

## SDDC Virtual Server | VMware

These clauses only apply to the Customer's use of the VMware On Premises Software.

### 1. Definitions

In this section:

- (a) **Customer Content** means any data uploaded into the Hosted Services for processing, storage or hosting, by the Customer or by any User, but does not include:
  - (1) Third-Party Content; or
  - (2) data collected by VMware (as specified in clause 3(e) of this section);
- (b) **Documentation** means that documentation that is generally provided to the Customer with the OP Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software;
- (c) **End User** means a user of a Hosted Services 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);
- (d) **Guest Operating System** means instances of third-party operating systems licensed by the Customer, installed in a Virtual Machine and run using the Software;
- (e) **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;
- (f) **Intellectual Property Rights** means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered;

- (g) **OP Software** means on-premises VMware Tools and VMware computer programs described in this Proposal, together with any software code relating to the foregoing;
- (h) **Product Guide** means the version of the VMware Product Guide which is current at the time of the VMware Agreement, a copy of which is found at [www.vmware.com/download/eula](http://www.vmware.com/download/eula); **Proposal Term** means the term of Cenitex services specified in this Proposal;
- (i) **Service Description** means the then-current version of the Service Description for the particular Hosted Services, as found at <https://www.vmware.com/download/eula.html>;
- (j) **Service Offering** means the VMware Services described 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;
- (k) **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;
- (l) **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;
- (m) **Virtual Machine** means a software container that can run its own operating systems and execute applications like a physical machine;
- (n) **VMware Agreement** means the Enterprise License Agreement between Cenitex and VMware in respect of the Hosted Services specified in this Proposal.
- (o) **VMware Tools** means the suite of utilities and drivers licensed by VMware under the "VMware Tools" name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running a Virtual Machine

VMware On Premises Software

## **2. The OP Software**

- (a) The Customer may only use the OP Software and Documentation:
  - (1) in Australia; and
  - (2) subject to the Product Guide applicable to the OP Software.

## **3. Guest Operating Systems**

- (a) Certain OP Software allows Guest Operating Systems and application programs to run on a computer system. The Customer acknowledges that it is responsible for obtaining and complying with any licences necessary to operate any such third-party software.

## **4. Acceptable Use of OP Software**

- (a) The Customer must not, or allow any third party to:
  - (1) use the OP Software in an applications services provider, service bureau, or similar capacity for third parties;
  - (2) disclose to any third party the results of any benchmarking testing or comparative or competitive analysis of VMware's Software done by or on behalf of the Customer, unless VMware has reviewed and approved of the methodology, assumptions and other parameters of the study prior to any disclosure;
  - (3) make available the Software in any form to anyone other than the Customer's employees, agents or contractors who require access to use the OP Software on behalf of the Customer in a matter permitted under the terms and conditions in this section;
  - (4) transfer or sublicense the OP Software or the Documentation to a third party without VMware's prior consent (except in relation to assignments or transfers arising from 'machinery of government' changes);
  - (5) use the OP Software in conflict with the terms and restrictions of the OP Software's licensing model and other requirements, as specified in the Product Guide relevant to the OP Software;

- (6) except to the extent permitted by applicable law, modify, translate, enhance, or create derivative works from the OP Software, or reverse engineer, decompile or otherwise attempt to derive source code from the OP Software;
- (7) remove any copyright or other proprietary notices on or in any copies of the Software; or
- (8) violate or circumvent any technological restrictions within the OP Software or as specified in this section (such as via software or services).

## **5. Privacy and Data Protection**

- (a) The Customer agrees that VMware may process technical and related information about the Customer's use of the OP Software, which may include internet protocol address, hardware information, operating system, application software, peripheral hardware, and other information software usage statistics to facilitate the provisioning of updates, support, invoicing or online services, and may transfer such information VMware affiliates from time to time.

## **6. Records and Audit**

- (a) The Customer will maintain accurate records of its use of the OP Software sufficient to show compliance with the terms and conditions set out in this section. The Customer acknowledges that VMware will have the right, no more than once in any 12 month period, to audit the Customer's use of the Software to confirm Cenitex's compliance with the terms of the VMware Agreement. The Customer will reasonably cooperate with Cenitex.

These clauses apply to the Customer's use of both the Hosted Services and the VMware OP Software.

## **1. Effect of termination**

- (b) Upon termination of the VMware Agreement for any reason, the Customer must:
  - (i) stop using the Hosted Services or OP Software; and
  - (ii) return, or, if Cenitex request, destroy, any Confidential Information of VMware or its suppliers in the Customer's possession or control (other than information that must be retained pursuant to law).

- (c) Deletion of any Content remaining in the Hosted Services 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.