

## VMware hosted (cloud) services | VMware

These clauses only apply to the Customer's use of the VMware Hosted Services.

### 1. Definitions

In this section:

- (a) **Customer Content** means any data uploaded into the Service Offering for processing, storage or hosting, by the Customer or by any User, but does not include:
  - (1) Third-Party Content; or
  - (2) performance and usage data collected by VMware (as specified in the 'Monitoring' clause below);
- (b) **End User** means a user of a Service Offering who is not the Customer's employee, onsite contractor or agent. End Users include the Customer's customers (e.g., persons to whom the Customer provides a service, and with whom the Customer is in a commercial contractual relationship);
- (c) **High Risk Activities** means activities with a likelihood of injury or death, including but not limited to controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario where failure could lead to personal injury, death or environmental damage;
- (d) **Proposal Term** means the term of Cenitex services specified in this Proposal;
- (e) **Service Description** means the then-current version of the Service Description for the particular Service Offering, as found at <https://www.vmware.com/download/eula.html>;
- (f) **Service Offering** means the VMware cloud service offering specified in this Proposal, including services to host VMware software, on the Customer's behalf, to enable the Customer to use that software in a production environment via internet-based consoles;
- (g) **Third-Party Content** means any data provided by a third party that interoperates with the Service Offering, including open source software, but that is not embedded in or required for use of the Service Offering. For example, Third-Party Content may include an application that is listed on a marketplace or in a catalogue;
- (h) **User** means any person who is authorised to access or use the Service Offering or Customer Content directly, and may include the Customer's employees, contractors,

service providers, and other third parties, but does not include the Customer's End Users;

- (i) **VMware Agreement** means the Enterprise License Agreement between Cenitex and VMware Australia Pty Ltd (ABN 77 122 677 089) in respect of the Service Offering.

## 2. The Service Offering

- (a) The Customer is responsible for their:
  - (1) Customer Content; and
  - (2) Users' compliance with the terms and conditions set out in this section.
- (b) If the Customer becomes aware that any Customer Content or Third-Party Content violates these terms, they must promptly remove that Content or suspend use of that Third-Party Content.
- (c) If VMware reasonably believes that a problem with the Service Offering may be attributable to Customer Content or to the Customer's use of the Service Offering, the Customer must cooperate with Cenitex and VMware to identify the source of the problem and resolve that problem.

## 3. Monitoring

- (a) The Customer acknowledges that VMware may monitor and collect configuration, performance and usage data relating to the Customer's use of the Service Offering:
  - (1) to facilitate delivery of the Service Offering (such as tracking entitlements, providing support, monitoring the performance, integrity and stability of the Services Offering's infrastructure, and preventing or addressing service or technical issues); or
  - (2) to improve VMware products and services, and customer experience,and the Customer must not interfere with that monitoring.

## 4. Required disclosures

- (a) VMware will not access, use or disclose Customer Content except if they are required by a subpoena, court order, agency action, or any other legal or regulatory requirement to disclose that Customer Content. Cenitex will provide the Customer with notice and a copy of the demand as soon as practicable, unless Cenitex is prohibited from doing so pursuant to applicable law.
- (b) Cenitex will:

- (1) where practicable, attempt to redirect any such order or requirement to disclose Customer Content to request disclosure directly from the Customer; or
- (2) if requested by the Customer, request that VMware take reasonable steps to content any required disclosure,

and VMware will limit the scope of any disclosure to only the information that VMware is required to disclose.

## 5. Data Protection and Security

- (a) The Customer is solely responsible for ensuring that the Service Offering and its security:
  - (1) is appropriate for the Customer Content and for the Customer's intended use;
  - (2) has the appropriate or required certifications for the Customer Content; and
  - (3) meets the Customer's requirements, including any legal requirements that apply to the Customer Content.
- (b) The Customer is responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity and security of the Customer Content. Those steps include:
  - (1) controlling access the Customer provides to its User;
  - (2) configuring the Service Offering appropriately;
  - (3) ensuring the security of the Customer Content while it is in transit to and from the Service Offering;
  - (4) using encryption technology to protect the Customer Content; and
  - (5) backing up the Customer Content.
- (c) The Customer is responsible for providing any necessary notices to Users and obtaining any legally required consents from Users regarding their use of the Service Offering.

## 6. Acceptable Use of Hosted Services - General restrictions

The Customer must not:

- (a) resell or sublicense the Service Offering; or
- (b) use the Service Offering:
  - (1) in a way prohibited by law or that would cause the Customer, Cenitex or VMware to be out of compliance with applicable law;

- (2) to violate any rights of others;
- (3) to try to gain unauthorised access to, test the vulnerability of, or disrupt the Service Offering of any other service, device, data, account or network;
- (4) to distribute spam or malware;
- (5) in a way that could harm the Service Offering or impair anyone else's use of it;
- (6) in a way intended to work around the Service Offering's technical limitations, recurring fees calculation or usage limits; or
- (7) to host or run any applications that control or are involved in any High Risk Activities.

## **7. Acceptable Use of Hosted Services - Content restrictions**

- (a) The Customer must not upload into the Service Offering any Content that:
  - (1) may create a risk of harm or any other loss or damage to any person or property;
  - (2) may constitute or contribute to a crime or a tort;
  - (3) includes any data that is illegal, unlawful, harmful, pornographic, defamatory, infringing, or invasive of personal privacy or publicity rights; or
  - (4) contains any data that the Customer does not have a right to upload into the Service Offering.
- (b) If the Customer uses the Service Offering for data regulated by law, then the Customer is solely responsible for the consequences of that use.

## **8. Temporary Suspension**

- (a) The Customer acknowledges and agrees that VMware may, at its option, suspend the Customer's use of any Service Offering if:
  - (1) Cenitex are in material breach of the VMware Agreement (including as a result of the Customer's breach of the acceptable use restrictions set out in clauses 5 and 6 of this section) and that breach is not cured within 10 Business Days of Cenitex being notified by VMware of the breach;
  - (2) VMware believe that Cenitex's or the Customer's use of the Service Offering poses a security risk to the Service Offering or to other users of the Service Offering; or
  - (3) VMware suspect fraud or abuse.

- (b) Cenitex will give the Customer notice before any suspension of the Customer's use of the Service Offering if permitted by law or unless VMware reasonably determine that Cenitex providing notice presents a risk of harm to the Service Offering, to other users of the Service Offering, or to any person or property, in which case Cenitex will notify the Customer as soon as feasible or permitted.
- (c) VMware will suspend access only to the Service Offering that is the subject of the issue giving rise to the suspension. VMware will promptly reinstate the Customer's access to the Service Offering once VMware have determined that the issue causing the suspension has been resolved.

## 9. Effect of termination

Deletion of any Content remaining in the Service Offering will occur as specified in the applicable Service Description. The Customer is responsible for ensuring that it has necessary copies of the Customer Content prior to the effective date of any termination.

## 10. Privacy and Data Protection

- (a) VMware will not access, use or disclose any Content uploaded to a Service Offering. Cenitex will promptly notify the Customer if Cenitex becomes aware of any unauthorised access, use or disclosure of the Customer Content.
- (b) Subject to subclause (c), the Customer consents to the movement by VMware of Personal Information the Customer discloses to VMware outside of the State of Victoria.
- (c) Unless otherwise notified by Cenitex, VMware will, in providing a Service Offering, store Content uploaded into that Service Offering in an Australian region and where such Content is located in an Australian region, VMware will not move such Content from Australia unless:
  - (1) required by a subpoena, court order, agency action, or any other legal or regulatory requirement (in accordance with this clause);
  - (2) the Customer provides their prior written consent;
  - (3) Cenitex, on behalf of the Customer, grant access to Content in connection with a request for support;
  - (4) in response to an actual or suspected security breach of the applicable Service Offering; or

(5) in the performance of disaster recovery services.