

**BUSINESS ASSOCIATE AGREEMENT
AS APPENDIX TO SERVICE OFFERING DESCRIPTION FOR APEX DATA STORAGE
SERVICES – DELL MANAGED**

This Business Associate Agreement (“Agreement”) applies only to Dell APEX Data Storage Services – Dell Managed and is effective on the date You agree to the APEX Subscription Quote for ADSS. This Agreement amends the underlying Service Offering Description for Dell APEX Data Storage Services – Dell Managed (herein “Service Agreement”) between Customer and Dell consistent with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), including the applicable federal regulatory revisions under the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”). This Agreement applies to the extent, if any, that Dell is acting as a Business Associate of the Customer under HIPAA and replaces any earlier such agreements that may have been entered into between the parties. This Agreement applies to only the purchase of APEX Data Storage Services – Dell Managed and is not extended to any other offerings Dell currently provides to Customer or may provide in the future.

1. Definitions.

(a) “HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. The HIPAA Privacy Rule is the Standards for Privacy of Individually Identifiable Health Information at 45 CFR, part 160 and part 164, subparts A and E. The HIPAA Security Rule is the HIPAA Security Standards (45 C.F.R. Parts 160 and 164, Subpart C). The HIPAA Breach Notification Rule is the Notification in the Case of Breach of Unsecured Protected Health Information, as set forth at 45 CFR Part 164 Subpart D.

(b) Unless otherwise defined in this Agreement or the Service Agreement, terms (whether capitalized or not) have the meanings in the HIPAA Rules, which are incorporated into this Agreement by reference.

(c) For this Agreement, Protected Health Information (“PHI”), is limited to PHI of the Customer.

2. Obligations of Dell.

If Dell accesses, creates, transmits, maintains or receives any PHI and on behalf of Customer (PHI) including any Electronic Protected Health Information (“Electronic PHI”), Dell will use reasonable and appropriate safeguards to maintain the privacy and security of such PHI. Dell agrees:

(a) not to use or further disclose PHI other than as required to carry out its Service Agreement obligations and as expressly permitted or required by this Agreement or Law, consistent with the HIPAA Rules. When making such use, disclosure or request of PHI, Dell agrees to make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request;

(b) to use reasonable and appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than as permitted by this Agreement;

(c) to report to Customer any Use or Disclosure of PHI not provided for by this Agreement of which it becomes aware. In addition, Business Associate will report, following discovery and without unreasonable delay, any “Breach of Unsecured Protected Health Information” consistent with the HIPAA Rules;

(d) ensure that any agents, including Subcontractors of Dell, to whom Dell provides PHI agree to substantially the same restrictions and conditions that apply to Dell with respect to such information;

(e) To the extent that Business Associate maintains a Designated Record Set for Covered Entity, to make available PHI maintained by Dell in a Designated Record Set to Customer as required for Customer to comply with its obligation to give an individual the right of access as set forth in 45 CFR 164.524 and the HITECH Act. Customer shall reimburse Dell for the applicable reasonable costs incurred by Dell in complying with such request. The provision of the access to the individual’s PHI and any denials of access to the PHI shall be the responsibility of Customer;

(f) To the extent that Business Associate maintains a Designated Record Set for Covered Entity, to make available PHI maintained by Dell in a Designated Record Set to Customer as required for Customer to comply with its obligation to amend PHI as set forth in 45 CFR 164.526. The amendment of an individual's PHI and all decisions related thereto shall be the responsibility of Customer;

(g) to make available to Customer information regarding disclosures made by Business Associate for which an accounting is required under 45 CFR Section 164.528 and the HITECH Act so Customer can meet its requirements to provide an accounting to an individual in accordance with 45 CFR 164.528 and the HITECH Act;

(h) to make its internal practices, books and records relating to the HIPAA Rules available to the Secretary of Health and Human Services for purposes of determining Customer's compliance with the HIPAA Rules;

(i) at termination of this Agreement, if feasible, return or destroy all Customer's PHI, if any, received from, or created or received by Dell on behalf of, the Customer that Dell still maintains in any form and retain no copies of such information, or, if such return or destruction is not feasible in the sole discretion of Dell, extend the protections of this Agreement to such retained PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.

(j) Dell is not prohibited from disclosing PHI for its proper management and administration or to carry out its legal responsibilities if the disclosure is Required by Law or Dell obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person. Dell will further require that the person to whom information is disclosed inform Dell of any breach of confidentiality or violation of the HIPAA Rules with respect to that information.

(k) Dell is not prohibited from using PHI to report violations of Law to appropriate Federal and State authorities consistent with the Privacy Rule or applicable federal or state law.

(l) With respect to Electronic PHI, Dell will (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of such Electronic PHI, as required by the Security Rule; and (ii) report to Customer any Security Incident affecting Electronic PHI of which it becomes aware.

(m) Data Aggregation Services: Dell may use PHI to provide Data Aggregation Services related to Customer's Health Care Operations. Business Associate may also de-identify PHI it obtains or creates in the course of providing services to Customer.

(n) Sale of PHI: Dell shall not directly or indirectly receive remuneration in exchange for PHI except where permitted by the Service Agreement and consistent with applicable law.

(o) Marketing of PHI: Business Associate shall not sell or use and/or disclose PHI for a marketing purpose without Customer obtaining prior authorization from the Individual.

3. Additional Provisions.

(a) Compliance Acknowledgment: Each party agrees to comply with its own obligations under applicable federal or state law for PHI that is within the legal responsibility of such party.

(b) Customer Obligations. Customer represents that Customer has the right and authority to provide access to or disclose (or otherwise allow access) the PHI to Dell for the services to be provided by Dell to Customer. Customer shall be solely responsible for establishing the applicable HIPAA Security Rule safeguards and associated policies for protecting PHI in its facilities. Customer shall communicate the relevant safeguards and policies to Dell when Dell provides Services at a Customer facility. Customer shall be solely responsible for deciding to render any PHI on its systems unusable, unreadable, or indecipherable to unauthorized individuals in accordance with the U.S. Department of Health & Human Services guidance. Customer is responsible to make sure no unsecured PHI is provided to Dell. Customer agrees to remove or encrypt all PHI (and any other Customer confidential data) on Dell systems and media components prior to returning them to Dell for any reason including warranty support. In the event such removal or encryption is not feasible, Customer shall sign up for [Global Keep Your Hard Drive Datasheet External \(dell.com\)](#) or make other arrangements to retain any drives or memory components that may contain unsecured Electronic PHI.

(c) Term and Termination. The term of this Agreement shall be the same as the term of the Service Agreement. Upon Customer's knowledge of a material breach of this Agreement by Dell, Customer shall notify Dell of the breach in writing, and shall provide an opportunity for Dell to cure the breach or end the violation within thirty (30) business days of such notification; provided that if Dell fails to cure the breach or end the violation within such time period to the satisfaction of Customer, Customer shall have the right to immediately terminate this Agreement. Customer (or its Channel Partner, as applicable) shall also have the right to terminate the Service Agreement upon written notice to Dell. In the event that termination of this Agreement is not feasible as mutually agreed to by Dell and Customer, Dell hereby acknowledges that Customer shall have the right to report the breach to the Secretary. Further, upon Dell's knowledge of a material breach of this Agreement by Customer, Dell may notify Customer of the breach in writing, and shall provide an opportunity for Customer to cure the breach or end the violation within thirty (30) business days of such notification; provided that if Customer fails to cure the breach or end the violation within such time period to the satisfaction of Dell, Dell shall have the right to immediately terminate this Agreement and the Services Agreement upon written notice to Customer and/or the Channel Partner, as applicable. In the event that termination of this Agreement is not feasible as mutually agreed to by Dell and Customer, Customer hereby acknowledges that Dell shall have the right to report the breach to the Secretary. This Agreement shall terminate immediately in the event that a HIPAA Business Associate Agreement is no longer applicable or required under the current Law.

(d) No Third Party Beneficiaries. No provision of this Agreement is intended to benefit any person or entity, nor shall any person or entity not a party to this Agreement have any right to seek to enforce or recover any right or remedy with respect to this Agreement.

(e) Independent Contractors. To the extent Dell may be a Business Associate related to the services being provided to the Customer, the parties agree that each party is an independent contractor and neither is acting as an agent of the other under the federal common law of agency [see 45 C.F.R. §160.402].

(f) Modification of Agreement. No alteration, amendment, or modification of the terms of this Agreement shall be valid or effective unless in writing and signed by Dell and Customer.