

Please click here for the [French](#) version of these terms.

Reseller Terms of Sale (NA)

This Partner Resale Agreement, including all applicable terms referenced herein, (collectively, this “**Agreement**”) applies to the purchase from Dell (or from an authorized Dell distributor) for the resale of Dell Products and Services to End Users in North America, either the United States (50 states and Washington, D.C.) or Canada, whichever is the country where Partner places the Order (see definition of “[Territory](#)” below). This Agreement is not applicable to the purchases of Dell Products and Services for Partner’s own internal end use (in such case Dell’s Commercial Terms of Sale at www.dell.com/cts for the United States or www.dell.ca/terms or www.dell.ca/conditions for Canada shall apply).

“**Dell**” means one of the entities below, as applicable for Partner’s country of purchase:

Canada: Dell Canada Inc., with offices at 155 Gordon Baker Rd., Suite 501, Toronto, ON M2H3N5

United States (50 states and Washington, D.C.): Dell Marketing L.P., with offices at One Dell Way, Round Rock, Texas 78682 or EMC Corporation, with offices at 176 South Street, Hopkinton, Massachusetts 01748.

For Partner Program benefits, Partner acknowledges to have read and accepted the [terms and conditions](#) of the of the [Dell Technologies Partner Program](#) (the “**Partner Program**”) which supplement this Agreement and are available via the [Dell Technologies Partner Portal](#) (the “**Partner Portal**”) and which include the [Dell Technologies Partner Code of Conduct](#).

This Agreement consists of the main body with the terms and conditions applicable to all [Offerings](#) that are in scope, as may be supplemented by additional schedules, containing terms applicable to all or only specific Offerings and shall form an integral part of this Agreement (“**Schedule(s)**”). This Agreement does not establish a commitment of Partner to procure, nor an obligation of Dell or its Affiliates to supply, any Offerings unless the parties have agreed on an [Order](#).

Each section of the Agreement is intended to apply to all resale transactions in the Territory, unless regional exceptions are specifically addressed within that section, a footnote, or the applicable Schedule(s).

By placing Orders, Partner accepts and is bound to the terms and conditions of this Agreement.

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1. Subject Matter and Parts of the Agreement.

1.1 Scope. Subject to compliance with local laws and the terms and conditions of this Agreement:

- (a) Partner is authorized to resell the Products and Services to End Users on a non-exclusive basis in the Territory.
- (b) Partner is not permitted to appoint any resellers for the resale of the Products and Services in the Territory.
- (c) Unless otherwise agreed in a Schedule, this Agreement does not apply to the purchase of Products and Services for internal end-use, or for use as an Original Equipment Manufacturer customer (“**OEM**”), or for Cloud Service Providers (“**CSP**”) and Outsourcers.
- (d) Partner shall not market, resell, distribute, rent, lease, or use Products or Services other than as expressly permitted in this Agreement and, with regard to Software, in the license agreement governing the Software.
- (e) Eligibility to resell certain Products and Services may be subject to additional obligations or conditions not outlined in this Agreement, including additional training and/or specialization requirements.
- (f) This Agreement does not guarantee sales of Products and/or Services.
- (g) Partner is free to determine its own resale pricing of Products and Services to its End Users.

1.2 Restrictions. Notwithstanding section 1.1 “[Scope](#)” above and subject to prior written Dell approval and compliance with local laws, Partner shall not directly or knowingly indirectly market or resell Products or Services: (a) outside the Territory or location of purchase; (b) to any consumers, resellers, distributors, or third-party sales agents; or (c) through retail storefronts, online stores, or auction or resale websites. Partner shall not stock Products for future sales unless agreed otherwise by Dell for a specific order. Partner shall not refurbish Products for resale or marketing. Furthermore, Partner shall not market or sell refurbished or previously owned or used Products, including used Products that Partner has obtained from any third party.

In addition to the section titled “[Restrictions](#)” above, Partner shall not directly or indirectly market or resell Products or Services: (a) to the U.S. federal government, (b) U.S. state and local government agencies, public education institutions and state and local government healthcare entities; (c) to the Canadian federal government or provincial

government entities, or other Canadian public sector entities; or (d) on a country specific basis, to that additional country's national government or similar state, provincial, or regional government of such country (collectively, customers in (a), (b), (c) and (d) are "**Public End Users**"). Partners in good standing in the Partner Program may resell to Public End Users under certain conditions (see the Partner Program for specific requirements; and without limiting the foregoing, unless otherwise confirmed in writing by Dell, only Partners explicitly listed within Dell's awards and contracts with the Canadian federal government are permitted to sell to Canadian federal government entities). All sales intended for resale to the U.S. federal government are further restricted to Partners who are successfully onboarded into the Dell Technologies Federal Partner Program and place such orders through the Dell Technologies Federal sales team. Notwithstanding anything contrary in this Agreement, all Public End User terms and flow-down provisions are specifically rejected by Dell and shall not apply to or bind Dell.

1.3 Order of Precedence. This Agreement, including the documents referenced herein, shall apply to the exclusion of all other general terms and conditions incorporated in or referred to in any documentation submitted by Partner to Dell. Preprinted terms and conditions contained on any Partner Order shall not apply.

Subject to the foregoing, in case of any conflict or inconsistency the following order of precedence shall apply:

- (a) The terms of the Order, where either: (i) this Agreement expressly provides for the Parties to optionally deviate from the relevant provision of this Agreement; or (ii) where the Order states that the Parties wish to deviate from the terms of this Agreement for the purpose of the individual transaction and the Parties expressly accept the deviation;
- (b) The terms of any Schedule to this Agreement; and
- (c) The main body of this Agreement.

2. Definitions.

2.1 "Affiliate" means a legal entity that is controlled by or is under common "control" of a related entity. Transactions under this Agreement may also involve affiliated companies of the Parties. "**Control**" means more than 50% of the voting power or ownership interests. With respect to Dell, Affiliate means Dell Inc. or Dell Inc.'s direct or indirect subsidiaries.

2.2 "Delivery" for Product occurs (i) for the U.S., when Dell provides the hardware Product to a carrier at Dell's designated point of shipment, or (ii) for Canada, when the hardware Product arrives at the ship-to address that Partner provided to Dell (for all products other than Infrastructure Products) or the hardware Product clears Canadian customs (for Infrastructure Products). Delivery for Software occurs (a) for the U.S., when Dell provides physical media to a Dell-designated carrier at Dell's designated point of shipment, (b) for Canada, when the physical media clears Canadian customs, or (c) for U.S. or Canada, the date Dell notifies Partner or End-User that Software is available for electronic download.

2.3 "Dispute" means any dispute, claim or controversy (whether in contract, tort or otherwise) related to or arising out of the Agreement or any Quote or Order.

2.4 "Documentation" means Dell's then current, generally available user manuals and online help for Products.

2.5 "End User" means any entity, within the Territory, purchasing Products, Services, or both from Partner for its own internal end-use and not for resale, distribution, remarketing, sub-licensing, to others.

2.6 "End User Agreement" means the agreement executed with the End User which will include terms in accordance with the applicable sections (all of which may be collectively referred to herein as "**End User Agreement**"), including but not limited to: [Software](#), [Services Flow-down Terms](#), [Prevention and Mitigation](#), [Trade Compliance](#) and [System Data](#) (all of which may be collectively referred to herein as the End User Agreement).

2.7 "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; (iii) ITAR (International Traffic in Arms Regulations) released data; and (iv) personally identifiable information that is subject to heightened security requirements as a result of Partner or End User's internal policies or practices, industry-specific standards or by law.

2.8 Products and Services. "**Products**" are either (i) Dell-branded IT hardware products ("**Equipment**") or (ii) Dell-branded generally available software, whether microcode, firmware, operating systems or applications ("**Software**"). "**Services**" are (a) Dell's standard service offerings for maintenance and support of Products ("**Support Services**") and (b) consulting, deployment, implementation, and any other services, specifically excluding Cloud and/or APEX Services, that are not Support Services ("**Professional Services**"). "**Third Party Products**" means hardware, software, products or services that are not "Dell" branded. Third Party software is licensed by a third party under its own terms of use. Products exclude Services and Third Party Products. Products, Services, and Third Party Products (if applicable) may be collectively referred to herein as "**Offerings**."

2.9 "Territory" means the geographical area, country or countries, within which Partner may resell the Products and distribute the Services authorized by Dell in accordance with this Agreement and applicable local law.

2.10 “Unauthorized Parts” means any third party parts which were not: (i) procured from Dell or (ii) otherwise authorized and/or certified by Dell for integration into the applicable Dell Product.

3. Quoting and Ordering.

3.1 Process. Partner may request a quote from Dell or its Affiliate (depending on the Offerings purchased), either in the form of a written quotation or online via www.dell.com or any other online process (“**Quote**”). Quoted prices are effective until the expiration date of the Dell’s quote. Dell reserves the right to modify pricing (including quotes) due to shortage of materials or products, increase in costs, pricing or other error, currency and exchange rate fluctuations, or other factors beyond Dell’s control. Partner may order the Offerings quoted by: (i) issuing a purchase order that references such Quote, the requested Offerings, the Partner’s and End User’s name and address, contract code (if applicable), and any other information requested by Dell; (ii) executing Dell designated order forms; or (iii) ordering online through either www.dell.com or other online process. Partner shall place Orders for Products and Services in the country where the End User is located. Orders are subject to credit approval and are subject to Dell’s acceptance. Acceptance of one Order is independent from acceptance of any other Order. An accepted order is hereinafter referred to as an “**Order**.” Orders are subject to availability and are cancellable only by Dell except as expressly permitted in a Schedule or with Dell’s written approval. Any variation to an accepted Order must be agreed in writing between Partner and Dell.

3.2 Product and Service-Specific Terms. Scope and details of Product and Service-specific terms are specified in the applicable standard service description that is attached to or referred in a Schedule or Quote or is made available through the then-current Dell website for product or service specific terms, currently located at www.dell.com/offeringsspecificterms (“**Offering Specific Terms**”). Such standard descriptions are from time to time referred to as “**Service Description(s)**” or “**Service Briefs**.” The version of the applicable document that is effective as of the date of the applicable Quote, shall be deemed incorporated into the Order. Scope and details of customized Professional Services not covered by such a standard description shall be documented in a mutually agreed Statement of Work (“**Statement of Work**” or “**SOW**”). When selling or providing any such offerings, Partner shall inform and require the End User to agree to the applicable Offering Specific Terms and Partner will provide written evidence of doing so upon receipt of request from Dell.

3.3 Revision of Offerings. Dell may revise its Offerings, including after Partner places an Order, but prior to Dell’s shipment or performance. As a result, Offerings which Partner receives may differ from those ordered, provided they still substantially meet or exceed the specifications as per the documentation of the originally ordered Offerings.

3.4 Cancellation. Partner may not cancel Orders except with Dell’s written approval. Orders for Third Party Products are subject to availability and are cancellable only by Dell. If Partner purchases a multi-year software license and related support or maintenance, and Partner and Dell agree to make installment payments of the purchase price over the term of the license, then Partner shall make all such installation payments in full, and the purchase is non-cancellable over the term of the license. Dell is not responsible for pricing, typographical, or other errors in any offer or quote, and reserves the right to cancel any Order arising from such errors. In addition, Dell may cancel Orders due to shortage of products or materials, increases in the costs of manufacturing, or any event beyond Dell’s control.

4. Product Delivery.

4.1 Shipment. Unless otherwise agreed, Dell may ship parts of an Order separately, choose the common carrier and shall arrange for shipment of the ordered Products to the ship-to address indicated in the Order, through a common carrier designated by Dell. Partner is responsible for inspecting the package(s) upon delivery and must note any visible damage on the proof of delivery (POD) or other delivery receipt Partner may be requested to sign. Dell will not be responsible for any visible shipping damages not noted on the delivery receipt. Partner must notify Dell within 21 days of the invoice date if any part of the Order is missing, wrong or damaged. Dell is not liable for any damage or loss to the Product when non-Dell provided shipping method is used for shipping from Dell to Partner or End User. Shipping and Delivery dates are indicative. Software may be provided by delivery of physical media or through electronic means.

4.2 Transfer of Risk of Loss and Title. Unless otherwise indicated in a respective attached Schedule, risk of loss and title for Products and licensed Software transfers to Partner or its representative upon Delivery. Title to and ownership of Software does not pass to Partner or End User. Software is licensed, not sold.

4.3 Acceptance. All Products and Third Party Products will be deemed to be accepted upon Delivery. Notwithstanding such acceptance, Partner retains all right and remedies under the warranty terms stated below.

4.4 No Returns. Neither Partner nor any of Partner’s End Users may return Products to Dell, except as expressly permitted under this Agreement or otherwise agreed in writing by Dell.

4.5 Security Interest. Where permitted by local law, Partner will hold Hardware on a fiduciary basis as Dell’s bailee, until full payment is received, including any late payment fees and costs of collection. Partner agrees Dell may file any

financing statements or related filings for protecting this security interest as Dell reasonably deems necessary or appropriate.

5. Software.

- 5.1 License Grant for Resale Purposes.** Subject to Partner's compliance with the terms of the Agreement, Dell grants to Partner a non-exclusive, non-transferable right to resell and distribute Software procured from Dell for resale purposes to the respective End User, for End User's internal business operations only. The quantity and definition of Software licensing units provided for resale, and any other usage conditions and restrictions, are agreed upon between Dell and Partner for each Order (usually provided in Dell's Quote), and Partner shall ensure that these are accurately reflected and detailed in the End User Agreement.
- 5.2 EULA-based Licensing.** End User's rights to use the Software delivered by Dell are governed by the terms of the applicable end user license agreement. Unless different terms have been agreed between the Parties, the terms posted on www.dell.com/eula (the "EULA") shall apply. Dell will provide a hard copy of the applicable terms upon request. Partner will ensure that each End User is notified that Software is subject to and governed by the EULA, and Partner will ensure the End User agrees and accepts such terms. Partner may not modify the EULA. 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.
- 5.3 Third Party Software.** Without limiting the generality of the foregoing [EULA-based Licensing](#) section above, for any Third Party Software, Partner shall comply with the applicable license terms and requirements of the applicable third party licensor. Partner will ensure all End Users are notified that the Third Party Software is subject to and governed by the applicable third party licensor's own license terms, and Partner will ensure the End User agrees and accepts such terms.
- 5.4 Activation Codes.** If Partner receives activation or registration codes or license keys ("**Activation Codes**"), Partner shall distribute the Activation Codes as directed by Dell and to activate (i) only the particular Software copy / licensing units for which the Activation Codes are intended by Dell to be used and (ii) only as many copies / licensing units of the Software as licenses Partner has purchased and resold to End User. Partner shall not reuse Activation Codes for multiple End Users or for multiple Software copies for the same End User. Partner must not use Activation Codes from any source other than Dell or an authorized representative.
- 5.5 Installation of Software by Partner on behalf of End User.** Before Partner downloads, installs, or otherwise uses Software on behalf of an End User, Partner shall (i) obtain the End User's written authorization to accept the applicable End User license terms on behalf of the End User, and (ii) comply with such terms when using the Software itself.
- 5.6 License Compliance Management.** Partner will immediately notify Dell if it becomes aware of any End User's violation of the End User license terms or Partner's license terms agreed with the End Users as they relate to the Software provided hereunder, and Partner shall refrain from waiving any rights or remedies against the End User in that regard. Partner will ensure that Dell has the ability to review and audit End User's usage of the Software for compliance with the applicable terms and shall collaborate with Dell in good faith on any audits conducted in relation to End User's usage. Dell may, without waiving any other rights or remedies and without liability to Partner or End User, suspend or terminate the provision of any Software license to End User in response to End User's violation or where Dell has valid reasons to believe that a violation has occurred.
- 5.7 Limitations.** Except for any Software license expressly granted to Partner in this Agreement, all rights in and to the Software provided for resale are retained by Dell or the respective third party, and no additional 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 End User license terms. Unless expressly agreed otherwise, 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 Dell's prior written consent and except as otherwise permitted by mandatory law (meaning a law that the Parties cannot change by contract), Partner shall not, and Partner shall not permit End User or any third party to do any of the following: (i) sublicense any Software, (ii) cause or permit the copying or reproduction of Software; (iii) translate, adapt, enhance, supplement, vary, or modify the Software or the related documentation; (iv) disassemble, decompile, or reverse engineer the Software, or create any derivative works based thereon; (v) use the Software to refurbish Dell's products; (vi) use Software in a hosting, service bureau, application service provider or similar capacity; or (vii) perform any comparative or competitive analyses, benchmark testing, or analyses of Products.¹

¹ **The Territory is in the U.S.: U.S. Government Restricted Rights apply.** The software and documentation provided with the Products and Services are "commercial products" as defined in Federal Acquisition Regulation ("FAR") 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as these terms are used in FAR 12.212 and Defense Federal Acquisition Regulation Supplement ("DFARS") Section 227.7202, as applicable. Consistent with FAR 12.212 and DFARS Section 227.7202, all U.S. Government end users acquire the software and documentation with only those rights set forth herein.

6. Services. Partner shall comply with Dell's guidelines and training materials, including all applicable Service Descriptions or Offering Specific Terms, with regards to the Services.

6.1 Services Flow-down Terms. Partner shall notify End User in Partner's End User Agreement that the provision and performance of Services are subject to and will be governed by, as applicable, the designated terms of sale for the Territory, Service Agreements, Offering Specific Terms, and Services Software terms (collectively, "**Services Flow-down Terms**").

The Services Flow-down Terms shall be defined as follows:

- (i) If the End User is located and Services will be delivered in the U.S., Partner will only resell Services to End Users who agree to be bound to (1) Dell's Commercial Terms of Sale set forth at www.dell.com/cts ("**U.S. CTS**"), or (2) such other written agreement as Dell may designate; and (3) all applicable Service Agreement(s).
- (ii) If the End User is located and Services will be delivered in Canada, Partner will only resell Services to End Users who agree to be bound to: (1) Dell's Commercial Terms of Sale (Canada) set forth at www.dell.ca/terms ("**Canada CTS**"), or (2) such other written agreement as Dell may designate; and (3) all applicable Service Agreement(s).

6.2 Where Partner seeks to distribute Offering or Services outside of the country to which the Offering or Services were delivered by Dell, the Services may, at Dell's discretion, not be available for delivery to the End User or the service levels available for delivery to the End User may differ from those detailed in the Service Description, depending upon the country in which the End User seeking the Services is located.

6.3 Partner is responsible, for the payment of all taxes, charges, levies, and fees assessed or imposed on any Services in any geography in which Partner or an End User receive the benefit of the Service.

6.4 Partner Notification. Partner shall notify End User by means of the End User Agreement that the provision and performance of Services are subject to and will be governed by the Services Flow-down Terms. Additionally, Partner acknowledges and agrees that Dell may present or, if requested by Dell, Partner shall present, the Services Flow-down Terms directly to the End User and Dell is not required to provide or perform any Services for such End User unless and until such End User has agreed to be bound by the Services Flow-down Terms, as may be determined in each case by Dell in its sole discretion. Partner shall immediately notify Dell if Partner becomes aware of any End User violation of any of the Services Flow-down Terms. Dell reserves the right, in its sole discretion, to suspend or terminate the provision of any of the Services to an End User in response to such End User's violation, or suspected violation, of any of the Services Flow-down Terms, and Dell will have no liability to Partner or End User as a result of any such suspension or termination.

6.5 Services Delivery. All Services will be performed by Dell, its third party providers or its subcontractors. Partner may not use, deliver, or perform any Services, including in its capacity as a managed services provider, absent a separate written agreement with Dell expressly authorizing the same.

6.6 Services Software. "**Services Software**" is software that Dell may make available to Partner and End User in connection with Services. Services Software may be hosted by Dell or its Affiliate or installed on End User's computers. Partner agrees that, and it will notify End User in an End User Agreement that, End User shall (i) only use the Services Software in connection with the Services, (ii) use any Services Software hosted by Dell in a lawful manner, without interfering with other Dell customers' 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 Dell's or Dell's licensors' or suppliers' intellectual property rights in the Services Software. It may be necessary for Dell 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. Partner agrees, and will ensure End User agrees, that (1) 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 and (2) Dell parties shall not be liable for any such interference with or prevention of Partner or End User's access to or use of the Services Software.

6.7 System Data.

- (a) In connection with Dell's performance or Partner's or End-User's use of the Products, Services, and Service Software, Dell may collect system data on the configuration, operation, performance and use of Products, Services, and Service Software through a telemetry collector ("**System Data**"), provided that this does not encompass any production data stored or processed by End User on or with a Product or Service. Partner's or End User's disablement of such features may entail disruption or disablement of the Product, Service or Service Software, as advised by Dell in the documentation or otherwise. System Data may be: (i) used by Dell or (ii) shared with third parties for lawful technical and commercial purposes, provided that any transfer by Dell to third parties requires appropriate protection of the confidentiality of End Customer and Partner-specific information and must be in line with applicable laws.

- (b) Dell shall exclusively own and retain all rights in System Data that is anonymized, i. e. that neither identifies Partner, nor End User, nor is personally identifiable with an individual, and such data shall be considered Confidential Information of Dell.
- (c) Partner shall notify End-User that Dell collects and uses System Data relating to the performance or use of Products, Services, and Service Software as described in section 6.7(a). Partner shall ensure its agreement with End-User for the purchase of Products or Services provide Dell the rights for System Data as set forth in subsections 6.7(a) and (b).

7. Invoicing; Payment Terms and Taxes.

7.1 Invoicing. Dell shall invoice in the currency agreed in the Order. If Dell is obligated by applicable law to collect and remit any taxes or fees, then Dell will add the appropriate amount to the invoices as a separate line item in accordance with statutory requirements. Dell may invoice parts of an Order separately or may invoice purchases of Products and Services in one (1) invoice. Additional charges will apply if Partner requests customized invoicing, consolidated invoicing, or other special billing arrangement or statements. All invoice terms will be deemed accurate unless Partner advises Dell in writing of a material error within ten (10) days from the date of such invoice. If Partner advises Dell of a material error, (i) any amounts corrected or modified by Dell in writing must be paid within fourteen (14) days of the correction, and (ii) Partner shall pay all other undisputed amounts by the invoice due date. If Partner withholds payment because the Partner believes an invoiced amount is incorrect, and Dell concludes that the amount is accurate, then the Partner must pay interest on the unpaid disputed amount from the due date until Dell's receipt of payment, subject to local laws. Partner may not offset, defer or deduct any invoiced amounts that Dell determines are correct following the notification process described in this paragraph. If Partner does not receive an invoice or acknowledgement in the mail or with the Products and/or Services, information about the purchase may be obtained by navigating to the Order Support page under Contact Support on the relevant www.dell.com country page or by contacting a Dell sales representative.

7.2 Payment Terms. Partner shall pay Dell's invoices in full per the account, currency, payment, time period and credit conditions stated in Dell's invoice. Where an invoice does not specify a payment term, then payment is due within 30 days after the date of the invoice, subject to continuing credit approval by Dell (such approval may be revoked by Dell without notice). Where permitted by local law, payments occurring after the invoice due date may generate late payment fees and interest. If not restricted by local statutory provision, Dell shall, without waiving any other rights or remedies, be entitled to charge interest, recovery costs, expenses, costs of collection or administrative fees ("**Fees**") on overdue amounts. Late payment fees and/or interest will be recalculated every 30 days thereafter based on the current outstanding balance at the rate and per the conditions based on the Territory and location: in North America, Dell shall be entitled to charge Fees the lesser of 1.5% per month (18% per annum) on undisputed overdue amounts, or the maximum rate permitted by law. Fees will be recalculated every 30 days based on the current outstanding balance. Dell, without waiving any other rights or remedies and without liability to Partner, may suspend Services, refuse to deliver Products, or accept new Orders until all overdue amounts are paid in full and seek collection of all amounts due, including reasonable attorneys and legal fees, expenses and costs of collection. Late payments may also result in immediate termination of the Agreement.

7.3 Taxes. Unless expressly stated otherwise in a Quote, the charges due hereunder are exclusive of, and Partner shall pay or reimburse Dell for, all value added (VAT) sales, use, property, excise, withholding and other similar taxes, governmental fees, customs, import duties and/or other applicable levies, resulting from Partner's purchase, except for taxes based on Dell's net income, gross revenue, or employment obligations. If the Partner qualifies for a tax exemption, Partner must provide Dell with a valid certificate of exemption or other appropriate proof of exemption. Partner is responsible for the payment of all taxes and fees assessed or imposed on Products and Services in any geography in which Partner or an End User receives the benefit of the Products and Services, including any sales, use, excise, value-added or comparable taxes, or any import or export duties or environmental handling fees, but excluding taxes for which a valid resale or exemption certificate has been provided. If Partner is required by law to withhold taxes, then Partner will within 60 days of remittance to the applicable tax authority provide Dell with satisfactory evidence (e.g., official withholding tax receipts) that Partner has accounted to the relevant authority for the sum withheld or deducted, otherwise Dell will charge Partner for the amount that Partner has deducted for the transaction. If Dell is obligated by applicable law to collect and remit any taxes or fees, then Dell will add the appropriate amount to Partner's invoices as a separate line item. Partner will defend and indemnify Dell from and against any claims, damages, liabilities, losses, costs and expenses (including reasonable attorneys' fees) arising out of or relating to any third-party claim or action relating to tax liabilities that are Partner's responsibility.

8. Equipment Warranty, Exclusions and Disclaimers.

8.1 Equipment Warranty. Dell warrants that Equipment, under normal usage and with regular recommended service, will be free from material defects in material and workmanship, and that Equipment will perform substantially in accordance with the corresponding standard documentation issued by Dell for the applicable Equipment. Unless provided otherwise in a Schedule, additional terms governing the limited warranties for Products and Services are found at www.dell.com or in the applicable documentation for the specific Equipment.

8.2 Support Services/Tag Transfer. As permitted by Dell, Partner may transfer the asset/service identification number (e.g., the Service Tag or Asset Number) to the End User that is associated with the Equipment purchased for resale. If Partner transfers the asset/service identification number, Partner must comply with the process found at www.support.dell.com, which process Dell may change from time to time. Partner's failure to properly transfer the

asset/service identification number of the Equipment will result in the End User's inability to receive Support Services from Dell for such Equipment, and Dell will not be liable to Partner or to any End User for any such failure.

8.3 Equipment Warranty Exclusions. Dell Product warranties do not cover problems that arise from (1) accident or neglect by Partner or any third party; (2) any third party items or services with which the Dell Product is used or other causes beyond Dell's control; (3) re-sale, installation, operation or use not in accordance with this Agreement, Dell's instructions or the applicable Documentation; (4) use in an environment, in a manner or for a purpose for which the Dell Product was not designed; (5) modification, alteration or repair by anyone other than Dell or its authorized representatives; or (6) in case of Equipment only, causes attributable to normal wear and tear. Dell has no obligation whatsoever for Dell Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without Dell's consent, for Equipment whose original identification marks have been altered or removed, or for any Dell Products for which payment has not been received. Products and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the Products or Services could lead directly to death, personal injury, or physical or property damage (collectively, "**High-Risk Activities**"). Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

(a) **Equipment Warranty Disclaimer.** Other than the warranties set forth in this Agreement, its Schedules, and to the maximum extent permitted by applicable law, Dell and its Affiliates, and their providers: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance or usage of trade. Partner shall not make any warranty on Dell's behalf. Partner is solely responsible for providing the End User with the correct warranty information, including term and coverage, and Partner shall indemnify and hold Dell harmless from any claims related to any warranty Partner grants that is beyond the Dell End User warranties set forth in the Agreement. Dell does not warrant that the Equipment will function (1) with any specific configuration not provided by Dell, or (2) to produce a specific result even if the configuration or result has been discussed with Dell.

(b) Products may contain qualified refurbished or reconditioned parts which meet all relevant test specifications and are functionally equivalent to new parts. Dell's applicable warranty terms apply equally to new, equivalent-to-new, refurbished or reconditioned parts. Parts used in repairing or servicing Products may also be new, equivalent-to-new, refurbished or reconditioned.

8.4 Software and Software Media Warranty. The warranties for Dell Software (if any) are stated in the applicable Dell Technologies [EULA](#).

8.5 Services Warranty. The warranties for Dell Services are stated in the applicable [Offering Specific Terms](#) and [Services Flow-down Terms](#).

8.6 Third Party Products Warranty. Third Party Products may carry a limited warranty from the third-party publisher, provider, licensor, or original manufacturer of such Third Party Products. Dell is not responsible for fulfillment of any Third Party Product warranty or for problems attributable to the use of Third Party Products. Dell will pass or assign to Partner, to the extent that it is permitted to do so, the benefit of any warranty or guarantee given by the manufacturer or supplier of such Third Party Products. Dell does not warrant that any Product will function in any specific configuration that includes any Third Party Products, or that any Product will function to produce a particular result, even if the specific configuration or the result has been discussed with Dell. Dell has no liability to Partner or End User for any damages or claims that arise out of or relate to Third Party Products. All Third Party Products are provided by Dell on an "as is" basis.

9. Indemnity.

9.1 Dell Intellectual Property Indemnity. Dell will: (a) defend Partner against any third party claim that Products or Support Services (but excluding Third Party Products, 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 Partner purchased the Product from Dell ("**Claim**"); and (b) indemnify Partner by paying: (1) the resulting costs and damages finally awarded against Partner 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 Dell. In addition, should any Product or Support Service become, or in Dell's opinion be likely to become, the subject of such a Claim, Dell may, at its expense and in its discretion: (a) obtain a right for Partner to continue using the affected Product or Support Service; (b) modify the affected Product or Support Service to make them non-infringing; (c) replace the affected Product or Support Service with non-infringing substitutes; (d) provide a reasonable depreciated or pro rata refund for the affected Product; or (e) discontinue the Support Services and refund the portion of any prepaid Support Service fees that correspond to the period of Support Services discontinuance. Except as otherwise provided by law, this Dell Indemnity section states Partner's exclusive remedies for any third party intellectual property claim relating to Products or Support Services, and nothing in this Agreement or elsewhere will obligate Dell to provide any greater indemnity.

9.2 Exclusions from Indemnity. Dell has no obligation under section "Dell Intellectual Property Indemnity" above: (i) if Partner is in material breach of this Agreement; or (ii) for any Claim resulting or arising from (1) any combination, operation, or use of a Dell Product with any other products, services, items, or technology, including Third Party Products and open source software; (2) use for a purpose or in a manner for which the Dell Product was not designed,

or use after Dell notifies Partner or End User to cease such use due to a possible or pending Claim; (3) any modification made by any person other than Dell or its authorized representatives; (4) any modifications made by Dell pursuant to instructions, designs, specifications or any other information provided to Dell by or on behalf of Partner or End User; (5) use of any version of a Dell Product when an upgrade or newer iteration of the Dell Product made available by Dell would have avoided the infringement; (6) services provided by Partner or End User (including Claims seeking damages based on any revenue Partner or End User derives from Partner's or End User's services); or (7) any data or information which Partner or a third party records on or utilizes in connection with the Dell Products (subsections 1 through 7 are collectively the "**Excluded Claims**"). Dell has no obligation to defend or indemnify any End User or any other third party.

9.3 Partner Indemnity. Partner will defend and indemnify Dell and its Affiliates against any third party claim resulting or arising from or relating to: (i) Partner's failure to obtain or maintain any appropriate license, intellectual property rights, or other permissions, regulatory certifications or approvals associated with any product, software, technology, data or other materials Partner provides, request or direct to be installed or integrated as part of the Products or Services; (ii) Partner's misuse or modification of any Products or Services or violation of Dell's or Dell Affiliate's proprietary rights; (iii) Partner's combination, operation or use of any of the Products or Services with any Third Party Product, where such combination, operation or use infringes or misappropriates any intellectual property right or trade secret of a third party; (iv) fraud, misrepresentation, gross negligence, willful misconduct, or breach of or noncompliance with any provision of this Agreement and/or any of the applicable local laws; (v) tax liabilities that are Partner's responsibility; (vi) the provision of Partner's own products, software, or services; (vii) the relationship or transactions between Partner and an End User; (viii) any false or inaccurate representation by Partner or its agent regarding an export license or the applicability or inapplicability of a license requirement or exception; (ix) any allegation made against Dell or Dell Affiliate due to Partner violation or alleged violation of any applicable customs, export control, or Sanctions laws or regulation; or (x) the Excluded Claims.

9.4 Indemnification Process. Dell's duty to defend and indemnify under this section is contingent upon (i) Partner's sending prompt written notice of the Claim to Dell, (ii) Partner's granting to Dell the sole right to control the defense and resolution of the Claim, and (iii) Partner's cooperation in Dell's defense and resolution of the Claim, and in mitigating any damages. Dell has no obligation to defend or indemnify any End User or any other third party.

10. Limitation of Liability.

10.1 Limitations on Damages. The limitations, exclusions and disclaimers stated below apply to all Disputes to the extent allowed by applicable local law. The terms of this clause are agreed allocations of risk constituting part of the consideration for Dell and its Affiliates' sale of Products and Services to Partner and will apply notwithstanding a failure of the essential purpose of any limited remedy, and regardless of whether a Party has been advised of the possibility of the liabilities.

10.2 Limitation on Direct Damages. Except for Partner's obligations to pay for the Offerings, Partner's violation of the restrictions on use of Products and Services or Dell or its Affiliates' intellectual property rights, and to the extent permitted by the applicable local law, Dell's (including its suppliers') total liability arising out of any Dispute or any matter under the Agreement, is limited to the lower amount of either (a) the amount Partner paid to Dell during the 12 months before the date that the matter or Dispute arose for the Product, Services or both that are the subject of the Dispute; or (b) \$1,000,000 USD (or equivalent in local currency) ("Liability Cap"). This excludes amounts received as reimbursement of expenses or payment of taxes. The existence of more than one claim will not increase or otherwise alter these limitations on Dell's liability. Notwithstanding anything otherwise set forth above, Dell (and its suppliers) shall have no liability for any direct damages resulting from Partner's use or attempted use of Third-Party Software, Free Software or Development Tools (all defined in the EULA), or Third Party Products.

10.3 Disclaimer of Certain Other Damages. Except for Partner's payment obligations and violation of Dell's or its Affiliates' intellectual property rights, neither Dell (and its suppliers) nor Partner has liability to the other for:

- (i) Indirect, incidental, consequential, special, exemplary, or punitive damages;
- (ii) lost profits, loss of revenue, or income;
- (iii) business interruption or downtime;
- (iv) loss or corruption of data or software, loss of use;
- (v) procurement of substitute products or services; or

10.4 Notwithstanding anything in this Agreement or on Dell's website to the contrary, Dell (and its Affiliates and its suppliers) is not responsible for information or data Partner provides to Dell unless Partner has a separate written agreement to the contrary. Dell (and its Affiliates and suppliers) does not accept liability beyond the remedies set forth in this Agreement.

10.5 Prevention and Mitigation. Partner shall notify End User by means of the End User Agreement of End User's obligations under this Prevention and Mitigation section. End User is solely responsible for its data. End User shall implement IT architecture and processes enabling End User to prevent and mitigate damages in line with the criticality of the systems and data for End User's business and its data protection requirements, including a business recovery plan. In that regard, End User shall: (i) provide for a backup process on a regular (at least daily) basis and backup relevant data before Dell performs any remedial, upgrade or other works on End User's IT systems; (ii) monitor the

availability and performance of its IT environment during the performance of Services; and (iii) promptly react to messages and alerts received from Dell or through notification features of the Products and immediately report any identified issue to Dell. To the extent that Dell has any liability for data loss, Dell shall only be liable for the cost of commercially reasonable and customary efforts to recover the lost data from End User's last available backup.

10.6 Limitation Period. Except as stated in this section, all claims must be made within the period specified by applicable law. If the law allows the Parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within 18 months after the cause of action accrues.

11. Confidentiality.

Partner may have access to or be exposed to (through the Partner Portal or other means) any materials, data, or information, whether in written, oral, electronic, website-based, or other forms, that is not generally known to the public (collectively, "Confidential Information"). If not required otherwise under the applicable local laws, Partner will keep all Confidential Information strictly confidential until three (3) years after the termination of this Agreement, using at least the same degree of care as used to protect its own confidential information, but no less than reasonable care. Notwithstanding anything to the contrary in this Agreement, Partner's confidentiality obligations with respect to Personal Information, trade secrets of Dell or its Affiliates, and technical information about current Product and Services and all information about unreleased products and services) shall never expire. Partner may share Confidential Information with Partner's employees only who have a need to know in furtherance of the business relationship between Partner and Dell and who are subject to legally binding obligations of confidentiality at least as restrictive as those imposed on Partner in this Agreement. Partner is fully liable for any breach of this paragraph by its personnel. These confidentiality obligations do not apply to any Confidential Information that (a) Partner can demonstrate was already in Partner's possession before receipt from Dell; (b) is or becomes publicly available through no fault by Partner or its personnel; or (c) Partner rightfully received from a third party who has no duty of confidentiality. If Partner is required by a government body or court of law to disclose any Confidential Information, to the extent permitted by law, Partner agrees to give Dell reasonable advance notice so that Dell may contest the disclosure or seek a protective order. Partner acknowledges that damages for improper disclosure of Confidential Information may be irreparable, and that Dell shall be entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available at law or in equity. Notwithstanding any separate confidentiality agreement Partner may have with Dell, Partner authorizes and agrees that information regarding Partner's business with Dell and information, including Personal Information, Partner provides to Dell in connection with the Partner Program may be accessed and used by Dell and its Affiliates and their employees and contractors for sales and marketing purpose and for any purpose related to the Partner Program or the relationship between Partner and Dell (collectively, "Purpose") and may be disclosed to relevant Distributors or resellers, governing body, or Partner's customers or End Users for the Purpose or to fulfill Dell's obligations to Partner and/or its customers or End Users.

12. Termination.

12.1 Termination for Convenience. Either Party may terminate this Agreement at any time, upon 60 days' written notice.

12.2 Suspension or Modification of Services. Dell may immediately terminate, the Agreement, its Schedules, any Service Agreements, SOWs or software licenses, should Dell, in its sole judgment, believe that Partner is involved in any fraudulent or illegal activities or if Partner has breached any Export Control or Anti-Corruption Laws sections of the Agreement.

12.3 Termination for Material Breach. Dell may terminate the Agreement, its Schedules, Service Agreements, SOWs, or licenses for Software without prejudice to any other rights or remedies upon 10 days' written notice if: (a) Partner is delinquent on its payment obligations (where payment is not subject to a good faith dispute); (b) Partner fails to make the payment within 10 days after receiving written notice of the past due amount; (c) a material breach not cured within 30 days of the breaching Party's receipt of written notice of the breach; or (d) if a Party becomes insolvent, declares bankruptcy or is adjudicated bankrupt or a receiver or trustee is appointed for substantially all of its assets. Dell may terminate the Agreement, its Schedules, Service Agreements or SOWs immediately if Partner is acquired by or merged with a competitor of Dell or any of its Affiliates; or Partner breaches any intellectual property rights, obligations, warranties, and indemnities.

13. Partner Responsibilities.

In addition to other obligations set forth in this Agreement, Partner is responsible for the following:

13.1 End User Documentation. Partner will provide each End User with appropriate product warranty statements, registration cards, software license agreements and other materials that Dell includes with its shipments of Products. If applicable and as approved in writing by Dell, Partner is responsible for providing all similar information related to its addition or modification to the Products. Partner acknowledges and agrees that Dell is a Third Party beneficiary of the End User Agreement and may enforce the provisions thereof directly against the End User or through the Partner, and the Partner shall require the End User to acknowledge and agree to such in the End User Agreement.

- 13.2 Business Conduct.** At all times Partner will conduct business in a manner which reflects favorably on the Products, Services, and goodwill and reputation of Dell Technologies. Partner will use best efforts to conduct its business in an ethical manner and to avoid any business practices that may be perceived as deceptive, misleading or otherwise improper. Partner will not make any false or misleading statement in Partner's marketing or sales materials. In connection with activities related to this Agreement, the Partner Program, or Partner's purchasing, marketing, sale or distribution of Products and Services. Partner will comply with its obligations under the [Dell Technologies Partner Code of Conduct](#).
- 13.3 Anti-Corruption Laws.** Partner agrees to comply with all applicable anti-corruption and anti-bribery laws, including, without limitation, the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010, and local applicable regulation (the "**Anti-Corruption Laws**").
- (a) In connection with this Agreement, neither Partner, nor any person or entity acting on Partner's behalf ("**Associated Person**"), shall directly or indirectly (a) offer, promise, authorize or transfer to, or (b) request, solicit, or demand from any person or Government Official (as defined below) anything of value to improperly influence, induce or reward any act, decision, or omission to obtain or retain business or secure any improper advantage. "**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.
 - (b) Partner shall impose upon any Associated Person obligations to comply with the Anti-Corruption Laws that are no less onerous than those in this Agreement and shall require Associated Persons to agree to terms no less restrictive than those contained in this section.
 - (c) Partner shall maintain, monitor, and enforce, throughout the duration of the dealings between Partner and Dell, its own reasonably adequate anti-corruption policies, procedures, and controls to ensure compliance with the Anti-Corruption Laws, including without limitation, policies and procedures relating to prevention of bribery, accounting for financial transactions, due diligence on third parties, and training of personnel.
 - (d) Dell may immediately suspend or terminate its performance under this Agreement if Partner refuses to provide information to confirm its compliance with this section. Dell shall not be liable to Partner for any claims or damages related to Dell's decision to withhold payments under this section.
- 13.4 Unauthorized Parts.** To the extent permitted by law, Partner will not, and will not permit its End User to, configure Dell Products with Unauthorized Parts. Partner shall not unpack Dell's original packaging of the Products for resale without prior approval in writing from Dell. Partner shall not disassemble Products, sell parts of the Products nor replace any parts of the Products without prior approval in writing from Dell.
- 13.5 Audit and Record-Keeping.** Partner will maintain legible, accurate and complete books and records relating to the Agreement or the marketing, sale, licensing, delivery, or end-use of Products and Services for a period of 10 years from the date of creation. At the end of the retention period, Partner must dispose of all records appropriately. At Dell's request, Partner must cooperate and assist Dell with any audit, review, or investigation ("**Audit**") that relates to (i) the Agreement or compliance with law; (ii) Partner marketing, sale, distribution, licensing, or delivery of Dell Products and Services, whether sourced from Dell or a third party; (iii) any amounts payable by Dell; or (iv) any amounts due to Dell. In connection with an Audit, Partner will deliver all records, information, and documents reasonably requested by Dell. Dell has the right to conduct onsite Audits, and Partner will grant Dell and its employees and representatives reasonable access to information, records, personnel, and customers (including End User Agreements and other agreements to verify Partner's compliance with the Agreement) and provide entry and access to Partner 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 Dell is a material breach of this Agreement. Dell will pay the costs of an Audit except where a discrepancy of five (5) percent or more is discovered in the information disclosed by Partner, in which case Partner agrees to be responsible for all reasonable costs.
- 13.6 Insurance.** Partner will obtain and maintain commercial general liability, including products liability, insurance in an amount appropriate for its business, but in no event less than \$1,000,000.00 (U.S.), with an insurance company having an AM Best rating of A minus or better or similar local rating agency if not subject to AM Best. Partner will name Dell as an additional insured on all commercial general liability insurance policies procured. Upon request, Partner will provide to Dell a certificate of the above-mentioned insurance, including any new or amended certificates of insurance.
- 13.7 Environmental Regulatory Requirements.** Partner will comply with the requirements of any applicable environmental laws, rules, regulations, similar legislation, and requirements of any government body and all applicable codes of conduct and other similar principles laid down by any representative body of the industry whether voluntary or mandatory in other countries or jurisdictions, as applicable.
- 13.8 Excluded Data.** Partner acknowledges and will inform End User that Products and Services are not designed to process, store, or be used in connection with Excluded Data. End User or Partner is solely responsible for reviewing data that will be provided to or accessed by Dell to ensure that it does not contain Excluded Data.

14. General.

14.1 Governing Law. To the extent as permitted by law and unless stated in a Schedule or the Offering Specific Terms, this Agreement and any Dispute shall be governed by the laws of the State of Texas (for the US) or the province of Ontario and the federal laws of Canada applicable therein (for Canada), without regard to conflicts of law principles. To the extent permitted by local law, Partner agrees to submit to, and waive any objection to, the jurisdiction of the courts located in the applicable location stated. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.

In addition to the section titled "[Governing Law](#)" above, the Parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute. Neither Party is entitled to join or consolidate claims by or against other resellers or pursue any claim as a representative or class action, or in private attorney general capacity. As a condition precedent to filing any lawsuit, the Parties will attempt to resolve any Dispute against Dell or any Dell Affiliate through negotiation with persons fully authorized to resolve the Dispute, or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Although the merits of the underlying Dispute will be resolved in accordance with this section, any Party has the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitation periods or preserve a superior position with respect to other creditors. If the Parties are unable to resolve the Dispute within 30 days (or other mutually agreed time) of notice of the Dispute to the other Party, the Parties will be free to pursue all remedies available at law or in equity. In any Dispute (other than Dell's efforts to collect overdue amounts from Partner) each Party will bear its own attorneys' fees and costs or legal expenses and expressly waives any statutory right to attorneys' fees under § 38.001 of the *Texas Civil Practices and Remedies Code* or other similar applicable laws.

14.2 Trade Compliance. Partner 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. Partner agrees, without limitation, to abide by, and to assume sole responsibility for obtaining, and complying with the requirements of, all required export, re-export, in-country transfer, and import licenses, registrations, and other government authorizations relating to the Products and Services provided under this Agreement. Partner shall require End Users to agree to terms no less restrictive than those contained in this section. Non-compliance with this section shall be a material breach of the Agreement.

- (a) Materials may not be used, sold, leased, exported, imported, re-exported, or transferred (i) except in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use, and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's ("OFAC") Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Entity List, Denied Persons List, Military End User List, and Military Intelligence End User List and (ii) to Russia or Belarus without Dell's prior written authorization. Partner represents and warrants that it is not the subject or target of, and that Partner is not located in a country or territory (including without limitation North Korea, Cuba, Iran, Syria, and Crimea and the so-called Donetsk People's Republic and Luhansk People's Republic) that is the subject or target of, economic sanctions of the United States, European Union or other applicable jurisdictions (collectively, "**Sanctions**").
- (b) Partner agrees that it will obtain all necessary rights, permissions and consents associated with: (a) technology or data (including personal data) that Partner and its Affiliates provide to Dell or its Affiliates, and (b) non-Dell software or other components that Partner and its Affiliates direct or request that Dell or its Affiliates use with, install, or integrate as part of the Dell's Offerings. Partner is solely responsible for reviewing data that will be provided to or accessed by Dell in the provision of the Offerings to ensure that it does not contain: (i) data that is classified, ITAR (International Traffic in Arms Regulations) related data, or both; or (ii) articles, services, and related technical data designated as defense articles and defense services.
- (c) Partner will defend and indemnify Dell and its Affiliates against any third party claim resulting from a breach of any of the foregoing obligation under this Trade Compliance section, or from Partner's infringement or misappropriation of intellectual property rights of Dell, its Affiliates or third parties.
- (d) Partner shall have adequate policies, procedures, and controls in place to ensure its compliance with this Trade Compliance section. Partner shall have comparable export terms with its End Users and shall ensure that the Products and Services provided in connection with this Agreement will not be exported, re-exported, sold, leased or otherwise transferred to, or utilized by, an End User engaged in any of the following activities: (i) military end-uses, including any activities related to the design, development, production or use of: (A) weapons of mass destruction; (B) nuclear chemical or biological weapons, including related materials or facilities; (C) missiles or the support of missile projects; (ii) terrorist activities; (iii) exploration or production of oil and gas in Arctic, deep water (greater than 500 feet or metric equivalent), energy export pipelines or shale formations in Russia or in, by, or with Russian companies, territories, or any other entities as identified by BIS and/or OFAC. Partner's controls shall include screening of transactions with its end-customers to ensure compliance with sanctions laws. Partner shall also have appropriate procedures in place to comply with (and to ensure timely reporting under) the requirements of the anti-boycott laws and regulations of the United States and other jurisdictions in which Dell Technologies does business.
- (e) Partner shall notify Dell immediately if Partner or any of Partner's or Partner's subsidiaries' directors, administrators, officers, board of directors (supervisory and management), members or employees is the subject or target of any Sanctions. Partner further agrees to provide reasonable notice to Dell of any government action or communication that Partner receives or becomes aware of concerning sanctions or trade compliance relating to the Products and/or Services provided herein by or to Partner.
- (f) For all Dell Offerings where the Incoterm is Ex Works (EXW), Partner shall enter into an Ex-Works Schedule in advance of any shipment and comply with such Schedule.

- 14.3 Encryption.** Partner is solely responsible for reviewing data that it will provide to Dell (or to which Dell will have access) and certifies that all items (including hardware, software, technology and other materials) it provides to Dell for any reason that contain or enable encryption functions either (a) satisfy the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 of the Wassenaar Arrangement on Export Controls for Conventional Arms (Wassenaar Arrangement) and Dual-Use Goods and Technologies and Category 5, Part 2 of the U.S. Commerce Control List (CCL) or (b) employ key length of 56-bit or less symmetric, 512-bit asymmetric or less, and 112-bit or less elliptic curve or (c) are otherwise not subject to the controls of Category 5, Part 2 of the Wassenaar Arrangement and Category 5, Part 2 of the CCL. Dell is not responsible for determining whether any Third Party Product to be used in or with the products and services by Partner satisfies regulatory requirements of the country to which such products or services are to be delivered or performed. Dell shall not be obligated to provide any product or service where the product or service is prohibited by law or does not satisfy the local regulatory requirements.
- 14.4 Entire Agreement.** This Agreement (including all online terms referenced herein) and the Dell quote and each Order: (i) comprise the complete statement of the agreement between the parties with regard to its subject matter, and (ii) supersede all prior or contemporaneous, written or oral understandings, communications, or agreements between the parties regarding such subject matter. No Party is relying upon the representations or statements of the other that are not fully expressed in this Agreement, and each Party is relying on its own judgment and due diligence and expressly disclaims reliance upon any representations or statements not expressly set forth in this Agreement. Any claims by any Party of fraud in the inducement of this Agreement or any Dell quote or any Order based on any statements, representations, understandings, or omissions, whether oral or written, that are not fully expressed in this Agreement, or the applicable Dell quote are expressly waived and released.
- 14.5 Force Majeure.** Except for payment of amounts due and owing, neither Party will be liable for failure to perform its obligations if performance is delayed or rendered impracticable due to circumstances beyond that Party's reasonable control including, without limitation, fire, acts of God / nature (such as flood, tornado, earthquake), war, epidemics / pandemics, terrorism, embargo, strike, riot, civil commotion, malicious damage, accident, breakdown of plant or machinery, general import/export/customs process problems affecting supplies, shortage in materials, failure of a utility service or transport network, lock out of other industrial dispute, local or national emergency, explosions, fire, the intervention of any governmental authority, or default due to any of the preceding events ("**Force Majeure**"), provided that the delayed Party shall provide the other Party with prompt written notice. If such delay or failure lasts longer than 30 days, then the other Party may immediately terminate the relevant Order, in whole or in part, by giving written notice to the delayed Party.
- Dell shall not be liable to Partner or End User for any delays or failure to perform its obligations during any period in which such performance is delayed or rendered impracticable or impossible due to circumstances beyond its reasonable control, including fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority.
- 14.6 Assignment; Subcontracting.** Partner may not assign the Agreement, a Dell Quote, an Order or any right or obligation under the Agreement, or delegate any performance, without Dell's prior written consent, which will not be unreasonably withheld. An assignment of Partner's Order to Dell's Affiliates, Dell Financial Services, LLC, Dell Financial Services Canada Ltd., or other financial institutions does not require consent. Even if Dell consents to an assignment or delegation, Partner remains responsible for all obligations to Dell under the Agreement, a quote, or Order that Partner incurred prior to the effective date of the assignment or delegation. Partner's attempts to assign or delegate without Dell's prior written consent is void. Dell may use its Affiliates or other qualified subcontractors to provide Services to Partner but Dell remains responsible to Partner for the performance of those Services.
- 14.7 Independent Contractors.** No provision of this Agreement will be deemed to create an association, trust, partnership, joint venture or other entity or similar legal relationship between the Parties or third parties hired by Partner's subcontractors, or impose a trust, partnership, or fiduciary duty, obligation, or liability on or with respect to such entities. Partner and Dell are independent contractors. Neither Party will make any representations or warranties, or assume any obligations, on the other Party's behalf. Neither Party is or will claim to be a legal representative, franchisee, agent or employee of the other Party.
- 14.8 Waiver and Severability.** Failure to enforce a provision of the Agreement will not constitute a waiver of that or any other provision of the Agreement. If any part of this Agreement or an Order is held unenforceable, the validity of all remaining provisions shall not be affected.
- 14.9 Notices.** All notices and other required communications to Dell shall be in writing and sent to the [Dell entity and location](#) set out in the first page of this agreement with a copy to the Dell email address Dell_Legal_Notices@dell.com (with an additional copy to Canada_Legal@dell.com (for Canada)). Written notice shall be provided by electronic mail with confirmed receipt. All such notices will be effective upon receipt.