

Quest Migration Software (SaaS) | Dell

1. Definitions

In this section:

- (a) **Agreement** means the Software Transaction Agreement between Cenitex and Dell dated on or around 31 July 2016 (ref STA_APJ_20150527), as varied by those parties;
- (b) **Appliance** means a computer hardware product upon which the Software is pre-installed and delivered;
- (c) **Dell** means Dell Software International Ltd (**DSIL**) or an affiliate of Dell that delivered the Software or has signed an order with Cenitex for the delivery of the Software;
- (d) **Documentation** means the user manuals and documentation that Dell makes available for the Software, and all copies of the foregoing;
- (e) **License** means the Software licensed to the Customer in accordance with this Proposal;
- (f) **License Type** means the model by which the Software is licensed (e.g., by server. By mailbox, by managed user);
- (g) **Maintenance Services** means Dell's maintenance and support offering for the Products;
- (h) **Product Terms** means the terms associated with each License Type and any other terms associated with an individual Product;
- (i) **Products** means the Software and any Appliance(s) provided to the Customer under this Proposal;
- (j) **SaaS Environment** means the systems to which the Customer is provided access in connection with its use of the SaaS Software; and
- (k) **Software** means the object code version of the software that is provided or made available to the Customer as well as any corrections, enhancements and upgrades to such software that are made available to the Customer, and all copies of the foregoing. Software includes On-Premise Software and SaaS Software along with any software that is delivered on an Appliance.

2. License

If the Software is installed on the Customer's equipment or the Customer is provided access to the Software by Cenitex, then the Customer must ensure that:

- (1) it only uses the Software and Documentation as part of the services provided to it by Cenitex under this Proposal;
- (2) such use is subject to the restrictions and limitations in this Proposal, including those in clauses 3, 6 and 9;
- (3) it cooperates with Dell during any compliance review that may be conducted by Dell or its designated agent; and
- (4) at the end of its engagement with Cenitex, it will, at Cenitex's request, promptly remove any Software installed on its computer equipment.

3. Restrictions

- (a) Unless the exclusions and limitations in this clause are prohibited by law, the Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Software, or any part thereof. In addition, the Customer may not:
 - (1) modify, translate, localise, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on, the Products, Documentation or any part thereof;
 - (2) resell, sublicense or distribute the Products or Documentation;
 - (3) provide, make available to, or permit the use of the Products, in whole or in part, by any third party (except as expressly set forth herein) without Dell's prior written consent;
 - (4) use the Products or Documentation to create or enhance a competitive offering or for any other purpose which is competitive to Dell;
 - (5) remove Software that was delivered on an Appliance from the Appliance on which it was delivered and load such Software onto a different appliance without Dell's prior written consent; or
 - (6) perform or fail to perform any act which would result in misappropriation or infringement of Dell's intellectual property rights in the Products or Documentation.
- (b) Each permitted copy of the Software and Documentation made by the Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original.

- (c) The Customer understands and agrees that the Products may work in conjunction with third party products and the Customer agrees to be responsible for ensuring that it is properly licensed to use such third party products. The terms and restrictions set out in this Proposal shall not prevent or restrict the 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 applicable open source licenses.
- (d) The Customer may not use any license keys or other license access devices not provided by Dell, including but not limited to 'pirate keys', to install or access the Software.

4. **Export**

- (a) The Customer acknowledges that the Products and Maintenance Services 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 to abide by the Export Controls. The Customer hereby agrees to use the Products and Maintenance Services in accordance with the Export Controls, and shall not export, re-export, sell, lease or otherwise transfer the Products or any copy, portion or direct product of the foregoing to:
 - (1) any country subject to a United States trade embargo;
 - (2) a national or resident of any country subject to a United States trade embargo; or
 - (3) any person or entity to which shipment of Products is prohibited by the Export Controls.

5. **Compliance Verification**

The 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 the Customer's deployment of the 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 the Customer's deployment of the Software for compliance with the terms and conditions of the Agreement. The Customer shall provide its full cooperation and assistance with such audit and provide access to the applicable records and computers.

6. **SaaS Provisions**

- (a) The Customer is solely responsible for collecting, inputting, validating and updating all Customer data stored in the SaaS Environment. The Customer represents and

warrants that it has obtained all rights, authorisations and consents necessary to use and transfer all Customer and/or third-party data within and outside of the country in which the Customer is located (including providing adequate disclosures and obtaining legally sufficient consents or authorisations from the Customer's employees, customers, agents, and contractors). If the Customer transmits data to a third-party website or other location for access by the SaaS Software, the Customer will be deemed to have given its consent and/or authorisation for access by Dell.

- (b) The Customer must not:
 - (1) use the SaaS Software in breach of applicable law and in particular the Customer will not transmit any content or data that is unlawful or infringes any intellectual property rights of third parties;
 - (2) circumvent or endanger the operation or security of the SaaS Software or 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;
 - (3) transmit unsolicited bulk or commercial messages; or
 - (4) intentionally distribute worms, Trojan horses, viruses, corrupted files or any similar items.
- (c) The Customer shall cooperate with Dell's reasonable investigation of SaaS Environment outages, security issues, and any suspected breach of this clause 9.
- (d) The Customer acknowledges that Dell may temporarily limit or suspend the Customer's access to the SaaS Software to prevent damages, if it is sufficiently probable that the continued use of the SaaS Software may result in harm to the SaaS Software, other Dell customers, or the rights of third parties in such a way that immediate action is required to avoid damages or the Customer is in breach of clause 9(b) above.
- (e) If the Customer requires Dell to return or delete any Customer personal information provided through its use of the SaaS Software, it must notify Cenitex at least 60 days before the expiration or earlier termination of the SaaS Software. If requested to return such personal information, Dell will do so to the extent allowed by applicable law in a commonly used format.
- (f) Unless Customer requests that Customer personal information be returned, following termination of the SaaS Software, Dell shall delete Customer's personal information



except to the extent necessary to allow Dell to comply with legal or regulatory orders or requirements.