

# DELL TECHNOLOGIES PARTNER PROGRAM AGREEMENT (U.S. and Canada version)

By participating in the Dell Technologies Partner Program (“**Program**”), the company or entity that is submitting the channel partner application or accepted into the Program (“**you**”, “**your**” or “**Partner**”) agrees to be bound by this Dell Technologies Partner Program Agreement (“**Agreement**”), which includes the General Terms; the Partner Specific Terms for any and all partner tracks which you are authorized to participate in the Program; and the documents, terms and conditions (as each may be modified) that are referenced in this Agreement.

**Please print a copy of this Agreement for your records.** Completion of the partner application does not mean or imply that you have been accepted into the Program.

For purposes of this Agreement, “**Dell**” means Dell Marketing L.P. or Dell Federal Systems L.P. (in the U.S.) or Dell Canada Inc. (in Canada); “**EMC**” means EMC Corporation (in the U.S.) or EMC Corporation of Canada (in Canada); “**Dell Technologies**” means Dell, EMC, or both, as applicable; and “**Dell Affiliate**” means any direct or indirect subsidiary of Dell Inc.

## General Terms

1. **Eligibility.** Throughout your participation in the Program, you must (a) maintain good credit standing with Dell Technologies; (b) meet Program requirements, including the completion of all required training at your own expense; and (c) comply with this Agreement. Additionally, you will at all times (d) maintain a current company profile in Partner Portal (as defined below), including your profile in the Find a Partner tool, and provide relevant, up-to-date contact details of your personnel; (e) manage permission and access to Partner Portal for your company personnel, ensuring each user has proper access rights, including promptly deactivating access for reassigned or terminated personnel; and (f) provide prompt, written notification to Dell Technologies of any changes that may affect your participation in the Program. You will designate an individual (“**Partner Account Administrator**”) to perform the tasks in subparts (d) through (f) and to receive any notice that Dell Technologies is required to give under this Agreement. You authorize Dell

Technologies to publish and include your partner profile and company information in the Find a Partner tool to help the public search for a Dell Technologies partner.

## 2. **Governing Documents**

2.1 **Agreement**. Unless otherwise specified in writing by Dell Technologies, this Agreement governs your participation in the Program, including marketing and incentive programs and other subprograms that are available to you. This Agreement supersedes any previous program terms (including the EMC Reseller Marketing Support Agreement, Dell PartnerDirect terms and conditions, and Dell EMC Partner Program Agreement) in place between you and Dell Technologies.

2.2 **Purchases**. Your purchases of hardware equipment and software licenses (“**Products**”) and support, maintenance, professional and other services (“**Services**”) directly from Dell Technologies are subject to agreements, terms and conditions referenced in the applicable Partner Specific Terms. You will purchase Products and Services for resale only through a Dell Technologies Partner Program authorized distributor (“**Distributor**”) unless you are expressly authorized in writing by Dell Technologies to purchase Products and Services directly from Dell Technologies.

2.3 **Subprogram Terms**. You agree that if you participate in any sales or marketing initiative or program under the Dell Technologies Partner Program, or receive benefits from it, you are subject to the terms and conditions (if any) that Dell Technologies sets forth for the initiative or program (“**Subprogram Terms**”). All initiatives or programs that offer incentives, rebates, marketing development funds, or other financial benefits are subject to the Dell Technologies Partner Program Incentive Terms and Conditions located [here](#) and to the business rules (if any) for the initiative or program.

## 3. **Partner Portal**

3.1 **Grant of License**. Dell Technologies may provide you, or you may receive, (a) access to the “**Partner Portal**”, which includes Program-related websites, platforms, applications (web or mobile), tools and other resources, and (b) “**Information**”, which includes Confidential Information (as defined below), “**Customer Data**” (as defined in the Customer Data Terms located [here](#)) and “**Personal Information**” (as defined below). Dell Technologies grants you a limited, non-exclusive, non-transferable, non-sublicenseable

license, while this Agreement is in effect, to access and use the Partner Portal and Information solely for your internal use and only for the purposes of (a) marketing and delivery of the Products and Services; (b) development of Partner's value-added services for the sole purpose of enabling and supporting customers' use of the Products and Services; or (c) assisting Dell Technologies to sell the Products and Services. You will use the Partner Portal and Information solely in accordance with (d) this Agreement, (e) any additional terms and conditions that may accompany the Partner Portal or Information, such as a clickwrap or browsewrap agreement or a notice indicating that additional terms apply to the Partner Portal or Information (collectively, "**Accompanied Terms**"), and (f) the Site Terms of Use located [here](#) if you access or use Partner Portal or Information through the Dell Technologies websites. Your use of the Find a Partner tool is subject to the terms and conditions [here](#). You will use and manage Customer Data in accordance with and subject to the Customer Data Terms located [here](#). In the event of conflict among these terms, the order of precedence is: Accompanied Terms, Customer Data Terms, this Agreement, and the Site Terms of Use. All Information shall remain the property of Dell Technologies. Any rights not expressly granted to you are reserved by Dell Technologies.

3.2 **Errors and Availability.** Dell Technologies is not responsible for any errors or delays in transmission that may occur prior to our receipt of the transmission. Security procedures used in the Partner Portal are solely for the purposes of authentication of a transmission. All transmissions are considered received by Dell Technologies only when actually received by Dell Technologies. Access to the Partner Portal may be unavailable without notice at certain times, and Dell Technologies will not be liable for any damages or losses that may result from such unavailability.

3.3 **Other Partner Benefits.** Dell Technologies may choose to make certain information it collects about your business available to companies with whom Dell Technologies has a strategic relationship, including companies who conduct market research on behalf of Dell Technologies or offer products or services intended to be a benefit to you or your customers. The information will be provided under confidentiality agreements between Dell Technologies and such partners and may be used in connection with notifying you of products, services or programs that Dell Technologies believes may be of interest to you.

#### 4. **Information**

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

4.2 **Personal Information.** If you provide to Dell Technologies any Personal Information about your personnel, customers or prospects, you represent that you have obtained permission for Dell Technologies to receive the Personal Information and to use and disclose the Personal Information as authorized in this Agreement. As used in this Agreement, “**Personal Information**” means any information or data that alone or together with any other information relates to an identified or identifiable natural person, or data considered to be personal data as defined under applicable laws.

5. **Lead Management Tools.** Dell Technologies may provide you with lead management tools (“**Lead Management Tools**”) to access and manage information regarding your leads. The term “**Partner Lead Contact Data**” shall mean any contact’s first and last name, e-mail address, and phone number that (i) were not provided by Dell Technologies and (ii) you choose to record in the Lead Management Tools. Partner Lead Contact Data will not be used by Dell Technologies for its direct sales or marketing efforts except with your prior approval or except if such data is obtained by Dell Technologies independently from other sources. You understand that deal registrations in the Partner Portal can be automatically linked to leads in the Lead Management Tool. You understand and consent to the following: once a lead is linked to a registered deal or opportunity with a customer, (a) the lead information related to the customer will appear in the deal registration tool; (b) all Partner Lead Contact Data related to the customer will become visible to Partner, Distributor, and Dell Technologies channel and sales personnel through the deal registration tool; (c) the deal registrant can view a list of contacts at Partner and Distributor and engage one or more of them as a point of contact for the deal; and (d) each Partner and Distributor contact, and all Dell Technologies channel and sales personnel, can view the names and contact information for all of the contacts associated with the deal.

6. **Administration.**

6.1 During the term of this Agreement and a period of five (5) years thereafter you will maintain legible, accurate and complete books, records, and documents concerning this Agreement and your activities hereunder. At the end of this retention period, you will appropriately dispose of all records. Upon Dell Technologies request, you will cooperate with and assist Dell Technologies with any audit, review, or investigation (“Audit”) that relates to (a) this Agreement or your compliance with laws; (b) your marketing, sale, distribution, licensing, or delivery of Products and Services, whether sourced from Dell Technologies or a third-party; (c) any rebates, incentives, concessions, or other amounts

paid or payable by Dell Technologies; (d) compliance with logo brand guidelines, or (e) any amounts due to Dell Technologies. In connection with an Audit, you will deliver all records, information, and documents reasonably requested by Dell Technologies. Dell Technologies has the right to conduct onsite Audits, and you will grant Dell Technologies and its employees and representatives with reasonable access to information, records, personnel, and customers (including customer agreements to verify your compliance with this Agreement) and provide entry and access to your premises or other locations (during normal business hours) where such information and records are located. Failure to cooperate with an Audit or provide the information or records requested by Dell Technologies is a material breach of this Agreement. Dell Technologies will pay the costs of an Audit except where a discrepancy of five (5) percent or more is discovered in the information disclosed by you, in which case you agree to be responsible for all reasonable costs. Before accepting certain large purchase orders, Dell Technologies may request, and you agree to provide, evidence (excluding confidential terms and pricing) that a final binding purchase order has been placed by the end-user customer for the Dell Technologies products and/or services being ordered (please note required evidence will be subject to Dell Technologies approval and will not include letters of intent, purchases conditional on a future event, internal distributor documentation, or awards of public tender offers).

6.2 Dell Technologies may deny any claim that it believes, in its sole discretion, does not conform to this Agreement, the Program, or subprogram terms. Dell Technologies may, without prior notice, immediately suspend or terminate any quote, purchase order, registration or your participation in the Program if you provide to Dell Technologies or customers any inaccurate, incomplete, or fraudulent claims or information or if you engage in activities that may cause damage, embarrassment or adverse publicity to Dell Technologies, or any of its officers, directors or employees. Dell Technologies records and systems shall be authoritative and conclusive for purposes of determining your eligibility and Program and subprogram benefits and for performing any computation under the Program or subprograms. Dell Technologies reserves the right to interpret the rules of the Program and subprograms in its sole discretion. All decisions made by Dell Technologies are final.

7. **Partner Conduct**. The terms in Section 6 (Administration) and Section 7 (Partner Conduct) are collectively referred to as the “**Compliance Terms**”.

7.1 **Business Conduct.** At all times you will conduct business in a manner which reflects favorably on the Products, Services, and goodwill and reputation of Dell Technologies. In your purchases, marketing and sales of Products and Services, you will use best efforts to conduct your business in an ethical manner and to avoid any business practices that may be perceived as deceptive, misleading or otherwise improper. You will not make any false or misleading statement in your marketing or sales materials. In connection with activities related to this Agreement, the Program, or your purchasing, marketing, sale or distribution of Products and Services, you will comply with your obligations under the Dell Technologies Partner Code of Conduct, which is currently located [here](#) and comply with the Compliance Terms.

7.2 **Anti-Corruption Laws.** “Anti-Corruption Laws” means the anti-corruption or anti-bribery laws in effect in jurisdictions where you act or purchase, market, sell, distribute, or deliver Products or Services, and Anti-Corruption Laws specifically include the Foreign Corrupt Practices Act of the United States and Canada’s Corruption of Foreign Public Officials Act of 1999. The Anti-Corruption Laws apply to your purchase, marketing, sale, and distribution of Products and Services. You agree to comply with the Anti-Corruption Laws. You will not, in connection with this Agreement or Ordering Agreement (defined in applicable Partner Specific Terms below), take or allow any third party to take, any action or engage in any practice that would violate the Anti-Corruption Laws. You represent and warrant that neither you nor any of your directors, officers or employees, who have decision-making authority with respect to this Agreement or Ordering Agreement, are government official or have been convicted of any offense involving bribery, corruption, fraud or dishonesty, or to the best of your knowledge, have been or are the subject of any investigation, inquiry or enforcement proceeding by any governmental, administrative or regulatory body regarding any offense or alleged offense under the Anti-Corruption Laws. You will (a) maintain, throughout the duration of dealings between you and Dell Technologies, your own anti-corruption policies and procedures, including adequate procedures designed to ensure that you and any third party you engage in connection with Products, Services, this Agreement or Program comply with the Anti-Corruption Laws; (b) provide a copy of such policies and procedures to Dell Technologies on request; and (c) monitor and enforce such policies and procedures as appropriate. Dell Technologies may, without any liability to you, immediately terminate this Agreement or Ordering Agreement or suspend its performance hereunder (including withholding incentive payments) if (1) Dell Technologies has reason to believe that you have breached this paragraph or the Dell Technologies Partner Code of Conduct, or that a breach may

occur, or (2) you refuse to provide information requested by Dell Technologies to confirm your compliance with this paragraph. Any incentive which Dell Technologies has paid to you will be automatically terminated and cancelled, and you will promptly refund such incentive to Dell Technologies, if you violate the Anti-Corruption Laws with regard to any transaction for which the incentive was paid.

### 7.3 **Customs, Export Controls, and Sanctions Compliance**

A. Dell Technologies acceptance of any order for any Products or Services is contingent upon your compliance with the provisions of this clause. If you sell Products and Services to end-users, you shall require your end-users to agree to terms no less restrictive than those contained in this Subsection 7.3.

B. You agree to abide by, and to assume sole responsibility for obtaining, and complying with the requirements of, all required export, re-export, in-country transfer, and import licenses, registrations, and other government authorizations relating to the Products and Services provided under an Ordering Agreement or this Agreement.

C. You agree that, in connection with the Products and Services supplied to you by Dell Technologies and any goods or services that you provide to Dell Technologies, you will not contract with or otherwise do business with any individual, company, organization or other entity, or with, in or involving any country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea), that is the subject or target of any U.S. or other government sanctions or trade embargoes or otherwise identified on a list of prohibited, sanctioned, debarred, or denied parties, including but not limited to those imposed, administered or enforced from time to time by the U.S. government through the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, the Bureau of Industry and Security ("BIS") of the U.S. Department of Commerce, or the U.S. Department of State, the European Union, or Her Majesty's Treasury of the United Kingdom (collectively, "Sanctions"), without having first obtained any required license or other government authorization or in any manner which would result in a violation of Sanctions by you or Dell Technologies.

D. Neither you nor or any of your subsidiaries nor any of your or your subsidiaries' directors, administrators, officers, board of directors (supervisory and management), members or employees is the subject or target of any Sanctions.



E. You have adequate controls and systems in place to screen, and are fully responsible for screening, transactions of all customers and other third parties who may assist, benefit from, or provide goods or services to, or receive goods or services from, you and to ensure compliance with applicable laws pertaining to Sanctions.

F. You have appropriate procedures in place to comply with (and to ensure timely reporting under) the requirements of the anti-boycott laws and regulations of the United States and other jurisdictions in which Dell Technologies does business.

G. You have adequate policies and procedures in place to ensure that, and will ensure that, the Products and Services provided in connection with this Agreement or an Ordering Agreement will not be exported, re-exported, sold, leased or otherwise transferred to, or utilized by, an end-user engaged in any of the following activities: (i) activities related to weapons of mass destruction, including any activities related to the design, development, production or use of: (A) nuclear weapons, materials or facilities; (B) missiles or the support of missile projects; or (C) chemical or biological weapons; (ii) terrorist activities (iii) military end uses in or connected with certain government owned or controlled corporations of such countries as identified by U.S. and other applicable government licensing authorities; (iv) exploration or production of oil and gas in Arctic, deep water (greater than 500 feet), or shale formations in Russia or in, by, or with Russian companies, territories, or any other entities as identified by BIS and/or OFAC.

H. Unless prohibited by law or compulsory governmental process, you agree to provide notice to Dell Technologies in a commercially reasonable manner of any government action or communication that you receive or become aware of concerning Sanctions or trade compliance relating to the Products and/or Services provided by or to you and to or by Dell Technologies.

I. Any goods, software, technology, or source or object code provided by you and installed on, exported with, or used as part of the Products or Services are authorized for export, re-export, or transfer pursuant to an export license obtained by you or is otherwise covered by a license exception.

J. You are responsible for accurately reporting and providing all applicable export license, product classification information, end-user and end use statements, and

destination control statements required by applicable customs, export controls, and sanctions laws.

K. Nothing in this Subsection 7.3 is to be construed as authorization by Dell Technologies for you to market or resell Products and Services in violation of the provisions of this Agreement.

L. To the extent this clause applies, you are not authorized to import to or export out of the Territory under Ex Works terms unless you have received written approval from Dell Technologies (at a Sales Vice President level or higher) and you have signed an Ex Works addendum with Dell Technologies and comply with such addendum.

7.4 **Offer-Specific Terms**. You understand and agree that Products and Services, including third-party branded offerings, identified at [www.dell.com/offeringspecifictterms](http://www.dell.com/offeringspecifictterms) that you purchase for resale are subject to additional, specific terms stated at [www.dell.com/offeringspecifictterms](http://www.dell.com/offeringspecifictterms) (“**Offer-Specific Terms**”). When selling or providing any such offerings, you shall inform and require the end-user (and require your resellers, if any, to inform and require the end-user) to agree to the applicable Offer-Specific Terms and you will provide written evidence of doing so upon receipt of request from Dell Technologies.

## 8. **Logos and Trademarks**

8.1 You agree that trademarks, service marks, trade or company names, product and service identifications, internet domains/internet addresses, logos, artwork and other symbols and devices associated with Dell Inc., Dell Affiliates, or the Products or Services (the “**Dell Marks**”) are and shall remain Dell Inc.’s property. You may not register or use any domain name, business name, email address, social media handle, or other designation of identity or origin containing or confusingly similar to any Dell Marks without Dell Inc.’s prior written permission, and you shall assign any such designations to Dell Inc. at your expense upon Dell Inc.’s demand. You will not incorporate Dell Marks into your product names, service names, or any other similar designations. You will not use the Dell Marks in search engine advertising, either as a keyword or in advertisements appearing on search engines without Dell’s prior written permission – however, such use restriction will not apply where prohibited by applicable law. In particular, bidding on keywords is permissible without Dell’s prior written permission in the European Economic Area (EEA),

Switzerland, San Marino, Vatican State, Australia and Japan; however, if you will request Dell Technologies to fund the keyword bidding activities, Dell Technologies may require additional terms and conditions related to such funding. Your use of the Dell Marks inures to the sole benefit of Dell Inc. You acknowledge that images and artwork provided to you by Dell Technologies, of the Products or Services, are copyrighted or licensed by Dell Inc. or a Dell Affiliate, and you will not alter these images or artwork or use them outside of the context in which they were provided to you.

8.2 **Program Logos.** Your use of Program logos is determined by, and must be in compliance with, the terms and conditions in the Dell Technologies Partner Logo and Trademark Usage Terms found [here](#).

9. **WARRANTY DISCLAIMER.** DELL TECHNOLOGIES MAKES NO WARRANTIES AND SPECIFICALLY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE PROGRAM (INCLUDING ALL INFORMATION, TOOLS, AND OTHER MATERIALS RELATED TO OR PROVIDED UNDER THE PROGRAM), EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. YOU UNDERSTAND THAT THE PROGRAM DOES NOT GUARANTEE THAT YOU WILL MAKE ANY SALES OR PROFITS. ALL DELL TECHNOLOGIES INFORMATION IS PROVIDED "AS IS".

10. **Indemnification.** To the fullest extent permitted by law, you shall indemnify, defend, and hold harmless Dell Technologies, Dell Affiliates, and their respective successors and assigns from any claim, demand, cause of action, debt, or liability (including reasonable attorney and legal fees, expenses, and court costs) arising from your violation of applicable laws, Compliance Terms, Section 4 ("Information") or the Dell Technologies Partner Code of Conduct.

11. **Limitation of Liability.** YOU ACKNOWLEDGE THAT YOUR PARTICIPATION IN THE PROGRAM IS STRICTLY VOLUNTARY AND THAT YOUR PARTICIPATION HAS NOT BEEN REQUIRED BY DELL TECHNOLOGIES AS A CONDITION OF PURCHASING PRODUCTS OR SERVICES FROM DELL TECHNOLOGIES.

11.1 **DELL TECHNOLOGIES SHALL HAVE NO LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE, RELIANCE, EXEMPLARY, INCIDENTAL, OR INDIRECT LOSS OR DAMAGES, FOR ANY LOSS OF BUSINESS, INCOME, OR PROFITS, OR FOR LOST OR CORRUPTED DATA OR SOFTWARE.**

11.2 **IN NO EVENT SHALL DELL TECHNOLOGIES AGGREGATE LIABILITY FOR ALL CLAIMS ARISING FROM, OUT OF, OR RELATING TO THE PROGRAM OR THIS AGREEMENT OR TERMINATION THEREOF EXCEED \$500.00 (U.S. DOLLARS).**

11.3 **THESE LIMITATIONS OF LIABILITY SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN TORT, CONTRACT, OR OTHER THEORIES, AND WHETHER DELL TECHNOLOGIES KNEW OR SHOULD HAVE KNOWN THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, THE REMEDIES SET FORTH HEREIN SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.**

## 12. **Termination**

12.1 **Termination.** You may withdraw from the Program at any time by notifying Dell Technologies in writing. Dell Technologies may suspend or terminate your participation in the Program, in whole or in part, without prior written notice: (a) for any breach of this Agreement or any other agreement related to your participation in the Program, or (b) for any attempt to impair the integrity of the Program as determined by Dell Technologies. In addition, Dell Technologies, in its sole discretion, may terminate the Agreement or Program in whole or in part, for all participants, or for you alone, without cause, upon ten (10) days' notice to the Partner Account Administrator or other contact provided by you in connection with your participation in the Program.

12.2 **Effect of Termination.** Upon termination of the Agreement, the license and rights granted to you in this Agreement shall terminate completely and you shall cease to use Information and Partner Portal, and shall promptly return to Dell Technologies all tangible copies of the Information in your or your personnel's possession at your own cost. Nothing in this Section 12 (Termination) shall limit Dell Technologies' rights to pursue other legal remedies, including immediate court or judicial relief. All provisions that by their nature are intended to survive the termination shall survive.

12.3 **Termination of Partner Portal Access.** Dell Technologies has the right to terminate or discontinue your or any of your personnel's access to the Information or Partner Portal, at its convenience.

13. **Miscellaneous**

13.1 **Assignment.** You may not assign or novate this Agreement or any of your rights under the Program or Agreement, nor delegate any of your obligations, to any third party, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner, without the express written consent of Dell Technologies. Dell Technologies may void any purported assignment, novation or delegation that violates the preceding sentence. To the extent Dell Technologies consents to an assignment, novation or delegation, this Agreement (including rights and obligations) inures to the benefit of and is binding upon your successors in interest by way of merger, acquisition, or otherwise, and your permitted assigns.

13.2 **Independent Contractors.** You and Dell Technologies are independent contractors and shall have no authority to bind the other. Neither this Agreement nor your participation in the Program shall be deemed to create a partnership, agency, joint venture, franchise, or other similar arrangement. Neither party will make any representations or warranties on the other party's behalf. Neither party is or will claim to be a legal representative, franchisee, employee, agent, or representative of the other party.

13.3 **Dispute Resolution.** As a condition precedent to filing any lawsuit, You and Dell Technologies will attempt to resolve any claim, controversy or dispute arising from, out of, or relating to the Program or this Agreement ("**Dispute**") against Dell Technologies or Dell Affiliate through negotiation with persons fully authorized to resolve the Dispute, or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Although the merits of the underlying Dispute will be resolved in accordance with this Section 13 (Miscellaneous), any party has the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitation periods, or preserve a superior position with respect to other creditors. If the parties are unable to resolve the Dispute within thirty (30) days (or other mutually agreed time) of notice of the Dispute to the other party, the parties will be free to pursue all

remedies available at law or in equity. In any Dispute (other than Dell Technologies efforts to collect overdue amounts from you) each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees under § 38.001 of the Texas Civil Practices and Remedies Code.

13.4 **Force Majeure.** Dell Technologies will not be liable for any delay or failure to perform its obligations during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond its reasonable control.

13.5 **Governing Law.** This Agreement, and any Dispute arising from, out of, or relating to the Program or this Agreement are governed by the laws of the State of Texas and the federal laws of the United States (or the laws of the Province of Ontario and the federal laws of Canada, if you are a Canadian entity), without regard to its conflict-of-laws rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply. To the extent permitted by law, the state and federal courts located in Texas (or in Toronto, Ontario, if you are a Canadian entity) will have exclusive jurisdiction for any Disputes. You and Dell Technologies agree to submit to the personal jurisdiction of the state and federal courts located within Travis or Williamson County, Texas, (or in Toronto, Ontario, if you are a Canadian entity) and agree to waive any and all objections to the exercise of jurisdiction over the parties by those courts and to venue in those courts. The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute. ***Neither Dell Technologies nor you are entitled to join or consolidate claims by or against other partners or customers, or pursue any claim as a representative or class action, or in private attorney general capacity.***

13.6 **Modifications.** Dell Technologies reserves the right to modify the Program, including, the eligibility requirements, Program benefits (including any discounts, incentives, and pricing), and this Agreement (including all documents, terms and conditions referenced herein), at any time without prior notice. Your continued participation in the Program will constitute your binding acceptance of the changes and your consideration supporting the modifications.

13.7 **Severability.** If any part of this Agreement is declared or found to be illegal, invalid or unenforceable, then that part will be stricken or modified to the extent necessary to make it legal, valid, and enforceable while preserving the parties' original intent to the

maximum extent possible. The remaining parts of this Agreement will remain in full force and will not be affected.

13.8 **Waiver.** Failure by Dell Technologies to enforce any provision of this Agreement will not constitute a waiver of any future enforcement of that or any other provision of this Agreement. No waiver will be effective against Dell Technologies unless in writing and signed by an authorized representative of Dell Technologies.

13.9 **References.** You shall not directly or indirectly issue or release any written publicity, marketing collateral, press release or other public announcement, relating in any way to this Agreement or your participation in the Program, or your relationship with Dell Technologies, without the prior written approval of Dell Technologies. For clarity, your use of Program logo as permitted by and in compliance with the terms of Subsection 8.2 (Program Logos) does not require prior written approval of Dell Technologies.

13.10 **Entire Agreement.** This Agreement (including the General Terms, applicable Partner Specific Terms, and all documents, terms and conditions (as each may be modified) that are referenced herein) constitutes the entire agreement between Partner and Dell Technologies regarding the Program, including subprograms, rebates, incentives, and marketing programs. Partner expressly disclaims any reliance on statements or representations made by Dell Technologies that are not embodied in this Agreement or on Dell Technologies' prior course of conduct.

13.11 **Headings, Interpretation, and English Language.** The section and subsection headings used herein are for convenience and reference only and are not to be considered in construing or interpreting this Agreement. All references herein to "Sections" and "Subsections" will be deemed references to sections of this Agreement. The words "include" and "including", and other variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation". The parties confirm that it is their wish that this Agreement, as well as other documents relating to this Agreement, including all notices, have been and will be drawn up in the English language only.

## **PARTNER SPECIFIC TERMS**

The terms and conditions below (“**Partner Specific Terms**”) apply to the respective partner tracks within the Program. Only the Partner Specific Terms that correspond to the partner track (or tracks) that you are authorized to participate in the Program will apply to you.

## 1. **Partner Specific Terms for Solution Provider Track**

**1.1 Partner Status.** Additional requirements regarding your Solution Provider status may be found [here](#). Noncompliance with any provision of this Agreement or the Ordering Agreement (as defined in this Section 1) may result in the termination of the Agreement, Ordering Agreement, or your participation as a Solution Provider.

**1.2 Indirect Purchases.** You will purchase Products and Services for resale only through a Distributor unless you are expressly authorized in writing by Dell Technologies to purchase Products and Services directly from Dell Technologies. If you purchase Products and Services from a Distributor for resale, you agree the Reseller Terms of Sale located [here](#) (for U.S. purchases) and [here](#) (for Canadian purchases) will apply to you, except final terms of pricing, invoicing, payment, order, shipment, cancellation, and returns will be as agreed between you and the Distributor and the terms that correspond to those topics in the Reseller Terms of Sale do not apply as between you and Dell Technologies.

**1.3 Direct Purchases.** Your purchase of Products and Services from Dell Technologies for resale is subject (a) to your written Reseller Agreement, Value Added Reseller Agreement, Channel Partner Reseller Agreement or any substantially similar resale agreement signed with Dell Technologies to the extent that it expressly applies to those Products and Services being purchased or, to the extent there is no such agreement, (b) to the Reseller Terms of Sale located [here](#) (for U.S. purchases) or [here](#) (for Canadian purchases)(subparts (a) and (b) are the “**Ordering Agreement**”). If the Ordering Agreement in subpart (a) does not contain terms as comprehensive as the Compliance Terms or this Section 1, then the Ordering Agreement is supplemented by the Compliance Terms and this Section 1. Different Ordering Agreement may apply to different Products and Services. Purchases from Dell Technologies may be returned only as permitted by the Dell Technologies Partner Program Return Policy located [here](#) and any such returns are subject to the policy.



**1.4 Purchases for Resale to Federal End User.** Your purchase of Products and Services from Dell Technologies for resale to any department, agency, division, or office of the United States Government (collectively, “**Federal End Users**”) is subject (a) to your Federal Certified Reseller Agreement or Federal Reseller Agreement (“**Federal Reseller Terms**”) with Dell Technologies to the extent that it expressly applies to those Products and Services being purchased or, to the extent there is no such agreement (b) to the Reseller Terms of Sale located at [www.dell.com/resellerterms](http://www.dell.com/resellerterms) and the Supplemental Terms for U.S. Federal Resellers (“**Federal Supplemental Terms**”), which are currently found [here](#), (subparts (a) and (b) are the “**Ordering Agreement**” for purchases intended for resale to Federal End Users). Quotes for Products and Services intended for sale to Federal End Users must be solicited from the Dell Technologies Federal Sales Team. Any orders not placed in collaboration with the Dell Technologies Federal Sales Team may not be sold to Federal End Users, and Dell Technologies makes no representations regarding those orders' compliance with any Federal acquisition requirements. Subsection 1.3 will not apply to quotes or orders of Products or Services that are intended for resale to Federal End Users.

**1.5 Deal Registration.** If you are permitted to participate in the deal registration program, your registrations are subject to the “Deal Registration Terms and Guidelines – North America” located [here](#).

**1.6 Precedence.** To the extent there are conflicting provisions regarding your purchases from Dell Technologies or your sales of Products or Services, the order of precedence will be: (a) Federal Supplemental Terms (if applicable), (b) Compliance Terms, (c) Ordering Agreement, (d) Partner Specific Terms for Solution Partner Track, and (e) General Terms (other than Compliance Terms). To the extent there are any conflicting provisions regarding Program, Information, incentives, rebates, pricing (each provided in connection with the Program) or interpretation of this Agreement, the order of precedence will be: (1) Compliance Terms, (2) Partner Specific Terms for Solution Partner Track, (3) General Terms (other than Compliance Terms), and (4) Ordering Agreement.

## **2. Partner Specific Terms for Cloud Service Provider Track**

**2.1 Ordering Agreements.** If Partner purchases Products and Services from Dell Technologies, then such purchases are subject to and governed by either (a) your existing Service Provider Ordering Agreement, Master Ordering Agreement, Alliance Agreement,

Strategic Alliance Framework Agreement or other purchasing agreement explicitly governing the type of Products and Services being purchased or, in the absence of such agreement, (b) the then-current U.S. Commercial Terms of Sale, which are currently found at [www.dell.com/cts](http://www.dell.com/cts), if your order is placed in the U.S.; or the then-current Canadian Commercial Terms of Sale, which are currently found at [www.dell.ca/terms](http://www.dell.ca/terms), if your order is placed in Canada (subparts (a) and (b) are collectively the “**Ordering Agreement**”). If the Ordering Agreement does not contain applicable Cloud Service Provider usage rights or terms as comprehensive as the Compliance Terms, then the Ordering Agreement is supplemented by the Cloud Service Provider Rider at <https://www.dell.com/learn/us/en/uscorp1/terms-conditions/csp-rider-to-cts> and by the Compliance Terms, respectively.

**2.2 Resell Terms.** If Partner purchases Products or Services from Dell Technologies for resale, then such purchases are subject to and governed by either (a) your existing Reseller Agreement, Value Added Reseller Agreement, Channel Partner Reseller Agreement or any substantially similar resale agreement that you have with Dell Technologies that applies specifically to those Products and Services or, in the absence of such agreement, (b) the Reseller Terms of Sale located [here](#) (for U.S. purchases) or [here](#) (for Canadian purchases)(subparts (a) and (b) are collectively the “**Resell Ordering Agreement**”). Different Ordering Agreement may apply to different Products and Services.

**2.3 Reporting.** In order for Dell Technologies to provide the available benefits, you shall provide to Dell Technologies, a Point of Sale Report (POS) identifying the clients, locations, contract duration, and capacity utilized during the period or provide such information to Dell Technologies at the time the applicable quote is generated. You shall include all contracts that are Dell Technologies Powered (on EMC, Dell or Dell Technologies equipment). Please submit your POS Report to [EMCSERVICEPROVIDERPOSREPORT@DELL.COM](mailto:EMCSERVICEPROVIDERPOSREPORT@DELL.COM) (or such other email specified by Dell Technologies) by the 15th of every month. Submit a blank POS Report if there is no activity that month.

### **3. Partner Specific Terms for System Integrator Track**

**3.1 Ordering agreements.** If Partner purchases Products and Services from Dell Technologies, then such purchases are subject to and governed by either (a) the existing Service Provider Ordering Agreement, Master Ordering Agreement, Alliance Agreement,

Strategic Alliance Framework Agreement or other purchasing agreement explicitly governing the type of Products and Services being purchased or (b) the then-current Commercial Terms of Sale, which are currently found at [www.dell.com/cts](http://www.dell.com/cts) (the "U.S. CTS"), or if the end-user is located in Canada, the then-current Dell's Commercial Terms of Sale (Canada) set forth at [www.dell.ca/terms](http://www.dell.ca/terms) (the "Canada CTS") (subparts (a) and (b) are the "**Ordering Agreement**").

**3.2 Resell Terms.** If Partner purchases Products or Services from Dell Technologies for resale, then such purchases are subject to and governed by either (a) the then-current Reseller Terms of Sale located [here](#) (for U.S. purchases) or [here](#) (for Canadian purchases) or (b) your existing Reseller Agreement, Value Added Reseller Agreement, Alliance Agreement or any substantially similar agreement that you have with Dell Technologies that authorizes you to purchase those Products and Services for resale (subparts (a) and (b) are the "**Resell Ordering Agreement**"). Different Ordering Agreement may apply to different Products and Services.

**3.3 Federal System Integrators.** If you are purchasing Products and Services for internal use of resale, directly or indirectly to a Federal End User (defined in Subsection 1.3 above), , and you have a Federal Integrator Purchase Agreement, Federal Customer Sales Agreement, or substantially similar agreement ("**Federal Ordering Agreement**") with Dell Technologies that applies specifically to those Products and Services, then your purchase of those items and any related activities are subject to the Federal Ordering Agreement. Quotes for Products and Services intended for sale, directly or indirectly, to Federal End Users must be solicited from the Dell Technologies Federal Sales Team.

#### **4. Partner Specific Terms for OEM Partner Track**

**4.1 "OEM Partner"** refers to a Partner that sells or distributes Products to OEM Customer and only as part of an OEM Customer Solution (defined below) and after Partner has added value to the Products through the addition of hardware, software, or services ("**OEM Activity**"). The term "**OEM Customer**" means an original equipment manufacturer that (a) combines the Products with OEM Customer's proprietary hardware, software, or other intellectual property, resulting in a specialized system or solution with industry- or task-specific functionality ("**OEM Customer Solution**") and (b) sells the OEM Customer Solution under OEM Customer's own brand.

**4.2 Partner Status.** You agree to comply with additional requirements Dell Technologies may apply to OEM Partners. Noncompliance with any provision of this Agreement or the Ordering Agreement (as defined in this Section 4) may result in the termination of the Agreement, Ordering Agreement, or your participation as an OEM Partner.

**4.3 Ordering Agreements.** Your purchases of Products or Services from Dell Technologies for resale to OEM Customers are subject to and governed by the OEM Partner Reseller Agreement (or a substantially similar resale OEM partner agreement that covers OEM Activity) that you have with Dell Technologies that applies specifically to those Products and Services being purchased for resale and OEM Activity to OEM Customers (the “Ordering Agreement”). If no Ordering Agreement is in place between you and Dell Technologies that applies specifically to the Products or Services, then you must execute an Ordering Agreement with Dell Technologies to purchase such Products and Services for resale to OEM Customers. If the Ordering Agreement does not contain terms as comprehensive as the Compliance Terms or this Section 4, then the Ordering Agreement is supplemented by the Compliance Terms and this Section 4, respectively. Purchases from Dell Technologies may be returned only as permitted by the Dell Technologies Partner Program Return Policy located [here](#) and any such returns are subject to the policy.

**4.4 Purchases for Resale to Federal End User.** If you or your OEM Customers are purchasing Products and Services for resale directly or indirectly to Federal End Users (as defined in Subsection 1.3 above), and you have a Federal Certified Reseller Agreement or Federal Reseller Agreement that allows for OEM Activity (“**Federal OEM Ordering Agreement**”) with Dell Technologies that applies specifically to those Products and Services, then your purchase of those items and any related activities are subject to the Federal OEM Ordering Agreement, and all other items and purchases are subject to and governed by the Ordering Agreement as set forth in the preceding Subsection and by the OEM Federal Supplemental Terms. Quotes for Products and Services intended for sale to Federal End Users must be solicited from the Dell Technologies Federal Sales Team. Any orders not placed in collaboration with the Dell Technologies Federal Sales Team may not be sold to Federal End Users (or to OEM Customers that intend to sell to Federal End Users), and Dell Technologies makes no representations regarding those orders’ compliance with any Federal acquisition requirements. Subsection 4.3 will not apply to quotes or orders of Products or Services that are intended for resale directly or indirectly to Federal End Users.

**4.5 Deal Registration.** If you are permitted to participate in the deal registration program, your registrations are subject to the “Deal Registration Terms and Guidelines – North America” located [here](#).

**4.6 Compliance.** You represent that you have, and you agree to maintain, adequate controls and systems in place to screen, and are fully responsible for screening, transactions of all third parties who may assist, benefit from, or provide goods or services to, or receive goods or services from, you and to ensure compliance with applicable laws and the Compliance Terms. For every agreement you enter or maintain with any third-party for the resale or distribution of Products or Services directly or indirectly to an end-user, you shall include terms as comprehensive as the Compliance Terms in a written agreement with such third-party and require such third-party to acknowledge and agree that Dell Technologies is a third party beneficiary of the agreement and that Dell Technologies may enforce the Compliance Terms directly against such third-party or through you.

**4.7 Precedence.** To the extent there are conflicting provisions regarding your purchases from Dell Technologies or sales of Products or Services, the order of precedence will be: (a) Federal OEM Ordering Agreement (if applicable), (b) Compliance Terms, (c) Ordering Agreement, (d) Partner Specific Terms for OEM Partner Track, and (e) General Terms (other than Compliance Terms). To the extent there are conflicting provisions regarding Program, Information, incentives, rebates, pricing (each provided in connection with the Program) or interpretation of this Agreement, the order of precedence will be: (1) Federal OEM Ordering Agreement (if applicable), (2) Compliance Terms, (3) Partner Specific Terms for OEM Partner Track, (4) General Terms (other than Compliance Terms), and (5) Ordering Agreement.

## **5. Partner Specific Terms for Distributor Track**

**5.1 Partner Status.** Noncompliance with any provision of this Agreement may result in the termination of the Agreement, Ordering Agreement (as defined in Subsection 5.2 below) or your participation as a Distributor.

**5.2 Ordering Agreement.** For purposes of this Section 5, “**Ordering Agreement**” means the Distributor Agreement, Channel Partner Distributor Agreement, or any

substantially similar distribution agreement, that you have with Dell Technologies that authorizes you to purchase Products and Services from Dell Technologies for resale to resellers within a specific geographic territory. If the Ordering Agreement does not contain terms as comprehensive as the Compliance Terms or this Section 5, then the Ordering Agreement is supplemented by the Compliance Terms and this Section 5. If no Ordering Agreement is in place between you and Dell Technologies that applies specifically to the Products or Services you wish to purchase or to the geographic territory where your reseller or End-User (defined below) are located, then you must execute an Ordering Agreement with Dell Technologies in order to purchase such Products and Services for resale to such reseller or End-User.

### 5.3 **Permitted Scope.**

A. **General.** “**End-User**” means any entity purchasing or otherwise obtaining Products and Services for its own internal end-use (and not for resell, distribution, or sub-licensing to others). Subject to this Agreement and the Ordering Agreement, and your compliance therewith, you may resell certain Products and Services to resellers for such resellers to sell to End-Users. You may sell only to the resellers within the geographic territory specified in your Ordering Agreement. You understand that not all Products and Services may be purchased for resale under your Ordering Agreement. The list of Products and Services you are eligible to purchase and permitted to sell and distribute are as specified in your Ordering Agreement or as provided to you upon request to your Dell Technologies account representative. Dell Technologies reserves the right to update such list of Products and Services at any time. You shall not market, resell, or use Products or Services other than as expressly permitted in the Ordering Agreement or this Agreement and, with regarding to software, in the license agreement governing the software.

B. **Restrictions.** Notwithstanding Subsection 5.3(A), and unless and to the extent that you are expressly granted such rights in writing by Dell Technologies, you shall not directly or indirectly market or resell Products or Services (a) to any consumers, distributors, third-party sales agents, or remanufacturers; (b) through retail storefronts (online or offline), online stores, or auction-type websites; (c) to the U.S. Federal government; (d) to the Canadian federal government, provincial government entities, or other Canadian public-sector entities; or (e) to any U.S. state or local government agencies, public or higher education institutions, or state or local government healthcare entities (collectively, “**Public End-Users**”). You agree not to sell to any reseller where you have

reason to know that such reseller intends to resell to a Public End-User, and you shall require any reseller to which you sell to agree that that it has read, understands, and, except as expressly permitted herein, agrees to be bound by the then-current Reseller Terms of Sale located [here](#) (for sales to U.S. resellers) or [here](#) (for sales to Canadian resellers) and that it will resell Products and Services in accordance with the Reseller Terms of Sale. You shall not market or resell Products or Services to any reseller that (1) is outside of the geographic territory specified in your Ordering Agreement or (2) you have reason to know intends to resell to End-Users outside of the geographic territory specified in your Ordering Agreement. Dell Technologies may notify you in writing of any reseller to whom Dell Technologies does not want you to sell Products or Services (“Reserved Reseller”) and you shall not sell, or shall cease to sell, Products or Services to such Reserved Reseller thereafter, and Dell Technologies shall have the right to modify the list at its discretion. Dell Technologies may notify you in writing of any End-User to whom Dell Technologies does not want its Products or Services to be resold (“Reserved End-User”) and you shall not sell, or shall cease to sell, Products or Services to any reseller whom you have reason to know intends to resell Products or Services to a Reserved End-User, and Dell Technologies shall have the right to modify the list at its discretion. You will have fifteen (15) days from the date of Dell Technologies publication of either the Reserved Reseller list or the Reserved End-User list to comply.

**5.4 Reseller Compliance.** You shall ensure every agreement you enter or maintain with any party for the resale or distribution of Products or Services shall (a) be substantially the same as or similar to the Reseller Terms of Sale located [here](#) (for sales to U.S. resellers) or [here](#) (for sales to Canadian resellers) and the Compliance Terms; (b) obligate your resellers to flow down terms to End-Users as specified in the Reseller Terms of Sale; and (c) obligate your resellers to acknowledge and agree (and to require End-Users to agree) that Dell Technologies is a third-party beneficiary of the agreement between the reseller and End-User and that Dell Technologies may enforce the flow down terms directly against the End-User or through the reseller.

**5.5 Deal Registration and Funding Letter.** If you are permitted to participate in the deal registration program, your registrations are subject to the “Deal Registration Terms and Guidelines – North America” located [here](#). In addition, you agree to comply with all terms and conditions set forth in Dell Technologies distributor funding letter agreement as provided in writing to you via the Partner Portal or other means.

**5.6 Precedence.** To the extent there are conflicting provisions regarding your purchase from Dell Technologies or your sales of Products and Services, the order of precedence will be: (a) Compliance Terms, (b) Ordering Agreement, (c) Partner Specific Terms for Distributor Track, and (d) General Terms (other than Compliance Terms). To the extent there are any conflicting provisions regarding Program, Information, incentives, rebates, pricing (each provided in connection with the Program) or interpretation of this Agreement, the order of precedence will be: (1) Compliance Terms, (2) Distributor Funding Letter, (3) Partner Specific Terms for Distributor Track, (4) General Terms (other than Compliance Terms), and (5) Ordering Agreement.

(Rev Feb 3, 2020)