cenitex

VicCloud (AWS) | AWS

1. Definitions

In this section:

(a) **Acceptable Use Policy** means the policy currently available at http://aws.amazon.com/aup, as it may be updated by AWS from time to time;

(b) **Agreement** means the agreement between Cenitex and AWS dated 28 February 2017 which is based on the terms of the AWS Enterprise Customer Agreement between AWS and Department of Premier and Cabinet dated 17 October 2014;

(c) **AWS Content** means Content AWS or any of its affiliates makes available about the Services or on the AWS site at http://aws.amazon.com to allow access to and use of the Services, including: WSDLs; documentation; sample code; software libraries; command line tools; and other related technology. AWS Content does not include the Services or third-party content;

(d) **AWS Service Offerings** means the Services (including associated APIs), the AWS Content, AWS trade marks, the AWS site at http://aws.amazon.com, and any other product or service provided by AWS to the Customer via Cenitex;

(e) **AWS Service Terms** means the rights and restrictions for particular Services located at http://aws.amazon.com/serviceterms, as they may be updated by AWS from time to time;

(f) **Content** means software (including machine images), data, text, audio, video, images or other content;

(g) **Customer Content** means Content that the Customer or any End User:

 (1) runs on the Services;

 (2) causes to interface with the Services; or

 (3) uploads to the Services under Customer's account or otherwise transfers, processes, uses or stores in connection with Customer's account;

(h) **End User** means any individual or entity that directly or indirectly through another user:

 (1) accesses or uses Customer Content; or

 (2) otherwise accesses or uses the AWS Service Offerings under a Customer account,

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but does not include individuals or entities when they are accessing or using the Services or any Content under their own account, rather than a Customer account; and

(i)   **Service** means each of the AWS services purchased by the Customer via Cenitex.

2.   Use of AWS Service Offerings

(a)   The Customer must adhere to all laws, rules, policies and regulations applicable to the Customer's use of the AWS Service Offerings, including the AWS Service Terms and the Acceptable Use Policy.

(b)   The Customer is responsible for all activities that occur under its accounts, regardless of whether the activities are undertaken by the Customer, its employees or a third party (including contractors or agents), and, except to the extent caused by AWS's breach of the Agreement, AWS, its affiliates and Cenitex are not responsible for unauthorised access to Customer's accounts.

(c)   Third party content may be made available directly to the Customer through the AWS website or in connection with the Services. This content may be governed by separate terms and conditions, including separate fees and charges. Because AWS may not have tested or screened the third-party content, the Customer's use of such content is at the Customer's sole risk.

3.   Changes

(a)   The Customer acknowledges that AWS may change or discontinue any of the AWS Service Offerings (including the AWS Service Offerings as a whole) or change or remove features or functionality of the AWS Service Offerings from time to time.

(b)   AWS will provide at least six months prior notice to Cenitex (and Cenitex will notify the Customer) if AWS knowingly discontinues a Service or functionality of a Service that it makes generally available to its customers, except that AWS may not provide such notice if necessary to:

(1)   address an emergency or threat to the security or integrity of AWS;

(2)   respond to claims, litigation, or loss of license rights related to third party intellectual property rights, or

(3)   comply with the law or requests of a government entity.

(c)   The Customer acknowledges that AWS may change, discontinue, or add Service Level Agreements from time to time, but will provide 60 days advance notice to Cenitex

before materially reducing the benefits offered under the Service Level Agreements, and Cenitex will promptly notify the Customer of any such changes.

4. **Customer responsibilities**

(a) The Customer will ensure that no Customer Content or its End Users' use of Customer Content or the AWS Service Offerings will violate the Acceptable Use Policy or applicable law. The Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Content. For example, the Customer is solely responsible for:

(1) the technical operation of Customer Content;

(2) any claims relating to Customer Content; and

(3) properly handling and processing notices that are sent to Customer (or any Customer Affiliate) by any person claiming that Customer Content violates such person's rights.

(b) The Customer is responsible for properly using the AWS Service Offerings and taking steps to maintain appropriate security, protection, and backup of Customer Content, which may include use of encryption technology to protect Customer Content from unauthorised access and routine archiving of Customer Content.

(c) The Customer will ensure that all End Users comply with the Customer's obligations under this section. If the Customer becomes aware of any violation of its obligations by an End User, the Customer must immediately notify Cenitex in writing of such violation and must immediately terminate such End User's access to Customer Content and the AWS Service Offerings or direct Cenitex to do this (where Cenitex controls that access).

5. **Fees**

(a) The Customer acknowledges that AWS may increase or add new fees and charges for any existing Service by giving Cenitex at least 60 days' advance notice. Cenitex will promptly advise the Customer of any such changes and the Service Catalogue will be updated to reflect those changes.

(b) AWS charges will vary according to Customer usage. Cenitex Support pricing is based on a fixed percentage of the AWS charges, reviewed annually, and as such support fees and charges will subsequently vary dependent upon Customer usage.

(c) Any adjustment to the Ongoing charges (an increase or a decrease) due to changes in Customer demand will be reflected on an annual basis.

(d)   AWS hosting charges will commence from the time the service is activated.

6.   **Service Levels**

Cenitex's commitments for uptime and connectivity will be provided under the AWS Service Level Agreements for the applicable service, as published by AWS at the following locations:

- http://aws.amazon.com/ec2-sla
- http://aws.amaxon.com/s3-sla
- http://aws.amazon.com/cloudfront/sla
- http://aws.amazon.com/route53/sla

7.   **Suspension**

The Customer acknowledges that AWS may suspend the Customer's or any End User's right to access or use any portion of or all of the AWS Service Offerings immediately upon notice to Cenitex if AWS reasonably determines:

(a)   the Customer's or any End User's use of the AWS Service Offerings or another Cenitex customer's use of the AWS Service Offerings:

(b)   poses a security risk to the AWS Service Offerings or any third party;

(c)   may adversely impact AWS's systems, the AWS Service Offerings or the systems or Content of any other AWS customer; or

(d)   may subject AWS, its affiliates or any third party to liability; or

(e)   the Customer or any End User is not in compliance with the Acceptable Use Policy or compliance with this section.

To the extent practicable, AWS will:

(f)   only suspend the Customer's right to access or use those instances, data, or portions of the AWS Service Offerings that caused the suspension; and

(g)   limit the suspension to the specific AWS account(s) belonging to the Customer or other Cenitex customer that caused the suspension.

8.   **Termination**

(a)   The Customer acknowledges that AWS may terminate its Agreement with Cenitex for any reason by providing Cenitex 90 days advance notice. Cenitex will promptly notify the Customer of any such termination and the Customer will cease receiving the Services at the end of the relevant notice period.

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(b)   AWS may terminate its Agreement with Cenitex upon 30 days advance notice to Cenitex:

    (1)   for cause, if there is an act or omission by a Customer or any End User that AWS has the right to suspend for under the Agreement; or

    (2)   in order to comply with applicable law or requests of governmental entities. Cenitex will promptly notify the Customer of any such termination and the Customer will cease receiving the Services at the end of the relevant notice period.

(c)   During the 30 days following termination: (i) AWS will not erase any Customer Content as a result of the termination; and (ii) Customer may retrieve Customer Content from the Services.

9.   Privacy

(a)   AWS has agreed that if Cenitex or the Customer elects to solely utilise the AWS Asia Pacific (Sydney) Region, AWS will not move the Customer's content from Australia unless required to comply with the laws or requests of a governmental or regulatory body (including subpoenas or court orders). AWS will give the Customer reasonable notice of a request of a governmental or regulatory body to allow the Customer to seek a protective order or other appropriate remedy (except to the extent AWS's compliance with the foregoing would cause it to violate a court order or other legal requirement).

(b)   AWS has agreed that it will not use or disclose the Customer's content, except as necessary to provide the Services to the Customer and any End Users or to comply with the law or requests of a governmental or regulatory body (including subpoenas or court orders). AWS will give the Customer reasonable notice of a request of a governmental or regulatory body to allow the Customer to seek a protective order or other appropriate remedy (except to the extent AWS's compliance with the foregoing would cause it to violate a court order or other legal requirement).

10.   Cenitex's commitments and recommendations

(a)   Cenitex will undertake a regular review regime in respect of AWS's accreditations to ensure that:

those accreditations meet Cenitex's security policies and standards for the type of data that AWS will hold (and based on this Cenitex may make recommendations as to the type of data that should be stored using AWS services); and

AWS maintains relevant and current security accreditations during the term of the Agreement.

(b) Cenitex recommends that all data stored using AWS Services is encrypted. Cenitex has put in place processes to ensure that data can be encrypted when using the AWS services. Cenitex can provide assistance to the Customer in relation to ensuring their data is encrypted.

(c) Cenitex recommends that only x-in-Confidence/unclassified DLM data should be held in AWS Service Offerings.