

End User License Agreement

APPLICABLE TO THE USE OF LICENSED SOFTWARE BY THE U.S. GOVERNMENT

This End User License Agreement (“EULA”) is between the U.S. Government agency identified on the purchase order that will procure for use the Software (“You”, “Your” or “Government”) and the Prime Contractor acting on behalf of the applicable entity identified in the “Licensor Table” located at www.dell.com/swlicensortable (“Licensor” or “Dell”). All references to Licensor herein shall be deemed references to the Prime Contractor. For avoidance of doubt, nothing herein shall establish privity of contract between the applicable entity identified in the “Licensor Table” and the Government.

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

1. License Grant.

1.1. Right to Use. Subject to your full compliance with the terms and conditions of this EULA, Licensor grants to You a personal, non-exclusive license to use the Software during the period stated in the applicable Order (if no period is specified, You may use the Software perpetually). This license grant allows you to use the Software in connection with the internal business operations of Your entity. In addition, You may make a reasonable number of copies of the Software solely as needed for backup or archival purposes. If additional license terms for certain non-Dell software apply to Your purchase, it is the Government’s responsibility to confirm the EULA for said software is acceptable. Additional terms for Software that is licensed to You for a limited time, i.e. “Subscription Software” are located at www.dell.com/subscription_terms (“Subscription Terms”).

1.2. Third Party Use. You may allow Your contractors (each, a “Permitted Third Party”) to use the Software solely for the purpose of providing services to You, provided that such use is in compliance with this EULA. You are liable for any breach of this EULA by any Permitted Third Party.

1.3. Rights Reserved. The Software is licensed and not sold. Except for the license expressly granted in this EULA, Licensor, on behalf of itself and its affiliates and suppliers, retains all rights in and to the Software and in all related materials (“Works”). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereafter developed. Any use of Works other than as expressly set forth herein is strictly prohibited.

1.4. Ownership. Licensor, on behalf of itself and its affiliates, retains ownership of the Works and all related intellectual property rights. If Software is provided to You on removable media (e.g., CD, DVD or USB drive), You may own the media on which the Software is recorded.

2. License Conditions.

2.1. You and Your Permitted Third Parties must do the following:

- A. Run the Software only on the hardware for which it was intended to operate, when applicable;
- B. Use License Keys (if applicable) only from Licensor or an authorized Dell License Key provider;
- C. Treat the Software as Dell confidential information;
- D. Use the Software only on as many computers or devices that You purchased, in such configurations permitted by Dell or Licensor, and/or in accordance with the applicable unit of measure, each as may be specified on Your Order. For Software licensed via a unit of measure, the terms and descriptions of each unit of measure are located at www.dell.com/UOM_terms ("UOM Terms");
- E. Abide by the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions. Under these laws, the Software must not be used, sold, leased, exported, imported, re-exported or transferred except with Dell's prior written authorization and in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. You represent and warrant that You are not the subject or target of, and that You are not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of economic sanctions of the United States, European Union or other applicable jurisdictions; and

2.2. You must not, and must not allow Your Permitted Third Parties, to do the following:

- A. Modify or remove any proprietary notices or markings on or in the Software;
- B. Transfer License Keys to any other person or entity;
- C. Download Updates from Licensor or an authorized provider unless You have a valid support agreement;
- D. Install Updates on Enterprise Products (e.g., server, networking, storage, integrated solutions, and data protection appliances) that have gone end of service life unless Licensor otherwise agrees in writing;
- E. Install and operate counterfeit versions of Software (i.e. software provided by anyone other than Dell or an authorized representative of Dell) on Dell hardware;
- F. Violate or circumvent any technological use restrictions in the Software;
- G. Sell, loan, rent, lease, sublicense, distribute or encumber (e.g., by lien, security interest, etc.) the Software;
- H. Use any trademarks or service marks of Licensor, its affiliates or suppliers;
- I. Provide access to the Software or allow use by any third party, other than Permitted Third Parties, without Licensor's prior written consent;
- J. Copy (other than allowed in this EULA), republish, upload, post or transmit the Software in any way;
- K. Modify or create derivative works based upon the Software, or decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part, except to the extent permitted by applicable mandatory law (meaning laws that the parties cannot change by contract);
- L. Attack or attempt to undermine the security, integrity, authentication or intended operation of the Software;
- M. Use the Software on a service bureau, rental or managed services basis;

- N. Create or permit others to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server, wireless or Internet-based device;
- O. Use the Software to create a competitive offering;
- P. Use the Software to create other software, products or technologies unless the Software contains Development Tools as described in Section 7;
- Q. Share or publish the results of any benchmarking of the Software without Dell's prior written consent;
- R. Use the Software for high risk activities, including without limitation online control systems, or use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, weapons systems or in any other device or system in which function or malfunction of the Software could result in death, personal injury or physical or environmental damage;
- S. Use the Software for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or support of missile projects, or chemical or biological weapons; and
- T. Assign this EULA, or any right or obligation under this EULA, or delegate any performance, without Dell's prior written consent, unless You are transferring the Software in accordance with the Transferability Section 3 below. Even if Dell consents to an assignment, You remain responsible for all obligations under this EULA that You incurred prior to the effective date of the assignment.

3. Transferability. You may not transfer the Software to another person or entity without the express written permission of Dell, unless allowed by applicable law stating that transfer may not be restricted (note that a transfer fee may be charged by Dell).

4. Compliance Verification. You must: (a) maintain and use systems and procedures that allow You to accurately track Your use of the Software; (b) certify to Dell in writing, at Dell's request, that Your use of Software fully complies with this EULA, indicating the number of Software licenses deployed at that time; and (c) cooperate fully and timely with Dell and its auditors if Dell notifies You that it will conduct an audit to confirm Your compliance with this EULA. Any such audit will be conducted during normal business hours. If Dell determines that You have over-deployed Software, Licensor will send an invoice for the amount exceeded at the then-current list price in accordance with an existing US Government GWAC IDIQ contract currently in effect, e.g. the Dell GSA MAS Contract Pricelist. If the Government exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount.

Any audit shall be scheduled at a mutually acceptable time and shall be subject to Your security clearance requirements and systems access requirements. Any dispute regarding this compliance verification will be subject to the Contract Disputes Act.

5. Third Party Software. "Third Party Software" is software, including open source software, that is contained in or provided with the Software and is licensed by a third party under its own terms of use ("Third Party Terms"). Third Party Software is governed solely by the applicable Third Party Terms and not by this EULA. Third Party Terms may be provided with the Third Party Software. Ordering Activities may request copies of any Third Party Software terms for acceptance into any specific order. For certain open source software, the applicable Third Party Terms may entitle You to obtain the corresponding source files. You may find corresponding source files for such open source software at [//opensource.dell.com/](https://opensource.dell.com/) or in the "About" or "Read Me" file of Software, or other locations that Licensor may specify.

6. **Free Software.** “Free Software” means Software that is provided to You without additional charge (e.g., scripts that enable customer installation; code that enables You to monitor Your use of Dell products; etc.). You may only use Free Software on or with equipment or in the operating environments for which Dell has designed that Free Software to operate. Licensor may terminate any license to Free Software at any time in its sole discretion. You may not transfer Free Software to anyone else.

7. **Development Tools.** If the Software includes development tools, such as scripting tools, APIs or sample scripts (collectively “Development Tools”), and unless there is a separate agreement between You and Dell or Licensor for the Development Tools, You may use such Development Tools to create new scripts and code for the purpose of customizing Your use of the Software (within the parameters set forth in this EULA and in the Development Tools themselves) and for no other purpose.

8. **Evaluation Software.** This EULA does not license use of Software for evaluation purposes (“Evaluation Software”) except to the extent these terms may be invoked by the separate license terms and conditions accompanying that Evaluation Software.

9. **Support Services Not Included.** If You purchase maintenance and support for Software, such services are identified in Your Order and will be provided under a separate services agreement.

10. **Termination.** You may terminate this EULA: (a) at any time for convenience in accordance with FAR 52.212-4(l); or (b) for a material breach of this EULA by Licensor in accordance with FAR 52.212-4(m). For Subscription Software, this EULA automatically terminates at the end of Your subscription period unless You renew Your rights. Licensor may terminate this EULA if such remedy is granted after conclusion of the Contract Disputes Act dispute resolution process or if such remedy is otherwise available to Licensor under United States federal law. When this EULA terminates, all licenses granted automatically terminate and You must immediately cease use of the Software and return or destroy all copies of the Software. If You terminate a license for Subscription Software due to an uncured material breach of this EULA by Licensor, Licensor will refund to You the unused pro-rated portion of any license fees that You pre-paid for such Subscription Software. You must immediately cease use of the Software and return or destroy all copies of the Software. Rights and obligations under Sections of this EULA that, by their nature should survive, will survive termination, as well as obligations for payment.

11. **Limited Warranty.** Licensor warrants that the Software will, for a period of sixty (60) days from the date of your receipt of the Software license, perform substantially in accordance with Software written materials accompanying it. **Except as otherwise offered by Dell, the Software is provided by Licensor “As Is” without any warranties or conditions. To the maximum extent permitted by applicable law, Licensor, on behalf of itself and its affiliates and suppliers: (a) makes no express warranties or conditions related to the Software; (b) disclaims all implied warranties and conditions related to the Software, including merchantability, fitness for a particular purpose, title, and non-infringement; and (c) disclaims any warranty or condition arising by statute, operation of law, course of dealing or performance, or usage of trade. Licensor does not warrant uninterrupted or error-free operation of the Software.**

12. **Limitation of Liability.**

12.1. **Limitations on Damages.** The limitations, exclusions and disclaimers stated below apply to all disputes, claims or controversies (whether in contract, tort or otherwise) between You and Licensor or Dell related to or arising out of: (a) this EULA; (b) the breach, termination or validity of this EULA; or (c) any Orders (each, a “Dispute”) unless You have a Pre-Existing Agreement with Dell that applies to the Software and contains its own Limitation of Liability clause (in which case, the Limitation of Liability

clause in the Pre-Existing Agreement shall apply). The terms of this Section are agreed allocations of risk constituting part of the consideration for Licensor's licensing of Software to You and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities. If applicable law prohibits any portion of the limits on liability stated below, the parties agree that such limitation will be automatically modified, but only to the extent required to make the limitation compliant with applicable law. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's gross negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

A. Limitation on Direct Damages. Except for Your obligation to pay for the Software, or for Your violation of the License Grant and License Conditions set forth herein or of Licensor's or Dell's intellectual property rights, the total liability of You and Licensor (including Licensor's affiliates and suppliers) arising out of any Dispute is limited to the amount You paid for the Software that is the subject of the Dispute. Notwithstanding anything otherwise set forth above, Licensor and its affiliates have no liability for any direct damages resulting from Your use or attempted use of Third Party Software, Free Software or Development Tools.

B. Disclaimer of Certain Other Damages. Except for Your obligation to pay for the Software, or for Your violation of the License Grant and License Conditions set forth herein or of Licensor's or Dell's intellectual property rights, neither You nor Licensor (including Licensor's affiliates and suppliers) shall have any liability under this EULA for special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use or procurement of substitute products or services.

12.2. Regular Backups. You are solely responsible for Your data. You must back up Your data before Licensor or a third party performs any remedial, upgrade or other work on Your production systems. You acknowledge that it is a best practice to have more than one back up copy of Your data. If applicable law prohibits exclusion of liability for lost data, then Licensor will only be liable for the cost of the typical effort to recover the lost data from Your last available back up.

12.3. Limitation Period. Except as stated in this Section, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within six (6) years after the cause of action accrues.

13. Additional Terms.

13.1. Notices. The parties will provide all notices under this EULA in writing. Unless provided otherwise in an Order, You must provide notices to the local Dell entity in Your Order, or, if Your Order is not with a Dell entity, by e-mail to Dell.Legal.Notices@dell.com.

13.2. Waiver and Severability. Failure to enforce a provision of this EULA will not constitute a waiver of that or any other provision of this EULA. If a court of competent jurisdiction determines that any part of this EULA or document that incorporates this EULA by reference is unenforceable, that ruling will not affect the validity of all remaining parts.

13.3. Modifications. This EULA may only be modified in writing signed by both parties; provided, however, that Licensor may, in its sole discretion, update the non-material terms and conditions of the Licensor Table, the UOM Terms and the Subscription Terms at any time. Any changes that Licensor makes to the Licensor Table, the UOM Terms or the Subscription Terms will only apply to Orders that occur after Licensor posts those changes online.

13.4. Governing Law. This EULA and any Dispute is governed by the Federal laws of the United States.

13.5. Dispute Resolution. All claims arising out of or relating to this EULA shall be resolved in accordance with the Contract Disputes Act of 1978, as amended.

13.6. Entire Agreement. You acknowledge that You have read this EULA, that You understand it, that You agree to be bound by its terms, and that this EULA, together with the underlying sales contract and Purchase Order(s), is the complete and exclusive statement of the agreement between You and Licensor regarding Your use of the Software. The pre-printed terms of Your purchase order or any other document that is not issued or signed by Licensor or Dell do not apply to Software, but a negotiated Government Purchase Order containing conflicting software license terms, signed by both parties, shall supersede the terms of the Agreement. You represent that You did not rely on any representations or statements that do not appear in this EULA when accepting this EULA.