

# Dell | Commercial Terms of Sale

Unless otherwise agreed to by Dell in writing, the Commercial Terms of Sale apply to direct commercial purchasers (including Small, Medium and Large Business and Government and Public sector customers) of Dell hardware, software and services and commercial end-users who purchase through a reseller. By placing your order, you accept and are bound to the Commercial Terms of Sale below:

## 1. Your Relationship with Dell.

- A. **Introduction.** Dell's sale of Products, Software, and Services, as well as its performance of Services and your use of the Software are subject to the terms of this agreement between you ("**you**" or "**Customer**") and Dell (the "**Agreement**"). "**Dell**" means Dell Marketing L.P., on behalf of itself and its suppliers and licensors, or the entity identified on your order confirmation, invoice, or other form of purchase document entered into by you at the time you purchased the Products, Software, or Services. "**Customer**" shall include any of your affiliates that places a Dell order, and "**Dell**" shall include any Dell affiliates with which such an order is placed. Purchases of Products, Software, or Services under this Agreement shall be solely for Customer's own internal use and not for resale purposes. In instances where Customer purchases through a reseller or distributor, final prices and terms and conditions of sale will be as agreed between Customer and the third party from which Customer makes such purchases; however, the terms set forth herein are applicable to your use of Dell Software and the performance of Dell Services.
- B. **Definitions.** "**Products**" means computer hardware and any other products provided hereunder. "**Services**" means any and all services provided by Dell as described in one or more Service Agreements. "**Software**" means any software, library, utility, tool, or other computer or program code, in object (binary) or source-code form, as well as the related documentation, provided by Dell to you. Software includes software locally installed on your systems and software accessed by you through the Internet or other remote means (such as websites, portals, and "cloud-based" solutions). "**Deliverables**" means the tangible and intangible materials, including reports, studies, base cases, drawings, findings, manuals, procedures, and recommendations prepared by Dell or its suppliers, licensors, or subcontractors in the course of performing the Services. "**Materials**" means all content and other items included with or as part of the Products, Services, Software, or Deliverables, such as text, graphics, logos, button icons, images, audio clips, information, data, photographs, graphs, videos, typefaces, music, sounds, and software. "**Third-Party Products**" means any non-Dell-branded products, software, or services.
- C. **Additional Agreements.** This Agreement, together with the Service Agreements (as defined below), form a legally binding contract between you and Dell in relation to your purchase and use of Products and Software, and Dell's performance of Services. In the event of a conflict between these agreements, the terms of these documents will be interpreted in the following order of precedence: (1) Service Agreement; and (2) this Agreement.
- D. **Quotes, Ordering, and Payment.**
  - I. **Payment Terms; Orders; Quotes; Interest.** Your order is subject to acceptance or cancellation by Dell, in Dell's sole discretion. Terms of payment are within

Dell's sole discretion, and unless otherwise agreed to by Dell, payment must be received by Dell prior to Dell's acceptance of an order. Each accepted order will be interpreted as a single Agreement, independent of any other orders. Payment for Products, Software, and Services must be made by credit card, automated clearing house, wire transfer, electronic funds transfer or some other prearranged payment method unless credit terms have been agreed to by Dell. Payment to Dell in respect of Products, Software and Services, as applicable, shall be made to the account indicated by Dell (as may be amended from time to time). Orders for Third-Party Products are subject to availability and are cancellable by Dell. Orders for Third-Party Products are non-cancellable by Customer. If Customer purchases a multi-year Software license and related support and/or maintenance, and Dell and the Customer (and, if applicable, the third-party licensor of the software) agree to annualize the Customer's purchase over the term of the license, Customer shall make all annual payments in full and such purchase is non-cancellable over the term of the license. Timely payment of the price and all charges is of the essence. It is the responsibility of Customer to ensure payments are authorized and approved on time to ensure receipt of payment no later than the due date; in no case shall Dell be responsible for ensuring such authorization or approval. Any assignment by Customer of its purchase order to a third-party financing company (other than Dell Financial Services, LLC) must be approved in advance in writing by Dell, and in no case shall any such approval excuse Customer from its obligations hereunder. Dell reserves the right to charge you a late penalty of 1.5% per month applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. Late penalties will be recalculated every 30 days thereafter based on your current outstanding balance. In addition, Dell, without waiving any other rights or remedies to which it may be entitled, shall have the right to suspend or terminate any or all Services and refuse additional orders for Products or Software from Customer until Dell's receipt of all overdue amounts. Dell shall have no liability to Customer for any such suspension or termination of services or for its refusal of additional orders. Dell further reserves the right to seek collection of all overdue amounts (including by referral to third party collectors), plus all reasonable legal fees (including reasonable attorney's fees) and costs associated with such collection. Customer shall place all orders in the country where the Products and Software are to be shipped and where Services are to be performed, and payment of the corresponding price and costs shall be made in the currency identified by Dell in its invoice. Additional charges will apply if Customer requests Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Service, such as customized invoicing, consolidated invoicing, and statements. Dell reserves the right to change the method of delivery of all documentation, and any additional changes requested by Customer may be subject to additional charges.

- II. **Invoices.** Invoices are due and payable within the time period noted on your invoice, or if not noted, then within 30 days, measured from the date of the invoice, subject to continuing credit approval by Dell, such approval may be revoked without further notice from Dell. Dell may invoice parts of an order separately or may invoice purchases of the Products, Software and Services in one invoice to Customer. Unless you and Dell have agreed to a different discount structure, Dell's standard pricing policy for Dell-branded systems that include Products, Software and Services in one discounted price, allocates the discount off list price applicable to the Services portion of the system to be

equal to the overall percentage discount off of the list price of the entire system. Dell is not responsible for pricing, typographical, or other errors in any offer, and reserves the right to cancel orders arising from such errors. Customer agrees that all invoices shall be deemed accurate unless Customer advises Dell in writing of a bona fide, material error within fourteen (14) days of the date of such invoice. In the event that Customer advises Dell of a material error, (i) payment of any amounts corrected or modified by Dell in writing shall be due within fourteen (14) days of such correction, and (ii) all other amounts shall be paid by Customer by the invoice due date. In the event Customer withholds payment of any invoiced amounts upon an assertion by Customer that such amounts are erroneous, and Dell subsequently concludes that such invoiced amounts are accurate, Customer shall pay interest on such amounts as described above from the due date for such amounts until Dell's receipt of those amounts. In no case shall Customer be entitled to offset, defer or deduct any invoiced amounts that Dell determines are not erroneous following the notification process set forth above.

- III. **Shipping Charges; Title; Risk of Loss.** Taxes, shipping and handling charges are not included in Product prices unless expressly indicated at the time of sale. Title to Products (except title to Software remains with the applicable licensors) passes from Dell to Customer upon shipment to Customer. Loss or damage that occurs during shipping by a carrier selected by Dell is Dell's responsibility. Loss or damage that occurs during shipping by a carrier selected by you is your responsibility. Shipping and delivery dates are provided as estimates only. You must notify Dell within 21 days of the date of your invoice or acknowledgement if you believe any part of your order is missing, wrong, or damaged.
- IV. **Taxes.** Unless you provide Dell with a valid and accurate tax-exemption certificate applicable to your Product purchase and ship-to location, you are responsible for sales tax and any other taxes or governmental fees associated with your order. Customer may qualify for tax exemptions from time to time in which case Dell requests that Customer provide it with a valid certificate of exemption or other appropriate documentary proof of exemption. The charges stated in the order or any invoice shall be inclusive of all duties, levies or any similar charges and shall exclude VAT or equivalent sales or use tax. Unless otherwise specified in writing by Dell, Customer shall pay all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes). Dell shall provide Customer with a valid invoice in accordance with VAT or other applicable law. In the event that Customer is required by law to make a withholding or deduction in respect of the price payable to Dell, Customer will make the relevant payments to Dell net of the required withholding or deduction. Customer will supply to Dell evidence (e.g. official withholding tax receipts), to the reasonable satisfaction of Dell, that Customer has accounted to the relevant authority for the sum withheld or deducted. If such evidence is not provided to Dell within 60 days of remittance to the applicable tax authority, Dell will impose a penalty payment on Customer, and Customer will be liable for such penalty, in the amount of the withholding imposed on that particular transaction.
- V. **Prices.** The prices charged for Products, Software, and Services purchased under this Agreement shall be the amounts set forth on Dell's website or other quotation, or as provided by the applicable invoice or Service Agreements relating to such Software or Services. Quoted prices will remain in effect only until the expiration date of the quote or Dell's acceptance of your order, and

such prices are subject to shortages in materials or resources, increases in the cost of manufacturing, or other factors.

VI. **Changed or Discontinued Products, Software, or Services.** Dell's policy is one of ongoing update and revision. Dell may revise or discontinue Product, Software, or Services offerings at any time without prior notice to Customer. A change in a Product, Software, or Service may occur after a Customer places an order but before Dell ships the Product or Software or performs the Service. As a result, Products, Software, or Services Customer receives might display minor differences from the Products, Software, or Services Customer orders. However, the Dell-branded Software and Products will meet or exceed all material specifications of such order. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned.

VII. **Returns and Exchanges.** Dell's return policy can be found at [www.Dell.com/ReturnPolicy](http://www.Dell.com/ReturnPolicy) and you agree to those terms. Before returning or exchanging a Product, you must contact us directly to obtain an authorization number to include with your return. You must return Products to us in their original or equivalent packaging, and you are responsible for risk of loss, as well as shipping and handling fees. Additional fees, including up to a 15% restocking fee, may apply. If you fail to follow the return or exchange instructions provided by Dell, Dell will not be responsible for any loss, damage, or modification of a Product, or processing of a Product for disposal or resale. Credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing associated with your original purchase.

2. **Service Agreements.** Dell may provide Services, Software, or Deliverables to you in accordance with one or more "Service Agreements." "**Service Agreements**" are service contracts, including "Service Descriptions" available at [www.Dell.com/ServiceContracts/](http://www.Dell.com/ServiceContracts/), "Statements of Work," and any other such mutually agreed upon documents. Each Service Agreement will be interpreted as a single agreement, independent of any other Service Agreement, so that all of the provisions are given as full effect as possible.

3. **Term; Auto-Renewal; Termination.**

A. **Term; Auto-Renewal.** This Agreement commences on the date you place your order and continues until all Services and Software licenses and applicable Product warranties have expired or been terminated. Each Service and license to Software will continue for the term stated in the Service Agreement or the Software license, unless otherwise terminated. Dell may, at its option, propose to renew the Service and the Software license by sending you an invoice or, subject to prior notification, continuing to perform the Service or make the Software available to you. You may (where permitted by law) agree to such renewal of the Service and Software license by paying such invoice by its due date or by continuing to order Services or use the Software.

B. **Termination of Services and Software License.** Either party may terminate an individual Service Agreement if the other party commits a material breach of such agreement and the breach is not cured within 90 days of receipt of written notice from the injured party except Dell may immediately terminate a Service Agreement if you fail to make payment for the Services when due. Termination of any or all Service Agreements will not terminate this Agreement. Unless renewed in accordance with this Agreement, this Agreement will terminate automatically upon the expiration of the agreed term of Services and Software license. Dell may terminate this Agreement immediately, including prior to the expiration of the term of Services or Software license, if (1) you fail to make any payment when due; (2) you are acquired by or merge

with a competitor of Dell; (3) you declare bankruptcy or are adjudicated bankrupt; or (4) a receiver or trustee is appointed for you or substantially all of your assets. Upon termination of this Agreement, all rights and obligations of the parties under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.

4. **Proprietary Rights.** All right, title, and interest in the intellectual property (including all copyrights, patents, trademarks, trade secrets, and trade dress) embodied in the Software, Products and Materials, as well as the methods by which the Services are performed and the processes that make up the Services, shall belong solely and exclusively to Dell or the applicable suppliers or licensors, and you shall have no rights whatsoever in any of the above, except as expressly granted in this Agreement. The Software, Products and Materials are protected pursuant to copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. You may not modify, remove, delete, augment, add to, publish, transmit, adapt, translate, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Software and Materials, in whole or in part.
5. **Deliverables.** Dell and its applicable suppliers or licensors will retain exclusive ownership of all Deliverables, and will own all intellectual property rights, title, and interest in any ideas, concepts, know-how, documentation, and techniques associated with such Deliverables. Subject to payment in full for the applicable Services, Dell grants you a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country or countries in which you do business, solely for your internal use, and solely as necessary for you to enjoy the benefit of the Services as stated in the applicable Service Agreements.
6. **Suspension or Modification of Software or Services.** Dell may suspend, terminate, withdraw, or discontinue all or part of the Services or your access or one or more users' access to the Software (and third-party software) upon receipt of a subpoena or law-enforcement request, or when Dell believes, in its sole discretion, that you (or your users) have breached any term of this Agreement or an applicable Service Agreement, or are involved in any fraudulent, misleading, or illegal activities.

With respect to Software provided or otherwise made available to you by Dell in connection with Services, it may be necessary for Dell to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the software, which may temporarily degrade the quality of the Services or result in a partial or complete outage of the Software. Dell provides no assurance that you will receive advance notification of such activities or that the Software or Services will be uninterrupted or error-free. Unless otherwise agreed to in writing between you and Dell, any degradation or interruption in the Software or Services shall not give rise to a refund or credit of any fees paid by you.

YOU AGREE THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SOFTWARE, INCLUDING TELEPHONE, COMPUTER NETWORKS, AND THE INTERNET, OR TO TRANSMIT INFORMATION, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF THE SOFTWARE. DELL SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF YOUR ACCESS TO OR USE OF THE SOFTWARE.

7. **Support Services.**
  - A. **Your Responsibilities.** When Services consist of repair of Dell-branded systems, such Services shall be those repair services that are necessary to fix a defect in materials or workmanship of a system or any standard system component covered by this

Agreement. Preventive maintenance is not included. Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Dell (or its representatives) are not included. Unless otherwise expressly provided in a Service Agreement, Services do not include repair of any system or system component that has been damaged as a result of (1) accident, misuse, or abuse of the system or component (such as use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell (or its representatives); (2) the moving of the system from one geographic location or entity to another; or (3) an act of nature such as lightning, flooding, tornado, earthquake, or hurricane.

- B. **Customer Authorization for Provision of Services.** Some warranties or service-contracts for Third-Party Products may become void if Dell or anyone other than an authorized service provider provides services for or works on such hardware or software (such as providing maintenance or repair services for the Third-Party Products). DELL DOES NOT TAKE RESPONSIBILITY FOR ANY EFFECT THAT THE DELL SERVICES MAY HAVE ON THOSE WARRANTIES OR SERVICE CONTRACTS.

You authorize Dell to use or otherwise access any and all Customer-provided Third-Party Products as necessary or as requested by Customer in Dell's performance of the Services, including copying, storing, and reinstalling a backup system or data. You shall defend, indemnify, and hold Dell harmless from any third-party claim or action arising out of your failure to provide such authorization (such as obtain appropriate licenses, intellectual-property rights, or any other permissions, regulatory certifications, or approvals associated with technology, software, or other components).

## 8. Software.

- A. **Accompanying License.** Software is subject to the separate software license agreements accompanying the software, along with any product guides, operating manuals, or other documentation included with the software media packaging or presented to Customer during the installation or use of the Software. Customer agrees that Customer will be bound by such license agreement.
- B. **Software License from Dell.** With respect to Software provided or otherwise made available to you by Dell in connection with the Services, if no license terms accompany the Software, then subject to your compliance with the terms set forth in this Agreement, Dell hereby grants Customer a personal, non-exclusive license to access and use such Software only during the term of the Services and solely as necessary for Customer to enjoy the benefit of the Services as stated in the applicable Service Agreements.
- I. **Restrictions.** Customer may not copy, modify, or create a derivative work, collective work, or compilation of the Software, and may not reverse engineer, decompile or otherwise attempt to extract the code of the Software or any part thereof. Customer may not license, sell, assign, sublicense, or otherwise transfer or encumber the Software; may not use the Software in a managed-services arrangement; and may not use the Software in excess of the authorized number of licensed seats for concurrent users, sites, or other criteria specified in the applicable Service Agreements. In addition, Customer may not access the Software to monitor its availability, performance, or functionality, or for any other benchmarking or competitive purpose.
  - II. Customer is further prohibited from (1) attempting to use or gain unauthorized access to Dell or to any third party's networks or equipment; (2) permitting

other individuals or entities to use the Software or copy the Software or Services; (3) attempting to probe, scan, or test the vulnerability of Software or a system, account, or network of Dell or any of its customers or suppliers; (4) interfering or attempting to interfere with service to any user, host, or network; (5) engaging in fraudulent activity of any nature; (6) transmitting unsolicited bulk or commercial messages; (7) restricting, inhibiting, or otherwise interfering with the ability of any other person, regardless of intent, purpose, or knowledge, to use or enjoy the Software (except for tools with safety and security functions); or (8) restricting, inhibiting, interfering with, or otherwise disrupting or causing a performance degradation to any Dell (or Dell Service supplier) facilities used to deliver the Services.

- III. **Audit.** You hereby grant Dell, or an agent designated by Dell, the right to perform an audit of your use of the Software during normal business hours; you agree to cooperate with Dell in such audit; and you agree to provide Dell with all records reasonably related to your use of the Software. The audit will be limited to verification of your compliance with the terms of this Agreement.
- IV. **Open Source Software.** A portion of the Software may contain or consist of open source software, which you may use under the terms and conditions of the specific license under which the open source software is distributed.

THIS OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY REGARDING TITLE OR AGAINST INFRINGEMENT. IN NO EVENT SHALL DELL, THE COPYRIGHT HOLDERS, OR THE CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

9. **Privacy.** For information about Dell's privacy practices, please read Dell's global and country-specific privacy policies at [www.Dell.com/Privacy](http://www.Dell.com/Privacy). These policies explain how Dell treats your personal information and protects your privacy.
10. **Customer & System Data.** In Dell's performance of the Services or in connection with your use of the Service-related Software, it may be necessary for Dell to obtain, receive, or collect data or information, including system-specific data (collectively, the "**Data**"). In such cases, you grant Dell a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely for those purposes. In addition, you grant Dell a license to aggregate and use the Data in an anonymous manner in support of Dell's marketing and sales activities. You also grant Dell the right to copy and maintain such material and content on Dell's servers (or the servers of its suppliers) during the term of this Agreement. You represent and warrant that you have obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which you are located in conjunction with Dell's performance of the Services or your use of the Service-related Software (including providing adequate

disclosures and obtaining legally sufficient consent from your employees, agents, and contractors).

11. **High-Risk Disclaimer.** The Dell-branded Products, Software and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines, or any other application in which the failure of the products, software, or services could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High-Risk Activities**"). Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities.
12. **Important Additional Information.**

NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT DELL'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. SOME JURISDICTIONS DO NOT ALWAYS ENFORCE CLASS ACTION OR JURY WAIVERS, AND MAY LIMIT FORUM SELECTION CLAUSES AND STATUTE OF LIMITATIONS PROVISIONS, AS SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO YOU IN YOUR JURISDICTION WILL APPLY TO YOU, AND DELL'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

**A. Limited Warranty.**

- I. THE LIMITED WARRANTIES FOR DELL-BRANDED PRODUCTS CAN BE FOUND AT [www.Dell.com/Warranty](http://www.Dell.com/Warranty) OR IN THE DOCUMENTATION DELL PROVIDES WITH SUCH PRODUCTS. THE SERVICES WILL BE PROVIDED IN A GOOD AND WORKMANLIKE MANNER. DELL HAS THE RIGHT TO GRANT THE LICENSES TO THE SOFTWARE LICENSED IN SECTION 8.b ABOVE, AND SUCH SOFTWARE WILL SUBSTANTIALLY CONFORM TO THE FUNCTIONAL SPECIFICATIONS AND CURRENT DOCUMENTATION PROVIDED BY DELL. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCES OF THIS PARAGRAPH, DELL, (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS (COLLECTIVELY, THE "DELL PARTIES") MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS, SOFTWARE, OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (1) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (2) RELATING TO THIRD-PARTY PRODUCTS, SOFTWARE, OR SERVICES; (3) RELATING TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE, OR DELL'S PERFORMANCE OF THE SERVICES; OR (4) REGARDING THE RESULTS TO BE OBTAINED FROM THE PRODUCTS, SOFTWARE, SERVICES, OR THE RESULTS OF ANY RECOMMENDATION BY DELL.
- II. WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, MISUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY DELL (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH PRODUCT OR SOFTWARE INSTRUCTIONS, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE PRODUCTS, SOFTWARE, OR SERVICES. THESE **WARRANTIES DO**



**NOT APPLY TO THIRD-PARTY PRODUCTS.** ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER. ALL THIRD-PARTY PRODUCTS ARE PROVIDED "AS IS."

- III. WITH RESPECT TO YOUR USE OF THE SOFTWARE (1) NEITHER DELL NOR ANY OF THE DELL PARTIES MAKES ANY EXPRESS OR IMPLIED WARRANTY THAT SOFTWARE PROVIDED TO YOU IN CONNECTION WITH THIS AGREEMENT IS OR WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS; OR THAT ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED; (2) YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH ERRORS OR VIRUSES ARE THE DIRECT RESULT OF DELL'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (3) DELL AND THE DELL PARTIES, JOINTLY AND SEVERALLY, DISCLAIM AND MAKE NO WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF ANY REPORTS, DATA, RESULTS, OR OTHER INFORMATION OBTAINED OR GENERATED BY YOU RELATED TO YOUR USE OF THE SOFTWARE; AND (4) USE OF THE SOFTWARE IS ENTIRELY AT YOUR OWN RISK AND NEITHER DELL NOR THE DELL PARTIES SHALL HAVE ANY LIABILITY RELATING TO SUCH USE.

**B. Limitation of Liability**

- I. DELL WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER. EXCEPT FOR YOUR BREACH OF SECTION 1.d.1. OR 8., NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING: (1) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS; (2) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK OR THE RECOVERY OF SUCH; (3) LOSS OF BUSINESS OPPORTUNITY; (4) BUSINESS INTERRUPTION OR DOWNTIME; OR (5) DELIVERABLES, DELL PRODUCTS, OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE.
- II. DELL'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER) IN ANY 12-MONTH PERIOD SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER DURING THE PRIOR 12 MONTHS OF THIS AGREEMENT FOR THE SPECIFIC PRODUCT, SOFTWARE, OR SERVICE GIVING RISE TO SUCH CLAIM(S).
- III. THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. THE PARTIES AGREE THAT THESE LIMITATION OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR DELL'S SALE OF PRODUCTS, SOFTWARE, OR SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

- C. **Confidentiality.** In connection with this Agreement, each party may have access to or be exposed to information of the other party that is not generally known to the public,

such as software, product plans, pricing, marketing and sales information, customer lists, "know-how," or trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "**Confidential Information**"). Confidential Information may not be shared with third parties unless such disclosure is to the receiving party's personnel, including employees, agents, and subcontractors, on a "need-to-know" basis in connection with this Agreement, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein. Each party agrees to take the necessary precautions to maintain the confidentiality of the other party's Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that (1) was known by one party prior to its receipt from the other or is or becomes public knowledge through no fault of the recipient; or (2) is rightfully received by the recipient from a third party without a duty of confidentiality. If a recipient is required by a court or government agency to disclose Confidential Information, the recipient shall provide advance notice to other party before making such a disclosure. The obligations with respect to Confidential Information shall continue for two years from the date of disclosure.

- D. **Indemnification.** Dell shall defend and indemnify you against any third-party claim or action that Products, Software, Services, or Deliverables (excluding Third-Party Products and open source software) prepared or produced by Dell and delivered pursuant to this Agreement infringe or misappropriate that third party's U.S. patent, copyright, trade secret, or other intellectual property rights ("**Indemnified Claims**"). In addition, if Dell receives prompt notice of an Indemnified Claim that, in Dell's reasonable opinion, is likely to result in an adverse ruling, then Dell shall at its option, (1) obtain a right for you to continue using such Products, Deliverables or Software or allow Dell to continue performing the Services; (2) modify such Products, Software, Services or Deliverables to make them non-infringing; (3) replace such Products, Software, Services, or Deliverables with a non-infringing equivalent; or (4) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Product, Deliverables, or Software. Notwithstanding the foregoing, Dell shall have no obligation under this Section for any claim resulting or arising from (1) modifications of the Products, Software, Services, Deliverables that were not performed by or on behalf of Dell; (2) the combination, operation, or use of the Products, Software, Services, or Deliverables in connection with a third-party product, software, or service (the combination of which causes the claimed infringement); or (3) Dell's compliance with your written specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by you. Dell's duty to indemnify and defend under this Section 12.d. is contingent upon: (x) Dell receiving prompt written notice of the third-party claim or action for which Dell must indemnify Customer, (y) Dell having the right to solely control the defense and resolution of such claim or action, and (z) your cooperation with Dell in defending and resolving such claim or action. This Section 12.d. states Customer's exclusive remedies for any third-party intellectual property claim or action, and nothing in this Agreement or elsewhere will obligate Dell to provide any greater indemnity to Customer.

You shall defend and indemnify Dell against any third-party claim or action arising out of (1) your failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications, or approvals associated with technology or data provided by you, or associated with software or other components directed or requested by you to be installed or integrated as part of the Products, Software

Services or Deliverables; (2) your breach of Dell's proprietary rights as stated in this Agreement; (3) any inaccurate representation regarding the existence of an export license or any allegation made against Dell due to your violation or alleged violation of applicable export laws, regulations, or orders; or (4) your providing of (or providing access to) Excluded Data to Dell.

Each party shall defend and indemnify the other party against any third-party claim or action for personal bodily injury, including death, to the extent directly caused by the indemnifying party's gross negligence or willful misconduct in the course of performing its obligations under this Agreement.

- E. **Independent Contractor Relationship; Assignment; Subcontracting.** The parties are independent contractors. No provision of this Agreement will or shall be deemed to create an association, trust, partnership, joint venture or other entity or similar legal relationship between Dell and Customer, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to such entities. Neither party will have any rights, power, or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this Agreement. Dell has the right to assign, subcontract, or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, by operation of law or otherwise, provided that Dell shall remain responsible for the performance of Services under this Agreement. Otherwise, neither party may assign this Agreement without the permission of the other.
- F. **Force Majeure.** Neither party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure"). In such event, however, the delayed party must promptly provide the other party with written notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure event lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, this Agreement or the applicable Service Agreement by giving written notice to the delayed party.
- G. **Export Compliance.** You acknowledge that the Products, Software, and Services provided under this Agreement, which may include technology and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."), may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which you or your system is located, and may also be subject to the customs and export laws and regulations of the country in which the Products, Software, or Services are rendered or received. You agree to abide by those laws and regulations. You further represent that any software provided by you and used as part of the Products, Software, or Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. If you cannot make the preceding representation, you agree to provide Dell with all of the information needed for Dell to obtain export licenses from the U.S. Government or any other applicable national government and to provide Dell with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, you are solely responsible for obtaining any necessary licenses relating to the export of software. Dell also may require export certifications from you for software. Dell's acceptance of any order for Products, Software, or Services is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government; Dell is not liable for

delays or failure to deliver Products, Software, or Services resulting from your failure to obtain such license or to provide such certification. Each Party agrees to indemnify, defend and hold the other harmless from any third-party claims, demands, or causes of action against the other due to the indemnifying party's violation or alleged violation of the applicable export laws, regulations or orders. **Excluded Data** . Customer acknowledges that Software and Services provided under this Agreement are not designed with security and access management for the processing and/or storage of the following categories of data: (1) data that is classified and or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) other personally identifiable information that is subject to heightened security requirements as a result of Customer's internal policies or practices or by law (collectively referred to as "Excluded Data"). Customer hereby agrees that Customer is solely responsible for reviewing its data that will be provided to Dell (or to which Dell will have access) to ensure that it does not contain Excluded Data.

- H. **Regulatory Requirements.** Dell is not responsible for determining whether any Third-Party Product to be used in the Products, Software, or performance of the Services, satisfies the local regulatory requirements of the country to which such Products, Software, or Services are to be delivered, and Dell shall not be obligated to provide any Product or Software or perform any Services where the resulting Products, Software, or Services do not satisfy the local regulatory requirements.
- I. **Entire Agreement; Severability.** This Agreement is the entire agreement between you and Dell with respect to its subject matter and supersedes all prior oral and written understandings, communications, or agreements between you and Dell. Any preprinted terms on your purchase order shall be given no force or effect and no terms of a purchase order that conflict with this Agreement shall be binding on Dell. No amendment to or modification of this Agreement, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of this Agreement should be found to be void or unenforceable, such provision will be stricken or modified, but only to the extent necessary to comply with the law, and the remainder of this Agreement will remain in full force and will not be terminated.
- J. **Updates.** Dell reserves the right to update this Agreement at any time, effective upon posting an updated version at [www.Dell.com/Terms](http://www.Dell.com/Terms); however, your rights and obligations shall be as provided in the version of this Agreement executed by you or available to you at the time of your purchase of Products, Software, or Services or, when applicable, renewal of Software or Services.
- K. **U.S. Government Restricted Rights.** The software and documentation provided with the Products, Software, and Services are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth herein. Contractor/manufacturer of Software and Dell-branded Products is Dell Products L.P., One Dell Way, Round Rock, Texas 78682.
- L. **Governing Law.** This Agreement, any related Service Agreement, and ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND DELL, including their affiliates, contractors, and agents, and each of their respective employees, directors,

and officers arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from this Agreement (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), Dell's advertising, or any related purchase (a "**Dispute**" ) shall be governed by the laws of the State of Texas, without regard to conflicts of law. The parties agree that the UN Convention for the International Sale of Goods will have no force or effect on this Agreement.

- M. **Venue.** The parties agree that any Dispute (as defined in ¶ 12(l)) shall be brought exclusively in the state or federal courts located in Travis or Williamson County, Texas. Customer and Dell 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 such courts and to venue in such courts.
- N. **Bench Trial.** The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute (as defined in ¶ 12(l)).
- O. **No Class Actions.** NEITHER CUSTOMER NOR DELL SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.
- P. **Limitation Period.** NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.
- Q. **Dispute Resolution.** Customer and Dell will attempt to resolve any Dispute (as defined in ¶ 12(l)) through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mediator agreed to by the parties, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a state or federal court in Travis or Williamson County a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within 30 days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or in equity.
- R. **Notices.** Notice to Dell under this Agreement or any related Service Agreement must be in writing and sent by postage prepaid first-class mail or receipted courier service to the address below or to such other address (including facsimile or e-mail) as specified in writing, and will be effective upon receipt.

Dell Marketing L.P., Attn: Contracts Manager  
One Dell Way, Round Rock, Texas 78682

**END OF DOCUMENT**

Dell Inc.  
Commercial Terms of Sale (United States)  
Revision Date 10/1/2010