

Dell EMC PowerProtect Backup Service (Now APEX Backup Services)

Service Offering Description

Effective Date: February 3, 2022

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This Service Offering Description supplements the Dell Technologies Cloud Service Offerings Agreement located at https://www.dell.com/learn/us/en/uscorp1/legal_docs/cloud-service-offerings-agreement.pdf (“Terms of Service”) that govern the Service Offering (as defined herein below).

- 1. Service Offering.** Dell EMC PowerProtect Backup Service (now APEX Backup Services) (“Service Offering”) is a software-as-a-service solution for managing data availability and information governance. The Service Offering includes any feature or functionality add-ons, and any modified versions of, and upgrades, updates and additions to such Service Offering.
- 2. Service Offering Use.** Subject to Customer’s compliance with the Agreement, Customer may access and use the Service Offering for Customer’s own internal business purposes only in a manner pursuant to the Agreement and the applicable Documentation for the Subscription Term unless earlier terminated. Customer may install and use the Service Offering up to the maximum number of permitted Users, the storage limit per User or the amount of storage, as applicable, as set forth on the applicable quote. Customer may make copies of the Documentation for its own internal use in connection with its use of the Service Offering in accordance with this Agreement, but no more than the amount reasonably necessary. Customer hereby consents to Service Provider’s use of third-party suppliers, including data center providers to supply hosting services for the Service Offering.
- 3. Orders, Payment and Taxes.** By submitting an Order for the product containing the Service Offering, Customer confirms its obligation for the Subscription Term stated in the quote and the associated financial commitment.
 - 3.1 Subscription Term, Expansion and Renewal.** The Service Offering is currently available under 1, 3, 4, or 5-year Subscription Terms. Additional Subscription Terms may be available as set forth on the applicable quote. If Customer desires additional capacity after the initial order, Customer may add capacity to the Service Offering during Customer’s Subscription Term by placing an order for additional capacity in monthly increments. The Subscription Term for the additional capacity will be the same as the original Service Offering. Additional charges will apply for added capacity as set forth in the applicable quote. Prior to expiration of the Subscription Term, Service Provider will notify Customer, and Service Provider may offer Customer a renewal subscription. If Customer fails to renew, then the termination provisions of the Terms of Service will apply.
 - 3.2 Subscription Activation and Subscription Term Commencement.** Following receipt of Customer’s order, Service Provider or its representative will initiate email communication with Customer to start the process for provisioning and activating the Service Offering. Once Customer completes the registration process, the Service Offering is provisioned, and Customer is notified via email that an administrator account has been created the account is available to activate. The Subscription Term begins on the date the first email is sent to Customer, regardless of when or if Customer activates the Service Offering and begins using the Service Offering.

3.3 Any terms and conditions in a Customer order document that conflict with, add to, or attempt to modify in any way this Service Offering Description or the Terms of Service are null and void.

4. Fees and Payment. The following terms will apply unless Customer has different payment terms with the entity from whom it purchases the Service Offering.

4.1 **Fees.** Customer will be billed for the Service Offering even if Customer does not activate or use the Service Offering. Customer must pay the subscription fees for the Service Offering in a single upfront payment. Customer agrees to pay the subscription fees set forth in the applicable quote according to the payment method that Customer chooses. Customer will pay for the Service Offering in accordance with the Terms of Service and this Service Offering Description.

5. Support. Service Provider provides support for the Service Offering in accordance with the Support Terms applicable to the level of support purchased by Customer set forth in the applicable quote. Scope and details of Support Terms are made available through the then-current Service Provider website for product- or service-specific terms, currently located at www.dell.com/offeringspecificterms. Support for Dell EMC PowerProtect Backup Service includes access to online resources such as chat and web support, as well as 24/7 telephone support. The version of the applicable document that is effective as of the date of the applicable quote, shall be deemed incorporated into the Order.

6. Data.

6.1 **Privacy.** Customer authorizes Service Provider to transmit, backup and use Customer Content solely to provide the Service Offering to Customer and Customer's Affiliates. Service Provider agrees to comply with its data processor obligations under any applicable Data Processing Addendum. Service Provider and its group of companies and third-party service providers may collect, use and share information, including limited personal information from our customers in connection with the deployment of telemetry collector software or other means ("Collector"). Service Provider will collect limited personal data when Customer utilizes the Service Offering and provides Service Provider with details such as name, contact details and the company. For more information on how Service Provider uses personal information, including how to exercise data subject rights, please refer to the Dell Privacy Statement which is available online at <https://www.dell.com/learn/us/en/uscorp1/policies-privacy-country-specific-privacy-policy>.

6.2 **Telemetry Collector.** The Collector gathers system information related to the Service Offering, such as diagnostics, configurations, usage characteristics, performance, number of users, number of devices, number of servers, per user storage capacity, aggregate storage usage and storage location (collectively, "System Data"), and it manages the remote access and the exchange of the System Data with Dell Inc. or its applicable subsidiaries (together, "Dell") and third-party service providers. This Collector is Dell Confidential Information and Customer may not provide or share it with others. Other than enabling the Collector to run, Customer does not have a license to use it. Customer consents to Dell's and its third-party service providers' connection to and remote access of the product containing the Collector and acknowledges that Dell will use the System Data transmitted to Dell via the Collector as follows ("Permitted Purposes"):

- remotely access the Service Offering and Collector to install, maintain, monitor, remotely support, receive alerts and notifications from, and change certain internal system parameters of the Service Offering and the Customer's environment, in fulfillment of applicable warranty and support obligations.

- provide Customer with visibility to its actual usage and consumption patterns of the Service Offering.
- utilize the System Data in connection with predictive analytics and usage intelligence to consult with and assist Customer, directly or through a reseller, to optimize Customer's future planning activities and requirements; and
- "anonymize" (i.e., remove any reference to a specific customer or individual) and aggregate System Data with that from products of other customers and use such data to develop and improve products.

Customer may not disable the Collector at any time.

The Collector does not enable Dell or their service personnel to access, view, process, copy, modify, or handle Customer's business data stored on or in the Service Offering. System Data does not include personally identifiable data relating to any individuals.

6.3. **Customer's Content.** Customer is solely responsible for (i) maintaining the confidentiality of its Users' credentials, passwords, and encryption keys associated with its accounts, (ii) properly configuring the settings of the Service Offering and taking its own steps to maintain appropriate security and protection of passwords and encryption keys and settings for any backup of Customer Content, (iii) all activities that occur with respect to Customer's accounts, (iv) its and its Users' access and use of the Service Offering and compliance with the Agreement and the applicable Documentation, (v) all Customer Content, and (vi) all product settings, which may override individual end point settings of Users, if applicable. Service Provider is not responsible for any alteration, compromise, corruption, or loss of Customer Content that arises from any access to, sharing, or use of Customer's accounts, credentials, passwords, or encryption keys.

Service Provider hereby disclaims any and all liability for any restoration of any Customer Content, including all text, sound, video or image files, or other information that Customer uploads to the Service Offering.

If Customer has operations in the United States or is otherwise subject to the US Health Insurance Portability and Accountability Act ("HIPAA"), Customer warrants and represents that prior to providing Service Provider access to the Service Offering, which has been used for processing and/or storage of Protected Health Information as defined in 45 C.F.R. Section 160.103 ("PHI"), all PHI on the Service Offering has been rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the U.S. Secretary of Health "Secretary" by either: (i) clearing, purging, or destroying PHI from any electronic media in a manner consistent with NIST Special Publication 800-88, *Guidelines for Media Sanitization*; (ii) encrypting PHI as defined in 45 C.F.R. 164.304 (currently the Secretary has identified the process for encrypting data set out NIST Special Publication 800-111 as meeting this standard). Customer is responsible for confirming any updated guidance from the Secretary on how to secure PHI in order to render it unusable, unreadable, or indecipherable, to unauthorized individuals and will comply with any applicable guidance as it relates to PHI found on the Service Offering.

7. **Security.** Service Provider is committed to secure cloud services. Customers can find more about Service Provider's commitment at [//www.dell.com/en-us/lp/trusted-cloud](http://www.dell.com/en-us/lp/trusted-cloud).

8. **Data Storage.** The Service Offering will process and store Customer Content in the Cloud Storage Area selected by Customer, except as necessary to comply with law or a valid binding order of

a law enforcement agency. In the event that Service Provider has the capability and desires to change the location of the Cloud Storage Area for a Customer Site, Service Provider agrees to promptly notify Customer in writing and provide all relevant details of the desired change to the location of the Cloud Storage Area, and not change the location of the Cloud Storage Area without Customer's prior written approval, which Customer may withhold in its sole discretion.

9. Data Retrieval. Upon expiration or termination of this Agreement, the rights granted by Service Provider to Customer under this Agreement will lapse and Customer will immediately cease all use of the Service Offering and delete (or, at Service Provider's request, return) related Documentation, passwords, and any Service Provider Confidential Information in its possession or control. Upon expiration or termination of this Agreement (other than termination by Service Provider for Customer's breach), Customer may (i) access the Service Offering for thirty (30) days solely to retrieve a back-up of the Customer Data at no cost, and (ii) access the Service Offering for an additional thirty (30) day period to retrieve a back-up of the Customer Data at a cost equal to the current annual list price, pro-rated to a monthly rate. If the Agreement is terminated by Service Provider for Customer's breach, on or prior to the 30th day after the expiration or termination of this Agreement, Customer may request that Service Provider provide a copy of the Customer Data to Customer at Service Provider's standard export fee. Service Provider will have no obligation to maintain or provide access to the Customer Data after the above periods have expired and will delete such data unless legally prohibited.

10. Cancellation. Customer cannot cancel or terminate the subscription prior to the expiration of the committed Subscription Term that Customer purchased. Customer may stop using the Service Offering at any time, but Customer is liable for all charges for the subscription, regardless of whether Customer uses the Service Offering for the entire Subscription Term. There is no refund for any committed charges that Customer paid at the time Customer purchased its subscription, regardless of whether Customers uses the Service Offering for the entire Subscription Term.

11. Service Level Objectives.

11.1 Availability. While Customer is receiving the Service Offering under the Terms of Service, Service Provider shall use commercially reasonable efforts to make the Service Offering available to Customer 24 hours per day, 7 days per week, excluding any Scheduled Maintenance, at least 99.5% of the time in any calendar month ("Service SLO").

11.2 Calculation of Service SLO. Service SLO = 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.

- "Downtime" means all functions of the Service Offering are unavailable for Customer. Downtime excludes Scheduled Downtime.
- "Scheduled Downtime" means downtime that occurs as part of the Service Offering's maintenance activities where Customer has been notified of the outage before it occurs.

11.3 Service SLO Exclusions. The following shall be excluded when calculating Service Offering Availability: (i) unavailability caused by force majeure events; (ii) any problems resulting from Customer combining or merging the Service Offering with any hardware or software not supplied by Service Provider; (iii) interruptions or delays in providing the Service Offering resulting from telecommunications, internet or other service provider actions, equipment or services failures; or (iv) any interruption or unavailability resulting from Customer's use of the Service Offering in an

unauthorized or unlawful manner or any interruption resulting from the misuse, improper use, alteration or damage of the Service Offering.

12. Legal Terms. Use of the Service Offering is subject to the [Cloud Service Offerings Agreement](#) (“Terms of Service”).

13. Definitions.

13.1 “**Cloud Storage Area**” means the geographic storage area provided by Service Provider and its suppliers where Customer Content may be stored per Customer’s instructions.

13.2 “**Customer Site**” means the geographic location at which Customer Content may be collected.

13.3 “**Documentation**” means the published user guides, manuals, instructions and/or specifications provided or made available to Customer with respect to the Service Offering on <https://dell-docs.druva.com> [dell-docs.druva.com] as amended from time to time. Customer may subscribe to alerts to receive changes to the Documentation in the customer documentation portal.

13.3 “**Service Provider**” means, as applicable:

EMC Corporation
176 South Street
Hopkinton,
Massachusetts
01748

or

Dell Marketing L.P.
One Dell Way
Round Rock,
Texas 78682