

**Congratulations on your new Dell purchase!**

**Your purchase and use of this product is subject to and governed by Dell's applicable Terms of Sale and End User License Agreement, which are each presented below in the following order:**

- **U.S. Consumer Terms of Sale**
- **Commercial Terms of Sale**
- **End User License Agreement**

**In addition, please take note of the important Safety Information.**

**By the act of clicking "I accept," you agree (or re-affirm your agreement to) the foregoing terms and conditions and acknowledge that you have read and understood the Safety Information. For the avoidance of doubt, to the extent that Dell is deemed under applicable law to have accepted an offer by you: (a) Dell hereby objects to and rejects all additional or inconsistent terms that may be contained in any purchase order or other documentation submitted by you in connection with your order; and (b) Dell hereby conditions its acceptance on your assent that the foregoing terms and conditions shall exclusively control.**

**IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT USE YOUR PRODUCT AND RETURN IT TO DELL IN ACCORDANCE WITH DELL'S RETURN POLICY LOCATED AT [www.dell.com/en-us/lp/return-policy](http://www.dell.com/en-us/lp/return-policy)**

---

#### **Safety Information**

**WARNING: To help avoid risk of bodily injury or property damage, observe the following warnings:**

##### **Battery Safety**

**Use only a battery obtained from Dell and approved for use with this device. Using a battery from a third-party source may increase the risk of fire.**

**Fully discharge the battery in the device prior to servicing, replacing or removal for recycling, return or disposal. Handle battery with care. Do not disassemble the battery. A damaged battery may pose a risk of personal injury or fire.**

##### **Power and Adapter Safety**

**Use only a Dell-provided AC adapter approved for use with this device.**

**Do not allow your computer or adapter to rest directly on exposed skin for extended periods of time. Sustained contact with exposed skin can cause discomfort or burn.**

##### **Electrical Safety**

**Before you connect the equipment to an electrical outlet, ensure that the equipment voltage and frequency rating match the available power source.**

**Plug the equipment power cables into properly grounded electrical outlets and use only the approved power cables rated for the equipment.**

**See Safety and Regulatory Content in <https://www.dell.com/en-us/lp/legal/regulatory-compliance> for additional safety and regulatory information.**

#### **U.S. Consumer Terms of Sale**

**PLEASE READ THESE TERMS CAREFULLY! THEY INCLUDE AN ARBITRATION PROVISION REQUIRING INDIVIDUAL ARBITRATION OF DISPUTES INSTEAD OF JURY TRIALS OR CLASS ACTIONS.** By submitting your order or accepting or using products, you acknowledge that you agree to these terms in their entirety.

**1. Application.** These Consumer Terms of Sale ("Terms") apply to all consumer purchases from Dell or of Dell products, software, services or support ("Product") in the United States.

**2. Additional Terms.** The Terms consist of this document and Dell's:

- a. U.S. Return Policy: [www.dell.com/en-us/lp/return-policy](http://www.dell.com/en-us/lp/return-policy)
- b. Consumer Warranties: [www.dell.com/en-us/lp/legal/terms-of-sale-consumer-warranties](http://www.dell.com/en-us/lp/legal/terms-of-sale-consumer-warranties) (for Dell-branded hardware purchases),
- c. License Agreements: [www.dell.com/en-us/lp/legal/terms-of-sale-consumer-license-agreements](http://www.dell.com/en-us/lp/legal/terms-of-sale-consumer-license-agreements) (for software purchases),
- d. Consumer Service Contracts: [www.dell.com/en-us/lp/legal/terms-of-sale-consumer-license-agreements](http://www.dell.com/en-us/lp/legal/terms-of-sale-consumer-license-agreements) (for services purchases),
- e. Telemetry Data Provision: [i.dell.com/sites/csdocuments/Legal\\_Docs/en-us/telemetry-data-provision.pdf](http://i.dell.com/sites/csdocuments/Legal_Docs/en-us/telemetry-data-provision.pdf) (describing how Dell collects, uses and shares system data),
- f. Privacy Statement: [www.dell.com/en-us/lp/legal/policies-privacy](http://www.dell.com/en-us/lp/legal/policies-privacy) (describing how Dell collects, uses and shares your personal information), and
- g. Terms of Use: [www.dell.com/en-us/lp/legal/site-terms-of-use](http://www.dell.com/en-us/lp/legal/site-terms-of-use) (governing your use of Dell's website).

**3. Orders, Acceptance and Cancellation.** Your order is an offer to buy. Dell may send an order confirmation email to acknowledge receipt of your order, but Dell does not accept your order until we send you notice that the Product has shipped. Dell may process payment for and ship parts of an order separately. Dell reserves the right at any time, even after we send you a confirmation email, to decline or cancel your order or to limit order quantities for any reason, including errors or suspected fraud.

**4. Pricing and Availability.** Prices and promotions are subject to change. Dell strives to communicate accurate pricing and product information, but errors may occur. In the unlikely event that an error impacts your order, or a Product ordered is no longer available, we will either contact you for instructions or cancel your order.

**5. Taxes and Fees.** Unless you provide Dell with a valid and correct tax exemption certificate, you are responsible for sales and other taxes associated with your order.

**6. Shipping.** Product title passes to you when the Product ships. You are responsible for inspecting the package(s) upon delivery and must note any visible damage on the proof of delivery (POD) or other delivery receipt the carrier asks you to sign. Dell is not responsible for any visible shipping damages not noted on the delivery receipt.

**7. Warranty Disclaimer.** DELL INCORPORATES ITS CONSUMER WARRANTIES REFERENCED ABOVE WHICH APPLY TO PURCHASES OF DELL-BRANDED HARDWARE. DELL MAKES NO WARRANTIES FOR SERVICE, SOFTWARE, MAINTENANCE OR SUPPORT OR FOR NON-DELL BRANDED PRODUCT, WHICH ARE PROVIDED "AS IS," AND DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AND CONDITIONS AGAINST HIDDEN OR LATENT DEFECTS. SOME STATES DO NOT ALLOW LIMITATION OF WARRANTIES, SO THESE LIMITATIONS MAY NOT APPLY TO YOU.

**8. Receiving Warranty or Service Support.** IT IS YOUR RESPONSIBILITY TO BACK UP ALL EXISTING DATA, SOFTWARE AND PROGRAMS BEFORE RECEIVING SERVICES OR SUPPORT (INCLUDING TELEPHONE

SUPPORT). DELL AND/OR YOUR THIRD-PARTY SERVICE PROVIDER WILL HAVE NO LIABILITY FOR LOSS OR RECOVERY OF DATA OR PROGRAMS, OR FOR LOSS OF USE OF SYSTEM(S) ARISING OUT OF THE SERVICES OR SUPPORT OR ANY ACT OR OMISSION, INCLUDING NEGLIGENCE, BY DELL OR YOUR-THIRD-PARTY SERVICE PROVIDER. Parts used in repairing or servicing Product(s) may be new, equivalent-to-new, or reconditioned.

**9. Telephone Communications.** Telephone communications with us, our agents or independent contractors may be monitored and/or recorded. You expressly consent, on behalf of yourself and other users of your phone number, to such monitoring or recording. By providing us with a phone number (including mobile) as your contact number, you expressly authorize us to contact you on that number via text message or telephone, including via prerecorded or auto-dialed calls. This consent is for non-telemarketing calls only.

**10. Limitation of Liability.** In no event will Dell be liable for any indirect, consequential, exemplary, incidental or punitive damages, including lost profits, even if Dell has been advised of the possibility of such damages. YOU AGREE THAT DELL'S LIABILITY IN ANY DISPUTE WILL BE CAPPED AT THE TOTAL AMOUNT YOU PAID FOR THE ORDER OR PRODUCT AT ISSUE. Some states do not allow limitation of certain damages, so these limitations may not apply to you. If you are a New Jersey resident, this provision will not apply to claims for damages caused by Dell's intentional, reckless or grossly negligent conduct.

**11. Purchases may not be resold or exported.** Your purchase is for your own use, not for resale, export, re-export or transfer. Your purchase is subject to and you are responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions ("Export Laws"). Your purchase, including any associated intellectual property rights or trade secrets that may accompany it, may not be used, licensed, sold, supplied, leased, exported, re-exported or otherwise transferred, whether directly or indirectly, to restricted countries (including, but not limited to Cuba, Iran, North Korea, Syria, Russia, Belarus, and the Crimea, Donetsk, and Luhansk regions of Ukraine), restricted end users, or for restricted end uses according to the Export Laws. Dell reserves all rights and remedies to enforce these restrictions, including injunctive relief, damages, and cancellation/termination of your purchase.

**12. Governing Law.** THESE TERMS AND ANY DISPUTE BETWEEN YOU AND DELL WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAW.

**13. Dispute Resolution and Binding Arbitration. YOU AND DELL AGREE TO RESOLVE ANY DISPUTES BETWEEN US EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ON AN INDIVIDUAL BASIS, WHICH MEANS YOU AND DELL WAIVE ANY RIGHT TO LITIGATE DISPUTES IN A COURT OR BEFORE A JURY, OR AS PART OF A CLASS ACTION, A REPRESENTATIVE ACTION, A CONSOLIDATED ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY, EXCEPT AS SPECIFIED IN ANY APPLICABLE MASS ARBITRATION RULES, PROCEDURES, OR GUIDELINES.**

a. This arbitration requirement applies to any claim or dispute of any kind (whether in contract, tort, or otherwise, whether pre-existing, present, or future, and including statutory, common law, or equitable) between you and Dell, its agents, employees, successors, assigns, direct and indirect subsidiaries, and any third party providing any products or services to you in connection with your purchase ("Dell") that relates in any way to your purchase or Product, these Terms, or Dell's marketing or advertising ("Claims").

b. You still have the right to bring individual Claims in small claims court, to the extent that you qualify.

c. Dell will pay the arbitration/arbitrator fees.

d. Arbitration shall be administered by the American Arbitration Association (AAA), subject to its Consumer Arbitration Rules, available at (800) 778-7879 and [www.adr.org](http://www.adr.org).

e. If more than 25 individual arbitration demands are filed by the same or related parties or party representatives, the Mass Arbitration Supplementary Rules (AAA) or Mass Arbitration Procedures and Guidelines (JAMS) will apply.

f. The arbitrator shall have exclusive authority to resolve any arbitrability issues including any dispute over these Terms or this arbitration provision's scope, application, meaning, and enforceability. The arbitrator

shall be empowered to grant whatever relief would be available in court. Any award of the arbitrator(s) shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

g. You and Dell agree to arbitration only on an individual basis, except as specified in any applicable mass arbitration rules, procedures, or guidelines. Neither you nor Dell may join or consolidate claims of others or participate in any claim as a class representative or a class member. 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). This Paragraph controls over any inconsistent term in any other agreement.

h. This transaction shall be governed by the Federal Arbitration Act 9 U.S.C. sec. 1-16 (FAA).

(rev. 09MAY2025)

## **Commercial Terms of Sale**

### **1. Scope.**

1.1. These Commercial Terms of Sale ("**Terms of Sale**") govern Customer's procurement of Supplier Offerings or Third Party Offerings (collectively "**Offerings**") from Supplier, for Customer's own internal use for its business purposes or in its capacity as a public sector entity. "**Customer**" refers to the entity ordering the Offerings and "**Supplier**" refers to the Dell legal entity with which Customer contracts for the procurement of the Offering. Customer and Supplier are typically specified in the associated Quote and Order, and are each referred to as "**Party**" and collectively as "**Parties**". If Customer wishes to resell Offerings or procure for the purposes of its personal use as a consumer, alternative terms and conditions apply. To the extent there is a written framework agreement in place between the Parties that applies to the Offerings, those terms shall apply instead of these Terms of Sale.

#### **1.2. "Supplier Offerings" means:**

- A. "**Products**" means Supplier-branded: (a) hardware ("**Equipment**"); or (b) generally available standard software, whether microcode, firmware, operating systems or applications ("**Software**"). Software includes "**Subscription Software**" licensed by Supplier as a stand-alone product on a subscription basis.
- B. "**Services**" means Supplier's: (a) service offerings for maintenance and support of Products or Subscriptions ("**Support Services**"); or (b) consulting and any other services that are not Support Services ("**Professional Services**").
- C. "**Subscriptions**" means Supplier-branded offerings provided to Customer for a defined time period ("**Subscription Term**") and priced based on the Subscription Term or other applicable metrics, and consisting of: (a) cloud offerings; or (b) Products or Services offered as a subscription, on an "as-a-service" basis or on a flexible consumption basis. Subscriptions do not include Subscription Software.

1.3. "**Third Party Offerings**" means hardware, software, products, services, subscriptions, solutions or any other offerings that are not Supplier-branded.

1.4. These Terms of Sale contain the terms and conditions applicable to all Offerings, as may be supplemented by specific terms for certain Offerings available at [www.dell.com/offeringspecifictterms](http://www.dell.com/offeringspecifictterms), in a Service Specification, a Subscription Specification or in a "**Schedule**" to these Terms of Sale (collectively "**Offering Specific Terms**"), which are all considered part of these Terms of Sale by reference.

### **2. Quote and Ordering; Affiliates; Order of Precedence.**

2.1. Unless otherwise agreed, prices stated on a quote from Supplier ("**Quote**") are effective until the expiration date of the Quote and may change due to shortages in materials or resources, increase in the cost of manufacturing or other factors beyond Supplier's reasonable control. To procure Offerings stated on a Quote, Customer may place orders which are subject to availability and acceptance by Supplier. An accepted order is referred to as an "**Order**". Supplier may cancel Orders due to pricing, typographical or other errors in the Quote.

**2.2.** Supplier may revise its Offerings, including after Customer places an Order but prior to Supplier's shipment or performance. As a result, Offerings Customer receives may differ from those ordered, as long as they still substantially meet or exceed the specifications as per the documentation of the originally ordered Offerings.

**2.3.** Transactions under these Terms of Sale may involve Affiliates. With respect to Customer, "**Affiliate**" means any other entity that controls, is owned by, controlled by or under common ownership or control with Customer. With respect to Supplier, it means Dell Technologies Inc. and its wholly owned subsidiaries. "Control" means more than 50% of the voting power or ownership interests.

**2.4.** In case of any conflict, the following order of precedence will apply: (a) the Order, where the Parties explicitly agree to deviate from these Terms of Sale for the respective Order; (b) any Offering Specific Terms; and (c) these Terms of Sale.

### **3. Delivery; Transfer of Risk and Title; Costs; Acceptance; Returns.**

**3.1.** Unless otherwise agreed, Supplier will arrange for shipment of the ordered Offerings to the ship-to address indicated in the Order, through a carrier that Supplier designates. Delivery dates are estimated. Software may be provided by delivery of physical media or through electronic means. Customer will notify Supplier within 21 days after the invoice date if Customer believes any Offering included in its Order is missing, wrong, or damaged, and will ensure that the intended installation site meets the specifications as per the applicable documentation.

**3.2.** Risk of loss transfers to Customer upon Delivery. Title to sold hardware passes to Customer upon Delivery. "**Delivery**" for hardware occurs when Supplier provides it to the carrier at Supplier's designated point of shipment; "**Delivery**" for software occurs when Supplier provides physical media (or the hardware on which it is installed) to the carrier at Supplier's designated point of shipment, or the date the software is made available for electronic download.

**3.3.** Unless otherwise agreed, cost of transit insurance will be included in the total price stated on the Quote.

**3.4.** Offerings are deemed accepted upon Delivery. Notwithstanding such acceptance, Customer retains all rights and remedies under the "Warranty" section.

**3.5.** Customer may only return Products to Supplier that are permitted to be returned pursuant to the return policy at [www.dell.com/en-us/lp/return-policy](http://www.dell.com/en-us/lp/return-policy)

### **4. Software Licenses.**

Customer's rights to use the Software are governed by the applicable end-user license agreement ("**EULA**"). Unless otherwise agreed, the EULA on [www.dell.com/eula](http://www.dell.com/eula) applies.

### **5. Services; Subscriptions.**

Supplier will provide Services (including any Deliverables) in accordance with the applicable Service Description, Statement of Work (SOW) or other agreed upon documentation for such Services ("**Service Specification**") for the period agreed in the Order. Supplier will provide Subscriptions in accordance with the Services Offering Description, Supplier's standard documentation for the Subscription or other agreed upon documentation for such Subscription ("**Subscription Specification**"). Unless otherwise agreed, the initial Support Services procured with a Product start when the applicable Product warranty period begins. Professional Services are provided as a separate service even if mentioned together with the sale or licensing of Products or Subscriptions by Supplier in the same Order. The Subscription activation process and the Subscription Term are described in the Subscription Specification, the Order or Supplier's online ordering process. Supplier is not providing legal or regulatory advice in any Professional Services.

#### **5.1. Support Services.**

- A.** Availability of Support Services is governed by Supplier's applicable "End-of-Service-Life" and release support policies available at [www.dell.com/support](http://www.dell.com/support) or as otherwise communicated by Supplier ("**Support Policies**"). Unless otherwise agreed, Support Services will terminate at earlier of (a) the expiration of the term for Support Services purchase by Customer or (b) the applicable End-of-Service-Life date. Customer's sole and exclusive remedy for such termination will be the credit by Supplier of any pre-paid fees for Support Services that will not be provided as a result of such termination. Unless stated

otherwise in the applicable Support Policies, Support Services for Software apply only to the current and the immediately prior release of the Software.

- B. Support Services do not cover: (a) problems that are excluded from warranty coverage; (b) problems that cannot be reproduced at Supplier's facility or via remote access to Customer's facility; (c) onsite activities for Products located outside the applicable service area (unless otherwise provided in a Service Specification); (d) providing media replacement, operating supplies, cosmetic repairs, accessories or parts such as frames; or (e) damage or defects that do not affect device functionality.
- C. Supplier may store tools and spare parts for diagnostic or remedial activities in connection with Services at Customer's site or on Customer's systems for use by Supplier's authorized personnel. Customer authorizes Supplier to remove or disable them when no longer needed for the Services.
- D. Replaced Equipment or components will be returned to Supplier and become Supplier's property upon receipt of such items at Supplier's specified facility unless agreed otherwise in an Order. If Customer does not return a replaced component or Equipment within 15 days after receipt of Supplier's request, Supplier reserves the right to charge Customer for such replaced Equipment or component. If Supplier determines that a component is "customer-replaceable" — that is, easily disconnected and reconnected — or if Supplier determines Equipment should be replaced, Supplier reserves the right to send Customer a component or replacement Equipment for exchange.
- E. Supplier will not access or use Customer production data stored on Products without Customer's authorization. Unless a data deletion service is expressly ordered from Supplier, Customer is responsible for removing all information and data stored on replaced parts, Products or any other items before they are returned to Supplier.
- F. If a Product is covered by Services and Customer intends to: (a) relocate Equipment to a different site (where applicable to the Product); (b) change the hardware configuration; (c) deny activation or disable remote support features of a Product, Customer will notify Supplier in advance. Supplier reserves the right to discontinue Services or charge additional fees if the foregoing limits Supplier's ability to provide Services or increases Supplier's costs. In addition, proactive support capabilities, response times or other service levels may no longer apply.

## 5.2. Grant of License Rights in Deliverables.

- A. **"Deliverables"** means reports, analyses, scripts, code or other work results that Supplier delivers to Customer within the framework of fulfilling obligations under a Service Specification.
- B. **"Proprietary Rights"** mean all patents, copyrights, trademarks, trade secrets or other intellectual property rights of a Party.
- C. Subject to Customer's compliance with these Terms of Sale and any applicable Service Specification, Customer's payment of applicable amounts due and Supplier's Proprietary Rights in any underlying intellectual property incorporated into any Deliverables or used by Supplier to perform Services, Supplier grants Customer a non-exclusive, non-transferable, revocable (in case of non-payment, or any breach of these Terms of Sale or any applicable Service Specification) license to use (without the right to sublicense) the Deliverables provided by Supplier for Customer's internal business purposes, solely in accordance with the applicable Service Specification and subject to these Terms of Sale. Customer may authorize its service providers to use the Deliverables, solely on Customer's behalf and for Customer's internal business purposes. Customer is responsible for service provider's compliance with these restrictions.
- D. Supplier retains all Proprietary Rights not expressly granted to Customer herein. The license granted in this section "Grant of License Rights in Deliverables" does not apply to: (a) Products; (b) Subscriptions; or (c) items licensed or otherwise provided under a separate agreement. Supplier is not limited in developing, using, or marketing services or products that are similar to the Deliverables or Services provided hereunder, any Service Specification, or, subject to Supplier's confidentiality obligations to Customer, in using the Deliverables or performing similar Services for any other projects.



**5.3.** Customer retains its Proprietary Rights in materials it furnishes to Supplier for use in connection with the performance of Services. Customer grants Supplier a non-exclusive, non-transferable right, under Customer's Proprietary Rights, to use Customer-provided materials solely for the benefit of Customer in fulfilling Supplier's obligations under these Terms of Sale.

**5.4.** Supplier is solely responsible for personnel placement as well as for all other human resource matters (example: vacations) concerning its personnel.

**5.5.** In connection with Services and Subscriptions, at no charge to Supplier, Customer will: (a) provide Supplier personnel with timely access to safe and clean facilities, space, power, documentation, files, data, information, additional software (if needed); (b) use skilled and authorized Customer personnel to cooperate with Supplier, as reasonably requested by Supplier; (c) be responsible for physical and network security and all conditions in its business necessary for performance of Services; (d) allow Supplier remote and onsite access to the Products and Customer's infrastructure environment, as required; and (e) promptly notify Supplier when Products fail and provide Supplier with sufficient details for Supplier to reproduce the failure.

## **6. Payment Terms; Taxes.**

**6.1.** Customer will pay Supplier's invoices in full and in the same currency as Supplier's invoice within 30 days after the date of the invoice, with interest accruing after the due date at the lesser of 1.5% per month or the highest lawful rate. In case of Customer's default in payment Supplier may, until arrangements as to payment or credit have been established: (a) cancel or suspend its performance of such Order; and/or (b) withhold performance under these Terms of Sale.

**6.2.** The charges due under each Order are exclusive of, and Customer will pay for all value added tax (VAT), excise, withholding and governmental fees and levies, resulting from Customer's purchase, which will be added to the invoices as a separate line item where legally required. If Customer qualifies for a tax exemption, Customer must provide Supplier with a valid certificate of exemption or other appropriate proof of exemption within 1 week of Customer's Order.

**6.3.** Customer must pay all fees for use of the Offerings, including fees for add-on features and fees based on usage. Supplier may invoice Customer directly for metered or overage fees, even if: (a) Customer originally purchased the Offerings through a Supplier reseller; or (b) even if a corresponding Order was not received from Customer.

## **7. Warranty.**

### **7.1. Product Warranty.**

- A.** Equipment. Supplier warrants that the Equipment will: (a) be free from material defects in materials and workmanship; and (b) perform substantially in accordance with Supplier's then-current standard documentation for such Equipment. Supplier will, at its option and cost: (1) repair or replace the affected Equipment; or if Supplier is unable to do so within a reasonable time, upon return of such Equipment to Supplier, (2) refund the amount Customer paid for the affected Equipment as depreciated on a straight-line basis over a five-year period.
- B.** Software. Supplier warrants that the Software licensed to Customer will substantially conform in all material respects to Supplier's then-current standard documentation for such Software. Supplier will, at its option and cost: (a) remedy the non-conformance; or if Supplier is unable to do so within a reasonable time, (b) terminate the Software license and provide a pro-rata refund of the license or subscription fees received by Supplier for such Software.
- C.** Additional Terms and Notice. Additional terms governing the Product warranty, including applicable warranty periods, are found at [http://www.dell.com/learn/us/en/uscorp1/legal\\_terms-conditions\\_dellgrmwebpage/art-limited-hardware-warranties](http://www.dell.com/learn/us/en/uscorp1/legal_terms-conditions_dellgrmwebpage/art-limited-hardware-warranties) and at [www.dell.com/prod-warranty-maint-table](http://www.dell.com/prod-warranty-maint-table). Warranty period for Software will not be less than 90 days. Customer must promptly notify Supplier of any warranty claims within the applicable warranty period.

**7.2. Services Warranty.** Supplier will perform Services in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify Supplier of any failure to so perform within 10 days after the date on which such failure occurs, and Supplier will use reasonable efforts to correct

such failure within a reasonable period. If, for reasons within Supplier's control, Supplier is unable to correct such deficiencies, then Customer may terminate the affected Services by providing written notice to Supplier.

**7.3. Subscriptions Warranty.** Unless otherwise provided in the Subscription Specification, Supplier warrants that during the Subscription Term the Subscription will be provided in material conformance with the Subscription Specification. If the Subscription does not comply with this warranty: (a) Supplier will make reasonable efforts to correct the non-conformance as provided in any applicable Service Level Agreement or Service Level Objective included in the Subscription Specification, or if none is provided, within a reasonable period of time; and (b) if Supplier is unable to correct the non-conformance for reasons for which Supplier is responsible, then Supplier may terminate the Subscription and credit Customer any pre-paid fees for the Subscription that will not be provided as a result of the termination. Customer must notify Supplier in writing within 10 days of identifying any non-conformance claims covered by this warranty. Customer will not make any claims or demands under sections "Product Warranty" and/or "Services Warranty" of these Terms of Sale for Products and/or Services provided as, or as part of, a Subscription.

**7.4. Limitations. Warranty does not cover problems that arise from:** (a) accident or neglect by Customer or any third party; (b) any third party items or services with which the Supplier Offering is used or other causes beyond Supplier's control; (c) installation, operation or use not in accordance with Supplier's instructions or applicable documentation; (d) use in an environment (except for Supplier Offerings hosted by Supplier), in a manner or for a purpose for which the Supplier Offering was not designed; (e) modification, alteration or repair by anyone other than Supplier personnel; (f) delays, interruptions, service failures, or other problems inherent in use of the internet and electronic communications; or (g) causes attributable to normal wear and tear. Supplier Offerings are not fault-tolerant and are not for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the Supplier Offering could lead to death, bodily injury or property damage. Supplier expressly disclaims any express or implied warranty of fitness for these activities. Supplier does not warrant an uninterrupted or error-free operation of Software, nor that all defects can be corrected.

**7.5. Exclusive Remedies and Warranty Disclaimer.** Supplier's warranties herein and Customer's sole and exclusive remedies in case of breach of any warranty are described in these Terms of Sale. Supplier and Supplier Affiliates: (a) make no other express warranties; (b) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (c) disclaim any warranty arising by statute, operation of law, course of dealing or performance or usage of trade.

## **8. Limitation of Liability.**

**8.1.** These terms are agreed allocations of risk constituting part of the consideration for the Parties entering into the transaction governed by these Terms of Sale and 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 risk of the liabilities. The limitations, exclusions and disclaimers stated below apply to all disputes, claims or controversies (whether in contract, tort, negligence or otherwise) related to or arising out of any transaction governed by these Terms of Sale ("Dispute").

- A.** Nothing herein will exclude or limit liability for: (a) gross negligence, willful misconduct, criminal conduct or fraud by a Party; (b) violation of the restrictions on use of Products, Subscriptions and Services; (c) violation or misappropriation by a Party of the other Party's intellectual property rights; (d) a Party's indemnity obligation stated in these Terms of Sale; (e) timely fulfillment of payment obligations; and/or (f) damages that cannot be excluded or limited by law.
- B.** Either Party's entire liability will be limited to direct damages and will be capped at the amount paid by Customer to Supplier during the 12 months prior to when the damaging event occurred for the specific Product, Subscription and/or Service giving rise to such liability, or fifty thousand United States Dollars, whichever is greater.
- C.** Neither Supplier nor its Affiliates will have any liability for any damages related to Third Party Offerings or resulting from Customer's use or attempted use of Free Software or Development Tools all defined in the EULA.
- D.** Neither Supplier (and its suppliers) nor Customer will be liable for: (a) special, consequential, exemplary, punitive, incidental or indirect damages, (b) lost profits,



**loss of revenue, loss or corruption of data, loss of use; or (c) procurement of substitute products, subscriptions or services.**

**8.2. Each Party is solely responsible for its data and mitigation of damages. Customer will implement Information Technology (IT) architecture and processes enabling Customer to prevent and mitigate damages in line with the criticality of the systems and data for Customer's business and its data protection requirements, including a business recovery plan. Customer will: (a) provide for a backup process on a regular (at least daily) basis and backup data before Supplier performs any work on Customer's IT systems; (b) monitor the availability and performance of its IT environment during the performance of Services; and (c) promptly react to any type of notifications received from the Products or from Supplier and immediately report any identified issue to Supplier. To the extent that a Party has any liability for data loss, it will be limited to the cost of commercially reasonable and customary efforts to recover the lost data from the last available backup.**

**8.3. The foregoing limitations will also apply in favor of Supplier's Affiliates.**

**8.4. Except as stated in this clause, all claims must be made within the period specified by applicable law. If the law allows 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. Third Party Offerings.**

Notwithstanding any other provisions herein, Third Party Offerings acquired by Customer are subject to the standard terms, license, services, warranty, indemnity, support terms and applicable data privacy terms or data processing agreement of the third party manufacturer/supplier (as each may be available at [www.dell.com/offeringspecificterms](http://www.dell.com/offeringspecificterms) or from the third party manufacturer/supplier to the Customer), or an applicable agreement between Customer and such manufacturer/supplier. Customer agrees to adhere to such terms and that it shall contact such third party directly for support or other offerings-related issues. Any warranty, data privacy, damages or indemnity claims against Supplier in relation to Third Party Offerings are excluded.

## **10. Confidentiality.**

**10.1. "Confidential Information"** means any information, pricing, technical data or know-how furnished in connection with Quotes, Orders and Offerings that are governed by these Terms of Sale, whether in written, oral, electronic, website-based or other form, by a Customer or a Customer Affiliate to Supplier or a Supplier Affiliate or vice versa and that: (a) is marked, accompanied or supported by documents clearly and conspicuously designating such documents as "confidential", "internal use" or the equivalent; (b) is identified by the discloser as confidential before, during or promptly after the presentation or communication; or (c) should reasonably be known by the recipient to be confidential. Confidential Information does not include information that is: (1) rightfully in the receiving Party's possession without prior obligation of confidentiality from the disclosing Party; (2) a matter of public knowledge (or becomes a matter of public knowledge other than through breach of confidentiality by the other Party); (3) rightfully furnished to the receiver by a third party without confidentiality restriction; or (4) independently developed by the receiver or its Affiliates without reference to the discloser's Confidential Information.

**10.2.** Each Party will ensure that, where it or one of its Affiliates is the receiver of Confidential Information hereunder, the receiver will (a) use Confidential Information of the discloser only for the purposes of exercising rights or performing obligations in connection with these Terms of Sale or any Order hereunder; and (b) protect from disclosure to any third parties any Confidential Information disclosed by the discloser, both for a period commencing upon the date of disclosure until 3 years thereafter. Subject to the terms of this section "Confidentiality", the foregoing obligations will never expire in relation to technical information about a discloser's products and services or any information about possible unreleased products or services and will survive any termination or expiration of these Terms of Sale.

**10.3.** Notwithstanding the foregoing, either Party and its Affiliates may disclose Confidential Information (a) to an Affiliate, or to a subcontractor used by Supplier to provide Services under these Terms of Sale, as long as the Affiliate or subcontractor has a need-to-know and complies with the foregoing; (b) to either Party's directors, officers, employees, and professional advisors and those of its Affiliates; and (c) if required by law or regulatory authorities provided the receiver has given the discloser prompt notice.

## **11. Data Privacy.**

**11.1.** Parties will comply with all data protection laws and regulations applicable to the processing of personal data under these Terms of Sale. In this section “personal data”, “controller”, “processor” and “processing” will have the meaning set out in the applicable data protection legislation.

**11.2.** To the extent that Supplier processes any personal data on behalf of Customer in the performance of its obligations under these Terms of Sale, Supplier will only do so as required to fulfil its legal obligations pursuant these Terms of Sale and either, as a controller and on its own behalf in accordance with its location-specific privacy policies, available at [www.dell.com/privacy](http://www.dell.com/privacy), or as a processor acting on behalf of Customer in accordance with Supplier’s applicable data processing schedule available at [www.dell.com/dataprocessingschedule](http://www.dell.com/dataprocessingschedule), or another data processing agreement executed by the Parties (as applicable “**Data Processing Schedule**”).

**11.3.** Customer is responsible for: (a) maintaining reasonable measures to avoid Supplier’s access to personal data not required by Supplier in provision of any Products, Subscriptions or Services; and (b) obtaining all necessary rights, permissions and consents associated with disclosure of any required personal data to Supplier, prior to such disclosure.

## **12. General.**

**12.1. Continuation of Obligations.** A termination without cause of Services and Subscriptions will be permitted only if expressly permitted in the applicable Offering Specific Terms. A termination or expiration of an Order will not affect any previously placed Orders or the obligation of Customer to pay all amounts due under a terminated Order.

**12.2. Governing Law; Jurisdiction.** These Terms of Sale and any Disputes are governed by the laws of the State of Texas (excluding the conflicts of law rules) and the federal laws of the United States. The state and federal courts of Texas will have exclusive jurisdiction for the resolution of any Disputes. Parties agree to submit to the personal jurisdiction of the state and federal courts of 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. The *United Nations Convention on Contracts for the International Sale of Goods* does not apply.

**12.3. Trade Compliance.** Customer is subject to and responsible for compliance with the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions (collectively, “**Applicable Trade Laws**”). Offerings may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with the Applicable Trade Laws. Customer represents and warrants that it is not the subject or target of, or located in a country or territory that is the subject or target of economic sanctions under the Applicable Trade Laws. Customer will defend and indemnify Supplier and Supplier Affiliates against any third party claim resulting from a breach of any of the foregoing. Trade Compliance requirements available at [www.dell.com/tradecompliance](http://www.dell.com/tradecompliance) contain further information and requirements on compliance with Applicable Trade Laws and then-current restrictions Customer must adhere to.

**12.4. Customer Responsibility.** Customer agrees that it will obtain all necessary rights, permissions and consents associated with: (a) technology or data (including personal data) that Customer and its Affiliates provide to Supplier or its Affiliates; and (b) non-Supplier software or other components that Customer and its Affiliates direct or request that Supplier or its Affiliates use with, install or integrate as part of the Supplier Offerings. Customer will defend and indemnify Supplier and its Affiliates against any third party claim resulting from a breach of the foregoing or from Customer’s infringement or misappropriation of intellectual property rights of Supplier, its Affiliates or third parties.

**12.5. Entire Agreement.** These Terms of Sale, including its Schedules, any Offering Specific Terms incorporated by reference and each Order, comprise the complete statement of the agreement of the Parties regarding the subject matter thereof. These Terms of Sale may be amended only by written agreement. Terms on any Order or any term or condition on a Customer form have no legal effect and do not modify or supplement these Terms of Sale.

**12.6. Force Majeure.** Neither Party will be liable for performance delays nor for non-performance caused by Force Majeure, except for payment obligations. If such delay or failure lasts longer than 30 days, either Party may immediately terminate without liability to the other for such termination, in whole or in part, the relevant Order by giving written notice to the other Party. “**Force Majeure**” refers to circumstances beyond a Party’s reasonable control including, without limitation, act of God, war, riot, civil commotion, terrorist acts, malicious damage, governmental or regulatory actions, accident, breakdown of plant or machinery, local or national emergency, explosions, fire, natural disasters, severe weather or other catastrophes, epidemics/pandemics, general import/export/customs process problems affecting supplies

to Supplier or to Customer, shortages in materials, failure of a utility service or transport network, embargo, strike, lock out or other industrial dispute (whether involving Supplier's workforce or any other party), or any act or omission of suppliers or subcontractors due to any of the preceding events.

**12.7. Assignment.** Neither Party may assign, transfer or novate any rights or obligations under an Order or these Terms of Sale without the other Party's prior written consent, which consent must not be unreasonably withheld. Notwithstanding the foregoing: (a) Supplier may use Affiliates or other qualified subcontractors to perform its obligations hereunder, provided that the relevant Party to the Order remains responsible for the performance; and (b) Supplier may assign rights to payments arising under any Order without consent of the Customer.

**12.8. Waiver; Severability.** Failure to enforce a provision of these Terms of Sale will not constitute a waiver of that or any other provision of these Terms of Sale. If any part of these Terms of Sale is held unenforceable, the validity of the remaining provisions will not be affected.

**12.9. Notices.** All notices must be in writing transmitted to the addresses identified by such Party on the Quote or Order, respectively, either by: (a) internationally recognized overnight delivery courier with verification of receipt; or (b) email with confirmed receipt. All such notices will be effective upon receipt.

**12.10. Independent Contractors.** The Parties are independent contractors for all purposes under these Terms of Sale. These Terms of Sale do not create any agency, partnership or joint venture.

**12.11. Third Party Rights.** There are no third-party beneficiaries to these Terms of Sale or any Order under any laws.

Commercial Terms of Sale (United States)  
Revision date 12SEPT2024

---

Translated versions may be found at [www.dell.com/eula\\_translations](http://www.dell.com/eula_translations)

### End User License Agreement

This End User License Agreement ("EULA") is between the individual consumer or business entity that will use the Software ("You") and the applicable entity identified in the "Licensor Table" located at [www.dell.com/swlicensortable](http://www.dell.com/swlicensortable) ("Licensor").

This EULA governs Your use of: (a) the object code version of Dell branded software that is preinstalled on Dell hardware or otherwise provided to You pursuant to a purchase contract, quote, order form, invoice or online procurement process (each, an "Order"); (b) associated software license keys, if any ("License Keys"); (c) updates to such software ("Updates"); (d) the documentation for such software; and (e) all copies of the foregoing (collectively, "Software"). If You accept this EULA, or if You install or use the Software, then You agree to this EULA unless You already have a signed agreement with Dell Marketing L.P. or one of its affiliates ("Dell") that includes licensing terms that govern Your use of the Software ("Pre-Existing Agreement"). If You accept this EULA or install or use the Software 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 unless the entity already has a Pre-Existing Agreement. If You do not agree to this EULA, do not install or use the Software.

If You are a business entity and You purchase Software from a third party ("Reseller") who sublicenses the Software to You under the terms of an agreement between You and such Reseller (a "Sublicense Agreement"), then the terms of Your Sublicense Agreement with the Reseller shall govern Your use of the Software and not this EULA. Resellers may only grant rights, and must pass through conditions, consistent with this EULA. Thus, even though Your Sublicense Agreement is between you and the Reseller, by installing or using the Software, You acknowledge and agree that: (a) any license rights in

the Sublicense Agreement that are greater than the license rights in this EULA shall not apply; (b) any license conditions in this EULA that are not contained in the Sublicense Agreement apply to You; (c) the limitations of liability set forth in this EULA will apply in favor of Licensor, its affiliates and suppliers despite the existence of a Sublicense Agreement; and (d) Licensor is a third-party beneficiary of the Sublicense Agreement and is entitled to exercise and enforce all of the Reseller's rights and benefits under that Sublicense Agreement.

If You purchase Software as an individual consumer, nothing in this EULA affects your statutory rights if the laws of your state or country do not permit it to do so.

## **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, non-exclusive license to use the Software during the period stated in the applicable Order (if no period is specified, You may use the Software perpetually). If You are an individual consumer, this license grant allows You to use the Software in connection with Your own personal use. If You are a business entity, this license grant allows You to use the Software in connection with the internal business operations of Your entity. In addition, You may make a reasonable number of copies of the Software solely as needed for backup or archival purposes. Additional license terms for certain Software may be included in the Offering Specific Terms Table located at [www.dell.com/offeringspecifictterms](http://www.dell.com/offeringspecifictterms) ("OST Table"), and additional terms for Software that is licensed to You for a limited time ("Subscription Software") are located at [www.delltechnologies.com/subscription\\_terms](http://www.delltechnologies.com/subscription_terms) ("Subscription Terms").
- 1.2. Third Party Use. If You are a business entity, You may allow Your contractors (each, a "Permitted Third Party") to use the Software 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 Software 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 Software and in all related materials ("Works"). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereafter developed. Any use of Works 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 Works and all related intellectual property rights. If Software is provided to You on removable media (e.g., CD, DVD or USB drive), You may own the media on which the Software is recorded.

## **2. License Conditions.**

- 2.1. You and Your Permitted Third Parties must do the following:
  - A. Run the Software only on the hardware for which it was intended to operate, when applicable;
  - B. Use License Keys (if applicable) only from Licensor or an authorized Dell License Key provider;
  - C. Treat the Software as Dell confidential information;
  - D. Use the Software only on as many computers or devices that You purchased, in such configurations permitted by Dell or Licensor, and/or in accordance with the applicable unit of measure, each as may be specified on Your Order. For Software licensed via a unit of measure, the terms and descriptions of each unit of measure are located at [www.delltechnologies.com/UOM\\_terms](http://www.delltechnologies.com/UOM_terms) ("UOM Terms");
  - E. Abide and be responsible for compliance with the export control and economic sanctions laws of the United States, the European Union, and other applicable jurisdictions (collectively, "Applicable Trade Laws"). Software, including any associated intellectual property rights or trade secrets that may accompany it, may not be used, licensed, sold, supplied, leased, exported, imported, re-exported, or transferred, whether directly or indirectly, to restricted countries (including, but not limited to Cuba, Iran, North Korea, Syria, Russia, Belarus, and the Crimea, Donetsk, and Luhansk regions of Ukraine), restricted end users, or for restricted end uses according to the Applicable Trade Laws. Dell reserves all rights and remedies to enforce these restrictions, including injunctive relief, damages, and cancellation/termination of this EULA. You represent and warrant that You or Your Permitted Third Parties are not the subject

or target of, or located in a country or territory that is the subject or target of economic sanctions under the Applicable Trade Laws. For further information about geographical restrictions and compliance with Applicable Trade Laws, visit [www.dell.com/tradecompliance](http://www.dell.com/tradecompliance); and

- F. Comply with all Third Party Terms (as defined in Section 5 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:

- A. Modify or remove any proprietary notices or markings on or in the Software;
- B. Transfer License Keys to any other person or entity;
- C. Download Updates from Licensor or an authorized provider unless You have a valid support agreement;
- D. Install Updates on Enterprise Products (e.g., server, networking, storage, integrated solutions, and data protection appliances) that have gone end of service life unless Licensor otherwise agrees in writing;
- E. Install and operate counterfeit versions of Software (i.e. software provided by anyone other than Dell or an authorized representative of Dell) on Dell hardware;
- F. Violate or circumvent any technological use restrictions in the Software;
- G. Sell, loan, rent, lease, sublicense, distribute or encumber (e.g., by lien, security interest, etc.) the Software;
- H. Use any trademarks or service marks of Licensor, its affiliates or suppliers;
- I. Provide access to the Software or allow use by any third party, other than Permitted Third Parties, without Licensor's prior written consent;
- J. Copy, republish, upload, post or transmit the Software in any way;
- K. Modify or create derivative works based upon the Software, or decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part;
- L. Attack or attempt to undermine the security, integrity, authentication or intended operation of the Software;
- M. Use the Software on a service bureau, rental or managed services basis;
- N. Create or permit others to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server, wireless or Internet-based device;
- O. Use the Software to create a competitive offering;
- P. Use the Software to create other software, products or technologies unless the Software contains Development Tools as described in Section 7;
- Q. Share or publish the results of any benchmarking of the Software without Dell's prior written consent;
- R. Use the Software 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 Software could result in death, personal injury or physical or environmental damage;
- S. Use the Software 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
- T. Assign this EULA, or any right or obligation under this EULA, or delegate any performance, without Dell's prior written consent, unless You are transferring the Software in accordance with the Transferability Section 3 below. 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.

3. **Transferability.** If You are an individual consumer, You may transfer the Software on a permanent basis as part of the sale or transfer of the hardware system on which the Software is loaded, provided that You retain no copies of any version of the Software. If You are a business entity, You may not transfer the Software to another person or entity without the express written permission of Dell, unless allowed by applicable law stating that transfer may not be restricted (note that a transfer fee may be charged by Dell).



4. **Compliance Verification.** If You are a business entity, You must: (a) maintain and use systems and procedures that allow You to accurately track Your use of the Software; (b) certify to Dell in writing, at Dell's request, that Your use of Software fully complies with this EULA, indicating the number of Software licenses deployed at that time; and (c) cooperate fully and timely with Dell and its auditors if Dell notifies You that it will conduct an audit to confirm Your compliance with this EULA. Any such audit will be conducted during normal business hours. If Dell determines that You have over-deployed Software, You agree to immediately purchase licenses at the then-current list price to bring Your use into compliance. If You over-deployed Software by 5% or more, then You agree to pay the total cost of the audit, in addition to any other liabilities You may have.
5. **Third Party Software.** "Third Party Software" is software, including open source software, that is contained in or provided with the Software and is licensed by a third party under its own terms of use ("Third Party Terms"). Third Party Software is governed solely by the applicable Third Party Terms and not by this EULA. Third Party Terms may be provided with the Third Party Software 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 <https://opensource.dell.com/> or in the "About" or "Read Me" file of Software, or other locations that Licensor may specify.
6. **Free Software.** "Free Software" means Software that is provided to You without additional charge (e.g., scripts that enable customer installation; code that enables You to monitor Your use of Dell products; etc.). You may only use Free Software on or with equipment or in the operating environments for which Dell has designed that Free Software to operate. Licensor may terminate any license to Free Software at any time in its sole discretion. You may not transfer Free Software to anyone else.
7. **Development Tools.** If the Software 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 Software (within the parameters set forth in this EULA and in the Development Tools themselves) and for no other purpose.
8. **Evaluation Software.** This EULA does not license use of Software for evaluation purposes ("Evaluation Software") except to the extent these terms may be invoked by the separate license terms and conditions accompanying that Evaluation Software.
9. **Support Services Not Included.** If You purchase maintenance and support for Software, such services are identified in Your Order and will be provided under a separate services agreement.
10. **Termination.** For Subscription Software, this EULA automatically terminates at the end of Your subscription period unless You renew Your rights. Licensor may terminate this EULA if You or a Permitted Third Party commits a material breach of this EULA and fails to cure such breach within thirty (30) days following Your receipt of notice of the breach from Dell. This right to terminate applies accordingly if Dell or the Reseller from whom You made Your purchase does not receive timely payment for the licenses to the Software or for the hardware on which the Software is loaded, if any. When this EULA terminates, all licenses granted automatically terminate and You must immediately cease use of the Software and return or destroy all copies of the Software. Except as otherwise agreed by Dell, You will not get a refund from Dell if this EULA is terminated. Rights and obligations under Sections of this EULA that, by their nature should survive, will survive termination, as well as obligations for payment.
11. **Warranty Disclaimer.** Under this EULA, Licensor provides neither any warranties for the Software nor does it provide support for the Software. Your rights under any warranties and any support entitlements for Software acquired for a fee are solely between You and the Reseller or Dell entity from whom You procured the Software and related support, and are defined under the commercial terms agreed between You and such selling entity. Accordingly, except as otherwise offered by Dell, the Software 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 Software; (b) disclaims all implied warranties and conditions related to the Software, 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 warrant uninterrupted or error-free operation of the Software. This Section does not affect or modify any of the statutory warranty rights that are available to consumers.

## **12. Limitation of Liability.**

- 12.1. Limitations on Damages. The limitations, exclusions and disclaimers set forth in a Pre-Existing Agreement or Dell Terms of Sale that applies your Order (in each case, the "Order Terms") shall apply to all disputes, claims or controversies (whether in contract, tort or otherwise) between You and Licensor or Dell related to or arising out of: (a) this EULA; (b) the breach, termination or validity of this EULA; or (c) any Orders (each, a "Dispute"). In the absence of applicable Order Terms, the terms set forth in this Section shall apply to all Disputes.

The terms of this Section are agreed allocations of risk constituting part of the consideration for Licensor's licensing of Software 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.

- A. Limitation on Direct Damages. Except for Your obligation to pay for the Software, or 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 Software that is the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. 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 Software, Free Software or Development Tools.
- B. Disclaimer of Certain Other Damages. Except for Your obligation to pay for the Software, or for Your violation of the License Grant and License Conditions set forth herein or of Licensor's or Dell's intellectual property rights, neither You nor Licensor (including Licensor's affiliates and suppliers) shall have any 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.
- 12.2. 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. If applicable law prohibits exclusion of liability for lost data, then Licensor will only be liable for the cost of the typical effort to recover the lost data from Your last available back up.
- 12.3. 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.

## **13. Additional Terms.**

- 13.1. Notices. The parties will provide all notices under this EULA in writing. Unless provided otherwise in an Order, You must provide notices to the local Dell entity in Your Order, or, if Your Order is not with a Dell entity, by e-mail to [Dell\\_Legal\\_Notices@dell.com](mailto:Dell_Legal_Notices@dell.com).
- 13.2. 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.

- 13.3. Modifications. This EULA may only be modified in writing signed by both parties; provided, however, that Licensor may, in its sole discretion, update the Licensor Table, the OST Table, the UOM Terms and the Subscription Terms at any time. Any changes that Licensor makes to the Licensor Table, the OST Table, the UOM Terms or the Subscription Terms will only apply to Orders that occur after Licensor posts those changes online.
- 13.4. Governing Law and Jurisdiction. If You obtained the Software directly from Dell, then the governing law and jurisdiction provisions set forth in Your Order Terms shall apply to this EULA. Otherwise the following shall apply:
- A. Subject to Section 13.4 D and 13.5, if You are domiciled in the United States or Canada: (1) 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.
  - B. Subject to Section 13.4 D, if You are domiciled outside of the United States or Canada: (1) this EULA and any Dispute is governed by the substantive laws in force in the country in which the Licensor is located (as indicated in the Licensor Table located at [www.dell.com/swlicensortable](http://www.dell.com/swlicensortable)), without regard to its conflict of law rules; and (2) the exclusive place of jurisdiction for any Dispute shall be in such country.
  - C. 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.
  - D. 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.
- 13.5. Dispute Resolution and Binding Individual (non-class) Arbitration. This Section only applies if You are an individual consumer that resides in (or obtained the Software 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 Software in) the United States, the arbitration will be administered by the American Arbitration Association (AAA), or JAMS. If You reside in (or obtained the Software in) Canada, arbitration will be at ADR Chambers pursuant to the general ADR Chambers Rules for Arbitration located at [www.adrchambers.com](http://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.

- 13.6. 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.
- 13.7. 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, along with the Order Terms into which this EULA may be incorporated (as applicable), is the complete and exclusive statement of the agreement between You and Licensor regarding Your use of the Software. All content referenced in this EULA by hyperlink is incorporated into this EULA in its entirety and is available to You in hardcopy form upon Your request. The pre-printed terms of Your purchase order or any other document that is not issued or signed by Licensor or Dell do not apply to Software. You represent that You did not rely on any representations or statements that do not appear in this EULA when accepting this EULA.

*EULA (rev. 23OCT2024)*

US OOB E file rev. 09MAY2025