

VMware, Inc. Support and Subscription Services Terms and Conditions

Under these Support and Subscription Services Terms and Conditions (this “**Agreement**”), either VMware, Inc., a Delaware corporation, or VMware International Limited, a company organized under the laws of Ireland, as applicable (“**VMware**”), shall provide technical support and subscription services as more fully described herein to Customer, according to the Support Level purchased by Customer and defined on the VMware Support Services website (www.vmware.com/support), commencing on the Effective Date. Applicable VMware entity, **Customer**, **Effective Date**, applicable **Software**, and **Support Level** are as specified on either a Support and Subscription Services Order Form, on Customer’s purchase order (“**Purchase Order**”) or, if Customer has purchased support on a per incident basis (“**Per Incident**”) (as defined in the Technical Support Guide), in the registration form completed by Customer upon such purchase (collectively the “**Order**”).

1. Definitions

“**Additional Module**” means a module including additional features or functionality that were (1) made available by VMware in conjunction with a Major Release but not initially purchased by Customer or (2) subsequently made available by VMware. Additional Modules are made available for purchase pursuant to separate licensing fee and separate purchase of Services. VMware in its discretion will designate what if anything constitutes an Additional Module, designating such by means of a descriptive name change (e.g. Software>>Software Clustering Module). Additional Modules will be considered “Software” for the purposes of this Agreement upon the purchase of Services for the Additional Module(s).

“**Computer**” means the Customer’s workstations or Servers on which the applicable Software is installed.

“**Contract Term**” means the period for which Customer has purchased the Services and any subsequent renewal periods. For Software Product Licenses for which Services are mandatory, the Contract Term shall commence on the date of shipment of the applicable Software Product License. For Software Product Licenses for which Services are optional, the Contract Term shall commence on the date of purchase of the Services.

“**Business Critical Support (BCS) Customer Team**” means a Customer team that: (i) consists of no more than six technical contacts, (ii) has at least one individual who has passed the relevant certification examinations and has been certified by VMware as a VMware Certified Professional, (iii) is centrally responsible for managing and supporting the Customer’s virtual infrastructure, (iv) develops and implements standards and processes for the management of all virtual systems supported, and (v) provides front line support for the virtual systems supported, making use of available technical repositories and experience to resolve known issues.

“**Documentation**” means any user instructions, manuals or other materials, and on-line help files regarding the use of the Software, as revised by VMware from time to time, that are generally provided by VMware in connection with the Software.

“**Error**” means a failure in the Software to materially conform to the specifications as described in the applicable Documentation.

“**Fees**” means those fees for the Services at the level specified in the Order and as specified in the related VMware invoice for the Contract Term.

“**License Administrator**” means Customer-specified employee on the Order who is responsible for: (a) facilitating election, purchase, and, if applicable, renewal of the Services; (b) receiving and administering Software Product Licenses, Updates, Maintenance Releases, Minor Releases, and Major Releases from VMware; and (c) Customer adherence to the license restrictions of this Agreement. Customer may change its License Administrator upon reasonable advance written notice to VMware.

“**License Key**” means a serial number (or file and accompanying serial number) that enables the Customer to activate and use the Software or Additional Module.

“**Maintenance Release**” means a generally available release of the Software that typically provides maintenance corrections or fixes only, designated by VMware by means of a change in the digit to the right of the second decimal point (e.g. Software 5.0 >> Software 5.0.1) or by Update number (e.g. Software 5.0 Update 1).

“**Major Release**” means a generally available release of the Software that contains functional enhancements or extensions, designated by VMware by means of a change in the digit to the left of the first decimal point (e.g. Software 5.0 >> Software 6.0).

“Minor Release” means a generally available release of the Software that introduces a limited amount of new optional features and functionality, designated by VMware by means of a change in the digit to the right of the decimal point (e.g. Software 5.0>>Software 5.1).

“Modified Code” means any modification, addition and/or development of code scripts (whether created by VMware, Customer or any third party) that deviates from the predefined product code tree(s)/modules developed by VMware for production deployment and/or use.

“Open Source Software” means components provided with the Software, for which the source code is generally available and are licensed under the terms of various published open source software license agreements or copyright notices accompanying such software components.

“Server” means a single physical Computer regardless of the number of processors in the Computer. Multiple Computers that share processing power or operate in a networked configuration as a single logical computer, such as in a “server farm” or similar arrangement, constitute multiple servers in the context of this Agreement.

“Services” means, collectively, the Technical Support and Subscription Services as further described on the VMware Support Services website (www.vmware.com/support).

“Site Support Customer Team” means a Customer team that: (i) consists of no more than four (4) technical contacts, (ii) provides front line support for the desktop and virtual systems supported, making use of available technical repositories and experience to resolve known issues and (iii) is located in the defined VMware regions as described on the VMware web at: <http://www.vmware.com/support/policies/severity.html#c155836>

“Software” means one or more individual VMware software products or software product suite, including Additional Modules, made generally available by VMware and specified in the Order. Software does not include Open Source Software, Modified Code or customized deliverables that VMware creates specifically for Customer.

“Software Product License” or **“SPL”** means a license to the Software, together with the License Key allowing the Customer to activate and use the Software.

“Subscription Services” means the provision of Updates, Maintenance Releases, Minor Releases and Major Releases to the Software, if any, and corresponding Documentation to Customer’s License Administrator.

“Support Administrator” means Customer-specified contact designated on the Order responsible for communicating and engaging VMware for Technical Support services with respect to problem reports. Primary License Administrators may change Support Administrator via the VMware Website.

“Technical Support” means the provision of technical assistance by VMware to the Support Administrator(s) with respect to installation (if covered by your Support Level), analysis of problem reports, and Errors, at the support level purchased by the Customer as indicated on the Order.

“Technical Support Guide” means the document titled “VMware Technical Support Guide” and posted at www.vmware.com/support.

“Third Party Products” means any third party software or hardware manufactured by a party other than VMware, including, without limitation, Open Source Software.

“Update” means a generally available release of the Software that typically provides maintenance corrections or fixes only, designated by VMware by means of a change in the digit of the Update number (e.g. Software 5.0 Update 1).

“Upgrade” means a Major Release.

“Workstation Complimentary Support” means the provision of VMware Workstation Maintenance Releases and Minor Releases, if any, to Customer’s License Administrator. Workstation Complimentary Support does not include the provision of any Major Releases.

2. Service Terms

2.1 Provision of Services. Subject to the terms of this Agreement, VMware shall provide the Services for which Customer has paid the applicable Fees. As part of the provision of applicable Services, Customer agrees to receive from VMware communications via e-mail, telephone, and other formats, regarding Service renewals, quotes, and other topics that are considered an essential part of the Services (including, but not limited to, communications concerning an Error or other technical issue and the availability of new releases). Customer further agrees to ensure that Customer’s Support Administrator is available to provide

necessary assistance to VMware in providing the Services, in accordance with Customer's reasonable security and confidentiality procedures.

2.2 Product End of Availability. VMware may, at its discretion, retire any Software at any time ("End of Availability"). Notice of such End of Availability, which shall include the last date of general commercial availability of the Software, shall be provided via the VMware Support Services website at www.vmware.com/support. VMware will discontinue Services for such Software in accordance with the timelines set forth in VMware's support lifecycle policies also to be provided via the VMware Support Services website.

2.3 Requirements. Customer may purchase initial Services only for the most current, generally available release of the Software, unless otherwise specified for specific Software, in accordance with Section 2.2 and VMware's support life cycle policies as provided on the VMware Support Services website (www.vmware.com/support).

- (a) For all current and additional Software Product Licenses or Additional Modules purchased for a particular VMware Software product or suite, Customer must purchase and/or renew Services at the same support level in a given functional discipline (e.g. Test, Development, QA, Production).
- (b) For most Software, including Additional Modules, a minimum of one (1) year of Services must be purchased. For Software-specific support requirements, please see the VMware Support Services website (www.vmware.com/files/pdf/support/software_specific_support_requirements.pdf). VMware will provide Services for an initial term of one (1) year for which Customer has paid the applicable Fees, unless a different term is expressly provided for in the applicable Order. For multi-year Contract Terms, the terms and conditions of this Agreement, including Services, may be amended by VMware, in its sole discretion, after the first year of the Contract Term. If such a change is determined by VMware to adversely and materially impact the Customer, Customer will be provided with written notification at least thirty (30) days prior to the effect of any such change. Except as otherwise expressly set forth herein or in the applicable Order, Services previously purchased will automatically renew for successive one (1) year terms. Upon any renewal, VMware's then-current terms and conditions for the Services and this Agreement will apply, unless either party gives written notice of its intent not to renew at least thirty (30) days prior to the end of the current Contract Term. A decision to terminate Services or otherwise not renew Services will not terminate the applicable Software Product Licenses.
- (c) VMware, during the course of providing Technical Support, may be required to analyze whether or not a reported problem is related Modified Code. Applicable response times shall be suspended while VMware conducts such analysis. Where VMware suspects that a problem may be related to Modified Code, VMware at its sole discretion, reserves the right to request that the Modified Code be removed. If VMware cannot directly identify the root cause of a problem, or reasonably suspects that the problem is related to Modified Code, Customer shall be informed that additional assistance may be obtained by Customer directly from various product discussion forums or via engagement for an additional fee with VMware's consulting services group.

2.4 Eligibility. Problems caused by the following situations are not included in Services but may be addressed separately upon request at VMware's then-current hourly rates for consulting, subject to the then-current standard consulting services terms and conditions:

- (a) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by VMware; operation of the Software with other media not in accordance with the manufacturer's specifications; or causes other than ordinary use; or
- (b) improper installation by Customer or use of the Software that deviates from any operating procedures as specified in the Documentation; or
- (c) actual or attempted modification, alteration or addition to the Software undertaken by Customer or any third party; or
- (d) Third Party Products, other than the interface of the Software with the Third Party Products; or
- (e) Modified Code, with the exception of the predefined product code tree(s)/modules developed by VMware for production deployment and/or use with the VMware vCenter Lifecycle Manager – Customized Option product; or
- (f) any technical issue unrelated to an Error (please see the Technical Support Guide for examples).

2.5 Customer Responsibilities. Customer's obligations regarding Services are subject to the following:

- (a) Customer is solely responsible for the use of the Software by its end user personnel.

- (b) Customer shall promptly report to VMware all problems with the Software, and shall implement any corrective procedures provided by VMware reasonably promptly after receipt.
- (c) Customer is solely responsible for protecting and backing up the data and information stored on the Computers on which the Software is used and should confirm that such data and information is protected and backed up before contacting VMware for Technical Support; VMware is not responsible for lost data or information in the event of Errors or other malfunction of the Software or Computers on which the Software is used.
- (d) Customer shall properly train its end user personnel in the use and application of the Software and any Computers on which the Software is used.

3. Fees

3.1 Fee Schedule

- (a) Except for purchases of Technical Support on a Per Incident basis, and unless otherwise indicated on the Order, Fees are payable on the Effective Date or, in the case of a renewal term, no later than the date of commencement of the applicable Contract Term, and due in accordance with Section 3.3 below. Customer agrees that Purchase Orders do not have to be signed to be valid and enforceable.
- (b) The Fees for Services, including renewals, are at the then-current list price. If Customer elects not to renew the Services or, in the case of Software that may initially be purchased without Services, if Customer elects not to purchase the Services when Customer acquires the Software Product License, Customer may later re-enroll or enroll, as the case may be, for the Services, subject to Subsection 3.1(d) below.
- (c) For any renewal or addition of Services, which requires a minimum purchase of one (1) year, Customer may elect to make Services for all or a portion of its Software Product Licenses coterminous. In such event, VMware will prorate the applicable Fees for the current Contract Term(s) based on the number of full or partial months remaining in the current Contract Term(s).
- (d) If Customer purchases Services after acquiring the Software Product Licenses, or had elected not to renew Services and later wishes to re-enroll in the Services, Customer must move to the then-current latest release of the Software, and must pay:
 - (i) the applicable Fees for the current Contract Term, and
 - (ii) the amount of Fees that would have been paid for the period of time that Customer had not enrolled in the Services, and
 - (iii) a 20% reinstatement fee on the sum of the fees in (i) and (ii).
- (e) Fees for Services are non-refundable upon payment.
- (f) In cases where an Upgrade license is purchased, any unused period of the Contract Term on the original license will be converted and used to extend the Contract Term for the newly purchased upgraded license.

3.2 Taxes. All Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Customer shall pay or reimburse VMware for all federal, state, dominion, provincial, or local sales, use, personal property, excise, value added, withholding or other taxes, fees, or duties relating to the transactions contemplated by this Agreement (other than taxes on the net income of VMware).

3.3 Invoicing and Late Payments; All invoices issued hereunder by VMware are due and payable within thirty (30) days of the date of the invoice. All amounts that are not paid on time by Customer shall be subject to a late charge equal to one and one-half percent (1.5%) per month, or, if less, the maximum amount allowed by applicable law. If payment of any Fee is overdue, VMware may also suspend performance until such delinquency is corrected.

4. Limited Warranty. VMware warrants that the Services to be performed hereunder will be done in a workmanlike manner and shall conform to industry standards. Upon Customer providing VMware with a reasonably detailed written notice to cure within thirty (30) days of occurrence of the nonconformance, VMware will re-perform the Services to achieve commercially reasonable conformance with the above warranty. THIS WARRANTY IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

5. Limitation of Liability. VMWARE SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. VMWARE'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE SERVICES FEES PAID BY CUSTOMER TO VMWARE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

6. Termination. VMware may suspend performance of Services if Customer fails to meet its cooperation obligations as set forth under this Agreement. VMware may terminate Services if such failure continues for thirty (30) days after VMware's written request to meet these obligations. VMware may terminate the Agreement and all Services at any time if (1) it is discovered that Customer is currently in breach of its Software license restrictions, pursuant to Customer's Software Product License or (2) Customer is in material breach of this Agreement.

7. Miscellaneous. Customer may not assign or delegate this Agreement to any third party without the prior written consent of VMware. This Agreement shall be governed by the laws of the State of California without regard to conflict of laws principles. The parties consent to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. This Agreement constitutes the entire agreement of the parties with respect to the provision of the Services by VMware to Customer, and supersedes all prior written or oral communications, understandings and agreements. This Agreement may not be amended by Customer except in a written document signed by both parties. Any waiver of the provisions of this Agreement must be in writing to be effective. Except as expressly set forth herein, no terms of any Purchase Order or other business form that Customer may use will affect the obligations of the parties under this Agreement, and any such Purchase Order or other business form of Customer which contains additional or conflicting terms are hereby rejected by VMware. If any provision of this Agreement is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law. The version of the Technical Support Guide found at www.vmware.com/support is the governing version of such document; any translation into other languages is for convenience only. VMware may update the Technical Support Guide periodically without prior notice.

Attachment 1
VMware Support Programs and Subscription Services Fee Addendum

- (a) Annual Fees for initial Services, as well as renewals, if any, will be based on the following schedule, pursuant to Customer’s elected level of Services for the Software, and subject to Subsection 1(d) below:

Services Level	Services Fee
Silver Support and Subscription (VMware Workstation only)	18% of the then-current list price of the Software
Gold Support and Subscription	21% of the then-current list price of the Software
Platinum Support and Subscription	25% of the then-current list price of the Software

- (b) Fees for each renewal term for Workstation Complimentary Support will be ten percent (10%) of the price paid for the applicable Software Product License at the time of purchase.
- (c) A Customer that originally purchased Services from a VMware Authorized Service Provider and is renewing only Technical Support through the VMware Authorized Service Provider may purchase Subscription Services separately on a renewal basis from VMware. In this case, the renewal fee for such Subscription Services shall be fourteen (14%) of the list price of the Software at the time the Software was purchased. “Authorized Service Provider” means a third party that is authorized under contract by VMware to provide first and/or second level Technical Support for VMware products.
- (d) The prices of Services (initial as well as renewals, if any) for the Software listed below at the Services levels listed below are not priced based on a percentage of list price of such Software; such prices are as reflected in the then-current applicable VMware standard price list, and Service levels are defined in the Technical Support Guide:

Software	Services Level
VirtualCenter for VMware Server (version 1.4)	Per Incident Support
VMware vCenter Converter Standalone	Per Incident Support
VMware vSphere Standard Edition	Gold and Platinum Support and Subscription
VMware Server	Gold and Platinum Support and Subscription
VMware vCenter Server 4 Foundation for vSphere	Gold and Platinum Support and Subscription
VMware Workstation	Per Incident Support
VMware Workstation	Site Support
VMware Fusion	Subscription Services Only; No Technical Support
VMware Fusion	Per Incident Support
VMware Fusion	Site Support
VMware vSphere ESXi Single Server	Gold and Platinum Support and Subscription (for one year only at point of sale)
VMware vSphere ESXi Single Server	Per Incident Support
VMware ThinApp	Gold and Platinum Support and Subscription ThinApp Suite Gold and Platinum Support and Subscription ThinApp Client
VMware Capacity Planner	Platinum Support and Subscription for worldwide partners only (complimentary web based support available for trained partners only; see (g) below)
VMware vSphere Essentials Edition	Per Incident Support

- (e) Business Critical Support (as defined in the Technical Support Guide) is available for a fixed price (including renewals thereof), based on VMware’s then-current list price, for an annual contract covering each supported BCS Customer Team. Additional technical contacts (including renewals thereof) beyond six may be added to the BCS Customer Team for a fixed annual fee. A

discount of twenty (20) percent off the then-current list price for Business Critical Support for a Customer that has contracted for, and currently has, one or more VMware Technical Account Managers shall apply to Business Critical Support, including renewals thereof.

- (f) Notwithstanding anything to the contrary in this Attachment 1, VMware may increase the Fees for any renewal term.
- (g) VMware Capacity Planner is a system analysis tool created exclusively for VMware's worldwide partners. Web-based technical support for VMware Capacity planner is available without charge, if the partner has certified completion of VMware's Capacity Planner Partner Training. VMware will make commercially reasonable efforts to respond to Capacity Planner web-based support requests whenever possible. Platinum Support is also available for VMware Capacity Planner. This Platinum level support offering is available to the VMware's partner community only.
- (h) Customers purchasing Gold or Platinum Services for products where Services are not required (including VMware Server, ESXi, and Workstation) must purchase Services at the same service level for each Software Product License deployed in a given functional discipline (e.g. Test, Development, QA, Production).
- (i) Site Support is available for certain products and is priced at a flat rate per license, with a minimum of fifty licenses. Site Support services include Technical Support and Subscription Services delivered to a Site Support Customer Team.