



SUPPLEMENTAL TERMS  
Dell EMC Google Isilon Cloud (Cloud OneFS)

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Effective Date: May 19, 2020 |

These Supplemental Terms supplement the <https://www.dell.com/learn/us/en/uscorp1/terms-conditions/dell-emc-cloud-services-terms-of-service> (“Terms”) that govern the Services (as defined herein below). The Services shall be provided to customer by EMC Corporation (“Dell EMC”) or, if outside North America, the appropriate Dell EMC Affiliate used to deliver said Services to Customer. The Services can be acquired only through the Google Marketplace in conjunction with additional Google services provided directly from Google. Additionally, and for the avoidance of doubt, the Services and these Supplemental Terms are ultimately between EMC Corporation, or, if purchased outside the United States, the local EMC Affiliate offering the Services, and Customer. By purchasing the Services, you hereby agree to be bound by the provisions set forth in the Terms and these Supplemental Terms.

For purposes of these Supplemental Terms, the following definitions shall apply:

- “Infrastructure” means the underlying technology, including Dell EMC storage and third-party technology, that supports Customer’s use of the Services.
- “Order” means Customer’s purchase of the Services from Dell EMC through the Google Marketplace which may also include, by way of example, a quote, purchase order or other purchasing mechanism.
- “Services” means the Dell EMC storage and Google Cloud Platform (“GCP”) service as further described herein, and that Customer is authorized to consume under these Supplemental Terms and the Terms.

## SERVICE DESCRIPTION:

Dell EMC will provide a managed, off-prem storage service to be used by Customer in conjunction with other GCP services. The Services are a scale-out NAS storage service, which provides management of OneFS storage cloud connected to GCP. The Services shall be purchased by the Customer through the Google Marketplace with configurations and minimum capacity as set forth in Exhibit A, attached hereto. The Services can be purchased for either one or three year Service Periods (defined later herein). The Services will be made available in multiple performance tiers (as further illustrated in Exhibit A) and includes: (i) proactive monitoring and management to an availability Service Level and (ii) 24x7 integrated Google-Dell EMC support. Dell EMC assumes no liability, and makes no representations or warranties, related to Customer’s use of the Google Marketplace or the GCP. All such use of the Google Marketplace (including the GCP) shall be subject to applicable terms between Customer and Google. For the avoidance of doubt, Dell EMC is not selling, nor reselling, GCP.

The Services are made available to Customer subject to the following:

- Tiers of Service represent some of the performance characteristics of the Service. By way of example, the following tiers defined by throughput and IOPS are available and generally used in the following capacity:
  - Tier 1 targeted for high end autonomics HPC applications
  - Tier 2 targeted for Data Analytics and highly transactional applications

- Tier 3 targeted for file applications such as media and entertainment
  - Tier 4 targeted for disaster recovery purposes
- Minimum term commitments of either one- or three- years.
- Unless otherwise agreed by the parties, bands of Service specific to each tier of Service with a minimum band capacity and minimum commitment for the Service Period will be as set forth in Exhibit A. Each band of Service represents a new price for the Service in conjunction with a new minimum capacity. Such bands, pricing, commitments and tiers will be set forth on the applicable Order.

## SERVICE PERIODS:

By submitting an Order, Customer confirms its obligation for the Service Period (as defined below) and the associated financial commitment.

- **SERVICE PERIODS & RENEWAL:** Services are currently available under a one-year Service Period or a three-year Service Period (each a “Service Period”). Prior to expiration of the Service Period, Dell EMC will notify Customer, and Dell EMC may offer Customer a one-year or three-year renewal subscription at Customer’s price under their current subscription. If Customer fails to renew, then the termination provisions of the Terms will apply.
- **SERVICE PERIOD UPGRADES:** Customer may change a one-year commitment to a three-year commitment (retroactive to original commitment date and price point prior to the completion of the one-year period).
- **SERVICE PERIOD COMMENCEMENT:** As part of submitting an Order, Customer will be provided the timeframe for when the Service will be available for use (i.e., two days). Dell EMC will provide Customer an e-mail communication confirming the Service is available for use. The Service will be deemed accepted in full by Customer if Customer does not respond within two business days rejecting the Order. The Service Period begins on the acceptance of the Service via the aforementioned email confirmation from Dell EMC, but in any event, no later than two business days after said email is sent by Dell EMC.
- **TERMINATION:** Notwithstanding anything to the contrary set forth in the Terms, Customer cannot terminate these Supplemental Terms or the Terms, including the Services purchased under any Order, for any reason. Customer must satisfy the applicable Service Period set forth in the applicable Order.
- **SERVICE EXPANSION:** Customer may consume additional Services above the minimum capacity for the committed band within the committed Service Period. Any capacity upgrade above the minimum committed capacity does not alter the billing rate. At any time, Customer may change their minimum commitment to a higher band in order to receive the lower price of the new band. The new minimum commitment will apply for the remainder of the original Service Period. For the avoidance of doubt, the new price shall only apply for the remainder of the Service Period. Any increase in capacity shall be in discrete increments as set forth on the applicable Order.
- **TIER CHANGE:** Customer may change their tier commitment subject to the approval of Dell EMC and tier availability.
- **SERVICE REDUCTION:** Customer may reduce the consumption of Services so long as the capacity does not fall below the minimum of the committed capacity set forth in the Order. Customer is obligated to maintain a minimum of the stated capacity for the Service Period. If the capacity consumed falls below the minimum committed capacity, Customer shall still be obligated to pay the fees associated with the minimum committed capacity set forth on the Order.

- **TERMINATION BY GOOGLE OR DELL EMC:** In the event that Dell EMC and Google terminate their relationship, or such relationship is not renewed, Dell EMC will continue to provide the Services to existing Customers for no more than twelve (12) months from the date of such termination or the expiration of the Customer's Service Period, which is shorter.

## **ORDERS:**

Any terms and conditions in an Order that conflict with, add to, or attempt to modify in any way these Supplemental Terms or the Terms are null and void.

## **FEES AND PAYMENT TERMS:**

The following terms will apply to the Services:

- **FEES:** Customer agrees to pay the minimum fees set forth in the applicable Order, for the Service Period, according to the payment method that customer chooses from available options in Google Marketplace.
- **ADDITIONAL FEES:** Customer will pay additional fees for any increased consumed Services above the minimum capacity set forth in the applicable Order.
- **PRICING:** Pricing for the Services shall be set forth on the Google Marketplace.
- **PRICING CHANGES:** Pricing may change with any change in Service Period made pursuant to these Supplemental Terms.
- **INVOICES:** Invoicing for the Services will be done by Google. Customer agrees to pay all invoices in full in accordance with Customer's terms with Google. Dell EMC reserves the right to directly collect any fees that Google has not collected or Customer has not paid.
- **BILLING DISPUTES:** To the fullest extent permitted by law, Customer waives all claims relating to payments or fees unless Customer provides its claim to Dell EMC in writing within thirty (30) days after charged or invoice is due.
- **TAXES:** The charges for the Services are exclusive of, and Customer must pay or reimburse all value added, sales, use, excise, withholding, personal property, goods and services, and other taxes, levies, customs, and duties resulting from the Order, except for taxes based on Dell EMC's or the Dell EMC Affiliate's net income. Such taxes will be billed and collected by Google through existing billing processes. Any applicable customer tax exemptions are applied through these existing Google processes and Customer has the responsibility to provide such documentation to Google in advance of the Order.

## **TECHNICAL SUPPORT:**

Customer is required to sign-up for the Google Cloud Platform Services: Technical Support Services as described at <https://cloud.google.com/terms/tssg/>. Google technical support for the Services will be provided in accordance with the terms of the support package purchased by the Customer from Google.

GOOGLE FRONTLINE SUPPORT: Authorized Customer contacts will contact Google in the event of a support issue related to the Services. As such, Customer will not initially contact Dell EMC for support and will instead direct all initial support questions to Google.

## PRIVACY:

- PRIVACY STATEMENTS. For information about Dell EMC Privacy Statements, please read the global and country-specific privacy policies at [www.Dell.com/Privacy](http://www.Dell.com/Privacy). These policies explain how Dell EMC treats Customer personal information and protects Customer privacy.
- EUROPEAN UNION'S GENERAL DATA PROTECTION REGULATION (GDPR). Customer agrees not to store, transfer or export any personal data to the Services and Infrastructure that is subject to GDPR. In the event Customer violates this provision, Dell EMC may immediately terminate these Terms and any Services without further liability to Customer, it's End Users or customers.

## SECURITY:

Dell EMC has implemented reasonable systems and procedures that meet or exceed industry standards to ensure the security, integrity and confidentiality of Content. Dell EMC may immediately suspend Customer's use of the Services if (a) there is an emergency security issue or (b) Dell EMC is required to suspend such use immediately to comply with applicable law.

Dell EMC does not assume any obligations with respect to Content, or Customer's use of the Services, other than as specifically provided in the Terms, Supplemental Terms or as required by applicable law. For the avoidance of doubt, Customer is responsible for the security, including encryption, of any Content stored within the Services.

Customer is solely responsible for satisfying any audit or compliance requirements of any data stored within the Services. Customer is also solely responsible for backup and saving any data stored within the Services. Customer may use Isilon "snapshot" technology to help mitigate data loss risks; however, Content is currently not copied or replaced to any other system other the originating Isilon system in the basic service, unless Customer chooses to purchase a replicated copy via the Google Marketplace. Any loss of data from use error or system failure may not be recoverable, and Dell EMC disclaims any liability resulting from such data loss. Customer may instruct Dell EMC to delete all Content including any cached or backup copies, following the expiration of the Retention Period. Any deletion by Dell EMC may be subject to additional fees. Dell EMC disclaims any liability for loss of Content as part of any such deletion request from Customer.

Any violation of this Section by Customer shall be considered a material breach and Dell EMC may suspend or terminate the Service without further obligation to Customer.

## SERVICE LEVEL:

### Definitions

- “Actual Uptime” means, of the Scheduled Uptime, the aggregate number of minutes in any calendar month during which the Services are available for use.
- “Change and Maintenance Window” means coordinated downtime for Dell EMC to perform any technical changes or maintenance to the equipment or Services (i.e. patches, upgrades, refresh, third party vendor updates, etc.). Dell EMC will use commercially reasonable efforts to notify Customer with advance prior notice of planned Change and Maintenance Windows. Dell EMC reserves the right to change the Change and Maintenance Windows period with advance prior notice to Customer; provided, however, Dell EMC will make every effort to schedule maintenance, systems repairs, and systems upgrades during low utilization periods (typically nights, weekends and holiday periods) of the Services.
- “Downtime” means all functions of the Service are unavailable for Customer. Downtime excludes Scheduled Downtime.
- “Measurement Period” means a calendar month during which the Service Level is in force. No Service Level shall apply during the enablement phase of the Services.
- “Monthly Uptime Percentage” means total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.
- “Scheduled Downtime” means downtime that occurs as part of the Service's maintenance activities where Customer has been notified of the outage before it occurs.
- “Scheduled Uptime” means the total number of minutes in any calendar month minus any Change and Maintenance Windows.
- “Service Credit” means a financial credit for Dell EMC’s failure to achieve the Service Level.

### Service Level

1. While Customer is receiving the Service, the Service will be operational and available to Customer at least 99.9% of the time in any calendar month measured as the extent to which the Services are actually available for use. Availability will be expressed as Actual Uptime divided by Scheduled Uptime, with the result expressed as a percentage (availability % = (actual uptime / scheduled uptime) x 100), (the foregoing collectively, the “Service Level”).
2. Subject to Section 3 below, if Dell EMC does not meet the Service Level, Customer will receive Service Credits per the schedules in the Service Credits section below. Service Levels and Service Credits shall be Customer’s sole and exclusive remedy and Dell EMC’s exclusive obligation for any failure by Dell EMC to meet a Service Level.
3. To receive Service Credits, Customer must purchase, at a minimum, Google’s “Enterprise Level” support package. In the event Customer does not purchase Google’s “Enterprise Level” support package, then Dell EMC shall only use commercially reasonable efforts to meet the Service Level and no Service Credits shall apply.
4. In addition, with respect to Service Levels where the target is time-based, measurement time shall be suspended during periods when Dell EMC is awaiting performance of functions by any party

other than Dell EMC that are necessary for Dell EMC to complete the activities required by such Service Levels.

## Service Level Exclusions

The Service Level does not apply to any performance issues that resulted from: (i) force majeure events; (ii) Customer's acts, omissions, failure of Customer equipment or services, including any failure thereof, (iii) third party service provider acts, omissions, equipment or services, (iv) infringement by customer of Dell EMC or a third party's intellectual property, (v) failure to meet Service Levels while under a business continuity or disaster recovery plan, (vi) any action taken by Dell EMC as the direction of Customer, or (vii) any other cause beyond Dell EMC's control.

## Service Credits

In the event of a Service Level default (other than as set forth in the Service Level Exclusions section above), Dell EMC shall provide a Service Credit to Customer in accordance with the following:

<u>Availability Service Level</u>	<u>At-Risk Amount</u>
▪ 99.9% - 99.0%	4%
▪ 98.9% - 95.0%	5%
▪ < 94.9%	7%

A maximum of one of the above At-Risk Amount percentages shall be payable during any given month. The "**At-Risk Amount**" is the corresponding percentage of Customer's Services fees for the month in which the Service Level default occurred. By way of example, if during the Measurement Window, Dell EMC achieves an availability level of 97%, and the fees for that month were \$10,000, the total amount of the Service Credit for that month shall be \$500.00 ( $\$10,000 \times 5\% = \$500$ ). Customer shall receive no more than one Service Credit for any given month.

## KEY PERFORMANCE INDICATORS (KPIs)

### General

In addition to the Service Level discussed above, Dell EMC shall also satisfy the KPIs detailed in this Section. For the avoidance of doubt, Dell EMC shall only be required to use commercially reasonable efforts to satisfy any KPIs. There will be no credits available for failure to achieve a KPI. Like the Service Level, Dell EMC will have no liability for failure to satisfy a KPI in the event such failure is caused by (i) force majeure events; (ii) Customer's acts, omissions, failure of Customer equipment or services, including any failure thereof, (iii) third party service provider acts, omissions, equipment or services, (iv) infringement by customer of Dell EMC or a third party's intellectual property, (v) failure to meet KPIs while under a business continuity or disaster recovery plan, (vi) any action taken by Dell EMC as the direction of Customer, or (vii) any other cause beyond Dell EMC's control.

## KPI

Measured as the time between the proper notification (i.e., when Google formally notifies Dell EMC) of an incident, and the incident acknowledged within the Dell EMC service management system.

Time to Respond	KPI Target	Time to Resolve Target**	Service Window**
P1 ticket acknowledged within 15 minutes	90%	4 Hours	24x7
P2 ticket acknowledged within 4 hours	90%	12 Hours	24x7
P3 ticket acknowledged within 8 hours	85%	48 Business Hours	8x5 Business Days
P4 ticket acknowledged within 8 hours	85%	7 Business Days	8x5 Business Days

\*\*Business hours/days are Monday – Friday, local data center time, excluding local holidays

- **P1:** Major functionality broken that renders a feature unusable. This includes a service down blocking a large customer or a release.
- **P2:** Critical feature breakage that significantly impacts a large percentage of users/customers or a single customer severely. Workarounds are generally not easily implemented in less than 30 minutes.
- **P3:** Important feature defect that's tied to roadmap or upcoming releases; a moderate live issue that is inconvenient for a customer that needs to be included in an upcoming release.
- **P4:** Desirable enhancement or minor bug fix that will benefit a user but is not prioritized into the roadmap or any imminent release.

## KPI Methodology

The KPI methodology is expressed as a percentage based on tickets opened and closed, by priority, during a measurement period. The following calculation will be used to determine the number of tickets that Dell EMC must successfully close to meet the relevant KPI:

- The number of closed tickets during the measurement period is multiplied by the relevant KPI target percentage; and
- If the result of the multiplication referred to above is not a whole number, that result will be rounded down to the nearest whole number (or zero where the result is less than 1.)

By way of example, if a KPI states that Dell EMC must successfully respond to 90% of tickets within a specified period to meet the relevant KPI:

- If the number of incidents is 100, Dell EMC must successfully respond to 90 incidents within the specified period to meet the relevant KPI ( $100 \times 90\% = 90$  tickets); or
- If the number of incidents is 9, Dell EMC must successfully respond to 8 incidents ( $9 \times 90\% = 8.1$  which is rounded down to 8 tickets).

## CUSTOMER OBLIGATIONS:

Customer may not use the Services, Infrastructure or Related Software to offer services to multiple, unrelated persons, such as for outsourcing, service bureau, or other similar business operations unless specifically authorized by Dell EMC in writing. Notwithstanding the foregoing, in the event Customer uses the Services or Related Software in a service provider capacity, Customer shall remain directly liable to Dell EMC for any breach of these terms resulting from Customer's end users or customers violation of these terms.

Customer shall, upon Dell EMC's request: (1) make available to Dell EMC, Customer technical personnel familiar with Customer's business requirements (primary and alternate designated technical personnel); (2) provide to Dell EMC complete and accurate information regarding Customer's business requirements in respect of the Services; (3) respond within a reasonable timeframe (or if no time period is specified, within three (3) business days) to all requests for approvals, which approval shall not be unreasonably withheld or delayed, provided however approval shall be deemed to have been provided if Customer has not responded within the applicable time; (4) cooperate with Dell EMC; (5) promptly notify Dell EMC of any third party claims or invalid or nonexistent licenses that may have an impact on these Terms or the Services; (6) give Dell EMC personnel and its subcontractors access to the Customer locations to the extent reasonably necessary for them to perform the Services, including to effect the necessary adjustments, maintenance and repairs; and (7) perform all other obligations of Customer described in these Terms. Customer shall not act in a way that affects or impacts the Services, Infrastructure or Related Software without Dell EMC's prior written approval.

## OTHER TERMS:

- For the avoidance of doubt, Customer does not retain any ownership rights in the Services, Related Software or underlying Infrastructure.
- Dell EMC may make updates to these Supplemental Terms, the Terms or Service Level in its sole discretion. Notwithstanding the foregoing, Dell EMC will use commercially reasonable efforts to provide Customer with ninety (90) days advance written notice for any materially adverse changes to the Supplemental Terms, the Terms or Service Levels.
- Dell EMC does not warrant that operation of the Services will be error-free or uninterrupted.

**Exhibit A**  
**Capacity Bands and Tiers of Service**

The table below depicts minimum capacity commitments based on a “band” and “tier” model. The “Capacity Band” is the selected band by Customer with a corresponding “Tier” of minimum committed capacity for the Service Period.

Capacity Band	Tier I	Tier II	Tier III	Tier IV
Band 1	173 TiB	108 TiB	433 TiB	649 TiB
Band 2	518 TiB	431 TiB	1,298 TiB	1,622 TiB
Band 3	1,036 TiB	862 TiB	2,163 TiB	3,245 TiB
Band 4	2,073 TiB	1,725 TiB	3,460 TiB	5,192 TiB
Band 5	2,764 TiB	3,450 TiB	5,190 TiB	7,788 TiB

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