

# VMWARE PRODUCT GUIDE

DECEMBER 2013

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## 1. Terms Applicable to All Products

The terms set forth in this VMware Product Guide ("**Product Guide**") apply to any VMware products licensed by you ("**You**") under an end user license agreement or software module agreement ("**License Agreement**") that references this Product Guide. For the purposes of this Product Guide, "**VMware**" means VMware, Inc., a Delaware corporation, if You are purchasing Software for use in the United States and VMware International Limited, a company organized and existing under the laws of Ireland, for all other purchases.

The terms of this Product Guide shall supersede and control over any conflicting or additional terms and conditions of any License Agreement, order document, acknowledgement or confirmation, or other document issued by You, unless VMware executes a written agreement with You expressly indicating: (a) that such document shall modify this Product Guide; or (b) that the terms of such other document shall supersede and control in the event of any inconsistency.

The license term for the Software shall be perpetual unless otherwise specified in the applicable order form.

As used in this Product Guide:

**"Documentation"** means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

**"Software"** means the VMware computer programs listed on VMware's commercial price list to which You acquire a license under an ordering document accepted by VMware, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.

## LICENSE METRIC SUMMARY TABLE

This table lists the applicable license metrics for the VMware products included in this Product Guide. These notes are for reference purposes only. Please refer to the product specific section of the Product Guide for more information.

<b>DATA CENTER AND CLOUD INFRASTRUCTURE</b>	<b>LICENSE METRIC</b>
VMware vSphere 5.5	Per Processor
VMware vSphere Update Manager	See Product Guide section.
VMware vCloud Director 5.5	Per Powered-On Virtual Machine
VMware vSphere Storage Appliance	Per Instance
NSX Platform	Per Virtual Machine
<b>INFRASTRUCTURE AND OPERATIONS MANAGEMENT</b>	<b>LICENSE METRIC</b>
VMware vCenter Operations Management Suite 5.8 Standard	Per Virtual Machine
VMware vCenter Operations Management Suite 5.8 Advanced	Per Operating Systems Instance
VMware vCenter Operations Management Suite 5.8 Enterprise	Per Operating Systems Instance
VMware vCenter Infrastructure Navigator	Per Virtual Machine
VMware vCenter Server 5.5	Per Server
VMware vCenter Lifecycle Manager	Per Processor
VMware vCenter Converter	See Product Guide section.
VMware vCenter Site Recovery Manager	Per Protected Virtual Machine
VMware vCenter CapacityIQ	See Product Guide section.
VMware vCenterServer Heartbeat	Per Protected vCenter Server
VMware vCenter Log Insight	Per Operating Systems Instance
<b>SECURITY PRODUCTS</b>	<b>LICENSE METRIC</b>
VMware vCloud Networking and Security 5.5	Per Secured Virtual Machine
VMware vShield Edge	Per Secured Virtual Machine
VMware vShield Endpoint	Per Secured Virtual Machine
VMware vShield App	Per Secured Virtual Machine
<b>APPLICATION MANAGEMENT</b>	<b>LICENSE METRIC</b>
VMware vCenter AppSpeed	Per Processor
VMware vCenter Application Discovery Manager	Per Managed System
<b>DESKTOP AND END USER COMPUTING</b>	<b>LICENSE METRIC</b>
VMware Horizon View Manager	Per Managed Concurrent Connections
VMware ThinApp	See Product Guide section.
VMware ThinApp Virtualization Packager	Per Device or Per Named User
VMware Workstation	Per Computer
VMware Fusion	Per Computer
VMware Fusion Professional	Per Computer
VMware Player	See Product Guide section.
VMware Player Plus	See Product Guide section.
VMware Zimbra	Per Mailbox
Socialcast On Premise	Per Named User
VMware Horizon View	Per Concurrent User
VMware Horizon Mirage	Per Named User
VMware Horizon Suite	Per Named User or Per Concurrent User
VMware Horizon Workspace	Per Named User
VMware vCenter Operations Manager for VMware Horizon View	Per Concurrent User
<b>CLOUD APPLICATION PLATFORM</b>	<b>LICENSE METRIC</b>
VMware vFabric Suite 5.1	Per Virtual Machine

VMware vFabric Suite 5.2	Per Virtual Machine
VMware vFabric Suite 5.3	Per Pair of Processing Units
VMware vFabric RabbitMQ	Per Processor
VMware vFabric GemFire	Per Processor
VMware vFabric SQLFire	Per Processor
VMware vFabric Applnsight	Per Virtual Machine
VMware vFabric Postgres 9.1	Per Virtual Machine
VMware vFabric Postgres 9.2 and 9.3	Per Virtual Machine
VMware vFabric tc Server, Enterprise Ready Server and Web Server	Per Processor and/or Machines
VMware vFabric Hyperic	Per Machine
VMware vFabric Application Performance Manager	Per Virtual Machine
VMware SpringSource	Per Processor and/or Machines
VMware vFabric Data Director	Per Virtual Machine
<b>IT BUSINESS MANAGEMENT</b>	<b>LICENSE METRIC</b>
VMware vCenter Chargeback Manager	Per Powered-On Virtual Machine
VMware Service Manager	Per Concurrent User and/or Named User
<b>VMWARE ITBM AND ITFM</b>	<b>LICENSE METRIC</b>
VMware IT Business Manager – On-Premise Software Edition	Per Named User
VMware IT Financial Manager– On-Premise Software Edition	Per Named User
VMware IT Business Management Suite Standard Edition – On Premise Software Edition	Per Operating Systems Instance
VMware IT Business Management Suite Advanced Edition – On Premise Software Edition or Term On Premise	Per Named User
VMware IT Business Management Suite Enterprise Edition – On Premise Software Edition or Term On Premise	Per Named User



## PRODUCT BUNDLES AND SUITES SUMMARY TABLE

This table lists the applicable components for VMware product bundles and suites. These notes are for reference purposes only. Please refer to your specific order form for complete product information.

DESCRIPTION OF SOFTWARE
<b>VMWARE HORIZON VIEW</b>
VMware Horizon View 100-Pack Bundle (VMware vSphere Desktop, VMware vCenter Server, VMware Horizon View Manager, VMware vCloud Networking and Security, VMware ThinApp Virtualization Packager, VMware ThinApp Client and VMware Workstation)
VMware Horizon View 10-Pack Bundle (VMware vSphere Desktop, VMware vCenter Server, VMware Horizon View Manager, VMware vCloud Networking and Security, VMware ThinApp Virtualization Packager, VMware ThinApp Client and VMware Workstation)
VMware Horizon View 100-Pack Add-On (VMware Horizon View Manager, VMware vCloud Networking and Security, VMware ThinApp Virtualization Packager, VMware ThinApp Client and VMware Workstation)
VMware Horizon View 10-Pack Add-On (VMware Horizon View Manager, VMware vCloud Networking and Security, VMware ThinApp Virtualization Packager, VMware ThinApp Client and VMware Workstation)
VMware View Enterprise 100 Pack (VMware vSphere Desktop, VMware vCenter Server and VMware Horizon View Manager)
VMware View Enterprise 10 Pack (VMware vSphere Desktop, VMware vCenter Server and VMware Horizon View Manager)
VMware View Enterprise Add-On 10-Pack (VMware Horizon View Manager)
VMware View Enterprise Add-On 100-Pack (VMware Horizon View Manager)
<b>VMWARE THINAPP</b>
VMware ThinApp Suite (ThinApp Virtualization Packager, VMware ThinApp Client and VMware Workstation)
VMware ThinApp Client 100-Pack (VMware ThinApp Client)
<b>VMWARE HORIZON MIRAGE</b>
VMware Horizon Mirage 10-Pack Named Users (VMware Horizon Mirage, VMware Fusion Professional, VMware ThinApp Virtualization Packager, VMware ThinApp Client, and VMware Workstation)
VMware Horizon Mirage 100-Pack Named Users (VMware Horizon Mirage, VMware Fusion Professional, VMware ThinApp Virtualization Packager, VMware ThinApp Client, and VMware Workstation)
<b>VMWARE HORIZON APPLICATION MANAGER</b>
VMware Horizon Application Manager 10-Pack (VMware Horizon Application Manager, VMware ThinApp Virtualization Packager, and VMware ThinApp Client)
VMware Horizon Application Manager 100-Pack (VMware Horizon Application Manager, VMware ThinApp Virtualization Packager, and VMware ThinApp Client)
<b>VMWARE HORIZON WORKSPACE</b>
VMware Horizon Workspace 10-Pack Named Users (VMware Horizon Workspace, VMware ThinApp Virtualization Packager, VMware ThinApp Client, VMware Workstation)
VMware Horizon Workspace 100-Pack Named Users (VMware Horizon Workspace, VMware ThinApp Virtualization Packager, VMware ThinApp Client, VMware Workstation)
<b>VMWARE HORIZON SUITE</b>
VMware Horizon Suite 10-Pack Named Users (VMware Horizon View, VMware Horizon Mirage, VMware Horizon Workspace, vCenter Operations Manager for VMware Horizon View)
VMware Horizon Suite 100-Pack Named Users (VMware Horizon View, VMware Horizon Mirage, VMware Horizon Workspace, vCenter Operations Manager for VMware Horizon View)

<b>DESCRIPTION OF SOFTWARE</b>
VMware Horizon Suite 10-Pack Concurrent Users (VMware Horizon View, VMware Horizon Mirage, VMware Horizon Workspace, vCenter Operations Manager for VMware Horizon View)
VMware Horizon Suite 100-Pack Concurrent Users (VMware Horizon View, VMware Horizon Mirage, VMware Horizon Workspace, vCenter Operations Manager for VMware Horizon View)
<b>VMWARE V CLOUD SUITE</b>
VMware vCloud Suite Standard (VMware vSphere Enterprise Plus, VMware vCloud Director, VMware vCloud Connector Advanced, VMware vCloud Networking and Security, VMware vCenter Operations Management Suite Standard, VMware vCloud Automation Center Standard)
VMware vCloud Suite Advanced (VMware vSphere Enterprise Plus, VMware vCloud Director, VMware vCloud Connector Advanced, VMware vCloud Networking and Security, VMware vCenter Operations Management Suite Advanced, VMware vCloud Automation Center Advanced)
VMware vCloud Suite Enterprise (VMware vSphere Enterprise Plus, VMware vCloud Director, VMware vCloud Connector Advanced, VMware vCloud Networking and Security, VMware vCenter Operations Management Suite Enterprise, vCenter Site Recovery Manager Enterprise, VMware vCloud Automation Center Enterprise)
<b>VMWARE V SPHERE WITH OPERATIONS MANAGEMENT</b>
VMware vSphere with Operations Management Standard (VMware vSphere Standard, VMware vCenter Operations Management Suite Standard)
VMware vSphere with Operations Management Enterprise (VMware vSphere Enterprise, VMware vCenter Operations Management Suite Standard)
VMware vSphere with Operations Management Enterprise Plus (VMware vSphere Enterprise Plus, VMware vCenter Operations Management Suite Standard)
<b>VMWARE V CENTER OPERATIONS MANAGEMENT SUITE</b>
VMware vCenter Operations Management Suite Standard (VMware vCenter Operations Manager)
VMware vCenter Operations Management Suite Advanced (VMware vCenter Operations Manager, VMware vFabric Hyperic, VMware vCenter Configuration Manager, VMware vCenter Infrastructure Navigator, VMware vCenter Chargeback Manager)
VMware vCenter Operations Management Suite Enterprise (VMware vCenter Operations Manager, VMware vFabric Hyperic, VMware vCenter Configuration Manager, VMware vCenter Infrastructure Navigator, VMware vCenter Chargeback Manager)
<b>VMWARE V FABRIC SUITE</b>
vFabric Fabric Suite Standard 5.1 (vFabric tc Server, vFabric Elastic Memory for Java, vFabric GemFire Application Cache Node, vFabric Web Server, vFabric Application Performance Manager, Spring support, Apache Tomcat support, Apache HTTP Server support)
vFabric Fabric Suite Advanced 5.1 (vFabric tc Server, vFabric Elastic Memory for Java, vFabric GemFire Application Cache Node, vFabric Web Server, vFabric Application Performance Manager, Spring support, Apache Tomcat support, Apache HTTP Server support , Application Director 1.0, SQLFire Professional Edition, vFabric Postgres, vFabric RabbitMQ, RabbitMQ support)
vFabric Fabric Suite Standard 5.2 (vFabric tc Server, vFabric Elastic Memory for Java, vFabric GemFire Application Cache Node, vFabric Web Server, vFabric Application Performance Manager, Spring support, Apache Tomcat support, Apache HTTP Server support)
vFabric Fabric Suite Advanced 5.2 (vFabric tc Server, vFabric Elastic Memory for Java, vFabric GemFire Application Cache Node, vFabric Web Server, vFabric Application Performance Manager, Spring support, Apache Tomcat support, Apache HTTP Server support , Application Director 1.0, SQLFire Professional Edition, vFabric Postgres, vFabric RabbitMQ, RabbitMQ support)
vFabric Suite Standard 5.3 (vFabric tc Server, vFabric Elastic Memory for Java, vFabric GemFire Application Cache Node, vFabric Web Server, vFabric Hyperic, Spring support, Apache Tomcat support, Apache HTTP Server support)

<b>DESCRIPTION OF SOFTWARE</b>
vFabric Suite Advanced 5.3 (vFabric tc Server, vFabric Elastic Memory for Java, vFabric GemFire Application Cache Node, vFabric Web Server, vFabric Hyperic, Spring support, Apache Tomcat support, Apache HTTP Server support , Application Director for Provisioning, SQLFire Professional Edition, vFabric Postgres, vFabric RabbitMQ, RabbitMQ support, Postgres support)
<b>VMWARE VI5-VCENTER</b>
VMware vCenter Operations Management Suite Enterprise Plus Bundle (25 Operating System Instance Pack) (VMware vCenter Operations Manager Adapter Pack for 3rd Party monitoring tools (25 License Pack), VMware vCenter Operations Management Suite Enterprise (25 Operating System Instance Pack), VMware vCenter Operations Management Suite Regulatory Compliance Option (25 Operating System Instance Pack)
<b>VMWARE VSPHERE</b>
VMware vSphere Enterprise Plus with Cisco Nexus 1000V Bundle (VMware vSphere 5 Enterprise Plus for 1 processor, Cisco Nexus 1000V for VMware vSphere 5 Enterprise Plus for 1 processor)
VMware vSphere Essentials Kit for Retail and Branch Offices: Starter Kit (VMware vCenter Server 5 Essentials for vSphere 5 for Retail and Branch Offices, VMware vSphere 5 Essentials for Retail and Branch Offices for 1 processor)
VMware vSphere Essentials Plus for Retail and Branch Offices: Starter Kit (VMware vCenter Server 5 Essentials for vSphere 5 for Retail and Branch Offices, VMware vSphere 5 Essentials Plus for Retail and Branch Offices for 1 processor)
<b>VMWARE VSHIELD</b>
VMware vShield Security Bundle (VMware vShield Edge 5 (25 VM Pack), VMware vShield App 5 (25 VM Pack), VMware vShield Data Security 5 (25 VM Pack))

## 2. DATA CENTER AND CLOUD INFRASTRUCTURE

### 2.1 VMware vSphere 5.5

#### Definitions

**“Powered-On Virtual Machine”** means a Virtual Machine in an active power state and executing computing instructions.

**“Processor”** means a single, physical chip that houses a central processing unit that can execute computer programs.

**“Server”** means a hardware system capable of running the Software. A hardware partition or blade is considered a separate hardware system.

#### 2.1.1 General License Notes for VMware vSphere 5.5

You may use the Software on a Server that contains up to the maximum number of Processors for which you have paid the applicable license fees.

Hosting Rights and Restrictions. Notwithstanding anything to the contrary in this EULA, You may use the Software to deliver “internally developed applications” as a service to third parties via an internal or external network. An “internally developed application” is: (i) a computer application that you have created or developed, and (ii) a third party computer application(s) that (a) is ancillary to your application-based service, and (b) cannot be accessed directly by end users of your application-based service. Except as expressly provided in this paragraph and Section 3.1 of the EULA, the use of the Software for any other types of hosting or for the benefit of any third party in any manner is strictly prohibited unless You are an authorized participant in a VMware program that is governed by a separate set of terms and conditions which authorizes such activity.

vStorage API for Array Integration (VAAI). You may use storage arrays that are certified for VAAI only with VMware vSphere Enterprise, VMware vSphere Enterprise Plus, VMware vSphere with Operations Management Enterprise, and VMware vSphere with Operations Management Enterprise Plus editions.

Third Party Multipathing. You may use multipathing extensions module only with VMware vSphere Enterprise, VMware vSphere Enterprise Plus, VMware vSphere with Operations Management Enterprise, and VMware vSphere with Operations Management Enterprise Plus editions.

vSphere Auto Deploy. You may use this feature only if You have licensed VMware vSphere Enterprise Plus and VMware vSphere with Operations Management Enterprise Plus editions.

vSphere View Accelerator. You may use this feature only if You have licensed VMware vSphere Enterprise Plus and VMware vSphere with Operations Management Enterprise Plus editions.

vSphere Replication. You may use this feature only if You have licensed any of the following editions of VMware vSphere: VMware vSphere Standard, VMware vSphere with Operations Management Standard, VMware vSphere with Operations Management Enterprise, VMware vSphere with Operations Management Enterprise Plus, VMware vSphere Enterprise, VMware vSphere Enterprise Plus, VMware vSphere Essentials Plus or VMware vSphere Essentials Plus for Retail and Branch Offices.

vSphere Data Protection. You may use this feature only if You have licensed any of the following editions of VMware vSphere: VMware vSphere Standard, VMware vSphere with Operations Management Standard, VMware vSphere with Operations Management Enterprise, VMware vSphere with Operations Management Enterprise Plus, VMware vSphere Enterprise, VMware vSphere Enterprise Plus, VMware vSphere Essentials Plus or VMware vSphere Essentials Plus for Retail and Branch Offices.

vSphere Big Data Extensions. You may use this feature only if You have licensed any of the following editions of VMware vSphere: VMware vSphere with Operations Management Enterprise, VMware vSphere with Operations Management Enterprise Plus, VMware vSphere Enterprise, and VMware vSphere Enterprise Plus.

vSphere Big Data Extensions - Log Files. You acknowledge that correspondence and log files generated in conjunction with a request for support services may contain sensitive, confidential or personal information. You are solely responsible for taking the steps necessary to protect such data prior to sending it to VMware or any third party, including obfuscating the logs or otherwise guarding such information prior to sending it to VMware, Your organization or any third party.

### **2.1.2 Product Edition/Suite Specific License Notes**

#### **VMware vSphere Essentials and VMware vSphere Essentials Plus (collectively, the “Essentials Kit”)**

In addition to the general license notes above, if You purchase a license to VMware vSphere as a part of the Essentials Kit, the following terms apply:

You may only use VMware vSphere included in the Essential Kit for up to three (3) Servers, with each Server having up to two (2) Processors. If you use VMware vCenter Server to manage Servers running a copy of VMware vSphere provided with the Essentials Kit, such Servers may only be managed by VMware vCenter Server provided with the Essentials Kit.

#### **VMware vSphere Essentials for Retail and Branch Offices VMware vSphere Essentials Plus for Retail and Branch Offices (collectively, the " ROBO Kit")**

In addition to the general license notes above, if You purchase a license to VMware vSphere as a part of the ROBO Kit, the following terms apply:

You may only use VMware vSphere included in the ROBO Kit for up to three (3) Servers per physical building, with each Server having up to two (2) Processors.

#### **VMware vSphere Hypervisor**

Notwithstanding the terms above, if You receive a license to VMware vSphere as a part of VMware vSphere Hypervisor, the following terms apply:

You may not use any programmatic interface, which can be called remotely (APIs), provided with your license to VMware vSphere Hypervisor. You must obtain a paid license to VMware vSphere to use such programmatic interfaces (APIs).

#### **VMware vSphere Desktop**

In addition to the general license notes above, if You purchase a license to VMware vSphere as a part of VMware vSphere Desktop, the following terms apply:

You may only use VMware vSphere Desktop to host (i) a virtual desktop infrastructure for up to the number of Desktop Virtual Machines for which You have paid the applicable license fees, and (ii) associated desktop management and monitoring tools. VMware vSphere Desktop is not subject to a processor limitation. "**Desktop Virtual Machine**" is a hosted Virtual Machine with one of the following Windows operating systems: XP, Vista, 7, 8 or server.

### **VMware View Enterprise, VMware Horizon View and VMware Horizon Suite**

"**Desktop Virtual Machine**" is a hosted Virtual Machine with one of the following Windows operating systems: XP, Vista, 7, 8 or server.

"**Powered On Desktop Virtual Machine**" means a Desktop Virtual Machine receiving a remote connection from a device or running locally on a device.

In addition to the general license notes above, if You purchase a license to VMware vSphere as a part of VMware View Enterprise, VMware Horizon View or the VMware Horizon Suite, the following terms apply:

You may only use VMware vSphere Desktop for up to the total number of Powered On Desktop Virtual Machines for which You have paid the applicable license fees. Your use of VMware vSphere Desktop is limited to hosting Desktop Virtual Machines and running VMware products which are included in VMware View Enterprise, VMware Horizon View or the VMware Horizon Suite, or third party connection brokers and desktop management and monitoring tools. Your use of individual features included in VMware View Enterprise, VMware Horizon View or VMware Horizon Suite is limited to that particular product. The use of individual features interchangeably between VMware View Enterprise, VMware Horizon View or the VMware Horizon Suite is strictly prohibited.

## **2.2 VMware vSphere Essentials Plus with vSphere Storage Appliance**

### **Definitions**

"**Instance**" means a single installation of the Software on a physical server or Virtual Machine.

"**Virtual Machine**" means a software container that can run its own operating system and execute applications like a physical machine.

### **2.2.1 General License Notes for VMware vSphere Essentials Plus with vSphere Storage Appliance**

You may use the Software for up to the maximum number of Instances for which you have paid the applicable license fees.

## **2.3 VMware vSphere Update Manager**

### **2.3.1 General License Notes for VMware vSphere Update Manager**

WITH RESPECT TO ANY MICROSOFT SOFTWARE INCLUDED IN THE SOFTWARE, MICROSOFT'S AND ITS SUPPLIERS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED USD \$5.00 FOR MICROSOFT SOFTWARE LICENSED TO YOU UNDER THIS EULA.

## 2.4 VMware vCloud Director 5.5

### Definitions

**"Powered-On Virtual Machine"** means a Virtual Machine in an active power state and executing computing instructions.

**"Processor"** means a single, physical chip that houses a central processing unit that can execute computer programs.

#### 2.4.1 General License Notes for VMware vCloud Director 5.5

You may use the Software for up to the number of Powered-On Virtual Machines for which you have paid the applicable license fees, unless you purchase the Software as a part of the VMware vCloud Suite.

Oracle is a third party beneficiary of this Agreement. THE AMOUNT YOU CAN RECOVER FROM ORACLE, INC. FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR DATA USE, SHALL IN NO EVENT EXCEED ONE THOUSAND DOLLARS (U.S. \$1,000).

IN NO EVENT SHALL INTEL OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOST INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE.

## 2.5 VMware vSphere Storage Appliance

### Definitions

**"Cluster"** means a group of Servers consisting of up to three (3) Servers.

**"Instance"** means a single installation of the Software on a physical server or Virtual Machine.

**"Server"** means a hardware system capable of running the Software. A hardware partition or blade is considered a separate hardware system.

**"Virtual Machine"** means a software container that can run its own operating system and execute applications like a physical machine.

#### 2.5.1 General License Notes for VMware vSphere Storage Appliance

You may use the Software for up to the number of Instances for which you have paid the applicable license fees. You may use a validly licensed Instance of VMware vCenter Server to manage multiple Clusters that are each running an Instance of VMware vSphere Storage Appliance.

#### 2.5.2 Product Edition/Suite Specific License Notes

##### **VMware vSphere Storage Appliance for VMware vSphere Essentials Plus**

In addition to the general license notes above, if You purchase a license to VMware vSphere Storage Appliance for VMware vSphere Essentials Plus, the following terms apply:

If you obtain a license to VMware vSphere Storage Appliance for VMware vSphere Essentials Plus as a part of your license to VMware vSphere Essentials Plus, you may use VMware vSphere Storage Appliance for VMware

vSphere Essentials Plus only on a single Cluster. You must use a validly licensed Instance of VMware vCenter Server to manage each Cluster that is running an Instance of VMware vSphere Storage Appliance for VMware vSphere Essentials Plus.

### **VMware vSphere Storage Appliance for VMware vSphere Essentials Plus for Retail and Branch Offices (“VSA for ROBO”)**

In addition to the general license notes above, if You purchase a license to VSA for ROBO, the following terms apply:

If you obtain a license to VSA for ROBO, you may use VSA for ROBO only on a single Cluster. You must use a validly licensed Instance of VMware vCenter Server to manage each Cluster that is running an Instance of VSA for ROBO.

## **2.6 VMware NSX Platform**

**“Administrator”** means Your administrator identified in the Order who is permitted to download the Software from VMware.

**“Authorized Contacts”** means the designated users whose names and contact information have been provided by the Administrator to VMware for the purposes of support services for the Software.

**“Digital Identifier”** means the digital identifier unique to the Administrator (or other user who downloads the Software) that tracks each download of the Software.

**“Services Terms”** means VMware’s then-current Support and Subscription Contract Terms and Conditions, copies of which are found at [www.vmware.com/files/pdf/support/support\\_terms\\_conditions.pdf](http://www.vmware.com/files/pdf/support/support_terms_conditions.pdf).

**“Tool Box”** means certain software tools that VMware may provide to You from time to time for support purposes.

**“Usage File”** means the real-time encrypted file produced by the Software for each service which produces information specifically relating to Your usage of the Software.

**“Virtual Machine”** or **“VM”** means a software container that can run its own operating system and execute applications like a physical machine.

### **License Notes**

If You purchased a usage based subscription license (**“Usage-Based License”**), the license fee for Your Usage-Based License will be calculated based on the reports provided to VMware by the Usage File.

If You purchased a subscription term license, You may use the Software for the term of the subscription up the amount of Virtual Machines per month for which You have paid the applicable license fees.

If You purchased a perpetual license, You may use the Software for the amount of Virtual Machines for which You have paid the applicable license fees.

**Delivery.** Only the Administrator is permitted to download the Software from VMware unless VMware otherwise agrees in writing, and the Digital Identifier will track each download of the Software. The Digital Identifier may be used by VMware to detect unauthorized use of the Software, but does not interfere with proper usage of the Software. You may not or permit any third party to tamper with the Digital Identifier.

**Location.** You may only install the Software on the equipment and operating environment located at Your facilities identified on the Order or otherwise approved by VMware in writing.



**APIs and Third Party Applications.** You may use the APIs included with the Software only to integrate the Software with Your cloud management, network management and billing systems. Any use of the APIs or other portions of the Software for other services (including but not limited to protocols, traffic engineering, L4-L7) must be certified for use in writing by VMware and will be subject to Your payment of additional fees. You may not use the Software, including the APIs, with any third party applications written specifically for the Software unless otherwise authorized in writing by VMware, which authorization may be conditioned on the payment of additional fees to VMware for such use.

**Tool Box.** You may internally use the Tool Box only to obtain support from VMware pursuant to the Services Terms. The Tool Box shall be deemed “Software” for the purposes of the EULA.

## 3. INFRASTRUCTURE AND OPERATIONS MANAGEMENT

### 3.1 VMware vCenter Server 5.5

#### Definitions

“**Instance**” means a single installation of the Software on a physical server or Virtual Machine.

“**Processor**” means a single, physical chip that houses a central processing unit that can execute computer programs.

“**Server**” means a hardware system capable of running the Software. A hardware partition or blade is considered a separate hardware system.

“**VMware Virtualization Software Product**” means a VMware product that enables Virtual Machines to run on a Server, including, VMware vSphere, VMware ESX, VMware ESXi, GSX Server and VMware Server.

#### 3.1.1 General License Notes for VMware vCenter Server 5.5

You may use the Software for information processing and computing purposes to perform management operations on distributed Servers that are activated for management by the Software, provided that a validly licensed copy of VMware vSphere is installed on each such Server.

You may transfer the Software between Your Servers, provided the same Software license may not run concurrently.

WITH RESPECT TO ANY MICROSOFT SOFTWARE INCLUDED IN THE SOFTWARE, MICROSOFT'S AND ITS SUPPLIERS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED USD \$5.00 FOR MICROSOFT SOFTWARE LICENSED TO YOU UNDER THIS EULA.

#### 3.1.2 Product Edition/Suite Specific License Notes

##### **VMware vCenter Converter**

In addition to the general license notes above, if You purchase a license to VMware vCenter Server as a part of VMware vCenter Converter, the following terms apply:

The Microsoft Windows Preinstallation Environment software included with VMware vCenter Server is limited for use as a boot, diagnostic, disaster recovery, setup, restoration, emergency services, installation, test and/or configuration utilities program, and not for use as a general purpose operating system or as a substitute for a fully functional version of any operating system product; and contains a security feature that will cause your computer system to reboot without prior notification after 24 hours of continuous use.

##### **VMware vSphere Essentials and VMware vSphere Essentials Plus (collectively, the “Essentials Kit”):**

In addition to the general license notes above, if You purchase a license to VMware vCenter Server as a part of the Essentials Kit, the following terms apply:

You may only use VMware vCenter Server included in the Essential Kit solely to manage up to three (3) Servers, with each Server having up to two (2) Processors. You may only use VMware vCenter Server provided with the Essentials Kit to manage Servers running a copy of VMware vSphere included with the Essentials Kit.

**VMware vSphere Essentials for Retail and Branch Offices**  
**VMware vSphere Essentials Plus for Retail and Branch Offices**  
(collectively, the "ROBO Kit")

In addition to the general license notes above, if You purchase a license to VMware vCenter Server as a part of the ROBO Kit, the following terms apply:

You may only use VMware vCenter Server, included in the ROBO Kit, solely to manage up to three (3) Servers per physical building, with each Server having up to two (2) Processors, or You may use a separately purchased VMware vCenter Server Standard license to manage such Servers. The number of physical buildings with Servers may not exceed the number of Your ROBO Kit licenses.

**VMware View Enterprise, VMware Horizon View and VMware Horizon Suite**

"**Desktop Virtual Machine**" is a hosted Virtual Machine with one of the following Windows operating systems: XP, Vista, 7, 8 or server.

"**Powered On Desktop Virtual Machine**" means a Desktop Virtual Machine receiving a remote connection from a device or running locally on a device.

In addition to the general license notes above, if You purchase a license to VMware vCenter Server Desktop as a part of VMware View Enterprise, VMware Horizon View or the VMware Horizon Suite the following terms apply:

Your use of VMware vCenter Server Desktop included in VMware View Enterprise, VMware Horizon View, or the VMware Horizon Suite is limited to managing Servers that are solely hosting Desktop Virtual Machines and VMware products which are included in VMware View Enterprise, VMware Horizon View, VMware Horizon Suite or third party connection brokers and desktop management and monitoring tools. Your use of individual features included in VMware View Enterprise, VMware Horizon View, VMware Horizon Suite is limited to that particular product. The use of individual features interchangeably between VMware View Enterprise, VMware Horizon View or VMware Horizon Suite is strictly prohibited.

**VMware vCenter Server Virtual Appliance**

In addition to the general license notes above, the following terms apply to the license to VMware vCenter Server Virtual Appliance provided with this EULA:

You may only download the number of copies of VMware vCenter Server Virtual Appliance that are reasonably necessary for You to exercise the license granted to you in Section 2.1.

## 3.2 VMware vCenter Lifecycle Manager

### Definitions

"**Server Software**" means the proprietary VMware vCenter Lifecycle Manager software, licensed by the number of Processor, which is installed on the guest operating system.

"**Virtual Appliance**" means the virtual machine, which includes the guest operating system and the Server Software.

### License Notes

VMware grants you a nonexclusive, non-transferable license, without rights to sublicense, to (i) deploy copies of the Server Software (in object code form only) in quantity permitted by the licenses for which you have paid the applicable fees; (ii) use the Virtual Appliance (in object code form only) for installation and operation of the Server Software; and (iii) use the documentation accompanying the Software in connection with permitted uses of the Software.

## 3.3 VMware vCenter Converter

### Definitions

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

### License Notes

You may use a single license of the Software solely to migrate the disk contents of physical computers, Virtual Machines, and supported third party disk images to the disk contents of Virtual Machines operated with VMware virtualization software products. The Software is intended for your own personal non-commercial use only. If you are interested in distributing VMware vCenter Converter for internal or external use, promotion, review or as part of a solution, please apply at [converter-redistribution-request@vmware.com](mailto:converter-redistribution-request@vmware.com).

You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

## 3.4 VMware vCenter Site Recovery Manager 5.5

### Definitions

**"Managed Virtual Machine"** means a Protected Virtual Machine.

**"Protected Virtual Machine"** means a Virtual Machine that is part of a vCenter Site Recovery Manager protection group.

**"Storage Replication Adapters"** means, software created by third party storage partners and distributed under its respective end user license agreements that enables communication between the Software and such partners' replication products.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

### 3.4.1 General License Notes for VMware vCenter Site Recovery Manager 5.5

This paragraph shall not apply to VMware vCenter Site Recovery Manager licenses purchased as a part of the VMware vCloud Suite. Except as otherwise authorized by a previous VMware-approved license model, You may use VMware vCenter Site Recovery Manager for up to the number of Protected Virtual Machines as determined by the edition of VMware vCenter Site Recovery Manager. For vCenter Site Recovery Manager Standard Edition, you may use VMware vCenter Site Recovery Manager subject to the following restrictions: (a) protect up to seventy-five (75) Virtual Machines within a physical facility or building; and (b) for each running copy of vCenter Site Recovery Manager Standard Edition, manage up to seventy-five (75) Protected Virtual Machines (**“SRM Standard Edition Restriction”**). If at any given time, the number of Protected Virtual Machines in subsections (a) or (b) exceeds seventy-five (75), You are required to upgrade all Your VMware vCenter Site Recovery Manager Standard Edition licenses to vCenter Site Recovery Manager Enterprise Edition. Notwithstanding the foregoing,

the SRM Standard Edition Restriction shall not apply if a failover of Protected Virtual Machines causes the number of Protected Virtual Machines to exceed the SRM Standard Edition Restriction within a physical facility or building for a reasonable period of time.

You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

### 3.5 VMware vCenterCapacityIQ

#### Definitions

**"Server Software"** means the proprietary VMware vCenterCapacityIQ software, licensed by the number of Processor, which is installed on the guest operating system.

**"Virtual Appliance"** means the virtual machine, which includes the guest operating system and the Server Software.

#### License Notes

VMware grants you a nonexclusive, non-transferable license, without rights to sublicense, to (i) deploy copies of the Server Software (in object code form only) in quantity permitted by the licenses for which you have paid the applicable fees; (ii) use the Virtual Appliance (in object code form only) for installation and operation of the Server Software; and (iii) use the documentation accompanying the Software in connection with permitted uses of the Software.

**Limited Warranty.** MICROSOFT AND ALL MICROSOFT AFFILIATES SPECIFICALLY DISCLAIM ANY AND ALL LIABILITY RELATED TO THE SOFTWARE AND THE PRODUCTS. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. THE FOREGOING SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER MICROSOFT AND ALL MICROSOFT AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

### 3.6 VMware vCenter Server Heartbeat

#### Definitions

**"vCenter Server Heartbeat Software"** includes, Protected vCenter Server database and VMware product databases, limited to the database server hosting vCenter Server data.

**"vCenter Server Heartbeat Console"** is the component that provides the user interface to manage the Software

**"Protected vCenter Server"** means an installation of the VMware vCenter Server and the associated database that contains VMware vCenter Server data, and VMware product-related data protected by the Software, located either in a Virtual Machine or on a Server.

**"Standby vCenter Server"** means an instance of the Protected vCenter Server, which is used solely for replicating and restoring the Protected vCenter Server.

#### License Notes

You must have a valid license of the Software for each Protected vCenter Server. You may use the Software to protect only databases, Servers, or Virtual Machines used by VMware products in your environment.

VMware grants you a nonexclusive, nontransferable license, without rights to sublicense, to (i) use the vCenter Server Heartbeat Console for information processing and computing purposes to perform management

operations on Protected vCenter Server, including the hosting of computer application-based services from a Server or Virtual Machine and provisioning of such services via an internal or external network, provided such services may not consist of services to a third party that provide primarily computing or processing power (such as utility computing or grid computing) or any computer application-based service that is traded, rented, leased or sold; and (ii) use and reproduce the VMware vCenter Server Heartbeat Console for installation and operation of an unlimited number on your own internal computers or terminals solely for the purpose of accessing the Virtual Machines or Servers on which the licensed vCenter Server Heartbeat Software are installed. You may uninstall the vCenter Server Heartbeat Software from Virtual Machines or Servers on which it is installed and reinstall the vCenter Server Heartbeat Software on an equivalent number of different Virtual Machines or Servers, so long as you have a valid Software license for each Protected vCenter Server.

## 3.7 VMware vCloud Automation Center 6.0

### Definitions

**“Instance”** means a single installation of the Software on a physical server or Virtual Machine.

**“Managed Desktop”** means a desktop system running or being managed or monitored by the Software.

**“Operating Systems Instance”** means a single installation of an operating system on a non-virtualized physical server or Virtual Machine.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

### 3.7.1 General License Notes for VMware vCloud Automation Center 6.0

You may not use any components of the VMware vCloud Automation Center other than as part of the VMware vCloud Automation Center. For clarity, the restrictions of the foregoing sentence do not apply to the VMware vCloud Automation Center Development Kit.

You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and You cannot recover any other damages, including consequential, lost profits, special, indirect or incidental damages.

You understand that any log files generated in order to obtain support from VMware may contain sensitive, confidential or personal information. You should consider obfuscating the logs before sending them to VMware.

### 3.7.2 Product Edition/Suite Specific License Notes

#### **VMware vCloud Automation Center – Advanced and Enterprise Editions**

In addition to the general license notes above, if You purchase a license to VMware vCloud Automation Center, you may use VMware vCloud Automation Center for up to the number of Operating Systems Instances for which You have paid the applicable license fees. The number of Operating Systems Instances is calculated as the average number of Operating Systems Instances used during the immediately preceding 365 days.

#### **VMware vCloud Automation Center for Desktop**

In addition to the general license notes above, if You purchase a license to VMware vCloud Automation Center for Desktop, you may use VMware vCloud Automation Center for Desktop to manage up the total number of Managed Desktops for which You have paid the applicable license fees.

## VMware vCloud Automation Center Development Kit

In addition to the general license notes above, if You purchase a license to the VMware vCloud Automation Center Development Kit, you may use the VMware vCloud Automation Center Development Kit for up to the number of Instances for which You have paid the applicable license fees.

### 3.8 VMware vCloud Connector Core 2.5

#### 3.8.1 General License Notes for VMware vCloud Connector Core 2.5

**Offline Data Transfer.** You may use this feature only if you have an active subscription to VMware vCloud Hybrid Service. Please see the VMware vCloud Hybrid Service Terms of Service and Service Description for additional restrictions that apply to you regarding Offline Data Transfer.

**Data Privacy.** Data that VMware collects during the registration, activation and maintenance of your account ("Relationship Data") is needed in order to manage your account, send to you notifications, deliver products/services or product/service information, bill you for the purchased products/services, improve products/services, monitor compliance and provide ongoing support (to the extent VMware chooses to do any of the foregoing). VMware uses and shares Relationship Data for legitimate business purposes in line with industry standards. The information that VMware collects or you submit through the generally accessible portions of VMware's webpages is subject to VMware's Privacy Policy posted on such webpages, but VMware's Privacy Policy does not apply to Relationship Data that you have submitted.

**Agents.** You should be aware that the Software includes an Agent (as defined below). "Agent" (otherwise known as vCloud Connector Node) is a virtual appliance that can be deployed in each of the cloud computing environments that you connect to through use of the Software. You are responsible for determining whether any disclosure of such Agent to any party is necessary, and obtaining any consents if so required. You are also responsible for complying with any applicable privacy and data protection laws. You shall only deploy Agents to cloud computing environments subject to an agreement with the cloud computing environment supplier or other applicable party that protects VMware's and its licensors' interests consistent with the terms contained in this Agreement.

### 3.9 VMware vCloud Connector Advanced 2.5

#### 3.9.1 General License Notes for VMware vCloud Connector Advanced 2.5

**Data Privacy.** Data that VMware collects during the registration, activation and maintenance of your account ("Relationship Data") is needed in order to manage your account, send to you notifications, deliver products/services or product/service information, bill you for the purchased products/services, improve products/services, monitor compliance and provide ongoing support (to the extent VMware chooses to do any of the foregoing). VMware uses and shares Relationship Data for legitimate business purposes in line with industry standards. The information that VMware collects or you submit through the generally accessible portions of VMware's webpages is subject to VMware's Privacy Policy posted on such webpages, but VMware's Privacy Policy does not apply to Relationship Data that you have submitted.

**Agents.** You should be aware that the Software includes an Agent (as defined below). "Agent" (otherwise known as vCloud Connector Node) is a virtual appliance that can be deployed in each of the cloud computing environments that you connect to through use of the Software. You are responsible for determining whether any disclosure of such Agent to any party is necessary, and obtaining any consents if so required. You are also

responsible for complying with any applicable privacy and data protection laws. You shall only deploy Agents to cloud computing environments subject to an agreement with the cloud computing environment supplier or other applicable party that protects VMware’s and its licensors’ interests consistent with the terms contained in this Agreement.

### 3.10 VMware vCenter Multi-Hypervisor Manager

#### 3.10.1 General License Notes for VMware vCenter Multi-Hypervisor Manager

You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

### 3.11 VMware vCenter Log Insight

#### Definitions

**“Operating Systems Instance”** means a single installation of an operating system on a non-virtualized physical server or Virtual Machine. For the purposes of VMware vCenter Log Insight only, the definition of Operating Systems Instance also includes a single system identified by an IP address that has the ability to generate log messages, including but not limited to, virtualized physical servers, storage arrays and network devices.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

#### 3.11.1 General License Notes for VMware vCenter Log Insight

You may use the Software for up to the number of Operating Systems Instances for which you have paid the applicable license fees. The number of Operating Systems Instances is calculated as the average number of Operating Systems Instances during the immediately preceding 365 calendar days. For the avoidance of doubt, the Software must be licensed for the Operating Systems Instances that are providing data to a centralized server. A license is not required for (i) installations of the Software that are solely for disaster recovery, online archive analysis, or scale out; or (ii) a centralized server which is solely configured to collect data and does not generate any data itself.

**Log Files and Support Data.** You acknowledge that correspondence, log files and other data generated in conjunction with either a request for support services or your involvement in the Customer Experience Improvement Program (collectively, “Support Data”) may contain sensitive, confidential or personal information. By participating in the Customer Experience Improvement Program, you acknowledge and agree that your Support Data may be collected, processed, stored and transferred in accordance with the VMware vCenter Log Insight Installation and Administration Guide (<http://www.vmware.com/pdf/log-insight-10-install-admin-guide.pdf>). You are solely responsible for taking all steps necessary to both: 1) consider all applicable privacy laws prior to sending any Support Data to VMware; and 2) remove or otherwise protect any confidential, sensitive or personal information from the Support Data, including obfuscating the logs or otherwise guarding such information. Information collected by VMware may be transferred, stored and processed by VMware in the United States or any other country in which VMware or its affiliates, subsidiaries or service providers maintain facilities.

IN NO EVENT SHALL INTEL OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOST INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE.



## 4. SECURITY PRODUCTS

### 4.1 VMware vCloud Networking and Security 5.5

#### Definitions

**“Processor”** means a single, physical chip that houses a central processing unit that can execute computer programs.

**“Secured Virtual Machine”** means a Virtual Machine that is defined as protected in the Documentation for VMware vCloud Networking and Security.

#### 4.1.1 General License Notes for VMware vCloud Networking and Security 5.5

You may use the Software for up to the number of Secured Virtual Machines for which you have paid the applicable license fees, unless you purchase the Software as a part of the VMware vCloud Suite.

VMware vShield Endpoint. You may use this feature only as a part of Your license to any of the following editions of VMware vSphere: VMware vSphere Standard, VMware vSphere Standard with Operations Management, VMware vSphere Enterprise, VMware vSphere Enterprise Plus, VMware vSphere Essentials Plus and VMware vSphere Essentials Plus for Retail and Branch Offices.

### 4.2 VMware vSphere Data Protection Advanced

**“Processor”** means a single, physical chip that houses a central processing unit that can execute computer programs.

**“Server”** means a hardware system capable of running software. A hardware partition or blade is considered a separate hardware system.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

#### 4.2.1 General License Notes for VMware vSphere Data Protection Advanced

You may use the Software to back up an unlimited number of Virtual Machines hosted by a Server if you have a license to the Software for each Processor in the host Server.

### 4.3 VMware vShield Edge

#### Definitions

**“Secured Virtual Machine”** means a Virtual Machine protected by VMware vShield policies.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

#### License Notes

You may use the Software for up to the number of Secured Virtual Machines for which you have paid the applicable license fees.

### 4.4 VMware vShield App

#### Definitions

**“Secured Virtual Machine”** means a Virtual Machine protected by VMware vShield policies.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

#### License Notes

You may use the Software for up to the number of Secured Virtual Machines for which you have paid the applicable license fees.

The Software enables You to scan your systems for personally identifiable information and other sensitive data (“Scanned Data”). The Software is offered as a tool that may help You understand Your data flows; use of the Software does NOT ensure legal and/or regulatory compliance with respect to such Scanned Data. VMware makes no representation, warranty or guarantee that the use of the Software will satisfy any statutory or regulatory obligations, or will assist with, guarantee or otherwise ensure compliance with any applicable laws or regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and the Financial Modernization (Gramm-Leach-Bliley) Act of 1999.

You acknowledge that VMware shall have no obligation with respect to any Scanned Data and the use of the Software will not ensure your compliance with any applicable laws or regulations. If VMware provides any support services related to the Software, You agree that You will not disclose any Scanned Data to VMware or its representatives. ANY AND ALL FUNCTIONALITY INCLUDED WITH THE SOFTWARE THAT RELATES TO SCANNED DATA IS PROVIDED “AS IS.” VMWARE SHALL HAVE NO LIABILITY WHATSOEVER WITH RESPECT TO ANY SCANNED DATA OR YOUR COMPLIANCE WITH YOUR STATUTORY OR REGULATORY OBLIGATIONS.

### 4.5 VMware vShield Endpoint

#### Definitions

**“Secured Virtual Machine”** means a Virtual Machine protected by VMware vShield policies.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

#### License Notes

You may use the Software for up to the number of Secured Virtual Machines for which you have paid the applicable license fees.

## 5. APPLICATION MANAGEMENT

### 5.1 VMware vCenter AppSpeed

#### Definitions

"**MySQL Software**" means the MySQL Enterprise Server-Advanced Database and the accompanying MySQL connector(s).

"**Server Software**" means the proprietary VMware vCenter AppSpeed software, licensed by the number of Processor(s), which is installed on the guest operating system.

"**Virtual Appliance**" means the virtual machine, which includes the guest operating system and the Server Software.

#### License Notes

VMware grants you a nonexclusive, non-transferable license, without rights to sublicense, to (i) copy and deploy as many instances of the Server Software (in object code form only) as necessary so long as the total quantity of processors in physical hosts that have virtual machines being monitor by the Server Software do not exceed the total number of processors permitted by the licenses for which you have paid the applicable fees; (ii) use the Virtual Appliance (in object code form only) for installation and operation of the Server Software; and (iii) use the documentation accompanying the Software in connection with permitted uses of the Software.

**MySQL Software.** You are not permitted to separate the MySQL Software from the Server Software for any purpose, including but not limited to the use of the MySQL Software as a general SQL server. Sun Microsystems, Inc .and its licensors retain all right, title and interest in the MySQL Software.

### 5.2 VMware vCenter Application Discovery Manager

#### Definitions

"**Managed System**" means a physical hardware system or Virtual Machine running or being monitored by the Software.

"**Virtual Machine**" means a software container that can run its own operating system and execute applications like a physical machine.

#### License Notes

You may use the Software for up to the number of Managed Systems for which you have paid the applicable license fees.

You may make two (2) copies of the Software solely for use in a development environment for proof of concept, quality-assurance, or other testing purposes ("**Non Production Use**").

## 6. DESKTOP AND END USER COMPUTING

### 6.1 VMware Horizon Workspace

**“Customer Application(s)”** means the software application(s) from a third party or developed by You.

**“Named User”** means Your employee or Third Party Agent who has been authorized by You to use the Software in accordance with the terms of this Agreement.

**“ThinApp(s)”** means a VMware virtualized application format created from and consisting of Customer Application(s) packaged by the ThinApp Packager Tool.

**“ThinApp Packager Tool”** means the VMware tool from the Software used to package Customer Application(s) into a ThinApp.

**“Third Party Agent”** means a third party delivering information technology services to You pursuant to a written contract with You.

You may use the Software for up to the number of Named Users for which You have paid the applicable license fees.

You will receive a single license to the ThinApp Packager Tool and VMware Workstation for each license pack of VMware Horizon Workspace purchased by You.

You may (i) use the ThinApp Packager Tool internally to package Customer Application(s) solely to create ThinApps; and (ii) distribute such ThinApps to Named Users within Your enterprise, without any further redistribution rights, in accordance with the licensing terms of the Customer Application.

You are responsible for all activities of your Named Users and for your Named Users' compliance with this Agreement. You must have a separate VMware ThinApp license for each Named User.

You will display the following notice with each ThinApp: “Powered by VMware. Portions of this software contain VMware, Inc. technology. Copyright © 1999-2013 VMware, Inc. All Rights Reserved.”

You will defend, indemnify and hold harmless VMware from and against any loss, cost, liability or damage, including attorneys' fees that VMware incurs or for which VMware becomes liable arising from or relating to: (i) Your breach of the VMware ThinApp EULA; and (ii) Your breach of the license terms and conditions of Customer Applications.

You may only use VMware Workstation with the VMware ThinApp Packager provided with the VMware Horizon Suite, and only Your IT administrator may use either copy of the VMware Workstation or VMware ThinApp Packager provided with the VMware Horizon Suite.

You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

IN NO EVENT SHALL INTEL OR ITS SUPPLIERS (INCLUDING ORACLE) BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOST INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE.

#### Collection and Privacy of Your Data.

- (i) Consent for Collection and Use of Data. In order for VMware to provide services and support to both

You and Your end users, You agree that VMware may collect, process, share and store data in accordance with the Privacy Supplement for VMware Horizon Workspace (<http://www.vmware.com/help/horizon-workspace-privacy-supplement.html>).

- (ii) Consent for the Transfer of Data. You agree that any personal and technical data collected or received by VMware from either You or Your end users in connection with Your use of the Software may be transferred, stored and processed in the United States or any other country in which VMware or its affiliates, subsidiaries or service providers maintain facilities. By downloading, installing, using and/or receiving customer support assistance, You consent to the worldwide processing of Your personal and technical data.
- (iii) Consent for IT Admin Control of Data and Applications. You understand that the Software has been developed, marketed and supported by VMware and its affiliates for Your use and Your individual representatives, employees, customers and other users. You acknowledge that Software may access, process and transfer personal, sensitive, confidential and technical data from Your services, networks, applications, database and Your end users' mobile devices, which may be governed by domestic and international data privacy laws and regulations. When providing Software to Your end users, You are solely responsible for complying with such laws and regulations, including, without limitation, any requirement to provide notification or obtain consent of the data subject.
- (iv) Log Files. You acknowledge that correspondence and log files generated in conjunction with a request for support services may contain sensitive, confidential or personal information. You are solely responsible for taking the steps necessary to protect such data, including obfuscating the logs or otherwise guarding such information prior to sending it to VMware or any third party.

#### Collection and Privacy of Your End User's Data.

- (i) Consent for Collection and Use of Data. In order for VMware to provide services and support to both You and Your employer ("Your Organization"), You agree that VMware may collect, process, share and store data in accordance with the VMware Horizon Workspace Privacy Supplement (<http://www.vmware.com/help/horizon-workspace-privacy-supplement.html>).
- (ii) Consent for the Transfer of Data. You agree that any personal and technical data collected or received by VMware in connection with the download, installation, configuration, maintenance, support and use of the Software may be transferred, stored and processed in the United States or any other country in which VMware or its affiliates, subsidiaries or service providers maintain facilities. By downloading, installing, using and receiving customer support assistance, You consent to the worldwide processing of Your personal and technical data.
- (iii) Consent for IT Admin Control of Data and Applications. You understand that the Software has been developed, marketed and supported by VMware and its affiliates for use by Your Organization and its individual representatives, employees, customers and other users, including You. By downloading, installing, using and receiving customer support services for the Software, You acknowledge that any data You input into the Software, including without limitation personal, sensitive, confidential and technical data ("Data"), may be shared with and accessible by Your Organization. In order to protect the privacy, security and integrity of the Data and information in Your Organization's instance of the Software, You acknowledge and understand that Your Organization may set policies that affect Your ability to control, access, share, transfer and/or delete Data stored in the Software.
- (iv) Log Files. You acknowledge that correspondence and log files generated in conjunction with a request for support services may contain sensitive, confidential or personal information. You are solely

responsible for taking the steps necessary to protect such data, including obfuscating the logs or otherwise guarding such information prior to sending it to VMware.

## 6.2 VMware Horizon View Manager

### Definitions

**"Desktop Virtual Machine"** is a hosted Virtual Machine with one of the following Microsoft Windows operating systems: XP, Vista, 7 or 8.

**"Powered On Desktop Virtual Machine"** means a Desktop Virtual Machine receiving a remote connection from a device or running locally on a device.

**"Terminal Services Session"** means a Microsoft Windows terminal services session running a valid Microsoft Windows license.

**"Virtual Machine"** means a software container that can run its own operating system and execute applications like a physical machine.

### License Notes

You may use the Software to manage up to the total number of concurrent connections, including connections to Terminal Services Sessions, Powered On Desktop Virtual Machines, and physical computers, for which You have paid the applicable license fees. The Software only supports the following Microsoft Windows operating systems: XP, Vista, 7 and 8. Your use of individual features included in a specific VMware View edition is limited to that edition. The use of individual features interchangeably between VMware View editions is strictly prohibited. You can use the Persona Management functionality of the Software on an unlimited number of physical computers, provided that you do not exceed the total number of concurrent connections under your license to the Software.

## 6.3 VMware View for iOS

### Definitions

**"App Store"** means an electronic store and its storefronts branded, and owned and/or controlled by Apple or an affiliate of Apple.

### License Notes

You and VMware acknowledge that this EULA is concluded between You and VMware only, and not with Apple, and Apple is not responsible for the Software or the content thereof. To the extent that the Usage Rules set forth for the Software in Apple's App Store Terms of Service are more restrictive, such Usage Rules shall apply.

You may use the Software only on an Apple-branded product running iOS (an "iOS Product") that You own or control.

VMware and You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Software.

The limited warranty in Section 7.1 of this EULA shall not apply to the Software. To the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to the Software. NOTWITHSTANDING ANY OTHER SECTION OF THIS EULA, TO THE MAXIMUM EXTENT PERMITTED BY LAW, VMWARE AND ITS LICENSORS PROVIDE THE SOFTWARE "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS EULA OR COMMUNICATION WITH YOU, AND VMWARE AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

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You represent and warrant that (i) You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties.

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VMware and You acknowledge and agree that (i) Apple and its subsidiaries are third party beneficiaries of this EULA, and (ii) upon Your acceptance of the terms and conditions of this EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce this EULA against You as a third party beneficiary thereof (provided that Apple's such rights shall not in any manner reduce VMware's rights).

## 6.4 VMware Horizon View Client for Windows

You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

## 6.5 VMware ThinApp

### Definitions

**"Customer Application(s)"** means the software application(s) from a third party or developed by You.

**"Device"** means any client hardware that enables an end user to run a ThinApp or the ThinApp Packager Tool.

**"Named User"** means Your single designated employee or Third Party Agent who has been authorized by You to use the Software in accordance with the terms of this Agreement.

**"ThinApp"** means a VMware virtualized application format created from and consisting of Customer Application(s) packaged by the ThinApp Packager Tool.

**"ThinApp Packager Tool"** means the VMware tool from the Software used to package Customer Application(s) into a ThinApp.

### 6.5.1 General License Notes for VMware ThinApp

You may use the Software internally to package Customer Application(s) solely to create ThinApps for end users within Your enterprise, without any further redistribution rights, in accordance with the licensing terms of the Customer Application.

You must have a separate Software license for each Device or Named User, except for a Device or Named User running ThinApp in an authorized concurrent use environment.

You will display the following notice with each ThinApp: “Powered by VMware. Portions of this software contain VMware, Inc. technology. Copyright © 1999-2013 VMware, Inc. All Rights Reserved.”

You will defend, indemnify and hold harmless VMware from and against any loss, cost, liability or damage, including attorneys’ fees that VMware incurs or for which VMware becomes liable arising from or relating to: (i) Your breach of the EULA; and (ii) Your breach of the license terms and conditions of Customer Applications.

### **6.5.2 Product Edition/Suite Specific License Notes**

#### **VMware Horizon Workspace**

In addition to the general license notes above, if you purchase a license to the Software as part of VMware Horizon Workspace, the following terms apply:

You may use the Software internally to package Customer Application(s) solely to create ThinApps for Named Users within Your enterprise, without any further redistribution rights, in accordance with the licensing terms of the Customer Application.

You are responsible for all activities of your Named Users and for your Named Users’ compliance with this Agreement. You must have a separate VMware ThinApp license for each Named User.

You will display the following notice with each ThinApp: “Powered by VMware. Portions of this software contain VMware, Inc. technology. Copyright © 1999-2013 VMware, Inc. All Rights Reserved.”

You will defend, indemnify and hold harmless VMware from and against any loss, cost, liability or damage, including attorneys’ fees that VMware incurs or for which VMware becomes liable arising from or relating to: (i) Your breach of the EULA; and (ii) Your breach of the license terms and conditions of Customer Applications.

#### **VMware Horizon Mirage**

In addition to the general license notes above, if You purchase a license to VMware ThinApp as a part of VMware Horizon Mirage, You may only use VMware ThinApp for up to the total number of Named Users for which You have paid the applicable license fees.

#### **VMware Horizon View**

**“Active Connection”** means (i) with respect to Horizon View, any connections to Powered On Desktop Virtual Machines, Terminal Services Sessions and physical computers, (ii) with respect to Horizon Mirage, any provisioned desktop image, and (iii) with respect to Horizon Workspace, any user who has logged in and authenticated into their workspace (provided however that a downloaded desktop agent that is constantly syncing or a provisioned and accepted workspace on a mobile device will always be considered an Active Connection and will constitute one Concurrent User at all times).

**“Concurrent Users”** means the total number of users accessing or using the Software at any given time to maintain an Active Connection to their workspace or desktop through an endpoint device.

**“Desktop Virtual Machine”** is a hosted Virtual Machine with one of the following Microsoft Windows operating systems: XP, Vista, 7 or 8.

**“Powered On Desktop Virtual Machine”** means a Desktop Virtual Machine receiving a remote connection from a device or running locally on a device.

**“Terminal Services Session”** means a Microsoft Windows terminal services session running a valid Microsoft Windows license.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

In addition to the general license notes above, if You purchase a license to VMware ThinApp as a part of VMware Horizon View, You may only use VMware ThinApp for up to the total number of Concurrent Users for which You have paid the applicable license fees.



## VMware Horizon Suite

**“Active Connection”** means (i) with respect to Horizon View, any connections to Powered On Desktop Virtual Machines, Terminal Services Sessions and physical computers, (ii) with respect to Horizon Mirage, any provisioned desktop image, and (iii) with respect to Horizon Workspace, any user who has logged in and authenticated into their workspace (provided however that a downloaded desktop agent that is constantly syncing or a provisioned and accepted workspace on a mobile device will always be considered an Active Connection and will constitute one Concurrent User at all times).

**“Concurrent Users”** means the total number of users accessing or using the Software at any given time to maintain an Active Connection to their workspace or desktop through an endpoint device.

**“Desktop Virtual Machine”** is a hosted Virtual Machine with one of the following Microsoft Windows operating systems: XP, Vista, 7 or 8.

**“Named User”** means Your single designated employee or Third Party Agents who have been authorized by You to use the Software in accordance with the terms of this Agreement.

**“Powered On Desktop Virtual Machine”** means a Desktop Virtual Machine receiving a remote connection from a device or running locally on a device.

**“Terminal Services Session”** means a Microsoft Windows terminal services session running a valid Microsoft Windows license.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

In addition to the general license notes above, if You purchase a license to VMware ThinApp as a part of VMware Horizon Suite, You may use the Software for up to the number of Named Users or Concurrent Users for which you have paid the applicable license fees.

The VMware Horizon Suite may be licensed (i) per Named User in 10 or 100 Named User Packs or (ii) per Concurrent User in 10 or 100 Concurrent User Packs.

## 6.6 VMware ThinApp Virtualization Packager

### Definitions

**“Customer Application(s)”** means the software application(s) from a third party or developed by You.

**“Device”** means any client hardware that enables an end user to run a ThinApp or the VMware ThinApp Virtualization Packager.

**“Named User”** means Your single designated employee or Third Party Agent who has been authorized by You to use the Software in accordance with the terms of this EULA.

**“ThinApp”** means a VMware virtualized application format created from and consisting of Customer Application(s) packaged by the VMware ThinApp Virtualization Packager.

### License Notes

You may use the VMware ThinApp Virtualization Packager to create ThinApps for end users within Your enterprise, without any further redistribution rights, in accordance with the licensing terms of the Customer Application. You must have a separate VMware ThinApp Virtualization Packager license for each Device or Named User, except for a Device or Named User running ThinApp in an authorized concurrent use environment.

Customer will display the following notice with each ThinApp: “Powered by VMware. Portions of this software contain VMware, Inc. technology. Copyright © 1999-2013 VMware, Inc. All Rights Reserved.”

## 6.7 VMware Workstation

VMware Workstation includes VMware Player Plus, VMware Converter and VMware Software Development Kit for VIX Application Programming Interface.

### Definitions

“**Virtual Machine**” means a software container that can run its own operating system and execute applications like a physical machine.

### License Notes

**VMware Workstation.** You may install and use the Software on a number of computers equal to the number of licenses purchased. Installing and running a single license of the Software on multiple computers is prohibited even if the computers are not running the Software concurrently. Concurrent use of the Software by multiple users on a single computer is prohibited.

You may use the Software to host application-based dedicated services to a third party, provided, such service does not provide computing or processing power (such as utility computing, grid computing or cloud computing) or any computer application-based service that is traded, rented, leased, or sold on a Virtual Machine basis.

Use of the Software has no Territory limitations.

Faculty and students of organizations that are members of the VMware Academic Program may use the Software for education and research. For information about the program please visit <http://www.vmware.com/partners/academic/program-overview.html>.

The Software may include Microsoft components. You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

**Limited Support and Subscription Services.** Unless You have purchased additional VMware support and subscription services for the Software, VMware will provide you with limited web-based support services for the Software for a period of thirty (30) days after the date of purchase and VMware will provide you with the “VMware Complimentary Update Service” for a period of eighteen (18) months from the date of general availability of the Software. The “VMware Complimentary Update Service” is defined in the VMware Support and Subscription Services Terms and Conditions posted at [http://www.vmware.com/files/pdf/support/support\\_terms\\_conditions.pdf](http://www.vmware.com/files/pdf/support/support_terms_conditions.pdf).

**Application Programming Interface (“APIs”).** The APIs are provided for your personal use solely for the purpose of creating software that communicates with VMware Software (the “**Developer Software**”). You agree to defend, indemnify and hold harmless VMware, and any of its directors, officers, employees, Affiliates or agents, from and against any and all claims, losses, damages, liabilities and other expenses (including reasonable attorneys’ fees), arising from your use, modification and distribution of the distributable code and the Developer Software.

You will not (1) use the APIs to create, design or develop anything other than Developer Software; (2) make any more copies of the APIs than are reasonably necessary for the authorized use and backup and archival purposes; (3) modify, create derivative works of, reverse engineer, reverse compile, or disassemble the APIs, except that you may modify and create derivative works of, and distribute any code provided in the APIs that is designated by VMware in the APIs documentation as “distributable code” solely as part of your Developer Software; (4) distribute, sell, lease, rent, lend, or sublicense any part of the APIs to any third party except as designated herein and as necessary to distribute Developer Software or; (5) use the APIs to (a) create, design or develop software or services to circumvent, enable, modify or provide access, permissions or rights which would violate the

technical restrictions of VMware Software, any additional licensing terms provided by VMware via product documentation, email notification and/or policy change on VMware website, and/or the terms of the End User License Agreements of VMware products; (b) disable, remove, over-ride or modify the display of any VMware product End User License Agreements to the end customers; or (c) upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware.

**VMware Player Plus.** You may install and use VMware Player Plus, for personal use, internal business use, or any use by You in the functions of Your employment on a number of computers equal to the number of licenses purchased, provided that you install and use VMware Player Plus on the same computer on which VMware Workstation is installed. Installing and using a single license of VMware Player Plus on multiple computers is prohibited even if the computers are not running VMware Player Plus concurrently.

The Software may include Microsoft components. You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

**VMware Converter.** You may use the Software solely to migrate the disk contents of physical computers, VMware Virtual Machines, and supported third party disk images to the disk contents of Virtual Machines operated with VMware virtualization software products.

## 6.8 VMware Fusion and VMware Fusion Professional

VMware Fusion includes VMware Software Development Kit for VIX Application Programming Interface.

In addition to the Software that is included in VMware Fusion, VMware Fusion Professional includes a commercial use license to VMware Player, as further described below.

### Definitions

**“Active Connection”** means (i) with respect to Horizon View, any connections to Powered On Desktop Virtual Machines, Terminal Services Sessions and physical computers, (ii) with respect to Horizon Mirage, any provisioned desktop image, and (iii) with respect to Horizon Workspace, any user who has logged in and authenticated into their workspace (provided however that a downloaded desktop agent that is constantly syncing or a provisioned and accepted workspace on a mobile device will always be considered an Active Connection and will constitute one Concurrent User at all times).

**“Commercial Use”** means any internal business use or any use by You in the functions of Your employment.

**“Concurrent Users”** means the total number of users accessing or using the Software at any given time to maintain an Active Connection to their workspace or desktop through an endpoint device.

**“Desktop Virtual Machine”** is a hosted Virtual Machine with one of the following Microsoft Windows operating systems: XP, Vista, 7 or 8.

**“Mac Computer”** means any Apple-branded products running Mac OS X.

**“Named User”** means Your single designated employee or Third Party Agent who has been authorized by You to use or access the Software in accordance with the terms of this Agreement.

**“Powered On Desktop Virtual Machine”** means a Desktop Virtual Machine receiving a remote connection from a device or running locally on a device.

**“Terminal Services Session”** means a Microsoft Windows terminal services session running a valid Microsoft Windows license.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

### **6.8.1 General License Notes for VMware Fusion and VMware Fusion Professional**

**VMware Fusion and VMware Fusion Professional.** You may install and use VMware Fusion for personal, non-Commercial Use on any Mac Computer that you own or control.

If you are a commercial enterprise or educational institution, you may install and use VMware Fusion or VMware Fusion Professional on a number of computers that you own or control equal to the number of licenses purchased. Installing and using the Software on multiple computers with a single license is prohibited even if the computers are not running the Software concurrently.

Use of the Software has no Territory limitations.

Faculty and Students of organizations that are members of the VMware Academic Program may use the Software for education and research. For information about the program please visit <http://www.vmware.com/partners/academic/program-overview.html>.

The Software may include Microsoft components. You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

**Limited support and subscription services.** Unless you have purchased additional VMware support and subscription services for the Software, VMware will provide you with limited web-based support services for the Software and the “VMware Complimentary Update Service” for a period of eighteen (18) months from the date of general availability of the Software. The “VMware Complimentary Update Service” is defined in the VMware Support and Subscription Services Terms and Conditions posted at [http://www.vmware.com/files/pdf/support/support\\_terms\\_conditions.pdf](http://www.vmware.com/files/pdf/support/support_terms_conditions.pdf).

**Application Programming Interface (APIs).** The APIs are provided for your personal use solely for the purpose of creating software that communicates with VMware Software (“**Developer Software**”). You agree to defend, indemnify and hold harmless VMware, and any of its directors, officers, employees, affiliates or agents, from and against any and all claims, losses, damages, liabilities and other expenses (including reasonable attorneys’ fees), arising from your use, modification and distribution of the distributable code and the Developer Software.

You will not (1) use the APIs to create, design or develop anything other than Developer Software; (2) make any more copies of the APIs than are reasonably necessary for the authorized use and backup and archival purposes; (3) modify, create derivative works of, reverse engineer, reverse compile, or disassemble the APIs, except that you may modify and create derivative works of, and distribute any code provided in the APIs that is designated by VMware in the APIs documentation as “distributable code” solely as part of your Developer Software; (4) distribute, sell, lease, rent, lend, or sublicense any part of the APIs to any third party except as designated herein and as necessary to distribute Developer Software or; (5) use the APIs to (a) create, design or develop software or services to circumvent, enable, modify or provide access, permissions or rights which would violate the technical restrictions of VMware Software, any additional licensing terms provided by VMware via product documentation, email notification and/or policy change on VMware website, and/or the terms of the End User License Agreements of VMware products; (b) disable, remove, over-ride or modify the display of any VMware product End User License Agreements to the end customers; or (c) upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware.

## **6.8.2 Product Edition / Suite Specific License Notes**

### **VMware Horizon Mirage**

In addition to the general license notes above, if You purchase a license to VMware Fusion Professional as a part of VMware Horizon Mirage, You may only use VMware Fusion Professional for up to the total number of the same Named Users for which You have paid the applicable license fees.

### **VMware Horizon Suite**

In addition to the general license notes above, if You purchase VMware Fusion Professional as a part of VMware Horizon Suite, You may use VMware Fusion Professional for up to the number of the same Named Users or the same Concurrent Users for which you have paid the applicable license fees.

The VMware Horizon Suite may be licensed (i) per Named User in 10 or 100 Named User Packs or (ii) per Concurrent User in 10 or 100 Concurrent User Packs. The VMware Horizon Suite includes VMware Horizon View, VMware Horizon Mirage and VMware Horizon Workspace.

## **6.9 VMware Player and VMware Player Plus**

### **Definitions**

**“Active Connection”** means (i) with respect to Horizon View, any connections to Powered On Desktop Virtual Machines, Terminal Services Sessions and physical computers, (ii) with respect to Horizon Mirage, any provisioned desktop image, and (iii) with respect to Horizon Workspace, any user who has logged in and authenticated into their workspace (provided however that a downloaded desktop agent that is constantly syncing or a provisioned and accepted workspace on a mobile device will always be considered an Active Connection and will constitute one Concurrent User at all times).

**“Commercial Use”** means any internal business use or any use by You in the functions of your employment.

**“Concurrent Users”** means the total number of users accessing or using the Software at any given time to maintain an Active Connection to their workspace or desktop through an endpoint device.

**“Desktop Virtual Machine”** is a hosted Virtual Machine with one of the following Microsoft Windows operating systems: XP, Vista, 7 or 8.

**“Named User”** means Your single designated employee or Third Party Agent who has been authorized by You to use or access the Software in accordance with the terms of this Agreement.

**“Powered On Desktop Virtual Machine”** means a Desktop Virtual Machine receiving a remote connection from a device or running locally on a device.

**“Terminal Services Session”** means a Microsoft Windows terminal services session running a valid Microsoft Windows license.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

### **6.9.1 General License Notes for VMware Player and VMware Player Plus**

You may install and use VMware Player for your own personal non-Commercial Use. If you purchased VMware Player Plus or if You obtain the Software as part of VMware Fusion Professional, You may install and use the Software for Commercial Use on a number of computers equal to the number of licenses purchased. Installing and using a single license of the Software on multiple computers is prohibited even if the computers are not running the Software concurrently. Use of the Software has no Territory limitations.

Faculty and Students of organizations that are members of the VMware Academic Program may use the Software for education and research. For information about the program, please visit

<http://www.vmware.com/partners/academic/program-overview.html>.

To embed the Software into your own product in order to sell a combined solution, you must enroll in VMware's Embedded OEM program and have a signed OEM Agreement with VMware. For information about the VMware Embedded OEM program, please visit <http://www.vmware.com/partners/programs/alliances/oem.html>.

The Software may include Microsoft components. You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

### **6.9.2 Product Edition / Suite Specific License Notes**

#### **VMware Horizon Mirage**

In addition to the general license notes above, if You purchase a license to VMware Player Plus as a part of VMware Horizon Mirage, You may only use VMware Player Plus for up to the total number of the same Named Users for which You have paid the applicable license fees.

#### **VMware Horizon Suite**

In addition to the general license notes above, if You purchase VMware Player Plus as a part of VMware Horizon Suite, You may use VMware Player Plus for up to the number of the same Named Users or the same Concurrent Users for which you have paid the applicable license fees.

The VMware Horizon Suite may be licensed (i) per Named User in 10 or 100 Named User Packs or (ii) per Concurrent User in 10 or 100 Concurrent User Packs. The VMware Horizon Suite includes VMware Horizon View, VMware Horizon Mirage and VMware Horizon Workspace.

## **6.10 VMware Zimbra**

### **Definitions**

**"Mailbox"** means a single end-user email account excluding distribution lists, aliases, locations, or resources such as conference rooms, training centers, projectors and other objects.

**"Subscription"** means a license for the Software and Support Services that (i) is effective upon the date of purchase and terminates upon the expiration or termination of Support Services; and (ii) may be renewed upon mutual written agreement by the parties and payment of the applicable fees.

**"Support Services"** means the technical support services offered by VMware for the Software pursuant to its then-current support policies.

### **License Notes**

You may create and use for up to the number of Mailbox for which you have paid the applicable license fees.

For Software licensed on a Subscription basis, You may create and use for up to the number of Mailbox during the term of the Subscription. Upon expiration or termination of a Subscription, You shall promptly cease use of the Software and product documentation and destroy (and certify to VMware in writing the fact of such destruction), or return to VMware all copies of the Software and product documentation then in Your possession or control.

## 6.11 Socialcast On Premise

### Definitions

“**Named User**” means the designated user who can access or use the Software.

“**Subscription Software**” means Software that is licensed for a specific term and includes Support Services (at the Support Services level purchased) for the duration of such term (“Subscription Term”).

“**Support Services**” means the technical support services offered by VMware for the Software pursuant to its then-current support policies.

### License Notes

You may use the Software for up to the number of Named Users for which you have paid the applicable license fees.

For Subscription Software, You may use the Software solely during the Subscription Term. Upon expiration or termination of Your licenses to the Subscription Software, You shall promptly cease use of the Software and Documentation and destroy (and certify to VMware in writing the fact of such destruction) or return to VMware all copies of the Software and Documentation then in Your possession or under Your control.

This Socialcast on Premise EULA shall apply to your purchase of licenses to the Software for additional Named Users.

VMware shall not have any obligation to provide Support Services unless you have installed, and at the time you request Support Services are running, VMware’s then current release of the Software and have downloaded and installed all available updates to the Software within the last 60 days. You shall purchase the same level of Support Services for all Named Users.

For the purposes of clarity, Section 2.3 of the Socialcast on Premise EULA does not apply to the Software.

You agree that VMware may collect, use, store and transmit technical and related information about your use of the Software which may include internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics and personally identifiable data (“**Collected Data**”) to facilitate the provisioning of updates, support, invoicing or online services to You. Collected Data is subject to the privacy policy at <http://www.socialcast.com> or such other website designated by VMware.

VMware may conduct no more than one (1) audit in any calendar quarter.

**EVALUATION LICENSE.** If You are licensing the Software for evaluation purposes, your use of the Software is only permitted in a non-production environment and for the evaluation period designated by VMware. Notwithstanding any other provision in the Socialcast on Premise EULA, an Evaluation License of the Software is provided “AS-IS” without support or warranty of any kind, expressed or implied.

## 6.12 VMware Horizon Mirage

### Definitions

“**Named User**” means Your single designated employee or Third Party Agent who has been authorized by You to use or access the Software in accordance with the terms of this Agreement.

### **6.12.1 General License Notes for VMware Horizon Mirage**

You may only use VMware Horizon Mirage for up to the total number of Named Users for which You have paid the applicable license fees.

YOU CAN RECOVER FROM MICROSOFT AND ITS SUPPLIERS ONLY DIRECT DAMAGES UP TO U.S. \$5.00 AND YOU CANNOT RECOVER FROM MICROSOFT ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES.

## **6.13 VMware Horizon Mirage Windows Migration**

### **Definitions**

“**Named User**” means the designated user who can access or use the Software.

### **License Notes**

You may use the Software for up to the number of Named Users for which you have paid the applicable license fees. If the Software is licensed to you for a limited term, you may use the software solely during such term. Upon expiration or termination of the term, you shall promptly cease use of the Software and Documentation and destroy (and certify to VMware in writing the fact of such destruction) or return to VMware all copies of the Software and Documentation then in your possession or under your control.

### **6.13.1 Product Edition / Suite Specific License Notes**

#### **VMware Horizon Mirage Windows Migration**

You may only use VMware Horizon Mirage Windows Migration for up to the total number of Named Users for which You have paid the applicable license fees and solely for the purpose of migrating from one Windows operating system to another (e.g., Windows XP to 7). VMware Horizon Mirage Windows Migration is licensed to you for a limited term. You may use the software solely during such term. Upon expiration of the term, You shall promptly cease use of the software and Documentation and destroy (and certify to VMware in writing the fact of such destruction) or return to VMware all copies of the software and Documentation then in Your possession or under Your control.

## **6.14 VMware View Planner 3.0**

### **6.14.1 General License Notes for VMware View Planner 3.0**

You may use the VMware View Planner benchmarking tool solely for Virtual Desktop Infrastructure performance analysis. As discussed in the VMware View Planner Installation and User Guide, VMware View Planner must be installed concurrently with VMware vSphere and VMware View Server. Your use of VMware View Planner must comply with the VMware View Planner Run and Reporting Rules available at [www.vmware.com/download/eula](http://www.vmware.com/download/eula). Only You and/or authorized third parties may publish or publicly disseminate the results of Your performance testing and benchmark studies, provided that such performance testing and benchmarking studies conform to the VMware View Planner Run and Reporting Rules and the testing and benchmarking guidelines set forth in the EULA.



## 6.15 VMware vCenter Operations Manager for VMware Horizon View

### Definitions

**“Active Connection”** means (i) with respect to Horizon View, any connections to Powered On Desktop Virtual Machines, Terminal Services Sessions and physical computers, (ii) with respect to Horizon Mirage, any provisioned desktop image, and (iii) with respect to Horizon Workspace, any user who has logged in and authenticated into their workspace (provided however that a downloaded desktop agent that is constantly syncing or a provisioned and accepted workspace on a mobile device will always be considered an Active Connection and will constitute one Concurrent User at all times).

**“Concurrent Users”** means the total number of users accessing or using the Software at any given time to maintain an Active Connection to their workspace or desktop through an endpoint device.

**“Desktop Virtual Machine”** is a hosted Virtual Machine with one of the following Microsoft Windows operating systems: XP, Vista, 7 or 8.

**“Powered On Desktop Virtual Machine”** means a Desktop Virtual Machine receiving a remote connection from a device or running locally on a device.

**“Terminal Services Session”** means a Microsoft Windows terminal services session running a valid Microsoft Windows license.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

### 6.15.1 General License Notes for VMware vCenter Operations Manager for VMware Horizon View

You may use the Software for up to the number of Concurrent Users for which you have paid the applicable license fees and who are connected to a virtual desktop powered by VMware Horizon View.

## 7. CLOUD APPLICATION PLATFORM

### 7.1 VMware vFabric Suite

#### Definitions

**"Processor"** means a single, physical chip that houses a central processing unit that can execute computer programs.

**"Server"** means a hardware system capable of running the Software. For purposes of the VMware vFabric EULA, a hardware partition or blade is considered a separate hardware system.

**"Virtual CPU"** means a single unit of virtual processing power configured to a Virtual Machine.

**"Virtual Machine"** means a software container that can run its own operating system and execute applications like a physical machine.

**"Processing Unit"** means the following:

- i) If running on a VMware-provided hypervisor, including but not limited to ESX, ESXi, and vSphere, then the Processing Unit is equivalent to one Virtual CPU.
- ii) If running on Amazon Web Services Elastic Compute Cloud, then the Processing Unit is equivalent to the CPU capacity of one 1.0-1.2 GHz 2007 x86 single-core Processor.
- iii) If running on a machine without a hypervisor of any kind (i.e., "bare metal"), then the Processing Unit is equivalent to one core of a Processor.

#### 7.1.1 General License Notes for VMware vFabric Suite 5.1 and 5.2

Your Average Use (as defined below) of the included Software may not exceed the number of Virtual Machines for which You have paid the applicable license fees, and each Virtual Machine running the Software is not permitted to have more than two (2) Virtual CPUs. If you run the Software in a Virtual Machine with more than two (2) Virtual CPUs, then multiple licenses of the Software are required. However, the splitting of a license of the Software to run in two (2) Virtual Machines, each with a single Virtual CPU, is strictly prohibited.

At least once every ninety (90) days during the License Term, You shall calculate the average number of Virtual Machines in which You have run the Software during the immediately preceding ninety (90)-day period ("Average Use"). If during any such ninety (90)-day period Your Average Use exceeds the number of licenses for which You have paid the applicable license fees, You shall: (a) report the excess use to VMware, within thirty (30) days of making the calculation, by written notice to [vfabric@vmware.com](mailto:vfabric@vmware.com) and (b) pay to VMware, within thirty (30) days of the date of VMware's invoice, VMware's then-current fees for such additional licenses and associated incremental support and subscription services fees.

#### 7.1.2 General License Notes for VMware vFabric Suite 5.3

Your Average Use (as defined below) of the included Software may not exceed the number of pairs of Processing Units for which You have paid the applicable license fees. If you run the Software in a Virtual Machine or Server with more than two (2) Processing Units, then multiple licenses of the Software are required. However, the splitting of a license of the Software to run in two (2) Servers, Processors or Virtual Machines, each with a single Processing Unit, is strictly prohibited.

At least once every ninety (90) days during the License Term, You shall calculate the average number of Processing Units on which you have run the Software during the immediately preceding ninety (90)-day period (“Average Use”). If during any such ninety (90)-day period Your Average Use exceeds the number of licenses for which You have paid the applicable license fees, You shall: (a) report the excess use to VMware, within thirty (30) days of making the calculation, by written notice to [vfabric@vmware.com](mailto:vfabric@vmware.com) and (b) pay to VMware, within thirty (30) days of the date of VMware’s invoice, VMware’s then-current fees for such additional licenses and associated incremental support and subscription services fees.

## 7.2 VMware vFabric Application Director for Provisioning and Release Automation 5.0

### Definitions

“**Virtual Machine**” means a software container that can run its own operating system and execute applications like a physical machine.

### License Notes

You may install and use the Software on the number of Virtual Machines for which You have paid the applicable license fees, or in accordance with a VMware-approved licensing model, unless You obtain licenses to the Software as a part of Your purchase of licenses to VMware vFabric Suite.

WITH RESPECT TO ANY MICROSOFT SOFTWARE INCLUDED IN THE SOFTWARE, YOU CAN RECOVER FROM MICROSOFT AND ITS SUPPLIERS ONLY DIRECT DAMAGES UP TO U.S. \$5.00, AND YOU CANNOT RECOVER FROM MICROSOFT ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES.

## 7.3 VMware vFabric RabbitMQ

### Definitions

"**Processor**" means a single physical chip that houses no more than six (6) processor cores that executes the instructions of the Software.

"**vFabric RabbitMQ Server Software**" means components of the Software that provide the messaging and other services on behalf of clients.

"**vFabric RabbitMQ Client Software**" means the components of the Software that execute in the user's application process and consume the services provided by the vFabric RabbitMQ Server Software.

### License Notes

You may install and use vFabric RabbitMQ Server Software on the number of Processors you have licensed or in a licensed vFabric Advanced Virtual Machine. You are permitted to use and reproduce the vFabric RabbitMQ Client Software on an unlimited number of computers solely for the purpose of accessing licensed vFabric RabbitMQ Server Software.

## 7.4 VMware vFabric GemFire Application Cache Node

### Definitions

"**Application Cache Node**" means a Node that uses the Software for embedding a data cache within an application’s process space or for accessing data available within a Data Management Node.

**"Data Management Node"** means a Node that uses the Software to provide data to one or more Application Cache Nodes.

**"Data Management Network"** means two or more Data Management Nodes that are interconnected for the purposes of sharing data.

**"Node"** means a server or personal computer hardware system capable of running the Software. A hardware partition or blade is considered a separate hardware system.

**"Processor"** means a single physical chip that houses no more than six (6) processor cores that executes the instructions of the Software.

### **License Notes**

You may install and use the Software on Application Cache Nodes and Data Management Nodes which contain up to the maximum aggregate number of Processors, or in accordance with a VMware-approved licensing model, for which you have paid the applicable license fees.

If you have purchased the "Unlimited Client Upgrade" for all of the Data Management Nodes within a Data Management Network, then you may connect an unlimited number of Application Cache Nodes to any Data Management Node within the Data Management Network.

If you have purchased the "Global WAN Upgrade" for all of the Data Management Nodes within a Data Management Network, then you may enable the Wide Area Network (WAN) communication for any Data Management Node within the Data Management Network.

## **7.5 VMware vFabric SQLFire Professional and Enterprise Edition**

### **Definitions**

**"Processor"** means a single physical chip that houses no more than six (6) processor cores that executes the instructions of the Software.

**"Server"** means a single hardware system capable of running the Software. For purposes of the VMware vFabric Application Platform EULA, a hardware partition or blade is considered a separate hardware system.

### **7.5.1 Product Specific License Notes for vFabric SQLFire Professional and Enterprise Edition**

#### **VMware vFabric SQLFire Professional Edition**

You may install and use the Software on Servers that contain up to the maximum aggregate number of Processors for which you have paid the applicable license fees. Subject to the foregoing, you may link clusters of Servers running the Software; each cluster may contain an unlimited number of linked servers running the Software. You may not use the data-aware stored procedures capability of the Software or enable the Wide Area Network (WAN) communication feature of the Software for any Node in Your network.

#### **VMware vFabric SQLFire Enterprise Edition**

You may install and use the Software on Servers that contain up to the maximum aggregate number of Processors for which You have paid the applicable license fees. Subject to the foregoing, You may link clusters of Servers running the Software; each cluster may contain an unlimited number of linked Servers running the Software. You may also use the data-aware stored procedures capability of the Software and enable the Wide Area Network (WAN) communication feature of the Software for any Node in Your network.

## 7.6 VMware vFabric AppInsight 2.6

### License Notes

You may use the Software for up to the number of Virtual Machines, or in accordance with a VMware-approved licensing model, for which you have paid the applicable license fees.

## 7.7 VMware vFabric Postgres 9.1

### Definitions

"**Non-Production Use**" means use of the Software solely in a development environment for application development, proof of concept, quality-assurance, or other testing purposes.

"**Production Use**" means use of the Software in any manner other than for Non-Production Use.

"**Virtual CPU**" means a single unit of virtual processing power configured to a Virtual Machine.

### License Notes

You may use the Software for Production Use only for up to the number of Virtual Machines for which you have paid the applicable license fees, and each Virtual Machine running the Software is not permitted to have more than two (2) Virtual CPUs per license. In addition, you may use the Software for Non-Production Use. If you run the Software in a Virtual Machine that has more than two (2) Virtual CPUs, then multiple licenses of the Software are required. The splitting of a license to the Software to run in two (2) Virtual Machines is strictly prohibited.

## 7.8 VMware vFabric Postgres 9.2 and 9.3

### Definitions

"**Non-Production Use**" means use of the Software solely in a development environment for application development, proof of concept, quality-assurance, or other testing purposes.

"**Production Use**" means use of the Software in any manner other than for Non-Production Use.

"**Virtual CPU**" means a single unit of virtual processing power configured to a Virtual Machine.

### License Notes

You may use the Software for Production Use only for up to the number of Virtual Machines for which you have paid the applicable license fees, and each Virtual Machine running the Software is not permitted to have more than two (2) Virtual CPUs per license. In addition, you may use the Software for Non-Production Use. If you run the Software in a Virtual Machine that has more than two (2) Virtual CPUs, then multiple licenses of the Software are required. The splitting of a license to the Software to run in two (2) Virtual Machines is strictly prohibited.

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## 7.9 VMware vFabric tc Server, Enterprise Ready Server and Web Server

### Definitions

"**Processor**" means a single physical chip that houses no more than six (6) processor cores that executes the instructions of the Software.

### License Notes

You may install and use the Software on the number of Processors, or in accordance with a VMware-approved licensing model, for which You have paid the applicable license fees.

## 7.10 VMware vFabric Hyperic

### Definitions

"**Machine**" means, solely with respect to vFabric Hyperic product, a license to install and use on a Server, a Virtual Machine, or a network device.

"**Subscription Software**" means Software that is licensed for a specific term and includes support and subscription services, at the level purchased, for the duration of such term ("**Subscription Term**"). Support and subscription services for Subscription Software are subject to the Services Terms.

### License Notes

You may install and use the Software on up to the number Machines, or in accordance with a VMware-approved licensing model, for which You have paid the applicable license fees.

For Subscription Software, You may use the Software only during the Subscription Term. You shall promptly cease all use of the Subscription Software upon expiration or termination of the Subscription Term.

YOU CAN RECOVER FROM MICROSOFT AND ITS SUPPLIERS ONLY DIRECT DAMAGES UP TO U.S. \$5.00, AND YOU CANNOT RECOVER FROM MICROSOFT ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES.

## 7.11 VMware vFabric Application Performance Manager

### Definitions

"**Virtual Machine**" means a software container that can run its own operating system and execute applications like a physical machine.

### License Notes

You may install and use the Software for up to the number of Virtual Machines, or in accordance with a VMware-approved licensing model, for which You have paid the applicable license fees.

## 7.12 VMware SpringSource

### Definitions

**“Machine”** means, solely with respect to Hyperic products, a license to install and use on a server, a Virtual Machine, or a network device.

**“Non-Production Use”** means use of the Software solely in a development environment for proof of concept, quality-assurance, or other testing purposes.

**“Processor”** means a single physical chip that houses no more than six (6) processor cores that executes the instructions of the Software.

**“Production Use”** means use of the Software in a live environment with Your commercial applications for internal business purposes only.

**“Subscription”** means a license for the Software and Support Services that (i) is effective upon the date of purchase and terminates upon the expiration or termination of Support Services; and (ii) may be renewed upon mutual written agreement by the parties and payment of the applicable fees.

**“Support Services”** means the technical support services offered by VMware for the Software pursuant to its then-current support policies.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

### License Notes

For Software licensed on a Subscription basis, You may (i) install the Software on the number of Processors and/or Machines, for Non-Production or Production Use, as specified in an Order Form, or in accordance with a VMware-approved licensing model; and (ii) use the Software for Your internal business purposes during the term of the Subscription. Upon expiration or termination of a Subscription, You shall promptly cease use of the Software and product documentation and destroy (and certify to VMware in writing the fact of such destruction), or return to VMware all copies of the Software and product documentation then in Your possession or control.

## 7.13 VMware vFabric Data Director

### Definitions

**“Virtual CPU”** means a single unit of virtual processing power configured to a Virtual Machine.

### License Notes

You may use the vFabric Data Director Software, in accordance with a VMware-approved licensing model, or for up to the number of Virtual Machines, for which you have paid the applicable license fees, and each Virtual Machine is not permitted to have more than two (2) Virtual CPUs per license. If You use the Software for a Virtual Machine that has more than two (2) Virtual CPUs, then an additional license for each set of two (2) Virtual CPUs is required. The splitting of a license for multiple Virtual Machines is strictly prohibited.

## 8. IT BUSINESS MANAGEMENT

### 8.1 VMware vCenter Chargeback Manager 2.5

#### Definitions

**“Powered-On Virtual Machine”** means a Virtual Machine in an active power state and executing computing instructions.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

#### 8.1.1 General License Notes for VMware vCenter Chargeback Manager 2.5

You may use the Software for up to the number of Powered-On Virtual Machines or in accordance to a VMware approved licensing model for which you have paid the applicable license fees.

You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

### 8.2 VMware Service Manager

#### Definitions

**“Concurrent Users”** means a total number of users who can access or use the Software at any given time.

**“Instance”** means the Software that is installed on either a single physical server or Virtual Machine or on a cluster of multiple physical servers or Virtual Machines working together and accessible by a single network address and has its data stored in a single database.

**“Named Users”** means designated users who can access or use the Software.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

#### License Notes

You may install an Instance of the Software and the access or use of the Software is limited to the number of Concurrent Users and/or Named Users for whom you have paid the applicable license fees.

You may make five (5) copies of the Software solely for development, quality-assurance, or other testing purposes (**“Non Production Use”**).



## 9. VMWARE ITBM AND ITFM

### 9.1 VMware IT Business Management Suite Standard Edition

#### Definitions

**“Named User”** means Your employee or Third Party Agent who has been authorized by You to use the Software in accordance with the terms of this EULA.

**“Operating Systems Instance”** means a single installation of an operating system on a non-virtualized physical server or Virtual Machine.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

#### 9.1.1 General License Notes for VMware IT Business Management Suite Standard Edition

##### **VMware IT Business Management Suite Standard Edition**

You may use the Software for up to the number of Operating Systems Instances for which You have paid the applicable license fees.

IN NO EVENT SHALL INTEL OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOST INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE.

### 9.2 VMware IT Business Management Suite Advanced Edition

#### Definitions

**“Named User”** means Your employee or Third Party Agent who has been authorized by You to use the Software in accordance with the terms of this EULA.

#### 9.2.1 General License Notes for VMware IT Business Management Suite Advanced Edition

##### **VMware IT Business Management Suite Advanced Edition**

You may use the Software for up to the number of Named Users for which You have paid the applicable license fees. For the purposes of Your Order of the Software, the definition of “Named User” also includes a “User” as may be referenced in Your Order. If You purchase additional license rights for a “Read Only User,” such user will have only read rights to the Software. You may use the Software for only one production instance and one non-production instance for every Suite You have purchased.

You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

## 9.3 VMware IT Business Management Suite Enterprise Edition

### Definitions

**“Named User”** means Your employee or Third Party Agent who has been authorized by You to use the Software in accordance with the terms of this EULA.

### 9.3.1 General License Notes for VMware IT Business Management Suite Enterprise Edition

#### **VMware IT Business Management Suite Enterprise Edition**

You may use the Software for up to the number of Named Users for which You have paid the applicable license fees. For the purposes of Your Order of the Software, the definition of “Named User” also includes a “User” as may be referenced in Your Order. If You purchase additional license rights for a “Read Only User,” such user will have only read rights to the Software. You may use the Software for only one production instance and one non-production instance for every Suite You have purchased.

You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and you cannot recover from Microsoft any other damages, including consequential, lost profits, special, indirect or incidental damages.

## 9.4 VMware ITBM and ITFM On Premise

### Definitions

**“Named User”** means Your employee or Third Party Agent who has been authorized by you to use the Software in accordance with the terms of the VMware ITBM and ITFM on Premise EULA.

### License Notes

#### **VMware IT Business Manager; VMware IT Financial Manager**

Each copy of the Software is licensed for use only by the number of Named Users listed in the applicable Order. You are responsible for all activities conducted by your Named Users and for your Named Users' compliance with the VMware ITBM and ITFM on Premise EULA.

The total number of Named Users who are allowed to use the Software licensed under an Order will be listed in such Order. You agree to provide each Named User a unique logon name and password to access the Software, and to prohibit Named Users from sharing a logon name or password with any other person. You may, from time to time, revoke a Named User’s authorization by disabling his or her logon name and password, provided such procedure is used for legitimate business reasons (e.g., change in employee’s duties or employment status) rather than to circumvent the restriction on number of Named Users.

You may use the Software in connection with providing services to third parties, provided that you do not provide such third parties with access to the Software.

The Software will be licensed on a subscription term basis, and You will receive support services during the term of your subscription, subject to the Services Terms.

## 10. VMWARE SUITES

### 10.1 VMware vCloud Suite

#### Definitions

“**Processor**” means a single, physical chip that houses a central processing unit that can execute computer programs.

“**Server**” means a hardware system capable of running the Software. A hardware partition or blade is considered a separate hardware system.

#### **10.1.1 General License Notes for VMware vCloud Suite** **– Standard, Advanced and Enterprise (collectively, the “vCloud Suite”)**

You may use the VMware applications in the vCloud Suite that are not VMware vSphere (“**Non-vSphere Applications in the vCloud Suite**”) for an unlimited number of Virtual Machines, provided that such Virtual Machines reside on a Processor that is running a copy of VMware vSphere licensed to You under the same vCloud Suite edition as the Non-vSphere Applications in the vCloud Suite. Your license to use the Non-vSphere Applications in the vCloud Suite is subject to Your compliance with the terms and conditions of Your license to VMware vSphere set forth below.

If you downgrade the version of VMware vSphere from the version provided with the vCloud Suite, you may continue to use the Non-vSphere Applications in the vCloud Suite, provided that You comply with the terms of the EULA.

You must purchase support and subscription services for the vCloud Suite under the Services Terms in order to receive any upgrades or updates for the VMware applications in the vCloud Suite. If You purchase support and subscription services for the vCloud Suite, You will receive support and subscription services for the VMware applications in the vCloud Suite as set forth in the Services Terms as a part of the vCloud Suite, and You will not be entitled to receive any support or subscription services for the VMware applications in the vCloud Suite on a standalone basis.

#### **10.1.2 License Notes for VMware vSphere Enterprise Plus licensed as a part of the VMware vCloud Suite**

You may use VMware vSphere on a Server that contains up to the maximum number of Processors for which you have paid the applicable license fees. If You exceed the number of Processors permitted under Your license to VMware vSphere, You must purchase additional licenses for the same vCloud Suite edition under which You received VMware vSphere.

Hosting Rights and Restrictions. Notwithstanding anything to the contrary in this EULA, You may use VMware vSphere to deliver “internally developed applications” as a service to third parties via an internal or external network. An “internally developed application” is: (i) a computer application that you have created or developed, and (ii) a third party computer application(s) that (a) is ancillary to your application-based service, and (b) cannot be accessed directly by end users of your application-based service. Except as expressly provided in this paragraph and Section 3.1 of the EULA, the use of VMware vSphere for any other types of hosting or for the benefit of any third party in any manner is strictly prohibited unless You are an authorized participant in a VMware program that is governed by a separate set of terms and conditions which authorizes such activity.

vSphere Big Data Extensions - Log Files. You acknowledge that correspondence and log files generated in conjunction with a request for support services may contain sensitive, confidential or personal information. You

are solely responsible for taking the steps necessary to protect such data prior to sending it to VMware or any third party, including obfuscating the logs or otherwise guarding such information prior to sending it to VMware, Your organization or any third party.

### **10.1.3 License Notes for VMware vCloud Director licensed as a part of the VMware vCloud Suite**

ORACLE IS A THIRD PARTY BENEFICIARY OF THE EULA. THE AMOUNT YOU CAN RECOVER FROM ORACLE CORPORATION FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR DATA USE, SHALL IN NO EVENT EXCEED ONE THOUSAND DOLLARS (U.S. \$1,000).

IN NO EVENT SHALL INTEL OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOST INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE.

### **10.1.4 License Notes for VMware vCenter Operations Management Suite licensed as a part of the VMware vCloud Suite**

IN NO EVENT SHALL ORACLE CORPORATION ("ORACLE") HAVE ANY LIABILITY REGARDING THE ORACLE COMPONENTS PROVIDED UNDER THE EULA, INCLUDING WITHOUT LIMITATION FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR DATA USE, INCURRED BY YOU OR ANY THIRD PARTY, WHETHER IN ACTION IN CONTRACT OR TORT OR OTHERWISE, EVEN IF ANY SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES. YOU CAN RECOVER FROM MICROSOFT CORPORATION AND ITS SUPPLIERS ONLY DIRECT DAMAGES UP TO U.S. \$5.00. YOU CANNOT RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES.

If You are provided with access to regulatory compliance content with the Software, You may only use such content if You paid the applicable fees.

ALTHOUGH THE SOFTWARE MAY INCLUDE SPECIFIC TECHNICAL AND CONFIGURATION GUIDANCE FOR REGULATORY COMPLIANCE, IT IS NOT A COMPREHENSIVE REGULATORY COMPLIANCE SOLUTION AND SHOULD NOT BE CONSTRUED AS LEGAL OR REGULATORY ADVICE. YOU SHOULD CONSULT YOUR REGULATORY COMPLIANCE EXPERT, LEGAL COUNSEL, OR AUDITOR FOR ANSWERS TO SPECIFIC COMPLIANCE QUESTIONS AND TO HELP YOU UNDERSTAND YOUR REGULATORY COMPLIANCE OBLIGATIONS.

### **10.1.5 License Notes for VMware vCloud Connector Advanced licensed as a part of the VMware vCloud Suite**

**Data Privacy.** Data that VMware collects during the registration, activation and maintenance of your account ("Relationship Data") is needed in order to manage your account, send to you notifications, deliver products/services or product/service information, bill you for the purchased products/services, improve products/services, monitor compliance and provide ongoing support (to the extent VMware chooses to do any of the foregoing). VMware uses and shares Relationship Data for legitimate business purposes in line with industry standards. The information that VMware collects or you submit through the generally accessible portions of VMware's webpages is subject to VMware's Privacy Policy posted on such webpages, but VMware's Privacy Policy does not apply to Relationship Data that you have submitted.

**Agents.** You should be aware that the Software includes an Agent (as defined below). "Agent" (otherwise known as vCloud Connector Node) is a virtual appliance that can be deployed in each of the cloud computing environments that you connect to through use of the Software. You are responsible for determining whether any disclosure of such Agent to any party is necessary, and obtaining any consents if so required. You are also responsible for complying with any applicable privacy and data protection laws. You shall only deploy Agents to cloud computing environments subject to an agreement with the cloud computing environment supplier or other applicable party that protects VMware's and its licensors' interests consistent with the terms contained in this Agreement.

#### **10.1.6 License Notes for VMware vCloud Automation Center licensed as a part of the VMware vCloud Suite**

You may not use any components of the VMware vCloud Automation Center other than as part of the VMware vCloud Automation Center.

You can recover from Microsoft and its suppliers only direct damages up to U.S. \$5.00, and You cannot recover any other damages, including consequential, lost profits, special, indirect or incidental damages.

You understand that any log files generated in order to obtain support from VMware may contain sensitive, confidential or personal information. You should consider obfuscating the logs before sending them to VMware.

If you purchase a license of VMware vCloud Automation Center as part of the vCloud Suite Standard, you are subject to the following restrictions for VMware vCloud Automation Center

You may not use vCloud Automation Center for reclamation, chargeback and multi-tenancy. You may not use vCloud Automation Center with multi-vendor software provisioning mechanisms other than cloning.

## 10.2 VMware vSphere with Operations Management

### **Definitions**

**"Processor"** means a single, physical chip that houses a central processing unit that can execute computer programs.

**"Server"** means a hardware system capable of running the Software. A hardware partition or blade is considered a separate hardware system.

#### **10.2.1 General License Notes for VMware vSphere with Operations Management – Standard, Enterprise and Enterprise Plus (collectively, "vSOM")**

Your license to use the VMware applications provided with vSOM that are not VMware vSphere ("**Non-vSphere Applications**") is restricted solely to the Virtual Machines that reside on a Processor that is running a copy of VMware vSphere licensed to You as a part of vSOM. Your license to use the Non-vSphere Applications is subject to Your compliance with the terms and conditions of Your license to VMware vSphere set forth below.

If you downgrade the version of VMware vSphere from the version provided with vSOM, you may continue to use the Non-vSphere Applications in vSOM, provided that You comply with the terms of the EULA.

You must purchase support and subscription services for vSOM under the Services Terms in order to receive any upgrades or updates for the VMware applications in vSOM. If You purchase support and subscription services for vSOM, You will receive support and subscription services for the VMware applications in vSOM as set forth in the Services Terms as a part of vSOM, and You will not be entitled to receive any support or subscription services for the VMware applications in vSOM on a standalone basis.

### **10.2.2 License Notes for VMware vSphere licensed as a part of vSOM**

You may use VMware vSphere on a Server that contains up to the maximum number of Processors for which you have paid the applicable license fees. If You exceed the number of Processors permitted under Your license to VMware vSphere, You must purchase additional licenses for the same vSOM edition under which You received VMware vSphere.

Hosting Rights and Restrictions. Notwithstanding anything to the contrary in this EULA, You may use VMware vSphere to deliver “internally developed applications” as a service to third parties via an internal or external network. An “internally developed application” is: (i) a computer application that you have created or developed, and (ii) a third party computer application(s) that (a) is ancillary to your application-based service, and (b) cannot be accessed directly by end users of your application-based service. Except as expressly provided in this paragraph and Section 3.1 of the EULA, the use of VMware vSphere for any other types of hosting or for the benefit of any third party in any manner is strictly prohibited unless You are an authorized participant in a VMware program that is governed by a separate set of terms and conditions which authorizes such activity.

vStorage API for Array Integration (VAAI). You may use storage arrays that are certified for VAAI only with Operations Management Enterprise, or VMware vSphere with Operations Management Enterprise Plus editions.

Third Party Multipathing. You may use multipathing extensions module only with VMware vSphere with Operations Management Enterprise, or VMware vSphere with Operations Management Enterprise Plus editions.

vSphere Auto Deploy. You may use this feature only if You have licensed VMware vSphere with Operations Management Enterprise Plus.

vSphere View Accelerator. You may use this feature only if You have licensed VMware vSphere with Operations Management Enterprise Plus.

vSphere Big Data Extensions. You may use this feature only if You have licensed VMware vSphere with Operations Management Enterprise or VMware vSphere with Operations Management Enterprise Plus.

vSphere Big Data Extensions - Log Files. You acknowledge that correspondence and log files generated in conjunction with a request for support services may contain sensitive, confidential or personal information. You are solely responsible for taking the steps necessary to protect such data prior to sending it to VMware or any third party, including obfuscating the logs or otherwise guarding such information prior to sending it to VMware, Your organization or any third party.

### **10.2.3 License Notes for VMware vCenter Operations Management Suite licensed as a part of vSOM**

IN NO EVENT SHALL ORACLE CORPORATION (“ORACLE”) HAVE ANY LIABILITY REGARDING THE ORACLE COMPONENTS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR DATA USE, INCURRED BY YOU OR ANY THIRD PARTY, WHETHER IN ACTION IN CONTRACT OR TORT OR OTHERWISE, EVEN IF ANY SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES. YOU CAN RECOVER FROM MICROSOFT CORPORATION AND ITS SUPPLIERS ONLY DIRECT DAMAGES UP TO U.S. \$5.00. YOU CANNOT RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES.

If You are provided with access to regulatory compliance content with the Software, You may only use such content if You paid the applicable fees.

ALTHOUGH THE SOFTWARE MAY INCLUDE SPECIFIC TECHNICAL AND CONFIGURATION GUIDANCE FOR REGULATORY COMPLIANCE, IT IS NOT A COMPREHENSIVE REGULATORY COMPLIANCE SOLUTION AND SHOULD NOT BE CONSTRUED AS LEGAL OR REGULATORY ADVICE. YOU SHOULD CONSULT YOUR REGULATORY COMPLIANCE EXPERT, LEGAL COUNSEL, OR AUDITOR FOR ANSWERS TO SPECIFIC COMPLIANCE QUESTIONS AND TO HELP YOU UNDERSTAND YOUR REGULATORY COMPLIANCE OBLIGATIONS.

## 10.3 VMware vCenter Operations Management Suite

### Definitions

**“Operating Systems Instance”** means a single installation of an operating system on a non-virtualized physical server or Virtual Machine.

**“Processor”** means a single, physical chip that houses a central processing unit that can execute computer programs.

**“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

### 10.3.1 General License Notes for VMware vCenter Operations Management Suite

For Your license to each edition of the VMware vCenter Operations Management Suite, the number of permitted Virtual Machines or Operating Systems Instances, as applicable (each, a “License Unit”) is calculated as the average number of License Units used during the immediately preceding 365 days.

IN NO EVENT SHALL ORACLE CORPORATION (“ORACLE”) HAVE ANY LIABILITY REGARDING THE ORACLE COMPONENTS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR DATA USE, INCURRED BY YOU OR ANY THIRD PARTY, WHETHER IN ACTION IN CONTRACT OR TORT OR OTHERWISE, EVEN IF ANY SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES. YOU CAN RECOVER FROM MICROSOFT CORPORATION AND ITS SUPPLIERS ONLY DIRECT DAMAGES UP TO U.S. \$5.00. YOU CANNOT RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES.

If You are provided with access to regulatory compliance content with the Software, You may only use such content if You paid the applicable fees.

ALTHOUGH THE SOFTWARE MAY INCLUDE SPECIFIC TECHNICAL AND CONFIGURATION GUIDANCE FOR REGULATORY COMPLIANCE, IT IS NOT A COMPREHENSIVE REGULATORY COMPLIANCE SOLUTION AND SHOULD NOT BE CONSTRUED AS LEGAL OR REGULATORY ADVICE. YOU SHOULD CONSULT YOUR REGULATORY COMPLIANCE EXPERT, LEGAL COUNSEL, OR AUDITOR FOR ANSWERS TO SPECIFIC COMPLIANCE QUESTIONS AND TO HELP YOU UNDERSTAND YOUR REGULATORY COMPLIANCE OBLIGATIONS.

### 10.3.2 Product Edition/Suite Specific License Notes

#### **VMware vCenter Operations Management Suite 5.8 Standard**

In addition to the general license notes above, if You purchase a license to the VMware vCenter Operations Management Suite 5.7 Standard, the following terms apply:

You may use the Software for up to the number of Virtual Machines for which you have paid the applicable license fees.

#### **VMware vCenter Operations Management Suite 5.8 Advanced**

In addition to the general license notes above, if You purchase a license to the VMware vCenter Operations Management Suite 5.7 Advanced, the following terms apply:

You may use the Software for up to the number of Operating Systems Instances for which you have paid the applicable license fees.

VMware vCenter Operations Management Suite may be enhanced with data from third party server, storage and networking monitoring tools, provided that the third party systems are integrated with or otherwise used in conjunction with the Virtual Machines, physical servers or VMware vSphere hosts managed by the VMware vCenter Operations Manager provided with the VMware vCenter Operations Management Suite.

VMware vCenter Configuration Manager may only be used to manage your virtualized infrastructure, including VMware vSphere, VMware vCloud Networking and Security Suite, VMware vCenter Server and VMware vCloud Director, but not the operating systems and applications running as virtual machines on your virtualized infrastructure.

You may use only the VMware vFabric Hyperic platform plug-ins for Windows, Linux, AIX, Solaris, and HP-UX operating systems.

#### **VMware vCenter Operations Management Suite 5.8 Enterprise**

In addition to the general license notes above, if You purchase a license to the VMware vCenter Operations Management Suite 5.7 Enterprise, the following terms apply:

You may use the Software for up to the number of Operating Systems Instances for which you have paid the applicable license fees.

VMware vCenter Operations Management Suite may be enhanced with third party infrastructure, operating systems and application monitoring tools, provided that the third party systems are integrated with or otherwise used in conjunction with the Virtual Machines, physical servers or VMware vSphere hosts managed by the VMware vCenter Operations Manager provided with the VMware vCenter Operations Management Suite.

## **10.4 VMware Horizon Suite**

### **Definitions**

**“Active Connection”** means (i) with respect to Horizon View, any connections to Powered On Desktop Virtual Machines, Terminal Services Sessions and physical computers, (ii) with respect to Horizon Mirage, any provisioned desktop image, and (iii) with respect to Horizon Workspace, any user who has logged in and authenticated into their workspace (provided however that a downloaded desktop agent that is constantly syncing or a provisioned and accepted workspace on a mobile device will always be considered an Active Connection and will constitute one Concurrent User at all times).

**“Concurrent Users”** means the total number of users accessing or using the Software at any given time to maintain an Active Connection to their workspace or desktop through an endpoint device.



**"Desktop Virtual Machine"** is a hosted Virtual Machine with one of the following Microsoft Windows operating systems: XP, Vista, 7 or 8.

**"Named User"** means Your single designated employee or Third Party Agents who have been authorized by You to use the Software in accordance with the terms of this Agreement.

**"Powered On Desktop Virtual Machine"** means a Desktop Virtual Machine receiving a remote connection from a device or running locally on a device.

**"Terminal Services Session"** means a Microsoft Windows terminal services session running a valid Microsoft Windows license.

**"Virtual Machine"** means a software container that can run its own operating system and execute applications like a physical machine.

#### **10.4.1 General License Notes for VMware Horizon Suite**

You may use the Software for up to the number of Named Users or Concurrent Users for which you have paid the applicable license fees.

The VMware Horizon Suite may be licensed (i) per Named User in 10 or 100 Named User Packs or (ii) per Concurrent User in 10 or 100 Concurrent User Packs. The VMware Horizon Suite includes VMware Horizon View, VMware Horizon Mirage, VMware Horizon Workspace, and VMware vCenter Operations Manager for VMware Horizon View.

## 11. PIVOTAL CF

If you purchase a license to Pivotal CF from VMware, the following End User License Agreement will apply.

### END USER LICENSE AGREEMENT

**IMPORTANT-READ CAREFULLY:** This Software contains computer programs and other proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of this End User License Agreement (the “EULA”).

This EULA and Pivotal Product Guide referenced herein is a legally binding document between you (meaning the person or the entity that obtained the Software under the terms and conditions of this EULA, is agreeing to be bound by the terms and conditions of this EULA, and is referred to below as “You” or “Customer”) and Pivotal (which means (i) Pivotal Software, Inc., if Customer is located in the United States; and (ii) the local Pivotal sales subsidiary, if Customer is located in a country in which Pivotal has a local sales subsidiary; and (iii) GoPivotal International Limited, if Customer is located outside the United States and in a country in which Pivotal does not have a local sales subsidiary (in each case, referred to herein as “Pivotal”). Unless Customer has entered into a written and separately signed agreement with Pivotal with respect to the license of the Software and provision of Support Services and Subscription Services that is currently in force, this EULA governs Customer's use of the Software and the provision of associated Support Services and Subscription Services. Capitalized terms have the meaning stated in the EULA.

Unless Customer has entered into a written and separately signed agreement with Pivotal that is currently in effect with respect to the subject matter of this EULA, by clicking on the “Agree” or “Accept” or similar button at the end of this EULA, or proceeding with the installation, downloading, use or reproduction of this Software, or authorizing any other person to do so, you are representing to Pivotal that you are (i) authorized to bind Customer; and (ii) agreeing on behalf of Customer that the terms of this EULA shall govern the relationship of the parties with regard to the subject matter in this EULA and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this EULA.

If Customer has a written and separately signed software license and services agreement currently in effect directly with Pivotal applicable to the Software, Support Services or Subscription Services, then by clicking on the “Agree” or “Accept” or similar button at the end of this EULA, or proceeding with the installation, downloading, use or reproduction of this Software, or authorizing any other person to do so, you are representing that you are (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of such written, signed agreement shall replace and supersede the terms of this EULA and shall govern the relationship of the parties with regard to this Software and/or the corresponding services, as applicable, and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of such written signed agreement.

If you do not have authority to agree to the terms of this EULA on behalf of the Customer, or do not accept the terms of this EULA on behalf of the Customer, click on the “Cancel” or “Decline” or other similar button at the end of this EULA and/or immediately cease any further attempt to install, download or use this Software for any purpose, and remove any partial or full copies made from this Software.

#### 1. DEFINITIONS

- 1.1. “Affiliate” means a legal entity that is controlled by, controls, or is under common “control” of Pivotal or You. “Control” means more than 50% of the voting power or ownership interests.

- 1.2. “Confidential Information”** means and includes the terms of this EULA, Software, and all confidential and proprietary information of Pivotal or Customer, including without limitation, all business plans, product plans, financial information, software, designs, and technical, business and financial data of any nature whatsoever, provided that such information is marked or designated in writing as “confidential,” “proprietary,” or with any other similar term or designation. Confidential Information does not include information that is (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession and prepared contemporaneously with such independent development; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.
- 1.3. “Documentation”** means, collectively, the operating instructions, release notes, user manuals and/or help files for the Software in electronic or written form.
- 1.4. “Open Source Software” or “OSS”** means software components that are licensed under a license approved by the Open Source Initiative or similar open source or freeware license and which are included in, embedded, utilized by, provided or distributed with the Software.
- 1.5. “Pivotal Product Guide”** means the notice by which Pivotal informs Customer of product-specific use rights and restrictions. The Pivotal Product Guide may be delivered in writing attached to the applicable Reseller quote, or otherwise in writing and/or a posting on the applicable Pivotal website, currently located at <http://www.gopivotal.com/product-guide>. The terms of the Pivotal Product Guide in effect as of the date of the quote shall be deemed incorporated into and made a part of the relevant Customer purchase order. Each Pivotal Product Guide is dated and is archived when it is superseded by a newer version. Pivotal shall not change any Pivotal Product Guide retroactively with regard to any products listed on an applicable quote issued prior to the date of the applicable Pivotal Product Guide. At Customer's request, Pivotal shall without undue delay provide Customer with a copy of the applicable Pivotal Product Guide.
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- 1.7. “Software”** means the Pivotal computer programs (listed on Pivotal's commercial price list) for which you obtain a license under an order or quote (which specifies a Subscription Services time-bound or perpetual license Term), together with any Software Releases that is provided to You pursuant to a Support Services and/or Subscription Services contract and that is not subject to a separate license agreement, as well as any associated media, printed materials, and related electronic documentation.
- 1.8. “Software Release”** means any subsequent version of the Software provided by Pivotal after initial delivery of the Software, but does not include new Software products or services (as determined by Pivotal).
- 1.9. “Subscription Services”** means, during the effective Software Term, as set forth in the applicable quote or order for such Software: (a) access to the Software and Documentation subject to the licensing terms and restrictions in the Pivotal Product Guide; and (b) Support Services.
- 1.10. “Support Services”** means the services available from Pivotal or its designee which provides Software Releases and support services for Software as set forth at <http://www.gopivotal.com/support>, as such schedule may be updated by Pivotal from time to time.

**1.11 “Term”** shall mean the period of time during which You are licensed to use the Software, as set forth in the quote, or order, and the Software will be available for Your use and/or access only for the duration of such Term.

## **2. EVALUATION SOFTWARE**

**2.1** This EULA shall also apply to “Evaluation Software” (including any copies made by or on behalf of Customer), and all Documentation for the foregoing, which are licensed to You for a limited duration for the specific purpose of evaluation prior to making a final decision on procurement. If You are licensing the Software for evaluation purposes, You can only use the Software in a non-commercial, non-production environment in a country where Pivotal has a local sales subsidiary, and only for a sixty (60) day period beginning on the day the Software is made available to you, unless otherwise agreed to in writing by Pivotal or as set forth in the Pivotal Product Guide (“Evaluation Term”). The particular Evaluation Software, installation site and other transaction-specific conditions shall be as mutually agreed in writing between Pivotal and Customer.

**2.2** Notwithstanding any deviating terms in this EULA, all licenses for Evaluation Software expire at the end of the Evaluation Term. The right to evaluate the Evaluation Software expires at the end of the Evaluation Term or upon return of the Evaluation Software to Pivotal, whichever is earlier.

**2.3** Without prejudice to any other limitations on Pivotal’s liability set forth in this EULA (which shall also apply to Evaluation Software), Evaluation Software is provided “AS IS” and any warranty or damage claims against Pivotal in connection with Evaluation Software are hereby excluded, except in the event of fraud or wilful misconduct of Pivotal.

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included in the Software, the Documentation or as applicable, the corresponding source files for the Software available at <http://www.gopivotal.com/open-source>. Customer is responsible for complying with any third party terms and conditions applicable to such Open Source Software. These OSS license terms may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms, solely with respect to such OSS.

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**3.4 Restrictions.** Except as expressly permitted by this EULA or by applicable law, You may not (i) sell, lease, assign, license, sublicense, distribute or otherwise transfer in whole or in part the Software; (ii) permit any use of or access to the Software by any third party; (iii) operate the Software on behalf of or for the benefit of any third party, including the operation of any service that is accessed by a third party (except that, for the purposes of this Section 3.4(iii), You may use the Software to deliver hosted services to your Affiliates as defined herein); (iv) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software except to the extent such a restriction is expressly prohibited under applicable law; (v) modify or create derivative works based upon the Software; (vi) use the Software in a service bureau, application service provider or similar capacity other than under Section 3.4(iii); or (vii) create, develop, license, install, use, or deploy any software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions in the Software.

**3.5 Customer Responsibilities.** You are responsible for separately obtaining any software, hardware or other technology required to operate the Software and complying with any corresponding terms and conditions. Customer is solely responsible for all obligations to comply with laws applicable to their use of the Software including without limitation any processing of personal data.

**3.6 Term License.** You are permitted to use the Software and access support only during the Term.

**3.7 Data Collection and Usage.** You agree that Pivotal may collect, use, store and transmit technical and related information about use of the Software including but not limited to internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services to You. You are responsible for obtaining any consents required in order to enable Pivotal to exercise the rights set forth in this Section 3.7 and for Customer's use of the Software, in each case in compliance with applicable law.

**3.8 Audit Rights.** During the term of this EULA and for two (2) years after termination or expiration of the EULA or Support Services and/or Subscription Services for the Software has expired, You agree to maintain accurate records as to your installation and use of the Software sufficient to provide evidence of compliance with the terms of this EULA. Pivotal, or an independent third party designated by Pivotal, may audit, upon written notice to You, your books, records, and computing devices to determine your compliance with this EULA and your payment of the applicable license and Support Services and/or Subscription Services fees, if any, for the Software. Pivotal may conduct no more than one (1) audit in any twelve (12) month period. In the event that any such audit reveals an underpayment by You of more than five percent (5%) of the license amounts due to Pivotal in the period being audited, or that You have breached any term of the EULA, then, in addition to paying to Pivotal any underpayments for Software licenses and Support Services and/or Subscription Services fees and any other remedies Pivotal may have, You will promptly pay to Pivotal the audit costs incurred by Pivotal.

**4. TITLE.** Software shall be deemed accepted upon download. Pivotal retains all right, title, and interest in and to the Software, and all related intellectual property rights. Pivotal retains all rights not expressly granted to You in this EULA and no rights shall be implied from the provisions hereof.

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#### **6. SOFTWARE RELEASES.**

Customer shall use and deploy Software Releases strictly in accordance with terms of the original license for the Software.

**7. TERMINATION.** Pivotal may terminate this EULA immediately upon notice if You do not comply with any term of this EULA. In the event of expiration or any termination of this Agreement, You must remove and destroy all copies of the Software, including all backup copies, from the server, virtual machine, and all computers and terminals on which the Software is installed or used. Any obligations to pay fees incurred prior to termination and Sections 1, 2.3, 3.4, 3.7, 3.8, 4, 7, 9, 10, 11, 12 and 13 of this EULA shall survive expiration or termination of this Agreement for any reason.

**8. IP INDEMNITY.** Subject to Section 9.3 herein, Pivotal shall (i) at its own expense, defend Customer against any third party claim that the Software infringes a copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction, or pay the amounts stated in a written settlement negotiated and approved by Pivotal. The foregoing obligations are subject to the following: Customer (a) notifies Pivotal promptly in writing of such claim; (b) grants Pivotal sole control over the defense and settlement thereof; (c) reasonably cooperates in response to a Pivotal request for assistance; and (d) has installed and used the Software in accordance with the Documentation and is not otherwise in material breach of this EULA. Should any such Software become, or in Pivotal's opinion be likely to become, the subject of such a claim, Pivotal may, at its option and expense, (1) procure for Customer the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; or (3) request return of the Software and, upon receipt thereof, refund the price paid by Customer, less straight-line depreciation based on a three (3) year useful life for Software. Notwithstanding anything to the contrary stated herein, Pivotal shall have no liability to the extent that the alleged infringement arises out of or relates to: (A) combination, operation or use of the Software with any other software, hardware, technology, data, or other materials, if the infringement would not have arisen but for such combination, operation or use; (B) use for a purpose or in a manner for which the Software was not designed; (C) any modifications to the Software made by any person other than Pivotal or its authorized representatives; (D) any modifications to the Software made by Pivotal pursuant to Customer's specific instructions; or (E) use of any older version of the Software when use of a newer Software Release made available to Customer would have avoided the infringement; or (F) any Open Source Software not developed by Pivotal. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND PIVOTAL'S ENTIRE LIABILITY WITH RESPECT TO ALLEGED INFRINGEMENT OF INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY ANY OR ALL OF THE SOFTWARE OR ITS OPERATION OR USE.

#### **9. LIMITED WARRANTY AND LIMITATION OF LIABILITY**

**9.1 Limited Warranty.** Pivotal warrants to Customer that (i) the Software will substantially conform to the functional description set forth in the Documentation accompanying the Software for a period of 90 days after the date of delivery of the Software to You ("**Warranty Period**"). If during the Warranty Period the Software does not substantially conform to the functional description set forth in the Documentation, your exclusive remedy will be that Pivotal shall, at its sole option, correct the defects in the Software or refund the license fees You paid, if any, for the Software provided that (i) the Software has been properly installed and used at all times and in accordance with the Documentation; (ii) no modification, deletion or addition has been made to the Software by persons other than Pivotal or its authorized representative; and (iii) Pivotal receives written notice of the non-conformity within the Warranty Period.

**9.2** EXCEPT AS SET FORTH IN SECTION 9.1, PIVOTAL AND ITS LICENSORS PROVIDE THE SOFTWARE WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS EULA OR COMMUNICATION WITH YOU, AND PIVOTAL AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE REGARDING OR RELATING TO THE SOFTWARE, THE DOCUMENTATION, OR ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS EULA. PIVOTAL AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT THE SOFTWARE WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.

**9.3 LIMITATION OF LIABILITY.** IN NO EVENT WILL PIVOTAL BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND ARISING UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE. PIVOTAL'S AND ITS LICENSORS' AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS EULA OR THE PROVISION OR USE OF ANY AND ALL OF THE SOFTWARE AND SERVICES PROVIDED HEREUNDER, WILL NOT, IN ANY EVENT, EXCEED THE LESSER OF (i) FEES YOU PAID FOR THE SOFTWARE DURING THE 12 MONTHS PRECEDING THE DATE PIVOTAL RECEIVES WRITTEN NOTICE OF THE FIRST CAUSE OF ACTION TO ARISE HEREUNDER; OR (ii) USD\$1,000,000. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER PIVOTAL OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**9.4 Limitation Period.** All claims must be made within (i) the time period specified by applicable law; or (ii) eighteen (18) months after the cause of action accrues if no such period is specified at law.

**9.5 Regular Back-ups.** As part of its obligation to mitigate damages, Customer shall take reasonable data backup measures. In particular, Customer shall backup data before Pivotal performs any remedial, upgrade, uploads or installs any new Software Release or otherwise works on Customer's production systems.

**10. CONFIDENTIALITY.** Each party shall (i) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this EULA; and (ii) use at least reasonable care to protect from disclosure to any third parties any Confidential Information disclosed by the other party for a period commencing upon the date of disclosure until three (3) years thereafter, except with respect to Customer data stored within the Software to which Pivotal may have access in connection with the provision of Support or Subscription Services, which shall remain Confidential Information until or unless one of the exceptions stated in the above definition of Confidential Information applies. Notwithstanding the foregoing, either party may disclose Confidential Information (a) to independent contractors performing services on its behalf and Affiliates for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such Affiliate complies independent contractors performing services on its behalf and comply with the foregoing; and (b) if required by law provided the receiving party has given the disclosing party prompt notice. Pivotal will not be responsible for unauthorized disclosure of Customer data stored within the Software arising from a data security breach, so long as Pivotal has implemented reasonable technical, physical and organizational safeguards in accordance with its standard policies and procedures then in effect.

**11. SOFTWARE-SPECIFIC TERMS AND CONDITIONS.** In addition to the above sections, the Software is subject to the specific license use rights and terms and conditions located at <http://www.gopivotal.com/product-guide>. In the event of any conflict between the Software-specific terms and conditions set forth in the Pivotal Product Guide and those set forth in this EULA, the Software-specific terms and conditions set forth in the Pivotal Product Guide shall control.

## **12. GENERAL.**

**12.1 Construction.** As used in this EULA: (a) the terms "include" and "including" are meant to be inclusive and shall be deemed to mean "include without limitation" or "including without limitation," (b) the word "or" is disjunctive, but not necessarily exclusive, (c) words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa, (d) references to "dollars" or "\$" shall be to United States dollars unless otherwise specified herein, (e) the term "his" applies to both genders, (f) unless otherwise specified, all references to days, months or years shall be deemed to be preceded by the word "calendar." The headings of this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation or construction of this Agreement.

**12.2 Governing Law.** This EULA is governed by: (i) the laws of California when Pivotal means Pivotal Software, Inc.; and (ii) the laws of the country in which the applicable Pivotal subsidiary is registered to do business when Pivotal means the local Pivotal subsidiary; and (iii) the laws of Ireland when Pivotal means GoPivotal International Limited; provided that in each case, the foregoing shall exclude any conflict of law rules, and the U.N. Convention on Contracts for the International Sale of Goods shall not apply.

**12.3 Jurisdiction; Venue.** In the event of a dispute concerning this EULA, Customer consents to the sole and exclusive personal jurisdiction and venue of (i) the state and federal courts of Santa Clara County, California when Pivotal Software, Inc. is party to this EULA, or (ii) when a local Pivotal subsidiary or GoPivotal International Limited is the licensor of the Software hereunder, then the courts of competent jurisdiction in the country where such subsidiary or GoPivotal International Limited is domiciled.

**12.4 Notices.** Any notice, consent or other communication to be given under this Agreement by any party shall be in writing and shall be either (a) personally delivered, (b) mailed by registered or certified mail, postage prepaid with return receipt requested, (c) delivered by prepaid overnight express delivery service or same-day local courier service, or (d) via e-mail transmission, with receipt confirmed or a confirming copy sent via mail. Notices delivered personally, by overnight express delivery service, by local courier service, facsimile transmission or email shall be deemed given as of actual receipt. Mailed notices shall be deemed given seven (7) Business Days after mailing.

**12.5 Successors and Assigns.** This Agreement may not be assigned without the express written consent of the other party, except that Pivotal may assign or transfer this Agreement, in whole or in part, without consent of Customer to any successors-in-interest to all or substantially all of the business or assets of Pivotal whether by merger, reorganization, asset sale or otherwise, or to any Affiliates of Pivotal. Any purported transfer or assignment in violation of this section is void. Subject to the foregoing restrictions, the terms and conditions of this EULA shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties.

**12.6 Severability.** If any provision of this EULA becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this EULA, and such court will replace such illegal, void or unenforceable provision of this EULA with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this EULA shall be enforceable in accordance with its terms.

**12.7 Waiver.** The failure by any party to insist upon strict performance of any of the provisions contained in this EULA shall in no way constitute a waiver of its rights as set forth in this EULA, at law or in equity, or a waiver of any other provisions or subsequent default by another party in the performance of or compliance with any of the terms and conditions set forth in this EULA. No waiver shall be effective against a party unless evidenced by a writing executed by the party against which such waiver is asserted.

**12.8 Counterparts.** This EULA may be executed in any number of counterparts, which collectively shall constitute one instrument. A facsimile, telecopy or other reproduction of this EULA may be executed by one or more parties



hereto and delivered by such party by facsimile or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute and deliver an original of this EULA as well as any facsimile, telecopy or other reproduction hereof.

**12.9 Independent Contractor.** The parties are independent contractors. Nothing in this EULA shall be construed to create a joint venture, partnership, or an agency relationship between the parties themselves or between the parties and any third Person. Except as expressly provided herein, no party has the authority, without the other party's prior written approval, to bind or commit any other party in any way.

**12.10 No Third-party Beneficiaries.** This EULA is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

**12.11 Force Majeure.** In the event that either party is prevented from performing or is unable to perform any of its obligations under this EULA due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, material unavailability, unavailability or interruption of telecommunications equipment or networks, or any other cause beyond the reasonable control of the party invoking this section, and if such party shall have used reasonable efforts to mitigate its effects, such party shall give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences.

**12.12 Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) 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 (b) 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; and (2) you will not permit the Software 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. If the Software and related documentation is licensed to the United States government or any agency thereof, then the Software and documentation will be deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of the Software and any related documentation by the U.S. Government will be governed solely by this EULA and is prohibited except to the extent expressly permitted by this EULA.

**12.13 Order of Precedence.** This EULA (i) is the complete statement of the agreement of the parties with regard to the subject matter hereof; and (ii) may be modified only by a writing signed by both parties. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this EULA, shall be null and void and of no legal force or effect. In the event of conflict or inconsistency among the Pivotal Product Guide, this EULA and a purchase order, the following order of precedence shall apply: (a) the Pivotal Product Guide, (b) this EULA and (c) the order.

**12.14 Entire Agreement.** This EULA, including accepted orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

**12.15 Contact Information.** Please direct legal notices or other correspondence to Pivotal Software, Inc., 1900 S. Norfolk St., Suite 125, San Mateo, California 94403, United States of America, Attn: [legal@gopivotal.com](mailto:legal@gopivotal.com).

**13. COUNTRY SPECIFIC TERMS [IRELAND].** The terms in this Section 13 apply only when Pivotal means the Pivotal sales subsidiary located in Ireland (currently GoPivotal International Limited) and for the avoidance of doubt these terms below shall replace the terms in the EULA above as specifically stated and all other terms shall remain unchanged:

**13.1 Section 9.2 (Warranty Exclusions).** The entire section is deleted and replaced with:

**D. Warranty Exclusions.** Except as expressly stated in the applicable warranty set forth in this EULA and the applicable exhibits, Pivotal (INCLUDING ITS SUPPLIERS) MAKES NO WARRANTIES, AND ALL WARRANTIES, TERMS AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED BY LAW, TO CUSTOMER OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES, TERMS AND CONDITIONS, OF FITNESS FOR PURPOSE, DESCRIPTION, AND QUALITY ARE HEREBY SPECIFICALLY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

**13.2 Section 9.3 (LIMITATION OF LIABILITY).** The entire section is deleted and replaced with the:

### **9.3. LIMITATION OF LIABILITY.**

- A.** In case of death or personal injury caused by Pivotal's negligence, in case of Pivotal's willful misconduct, fraud or gross negligence, and where a limitation of liability is not permissible under applicable mandatory law, Pivotal shall be liable according to statutory law.
- B.** Subject always to subsection 9.3.A, the liability of Pivotal (including its suppliers) to the Customer under or in connection with a Customer's purchase order, whether arising from negligent error or omission, breach of contract, or otherwise ("Defaults") shall not exceed the lesser of (i) fees You paid for the Software during the 12 months preceding Pivotal's notice of such claim; or (ii) or one million euros (€1,000,000).
- C.** In no event shall Pivotal (including its suppliers) be liable to Customer however that liability arises, for the following losses, whether direct, consequential, special, incidental, punitive or indirect: (i) loss of actual or anticipated revenue or profits, loss of use, loss of actual or anticipated savings, loss of or breach of contracts, loss of goodwill or reputation, loss of business opportunity, loss of business, wasted management time, cost of substitute services or facilities, loss of use of any software or data; and/or (ii) indirect, consequential, exemplary or incidental or special loss or damage; and/or (iii) damages, costs and/or expenses due to third party claims; and/or (iv) loss or damage due to the Customer's failure to comply with obligations under this EULA, failure to do back-ups of data or any other matter under the control of the Customer and in each case whether or not any such losses were direct, foreseen, foreseeable, known or otherwise, and whether or not that party was aware of the circumstances in which such losses could arise. For the purposes of this Section 9.3, the term "loss" shall include a partial loss, as well as a complete or total loss.
- D.** The parties expressly agree that should any limitation or provision contained in this Section 9.3 be held to be invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted, but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Section 9.3.
- E.** The parties expressly agree that any order for specific performance made in connection with this EULA in respect of Pivotal shall be subject to the financial limitations set out in sub-section 9.3.B.

**F. CUSTOMER OBLIGATIONS IN RESPECT OF PRESERVATION OF DATA.** During the Term of the EULA the Customer shall:

**1)** from a point in time prior to the point of failure, (i) make full and/or incremental backups of data which allow recovery in an application consistent form, and (ii) store such back-ups at an off-site location sufficiently distant to avoid being impacted by the event(s) (e.g. including but not limited to flood, fire, power loss, denial of access or air crash) and affect the availability of data at the impacted site;

**2)** have adequate processes and procedures in place to restore data back to a point in time and prior to point of failure, and in the event of real or perceived data loss, provide the skills/backup and outage windows to restore the data in question;

**3)** use anti-virus software, regularly install updates across all data which is accessible across the network, and protect all storage arrays against power surges and unplanned power outages with uninterruptible power supplies; and

**4)** ensure that all operating system, firmware, system utility (e.g. but not limited to, volume management, cluster management and backup) and patch levels are kept to Pivotal recommended versions and that any proposed changes thereto shall be communicated to Pivotal in a timely fashion.

**13.3. Section 9.4 (Limitation Period).** The entire section is deleted and replaced with:

**WAIVER OF RIGHT TO BRING ACTIONS:** Customer waives the right to bring any claim arising out of or in connection with this EULA more than twenty-four (24) months after the date of the cause of action giving rise to such claim.

## 12. UPGRADES AND CONVERSIONS

If you obtain a license to VMware software via an upgrade or conversion program or promotion, including the VMware Fair Value Conversion program, your license to the VMware software is also subject to the applicable promotion or program terms posted at [www.vmware.com/download/eula](http://www.vmware.com/download/eula).

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