
Date: March 2nd, 2021
To: Administration & Finance Executive Committee
From: Jeremy Hughes, Information Technology Manager
Subject: Dell “Keep It” Program

BACKGROUND

Dell Technologies has proposed enrolling the Town of Fort Frances (*the “Town”*) in their “Keep It” program. This program provides evaluation samples of hardware to public sector customers at no cost.

Enrolling in this program creates no obligation for the Town to purchase Dell products, nor provide Dell any preferential treatment throughout the Town’s procurement processes.

Any evaluation samples will be inventoried and accounted for at their fair market value.

Dell will have no influence over how evaluation samples are distributed or used by the Town.

HARDWARE SPECIFICATIONS

The proposed evaluation sample is a Dell Latitude 9410 2-in-1 with:

- 14" 1080p Screen
- Intel i7-10610U Processor
- 16GB RAM
- 512GB NVMe SSD

ATTACHMENTS

Attached is a document titled *Dell “Keep It” Program Agreement* (4 pages).

Administration & Finance Executive Committee approval of this report will agree with the recommendation to:

- 1) Authorize the Town’s IT Manager to enroll in the Dell “Keep It” Program to provide the Town with a free evaluation sample Dell Latitude 9410 2-in-1 with a fair market value of \$5,061.



DELL "KEEP IT" PROGRAM AGREEMENT

GENERAL TERMS

This agreement ("**Agreement**") between you ("**you**" or "**Customer**"), and Dell Marketing L.P. (in the US) or Dell Canada Inc. (in Canada) ("**Dell**"), governs the provision and your use of the Solutions and is effective upon your acceptance hereof.

SOLUTION. Dell will provide you with hardware, software and/or services (collectively "**Solutions**") at no charge. The hardware Solutions are yours to keep and title to such hardware (except for the software provided with such hardware) passes from Dell to you upon shipment. Shipping and delivery dates are provided as estimates only.

1. **PURPOSE.** If you resell Dell products and services in the regular course of your business ("**Reseller**"), you will use the Solutions only for your product demonstrations, for internal testing or evaluation, or for training your team to sell Dell products and services. If you are a commercial entity ("**Commercial Customer**") or a [Public Customer](#) (defined below), you will use the Solutions only for evaluation or internal business use ("**Purpose**"). Dell will have all rights, title and ownership of any feedback you provide about the Solutions.
2. **SOFTWARE AND SERVICES.** Software provided as part of the Solutions shall be governed by (i) the software license agreements included with the software media packaging or presented to Customer during the installation or use of the Solution, or (ii) for software licensed by Dell, if no license terms accompany the software or are not otherwise made available to Customer, the End User License Agreement –A Version, found at dell.com/aeula ("**EULA**"). If there are any conflicting terms, this Agreement will control. If the Solutions include services, then such services are governed by supplemental terms and conditions applicable to such service and located at www.dell.com/servicecontracts/US (if you are in the U.S.) and www.dell.com/servicecontracts/global (if you are located in another country).
3. **RETURNS.** No exchanges or credits are permitted. If you decide to return the Solutions to Dell, you must follow Dell's return policies and instructions. Title to the hardware Solution will transfer from you to Dell upon Dell's receipt. CUSTOMER MUST BACKUP ANY DATA OR SOFTWARE AND REMOVE ANY CONFIDENTIAL OR SENSITIVE DATA FROM THE SOLUTIONS PRIOR TO RETURNING THEM TO DELL. UNDER NO CIRCUMSTANCES WILL DELL BE LIABLE FOR LOST DATA OR SOFTWARE, COSTS ASSOCIATED WITH DATA OR SOFTWARE RESTORATION, FOR ANY DISCLOSURE OF CONFIDENTIAL OR SENSITIVE DATA RESIDING ON THE SOLUTIONS OR FOR ANY REQUIREMENTS TO COMPLY WITH SPECIAL RULES OR OTHER REQUIREMENTS THAT MAY APPLY TO CUSTOMER'S DATA ON OR IN THE SOLUTIONS. Customer agrees to indemnify, defend and hold harmless Dell from any and all claims or liability against Dell arising from any third party data that may be on the Solutions.
4. **WARRANTY DISCLAIMER.** The solutions are provided "as is," with all faults. Dell disclaims any and all warranties and conditions, express, implied or statutory, with respect to the solutions, including without limitation, any warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, title and noninfringement.
5. **HIGH RISK APPLICATION DISCLAIMER.** Dell has not tested or certified the Solutions for use in high-risk applications in which the failure of the Solutions could lead directly to death, personal injury or severe physical or property damage. Dell makes no assurances that the Solutions are suitable for any high-risk uses.

6. **LIMITATION OF LIABILITY.** DELL, ITS AFFILIATES AND SUBCONTRACTORS SHALL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, OR FOR LOSS OF PROFITS; LOSS OF USE; LOSS or use OF DATA; OR BUSINESS INTERRUPTION OF ANY KIND. DELL'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY SOLUTIONS WILL NOT EXCEED \$500 USD. THESE LIMITATIONS APPLY WHETHER ARISING UNDER ANY CONTRACT, TORT, WARRANTY OR ANY OTHER THEORY OF LIABILITY, EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
7. **INTELLECTUAL PROPERTY RIGHTS.** All rights, titles and interests to Dell's intellectual property, including without limitation those embodied in the Solutions, remain with Dell. Customer will not use the name of Dell nor any Dell trademarks, trade names, service marks, or quote the opinion of any Dell employee in any advertising or otherwise without first obtaining the prior written consent of Dell.
8. **COMPLIANCE WITH LAWS.** You will comply with all laws and regulations applicable to your use of the Solutions in the countries in which you do business, including without limitation any laws relating to taxes, export, sanctions and anti-bribery or competition laws ("**Applicable Laws**"). You will not, and will not allow, the Solutions to be exported (i) to embargoed countries or (ii) without a license where such license is required by Applicable Laws.
9. **CONFIDENTIALITY AND NON-DISCLOSURE.** Customer agrees to protect Dell's confidential information with the same degree of care, but no less than a reasonable degree of care, as Customer uses with respect to its own confidential information. Customer will not disclose the confidential information of Dell without the prior written consent of Dell. "**Confidential Information**" means any oral, written, graphic or machine-readable information disclosed by Dell that should be reasonably understood to be confidential.
10. **TERMINATION.** At any time, Dell may terminate its Keep It program, your participation, any services and your license to use any software without notice if there is a shortage of Solutions or for any other reason, including for its own convenience. All terms intended to survive such termination shall survive.
11. **GOVERNING LAW.** This Agreement, and ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND DELL, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers (a "**Dispute**") will be governed by the laws of the State of Texas (or by U.S. federal laws if you are a Federal End User) (or the laws of the province of Ontario and the federal laws of Canada applicable therein if you are a Canadian user) without regard to conflicts of law. The UN Convention for the International Sale of Goods will not apply.
12. **general.** This Agreement ([GENERAL TERMS](#) and applicable [CUSTOMER SPECIFIC TERMS](#)) constitutes the entire agreement between you and Dell regarding the Solutions. Customer will not transfer or assign this Agreement. Dell and Customer are independent contractors and neither is a legal representative or agent of the other.

[Customer Specific Terms](#) apply to you if you are a [public customer](#), [channel partner](#), [federal channel partner](#), or a [Canadian public sector customer](#). If there is a conflict, the Customer Specific Terms will take precedence over the [GENERAL TERMS](#).

CUSTOMER SPECIFIC TERMS

CHANNEL

Additional Terms Applicable to Dell Resellers, Distributors, System Integrators, OEM Customers, and other Channel Partners

- A. Clause 1 of the [GENERAL TERMS](#) ("SOLUTION") shall be deleted and replaced by the following:

Dell may provide, directly or indirectly through you, at no charge, the Solutions to end-user customer or potential end-user customer (each, "**End User**") for the End User to use solely for evaluation or internal business purpose. The hardware Solutions are for End User to keep and title to such hardware passes to End User upon End User's receipt of the hardware. Shipping and delivery dates are provided as estimates only. Notwithstanding the foregoing, Dell may request you to return the Solutions to Dell if Dell has reasonable belief that you have breached, or refused to provide information requested by Dell to confirm your compliance with, clause 9 of the [GENERAL TERMS](#), and you shall comply with such request at your sole expense.

- B. Solutions may be provided to an End User only if the End User has agreed in writing to the terms of this Agreement for the foregoing purpose, the applicable references to "you" or "Customer" in the Agreement shall mean "End User". You shall ensure End User complies with this Agreement and all Applicable Laws, and you are responsible for End User's failure to comply with such terms and Applicable Laws. You shall indemnify and hold Dell harmless against any claims arising out of End User's noncompliance with the terms or use of the Solutions.

[FEDERAL CHANNEL](#)

[Additional Terms Applicable to Dell Federal Channel Partners](#)

The terms and conditions in this section apply to you if you are a Reseller to any department, agency, division, or office of the United States government ("**Federal Reseller**"). These additional terms and conditions supplement, amend or revise the [GENERAL TERMS](#) as described below. The terms in this section shall take precedence over the [GENERAL TERMS](#). The term "Dell" will mean Dell Marketing L.P. or Dell Federal Systems L.P.

- A. **Additional Terms Applicable to Dell Channel Partners**, clauses A-C.
- B. **Additional Terms for US Public and Healthcare Customers**, clauses A-E. The term "Federal Reseller" shall be substituted for the term "Public Customer" therein.

[UNITED STATES](#)

[Additional Terms for US Public and Healthcare Customers](#)

The Additional Terms for US Public and Healthcare Customers section ("**US Public Customer Terms**") below apply to public sector or healthcare customers such as any healthcare provider, department, agency, division or office of the United States government ("**Federal End User**"), or any department, agency, division, or office of any district, state, county or municipal government within the United States (together with Federal End Users, "**Public Customer**") and supplement the [GENERAL TERMS](#). If you are a Federal End User then "Dell" will mean Dell Marketing L.P. or Dell Federal Systems L.P.

- A. Any portion of the [GENERAL TERMS](#) that is not applicable by law shall not apply to you. US Public Customer Terms shall take precedence over the [GENERAL TERMS](#). Any applicable software EULAs shall control over these terms.
- B. You agree to provide Dell with an electronic evaluation form provided by Dell within 90 days of the date you receive the Solutions. If you fail to provide the electronic evaluation within this timeframe, you will return all hardware Solutions to Dell and pay Dell's then-current commercial price for all software included in the Solutions.
- C. The parties agree that the Solutions are intended exclusively for your evaluation and (i) does not constitute a "gift" or "gratuity," as contemplated under relevant regulations such as 5 C.F.R. Part 2635, Federal Acquisition Regulation ("**FAR**") 3.101-2, and FAR Subpart 3.2, and (ii) do not give the appearance of a conflict of interest as described under FAR Subpart 3.11 or other relevant regulations. The consideration for Dell providing the Solutions is your promise to submit the electronic evaluation form. By accepting the Agreement, you acknowledge, affirm and agree that you are authorized to accept the Solutions pursuant to established gift rules applicable to you (as a government employee) and/or your agency.

- D. Public Customer does not intend to award a contract on the basis of Dell's provision of the Solutions, nor grant Dell any preferential treatment in any contracts or task or delivery orders currently being performed by Dell, or future procurement actions.
- E. Public Customer is responsible for reporting receipt or value of the Solution to any federal or state healthcare program that it participates in to the extent such reporting is required.
- F. You confirm that you are a contracting officer or other authorized representative of Public Customer with authority to bind the Public Customer for purposes of accepting the Public Solutions in accordance with the terms and conditions set forth herein.

Canada

Additional Terms for Canadian Public Sector Customers

The Additional Terms for Canadian Public Sector Customers ("Canadian Public Customer Terms") below apply to public sector customers in Canada such as any federal, provincial or municipal government, department, or agency, healthcare provider or education institution ("Canadian Public Customer") and supplement the [GENERAL TERMS](#).

- A. Any portion of the [GENERAL TERMS](#) that is not applicable by law shall not apply to you. Canadian Public Customer Terms shall take precedence over the [GENERAL TERMS](#). Any applicable software EULAs shall control over these terms.
- B. The parties agree that the Solutions are intended exclusively for your evaluation and: (i) are not provided as a gift or similar gratuity; and (ii) do not give the appearance of a conflict of interest under your applicable procurement rules and regulations.
- C. Canadian Public Customer does not intend to award a contract on the basis of Dell's provision of the Solutions, nor grant Dell any preferential treatment in any contracts or task or delivery orders currently being performed by Dell, or future procurement actions.
- D. Public Customer is responsible for reporting receipt or value of the Solution to the extent such reporting is required.
- E. You confirm that you are a contracting officer or other authorized representative of Canadian Public Customer with authority to bind the Canadian Public Customer for purposes of accepting the Solutions in accordance with the terms and conditions set forth herein.