VMware Cloud on AWS

SaaS Listing

The definitions set out in the agreement will apply to this SaaS listing document.

The Broadcom software program(s) ("Broadcom Software") listed below is provided under the following terms and conditions in addition to any terms and conditions referenced on the Broadcom quote or other transaction document entered into by you and the Broadcom entity ("Broadcom") through which you obtained a license for the Broadcom Software (hereinafter referred to as the "Agreement"). These terms shall be effective from the effective date of such an ordering document.

This SaaS listing describes VMware Cloud on AWS. All capitalized terms in this SaaS listing have the meaning ascribed to them in the Agreement (including the VMware Glossary) or in the Definitions section.

Program Name: *VMC on AWS*

1.   SERVICE DESCRIPTION

The VMware Cloud on AWS service is a managed Infrastructure as a Service Offering that enables Customer to deploy Software Defined Data Centers (SDDCs) running VMware software on bare metal EC2 hosts in the Amazon Web Services ("**AWS**") cloud. VMC is provided on a 1 Year subscription term, and billed on a per host per year basis. The Service Offering has the following components:

- Software Defined Data Center ("SDDC") consisting of:
  - AWS EC2 Bare metal server (i3, i3en, i4i)
  - VMware vSphere®
  - VMware vCenter Server®
  - VMware vDefend™ Gateway and Distributed Firewall
  - VMware NSX Networking
  - VMware vSAN™
  - VMware HCX®
- Self-service provisioning of SDDCs from the VMC Console at vmc.vmware.com
- Maintenance, patching, and upgrades of the SDDC, performed by VMware by Broadcom

The Service Offering does not include the full feature set of VMware Cloud Foundation (VCF), and notably does not include entitlement to Aria, Tanzu, and vCloud Director. License portability is not permitted for VMware Cloud Foundation or VMware vSphere Foundation as the necessary software is included as part of the service subscription.

In addition to 1-year subscriptions to the Service Offering, customers are billed on a monthly basis for consumption of certain AWS networking services related to the SDDC and Microsoft products (optional) as detailed below.

- AWS EC2 Egress Data Transfer (Per GB)
- AWS EC2 Cross Region Data Transfer (Per GB)
- AWS EC2 Direct Connect (Per GB)
- AWS EC2 Elastic IP (Per IP Address, Per Hour)
- AWS EC2 Transit Connect (Per Hour, Per GB, Per Attachment)
- Optional: Microsoft Windows Data Center Server (Per Host Per Month)
- Optional: Windows SQL Server (Per Host Per Month)

Capacity Management: Customer is responsible for capacity management of its SDDCs. Broadcom requires that twenty percent (20%) unused space ("slack space") be maintained in the VMware vSAN™ datastore within the service, to support operation of the SDDC. Adequate slack space is required for use of the vSAN datastore. If storage free space reaches (or falls below) twenty percent (20%), it is possible that Customer could lose the ability to utilize the SDDC, and the environment could become inoperable. If unused space in an SDDC vSAN datastore reaches (or falls below) twenty percent (20%), Broadcom will automatically add hosts to the SDDC to prevent damage to the SDDC. Customer can use the VMware Cloud sizer tool, found at https://vmc.vmware.com/sizer, for guidance on the appropriate number of hosts needed to support anticipated workloads. If Customer has changed the Elastic DRS for VMware Cloud™ on AWS (Elastic Distributed Resources Scheduler) ("eDRS") policy to "Optimize for Best Performance" or "Optimize for Lowest Cost", or "Custom Policy", Broadcom will automatically size Customer's SDDC up or down based on load and according to the eDRS policy Customer has chosen, subject to existing subscriptions. For CPU and memory recommendations, a scale-out action is only initiated if Customer has sufficient subscription coverage for the relevant region and instance type. If Customer does not change the eDRS settings, the default option is "Scale Up for Storage Only" which means that Broadcom will add hosts to Customer's SDDC only when storage capacity becomes critical (that is, twenty percent (20%) or less free space) and is initiated regardless of available subscriptions. If Customer does not have sufficient subscriptions to cover the new host(s), Customer must purchase such sufficient subscriptions within 48 hours. If a host is added beyond available subscriptions and subscriptions are not purchased within 48 hours, Customer will lose access to SDDC(s) and workloads. SDDC(s) with hosts not covered by subscription will eventually be irrevocably deleted. When eDRS is set to "Scale Up for Storage Only" Broadcom will not automatically scale down the SDDC. Additional hosts added pursuant to this capacity management process must be purchased using 1-Year subscriptions.

Data Retention and Deletion: Retention and storage policies associated with Customer Content in the VMware Cloud on AWS service (including any personal data in Customer Content) are solely managed by Customer. Broadcom does not back up Customer Content in the service and therefore will not be able to recover any Customer Content in any unforeseen event. Customer is responsible for implementing tools, products, and operational procedures to support data migration, data protection, backup/archive, and restoration for all Customer Content and all configurations created by Customer in the SDDC, including Virtual Machines and Content Libraries. Any deletion of a host on VMware Cloud on AWS results in an automated cryptographic wipe of the hard drive, that is performed via destruction of keys used by the self encrypting drives. This cryptographic erasure ensures that there is no Customer Content on the drives before returning the hosts to the pool of available hardware to be reprovisioned or decommissioned. Service Operations Data is backed up by Broadcom and retained for one (1) year. Usage Data is backed up by VMware and retained for no more than seven (7) years.

2.   THIRD PARTY INFORMATION AND TERMS

Any required third-party software license terms are incorporated by this reference and are set forth in online documentation at techdocs.broadcom.com or legaldocs.broadcom.com.

Amazon: Customer will not be able to access or use the VMware Cloud on AWS service without having its own AWS customer account (an "**AWS account**"), which Customer must establish directly with AWS. This means that if Customer does not already have an AWS account, Customer must establish one prior to being able to access the VMware Cloud on AWS service. Prior to provisioning an SDDC, Broadcom allows Customer to connect to its AWS account. This process establishes identity and access management policies in Customer's AWS account that enable communication between resources provisioned in Customer's AWS account and in the VMC SDDC.

Microsoft: If Customer is running Windows workloads in Customer's VMware Cloud on AWS service instance and wishes to leverage the functionality of the Microsoft Windows Server Datacenter offering or the Microsoft SQL Server Enterprise offering (collectively, the "**Microsoft Products**"), Customer may have Broadcom enable the Microsoft Products, under Broadcom's own licenses for the Microsoft Products, for Customer's environment. Broadcom is a licensee of the Microsoft Products pursuant to a separate agreement between Microsoft and Broadcom. Customer may be able to provision its existing license(s) in Customer's environment, if those licenses are eligible for that portability, pursuant to Customer's own license agreement with Microsoft. If Customer elects to have Broadcom enable the Microsoft Products for Customer's

VMware Cloud on AWS instance, Broadcom will charge Customer for this use. Customer's use of the Microsoft Products is subject to the following conditions, which are in addition to the provisions of the Agreement:

1.   The Microsoft Products may only be used with Customer's instance of the VMware Cloud on AWS service. Customer is not permitted to provision or to allow anyone else to provision the Microsoft Products in any other environment, including but not limited to Customer's on-premises environment.
2.   The Microsoft Products may not be used in high-risk activities, as described in the General Terms.
3.   Customer may not remove, modify, or obscure any copyright, trademark, or other proprietary rights notices that are contained in or on the Microsoft Products.
4.   Customer may not reverse engineer, decompile, or disassemble the Microsoft Products, except to the extent that such activity is expressly permitted by applicable law.
5.   Microsoft, to the extent permitted by applicable law, disclaims all warranties regarding, and any liability on the part of Microsoft or its suppliers for, any damages, whether direct, indirect, or consequential, arising from Customer's use of VMware Cloud on AWS.
6.   The Microsoft Products are the intellectual property of Microsoft. Customer's rights to use the Microsoft Products are limited to those rights expressly granted in the Agreement and are subject to the conditions in this section ("Microsoft Server Products").
7.   Microsoft is a third party beneficiary of these terms, with the right to enforce these terms and to verify Customer's compliance with these terms. If Customer needs support for the Microsoft Products, Customer must contact Microsoft, or Customer's preferred third-party support provider. Broadcom will not provide support for the Microsoft Products that Customer uses in connection with its service instance.

The separate license agreement between Broadcom and Microsoft regarding the Microsoft Products requires Broadcom and/or Customer's authorized Broadcom channel partner to disclose Customer's name and address to Microsoft, and Customer acknowledges this and consents to this disclosure, (i) if Customer has a demonstration of the VMware Cloud on AWS service, using the Microsoft Products, or (ii) if Customer uses the VMware Cloud on AWS service on a trial or evaluation basis and the Microsoft Products are used. If Customer elects to have Broadcom provision the Microsoft Products in Customer's VMware Cloud on AWS service instance, Broadcom is also required to disclose to Microsoft the country in which Customer's instance of the service is provisioned, and Customer acknowledges and consents to this disclosure. This information will be used by Microsoft to verify Broadcom's compliance with the terms of the separate license agreement between Broadcom and Microsoft regarding the Microsoft Products, and Customer's compliance with the terms set forth above in this section ("**Microsoft Server Products**").

Google: VMware Cloud on AWS utilizes Google Analytics.

FullStory: VMware Cloud on AWS uses FullStory functionality to collect data directly from any browsers used to access and use the service. FullStory collects data regarding use of the service, including user interaction and behavior, to enable session replay. The data collected and inferred is used by Broadcom to diagnose and improve its products and services, and to address issues. For users who wish to opt out of session recording, FullStory makes the following website available: https://www.fullstory.com/optout/.

3.   Service Level Agreement

The service level agreement in this Section ("**SLA**") is subject to the Agreement. We reserve the right to change the terms of this SLA in accordance with the Agreement. The terms and conditions described in this document do not apply to SDDCs deployed in the VMware Cloud on AWS GovCloud region.

Availability

Broadcom will use commercially reasonable efforts to ensure that, during any given billing month of the Subscription Term, Availability of each component of the Service Offering ("service component") meets the "Availability Commitment" specified in the table below.

Non-Stretched Cluster (single availability zone)	
Service Component	**Availability Commitment**
SDDC Infrastructure (for a cluster in a single availability zone)	99.9%
SDDC Management	99.9%
VMware Site Recovery - Management	99.9%

Stretched Cluster (multiple availability zones)	
Service Component	**Availability Commitment**
SDDC Infrastructure 4 hosts or less (1-2 per availability zone)	99.9%
SDDC Infrastructure 6 host or more (3+ per availability zone)	99.99%
SDDC Management	99.9%
VMware Site Recovery - Management	99.9%

If the Availability of the service component is less than the associated Availability Commitment, then you may request an SLA Credit. Availability in a given billing month is calculated according to the following formula:

"**Availability**" = ([total minutes in a billing month – total minutes Unavailable] / total minutes in a billing month) x 100

Unavailability and SLA Events

A service component will be considered "**Unavailable**", subject to the Service Level Agreement Limitations set forth below, if Broadcom's monitoring tools determine that one of the following events (each, an "**SLA Event**") has occurred.

The total minutes that the service component is Unavailable for a particular SLA Event is measured from the time that the SLA Event has occurred, as validated by Broadcom, until the time that the SLA Event is resolved such that the service component is no longer Unavailable.

If two or more SLA Events occur simultaneously, the SLA Event with the longest duration will be used to determine the total minutes Unavailable.

Each of the following will be considered an SLA Event for the VMware Cloud on AWS service:

SDDC Infrastructure:
   a) All of your virtual machines ("VMs") running in a cluster do not have any connectivity for four consecutive minutes.
   b) None of your VMs can access storage for four consecutive minutes.
   c) None of your VMs can be started for four consecutive minutes.

<u>SDDC Management:</u>
    a)   Your vCenter server is inaccessible for four consecutive minutes.
    b)   Your NSX manager is inaccessible for four consecutive minutes.

Availability of the Service Offering is dependent on and subject to availability of the AWS infrastructure on which the Service Offering is hosted. Availability of the AWS infrastructure is not covered by the service availability metrics set forth in this Service Level Agreement. If the AWS infrastructure is unavailable, and therefore the Service Offering is unavailable, your sole recourse pursuant to the Agreement is to us, and not to AWS. In such event, we have recourse to AWS pursuant to our separate agreement with AWS. You may have recourse to AWS pursuant to your separate agreement with AWS, which is required as provided in the Service Description, for any unavailability of the AWS systems.

Requirements

To be eligible to receive any SLA Credits for an SLA Event, you must meet the following requirements:
- For non-stretched clusters, you must have a minimum configuration for all VM storage policy Numbers of Failures to Tolerate (FTT) = 1 when the cluster has 2 to 5 hosts, and a minimum configuration of FTT = 2 when the cluster has 6 to 16 hosts. This is not dependent on RAID levels.
- For stretched clusters with four hosts or less, spanning across more than one availability zone, you must have a minimum configuration for all VM storage policy Site Disaster Tolerance (PFTT) = Dual Site Mirroring.
- For stretched clusters with six hosts or more, spanning across more than one availability zone, you must have a minimum configuration for all VM storage policy Site Disaster Tolerance (PFTT) = Dual Site Mirroring and Secondary level of failures to tolerate (SFTT) = 1. This is not dependent on RAID levels.
- The storage capacity for the cluster retains slack space of 20% available (as described in the VMware vSAN™ storage guide
- There must be sufficient capacity on the cluster to support starting a VM.

SLA Credits

Each "SLA Credit" is an amount equal to a portion of the monthly recurring or metered subscription amount (net of any discounts) for the billing month in which the SLA event occurred.

If an SLA Event occurs for your SDDC Infrastructure, it applies to a cluster within the SDDC. For each SLA Event for a cluster, you are entitled to an SLA Credit proportional to the number of hosts in that cluster. For example, for an SDDC with two clusters, where the first cluster has 4 hosts and the second cluster has 6 hosts, if there is an SLA Event that affects the first cluster, then the SLA Credit would be applied to 40% of the monthly recurring or metered subscription amount (excluding addons, and net of any discounts) for the billing month in which the SLA Event occurred.

If an SLA Event occurs for your SDDC Management, it applies to the entire SDDC. For each SLA Event for the SDDC, you are entitled to an SLA Credit for the entire SDDC. For example, for an SDDC with two clusters where the first cluster has 4 hosts and the second cluster has 6 hosts, if there is an SLA event that applies to the first cluster, then the SLA Credit would be applied to 100% of the monthly recurring or metered subscription amount (net of any discounts) applicable to the SDDC for the billing month in which the SLA Event occurred.

If an SLA Event occurs for VMware Site Recovery management, it applies to all VMs protected using VMware Site Recovery add-on. For each SLA Event for VMware Site Recovery, you are entitled to an SLA Credit for the VMware Site Recovery add-on. For example, for an SDDC with the VMware Site Recovery add-on, if there is an SLA event that applies to the SDDC, then the SLA Credit would be applied to 100% of the monthly recurring or metered subscription amount (excluding add-ons, and net of any discounts) applicable to the VMware Site Recovery add-on for the billing month in which the SLA Event occurred.

SDDC Infrastructure

For a cluster in a single availability zone

Monthly Uptime Percentage	SLA Credit Percentage
Less than 99.9% but equal to or greater than 99.0%	10%
Less than 99.0%	30%

For a stretched cluster across more than one availability zone

Monthly Uptime Percentage	SLA Credit Percentage
Less than 99.9% but equal to or greater than 99.0%	10%
Less than 99.0%	30%

SDDC Management

Monthly Uptime Percentage	SLA Credit Percentage
Less than 99.90% but equal to or greater than 99.0%	5%
Less than 99.0%	15%

VMware Site Recovery Management

Monthly Uptime Percentage	SLA Credit Percentage
Less than 99.9% but equal to or greater than 99.0%	5%
Less than 99.0%	15%

Service Level Agreement Limitations

The following will be excluded from any time-based calculations related to the service component being Unavailable: (i) scheduled maintenance where you have been notified at least 24 hours in advance, (ii) recurring or zero-impact maintenance that is generally applicable to all customers, (iii) your misuse of the service offering or a service component, (iv) force majeure events, denial of service attacks, viruses, or hacking attacks for which there is no commercially reasonable known solution, or any other events that are not within our control or that could not have been avoided with commercially reasonable care, (v) acts or orders of government, (vi) packet loss, network or internet problems beyond Broadcom's border router supporting our public internet connectivity, or (vii) bugs in code or services for which there is no commercially reasonable known fix (even if there is a known workaround).

In addition to the requirements set forth, above, you will not be eligible to receive an SLA Credit if: (i) your account has any delinquent payments for the Service Offering, or (ii) the SLA Event was due to your failure to meet your security responsibilities as set forth in the Agreement.

Broadcom's monitoring tools, data, and records will be the sole source of information used to track and validate Availability. Upon request, VMware will provide to you, within 45 days after a confirmed SLA Event, a copy of the Availability report that VMware makes generally available to customers.

Service Level Agreement Claims

To request an SLA Credit, you must file a support request within 60 days after the suspected SLA Event. Broadcom will review the request and issue an SLA Credit when Broadcom validates the SLA Event based on Broadcom's data and records.

SLA Credits will be issued to the person or entity that Broadcom invoices for the Service Offering, as a separate credit memo that can be applied towards a future invoice for that Service Offering instance. If your subscription term for the Service Offering expires or is terminated prior to the issuance of a Service Credit, the Service Credit will become void as of the date of the expiration or termination.

The Service Credits specified in this SLA are your sole and exclusive remedies for any SLA Events occurring during your subscription term for the Service Offering or for any other claim in connection with this SLA.