



## SERVICE ADDENDUM FOR PRIVATE CLOUD

### 1. ADDITIONAL TERMS & CONDITIONS FOR SERVICES.

This Service Addendum sets forth additional terms and conditions applicable to Customers who enter into a Master Services Agreement (MSA) and Service Order with Service Provider (as defined in the MSA) to obtain Private Cloud services ("Services" or "Cloud Services") from Service Provider.

### 2. BILLING COMMENCEMENT AND CHARGES.

2.1 Service Provider shall configure the Services in accordance with the Service Order and notify Customer of the availability of the Services. The Service Commencement Date will be from the date the Services are made available to Customer by the Service Provider. The first billing period for the Services shall be from the Service Commencement Date and shall be in accordance with the details specified in the Service Order.

2.2 Charges are invoiced monthly in advance. One time Charges, such as ad hoc support fees, and Overages are invoiced in arrears and may be added to your monthly Charges or invoiced separately. Charges for Services that are consumption based shall be invoiced in advance for any minimum committed spend. Consumption in excess of any minimum committed spend will be invoiced in arrears. Service Provider reserves the right to implement a credit limit in relation to the Customer in respect of any Services, at its discretion. Customers paying invoices via credit card or other payment method that incur merchant fees, shall be charged an additional 3% convenience fee (or if such merchant fee exceeds 3% of the balance of the payment, the cost of the full transaction fee, verification or hold amount) for using such payment method. Customer acknowledges that it is not a consumer for the purposes of receiving Services hereunder and that the addition of a convenience fee is therefore not prohibited by applicable law.

2.2 Customer acknowledges and understands that the Services utilize third party technology and software from vendors including, but not limited to, Microsoft and Broadcom (VMWare). These third party vendors are able to levy price increases on their technology and software at any time. Pursuant to section 2.2 of the MSA, Customer shall be responsible for paying, and Service Provider will invoice Customer for, any increased price in respect of the technology/software licenses used for their applicable Services.

### 3. SERVICE TERMS

3.1 The Services provide a range of solutions by providing access to virtual resources on shared equipment and by connecting with our network. Customer data will be operating on a dedicated storage volume hosted on a shared storage platform. Service Provider shall provide the Services to the Customer in accordance with the terms and conditions of the Agreement including this Service Addendum, the Service Order and the MSA.

3.2 Service Provider agrees to monitor, secure, maintain and optimize the network devices and the physical network infrastructure underlying the Services on a 24x7x365 basis. Customer agrees that the Services are subject to the technical limitations of the devices being managed and the equipment and our infrastructure, and accordingly is subject to the Service Level Agreement outlined further below.

3.3 The Customer acknowledges that the provision of Services may be impacted by matters beyond the reasonable control of Service Provider including matters relating to legislation, regulatory changes, changes in the policy directive of any applicable regulatory authority and/or amendments to the terms and conditions of third-party services necessary for the Services, such as utility providers or third-party vendors such as Microsoft ("Regulatory Changes"). The Customer agrees that upon written notice to the Customer, Service Provider may amend the provision of Services or the Service Order, or terminate the Services, as required to reasonably address any Regulatory Changes.

3.4 The provision of the Service by the Service Provider is conditional on Customer's adherence to all applicable laws and regulations, and the terms and conditions of this Agreement including the requirements of the Service Provider's Acceptable Use Policy (AUP). Any breach of the AUP shall give the right to the Service Provider to suspend and/or terminate the Services without further liability to the Customer. Customer may not place excessive burdens on Service Provider resources, including our customer support services. Customer acknowledges and agrees that bandwidth, connection speeds and other similar indices of capacity are

maximum numbers. Consistently reaching these capacity numbers may result in Service Provider placing restrictions on Customers use of the Cloud Services. Customer agrees Service Provider may place restrictions on its use of the Cloud Services or customer support Services to the extent that Customer exceeds the reasonable use of these resources by similarly-situated customers.

3.5 Customer acknowledges and agrees that the provision of the Service and the associated Service Level Agreement is provided on the condition that Service Provider is able to make any changes, upgrades and/or conduct maintenance in respect of the facilities, equipment and software used to provide the Services. To the extent that a change, upgrade or maintenance impacts the Services or requires the relocation of the equipment used to provide the Services to the Customer either within the facility or to an alternative facility operated by the Service Provider, then Service Provider will give the Customer reasonable advance notice and will endeavor to minimize any impact to the Services.

3.6 Services provided by Service Provider are neither designed nor intended for use in a situation where its failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Users are not permitted to use the Services in, or in connection with, High Risk Use. High Risk Use includes, for example: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the U.S. Food, Drug, and Cosmetic Act. The Customer shall indemnify and hold Service Provider and its third-party licensors harmless against any third-party claim arising out of any User's breach of this provision.

3.7 Service Provider uses a proprietary application programming interface (API) for Customer's use in the consumption and management of the Services. All APIs are licensed to Customer, are revocable, and are non-exclusive for the Term and are for the Customer's use solely in managing or exchanging data with the Services. Customer agrees it will not copy or otherwise decrypt Service Provider's API nor reverse engineer, decompile, or disassemble any such software or code, except to the extent such activity is expressly permitted by applicable law. Customer will not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on or during the use of any such software

### 4. CUSTOMER OBLIGATIONS.

4.1. Customer is responsible for determining and employing appropriate risk mitigating measures to protect its business interests taking into account the criticality of the Services to the Customer's operations and the sensitivity of any data or information processed using the Services. This includes, but is not limited to, additional security controls for any Customer managed environment, data encryption, conducting regular data back-ups (including testing and verifying completion of a useable back-up) in connection with its use of the Services and configuring its systems for redundancy. It remains Customer's responsibility to manage, protect and store securely passwords or other authentication mechanisms used by Customer whether initially configured by Customer or Service Provider. Customer understands that the Services are provided exclusively on the basis of this allocation of responsibility. Service Provider shall not have any liability in respect of a failed or corrupt back-up (or resulting failure to restore data), except to the extent Customer submits a support ticket for assistance in configuring back-ups as part of an advanced service plan. Customers on a base service plan shall be solely-responsible for configuring the Service to back-up customer data at its required intervals.

4.2 The Customer is solely responsible for keeping its account permissions, billing, and other account information up to date in accordance with Service Provider's procedures, including through any customer portal made available to the Customer. Service Provider can only provide administrative or technical support in relation to the Services to the named Customer representative(s) listed on the account.

### 5. CANCELLATION, TERMINATION RIGHTS

5.1. Customer may cancel the Services at the expiry of the then current Term by providing ninety (90) days' prior notice to Service Provider by raising a support ticket. Customer acknowledges and agrees that this is a minimum notice period and Service Provider's ability to manage the availability and capacity of its Services is contingent on this provision. Cancellation of the Services at any other time shall be subject to early termination fees as specified in the Master Services Agreement.

5.2 On termination of the Services, (i) Customer shall pay all Charges and other amounts due; (ii) Customer shall return all software, access keys, or other property provided to Customer by Service Provider under this Agreement; and (iii) Service Provider shall have no obligation to provide Customer with access to the Services or to retain a back-up or any copy of the Customer's data. Service Provider will deprovision the Services in accordance with its internal procedures including expunging any Customer Data that resides on the virtual resources or equipment. Customer is responsible for retaining a copy of any Data prior to termination of the Services. Service Provider may, at its discretion, assist Customer with the deprovisioning of the Service and supporting any migration or retention of Customer Data. Such Services shall be considered a separate professional Service and shall incur Charges at Service Providers then current hourly rates.

### 5. THIRD PARTY SOFTWARE TERMS

5.1 In conjunction with the Services, you will be utilizing certain software and/or products developed, owned and licensed by third parties ("**Third Party Software**"). All such software shall be subject to the Third Party Software providers end-user license terms and Customer understands and agrees that these terms are determined by the Third Party Software provider and they are an inherent component of the Services. All licenses for such Third Party Software must be ordered and/or subscribed through Service Provider; Service Provider prohibits the use of Customer procured licenses on the infrastructure used to deliver the Services.

5.2 Use of the Third Party Software is subject to the following additional terms and conditions:

**Microsoft** – Microsoft licenses are provided pursuant to the Microsoft Services Provider Use Rights (SPUR) which can be found here: <https://www.microsoft.com/licensing/docs/view/Services-Provider-Use-Rights-SPUR>

**Broadcom** – Use of the VMWare software and platform are subject to the end user terms which can be found here: <https://www.broadcom.com/company/legal/licensing>

**Zerto** – Use of the Zerto software and products are subject to the end user terms which can be found here: <https://www.zerto.com/zerto-eula/>

**Veeam** – Use of the Veeam software and products are subject to the end user terms which can be found here: <https://www.veeam.com/eula.html>

**Pure Storage** – Use of the Pure Storage software and products are subject to the end user terms which can be found here: <https://www.purestorage.com/legal/pure-end-user-agreement.html>

5.3 You undertake not to (and not to allow third parties to) (1) sublicense, lease, rent, loan, or otherwise transfer any Third Party Software to any third party, (2) decompile, disassemble, decrypt, extract or otherwise reverse engineer or attempt to reconstruct or discover any source code of, or any underlying ideas in, the Third Party Software, unless applicable law permits and only then subject to providing prior written notice and to the extent required to achieve interoperability with other sources of code (3) modify, adapt, or prepare derivative works from the Third Party Software, (4) sublicense or allow others to use the Third Party Software (5) remove, obscure, or alter any third party's trademarks or copyright or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Third Party Software, and (6) make unauthorized copies of the Third Party Software (except as necessary for backup purposes).

### 6. SERVICE LEVEL AGREEMENT.

6.1. **INFRASTRUCTURE AND NETWORK AVAILABILITY.** Service Provider aims to maintain 99.99% Network and Infrastructure availability excluding maintenance windows and Excused Outages. This SLA includes the Service Provider's Network and Service Infrastructure. "Network" means the Service Provider owned and operated Internet Protocol (IP) routing infrastructure consisting solely of Service Provider devices at selected Service Provider points of presence ("Selected POP's") and the connections between them in the contiguous United States of America (and specifically excludes Alaska and Hawaii). A "Network Outage" is an instance in which no traffic can pass in or out of these Selected POPs. Service Infrastructure is defined as the critical infrastructure used by the Service Provider to deliver the Services including the servers, power distribution and data center infrastructure. A Service Interruption shall be deemed to have occurred in the event the Customer's Service is either not accessible or not available due to either a Network Outage or Critical Infrastructure failure as recorded by Service Provider's monitoring. This Service Level excludes the availability of the VMWare Control Console and Service Providers Support Portal.

6.2 **CUSTOMER'S REMEDIES FOR SERVICE INTERRUPTIONS.** Upon experiencing a Service Interruption, provided that Customer is current on all payments due to Service Provider at the time of the Service Interruption, Customer shall be entitled to obtain the issuance of an out-of-service credit, as outlined below, by submitting a request to [support@hivelocity.net](mailto:support@hivelocity.net) (or such other contact details as notified to Customer) within seven (7) business days of the Service Interruption. Service Provider will issue a credit for any Service Interruption or Network Outage equal to one thirtieth (1/30) of the monthly Charges for the affected Service for each hour Service Provider exceeds the stated service level. Only one type of service level can be claimed during any given service impacting issue and the maximum a Customer may receive for service level breaches affecting any Service in any calendar month shall not exceed Customer's monthly Charges for the affected Service. Any out-of-service credits shall be applied to the following month's charges for the Services. Customer's rights, set forth in this Section, to obtain out-of-service credits for a service level breach shall be Service Provider's sole liability to Customer, and Customer's exclusive remedy, for any Service Interruption or Network Outage experienced by Customer.

6.3 **EXCUSED OUTAGES.** No Service Credit will be deemed to accrue for any failure to satisfy this SLA relating to any of the following "Excused Outage" events (as reasonably determined by Service Provider): (i) Customer-initiated changes impacting the availability of the Services, whether implemented by Customer or Service Provider on behalf of Customer, or the use of unsupported operating systems or applications by the Customer; (ii) a violation of the AUP or facility or Service protocols notified to Customer (iii) an event of force majeure as defined under the MSA (iv) viruses, malware, ransomware or other cyber security attacks; (v) Customer's non-compliance with its obligations under this Agreement; (vi) any Service Provider maintenance notified to Customer (vii) any failures that cannot be corrected due to Customer's unavailability (viii) any unavailability of a customer portal or ticketing service used to access the Services; (ix) outages as a result of Customer placing excessive demand on their Services by exceeding their available resources, or (x) temporary unavailability of the Service as a result of the correct functioning of high availability infrastructure redundancy.