



Software Evaluation License Agreement

This Software Evaluation License Agreement (“EULA”) is between the business entity that will use the Software (“You” or “Company”) and the applicable entity identified in the “Licensor Table” located at www.dell.com/swlicensortable (“Licensor”). For purposes of this EULA, “Dell” shall refer to Dell Marketing L.P. or one of its affiliates.

This EULA governs Your use of: (a) the Dell branded software made available to you for use via download or otherwise with this EULA; (b) associated software license keys, if any (“License Keys”); (c) updates to such software (“Updates”); (d) the documentation for such software; and (e) all copies of the foregoing; (collectively, “Software”). If You accept this EULA, or if You install or use the Software, then You agree to this EULA. If You accept this EULA or install or use the Software on behalf of a business entity, then You represent that You have authority to take those actions, and this EULA will be binding on that business entity. If You do not agree to this EULA, do not install or use the Software.

1. License Grant.

1.1. Right to Use. Subject to and in consideration of your full compliance with the terms and conditions of this EULA, Licensor grants to You a temporary, personal, non-exclusive, non-transferable, fee-free license to use the Software in Your non-production environment for the sole purposes of: (a) evaluation and testing for purchase considerations; and (b) supporting Dell’s development activities, including without limitation, activities such as hardware and/or software evaluation, integration, testing and validation. You may use the Software solely on qualified, supported Dell hardware configurations in accordance with the usage limits set forth herein.

1.2. Third Party Use. You may allow Your contractors (each, a “Permitted Third Party”) to use the Software in compliance with this EULA solely for the purpose of helping You exercise Your rights in Section 1.1 above. You are liable for any Permitted Third Party breach of this EULA.

1.3. Rights Reserved. The Software is licensed and not sold. Except for the license expressly granted in this EULA, Licensor, on behalf of itself and its affiliates, retains ownership of the Software and all related intellectual property rights in and to the Software. The rights in the Software are valid and protected in all forms, media and technologies existing now or hereafter developed. Any use of Software other than as expressly stated in this EULA is prohibited.

1.4. Feedback. You agree to participate in discussions with Dell regarding your use of the Software. During these discussions, you agree to provide your assessment of the Software, and any other feedback, as further requested by Dell. If you create any reports, testing data or results, benchmarking or other analysis completed in whole or in part in conjunction with usage of the Software, you will provide a copy to Dell. All documents and information that you provide to Dell under this Section is owned by Dell and may be used or not used, as Dell deems appropriate, without any compensation to you.

2. License Conditions.

2.1. You and Your Permitted Third Parties must do the following:

- A. Run the Software only on the hardware or in an environment for which it was intended to operate, when applicable;
- B. Use License Keys (if applicable) only from Licensor or an authorized Dell License Key provider;
- C. Treat the Software as Dell confidential information;
- D. Use the Software only on one computer or device, in the configuration permitted by Dell or Licensor, and/or in accordance with the applicable unit of measure located at www.dell.com/UOM_terms.

- E. Abide and be responsible for compliance with the (collectively, "Applicable Trade Laws"). Software may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with the Applicable Trade Laws. You represent and warrant that You or Your Permitted Third Parties are not the subject or target of, or located in a country or territory that is the subject or target of economic sanctions under the Applicable Trade Laws. For further information about geographical restrictions and compliance with Applicable Trade Laws, visit www.dell.com/tradecompliance; and
- F. Comply with all Third Party Terms (as defined in Section 4 below).

2.2. You must not, and must not allow Your Permitted Third Parties, to do the following:

- A. Modify or remove any proprietary notices or markings on or in the Software;
- B. Transfer License Keys to any other person or entity;
- C. Download Updates from Licensor or an authorized provider unless Licensor specifically authorizes You to do so;
- D. Violate or circumvent any technological use restrictions in the Software;
- E. Sell, loan, rent, lease, sublicense, distribute or encumber (e.g., by lien, security interest, etc.) the Software;
- F. Use any trademarks or service marks of Licensor, its affiliates or suppliers;
- G. Provide access to the Software or allow use by any third party, other than Permitted Third Parties, without Licensor's prior written consent;
- H. Copy, republish, upload, post or transmit the Software in any way;
 - I. Modify or create derivative works based upon the Software, or decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part;
 - J. Attack or attempt to undermine the security, integrity, authentication or intended operation of the Software;
 - K. Use the Software in a production environment, including in a service bureau, rental or managed services basis;
 - L. Create or permit others to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server, wireless or Internet-based device;
- M. Use the Software to create a competitive offering;
- N. Use the Software to create other software, products or technologies;
- O. Create, share or publish the results of any benchmarking of the Software without Dell's prior written consent; and
- P. Assign this EULA, or any right or obligation under this EULA, or delegate any performance, without Dell's prior written consent.

3. Compliance Verification. Upon Dell's request, you will provide Dell a written statement signed by one of Your officers attesting under penalty of perjury that Your use of the Software complies with this EULA. Dell may audit Your use of the Software upon thirty days' advance written notice and you agree to comply fully and timely with that audit.

4. Third Party Software. "Third Party Software" is software, including open source software, that is contained in or provided with the Software and is licensed by a third party under its own terms of use ("Third Party Terms"). Third Party Software is governed solely by the applicable Third Party Terms and not by this EULA. For certain open source software, the applicable Third Party Terms may entitle You to obtain the corresponding source files. Contact Dell if you would like to obtain the source files.

5. Support Services Not Included. Dell does not provide support and maintenance with the Software.

6. Termination. This EULA automatically terminates forty-five (45) after Dell makes the Software available to you. Licensor may terminate this EULA if You or a Permitted Third Party commits a material breach of this EULA and fails to cure such breach within five days following Your receipt of notice of the breach from Dell. When this EULA terminates, all licenses granted automatically terminate and You must immediately cease use of the Software and return or destroy all copies of the Software. Rights and obligations under Sections of this EULA that, by their nature should survive, will survive termination.

7. Warranty Disclaimer. Licensor provides the Software under this EULA “As Is” without any warranties or conditions. To the maximum extent permitted by applicable law, Licensor, on behalf of itself and its affiliates and suppliers: (a) makes no express warranties or conditions related to the Software; (b) disclaims all implied warranties and conditions related to the Software, including merchantability, fitness for a particular purpose, title, and non-infringement; and (c) disclaims any warranty or condition arising by statute, operation of law, course of dealing or performance, or usage of trade. Licensor does not warrant uninterrupted or error-free operation of the Software.

8. Limitation of Liability.

8.1. Limitations on Damages. Dell has no liability for any direct, special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use or procurement of substitute products or services. The terms of this Section are agreed allocations of risk constituting part of the consideration for Licensor’s licensing of Software to You and will 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 possibility of the liabilities. If applicable law prohibits any portion of the limits on liability stated below, the parties agree that such limitation will be automatically modified, but only to the extent required to make the limitation compliant with applicable law.

8.2. Regular Backups. You are solely responsible for Your data and for backing up data, if any, that you use in connection with the Software. You acknowledge that it is a best practice to have more than one back up copy of Your data. If applicable law prohibits exclusion of liability for lost data, then Licensor will only be liable for the cost of the typical effort to recover the lost data from Your last available back up.

8.3. 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 eighteen months after the cause of action accrues.

9. Confidential Information. Each of the parties may have access or be exposed to 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”). The recipient will keep all Confidential Information strictly confidential until 3 years after the termination of Customer’s access to the Software, using at least the same degree of care as it uses to protect its own confidential information, but no less than reasonable care. Notwithstanding anything to the contrary in this EULA, Customer’s confidentiality obligations with respect technical information about current products and services and all information about unreleased products and services of Dell shall never expire. The recipient may share Confidential Information only with its employees who have a need to know in furtherance of the business relationship between Customer and Dell and who are subject to legally binding obligations of confidentiality at least as restrictive as those imposed in these Terms. The recipient is fully liable for any breach of this paragraph by its personnel, including contractors. These confidentiality obligations do not apply to any Confidential Information that: (a) the recipient can demonstrate was already in its possession before its disclosure hereunder; (b) is or becomes publicly available through no fault of the recipient or its personnel; or (c) is rightfully received from a third party who has no duty of confidentiality. If the recipient is required by a government body or court of law to disclose any 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. The recipient acknowledges that damages

for improper disclosure of Confidential Information may be irreparable and that the discloser 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 between Dell and the Customer, Customer authorizes and agrees that the information regarding its business with Dell, and information Customer provides to Dell, in connection with the Software may be accessed and used by Dell and their employees and contractors for sales and marketing purposes and for any purpose related to the relationship between Customer and Dell.

10. Additional Terms.

10.1. Notices. The parties will provide all legal notices under this EULA in writing. You must provide notices to Dell at Dell_Legal_Notices@dell.com.

10.2. Waiver and Severability. Failure to enforce a provision of this EULA will not constitute a waiver of that or any other provision of this EULA. If a court of competent jurisdiction determines that any part of this EULA or document that incorporates this EULA by reference is unenforceable, that ruling will not affect the validity of all remaining parts.

10.3. Modifications. This EULA may only be modified in writing signed by both parties; provided, however, that Licensor may update the Licensor Table at any time.

10.4. Governing Law and Jurisdiction.

- A. If the entity on whose behalf You accepted this EULA is domiciled in the United States or Canada: (1) this EULA and any Dispute is governed by the laws of the State of Texas (excluding the conflicts of law rules) and the federal laws of the United States; and (2) to the extent permitted by law, the state and federal courts located in Texas will have exclusive jurisdiction for any dispute under this EULA. Both parties agree to submit to the personal jurisdiction of the state and federal courts located within Travis or Williamson County, Texas, 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.
- B. If the entity on whose behalf You accepted this EULA is domiciled outside of the United States or Canada: (1) this EULA and any dispute under it is governed by the substantive laws in force in the country in which the Licensor is located (as indicated in the Licensor Table located at www.dell.com/swlicensortable), without regard to its conflict of law rules; and (2) the exclusive place of jurisdiction for any dispute shall be in such country.
- C. In any event, neither the U.N. Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act shall apply to this EULA or any dispute under it.

10.5. No Third Party Beneficiaries. There are no third party beneficiaries of this EULA.

10.6. Entire Agreement. You acknowledge that You have read this EULA, that You understand it, that You agree to be bound by its terms, and that this EULA is the complete and exclusive statement of the agreement between You and Licensor regarding Your use of the Software. All content referenced in this EULA by hyperlink is incorporated into this EULA in its entirety and is available to You in hardcopy form upon Your request. You represent that You did not rely on any representations or statements that do not appear in this EULA when accepting this EULA.