



## OEM Terms of Sale – United States and Canada

These OEM Terms of Sale, including all applicable terms referenced herein, (“OTS”) governs OEM Customer’s (defined below) purchase of Products and Services (collectively “Offerings”) ordered directly from one of the entities below, as applicable for the country of purchase (“Supplier”):

**Canada:** Dell Canada Inc.

**United States** (50 states and Washington D.C.): Dell Marketing L.P. or EMC Corporation

In this OTS, Supplier and OEM Customer may be referred to individually as a “Party” or collectively as the “Parties.”

The OTS consists of the main body setting forth the general terms and conditions applicable to all Offerings (“General Terms”) and is supplemented by additional Schedules and exhibits (“Schedules”), which shall form an integral part of this OTS. Offering-specific Terms contain terms applicable only to those certain Offerings.

By (i) issuing an Order to Supplier that references a Supplier Quote to OEM Customer; or (ii) signing such Quote and returning it to Supplier, or (iii) otherwise by placing your Order through either [www.Dell.com](http://www.Dell.com) or other online process, you accept and are bound to the terms of this OTS. For the avoidance of doubt, in the event of an existing agreement that covers the scope of the Offering, such agreement will apply. In addition, standard terms and conditions attached to the Quote or Order are not applicable.

### GENERAL TERMS

#### 1. DEFINITIONS

- A. **“Affiliate”** means, with respect to Supplier, Dell Inc. or Dell Inc.’s direct or indirect subsidiaries; and with respect to OEM Customer, a legal entity that is controlled by, controls, or is under common control with OEM Customer. “Control” means more than 50% of the voting power or ownership interests.
- B. **“Cloud Service Provider”** means an original equipment manufacturer that provides Service Offerings to End Users as defined herein.
- C. **“Delivery”** for Equipment occurs : (i) for the United States, when Supplier provides the Equipment to a carrier at Supplier’s designated point of shipment, or (ii) for Canada, when the Equipment arrives at the ship-to address that OEM Customer provided to Dell (for laptops, desktops, servers, networking and accessories) or when the Equipment clears Canadian customs (for storage, data protection, converged and other similar infrastructure products). “Delivery” for Software occurs either: (a) for the U.S. when Supplier provides physical media to a Supplier-designated carrier at Supplier’s designated point of shipment, (b) for Canada, when the physical media clears Canadian customs, or (c) for the U.S. and for Canada, the date Supplier notifies OEM Customer, or it’s End-User that Software is available for electronic download.
- D. **“Deliverables”** means reports, analyses, scripts, code or other work results that Supplier delivers to OEM Customer within the framework of fulfilling obligations under a Service Specification.
- E. **“End User”** shall mean a customer of OEM Customer or OEM Customer Representatives (defined in 2.A.) to whom OEM Solutions are offered and/or sold to, for the End User’s own internal use.
- F. **“Equipment”** means the Supplier branded hardware that Supplier provides to OEM Customer under these OEM Terms of Sale (including Equipment without Supplier branding (i.e. generic “OEM Customer-ready” box)).
- G. **“EULA”** means the end user license agreement found at <http://www.dell.com/eula>.
- H. **“Excluded Data”** means: (i) data that is classified, used on the U.S. Munitions list (including software and technical data) or both; (ii) articles, services, and related technical data designated as defense articles and defense services; and (iii) ITAR (International Traffic in Arms Regulations) related data.
- I. **“Government Official”** means an officer or employee of a government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public organization.



- J. **“OEM Customer”** means you in your capacity as an original equipment manufacturer that is purchasing Offerings from Supplier to create an OEM Solution. For clarity, an original equipment manufacturer (a) combines Product with its proprietary hardware, software or other intellectual property, resulting in a specialized system or solution with industry or task-specific functionality and (b) resells the Supplier Offering as part of, in conjunction with, or for use with the OEM Solution under OEM Customer’s own brand.
- K. **“OEM Solution”** shall mean OEM Customer’s appliance or value-add solution which Supplier Offerings are incorporated into or utilized as a part thereof. OEM Solutions have functionality different than Supplier Offerings and are marketed by OEM Customer to End-Users.
- L. **“Order”** means (i) a OEM Customer purchase order that references a Supplier Quote and, if applicable, contract code; (ii) Supplier order forms executed by OEM Customer; or (iii) OEM Customer’s order of Offerings, through either [www.Dell.com](http://www.Dell.com) or other online process.
- M. **“Product(s)”** means Supplier-branded: (a) hardware (**“Equipment”**); or (b) generally available standard software, whether microcode, firmware, operating system or applications in object or source code form(**“Software”**). Software includes code delivered electronically, pre-installed or locally installed on Equipment, **“Services Software”** (which is software that Supplier may make available in connection with Services) and **“Subscription Software”** licensed by Supplier as a stand-alone product on a subscription basis..
- N. **“Proprietary Rights”** means all patents, copyrights, trademarks, trade secrets or other intellectual property rights of a Party.
- O. **“Provider(s)”** means entities (other than OEM Customer) whose components, subassemblies, software, services, or some combination of these items have been incorporated into Products, Services, or both.
- P. **“Service Agreements”** means service contracts, including service descriptions available at <https://www.dell.com/en-us/lp/global-commercial-service-contracts>, service briefs, statement of work, services specifications, and any other similar mutually agreed documents.
- Q. **“Service Offering”** means OEM Customer’s information technology as a service offering, in the form of software-as-a-service (“SaaS”), infrastructure as a service (“IaaS”), platform as a service (“PaaS”) hosted, turn-key, on-demand, service bureau or similar basis.
- R. **“Services”** means Supplier’s: (a) service offerings for maintenance and support of Products or Subscriptions (**“Support Services”**); or (b) consulting and any other services that are not Support Services (**“Professional Services”**).
- S. **“Software Release”** means any subsequent, generally available version of Software provided after initial Delivery of Software but does not mean a new Product.
- T. **“Subscriptions”** means Supplier-branded offerings provided to OEM Customer for a defined time period (**“Subscription Term”**) and priced based on the Subscription Term or other applicable metrics, and consisting of: (a) cloud offerings; or (b) Products or Services offered as a subscription, on an “as-a-service” basis or on a flexible consumption basis. Subscriptions do not include Subscription Software.
- U. **“Supplier Offerings”** means the Supplier Products, Services and Subscriptions.
- V. **“Support Services”** means those services as further defined in Section 6 below.
- W. **“Third-Party Offerings”** means hardware, software, services subscriptions, solutions or any other offerings that are not Supplier Offerings. Third-Party Offerings may include, without limitation, products and services manufactured, created, licensed, or performed by or on behalf of Supplier or its Affiliates, and may include hardware or software installed in a Supplier Offering in the course of performing a Service.
- X. **“Unique Part”** shall mean any part or component integrated into or attached to OEM Solutions that is not a standard component or part in the current Supplier Offering. Parts that are formerly standard but no longer regularly used in current Supplier Offering, or that were standard in Supplier Offerings that have been discontinued or reached the end of their product life cycle, will be deemed to be “Unique Parts.”

## 2. SCOPE OF THE PARTIES RELATIONSHIP UNDER THESE OEM TERMS OF SALE



- A. Appointment.** Subject to OEM Customer's compliance with these OEM Terms of Sale, OEM Customer (directly or through distributors, third-party sales agents, or other remarketers in its distribution channel (collectively "**OEM Customer Representatives**")) may resell Supplier Offerings only as part of OEM Solutions and only after OEM Customer has added value to the Supplier Offerings through the addition of hardware, software, or services. OEM Customer may use OEM Customer Representatives to resell OEM Solutions, provided that the agreement between OEM Customer and such OEM Customer Representatives are as comprehensive and restrictive as these OEM Terms of Sale.
- B. Non-Exclusivity; OEM Customer's Pricing Freedom.** These OEM Terms of Sale is not exclusive. Supplier may market (directly or through third parties) the Products, Supplier Services, and/or other products and services to anyone, including OEM Customer's OEM Customers, without any obligation or liability to OEM Customer. Supplier reserves the right to change its distribution channels for Products and appoint, add or terminate other original equipment manufacturers, distributors, Third-Party sales agents or other remarketers to sell Products, including sales and distribution entities who may compete with OEM Customer or OEM Customer Representatives. These OEM Terms of Sale does not guarantee that OEM Customer will make any sales of the Products. It is agreed and understood that OEM Customer will, at all times, independently determine and/or set its resale prices for OEM Solutions or Services. No employee or representative of Supplier or anyone else has any authority to determine or otherwise restrict OEM Customer's resale prices for OEM Solutions or Services.
- C. Recordkeeping/Document Delivery.** OEM Customer will maintain legible, accurate and complete books and records relating to these OEM Terms of Sale or the marketing, sale, licensing, delivery, or end-use of the Offerings and OEM Solutions for a period of 10 years from the date of creation (including but not limited to complete distribution records by End User and by Supplier Offering serial number). At the end of the retention period, OEM Customer must dispose of all records appropriately. At Supplier's request, OEM Customer must cooperate and assist Supplier with any audit, review, or investigation ("**Audit**") that relates to (i) these OEM Terms of Sale or OEM Customer's compliance with law; (ii) OEM Customer sale, marketing, distribution, licensing, or delivery of Supplier Offerings, whether sourced from Supplier or a third-party; (iii) any amounts payable by Supplier; or (iv) any amounts due to Supplier. In connection with an Audit, OEM Customer will deliver all records, information, and documents reasonably requested by Supplier. Supplier has the right to conduct onsite Audits, and OEM Customer will grant Supplier and its employees and representatives reasonable access to information, records, personnel, and OEM Customers (including End-User Agreements and other agreements to verify OEM Customer's compliance with these OEM Terms of Sale), and provide entry and access to OEM Customer's premises or other locations (during normal business hours) where such information and records are located. Failure to cooperate with an Audit or provide the information or records requested by Supplier is a material breach of these OEM Terms of Sale. Supplier will pay the costs of an Audit except where a discrepancy of five (5) percent or more is discovered in the information disclosed by OEM Customer, in which case OEM Customer agrees to be responsible for all reasonable costs.

### 3. BUYING PRODUCTS AND SERVICES

- A. Quotes and Orders.** OEM Customer may request a quote from Supplier or its Affiliate (depending on the Products and Services purchased), either in the form of a written quotation or online via [www.dell.com](http://www.dell.com) or any other online process ("Quote"). Orders are subject to credit approval and are subject to Supplier acceptance. Each Order must include the correct name of, and be placed with the Supplier entity that provided the applicable Quote. Supplier will not be responsible or liable to OEM Customer or the End-User for any delays caused by incorrect information in an Order. Quoted prices are effective until the expiration date of the Supplier's Quote, but may change due to industry-wide shortages in materials or resources, increase in the cost of manufacturing, tariffs or other factors outside the control of Supplier. Orders may contain charges for shipping and handling. OEM Customer acknowledges Supplier's pricing and discounts to OEM Customer are considered Supplier's confidential information, and OEM Customer shall not show such pricing or discounts as a separate line item to OEM Customer Representatives or End-Users or otherwise disclose such information to any third-party.
- B. Changed or Discontinued Products or Services.** Supplier may revise or discontinue Supplier Offerings at any time, including after OEM Customer places an Order, but prior to Supplier's shipment of Product or before the end of the Service. As a result, Supplier Offerings OEM Customer receives may differ from those ordered. However, Supplier branded Products will materially meet or exceed all published specifications for the Products.



- C. Cancellation, Returns and Acceptance.** OEM Customer may only change or cancel an Order for Supplier Offerings up until the time Supplier begins manufacturing the Supplier Offerings. Orders for Third-Party Offerings, end of life (“EOL”) Products (or those going EOL within 90 days), or Unique Parts may not be changed or cancelled unless approved. Supplier is not responsible for pricing, typographical, or other errors in any offer and may cancel Orders affected by such errors. All Equipment and Software are deemed accepted by OEM Customer upon Delivery. Even though OEM Customer accepts Products as stated in the prior sentence, OEM Customer retains all rights and remedies set forth in the applicable Product warranty. OEM Customer agrees and understands that Supplier’s return policy is not available to OEM Customer. OEM Customer shall notify Supplier within 21 days of the invoice date if OEM Customer believes any Supplier Offering included in its Order is missing, wrong, or damaged.
- D. Shipment.** Unless otherwise agreed, Supplier shall arrange for shipment of the ordered Products to the ship-to address indicated in the Order, through a common carrier designated by Supplier. Delivery dates are indicative. Software may be provided by delivery of physical media or through electronic means. Unless otherwise agreed, Supplier will choose the common carrier and cost of transit insurance, if applicable, (provided by Supplier on behalf of OEM Customer) shall be included in the total price stated on the Quote.
- E. Risk of Loss and Title.** Risk of loss for sold Equipment and licensed Software transfers to OEM Customer upon Delivery. Title to Equipment passes to OEM Customer upon Delivery. Title to Software does not pass to OEM Customer. Software is only licensed to OEM Customer and not sold.
- F. Security Interest.** Where permitted by local law, OEM Customer will hold Equipment on a fiduciary basis as Supplier’s bailee, until full payment is received, including any late payment fees and costs of collection. OEM Customer agrees Supplier may file any financing statements or related filings for protecting this security interest as Supplier reasonably deems necessary or appropriate.
- G. Procurement of Unique Parts.** Supplier may purchase Unique Parts and long lead-time components to support the manufacture of customized configurations for OEM Customer. If (i) such materials are not used within ninety (90) days of receipt of Unique Parts because of a change in OEM Customer’s forecast, reschedule or cancellation of any purchase order, or other reasons, and (ii) Supplier is unable to resell such materials to others at a reasonable price or unable to cancel its order for the materials, then in its sole discretion Supplier may invoice and deliver the materials to OEM Customer. OEM Customer shall pay Supplier for the materials and any stocking fees Supplier may incur as a result of holding such materials in its inventory longer than ninety (90) days.
- H. Packaging.** Unless otherwise stated, prices Quoted by Supplier include standard packaging for shipment. OEM Customer will submit custom packaging requests to Supplier for review and price estimate. Supplier will not be responsible for delays resulting from custom packaging requested by OEM Customer.
- I. End of Life (EOL) of Products.** At the end of life of Supplier Offerings, Supplier will notify OEM Customer before discontinuing a product version of product (generally, ninety (90) days’ notice). During that time period after notice and before the discontinue date Supplier will sell both the former and the new Supplier Offerings.

#### 4. INVOICING AND PAYMENT TERMS

- A. Payment.** OEM Customer must pay Supplier’s invoices in full and in the same currency as Supplier’s Quote within the time noted on Supplier’s invoice, or if not noted, then within thirty (30) days after the date of the invoice, with interest accruing after the due date at the lesser of 1.5% per month (18% per annum) or the highest lawful rate. Supplier may invoice parts of an Order separately or together in one invoice. All invoice terms will be deemed accurate unless OEM Customer advises Supplier in writing of a material error within ten days following receipt. If OEM Customer advises Supplier of a material error, (i) any amounts corrected by Supplier in writing must be paid within fourteen days of correction, and (ii) all other amounts shall be paid by OEM Customer by the due date. If OEM Customer withholds payment because OEM Customer believes an invoiced amount is incorrect, and Supplier concludes that the amount is accurate, OEM Customer must pay interest as described in this Section from the due date for the amount until Supplier’s receipt of payment. OEM Customer may not offset, defer or deduct any invoiced amounts that Supplier determines are correct following the notification process stated above. Supplier, without waiving any other rights or remedies and without liability to OEM Customer, may suspend any or all Services until all overdue amounts are paid in full.



**B. Taxes.** OEM Customer is responsible for payment of any sales, use, value added, GST, tariffs and any other similar taxes or governmental fees associated with OEM Customer's Order, except for taxes based on Supplier's net income, gross revenue, or employment obligations. OEM Customer must also pay all freight, insurance, and applicable taxes (which may include but shall not be limited to import or export duties, sales, use, value add, and excise taxes). If Supplier is obligated by applicable law to collect and remit any taxes or fees, then Supplier will add the appropriate amount to OEM Customer's invoices as a separate line item. If OEM Customer qualifies for a tax exemption, OEM Customer must provide Supplier with a valid certificate of exemption or other appropriate proof of exemption. If OEM Customer is required by law to make a withholding or deduction from payment, OEM Customer will make payments to Supplier net of the required withholding or deduction, and will provide to Supplier satisfactory evidence (e.g., official withholding tax receipts) that OEM Customer has accounted to the relevant authority for the sum withheld or deducted. If OEM Customer does not provide the information within sixty days of remittance to the applicable tax authority, Supplier will charge OEM Customer for the amount that OEM Customer deducted for the transaction.

## 5. SOFTWARE LICENSE TERMS

**A. OEM Usage.** Software procured under these OEM Terms of Sale is licensed solely for OEM Customer Usage. To the extent OEM Customer distributes Software through OEM Customer Representatives it shall be responsible vis-à-vis Supplier for their compliance with the applicable terms of this Section 5.

**B. OEM Customer Development and Support Usage.** OEM Customer's rights to use Software for OEM Development and Support Usage ("**OEM Development and Support Usage**" means use of the Software in a non-production manner for developing and testing its OEM Solution and for the purpose of providing support to OEM Customer's End-Users) are governed by the terms of the applicable End-User license agreement evidenced by the Software's applicable Acceptance Method. If OEM Customer believes the development and testing of the OEM Solution and/or providing support for it requires Software usage rights exceeding the rights granted under the aforementioned terms, OEM Customer is responsible for obtaining the required consent from the applicable licensor.

### C. OEM Distribution Usage.

(i) **General.** Subject to OEM Customer's compliance with the terms of these OEM Terms of Sale, Supplier grants to OEM Customer a non-exclusive, non-transferable, right to resell and distribute the Software (including documentation, but solely for the purpose of supporting End-User's use of the applicable ordered Products) to End-Users through the applicable Acceptance Method for End-User's internal business operations only. The quantity of Software and any other usage restrictions and/or descriptions are agreed upon between Supplier and OEM Customer for each Order (usually provided in the Quote and Product Notice), and OEM Customer shall procure they are accurately reflected and detailed in the agreement with the End-User (and any OEM Customer Representative, where applicable).

(ii) **OEM Distribution Usage of Supplier Software.** For OEM Distribution Usage ("**OEM Distribution Usage**" means OEM Customer providing the Software to its End-Users as part of the its OEM Solution, whether directly or through OEM Customer Representatives) of Supplier branded Software, OEM Customer has the option to either provide the Software, directly to End-User or indirectly through OEM Customer Representatives in compliance with the applicable Acceptance Method, subject to OEM Customer's EULA-based Licensing model, or through sublicensing directly to End-User or indirectly to End-Users through OEM Representatives based on OEM Customer's own license terms.

**a. EULA-based Licensing.** If OEM Customer opts for EULA-based Licensing, OEM Customer will, with the sale or distribution of the OEM Solution, ensure that each End-User is notified, in its applicable agreement with the entity from which End-User procures the Software (i. e. OEM Customer or the applicable OEM Representative) that Software is subject to and governed by the EULA and OEM Customer will ensure the End-User agrees and accepts the EULA.

**b. Sublicensing.** If OEM Customer opts for a sublicensing model, Supplier grants OEM Customer a limited, personal, non-exclusive, non-transferable, right (a) to sublicense Software to End-Users directly; or (b) to



cause its OEM Representatives to sublicense such Software to End-Users, both of which sublicenses must be at least as protective to the licensor as the terms of the EULA. Prior to the sale of Software licenses through Sublicensing, OEM Customer shall ensure that each End-User is legally bound and obligated by a software license agreement meeting, at a minimum, the foregoing requirements. Further, OEM Customer shall enforce the provisions of each such software license agreement through the use of good faith, reasonable care and a level of diligent effort comparable to that generally used by licensors of software of a similar nature and importance, and shall, upon request of Supplier, assign over any rights to Supplier from time to time which Supplier may reasonably request to enforce one or more of such sublicense agreements to the extent they relate to the Software provided under these OEM Terms of Sale; and reasonably cooperate with Supplier in order to enable Supplier to enforce such software license agreement.

- (iii) For any Third-Party Offering that is contained in or provided with the Software, where both (a) and (b) are licensed by a third-party under its own terms of use), OEM Customer shall comply, and ensure that any OEM Customer Representative comply, with the applicable license terms and requirements of the applicable third-party licensor. In particular, OEM Customer will ensure all End-Users are notified that the Third-Party Offerings are subject to and governed by the applicable third-party licensor's terms, and OEM Customer will ensure the End-User agrees and accepts the applicable license terms. For certain open source software, the applicable Third-Party Offering terms may include obligations as a distributor and entitle OEM Customer and the End-User to obtain the corresponding source files. OEM Customer may find corresponding source files for such open source software at [//opensource.dell.com/](https://opensource.dell.com/) or in the "About" or "Read Me" file of Software, or other locations that Licensor may specify.
- (iv) OEM Customer will immediately notify Supplier if OEM Customer becomes aware of any End-User's violation of the EULA or OEM Customer's license terms agreed with the End-Users as they relate to the Software provided hereunder, and shall refrain from waiving any rights or remedies against the End-User in that regard. OEM Customer will ensure that Supplier has the ability to review and audit End-User's usage of the Software for compliance with the applicable terms, and shall collaborate with Supplier in good faith on any audits conducted in relation to End-User's usage, whether triggered by OEM Customer or Supplier.

- D. Cloud Service Provider Use.** In addition to the license granted in Section 5B herein, Supplier grants to OEM Customer a nonexclusive, nontransferable license to use the Software and its documentation during the period of the license for OEM Customer's OEM Solution. Supplier also authorizes OEM Customer to grant the End-Users remote or limited access to and the limited right, during the period in which OEM Customer is providing the Service Offering to its End-User(s), to use Software solely in order to utilize, process and manipulate the information, data and records of the End-User(s) stored on, controlled by or accessed through the Products as a part of the Service Offering. OEM Customer shall not and shall require its End-Users to not make any other use whatsoever. OEM Customer shall be responsible for any access to and use of Products by its End-Users as if such access was by OEM Customer. This license grant is subject to Supplier's EULA except that no restriction to use the licenses on a service bureau, rental or managed service basis shall apply when used for OEM Customer's OEM Solution.
- E. Installation of Software by OEM Customer on behalf of End-User.** Before OEM Customer installs, downloads, or otherwise uses Software on behalf of an End-User, OEM Customer shall (a) obtain the End-User's written authorization to accept the applicable End-User software license agreement on behalf of the End-User, and (b) comply with the software license agreement with regard to OEM Customer's use of the Software.
- F. Activation Codes.** If OEM Customer receives Activation Codes ("**Activation Codes**" means any activation or registration codes or license keys associated with software), OEM Customer shall distribute the Activation Codes as directed by Supplier and to activate (a) only the particular Software copy for which the Activation Codes are intended by Supplier to be used and (b) only as many copies of the Software as licenses OEM Customer has purchased and resold to an End-User. OEM Customer shall not reuse Activation Codes for multiple End-Users or for multiple Software copies for the same End-User.



- G. Limitations.** Except for any Software license expressly granted in these OEM Terms of Sale, no rights are granted, and none shall be implied. All Software licenses are for use of object code only unless expressly provided otherwise in the applicable license terms. Unless expressly otherwise agreed, microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such Equipment item. Without Supplier's prior written consent and except as otherwise permitted by mandatory law (meaning a law that the parties cannot change by contract), OEM Customer shall not, and OEM Customer shall not permit any third-party to, do any of the following: (a) sublicense any Software except as provided above in case OEM Customer opts for Sublicensing, (b) cause or permit the copying or reproduction of Software; (c) translate, adapt, enhance, supplement, vary or modify the Software or the related documentation; (d) disassemble, decompile, or reverse engineer the Software or create any derivative works based thereon; (e) use the Software to refurbish Supplier's Products; (f) use Software in a service bureau, application service provider or similar capacity; or (g) disclose to any third-party the results of any comparative or competitive analyses, benchmark testing or analyses of Products performed by, or on behalf of, OEM Customer or End-Users.
- H. Purchase Acknowledgment.** For certain Software transactions, OEM Customer agrees that (a) Supplier may present or, if requested by Supplier, OEM Customer shall present, a purchase acknowledgment form directly to the End-User, and (b) Supplier is not required to process OEM Customer's Order or deliver the applicable Software to the End-User unless and until such End-User has executed the purchase acknowledgment form.
- I. End-User Violation.** OEM Customer will immediately notify Supplier if OEM Customer becomes aware of any End-User's violation of a Supplier EULA or Offering Specific Terms. Supplier may, without waiving any other rights or remedies and without liability to OEM Customer or End-User, suspend or terminate the provision of any one or more of the Software to End-User in response to End-User's violation or suspected violation.

## 6. SERVICES, SUPPORT AND SUBSCRIPTIONS

- A.** Supplier will provide Services (including any Deliverables) in accordance with the applicable Service description, statement of work ("SOW") or other agreed upon documentation for such Services ("**Service Specification**") for the period agreed in the Order. Supplier will provide Subscriptions in accordance with the Services Offering Description, Supplier's standard documentation for the Subscription or other agreed upon documentation for such Subscription ("Subscription Specification"). Unless otherwise agreed, the initial Support Services procured with a Product start when the applicable Product warranty period begins. Professional Services are provided as a separate service even if mentioned together with the sale or licensing of Products or Subscriptions by Supplier in the same Order. The Subscription activation process and the Subscription Term are described in the Subscription Specification, the Order or Supplier's online ordering process. Supplier is not providing legal or regulatory advice in any Professional Services.
- B. Support Services.** OEM Customer shall establish and maintain Support Services for its End-Users with respect to the OEM Solution. OEM Customer may contract Support Services from Supplier for Supplier Offerings, and depending on the Supplier Offering, Supplier may allow OEM Customer to provide Support Services on Supplier Offerings only after Supplier designated certifications and qualifications are obtained. Support Services will be performed in accordance with the applicable Service Agreement, or as outlined in the Product Schedules linked below and with all published and available technical documentation and specifications that Supplier releases concerning the Supplier Offering. A transfer of Support Services, if allowed on such Product, must be done in accordance with the applicable Services Agreement (or as outlined in the Product Schedules linked below), and may depend on geographical availability of the Support Services.
- C. Resell.** OEM Customer may resell Support Services (as defined and outlined in the Product Schedules linked below) only with Supplier Offerings and only to End-Users who agree to be bound by Services Agreements that apply to such Services. OEM Customer will incorporate in an enforceable manner the Service Agreement, including terms and conditions incorporated by reference ("**Services Flowdown Terms**"), into its own agreement with End-Users ("**End-User Agreement**"). OEM Customer acknowledges and agrees that Supplier is a Third-Party beneficiary of the End-User Agreement and OEM Customer will require the End-User to acknowledge and agree as to such in the End-User Agreement. Supplier reserves the right, in its sole discretion, to suspend or terminate the provision of any one or more of the Services to OEM Customer or an End-User in response to such violation, or suspected violation,



of any of the Services Flowdown Terms, and Supplier will have no liability to OEM Customer or End-User as a result of any such suspension or termination.

- D. Customization Services.** This section shall apply whether OEM Customer or Supplier performs engineering changes or configuration Services to customize the Supplier Offering portion of the OEM Solution subject to a Service Agreement. OEM Customer is responsible for (a) determining technical specifications for each customized configuration; (b) ensuring that those technical specifications are properly documented in the applicable Service Agreement; (c) testing of prototype(s) to verify the prototype(s) meet applicable specifications and are compatible with any Unique Parts or OEM Customer's software, before OEM Customer places production orders for the customized configurations of Supplier Offerings; and (d) obtaining all necessary licenses or other rights enabling Supplier to copy, install, modify and distribute software to OEM Customer. Regardless of manufacturing integration tests that may be performed by Supplier, Supplier is not responsible for the suitability of the customized configuration, for any revision or engineering changes in any third-party products included in such configuration, for the compatibility of any Unique Parts or third-party or OEM Customer software with the configuration, or for any liability or damage arising from the installation of a configuration in accordance with the Service Agreement or OEM Customer's instructions. Additional regulatory and safety compliance required due to the integration of Unique Parts into the configurations shall be OEM Customer's responsibility. To the extent OEM Customer purchases certain services requiring Supplier to affix or label OEM Customer's name, logo or trademark on the Products, OEM Customer hereby grants Supplier a non-exclusive, royalty-free license to use such name, logo, or trademark solely in connection with such purpose and agrees to enter into a trademark license agreement if requested by Supplier.
- E. Grant of License Rights in Deliverables.** Subject to OEM Customer's compliance with these OEM Terms of Sale and any applicable Service Specification, OEM Customer's payment of applicable amounts due and Supplier's Proprietary Rights in any underlying intellectual property incorporated into any Deliverables or used by Supplier to perform Services, Supplier grants OEM Customer a non-exclusive, non-transferable, revocable (in case of non-payment, or any breach of these Terms of Sale or any applicable Service Specification) license to use (without the right to sublicense) the Deliverables provided by Supplier for OEM Customer's internal business purposes, solely in accordance with the applicable Service Specification and subject to these Terms of Sale. OEM Customer may authorize its service providers to use the Deliverables, solely on OEM Customer's behalf and for OEM Customer's internal business purposes. OEM Customer is responsible for service provider's compliance with these restrictions.
- (i) Supplier retains all Proprietary Rights not expressly granted to OEM Customer herein. The license granted in this section "Grant of License Rights in Deliverables" does not apply to Supplier Offerings or items licensed or otherwise provided under a separate agreement. Supplier is not limited in developing, using, or marketing services or products that are similar to the Deliverables or Services provided hereunder, any Service Specification, or, subject to Supplier's confidentiality obligations to OEM Customer, in using the Deliverables or performing similar Services for any other projects.
- (ii) OEM Customer retains its Proprietary Rights in materials it furnishes to Supplier for use in connection with the performance of Services. OEM Customer grants Supplier a non-exclusive, non-transferable right, under OEM Customer's Proprietary Rights, to use OEM Customer-provided materials solely for the benefit of OEM Customer in fulfilling Supplier's obligations under these Terms of Sale.
- (iii) Supplier is solely responsible for personnel placement as well as for all other human resource matters (example: vacations) concerning its personnel.
- (iv) In connection with Services and Subscriptions, at no charge to Supplier, OEM Customer will: (a) provide Supplier personnel with timely access to safe and clean facilities, space, power, documentation, files, data, information, additional software (if needed); (b) use skilled and authorized OEM Customer personnel to cooperate with Supplier, as reasonably requested by Supplier; (c) be responsible for physical and network security and all conditions in its business necessary for performance of Services; (d) allow Supplier remote and onsite access to the Products and OEM Customer's infrastructure environment, as required; and (e) promptly notify Supplier when Products fail and provide Supplier with sufficient details for Supplier to reproduce the failure.
- F. Services Software.** Services Software may be hosted by Supplier or installed on OEM Customer's computers. OEM Customer agrees that it shall (i) only use the Services Software in connection with the Supplier's Services, (ii) use any Services Software hosted by Supplier in a lawful manner, without interfering with other Supplier



OEM Customer's use of the Services Software, and without attempting to disrupt the security or operation of the network or systems used to provide the Services Software; and (iii) not misappropriate, disclose, or otherwise violate Supplier's or its Providers' intellectual property rights in the Services Software. It may be necessary for Supplier to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Services Software, which may temporarily degrade the quality of the Services or result in a partial or complete outage of the Services Software. **OEM CUSTOMER AGREES THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SERVICES SOFTWARE, INCLUDING TELEPHONE, COMPUTER NETWORKS, AND THE INTERNET, OR TO TRANSMIT INFORMATION, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF SUCH SERVICES SOFTWARE. SUPPLIER SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF OEM CUSTOMER'S ACCESS TO OR USE OF THE SERVICES SOFTWARE.**

## 7. WARRANTY, EXCLUSIONS, AND DISCLAIMERS

### A. Product Warranty.

**(i) Equipment.** Supplier warrants that the Equipment will: (a) be free from material defects in materials and workmanship; and (b) perform substantially in accordance with Supplier's then-current standard documentation for such Equipment. Supplier will, at its option and cost: (1) repair or replace the affected Equipment; or if Supplier is unable to do so within a reasonable time, upon return of such Equipment to Supplier, (2) refund the amount OEM Customer paid for the affected Equipment as depreciated on a straight-line basis over a five-year period.

**(ii) Software.** Supplier warrants that the Software licensed to OEM Customer will substantially conform in all material respects to Supplier's then-current standard documentation for such Software. Supplier will, at its option and cost: (a) remedy the non-conformance; or if Supplier is unable to do so within a reasonable time, (b) terminate the Software license and provide a pro-rata refund of the license or subscription fees received by Supplier for such Software.

**(iii) Additional Terms and Notice.** Additional terms governing the Product warranty, including applicable warranty periods, are found at [http://www.dell.com/learn/us/en/uscorp1/legal\\_terms-conditions\\_dellgrmwebpage/art-limited-hardware-warranties](http://www.dell.com/learn/us/en/uscorp1/legal_terms-conditions_dellgrmwebpage/art-limited-hardware-warranties) and <http://www.dell.com/prod-warranty-maint-table>. Warranty period for Software will not be less than 90 days. OEM Customer must promptly notify Supplier of any warranty claims within the applicable warranty period.

**B. Services Warranty.** Supplier will perform Services in a workmanlike manner in accordance with generally accepted industry standards. OEM Customer must notify Supplier of any failure to so perform within 10 days after the date on which such failure occurs, and Supplier will use reasonable efforts to correct such failure within a reasonable period. If, for reasons within Supplier's control, Supplier is unable to correct such deficiencies, then OEM Customer may terminate the affected Services by providing written notice to Supplier.

**C. Subscriptions Warranty.** Unless otherwise provided in the Subscription Specification, Supplier warrants that during the Subscription Term the Subscription will be provided in material conformance with the Subscription Specification. If the Subscription does not comply with this warranty: (a) Supplier will make reasonable efforts to correct the non-conformance as provided in any applicable Service Level OEM Terms of Sale or Service Level Objective included in the Subscription Specification, or if none is provided, within a reasonable period of time; and (b) if Supplier is unable to correct the non-conformance for reasons for which Supplier is responsible, then Supplier may terminate the Subscription and credit OEM Customer any pre-paid fees for the Subscription that will not be provided as a result of the termination. OEM Customer must notify Supplier in writing within 10 days of identifying any non-conformance claims covered by this warranty. OEM Customer will not make any claims or demands under sections "Product Warranty" and/or "Services Warranty" of these Terms of Sale for Products and/or Services provided as, or as part of, a Subscription.

**D. Limitations.** Warranty does not cover problems that arise from: (a) accident or neglect by OEM Customer or any Third-Party; (b) any Third-Party items or services with which the Supplier Offering is used or other causes beyond Supplier's control; (c) installation, operation or use not in accordance with Supplier's instructions or applicable documentation; (d) use in an environment (except for Supplier Offerings hosted by Supplier), in a manner or for a purpose for which the Supplier Offering was not designed; (e) modification, alteration or repair by anyone other than



Supplier personnel; (f) delays, interruptions, service failures, or other problems inherent in use of the internet and electronic communications; or (g) causes attributable to normal wear and tear. Supplier Offerings are not fault-tolerant and are not for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the Supplier Offering could lead to death, bodily injury or property damage. Supplier expressly disclaims any express or implied warranty of fitness for these activities. Supplier does not warrant an uninterrupted or error-free operation of Software, nor that all defects can be corrected.

**E. Exclusive Remedies and Warranty Disclaimer.** Supplier's warranties herein and OEM Customer's sole and exclusive remedies in case of breach of any warranty are described in these Terms of Sale. Supplier and Supplier Affiliates: (a) make no other express warranties; (b) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (c) disclaim any warranty arising by statute, operation of law, course of dealing or performance or usage of trade. Supplier does not warrant that Offerings will function in any specific configuration that includes non-Supplier hardware or software or will function to produce a particular result, even if the specific configuration or the result has been discussed with Supplier. As between Supplier and OEM Customer, OEM Customer is responsible for the design and implementation of configurations, systems and networks suitable for the risks involved in the End-User applications and operating environments into which OEM Customer sells.

**F. Third-Party Offerings Warranty.** Third-Party Offerings may carry with them a warranty from the original manufacturer or licensor ("**Third-Party Warranty**"). Supplier is not responsible for fulfillment of any Third-Party Warranty or for problems attributable to the use of Third-Party Offerings. OEM Customer will rely solely on the issuer of any Third-Party Warranty for all obligations under the Third-Party Warranty.

## 8. TERM; TERMINATION OR SUSPENSION

- A. Term.** The term of these OEM Terms of Sale begins on the Effective Date and continues until it is terminated in accordance with this section "Term; Termination or Suspension".
- B. Suspension or Modification of Services.** Supplier may suspend, terminate, withdraw, or discontinue all or part of the Services or stop delivery of Products when Supplier believes, in its sole judgment, that OEM Customer is involved in any fraudulent or illegal activities.
- C. Termination.** Either party may terminate a Service Agreement, or license for Software: (i) for a material breach by the other party that is not cured within thirty days of the breaching party's receipt of written notice of the breach; or (ii) if a party declares bankruptcy or is adjudicated bankrupt or a receiver or trustee is appointed for substantially all of its assets. In addition, Supplier may terminate one or more Service Agreements or software licenses with ten days' written notice if: (i) OEM Customer does not make payment as required by these OEM Terms of Sale or the applicable Schedule (where the payment is not subject to a good faith dispute); (ii) OEM Customer fails to make the payment within ten days after receiving written notice of the past due amount; (iii) OEM Customer purchased through a reseller and, as applicable, (iii)(a) the agreement between OEM Customer and the reseller expires or is terminated; (iii)(b) the agreement between Supplier and the reseller expires or is terminated; or (iii)(c) the reseller is delinquent on its payment obligations to Supplier. Supplier may terminate some or all of the Schedules immediately if OEM Customer is acquired by or merged with a competitor of Supplier or any of its Affiliates. Termination of a Service Agreement will not terminate other Service Agreements, and termination of all Service Agreements will not terminate these OEM Terms of Sale.
- D. Survival.** The provisions relating to payment of outstanding fees, records and audit, confidentiality, and liability, all rights of action accruing prior to termination, along with any other provision of these OEM Terms of Sale that, expressly, or by its nature and context, is intended to survive, will survive termination.
- E. Continuing Obligations.** A termination without cause of Services and Subscriptions will be permitted only if expressly permitted in the applicable Offering Specific Terms. A termination or expiration of an Order will not affect any previously placed Orders or the obligation of OEM Customer to pay all amounts due under a terminated Order.

## 9. INDEMNITY

- A. Supplier Indemnity.** Supplier will: (i) defend OEM Customer against any third-party claim that the Product, Subscription or Support Services (but excluding any Third-Party Offerings, any Products provided for evaluation or without charge and open source software) infringe that party's patent, copyright, or trade secret enforceable in the



country where OEM Customer purchased the Products from Supplier (“**Claim**”); and (ii) indemnify OEM Customer by paying: (1) the resulting costs and damages finally awarded against OEM Customer by a court of competent jurisdiction to the extent that such are the result of the third-party Claim; or (2) the amounts stated in a written settlement negotiated and approved by Supplier.

- B. In addition, should any Products, Subscription or Support Service become, or in Supplier’s opinion be likely to become, the subject of a Claim, Supplier may, at its expense and in its discretion: (i) obtain a right for OEM Customer to continue using the affected Products, Subscription or Support Service; (ii) modify the affected Products, Subscription or Support Service to make them non-infringing; (iii) replace the affected Products, Subscription or Support Service with non-infringing substitutes; (iv) provide a reasonable depreciated or pro rata refund for the affected Product; or (v) discontinue the Support Services or Subscription and refund the portion of any pre-paid Support Service or Subscription fees that corresponds to the period of Support Services discontinuance. Except as otherwise provided by law, this Section 9 states OEM Customer’s exclusive remedies for any Third-Party intellectual property claim relating to Products and Support Services, and nothing in these OEM Terms of Sale or elsewhere will obligate Supplier to provide any greater indemnity.
- C. **Exclusions from Indemnity.** Supplier has no obligation under Section 9A above: (i) if OEM Customer is in material breach of these OEM Terms of Sale; or (ii) for any Claim resulting or arising from: (1) any combination, operation or use of a Products, Subscription or Support Service with any other products, services, items, or technology, including Third-Party Offerings and open source software; (2) use for a purpose or in a manner for which the Products, Subscription or Support Service was not designed, or use after Supplier notifies OEM Customer to cease such use due to a possible or pending Claim; (3) any modification to the Products, Subscription or Support Service made by any person other than Supplier or its authorized representatives; (4) any modification to the Products, Subscription or Support Service made by Supplier pursuant to instructions, designs, specifications or any other information provided to Supplier by or on behalf of OEM Customer; (5) use of any version of a Products, Subscription when an upgrade or newer iteration of the Products, Subscription or Support Service made available by Supplier would have avoided the infringement; (6) services, products or software provided by OEM Customer (including Claims seeking damages based on any revenue OEM Customer derives from OEM Customer’s services); or (7) any data or information that OEM Customer or a Third-Party records on or utilizes in connection with the Products, Subscription or Support Services (collectively, the “**Excluded Claims**”).
- D. **OEM Customer Indemnity.** OEM Customer will defend and indemnify Supplier and its Affiliates against any Third-Party claim resulting or arising from: (i) OEM Customer’s failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications, or approvals associated with technology or data that OEM Customer provides to Supplier or its Affiliates, or with non-Supplier software or other components that OEM Customer directs or requests that Supplier or its Affiliates use with, install, or integrate as part of the Products or Services; (ii) OEM Customer’s violation of Supplier’s or its Affiliates’ proprietary rights; (iii) failure of OEM Customer or OEM Customer Representatives to abide by all applicable laws, rules, regulations and orders that affect the Products and Section 11 Compliance below; (iv) any warranties or representations made by OEM Customer or OEM Customer Representatives which differ from those provided by Supplier; (v) OEM Customer’s misuse or abuse of the Products, negligence, or breach of any provision in these OEM Terms of Sale; or (vi) the Excluded Claims.
- E. **Mutual Indemnity.** Each party shall 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 these OEM Terms of Sale.
- F. **Indemnification Process.** A party’s duty to defend and indemnify under this section is contingent upon the party seeking indemnity: (i) sending prompt written notice of the Claim to the party providing indemnity and taking reasonable steps to mitigate damages; (ii) granting to the party providing indemnity the sole right to control the defense and resolution of the Claim; and (iii) cooperating with the party providing indemnity in the defense and resolution of the Claim and in mitigating any damages.

## 10. LIMITATION OF LIABILITY

- A. **These terms are agreed allocations of risk constituting part of the consideration for the Parties entering into the transaction governed by these OEM Terms of Sale and apply even if there is a failure of the essential purpose of any limited remedy and regardless of whether a Party has been advised of the risk of the**



liabilities. The limitations, exclusions and disclaimers stated below apply to all disputes, claims or controversies (whether in contract, tort, negligence or otherwise) related to or arising out of any transaction governed by these OEM Terms of Sale (“Dispute”).

- B. Either Party’s entire liability will be limited to direct damages and will be capped at the amount paid by OEM Customer to Supplier during the 12 months prior to when the damaging event occurred for the specific Supplier Offering, Subscription and/or Service giving rise to such liability, or fifty thousand United States Dollars, whichever is greater.
- C. Nothing herein will exclude or limit liability for: (a) gross negligence, willful misconduct, criminal conduct or fraud by a Party; (b) violation of the restrictions on use of Supplier Offerings, Subscriptions and Services; (c) violation or misappropriation by a Party of the other Party’s intellectual property rights; (d) a Party’s indemnity obligation stated in these OEM Terms of Sale; (e) timely fulfillment of payment obligations; and/or (f) damages that cannot be excluded or limited by law.
- D. Neither Supplier (and its suppliers) nor OEM Customer will be liable for: (a) special, consequential, exemplary, punitive, incidental or indirect damages, (b) lost profits, loss of revenue, loss or corruption of data, loss of use; or (c) procurement of substitute products, subscriptions or services.
- E. The foregoing limitations will also apply in favor of Supplier’s Affiliates.
- F. Except as stated in this clause, all claims must be made within the period specified by applicable law. If the law allows Parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within 18 months after the cause of action accrues.

## 11. COMPLIANCE

- A. **General Regulatory Compliance.** OEM Customer, at its own expense, will comply with all applicable laws, orders and regulations of any governmental authority with jurisdiction over its activities in connection with these OEM Terms of Sale. Supplier will furnish to the OEM Customer any reasonably available information required to enable the OEM Customer to comply with applicable laws and regulations related to the Products. The regulatory compliance marks on Products may vary, depending on where such Products are manufactured and sold to OEM Customer. OEM Customer understands that the Products sold from the United States, Canada, and European Union (EU) countries contain regulatory compliance marks that are required to ship into the United States, Canada, and European Union (EU) countries, respectively. Additional regulatory compliance marks are required to ship to other locations. OEM Customer is solely responsible for obtaining any marks that may be required. OEM Customer shall be responsible for continued regulatory compliance, including, but not limited to compliance with electrostatic discharge and radiated emissions standards, for any modifications or additions made to the Supplier Offering after the Products are shipped from Supplier. In addition, OEM Customer will ensure the Products comply with all regulatory requirements for its target market and locations and are properly labeled.
- B. **Product Labeling.** Except as otherwise agreed between Supplier and OEM Customer in a Service Agreement, all Products re-sold by OEM Customer under the authority of these OEM Terms of Sale shall be resold only with their original markings. If OEM Customer removes or moves any Supplier marks or logos on the Products after such products have shipped, and applies other marks or logos (including any marks or names belonging to OEM Customer) to such Products, then OEM Customer is responsible for obtaining all necessary regulatory approvals or other authorizations for each country where such modified products will be sold and shipped by OEM Customer. In no event shall OEM Customer remove or change safety and agency certification labels or other manufacturers’ labels on Products without the appropriate agency or manufacturer written approval.
- C. **Trade Compliance.** OEM 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**”). Offerings may not be used, sold, resold, leased, exported, imported, re-exported, or transferred except in compliance with the Applicable Trade Laws. OEM 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. OEM Customer will defend and indemnify Supplier and Supplier Affiliates against any Third-Party claim resulting from a breach of any of the foregoing. Trade compliance requirements available at [www.dell.com/tradecompliance](http://www.dell.com/tradecompliance) contain further information and requirements on compliance with Applicable Trade



Laws and then-current restrictions to which OEM Customer must adhere. If Offerings are used, sold, resold, leased, exported, imported, re-exported, or transferred in violation of Applicable Trade Laws, Supplier shall not be obligated to provide any warranty service or Support Services for such Offerings.

#### **D. Environmental**

(i) OEM Customer shall comply with all applicable producer responsibility laws and regulations that may include but are not limited to: electronics, batteries and packaging in all applicable jurisdictions;

(ii) Compliance with producer responsibility laws and regulations includes, but is not limited to, obligations related to importing, placing on the market, declarations and regulatory filings, take back, environmentally appropriate treatment and other obligations as designated by the applicable laws and regulations.

#### **E. Disposal**

(i) OEM Customer shall comply with all applicable laws and regulations regarding disposal of electronic waste, and all non-functional and functional Products of which OEM Customer chooses to dispose (collectively “**Electronic Waste**”) shall be disposed of in accordance with applicable law.

(ii) OEM Customer will use approved electronic waste vendors in the disposal of Electronic Waste, will maintain an audit process on those vendors and will require certification of vendors at such time as industry certification programs are available. As part of the OEM Customer’s disposal process for Electronic Waste, including disk drives and solid-state drives, Software and data will be sanitized or physically destroyed using a process no less stringent than the guidelines contained in NIST SP 800-88r1 and applicable law.

(iii) For all Electronic Waste that is disposed of by OEM Customer, Supplier trademarks and trade names will be removed and/or destroyed.

#### **F. Anti-Corruption Law Compliance.**

(i) OEM Customer agrees to comply with the anti-corruption or anti-bribery laws in effect in jurisdictions where OEM Customer markets or sells Supplier products or services (the “Anti-Corruption Laws”) including, without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010. OEM Customer shall not, in connection with these OEM Terms of Sale directly or indirectly (a) offer, promise, authorize or transfer to, or (b) request, solicit, or demand from any person or Government Official anything of value to improperly influence, induce or reward any act, decision, or omission to obtain or retain business or secure any improper advantage.

(ii) Each party agrees that in the event that it subcontracts the provision of any element of these OEM Terms of Sale to any person, or receives any services in connection with its performance of these OEM Terms of Sale from any person (each such person being an “**Associated Person**”), it shall impose upon such Associated Person Anti-corruption obligations that are no less onerous than those imposed in these OEM Terms of Sale.

(iii) Each party shall (a) maintain and enforce, throughout the duration of dealings between the parties, its own anti-corruption policies and procedures, including without limitation, adequate procedures designed to ensure that it and its Associated Persons comply with the Anti-Corruption Laws.; (b).Each party shall maintain proper, accurate, and complete accounting books and records relating to all of its activities under these OEM Terms of Sale. Each party shall provide information, documentation and reasonable assistance to the other party and its authorized representatives for purposes of ensuring its compliance with the Anti-Corruption Laws or to support an inquiry or investigation of a suspected violation of those laws.

(iv) A party may suspend its performance under these OEM Terms of Sale if it has reasonable belief the other party breaches, or if the other party refuses to provide information to confirm its compliance with, this Section 11F of these OEM Terms of Sale.

## **12. DATA PRIVACY**

**A. Compliance with Laws.** Parties will comply with all data protection laws and regulations applicable to the processing of personal data under these OEM Terms of Sale. In this section “personal data”, “controller”, “processor” and “processing” will have the meaning set out in the applicable data protection legislation.

**B. Data Processing Terms.** To the extent that Supplier processes any personal data on behalf of OEM Customer in the performance of its obligations under these Terms of Sale, Supplier will only do so as required to fulfil its legal obligations pursuant these Terms of Sale and either, as a controller and on its own behalf in accordance with its



location-specific privacy policies, available at [www.dell.com/privacy](http://www.dell.com/privacy), or as a processor acting on behalf of OEM Customer in accordance with Supplier's applicable data processing schedule available at [www.dell.com/dataprocessingschedule](http://www.dell.com/dataprocessingschedule), or another data processing agreement executed by the Parties (as applicable "Data Processing Schedule").

- C. Disclosures to Supplier.** OEM Customer is responsible for: (a) maintaining reasonable measures to avoid Supplier's access to personal data not required by Supplier in provision of any Supplier Offerings; and (b) obtaining all necessary rights, permissions and consents associated with disclosure of any required personal data to Supplier, prior to such disclosure.
- D. Excluded Data.** OEM Customer acknowledges that products and services provided under these OEM Terms of Sale are not designed to process, store, or be used in connection with Excluded Data. OEM Customer is solely responsible for reviewing data that will be provided to or accessed by Supplier to ensure that it does not contain Excluded Data. Furthermore, products in their default configurations may not be optimized to process, store or transmit personally identifiable information that is subject to heightened security requirements as a result of OEM Customer's internal policies or practices or by law. OEM Customer is solely responsible for compliance with heightened security requirements mandated by its own internal policies and by law.

### 13. PUBLIC RELEASE OF INFORMATION, IP, TRADEMARKS, AND CONFIDENTIALITY

- A. Public Release of Information.** Within ninety (90) days of the execution of these OEM Terms of Sale, Supplier may, in its sole discretion, request OEM Customer to participate in a news release or other publicity ("Publicity") announcing OEM Customer's selection of Supplier's OEM Solution. OEM Customer agrees to participate in such Publicity and authorizes Supplier to use OEM Customer's name, trademark, logo, images of OEM Solution and other identifying marks in the Publicity, provided that Supplier will obtain OEM Customer's approval of the Publicity content prior to the first public release of the Publicity. Supplier shall have the right to publish, use, reference and display the final, approved Publicity, in whole or through unedited excerpts, in all forms of media. Except as expressly agreed in this Section, neither Supplier nor OEM Customer may publicly release any information relating to these OEM Terms of Sale, including the existence of these OEM Terms of Sale, without first receiving the prior written approval of the other party. Relative to Supplier, such prior written approval must be obtained from Supplier's public relations department.
- B. IP Ownership Rights.** All right, title and interest in and to the intellectual property rights in Supplier Offerings and Supplier Services, including technology and trade secrets embodied therein and any custom developments created or provided in connection with or related to these OEM Terms of Sale, and any derivative works thereof, belong solely and exclusively to Supplier or its licensors or suppliers, and OEM Customer has no rights whatsoever in any of the foregoing other than the rights expressly set forth in these OEM Terms of Sale. Nothing in these OEM Terms of Sale or otherwise will be deemed to grant to OEM Customer an ownership interest in any of the intellectual property rights in or to any Supplier Offerings or Supplier Services, in whole or in part.
- C. Trademarks.** OEM Customer is permitted to use the "Dell" or "Dell EMC" name and Supplier Offering names (collectively, the "**Approved Names**"), solely for the purpose of accurately identifying the Products OEM Customer is marketing. OEM Customer's use of Approved Names shall comply with Supplier's trademark usage guidelines, which may be updated at any time by Supplier in its sole discretion. OEM Customer may not use the Approved Names more prominently or more frequently than necessary for this purpose. OEM Customer may not use any logo of Supplier's or any name or mark of Supplier's other than the Approved Names, except and only to the extent of Supplier's prior, written permission. OEM Customer agrees to ensure that its use of the Approved Names will not likely create the impression that Supplier is affiliated with OEM Customer or has sponsored, authorized, approved or endorsed OEM Customer's business, OEM Solutions, any OEM Customer offer, or any marketing, advertising or promotion thereof. OEM Customer agrees to change or correct, at OEM Customer's expense, any advertising, publicity, material, or activity which Supplier, in its sole judgment, decides is inaccurate, objectionable, misleading, or a misuse of Supplier's names, marks, or logos. OEM Customer acquires no right, title or interest in any Supplier marks, names and logos, except for the limited, non-exclusive right to use the Approved Names as provided in this Section. This limited right ends with termination of these OEM Terms of Sale.
- D. Confidential Information.**



- (i) **“Confidential Information”** is 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: (1) is marked, accompanied, or supported by documents clearly and conspicuously designating the documents as "confidential", "internal use", or the equivalent; (2) is identified by the discloser as confidential before, during, or promptly after the presentation or communication; or (3) should reasonably be known by recipient to be confidential.
- (ii) These OEM Terms of Sale imposes no obligation upon a recipient with respect to information designated as confidential which: (1) the recipient can demonstrate was already in its possession before receipt from the discloser; (2) is or becomes publicly available through no fault of the recipient or its Representatives (defined below); (3) is rightfully received by the recipient from a Third-Party who has no duty of confidentiality; (4) is disclosed by the discloser to a Third-Party without a duty of confidentiality on the Third-Party; or (5) is independently developed by the recipient without a breach of these OEM Terms of Sale.
- (iii) 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. Recipient will use Confidential Information only for the purpose of and in connection with the evaluation of a potential, or continuation of, a business transaction or relationship between the parties. Recipient may disclose Confidential Information to its directors, officers, employees, and employees of its Affiliates, as well as its and its Affiliates' contractors, advisors, and agents, so long as those individuals have a need to know in their work for recipient in furtherance of the potential or continued business transaction or relationship, and are bound by obligations of confidentiality at least as restrictive as those imposed on recipient in these OEM Terms of Sale (collectively, **“Representatives”**). Recipient is fully liable for any breach of these OEM Terms of Sale by its Representatives. Recipient will use the same degree of care, but no less than reasonable care, as the recipient uses with respect to its own similar information to protect the Confidential Information. Recipient may only disclose Confidential Information as authorized by these OEM Terms of Sale. The terms of these OEM Terms of Sale do not restrict the right of recipient to independently design, develop, acquire, market, service, or otherwise deal in, directly or indirectly, products or services competitive with those of the discloser so long as the recipient does not use any of the discloser's Confidential Information for those activities. Unless the parties otherwise agree in writing, a recipient's duty to protect Confidential Information expires three years from the date of disclosure. However, subject to the terms of this Section, the obligation to protect technical information about a discloser's current products and services and all information about possible unreleased products or services never expires. Upon the discloser's written request, recipient will promptly return or destroy all Confidential Information received from the discloser, together with all copies. Notwithstanding the above, recipient's professional advisors (e.g., lawyers and accountants) may retain in confidence one file copy of their respective work papers and final reports in accordance with their professional and ethical obligations.

#### 14. MISCELLANEOUS

- A. References.** Supplier may identify OEM Customer as a user of Products, Services, or both, as applicable.
- B. Notices.** The parties will provide all notices under these OEM Terms of Sale in writing. OEM Customer must provide notices to Supplier, at the Supplier email address on the first page of these OEM Terms of Sale and, if applicable, Supplier or its Affiliate's address as stated in a Schedule.
- C. Force Majeure.** Except for payment of amounts due and owing, neither Supplier nor OEM Customer 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.
- D. Assignment and Subcontracting.** Neither party shall assign these OEM Terms of Sale nor an Order or any right or obligation herein or delegate any performance without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing: (i) Supplier may use Affiliates or other qualified subcontractors to perform its obligations hereunder, provided that the relevant party to the Order shall remain responsible for the performance thereof; and (ii) either party may assign payment obligations arising under any Order without consent of the other party.
- E. Governing Law; Informal Dispute Resolution; Attorney's Fees.** These OEM Terms of Sale, and any dispute, claim, or controversy (whether in contract, tort, or otherwise) related to or arising out of these OEM Terms of Sale or any Quote or Order (**“Dispute”**) is governed by the laws of the State of Texas and the federal laws of the United



States (for the U.S.) or the laws of the Province of Ontario and the federal laws of Canada applicable therein, if for Canada), without regard to its conflict-of-laws rules. The U.N. Convention on Contracts for the International Sale of Goods does not apply. Furthermore, the parties agree that the provisions of the Uniform Computer Information Transactions Act (“UCITA”) do not apply to these OEM Terms of Sale, and the parties waive any and all rights they may have under any laws(s) adopting UCITA in any form. To the extent permitted by law, the state and federal courts located in Texas (for the U.S.) or for the applicable provincial and federal courts located in Toronto, Ontario (for Canada) will have exclusive jurisdiction for any Disputes. OEM Customer and Supplier agree to submit to the personal jurisdiction of the state and federal courts located within Travis or Williamson County, Texas, (or in Toronto, Ontario, if OEM Customer is a Canadian entity) 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 parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute.

- F. Waiver.** Failure to enforce a provision of these OEM Terms of Sale will not constitute a waiver of that or any other provision of these OEM Terms of Sale.
- G. Independent Contractors.** The parties are independent contractors for all purposes under these OEM Terms of Sale and cannot obligate any other party without prior written approval. The parties do not intend anything in these OEM Terms of Sale 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.
- H. Severability.** If any part of these OEM Terms of Sale or document that incorporates these OEM Terms of Sale by reference is held unenforceable, the validity of all remaining parts will not be affected.
- I. Insurance.** OEM Customer agrees to obtain and maintain during the term of these OEM Terms of Sale, commercial general liability, including products liability, insurance in a minimum amount of at least One Million Dollars (\$1,000,000.00) with an insurance company having a Best rating of A- or better. Upon Supplier’s request, OEM Customer shall provide to Supplier a certificate of the above-mentioned insurance and shall provide copies of any new or amended certificates of insurance to Supplier. In addition, OEM Customer shall name Supplier as an additional insured on all commercial general liability insurance policies procured in accordance with this section. OEM Customer shall give Supplier at least thirty (30) days prior written notice of any cancellation or termination of insurance required by this section.
- J. Entire OEM Terms of Sale.** These OEM Terms of Sale (including the General Terms and Products and Services Schedules) and each Order hereunder comprise the complete statement of the agreement of the parties regarding the subject matter thereof and may be modified only by written agreement.
- K. Conflicts.** If there is a conflict between any Service Agreement and these OEM Terms of Sale, the terms of the Service Agreement will take precedence, and in the event of any conflicts between a Product or Service Schedule and the General Terms, the Product or Service Schedule will prevail. In the event that a subject is addressed in both the Supplier Software license agreement provided in or with the Software and these OEM Terms of Sale or in any Product or Service Schedule, then the corresponding provision of the Supplier Software license agreement will prevail.
- L. Federal Transactions.** OEM Customer is not authorized by Supplier or these OEM Terms of Sale to sell or provide, directly or indirectly, Products or Services to any department, agency, division, or office of the federal government of the United States (collectively, “Federal End Users”). OEM Customer must obtain written authorization from Supplier’s U.S. Federal Sales team to purchase Products and Services for resale to Federal End Users. All United States Government Federal Acquisition Regulations (FAR), agency FAR supplement clauses, Federal End User terms and flowdown provisions, and any terms and conditions relating to ITAR – whether they are contained or referenced in OEM Customer’s purchase orders or other communications – are specifically rejected by Supplier and shall not apply to or bind Supplier. Supplier shall have no liability for providing products or services that do not comply with the Trade Agreements Act, Buy American Act, or any other federal government procurement regulations, including but not limited to UID, IPV6, RFID, Energy Star, EPEAT, counterfeit products, information assurance, and DPAS.
- M. U.S. Government Data Rights.** The Software and Documentation are “commercial computer software” and “commercial computer software documentation” as those terms are defined in the U.S. Government Federal Acquisition Regulations. Supplier provides products for ultimate federal government end use solely in accordance



with the following: Government technical data and software rights in these products include only those rights customarily provided to the public as defined in these OEM Terms of Sale. This customary commercial license in technical data and software is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).

- N. Language.** The Parties have required that these OEM Terms of Sale be drawn up in English and have also agreed that all notices or other documents required by or contemplated in these OEM Terms of Sale 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.