

Dell EMC Cloud Services Terms of Service
Effective Date: April 26, 2017

NOTE: This version is being provided for archival purposes only.

The current Dell EMC Cloud Services Terms of Service are posted at www.dell.com/dellemcloudterms

These Dell EMC Cloud Services Terms of Service (“Terms”) apply to the Services, including Pre-GA and Evaluation Services, and will be binding on Customer and Dell EMC when Dell EMC makes any of these available for Customer’s use. The term “Dell EMC” means: (i) EMC Corporation, if Customer is located in North America; or (ii) EMC Information Systems International, if Customer is located outside of North America. Each Service has applicable Supplemental Terms.

1. Right to Use

- 1.1 Services.** Subject to Customer’s compliance with these Terms, Dell EMC grants to Customer during the Service Period a limited, non-exclusive, non-transferable and revocable right to access and use solely for Customer’s own benefit the Services purchased by Customer, or that Customer has otherwise been authorized to use.
- 1.2 Software.** Subject to Customer’s compliance with these Terms, Dell EMC grants to Customer during the Service Period a limited, non-exclusive, non-transferable and revocable license to use Related Software, if any, provided by Dell EMC as part of a Service. Customer acknowledges that certain third-party software may be provided with the Services or Related Software and that the license terms accompanying that code will govern its use during the Service Period.
- 1.3 Restrictions.** For clarity, the rights granted in this Section do not allow Customer or End Users to use the Services or Related Software to offer services to multiple, unrelated persons, such as for outsourcing, service bureau, or other similar business operations.

2. Customer’s Obligations

- 2.1 Acceptable Use.** Customer is solely responsible for its End Users’ compliance with these Terms and Dell EMC’s Acceptable Use Policy stated in Section 16 below (“Acceptable Use Policy”). Dell EMC reserves the right to remove or refuse to post Customer’s Content at any time for violations of the Acceptable Use Policy or applicable law.
- 2.2 Restrictions.** Except as specifically permitted otherwise, Customer will not, nor will Customer permit another person, including End Users, to:
- Rent, lease, lend, resell, or transfer the Services or Related Software or any part of them to any third parties;
 - Copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or work around technical limitations in the Services or Related Software, except as permitted by applicable law;
 - Disable, tamper with, or otherwise attempt to circumvent any billing or monitoring mechanism related to the Services;
 - Remove, obscure, or alter any trademark, copyright, or other proprietary rights notices displayed in the Services or Related Software; or
 - Disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of the Services done by or on behalf of Customer.
- 2.3 Updates.** Customer agrees that any Related Software Customer may have installed on Customer’s infrastructure may periodically check with Dell EMC for Updates. Customer agrees that Dell EMC may automatically download and install any Updates to the Services and Related Software on Customer’s devices.
- 2.4 Account.** Customer may need to register with Dell EMC to use the Services. If so, Customer agrees to keep its registration information accurate, complete, and up to date as long as Customer continues to use the Services. Customer agrees to pay the fees associated with its use of the Services.
- 2.5 Credentials.** Customer is responsible for keeping its passwords secure. Customer is solely responsible for any activity that occurs under its user names and Accounts. Dell EMC is not responsible for any misuse of customer’s passwords. If Customer loses the passwords or encryption keys for its Accounts, Customer may not be able to access its Content.
- 2.6 Credential Security.** Customer must notify Dell EMC immediately of any unauthorized use of Accounts or any other security breach related to the Services. If Dell EMC determines that a security breach has occurred or is likely to occur then Dell EMC may suspend Accounts and require Customer to change user names and passwords.

3. Customer’s Content

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

- 3.2 Rights in Content.** Customer is solely responsible for any Content, and will secure and maintain all rights in any Content necessary for Dell EMC to provide the Services without violating the rights of any third party or otherwise obligating Dell EMC to Customer or to any third party.
- 3.3 Customer Responsibility.** Dell EMC will not assume any obligations with respect to Content, or Customer's use of the Services, other than as specifically provide in these Terms or as required by applicable law.
- 4. Confidential Information**
- 4.1 Use and Protection.** Each party will use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with these Terms or any Order and will not disclose the other's Confidential Information to third parties without authorization of the owner and as provided below. Each party will take reasonable steps to protect the other's Confidential Information. These steps must be at least as protective as those the party takes to protect its own Confidential Information from disclosure to any third parties.
- 4.2 Length of Obligation.** Except as permitted above, neither party will use or disclose the other's Confidential Information for three years after termination or expiration of these Terms unless applicable law requires a longer period of protection. Confidential software code will remain Confidential Information in perpetuity.
- 4.3 Authorized Disclosure.** Notwithstanding the foregoing, the receiving party may disclose Confidential Information to its Affiliates for the purpose of operating its business, fulfilling its obligations or exercising its rights hereunder as long as such Affiliates comply with these Terms, and to a third party as required by applicable law, provided the receiving party has given the disclosing party prompt notice if permissible under applicable law.
- 4.4 Ownership of Confidential Information.** All Confidential Information disclosed under these Terms will remain the property of the disclosing party and be promptly returned to the disclosing party, or destroyed by the receiving party, when requested in writing by the disclosing party. The disclosing party does not grant any licenses under its Intellectual Property Rights in the Confidential Information to the receiving party.
- 5. Intellectual Property Rights.** Except as expressly set forth in these Terms neither party grants to the other any rights to the other's property. As between the parties, Customer retains all Intellectual Property Rights in Content, and Dell EMC retains all rights, including Intellectual Property Rights, in the Services and Related Software.
- 6. Feedback.** For any Feedback Customer provides to Dell EMC about the Services or Related Software, Customer hereby irrevocably assigns to Dell EMC all Intellectual Property Rights Customer may have in such Feedback. If any rights in Feedback are not assignable to Dell EMC for any reason, Customer hereby grants to Dell EMC, its Affiliates and their successors a non-exclusive, worldwide, royalty-free, fully paid, sublicensable, perpetual and irrevocable license, under all of Customer's Intellectual Property Rights in the Feedback, for Dell EMC and its Affiliates to implement and use the Feedback.
- 7. Payment Terms.** The following terms will apply unless Customer has different payment terms with the entity from whom it purchases the Services.
- 7.1 Billing and Payments**
- 7.1.1. Online Billing.** If Customer uses a credit card for payment and has chosen an automatically renewing Service then Customer authorizes Dell EMC to automatically renew Customer's Service Period and charge the then-current renewal fees to the credit card associated with the Account unless Customer notifies Dell EMC before expiration of Customer's current Service Period that Customer does not want to renew. Purchases completed online shall be transacted prior to Customer receiving access to Customer's Account.
- 7.1.2. Purchase Orders.** If Customer submits an Order referencing a Dell EMC quote then the Order will be accepted upon Dell EMC issuing an e-mail or other written communication to Customer accepting such Order or enabling Customer's Account and providing Customer with access to the Services, whichever occurs first. Dell EMC will submit invoices against the Order for ongoing consumption of Services, and Customer will establish a mechanism for payment of the invoices.
- 7.1.3. Invoices.** Customer will pay the invoices in full and in the same currency stated in the invoice within thirty days after the invoice date, with interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate. Customer must not offset for claims any payments due and owing to Dell EMC other than those arising under these Terms that are disputed under Section 7.2, below.
- 7.1.4. Taxes.** The charges due under this Agreement are exclusive of and Customer must pay or reimburse Dell EMC for all value added, sales, use, excise, withholding, personal property, goods and services, and other taxes, levies, customs, and duties resulting from the Order, except for taxes based on Dell EMC's net income. If Customer requires Dell EMC to withhold taxes, then Customer must forward any withholding receipts to Dell EMC.
- 7.2 Billing Disputes.** To the fullest extent permitted by law, Customer waives all claims relating to payments or fees unless Customer provides its claim to Dell EMC in writing within thirty days after charged or invoice is due.
- 8. Changes to Services and Terms**
- 8.1 Services.** Dell EMC may make commercially reasonable Updates to the Services from time to time.

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

9. Pre-GA and Evaluation Services

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

- Pre-GA and Evaluation Services are provided "AS-IS" and without support;
- Any security, compliance, service level, and privacy commitments made by Dell EMC in connection with these Terms are not applicable to Pre-GA and Evaluation Services;
- Dell EMC may change or discontinue Pre-GA and Evaluation Services at any time and makes no commitment to make them generally available;
- Pre-GA Services are Confidential Information of Dell EMC;
- Pre-GA Services are experimental, provided for testing purposes only, and may not be used in production; and
- Customer will comply with testing guidelines provided by Dell EMC and will make reasonable efforts to provide Feedback.

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

10. Privacy

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

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

11. Term and Termination

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

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

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

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

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

- It is reasonably needed to prevent unauthorized access to Content or the content of other Dell EMC customers;
- Customer fails to respond to a claim of alleged infringement within a reasonable time;
- Customer does not pay amounts due under an Order; or
- Customer or an End User violates these Terms.

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

11.6 Customer's Content upon Termination. Customer may extract or delete Content at any time prior to the expiration or termination of the applicable Service Period. When a Service Period expires or terminates, Content that Customer has not previously deleted or removed will be retained for up to ninety days or other retention period specified in

the Supplemental Terms ("Retention Period"), except for Pre-GA and Evaluation Services where Content may be deleted immediately upon termination of such Services without any retention period. Customer is responsible for extracting any Content it wishes to retain, including any data that Customer is required to retain by applicable law. Customer remains responsible for all storage and other applicable charges during the Retention Period. Customer instructs Dell EMC to delete all Content including any cached or backup copies, following the expiration of the Retention Period. After the Retention Period, Customer agrees that Dell EMC has no additional obligations to continue to hold, export, or return Content and that Dell EMC has no liability for deletion of Content pursuant to these Terms.

12. No Warranty

12.1 Disclaimer. Dell EMC AND ITS SUPPLIERS PROVIDE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, FOR THE SERVICES, RELATED SOFTWARE, EVALUATION SERVICES, OR PRE-GA SERVICES. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW PROVIDES OTHERWISE.

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

13. Limitation of Liability

13.1 Limitation on Indirect Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR DELL EMC'S SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES, WILL BE LIABLE UNDER THESE TERMS FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE OF THE SERVICES, LOST PROFITS, GOODWILL, OR DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSSES (EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT PROVIDE A COMPLETE REMEDY), RESULTING FROM THE USE OR INABILITY TO USE THE SERVICES OR RELATED SOFTWARE OR IN ANY WAY RELATING TO THESE TERMS.

13.2 Limitation on Direct Liability. WITH RESPECT TO PAID SERVICES, CUSTOMER AGREES THAT THE AGGREGATE LIABILITY OF DELL EMC, ITS SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES FOR ALL CLAIMS IN CONNECTION WITH THESE TERMS WILL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. WITH RESPECT TO UNPAID SERVICES, EVALUATION SERVICES, RELATED SOFTWARE AND PRE-GA SERVICES, NEITHER DELL EMC, NOR DELL EMC'S SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES WILL BE LIABLE UNDER THESE TERMS FOR DIRECT DAMAGES. CUSTOMER AGREES THAT THIS DAMAGES LIMITATION IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN CUSTOMER AND DELL EMC. The limitation of liability in this Section 13.2 applies to the fullest extent permitted by applicable law, but does not apply to the parties' obligations set forth in Section 14 (Defense of Claims).

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

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

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

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

15. General

- 15.1 Notices.** All notices must be in writing, which includes e-mail. All legal notices to Dell EMC must be sent to Dell_Legal_Notices@dell.com. Any written notice to Customer will be sent to the address identified in Customer's Account information. It is Customer's responsibility to keep its address on file with Dell EMC current.
- 15.2 Assignment.** Customer may not assign these Terms, either in whole or in part, directly or by operation of law, delegate duties, or assign any of Customer's rights.
- 15.3 Severability.** If a court of competent jurisdiction determines that any provision of these Terms is unenforceable, then the unenforceable portion will be changed and interpreted to best accomplish the objectives of the provision within the limits of applicable law. Invalidity of a portion of these Terms will not render the entire agreement invalid.
- 15.4 Waiver.** Failure to enforce any provision of these Terms will not constitute a waiver of that provision or of the right to enforce that provision at a subsequent time.
- 15.5 Relationship of the Parties.** Customer and Dell EMC are independent contractors. These Terms do not create an agency, partnership, or joint venture.
- 15.6 No Third-Party Beneficiaries.** There are no third-party beneficiaries to these Terms.
- 15.7 Applicable Law and Venue.** These Terms are governed by the laws of the State of Texas, without regard to its conflict of laws principles. Each party hereby submits to the jurisdiction and venue of the state and federal courts of Texas and irrevocably waives any right to claim that such jurisdiction and venue is not convenient. Any action to enforce these Terms must be brought in the State of Texas. This choice of jurisdiction does not prevent Dell EMC from seeking injunctive relief to enforce its rights in any appropriate jurisdiction. The U.N. Convention on Contracts for the International Sale of Goods does not apply.
- 15.8 Entire Agreement.** These Terms and the documents referenced within comprise the entire agreement concerning this subject matter and supersede any prior or concurrent communications.
- 15.9 Survival.** All provisions of these Terms that expressly state that they survive, or which by their nature should survive, do survive termination or expiration of these Terms.
- 15.10 U.S. Export Jurisdiction.** The Services and Related Software may be subject to the export and import laws of the United States and other countries. Customer agrees to comply with all export and import laws and regulations. Customer acknowledges that the Services and Related Software may not be exported or re-exported to any U.S. embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. Customer represents and warrants that Customer is not located in any such country or on any such list. Customer agrees that Customer will not use the Services and Related Software for any purposes prohibited by U.S. law, including the development, design, manufacture, or production of missiles, or for development of nuclear, chemical or biological weapons. Customer acknowledges that the Services and Related Software are not designed to handle data or include services subject to International Traffic in Arms Regulations and agrees not to store, transmit, or introduce any such information into the Services or the Related Software.
- 15.11 International Availability.** Availability of the Services, including specific features and language versions, varies by country. Information on availability is located in the Supplemental Terms, if any.
- 15.12 Force Majeure.** Neither party will be liable for any failure in performance under these Terms due to causes beyond its reasonable control such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, cyber terrorism, acts of God, and acts or omissions of Internet traffic carriers. This section will not, however, apply to Customer's payment obligations under these Terms.
- 15.13 Publicity.** Customer is permitted to state publicly that it uses the Services. If Customer wants to display or distribute any Dell EMC trademarks in connection with Customer's use of the Services, Customer must obtain written permission from Dell EMC. Dell EMC may include Customer's name in a list of Dell EMC customers, whether online or in promotional materials. Dell EMC may also verbally reference Customer as a user of the Services. Neither party needs approval if it is repeating a public statement that is substantially similar to a previously-approved public statement.
- 15.14 Order of Precedence.** Any inconsistency or incompatibility in or between these Terms and any other documents referenced within these Terms will be resolved by giving precedence in the following order:
- Dell EMC Acceptable Use Policy; then;
 - The quote to Customer; then
 - ,Supplemental Terms, if any; then
 - These Terms, and, finally;
 - Dell EMC Privacy Policy
- 15.15 Updates.** These Terms will also apply to any enhancements or new features added to the Services and any revised versions of Related Software.
- 16. Acceptable Use Policy**
- 16.1 General Restrictions.** You may not, and may not allow those accessing any Dell EMC online services through you to: (a) resell or sublicense the Dell EMC online services; or (b) use or access the Dell EMC online services: (i) in a way prohibited by law, regulation, governmental order or decree; (ii) to violate any rights of others; (iii) to try to gain

unauthorized access to, test the vulnerability of, or disrupt the Dell EMC online services or any other service, device, data, account or network; (iv) to spam or distribute malware; (v) in a way that could harm the Dell EMC online services or impair anyone else's use of it; (vi) in a way intended to work around any Dell EMC online services technical limitations, recurring fees or usage limits; or (vii) in any application or situation where failure of the Dell EMC online services could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage. You must ensure that your customers comply with the terms of this Acceptable Use Policy, and you agree that if you become aware of any violation by any of your customers, then you will terminate that each such customer's access to the Dell EMC online service immediately. If Dell EMC has reason to believe that you or your customers have breached this Acceptable Use Policy, Dell EMC or Dell EMC's designated representative may review your use of the Dell EMC online services, including your account, your content, and your records, to verify your compliance with this Acceptable Use Policy.

16.2 Content Restrictions. You will take steps to ensure that those accessing any service, including your branded products or services, that you provide with the Dell EMC online services, do not post content that: (a) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to anyone; (b) may create a risk of any other loss or damage to any person or property; (c) may constitute or contribute to a crime or tort; (d) contains any information or content that is illegal, unlawful, harmful, abusive, pornographic, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable; or (e) contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships. You are solely responsible for any software, product or service that a third party licenses, sells or makes available to you that you installs or use with the Dell EMC online services. Your use of that software, product or service is governed by separate terms between you and that third party. Dell EMC is not a party to and is not bound by any of those separate terms. You represent and warrant that your content does not and will not violate any third-party rights, including any intellectual property rights, and rights of publicity and privacy.

16.3 Violations of Acceptable Use. If you becomes aware that any of your content or your customers' use of your content violates this Acceptable Use Policy, you will take immediate action to remove the applicable part of your content or suspend your customer's access to it. If you fail to do so, Dell EMC may ask you to do so. If you fail to comply with Dell EMC's request within twenty-four hours, Dell EMC may suspend or disable access to the Dell EMC online services and/or your content until you comply with Dell EMC's request.

16.4 Notification of Infringement Concerns. If you believes that your copyrighted work has been copied and is accessible on the Dell EMC online services in a way that constitutes copyright infringement, please send a notice to Dell EMC's Designated Copyright Agent:

Dell Inc.
Attn: IP Legal Department - Copyrights
Hopkinton, MA 01748
Email: dmca@dell.com

Notices must include each of the following:

- (1) The electronic or physical signature of the owner of the exclusive right that is allegedly infringed, or the electronic or physical signature of someone authorized to act on the owner's behalf;
- (2) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- (3) Identification of the material, claimed to be infringing or to be the subject of infringing activity, for which disabling of access or removal is sought, and information reasonably sufficient to permit us to locate the material;
- (4) If the infringement claimed is by reason of intermediate and temporary storage, or caching, of material, include also a statement confirming that the infringing material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be so removed or that access to such material be disabled;
- (5) If the infringement claimed is by reason of referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, then, instead of the identification under paragraphs (3) or (4), provide identification of the reference or link, to the claimed material or activity, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate that reference or link;
- (6) Information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail address at which you may be contacted;
- (7) A statement that you has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and,
- (8) A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

17. Definitions

- 17.1 Account** means Customer's registration, payment and other information related to Customer's use of the Services and Related Software. Customer must have a current Account to access and use the Online Services.
- 17.2 Affiliate** means a legal entity that is controlled by, controls, or is under common control with Dell EMC or Customer, respectively. "Control" means more than 50% of the voting power or ownership interests.
- 17.3 Confidential Information** means any information that is marked "confidential" or "proprietary" or any other similar term or, if disclosed orally, is identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, is summarized, appropriately labeled and provided in tangible form. It does not include information that is, or becomes, publicly available without a breach of these Terms; was lawfully known to the receiver of the information without an obligation to keep it confidential; is received from another source who can disclose it lawfully and without an obligation to keep it confidential; is independently developed; or information that identifies or can reasonably be used to identify an individual.
- 17.4 Content** means digital data including text, sound, software, images, video, electronic documents, electronic materials, and other encoded content, that Customer or End Users use with the Services or provide to Dell EMC in connection with Customer's use of the Services.
- 17.5 Customer** means the entity identified in an Order or anyone who uses Pre-GA or Evaluation Services.
- 17.6 End User** means Customer's employees, contractors and similar personnel authorized by Customer to use the Services.
- 17.7 Evaluation Services** means generally available services offered by Dell EMC under these Terms and provided on a limited-use basis as described in Section 9.1 before Customer decides to purchase, and Related Software, if any.
- 17.8 Feedback** means suggestions or comments provided by Customer or End Users to Dell EMC that are related to the Services or Related Software.
- 17.9 Intellectual Property Rights** means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.
- 17.10 Pre-GA Services** means the Services (or portions of Services) and Related Software that Dell EMC identifies as beta or pre-release and that are not made generally available for use.
- 17.11 Order** means a purchase order or similar document issued by Customer for the purchase of Services.
- 17.12 Related Software** means software provided by Dell EMC in connection with the Services for the sole purpose of enabling Customer to use the Services. Related Software may include development software and tools, and software to be installed on End User devices for the purpose of using the Services. Related Software excludes software that Dell EMC makes available under separate terms or pursuant to a separate agreement.
- 17.13 Services** mean the Dell EMC products or services offered under these Terms from time to time.
- 17.14 Service Period** means the time period that Customer is permitted to use the Services that Customer ordered.
- 17.15 Supplemental Terms** means additional terms and conditions, if any, made available to Customer that applies to a Service.
- 17.16 Updates** mean the periodic software changes that Dell EMC makes to the Services or Related Software. Updates are designed to improve, enhance, and further develop the Services, and may take the form of bug fixes, enhanced functions, new software modules, and completely new versions.