all Intellectual Property Rights in the Services and Related Software.

6. Feedback. If Customer provides Feedback to Dell EMC about the Services or Related Software, Customer hereby irrevocably assigns to Dell EMC all Intellectual Property Rights Customer may have in that Feedback. If any rights in Feedback that Customer provides are not assignable to Dell EMC for any reason, Customer hereby grants to Dell EMC, its Affiliates and their successors a non-exclusive, worldwide, royalty-free, fully paid, sublicensable, perpetual, and irrevocable license, under all of Customer's Intellectual Property Rights in the Feedback, for Dell EMC and its Affiliates to implement and use the Feedback.

7. Payment Terms. The payment terms are included in the Supplemental Terms for the Service if Customer buys from Dell EMC, or in the purchasing documents provided by a channel partner, if Customer buys Services from a channel partner.

8. Changes to Services and Terms

8.1 Services. Dell EMC may make commercially reasonable Updates to the Services from time to time.

8.2 Terms. Dell EMC may modify these Terms at any time by posting a revised version on dell.com or an alternate site Dell EMC identifies, or by notifying Customer in accordance with Section 15.1 (Notices). The modified Terms become effective thirty days after posting. If Customer does not agree to the updated Terms, then Customer must notify Dell EMC within thirty days after Dell EMC posts the updated Terms. Upon receipt of Customer's notice, Dell EMC will provide Services for any open Service Periods pursuant to the Terms in effect when Customer purchased those Services, but the Services will terminate at the end of the applicable Service Period unless Customer renews the Services and accepts the then-current Terms.

9. Pre-GA and Evaluation Services

9.1 If Customer chooses to use any Pre-GA or Evaluation Services, Customer may do so only to evaluate functionality, performance, compatibility and reliability during the period that Dell EMC specifies. In connection with such use, Customer specifically agrees that:

- Pre-GA and Evaluation Services are provided "AS-IS" and without support;
- Any security, compliance, service level, and privacy commitments stated in these Terms or any Supplemental Terms are not applicable to Pre-GA and Evaluation Services;
- Dell EMC may change or discontinue Pre-GA and Evaluation Services at any time and makes no commitment to make them generally available;
- Pre-GA Services are Confidential Information of Dell EMC;

- Pre-GA Services are experimental, provided for testing purposes only, and may not be used in production; and
- Customer will comply with testing guidelines that Dell EMC provides and will make reasonable efforts to provide Feedback.

9.2 Services and Related Software that Customer accesses or uses for evaluation purposes, or otherwise free of charge, are subject to the applicable terms of Section 9.1.

10. Privacy

10.1 **Privacy Policy.** Customer agrees that Dell EMC's collection, use, and disclosure of Customer's personal information, Content provided to Dell EMC, or any other data Customer provides to Dell EMC or places within the Services or Related Software will be governed by Dell EMC's Privacy Policy located at <http://www.emc.com/legal/emc-corporation-privacy-statement.htm>, these Terms, and the laws generally applicable to Dell EMC as a provider of the Services.

10.2 **Customer's Compliance.** Customer agrees to be solely responsible for compliance with laws, including any laws that apply to Customer's business, to any Content placed in the Services, and to Customer's use of the Services.

11. Term and Termination

11.1 **Term.** These Terms will remain in effect until expiration of the last Service Period, including any extensions, or the termination of these Terms, whichever is earlier.

11.2 **Termination by Customer.** Customer may terminate these Terms at any time by giving thirty days' written notice. Any such termination will not be effective, however, until all active and prepaid Service Periods have expired and Customer has completely stopped using the Services. Service Periods for paid Services expire as stated in the applicable Order, and Customer cannot terminate any Service Periods for convenience prior to expiration.

11.3 **Non-Renewal by Dell EMC.** Dell EMC may elect not to renew any or all of Customer's Service Periods by giving notice at least ninety days prior to the expiration of any then-current Service Period.

11.4 **Regulatory Changes.** In any country where any current or future government regulation or requirement applies to Dell EMC or causes Dell EMC to believe these Terms or the Services may conflict with any such regulation or requirement, Dell EMC may change the Services or terminate these Terms and any Service Periods. Dell EMC will use reasonable efforts to notify Customer if it believes it must exercise its rights under this Section.

11.5 **Suspension.** Dell EMC may suspend Customer's use of the Services if:

- Dell EMC reasonably needs to do so to prevent unauthorized access to Content or the content of other Dell EMC customers;
- Customer fails to respond to a claim of alleged infringement within a reasonable time;
- Customer does not pay amounts due under an Order; or
- Customer or an End User commits a material violation of these Terms.

A suspension does not extend the Service Period, will apply to the minimum necessary part of the Services, and will be in effect only while the condition or need exists. Customer and Dell EMC remain obligated to comply with these Terms during a suspension. Dell EMC will give notice before implementing the suspension except where it is reasonable to suspend Customer's use immediately. If Customer does not address the reasons for the suspension within ninety days after suspension, then Dell EMC may terminate the Service Period and rights to use the Services, and delete Content without following the process described in Section 11.6 (Customer's Content upon Termination).

11.6 **Customer's Content upon Termination.** This Section 11.6 will apply unless the Supplemental Terms for a specific Service contain a provision that addresses the manner in which Content will be handled upon termination or expiration of these Terms or a Service Period. Customer may extract or delete Content at any time prior to the expiration or termination of the applicable Service Period. When a Service Period expires or terminates, Dell EMC will retain Content that Customer has not previously deleted or removed for up to ninety days or for such other retention period specified in the Supplemental Terms ("Retention Period"). There is no Retention Period for Pre-GA Services and for Evaluation Services that Customer elects not to convert to paid Services, and Dell EMC may delete Content placed into these Services immediately upon termination. Customer is responsible for extracting any Content it wishes to retain, including any Content that Customer is required to retain by applicable law. Customer remains responsible for all storage and other applicable charges during the Retention Period. Customer instructs Dell EMC to delete all Content including any cached or backup copies, following the expiration of the Retention Period. After the Retention Period, Customer agrees that Dell EMC has no additional obligations to continue to hold, export, or return Content, and that Dell EMC has no liability for deletion of Content pursuant to these Terms.

12. Disclaimers

12.1 **Warranty Disclaimer.** *Dell EMC and its suppliers provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability, title, non-infringement, or fitness for a particular*

purpose, for the Services, Related Software, Evaluation Services, or Pre-GA Services. These disclaimers will apply unless applicable law provides otherwise.

12.2 High-Risk Disclaimer. *Customer understands and agrees that the Services and Related Software are not fault-tolerant and are not designed or intended for use in any high-risk or hazardous environment, including without limitation, the operation of nuclear facilities, aircraft navigation, air traffic control, life support machines, weapons systems, or any other application where the failure or malfunction of any product or service can reasonably be expected to result in death, personal injury, severe property damage or severe environmental harm (each a “High Risk Environment”). Accordingly: (i) Customer must not use the Services or Related Software in a High Risk Environment; (ii) if Customer uses the Services or Related Software in a High Risk Environment, that use is at Customer’s own risk; and (iii) Dell EMC, its Affiliates, and suppliers have no liability to Customer, End Users, or anyone else on account of Customer’s use of the Services or Related Software in a High Risk Environment.*

12.3 Limitation on Statutory Warranties. Any warranties, guarantees, or conditions that Dell EMC cannot disclaim under applicable law will last for the minimum duration required by applicable law or one year from the date of Service Period origination, whichever is longer.

13. Limitation of Liability

13.1 Limitation on Indirect Liability. *To the maximum extent permitted by applicable law, neither party, nor Dell EMC’s suppliers, channel partners, and their respective subsidiaries, will be liable under these Terms for indirect, incidental, special, consequential, exemplary, or punitive damages, including loss of use of the Services, lost profits, goodwill, or data, cost of procurement, of substitute goods or services, or other intangible losses (even if the party knew or should have known that such damages were possible and even if direct damages do not provide a complete remedy), resulting from the use or inability to use the Services or Related Software or in any way relating to these Terms.*

13.2 Limitation on Direct Liability. *With respect to Paid Services, Customer agrees that the aggregate liability of Dell EMC, its suppliers, channel partners, and their respective subsidiaries for all claims in connection with these Terms will be limited to the amount paid by Customer hereunder in the twelve months preceding the event giving rise to the liability. With respect to unpaid Services, Evaluation Services, Related Software, and Pre-GA Services, neither Dell EMC nor Dell EMC’s suppliers, channel partners, and their respective subsidiaries will be liable under these Terms for Direct Damages. Customer agrees that this damages limitation is a fundamental element of the basis of the bargain between Customer and Dell EMC.*

13.3 Exclusions. The limitation of liability in this Section 13 applies to the fullest extent permitted by applicable law, but does not apply to: (i) damages resulting from Customer’s breach of the Acceptable Use Policy; (ii) damages resulting from Customer’s breach of Section 2.2 (Restrictions); (iii) Customer’s payment obligations; or (iv) Customers’ obligations set forth in Section 14 (Indemnification).

13.4 Reservation of Rights. Nothing in these Terms will limit Dell EMC’s rights under applicable law.

14. Indemnification. Customer agrees to defend, indemnify, and hold harmless Dell EMC, its suppliers, and channel partners from and against any third-party claims, liabilities, damages, losses, and expenses, including reasonable attorney fees and costs, in connection with:

- Customer’s or End Users’ use of the Services;
- Customer’s or End Users’ breach of these Terms;
- Customer’s or End Users’ breach of the Acceptable Use Policy;
- Customer’s or End Users’ violation of any third party right, including any Intellectual Property Right;
- Any claim that use of Content caused damage to a third party; or
- Any work product created using the Services and use of any such work product by Customer or a third party.

The foregoing obligations are subject to Dell EMC: (a) notifying Customer promptly in writing of such claim; (b) granting Customer sole control over the defense and settlement thereof; and (c) reasonably cooperating in response to a Customer request for assistance, at Customer’s expense. Customer will pay the amount of any resulting adverse final judgment or settlement to which Customer agrees. Dell EMC’s right to defense and payment of judgments or settlements under this Section is in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such rights. This indemnity obligation will survive the termination or expiration of all Service Periods and these Terms.

15. General

15.1 Notices. All notices must be in writing, which includes e-mail. All legal notices to Dell EMC must be sent to Dell_Legal_Notices@dell.com. Any written notice to Customer will be sent to the address identified in Customer’s Account information. Customer is responsible for keeping its address on file with Dell EMC current.

- 15.2 Assignment.** Customer may not: (i) assign these Terms or any of its rights under these Terms, either in whole or in part, or directly or by operation of law; or (ii) delegate any of its duties under these Terms, without Dell EMC's prior written consent.
- 15.3 Severability.** If a court of competent jurisdiction determines that any provision of these Terms is unenforceable, then the unenforceable portion will be changed and interpreted to best accomplish the objectives of the provision within the limits of applicable law. Invalidity of a portion of these Terms will not render the entire agreement invalid.
- 15.4 Waiver.** Failure to enforce any provision of these Terms will not constitute a waiver of that provision or of the right to enforce that provision at a subsequent time.
- 15.5 Relationship of the Parties.** Customer and Dell EMC are independent contractors. These Terms do not create an agency, partnership, or joint venture.
- 15.6 No Third-Party Beneficiaries.** There are no third-party beneficiaries to these Terms. End Users are neither parties to these Terms nor third-party beneficiaries.
- 15.7 Applicable Law and Venue.** These Terms are governed by the laws of the State of Texas, without regard to its conflict of laws principles. Each party hereby submits to the jurisdiction and venue of the state and federal courts of Texas and irrevocably waives any right to claim that Texas jurisdiction and venue is not convenient. Any action to enforce these Terms must be brought in the State of Texas. This choice of jurisdiction does not prevent Dell EMC from seeking injunctive relief to enforce its rights in any appropriate jurisdiction. The U.N. Convention on Contracts for the International Sale of Goods does not apply.
- 15.8 Entire Agreement.** These Terms and the documents referenced within comprise the entire agreement concerning this subject matter and supersede any prior or concurrent communications.
- 15.9 Survival.** All provisions of these Terms that expressly state that they survive, or which by their nature should survive, do survive termination or expiration of these Terms.
- 15.10 Export.** The Services and Related Software may be subject to the export and import laws of the United States and other countries. Customer agrees to comply with all applicable export and import laws and regulations. Customer acknowledges that the Services and Related Software may not be exported or re-exported to any U.S. embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. Customer represents and warrants that Customer is not located in any such country or on any such list. Customer agrees that Customer will not use the Services and Related Software for any purposes prohibited by U.S. law, including the development, design, manufacture, or production of missiles, or for development of nuclear, chemical, or biological weapons. Customer acknowledges that the Services and Related Software are not designed to handle data or include services subject to International Traffic in Arms Regulations and agrees not to store, transmit, or introduce any such information into the Services or the Related Software.
- 15.11 International Availability.** Availability of the Services, including specific features and language versions, varies by country. Information on availability is located in the Supplemental Terms.
- 15.12 Force Majeure.** Neither party will be liable for any failure in performance under these Terms due to causes beyond its reasonable control, such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, terrorism, cyber terrorism, acts of God, and acts or omissions of Internet traffic carriers. This Section will not, however, apply to Customer's payment obligations under these Terms.
- 15.13 Publicity.** Customer may state publicly that it uses the Services. If Customer wants to display or distribute any Dell EMC trademarks in connection with Customer's use of the Services, Customer must obtain written permission from Dell EMC. Dell EMC may include Customer's name in a list of Dell EMC customers, whether online or in promotional materials. Dell EMC may also verbally reference Customer as a user of the Services. Neither party needs approval if it is repeating a public statement that is substantially similar to a previously-approved public statement.
- 15.14 Order of Precedence.** Any inconsistency or incompatibility in or between these Terms and any other documents referenced within these Terms will be resolved by giving precedence in the following order:
- Dell EMC Acceptable Use Policy and Privacy Policy; then
 - The Dell EMC quote to Customer; then
 - The applicable Supplemental Terms, if any; and finally,
 - These Terms.
- 15.15 Updates.** These Terms will also apply to any enhancements or new features added to the Services and any revised versions of Related Software.
- 16. Definitions**
- 16.1 Account** means Customer's registration, payment and other information related to Customer's use of the Services and Related Software. Customer must have a current Account to access and use the Online Services.
- 16.2 Affiliate** means a legal entity that is controlled by, controls, or is under common control with Dell EMC or Customer, respectively. "Control" means more than 50% of the voting power or ownership interests.

- 16.3 Confidential Information** means any information, technical data or know how furnished, whether in written, oral, electronic, website-based, or other form by the discloser to the recipient that: (a) is marked, accompanied, or supported by documents clearly and conspicuously designating such documents as "confidential", "internal use" or the equivalent; (b) is identified by the discloser as confidential before, during or promptly after the presentation or communication; or (c) should reasonably be known by recipient to be confidential. It does not include information that: (a) the recipient can demonstrate was already in its possession before receipt from the discloser; (b) is or becomes publicly available through no fault of the recipient or its representatives; (c) is rightfully received by the recipient from a third party who has no duty of confidentiality; (d) is disclosed by the discloser to a third party without a duty of confidentiality on the third party; or (e) is independently developed by the recipient without a breach of these Terms. If a recipient is required by a government body or court of law to disclose Confidential Information, to the extent permitted by law, the recipient agrees to give the discloser reasonable advance notice so that the discloser may contest the disclosure or seek a protective order.
- 16.4 Content** means digital data including text, sound, software, images, video, electronic documents, electronic materials, and other encoded information, that Customer or End Users use with the Services or provide to Dell EMC in connection with Customer's use of the Services.
- 16.5 Customer** means the entity identified in an Order or anyone who uses Pre-GA or Evaluation Services.
- 16.6 Dell EMC** means: (i) EMC Corporation, if Customer is located in North America; or (ii) EMC Information Systems International, if Customer is located outside of North America
- 16.7 End Users** means Customer's employees, contractors and similar personnel authorized by Customer to use the Services.
- 16.8 Evaluation Services** means generally available services that Dell EMC offers under these Terms and provides on a limited-use basis as described in Section 9.1 before Customer decides to purchase, and Related Software, if any.
- 16.9 Feedback** means suggestions or comments that Customer or End Users provide to Dell EMC that are related to the Services or Related Software.
- 16.10 Intellectual Property Rights** means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.
- 16.11 Pre-GA Services** means the Services (or portions of Services) and Related Software that Dell EMC identifies as beta or pre-release and that are not made generally available for use.
- 16.12 Order** means a purchase order or similar document issued by Customer for the purchase of Services.
- 16.13 Related Software** means software provided by Dell EMC in connection with the Services for the sole purpose of enabling Customer to use the Services. Related Software may include development software and tools, and software to be installed on End User devices for the purpose of using the Services. Related Software excludes software that Dell EMC makes available under separate terms or pursuant to a separate agreement.
- 16.14 Services** mean the Dell EMC cloud services that Customer is authorized to use under these Terms.
- 16.15 Service Period** means the time period that Customer is permitted to use the Services that Customer ordered.
- 16.16 Supplemental Terms** means the additional terms and conditions that apply to a Service. The Supplemental Terms for each Service are available at www.dell.com/dellemcccloudterms.
- 16.17 Updates** means the periodic software changes that Dell EMC makes to the Services or Related Software. Updates are designed to improve, enhance, and further develop the Services, and may take the form of bug fixes, enhanced functions, new software modules, and completely new versions.