

Last Updated: May 6, 2024

These Dell APEX Subscriptions Terms for Partner End Users (the “Agreement”) establishes the terms and conditions under which Dell (defined below) will provide the Subscription for use by the You. Capitalized terms used in this Agreement are defined below in [Clause 8 \(Definitions\)](#).

1. Delivery, Site, Use, Risk, and Return.

1.1 Delivery; Site. Dell will ship the Products to the Site stated in the Order. Where software is provided in a form that is embedded on the Equipment, Dell will enable any required license keys by electronic means. Before arrival of the Products to the Site and during the Subscription Term, You must have arranged: (i) appropriate space at the Site; (ii) the necessary environment (power, cooling, etc.) required to support and operate the Products; and (iii) servers and network connectivity required to support Products. The Products may not be moved from the Site without Dell’s prior written consent. You grant or will obtain the right for Dell’s reasonable access to the Site for purposes of: (i) providing Services; (ii) metering; (iii) inspecting the Products; (iv) performing Asset Recovery; and (v) exercising Dell’s other rights set forth in this Agreement. In case the Equipment is installed at a Colocation Site, You guarantee that Dell has the right to exercise its rights concerning the Products stated above. You agree to hold Dell harmless from and against any and all disputes, claims or controversies (whether in contract, tort (including negligence) or otherwise) resulting from Your locating the Products at a Colocation Site.

1.2 Risk of Loss. You are responsible for risk of loss, theft, damage or destruction of the Products, and any licensed Software, from the date of delivery until Asset Recovery. If any such loss occurs during the Subscription Term, You must promptly notify Dell and continue to pay all Fees to Reseller until the impacted Products are repaired or replaced at Your expense. Until such time as the Products are repaired or replaced, Dell is relieved of its obligations to the extent such events impact Dell’s ability to perform.

1.3 Title. Dell retains title to Products at all times notwithstanding the manner in which such may be attached or affixed to realty.

1.4 Use and Cloud Service Providers.

A. Use. You may use the Products at the Site only during the Subscription Term for your internal business operations. Your rights to use the Products provided by Dell during the Subscription Term are governed by the terms of this Agreement, the applicable Offering Specific Terms, and, for Software, the terms of the applicable end-user license agreement. Unless different terms have been agreed between the parties, the terms posted on www.dell.com/eula (“EULA”) for the relevant Software product family and effective as of the date of the applicable End User Subscription Form apply. Any rights provided by Reseller to You that are greater than the rights in this Agreement do not obligate or apply to Dell and are the sole responsibility of the Reseller. You agree that use of the Products will not violate any applicable law, including but not limited to: violation of the rights of others, violation of laws concerning child pornography or laws concerning illegal gambling. You agree that You will not use the Products to stalk, harass or harm anyone, including minors, or be abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, advocate violence or encourage illegal activity.

B. Cloud Service Providers. Notwithstanding [Clause 1.4A \(Use\)](#) of this Agreement or the [EULA](#), if You are a Cloud Service Provider partner in good standing in the Dell Technologies Partner Program, then Dell grants You a nonexclusive and nontransferable right to use the Products, including any Software licensed by Dell, to provide services to Your clients during the Subscription Term. You may allow clients to use the Products solely in order to access, process and manipulate the information, data and records of Your clients stored on, controlled by or accessed through the Products. You are responsible for any access to and use of Products by your clients as if such access was by You. In your agreement with Your clients for the Subscription, You will not include any terms that contravene or supersede the provisions of this Agreement.

1.5 Third Party Products. Third Party Products offered to You under an End User Subscription Form are subject to the standard terms, license, services, warranty, indemnity and support terms of the third-party manufacturer/supplier (or

applicable direct agreement between You and such manufacturer/supplier). You agree to such terms and that You will contact such third party directly for support or other offerings-related issues. In return, any warranty, damages or indemnity claims against Dell in relation to Third Party Products are excluded. **Dell makes no express warranties or conditions, and disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement as well as any warranty arising by statute, operation of law, course of dealing or performance or usage of trade even if support and licensing fees are invoiced through Dell.** The licensing terms for some Third Party Products can be found in the Offering Specific Terms. Unless otherwise provided in your license agreement with the third-party manufacturer/supplier, You acknowledge that your right to use the Third Party Products is limited to the Subscription Term and any agreed upon extension thereto in accordance with this Agreement.

1.6 Services. Scope and the details of Services and Product-specific terms are specified in the applicable standard service description that is referred in the End User Subscription Form and made available through the Offering Specific Terms. Such standard descriptions are from time to time referred to as “Service Description(s)”, “Product Notices” or “Service Briefs.” The version of the applicable document that is effective as of the date of the applicable End User Subscription Form, is deemed incorporated into this Agreement. Scope and details of customized Professional Services, if any, not covered by such a standard description will be documented in a mutually agreed Statement of Work (“**SOW**”). You agree that failure to comply with this Agreement, including the applicable standard service description and the End User Operating Environment Warranty, may limit Dell’s ability to provide Services. In such case, proactive support capabilities, response times or other service levels may no longer apply, and Dell may make the continuation of Services and/or the Subscription dependent on an adjustment of fees and reasonable charges for any recertification necessary for continued support.

1.7 Ownership of Customer Content. You agree that: (i) Customer Content remains Your responsibility; and (ii) Dell does not handle, process or direct the use of Customer Content.

1.8 Return of Products; Data Migration. No later than seven (7) days after the end of the Subscription Term, You must: (i) migrate and erase (by method that does not cause damage to the Products) Customer Content from the Products and (ii) make the Products available to Dell for Asset Recovery. Unless Dell has agreed in writing to perform data migration, Dell is not responsible for removing Customer Content from the Products. If You have not deleted Customer Content from the Products, it may be deleted by Dell. At no time, will Dell be responsible for, or bear any liability and you will indemnify Dell for claims regarding any Customer Content that is not erased or removed from the Products before Asset Recovery. The parties will mutually agree on a time for Asset Recovery, but in no case will Asset Recovery occur later than seven (7) days after the end of the Subscription Term unless another date has been agreed in writing by Dell. You will continue to pay Fees to your Reseller until You have removed the Customer Content and Asset Recovery occurs.

2. Metering.

2.1 Authorization to Meter; Subscription Usage.

During the Subscription Term, Dell meters usage and collects telemetry data relating to the Products as further provided in the [Dell Telemetry Data Provision](#). Dell is authorized to meter and/or audit the usage to calculate the associated fees via electronic means in accordance with the Dell Telemetry Data Provision and through on-site inspection by Dell personnel. Dell agrees to cooperate with You to minimize the impact of any Dell on-site inspection to Your operations.

You agree that:

- A.** Dell may store Measuring Equipment at the Site and to load Measuring Equipment onto Products;
- B.** Dell may have reasonable access to the Measuring Equipment at the Site;
- C.** You will provide and maintain equipment (a physical server or virtual machine) necessary to run storage metadata telemetry collection software and enable electronic communications between the Products and Dell;
- D.** You will not disable, interfere in the operation of the Measuring Equipment, or copy or make any use of the Measuring Equipment whatsoever;
- E.** You will protect the Measuring Equipment from disclosure to a third-party; and

F. You must promptly install and make available for use all Products contained in each Order including all components that Dell ships to Your Site (e.g., hard drives, etc.).

You acknowledge that Dell shares metering information including the Monthly Commitment and Reserve Usage with Partner for its billing purposes.

2.2 Interruption of Metering Capabilities.

If, for more than seven (7) days of any calendar month, Dell is unable to meter usage due to: (i) any action by anyone other than Dell or (ii) a failure of any communications equipment used for facilitating metering, then Your usage will be deemed to be equal to the usage during the previous Billing Period. If Dell is unable to meter for a period of more than thirty (30) days due to (i) or (ii) or You otherwise fail to comply with the Clause 2.1 of this Agreement, Your usage will be deemed to be equal to the maximum capacity of the Products. If Dell is unable to meter usage due to any failure which is caused by Dell (e.g., failure of the Measuring Equipment), Your usage will be deemed to be equal to the usage during the previous Billing Period. Dell will promptly notify You and Partner of an inability to access the Products (electronically or physically, as applicable) and work cooperatively to reestablish access.

3. Warranty.

3.1 Warranty and Remedy. During the initial Subscription Term, Dell will exercise reasonable care to maintain a Product's ability to perform substantially in accordance with the corresponding standard documentation issued by Dell for the applicable Product under normal usage and with regular recommended service and provide Services in a workmanlike manner. You will promptly provide Dell and Reseller with written notice of any failure to conform with the foregoing warranty but within ten days after the date on which such failure first occurs for Services. Dell's entire liability and Your exclusive remedies for any failure to comply with this warranty are as follows: Dell will make reasonable efforts to correct the non-conformance within a reasonable period of time, not to exceed 30 days from receipt of Your notice (the "**Cure Period**"); and (a) if Dell is unable to correct the non-conformance during the Cure Period for reasons for which Dell is responsible, then Dell will replace the non-conforming Product or reperform the applicable Services; or (b) if Dell, at its sole discretion, determines such is not reasonably possible, then You, Partner or Dell may terminate the applicable Order and End User Subscription Form and Partner may seek from Dell a refund of any fees Partner prepaid to Dell for the Subscription that will not be provided as a result of the termination. Refund of any fees You prepaid to Reseller will be as mutually agreed between You and Reseller.

3.2 Limitations. The warranties set forth in this clause do not cover problems that arise from: (i) accident or neglect by You or any third party; (ii) any third party items or services with which the Product is used or other causes beyond Dell's control; (iii) installation, operation or use not in accordance with Dell's instructions and the applicable documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than Dell personnel or (vi) causes attributable to normal wear and tear (e.g., cosmetic damage that doesn't affect the Product's functionality). Dell has no obligation for: (1) Software installed or used beyond the licensed use, or (2) Product whose original identification marks have been altered or removed. Products and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the Products or Services could lead to death, bodily injury, or physical or property damage (collectively, "**High-Risk Activities**"). You agree that You are not relying on delivery of future functionality, public comments or advertising by Dell, or product roadmaps when purchasing a Subscription.

3.3 Warranty Disclaimer. Other than the warranties set forth in this clause, and to the maximum extent permitted by applicable law, Dell and Dell's Affiliates: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade. Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities. Dell is not liable for delays, interruptions, service failures or other problems inherent in use of internet and electronic communications or for issues related to Colocation Sites.

3.4 End User's Operating Environment Warranty. You agree to operate the Products: (i) with reasonable care, (ii) in accordance with the documentation and configuration provided by Dell, and (iii) in accordance with industry standards (including but not limited to maintaining a regular data back-up system for Customer Content). You agree to keep the

Products located at the Site free and clear from any liens or encumbrances. You must give immediate written notice of any attachment or judicial process affecting the Products or Dell's ownership.

4. Term and Termination.

4.1 Term. This Agreement is effective on the Effective Date provided in the End User Subscription Form and continues until the earlier of termination or Asset Recovery.

4.2 Termination. Dell may terminate this Agreement (including any Order and End User Subscription Form) if You commit a breach of this Agreement that is not cured within 30 days of written notice from Dell or Reseller. Dell may also terminate this Agreement (including any Order and End User Subscription Form) for: (a) Your Bankruptcy; (b) Your failure to pay Fees to Your Reseller within thirty (30) days of the due date; (c) Your Partner's failure to pay Fees to Dell within thirty (30) days of the due date; (d) Your Distributor's Bankruptcy; and/or (e) Your Reseller Bankruptcy (each event being an "**Event of Default**"). To provide You with uninterrupted access to the Subscription for Partner Events of Default, Dell may take assignment of the End User Agreement, provided You are not in breach of the End User Subscription Form, this Agreement, or the End User Agreement. You consent to the assignment of the End User Agreement to Dell for an Event of Default.

4.3 Effects of Termination.

A. Generally. When the Subscription expires, terminates or is rejected for any reason, You must: (a) stop using the Products; (b) make the Products available to Dell and provide Dell with prompt access to the Site to recover the Products; (c) return, or if requested by Dell, destroy any of Dell's confidential information in Your possession or under Your control (other than information that applicable law requires You to retain). You are responsible for making sure that You have copies of all Customer Content You require prior to the date of any termination in accordance with [Clause 1.8 \(Return of Products; Data Migration\)](#) above.

B. Additional Recovery Rights. You agree that upon the Subscription expiration or termination for any reason: (a) Dell may seek a court order to enforce Dell's right to recover the Products from the Site; (b) Dell may declare immediately due and payable fees from the Partner for the Monthly Commitment for the remainder of the Subscription Term along with any past due amounts; (c) Dell or Partner may seek to recover the value of any Products not returned at the end of the Subscription Term; and (d) Dell is entitled to recover from You the reasonable attorney's fees resulting from this enforcement action. Your Reseller may also seek from You immediate payment for fees for the Monthly Commitment of the remainder of the Subscription Term pursuant to the End User Agreement.

C. Recourse. Your sole recourse with respect to any termination (including refund of any pre-paid fees for the terminated Subscription) is against Reseller.

D. Survival. The provisions relating to confidentiality, liability, and all rights of action accruing prior to termination, along with any other provision of the Agreement that, expressly, or by its nature and context, is intended to survive, will survive termination.

5. Limitation of Liability.

5.1 Limitations on Damages. Your, and Dell's (including Dell's suppliers and Affiliates) maximum liability for all disputes arising under the Agreement ("**Disputes**") is limited, to the extent permitted by law, to the greater of: (a) \$100,000 USD (or the equivalent in local currency); or (b) the amount You paid to Reseller for the Subscription during the 12 months immediately before the events giving rise to any dispute. This limitation applies even if any limited remedy in the Agreement is found to have failed in its essential purpose. In addition, neither You nor Dell (including Dell's suppliers and Affiliates) are liable to the other for any 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, even if the party alleged to be liable has knowledge of the possibility of such damages. The foregoing limitations and exclusions do not apply to: (i) Your obligation to pay for the Subscription, (ii) Your obligation to pay for damage to or loss of the Products, (iii) Your violation of the restrictions on use of the Products, (iv) Your violation or misappropriation of the other party's (including Dell's) intellectual property rights, (v) Your indemnity obligation under



this Agreement; or (vi) where prohibited by applicable law. Dell, Dell's suppliers and Dell's Affiliates have no liability for any damages resulting from Your use or attempted use of Third Party Products, or Free Software or Development Tools (both as defined in the [EULA](#)).

5.2 Prevention and Mitigation. You are solely responsible for Customer Content and for maintaining an IT architecture, as well as processes, enabling You to prevent and mitigate damages in line with the criticality of the Customer Content for Your business and its data protection requirements, including a business recovery plan. You will: (a) provide for a backup process in accordance with industry standards including but not limited to backup relevant data before Dell performs any remedial, upgrade or other works on the Products or Your IT systems; (b) monitor the availability and performance of Your IT environment, including the Products; and (c) promptly react to messages and alerts received from Dell or through notification features of the Products and immediately report any issue You identify to Dell. To the extent that Dell has any liability for loss of Customer Content made available by applicable law, Dell will only be liable for the cost of commercially reasonable and customary efforts to recover the lost Customer Content from Your last available backup.

5.3 Limitation Period. Except as stated in this Clause, 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 event(s) giving rise to a dispute occurs.

6. Trade Compliance. 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 Subscription and any other products or services 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. You will defend and indemnify Dell against any third party claim resulting from a breach of any of the foregoing. For further information about geographical restrictions and compliance with Applicable Trade Laws, visit [Dell Trade Compliance](#).

7. General.

7.1 Governing Law; Jurisdiction. Except for Sites in the Kingdom of Saudi Arabia, Qatar and the United Arab Emirates, the End User Subscription Form will identify: (i) the laws governing this Agreement and any Disputes and (ii) the courts with exclusive jurisdiction for any Disputes. See the Location Specific Terms for the governing law and jurisdiction if the Site is located in the Kingdom of Saudi Arabia, Qatar and the United Arab Emirates. Except for the Kingdom of Saudi Arabia, Qatar and the United Arab Emirates, in the event the End User Subscription Form fails to identify (i) or (ii), the laws and the exclusive place of jurisdiction for any Disputes are the laws and the courts of the country of the Dell entity selling the Subscription without regard to conflicts of law. The U.N. Convention on Contracts for the International Sale of Goods does not apply. You and Dell agree to submit to the personal jurisdiction of the courts identified in the End User Subscription Form (or if the Form fails to identify the jurisdiction, then as identified in this Agreement) and agree to waive any and all objections to the exercise of jurisdiction over the parties by those courts and venue in those courts.

7.2 Notices. The parties will provide all notices under this Agreement in writing. You must provide notices to Dell at the Dell address on the End User Subscription Form.

7.3 Assignment. The assignment or transfer, whether by operation of law or otherwise, of a party's right(s) or delegation of obligation(s) under this Agreement, requires the consent of the other party. Notwithstanding the foregoing, Dell may use Dell Affiliates or other qualified subcontractors to perform its obligations hereunder, provided that Dell remains responsible for the performance thereof, and either party may assign the rights to payment arising under an Order without the consent of the other party.

7.4 Disclosure of End User Agreement. You agree Reseller may disclose the End User Agreement to Dell and Dell's Affiliates.

7.5 Entire Agreement. This Agreement and each End User Subscription Form hereunder comprise the complete statement of the agreement between You and Dell regarding the subject matter thereof and may be modified only by written agreement.

8. **Definitions.**

- 8.1 **“Affiliate” or “Affiliates”** means any other entity that controls, is owned by, controlled by or under common ownership or control with You, and with respect to Dell, “Affiliate” means Dell Technologies Inc. and its wholly-owned subsidiaries. **“Control”** means more than 50% of the voting power or ownership interests.
- 8.2 **“APEX Subscriptions End User Form” or “End User Subscription Form”** means the form signed by You and Dell listing the Products and Services included in the Subscription and linking this Agreement.
- 8.3 **“Asset Recovery”** of a Product means Dell taking possession of the Product.
- 8.4 **“Bankruptcy”** means bankruptcy, receivership, examinership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings or statutory process instituted by or against the applicable entity, or all or any part of its property under the applicable law where such entity is organized, and such entity consents thereto or fails to cause the same to be discharged as per local legal requirements.
- 8.5 **“Billing Period”** means the period of time identified in an Order for which Dell will invoice Partner for the Subscription.
- 8.6 **“Cloud Service Provider” or “CSP”** means a Cloud Service Provider in good standing in the Dell Technologies Partner Program purchasing a Subscription to provide services to its customer(s) during the Subscription Term. If the Subscription is purchased by a CSP directly from a Distributor, references to Reseller in this Agreement mean Distributor.
- 8.7 **“Colocation Site”** means, where applicable, a third-party Site.
- 8.8 **“Customer Content”** means data (including but not limited to all text, sound, video, and image files), software (including machine images), and other information You or Your end users store, use or make available to Dell through use of the Subscription. Customer Content does not include System Data relating to Your use of the Products and which is described in the Dell Telemetry Data Provision.
- 8.9 **“Dell”** is the Dell Technologies entity which signs the APEX Subscriptions End User Form.
- 8.10 **“Distributor”** means an authorized distributor in the Dell Technologies Partner Program.
- 8.11 **“End User”, “You” or “Customer”** purchased the Subscription from a Partner for Your own internal business purposes.
- 8.12 **“End User Agreement”** means the agreement between You and the Reseller for the Subscription.
- 8.13 **“Fee”** means the fees for the Monthly Commitment and the Reserve Usage.
- 8.14 **“Measuring Equipment”** means the equipment, software and programming needed for Dell to track usage levels and perform Support Services.
- 8.15 **“Monthly Commitment”** means the minimum amount of usage the Partner commits to paying for each month as specified in an Order regardless of the actual usage.
- 8.16 **“Offering Specific Terms”** means those terms available at www.dell.com/offeringspecificterms.
- 8.17 **“Order”** means Partner’s order to Dell for the Subscription that is confirmed by Dell.
- 8.18 **“Partner”** refers to either, or both, a Distributor or a Reseller placing a Subscription order with Dell for resale to You.
- 8.19 **“Products”** means (i) Dell-branded IT hardware products (**“Equipment”**) or (ii) Dell-branded generally available software, whether microcode, firmware, operating systems or applications (**“Software”**). Products exclude Services and Third Party Products.
- 8.20 **“Professional Services”** are consulting, implementation and any other services that are not Services.
- 8.21 **“Reseller”** means an entity authorized to purchase Dell products or services for resale to end users, and Reseller includes a Solution Provider partner in the Dell Technologies Partner Program.
- 8.22 **“Reserve Usage”** means the amount of Your flexible consumption usage above the Monthly Commitment.

8.23 “Services” are Dell’s standard service offerings for maintenance and support of Products (“**Support Services**”) and deployment services (“**Deployment Services**”).

8.24 “Site” means the location of the Product installation as identified on an Order and the End User Subscription Form.

8.25 “Subscription” means the use of a Product on a flexible consumption basis as measured by the description and metrics from Your Reseller and this Agreement.

8.26 “Subscription Term” means the time period identified on an Order and the End User Subscription Form for use of the Products, and any Dell approved extension(s) thereto. The Subscription Term commences on the first day of the month following the date the Products have been installed at the Site, or, if End User delays the installation process or if End User’s Site is not prepared for the installation of the Products, the first day of the second month following the Product’s arrival at the Site.

8.27 “Third Party Products” means hardware, software, products, or services that are not “Dell” or “Dell EMC” branded.

9. Location Specific Terms.

Find the location of the Site in the table below for applicable Location Specific Terms. Site locations are provided in alphabetical order, except in circumstances when locations share common terms.

Site location	Applicable Location Specific Terms
Australia	<p>Clause 3.3 (Warranty Disclaimer) is revised to read as follows:</p> <p>“3.3 Warranty Disclaimer. Subject to those conditions and warranties that cannot be lawfully excluded or modified, including without limitation under Division 1 of Part 3-2 of the Australian Competition and Consumer Act 2010 (4th) and other than the warranties set forth in this clause, to the maximum extent permitted by applicable law, Dell and Dell’s Affiliates: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade. Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities. Dell is not liable for delays, interruptions, service failures or other problems inherent in use of internet and electronic communications or for issues related to Colocation Sites.”</p>
Austria	<p>The following sentence is added to Clause 2.2 (Interruption of Metering Capabilities):</p> <p>“To the extent Partner or End User is able to prove that the actual usage was less than the amount for the respective Billing Period such use is decisive, provided that the amount is not less than agreed for the Monthly Commitment.”</p> <p>The following sentence is added to the end of Clause 3.1 (Warranty and Remedy):</p> <p>“Right to reduction or suspension of payment for reasons described in Sec. 1096 Austrian Civil Code (ABGB) shall not apply.”</p> <p>Clause 4.2 (Termination) is amended by the deletion of 4.2(b) and its replacement with the following:</p> <p>“4.2(b) Your failure to pay Fees to your Reseller for at least two consecutive payments or for a not insignificant part of the Fees.”</p> <p>Clause 5.1 (Limitations on Damages) is deleted and replaced by the following:</p> <p>“For all claims of either party to the other for damages whatever the legal basis may be (including tort), the following shall apply:</p> <p>(1) Unlimited Liability. The Parties accept unlimited liability for acts or omissions based on willful misconduct or gross negligence. Claims based on the product liability act (“Produkthaftungsgesetz”), or claims resulting from personal injury or death shall be treated in accordance with applicable laws. The same applies to a defect occurring following the</p>

	<p>provision of a guarantee for the composition of Products or works, in case of fraudulently concealed defects, as well as claims based on default in pre-contractual negotiations. Nothing herein shall exclude or limit liability for: (i) Your obligation to pay for the Subscription, (ii) Your obligation to pay for damage to or loss of the Products, (iii) Your violation of the restrictions on use of the Products, (iv) Your violation or misappropriation of the other party's (including Dell's) intellectual property rights, (v) Your indemnity obligation under this Agreement; or (vi) where prohibited by applicable law. Dell, Dell's suppliers and Dell's Affiliates have no liability for any damages resulting from Your use or attempted use of Third Party Products, or Free Software or Development Tools (both as defined in the EULA).</p> <p>(2) Limitations. In case of slight negligence, the Parties are only liable in case of a violation of essential contractual duties (an obligation the performance of which is essential to allow the implementation and proper execution of the agreement, and the compliance with which the other Party usually relies or may rely on and the violation of which jeopardizes the achievement of the purpose of the contract's purpose). The liability for slight negligence is then limited to contract-typical, foreseeable damages. This applies to all damage claims independent of their legal basis, including, in particular, tort claims. Insofar as Dell is liable for loss of data, liability is restricted to the typical effort to recover the available and recoverable data which would have accrued if Customer had appropriately backed up (or mirrored) its data.</p> <p>(3) Liability Cap. In the case of slight negligence, liability is also limited to 100,000 EUROS or the amount You paid to Dell for the Subscription during the 12 months immediately before the events giving rise to any dispute.</p> <p>(4) Exclusions. In the event of slight negligence, there shall be no liability for: (i) loss of profits, income or revenue; (ii) loss of goodwill or reputation. Dell (and the Dell's third-party service providers) shall not be liable for any damages arising out of the use or attempted use of any third-party software, free software or development tools as defined in the EULA referred to in the "Software Licenses Terms" provision in these Terms and Conditions, or arising from the use of any third-party products.</p> <p>(5) Guarantees. Dell does not give a guarantee in relation to Products or Services ("Beschaffheitsgarantie") that would entail an unlimited liability of Dell or a liability regardless of negligence or fault pursuant to Austrian General Civil Code (ABGB), except if an unlimited liability and/or liability regardless of negligence or fault has been expressly agreed in writing. The mere use of terms like "to guarantee", "to ensure" or similar wording shall not be considered sufficient to establish such liability, but a binding contractual commitment of Dell that is subject to the agreed limitation of liability.</p> <p>(6) Dell and Employees. The foregoing limitations shall also apply mutatis mutandis with regard to claims and disbursements ("Aufwendungen") asserted against Dell's employees and third-party suppliers including but not limited to Dell's Affiliates."</p>
<p>Brazil, Chile, Colombia or Mexico</p>	<p>Clause 5.1 (Limitations on Damages) reads as follows:</p> <p>"5.1 Limitations on Damages. Your, and Dell's (including Dell's suppliers and Affiliates) maximum liability for all disputes arising under the Agreement ("Disputes") is limited, to the extent permitted by law, to the greater of: (a) \$100,000 USD (or the equivalent in local currency); or (b) the amount You paid to Reseller for the Subscription during the 12 months immediately before the events giving rise to any dispute. This limitation applies even if any limited remedy in the Agreement is found to have failed in its essential purpose. In addition, neither You nor Dell (including Dell's suppliers and Affiliates) are liable to the other for any indirect or moral damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use, or procurement of substitute products or services, even if the party alleged to be liable has knowledge of the possibility of such damages. The foregoing limitations and exclusions do not</p>

	<p>apply to: (i) Your obligation to pay for the Subscription, (ii) Your obligation to pay for damage to or loss of the Products, (iii) Your violation of the restrictions on use of the Products, (iv) Your violation or misappropriation of the other party’s (including Dell’s) intellectual property rights, (v) Your indemnity obligation under this Agreement; or (vi) where prohibited by applicable law. Dell, Dell’s suppliers and Dell’s Affiliates have no liability for any damages resulting from Your use or attempted use of Third Party Products, or Free Software or Development Tools (both as defined in the EULA).”</p>
<p>Canada</p>	<p>Clause 1.5 (Third Party Products) and Clause 3.3 (Warranty Disclaimer) is amended such that: (i) all references in the Clauses to “WARRANTIES” will be deemed to include both “WARRANTIES” and “CONDITIONS”; and (ii) the reference to “MERCHANTABILITY” will be deemed to include “MERCHANTABLE QUALITY”.</p> <p>The following will be added as a new Clause 7.6 to Clause 7 (General):</p> <p>“7.6 The parties have required that this Agreement be drawn up in English and have also agreed that all notices or other documents required by or contemplated in this Agreement be written in English. Les parties ont requis que cette convention soit rédigée en anglais et ont également convenu que tout avis ou autre document exigé aux termes des présentes ou découlant de l'une quelconque de ses dispositions sera préparé en anglais.”</p>
<p>Czech Republic</p>	<p>The reference to the Civil Code means Act No. 89/2012Coll., as amended.</p> <p>The following is added to the end of the preamble of this Agreement:</p> <p>“The parties confirm that neither party hereto is to be considered a weaker party and that the basic conditions of this Agreement are a result of the negotiations of the parties and that each party had the opportunity to influence the content of the basic conditions of this Agreement. Further, the parties explicitly confirm that they are entrepreneurs and that they conclude this Agreement in the course of their business; accordingly, the provisions of Section 1793 and 1796 of the Civil Code shall therefore not apply to this Agreement.</p> <p>This Agreement together with the respective Order and Form (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof and the parties exclude any assumption of rights and obligations which are out of the scope of the express provisions of this Agreement and which may be derived from any current or future business practices established among the parties, either existing in general and or within the relevant industry, and which are related to the subject of the performance under this Agreement, unless such business practices are expressly agreed upon herein; and (ii) may be modified only in a writing with evidence of acceptance by both parties. All terms of any purchase order or similar document provided by Customer, that are inconsistent with or conflict with this Agreement, shall be null and void and of no legal force or effect.”</p> <p>The following are added as a new Clauses 7.6 (Excluded Provisions) and 7.7 (Change of Circumstances) to Clause 7 (General):</p> <p>“7.6 Excluded Provisions. The parties agree that to the fullest extent permitted by law Sections 558(2), 1740 (3), 1747, 1748, 1936 (1), 1950, 1951, 1952 (2), 1971, 1978 (2), 1980 and 1987 (2), of the Civil Code do not apply to this Agreement. The parties further agree and acknowledge that it is not their intention to enter into a lease agreement within the meaning of the Civil Code and Section 2201 of the Civil Code do not apply to this Agreement.”</p> <p>7.7 Change of Circumstances. Customer bears the risk in relation to a change of circumstance within the meaning of Section 1765(2) of the Civil Code.”</p>
<p>France</p>	<p>The following is added at the end of the preamble:</p> <p>“Each Party acknowledges that during the pre-contractual discussions the other party has delivered and has exchanged the volume of information sufficient in order to enter into this</p>

	<p>Agreement and related contractual documents and had the opportunity to negotiate all terms and conditions.</p> <p>The parties acknowledge and agree that the aggregate of the contractual terms and conditions are a consistent and well-balanced contractual framework regarding each party's rights and obligations, including but not limited to, warranties, liabilities and financial terms."</p> <p>The following sentence is added to the end of Clause 5.1 (Limitations on Damages):</p> <p>"Unpredictability ("Imprevison"). It is expressly agreed that the Parties exclude application of article 1195 of French civil code."</p>
<p>Germany</p>	<p>The following is added to the end of Clause 1.3 (Title to Products):</p> <p>"If the Products are inseparably combined or mixed with other items not belonging to Dell of which the Products become an essential part ("wesentlicher Bestandteil"), Dell shall acquire co-ownership of the new item in the ration of the value of the Products to the combined or mixed items at the time of combination or integration. If the Products are combined or mixed in/with other items in such way that the other item is to be regarded as the main item ("Hauptsache"), You and Dell hereby agree that You shall transfer co-ownership of this item to Dell on a pro rata basis. Supplier hereby accepts this transfer."</p> <p>The following sentence is added to Clause 2.2 (Interruption of Metering Capabilities):</p> <p>"To the extent Partner or End User is able to prove that the actual usage was less than the amount for the respective Billing Period such use is decisive, provided that the amount is not less than agreed for the Monthly Commitment."</p> <p>The following sentence is added to the end of Clause 3.1 (Warranty and Remedy):</p> <p>"Without prejudice to the nature of the contract, Supplier reserves the right to choose the type of defect remediation (e.g., replacement, repair) and German Civil Code ("BGB") sections 536 and 536a are excluded, except in cases of unlimited liability according to Clause 5. Claims for unjust enrichment remain unaffected."</p> <p>Clause 4.2 (Termination) is amended by the deletion of 4.2(b) and its replacement with the following: "(b) Your failure to pay Fees to your Reseller for at least two consecutive payments or for a not insignificant part of the Fee."</p> <p>Clause 5.1 (Limitations on Damages) is replaced with the following:</p> <p>"For all claims of either party to the other for damages whatever the legal basis may be (including tort), the following shall apply:</p> <p>(1) Unlimited Liability. The Parties accept unlimited liability for acts or omissions based on willful misconduct or gross negligence. Claims based on the product liability act ("Produkthaftungsgesetz"), or claims resulting from personal injury or death shall be treated in accordance with applicable laws. The same applies to a defect occurring following the provision of a guarantee for the composition of Products or works, in case of fraudulently concealed defects, as well as claims based on default in pre-contractual negotiations. Nothing herein shall exclude or limit liability for: (i) Your obligation to pay for the Subscription, (ii) Your obligation to pay for damage to or loss of the Products, (iii) Your violation of the restrictions on use of the Products, (iv) Your violation or misappropriation of the other party's (including Dell's) intellectual property rights, (v) Your indemnity obligation under this Agreement; or (vi) where prohibited by applicable law. Dell, Dell's suppliers and Dell's Affiliates have no liability for any damages resulting from Your use or attempted use of Third Party Products, or Free Software or Development Tools (both as defined in the EULA).</p>

	<p>(2) Limitations. In case of slight negligence, the Parties are only liable in case of a violation of essential contractual duties (an obligation the performance of which is essential to allow the implementation and proper execution of the agreement, and the compliance with which the other Party usually relies or may rely on and the violation of which jeopardizes the achievement of the purpose of the contract's purpose). The liability for slight negligence is then limited to contract-typical, foreseeable damages. This applies to all damage claims independent of their legal basis, including, in particular, tort claims. Insofar as Dell is liable for loss of data, liability is restricted to the typical effort to recover the available and recoverable data which would have accrued if Customer had appropriately backed up (or mirrored) its data.</p> <p>(3) Liability Cap. In the case of slight negligence, liability is also limited to 100,000 EUROS or the amount You paid to Dell for the Subscription during the 12 months immediately before the events giving rise to any dispute.</p> <p>(4) Exclusions. In the event of slight negligence, there shall be no liability for: (i) loss of profits, income or revenue; (ii) loss of goodwill or reputation. Dell (and the Dell's third-party service providers) shall not be liable for any damages arising out of the use or attempted use of any third-party software, free software or development tools as defined in the EULA referred to in the "Software Licenses Terms" provision in these Terms and Conditions or arising from the use of any third-party products.</p> <p>(5) Guarantees. Dell does not give a guarantee in relation to Products or Services ("Beschaffungsgarantie") that would entail an unlimited liability of Dell or a liability regardless of negligence or fault pursuant to the German Civil Code, except if an unlimited liability and/or liability regardless of negligence or fault has been expressly agreed in writing. The mere use of terms like "to guarantee", "to ensure" or similar wording shall not be considered sufficient to establish such liability, but a binding contractual commitment of Dell that is subject to the agreed limitation of liability.</p> <p>(6) Dell and Employees. The foregoing limitations shall also apply mutatis mutandis with regard to claims and disbursements ("Aufwendungen") asserted against Dell's employees and third-party suppliers including but not limited to Dell's Affiliates."</p>
<p>Japan</p>	<p>The following is added as new Clause 7.6 (Exclusion of Antisocial Forces) to Clause 7 (General):</p> <p>"7.6 Exclusion of Antisocial Forces.</p> <p>A. Each party represents and warrants the following to the other party:</p> <ol style="list-style-type: none"> 1. Each party is not an organized crime group, a related company or association of an organized crime group, a corporate extortionist, any other equivalent person of above or a member of above ("Antisocial Forces"). 2. Member of the Board (including managing executive employees, directors of the board, managing executive directors, or any other equivalent person of above) is not Antisocial Forces. 3. Each party is not allowing the use of its name to Antisocial Forces to enter into this Agreement. 4. Each party does not take the following conduct in relation to this Agreement by itself or by using a third party until the delivery or provision of the Products or Subscription, or the full payment of the price for the Products or Subscription are completed. <ol style="list-style-type: none"> (a) Use of intimidating words or violence to the other party. (b) Obstruction of the business or damaging the credit of other party by use of fraud or force. <p>B. Each party shall be entitled to terminate this Agreement without any notice, if the other party breaches the following:</p>

	<p>1. in the case that the other party declares contrary to the representations and warranties set forth in (1) or (2) of paragraph A of Clause 7.6.</p> <p>2. in the case that the other party enters into this Agreement by violating the representations and warranties set forth in (3) of paragraph A of Clause 7.6.</p> <p>3. in the case that the other party violates the representations and warranties set forth in (4) of paragraph A of Clause 7.6.</p> <p>C. You represent and warrant that You will not provide the Products or Subscription to the office of Antisocial Forces and any other operation base of Antisocial Forces by yourself or by using a third party.</p> <p>D. Dell shall be entitled to terminate this Agreement without any notice, if You breach the preceding clause.</p> <p>E. If the Agreement is terminated pursuant to the provisions of paragraph B or D of this Clause, the breaching party shall not make any claim against the other party for any damage caused by the termination.”</p>
<p>Kingdom of Saudi Arabia, Qatar or United Arab Emirates</p>	<p>Clause 7.1 (Governing Law; Jurisdiction) is replaced with the following:</p> <p>“7.1 Governing Law; Jurisdiction. This Agreement and any Dispute are governed by and construed with the laws of England and Wales. The U.N. Convention on Contracts for the International Sale of Goods does not apply. In the event of a Dispute between the parties, the Dispute shall be referred to and finally resolved under the London Court of International Arbitration Rules (the “Rules”), which Rules are deemed to be incorporated by reference into this Clause. For the purposes of any arbitration commenced pursuant to this Clause: (i) there shall be a sole arbitrator; (ii) the seat, or legal place, of the arbitration shall be in the Dubai International Financial Centre in Dubai, UAE; (iii) the governing law of the parties’ decision to arbitrate shall be the law of the Dubai International Financial Centre and the governing laws any Dispute are the laws of England and Wales, (iv) the arbitration hearings shall take place in Dubai, UAE; (v) the language to be used in the arbitration proceedings shall be English; and (vi) the award of the arbitrator shall be final and binding on the parties. The parties agree that each of them will not challenge any arbitral award made pursuant to arbitration proceedings conducted in accordance with this Clause in any court and will submit to the jurisdiction of the courts of the Dubai International Financial Centre for the purposes of enforcement proceedings. The parties agree that each of them will not object to or challenge any application to enforce any arbitral award made pursuant to arbitration proceedings conducted in accordance with this Clause in any court and will submit to the jurisdiction of the courts of the Dubai International Financial Centre. Any right of appeal or reference to points of law to the courts is waived, to the extent that such waiver can be validly made under applicable law. Nothing in this Agreement prevents or prohibits either party from seeking urgent interim relief in any UK court of competent jurisdiction, including pre-arbitral attachments, temporary restraining orders, temporary injunctions, permanent injunctions and/or orders of specific performance, as may appear reasonably necessary to preserve the rights of either party. The application by either party to a judicial authority for such measures shall not be deemed to be an infringement or a waiver of the parties’ decision to arbitrate and shall not affect the relevant powers reserved to the arbitrator pursuant to this Clause.”</p> <p>The following is added as a new Clause 7.6 (Language) to Clause 7 (General):</p> <p>“7.6 Language This Agreement will be written and construed in the English language, and all questions of interpretation of this Agreement shall be resolved by reference to the same as written in English. This Agreement may not be translated into Arabic without the prior written consent of Dell. If the Agreement is translated into the Arabic language or any other foreign language, the English version will prevail for all purposes, including any disputes or claims that may be resolved by any legal proceeding. All communications between the parties in relation to this Agreement shall be in English. If, in either case, a version translated into the Arabic language is required, You will prepare the translation. If the translation of any communication</p>

	into the Arabic language is required, You shall be responsible for any associated costs, including any cost that Dell incurs in order to verify that a translation provided by You is accurate. You acknowledge that any translation, whether commissioned or paid for by Dell or You, shall be the property of Dell and shall constitute a part of Dell’s confidential information.”
New Zealand	Clause 3.3 (Warranty Disclaimer) is revised to read as follows: “3.3 Warranty Disclaimer. Subject to those conditions and warranties that cannot be lawfully excluded or modified, including without limitation under the Consumer Guarantees Act 1993 or similar law and other than the warranties set forth in this clause, to the maximum extent permitted by applicable law, Dell and Dell’s Affiliates: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance, or usage of trade. Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities. Dell is not liable for delays, interruptions, service failures or other problems inherent in use of internet and electronic communications or for issues related to Colocation Sites.”
	The following sentence is added to the end of Clause 5.1 (Limitations on Damages) : “To the extent permitted by law, the parties agree (a) Sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 will not apply.”
Poland	The following sentence is added to the end of Clause 3.3 (Warranty Disclaimer) : “The parties hereby exclude the warranty pursuant to Article 558 § 1 of the Civil Code, as well as any other excludable statutory warranties arising under applicable law (to the full extent permitted by law). This warranty is agreed between the parties and is not a unilateral statement referred to in Article 577 of the Civil Code.”
	The following is added as a new Clause 7.6 to this Schedule to Clause 7 (General) : “7.6. Dell, has the status of a large enterprise within the meaning of Article 4(6) of the Act on the Prevention of Excessive Delays in Commercial Transactions of 8 March 2013.”
Portugal	The first sentence of Clause 7.3 (Assignment) is revised to read: “The assignment or transfer, whether by operation of law or otherwise, of a party’s right(s) or delegation of obligation(s) under this Agreement, requires the consent of the other party, in which case, assignment or transfer is effective upon notice.”
Switzerland	The following sentence is added to Clause 2.2 (Interruption of Metering Capabilities) : “To the extent Partner or End User is able to prove that the actual usage was less than the amount for the respective Billing Period such use is decisive, provided that the amount is not less than agreed for the Monthly Commitment.”
	The following sentence is added to the end of Clause 3.1 (Warranty and Remedy) : ”Section 259a et seq. of the Swiss Code of Obligations shall not apply.”
	For Clause 3.3 (Warranty Disclaimer) (ii) and (iii) do not apply.
	Clause 5.1 (Limitations on Damages) is replaced with the following: “For all claims of either party to the other for damages whatever the legal basis may be (including tort), the following shall apply: (1) Unlimited Liability. The Parties accept unlimited liability for acts or omissions based on willful misconduct or gross negligence. Claims based on the product liability act (“ Produkthaftungsgesetz ”), or claims resulting from personal injury or death shall be treated in accordance with applicable laws. The same applies to a defect occurring following the

provision of a guarantee for the composition of Products or works, in case of fraudulently concealed defects, as well as claims based on default in pre-contractual negotiations. Nothing herein shall exclude or limit liability for: (i) Your obligation to pay for the Subscription, (ii) Your obligation to pay for damage to or loss of the Products, (iii) Your violation of the restrictions on use of the Products, (iv) Your violation or misappropriation of the other party's (including Dell's) intellectual property rights, (v) Your indemnity obligation under this Agreement; or (vi) where prohibited by applicable law. Dell, Dell's suppliers and Dell's Affiliates have no liability for any damages resulting from Your use or attempted use of Third Party Products, or Free Software or Development Tools (both as defined in the [EULA](#)).

(2) Limitations. In case of slight negligence, the Parties are only liable in case of a violation of essential contractual duties (an obligation the performance of which is essential to allow the implementation and proper execution of the agreement, and the compliance with which the other Party usually relies or may rely on and the violation of which jeopardizes the achievement of the purpose of the contract's purpose). The liability for slight negligence is then limited to contract-typical, foreseeable damages. This applies to all damage claims independent of their legal basis, including, in particular, tort claims. Insofar as Dell is liable for loss of data, liability is restricted to the typical effort to recover the available and recoverable data which would have accrued if Customer had appropriately backed up (or mirrored) its data.

(3) Liability Cap. In the case of slight negligence, liability is also limited to 100,000 EUROS or the amount You paid to Dell for the Subscription during the 12 months immediately before the events giving rise to any dispute.

(4) Exclusions. In the event of slight negligence, there shall be no liability for: (i) loss of profits, income or revenue; (ii) loss of goodwill or reputation. Dell (and the Dell's third-party service providers) shall not be liable for any damages arising out of the use or attempted use of any third-party software, free software or development tools as defined in the EULA referred to in the "Software Licenses Terms" provision in these Terms and Conditions or arising from the use of any third-party products.

(5) Guarantees. Dell does not give a guarantee in relation to Products or Services ("**Beschaffheitsgarantie**") that would entail an unlimited liability of Dell or a liability regardless of negligence or fault pursuant to the Swiss Code of Obligations (OR), except if an unlimited liability and/or liability regardless of negligence or fault has been expressly agreed in writing. The mere use of terms like "to guarantee", "to ensure" or similar wording shall not be considered sufficient to establish such liability, but a binding contractual commitment of Dell that is subject to the agreed limitation of liability.

(6) Dell and Employees. The foregoing limitations shall also apply mutatis mutandis with regard to claims and disbursements ("**Aufwendungen**") asserted against Dell's employees and third-party suppliers including but not limited to Dell's Affiliates."