



## STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 3

CONTRACT #: AR2495

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Dell Marketing LP (Referred to as CONTRACTOR).

**BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:**

The attached Attachment C Pricing Discounts and Pricing Schedule replaces the current Attachment C.

The attached end user terms are amended into Attachment E.

Effective Date of Amendment: 8/18/2021

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**

**STATE OF UTAH**

*Carina Clifford*

8/19/2021

08/20/2021

Contractor's Signature

Date

Director, State of Utah Division of Purchasing

Date

Carina Clifford

Contractor's Name (Print)

Contract Administrator

Title (Print)

**For Division of Purchasing Internal Use**

Purchasing Agent	Phone #	E-mail Address	Contract #
Solomon Kingston	801-957-7142	skingston@utah.gov	AR2495

## Attachment C - Pricing Discounts and Schedule

Contractor: Dell Marketing LP

### Pricing Notes

1. % discounts are based on minimum discounts off Contractor's commercially published pricelists versus fixed pricing. Nonetheless, Orders will be fixed-price or fixed-rate and not cost reimbursable contracts. Contractor has the ability to update and refresh its respective price catalog, as long as the agreed-upon discounts are fixed.
2. Minimum guaranteed contract discounts do not preclude a Contractor and/or its authorized resellers from providing deeper or additional, incremental discounts at their sole discretion.
3. Purchasing entities shall benefit from any promotional pricing offered by Contractor to similar customers. Promotional pricing shall not be cause for a permanent price change.
4. Contractor's price catalog include the price structures of the cloud service models, value added services (i.e., Maintenance Services, Professional Services, Etc.), and deployment models that it intends to provide including the types of data it is able to hold under each model. Pricing shall all-inclusive of infrastructure and software costs and management of infrastructure, network, OS, and software.

### Cloud Service Model: Infrastructure as a Service (IaaS)

Description	Discount
APEX On Prem/Hybrid Cloud	5.00%
APEX Flex on Demand	5.00%
OEM: VirtuStream	7.00%
<b>Average Service Model OEM Discount Off</b>	<b>5.67%</b>

### Cloud Service Model: Platform as a Service (PaaS)

Description	Discount
OEM: Boomi	15.00%
<b>Average Service Model OEM Discount Off</b>	<b>15.00%</b>

### Additional Value Added Services

Item Description	Onsite Hourly Rate		Remote Hourly Rate	
	NVP Price	Catalog Price	NVP Price	Catalog Price
Boomi Maintenance Services	15% Discount	25% of Licensing cost	15% Discount	25% of Licensing cost
Professional Services				
Boomi Deployment Services	233.75	275.00	191.25	225.00
Boomi Integration Services	233.75	275.00	191.25	225.00
Boomi Consulting/Advisory Services	233.75	275.00	191.25	225.00
Boomi Architectural Design Services	255.00	300.00	233.75	275.00
Boomi Statement of Work Services	233.75	275.00	191.25	225.00
EMC Adv Sol Arch			329.00	353.76
EMC Sr Sol Arch			284.00	305.38
EMC Sol Arch			274.00	294.62
EMC Sr Program Mgr			419.00	450.54
EMC Program Mgr			345.00	370.97
EMC Adv Consultant			352.00	378.49
EMC Sr Consultant			298.00	320.43
EMC Consultant			257.00	276.34
Partner Services	n/a	n/a	n/a	n/a
Training Deployment Services				
SEL BOOMI Administrator I Per Class			340.00	400.00
SEL BOOMI Administrator II Per Class			340.00	400.00
SEL BOOMI Developer III Per Class			510.00	600.00
SEL BOOMI Int Developer EDI Per Class			595.00	700.00
SEL BOOMI Architect II Per Class			850.00	1,000.00
SEL BOOMI Architect I Per Class			1,020.00	1,200.00
SEL BOOMI Architect III Per Class			1,020.00	1,200.00
SEL BOOMI Developer II Per Class			1,020.00	1,200.00
SEL BOOMI Master Data Mgmt I Per Class			1,360.00	1,600.00
SEL BOOMI Developer I Per Class			1,530.00	1,800.00
SEL BOOMI ProServ-JumpStart - 5 hours			1,700.00	2,000.00
SEL BOOMI IntDev I & II Per Class			2,975.00	3,500.00
SEL BOOMI IntDev I & II Remote Per Class			2,975.00	3,500.00
SEL BOOMI Administrator I Per Class			340.00	400.00
Boomi EDI Mngd Services 1-10 (PPP)	850.00	1,000.00		
Boomi EDI Mngd Services 11-20 (PPP)	743.75	875.00		

**Attachment C - Pricing Discounts and Schedule**

**Contractor:** Dell Marketing LP

Boomi EDI Mngd Services 21-35 (PPP)	637.50	750.00		
Boomi EDI Mngd Services 36-50 (PPP)	531.25	625.00		
Boomi EDI Mngd Services 51-100 (PPP)	425.00	500.00		
Boomi EDI Mngd Services >100 (PPP)	318.75	375.00		

**Deliverable Rates**

**NVP Price**                      **Catalog Price**

[Insert additional value added services as necessary]		
[Insert additional value added services as necessary]		

# ATTACHMENT E – Terms and Conditions

There are two (2) sets of terms and conditions for each of its new IaaS offerings respectively, Dell Technologies APEX and Dell Technologies APEX Flex On Demand

## Dell Technologies APEX

### Cloud Purchase Terms

Schedule to the Dell [Commercial Terms of Sale](#)

These Cloud Purchase Terms (“Cloud Terms”) state the terms and conditions that apply to: (1) a Customer’s purchase of Dell Cloud Offerings from Supplier ordered on the Dell Technologies Cloud Console (“Console”); and (2) a Customer’s purchase of Dell Cloud Offerings from a Supplier-authorized reseller (“Reseller”).

The terms and conditions of the Dell [Commercial Terms of Sale](#) (“CTS”) (but excluding any schedules attached or incorporated thereto) and the then current [Dell Acceptable Use Policy](#) (“AUP”) are incorporated by reference into these Cloud Terms. These Cloud Terms consist of two parts: Part A, Universal Terms for all Dell Cloud Offerings, and Part B, Terms Applicable to Specific Offerings. Further information about the Offerings is provided in the Service Offering Descriptions.

In these Cloud Terms, references to the “Governing Agreement” mean, collectively, the CTS (as amended and supplemented by these Cloud Terms and including the AUP), each applicable Service Offering Description, and the Order. Unless otherwise stated, references to “Clauses” mean Clauses of these Cloud Terms. Notwithstanding the clause addressing order of precedence in the CTS, if there is a conflict between or among these Cloud Terms, the Order, the Service Offering Description, the AUP, or the CTS, the documents will prevail in the following order: (a) the Service Offering Description (and all documents incorporated into it); (b) these Cloud Terms; (c) the AUP, (d) the Order; and (e) the CTS.

#### **Part A: Universal Terms for all Dell Cloud Offerings**

1. **Definitions.** The definitions used in the CTS are also used in these Cloud Terms. The following definitions also apply:

“Content” means any data (including all text, sound, video, and image files), software (including machine images), and other information.

“Customer Content” means Content uploaded by Customer or a User into the Offering for processing, storage or hosting, but does not include Third-Party Content or data Supplier collects as specified in Part B, Clause 1.1A.

“Data Processing Addendum” means the then-current version of the Supplier’s Data Processing Addendum.

“End User” means third parties to whom Customer provides a service and with whom Customer is in a commercial contractual relationship and does not include Customer’s employees, contractors and agents.

“Fixed Billed” means an Offering in which Customer pays a fixed amount as identified in the Quote and the Service Offering Description, usually on a monthly or annual basis. Fixed Billed includes Offerings sold as subscriptions.

“Offering” for the purpose of these Cloud Terms means any Supplier cloud service described in these Cloud Terms or the Service Offering Descriptions.

“Order” means a Quote that has been accepted as provided in Clause 3.1A below.

“Quote” means the items Customer selects in the Console and the prices that Supplier provides for those items at the time Customer accepts the Quote as described in Clause 3.1A below.

“Service Level Agreement” or “Service Level Objective” means the then-current version of the performance commitments, if any, for a particular aaS Offering. If applicable, these will be provided in the Service Offering Description.

“Service Offering Description” means the then-current version of the Supplier document that describes the Offering identified in a Quote or the Console. If there is no separate Supplier document, then the description in the Quote or the Console will apply. The clause of the CTS entitled “Product and Service Specific Terms” will not apply to Offerings ordered under these Cloud Terms.

“Service Location” means the street address location, specified by the Customer when ordering any Products to be deployed with the Offering.

“Supplier” means the Dell entity that delivers the Offering(s) to Customer.

“Support Terms” means the then-current terms regarding Support Services for each Offering and as described in the Service Offering Description.

“Term” means the initial period during which Customer is authorized to use an Offering, as stated in the applicable Order or the Console, and subsequent renewal terms (if any). The initial term begins as specified in the Order or the Service Offering Description.

“Third-Party Claim” means any third-party administrative, regulatory, arbitral, judicial, or other action, suit, or proceeding, or any third party allegation, assertion or demand, arising from or relating to: (a) Content; (b) Customer’s use of any Offering in violation of the Governing Agreement; (c) Customer’s misrepresentation of facts regarding an export license or any allegation made against any Supplier or its affiliates due to Customer’s violation or alleged violation of applicable export laws; or (d) combination of the Offering with non-Supplier products or content, including any Customer Content and/or any Third-Party Content.

“Third-Party Content” means Content provided by a third party that interoperates with the Offering, including open source software, but that is not embedded in or required for use of the Offering. As an example, Third-Party Content may include an application that is listed on a marketplace or in an online catalog.

“User” means any person who is authorized to access or use the Offering or Customer Content directly under Customer’s Login Credentials (as defined in the Dell Technologies Cloud Console Terms of Use) that Customer created when registering to use the Console, and may include Customer’s employees, contractors, service providers, and other third parties, but does not include Customer’s End Users.

“Variable Billed” means an Offering in which Customer pays a variable amount as identified in the Quote and Service Offering Description, usually based on usage.

## **2. The Offering.**

**2.1 Provision of the Offering.** Supplier is responsible for delivery of the Offering. Supplier may use Supplier’s Affiliates and Supplier authorized third parties to assist with delivery. For Offerings that include delivery of Supplier Products, the terms and process for that delivery will be stated in the applicable Service Offering Description. The clause of the CTS entitled “Product Delivery” shall not apply.

### **2.2 Ownership and Use of the Offering.**

- A. Customer may access and use the Offering only: (a) during the Term; (b) for Customer’s internal business purposes, which may include providing services to Customer’s End Users if permitted in the Service Offering Description; and (c) in accordance with the Governing Agreement and Supplier’s AUP.
- B. If the Offering includes Software that requires installation at the Service Location, then Customer will only use the Software: (a) in connection with Customer’s use of the Offering and as provided in the Governing Agreement; (b) for the Term; and (c) in accordance with the Supplier’s [End User License Agreement](#).
- C. Customer must not: (a) resell or sublicense the Offering; or (b) use the Offering: (i) in a way intended to work around the Offering’s technical restrictions, recurring fees calculation, or usage limits; or (ii) to create or enhance a competitive offering or for any purpose which is competitive with Supplier.

- D. If Supplier reasonably believes a problem with the Offering may result from or be attributable to Content that Customer uploaded to the Offering, or to Customer's use of the Offering, Customer must cooperate with Supplier to identify the source of the problem and to resolve the problem.
- E. As between Customer and Supplier, Supplier owns all rights in and to the Offering and any related Software, including all improvements, enhancements, modifications, and derivative works, and all intellectual property rights in all of them. This includes any information Supplier collects and analyzes about Customer's use of the Offering as outlined in Part B to these Cloud Terms and the specific Service Offering Description. Customer's rights to use the Offering are limited to those expressly granted in the Governing Agreement. There are no implied rights in these Cloud Terms. Supplier retains all rights that it has not expressly granted to Customer herein.

### 2.3 Modifications.

- A. Supplier may modify Offerings from time to time and will specify the effective date of changes, by email, the Console, release note, documentation or through the Offering itself. The information will be delivered by email if the modification is not solely an enhancement. Customer's continued use of the Offering after the date of any change will be considered acceptance of the modified Offering.
- B. If Supplier makes a change that removes a material feature or materially reduces the functionality of an Offering, then Customer will have the right to terminate the Offering. If Customer intends to terminate the Offering, it must notify Supplier within 30 days from the date of Supplier's change notice. If Customer has elected to terminate the Offering, this will be effective as of: (a) the date Supplier receives Customer's notice of termination; or (b) any later date specified in Customer's notice, not to exceed 90 days from the date of Supplier's receipt of Customer's termination notice. Customer will remain responsible for the payment of all fees incurred through the termination date, and Supplier will promptly refund any prepaid fees for the Offering that will not be provided as a result of the termination. No other remedies are available to Customer for its termination of an Offering under this Clause 2.3B.

## 3. Orders, Payment, Shipment, Ownership, Insurance, and Colocation.

### 3.1 Orders, Shipment.

- A. Customer accepts a Quote by clicking "Place Order" or other similar term in the Console. All Orders are subject to the Governing Agreement and are not binding until Supplier accepts them. An Order will be accepted upon the earlier of: (a) when Supplier confirms to Customer in writing that it accepts the Order; or (b) as may be otherwise provided in the Service Offering Description. Supplier is not required to provide the Offering to Customer until Customer provides Supplier with all information Supplier needs to process Customer's Order and to provision the Offering for Customer. Unless permitted in the Governing Agreement, all Orders are non-refundable and non-cancellable. Any refunds to which Customer is entitled under the Governing Agreement will be paid to Customer.
- B. Customer must pay all charges it incurs for its use of the Offering. Charges may consist of both a committed amount as well as additional amounts, including charges for add-on features that Customer orders or enables, and charges Customer incurs based on actual usage of the Offering (metered charges or "overages"). Customer must establish a method of payment to cover all charges.
- C. If Customer pays for an Offering using a credit card (if credit card payment is available), then Customer will be subject to any additional terms presented to Customer by the third-party credit card payment processor, which will be the merchant of record for that transaction. If applicable, Customer is responsible for keeping its credit card information up to date in the Console.
- D. Supplier may bill Customer directly for any additional charges, even if Customer has ordered the Offering from a Partner. Supplier may invoice Customer for charges even if a corresponding purchase order was not received from Customer or a Partner.

3.2 **Payment Terms.** Customer must pay all charges within 30 days after the date of invoice.

3.3 **Supplier Shipment.** Supplier will ship Products to the Service Location if any are included as part of an Offering.

3.4 **Ownership.** Unless the Service Offering Description states differently, Supplier owns and retains title to the Products

(including any replaced parts), and these must be returned to Supplier at the end of the Term (or promptly upon replacement with respect to replaced Products or parts). Customer will keep the Products free and clear of any liens or encumbrances and Customer will immediately notify Supplier in writing of any attachment or judicial process affecting the Products or Supplier's ownership of the Products.

**3.5 Insurance.** Customer is responsible for securing any Products and for any risk of damage on site of the Service Location. Customer must insure the Products installed at the Service Location with a reputable insurance company against all: (a) liability whatsoever to any third party arising directly or indirectly out of Customer's selection, possession, or use of the Products; and (b) loss or damage to the Products from all insurable risks for the full cost of replacing it; and (c) other risks in respect of which a prudent person with Products on their premises would reasonably insure such Products. In regard to (a) and (b), Supplier will be named as additional insured and loss payee respectively. Upon Supplier's request, Customer must show Supplier evidence that the insurance required under these Cloud Terms is in place for the Products. Customer must immediately notify Supplier of any loss claim and Customer must not settle any claims without Supplier's prior written agreement.

**3.6 Colocation.** If the Service Location is not owned or wholly controlled by Customer (in this clause a "Colocation Site"), Customer will ensure that Supplier has access to the Colocation Site for the purposes outlined in the Service Offering Description. Failure to provide Supplier with timely access to the Colocation Site will relieve Supplier of its Support Services obligations and Supplier may, at its discretion, choose to suspend (until such time as Supplier and Customer agree to relocation of the Offering at a Supplier accessible Service Location) and/or terminate the Order. Customer agrees to hold Supplier harmless from and against any and all disputes, claims or controversies (whether in contract, tort (including negligence) or otherwise) related to or arising out of the Customer's installation, operation or use of the Offering at a Colocation Site.

#### **4. Supplemental Termination Provisions.**

**4.1 Termination of Offering.** (A) Neither Customer nor Supplier may terminate the Offering for convenience. (B) Even if Customer stops using the Offering during the Term for its convenience, Customer must still pay Supplier all fees due for the then-current Term. (C) Either party may terminate for cause, if: (1) such party becomes insolvent, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (2) such party becomes subject to control of a trustee, receiver, or similar authority, or to any bankruptcy or insolvency proceeding; (3) the other party commits a material breach and has failed to cure the breach within 30 days from the other party's written notice; or (4) with respect to Supplier only, as provided under Section 9.3 below. A termination for cause will be effective on the date the notice was sent.

#### **4.2 Effect of Termination.**

- A. Upon termination of an Offering for any reason: (a) Customer must stop using the Offering; (b) Customer must return all Supplier provided Products in compliance with the Service Offering Description, or if the Service Offering Description requires Supplier to recover the Products, then Customer will provide Supplier with prompt access to the Service Location (including any Colocation Site) to recover the Products; and (c) Customer must return or, if Supplier requests, destroy, any Confidential Information of Supplier or its suppliers in Customer's possession or under Customer's control (other than information that must be retained pursuant to law). The Service Offering Description will indicate when Supplier will delete any Content Customer has uploaded to the Offering. Customer is responsible for ensuring that it has copies of all Content it requires prior to the date of any termination.
- B. Any provision of the Governing Agreement that, by its nature and context is intended to survive termination or expiration will survive, including the Data Processing Addendum, to the extent Supplier processes or continues to process Personal Data (as defined in the Data Processing Addendum), and for as long as Supplier continues such processing activity.
- C. Except where Customer or Supplier are permitted to terminate the Offering pursuant to Clauses 2.3 ("Modifications") or 4.1C(3) (Customer's termination for Supplier's breach), any other termination of the Offering will not entitle Customer to any refunds, credits, or exchanges. If Supplier terminates the Offering due to Customer's material breach, Customer will immediately pay all fees due for the Offering for the remainder of the then-current Term.
- D. Customer agrees that upon termination for any reason: (i) Supplier may, without waiving any other rights or remedies, seek an order, including without limitation by way of injunctive or equitable relief, from a court of competent jurisdiction to enforce Supplier's right to recover Supplier owned Products from the Service Location (including any Colocation Site); and (ii) Supplier is entitled to recover from Customer the reasonable attorney fees corresponding to such enforcement action.

## **5. Support Services.**

5.1 Supplier will provide support to Customer for the Offering in accordance with the applicable Support Terms specified in the Service Offering Description. The clause of the CTS entitled "Services" shall not apply.

5.2 Supplier shall not access or use any Content stored on the Products, unless Customer has expressly authorized Supplier to do so. Customer is responsible for removing all Content stored on replaced parts, or on any other items or Product before it is returned to Supplier. Supplier has no liability for any data remaining on Products that Customer fails to remove. Customer may purchase a data deletion service from Supplier (or Reseller), where available.

5.3 If Customer wishes: (a) to relocate Products to a different installation site (where applicable to the Product); (b) to change the hardware configuration on its own; or (c) to deny the activation or to disable remote support features of a Product, Customer must notify Supplier in advance. Supplier will review Customer's request and may approve or deny it in Supplier's sole discretion. Additional fees may apply.

## **6. Warranties.**

6.1 **Limited Warranty.** Supplier will provide the Offering substantially in accordance with the Service Offering Description. For any breach of the foregoing warranty, Supplier's entire liability and Customer's exclusive remedies under these Cloud Terms (subject to Customer's right to terminate the Offering for material breach under Clause 4.1) shall be for Supplier to use reasonable efforts to correct material deviations from the Service Offering Description. The clauses of the CTS entitled "Equipment Warranty", "Software Warranty", and "Services Warranty" shall not apply to the Offerings. Customer shall promptly provide Supplier with written notice of any material deviations of which it becomes aware.

6.2 **Disclaimer and Limitations.** **Other than the limited warranty set forth in this Clause 6, Supplier's warranty limitations and disclaimer provided in the clauses of the CTS entitled "Limitations" and "Warranty Disclaimer" apply to the Offering and to all materials or services provided to Customer under the Service Offering Descriptions. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of Supplier or product roadmaps in obtaining subscriptions for any Offering.**

7. **Reseller Transactions.** Notwithstanding anything to the contrary herein, if Customer buys an Offering through a Reseller (as opposed to directly from Supplier), then:

7.1 All references and terms related to fees, payments, cancellation or termination rights, or similar financial terms (the "Financial Terms") in these Cloud Terms ((including, without limitation, Clauses 3.1A – C, 3.2, 4.1B, and 4.2) or Governing Agreement shall not apply to the Customer, and such Financial Terms shall instead be governed by Customer's agreement with the Reseller; and

7.2 All notices in these Cloud Terms or Governing Agreement required from Customer to Supplier shall be required, in addition, from Customer to Reseller.

## **8. Data Protection.**

8.1 The applicable Service Offering Description defines the administrative, physical, technical and other safeguards applied to Customer Content residing in the Offering. Customer is responsible for applying appropriate security measures to Customer Content such as: (a) controlling access Customer provides to Users; (b) configuring the Offering appropriately; (c) ensuring the security of Customer Content (e.g. through encryption) while it is in transit and at rest; and (d) backing up Customer Content. Customer acknowledges that it is responsible for adopting industry best practice in relation to back-up copies of its data and is solely responsible for ensuring that it has implemented appropriate security measures for Customer Content and Customer's intended use of the Offering.

8.2 Customer acknowledges that uploading Customer's Content to the Offering does not constitute a disclosure by Customer of its Confidential Information to Supplier.

8.3 Supplier's Data Processing Addendum is incorporated herein by reference and describes the parties' respective roles for the processing and control of Personal Data (as defined in the Data Processing Addendum) that Customer may provide to

Supplier as part of the Offering. Supplier will act as an authorized data processor, and in respect of the data processing activities related to the Offering, as specified in this Agreement, the Data Processing Addendum and the applicable Order.

8.4 Customer is responsible for providing any necessary legal notices to Users and obtaining any legally required consents related to its use, collection, disclosure, sharing, cross border data transfer and processing of the Personal Data (as defined in the Data Processing Addendum), Offering and Supplier's provision of the Offering.

8.5 **Required Disclosures.** If Supplier is required by a subpoena, court order, agency action, or any other legal or regulatory requirement to disclose any Customers Content, Supplier will provide Customer with notice and a copy of the demand as soon as practicable, unless Supplier is prohibited from doing so pursuant to applicable law. If Customer requests, Supplier will, at Customer's expense, take reasonable steps to contest any required disclosure.

## 9. Suspension.

9.1 **Generally.** Supplier may suspend Customer's use of any Offering if: (a) Customer is in breach of the Governing Agreement (including failure to pay invoices when due) and has not cured that breach within 10 days from Supplier's notice; or (b) with immediate effect where Customer is in breach of the AUP or Supplier otherwise reasonably believes that Customer is using the Offering for fraudulent, abusive, or unlawful purposes. Supplier will give Customer notice before suspending Customer's use of the Offering if permitted by law or unless Supplier reasonably believes that providing notice presents a risk of harm to the Offering, to other Users of the Offering, or to any person or property, in which case Supplier will notify Customer as soon as feasible or permitted. Supplier will suspend Customer's access only to the Offering that is the subject of the issue giving rise to the suspension. Supplier will promptly reinstate Customer's access to the Offering once Supplier agrees that the issues related to the suspension have been resolved.

9.2 **Effect of Suspension.** Customer will pay all applicable fees incurred before and during any suspension. Customer will not be entitled to any service credits under an applicable Service Level Agreement or Service Level Objective that Customer might have otherwise accrued during any suspension.

9.3 **Termination for Suspension.** Supplier may, at its option, terminate the Offering effective immediately upon written notice to Customer if Supplier has the right to suspend the Offering.

10 **Indemnification by Customer.** Subject to the remainder of this Clause 10, Customer will: (a) defend Supplier against any Third-Party Claim; and (b) indemnify Supplier from all fines, damages, and other costs resulting from a final award, judgment, or order of a court of competent jurisdiction or a government agency arising out of a Third-Party Claim. Supplier will: (1) provide Customer with notice of any Third-Party Claim within a reasonable period after learning of the Claim; and (2) reasonably cooperate in response to Customer's requests for assistance. Customer will have sole control over the defense of any Third-Party Claim. Customer may not, without Supplier's prior written consent, settle any Third-Party Claim if that settlement obligates Supplier to admit any liability, to make any monetary payment, or to undertake any material obligation, or if that settlement would affect any Offering or Supplier's business practices or policies. THE LIMITATIONS STATED IN THE CLAUSE OF THE CTS ENTITLED "LIMITATION ON LIABILITY" DO NOT APPLY TO CUSTOMER'S OBLIGATIONS UNDER THIS CLAUSE 10.

## **Part B: Terms Applicable to Specific Offerings**

### 1. **as a Service Offerings ("aaS Offerings").**

#### 1.1 **Use of the aaS Offering.**

- A. Supplier monitors and collects configuration, performance, and usage data relating to Customer's use of the aaS Offering, as provided in the Service Offering Description.
- B. Customer may use Third-Party Content, at Customer's option, where available. If Customer chooses to use Third-Party Content, Customer is responsible for complying with any terms applicable to that Third-Party Content, including any separate fees or charges imposed by the provider of that Third-Party Content. **Third-Party Content is available "AS IS" without any indemnity, warranty, condition, or Support Services (unless otherwise specified) of any kind.** Supplier may suspend or terminate provision and hosting of any Third-Party Content at any time, and that suspension or termination will not be deemed a material change to any aaS Offering for the purpose of Clause 2.3B of Part A of these Cloud Terms.

C. As between Customer and Supplier, Customer retains all rights in and to Customer Content.

### Service Offering Descriptions

Dell Technologies Cloud Platform (DTCP) with Subscription	Terms governing DTCP with Subscription: <a href="http://www.dell.com/learn/us/en/uscorp1/legal_terms-conditions_dellwebpage/global-cloud-purchase-terms">www.dell.com/learn/us/en/uscorp1/legal_terms-conditions_dellwebpage/global-cloud-purchase-terms</a>  Hybrid Cloud - Service Offering Description: <a href="https://www.delltechnologies.com/en-gb/collaterals/unauth/legal-documents/solutions/dtcp-offerings-description.pdf">https://www.delltechnologies.com/en-gb/collaterals/unauth/legal-documents/solutions/dtcp-offerings-description.pdf</a>  Private Cloud - Service Offering Description: <a href="https://www.delltechnologies.com/en-gb/collaterals/unauth/legal-documents/solutions/dtcp-private-cloud-offering-description.pdf">https://www.delltechnologies.com/en-gb/collaterals/unauth/legal-documents/solutions/dtcp-private-cloud-offering-description.pdf</a>	N
APEX Storage-as-Service	Terms governing Project APEX Storage-as-a-Service: <a href="http://www.dell.com/learn/us/en/uscorp1/legal_terms-conditions_dellwebpage/global-cloud-purchase-terms">www.dell.com/learn/us/en/uscorp1/legal_terms-conditions_dellwebpage/global-cloud-purchase-terms</a>  Project APEX Storage-as-a-Service Service Offering Description: <a href="https://i.dell.com/sites/csdocuments/Legal_Docs/en/us/projectapex_staas_serviceofferingdescription.pdf">https://i.dell.com/sites/csdocuments/Legal_Docs/en/us/projectapex_staas_serviceofferingdescription.pdf</a>	N

# Dell Technologies Data Processing Addendum

## Data Processing Addendum

This Data Processing Addendum (“DPA”) to the Agreement shall apply where the provision of services by Dell to you (“Customer”) involves the Processing of Personal Data which is subject to Privacy Laws and Dell acts as Processor on behalf of the Customer as the Controller (the “Services”). This DPA does not apply where Dell is the Controller. In the event of conflict between this DPA and the Agreement, this DPA shall control with respect to its subject matter.

### 1. **Definitions.**

Terms not defined herein have the meanings set forth in the Agreement. The following words in this DPA have the following meanings:

- 1.1 “Agreement” means the agreement between Customer and Dell for the provision of the Services to the Customer.
- 1.2 “Controller” means an entity which, alone or jointly with others, determines the purposes and means of the Processing of the Personal Data.
- 1.3 “GDPR” means the General Data Protection Regulation (EU) 2016/679.
- 1.4 “Model Clauses” means the Standard Contractual Clauses for the transfer of personal data to Processors (Decision 2010/87/EU) as they may be amended or replaced from time to time.
- 1.5 “Personal Data” means any information relating to an identified or identifiable natural person which is Processed by Dell in the performance of the Agreement.
- 1.6 “Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data Processed under this DPA.
- 1.7 “Privacy Laws” means any data protection and privacy laws to which a party to this Agreement is subject and which are applicable to the Services provided, including where applicable, the GDPR, the UK’s Data Protection Act, the California Consumer Privacy Act (“CCPA”) and other similar laws.
- 1.8 “Processing” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- 1.9 “Processor” means an entity which Processes the Personal Data on behalf of the Controller.
- 1.10 “Subprocessor” means any Processor engaged by Dell for the provision of the Services.

### 2. **Processing of Personal Data.**

#### 2.1 Roles of the Parties.

Dell may Process Personal Data under the Agreement as a Processor acting on behalf of the Customer as the Controller.

#### 2.2 Instructions.

Dell will Process Personal Data in accordance with Customer’s documented instructions. Customer agrees that this DPA, the Agreement and any subsequent statements of work or service orders, and any configurations by Customer or its authorized users, comprise Customer’s complete instructions to Dell regarding the Processing of Personal Data. Any additional or alternate instructions must be agreed between the parties in writing, including the costs (if any) associated with complying with such instructions. Dell is not responsible for determining if Customer’s instructions are compliant with applicable law. However, if Dell is of the opinion that a Customer instruction infringes applicable Privacy Laws, Dell shall notify Customer as soon as reasonably practicable and shall not be required to comply with such infringing instruction.

## 2.3 Details of Processing.

Details of the subject matter of the Processing, its duration, nature and purpose, and the type of Personal Data and data subjects are as specified in the Agreement and Annex 1.

## 2.4 Compliance.

Customer and Dell agree to comply with their respective obligations under Privacy Laws applicable to the Personal Data that is Processed in connection with the Services. Customer has sole responsibility for complying with Privacy Laws regarding the lawfulness of the Processing of Personal Data prior to disclosing, transferring, or otherwise making available, any Personal Data to Dell.

## 3. **Subprocessors.**

### 3.1 Use of Subprocessors.

Dell may use Subprocessors with the Customer's general or specific written consent. Customer agrees that Dell may appoint and use Subprocessors to process the Personal Data in connection with the Services provided that Dell puts in place a contract in writing with each Subprocessor that imposes obligations that are: (i) relevant to the services to be provided by the Subprocessors and (ii) materially similar to the rights and/or obligations imposed on Dell under this DPA. Subprocessors may include third parties or any member of the Dell group of companies. Where a Subprocessor fails to fulfil its data protection obligations as specified above, Dell shall be liable to the Customer for the performance of the Subprocessors' obligations.

### 3.2 List of Subprocessors.

A list of Subprocessors that Dell engages to support the provision of the Services is made available by Dell on [www.dell.com/subprocessors](http://www.dell.com/subprocessors).

## 4. **Security.**

### 4.1 Technical and organizational security measures.

Taking into account industry standards, the costs of implementation, the nature, scope, context and purposes of the Processing, and any other relevant circumstances relating to the Processing of the Personal Data on Dell systems, Dell shall implement appropriate technical and organizational security measures to ensure security, confidentiality, integrity, availability and resilience of processing systems and Services involved in the Processing of the Personal Data are commensurate with the risk in respect of such Personal Data. Customer agrees that the technical and organizational security measures described in the Agreement provide an appropriate level of security for the protection of Personal Data to meet the requirements of this clause. Dell will periodically (i) test and monitor the effectiveness of its safeguards, controls, systems and procedures and (ii) identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of the Personal Data. Customer is responsible for implementing, configuring and maintaining privacy and security measures for Services and products that Customer provides or controls.

### 4.2 Technical Progress.

The Information Security Measures are subject to technical progress and development and Dell may modify these provided that such modifications do not degrade the overall security of the Services provided under the Agreement.

### 4.3 Access.

Dell shall ensure that persons authorized to access the Personal Data (i) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and (ii) access the Personal Data only upon documented instructions from Dell, unless required to do so by applicable law.

## 5. **Personal Data Breach.**

Dell will notify the Customer without undue delay after becoming aware of a Personal Data Breach in relation to the Services provided by Dell under the Agreement and will use reasonable efforts to assist the Customer in mitigating, where possible, the adverse effects of any Personal Data Breach.

## **6. International Transfers.**

Dell is authorized, in connection with the provision of the Services, or in the normal course of business, to make worldwide transfers of Personal Data to its affiliates and/or Subprocessors. When making such transfers, Dell shall ensure appropriate protection is in place to safeguard the Personal Data transferred under or in connection with this Agreement. Where the provision of Services involves the transfer of Personal Data from the European Economic Areas and the UK ("EEA") to countries outside the EEA or the UK (which are not subject to an adequacy decision under Privacy Laws) Dell agrees it will use the Model Clauses along with appropriate supplemental measures or other appropriate data transfer mechanisms in accordance with applicable Privacy Laws.

## **7. Deletion of Personal Data.**

Upon termination of the Services (for any reason), the Parties agree to adhere to data deletion mechanism as set out in the Agreement.

## **8. Cooperation.**

### 8.1 Data Subject Requests.

Dell shall promptly inform Customer of any requests from individuals exercising their data subject rights under Privacy Laws. Customer is responsible for responding to such requests. Dell will reasonably assist Customer to respond to data subject requests to the extent that Customer is unable to access the relevant Personal Data in the use of the Services. Dell reserves the right to charge Customer for such assistance if the cost of assisting exceeds a nominal amount.

### 8.2 Third party requests.

If Dell is required by a subpoena, court order, agency action, or any other legal or regulatory requirement to disclose any Customers Content, Dell will provide Customer with notice and a copy of the demand as soon as practicable, unless Dell is prohibited from doing so pursuant to applicable law. If Customer requests, Dell will, at Customer's expense, take reasonable steps to contest any required disclosure.

### 8.3 Privacy Impact Assessment and Prior Consultation.

To the extent required by Privacy Laws, Dell shall provide reasonable assistance to Customer to carry out a data protection impact assessment in relation to the Processing of Personal Data undertaken by Dell and/or any required prior consultation(s) with supervisory authorities. Dell reserves the right to charge Customer a reasonable fee for the provision of such assistance.

## **9. Demonstrating Compliance.**

Dell agrees to supply, upon Customer request for an audit, the Standardized Information Gathering ("SIG") questionnaire ("Security Questionnaire") related to the security practices and posture of Dell's organization. The Security Questionnaire is reviewed annually, mapped to Dell policies and standards, and updated with relevant and current US and international regulatory and privacy standards, such as, NIST 800-53r4, NIST CSF 1.1, CIS Top 20, or ISO 27001, where applicable. To the extent Customer's audit requirements under the Standard Contractual Clauses or applicable Privacy Laws cannot reasonably be satisfied through the Security Questionnaire, documentation or compliance information Dell makes generally available to its customers, Dell will promptly respond to Customer's additional audit instructions. Before the commencement of an audit, Customer and Dell will mutually agree upon the scope, timing, duration, control and evidence requirements, and fees for the audit, provided that this requirement to agree will not permit Dell to unreasonably delay performance of the audit. To the extent needed to perform the audit, Dell will make the processing systems, facilities and supporting documentation relevant to the processing of Personal Data by Dell available. Such an audit will be conducted by an independent, accredited third-party audit firm, during regular business hours, with reasonable advance notice to Dell, and subject to reasonable confidentiality procedures. Neither Customer nor the auditor shall have access to any data from Dell's other customers or to Dell systems or facilities not involved in the Services. Customer is responsible for all costs and fees related to such audit, including all reasonable costs and fees for any and all time Dell expends for any such audit, in addition to the rates for services performed by Dell. If the audit report generated as a result of Customer's audit includes any finding

of material non-compliance, Customer shall share such audit report with Dell and Dell shall promptly cure any material non-compliance.

**10. CCPA.**

If Dell is Processing Personal Data within the scope of the CCPA, Dell will Process Personal Data on behalf of Customer and will not retain, use, or disclose that Personal Data for any purpose other than for the purposes set out in the DPA and as permitted under the CCPA. In no event will Dell sell any Personal Data.

**Annex 1**  
**Data Processing Description**

**1. Subject matter and duration of the Processing.**

The subject matter and duration of the Processing shall be according to the Agreement.

**2. Purpose of Processing.**

Personal Data will be Processed for the purpose of providing Services, as relevant and defined by the selected service levels and support options. The Agreement and the relevant service descriptions and statements of work shall apply for the specifics and possible additional services.

**3. Nature of Processing.**

The nature of the Personal Data Processed is described in the relevant service descriptions and statements of work.

**4. Categories of Data Subjects.**

The data subjects are Customer's end users, employees, contractors, suppliers and other third parties relevant to the Services.

**5. Types of Personal Data.**

The type of Personal Data that may be submitted by the Customer are described in the relevant service descriptions and statements of work. Unless otherwise specified, Dell does not Process Special Categories of Data, and Customer shall not provide Special Categories of Data, Personal Health Information, or other similar Personal Data.

# Dell Technologies Acceptable Use Policy

Revision 1.2 – March 23, 2021

## Acceptable Use Policy

This Acceptable Use Policy ("AUP") describes prohibited use of, and/or access to, Dell's infrastructure, networks, cloud-based offerings, systems, services, web sites, accounts, and products (the "Dell Resources"). In this AUP, "User" means Dell's customers and those that access the Dell Resources through Dell customers. By using or accessing the Dell Resources, User agrees to comply with the current version of this AUP. **If User violates this AUP or authorizes or helps others to do so, Dell may (in addition to any other rights Dell may have), in its sole discretion, suspend or terminate User's access to, or use of, the Dell Resources.**

### Violations

User may not upload content or use the Dell Resources in a manner or for a purpose that Dell believes:

1. Violates any applicable law or regulation (a "Law"), including, but not limited to, the Digital Millennium Copyright Act, or those Laws concerning child pornography and/or illegal gambling;
2. Is abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, advocates violence, or otherwise inappropriate;
3. Violates or infringes the rights of others, including for example by infringing or misappropriating any intellectual property rights of another;
4. Advocates or encourages illegal activity;
5. Stalks, harasses, or harms anyone, including minors;
6. Impersonates any person or entity or misrepresents User's affiliation with a person or entity;
7. Modifies, alters, or tampers with (including attempts to self-repair) any software included in the Dell Resources;
8. Except where allowed by Law, reverse engineers, disassembles, or decompiles the Dell Resources;
9. Accesses or uses the Dell Resources in a way intended to avoid fees or exceeding usage limits or quotas;
10. Interferes with or disrupts the Dell Resources;
11. Uses any high-volume automated means (including robots, spiders, scripts or other methods) to access the Dell Resources;
12. Attempts to gain unauthorized access to any part of the Dell Resources, by hacking, password mining, or other means;
13. Violates the security or integrity of the Dell Resources, including by:
  - a. Accessing or using the Dell Resources without permission, including attempts to probe, scan, or test the vulnerability of the Dell Resources or to breach any security or authentication measures used by the Dell Resources;
  - b. Monitoring data or traffic on the Dell Resources without permission;
  - c. Forging packet or email headers, or any part of a message describing its origin or route;
  - d. Uploading any content that contains viruses, worms, corrupt files, Trojan horses, or other forms of harmful code, or any other content that may compromise the Dell Resources; or
  - e. Hacking, destabilizing, or making unauthorized changes to the Dell Resources, or altering another website to falsely imply it is affiliated with the Dell Resources;
14. Connects to any users, hosts, or networks where User does not have permission to communicate with such users, hosts, or networks, such as:
  - a. Monitoring or crawling the Dell Resources in any way that would disrupt their performance or operation;
  - b. Conducting denial of service attacks;
  - c. Interfering with the operation of Dell Resources, including by attempting to overload the Dell Resources; or
  - d. Operating network services like open proxies, open mail relays, or open recursive domain name servers;
15. Distributes, publishes, sends, or facilitates unsolicited mass e-mailings, promotions, advertising, or solicitations, including commercial advertising and informational announcements; or

16. Collects replies to messages if those messages violate this AUP.

The examples of prohibited conduct listed above are not comprehensive. Dell has the sole discretion to determine whether User content or User's use of the Dell Resources is a violation of this AUP. All User content, and/or actions that are performed via User's account, are the sole responsibility of User.

### **Consequences of Violations**

Any violation of this AUP by User will be considered to be a material breach of the corresponding contract between Dell and User. If User violates this AUP, Dell reserves the right, in its sole discretion, to apply the remedies provided in the applicable contract with User or available to Dell at Law (e.g. suspension and/or termination of User's access to the Dell Resources).

In addition, Dell reserves the right to investigate any potential violation of this AUP or misuse of the Dell Resources. Among other actions, Dell may perform the following:

1. Remove, disable access to, or modify any data or content that violates this AUP; and
2. Report any activity that potentially violates any Law to law enforcement, regulators, or other appropriate third parties. This may include disclosing appropriate User content and information where necessary.

### **Reporting**

User is required to immediately report any violation or suspected violation of this AUP to Dell. User will provide Dell with assistance, as requested, to address those events or violations. Any reports must be made to Dell by email ([Dell.Legal.Notices@dell.com](mailto:Dell.Legal.Notices@dell.com)).

## **Dell Technologies Flex On Demand**

***Dell EMC APEX Flex on Demand (FOD) – Public Sector Only***

These section of Exhibit 4 may be entered into between Purchasing Entity and Contractor of and for the benefit of itself and its affiliate, Dell EMC for its APEX Flex on Demand (FOD) offering. In the event of any conflict between the terms of this Exhibit 4 and the Agreement, this Exhibit 4 shall take precedence and control.

This section of Exhibit 4 comprised of the following documents, which are hereby incorporated by referenced and attached on the following pages:

- 1. Master Flexible Consumption Agreement (MFCA) – Public Sector Only**
- 2. Flex on Demand (FOD) Schedule – Public Sector Only**
- 3. APEX Custom Solutions – Flex on Demand (FOD) Customer Brochure**

**MASTER FLEXIBLE CONSUMPTION AGREEMENT  
APEX FLEX ON DEMAND TERMS AND CONDITIONS - PUBLIC SECTOR ONLY**



*For DELL EMC Use Only*  
Contract ID \_\_\_\_\_

**MASTER FLEXIBLE CONSUMPTION AGREEMENT – U.S. STATE & LOCAL GOVERNMENT**

This Master Flexible Consumption Agreement (this “**Master Agreement**” or “**MFCFA**”) is made effective as of \_\_\_\_\_ (the “**Effective Date**”) between the following parties:

**EMC Corporation (“Dell EMC”)**  
**176 South Street**  
**Hopkinton, MA 01748**  
**Email for Legal Notices:**  
**LegalNotices@emc.com**

**And**

**XXXXXXXXXXXXXXXX (“Customer”)**  
**XXXXXXXXXXXXXXXX**  
**XXXXXXXXXXXXXXXX**  
**Email for Legal Notices:**

This MFCFA governs Customer's access to and use of a configuration of Deployed Capacity on a Flexible Consumption basis at an agreed Customer location, as described in one or more separately executed Flex Consumption Schedules (the “**Schedule(s)**”). This MFCFA shall govern each Schedule (including any related purchase order) that references this MFCFA.

**1. DEFINITIONS.**

**A. “Billing Period”** means the period of time identified on a Schedule for which DELL EMC will invoice Customer for its Flexible Consumption.

**B. “Customer Data”** means all data stored on the Deployed Capacity by or on behalf of Customer or its end users and information derived from such data, including all file layouts and records associated therewith). As between Customer and DELL EMC, Customer Data is Customer's Confidential Information.

**C. “Documentation”** means the then-current, generally available, written user manuals and online help and guides provided by DELL EMC for Deployed Capacity.

**D. “Flexible Consumption”** means the amount of Customer's usage of the Deployed Capacity, as it may vary from time to time, measured pursuant to a description and metrics identified on the Schedule.

**E. “Flexible Consumption Fee”** means, for a particular Billing Period, (i) the fee for the Monthly Committed Capacity, and (ii) the fee charged by DELL EMC for Customer's Flexible Consumption above the Monthly Committed Capacity, calculated in accordance with the pricing set forth in the Schedule.

**F. “Flexible Consumption Period”** means the time period identified as such on a Schedule, and any DELL EMC approved extension(s) thereto.

**G. “Installation Site”** means the ship-to address or other location identified as such on the Schedule as the site of installation and/or use of a Deployed Capacity, or a subsequent location approved by DELL EMC.

**H. “Monthly Committed Capacity”** means the amount of capacity the Customer commits to paying for each month as specified in a Schedule regardless of its actual consumption of capacity.

**I. “Deployed Capacity”** means collectively: (a) “**Equipment**” (which is EMC-branded or Dell-branded hardware that DELL EMC provides to Customer under this Master Agreement); and (b) “**Software**” (any EMC-branded or Dell-branded programming code licensed to Customer as a standard product, also including microcode, firmware and operating system software), as more specifically identified on a Schedule. The Deployed Capacity exclude Third Party Products.

**J. “Prime Contract”** means, if applicable, the contract (Prime Contract) and any applicable purchase order, task order or delivery order between Customer and the state or local government entity for the Deployed Capacity and Support Services described in an applicable Schedule issued under this Agreement.

**K. “Return”** of Deployed Capacity means the earlier to occur of (a) DELL EMC taking possession of the Deployed Capacity at the Installation Site, or (b) DELL EMC receiving and accepting a return of the Deployed Capacity.

**L. “Support Services”** mean services for the support and maintenance of Deployed Capacity as described in the Applicable Schedule.

**M. “Third Party Deployed Capacity”** means hardware, software, or services that are not “Dell” branded, “EMC” branded, or “DELL EMC” branded.

**N. “Warranty Period”** means for a specific Deployed Capacity, the period of warranty coverage listed at: <https://www.delltechnologies.com/content/dam/digitalasset>

## **2. SCHEDULES, PURCHASING, FEES AND PAYMENT.**

**A. Schedules.** The description of the Deployed Capacity, Support Services, and related pricing are as stated in the applicable Schedule. The product specific terms informs Customer of product-specific use rights and restrictions, unit of measure (if any), and the applicable maintenance (support) obligations.

**B. Ordering.** Customer indicates its approval of a specific Schedule by signing it and issuing a purchase order, task order or delivery order pursuant to the Prime Contract, if applicable, to DELL EMC that incorporates by reference in its entirety the terms and conditions of such Schedule and this Agreement. DELL EMC indicates its approval of Customer's purchase order by (i) counter-signing a Schedule and any purchase order, task order or delivery order, if applicable, executed by Customer and (ii) shipping the applicable Deployed Capacity to Customer.

**C. Authorization to Monitor; Flexible Consumption Fees.** During the Flexible Consumption Period, Customer shall pay a Flexible Consumption Fee calculated in accordance with pricing and frequency set forth on and defined in the applicable Schedule. DELL EMC is authorized to periodically monitor the Flexible Consumption in order to calculate the applicable Flexible Consumption Fee. DELL EMC may conduct such activity through the use of electronic means and/or on-site inspection by DELL EMC personnel and do so only in order to authenticate Customer as the user of the Flexible Consumption and verify Customer's usage levels. Customer is responsible for providing and maintaining the equipment (a physical server or virtual machine) necessary to run storage utilization scripts and to enable electronic communications between the Deployed Capacity and DELL EMC. Customer authorizes DELL EMC to store at the Installation Site, or load onto Deployed Capacity used for electronic communications, such equipment and programming as may be needed by DELL EMC to track usage levels or perform any Support Services for Deployed Capacity and shall not disable or interfere in the operation thereof. Customer shall (i) not copy or make any use thereof whatsoever; and (ii) protect such from disclosure to any third party and give DELL EMC reasonable access thereto. DELL EMC shall cooperate with Customer to minimize the impact of any DELL EMC on-site inspection to Customer's operations.

**D. Payment and Assignment.** DELL EMC or if applicable, its assignee, shall invoice Customer monthly. Customer shall pay invoices in full and in the same currency as the invoice within thirty (30) days after the date of invoice, with interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate under any applicable Prompt Payment Act, if any. No credit cards will be accepted as a form of payment. Payments to DELL EMC's assignee of any amounts due shall not be subject to reduction or setoff. Subject to any right of non-appropriation pursuant to Section 10.B herein, Customer's obligation to pay the

Monthly Flexible Consumption Fee for the Flexible Consumption Period is absolute, unconditional and non-cancellable and shall not be subject to any abatement, reduction, set off, defense, delay or counterclaim for any reason whatsoever.

**E. Taxes.** The charges due hereunder and any other items provided by DELL EMC are exclusive of, and Customer shall pay or reimburse DELL EMC for, all value added (VAT), sales, excise, withholding, state or other local governmental taxes, property taxes, use taxes and any other taxes, levies, customs and duties resulting from a Customer purchase order, except for taxes based on DELL EMC's net income. If Customer is required to withhold taxes, then Customer will forward any withholding receipts to DELL EMC. Unless otherwise provided on Customer's purchase order, invoices shall be sent to the Customer contact point or Customer's Accounts Receivable department, as specified on the applicable Schedule.

**F. Interruption of Monitoring Capabilities.** For Schedules in which Flexible Consumption varies based upon usage or another metric, if, for more than five (5) days of any calendar month, DELL EMC is unable to monitor to determine the applicable Flexible Consumption Fee due to (i) any action by anyone other than DELL EMC, or (ii) a failure of any communications equipment provided by Customer that is used for purposes of monitoring, DELL EMC shall invoice, and Customer shall pay, a Flexible Consumption Fee for the affected Billing Period(s) that shall be based on the Flexible Consumption during the previous Billing Period; provided, however, that if DELL EMC is unable to monitor for a period of more than thirty (30) days, DELL EMC shall invoice, and the Customer shall pay, either (a) the maximum capacity of the Deployed Capacity, or (b) such other maximum rate described in the Schedule, if applicable. If DELL EMC is unable to monitor the Flexible Consumption due to any failure which is caused by DELL EMC (e.g. failure of the modem, software or other equipment used by DELL EMC to monitor Customer's usage), the amounts owed by Customer for such outage period shall be based on Customer's Flexible Consumption during the previous Billing Period. DELL EMC shall promptly notify Customer of an inability to electronically and or physically access the Deployed Capacity, as applicable, and work cooperatively to reestablish access.

## **3. DELIVERY, RISK, TITLE, USE AND RETURN.**

**A. Installation Site Preparation.** On or before arrival of the Deployed Capacity, Customer shall arrange (i) appropriate space at the Installation Site; (ii) the necessary environment (power, cooling, etc.) required to support and operate the Deployed Capacity; and (iii) servers and network connectivity required to support Deployed Capacity.

**B. Deployed Capacity Shipment.** DELL EMC shall deliver the Deployed Capacity by common carrier to the Installation Site. Software may be provided by (i) shipment of physical

media; or (ii) electronic download (when so offered by DELL EMC).

**C. Risk of Loss.** DELL EMC shall bear the entire risk of loss, theft, damage or destruction with respect to the DELL EMC Deployed Capacity until the time of arrival of the Deployed Capacity at the Installation Site(s) and Customer shall bear such risk from such time on until the Deployed Capacity is Returned. If any loss, theft, damage or destruction to the Deployed Capacity occurs during the time Customer bears such risk, DELL EMC shall be relieved of its Flexible Consumption obligations to the extent such event impacts DELL EMC's ability to provide such Flexible Consumption until such time as the Deployed Capacity is repaired or replaced. Charges shall continue to accrue during this period of such interruption. If Deployed Capacity is materially damaged, stolen or destroyed, Customer shall promptly notify DELL EMC.

**D. Customer Insurance Coverage.** Subject to any applicable law or regulation to the contrary, Customer must insure the Deployed Capacity (with a reputable insurance company) against all: (a) liability whatsoever to any third party arising directly or indirectly out of Customer's selection, possession or use of the Deployed Capacity, and (b) loss or damage to the Deployed Capacity from all insurable risks for the full cost of replacing it, and (c) other risks in respect of which a prudent owner or operator of Deployed Capacity of the same nature as the Deployed Capacity would normally insure such Deployed Capacity. In regard to (a) and (b), DELL EMC will be named as co-insured and loss payee respectively, unless otherwise prohibited by law. Upon DELL EMC's prior written consent, Customer may meet the above insurance requirements with its existing self-insurance program, as provided under applicable law. Upon DELL EMC's request Customer must show DELL EMC evidence that the insurance required under this Master Agreement is in place in respect of the relevant Schedule(s). Customer must immediately notify DELL EMC of any loss claim and Customer must not settle any claims without DELL EMC's agreement.

**E. Personal Property and Identification.** Title to Deployed Capacity provided by DELL EMC pursuant to any Schedule remains with DELL EMC at all times and Customer shall have no right or interest in such Deployed Capacity except as provided in this Master Agreement and related Schedule. All Deployed Capacity shall remain personal property of DELL EMC notwithstanding the manner in which such may be attached or affixed to realty. At any time, Customer shall (i) at request of DELL EMC, legibly mark each item of Equipment in a reasonably prominent location with a label, disc or other marking stating that the Equipment is owned by DELL EMC; and (ii) not remove such without the prior written consent of DELL EMC. Customer may not change the Installation Site without DELL EMC's prior written consent. Customer shall give DELL EMC immediate written notice of any attachment or judicial process affecting the Deployed Capacity or DELL EMC's ownership of which Customer becomes aware. In case the Equipment is installed at a third party Installation Site, Customer undertakes to notify in writing such third

party that DELL EMC is the owner of the Equipment and that such Equipment (i) cannot be treated as a fixture or fitting forming part of the third party property (ii) can not be seized by such third party in distress for monies owed by the Customer to such third party. Customer undertakes to guarantee that, at any time during the course of any Equipment applicable Schedule, DELL EMC have the right to enter the third party Installation Site to inspect the Equipment and to retake possession of the Equipment on expiry or termination of any Schedule.

**F. Ownership of Customer Data.** All Customer Data, shall remain the responsibility and property of Customer. The parties acknowledge and agree that DELL EMC does not handle, process, or direct the use of Customer Data.

**G. Return of Deployed Capacity; Data Migration.** Prior to any Return of Deployed Capacity, including in case of expiration or termination of the corresponding Schedule, Customer must completely migrate and erase (by use of a method that does not cause damage to the Deployed Capacity) its Customer Data and establish a mutually convenient date, generally coinciding with the end of a Billing Period, when the Deployed Capacity will be Returned to DELL EMC. Customer is liable for any Return costs and shall reimburse DELL EMC for the reasonable value of any Deployed Capacity that is not Returned or is Returned in a condition that evidences damage in excess of reasonable wear and tear.

**4. LICENSE TERMS. License Grant.** Customer is granted a non-exclusive, non-transferable license to use the Software and the Documentation during the Flexible Consumption Period solely for Customer's internal business operations, and, when so indicated on the applicable Schedule, for delivery of services to its end users. Customer's rights to use the Software provided by DELL EMC during the Flexible Consumption Period are governed by the terms of the Agreement and 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](http://www.dell.com/eula) for the relevant Software product family and effective as of the date of the applicable Quote shall apply taking into account the character of this Master Agreement. DELL EMC will provide a hard copy of the applicable terms upon request. Unless expressly otherwise agreed, microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such Equipment item.

## **5. WARRANTY.**

**A. DELL EMC Warranty.** During the Warranty Period, DELL EMC will maintain a Deployed Capacity's ability to perform substantially in accordance with the related Documentation. Customer shall promptly provide DELL EMC with written notice of any material defect of which it becomes aware. DELL EMC shall remedy such defect within thirty (30) days of receipt of notice (the "Cure Period"). If DELL EMC fails to cure such defect within the

Cure Period, DELL EMC's entire liability and Customer's exclusive remedy shall be for DELL EMC to substitute the defective Deployed Capacity with an identical or equivalent Deployed Capacity model.

**B. Exclusions.** DELL EMC shall not be responsible for, and shall have the right to charge Customer for, and Customer shall promptly pay any charges for, Deployed Capacity related problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Deployed Capacity is used or other causes beyond DELL EMC's control; (iii) installation, operation or use not in accordance with DELL EMC's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Deployed Capacity was not designed; (v) modification, alteration or repair by anyone other than DELL EMC or its authorized representatives; or (vi) in case of Equipment only, causes attributable to normal wear and tear. DELL EMC has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without DELL EMC's consent or whose original identification marks have been altered or removed.

**C. No Further Warranties; Disclaimer.** EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO DEPLOYED CAPACITY, SUPPORT SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, DELL EMC (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, UNDER THIS MASTER AGREEMENT AND DISCLAIMS ALL IMPLIED WARRANTIES. INsofar AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. DELL EMC AND ITS SUPPLIERS DO NOT WARRANT THAT SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET CUSTOMER'S REQUIREMENTS.

**D. Customer Warranties.**

**(i). Validity and Documentation.** Customer represents, warrants and covenants to DELL EMC and will provide to DELL EMC at DELL EMC's request all documents deemed necessary or appropriate by DELL EMC, including Certificates of Insurance, financial statements, Secretary or Clerk Certificates, essential use information or documents (such as affidavits, notices and similar instruments in a form satisfactory to DELL EMC) and Opinions of Counsel (in substantially such form as provided to Customer by DELL EMC and otherwise satisfactory to DELL EMC)(together

"Documentation") to the effect that, as of the time Customer enters into this Agreement and each Schedule that:

(a) Customer is an entity duly organized and existing under and by virtue of the authorizing statute or constitutional provisions of its state and is a state or political subdivision thereof as described in Section 103(a) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder as in effect and applicable to the MFCA or any Schedule, with full power and authority to enter into this MFCA and any Schedules and perform all of its obligations under the Schedules;

(b) The MFCA and each Schedule have been duly authorized, authenticated and delivered by Customer by proper action of its governing board at a regularly convened meeting and attended by the requisite majority of board members, or by other appropriate official authentication, as applicable, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this MFCA and each Schedule against Customer;

(c) This MFCA and each Schedule constitute the valid, legal and binding obligations of Customer, enforceable in accordance with their terms;

(d) No other approval, consent or withholding of objection is required from any federal, state or local governmental authority or instrumentality with respect to the entering into or performance by Customer of the MFCA or any Schedule and the transactions contemplated thereby;

(e) Customer has complied with such public bidding requirements and other state and federal laws as may be applicable to the MFCA and any Schedule and the acquisition by Customer of the Deployed Capacity;

(f) The entering into and performance of the MFCA or any Schedule will not (i) violate any judgment, order, law or regulation applicable to Customer; (ii) result in any breach of, or constitute a default under, any instrument to which the Customer is a party or by which it or its assets may be bound; or (iii) result in the creation of any lien, charge, security interest or other encumbrance upon any assets of DELL EMC or on the Deployed Capacity, other than those created pursuant to this MFCA;

(g) There are no actions, suits, proceedings, inquiries or investigations, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Customer, nor to the best of Customer's knowledge and belief is there any basis therefor, which if determined adversely to Customer will have a material adverse effect on the ability of Customer to fulfill its obligations under the MFCA or any Schedule;

(h) The Deployed Capacity is essential to the proper, efficient and economic operation of Customer or to the services which Customer provides to its citizens. Customer expects to make immediate use of the Committed Capacity, at a minimum, for which it has an immediate need that is neither temporary nor expected to diminish during the applicable Flexible Consumption Period. The Deployed Capacity will be used for the sole purpose of performing one or more of Customer's

governmental or proprietary functions consistent within the permissible scope of Customer's authority; and

(i) Customer has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds to make all Flexible Consumption Fees and other obligations under this MFCA and any Schedule during the current Fiscal Period, and such funds have not been expended for other purposes.

**E. Operating Environment Warranty.** Customer shall, at its expense, operate the Deployed Capacity with reasonable care and in accordance with the Documentation, and keep the Deployed Capacity located at the Installation Site free and clear from any liens or encumbrances. Customer shall operate and maintain a data back-up system in its data center environment. Customer shall provide for a daily back-up process including backing up data before performance of any remedial, upgrade or other works on Customer's production systems.

## 6. INDEMNITY.

**A. IP Indemnity.** DELL EMC will: (a) defend Customer against any third party claim that Deployed Capacity or Support Services (but excluding Third Party Products and open source software) infringe that party's patent, copyright or trade secret enforceable in the country where Customer acquired the Deployed Capacity from DELL EMC ("Claim"); and (b) indemnify Customer by paying: (1) the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (2) the amounts stated in a written settlement negotiated and approved by DELL EMC. In addition, should any Deployed Capacity or Support Service become, or in DELL EMC's opinion be likely to become, the subject of such a Claim, DELL EMC may, at its expense and in its discretion: (a) obtain a right for Customer to continue using the affected Deployed Capacity or Support Service; (b) modify the affected Deployed Capacity or Support Service to make them non-infringing; (c) replace the affected Deployed Capacity or Support Service with non-infringing substitutes; or (d) notify Customer to return the Deployed Capacity and discontinue Support Services, and, upon receipt thereof, refund the remaining portion, if any, of any pre-paid Flexible Consumption Fee. Except as otherwise provided by law, this Section 6 states Customer's exclusive remedies for any third-party intellectual property claim relating to Deployed Capacity or Support Services, and nothing in this Master Agreement or elsewhere will obligate DELL EMC to provide any greater indemnity.

**B. Exclusions from Indemnity.** DELL EMC has no obligation under Section 6.1 above: (a) if Customer is in material breach of this Master Agreement; or (b) for any Claim resulting or arising from: (1) any combination, operation or use of a Deployed Capacity or Support Service 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 Deployed Capacity or Support Service was not designed, or use after DELL EMC notifies Customer to cease such use due to a possible or pending Claim; (3) any modification to the Deployed Capacity or Support Service made by any person other than DELL EMC or its authorized representatives; (4) any modification to the Deployed Capacity or Support Service made by DELL EMC pursuant to instructions, designs, specifications or any other information provided to DELL EMC by or on behalf of Customer; (5) use of any version of a Deployed Capacity when an upgrade or newer iteration of the Deployed Capacity or Support Service made available by DELL EMC would have avoided the infringement; (6) services provided by Customer (including Claims seeking damages based on any revenue Customer derives from Customer's services); or (7) any data or information that Customer or a third party records on or utilizes in connection with the Deployed Capacity or Support Services.

**C. Indemnification Process.** DELL EMC's duty to defend and indemnify under this section is contingent upon Customer: (a) sending prompt written notice of the Claim to DELL EMC and taking reasonable steps to mitigate damages; (b) granting to DELL EMC the sole right to control the defense and resolution of the Claim; and (c) cooperating with DELL EMC in the defense and resolution of the Claim and in mitigating any damages.

## 7. LIMITATION OF LIABILITY.

**A. Limitation on Direct Damages.** EXCEPT FOR CUSTOMER'S OBLIGATION TO PAY AMOUNTS OWED HEREUNDER, CUSTOMER'S VIOLATION OF DELL EMC'S OR ITS AFFILIATES' INTELLECTUAL PROPERTY RIGHTS, OR DELL EMC'S INDEMNITY OBLIGATION STATED IN SECTION 6 ABOVE, EACH PARTY'S TOTAL LIABILITY FOR ANY CLAIM ARISING UNDER THIS MASTER AGREEMENT SHALL BE LIMITED TO THE TOTAL OF THE FLEXIBLE CONSUMPTION FEES FOR THE DEPLOYED CAPACITY, SUPPORT SERVICES, OR BOTH TO WHICH THE CLAIM RELATES PAID DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CLAIM IS MADE, EXCLUDING AMOUNTS RECEIVED AS REIMBURSEMENT OF EXPENSES OR PAYMENT OF TAXES ACCRUED.

**B. No Indirect Damages.** EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF DELL EMC'S INTELLECTUAL PROPERTY RIGHTS, NEITHER CUSTOMER NOR DELL EMC SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

**C. Limitation Period.** All claims must be made within (i) the time period specified by applicable law; or (ii) eighteen (18) months after the cause of action accrues if (a) no such period is specified at law; or (b) the applicable law allows

the parties to agree to a shorter period than that specified therein.

## 8. CONFIDENTIALITY.

**A. Existing Non-Disclosure Agreement:** If Customer and DELL EMC have a non-disclosure agreement in place as of the date of this Master Agreement, then that non-disclosure agreement shall supersede this Section 8. Where no such non-disclosure agreement exists Section 8.B shall apply.

**B. Confidential Information. “Confidential Information”** means any information that is marked “confidential” or “proprietary” or any other similar term or in relation to which its confidentiality should by its nature be inferred 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. Confidential Information does not include information that is (i) rightfully in the receiving party’s possession without prior obligation of confidentiality from the disclosing party; (ii) a matter of public knowledge; (iii) rightfully furnished to the receiving party by a third party without confidentiality restriction; or (iv) independently developed by the receiving party without reference to the disclosing party’s Confidential Information. Each party shall (a) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this Master Agreement or any Schedule or purchase order hereunder; and (b) protect from disclosure to any third parties, by use of a standard of care equivalent to that as used by recipient to protect its own information of a similar nature and importance, and, no less than the use of reasonable care, any Confidential Information disclosed by the other party for a period commencing upon the date of disclosure until three (3) years thereafter, except with respect to (1) Customer Data to which DELL EMC may have access in connection with the provision of Services, which shall remain Confidential Information until one of the exceptions stated in the above definition of Confidential Information applies; and (2) Confidential Information that constitutes, contains or reveals, in whole or in part, DELL EMC proprietary rights, which shall not be disclosed by the receiving party at any time. Notwithstanding the foregoing, the receiving party and its assignees may disclose Confidential Information to (A) other companies within the receiving party’s group, advisors, banks and agents for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such group companies, advisors, banks and agents comply with the foregoing; (B) to any third party for the purposes of raising funds secured on or collateralised by this Master Agreement and/or any Schedule (whether by way of bank loan or any other form of financing or fundraising or funding process); and (C) to the extent required by law, court order or regulation.

## 9. TRADE COMPLIANCE.

Customer’s usage of DELL EMC’s Deployed Capacity or Support Services and access to related technology (the “Materials”) are for its own use, not for resale, export, re-export, or transfer. Customer is subject to and responsible

for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions. Materials may not be used, sold, leased, exported, imported, re-exported, or transferred except as in compliance with such laws, including, without limitation, export licensing requirements, end-user, end-use, and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control’s Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States or other applicable jurisdictions.

## 10. TERM; APPROPRIATION OF FUNDS; EVENTS OF DEFAULT; REMEDIES.

**A. Master Agreement Term.** This Master Agreement commences on its Effective Date, and unless otherwise terminated as set forth below, shall terminate for convenience when a party sends written notice of termination, which notice shall become effective forty-five (45) days after receipt thereof. Such termination shall not terminate any Schedule already in effect at the time thereof and shall not impact any renewal provisions of such Schedules. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment and liability, shall so survive. Unless earlier terminated pursuant to its term, each Schedule shall commence and expire in accordance with its terms.

### **B. Appropriation of Funds.**

(i) Customer reasonably believes that legally available funds in an amount sufficient to make all Monthly Flexible Consumption Fees during the Flexible Consumption Period defined in Table 3.3 on each applicable Schedule and will do all things lawfully within its power (notwithstanding its right to self rule) to obtain and maintain funds from which Monthly Flexible Consumption Fees may be paid. The parties intend that the obligation of Customer to pay the Monthly Flexible Consumption Fee and other amounts due under a Schedule constitutes a current expense of Customer and is not to be construed to be a debt in contravention of any applicable constitutional or statutory limitation on the creation of indebtedness or as a pledge of funds beyond Customer’s current Fiscal Period.

(ii) Customer may terminate a Schedule in whole, but not in part by giving at least sixty (60) days’ notice prior to the end of the then current Fiscal Period (as defined in the Customer’s Secretary/Clerk’s Certificate or other such documentation as reasonably requested by and provided to DELL EMC) certifying that: (1) sufficient funds were not appropriated and budgeted by Customer’s governing body or will not otherwise be available to continue the Schedule beyond the current Fiscal Period; and (2) that Customer

has exhausted all funds legally available for payment of the Monthly Flexible Consumption Fee beyond the current Fiscal Period. Upon termination of the Schedule, Customer's obligations under the Schedule (except those that expressly survive the end of the Flexible Consumption Period) and any interest in the Deployed Capacity shall cease and Customer shall surrender the Deployed Capacity in accordance with Section 3.F and/or if requested by DELL EMC, assemble the Deployed Capacity in a single location designated by DELL EMC granting DELL EMC the right to enter the premises where such Deployed Capacity is located for the purpose of repossession; free from all claims by Customer; provided that the parties shall reasonably cooperate to enable Customer to migrate and erase its data and for DELL EMC to recover such Deployed Capacity. Customer shall be responsible for the payment of the actual documented price of any component(s) of the DELL EMC Deployed Capacity not returned by Customer and for any damage to the DELL EMC Deployed Capacity beyond normal wear and tear. DELL EMC shall take reasonable steps to protect Customer Data for thirty (30) days after recovery of Deployed Capacity under this Subsection B.

(iii) Notwithstanding the foregoing, Customer agrees that, without creating a pledge, lien or encumbrance upon funds available to Customer in other than its current Fiscal Period, it will use its best efforts to take all action necessary to avoid termination of a Schedule, including making budget requests for each Fiscal Period during each applicable Flexible Consumption Period for adequate funds to meet its obligations hereunder and to continue the Schedule in force.

**C. Events of Default.** Notwithstanding Customer's rights under Section 10 B. to non-appropriate, the occurrence of any of the following in connection with the MFCA, any Schedule, or any amendments to either of the foregoing documents, shall constitute an Event of Default: (i) Customer shall fail to pay the Monthly Flexible Consumption Fee within thirty (30) days of its due date; (ii) Customer shall fail to perform any provision, covenant, condition or agreement, and such failure shall continue for thirty (30) days after notice thereof; or (iii) bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings shall be instituted by or against Customer or all or any part of its property under the Federal Bankruptcy Code or other law of the United States or any state or jurisdiction in which Customer is organized, and it shall consent thereto or shall fail to cause the same to be discharged within sixty (60) days.

**D. Remedies.** If an Event of Default shall occur, DELL EMC may exercise any one or more of the following remedies: (i) immediately terminate any or all Schedules; (ii) by notice in writing to Customer, declare immediately due and payable, and Customer shall be obliged to pay immediately, (1) all past due Monthly Flexible Consumption Fees and other past due amounts plus (2) as the parties agreed upon pre-estimate of damages and not a penalty, all Monthly Flexible Consumption Fees for the Monthly Committed

Capacity for the remainder of the Flexible Consumption Period with clause (2) being discounted to present value using the discount rate of the Federal Reserve Bank of Chicago on the Commencement Date of the applicable Schedule and (iii) require Customer to Return any or all Deployed Capacity as provided in Section 3G and/or if requested by DELL EMC, assemble the Deployed Capacity in a single location designated by DELL EMC granting DELL EMC the right to enter the premises where such Deployed Capacity is located for the purpose of repossession; free from all claims by Customer; provided that the parties shall reasonably cooperate to enable Customer to migrate and erase its data and for DELL EMC to recover such Deployed Capacity. Customer shall be responsible for the payment of the actual documented costs and reasonable attorney's fees incurred by DELL EMC in retaking possession of the Deployed Capacity and/or seeking to recover amounts due. DELL EMC shall take reasonable steps to protect Customer Data for thirty (30) days after recovery of Deployed Capacity under this Subsection D.

## 11. MISCELLANEOUS.

**A. Notices.** Notice to DELL EMC under this Master Agreement or any related transaction must be in writing and sent (i) by registered or certified mail, postage prepaid first-class mail with return receipt requested; or (ii) by overnight delivery service with verification of receipt, to the address below; or (iii) by electronic mail to: Dell\_Legal\_Notices@dell.com. All such notices will be effective upon receipt.

Dell EMC

Attn: Contracts Manager

Dell Legal Department

One Dell Way, Round Rock, TX 78682

**B. Entire Agreement.** This Master Agreement, applicable Schedule(s) and each purchase order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in a writing with evidence of acceptance by both parties. All terms of any purchase order or similar document provided by Customer, that are inconsistent or conflict with this Master Agreement and/or Schedule, shall be null and void and of no legal force or effect,

**C. Assignment and Change in Control.** The assignment or transfer, whether by operation of law or otherwise, of a party's right(s) or delegation of obligation(s) hereunder, shall require the consent of the other party. However, such consent shall not be required of Customer if the assignment or transfer involves (i) assignment by DELL EMC or its assignee of the right to receive payments and related rights due by Customer (iii) the purchase of all or substantially all of DELL EMC's assets or any deemed assignment or transfer by DELL EMC by reason of merger, consolidation, change-in-control or corporate reorganization. DELL EMC may use its direct or indirect subsidiaries or other sufficiently qualified subcontractors to provide Services to

Customer, provided that DELL EMC remains responsible to Customer for the Services' performance.

**D. Governing Law.**

This Master Agreement is governed by the laws of the State in which Customer is located. Subject to applicable state and local laws, the exclusive venue for all litigation arising between the parties related to this Agreement and any Schedules issued hereunder shall be in the federal courts sitting within the State in which Customer is located. BOTH PARTIES HEREBY WAIVE TRIAL BY JURY.

**E. Waiver.** Failure to enforce a provision of this Master Agreement will not constitute a waiver.

**F. Independent Contractors.** The parties shall act as independent contractors for all purposes under this Master Agreement. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other.

**G. Financial Statements.** In addition to providing the Documentation that may be requested by DELL EMC under

Section 5D(i) above, Customer agrees to furnish Customer's financial statements (prepared in accordance with generally accepted accounting principles) and other financial information, relating to a Schedule within five (5) Business Days as DELL EMC may from time to time reasonably request and subject to the applicable confidentiality terms as provided for in Section 8.

**H. Severability.** If any part of this Master Agreement, Schedule, purchase order, or quote is held unenforceable, the validity of all remaining parts will not be affected.

**I. Order of Precedence.** In the event of a conflict between the provisions of the documentation related to this MFCA, the order of precedence with respect to the term in conflict will be: (a) the terms of a Schedule (as amended); (b) the terms of this MFCA (as amended) In the event of a conflict between the terms of the MFCA and any Prime Contract, the MFCA shall prevail.

**In Witness Whereof**, the parties have caused their duly authorized representatives to execute this Master Agreement as of the Effective Date.

**EMC Corporation ("Dell EMC")**

**By:** \_\_\_\_\_

—

**Name (Print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

—

**CUSTOMER NAME ("Customer")**

**By:** \_\_\_\_\_

—

**Name (Print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

—

**APEX FLEX ON DEMAND SCHEDULE TO THE MASTER FLEXIBLE CONSUMPTION AGREEMENT  
SUPPLEMENTAL TERMS AND CONDITIONS – PUBLIC SECTOR ONLY**



*For DELL EMC Use Only*  
Contract ID \_\_\_\_\_

**Flexible Consumption Schedule (Flex on Demand) – U.S. STATE & LOCAL GOVERNMENT**

This Flexible Consumption Schedule (the “**Schedule**”) sets forth the terms under which the customer identified below (“**Customer**”) may access and use certain Deployed Capacity from the Dell entity identified below (“**DELL EMC**”). Customer’s use of the Deployed Capacity is subject to the terms of this Schedule and the **Governing Agreement** identified below.

<p>7 <b>Effective Date:</b> _____</p>	<p><b>Governing Agreement:</b>  Customer’s existing Master Flexible Consumption Agreement with DELL EMC dated on or about: _____</p>
<p><b>Name of Dell EMC entity (“DELL EMC”):</b>  EMC CORPORATION  176 SOUTH STREET  HOPKINTON MA 01748</p>	<p><b>Name of Customer:</b>  [xxxxx]  Xxxx  Xxxxxxx</p>

1. **Effective Date, Commencement Date.**
  - 1.1 **Schedule Effective Date and Transaction Start Date.** This Schedule expresses the current understanding of DELL EMC and Customer with regard to the Deployed Capacity listed on the Attachment 1 hereto. This Schedule, when signed by DELL EMC and Customer takes effect as of the **Effective Date** shown above.
  - 1.2 **Commencement Date.** The Flexible Consumption Period shall begin on either (i) the first day of the first month following the date the Deployed Capacity has been installed at the Installation Site, or, if Customer delays the installation process or if Customer’s facility is not prepared for the installation of Deployed Capacity, (ii) the first day of the second month following the Deployed Capacity’s arrival at the Installation Site (as applicable, the “**Commencement Date**”).
2. **Listing of Deployed Capacity; Unit of Measure (“UOM”) for Software; Level of Support Services.**
  - 2.1 **Deployed Capacity.** The Deployed Capacity subject to this Schedule is listed on the Attachment 1 hereto.
  - 2.2 **Unit of Measure for Software.** A complete description of the Unit of Measure applicable to each unit of Software listed on the Attachment 1 is contained in the Software Use Rights Guide at <https://www.dell EMC.com/content/dam/digitalassets/active/en/unauth/manual-warranty-informations/products/data-protection/h2483-sw-use-rights.pdf>
  - 2.3 **Support Services.** The following Table 2.3 specifies the level of Support Services to be provided for all Deployed Capacity during the Flexible Consumption Period.

Table 2.3 – Level of Support Services	
Support Services Level is:	XXXXXXXXXX

- 2.4 **Support Services Terms.** Support Services identified in a Schedule relating to Dell-branded and EMC Branded Deployed Capacity will be provided in accordance with and pursuant to the following terms for ProSupport for Enterprise: <https://www.delltechnologies.com/content/dam/digitalassets/active/en/unauth/offering-overview-documents/services/h16453-dellemc-prosupport-mc-option.pdf>.  
  
Support Services identified in a Schedule relating to Dell-branded and EMC Branded Deployed Capacity will be provided in accordance with and pursuant to the following terms for ProSupport Plus for Enterprise: <https://www.delltechnologies.com/content/dam/digitalassets/active/en/unauth/offering-overview-documents/services/h16454-dellemc-prosupport-plus-option.pdf>.

Support Services identified in a Schedule relating to Dell-branded and EMC Branded Deployed Capacity will be provided in accordance with and pursuant to the following terms for ProSupport One for Data Center: <https://www.delltechnologies.com/content/dam/documents-and-videos/dv1/en/services/support/legal-pricing/dell-emc-prosupport-one-for-data-center.pdf>.

**3. BILLING/METRICS. PURCHASE ORDER, FLEXIBLE CONSUMPTION PERIOD AND RENEWALS.**

**3.1 Billing Metrics and Flexible Consumption Period.** Customer is authorized to use all or a portion of the Deployed Capacity and receive Support Services thereon only during the **Flexible Consumption Period** as described in Table 3.3 below. During the Flexible Consumption Period, DELL EMC will measure the usage of the Deployed Capacity on a daily basis and issue a monthly invoice, in arrears, to Customer that reflects the amount of average usage during the prior month. The monthly Flexible Consumption Fee for usage is based on a minimum committed amount of use (the **“Monthly Committed Capacity”**) plus any usage in excess thereof (use of the **“Monthly Reserve Capacity”**). The Metered Total Capacity, Monthly Committed Capacity and Reserve Capacity are measured by means of the following metric:

**3.2 Capacities and Asset Metering.** Prior to Billing, Dell EMC will provide Customer a monthly usage report, which reflects both the Metered Total Capacity of the Deployed Capacity and the Monthly Committed Capacity as a Percentage of that Metered Total Capacity. **“Metered Total Capacity”** means the reported capacity of the Deployed Capacity based upon Customer’s storage configuration in the applicable environment. Monthly reports will reflect the Metered Total Capacity of Deployed Capacity as reported by the asset and will scale the Monthly Committed Capacity in line with the Monthly Committed Capacity as a Percentage of Metered Total Capacity (see table 3.3). The committed Monthly Flexible Consumption Fee, the Monthly Unit Rate (Charge per GiB per Month) and the Monthly Committed Capacity as a Percentage of Metered Total Capacity remain fixed.

**3.3 Rate, Billing Period and Flexible Consumption Fee; Reserve Capacity Cap.** Table 3.3 sets forth the Billing Period, Monthly Unit Rate, the Flexible Consumption Period and Fee for the Monthly Committed Capacity. The Flexible Consumption Fee per Billing Period is the sum of the fee for the Monthly Committed Capacity and plus the fee for the Reserve Capacity, if any, used during that Billing Period. These fees are calculated by multiplying the applicable amount of use by the Monthly Unit Rate. In no event shall the Flexible Consumption Fee for any Billing Period be less than that which would apply to the Monthly Committed Capacity. Without limiting the foregoing, Customer is responsible to pay DELL EMC the fees for the Monthly Committed Capacity in accordance with the terms and conditions of this Schedule even if Customer’s actual usage is less than the Monthly Committed Capacity. If the monthly use is not greater than the Monthly Committed Capacity, no Reserve Capacity fee shall be due. If the monthly use exceeds the Monthly Committed Capacity, DELL EMC shall calculate the amount of the Reserve Capacity usage, using the Monthly Unit Rate set forth in Table 3.3 and include the amount in the next monthly invoice issued by DELL EMC.

<b>Table 3.3 – Billing Information</b>	
Flexible Consumption Period begins on	The Commencement Date
Flexible Consumption Period duration is:	xxxxx (xx) months, but continues thereafter on a month-to-month basis until all Deployed Capacity is made available for pick-up by DELL EMC.
Billing Period	Monthly (in arrears)
Monthly Committed Capacity as a Percentage of Metered Total Capacity	Xxxx
Monthly Unit Rate (Charge per GiB per Month)	Xxxxx
Monthly Flexible Consumption Fee for Monthly Committed Capacity	Xxxxx

Dell EMC shall charge Customer the Monthly Unit Rate for use of Reserve Capacity above the Monthly Committed Capacity up to eighty-five (85%) percent of the Metered Total Capacity, and Customer’s use of the Reserve Capacity between 85% and 100% of the Metered Total Capacity be at no charge to Customer (“Reserve Capacity Cap”) except in cases of: (i) interruption of monitoring when customer is at fault (Section 2.F of the MFCA), or (ii) Customer is in default of this Schedule, where in either case Dell EMC will continue to invoice for use up to 100%. Dell EMC shall issue invoices referencing this Schedule.

**3.4 Purchase Order Requirements.** Customer’s initial purchase order must specify an amount that is at least equal to the monthly Flexible Consumption Fee for the Monthly Committed Capacity multiplied by the number of months in the Flexible Consumption Period. That minimum amount of the purchase order is shown in Table 3.4 below. Customer shall pay all invoices for Flexible Consumption Fees, including, but not limited to, those that contain charges for use of Reserve Capacity, regardless of whether or not such amounts exceed the amount of Customer’s purchase order(s) issued to DELL EMC in connection with this Schedule. If DELL EMC reasonably determines that the amount of Customer’s original purchase order will not cover the actual Flexible Consumption Fee, then DELL EMC will notify and discuss the situation with Customer. Upon agreement on the additional funds, Customer shall promptly issue a related purchase order for that additional amount.

**Table 3.4 – Purchase Order Amount**

Customer Purchase Order amount is:	\$X,XXX,XXX
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**3.5 Increasing Monthly Committed Capacity/Flexible Consumption Period.** During the Flexible Consumption Period, Customer may increase (i) its Monthly Committed Capacity; or (ii) both the duration of the Flexible Consumption Period and the Monthly Committed Capacity at the applicable Monthly Unit Rates stated in Table 3.5 below. To do so, Customer must agree to the increase in an amendment to this Schedule. When DELL EMC and Customer have agreed on the increase, DELL EMC shall prepare and send an amendment to Customer using the pricing in Table 3.3. The parties shall indicate their acceptance by signing the amendment and DELL EMC shall invoice Customer based on the new pricing pursuant to the amendment. When extending the duration of the Flexible Consumption Period, the revised duration continues to be measured from the original Commencement Date of the Flexible Consumption Period. If the duration of Flexible Consumption Period was thirty (36) months and the amendment adds six (6) months, then the new Flexible Consumption Period is a total of forty-two (42) months, beginning on the original starting date. The revised Monthly Unit Rate commences on the first day of the first month following the month in which the amendment becomes effective. In no event shall the amendment have any retroactive effect.

**Table 3.5 – Pricing for Increases Monthly Committed Capacity/Flexible Consumption Period**

80%	\$ -	\$ -	\$ -
70%	\$ -	\$ -	\$ -
60%	\$ -	\$ -	\$ -
	48 Months	54 Months	60 Months

**3.6 Renewal and/or Month-to-Month Extension.** Prior to the expiration of the applicable Flexible Consumption Period, Customer shall notify DELL EMC that Customer no longer wishes to use the Deployed Capacity. Customer shall completely migrate its information and data off of the Deployed Capacity and establish a mutually convenient date, coinciding with the end of a Billing Period, when the Deployed Capacity will be returned to DELL EMC. However, until Customer notifies DELL EMC that Customer has removed its data and the Deployed Capacity has been returned, Customer shall continue to pay the then currently applicable Flexible Consumption Fee on a month-to-month basis. In order to implement a new agreement, Customer must issue a new purchase order that complies with the requirements of the new agreement. Customer agrees to pay all charges incurred on a month-to-month extension regardless of whether or not it has issued a purchase order to DELL EMC.

**4. DELIVERY, INSTALLATION AND IDENTIFICATION.**

**4.1 Delivery.** DELL EMC shall deliver all Deployed Capacity to the “Ship-To” address stated in Table 4.3 below. Where Software is provided in a form that is embedded on the Equipment, DELL EMC will enable any required license keys (meaning information needed to enable activation and use of the Software) by electronic means.

**4.2 Deployment Services.** Deployed Services, subject to this Schedule, are listed on the Attachment 1 hereto. Other services, may be made available under a separate contract signed by the parties.

**4.3. Shipment and Installation Site(s).**

<b>Table 4.3 – Shipment and Installation Site(s).</b>	
<b>Licensed Software Ship-To Address (one address):</b>	<b>Installation Site(s), if any:</b>

**5. Miscellaneous.** Unless otherwise set forth above, the terms and conditions of the Governing Agreement shall apply to, and shall be considered incorporated into, this Schedule. The terms and conditions in this Schedule are deemed to be confidential information in accordance with the Governing Agreement. In the event of the assignment of this Schedule by DELL EMC, the assignee shall have all DELL EMC’s rights hereunder, but none of its obligations, and upon receipt by Customer of written notice of any such assignment, Customer shall make all Flexible Consumption Fee payments thereafter becoming due under any assigned Schedule to such assignee, and in regards to the Committed Capacity portion of that Fee, without regard to any set-off, defense or counter claim that Customer may have against DELL EMC or any third party. Customer and DELL EMC agree that a signed Schedule may

be amended by written notice from DELL EMC to Customer provided such notice is to correct the serial (or service tag) number of Deployed Capacity.

The parties have caused their authorized representatives to sign and this Schedule becomes effective as of the Effective Date.

**EMC CORPORATION (“DELL EMC”)**

**ABC (“Customer”)**

By (Sign): \_\_\_\_\_

By (Sign): \_\_\_\_\_

Name (Print): \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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Attachment 1

Product list to be added

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