

API TERMS OF USE

The API Terms of Use, including provisions or linked content incorporated by reference (“**API Terms**”) is a legal agreement between Dell Inc. and its direct and indirect subsidiaries (“**Dell**”) and you, on behalf of your company or client (collectively “**Customer**”, “**You**”) who uses Dell’s application programming interfaces made available by Dell to You (“**APIs**”) and any code, software, test data sets, portals, code libraries, data formats, or other resources provided by Dell that facilitate usage of the APIs (with the API documentation, wrapper libraries, sample code, data specifications, data sets, manuals, API updates and changes, and source code, collectively called the “**Developer Resources**”) (APIs and Developer Resources collectively called “**API Materials**”).

1. Acceptance of Terms. These API Terms become binding on You when You agree to these API Terms (i) by checking a box and/or clicking on the “Agree”, “Accept” or similar button, or (ii) when You access or otherwise use the API Materials. These API Terms shall remain in place for as long as You have access to the API Materials or until termination as described below. By accepting these API Terms, You (a) represent to Dell that you are authorized to agree to the API Terms on behalf of Customer; (b) agree to be legally bound by the API Terms; and (c) waive on behalf of the Customer any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of these API Terms. If one or more of these representations are not true, then You must not accept these API Terms and cease any further attempt to access and/or use the API Materials.

2. Modification of Terms. At its discretion, Dell may revise these API Terms at any time by placing updated API Terms on www.dell.com/apiterms. By continuing to access and/or use the API Materials, You accept the revised API Terms. You are responsible for checking to see if there are updated API Terms.

3. Customer Responsibility. To use the API Materials, You may be required to register and set up an authorized account with login credentials. You must keep registration information accurate and complete so long as you use the API Materials. You shall not provide your login credentials to any third party and You shall not misrepresent or mask Your identity when using the API Materials. You are responsible for any use of the API Materials, including without limitation calls made to the APIs, that occurs under credentials issued to You; or any use of the API Materials under Your account even if said use does not comply with Your internal procedures or corresponds to Your failure to protect such credentials. If You believe Your credentials or account have been compromised, including any unauthorized access to or use or disclosure of any of Your account information, passwords, usernames or credentials, You must immediately notify Dell at security@dell.com. You agree that You or any person or entity that You authorize to use API Materials (“**Users**”) have the authority to act in the assigned roles and with the assigned permissions when such Users use the credentials.

4. License and Access.

4.1 License. These API Terms govern Your Users’ right to use, access, and reference the API Materials. Subject to Your compliance with these API Terms, Dell hereby grants You a limited, non-exclusive, revocable, non-transferable, non-sublicensable, worldwide license solely for Your Users to use, display and reproduce the API Materials accessible to You solely in connection with Your internal business purposes as contemplated in the API Materials. Some API Materials may contain open source and the open source software and the open source license constitute a separate agreement that governs that part of the API Materials to the extent that the open source license expressly supersedes the API Terms. No licenses are to be implied from any term of these API Terms other than the licenses expressly granted herein.

4.2 Change Management. Dell reserves the right to modify or discontinue all or part of the API Materials at any time and the changes may impact how Your software, applications, websites, systems or functions that use, call, command, query or request API Materials (an “**Application**”) accesses the API, and/or the functionality of the API. Accordingly, You acknowledge and agree that you may not rely on the future availability of any particular feature or functionality in the API Materials, and that the development of Your Application utilizing the API Materials is done entirely at Your own cost and risk. Dell shall have no liability to You for API Materials or any changes to the API Materials, including, but not limited to, any adverse effects on the functionality of Your Application.

5. Your Usage.

5.1 Usage Requirements. You (and not Dell) are solely responsible for Your Application, and for any data that Your Application pulls or pushes via the API (“**Application Data**”). If You develop an Application while using the API Materials: (a) Your Application must offer substantial and different functionality than the functionality offered by Dell products, software and services (hereinafter called “**Dell Offerings**”), (b) You shall use reasonable technical and organizational security measures to protect any Application Data sent or received using the API, and (c) You shall ensure that Your Application does not make excessive or disruptive use of the API Materials. Dell may monitor Your use of the API Materials to verify Your compliance with these API Terms, improve Dell Offerings, and ensure quality, and You shall not interfere with this monitoring. You are solely responsible for complying with all applicable data localization, data protection, privacy and other laws and regulations relating to the collection, use and processing of Application Data by the API and Your Application, including without limitation providing any required notices or consents to end-users or customers and/or maintaining Application Data geographically in compliance with applicable data localization laws. If Your Application pulls or pushes Application Data via the API, You shall be responsible for ensuring you have all the rights necessary to pull or push such Application Data and process it using Your Application, and shall notify the user or customer that Dell is not responsible for Your Application or Your use of the Application Data.

5.2 Usage Limits. Dell sets and enforces limits on your use of the APIs (such as, limiting the number of requests that you may make) in its sole discretion. You will not use the APIs in a manner that exceeds reasonable request volume, constitutes excessive or abusive usage, or otherwise fails to comply or is inconsistent with any part of these API Terms and will not attempt to circumvent any usage limits expressly agreed between You and Dell. If You exceed or Dell reasonably believes that You have attempted to circumvent limits established for Your use of the APIs, Dell may temporarily suspend or permanently block Your access to the API Materials.

5.3 Usage Restrictions. You shall not do the following:

- A. Use or access the API Materials to replicate or compete with any Dell Offerings;
- B. Modify or remove any proprietary notices or markings on or in the API Materials;
- C. Use the API Materials in connection with any high-risk activities (e.g. operation of nuclear facilities, air traffic control, or life support systems);
- D. Use the API Materials to (or attempt to) compromise, interfere with, modify, disable, or otherwise circumvent any technical or security measure or to compromise, interfere with, or otherwise disrupt any instance of any Dell Offerings, including, but not limited to, using the API Materials to gain unauthorized access to or test the vulnerability of any Dell (or Dell customer or partner) system or network;
- E. Use the APIs to upload data into any Dell (or Dell customer or partner) system or network that (i) may create a risk of harm or any other loss or damage to any person or property; (ii) may constitute or contribute to a crime or a tort; (iii) includes any data that is illegal, unlawful, harmful, pornographic, defamatory, infringing, or invasive of personal privacy or publicity rights; (iv) contains any data that You do not have a right to upload;
- F. Attempt to reverse engineer, decompile, disassemble or derive the source code (or other trade secret or know-how information) for any Dell Offerings;
- G. Sell, loan, rent, lease, sublicense, distribute or encumber (e.g., by lien, security interest, etc.) the API Materials;
- H. Use any trademarks or service marks of Dell or suppliers;
- I. Copy, republish, upload, post or transmit the API Materials in any way;
- J. Attack or attempt to undermine the security, integrity, authentication or intended operation of the API Materials or any Dell Offerings;
- K. Use or access the API Materials to monitor the availability or performance of any Dell Offerings or for any other benchmarking activities;
- L. Use Application Data that does not belong to You or that You do not have permission to access or use; or
- M. Violate the Dell [Acceptable Use Policy](#).

6. Feedback. You may provide suggestions, enhancement requests, corrections, or other feedback relating to the API Materials (collectively the “**Feedback**”). You grant Dell a paid up, non-exclusive, perpetual, irrevocable, sublicensable, transferrable, royalty-free, worldwide right and license under patents, copyrights, trade secrets, and any other applicable intellectual property rights to make, have made, use, offer to sell, sell, import, reproduce, disclose, prepare derivative works, distribute, perform, display, and otherwise exploit such Feedback without restriction.

7. Confidential Information. Each of the parties may have access or be exposed to (through the API Materials or other means) materials, data, or information whether in written, oral, electronic, website-based, or other forms, that a reasonable person would know is not generally known to the public (collectively, “**Confidential Information**”). The recipient will keep all Confidential Information confidential until 3 years after the termination of Your access to the API Materials, using at least the same degree of care as it uses to protect its own confidential information, but no less than reasonable care. Notwithstanding anything to the contrary in these API Terms, Your confidentiality obligations with respect to technical information about current products and services and all information about unreleased Dell Offerings shall never expire, subject to local law. The recipient may share Confidential Information only with its employees who have a need to know in furtherance of the business relationship between You and Dell and who are subject to legally binding obligations of confidentiality at least as restrictive as those imposed in these API Terms. The recipient is fully liable for any breach of this paragraph by its personnel, including contractors. These confidentiality obligations do not apply to any Confidential Information that: (a) the recipient can demonstrate was already in its possession before its disclosure hereunder; (b) is or becomes publicly available through no fault of the recipient or its personnel; or (c) is rightfully received from a third party who has no duty of confidentiality. If the recipient is required by a government body or court of law to disclose any Confidential Information, to the extent permitted by law, the recipient agrees to give the discloser reasonable advance notice so that the discloser may contest the disclosure or seek a protective order. The recipient acknowledges that damages for improper disclosure of Confidential Information may be irreparable and that the discloser shall be entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available at law or in equity. Notwithstanding any separate confidentiality agreement between Dell and You, You authorize and agree that the information regarding Your business with Dell and information You provide to Dell in connection with Your use of the API Materials may be accessed and used by Dell and their employees, partners and contractors for sales and marketing purposes and for any purpose related to the API Materials or the relationship between You and Dell.

8. Termination. You may terminate these API Terms by discontinuing access or use of the API Materials. Dell may terminate these API Terms with or without cause by providing You with notice, which may be provided by email or posting a notice to the relevant Dell website where You obtained the API Materials. Additionally, Dell may, at our option, immediately suspend Your use of the API Materials without notice if: (a) You are in breach of these API Terms; (b) we believe that Your use of the API Materials poses a security risk to any Dell Offerings, to any other Dell customer, or to any other user of the API Materials; or (c) we suspect fraud, abuse, or any other illegal activity. Upon termination, all licenses granted to You by these API Terms immediately terminate and You must (i) destroy all copies of the API Materials, (ii) cause Your Application to stop accessing or using the APIs, and (iii) delete all Application Data. The following Sections survive any termination of these API Terms: Sections 5 (Your Usage), 6 (Feedback), 8 (Termination), 9 (Ownership and Rights Reserved), 10 (Representations and Warranties), 11 (Warranty Disclaimer), 12 (Limitations of Liability and Damages), 13 (Indemnification), and 14 (General).

9. Ownership and Rights Reserved. The API Materials are licensed, not sold. Except for the license expressly granted in these API Terms, Dell and/or its suppliers retains ownership of the API Materials and all related intellectual property rights in and to the API Materials. Any use of the API Materials other than as expressly stated in these API Terms is prohibited.

10. Representations and Warranties. You represent and warrant that (i) You have the authority to grant the licenses granted herein, and (ii) You will comply with all applicable laws and regulations.

11. Warranty Disclaimer. YOU TAKE FULL RESPONSIBILITY FOR THE USE OF THE API MATERIALS. DELL PROVIDES THE API MATERIALS AND THE USE OF THE API MATERIALS ON AN “AS IS” AND “AS AVAILABLE” BASIS. SPECIFICALLY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DELL MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND; DISCLAIMS ALL WARRANTIES AND CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY QUALITY, FITNESS, ACCURACY, NONINFRINGEMENT, AVAILABILITY OR OPERATION; AND DOES NOT GUARANTEE THAT THE API MATERIALS AND THE USE OF THE API MATERIALS WILL BE FREE FROM ERRORS OR DEFECTS.

12. Limitations of Liability and Damages.

12.1 Limitation on Damages. With respect to Your and Customer's access to and use of the API Materials, to the maximum extent permitted by applicable law, Dell will not be liable under any legal theories (including negligence but excluding gross negligence or willful misconduct where applicable law requires such exclusions) for any type of damages in excess of \$1000 USD, even if Dell knew of the possibility of such damages.

12.2 Regular Backups. You are solely responsible for Your data and for backing up data, if any, that you use in connection with the API Materials. 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 Dell 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 eighteen months after the cause of action accrues.

13. Indemnification. You shall defend, indemnify, and hold harmless Dell and its agents, employees, and licensors ("Indemnified Parties") against any claim, suit, or proceeding ("Claim") and any liability, damage, loss, cost, and expenses (including attorney's fees) arising from the Claim ("Damages") threatened or brought against any Indemnified Party (i) alleging that Your Application infringes (including contributory infringement) or misappropriates any third party's intellectual property right or (ii) resulting from Your breach of these API Terms.

14. General.

14.1 Governing Law. Any claim or dispute, including without limitation, tort, statutory, or contractual claims, arising under or in any way relating to these API Terms, the API Materials, the Application Data, or any combination of these items (the "Dispute"), shall be governed by the laws of the state of Texas without regard to Texas conflicts of laws principles. Customer irrevocably agrees to submit to, and waive any objection to, the personal and exclusive jurisdiction of and venue in the federal and state courts located within Travis or Williamson County, Texas. The parties agree that such courts shall be the exclusive proper forum for the resolution of any Dispute. Neither the U.N. Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act will apply. If You are an individual consumer, nothing in these API Terms deprives You of the protection afforded to You by the provisions of mandatory consumer protections laws that are applicable to You, nor do these API Terms prevent you from seeking remedies or enforcing your rights as a consumer under such laws.

14.2 Assignment. Dell may assign its rights and obligations under these API Terms. You may not assign Your rights and obligations under these API Terms.

14.3 Entire Agreement and Order of Precedence. These API Terms constitute the complete statement of the agreement of the parties regarding the subject matter hereof. However, if You use the APIs as an interface to, or in conjunction with, other Dell Offerings, then the terms for those other products or services may also apply to Your use of the API Materials. In the event of a conflict or inconsistency in the regulations or documents, these API Terms will prevail.

14.4 Trade Compliance. Your use of the API Materials is intended for Your own use, not for resale, export, re-export, or transfer. You are 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"). The API Materials are for Your authorized use under this Agreement, and may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with the Applicable Trade Laws. You represent and warrant that You 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 [Dell Trade Compliance](#).

14.5 Independent Contractors. Dell and You are independent contracting parties, and these Terms will not be construed to create a partnership, joint venture, agency or employment relationship between Dell and You. Neither You nor Dell, nor any of their affiliates, officers, directors, or employees is an agent of the other for any purpose, nor has the authority to bind the other.

14.6 Waiver and Severability. Dell's failure to enforce a provision of these API Terms will not constitute a waiver of that or any other provision of these API Terms . If any part of these API Terms are held unenforceable, the validity of the remaining provisions shall not be affected.

14.7 Force Majeure. Neither party will be liable for failure to perform its obligations during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond that party's reasonable control. If any delay or failure lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, the relevant API or API Materials by giving written notice to the delayed party.

14.8 Availability. Access to the API Materials and use of the APIs may be unavailable or discontinued without notice at certain times. To the maximum extent permitted by applicable law, Dell will not be liable for any damages or losses that may result from such unavailability.

14.9 U.S. Government Restricted Rights. The software and documentation provided with the API Materials are "commercial products" as defined in Federal Acquisition Regulation ("FAR") 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as these terms are used in FAR 12.212 and Defense Federal Acquisition Regulation Supplement ("DFARS") Section 227.7202, as applicable. Consistent with FAR 12.212 and DFARS Section 227.7202, all U.S. Government end users acquire the software and documentation with only those rights set forth herein.

14.10 Dispute Resolution. Before You or Dell files any lawsuit regarding a Dispute, You and Dell will attempt to resolve the Dispute through negotiation or through mediation using a mutually agreeable mediator. In order to initiate the negotiation or mediation phase, the interested party must notify the other party of its intention. You and Dell will treat the existence or results of any negotiation or mediation as confidential. If the parties are unable to resolve the Dispute within 30 days of receipt of notice of the Dispute to the other party, the parties will be free to pursue all remedies available at law or in equity. Notwithstanding the foregoing, either party has the right to seek a temporary restraining order, preliminary injunction, or other equitable relief from a court of competent jurisdiction to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitation periods, or protect intellectual property rights. There are no third-party beneficiaries in connection with these API Terms.