

## Terms and Conditions for VMware on IBM Cloud Services

These Terms and Conditions for VMware on IBM Cloud Services (the “**Terms**”) are a legal agreement between you, the customer (“**Customer**” or “**you**”), and Dell. For purposes of these Terms, “**Dell**” means Dell Marketing L.P., on behalf of itself and its suppliers and licensors, or the Dell entity identified on your Order Form (if applicable) and includes any Dell affiliate with which you place an order for the Services. Your purchase of the Services is solely for your internal business use and may not be resold.

1. Your use of the Services reflected on your VMware on IBM Cloud with Dell account and any changes or additions to the VMware on IBM Cloud Services that you purchase from Dell are subject to these Terms, including the Customer Support terms attached hereto as Exhibit A, as well as the Dell Cloud Solutions Agreement located at <http://www.dell.com/cloudterms> (the “**Cloud Agreement**”), which is incorporated by reference in its entirety herein.
2. You are purchasing a Subscription to the Services which may include VMware vCenter Server on IBM Cloud or VMware Cloud Foundation on IBM Cloud (individually or collectively, the “**Services**”). “**Subscription**” means an order for a quantity of Services for a defined Term. The “**Term**” is one (1) year from the start date of your Services, and will thereafter automatically renew for successive month to month terms for the duration of your Subscription.
3. The Services will be billed on a monthly basis, with payment due and payable in accordance with the payment terms set forth in the Cloud Agreement. You may terminate the Services at any time upon written notice to Dell. Currently, neither Dell nor IBM has an early termination charge, however this is subject to change and a termination charge may be charged in the future. Any usage before termination will be billed on the next scheduled invoice date. You will be charged monthly in advance based on the quantity of Services that you purchase. In order to avoid being billed for the upcoming month, Dell must receive your termination notice no later than the 25th day of the month.
4. Additional, optional services for the Services, such as point-of-need support, installation, consulting, and professional or training services, may be available for purchase from Dell and will be subject to a separate service description or supplemental terms of service to be agreed upon between you and Dell.
5. By accepting these Terms, you acknowledge and agree that your use of the Services is subject to the “**IBM End User Agreements**”, which include, without limitation, (i) the IBM Cloud Services Agreement, (ii) the Bluemix Service Description, and (iii) the addendum to the Bluemix Service Description, all of which are available on the following IBM Internet website: <http://www-03.ibm.com/software/sla/sladb.nsf> and are incorporated by reference in their entirety herein. In addition, you also acknowledge and agree that your use of the Services is subject to the following additional terms:
  - The Services may only be used by commercial end users only (not by government customers), and only by end users located in the United States of America and its territories.
  - IBM may modify the Services without degrading its functionality or security features. Any change that affects the commercial terms (e.g. charges) of the Services will not be effective until the next agreed renewal or extension of the Services. IBM will provide any such modification to the Services via the IBM portal located at: <https://console.ng.bluemix.net/infrastructure/vmware-solutions/console-CreateVCenter> (the “**IBM Portal**”), or such other location as IBM may designate.
  - IBM may withdraw a service feature of the Services upon thirty (30) days’ notice via the Portal, unless otherwise stated in the IBM End User Agreements.
  - The Services may not be used for any unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights.

- IBM and Dell do not warrant uninterrupted or error-free operation of the Services or that IBM or Dell will correct all defects or prevent third party disruptions or unauthorized third-party access.
  - Dell will provide Level 1 and Level 2 customer support (“*Customer Support*”) for the Services acquired through Dell. Such Customer Support is provided by Dell in accordance with the terms set forth in Exhibit A attached hereto, and any description of technical support in the IBM End User Agreements or an IBM services document will not apply regarding IBM’s delivery of the Services. All requests for Customer Support should be submitted directly to Dell and not IBM; and IBM is not responsible for and disclaims all liabilities for any claims related to the Customer Support that Dell provides for the Services.
  - At any time during a Subscription term, IBM or Dell may suspend or terminate your access to the Services as further set forth in the IBM End User Agreements. If you are terminated as a customer, Dell reserves the right to invoice you for the Services that you ordered before termination, and you agree to pay Dell for such Services.
  - Upon termination, you will be required to place a cancellation ticket into the Portal which will then destroy the data and place the VM or Bare Metal Server into inventory for other clients. Prior to such cancellation ticket, you are responsible to perform a backup of the data on its media for retention.
  - IBM and Dell may process and store your business contact information and the business contact information of any of your personnel in connection with the performance of the Services and these Terms wherever they do business.
  - IBM and Dell may use personnel and resources in locations worldwide and third-party suppliers to support the delivery of the Services, including, without limitation, Customer Support.
6. Access to and use of the Services will begin once you have been on-boarded. You may contact your Dell sales representative at any time for pricing information.
7. Dell reserves the right to cancel orders as a result of pricing or other errors.
8. You may contact your Dell sales representative for assistance with obtaining a copy of any of any of the documents referenced herein.

## Exhibit A

### **Customer Support Level 1 and Level 2 Support Description**

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This Customer Support Level 1 and Level 2 Support Description (this “**Support Description**”) details the Customer Support services that Dell will provide to Customer during a Subscription Term pursuant to the Terms and Conditions for VMware on IBM Cloud Services (the “**Terms**”). All capitalized terms not defined in this Support Description shall have the respective meanings set forth in the Terms. In the event of conflict between the Terms and this Support Description, the terms of this Support Description shall take precedence.

**Level 1 Support:** Dell will be responsible for providing the following “**Level 1 Support**” to Customer:

- Perform an initial diagnosis in an effort to identify the Customer’s problem and provide steps to resolve this issue with the Customer.
- Perform password resets following IBM security guidelines on the IBM Portal.
- Advise Customer on features and functionality items as related to the IBM Portal.
- Provide Dell’s own methods for Customer phone contact and management of each sub brand branded agent portal for trouble tickets.
- Troubleshooting “Server Operating System Update and Maintenance”.
- Troubleshooting “Server Operating System Configuration”.
- Troubleshooting “Initial Database Server Configuration” (via IBM Clouds automated deployment only).
- Troubleshooting “Networking Issues”.
- Troubleshooting problems arising from Customer or any third party’s software, hardware, or other technology or equipment provisioned by IBM Cloud.
- Troubleshooting problems with Customer’s access to Internet.

**Level 2 Support:** Dell will be responsible for providing the following “**Level 2 Support**” to Customer:

- Product and technical based-questions. When doing so, Customer must include a concise description of the issue and steps to recreate the issue, and all relevant log file data, troubleshooting steps, and access details.
- Loss of Services. “**Loss of Services**” means the Customer’s inability to connect to the IBM data centers providing the Services (i) via Dell’s access to the IBM Portal or (ii) Customer’s access to a Service.
- A “Bare Metal Server” or “Virtual Server” experiencing underlying hardware failure issues.
- “Server Changes” or “Network Changes”, or “Server Upgrades” or “Network Upgrades”.
- Concerns and issues after a product or service has been provisioned or added to an account.