

VMWARE GENERAL TERMS

Last updated: 16 June 2022

By downloading or using an Offering, Customer agrees to be bound by the terms of the Agreement.

1. OFFERINGS.

- 1.1. **Applicable Terms.** The terms of the Order and these General Terms, including applicable Exhibits and Offering-specific Notes (collectively, the “**Agreement**”) govern Customer’s use of the Offerings. The following descending order of precedence applies: (a) the Order; (b) the General Terms; (c) the Exhibits; and (d) the Offering-specific Notes.
- 1.2. **Users.** Customer is responsible for its Users’ compliance with the Agreement.
- 1.3. **Restrictions.** Customer may use the Offerings only for its internal use and for the benefit of its Affiliates. Affiliates may not use the Offerings. Customer may not resell or sublicense its rights to the Offerings. Customer may not use the Offerings in an application service provider, service bureau, hosted IT service, or similar capacity for third parties.
- 1.4. **Benchmarking.** Customer may use the Offerings to conduct internal performance testing and benchmarking studies. Customer may only publish or distribute study results with VMware’s approval. Customer may submit requests to VMware by emailing benchmark@vmware.com.
- 1.5. **Evaluations.** Evaluations are for 30 days (unless VMware specifies otherwise in writing). Customer may not have access to data in the Evaluation after it ends. Evaluations are provided “AS IS” without indemnification, support, service level commitment, or warranty of any kind, express or implied.

2. ORDERS AND PAYMENTS.

- 2.1. **Orders.** Orders are binding when VMware accepts them, which is deemed to occur on Delivery.
- 2.2. **Purchase Orders.** Purchase orders do not have to be signed to be valid. Terms contained in any purchase order or other business form do not apply.
- 2.3. **No Refunds.** All Orders are non-refundable and non-cancellable except as expressly provided in the Agreement.
- 2.4. **Overages.** Customer must pay all fees for use of the Offerings, including amounts for add-on features and fees incurred based on usage. VMware may bill Customer directly for metered or overage fees, even if Customer originally purchased the Offerings through a VMware authorized reseller.
- 2.5. **Direct Orders.** This section 2.5 (Direct Orders) applies only to Orders placed directly with VMware. If Customer purchases entitlements to the Offerings through a VMware authorized reseller, different terms regarding invoicing, payment, and taxes may apply.
 - 2.5.1. **Payments.** Except as listed in an Order, fees for the Offerings will be governed by the applicable price list at the time of invoicing. Customer must pay all undisputed fees and approved expenses within 30 days from the date of invoice. After 30 days, interest will accrue at the lesser of 1.5% per month or the highest lawful rate.
 - 2.5.2. **Disputes.** To dispute any fees in good faith, Customer must notify VMware in writing of the reasons for the dispute before the payment due date. The parties must negotiate in good faith to resolve the dispute as soon as reasonably practicable. VMware will not suspend or terminate Customer’s access to any Offering because of any unpaid, disputed fees while Customer and VMware are negotiating to resolve the dispute.
 - 2.5.3. **Taxes.** Fees are exclusive of Taxes. Customer must pay or reimburse VMware for all Taxes. If Customer is required to withhold any Tax, Customer must gross up its payments so that VMware receives all sums due in full. If Customer’s address is outside of the United States, VMware will treat the Customer’s “bill to” address as the place of supply for VAT purposes.

3. TERM.

- 3.1. **Term.** The Agreement applies to the Offerings from the effective date of the Order until the expiration or termination of Customer’s entitlement to the Offerings as set forth in this Agreement.
- 3.2. **Temporary Suspension.** In the event of a security risk to a Service or its users, VMware may suspend Customer’s use of that Service.
- 3.3. **Termination for Cause.** Either party may terminate the Agreement (in whole or in part) or Customer’s entitlement to an Offering under the Agreement effective immediately upon written notice if the other party: (a) materially breaches any provision of the Agreement and fails to cure within 30 days after receiving written notice; or (b) becomes insolvent or subject to any form of bankruptcy proceeding.

3.4. Effect of Termination. Upon termination of the Agreement or part of it: (a) all entitlements to the applicable Offerings immediately end; (b) Customer must stop using, and destroy any copies of, those Offerings; 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 that is intended by the parties to survive termination of the Agreement will survive.

4. CONFIDENTIAL INFORMATION.

4.1. 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 the Agreement. Recipient may disclose Confidential Information only to Recipient's Affiliates, employees and contractors who need to know the Confidential Information for purposes of the Agreement and who have a duty of confidentiality no less restrictive than this section 4 (Confidential Information).

4.2. Exceptions. Recipient's obligations under section 4.1 (Protection) 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.

4.3. Injunctive Relief. Nothing in the Agreement limits a party's right to seek equitable relief for breach of this section 4 (Confidential Information).

5. OWNERSHIP.

5.1. Customer Content. Customer retains all Intellectual Property Rights in and to Customer Content.

5.2. VMware IP. VMware retains all Intellectual Property Rights in and to the Offerings, including any improvements, enhancements, modifications, and derivative works. If Customer provides any feedback about the Offerings, VMware may use that feedback without restriction.

5.3. Reservation of Rights. Except as expressly stated in the Agreement, the Agreement does not grant either party any rights, implied or otherwise, to the other party's content or intellectual property.

6. LIMITED WARRANTIES.

6.1. Software and Cloud Services. VMware warrants that Software and Cloud Services will substantially conform with the Documentation: (a) for Software, for 90 days following Delivery; or (b) for Cloud Services, for the Subscription Term. Customer must properly install and use the Offerings without modification and in accordance with the Documentation. Customer must notify VMware of an alleged breach of this warranty within the applicable warranty period. As Customer's sole remedy for a breach of this warranty, VMware must either: (1) correct any reproducible error in the Software or Cloud Service; or (2) terminate the Software or Cloud Service and refund applicable license fees (for Software) or unused, prepaid fees (for Cloud Services).

6.2. Professional Services and Support Services. VMware warrants that Professional Services and Support Services will be performed in a professional manner following industry standards. Customer must notify VMware within 30 days of an alleged breach of this warranty. As Customer's sole remedy for a breach of this warranty, VMware must either: (a) rectify the breach; or (b) terminate the applicable Service and refund any unused, prepaid fees for that Service.

6.3. Disclaimer of Warranties. Except for the limited warranties in this section 6 (Limited Warranties), to the maximum extent permitted by law, VMware, for itself and on behalf of its suppliers, disclaims all warranties and conditions whether express, implied, or statutory, including any warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, non-infringement, and any warranty arising from course of dealing or course of performance, relating to the Offerings. Neither VMware nor its suppliers warrant that the Offerings will operate uninterrupted, that Offerings will be free from defects or errors, or that the Offerings will meet (or are designed to meet) Customer's requirements.

7. INDEMNIFICATION.

7.1. Defense and Indemnification. Subject to the remainder of this section 7 (Indemnification), VMware will: (a) defend Customer against any Infringement Claim; and (b) indemnify Customer from amounts finally awarded against Customer by a court of competent jurisdiction or a government agency, or agreed to in a settlement, for the Infringement Claim.

7.2. Requirements. Customer must provide VMware with prompt notice of any Infringement Claim and reasonably cooperate with VMware's requests for assistance. VMware will have sole control of the defense and settlement of the Infringement Claim.

- 7.3. Exclusions.** VMware has no obligation under this section 7 (Indemnification) with respect to an Infringement Claim based on: (a) combination of Indemnified Materials with non-VMware materials; (b) use of an older version of Indemnified Materials when use of a newer version would have avoided the infringement; (c) any modification to Indemnified Materials other than those made by VMware; (d) any Deliverable provided by VMware in accordance with Customer's specifications; (e) any claim relating to open source software or freeware technology that is not embedded by VMware into the Offerings; or (f) any Indemnified Material provided on a no-charge, beta, or evaluation basis.
- 7.4. Remedies.** If Indemnified Materials become, or in VMware's reasonable opinion are likely to become, the subject of an Infringement Claim, VMware must, at its option and expense, either: (a) procure the necessary rights for Customer to keep using the Indemnified Materials; or (b) modify or replace the Indemnified Materials to make them non-infringing. If those remedies are not commercially feasible, VMware may terminate Customer's entitlement to the Indemnified Materials and refund any applicable:
- (1) prepaid fees for Cloud Services or Subscription Software, prorated for the remaining portion of the then-current Subscription Term;
 - (2) fees paid for Perpetual Licenses or Deliverables, less straight-line depreciation over a three-year useful life; and
 - (3) unused, prepaid fees for discontinued Support Services.
- 7.5. Sole Remedy.** This section 7 (Indemnification) states Customer's sole remedy and VMware's entire liability for Infringement Claims.
- 8. LIMITATION OF LIABILITY.**
- 8.1. Disclaimer.** To the maximum extent permitted by law, neither party will be liable for lost profits or business opportunities, loss of use, loss of data, loss of goodwill, business interruption, or any indirect, special, incidental, or consequential damages under any theory of liability. This limitation will apply regardless of whether a party has been advised of the possibility of those damages and regardless of whether any remedy fails of its essential purpose.
- 8.2. Cap on Monetary Liability.** Each party's aggregate liability under this Agreement will not exceed amounts paid or payable by Customer for the Offering giving rise to the claim in the 12 months prior to the event giving rise to the claim, except for Perpetual Licenses, where each party's aggregate liability will not exceed the license fees paid for the Software giving rise to the claim. VMware's aggregate liability for an Evaluation will not exceed \$5,000 USD.
- 8.3. Exclusions.** The limitations of liability in sections 8.1 (Disclaimer) and 8.2 (Cap on Monetary Liability) will not apply to: (a) VMware's indemnification obligations under section 7 (Indemnification); (b) either party's infringement of the other party's Intellectual Property Rights; (c) Customer's violation of section 2 of the Cloud Services Exhibit (Acceptable Use); or (d) any liability that may not be limited by law.
- 8.4. Further Limitations.** VMware's liability for any third-party software embedded into the Software or Cloud Services is subject to this section 8 (Limitation of Liability). VMware's suppliers have no liability under the Agreement, and Customer may not bring claims directly against them. VMware has no liability with respect to any Third-Party Content.
- 9. DATA USE AND PRIVACY.**
- 9.1. Personal Data.** If VMware acts as a processor of Personal Data, VMware will process Personal Data in accordance with the Data Processing Addendum.
- 9.2. Account, Operations, and Usage Data.** VMware collects Customer contact and purchase information to manage Customer's account and to fulfill Orders. VMware also processes: (a) information necessary to facilitate delivery and operation of the Offerings, verify compliance with the terms of the Agreement, invoice, and provide Support Services; and (b) configuration, performance, and usage data to improve VMware products and services, and other analytics purposes as detailed in the Offering-specific Notes. To the extent any of that data includes information that identifies an individual, VMware will process that information in accordance with VMware's Products & Services Privacy Notice available at www.vmware.com/help/privacy.html.
- 9.3. Support Requests and Professional Services.** Customer is responsible for taking steps necessary to protect any sensitive information or Personal Data that it provides to VMware while receiving Support Services or Professional Services. Those steps may include obfuscating or removing such information or working with VMware at the time of submission to limit disclosure.
- 9.4. 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

(a “**Demand**”). Unless legally prohibited from doing so, VMware must provide Customer with notice and a copy of the Demand. If the Demand relates to Cloud Services, 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.

10. **OPEN SOURCE SOFTWARE.** Open source software is licensed to Customer under the open source software’s own applicable license terms, which can be found in either the open source_licenses.txt file accompanying the Offerings, the Documentation, or at www.vmware.com/download/open_source.html. These license terms are consistent with the license granted in the Agreement and may contain additional rights benefiting Customer. The open source license terms take precedence over the Agreement to the extent that the Agreement imposes greater restrictions on Customer than the applicable open source license terms. To the extent the license for any open source software requires VMware to make the corresponding source code and/or modifications (the “Source Files”) available to Customer, Customer may obtain a copy of the applicable Source Files at www.vmware.com/download/open_source.html or by sending a written request, with name and address, to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date Customer acquires its entitlement to the Offering.
11. **MISCELLANEOUS.**
 - 11.1. **Transfer and Assignment.** Customer may not assign the Agreement or any Order without VMware’s consent. Once validly assigned, the Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.
 - 11.2. **Notice.** All notices must be in writing. Notices to Customer will be given: (a) by email to the email address associated with Customer’s account, if Customer has subscribed to email notices; or (b) by posting in the VMware customer portal. Legal notices to VMware will be given to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.
 - 11.3. **Waiver.** Waiver of a breach of the Agreement will not constitute a waiver of any later breach.
 - 11.4. **Severability.** If any part of the Agreement is held to be invalid or unenforceable, all remaining provisions will remain in force to the extent feasible to effectuate the intent of the parties.
 - 11.5. **Insurance.** VMware will carry insurance for the term of the Agreement. VMware’s Memorandum of Insurance may be viewed at www.vmware.com/agreements.
 - 11.6. **Compliance with Laws.** Each party must comply with all applicable laws.
 - 11.7. **Export Control.** The Offerings are subject to the U.S. Export Administration Regulations (including “deemed export” and “deemed re-export” regulations), and may be subject to the export control laws of other countries. Customer represents and warrants that: (a) Customer and any User, are not, and are not acting on behalf of: (1) any person who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (2) 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, or any similar applicable designated persons list; (b) Customer, and any User, will not permit the Offerings to be used for any purposes prohibited by law, including any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons; and (c) Customer, and any User, are not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part, Customer’s United States export privileges. Customer must notify VMware promptly if Customer or any User becomes subject to any order of that type.
 - 11.8. **Governing Law.** The Agreement is governed by the laws of the State of California and U.S. federal laws, if the billing address for Customer’s Order is in the United States, and by the laws of Ireland if the billing address for Customer’s Order is outside the United States. Conflict of law rules are expressly disclaimed. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
 - 11.9. **U.S. Public Sector End User.** If Customer is a U.S. Public Sector End User, the U.S. Public Sector Exhibit available at www.vmware.com/agreements supersedes or modifies the referenced provisions of the Agreement.

- 11.10. **Third Party Rights.** Other than as expressly stated, the Agreement does not create any rights for any person who is not a party to it. Only persons who are parties to the Agreement may enforce or rely on any of its terms.
- 11.11. **Force Majeure.** Except for Customer's payment obligations, neither party will be liable for any delay or failure to perform due to any cause beyond the party's reasonable control, including labor disputes, industrial disturbances, systemic utility failures, acts of nature, pandemics, embargoes, riots, government orders, acts of terrorism, or war.
- 11.12. **No Agency.** Nothing in the Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the parties. No party has authority to bind the other party.
- 11.13. **Translation.** This non-English version of these General Terms is provided only as a courtesy, and Customer's use of the Offerings is governed by the English version of these General Terms, published at www.vmware.com/agreements.
- 11.14. **Counterparts.** The Agreement may be signed electronically or in counterparts, in which case each signed copy will be deemed an original as though both signatures appeared on the same document.
- 11.15. **Entire Agreement.** The Agreement contains the entire agreement of the parties and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings, and agreements, whether written or oral, between the parties regarding its subject matter. The Agreement may be amended only in writing and signed by both parties.

12. DEFINITIONS.

Affiliate means an entity that is directly or indirectly controlled by, is under common control with, or controls that party, where "control" means an ownership, voting, or similar interest representing more than 50% of the total interests outstanding of that entity at that time.

Cloud Service means the VMware cloud service specified in Customer's Order.

Cloud Services Guide means the then-current VMware Cloud Services Guide, available at www.vmware.com/agreements.

Confidential Information means information or materials provided by a party ("Discloser") to the other party ("Recipient") 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: (1) license keys; (2) VMware pricing, product roadmaps or strategic marketing plans; (3) non-public materials relating to the Offerings; and (4) Customer Login Credentials.

Customer means the entity identified in the Order as "Customer".

Customer Content means content uploaded by Customer or any User into the Cloud Service or provided to VMware as a part of Support Services, but does not include Third-Party Content or account information. For purposes of this definition, "content" means any data, including all text, sound, video, or image files, and software (including machine images).

Data Processing Addendum means the then-current VMware Data Processing Addendum, available at www.vmware.com/agreements.

Deliverables means any reports, analyses, scripts, templates, code, or other work results delivered by VMware as specified in the applicable SOW for Professional Services.

Delivery means: (a) for Cloud Services, when VMware emails the Login Credentials to the email address associated with Customer's account; (b) for Software, when VMware notifies Customer of availability of Software for download; (c) for Support Services, upon VMware's issuance of an invoice for those Support Services; (d) for Professional Services, as specified in the applicable SOW; (e) for purchasing program credits, when VMware makes the fund balance available in the applicable portal; and (f) for shipping and delivery of physical objects, Ex Works VMware's regional fulfillment facility (INCOTERMS 2020™).

Documentation means the product documentation describing the features, functionality, and use of the Offerings published and updated by VMware from time to time at docs.vmware.com.

Evaluation means an Offering (or part of an Offering) made available free of charge, for evaluation, trial, proof of concept, or similar purpose.

Exhibits means the exhibits to these General Terms (Software, Cloud Services, Professional Services, U.S. Federal, and VMware Entities) available at www.vmware.com/agreements.

Indemnified Materials means the Cloud Services, Software, and Deliverables.

Infringement Claim means any claim by a third party that the Indemnified Materials infringe any patent, trademark, or copyright of that third party, or misappropriate a trade secret (only to the extent that misappropriation is not a result of Customer's actions).

Intellectual Property Rights means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, know-how, inventions, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.

Login Credentials means any passwords, authentication keys, or security credentials that enable Customer's access to and management of the Cloud Service.

Offering(s) means, collectively, Services or Software.

Offering-specific Notes means the applicable license notes or services notes found in the Product Guide, the Cloud Services Guide, and the Support Services Guide.

Order means an enterprise order, SOW, quote, or other ordering document for Offerings, issued by Customer to VMware or to Customer's VMware authorized reseller and accepted by VMware described in section 2 of these General Terms (Orders and Payments).

Perpetual License means a license to the Software with a perpetual term.

Personal Data is defined in the Data Processing Addendum.

Product Guide means VMware's then-current Product Guide available at www.vmware.com/agreements.

Professional Services means those services described in the applicable SOW.

Service Level Agreement means the then-current version of the applicable service level agreement for a Cloud Service, available at www.vmware.com/agreements.

Service(s) means Cloud Services, Support Services, or Professional Services.

Software means the VMware computer programs that Customer licenses under an Order, together with any related software code VMware provides as part of Support Services and that is not subject to a separate license agreement.

SOW means a written agreement between Customer and VMware containing project-specific details of the Professional Services or VMware online datasheet.

Subscription Software means Software that is licensed for a specific term.

Subscription Term means the period Customer is permitted to use a Cloud Service or Subscription Software, stated in the applicable Order. For any on-demand Cloud Services, Subscription Term means the period during which Customer uses the Cloud Service.

Support Services means VMware support and subscription services that are purchased under an Order or included with purchase of Subscription Software or Cloud Services.

Support Services Guide means VMware's then-current Support Services Guide, available at www.vmware.com/agreements.

Tax means any sales, consumption, VAT, GST, use, gross receipts, business and occupation, withholding, and other taxes (other than taxes on VMware income), export and import fees, customs duties, and similar fees imposed by any government or other authority.

Third-Party Agent means a third party delivering information technology services to Customer under a contract with Customer.

Third-Party Content means content provided by a third party that interoperates with a Cloud Service, but that is not part of the Cloud Service. Third-Party Content is optional and is subject to the third-party terms accompanying the Third-Party Content.

U.S. Public Sector End User means a U.S. Federal End User or a U.S. State or Local Government End User, as those terms are defined in the U.S. Public Sector Exhibit.

User means an employee, contractor, or Third-Party Agent that Customer authorizes to use the Offerings as permitted under the Agreement or under Customer's Login Credentials.

VMware means VMware, Inc., a Delaware corporation, if the billing address for the Order is in the United States, or VMware International Unlimited Company, a company organized and existing under the laws of Ireland, if the billing address for the Order is outside the United States, except if the billing address for the Order is in the United Kingdom, Australia, or New Zealand or the Pacific Islands, in which case VMware means the applicable entity identified in the VMware Entities Exhibit found at www.vmware.com/agreements.