



Contract Number

24-207

SAP Number

Innovation and Technology Department

Department Contract Representative	Jeremiah Thomas
Telephone Number	(909)388-0641
Contractor	Dell Global B.V. (Singapore Branch)
Contractor Representative	N/A
Telephone Number	N/A
Contract Term	The period commencing on the date of first use of the software and continuing until terminated.
Original Contract Amount	N/A
Amendment Amount	N/A
Total Contract Amount	N/A
Cost Center	1200604048

Briefly describe the general nature of the contract: Non-financial End User License Agreement, including non-standard terms, with Dell Global B.V. (Singapore Branch) for the use of workload metric software for virtual servers, known as RV Tools, for the period commencing on the date of first use of the software and continuing until terminated.

FOR COUNTY USE ONLY

Approved as to Legal Form

► Bonnie Uphold
Bonnie Uphold, Supervising Deputy County Counsel

Date 2/28/2024

Reviewed for Contract Compliance

► _____

Date _____

Reviewed/Approved by Department

► _____

Date _____

END USER LICENSE AGREEMENT FOR RVTools

This End User License Agreement ("EULA") is between the individual consumer or business entity that will use the Application ("You") and Dell Global B.V. (Singapore Branch), the Singapore branch of a company incorporated in The Netherlands with limited liability, located at 2 International Business Park, The Strategy Tower 2, #01-34 Singapore 609930 ("Licensor").

This EULA governs Your use of: (a) the object code version of RVTools; (b) updates to such software ("Updates"); (d) the documentation for such software; and (e) all copies of the foregoing (collectively, "Application"). If You accept this EULA, or if You install or use the Application, then You agree to this EULA. If You accept this EULA or install or use the Application on behalf of a business entity, then You represent that You have authority to take those actions, and this EULA will be binding on that business entity.

1. License Grant.

1.1. Right to Use. Subject to and in consideration of your full compliance with the terms and conditions of this EULA, Licensor grants to You a personal, nonexclusive, non-transferable, and revocable license to use the Application in accordance with the terms of this EULA. If You are an individual consumer, this license grant allows You to use the Application in connection with Your own personal use. If You are a business entity, this license grant allows You to use the Application in connection with the internal business operations of Your entity. In addition, You may make a reasonable number of copies of the Application solely as needed for backup or archival purposes.

1.2. Third Party Use. If You are a business entity, You may allow Your contractors (each, a "Permitted Third Party") to use the Application solely for the purpose of providing services to You, provided that such use is in compliance with this EULA. You are liable for any breach of this EULA by any Permitted Third Party.

1.3. Rights Reserved. The Application is licensed and not sold. Except for the license expressly granted in this EULA, Licensor, on behalf of itself and its affiliates and suppliers, retains all rights in and to the Application. The rights in the Application are valid and protected in all forms, media and technologies existing now or hereafter developed. Any use of the Application other than as expressly set forth herein is strictly prohibited.

1.4. Ownership. Licensor, on behalf of itself and its affiliates, retains ownership of the Application and all related intellectual property rights. If Application is provided to You on removable media (e.g., CD, DVD or USB drive), You may own the media on which the Application is recorded.

2. License Conditions.

2.1. You and Your Permitted Third Parties must do the following:

1. Run the Application only on the hardware for which it was intended to operate, when applicable;
2. Treat the Application as Dell confidential information;
3. Abide by the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions. Under these laws, the Application must not be used, sold, leased, exported, imported, re-exported or transferred except in compliance with such laws, including, without limitation, export licensing requirements,

end user, end-use and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. You represent and warrant that You are not the subject or target of, and that You are not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of economic sanctions of the United States, European Union or other applicable jurisdictions; and

4. Comply with all Third Party Terms (as defined in Section 3 below).

2.2. Except as otherwise permitted by this EULA or by mandatory law (meaning a law that the parties cannot change by contract), You must not, and must not allow Your Permitted Third Parties, to do the following:

1. Modify or remove any proprietary notices or markings on or in the Application;
2. Violate or circumvent any technological use restrictions in the Application;
3. Sell, loan, rent, lease, sublicense, distribute, encumber (e.g., by lien, security interest, etc.), or otherwise commercially exploit the Application;
4. Infringe any trademarks or service marks of Licensor, its affiliates or suppliers;
5. Provide access to the Application or allow use by any third party, other than Permitted Third Parties, without Licensor's prior written consent;
6. Copy, republish, upload, post or transmit the Application in any way;
7. Modify or create derivative works based upon the Application, or decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Application, in whole or in part;
8. Attack or attempt to undermine the security, integrity, authentication or intended operation of the Application;
9. Use the Application on a service bureau, rental or managed services basis;
10. "Frame" or "mirror" the Application on any other server, wireless or Internet-based device, or permit others to do so;
11. Use the Application to create a competitive offering to the Application;
12. Use the Application to create other software, products or technologies unless the Application contains Development Tools as described in Section 7;
13. Benchmark the Application, or share or publish the results of any such benchmarking of the Application, without Dell's prior written consent;
14. Use the Application for high risk activities, including without limitation online control systems, or use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, weapons systems or in any other device or system in which function or malfunction of the Application could result in death, personal injury or physical or environmental damage;
15. Use the Application for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or support of missile projects, or chemical or biological weapons; and
16. Assign this EULA, or any right or obligation under this EULA, or delegate any performance, without Dell's prior written consent. Even if Dell consents to an assignment, You remain responsible for all obligations under this EULA that You incurred prior to the effective date of the assignment.

2.3 Application Updates. Licensor reserves the right to modify, suspend or discontinue, temporarily or permanently, the Application or any service to which it connects, with or

without notice. Licensor may from time to time provide enhancements or improvements to the features/functionality of the Application, which may include patches, bug fixes, updates, upgrades and other modifications ("Modifications"). Modifications may modify or delete certain features and/or functionalities of the Application. You agree that Licensor has no obligation to (i) provide any Updates or Modifications, or (ii) continue to provide or enable any particular features and/or functionalities of the Application to You. You further agree that all Modifications will be (i) deemed to constitute an integral part of the Application, and (ii) subject to the terms and conditions of this EULA.

2.4 Feedback. Any feedback, comments, ideas, improvements or suggestions (collectively, "Feedback") provided by You to Licensor with respect to the Application shall be deemed the sole and exclusive property of Licensor. Licensor shall be free to use, copy, modify, publish, or redistribute the Feedback for any purpose and in any way without any obligation or accounting to You.

3.

- C. **Third Party Application.** "Third Party Application" is software, including open source software, that is contained in or provided with the Application and is licensed by a third party under its own terms of use ("Third Party Terms"). Third Party Application is governed solely by the applicable Third Party Terms and not by this EULA. Third Party Terms may be provided with the Third Party Application or may be included in the OST Table. For certain open source software, the applicable Third Party Terms may entitle You to obtain the corresponding source files. You may find corresponding source files for such open source software at [//opensource.dell.com/](https://opensource.dell.com/) or in the "About" or "Read Me" file of Application, or other locations that Licensor may specify.

3.

- C. **Third Party Services.** The Application may display, include or make available third-party content (including data, information, applications and other products services) or provide links to third-party websites or services ("Third-Party Services"). You acknowledge and agree that Licensor (including Licensor's affiliates and suppliers) shall not be responsible for any Third-Party Services, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. Licensor does not assume and shall not have any liability or responsibility to You or any other person or entity for any Third-Party Services. Third-Party Services and links thereto are provided solely as a convenience to You and You access and use them entirely at your own risk and subject to such third parties' terms and conditions.

3.

- C. **Development Tools.** If the Application includes development tools, such as scripting tools, APIs or sample scripts (collectively "Development Tools"), and unless there is a separate agreement between You and Dell or Licensor for the Development Tools, You may use such Development Tools to create new scripts and code for the purpose of customizing Your use of the Application (within the

parameters set forth in this EULA and in the Development Tools themselves) and for no other purpose.

3.

- C. **Termination.** Licensor may, in its sole discretion, at any time and for any or no reason, suspend or terminate this EULA with or without prior notice. This EULA will terminate immediately, without prior notice from Licensor, if You or a Permitted Third Party commits a material breach of this EULA. When this EULA terminates, all licenses granted automatically terminate and You must immediately cease use of the Application and return or destroy all copies of the Application. Rights and obligations under Sections of this EULA that, by their nature should survive, will survive termination.

3.

- C. **Warranty Disclaimer.** Under this EULA, Licensor provides neither any warranties for the Application nor does it provide support for the Application. The Application is provided by Licensor under this EULA "As Is" without any warranties or conditions. To the maximum extent permitted by applicable law, Licensor, on behalf of itself and its affiliates and suppliers: (a) makes no express warranties or conditions related to the Application; (b) disclaims all implied warranties and conditions related to the Application, including merchantability, fitness for a particular purpose, title, and non-infringement; and (c) disclaims any warranty or condition arising by statute, operation of law, course of dealing or performance, or usage of trade. Licensor does not represent or warrant: (a) uninterrupted or error-free operation of the Application; (b) that any information or content provided through the Application is accurate or reliable; (c) that content or emails sent from or on behalf of the Application are free of viruses, scripts, trojan horses, worms, malware, timebombs or other harmful components. This Section does not affect or modify any of the statutory warranty rights that are available to consumers.

3. Limitation of Liability.

8.1. Limitations on Damages. The terms set forth in this Section shall apply to all disputes, claims, or controversies between You and Licensor or Dell arising under: (a) this EULA; or (b) breach, termination or validity of this EULA ("each a Dispute").

The terms of this Section are agreed allocations of risk constituting part of the consideration for Licensor's licensing of Application to You and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities. If applicable law prohibits any portion of the limits on liability stated below, the parties agree that such limitation will be automatically modified, but only to the extent required to make the limitation compliant with applicable law.

1. Limitation on Direct Damages. Except for Your violation of the License Grant and License Conditions set forth herein or of Licensor's or Dell's intellectual property rights, the total liability of You and Licensor (including Licensor's affiliates and suppliers) arising out of any Dispute is limited to the amount You paid for the Application. Notwithstanding anything otherwise set forth above, Licensor and its affiliates have no liability for any direct damages resulting from Your use or attempted use of Third Party Application, or Development Tools.
2. Disclaimer of Certain Other Damages. Except for Your violation of the License Grant and License Conditions set forth herein or of Licensor's or Dell's intellectual property rights, Licensor (including Licensor's affiliates and suppliers) shall have no liability under this EULA for special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use or procurement of substitute products or services.

8.2. Regular Backups. You are solely responsible for Your data. You must back up Your data before Licensor or a third party performs any remedial, upgrade or other work on Your production systems. You acknowledge that it is a best practice to have more than one back up copy of Your data.

8.3. Limitation Period. Except as stated in this Section, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within 18 months after the cause of action accrues.

9. Additional Terms.

9.1. Notices. The parties will provide all notices under this EULA in writing. You must provide notices by e-mail to Dell.Legal.Notices@dell.com.

9.2. Waiver and Severability. Failure to enforce a provision of this EULA will not constitute a waiver of that or any other provision of this EULA. If a court of competent jurisdiction determines that any part of this EULA or document that incorporates this EULA by reference is unenforceable, that ruling will not affect the validity of all remaining parts.

9.3. Modifications. Licensor reserves the right, at its sole discretion, to modify or replace this EULA at any time. By continuing to access or use the Application after any revisions to EULA become effective, You agree to be bound by the revised terms. If You do not agree to the new terms, You are no longer authorized to use the Application.

9.4. Governing Law and Jurisdiction.

9. Subject to Section 9.4 C and 9.5, this EULA and any Dispute is governed by the laws of the State of Texas (excluding the conflicts of law rules) and the federal laws of the United States; and (2) to the extent permitted by law, the state and federal courts located in Texas will have exclusive jurisdiction for any Dispute. Both parties agree to submit to the personal jurisdiction of the state and federal courts located within Travis or Williamson County, Texas, 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.
10. In any event, neither the U.N. Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act shall apply to this EULA or any Dispute.
11. If You are an individual consumer, this Section 13.4 does not deprive You of the protection afforded to You by the provisions of mandatory consumer protections laws

that are applicable to You, nor does it prevent you from seeking remedies or enforcing your rights as a consumer under such laws.

9.5. Dispute Resolution and Binding Individual (non-class) Arbitration. This Section only applies if You are an individual consumer that resides in (or obtained the Application in) the United States or Canada. All Disputes shall be resolved exclusively and finally by binding individual arbitration. This means You and Licensor waive any right to litigate disputes in a court or before a jury and neither You nor Licensor shall be entitled to join, consolidate, or include any claims belonging to or alleged or arising from, by or on behalf of any third party to an arbitration brought hereunder, or to arbitrate any claim as a class action, class representative, class member, or in a private attorney general capacity. If You reside in (or obtained the Application in) the United States, the arbitration will be administered by the American Arbitration Association (AAA), or JAMS. If You reside in (or obtained the Application in) Canada, arbitration will be at ADR Chambers pursuant to the general ADR Chambers Rules for Arbitration located at www.adrchambers.com. The arbitration shall be conducted in the English language. The arbitration panel shall have exclusive authority to resolve any arbitrability issues including any dispute over this EULA or this arbitration provision's scope, application, meaning and enforceability. The arbitration panel shall be empowered to grant whatever relief would be available in court, including without limitation preliminary relief, injunctive relief and specific performance. Any award of the arbitration panel shall be final and binding immediately when rendered, and judgment on the award may be entered in any court of competent jurisdiction. If any portion of this arbitration agreement is found unenforceable, the unenforceable portion shall be severed and the remaining arbitration terms shall be enforced (but in no event will there be a class arbitration). Consumer claimants (individuals whose transaction is intended for personal, family or household use) may elect to pursue their claims in small-claims court rather than arbitration. Licensor will be responsible for paying any individual consumer's arbitration/arbitrator fees. Notwithstanding the foregoing, Licensor may apply to any relevant government agency or any court of competent jurisdiction to preserve its rights under this EULA and to obtain any injunctive or preliminary relief, or any award of specific performance, to which it may be entitled, either against You or against a non-party; provided, however, that no such administrative or judicial authority shall have the right or power to render a judgment or award (or to enjoin the rendering of an arbitral award) for damages that may be due to or from either party under this EULA, which right and power shall be reserved exclusively to an arbitration panel proceeding in accordance herewith.

9.6. Third Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

9.7 Entire Agreement. You acknowledge that You have read this EULA, that You understand it, that You agree to be bound by its terms, and that this EULA is the complete and exclusive statement of the agreement between You and Licensor regarding Your use of the Application. You represent that You did not rely on any representations or statements that do not appear in this EULA when accepting this EULA.