

# Appendix F to DIR-TSO-3038

## Dell | Cloud Solutions Schedule

This Cloud Solutions Schedule (the “Schedule”) provides specific terms and conditions applicable to Cloud Solutions provided by Dell to Customer. As to such Solutions, this Schedule amends and supplements the terms of DIR-TSO-3038 (as applicable, the “Contract”) in place between the parties.

### TERMS AND CONDITIONS APPLICABLE TO CLOUD SOLUTIONS

#### 1. Your Relationship with Dell.

This Schedule is entered into between you and Dell and governs your use of and access to the Solution. The term “**Schedule**” refers collectively to these terms and conditions and, as applicable, (i) the Solution Description for the applicable Solution; (ii) any order form referencing or incorporating the Solution Description (an “**Order Form**”); and (iii) the attached Cloud Solutions Agreement Acceptable Use Policy (“**AUP**”); that will govern the use of and access to the Solution by Customers and End Users outside of the United States (“**U.S.**”). In the event of any conflict between (i) the Order Form and (ii) this Schedule, this Schedule shall prevail. Unless otherwise expressly stated in this Appendix G, where terms conflict, the DIR Contract controls. This Schedule and the Contract shall hereafter be read and construed together as a single document.

This Schedule is effective upon your (a) execution of a Solution Description or an Order Form; (b) acceptance of these terms pursuant to an online order process; or (c) accessing or using the Solution. “**You**,” “**your**” or “**Customer**” means the customer entity identified in the applicable Solution Description, Order Form or online order process and includes any of your affiliates that place an order for the Solution. “**Dell**,” “**us**,” “**we**” or “**our**” means Dell Marketing L.P., on behalf of itself and its suppliers and licensors, or the Dell entity identified on your Solution Description or Order Form and includes any Dell affiliate with which you place an order for the Solution. You agree that your purchase of the Solution is solely for your internal business use. The Solutions purchased under this Schedule are not for resale.

#### 2. Definitions.

“**Activation Instructions**” means any instructions, user IDs, software license keys or passwords that we may provide you in respect of specific Solutions to enable you to activate or access the Solution.

“**Cloud**” means a combination of hardware, services, software and networking elements made available by us under a Solution Description that comprise an information technology system. Depending on the Solution purchased, the Cloud may consist of a dedicated system for your use only, the right to use certain parts of a shared system maintained for multiple customers, or a combination of some dedicated elements and some shared elements.

“**Confidential Information**” means, to the extent authorized by the Texas Public Information Act and other applicable law, (i) for you, information provided to us on an Order Form; (ii) for us, , Activation Instructions, , know-how, audit and security reports, product development plans, data center designs (including non-graphic information you may observe on a tour of a data center), or other proprietary information or technology provided to you (including Software); and (iii) for both you and us, Trade Secrets or any information designated as Confidential. Information developed without reference to another party’s Confidential Information, or that is a part of or enters the public domain or otherwise is made available to a party other than through a violation of confidentiality, will not be Confidential Information. For the avoidance of doubt, information transmitted to us or stored as part of the Solution to which Dell does not have access will not be considered Confidential Information.

“**End User**” means each individual or entity that Customer has authorized to access and use the Solution.

“**Intellectual Property**” has the same meaning as the term “Intellectual Property Rights” as set forth in Section 8 of DIR Contract Number DIR-TSO-3038.

“**Services**” means any and all services performed by us as described in one or more Solution Descriptions, including our providing access to and use of the Cloud.

Notwithstanding any conflicting definition set forth in the DIR Contract, for the purposes of this Schedule, “**Software**” means any software, library, utility, tool or other computer or program code, in object (binary) or source-code form, as well as the related documentation, provided by us in connection with a Solution. Software includes software locally installed on your systems and software accessed through the Internet or by other remote means including websites, portals and cloud-based solutions to utilize a Solution in accordance with this Schedule.

“**Solution**” means the combination of the Services performed and Software provided by us to you pursuant to a Solution Description, including use of the Cloud in connection with the provision of a Solution.

“**Solution Description**” means (i) a statement of work, service description, solution description or other agreement that references this Schedule or the Agreement, or (ii) a specification sheets referenced in an Order Form.

“**Third-Party Products**” means any non-Dell software or services provided, made available or otherwise used by us in connection with the Solution, including Customer provided software, hardware or services.

Notwithstanding any conflicting definition set forth in the DIR Contract, for the purposes of this Schedule, “**Trade Secret**” means any information not commonly known or available to the public, which (i) derives economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

### 3. **Quotes, Ordering and Payment.**

We will charge amounts for Solutions as set forth in the applicable Solution Description or Order Form or, if not specified, the current list pricing provided on our website. Quoted prices will remain in effect only until the expiration date of the quote. All orders are subject to our acceptance. The number of systems, units (e.g., mailboxes, recipients, minutes, etc.) and End Users for which you have purchased Solution(s) is indicated on the Order Form. Usage in excess of these numbers or for a period of time longer than the Term will result in additional costs. The additional costs per billing period will be determined by multiplying the excess usage by the contracted fee per system, unit or End User in the original Order Form. Payment must be made by credit card, wire transfer or other prearranged payment method unless we agree in writing to credit terms. Solutions are invoiced monthly beginning on the Activation Date. We, or our local affiliate(s), will invoice you locally, per the billing address(es) you provide, in the applicable currency. Invoices shall be in accordance with Section 7B of Appendix A, DIR Contract Number DIR-TSO-3038. Payments shall be in accordance with Section 7C of Appendix A, DIR Contract Number DIR-TSO-3038.

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers will provide Vendor with tax exempt certificate upon request.

### 4. **Activation.**

With respect to certain Solutions, after our receipt and acceptance of an order, you will receive Activation Instructions. The date Activation Instructions are transmitted or, in the event Activation Instructions are not required, the effective date of the applicable Solution Description or the date an online order is executed is the “**Activation Date**.” You are responsible for providing, maintaining and monitoring one dedicated email address for the receipt of notices and other communications related to the Solution.

### 5. **Term; Renewals.**

The “**Term**” for any Solution begins on the Activation Date and extends for the period indicated in the Solution Description or Order Form. Unless you decline auto-renewal in writing at least thirty (30) days prior to the expiration of the Term or unless auto-renewal is explicitly disclaimed in a Solution Description or an Order Form, we may automatically renew this Schedule and the related Solution(s) for a successive Term at our then-current list price. By continuing to use the Solution(s) beyond the expiration of the

applicable Term, we may renew this Schedule and the related Solution(s) in our discretion for a successive Term at our then-current list price. The maximum term for Cloud Services is thirty-six (36 months).

- 6. Termination.** Termination shall be in accordance with Section 10B of DIR Contract Number DIR-TSO-3038.

**7. Suspension, Deletion, and Modification.**

We may suspend all or part of the Solution or your access to or use of data stored in the Cloud (i) upon receipt of a subpoena or law-enforcement request; or (ii) when we have a commercially reasonable belief that you have breached this Schedule or that your use of the Solution poses an imminent security risk or may subject Dell to liability. We will use commercially reasonable efforts to give you at least twelve (12) hours' notice of a suspension unless we determine in our commercially reasonable judgment that a suspension on shorter or contemporaneous notice is necessary to protect us or our customers.

Notwithstanding any conflicting term set forth in the DIR Contract, for the purposes of this Schedule, we may delete your data stored in the Cloud (a) sixty (60) days following any termination by us pursuant to Section 6 of this Schedule, or (b) if you fail to renew an applicable Solution Description within sixty (60) days of expiration. If we are providing the Solution in connection with a trial program such as a demo, evaluation, pilot or proof of concept (a "Trial"), immediately following the conclusion of the Trial we may delete your data stored in the Cloud and are under no obligation to return your data to you. If, however, immediately following the conclusion of the Trial you renew the Solution for the standard term, we will store your data in the Cloud in accordance with this Schedule.

We may modify the functionality or features of the Solution at any time, provided that the modification does not materially denigrate the functionality of the Solution (as described in the applicable Solution Description) during the Term. We will not be liable to you or any third-party for any such modification. If any such change materially or adversely affects Customer's legitimate use of services in accordance with this Schedule, Customer may terminate the affected service without incurring any further liability, beyond the charges incurred prior to such termination.

From time to time, we may change the location where the Solution is provided; provided, however, we will remain responsible for the delivery of the Solution. All customer data shall remain at all times within the Continental United States.

It may be necessary for us to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Software, which may temporarily degrade the quality of the Solution or result in a partial or complete outage of the Solution. Although we cannot guarantee that you will receive advance notice of repairs or maintenance, we will endeavor to provide at least seven (7) days' notice of scheduled updates and patches.

**8. Access and Use.**

Notwithstanding any conflicting term set forth in the DIR Contract, for the purposes of this Schedule, to the extent Software is provided as a part of the Solution, such Software is provided subject to the following terms:

- A. License.** For the applicable Term, and subject to the restrictions below, we grant you a non-exclusive, non-transferable, non-sublicensable, limited, revocable license under our Intellectual Property rights to access and use the applicable Software as permitted by this Schedule.
- B. Restrictions.** Unless otherwise expressly permitted in this Schedule, without our prior written consent, you will not:
- i. permit any third-party to use or copy the Software, unless such third-party is an authorized End User;
  - ii. modify, translate, alter, adapt, publish, transmit, remove, reverse engineer, decompile, disassemble, reproduce, distribute, display, create derivative works, compilations or collective works based on or otherwise exploit any of the Software;
  - iii. merge the Software with any other software;

- iv. sell, sublicense, rent, lease, grant a security interest in, or otherwise transfer rights to the Software;
- v. benchmark the performance or the Software of Solution without our prior written consent; or
- vi. use the Software to operate in or as a time-sharing, outsourcing or service bureau environment or in any way allow third-party access to the Solution.

You acknowledge and agree that you are liable for any breach of this Schedule by any End User.

- C. Rights Reserved.** THE SOFTWARE IS LICENSED, NOT SOLD. Except for the license expressly granted herein, Dell, on behalf of itself and its licensors and suppliers, retains all right, title and interest in and to the Software and in all related Intellectual Property and its derivative works, including registrations, applications, renewals and extensions of such rights (the "Works"). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereinafter developed and any use other than as contemplated herein, including the reproduction, modification, distribution, transmission, adaptations, translation, display, re-publication or performance of the Works, except as specifically permitted herein, is strictly prohibited. Dell, on behalf of itself and its licensors and suppliers, retains all rights not expressly granted herein.
- D. Open Source Software.** A portion of the Software may contain or consist of open source software, which you may use under the terms and conditions of the specific license under which the open source software is distributed.

- 9. Privacy.** For information about our privacy practices, please read our global and country specific privacy policies at [www.Dell.com/Privacy](http://www.Dell.com/Privacy). These policies explain how we treat your personal information and protect your privacy. If your Solution Description specifies the region in which your data will be stored, we will not move the data from the specified region without notifying you other than as required by law or pursuant to lawful requests from government entities.

#### **10. Customer Obligations.**

You are responsible for keeping your account permissions, billing and other account information up to date. You must pay when due the amounts for the Solution stated in the applicable Solution Description or other agreement between you and Dell. Certain Solutions may contain features designed to interoperate with Third-Party Products. In our performance of the Solution, we may obtain information related to your use of the Solution. You agree that we may use such information in an aggregated, anonymized form to assist in improving and optimizing various aspects of the Solution or in support of generic marketing activities related to the Solution.

You represent and warrant that you have obtained all rights, permissions and consents necessary to use and transfer any Customer data or End User data within in which you are located in connection with our performance of the Service or your use of the Software (including providing adequate disclosures and obtaining legally sufficient consents from your employees, agents, contractors and End Users). You are responsible for the data and software you use or store in the Cloud, including its maintenance, operation and compatibility in and with the Cloud, and any third-party claims regarding the same. You understand and agree that we have no control over the content of the data processed by us and that we perform the Services on your behalf. If you or an End User transmits data to a third-party website or other provider that is linked to or made accessible by the Solution, you and the End User consent to our enabling such transmission, but such transmission and any related interaction is solely between you and the third-party website or provider and may be subject to additional terms and conditions provided by the third-party website or provider. We will not be responsible for any disclosures, modifications or deletion of your data resulting from any such transmission. We make no warranties about and will have no liability for such third-party websites or providers.

You will be deemed to have taken any action that you permit, enable or facilitate any person or entity to take related to this Schedule or use of any Solution. You are responsible for the use of the Solutions by any End User and any person who gains access to your or any End User's data or the Solution as a result of your failure to use reasonable security precautions, even if the use was not authorized by you. You will

ensure that End Users comply with your obligations under this Schedule and that the terms of your agreement with each End User are consistent with this Schedule and are legally enforceable. If you become aware of any violation of your obligations under this Schedule by an End User, you will immediately terminate such End User's access to the Solution.

You are responsible for selecting, obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Solution and for ensuring that the equipment is compatible with the Solution.

You are responsible for properly configuring and using the Solution and taking your own steps to maintain appropriate security, protection and back-up of your data and software, including the use of appropriate encryption, back-up and archiving.

You acknowledge that the Solutions are not intended to replace and do not replace the need for you to maintain regular data back-ups or redundant data archives. You are responsible for maintaining back-up copies of your data that may be stored or processed by us in the course of our provision of Solutions. You understand and agree that we are not responsible for any loss or corruption of your data or software. You remain responsible for properly handling and processing notices claiming that your data or software violates a person's rights.

- 11. Customer License Grant.** Customer grants to Dell the necessary rights to operate any Customer-provided software, including a non-exclusive, royalty-free license (which shall terminate upon termination of the applicable Solution) to install, deploy, use, execute, reproduce, display, perform and run such software (including, without limitation, guest operating systems and application programs), as are reasonable or necessary for Dell to perform or provide the Solution. As between you and Dell, you are responsible for providing, updating, uploading and maintaining any Customer-provided software and paying all fees associated therewith, including any software license and maintenance fees. If, in order to provide the Solution, we are required to install, patch, manage or otherwise use or access software that you license from a third-party software vendor, then you represent and warrant that you have obtained a written license agreement with the vendor that permits us to perform these activities.

Customer grants to Dell a non-exclusive, royalty-free license to access, use, reproduce, modify, perform, display and distribute Customer and End User data as is reasonable or necessary for Dell to perform or provide the Solution. It is Customer's responsibility to obtain, at its own expense, all licenses, consents and approvals required to grant to Dell the rights and licenses in this Schedule.

**12. Important Additional Information.**

- a. **Limited Warranty.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT: (I) IN THE EVENT WE ARE PROVIDING THE SOLUTION IN CONNECTION WITH A TRIAL, THE SOLUTION IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTIES; (II) WITH RESPECT TO YOUR OR END USER'S USE OF THE SOFTWARE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH PROBLEMS OR VIRUSES ARE THE DIRECT RESULT OF OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; AND (III) YOU AGREE THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SOLUTIONS, INCLUDING TELEPHONE, COMPUTER NETWORKS AND THE INTERNET, OR FOR TRANSMITTING INFORMATION CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF THE SOLUTIONS. WE WILL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF YOUR OR END USER'S ACCESS TO OR USE OF THE SOLUTIONS OR THE IMPACT SUCH INTERFERENCE OR PREVENTION MAY HAVE ON OUR ABILITY TO PERFORM THE SOLUTIONS.
- b. **Customer Provisions.** Notwithstanding anything to the contrary in the Agreement, Customer's responsibilities are as follows.

Customer's is responsible for; (1) the failure of any End Users to comply with the Acceptable Use Policy in this Contract; and (2) the provision of Customer's own services, software, technology or solution.

- c. **No Third-Party Beneficiaries.** This Schedule does not and is not intended to confer any rights or remedies, express or implied, upon any person other than the parties hereto.