

Service Offering Description APEX Private Cloud with Subscription

1. Introduction.

1.1 Subscription Offering. APEX Private Cloud (the “Subscription Offering” or “APEX Service”) is a Fixed-Billed, subscription Offering that brings VMware vSphere Enterprise Plus and vSAN Enterprise on VxRail to a customer’s on-premises environment.

A. Features of the Subscription Offering. The Subscription Offering has the following features:

- (1) Dell Integrated Rack Offering – Supplier supplied VxRail, power distribution, switches, racks, etc. In some special cases, when specifically approved by Dell in writing, the Integrated Rack offer can be deployed into a rack with PDUs that you provide. For more information, contact your sales representative.
- (2) Customer Provided Rack Offering – Customer supplied, validated equipment – power distribution, switches, racks, data cables, and any other materials or software necessary to allow the other components of the Subscription Offering (e.g., VxRail) to operate according to its specifications. (Customer must provide rack and switch supported by VxRail and ensure there is enough power distribution unit (PDU) space to fulfill the order.)
- (3) Access to the firmware, drivers and BIOS updates.
- (4) Deployment of certain components of the Subscription Offering as specified in Appendix A.
- (5) Ongoing support from Dell for the Subscription Offering.
- (6) Subscription Offering recovery at the end of the subscription.

1.2 Definitions. The definitions below apply to this Service Offering Description. Some capitalized terms are defined within the specific context in which they are used below. Other capitalized words that are not defined in this Service Offering Description are defined in the APEX Agreement.

- “Activation Date” means the date that the Subscription Offering is available for You to start provisioning virtual machines in the deployed virtualized compute and storage infrastructure. Notwithstanding the foregoing, the Activation Date will be deemed to have occurred 21 days after Dell’s delivery of the Equipment to the Site unless Dell caused the delay.
- “Deployment” means the date on which Dell, in its sole discretion, completes the installation and establishes the configuration of the Subscription Offering at the Site.

2. Additional Subscription Offering Information.

2.1 Technical Documentation and Resources. Documents are available at <https://www.delltechnologies.com/en-us/cloud/index.htm>.

2.2 APEX Agreement and VMware License Terms. This Service Offering Description is governed by the APEX Agreement located at www.dell.com/apexagreement (“APEX Agreement” or “AA”) and both documents together govern the Subscription Offering. “APEX Agreement” for a Reseller or Dell-authorized distributor purchasing the APEX Service directly from Dell shall mean the APEX Reseller Agreement or APEX Distributor Agreement, respectively, located at <https://www.delltechnologies.com/partner/en-us/partner/apex-partner-agreement.htm>. Dell (as defined in the APEX Agreement) will provide the APEX Service to You.

If VMware has approved Customer utilizing its VMware Enterprise License Agreement (ELA) or VMware Cloud Provider Program (“VCP”) for entitlement to the VMware software in Section 1.1A, then Customer’s license to the VMware software is pursuant to the terms and conditions of the ELA or VCP agreement with VMware. Notwithstanding the AA, any use by Customer’s end users (i.e., not Customer’s employees or contractors but persons or entities to whom Customer provides a service) of the VMware software must be in accordance with Customer’s VCP agreement with VMware.

3. Telemetry Collector. Dell may collect certain information related to the APEX Service through a telemetry collector (“Collector”). Such information may include, without limitation, diagnostics, configurations, usage data, performance, Deployment location information, and system information sent to Dell automatically by Dell’s systems and tools (“System Data”).

By utilizing the APEX Service, Customer permits Dell to use the Collector to collect and use System Data for the following purposes (“Permitted Purposes”):

- to provide Customer with the APEX Service, including to fulfill applicable warranty and support obligations, to remotely monitor performance and modify APEX Service configurations, and to bill Customer (as applicable);
- to provide either Customer’s end users, or the Dell Channel Partners (as defined below) through which the Customer ordered the APEX Service, with metrics regarding Customer’s APEX Service usage and consumption patterns and as specified in this Service Offering Description;
- to create predictive analytics and usage intelligence to optimize Customer’s future planning activities and requirements;
- for sales and marketing, including sales and marketing research;
- to secure and protect Dell’s assets, rights and interests, including where appropriate to investigate, prevent, or take action regarding suspected illegal activity or fraud;
- to comply with Dell’s legal obligations, including in response to a court order, warrant, subpoena, regulatory or law enforcement demand, or other legal process;
- for provision, research, support, or enhancement of Dell products, services and offerings; and
- for any other legally permitted purpose.

Dell does not intend for the Collector to access, view, process, copy, modify, or handle Customer Content. Dell will treat any personal information collected through the Collector in accordance with the applicable jurisdiction’s Dell Privacy Statement, all of which are available at <http://www.dell.com/localprivacy> and each of which is hereby incorporated by reference.

Customer agrees that Dell may share the System Data with the following categories of third-parties that are involved in the transaction for the Permitted Purposes:

- Dell third-party service providers; and
- Dell channel partners, including but not limited to resellers, distributors, channel service partners, and OEM partners (collectively, “Dell Channel Partners”).

Dell owns all anonymized and aggregated System Data (“Dell System Data”). Dell System Data will not contain any personal information, and will be de-identified such that it will not disclose the identity of Customer to any third party. Customer acknowledges and agrees that the Collector and Dell System Data is Dell’s Confidential Information. Nothing herein grants Customer a license, express or implied, by estoppel, inducement, or otherwise, to use the Collector for any purpose.

Additional requirements and implementation details concerning the collection and use of System Data may be found in the technical documentation for the APEX Service available at <https://www.delltechnologies.com/en-us/cloud/index.htm>. To the extent this Section 3. conflicts with any other agreement between Dell and Customer, the terms of this Section shall control.

Customer may not disable the Collector at any time. Customer acknowledges that disabling the Collector will limit Dell’s ability and obligations (if any) to provide and/or support the APEX Service.

4. Service Operations.

4.1 Site. The Subscription Offering is Deployed at the street address location agreed by the Parties when ordering the Subscription Offering (“Site”). The Subscription Offering will be shipped to the Site. Customer must allow Dell’s authorized technician access to the Site in a timely manner for the following activities:

- (1) Initial Site survey information is collected through the ordering process on the APEX Console. Dell will contact Customer to verify that information and will work with Customer to complete the configuration

workbook. Customer acknowledges that delays in providing information for the Site survey or the configuration workbook may cause delays in the completion of subsequent Subscription Offering activities by Dell.

- (2) Deployment of the system, activation of Subscription Offering, and for adding Customer requested capacity.
- (3) Remediation of a problem with the APEX System (e.g., needing to replace faulty Equipment) where the issue cannot be addressed remotely.
- (4) Retrieval of the Subscription Offering from Customer's Site(s).
- (5) If Customer utilizes its ELA or VCPP entitlements from VMware for entitlement to the VMware software, Customer must provide Dell with software license key information during the ordering process.

Any delays or restrictions in providing access to the Site (for example, if Customer restricts access on weekends, restricts access during certain hours or restricts access for other Customer processes or conditions at the Site when the APEX System arrives) will affect Dell required on-site activities.

4.2 Capacity Management. Customer is responsible for capacity management of the Subscription Offering. Dell requires that 30% unused space ("slack space") be maintained in the vSAN datastore within the Subscription Offering, in order to support operation of the Subscription Offering. Adequate slack space is required for use of the vSAN datastore. If storage free space falls below 25%, it is possible that Customer could lose the ability to utilize the Subscription Offering, and the environment could become inoperable.

4.3 Service Terms. Dell is the single point of contact for all Subscription Offering support requests, even if Customer is utilizing its VMware ELA and VCPP software entitlements. Support features include:

- Rack Integration
- ProDeploy Plus
- ProSupport Plus with Mission Critical Support
- Asset Return

Additional information on Service Terms and Support for the Subscription Offering including Dell's commitments regarding Support can be found at: <https://www.dell.com/support/home/en-us/product-support/product/apex-cloud-service/docs>.

4.4 Restriction on Modification of Systems. The APEX System is a closed system, for use solely with the Subscription Offering. Customers are not allowed to modify the APEX System except as expressly permitted by Dell.

When Customer receives the system at its premises, Customer must not open or disturb the package containing the system and must keep the package in a safe location at Customer's premises until Dell's authorized technician arrives to unbox the system, set it up, establish the configuration, and power it on. Thereafter, problems with the system will be handled through the support process. Customer may not move the Subscription Offering from the Site agreed by Dell.

Customer must maintain the Subscription Offering software in accordance with the supported software versions as listed in the Dell EMC VxRail Support Matrix.

If You violate the terms of this section, then Dell will be relieved of its support obligations, and Dell may choose to discontinue or suspend the Subscription Offering at the compromised location, and/or terminate Your subscription to the Subscription Offering.

4.5 APEX System. Title to the Subscription Offering remains at all times with Dell and risk for the Subscription Offering will pass to Customer upon delivery to the Site, whether or not the Subscription Offering has been Deployed. Customer acquires no right or interest in the Subscription Offering by virtue of ordering a subscription to the Subscription Offering except as provided in this Service Offering Description and the AA, as applicable.

Dell may replace the APEX System at Customer's location(s) with notice to Customer during the Subscription Term or any renewal Term for reasons including but not limited to a hardware or equipment refresh. Dell also

reserves the right to reuse the APEX System for different customers when appropriate. If Dell elects to provide a previously deployed APEX System to a customer, the APEX System that is delivered will have all previous data and configurations deleted completely.

At Dell's discretion, the APEX System may be refreshed by Dell or Dell's authorized technician.

4.6 Operating Environment and Security. Customer shall, at its expense, operate the Subscription Offering with reasonable care and in accordance with the Service Offering Description, and keep the Subscription Offering located at the Site free and clear from any liens, security interest or encumbrances. Customer will not sell, charge, assign, transfer or dispose of or part with possession of the Subscription Offering. In the event of a threatened seizure of the Subscription Offering or an insolvency event, Customer agrees to provide Dell with Notice so Dell may take action to repossess the Subscription Offering. Dell recommends that Customer operate and maintain a data back-up system in its data center environment. Customer should provide for a daily back-up process including backing up data before performance of any remedial, upgrade or other works on its production systems. Dell disclaims any liability for Customer's failure to maintain a data back-up process.

Customer is responsible for ensuring the physical security of the APEX System at each Site. Customer is responsible for any damage to the Subscription Offering at the Site. Customer is responsible for maintaining the configuration. Customer is also responsible for managing the information security, the network security, patching, vulnerability scans of the system, and performing security monitoring of the system.

4.7 Customer Content. hereby disclaims any and all responsibility for any restoration of any data, including all text, sound, video or image files, and software or other information that Customer uploads to the Subscription Offering ("Customer Content") (including on any that Customer provides on USB flash drive).

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 Dell access to the Subscription 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 Subscription 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 Subscription Offering.

5. Business Operations.

5.1 Pricing. Pricing for the Subscription Offering is based on configuration of the system and the Subscription Term. Pricing may vary depending on the number and type of hosts. For details on pricing, consult Customer's sales representative.

5.2 Billing. Customer will be billed monthly for the Subscription Offering unless Customer elects an annual or upfront payment for the entire committed term of the subscription. There are no metered charges for use of the Subscription Offering.

5.3 Subscription Term and Expansion. The Subscription Offering is offered for a committed term subscription of either one or three years as identified in Customer's Order. Customer's initial Subscription Term and charges begin on the Activation Date. The Subscription Offering is not transferrable.

If Customer desires additional capacity after the initial order, Customer may add capacity to the Subscription Offering during Customer's Subscription Term by placing an order for additional capacity so long as such orders are placed three months before the end of Customer's Subscription Term. The Subscription Term for the expansion capacity will be the same as the original Subscription Offering. Additional charges will apply for added capacity and will begin on the Activation Date of such expansion capacity. Additional capacity to the Subscription Offering is subject to this Service Offering Description and AA. If Customer desires additional capacity within three months of the end of the Customer's Subscription Term, please contact Customer's sales representative to renew Customer's Subscription Term and order additional capacity. During a Subscription Term, you may not reduce capacity.

5.4 Notice and Renewal. If Customer does not intend to use the Subscription Offering after the Subscription Term, Customer must provide Dell with written notice of Customer's intent to terminate at least ninety (90) days before the end of the then current Subscription Term to avoid additional costs.

If Customer wishes to use the Subscription Offering after the Subscription Term, Customer can renew upon mutually agreed upon pricing and terms for either a one-year or three-year term, for a total term of not to exceed six years from the Activation Date, or Customer can purchase a new subscription.

If Customer has not renewed its subscription, not purchased a new subscription, nor provided Dell with notice of Customer's intent to end the subscription, the subscription will continue after Customer's initial Subscription Term on a monthly basis ("Monthly Renewal Term"). For the Monthly Renewal Term(s), Customers will be billed monthly at the monthly rate which is different than the billable rate for longer subscription terms (to the extent permitted by local law). For additional information on the monthly rate, please contact your account representative. Customer may cancel the Monthly Renewal Term by providing Dell with at least ninety (90) days written notice of Customer's intent to end the Monthly Renewal Term

5.5 Termination of the Subscription Offering. Termination of the Subscription Offering will result in permanent loss of access to the environments, discontinuation of services, and a deletion of the environments and configurations pursuant to Dell practices. Notwithstanding the foregoing, if Customer wishes to extract Customer Content from the Subscription Offering (to the extent Customer has not already done so prior to termination of Customer's Subscription Term), Customer must notify Dell before Dell's authorized technician removes the APEX System from Customer's premises, and, subject to additional fees, Dell will assist Customer in extracting Content from the Subscription Offering. Customer will be responsible for all fees associated with Content extraction. If Customer does not notify Dell before APEX System removal, Customer's Content will be permanently deleted and will not be recoverable. Dell shall have no obligation for deleting Customer Content in accordance with this section.

5.6 Cancellation. Except to the extent otherwise required by applicable law, Customer cannot cancel or terminate the subscription prior to the expiration of the committed Subscription Term that Customer purchased. Customer may stop using the Subscription Offering at any time, but Customer is liable for all charges for the subscription, regardless of whether Customer actually uses the Subscription 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 or not Customers actually uses the Subscription Offering for the entire Subscription Term. If Customer is on a Monthly Renewal Term (that is, if Customer has not purchased a new or renewal subscription after expiration of Customer's initial committed Subscription Term but Customer is continuing to use or possess the Subscription Offering), Customer may stop using the Subscription Offering at any time during the month, but Customer is obligated for monthly fees until Customer provides Dell with written notice of Customer's intent to terminate the Monthly Renewal Terms for the Subscription Offering in accordance with Section 5.4 above.

5.7 Decommission of APEX System. If Customer has elected to terminate its subscription at the end of Customer's committed Subscription Term or Monthly Renewal Term(s), Customer will have 30 days from the time Dell notifies Customer, or if no notice is provided from the last day of the Subscription Term or Monthly Renewal Term(s), as applicable, within which to delete Customer's Content from the system. If the Subscription is terminated prior to the end of the term, Customer will have thirty (30) days from the time Dell notifies Customer of termination, within which customer is obliged to delete Customer's Content from the APEX System. At the end of 30 days, Dell's authorized technician will remove the system from Customer's premises. Pursuant to the Termination Section 5.5 (Termination of the Subscription Offering) above, if Customer has not deleted its Content from the system, it may be deleted by Dell.

5.8 Retaking Possession of the Subscription Offering. Upon termination of Customer's subscription, with notice to Customer and in accordance with local law, Dell or Dell's authorized technician may enter upon Customer's premises where any of the Subscription Offering(s) are located to recover the Subscription Offering. Customer is responsible for ensuring that Customer's Content has been removed from the system, within the time period specified in the Decommission Section 5.7 above.

In the event Dell terminates this Subscription Offering for Customer's breach, Customer shall be responsible for the payment of the actual documented costs and reasonable attorney's fees incurred by Dell in retaking possession of the Subscription Offering and/or seeking to recover amounts due and owing.