



## **APEX Subscriptions Schedule (Reseller – U.S. Public) Last Updated: May 6, 2024**

This Dell APEX Subscriptions Schedule (Reseller) (“**Schedule**”) applies to Reseller’s order from Distributor of Products on a flexible consumption basis, as described in one or more separately executed Orders (also referred to as “**APEX Subscriptions Order (Reseller)**”). This Schedule is effective on the Effective Date provided in the Order.

In this Schedule, “**Dell**” refers to the provider of Dell APEX Subscriptions. “**Ingram Micro**” refers to the authorized distributor in the Dell Technologies Partner Program. “**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. Reseller must be authorized to resell, either directly or indirectly, to U.S. Public End Users. In this Schedule, “**U.S. Public End User(s)**” refers to either (a) any department, agency, division or office of the United States federal government or (b) any U.S. state or local government (i) department, agency, division, or office, (ii) public or higher education institution, or (iii) healthcare entity.

This Schedule is governed by the written agreement between you and Ingram Micro for the resale of Dell Products and Services (including terms governing sales to U.S. Public End Users) or if there is no such agreement, Ingram Micro’s standard terms and conditions of sale apply available at [Sales terms and conditions | Ingram Micro](#) (in either case “**Reseller Agreement**”).

Capitalized terms used in this Schedule and not defined below in Section 6 (Definitions) have the meanings given to such terms in the Agreement.

### **1. Ordering, Payment, Metering, Amendments, Increases and Extensions.**

**1.1. Ordering.** Reseller may place a Subscription order by signing a specific Order and issuing a purchase order to Ingram Micro that references such Order (unless Ingram Micro grants an exception to this purchase order requirement). Orders are subject to Ingram Micro’s acceptance. Unless Ingram Micro provides an exception to the purchase order requirement, Reseller’s initial purchase order must specify an amount that is at least equal to the fee for the Monthly Commitment multiplied by the number of months in the Subscription Term. If Ingram Micro reasonably determines that the amount of Partner’s original purchase order will not cover the actual Fee due to Reserve Usage, then Ingram Micro will notify and discuss the situation with Reseller. Upon agreement on the additional funds, Reseller shall promptly issue a related purchase order for that additional amount. The parties agree the terms and conditions of each Order are Confidential Information.

**1.2. Resale Process (Two Tier).** Ingram Micro authorizes Reseller to resell the Subscription listed in the applicable Order as a two-tier transaction directly from Dell to Ingram Micro to Reseller to U.S. Public End User. By submitting an Order to Ingram Micro, Reseller confirms that it has delivered the End User Documents with Reseller’s quote to U.S. Public End User and that Reseller has confirmed to Ingram Micro that Reseller has included the End User Documents in accordance with the requirements in section 1.3 (End User Documents). Reseller will prohibit U.S. Public End User from agreeing to any terms that contravene or supersede the provisions of the Schedule and/or the End User Documents. Reseller will promptly notify Ingram Micro of any breach of the End User Documents that becomes known to Reseller.

**1.3. End User Documents.** Reseller must enter into a contract with the U.S. Public End User that results in the U.S. Public End User’s binding agreement to the End User Documents. Reseller shall defend and indemnify Ingram Micro from and against third party claims resulting from Reseller’s failure to ensure U.S. Public End User’s binding agreement to End User Documents, but only to the extent any such third party claim would not have arisen but for such failure by Reseller. Ingram Micro will process the Order after Reseller confirms to Ingram Micro Public End User’s agreement to the End User Documents. Reseller is not authorized to change the End User Documents without Dell’s written approval. Reseller acknowledges that U.S. Public End User’s failure to comply with the End User Documents could, among other things, limit Dell’s ability to provide the Subscription, including Services, support capabilities, response times or other service levels.

**1.4. Security Interest.** In order to secure Ingram Micro’s collection under this Schedule, Reseller hereby

grants Ingram Micro a continuing security interest in all of its right, title and interest in the receivables arising from or relating to the End User Documents, and Reseller further agrees and consents to Ingram Micro filing a financing statement (including amendments thereto) with respect to the collateralized security interest in a form appropriate under the UCC of the relevant jurisdiction. Reseller further acknowledges and agrees that Ingram Micro requires and Reseller covenants that it will ensure that Ingram Micro obtains and intercreditor subordination or similar agreement with any and all other Reseller lenders to ensure Ingram Micro has first priority or any such collateral and related UCC filings.

**1.5. Payment.** Reseller must pay all fees for use of the Subscription including fees for usage and other offerings according to the rates and pricing stated in the applicable Order. In no event will the Fee for any Billing Period be less than the Monthly Commitment, and Reseller is responsible to pay Ingram Micro the fees for the Monthly Commitment even if actual usage is less than the Monthly Commitment. Reseller must pay Ingram Micro's invoices for the Fees in accordance with the applicable Order and the payment terms of the Agreement. Ingram Micro may invoice Reseller for Fees even if a corresponding purchase order was not received from Reseller. Notwithstanding anything in the Agreement, Reseller's obligation to pay the Fees for the Subscription Term is non-cancellable.

**1.6. Interruption of Metering Capabilities.** During the Subscription Term, Dell meters usage and collects telemetry data relating to the Products as further provided in the [Dell Telemetry Data Provision](#). 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 usage is deemed to be equal to the usage during the previous Billing Period and Reseller must pay Fees for such deemed usage. If Dell is unable to meter for a period of more than thirty (30) days due to (i) or (ii) or U.S. Public End User's failure to comply with the Clause Authorization to Meter; Subscription Usage in the APEX Subscription Terms for Partner End Users – U.S. Public, usage is deemed to be equal to the maximum capacity of the Products and Reseller must pay Fees for such deemed usage. If Dell is unable to meter usage due to any failure which is caused by Dell (e.g. failure of the Measuring Equipment), the usage is deemed to be equal to the usage during the previous Billing Period and Reseller must pay Fees for such deemed usage. Dell will promptly notify Reseller of an inability to access the Products (electronically or physically, as applicable) and work cooperatively to reestablish access.

**1.7. Increasing Monthly Commitment/Subscription Term.** During the Subscription Term, Reseller 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 the Order by entering into an Order amendment. If the parties have mutually agreed on the increase, Ingram Micro will send the Reseller an amended Order for execution. Once signed by Ingram Micro and the Reseller, Ingram Micro will invoice Reseller based on the new pricing in the amended Order. 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 the Subscription Term was twenty-four (24) months and the 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.

**1.8. Month to Month Extensions.** Prior to the expiration of the applicable Subscription Term, Reseller must notify Ingram Micro if U.S. Public End User no longer wishes to use the Products. Reseller will continue to charge U.S. Public End User and pay applicable Fees to Ingram Micro on a month-to-month basis until U.S. Public End User has removed Customer Content and made the Products available to Dell for Asset Recovery and Asset Recovery occurs.

## **2. Delivery, Risk of Loss, Title, Third Party Products, Use, Warranty, Return and Retention.**

**2.1. Delivery.** Dell will deliver the Products to the Site stated in the Order. Reseller cannot give U.S. Public End User permission to move the Products from the Site without Dell's written consent.

**2.2 Risk of Loss.** Notwithstanding 48 CFR 52.212-4(j) or equivalent requirements mandated by statute, Reseller is responsible for risk of loss, theft, damage or destruction of the Product(s) and any licensed Software, from the date of delivery until Asset Recovery. If any such loss occurs during the Subscription

Term, Reseller shall promptly notify Ingram Micro and shall continue to pay all Fees to Ingram Micro until the impacted Products are repaired or replaced at Your expense. Until such time as the Products are repaired or replaced, Dell shall be relieved of its obligations to perform to the extent such events impact Dell's ability to perform.

**2.3. Title.** Reseller agrees that Dell retains title to Products at all times notwithstanding the manner in which such may be attached or affixed to realty. Reseller must give immediate written notice of any attachment or judicial process affecting the Products or Dell's ownership.

**2.4. Third Party Products.** Third Party Products offered hereunder are subject to the standard terms, license, services, warranty, indemnity and support terms of the third party manufacturer/supplier (or applicable direct agreement between U.S. Public End User and such manufacturer/supplier). Reseller agrees to such terms and that Dell is not responsible for fulfillment of any Third Party Product warranty or for problems attributable to the use of Third Party Products. **Any warranty, damages or indemnity claims against Dell in relation to Third Party Products are excluded, and Dell makes no express warranties, and disclaims 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 at <http://www.dell.com/offeringspecificterms>.

**2.5. Use.** Reseller is authorized to resell Subscriptions and the right to receive the identified Services only during the Subscription Term. Reseller may access the Products only as necessary to exercise its right to resell as described herein and in the applicable Order.

**2.6. Warranty.** Dell's limited warranty for the Products and the Subscription is to the U.S. Public End User only and is provided in the APEX Subscriptions Terms for Partner End Users – U.S. Public. If Dell is unable, in its sole discretion to timely cure a non-conformance with the warranty in the APEX Subscriptions Terms for Partner End Users – U.S. Public, Partner or the U.S. Public End User may terminate the applicable Order and End User Subscription Form, and Reseller may seek from Ingram Micro a refund of any fees Reseller prepaid to Ingram Micro for the Subscription that will not be provided as a result of the termination. Refund of any fees prepaid by the U.S. Public End User to the Reseller or Ingram Micro, as applicable, will be as mutually agreed between the Reseller (or Ingram Micro, as applicable) and U.S. Public End User. **To the maximum extent permitted by applicable law, Dell: (a) makes no other express warranties; (b) disclaims all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (c) disclaims any warranty arising by statute, operation of law, course of dealing or performance or usage of trade. Dell does not warrant that the use of Subscription will be uninterrupted or error-free. Dell is not liable for delays, interruptions, service failures, or other problems inherent in use of the internet and electronic communications.**

**2.7. Return of Products; Customer Content.** Asset Recovery must occur no later than seven (7) days after the end of the Subscription Term unless another date has been agreed to by Dell. Unless Dell has agreed in writing to perform data migration, Dell is not responsible for removing Customer Content from the Products. If the U.S. Public End User has 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 regarding, any Customer Content that is not erased or removed from Products before Asset Recovery. Reseller will reimburse Ingram Micro for the reasonable value of any Products not returned or that are returned in a damaged condition.

### **3. Termination, Events of Default; and Remedies.**

**3.1. Termination.** Parties may terminate the Agreement or this Schedule in accordance with the Agreement, however such termination does not terminate any Order(s) already in effect at the time of such termination, and does not impact any renewal or extension provisions of such Order(s). Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment and liability, survives.

**3.2. Order Termination.** Reseller is permitted, subject to the conditions contained herein, to terminate an Order under, and only under, any of the following circumstances: (a) the U.S. Public End User terminates the End User Prime Contract portion covering this Subscription pursuant to a termination for convenience pursuant to 48 CFR 52.249, 48 CFR 52.212-4, or other U.S. Public End User-mandated termination for convenience statutory requirement ("**Termination for Convenience**"); (b) the U.S. Public End User

terminates the End User Prime Contract because of a non-availability of funds for the next fiscal year and funds are not made available that are sufficient for its payment obligations under the Order or for functionally similar equipment (“**Non-Appropriation**”); or (c) the U.S. Public End User does not exercise any renewal of the End User Prime Contract due to a determination by the U.S. Public End User that renewal is not in the best interest of the U.S. Public End User (“**Non-Renewal**”). Each of (a), (b), and (c) is hereinafter referred to as a “**Termination Event**”.

**3.3. Order Termination Requirements.** No termination of an Order pursuant to a Termination Event shall be effective until Reseller fulfills all of the following conditions:

- A.** Reseller must promptly notify Ingram Micro in writing of the occurrence of and the type of Termination Event.
- B.** Reseller must promptly provide Ingram Micro with true copies, if available, of all documentation relating to the Termination Event, including but not limited to, all notices regarding the termination or non-renewal of the End User Prime Contract, as well as any and all notices and correspondence related to performance deficiencies or defaults by the U.S. Public End User under the End User Prime Contract or any U.S. Public End User Order.
- C.** Reseller must use best efforts to determine whether the U.S. Public End User intends to replace Reseller with a new contractor for the Subscription previously provided under the terminated End User Prime Contract, and Reseller must promptly inform Ingram Micro in writing of such determination.
- D.** The effective date of the termination of the Order, pursuant to a Termination Event, shall be the day after the last day that the End User Prime Contract is in effect (“**Termination Date**”), and upon the Termination Date, Reseller is responsible for Asset Recovery in accordance with this Schedule and must pursue any claims against the U.S. Public End User as required by Dell or require Reseller to pursue such claims, including any claim for late interest. Reseller agrees to cooperate in Dell’s efforts to enforce the terms of End User Documents against U.S. Public End User. If requested by Dell, Reseller will bring in its own name a claim, appeal, or other enforcement action on Dell’s behalf (“**Sponsored Claim**”). Ingram Micro agrees to require Reseller to agree to bring a Sponsored Claim upon Dell’s reasonable request. Dell agrees to present any request for a Sponsored Claim to the Reseller within a reasonable time to allow Reseller to review, comment and file the Sponsored Claim. In the event Reseller refuses to submit or continue the pursuit of a reasonable Sponsored Claim and U.S. Public End User refuses to provide Dell with standing to pursue a claim in its own name due to no privity of contract between U.S. Public End User and Dell, Reseller agrees to pay the full amount of such claim to Ingram Micro within ten (10) business days from demand.

**3.4. Essential Use/Intent.** Reseller agrees that early termination of the applicable Order is highly unlikely because the acquisition, quantity and use of the Subscription are deemed to be essential to U.S. Public End User’s operations and agrees to require U.S. Public End User to complete an Essential Use Certificate if required by Dell. Reseller agrees that it will take all reasonable affirmative steps to ensure options are timely exercised under the End User Prime Contract so that all payments during the Subscription Term are obtained.

**3.5. Events of Default.** The following are deemed “**Events of Default**” under this Schedule: (i) Reseller fails to pay the Fees within thirty (30) days of its due date; (ii) U.S. Public End User commits a breach of the End User Subscription Form that is not cured within thirty (30) days of written notice; (iii) Reseller commits a breach of this Schedule or any Order that is not cured within thirty (30) days of written notice; or (iv) as permitted by applicable law, Reseller Bankruptcy.

**3.6. Remedies.** If an Event of Default occurs, to the maximum extent permitted by applicable law, Ingram Micro may exercise any one or more of the following remedies: (i) immediately terminate any or all Orders; (ii) declare immediately due and payable any or all Orders, and Reseller is obliged to pay immediately, fees for the Monthly Commitment for the remainder of the Subscription Term along with any past due amounts, or (iii) Dell may enter the Site to recover the Products for any or all Orders, provided the parties shall reasonably cooperate to enable U.S. Public End User to migrate and erase its Customer Content; Reseller must ensure that the End User Prime Contract provides for U.S. Public End User’s consent to Dell’s recovery of Products. Reseller is responsible for the payment of the actual documented costs and

reasonable attorney's fees incurred by Dell or Ingram Micro in retaking possession of the Products and/or seeking to recover amounts due, including costs for erasure and destruction of Customer Content, where applicable.

#### **4. Assignment and Change in Control.**

The assignment or transfer, whether by operation of law or otherwise, of a party's right(s) or delegation of obligation(s) under this Schedule and any Orders, requires the consent of the other party. However, such consent is not required of Reseller if the assignment or transfer involves assignment by Dell or its assignee of the right to receive payments and related rights due by Reseller.

#### **5. Entire Agreement; Order of Precedence.**

The Agreement, its Schedules, and the Order(s) comprise the complete statement of the agreement of the parties with regard to this subject matter. These may be modified only in writing signed by both parties. In the case of any conflict or inconsistency between the terms of this Schedule, an Order and the Agreement, the order of precedence is as follows: (1) Order, (2) this Schedule, and (3) the Agreement.

#### **6. Definitions.**

**6.1 "APEX Subscriptions End User Form (U.S. Public)" or "End User Subscription Form"** means the form provided to U.S. Public End User listing the Products and Services included in the Subscription and linking the Dell APEX Subscription Terms for Partner End Users – U.S. Public.

**6.2 "APEX Subscriptions Terms for Partner End Users – U.S. Public"** means the terms and conditions from Dell that apply to an U.S. Public End User's access to and use of the Subscription. They can be found at [https://i.dell.com/sites/csdocuments/Legal\\_Docs/en/us/apex-subscriptions-terms-partner-end-users-us-public.pdf](https://i.dell.com/sites/csdocuments/Legal_Docs/en/us/apex-subscriptions-terms-partner-end-users-us-public.pdf) or provided upon request. These terms and conditions may be updated from time to time.

**6.3. "Asset Recovery"** of a Product means Dell taking possession of the Product.

**6.4. "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.

**6.5. "Billing Period"** means the period of time identified in an Order for which Ingram Micro will invoice Reseller for the Subscription.

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

**6.7. "End User Prime Contract"** means the agreement (including any applicable purchase order, task order or delivery order) between the Reseller and the U.S. Public End User for the Subscription described in an applicable Order (subcontract) issued under this Schedule.

**6.8. "Fee" or "Fees"** means the fees for the Monthly Commitment and the Reserve Usage.

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

**6.10. "Monthly Commitment"** means the minimum amount of usage the Reseller commits to paying for each month as specified in an Order regardless of the actual usage.

**6.11. "Reserve Usage"** means the amount of U.S. Public End User's flexible consumption usage above the Monthly Commitment.

**6.12. "Site"** means the location of the Product installation as identified on an Order and the U.S. Public End User Subscription Form.

**6.13. "Subscription"** means the use of a Product on a flexible consumption basis as measured by the description and metrics identified on the Order and this Schedule.

**6.14. "Subscription Term"** means the time period identified on an Order and U.S. Public End User Subscription Form for use of the Products, and any Ingram Micro 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 U.S. Public End User delays the installation process or if U.S. Public 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.