

VMware Project Showcase Early Access Program (EAP) Agreement

Note: BY CLICKING “I AGREE” OR BY ACCESSING OR OTHERWISE USING ANY OF THE PROJECT SHOWCASE SERVICES IDENTIFIED BELOW, YOU (“**You**” OR “**Customer**”) AGREE TO THIS PROJECT SHOWCASE EARLY ACCESS PROGRAM LICENSE AGREEMENT (“**AGREEMENT**”) IN A LEGALLY BINDING MANNER WITH VMWARE, INC. (“**VMware**”). IF YOU ARE ACTING ON BEHALF OF A COMPANY OR OTHER ORGANIZATION, YOU REPRESENT THAT YOU ARE AUTHORIZED TO LEGALLY BIND SUCH ORGANIZATION AND THAT YOU CONCLUDE THE AGREEMENT ON BEHALF OF SUCH ORGANIZATION. IN THE FOLLOWING, THE TERMS “YOU” AND “CUSTOMER” SHALL REFER, JOINTLY AND SEVERALLY, TO YOU INDIVIDUALLY AND ANY ORGANIZATION ON WHOSE BEHALF YOU ACT.

If you do not agree to the terms of this Agreement, then do ***not*** click “I AGREE,” access, download, install, upload, copy or use any of the Project Showcase Services.

1. Project Showcase Services Selected:

Select	Name of Service
<input type="checkbox"/> Yes / <input type="checkbox"/> No	Keswick
<input type="checkbox"/> Yes / <input type="checkbox"/> No	Trinidad

2. DEFINITIONS.

- a. “*Confidential Information*” means information or materials provided by a Party (“Discloser”) to the other Party (“Recipient”) in connection with this Agreement that: (a) is in tangible form and labelled “confidential” or similar; or (b) information which a reasonable person knew or should have known to be confidential. Confidential Information includes non-public materials relating to the Service (including Login Credentials).
- b. “*Customer Content*” means content uploaded by Customer or any User into the Service or provided to VMware for support (if any), but does not include Third Party Content, account information, or Technical Data. For purposes of this definition, “content” means any data, including all text, sound, video, or image files, and software (including machine images).
- c. “*Feedback*” means information provided by Customer to VMware concerning the Service including, without limitation, identifying potential errors and improvements in the Offering.
- d. “*Intellectual Property Rights*” shall mean all intellectual property rights, including, without limitation, patent, copyright, trademark, and trade secret.
- e. “*Login Credentials*” mean any passwords, authentication keys, or security credentials that enable Customer’s access to and use of the Service.
- f. “*Showcase Service*” or “*Service*” means an **early access, non-general availability** release of those of the VMware Project Showcase services for which You select “Yes” under Section 1 and which are more fully described in Exhibits A or B as applicable:
- g. “*Term*” means the period during which VMware, at its discretion, makes the Service available to Customer as further set forth in Section 8.

- h. “*Updates*” shall mean a modification, error correction, bug fix, new release, or other update to or for the Early Access Service Offering.
- i. “*User*” means any person who accesses Customer Content or uses the Service under Customer’s Login Credentials.

2. ACCESS AND USE.

a. Authorized Uses. Subject to Customer’s compliance with this Agreement, Customer may access and use the Service(s) during the Term solely for purposes of: (i) testing and evaluation in accordance with the instructions provided by VMware; and (ii) providing Feedback.

b. Unauthorized Uses. Customer may not upload Customer Content or otherwise use the Service: (a) in a way prohibited by law or that would cause a violation of law; (b) to violate the rights of others; (c) to try to gain unauthorized access to, test the vulnerability of, or disrupt any service, device, data, account, or network; (d) to distribute spam or malware; (e) in a way that could cause harm or impair anyone’s use of the service; or (f) in a way intended to work around technical limitations.

c. Security Measures. Customer must: (a) take appropriate steps to protect Customer Content; (b) provide any necessary notices to and obtain any legally required consents from Customer’s Users; (c) notify VMware as soon as possible if Customer believes its account has been compromised; and (d) reasonably cooperate with VMware, and if directed by VMware with Equinix to, resolve issues related to Customer’s use of the Service. Customer is responsible for ensuring that the Service is appropriate for Customer’s intended use. Customer is responsible for any use of the Service that occurs under its Login Credentials.

3. FEEDBACK. The purpose of this Agreement is the testing and evaluation of the Service. In furtherance of this purpose, Customer shall use reasonable commercial efforts to provide Feedback to VMware from time to time as reasonably coordinated by the parties, including, without limitation, identifying potential errors and improvements. Customer agrees that VMware will own any Feedback, and without restriction of any kind, including for potential inclusion in current or future VMware products and services without any attribution or compensation to Customer.

4. CONFIDENTIALITY.

a. Protection. Recipient must protect Discloser’s Confidential Information with at least the same care as it protects its own Confidential Information but not less than reasonable care. Recipient may not use Discloser’s Confidential Information except to exercise its rights and perform its obligations under this Agreement. Recipient may disclose Confidential Information only to Recipient’s Affiliates, employees and contractors who need to know the Confidential Information for purposes of this Agreement and who have a duty of confidentiality no less restrictive than this section 4.

b. Exceptions. Recipient’s obligations under Section 4.a do not apply if the information: (a) is rightfully known by Recipient at the time of disclosure without any obligation of confidentiality; (b) is lawfully disclosed to Recipient by a third party without confidentiality restrictions; (c) becomes publicly available through no fault of Recipient; or (d) is independently developed by Recipient without access to or use of Discloser’s Confidential Information.

c. Injunctive Relief. Nothing in this Agreement limits a Party’s right to seek equitable relief for breach of this section 4 (Confidential Information).

5. DATA USE AND PRIVACY.

a. Customer’s use of the Service(s) will be subject to VMware’s data privacy policies which can be

reviewed at <https://www.vmware.com/help/privacy.html>

b. **Customer Content.** Customer is responsible for any losses or other consequences arising from Customer's failure to encrypt or to back up Customer Content, including any loss of or damage to any data.

c. **Technical Data.** VMware collects, processes, and stores technical data in the course of providing the Service for the following purposes: internal statistical and analytical assessment; to facilitate support (if any); to provision updates; to develop and improve VMware products and services; to track and manage VMware's infrastructure, network, storage and software; and for capacity planning, troubleshooting, and other forecasting purposes (collectively, "*Technical Data*"). VMware may share Technical Data with VMware's affiliates and third party service providers for these purposes and as otherwise required by applicable law.

d. **Log Files.** Customer acknowledges that correspondence and log files generated in conjunction with a request for support services, if applicable, may contain sensitive, confidential or personal information. Customer is 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 VMware.

e. **Required Disclosures.** VMware may disclose Customer Content or Confidential Information if VMware is required by law or by order of a judicial or administrative body of competent jurisdiction ("**Demand**"). Unless legally prohibited from doing so, VMware must provide Customer with notice and a copy of the Demand. If the Demand relates to the Service, VMware must (i) inform the relevant authority that VMware is a service provider acting on Customer's behalf and all requests for access to Customer Content should be directed in writing to the contact Customer identifies (or if no contact is timely provided, to Customer's legal department) and (ii) only provide access to Customer Content with Customer's authorization. If Customer requests, and at Customer's expense, VMware must take reasonable steps to contest the Demand. If VMware is legally prohibited from notifying Customer of the Demand, VMware must evaluate the validity of the Demand, and, if VMware does not believe the Demand is legal, VMware must challenge the Demand. VMware must limit the scope of any disclosure to the minimum information required to comply with the Demand.

f. **Performance Monitoring.** VMware monitors the performance and stability of the Service. Customer must not block or interfere with that monitoring. If VMware reasonably believes there a problem with the Offering may be attributable to Customer's use of it or to Customer Content, Customer must cooperate with VMware to identify the source of and to resolve that problem.

6. OWNERSHIP. As between VMware and Customer, VMware shall own and retain all right, title and interest in and to the Intellectual Property Rights in the Service(s), including any derivative works thereof, and any Technical Data. VMware similarly acknowledges that, as between Customer and VMware, Customer shall own and retain all right, title and interest in and to the Intellectual Property Rights in any Customer Content. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER WITH RESPECT TO THE SERVICE ARE RESERVED TO VMWARE AND/OR ITS VENDORS; provided, however, that CUSTOMER shall own and retain all right, title and interest in and to the Intellectual Property Rights in Customer Content.

7. SUPPORT. VMware will use reasonable commercial efforts to support the Service during the Term.

8. TERM AND TERMINATION.

a. **Term.** The term of this Agreement, and Customer's rights with respect to the Service, will be in effect from the date on which Customer is provided access to the Offering for a period of 180 days unless: (i) extended by VMware in its discretion upon Customer's request; (ii) terminated by VMware if, within

two weeks after receiving a notice from VMware requesting Feedback Customer still has not provided Feedback to VMware; or (iii) terminated earlier pursuant to Section 8.b.

b. Termination. Either Party may terminate this Agreement at any time for any reason by providing the other Party written notice of termination. Termination will be effective immediately upon delivery of the notice.

c. Effect of Termination. Upon termination of this Agreement: (a) all entitlements to the Service immediately end; (b) Customer must stop using the Offering; and (c) each Party must return or destroy any Confidential Information of the other Party in its control (other than information that must be retained by law). Any provision of this Agreement that is intended by the parties to survive termination of this Agreement will survive.

9. LIMITATION OF LIABILITY. THE SERVICES ARE PROVIDED WITHOUT CHARGE FOR THE PURPOSES EXPRESSLY PERMITTED UNDER THESE TERMS. ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED BY LAW, VMWARE SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND THE TOTAL LIABILITY OF VMWARE AND ITS LICENSORS ARISING OUT OF OR RELATED TO THESE TERMS OR THE SERVICES SHALL NOT EXCEED \$100.00, REGARDLESS OF THE FORM OF DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF VMWARE AND ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE THAT VMWARE WOULD NOT PROVIDE THE SERVICES WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

10. WARRANTY DISCLAIMER. IT IS UNDERSTOOD THAT THE SERVICES MAY CONTAIN ERRORS AND ARE PROVIDED FOR THE PURPOSES EXPRESSLY PERMITTED UNDER THESE TERMS, AND, TO THE FULLEST EXTENT PERMITTED BY LAW, ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE.

11. OTHER PROVISIONS

a. Priority. The following order of precedence shall apply in descending priority in the event of any conflict in terms: (1) an Exhibit to this Agreement; (2) the main body of this Agreement; and (3), the terms and conditions associated with the Cloud Services Platform portal through which Customer accessed the Project Showcase Services.

b. Governing Law. This Agreement, and all disputes arising out of or related thereto, shall be governed by and construed under the laws of the State of California without reference to conflict of laws principles. All such disputes shall be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts. The United Nations Convention for the International Sale of Goods shall not apply.

c. Export Control. The Early Access Service Offering is of United States origin and is provided subject to the U.S. Export Administration Regulations. Diversion contrary to U.S. law is prohibited. Without limiting the foregoing, you agree that (1) you are not, and are not acting on behalf of, any person who is a citizen, national, or resident of, or who is controlled by the government of, Cuba, Iran, North Korea, Sudan, or Syria, or any other country to which the United States has prohibited export transactions; (2) you are not, and are not acting on behalf of, 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; and (3) you will not use the Early Access Service Offering for, and will not permit the Early Access Service Offering to be used for, any purposes prohibited by law, including, without limitation, for any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. U.S. Export Control Classification Numbers (ECCN's) may be found at VMware help page: <http://www.vmware.com/help/export-control>.

d. Modification. This is the entire agreement between the parties relating to the subject matter hereof and all other terms are rejected. No waiver or modification of this Agreement shall be valid unless in writing signed by each Party. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any other term or breach hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.

e. Assignment. If either Party seeks to assign its rights and obligations under this Agreement it must promptly notify the other Party which may then exercise its right to terminate the Agreement pursuant to Section 8 above. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.