



Service Description: Dell Backup and Recovery Cloud Storage

Service Providers: Dell Marketing L.P. (“Dell”), One Dell Way, Round Rock, Texas 78682, and its worldwide subsidiaries, and authorized third party suppliers or contractors.

Terms and Conditions. Dell is pleased to provide Dell Backup and Recovery Cloud Storage (the “Service” or “Services”) in accordance with this Service Description and Dell’s Terms of Sale for individual customers (“Consumer” or “Consumers”) posted at www.dell.com/salestermsconsumer_NZ which you can also locate from your local country-specific www.dell.com website stated at the end of this Service Description. The parties acknowledge having read and agree to be bound by such online terms. Dell may offer customers the Service through free trials, monthly subscriptions, annual subscriptions, and/or various promotional offers. You (the “Customer”) acknowledge and agree that the Service(s) described below are being supplied in accordance with your acceptance of the terms and conditions of this Agreement. To the extent of any inconsistency between terms in this Service Description and Dell’s Terms of Sale, Dell’s Terms of Sale will prevail.

Service. The Service allows you to back up and restore your data, photographs, videos, music and other digital files (collectively, the “Content”) via the internet for one (1) computer per subscription. Back-up of the Content you designate occurs via your Internet connection at the time and frequency set by you. You must provide and pay for all computer equipment and services necessary to use the Service, including access to the internet. Dell makes reasonable efforts to provide you with uninterrupted access to the Service. Dell will make commercially reasonable efforts to make the Service available 24-hours a day, seven days a week. However, there will be occasions when the Service will be interrupted for maintenance, upgrades, emergency repairs or the failure of telecommunications equipment and services that are beyond the control of Dell. Dell will take reasonable steps to minimize such disruptions.

The Service offers Customers consumer-level backup for their personal files using online (cloud) backup space (depending on the offer selected by the Customer). The Service is designed and intended to provide a secondary backup location for copies of files that are ordinarily housed on the consumer’s personal computer(s). The Service is not an archival service or an extension of a consumer’s hard drive. The online backup service is designed to house copies of files that are primarily and ordinarily stored on the consumer device that is being backed up. It is solely the Customer’s responsibility to maintain original versions of all content.

Please note that upon cancellation of your subscription, you may continue to use the service for the remainder of the prepaid subscription term and you will not be entitled to any refund of fees prepaid for that subscription year except as required by local laws and the relevant returns and refunds for change of mind (cooling-off) policy. When the prepaid subscription term expires, the service will be terminated and all of the content will be permanently deleted. Neither Dell nor any of its third party suppliers or contractors will have any liability to customers or other third parties for loss or recovery of content or programs attributable to the service or otherwise.

Dell may provide this Service through its services partners. The billing agent is Cleverbridge, additional terms from this company may have to be agreed upon by the Customer in order to process payment.

Subscription Terms:

Auto-Renewal. If you enrolled in a subscription that has auto-renewal and automatic payments, please consult the “Confirmation of Subscription Terms” section of the Cloud Storage order confirmation email from cs@cleverbridge.com for the auto-renewal and automatic charge terms that are applicable to you. **You can cancel at any time without penalty. Your subscription and automatic payments will continue until you cancel.** Please consult the “Confirmation of Subscription Terms” section of the Cloud Storage order confirmation email from cs@cleverbridge.com if you are not sure if you are subject to auto-renewal and automatic payments.

Cancellations. You may cancel by opening the Dell Backup and Recovery application on your device, clicking on “Manage Backups” then “Cloud Backup”, and selecting “Cancel Account.” You may also cancel your account by clicking on the “Cancel your subscription” link in the Subscription Cancellation section of your Cloud Storage order confirmation email.

Your Account Information. The period of a paid-subscription to the Service begins upon purchase of your subscription, regardless of whether or when you activate or begin using your account, or, if applicable, the expiration of your free trial subscription, assuming you do not cancel during the free trial period. The period of any free trial subscription to the Service begins upon initial activation of your account. Unless your account is earlier terminated under this Agreement, your free trial subscription expires at the end of the free-subscription term.. Once you cancel your Service, your access to your account will terminate. When you register for the Service, you agree to provide accurate information about yourself and to keep that



information up-to-date. At registration, you will select a user name and password that you will need to restore or share your Content. Dell may use an escrowed copy of your password only to allow you to restore or share your Content (upon your presentation of your Account Information to Dell). Dell will not otherwise use or share your escrowed password, unless required to do so by law. Please keep your password safe and secure. You will not be able to restore or share your Content without it. It is your responsibility to maintain the confidentiality of your user name and password (your "Account Information"). You are responsible for all use of the Service accessed through your Account Information. When you share your content, the content you share is not encrypted. You agree to immediately notify Dell of any unauthorized use of your Account Information or any other actual or suspected breach of security.

Software. The Service includes the installation of software (the "Service Software") on your Supported PC(s) (as defined below) that enables the delivery of the Service. The Service Software and Service are protected by copyright, patent and other intellectual property laws and are proprietary and confidential of Dell and/or its third party suppliers or contractors. All rights, title and interest in and to the Service Software and Services are and will remain vested in Dell and/or its third party suppliers or contractors. The Software is licensed to the Customer, not sold.

YOUR USE OF THE SERVICE: You are solely responsible for all Content and Account Information that you transmit, store, view, restore or share through the Service and to and from your account. You agree that your use of the Service will fully comply with all applicable laws, rules and regulations and that it will also comply with all regulations, policies and procedures of networks through which you access and use the Service. Without limiting the generality of these requirements, you agree that you will not use the Service to:

- Transmit, store, view, restore or share Content that: (i) contains illegal material; (ii) is harassing, libelous, defamatory, abusive, threatening, harmful, pornographic, obscene or is otherwise tortious or offensive, as determined by Dell; (iii) encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate a law; or (iv) contains any viruses, worms, Trojan horses or other code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment associated with the Service;
- Transmit, store, view, restore or share Content, if such action would violate any applicable privacy policy or applicable privacy law, rule or regulation;
- Plan or carry out any illegal activity;
- Violate the intellectual property rights or other rights of any third party, including, without limitation, any person's copyrights in music, videos, images, books or other works;
- Breach any duty of confidentiality that you owe to anyone;
- Access or attempt to access any account for which you have no access authorization;
- Sell Content to others, charge anyone for access to your Account or otherwise use, sell or share the Service for any commercial purpose;
- Attempt to probe, scan or test the vulnerability of the Services or of a system, account or network of Dell or any of Dell's suppliers; or
- You acknowledge that U.S. and other countries' export laws may apply to the transfer of technology and software through the Service. You warrant that any software you transmit and store using the Service contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. You also warrant that any technology you transmit and store is approved for export without a license. Notwithstanding the foregoing, you are solely responsible for obtaining any specific licenses relating to the export of technology and/or software if a license is required.

You further agree that you will not:

- Create any links, whether on a web page, in an e-mail or otherwise, that direct anyone to any part of your Account; or
- Interfere or attempt to interfere with the servers or networks connected to the Service.

Inspection of Your Content. Dell does not control the Content of any customer's account and does not have any obligation to monitor or review Content for any purpose. Notwithstanding the foregoing, if Dell and/or its third party suppliers or contractors reasonably suspects that an Account is being used for storage or distribution of any Content that violates Dell's terms and conditions of the Service or any applicable law, Dell reserves the right, and subject to applicable law, to terminate your account, delete your Content and/or, if applicable, notify the appropriate authorities, without prior notice to you. Your Content is subject to examination by law enforcement officials or others without your consent, upon presentation to you or Dell and/or Dell's third party suppliers or contractors of a search warrant, subpoena or other legal process, or if Dell and/or Dell's third party suppliers or contractors reasonably suspects a violation of these Terms and Conditions has occurred. Unless required by law, you have no right to be notified by Dell of any such disclosure. You agree to hold Dell and/or Dell's third party suppliers or contractors harmless from and against, and waive



(to the extent permitted by applicable law) any claims you may have against Dell resulting from any disclosure, investigation or act or omission of Dell in the course of conducting or cooperating with an investigation as set forth in this section.

Security of Your Content. The Service provides secure Content transmission and storage. Content is encrypted using 448 bit Blowfish encryption before leaving your computer and during transport. Content is stored using the same 448 bit Blowfish encryption. Content is encrypted based on a system-defined key. Because it is not possible to make encrypted files completely impenetrable, you acknowledge that it may be possible for an unauthorized third party to access your Content, and you agree that, in such event, any loss that you may suffer is subject to the Limitation of Liability section of this Service Description.

Modifications. Dell reserves the right to modify or discontinue the Service, with or without notice or liability to you or any third party.

Data Backup. It is solely the Customer's responsibility to complete a backup of all existing data, software, and programs on affected supported products. As per the Limitation of Liability section below, Dell is not responsible for loss of or recovery of data, programs or loss of use of system(s) or network(s). Customer understands and agrees that under no circumstances will Dell be responsible for any loss of software, programs or data – even if technicians have attempted to assist Customer with their backup, recovery, or similar services. Any such assistance is beyond the scope of any Dell warranty and this Service Description; this assistance is provided in Dell's sole discretion and without any guarantee or warranty of any kind. Neither does Dell provide any guarantee or warranty of any kind with respect to any third party product that a technician may use in assisting Customer.

Data Export. You expressly authorize Dell to use, reproduce, modify, perform, display and distribute your data as is reasonable or necessary for Dell to provide the Services. You further acknowledge and expressly consent that the Service is provided from facilities located outside of your country and any data, or information you provide through the Service (including personal information protected by Data Privacy Laws) will be transmitted and stored outside of your country. You agree that the stored information may be subject to the applicable laws and jurisdiction of the place of such facilities. You will be responsible to ensure that you have obtained all rights, permissions, and consents or have provided disclosures necessary to use and transfer such data and information outside of your country when using Dell's Services. Once such data or information has been transferred to Dell you would have been deemed to have obtained the necessary consent and authorizations. You acknowledge and expressly consent that Dell may, in the normal course of business, make worldwide transfers of personal data on its corporate systems, to other entities, agents or subcontractors in the same group of companies, or to other relevant business partners who may have incidental access to personal data. When making such transfers, Dell shall ensure appropriate protection is in place to safeguard personal data transferred under or in connection with this Agreement.

Termination. The term of this Agreement will commence on the date of your first acceptance of the Agreement and continue until the earliest of (a) the Customer cancels the Service or the Customer's subscription to the Service expires, (b) the date upon which Dell provides notice to you of termination of this Agreement for Dell's convenience, and (c) non-payment or your violation or breach of any terms or conditions of this Agreement (the "Term"). Upon the expiration or termination of this Agreement the rights granted to you under this Agreement with respect to the Service and the Confidential Information (defined below) will immediately terminate. Use of the Service constitutes acceptance of the Agreement.

Data Collection; Dell's Privacy Policy. In connection with the Services, Dell may measure, record and upload performance data. Dell will treat such information in accordance with Dell's Global Privacy Policy. Your use of this Service is governed by Dell's Privacy Policy which can be found at <http://www.dell.co.nz/privacy>. In carrying out its obligations, Dell, or its third party sub-contractors, may at its discretion and solely for the purposes of monitoring the quality of Dell's response, record part or all of the calls/chat sessions between you and Dell. By utilizing these Services, you consent to have your calls/chat sessions with Dell or its third-party subcontractors monitored and/or recorded.

Cooperation with Law Enforcement. Dell and/or its third party suppliers or contractors may be required by law to report any facts or circumstances reported to us or that we discover from which it appears there may be a violation of applicable law, including without limitation, child pornography laws. You acknowledge and agree that Dell and/or its third party suppliers or contractors may proactively report any such information, including the identity of users, account information, images and other facts to law enforcement personnel, government officials and/ or a third party as Dell and/or its third party suppliers or contractors believes reasonably necessary or appropriate, as determined by Dell and/or its third party suppliers or contractors in its reasonable discretion, to meet its legal obligations or protect the rights, property or safety of its employees, other users or third parties. Customers are prohibited from violating or attempting to violate the security of Dell, the Service Software, or the Service. Violations of system or network security may result in civil or criminal liability. Dell and/or its third party suppliers or contractors will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Customers who are involved in such violations.



NO WARRANTIES; LIMITED LIABILITY. The transmission, storage, viewing, restoration and sharing of Content through the internet are subject to a variety of conditions that make such transmission, storage, viewing, restoration and sharing potentially unreliable. Accordingly, to the fullest extent permitted by law, you agree that use of the Service is at your sole risk. The Service is provided to you on an “as-is” and “as-available” basis. Dell expressly disclaims all warranties of any kind, whether express or implied, with respect to your account or the Service, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Without limiting the foregoing, Dell makes no representation or warranty: (a) that the Service will meet your requirements; (b) that the Service or your access to it will be uninterrupted, timely, secure, virus-free or error-free; (c) that your Content will not be lost, compromised or damaged; (d) that your computer or network operations or those of any person with whom you share Content will not be negatively affected by your use of the Service; (e) that any data on your computer or network will not be lost or damaged as a result of your use or non-use of the Service; or (f) that defects in the Service will be corrected. No advice or information, whether oral or written, obtained by you from Dell or through the Service shall create any warranty not expressly made herein. Some jurisdictions do not allow the exclusion of certain warranties, so some of the above exclusions may not apply to you.

To the fullest extent permitted by law, Dell shall not be liable for any indirect, incidental, special, consequential or punitive damages arising out of: (1) the use of or inability to use the Service, (2) loss or alteration of Content, (3) any claim attributable to errors, omissions or other inaccuracies in the Service, (4) unauthorized access to or alteration of Content or other transmissions, or (5) any other matter relating to the Service, even if Dell has been advised of the possibility of such damages. To the extent permitted by law, you agree that Dell’s total liability for damages related to the Service is limited to the total amount you have paid for the Service, or, if your claim arose during a free trial period, to the then-current annual amount charged for the Service. Notwithstanding anything in these Terms and Conditions to the contrary, the remedies set forth in these Terms and Conditions shall apply even if such remedies fail their essential purpose. Some jurisdictions do not allow the limitation or exclusion of liability for certain damages, so some of the above limitations may not apply to you, in which case Dell’s liability shall be limited to the maximum extent permitted by applicable law.

Third-Party Claims / Indemnification. You agree that you are personally responsible for your behavior in connection with the Service. Neither Dell nor its third party suppliers or contractors shall be liable for claims made against you or Dell [and/or its third party suppliers or contractors] arising out of your use of the Service, and you hereby agree to indemnify and hold Dell, its related companies, officers, directors, employees, agents and/or its third party suppliers or contractors harmless from and against any claim or demand, including reasonable attorneys’ fees and costs, made by any third party due to or arising, directly or indirectly, in whole or in part, out of your use of the Service, the use of the Service by any other person who accesses it using your Account Information, your Content, your violation of this Service Description or your infringement of any intellectual property or other right of any third party.

Third-Party Suppliers and Contractors. You agree that Dell’s suppliers and contractors are third party beneficiaries to this Agreement with the right to rely on and enforce its terms to their full extent, notwithstanding that such entities are not parties to this Agreement. In no event shall Dell’s suppliers or contractors have any liability [to you or other third parties] for any damages, whether direct, indirect, incidental or consequential, as a result of the use of the Service.

Governing Law. The parties agree that this Agreement, any sales thereunder, or any claim, dispute or controversy (whether in contract, tort, or otherwise, whether preexisting, present or future, and including statutory, common law, and equitable claims) between Customer and Dell arising from or relating to this service description, its interpretation, or the breach, termination or validity thereof, the relationships which result from this Service Description, Dell’s advertising, or any related purchase shall be governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

Nothing set out in this Service Description affects your consumer statutory rights.

Dell’s standard terms and conditions can be found at <http://www.dell.co.nz/> (Terms and Conditions footer on home page). This Service is not available at all locations in the Asia Pacific and Japan region.