Dell DataSafe Online: Terms and Conditions

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY. THEY CONTAIN IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS. THIS DOCUMENT CONTAINS A BINDING ARBITRATION CLAUSE.

ACCEPTANCE OF THESE TERMS AND CONDITIONS: By clicking the “Accept” button below, you agree to be bound by these Terms and Conditions (“Agreement”), which govern your use of the DataSafe Online Service (“DataSafe Online”), which is provided to you by Dell. If you agree to these Terms and Conditions on behalf of your employer, you represent that you have the authority to do so. These Terms and Conditions incorporate by reference the End User License Agreement <<https://www.delldatasafe.com/template/eulaEN.html>> and the Dell Privacy Policy <<http://www.dell.com/content/topics/global.aspx/policy/en/policy?c=us&l=en&s=gen&~section=000>>, which applies to all information that Dell collects from and about you in connection with DataSafe.

DATASAFE ONLINE IS A BACK-UP SERVICE: DataSafe Online allows you to back up, restore and share your data, photographs, videos, music and other digital files (collectively, the “Content”) via the Internet. Back-up of the Content you designate occurs via your Internet connection at the time and frequency set by you. DataSafe Online is not an archival service. It is solely your responsibility to maintain original versions of all Content that you back up through DataSafe Online. You must provide and pay for all computer equipment and services necessary to use DataSafe Online, including access to the Internet. Dell makes reasonable efforts to provide you with uninterrupted access to DataSafe Online. However, there will be occasions when DataSafe Online will be interrupted for maintenance, upgrades, emergency repairs or the failure of telecommunications equipment and services that are beyond the control of Dell. Dell will take reasonable steps to minimize such disruption. Please see “Disclaimer of Warranties” and “Limitation of Liability,” below, for important information about Dell’s responsibilities.

YOUR ACCOUNT INFORMATION: The period of a paid-subsription to DataSafe Online begins upon shipment of your Dell computer, or if your subscription was purchased separately from your computer, upon purchase of your DataSafe Online subscription, regardless of whether or when you activate or begin using your account. The period of a free subscription to DataSafe Online begins upon initial activation of your DataSafe account. Unless your account is earlier terminated under this Agreement, your free subscription expires at the end of the free-subscription term. Dell, in its sole discretion, may allow you to renew your free subscription. That renewal may require payment of a subscription or other fees. Once your free subscription expires or terminates, and you have not renewed your subscription, your access to your DataSafe account will also terminate. When you register for DataSafe Online, you agree to provide accurate information about yourself and to keep that information up-to-date. At registration, you will select a user name and password that you will need to restore or share your Content. Dell may use an escrowed copy of your password only to allow you to restore or share your Content (upon your presentation of your Account Information to Dell). Dell will not otherwise use or share your escrowed password, unless required to do so by law. Please keep your password safe and secure. You will not be able to restore or share your Content without it. It is your responsibility to maintain the confidentiality of your DataSafe Online user name and password (your “Account Information”). You are responsible for all use of DataSafe Online accessed through your Account Information. When you share your content, the content you share is not encrypted. You agree to immediately notify Dell of any unauthorized use of your Account Information or any other actual or suspected breach of DataSafe Online security.

YOUR USE OF DATASAFE ONLINE: You are solely responsible for all Content and Account Information that you transmit, store, view, restore or share through DataSafe Online and to and from your account. CONTENT YOU CHOOSE TO SHARE IS NOT ENCRYPTED. You agree that your use of DataSafe Online will fully comply with all applicable laws, rules and regulations and that it will also comply with all regulations, policies and procedures of networks through which you access and use DataSafe Online. Without limiting the generality of these requirements, you agree that you will not use DataSafe Online to:

· Transmit, store, view, restore or share Content that: (i) contains illegal material; (ii) is harassing, libelous, defamatory, abusive, threatening, harmful, pornographic, obscene or is otherwise tortious or offensive, as determined by Dell in its sole discretion; (iii) encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate a law; or (iv) contains any viruses, worms, Trojan horses or other code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment associated with DataSafe Online;

· Transmit, store, view, restore or share Content, if such action would violate any applicable privacy policy or applicable privacy law, rule or regulation, including, without limitation, the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act of 1996, the Fair Credit Reporting Act, the Children’s Online Privacy Protection Act and each such Act’s related rules and regulations;

· Plan or carry out any illegal activity;

· Violate the intellectual property rights or other rights of any third party, including, without limitation, any person’s copyrights in music, videos, images, books or other works;

· Breach any duty of confidentiality that you owe to anyone;

· Access or attempt to access any DataSafe Online account for which you have no access authorization;

· Sell Content to others, charge anyone for access to your Account or otherwise use, sell or share DataSafe Online for any commercial purpose; or

· You acknowledge that U.S. and other countries' export laws may apply to the transfer of technology and software through DataSafe Online. You warrant that any software you transmit and store using DataSafe Online contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. You also warrant that any technology you transmit and store is approved for export without a license. Notwithstanding the foregoing, you are solely responsible for obtaining any specific licenses relating to the export of technology and/or software if a license is required.

You further agree that you will not:

· Create any links, whether on a web page, in an e-mail or otherwise, that direct anyone to any part of your Account; or

· Interfere with the servers or networks connected to DataSafe Online.

INSPECTION OF YOUR CONTENT: Dell does not control the Content of any customer’s account and does not have any obligation to monitor or review Content for any purpose. Notwithstanding the foregoing, if Dell reasonably suspects that an Account is being used for storage or distribution of any Content that violates these Terms and Conditions, Dell reserves the right, in its sole discretion and subject to applicable law, to terminate your account, delete your Content and/or, if applicable, notify the appropriate authorities, without prior notice to you. YOUR CONTENT IS SUBJECT TO EXAMINATION BY LAW ENFORCEMENT OFFICIALS OR OTHERS WITHOUT YOUR CONSENT, UPON PRESENTATION TO YOU OR DELL OF A SEARCH WARRANT, SUBPOENA OR OTHER LEGAL PROCESS, OR IF DELL REASONABLY SUSPECTS A VIOLATION OF THESE TERMS AND CONDITIONS HAS OCCURRED. Unless required by law, you have no right to be notified by Dell of any such disclosure. you agree to HOLD dell HARMLESS FROM and against, and waive (to the extent permitted by applicable law) any claims you may have against dell resulting from any disclosure, investigation or act or omission of dell in the course of conducting or cooperating with an investigation as set forth in this section.

SECURITY OF YOUR CONTENT: DataSafe Online provides secure Content transmission and storage. Content is encrypted using 128-bit Secure Socket Layering (SSL) during transport, and backed-up Content is stored using Advanced Encryption Standard (AES) 256-bit encryption. Content is encrypted based on a user-defined key, so only the user (you) can decrypt the Content using that key (your password). However, because it is not possible to make encrypted files completely impenetrable, you acknowledge that it may be possible for an unauthorized third party to access your Content, and you agree that, in such event, any loss that you may suffer is subject to the Limitation of Liability section of these Terms and Conditions.

MODIFICATIONS: Dell reserves the right to modify or discontinue DataSafe Online, with or without notice or liability to you or any third party.

TERMINATION & CANCELLATION: Dell may, at its sole discretion, immediately terminate your access to DataSafe Online, without liability to you or any third party, if it believes that you have violated these Terms and Conditions or if you fail to pay for DataSafe Online as agreed. In its discretion, and subject to applicable law, Dell may prompt you to restore your Content prior to termination, after which Dell will have no obligation to store your Content or permit you to restore or share it. You may cancel DataSafe Online by contacting Dell. Before you cancel, be sure that you have restored all of your Content from DataSafe Online. Once you submit payment for DataSafe Online, the transaction is final, and you will not be refunded all or any part of your payment outside the standard Dell refund policy. If you purchased your subscription from a vendor other than Dell, that vendor’s refund policy applies. If your subscription was purchased from Dell but separately from your computer, no refund will be issued more than 21 days after your purchase. Other terms and conditions may apply, depending on your particular subscription type. In the event that Dell terminates your account, there will be no refunds.

USE OF INFORMATION SUBMITTED: You agree that Dell is free to use any comments, information or ideas in any communication you send to Dell, without compensation or acknowledgement to you, for any purpose whatsoever, including, but not limited to, modifying and marketing DataSafe Online or developing, manufacturing and marketing other products or services.

ELECTRONIC COMMUNICATIONS: By using DataSafe Online, you consent to receiving electronic communications and notices from Dell, and you agree that any such communication will satisfy any legal communication requirements, including that such communications be in writing.

DISCLAIMER OF WARRANTIES: The transmission, storage, viewing, restoration and sharing of Content through the Internet are subject to a variety of conditions that make such transmission, storage, viewing, restoration and sharing potentially unreliable. ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED BY LAW, YOU AGREE THAT USE OF DATASAFE ONLINE IS AT YOUR SOLE RISK. DATASAFE ONLINE IS PROVIDED TO YOU ON AN “AS IS” AND “AS AVAILABLE” BASIS. DELL EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO YOUR ACCOUNT OR DATASAFE ONLINE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, DELL MAKES NO REPRESENTATION OR WARRANTY: (A) THAT DATASAFE ONLINE WILL MEET YOUR REQUIREMENTS; (B) THAT DATASAFE ONLINE OR YOUR ACCESS TO IT WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS-FREE OR ERROR-FREE; (C) THAT YOUR CONTENT WILL NOT BE LOST, COMPROMISED OR DAMAGED; (D) THAT YOUR COMPUTER OR NETWORK OPERATIONS OR THOSE OF ANY PERSON WITH WHOM YOU SHARE CONTENT WILL NOT BE NEGATIVELY AFFECTED BY YOUR USE OF DATASAFE ONLINE; (E) THAT ANY DATA ON YOUR COMPUTER OR NETWORK WILL NOT BE LOST OR DAMAGED AS A RESULT OF YOUR USE OR NON-USE OF DATASAFE ONLINE; OR (F) THAT DEFECTS IN DATASAFE ONLINE WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM DELL OR THROUGH DATASAFE ONLINE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

LIMITATION OF LIABILITY: TO THE FULLEST EXTENT PERMITTED BY LAW, DELL SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF: (1) THE USE OF OR INABILITY TO USE DATASAFE ONLINE, (2) LOSS OR ALTERATION OF CONTENT, (3) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS OR OTHER INACCURACIES IN DATASAFE ONLINE, (4) UNAUTHORIZED ACCESS TO OR ALTERATION OF CONTENT OR OTHER TRANSMISSIONS, OR (5) ANY OTHER MATTER RELATING TO DATASAFE ONLINE, EVEN IF DELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY LAW, YOU AGREE THAT DELL’S TOTAL LIABILITY FOR DAMAGES RELATED TO DATASAFE ONLINE IS LIMITED TO THE TOTAL AMOUNT YOU HAVE PAID FOR DATASAFE ONLINE, OR, IF YOUR CLAIM AROSE DURING A FREE TRIAL PERIOD, TO THE THEN-CURRENT ANNUAL AMOUNT CHARGED FOR DATASAFE ONLINE. Notwithstanding anything in these Terms and Conditions to the contrary, the remedies set forth in these Terms and Conditions shall apply even if such remedies fail their essential purpose. Some jurisdictions do not allow the limitation or exclusion of liability for certain damages, so some of the above limitations may not apply to you, in which case Dell’s liability shall be limited to the maximum extent permitted by applicable law.

THIRD-PARTY CLAIMS/INDEMNIFICATION: You agree that you are personally responsible for your behavior in connection with DataSafe Online. Dell shall not be liable for claims made against you or Dell arising out of your use of DataSafe Online, and you hereby agree to indemnify and hold Dell, its related companies, officers, directors, employees and agents harmless from and against any claim or demand, including reasonable attorneys’ fees and costs, made by any third party due to or arising, directly or indirectly, in whole or in part, out of your use of DataSafe Online, the use of DataSafe Online by any other person who accesses it using your Account Information, your Content, your violation of these Terms and Conditions or your infringement of any intellectual property or other right of any third party.

GOVERNING LAW: THE PARTIES AGREE THAT THIS AGREEMENT, ANY SERVICES THERE UNDER, OR ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PREEXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, COMMON LAW, AND EQUITABLE CLAIMS) BETWEEN YOU AND DELL arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from this agreement, Dell's advertising, or any related transaction SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. If you use DataSafe Online to back up Content in one jurisdiction (as defined by Dell) but restore or share it in another jurisdiction, then the law governing these Terms and Conditions applicable to the back-up shall also apply to the restoration or sharing.

BINDING ARBITRATION: ANY CLAIM, DISPUTE, OR CONTROVERSY BETWEEN CUSTOMER AND DELL SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING INDIVIDUAL (NON-CLASS) ARBITRATION ADMINISTERED BY THE NATIONAL ARBITRATION FORUM (NAF) according to the terms in Dell's U.S. Terms and Conditions of Sale (See dell.com/terms).

GENERAL: If any provision of these Terms and Conditions is held to be invalid or unenforceable, such provision shall be struck, and the remaining provisions shall be enforced; provided, however, that if the individual (non-class) nature of the arbitration provision is found unenforceable, the entire arbitration provision shall not be enforced. Headings are for reference purposes only and in no way define, limit, construe or describe the extent or scope of such section. Dell’s failure to enforce any provision of these Terms and Conditions shall not constitute a waiver of that or any other provision. These Terms and Conditions set forth the entire understanding and agreement between you and Dell with respect to DataSafe Online.

CONTACT US: [Customer Service E-Mail Form <<http://support.dell.com/support/topics/global.aspx/support/email_customer_care/emailcustomercare?c=us&cs=19&l=en&s=dhs>>].

CLAIMS OF COPYRIGHT INFRINGEMENT: It is the policy of Dell to respect the intellectual property rights of others. If you believe that your work has been copied or used via DataSafe Online in a way that constitutes copyright infringement, please send written notice to us at the following address:

Attention: [Customer Service E-Mail Form <<http://support.dell.com/support/topics/global.aspx/support/email_customer_care/emailcustomercare?c=us&cs=19&l=en&s=dhs>>].

Your notice must contain the following:

(i) A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright interest;

(ii) Identification of the copyrighted work claimed to have been infringed;

(iii) Identification of the Content that is claimed to be infringing and information reasonably sufficient to permit Dell to locate the Content that is claimed to be infringing;

(iv) Your contact information, such as your address, telephone number, and, if available, your email address;

(v) A statement that you have a good faith belief that use of the Content in the manner complained of is not authorized by the copyright owner, its agent or the law; and

(vi) A statement that the above information is accurate, and, under penalty of perjury, that you are, or are authorized to act on behalf of, the owner of the copyright that is allegedly infringed.

I ACCEPT