

## VMWARE BETA CLOUD SERVICE OFFERING TERMS OF SERVICE

By accessing a Beta Offering, you agree to be bound by these terms of service (“**Terms of Service**”) and any applicable Third Party Terms, all of which together constitute the “**Agreement**”. If you do not agree to these Terms of Service, or any other portion of the Agreement, you must not access or use the Beta Offering. “**You**” means you individually or the organization that you represent. If you are entering into this Agreement on behalf of an organization, you represent to us that you have the authority to bind that entity. “**VMware**”, “**we**”, or “**us**” means VMware, Inc., a Delaware corporation, if the address you provide to us when registering for the Beta Offering is in the United States, or VMware International Limited, a company organized and existing under the laws of Ireland, if the address you provide to us when registering for the Beta Offering is outside of the United States. Capitalized terms used in these Terms of Service are defined throughout this document and in Section 12 (“Definitions”), below.

**This Agreement governs your access to and use of the Beta Offering. You may use the Beta Offering only during the Beta Term and only for non-production activity. We provide the Beta Offering to you strictly “AS IS”, free of charge, and without any warranty or indemnification of any kind.**

### **1. Beta Offering; Beta Software.**

**1.1 Generally.** This Agreement governs (a) your access to and use of any Beta Offering, and (b) your participation in Feedback Sessions. We may deliver any Beta Offering to you with the assistance of our affiliates, licensors, and service providers. You must comply with all laws, rules and regulations applicable to your use of the Beta Offering.

**1.2 Beta Software.** We may also provide Beta Software to you as part of the Beta Offering, which software may not have a separate end user license agreement. If we provide Beta Software to you with a separate end user license agreement, then that end user license agreement supersedes the Agreement in connection with your rights to the Beta Software. You may copy Beta Software for your archival or backup purposes if all titles, trademarks, copyright and restrictive rights notices are reproduced on such copies.

### **1.3 Access and Use.**

**1.3.1** You must access and use any Beta Offering solely for purposes of internal testing and evaluation, and to provide feedback to us. You may use the Documentation provided with a Beta Offering solely in support of your authorized use of the Beta Offering.

**1.3.2** To access a Beta Offering, you must register with VMware and set up an authorized account with Login Credentials. We are not required to confirm your registration until you provide all required information. When VMware accepts your request to access a Beta Offering, we will deliver the corresponding Login Credentials to you by email to the address associated with your account.

**1.3.3** You must keep your Login Credentials confidential. If you set up an account for an organization, you must require that all Users of that account keep their Login Credentials confidential. You must keep your registration information accurate, complete and current as long as you access or use a Beta Offering. You are responsible for any use that occurs under your Login Credentials, including any activities by you, your employees, contractors or agents. If you

believe an unauthorized person has gained access to your Login Credentials, you must notify us as soon as possible. We will not be responsible for any unauthorized access to or use of your account.

**1.3.4** We monitor the overall performance and stability of the infrastructure of Beta Offerings. You must not block or interfere with that monitoring. If we reasonably believe a problem with a Beta Offering may be attributable to your use of a Beta Offering or to Your Content, you must cooperate with us to identify the source of and to resolve that problem.

**1.4 Other VMware Service Offerings or Software.** As part of your access to or use of a Beta Offering, you may receive access to additional VMware data, content, service offerings, software, or applications, which may be subject to separate terms. If so, those separate terms will prevail over the Agreement as to your access to and use of that data, content, service offerings, software or applications.

**1.5 Third Party Content.** As part of your access to or use of a Beta Offering, you may receive access to Third Party Content, which may be subject to separate terms. If so, those separate terms will prevail over the Agreement as to your use of the Third Party Content. Third Party Content is available "AS IS", without indemnification, support, warranty, or condition of any kind. You are responsible for reviewing, accepting, and complying with any third party terms of use or other restrictions applicable to the Third Party Content. Those terms will be available to you through a notification within the Beta Offering or in the Third Party Terms. We will not provide any support for Third Party Content unless otherwise provided in the Third Party Terms. We reserve the right to suspend or terminate Third Party Content at any time.

**1.6 Support Services.** We are not obligated to provide any maintenance, technical support, or other support for any Beta Offering. We will not provide support to any end users of Your Content.

**1.7 Evaluation Feedback.** As consideration for access to and use of a Beta Offering, you will, from time to time, as we may reasonably request, provide feedback (including comments and suggestions) to us, and only to us, concerning (a) information that we may disclose in Feedback Sessions, and (b) the functionality and performance of the Beta Offering. We may use feedback and other information regarding the Beta Offering that you provide to us, through any means, to improve or enhance our products, in our sole discretion. You hereby grant us an exclusive, perpetual, irrevocable, royalty-free, worldwide right and license, with the right to sublicense, to use, reproduce, disclose, distribute, display, perform, modify, prepare derivative works of, and otherwise exploit that feedback without restriction in any manner now known or in the future conceived, and to make, have made, use, sell, offer to sell, import and export any product or service that incorporates the feedback, and you will have no claim on any resulting Intellectual Property Rights.

**1.8 Publicity.** You will use reasonable efforts to participate in marketing and publicity activities related to a Beta Offering, as we may reasonably request from time to time.

**1.9 Open Source Software.** You may receive open source software if you use a Beta Offering. Any open source software distributed to you is made available under the applicable open source license, which can be found at [http://www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html). You may obtain a copy of these licenses and any source code (and modifications) that we are required to make available under these licenses (the "Source Files") at [http://www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html) or by sending a written request, with your name and address to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All written requests must clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date you last received open source software as part of a Beta Offering or accessed a Beta Offering

**1.10 Verifying Compliance.** We have the right to verify your compliance with the Agreement. If we seek to verify that compliance, you must provide information or other materials we reasonably request to assist in the verification. If we have reason to believe that you or a User has breached the Agreement, then we or our designated agent may review your use of the Beta Offering, including your account, Your Content, and records, to verify your compliance with the Agreement.

## **2. Your Content.**

**2.1 General.** You are solely responsible for Your Content. You are responsible for protecting the security of Your Content, including any access to Your Content that you might provide to your employees, customers, or other third parties. We access and use Your Content only as necessary to provide the Beta Offering to you, to perform or enforce contractual obligations, or to comply with applicable law. For example, we may need to access or use Your Content (or provide it to one of our affiliates, licensors or service providers) to (a) prevent or address service or technical problems; (b) provide support (if applicable); (c) detect, prevent or address fraud, technology or security issues; (d) protect against harm to the rights, property or safety of us, our users or the public; or (e) respond to a subpoena, warrant, audit or agency action.

## **2.2 Data Protection; Security.**

**2.2.1** By accepting the Agreement, you warrant and represent that you understand that a Beta Offering is not intended to be used with any data of a commercial or sensitive nature. You must not submit any personal data to a Beta Offering, including (a) personal data within the meaning of that term given in the Regulation 2016/679 (the EU General Data Protection Regulation) or (b) protected health information within the meaning of the United States Health Insurance Portability and Accountability Act.

**2.2.2** You are responsible for ensuring that the security of the Beta Offering is appropriate for your intended use of that Beta Offering and Your Content. You are responsible for (a) protecting the security of Your Content, including without limitation, any access you might provide to Your Content by your employees, customers or other third parties, and in transit to and from the Beta Offering; (b) properly configuring the Beta Offering so that it is suitable for your use; (c) backing up Your Content to the extent required; (d) encrypting Your Content to the extent required; (e) providing any necessary notices to your users and obtaining any legally required consents from your Users concerning your use of a Beta Offering and Your Content; and (f) complying with any laws or regulations applicable to Your Content and your use of the Beta Offering.

**2.2.3** As between you and us, you are responsible for any losses or other consequences arising from your failure to encrypt or to back up Your Content, including any loss of or damage to any data.

## **3. Acceptable Use.**

### **3.1 Use Restrictions**

**3.1.1** You and any Users accessing a Beta Offering through you may not: (a) resell or sublicense the Beta Offering; (b) use the Beta Offering: (i) in a way prohibited by law, regulation, governmental order or decree; (ii) to violate the rights of others; (iii) to try to gain unauthorized access to, test the vulnerability of, or disrupt the Beta Offering, or any other service, device, data, account, or network; (iv) to spam or to distribute malware; (v) in a way that could harm the Beta Offering or impair anyone else's use of it; (vi) in a way intended to work around the Beta Offering's technical limitations or usage limits, if any; or (vii) in any application or situation where failure of the Beta Offering could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage; (c) disclose, provide, or disseminate to any third party, including your partners, affiliates or subsidiaries, in any manner, the Beta Offering or any

information that we provide to you regarding the Beta Offering; or (d) use any part of a Beta Offering or any information provided to you by us for your product development or for any other commercial purpose, including sales or marketing activities, except as expressly permitted by the Agreement. You must ensure that your Users comply with the terms of the Agreement. You agree that if you become aware of any violation by one of your Users, you will terminate that User's access immediately.

**3.1.2** You will not, and will not permit any third party to: (a) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from a Beta Offering or any Beta Software unless we make the source code publicly available or if (and then only to the extent) such prohibition is not permitted under applicable law; (b) disable, interfere with, disrupt, or circumvent any aspect of a Beta Offering, including the integrity or performance of the Beta Offering, or Third Party Content or data provided through a Beta Offering; or (c) rent, resell, copy, modify, create derivative works of, translate, or sublicense a Beta Offering. For the sake of clarity, the Beta Offering and all performance data and test results, including benchmark test results (collectively "**Performance Data**"), relating to a Beta Offering are the Confidential Information of VMware, and are to be treated in accordance with the terms of Section 9 ("Confidential Information") of these Terms of Service. Accordingly, you will not publish or disclose to any third party any Performance Data relating to a Beta Offering.

**3.2 Content Restrictions.** You must take steps to ensure that any User does not post content on a Beta Offering that: (a) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to anyone; (b) may create a risk of any other loss or damage to any person or property; (c) may constitute or contribute to a crime or tort; (d) contains any information or content that is illegal, unlawful, harmful, abusive, pornographic, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable; or (e) contains any information or content that you do not have a right to make available under any law or any contractual or fiduciary relationship. You are solely responsible for any software, product or service that a third party licenses, sells or makes available to you that you install or use with a Beta Offering. Your use of that software, product or service is governed by separate terms between you and that third party. We are not a party to and are not bound by any of those separate terms. You represent and warrant that Your Content does not and will not violate any third party rights, including any Intellectual Property Rights, and rights of publicity and privacy. You must ensure that your use of a Beta Offering complies at all times with your privacy policies and all applicable laws and regulations, including any encryption requirements.

**3.3 Violations of Acceptable Use.** If you become aware that any of Your Content or a User's use of Your Content violates Sections 3.1 or 3.2 of these Terms of Service, you must immediately (a) suspend access to or remove the applicable part of Your Content or (b) suspend the User's access, or both. We may also ask you to take action within a certain time period. If you fail to comply with the request we may, at our sole discretion, suspend or terminate your account or disable access to Your Content until you comply with our request.

**3.4 Notification of Infringement Concerns.** If you believe that your copyrighted work has been copied and is accessible on a Beta Offering in a way that constitutes copyright infringement, please send a notice to us as provided in Section 8 of the VMware Community Terms of Use available at [http://www.vmware.com/community\\_terms.html](http://www.vmware.com/community_terms.html).

#### **4. IP Ownership.**

**4.1 Ownership.** As between you and us, we and our licensors own and retain all right, title and interest in and to any Beta Offering, Beta Software, and VMware Software, including all

improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein. This includes any information that we collect and analyze in connection with any Beta Offering such as usage patterns and other information to improve and evolve our software products and service offerings. Your rights to use any Beta Offering are limited to those expressly granted in the Agreement. No other rights with respect to any Beta Offering (including Beta Software), any VMware Software, or any related Intellectual Property Rights are implied. No license or right under any Intellectual Property Right is granted under the Agreement or by any disclosure of Confidential Information except as expressly set forth in the Agreement.

**4.2 Ownership of Your Content.** As between you and us, you and your Users retain all right, title and interest, and all Intellectual Property Rights, in and to Your Content. Our rights to access and use Your Content are limited to those expressly granted in the Agreement. No other rights with respect to Your Content or any related Intellectual Property Rights are implied.

## **5. Term and Termination.**

**5.1 Term of Beta Offering.** The term of the Agreement, and your rights with respect to a Beta Offering, will be in effect through the applicable Beta Term, plus any renewals or extensions of the Beta Term as set forth in a written agreement signed by you and us, unless such rights are terminated earlier as permitted under the Agreement.

**5.2 Termination.** Either party may terminate the Agreement or your rights with respect to a Beta Offering at any time for any reason or for no reason by providing the other party written notice of that termination, and that termination will be effective immediately upon delivery of the notice. If you breach your confidentiality obligations as set forth in Section 9 (“Confidential Information”) of these Terms of Service, the Agreement and your rights with respect to a Beta Offering will automatically terminate without notice, and we may immediately revoke your access to the Beta Offering,

### **5.3 Effect of Termination.**

**5.3.1** Upon termination of the Agreement or your rights to a Beta Offering: (a) all rights granted to you under the Agreement in connection with that Beta Offering, including your ability to access any of Your Content stored in the Beta Offering, will immediately terminate; and (b) you must promptly discontinue all use of the Beta Offering and delete or destroy (or, in the case of electronic data, use commercially reasonable efforts to delete or render practically inaccessible) any of our Confidential Information provided to you in connection with the Agreement and the Beta Offering.

**5.3.2** Sections 1.7 (Evaluation Feedback), 1.9 (Open Source Software), 3 (Acceptable Use), 4 (IP Ownership), 5 (Term and Termination), 6 (Disclaimer), 7 (Indemnification by You), 8 (Limitation of Liability), 9 (Confidential Information), 10 (Technical Data; Log Files), 11 (General) and 12 (Definitions) of these Terms of Service will survive the termination of the Agreement.

## **6. Disclaimer.**

**6.1** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE AND OUR LICENSORS AND SERVICE PROVIDERS DISCLAIM ALL WARRANTIES, CONDITIONS, AND OTHER TERMS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES AND CONDITIONS ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, RELATING TO ANY BETA OFFERING, ANY DOCUMENTATION, AND ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO YOU UNDER THE AGREEMENT. WE AND OUR LICENSORS AND SERVICE PROVIDERS DO NOT WARRANT, COVENANT OR GIVE ANY CONDITION OR TERM THAT A BETA OFFERING WILL BE UNINTERRUPTED OR FREE FROM DEFECTS, OR THAT A BETA OFFERING WILL MEET

(OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS OR ANY SERVICE LEVELS.

**6.2** You acknowledge that: (a) any Beta Offering may contain features currently under development, (b) VMware has not promised or guaranteed to you that any Beta Offering will be announced or made available to anyone in the future, (c) VMware has no express or implied obligation to you to announce or introduce any Beta Offering, (d) VMware may elect not to introduce a product similar to or compatible with any Beta Offering, and (e) any version number (if any) referenced is subject to change and does not in any way represent VMware's commitment to release any product or service in the future. Specifically, any Beta Offering may contain features, functionality or modules that may not be included in the services that we may offer on a commercial basis, or in the generally available commercial version of a Beta Offering, if released, or that may be marketed separately for additional fees. Therefore, you expressly acknowledge and agree that any research or development that you perform regarding any Beta Offering or any product or service associated with any Beta Offering is done entirely at your own risk.

**7. Indemnification by You.** You will defend and indemnify us against any third party claim arising from or relating to: (a) Your Content; (b) any infringement or misappropriation of any Intellectual Property Rights by you or your Users in connection with your use of a Beta Offering; (c) your use of any Beta Offering in violation of the Agreement, or (d) your or your Users' use of any Third Party Content. We will (i) provide you with notice of the claim within a reasonable period of time after learning of the claim; and (ii) cooperate in response to your requests for assistance. You may not settle or compromise any indemnified claim without our prior written consent.

## **8. Limitation of Liability.**

**8.1 Generally.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE OR OUR LICENSORS OR SERVICE PROVIDERS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICES, SOFTWARE OR SYSTEMS WHICH ARE PART OF ANY BETA OFFERING, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSSES IN CONNECTION WITH THE AGREEMENT UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. IN ANY EVENT, OUR LIABILITY IN CONNECTION WITH THE AGREEMENT WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER A CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED \$100.00 USD (OR EQUIVALENT IN LOCAL CURRENCY) REGARDLESS OF WHETHER WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

**8.2 Further Limitations.** Our licensors and service providers will have no liability of any kind under the Agreement. You may not bring a claim under the Agreement more than eighteen (18) months after the cause of action arises.

## **9. Confidential Information.**

**9.1 Protection.** A party may use Confidential Information of the other party solely to exercise its rights and perform its obligations under the Agreement or as otherwise permitted under the Agreement. Each party may disclose the Confidential Information of the other party only to the employees or contractors of the recipient party who have a need to know the Confidential Information for purposes of the Agreement and who are under a duty of confidentiality no less restrictive than each party's duty under the Agreement ("**Representatives**"). Each recipient party is responsible for any acts or omissions of its Representatives that, if taken by the recipient party, would constitute a breach of the Agreement. All Confidential Information disclosed under the Agreement will remain the property of the disclosing party. Each party will use reasonable care to protect the confidentiality of the other party's Confidential Information. Regardless of any

expiration or termination of the Agreement, you must meet your obligations with respect to Confidential Information provided by VMware under the Agreement for five years after receipt of that Confidential Information (except for source code, which must be kept in confidence for perpetuity).

**9.2 Exceptions.** The recipient party's obligations under Section 9.1 with respect to any Confidential Information will terminate if the recipient party can show by written records that the information: (a) was already rightfully known to the recipient party at the time of disclosure by the other party; (b) was disclosed to the recipient party by a third party who had the right to make the disclosure without any confidentiality restrictions; (c) is, or through no fault of the recipient party has become, generally available to the public; or (d) was independently developed by the recipient party without access to or use of the discloser's Confidential Information. The recipient party may disclose Confidential Information to the extent the disclosure is required by law or regulation or the listing rules of any stock exchange. The recipient party will provide the other party reasonable advance notice, when practicable and to the extent permitted by law, and will take reasonable steps to contest and limit the scope of any required disclosure to the minimum required by the law or regulation. Breach of this Section 9 by the recipient party may cause the disclosing party substantial harm for which monetary damages are an insufficient remedy. Accordingly, each party agrees that the other party may apply for injunctive relief in respect of any threatened or actual breach of this Section 9.

## **10. Technical Data; Log Files.**

**10.1 Technical Data.** We collect, process and store technical and related information about your device, system, application, peripherals, and your use of a Beta Offering, including internet protocol address, hardware identification, operating system, application software, peripheral hardware, number of active plugins and software development kits, the successful installation and launch of a Beta Offering, the amount of computing and storage resources purchased or consumed, user counts, third party licenses or services consumed, and other Beta Offering usage statistics (collectively, "**Technical Data**"). We use Technical Data to provide the Beta Offering; for internal statistical and analytical purposes; to facilitate support (if any); for invoicing or online services (if applicable); to provision updates; to develop and improve VMware products and services; to track and manage our infrastructure, network, storage and software; and for capacity planning, troubleshooting, and other forecasting purposes. We may share Technical Data with our affiliates and third party service providers for these purposes and as otherwise required by applicable law.

**10.2 Log Files.** You acknowledge that correspondence and log files generated in conjunction with a request for support services, if applicable, may contain sensitive, confidential or personal information. You are solely responsible for taking the steps necessary to protect such data, including obscuring the logs or otherwise guarding such information prior to sending it to us.

## **11. General.**

**11.1 Assignment.** You may not assign or otherwise transfer any of your rights or obligations under the Agreement, in whole or in part, by operation of law or otherwise, without our prior written consent. Any attempted assignment or transfer without that consent will be void. Subject to these limits, the Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

**11.2 Notices.** Any notice from us to you under the Agreement will be delivered by email to the email address associated with your account or by posting to the community page associated with the Beta Offering, except as otherwise set forth in the Agreement. Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.

11.3 **Modifications.** We reserve the right to modify, suspend, or terminate a Beta Offering (or any part thereof), either temporarily or permanently, at any time or from time to time, with or without prior notice to you. We may change the terms of the Agreement, or of your access to the Beta Offering. It is your responsibility to regularly check the applicable Beta Offering website for updates. Your continued use of a Beta Offering after the effective date of any modification to the Beta Offering or the Agreement will be deemed acceptance of the modified Beta Offering or the Agreement, as applicable.

11.4 **Waiver.** Any waiver of any provision of the Agreement must be in writing and signed by the waiving party to be effective. The waiver of a breach of any provision of the Agreement will not constitute a waiver of any other provision or of any later breach.

11.5 **Severability.** If any provision of the Agreement is held to be invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of the Agreement will remain in force.

11.6 **Compliance with Laws; Export Control.** Each party will comply with all laws applicable to the actions contemplated by the Agreement. You acknowledge that any Beta Offering provided to you by VMware pursuant to the Agreement is of United States origin, is provided subject to the U.S. Export Administration Regulations (including “deemed export” and “deemed re-export” regulations), and may be subject to the export control laws of other applicable territories. You represent and warrant that (a) you are not, and are not acting on behalf of, (1) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (2) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List (3) any person found on the UK Designated Persons list; (b) you will not permit a Beta Offering to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons; (c) Your Content will not be classified or listed on the United States Munitions list, contain defense articles, defense services or contain ITAR-related data; or technology related to the Munitions List found in the UK Strategic Export Controls List; (d) Your Content will not require an export license and is not restricted from export to, or from, any VMware global resource or personnel under applicable export control laws; and (e) you are not subject, either directly or indirectly, to any order issued by any agency of the United States government, revoking or denying, in whole or in part, your United States export privileges. You will notify VMware immediately if you become subject to any such order.

11.7 **Force Majeure.** We will not be liable for any delay or failure to perform any obligations under the Agreement due to any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism or war.

11.8 **Construction.** The headings of sections of these Terms of Service are for convenience and are not for use in interpreting these Terms of Service. As used in these Terms of Service, the word “including” means “including but not limited to”.

11.9 **Governing Law and Forum.** The Agreement is governed by the laws of the State of California, without regard to its choice of law principles. The United Nations Convention for the International Sale of Goods shall not apply.

11.10 **Third Party Rights.** Other than as expressly set forth in the Agreement, the Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to the Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.



11.11 **Order of Precedence.** The terms of the Agreement will supersede and control over any conflicting or additional terms and conditions of any other document for any Beta Offering.

11.12 **Entire Agreement.** The Agreement, as it may be revised by us, is the entire agreement of the parties regarding its subject matter. The Agreement supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between the parties regarding its subject matter.

## 12. **Definitions.**

12.1 **“Beta Offering”** means one or more beta cloud service offerings that VMware, at its sole discretion, may invite you to access and use from time to time.

12.2 **“Beta Software”** means beta versions of software provided by VMware to you in object form only for use as part of a Beta Offering.

12.3 **“Beta Term”** means the time period during which you are entitled to access the Beta Offering.

12.4 **“Confidential Information”** means non-public technical, business or other information or materials disclosed or otherwise made available by one party to the other that are in tangible form and labeled “confidential” or the like. Our Confidential Information includes: (a) Beta Offering; (b) Performance Data; (c) Login Credentials; and (d) any information or materials relating to VMware products or services (including any trade secrets, know-how, inventions, techniques, processes, and algorithms embodied in a Beta Offering, pricing, product or service roadmaps, strategic marketing plans, product or service designs, technical requirements and workflows, and source code), whether or not marked as such. Your Confidential Information does not include Your Content.

12.5 **“Documentation”** mean the printed or online written reference materials provided to you by VMware with a Beta Offering, including instructions, beta testing guidelines, and end user guides.

12.6 **“Feedback Sessions”** means meetings conducted by VMware in which you participate, whether in person or by telephone or via the Internet, including customer summits, customer roundtables, design workshops, and discussions.

12.7 **“Intellectual Property Rights”** means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, and moral rights, whether registered or unregistered.

12.8 **“Login Credentials”** mean any passwords, authentication keys or security credentials that enable your access to and management of a Beta Offering.

12.9 **“Third Party Content”** means third party data, service, content, software or applications, including open source software.

12.10 **“Third Party Terms”** means the then-current version of a Beta Offering’s Third Party Terms document.

12.11 **“User”** means any person who accesses Your Content or uses a Beta Offering under your Login Credentials.

12.13 **“VMware Software”** means the software programs listed in our commercial price list.

12.14 **“Your Content”** means any and all applications, files, information, data or other content uploaded to or published or displayed through a Beta Offering by you, your Users, us (acting upon your instructions as part of a service), or any third party users who access any service you provide with a Beta Offering. It does not include Performance Data or Technical Data.