***Transaction Product Agreement***

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS PRODUCT. BY DOWNLOADING, INSTALLING OR USING THIS PRODUCT, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. FOR ORDERS PLACED OUTSIDE THE UNITED STATES OF AMERICA, PLEASE SEE** [**WWW.QUEST.COM/LICENSEAGREEMENTS**](http://WWW.QUEST.COM/LICENSEAGREEMENTS) **FOR THE APPLICABLE VERSION OF YOUR AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR THE LOCALIZED VERSION OF YOUR AGREEMENT, DO NOT DOWNLOAD, INSTALL OR USE THIS PRODUCT. NEITHER THIS AGREEMENT NOR THE LOCALIZED AGREEMENT SHALL SUPERSEDE ANY OTHER SIGNED AGREEMENT BETWEEN YOU AND QUEST THAT EXPRESSLY GOVERNS THE ORDER FOR THIS PRODUCT.**

This Transaction Product Agreement (the *“Agreement”*) is made between Quest Software, Inc., with its principal place of business located at 5 Polaris Way, Aliso Viego, California, 92656 (“Quest”) and you, the customer (“Customer”).

1. Definitions. Capitalized terms not defined in context shall have the meanings assigned to them below:

(a) “Affiliate” means any legal entity controlling, controlled by, or under common control with a party to this Agreement, for so long as such control relationship exists.

(b) “Documentation” means the user manuals and documentation that Quest makes available for the Software, and all copies of the foregoing.

(c) “Hardware” means either the hardware products purchased by Customer under this Agreement.

(d) “License Type” means the model by which the Software is licensed (e.g., by server, by mailbox, by managed user) as indicated in the applicable Order

(e) “Partner” means a reseller or distributor that is under contract with Quest or another Partner and is authorized via such contract to resell the Products and/or Maintenance Services.

(f) “Product Guide” means the document located at <http://www.quest.com/productguide> that contains the Product Terms.

(g) “Product Terms” means the usage rights and other terms associated with each License Type or individual Product. The Product Terms for Software identified in an Order that is issued to Quest shall be as stated in the Order, or, if no Product Terms are stated in the Order, then the Product Terms for such Software shall be as stated in the Product Gide as the data of the Order. The Product Terms for Software ordered from a Partner shall be as stated in the Product Guide as of the date of the Order.

(h) “Products” means the Software and/or Hardware purchased by Customer under this Agreement.

(i) “Order” means the document by which Customer orders the Product(s) or, if Customer orders the Product(s) from Quest’s eStore (<https://estoree.quest.com>), the process by which Customer orders the Product(s). Orders executed by Customer and Quest shall be governed solely by the terms of this Agreement and the applicable Order. Orders placed with Quest by Customer purchase order only and all Orders placed through a Partner shall be governed solely by the terms of this Agreement. Any conflicting or additional terms in or accompanying an Order will not be binding on Quest unless Quest accepts such terms in writing. Each Order shall be the Customer’s irrevocable commitment to purchase and pay for the Products and/or Maintenance Services stated in the Order.

(j) ***“***Software***”*** means the object code version of the software that is delivered pursuant to an Order as well as any corrections, enhancements, and upgrades to such software that Quest may provide to Customer pursuant to this Agreement, and all copies of the foregoing.

**2. Software License.**

(a) **Internal Use License.** Subject to the terms of this Agreement, Quest grants to Customer, and Customer accepts from Quest, a perpetual (unless otherwise set forth in an Order), non-exclusive, non-transferable (except as otherwise set forth herein) and non-sublicensable license to (i) install, execute, access, run, or otherwise use the quantities of each item of Software identified in the applicable Order within the parameters of the Product Terms associated with the applicable Product and License Type, (ii) make a reasonable number of additional copies of the Software to be used solely for non-productive archival or passive disaster recovery purposes, so long as neither the original and a copy nor two copies of the same Software are used at thee same time, and (iii) make and use copies of the Documentation as reasonably necessary to support Customer’s authorized users in their use of the Software (collectively, “License”). Except for MSP Licenses (as the defined below), each License shall be used by Customer solely to manage its own internal business operations as well as the business operations of its Affiliates.

(b) **MSP License.** If an MSP License is specifically identified in an Order, Customer shall be granted a License to use the Software identified in the Order and the associated Documentation as a managed service provided (“MSP”) to provide software and systems management services, including, without limitation, application, operating system, and database implementation, performance tuning, and maintenance services (“Management Services”), for the benefit of a single named client (“client”), pursuant to the terms of Agreement and the MSP Use Terms in the Product Guide.

(c) **Evaluation License.** If an Order indicates that Software is to be used for evaluation purposes or if the Software is otherwise obtained by Quest for evaluation purposes, Customer shall be granted a non-production License to use such Software and the associated Documentation solely for Customer’s own internal evaluation purposes for an evaluation period of up to thirty (30) days from the date of delivery of the Software, plus any extensions granted by Quest in writing (the “Evaluation Period”). There is no fee for Customer’s use of the Software for non-production evaluation purposes during the Evaluation Period, however, Customer is responsible for any applicable shipping charges or taxes which may be incurred, and any fees which may be associated with usage beyond the scope permitted herein. Customer’s opportunity for a free evaluation of the Software is limited to one Evaluation Period per release of the Software. Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that evaluation Software is provided “AS IS” and the Quest does not provide a Warranty or Maintenance Services for evaluation Licenses.

(d) **Third Party Use.** If Customer contracts with a third party who performs Software implementation, configuration, consulting or outsourcing services (“Service Provider”), the Service Provider may use the Software and Documentation Licenses by Customer hereunder solely for purposes of providing such services to Customer, provided that (i) Customer ensures that the Service Provider uses the Software and Documentation in accordance with the terms of this Agreement, (ii) the use of the Software and Documentation by the Service Provider will not violate the terms of the export restrictions set forth herein, and (iii) the Service Provider is not a Quest competitor. Customer shall be jointly and severally liable to Quest for the acts and omissions of its Service Providers in connection with their permitted use of the Software and Documentation.

(e) **Freeware License.** If a freeware version of Quest software (“Freeware”) is downloaded by Customer from a Quest website, the terms of such use shall be governed by the applicable Freeware definition provided at: [www.quest.com/productguide](http://www.quest.com/productguide).

**3. Restrictions.** Except to the extent expressly permitted by applicable law, and to the extent that Quest is not permitted by such applicable law to exclude or limit the following rights, Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Products, Documentation or any part thereof. In addition, Customer may not (i) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Products, Documentation or any part thereof, (ii) resell the Products or Documentation or use the Products or Documentation in any commercial time share arrangement, in connection with the operation of any nuclear facilities, or for purposes which are competitive to Quest. Each permitted copy of the Software and Documentation made by Customer hereunder must contain all title, trademarks, copyrights and restricted rights notices as in the original. Customer understands and agrees that the Products may work in conjunction with third party products and Customer agrees to be responsible for ensuring that it is properly licenses to use such third party products. Notwithstanding anything otherwise set forth in this Agreement, the terms and restrictions set forth herein shall not prevent or restrict Customer from exercising additional or different rights to any open source software that may be contained in or provided with the Products in accordance with the additional or different rights to any open source software that may be contained in or provided with the Products in accordance with the applicable open source license.

**4. Reservation of Rights and Ownership.** Quest reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement. Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and treaties, (ii) Quest and/or its suppliers own the title, copyright, and other intellectual property rights in the Products, (iii) the Software is licenses, and not sold, and (iv) this Agreement does not grant Customer any rights to Quest’s trademarks or service marks.

**6. Payment.** Customer agrees to pay to Quest (or, if applicable, the Partner) the fees specified in each Order, including any applicable shipping fees. Customer will be invoiced promptly following delivery of the Products or prior to the commencement of any Renewal Maintenance Period and Customer shall make all payments due to Quest in full within thirty (30) days from the date of each invoice or such other period (if any) stated in an Order signed by Quest. Any amounts payable to Quest by Customer that remain unpaid after the due date shall be subject to a late charge of 1.5% of the invoice amount per month from the due date until such amount is paid, or the maximum rate permitted by law if less.

**7. Taxes.** The fees stated in an Order may not include taxes. If Quest is required to pay sales, use, property, value-added or other taxes based on the Products or Maintenance Services provided under this Agreement or on Customer’s use of Products or Maintenance Services, then such taxes shall be billed to and paid by Customer. This Section does not apply to taxes based on Quest’s income.

**8. Termination.** This Agreement and/or the License(s) granted hereunder may be terminated (i) by mutual agreement of Quest and Customer, or (ii) by Quest, if Customer or a Service Provider commits a material breach of this Agreement and fails to cure such breach to Quest’s reasonable satisfaction within thirty (30) days following receipt of Quest’s notice thereof, or (iii) by Customer for any reason upon thirty (30) days written notice to Quest. Upon termination of this Agreement or expiration or termination of a License for any reason, all rights granted to Customer for the applicable License(s) shall immediately cease and Customer shall immediately: (i) cease using the applicable Software and Documentation, (ii) return the applicable Software to Quest together with all Documentation and other materials associated with the applicable License(s), (iv) pay Quest or the applicable Partner all amounts due and payable up to the date of termination, and (v) give Quest a written certification that Customer has complied with all of the foregoing obligations. Termination of this Agreement or a License shall be without prejudice to any other remedies that the terminating party may have under law, subject to the limitations and exclusions set forth in this Agreement. Any provision of this Agreement that requires or contemplates execution after termination of this Agreement or expiration or termination of a License is enforceable against the other party and their respective successors and assignees notwithstanding termination or expiration, including, without limitation, the “*Payment*,” “*Taxes*,” “*Termination*,” “*Warranty Disclaimer,”* “*Infringement*” "*Limitation of Liability*," "*Nondisclosure*," “*Use Verification*,” and “*General*” Sections of this Agreement.

**9. Export.** Customer acknowledges and agrees that the Products are subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the "Export Controls"), and agrees not to export or re-export, or allow the export or re-export of the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer hereby represents that (i) represents that Customer is not an entity or person to which shipment of Products is prohibited by the Export Controls; and (ii) Customer will not export, re-export or otherwise transfer the Products to (a) any country subject to a United States trade embargo, (b) a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which shipment of Products is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

**10. Maintenance.** During any Maintenance Period and for the applicable fees, Quest shall make available to Customer the following Maintenance Services for the Software as defined in this Section. The first Maintenance Period begins on the date of delivery of the Software following an Order and eds twelve (12) months thereafter unless otherwise set forth in the applicable Order (the “Initial maintenance Period”). Following the Initial Maintenance Period, Maintenance Services shall automatically renew for additional terms of twelve (12) months (each, a “Renewal Maintenance Period”) unleast the renewal has been cancelled by either party giving written notice to the other at least sixty (60) days prior to the first day of the applicable Renewal Maintenance Period. Cancellation of Maintenance Services will not terminate Customer’s rights to continue to use the Software. Maintenance fees shall be due in advance of a Renewal Maintenance Period and shall be subject to the payment requirements set forth in this Agreement. The procedure for reinstating Maintenance Services after it has lapsed is posted in <http://support.quest.com/Maintenance_Service.asp>. Except as otherwise stated in the Product Guide, “Maintenance Services” shall be available via the Internet, e-mail, or telephone and shall mean the following:

(a) Quest shall make available to Customer new versions and releases of the Software, including Software corrections, enhancements and upgrades, if and when Quest makes them generally available without charge as part of Maintenance Services.

(b) Quest shall respond to communications from Customer that report Software failures not previously reported to Quest by Customer. Nothing in the foregoing shall operate to limit or restrict follow up communication by Customer regarding Software failures.

(c) Quest shall respond to requests from Customer’s technical coordinators for assistance with the operational/technical aspects of the Software; provided that Quest shall have the right to limit such responses if Quest reasonably determines, in its sole reasonable discretion, that on-siet consulting services would be more appropriate to address the scope and nature of the request. Any such onsite consultation would be pursuant to a service agreement as agreed upon by the parties.

(d) Customer shall have access to Quest’s Support Web site at <http://support.quest.com> (“SupportLink”).

(e) Maintenance Services are available during regional business support hours (“Business Hours”) as indicated on SupportLink. In addition, Customer may purchase Business Critical Support (i.e. 24x7 Severity Level 1 support) for certain Software. The list of Software for which Business Critical Support is available and/or required is set forth on SupportLink.

(f) During Business Hours, Quest will respond within one (1) hour to a call from Customer which reports a critical Software condition (a “Severity Level 1 Problem”). Customer must use commercially reasonable efforts to provide Qeust with the necessary remote access to facilitate the identification and resolution of a Severity Level 1 Problem. Quest’s ability to identify and resolve a Severity Level 1 Problem may be delayed without such remote access.

(g) The Maintenance Services for those Software products that Quest has obtained through an acquisition or merger may, for a period of time following the effective date of the acquisition or merger, be governed by terms other than those in this Section 10. The application different terms, if any, shall be stated on SupportLink.

**11. Warranties.**

(a) **Software Warranties.** Quest warrants that, for a period of thirty (3) days following the initial delivery Software pursuant to an Orer (the “Warranty period”), (i) the media provided by Quest, if any, on which the On-Premise Software is recorded will be free from material defects in materials and workmanship under normal use, (ii) the operation of the Software, as provided by Quest, will substantially conform to its Documentation applicable to such Software, and (iii) the Software as delivered by Quest does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code designed by Quest to allow unauthorized intrusion upon, disabling of, or erasure of the Software (however, the Software may contain a key limiting use of the Software to within the scope of License granted, and license key issued by Quest for temporary use are time-sensitive) (the “Warranties”). Customer must give written notice to Quest of any breach of the Warranties no later than five days following the expiration of the Warranty Period.

Customer’s exclusive remedies, and Quest’s sole obligations, for any such breach of these Warranties shall be as follows: (a) for the warranty in subsection (i), Quest shall, at its expense, replace any defective media; (b) for the warranty in subsection (ii), Quest shall correct or provide a workaround for reproducible errors in the Software that cause a breach of the warranty within a reasonable time considering the severity of the error and its effect on Customer, or, at Quest’s option, refund the license fee paid for the nonconforming Software upon return of such Software to Quest and termination of the related License(s) hereunder; and (c) for the warranty in subsection (iii), Quest shall provide a copy of the Software that is in conformance with such warrant.

The foregoing Warranties shall not apply to any non-conformance (i) that Quest cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the Software or by using the Software in a manner that is inconsistent with this Agreement or the Documentation; or (iii) arising from the modification of the Software by anyone other than Quest.

(b) **Hardware Warranty.** Hardware shall be warranted in accordance with the warranty document delivered with the Hardware and/or included on the hardware manufacturer’s website. In the event Customer acquires Hardware that is delivered with a third party warranty (“Third Party Warranty”), Customer will rely solely on the applicable third party for all Third Party Warranty obligations.

(c) **Warranty Disclaimer.** THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION OR IN AN ORDER ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY QUEST HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. QUEST DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS.

**12. Infringement.** Quest will at its own expense defend or settle any claim, suit, action, or proceeding brought against Customer by a third party to the extent it is based on an allegation that the Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the country in which the Software is delivered to Customer, or misappropriates a trade secret in such country (a “Claim”). Additionally, Quest shall pay any judgments finally awarded against Customer under a Claim or any amounts assessed against Customer in any settlements of a Claim, and reasonable administrative costs or expenses, including without limitation reasonable attorneys’ fees, necessarily incurred by Customer in responding to the Claim. Quest’s obligations under this Section are conditioned upon Customer (i) giving prompt written notice of the Claim to Quest; (ii) permitting Quest to retain sole control of the investigation, defense or settlement of the Claim, and (iii) providing Quest with such cooperation and assistance as Quest may reasonably request from time to time in connection with the investigation, defense or settlement of the Claim. Quest shall have no obligation hereunder to defend Customer against any Claim (a) resulting from use of the Software other than as authorized in this Agreement, (b) resulting from a modification of the Software other than by Quest, or (c) based on Customer’s use of the Software after Quest recommends discontinuation because of possible or actual infringement, (d) based on a Customer’s use of a superseded or altered release of Software if the infringement would have been avoided by use of a current or unaltered release of the Software made available to Customer, or (e) to the extent the Claim arises from or is based on the use of the Software with other products, services, or data not supplied by Quest if the infringement would not have occurred but for such use. If Customer’s use of the Software is enjoined as a result of a Claim, Quest shall, at its expense and option either (i) obtain for Customer the right to continue using the Software, (ii) replace the Software with a functionally equivalent non-infringing product, (iii) modify the Software so that it is non-infringing, or (iv) accept the return of the infringing Software and refund the license fee paid for the infringing Software, pro-rated over a sixty (60) month period from the date of delivery of the Software following an Order. This Section states the entire liability of Quest, and Customer’s sole and exclusive remedy, with respect to a Claim.

**13. Limitation of Liability.** EXCEPT FOR (A) ANY BREACH OF THE “*RESTRICTIONS*” OR “*CONFIDENTIAL INFORMATION*” SECTIONS OF THIS AGREEMENT, (B) AMOUNTS CONTAINED IN JUDGMENTS OR SETTLEMENTS WHICH QUEST IS LIABLE TO PAY ON BEHALF OF CUSTOMER UNDER THE “*INFRINGEMENT*” SECTION OF THIS AGREEMENT, OR (C) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, IN NO EVENT SHALL QUEST, IT’S AFFILIATES, OR SUPPLIERS, OR CUSTOMER BE LIABLE FOR ANY LOSS OF REVENUE, LOS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF GOODWILL OR REPUTATION, LOSS OF ANTICIPATED SAVINGS, LOSS OF, DAMAGE TO OR CORRUPTION OF DATA, OR FOR ANY INDIRECT, INCIDENTIAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, IN EACH CASE HOWSOEVER ARISING, WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES AND WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE.

EXCEPT FOR (A) ANY BREACH OF CUSTOMER’S PAYMENT OBLIGATIONS; (B) ANY BREAK OF THE “*SOFTWARE LICENSE,*” “*RESTRICTIONS,*” “EXPORT” OR “NONDISCLOSURE” SECTIONS OF THIS AGREEMENT, OR ANY OTHER VIOLATION OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS; (C) QUEST’S EXPRESS OBLIGATIONS UNDER THE *“INFRINGEMENT”* SECTION OF THIS AGREEMENT; OR (D) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, THE MAXIMUM AGGREGATE AND COMULATIVE LIABILITY OF QUEST, ITS AFFILIATES AND SUPPLIERS, AND CUSTOMER UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREAK OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID AND/OR OWED (AS APPLICABLE) BY CUSTOMER FOR THE PRODUCTS OR MAINTENANCE SERVICES THAT ARE THE SUBJECT OF THE CLAIM. FOR MAINTENANCE SERVICES OR A PRODUCT SUBJECT TO RECURRING FEES, THE LIABILITY SHALL NOT EXCEED THE AMOUNT PAID AND/OR OWED (AS APPLICABLE) FOR SUCH MAINTENANCE SERVICE OR PRODUCT DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

Quest’s Affiliates and suppliers shall be beneficiaries of this “*Limitation of Liability”* Section and Customer’s Clients and Service Providers are entitled to the rights granted under the *“Third Party Use”* section of this Agreement; otherwise, no third party beneficiaries exist under this Agreement. Quest expressly excludes any and all liability to Customer’s Service Providers, Clients and to any other third party.

**14. Confidential Information.**

(a) **Definition. “*Confidential Information*”**means information or materials disclosed by one party (the ***“Disclosing Party”***) to the other party (the ***“Receiving Party”***) that are not generally available to the public and which, due to their character and nature, a reasonable person under like circumstances would treat as confidential, including, without limitation, financial, marketing, and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Software (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Software, any Software license keys provided to Customer, and the terms and conditions of this Agreement.

Confidential Information shall not include information or materials that (i) are generally known to the public, other than as a result of an unpermitted disclosure by the Receiving Party after the date that Customer accepts this Agreement; (ii) were known to the Receiving Party without an obligation of confidentiality prior to receipt from the Disclosing Party; (iii) the Receiving Party lawfully received from a third party without that third party’s breach of agreement or obligation of trust; (iv) are protected by Dell in accordance with its obligations under the *“Protected Data”* Section below, or (v) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party’s Confidential Information.

(b) **Obligations.** The Receiving Party shall (i) not disclose or permit disclosure of the Disclosing Party’s Confidential Information to any third party, except as permitted in Section 14(c) below, (ii) only use the Disclosing Party’s Confidential Information to exercise the rights granted to it under this Agreement, and (iii) protect the Disclosing Party’s Confidential Information from unauthorized use or disclosure by exercising at least the same degree of care it uses to protect its own similar information, but in no event less than a reasonable degree of care. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Disclosing Party’s Confidential Information and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights. For the avoidance of doubt, this Section shall apply to all disclosures of the parties’ Confidential Information as of the date that Customer accepts this Agreement, whether or not specifically arising from a party’s performance under this Agreement.

(c) **Permitted Disclosures**. Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party’s Confidential Information without the Disclosing Party’s prior written consent to any of its Affiliates, directors, officers, employees, consultants, contractors or representatives (collectively, the ***“Representatives”***), but only to those Representatives that (i) have a “need to know” in order to carry out the purposes of this Agreement or to provide professional advice in connection with this Agreement, (ii) are legally bound to the Receiving Party to protect information such as the Confidential Information under terms at least as restrictive as those provided herein, and (iii) have been informed by the Receiving Party of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this Section. The Receiving Party shall be liable to the Disclosing Party for the acts or omissions of any Representatives to which it discloses Confidential Information which, if done by the Receiving Party, would be a breach of this Agreement.

Additionally, it shall not be a breach of this Section for the Receiving Party to disclose the Disclosing Party’s Confidential Information as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party unless expressly prohibited from doing so by a court, arbitration panel or other legal authority of competent jurisdiction.

**15. Protected Data.** For purposes of this Section, ***“Protected Data”*** means any information or data that is provided by Customer to Dell during this Agreement 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 Privacy Laws, and “***Privacy Laws”*** means any law, statute, directive or regulation regarding privacy, data protection, information security obligations and/or the processing of Protected Data.

Except as permitted herein or to the extent required by Privacy Laws or legal process, Dell shall not disclose Protected Data to any third party for any reason. Dell shall implement appropriate technical and organizational measures to prevent unauthorized disclosure of or access to Protected Data by third parties, and shall only store and process Protected Data as required to fulfill its obligations under this Agreement and any applicable Orders. Dell shall make reasonable efforts to comply with Customer’s written instructions with respect to the Protected Data; however, Dell shall have no liability to Customer for any breach of this Section resulting from Dell’s acts or omissions in accordance with any such instructions. Dell shall promptly notify Customer of any disclosure of or access to the Protected Data by a third party in breach of this Section and shall cooperate with Customer to reasonably remediate the effects of such disclosure or access. Dell further affirms to Customer that Dell Software Inc. currently abides by the safe harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of data from the European Union.

Customer hereby (i) represents that it has the right to send the Protected Data to Dell, (ii) consents for Dell to store and use the Protected Data worldwide for the sole purpose of performing its obligations under this Agreement and any applicable Orders, (iii) agrees that the Protected Data may be accessed and used by Dell and its Representatives worldwide as may be needed to support Dell’s standard business operations, and (iv) agrees that Protected Data consisting of Customer contact information (e.g., email addresses, names) provided as part of Maintenance Services may be sent to Dell’s third party service providers as part of Dell’s services improvement processes.

**16. Compliance Verification.** Customer agrees to maintain and use systems and procedures to accurately track, document, and report its installations, acquisitions and usage of the Software. Such systems and procedures shall be sufficient to determine if Customer’s deployment of the Software or, if applicable, use of the SaaS Software is within the quantities, Product Terms, and maintenance releases to which it is entitled. Dell or its designated auditing agent shall have the right to audit Customer's deployment of the Software or, if applicable, use of the SaaS Software for compliance with the terms and conditions of this Agreement and the applicable Order(s). Any such audits shall be scheduled at least ten (10) days in advance and shall be conducted during normal business hours at Customer's facilities. Customer shall provide its full cooperation and assistance with such audit and provide access to the applicable records and computers. Without limiting the generality of the foregoing, as part of the audit, Dell may request, and Customer agrees to provide, a written report, signed by an authorized representative, listing Customer's then current deployment of On-Premise Software and/or the number of individuals that have accessed and used SaaS Software. If Customer's deployment of the Software or, if applicable, use of the SaaS Software is found to be greater than its purchased entitlement to such Software, Customer will be invoiced for the over-deployed quantities at Dell’s then current list price plus the applicable Maintenance Services and applicable over-deployment fees. All such amounts shall be payable in accordance with this Agreement. Additionally, if the unpaid fees exceed five percent (5%) of the fees paid for the applicable Software, then Customer shall also pay Dell's reasonable costs of conducting the audit. The requirements of this Section shall survive for two (2) years following the termination of the last License governed by this Agreement.

**17. SaaS Provisions**.

(a) **Data.** Customer may store data on the systems to which it is provided access in connection with its use of the SaaS Software (the ***“SaaS Environment”***). Dell may periodically make back-up copies of Customer data, however such back-ups are not intended to replace Customer’s obligation to maintain regular data backups or redundant data archives. Customer is solely responsible for collecting, inputting and updating all Customer data stored in the SaaS Environment, and for ensuring that it does not (i) knowingly create and store data that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) use the SaaS Environment for purposes that would reasonably be seen as obscene, defamatory, harassing, offensive or malicious. If the Order states where Customer data is to be stored, Dell will not move the data from the specified region without notifying Customer, except if Dell is required to do so by law or legal process. Dell shall have the right to delete all Customer data stored in connection with the use of the SaaS Software thirty (30) days following any termination of this Agreement or any License to SaaS Software granted hereunder.

Customer represents and warrants that it has obtained all rights, permissions and consents necessary to use and transfer all Customer and/or third party data within and outside of the country in which Customer or the applicable Customer Affiliate is located (including providing adequate disclosures and obtaining legally sufficient consents from Customer’s employees, customers, agents, and contractors). If Customer transmits data to a third-party website or other provider that is linked to or made accessible by the SaaS Software, Customer will be deemed to have given its consent to Dell enabling such transmission and Dell shall have no liability to Customer in connection with any claims by a third party in connection with such transmission.

(b) **Conduct.** In connection with the use of SaaS Software, Customer may not (i) attempt to use or gain unauthorized access to Dell’s or to any third-party's networks or equipment; (ii) permit other individuals or entities to copy the SaaS Software; (iii) provide unauthorized access to or use of any SaaS Software or the associated access credentials; (iv) attempt to probe, scan or test the vulnerability of the SaaS Software, the SaaS Environment, or a system, account or network of Dell or any of Dell’s customers or suppliers; (v) interfere or attempt to interfere with service to any user, host or network; (vi) engage in fraudulent, offensive or illegal activity of any nature or intentionally engage in any activity that infringes the intellectual property rights or privacy rights of any individual or third-party; (vii) transmit unsolicited bulk or commercial messages; (viii) intentionally distribute worms, Trojan horses, viruses, corrupted files or any similar items; (ix) restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the SaaS Software (except for tools with safety and security functions); or (x) restrict, inhibit, interfere with or otherwise disrupt or cause a performance degradation to any Dell (or Dell supplier) facilities used to provide the SaaS Environment. Customer shall cooperate with Dell’s reasonable investigation of SaaS Environment outages, security issues, and any suspected breach of this Section, and shall, at its expense, defend Dell and its Affiliates from any claim, suit, or action by a third party (a ***“Third Party Claim”***) alleging harm to such third party caused by Customer’s breach of any of the provisions of this Section. Additionally, Customer shall pay any judgments or settlements reached in connection with the Third Party Claim as well as Dell’s costs of responding to the Third Party Claim.

(c) **Suspension.** Dell may suspend Customer’s use of SaaS Software (a) if so required by law enforcement or legal process, (b) in the event of an imminent security risk to Dell or its customers, or (c) if continued use would subject Dell to material liability. Dell shall make commercially reasonable efforts under the circumstances to provide prior notice to Customer of any such suspension.

**18. General.**

(a) **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to any conflict of laws principles that would require the application of laws of a different state. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the state or federal courts located in Travis or Williamson County, Texas. Each party hereby agrees to submit to the jurisdiction of such courts.

The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of the states in which the parties do business or are incorporated.

(b) **Assignment.** Except as otherwise set forth herein, Customer shall not, in whole or part, assign or transfer any part of this Agreement, the Licenses granted under this Agreement or any other rights, interest or obligations hereunder, whether voluntarily, by contract, by operation of law or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order, or otherwise without the prior written consent of Dell. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.

(c) **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite the failure or unenforceability of an agreed remedy. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

(d) **Use by U.S. Government.** The Software is a “commercial item” under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government is prohibited except as expressly permitted by the terms of this Agreement. In addition, when Customer is a U.S. government entity, the language in Subsection 12(ii) of this Agreement and Section 18(h) of this Agreement shall not be applicable.

(e) **Notices.** All notices provided hereunder shall be in writing and addressed to the legal department of the respective party or to such other address as may be specified in an Order or in writing by either of the parties to the other in accordance with this Section. Except as may be expressly permitted herein, notices may be delivered personally, sent via a nationally recognized courier or overnight delivery service, or mailed by first class mail, postage prepaid. All notices, requests, demands or communications shall be deemed effective upon personal delivery or, if sent by mail, four (4) days following deposit in the mail in accordance with this paragraph.

(f) **Disclosure of Customer Status.** Dell may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of Dell in its marketing communications.

(g) **Waiver.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(h) **Injunctive Relief.** Each party acknowledges and agrees that in the event of a material breach of this Agreement, including but not limited to a breach of the “*Software License,*" “*Restrictions*” or "*Confidential Information*" Sections of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.

(i) **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. For the avoidance of doubt, an excuse of the obligation to pay fees due hereunder during the pendency of a force majeure event shall not operate to relieve Customer or its Affiliates of its contractual obligations to pay such fees.

(j) **Equal Opportunity.** Dell Software Inc. is a federal contractor and Affirmative Action employer (M/F/D/V) as required by the Equal Opportunity clause C.F.R. § 60-741.5(a).

(k) **Headings.** Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term “including” is used in this Agreement it will be construed in each case to mean “including, but not limited to.”

(l) **Legal Fees**. If any legal action is brought to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys’ fees, court costs and other collection expenses, in addition to any other relief it may be awarded.

(m) **Entire Agreement.** This Agreement is intended by the parties as a final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. In the absence of such an agreement, this Agreement and the applicable Order shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial proceeding that may involve the Agreement. Each party acknowledges that in entering into the Agreement it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement. In those jurisdictions where an original (non-electronic) signature on agreements such as this Agreement or an Order is required by law or regulation, the parties hereby agree that, notwithstanding any such law or regulation, a certified electronic signature on this Agreement or any Order shall be sufficient to create an enforceable and valid agreement. In the event of a conflict between the terms of this Agreement and the terms contained in an Order, the terms in the Order shall only control if the Order is signed by both Dell and Customer; otherwise, the terms of this Agreement shall control. Neither this Agreement, nor an Order, may be modified or amended except by a writing executed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or an Order.