

**APEX Subscriptions Schedule**  
to  
**Commercial Terms of Sale**

**Last Updated:** May 6, 2024

This Dell APEX Subscriptions Schedule (the “**Schedule**”) establishes the terms and conditions under which Supplier ([defined below](#)) will provide the Subscription for use by Customer. The Term of this Schedule is from the Effective Date until the earlier of termination or [Asset Recovery](#). The Schedule includes and incorporates by reference all of the following terms and conditions of: (i) the Commercial Terms of Sale (“**CTS**”) for the location of the Dell entity on the Order available at [Dell Online Terms](#) (but excluding any schedules attached or incorporated thereto) and (ii) the Order. Capitalized terms used in this Schedule and not defined below in Section 8 ([Definitions](#)) have the same meanings given to such terms in the CTS. References herein to the Schedule include all of the foregoing terms and conditions. In the event of conflict, they will prevail in the following order: (a) the Order (and all documents incorporated into it); (b) the Schedule; and (c) the CTS.

**1. Orders and Payment.**

**1.1 Orders.** The description of the Products, Support Services, and related pricing are as stated in the Order.

**1.2 Ordering.** Customer indicates its acceptance of the Order by signing it, and issuing a purchase order to Supplier that references the Order (unless Supplier grants an exception to this purchase order requirement). Supplier accepts an Order by (i) counter-signing the Order; and (ii) shipping the Products to Customer.

**1.3 Payment.** Customer must pay all fees for use of the Subscription including fees for usage and other offerings according to the currency, rates and pricing stated in the applicable Order. The Fee per Billing Period is the sum of the fee for the Monthly Commitment plus the fee for the Reserve Usage, if any, used during that Billing Period. These fees are calculated by multiplying the applicable amount of use by the Monthly Unit Rate. In no event will the Fee for any Billing Period be less than the Monthly Commitment, and Customer is responsible to pay Supplier the fees for the Monthly Commitment even if actual usage is less than the Monthly Commitment. Customer must pay Supplier’s invoices for the Fees in accordance with the applicable Order and the payment terms of the CTS even if a corresponding purchase order was not received from Customer. Notwithstanding anything in the CTS, Customer’s obligation to pay the Fees for the Subscription Term is non-cancellable.

**1.4 Purchase Orders.** Unless Supplier provides an exception to the purchase order requirement, Customer’s initial purchase order must specify an amount that is at least equal to the fee for the Monthly Commitment. That minimum amount of the purchase order is shown in the Order. Customer must pay all invoices for Fees, including, but not limited to, those that contain charges for Reserve Usage, regardless of whether or not such amounts exceed the amount of Customer’s purchase order(s) issued in connection with an Order. If Supplier reasonably determines that the amount of Customer’s purchase order will not cover the actual Fee, then Supplier will notify and discuss the situation with Customer. Upon agreement on the additional funds, Customer will promptly issue a related purchase order for that additional amount.

**2. Delivery, Site, Use, Risk, and Return.**

**2.1 Delivery; Site.** Supplier will ship the Products to the Site. The terms and process for shipment and delivery of the Products will be stated in the CTS. Before arrival of the Products and during the Subscription Term, Customer 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 for Supplier to access and support the Products, including for the purpose of usage metering under [Clause 3 \(Metering\)](#) of this Schedule. Customer will provide Supplier with the required Site information as necessary to enable shipment, delivery, and installation of the Products. The Products may not be moved from the Site without Supplier’s prior written consent. Customer grants or will obtain the right for Supplier’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 Supplier’s other rights set forth in this Schedule. In case the Equipment is installed at a Colocation Site, Customer guarantees that Supplier has the right to exercise its rights concerning the Products stated above. Customer agrees to hold Supplier harmless from and against any and all

disputes, claims or controversies (whether in contract, tort (including negligence) or otherwise) resulting from Customer locating the Products at a Colocation Site.

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

**2.3 Risk of Loss.** Customer is responsible for risk of loss, theft, damage or destruction of the Product(s) from the date of delivery until Asset Recovery. If any such loss occurs during the Subscription Term, Customer must promptly notify Supplier and continue to pay all Fees until the impacted Products are repaired or replaced at Customer's expense. Until such time as the Products are repaired or replaced, Supplier is relieved of its obligations to the extent such events impact Supplier's ability to perform.

#### **2.4 Use and Cloud Service Providers.**

**A. Use.** Customer may use the Products at the Site only during the Subscription Term for its internal business operations. Customer's rights to use the Products provided by Supplier during the Subscription Term are governed by the terms of this Schedule, 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](http://www.dell.com/eula) ("EULA") for the relevant Software product family and effective as of the date of the applicable Order apply. Customer agrees that its 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. Customer agrees that it 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 2.4A \(Use\)](#) of this Schedule or the [EULA](#), if Customer is a Cloud Service Provider partner in good standing in the Dell Technologies Partner Program, then Supplier grants Customer a nonexclusive and nontransferable right to use the Products, including any Software licensed by Supplier, to provide services to Customer's clients during the Subscription Term. Customer may allow clients to use the Products solely in order to access, process and manipulate the information, data and records of the client stored on, controlled by or accessed through the Products. Customer is responsible for any access to and use of Products by its clients as if such access was by Customer. Customer will not include any terms that contravene or supersede the provisions of this Agreement with its clients.

**2.5 Ownership and Removal of Customer Content.** All Customer Content remains the responsibility and property of Customer. The parties acknowledge and agree that Supplier does not handle, manage, access, process, or direct the use of Customer Content.

**2.6 Return of Products; Data Migration.** No later than seven (7) days after the end of the Subscription Term, Customer 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 Supplier for Asset Recovery. Unless Supplier has agreed in writing to perform data migration, Supplier is not responsible for removing Customer Content from the Products. If Customer has not deleted Customer Content from the Products, Supplier may delete it. At no time, will Supplier be responsible for, or bear any liability for any Customer Content that is not erased or removed from the Products before Asset Recovery. Customer will indemnify and defend Supplier for any claims relating to any Customer Content. 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 Supplier. Customer will continue to pay Fees until Customer has removed the Customer Content and Asset Recovery occurs.

**2.7 Increasing Monthly Commitment/Subscription Term.** During the Subscription Term, Customer may request to increase (i) the Monthly Commitment; or (ii) both the duration of the Subscription Term and the Monthly Commitment at the applicable Monthly Unit Rates stated in an Order by entering into an Order amendment. If the parties have mutually agreed on the increase, Supplier will send Customer an Order amendment for execution. Once signed by Supplier and the Customer, Supplier will invoice Customer based on the new pricing in the Order amendment. When extending the duration of the Subscription Term, the revised duration continues to be measured from the original starting date of the Subscription Term. For example, if the duration of Subscription Term was twenty-four (24) months and the Order amendment adds six (6) months, then the new Subscription Term is a total of thirty (30) months, beginning with the original Subscription Term. The revised Monthly Unit Rate commences on the first day of the first month following the month in which the Order amendment becomes effective.

**2.8 Month to Month Extension.** Prior to the expiration of the applicable Subscription Term, Customer must notify Supplier if Customer no longer wishes to use the Products. Supplier will continue to charge Customer and Customer agrees to pay applicable Fees to Supplier on a month-to-month basis until Customer has removed Customer Content and made the Products available to Dell for Asset Recovery and Asset Recovery occurs.

### **3. Metering.**

**3.1 Authorization to Meter; Subscription Usage.** During the Subscription Term, Supplier meters usage and collects telemetry data relating to the Products as further provided in the [Dell Telemetry Data Provision](#). Supplier 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. Supplier agrees to cooperate with Customer to minimize the impact of any Supplier on-site inspection to Customer's operations.

Customer agrees that:

- A. Supplier may store Measuring Equipment at the Site and to load Measuring Equipment onto Products;
- B. Supplier may have reasonable access to the Measuring Equipment at the Site;
- C. Customer 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. Customer will not disable, interfere in the operation of the Measuring Equipment, or copy or make any use of the Measuring Equipment whatsoever;
- E. Customer will protect the Measuring Equipment from disclosure to a third-party; and
- F. Customer must promptly install and make available for use all Products contained in each Order including all components that Supplier ships to Customer's Site (e.g., hard drives, etc.).

**3.2 Interruption of Metering Capabilities.** If, for more than seven (7) days of any calendar month, Supplier is unable to meter usage due to: (i) any action by anyone other than Supplier, or (ii) a failure of any communications equipment used for facilitating metering, then Customer's usage will be deemed to be equal to the usage during the previous Billing Period, and Customer must pay Fees for such deemed usage. If Supplier is unable to meter for a period of more than thirty (30) days due to (i) or (ii) or Customer otherwise fails to comply with [Clause 3.1 \(Authorization to Meter; Subscription Usage\)](#) of this Schedule, Customer's usage will be deemed to be equal to the maximum capacity of the Products and Customer must pay Fees for such deemed usage. If Supplier is unable to meter usage due to any failure which is caused by Supplier (e.g., failure of the Measuring Equipment), Customer's usage will be deemed to be equal to the previous Billing Period and Customer must pay Fees for such deemed usage. Supplier will promptly notify Customer of an inability to access the Products (electronically or physically, as applicable) and work cooperatively to reestablish access.

### **4. Warranty.**

**4.1 Limited Warranty.** During the initial Subscription Term, Supplier will exercise reasonable care to maintain a Product's ability to perform substantially in accordance with the corresponding standard documentation issued by Supplier for the applicable Product under normal usage and with regular recommended service and provide Services in a workmanlike manner. Customer will promptly provide Supplier 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. Supplier's entire liability and Customer's exclusive remedies for any failure to comply with this warranty are as follows: Supplier will make reasonable efforts to correct the non-conformance within a reasonable period of time, not to exceed 30 days from receipt of Customer's notice (the "**Cure Period**"); and (a) if Supplier is unable to correct the non-conformance during the Cure Period for reasons for which Supplier is responsible, then Supplier will replace the non-conforming Product or reperform the applicable Services; or (b) where such is not reasonably possible as determined by Supplier, the parties may terminate the applicable Order and refund Customer any pre-paid fees for the Order that will not be provided as a result of the termination. Clauses Equipment Warranty, Software Warranty, and Services Warranty of the CTS do not apply to Subscriptions provided under this Schedule.

**4.2 Additional Limitations and Disclaimer.** Supplier's warranty limitation under Clause Limitations of the CTS and warranty disclaimer under Clause Warranty Disclaimer of the CTS apply to Orders under this Schedule. **Supplier is not liable for delays, interruptions, service failures, or other problems inherent in use of the internet**

and electronic communications or for issues related to Colocation Sites. Customer agrees that Customer is not relying on delivery of future functionality, public comments or advertising by Supplier, or product roadmaps when placing Orders under this Schedule.

**4.3 Customer's Operating Environment Warranty.** Customer agrees 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). Customer agrees to keep the Products located at the Site free and clear from any liens or encumbrances. Customer must give immediate written notice of any attachment or judicial process affecting the Products or Supplier's ownership.

## **5. Supplemental Termination Provisions.**

**5.1 Events of Default.** The occurrence of any of the following constitute an "Event of Default": (i) Customer's failure to pay the fee when due under the Order; (ii) Customer's failure to perform any provision, covenant, condition or agreement contained in the CTS and this Schedule, which failure continues for 30 days from Supplier's notice thereof; or (iii) Customer Bankruptcy.

**5.2 Remedies.** If an Event of Default occurs, Supplier may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders; (ii) by notice in writing to Customer, declare immediately due and payable, and Customer is obliged to immediately pay (1) all outstanding unpaid Fees owed for all Orders plus, (2) as a mutually agreed pre-estimate of damages and not a penalty, all remaining Monthly Commitment fees payable under any Orders for the remainder of the Subscription Term (notwithstanding any early termination) for all then current Orders; and (iii) require Customer to make Products available for Asset Recovery at the Site as provided in [Clause 2.6 \(Return of Products; Data Migration\)](#) of this Schedule. The parties will reasonably cooperate for Supplier to recover the Products. Customer is responsible for the payment of the actual documented costs and reasonable attorney's fees incurred by Supplier in retaking possession of the Products and/or seeking to recover amounts due.

## **6. Indemnity.**

**6.1 Indemnification by Dell.** Supplier will: (i) defend Customer against any third party claim that Products or Support Services (but excluding Third Party Products, any Product provided for evaluation or without charge, and open source software) infringe that party's patent, copyright, or trade secret enforceable in the country where Customer purchased the Subscription from Supplier ("**Claim**"); and (ii) indemnify Customer by paying: (a) the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (b) the amounts stated in a written settlement negotiated and approved by Supplier. In addition, should any Product or Support Service become, or in Supplier's opinion be likely to become, the subject of such a Claim, Supplier may, at its expense and in its discretion: (1) obtain a right for Customer to continue using the affected Product or Support Service; (2) modify the affected Product or Support Service to make them non-infringing; (3) replace the affected Product or Support Service with non-infringing substitutes; (4) notify Customer to return the Product and discontinue Support Services, and, upon receipt of the Products, refund the remaining portion, of any, of any prepaid Fees. Except as otherwise provided by law, this [Clause 6.1 \(Indemnification by Dell\)](#) states Customer's exclusive remedies for any third party intellectual property claim relating to the Products or Support Services, and nothing in this Schedule or elsewhere will obligate Supplier to provide any greater indemnity.

**6.2 Limitations.** Supplier has no obligation under [Clause 6.1 \(Indemnification by Dell\)](#) of this Schedule: (i) if Customer is in material breach of this Schedule or the Order; or (ii) for any Claim resulting or arising from: (a) any combination, operation or use of a Product or Support Service with any other products, services, items, or technology, including Third Party Products and open source software; (b) use for a purpose or in a manner for which the Product or Support Service was not designed, or use after Supplier notifies Customer to cease such use due to a possible or pending Claim; (c) any modification to the Product made or Support Service performed by any person other than Supplier or its authorized representatives; (d) any modification made to the Product or Support Service performed by Supplier pursuant to instructions, designs, specifications or any other information provided to Supplier by or on behalf of Customer; (e) use of any version of a Product when an upgrade or newer iteration of the Product or Support Service made available by Supplier would have avoided the infringement; (f) services provided by Customer (including Claims seeking damages based on any revenue or value Customer derives from Customer's services); or (g) any data or information that Customer or a third party records on or utilizes in connection with the Product or Support Service including Customer Content.



**6.3 Mutual Indemnity.** Each party will 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 Schedule. "Claim" includes a third party claim under this [Clause 6.3 \(Mutual Indemnity\)](#).

**6.4 Indemnification Process.** Supplier's duty to defend and indemnify under this Schedule is contingent upon the Customer: (i) sending prompt written notice of the Claim to Supplier and taking reasonable steps to mitigate damages; (ii) granting to Supplier the sole right to control the defense and resolution of the Claim; and (iii) cooperating with Supplier in the defense and resolution of the Claim and in mitigating any damages.

## **7. Limitation on Liability.**

7.1 For the purpose of this Schedule only Clause Limitation on Direct Damages of the CTS is deleted in its entirety and replaced with the following:

**A. Limitation on Direct Damages.** Except for Customer's obligations to pay for Orders, Customer's obligation to pay for damage to or loss of the Products, Customer's violation of the restrictions on use of Products and Services or Supplier's or its Affiliates' intellectual property rights, a party's indemnity obligation as stated in this Schedule or the CTS, or where prohibited by applicable law, Supplier's (including its suppliers) and Customer's total liability arising out of any Dispute or other matter under the Schedule, 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 Customer paid to Supplier during the 12 months before the date that the matter or Dispute arose under the Order that is subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. Notwithstanding anything otherwise set forth above, Supplier (and its suppliers) has no liability for any direct damages resulting from Customer's use or attempted use of Third Party Software, Free Software or Development Tools (all defined in the [EULA](#)), or Third Party Products., or Third Party Products.

## **8. Definitions.**

The definitions used in the CTS are also used in this Schedule. The following definitions also apply:

**8.1 "Asset Recovery"** of a Product means Supplier taking re-possession of the Product.

**8.2 "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.

**8.3 "Billing Period"** means the period of time identified in an Order for which Supplier will invoice Customer for the Subscription.

**8.4 "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 during the Subscription Term.

**8.5 "Colocation Site"** means, where applicable, a third-party Site.

**8.6 "Customer Content"** means data (including all text, sound, video, and image files), software (including machine images), and other information that Customer, or Customer's end users store, use or make available to Supplier through use of the Subscription. Customer Content does not include System Data relating to Customer's use of the Products and which is described in the Dell Telemetry Data Provision.

**8.7 "Effective Date"** of this Schedule means the effective date listed on the Order.

**8.8 "Fee"** means the fees for the Monthly Commitment and Reserve Usage.

**8.9 "Measuring Equipment"** means the equipment, software and programming needed for Supplier to track usage levels and perform Support Services.

**8.10 “Monthly Commitment”** means the minimum amount of usage the Customer commits to paying for each month as specified in an Order regardless of the actual usage.

**8.11 “Offering Specific Terms”** means those terms available at [www.dell.com/offeringspecificterms](http://www.dell.com/offeringspecificterms).

**8.12 “Order”** means Customer’s order to Supplier for the Subscription that is confirmed by Supplier.

**8.13 “Reserve Usage”** means the amount of Customer’s flexible consumption usage above the Monthly Commitment.

**8.14 “Site”** means the location of the Product installation as identified on an Order.

**8.15 “Subscription”** means the use of a Product on a flexible consumption basis as measured by the description and metrics from the Order.

**8.16 “Subscription Term”** means the time period identified on an Order for use of the Products, and any Supplier approved extensions 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 Customer delays the installation process or if Customer’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.

**8.17 “Supplier”** or **“Dell”** means the Dell Technologies entity that enters into the Order.

**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	The first sentence of <a href="#">Clause 4.2 (Additional Limitations and Disclaimer)</a> is amended to read as follows: <b>“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 (4<sup>th</sup>), Supplier’s warranty limitation under Clause Limitations of the CTS and warranty disclaimer under Clause Warranty Disclaimer of the CTS apply to Orders under this Schedule.”</b>
Austria	The following sentence is added to the end of <a href="#">Clause 1.3 (Payment)</a> of this Schedule: “The Customer must pay any other fees arising from the nature of the contract.”
	The following sentence is added to the end of <a href="#">Clause 3.2 (Interruption of Metering Capabilities)</a> of this Schedule: “Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive provided the amount is not less than agreed for the Monthly Commitment.”
	The following sentence is added to the end of <a href="#">Clause 4.1 (Limited Warranty)</a> of this Schedule: “Right to reduction or suspension of payment for reasons described in Sec. 1096 Austrian Civil Code (ABGB) shall not apply.”
	<p><a href="#">Clause 5.2. (Remedies)</a> of this Schedule is replaced with the following:</p> <p><b>“5.2 Remedies.</b> If an Event of Default occurs, Supplier may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders for Events of Default 5.1(ii)-(iii); (ii) immediately terminate any or all Orders if Customer has not paid two consecutive payments or has missed payments for a not insignificant amount of the Fees; (iii) by notice in writing to Customer, declare immediately due and payable, and Customer is obliged to immediately pay (1) all outstanding unpaid Fees owed for all Orders plus, (2) as a mutually agreed pre-estimate of damages and not a penalty, all remaining Monthly Commitment fees payable under any Orders for the remainder of the Subscription Term (notwithstanding any early termination) for all then current Orders; and (iv) require Customer to make Products available for Asset Recovery at the Site as provided in <a href="#">Clause 2.6 (Return of Products; Data Migration)</a> of this Schedule. The parties will reasonably cooperate for Supplier to recover the Products. Customer is responsible for the payment of the actual documented costs and reasonable attorney’s fees</p>

	<p>incurred by Supplier in retaking possession of the Products and/or seeking to recover amounts due.”</p> <p><a href="#">Clause 7 (Limitation of Liability)</a> of this Schedule shall not apply. The Limitation of Liability in the CTS for Austria applies to this Schedule with the following adjustments. For this Schedule, Clause 8.1 of the Commercial Terms of Sale for Austria shall be amended by adding the following at the end of the Clause: “Nothing herein shall exclude or limit liability for: Customer’s obligation to pay for damage to or loss of the Products, Customer’s violation of the restrictions on use of Products and Services or Supplier’s or its Affiliates’ intellectual property rights, a party’s indemnity obligation as stated in the APEX Subscriptions Schedule to the CTS or the CTS.”</p>
<b>Brazil</b>	<p>The following new Clause 1.5 (Currency Exchange) is added to <a href="#">Clause 1 (Orders and Payment)</a> of this Schedule:</p> <p><b>“1.5 Currency Exchange.</b> During the Subscription Term if the exchange rate variation of the US dollar is equal to or greater than 10 percent (10%), Supplier may adjust the exchange rate in the next month’s invoice. The exchange rate variation is measured by a comparison of the exchange rate from the date of the Order and the exchange rate on the date of the applicable invoice. The exchange rates are measured from the exchange rates issued by the Central Bank of Brazil.“</p> <p>The following new clause 2.2.1 is added to <a href="#">Clause 2.2 (Title to Products)</a> of this Schedule:</p> <p><b>“2.2.1.</b> At the end of the Subscription Term (as established in each Order) it is mandatory to return the Product(s) to Supplier, as they are the property of Supplier and there is no purchase option for the Customer. The Subscription is restricted to Customer’s use of the Product during the Subscription Term at the Site as described in this Schedule and the Order.”</p> <p>Clauses 7.1.1, 7.1.2, and 7.1.4 of the CTS for Brazil are not applicable to this Schedule.</p>
<b>Canada</b>	<p>The following will be added as a new Clause 1.5 is added to <a href="#">Clause 1 (Orders and Payment)</a> of this Schedule:</p> <p><b>“1.5</b> The parties have required that this Schedule be drawn up in English and have also agreed that all notices or other documents required by or contemplated in this Schedule 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 érá aux termes des présentes ou découlant de l’une quelconque de ses dispositions érá préparé en anglais.”</p>
<b>Chile</b>	<p>Clauses 7.1.1, 7.1.2 and 7.1.4 of the CTS for Chile are not applicable to this Schedule.</p>
<b>China</b>	<p><a href="#">Clause 4.2. (Additional Limitations and Disclaimer)</a> of this Schedule is replaced with the following:</p> <p><b>“4.2 Additional Limitations and Disclaimer.</b> Supplier’s warranty limitation under <b>Clause Equipment Warranty Exclusions of the CTS and warranty disclaimer under Clause Equipment Warranty Disclaimer of the CTS apply to Orders under this Schedule. Supplier is not liable for delays, interruptions, service failures, or other problems inherent in use of the internet and electronic communications or for issues related to Colocation Sites. Customer agrees that Customer is not relying on delivery of future functionality, public comments or advertising by Supplier, or product roadmaps when placing Orders under this Schedule.”</b></p>
<b>Colombia</b>	<p>Clauses 7.1.1, 7.1.2 and 7.1.4 of the CTS for Colombia are not applicable to this Schedule.</p>
<b>Czech Republic</b>	<p>The reference to the Civil Code means Act No. 89/2012Coll., as amended.</p>

	<p>The following is added at the end of the preamble of this Schedule:</p> <p>“The parties shall act as independent contractors for all purposes under this Schedule. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other. The parties confirm that neither party hereto is to be considered a weaker party and that the basic conditions of this Schedule 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 Schedule. Further, the parties explicitly confirm that they are entrepreneurs and that they conclude this Schedule in the course of their business; accordingly, the provisions of Section 1793 and 1796 of the Civil Code shall therefore not apply to this Schedule.</p> <p>This Schedule(s) and each Order (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 Schedule 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 Schedule, unless such business practices are expressly agreed upon in this Schedule; 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 or conflict with this Schedule, shall be null and void and of no legal force or effect.</p> <p>The parties agree (to the fullest extent permitted by the laws of the Czech Republic) that Sections 558(2) (to the extent in which it stipulates that business practice prevails over non-mandatory provisions of law), 1740 (3), 1747, 1748, 1936 (1), 1950, 1951, 1952 (2), 1971, 1978 (2), 1980 and 1987 (2), of the Civil Code do not apply for the purposes of this Schedule. Considering the nature and circumstances of this Schedule the parties expressly agree and acknowledge that it is not their intention to enter into a lease agreement within the meaning of the Civil Code and accordingly Section 2201 of the Civil Code does not apply to this Schedule. Customer bears the risk of a change in circumstances within the meaning of Section 1765(2) of the Civil Code.”</p> <p>The following is added to the end of <a href="#">Clause 3.2 (Interruption of Metering Capabilities)</a> of this Schedule: “Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive, provided the amount is not less than agreed for the Monthly Commitment.”</p>
<p><b>France</b></p>	<p>The following is added at the end of the preamble of this Schedule:</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 Schedule 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 <a href="#">Clause 7.1A (Limitation on Direct Damages)</a> of this Schedule: “Unpredictability (Imprevison). It is expressly agreed that the Parties exclude application of article 1195 of French civil code.”</p>



<p><b>Germany</b></p>	<p>The following is added to the end of <a href="#">Clause 2.2 (Title to Products)</a> of this Schedule:</p> <p>“If the Products are inseparably combined or mixed with other items not belonging to the Supplier of which the Products become an essential part (“<i>wesentlicher Bestandteil</i>”), Supplier 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 (“<i>Hauptsache</i>”), the Customer and Supplier hereby agree that the Customer shall transfer co-ownership of this item to Supplier on a pro rata basis. Supplier hereby accepts this transfer.”</p>
	<p>The following is added to the end of <a href="#">Clause 3.2 (Interruption of Metering Capabilities)</a> of this Schedule:</p> <p>“Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive, provided the amount is not less than agreed for the Monthly Commitment.”</p>
	<p>The following sentence is added to the end of <a href="#">Clause 4.1(Limited Warranty)</a> of this Schedule: “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 (“<b>BGB</b>”) sections 536 and 536a are excluded, except in cases of unlimited liability according to Clause 8 of the CTS. Claims for unjust enrichment remain unaffected.”</p>
	<p><a href="#">Clause 5.2. (Remedies)</a> of this Schedule is replaced with the following:</p> <p><b>“5.2 Remedies.</b> If an Event of Default occurs, Supplier may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders for Events of Default 5.1(ii)-(iii); (ii) immediately terminate any or all Orders if Customer has not paid two consecutive payments or has missed payments for a not insignificant amount of the Fees); (iii) by notice in writing to Customer, declare immediately due and payable, and Customer is obliged to immediately pay (1) all outstanding unpaid Fees owed for all Orders plus, (2) as a mutually agreed pre-estimate of damages and not a penalty, all remaining Monthly Commitment fees payable under any Orders for the remainder of the Subscription Term (notwithstanding any early termination) for all then current Orders; and (iv) require Customer to make Products available for Asset Recovery at the Site as provided in <a href="#">Clause 2.6 (Return of Products; Data Migration)</a> of this Schedule. The parties will reasonably cooperate for Supplier to recover the Products. Customer is responsible for the payment of the actual documented costs and reasonable attorney’s fees incurred by Supplier in retaking possession of the Products and/or seeking to recover amounts due.”</p>
	<p><a href="#">Clause 7 (Limitation on Liability)</a> of this Schedule shall not apply. The Limitation of Liability in the CTS for Germany applies to this Schedule with the following adjustments. Clause 8.1 of the CTS for Germany shall be amended by adding the following at the end of the clause: “Nothing herein shall exclude or limit liability for: Customer’s obligation to pay for damage to or loss of the Products, Customer’s violation of the restrictions on use of Products and Services or Supplier’s or its Affiliates’ intellectual property rights, a party’s indemnity obligation as stated in the APEX Subscriptions Schedule to the Commercial Terms of Sale or the CTS.”</p>
<p><b>Hong Kong</b></p>	<p><a href="#">Clause 4.2 (Additional Limitations and Disclaimer)</a> of this Schedule is replaced with the following:</p> <p><b>“4.2 Additional Limitations and Disclaimer.</b> Supplier’s warranty limitation under Clause Warranty of the CTS apply to Orders under this Schedule. Supplier is not liable for delays, interruptions, service failures, or other problems inherent in use of the internet and electronic communications or for issues related to Colocation Sites. Customer agrees that Customer is not relying on delivery of future functionality, public comments or advertising by Supplier, or product roadmaps when placing Orders under this Schedule.”</p>
<p><b>Japan</b></p>	<p>The following sentences in <a href="#">Clause 1.4 (Purchase Orders)</a> of this Schedule are deleted: “If Dell reasonably determines that the amount of Customer’s purchase order will not cover the actual</p>

	<p>Fee, then Dell will notify and discuss the situation with Customer. Upon agreement on the additional funds, Customer will promptly issue a related purchase order for that additional amount.”</p>
<p><b>Kingdom of Saudi Arabia, Qatar, or United Arab Emirates</b></p>	<p>The third sentence in the preamble is deleted and replaced with the following: “The Schedule includes and incorporates by reference all of the following terms and conditions of: (i) the Commercial Terms of Sale (“CTS”) for the United Kingdom available at <a href="#">Dell Online Terms</a>, as amended by this Schedule but excluding any other schedules attached or incorporated thereto and (ii) the Order.”</p> <p>The following new Clause 7.2 (Dispute Resolution) is added to <a href="#">Clause 7 (Limitation on Liability)</a> of this Schedule:</p> <p><b>“7.2. Dispute Resolution.</b> In the event of a dispute between the parties, arising out of or in connection with this Schedule, any Order or its subject matter or formation (including non-contractual disputes or claims) (“Dispute”) then 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 (notwithstanding the place of jurisdiction identified in the CTS); (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 Schedule 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 new Clause 7.3 is added to <a href="#">Clause 7 (Limitation on Liability)</a> of this Schedule:</p> <p><b>“7.3 Language.</b> This Schedule and any Orders will be written and construed in the English language, and all questions of interpretation of this Schedule and any Orders shall be resolved by reference to the same as written in English. This Schedule and any Orders may not be translated into Arabic without the prior written consent of Dell. If the Schedule or any Orders are 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 Schedule and any Orders shall be in English. If, in either case, a version translated into the Arabic language is required, Customer will prepare the translation. If the translation of any communication into the Arabic language is required, Customer shall be responsible for any associated costs, including any cost that Dell incurs in order to verify that a translation provided by Customer is accurate. Customer acknowledges that any translation, whether commissioned or paid for by Dell or Customer, shall be the property of Dell and shall constitute a part of Dell’s confidential information.”</p>
<p><b>Mexico</b></p>	<p>Clauses 7.2.1, 7.2.2 and 7.2.4 of the CTS for Mexico are not applicable to this Schedule.</p>

<p><b>New Zealand</b></p>	<p>The following sentence is added to <a href="#">Clause 7.1A (Limitation on Direct Damages)</a> of this Schedule: “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.”</p> <p>The first sentence of <a href="#">Clause 4.2 (Additional Limitations and Disclaimer)</a> of this Schedule is amended to read as follows:</p> <p><b>“Subject to those conditions and warranties that cannot be lawfully excluded or modified, including without limitation under the Consumer Guarantees Act 1993, Supplier’s warranty limitation under Clause Limitations of the CTS and warranty disclaimer under Clause Warranty Disclaimer of the CTS apply to Orders under this Schedule.”</b></p>
<p><b>Poland</b></p>	<p>The following new Clause 2.9 is added to <a href="#">Clause 2 (Delivery, Site, Use, Risk, and Return)</a> to this Schedule:</p> <p><b>“2.9.</b> Supplier, 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.”</p> <p>The following is added as a new Clause 4.4 to <a href="#">Clause 4 (Warranty)</a> to this Schedule:</p> <p><b>“4.4.</b> The parties 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.”</p>
<p><b>Switzerland</b></p>	<p>The following is added to the end of <a href="#">Clause 3.2 (Interruption of Metering Capabilities)</a> of this Schedule: “Notwithstanding the above, to the extent Customer is able to prove that the actual usage was less than the amount invoiced for the respective Billing Period, such use shall be decisive, provided the amount is not less than agreed for the Monthly Commitment.”</p> <p>The following sentence is added to the end of <a href="#">Clause 4.1 (Limited Warranty)</a> of this Schedule: “Section 259a et seq. of the Swiss Code of Obligations shall not apply.”</p> <p>The <a href="#">Clause 7 (Limitation on Liability)</a> of this Schedule shall not apply. The Limitation of Liability in the CTS for Switzerland applies to this Schedule with the following adjustments to Clause 8.1 of the CTS for Switzerland. Such Clause is amended by adding the following at the end of the Clause: “Nothing herein shall exclude or limit liability for: Customer’s obligation to pay for damage to or loss of the Products, Customer’s violation of the restrictions on use of Products and Services or Supplier’s or its Affiliates’ intellectual property rights, a party’s indemnity obligation as stated in the APEX Subscriptions Schedule to the CTS or the CTS.”</p>

UK	<p>Clause 7.1 of <a href="#">Clause 7 (Limitation on Liability)</a> is revised to read:</p> <p>“For the purpose of this Schedule only the Clause “Liability Cap” of the CTS is deleted in its entirety and replaced with the following:</p> <p><b>‘Liability Cap. Except for Customer’s obligations to pay for Orders, Customer’s obligation to pay for damage to or loss of the Products, Customer’s violation of the restrictions on use of Products and Services or Supplier’s or its Affiliates’ intellectual property rights, a party’s indemnity obligation as stated in this Schedule or the CTS, or where prohibited by applicable law, Supplier’s (including its suppliers) and Customer’s total liability arising out of any Dispute or other matter under the Schedule, 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 Customer paid to Supplier during the 12 months before the date that the matter or Dispute (as defined below) arose under the Order that is subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. Notwithstanding anything otherwise set forth above, Supplier (and its suppliers) has no liability for any direct damages resulting from Customer’s use or attempted use of Third Party Software, Free Software or Development Tools (all defined in the <a href="#">EULA</a>), or Third Party Products.’”</b></p>
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