

Support for VMware Cloud Service Offerings

TERMS AND CONDITIONS

Effective as of 02 February 6, 2020

These Support for VMware Cloud Service Offerings Terms and Conditions (“**Cloud Support Terms**”) apply to your use of VMware’s support services (“**Cloud Support**”) for a VMware cloud service offering (“**Service Offering**”). These Cloud Support Terms may be updated from time to time. “**You**” means you individually or the entity that you represent. If you are accepting these Cloud Support Terms for an entity, you represent that you have the authority to bind that entity. “**VMware**”, “**we**”, or “**us**” means VMware, Inc., a Delaware corporation, if the billing address for your Order is in the United States, or VMware International Unlimited Company, a company organized and existing under the laws of Ireland, if the billing address for your Order is outside the United States. Capitalized terms used in these Cloud Support Terms are defined throughout this document and in Section 5 (“**Definitions**”), below. Capitalized terms used but not defined in these Cloud Support Terms will have the same meanings given to them in the VMware Cloud Service Offerings Terms of Service (“**Terms of Service**”), found at <https://www.vmware.com/download/eula.html>.

1. SUPPORT FOR SERVICE OFFERINGS.

1.1 Generally. VMware will provide Cloud Support during the Subscription Term at the support level purchased (i.e., Basic or Production support, or VMware Premier Support™, if available for the Service Offering, or other specified level of support for the Service Offering).

1.2 End of Support. VMware may, at its discretion, decide to end availability of any Service Offering and related Cloud Support from time to time (“**End of Support**”). VMware has no obligation to provide Cloud Support after the End of Support for the Service Offering. For information on VMware lifecycle policies for its products, see <https://www.vmware.com/support/policies.html#lifecyclepolicies>.

1.3 Purchase Requirements.

1.3.1 Cloud Support is included with your subscription to a Service Offering. If different levels of support are available for a Service Offering, you must purchase the same level of support for all seats (e.g., users, devices, etc., as described in the relevant Service Description) for the Service Offering in a given environment, such as Test, Development, QA, or Production (e.g., you cannot purchase Production level support for only one seat of Workspace ONE in your Test environment, and purchase Basic level support for the other Workspace ONE seats in that environment).

1.3.2 Upon renewal of your subscription to a Service Offering, these Cloud Support Terms will automatically update to the then-current Cloud Support Terms at <https://www.vmware.com/support/policies.html>.

1.4 Exclusions.

Support for a Service Offering does not cover problems caused by the following:

- (a) use of the Service Offering that deviates from any recommended or required operating procedures;
- (b) Third Party Products, other than the interface of the Service Offering with the Third Party Products;

(c) use of the Service Offering with unsupported tools (e.g., Java Development Kit (JDK); Java Runtime Environment (JRE)), or with APIs, interfaces or data formats other than those included with the Service Offering and supported as set forth in the applicable Service Description. You may request assistance from VMware for such problems, for an additional fee.

1.5 Your Responsibilities. VMware's obligation to provide Cloud Support is subject to the following:

(a) You agree to receive communications from VMware via email, telephone, and other formats, regarding Cloud Support (such as communications concerning support coverage, errors or other technical issues, availability of new releases of the Service Offering or components related to the Service Offering, release notes, recommendations and training options).

(b) Your technical contact(s) must cooperate with VMware to enable VMware to deliver Cloud Support.

(c) As between VMware and you, you are solely responsible for use of the Service Offering by your authorized users and must properly train your authorized users in the use of the Service Offering.

(d) You must promptly report to VMware all problems with the Service Offering and must implement all corrective procedures provided by VMware promptly after receipt of the corrective procedures.

(e) You must have dedicated resources available to work 24x7 on Severity One Errors.

(f) To the extent the Service Offering is a multi-tenant environment, you must make changes to your settings as may be requested by VMware if your setting impact the performance of the whole environment or poses issues to VMware's abilities to manage your or other tenant's environment at pre-defined SLA level. If you do not make the requested changes upon request, VMware may make changes to your setting.

1.6 Updates and Upgrades

1.6.1 Updates. Cloud Support may include updates for the Service Offering that address security fixes, critical patches, general maintenance functionality, and documentation. VMware is under no obligation to develop any future functionality or enhancements. VMware may update the Service Offering pursuant to these Cloud Support Terms and the update will automatically replace the previous version of the applicable Service Offering. Where practical, VMware will schedule the Service Offering updates during non-business hours and will provide you with notice in advance.

1.6.2 Upgrades. VMware provides upgrades to provide new functionality and to fix problems uncovered in a current version of the Service Offering. If your problem relates to a software defect in the underlying software used to provide the Service Offering as acknowledged by VMware with a tracking number associated with a support request, our technical support engineer will work with you to determine the appropriate release mechanism for a fix based on the technical severity of the software defect and the business impact it has on your organization.

1.7 First Line Support & Authorized Technical Contacts

1.7.1 Your authorized technical contacts must be knowledgeable about Service Offering and your technical environment in order to work with VMware to analyze and resolve support requests. Your authorized technical contacts are responsible for engaging VMware technical support and monitoring the resolution of all support requests and escalated support issues. You are required to establish and maintain processes as necessary to manage first line support for users of the Service Offering within your organization. If after reasonable efforts you are unable to diagnose or resolve the error(s), your authorized

technical contact(s) may contact VMware for technical support via phone or web and assign the correct Severity level as defined in Section 1.8, below.

1.7.2 The number of authorized technical contacts to which you are entitled is limited depending on the level of Cloud Support you purchased. For more information on the detailed number of authorized contacts, see the comparison chart for Cloud Support at <https://www.vmware.com/support/services.html>. The contact information of authorized technical contacts must be provided on an individual basis (i.e., each technical contact) and must not be a group alias.

1.8 Severity Levels; Upgrade/Downgrade of Severity Level.

1.8.1 Severity Level. “Severity” is a measure of the relative impact an error has on use of the Service Offering, as assigned by you when opening a support request. The following Severity levels apply to all Service Offerings:

“Severity One” means a critical production issue that severely impacts use of the Service Offering. The situation halts your organization’s business operations and no procedural workaround exists. Severity One requires you to have dedicated resources available to work on the issue on an ongoing basis with VMware, and includes the following situations:

- The Service Offering is down or unavailable.
- Data is corrupted or lost and must be restored from backup.
- A critical documented feature/function of the Service Offering is not available.

“Severity Two” means that major functionality is impacted, or significant performance degradation is experienced. The situation is causing a high impact to portions of your business operations and no reasonable workaround exists. Severity Two includes the following situations:

- The Service Offering is operational, but performance is highly degraded to the point of major impact on usage.
- Important features of the Service Offering are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion.

“Severity Three” means a partial, non-critical loss of use of the Service Offering with a medium-to-low impact on your business, but your business continues to function. A short-term workaround is available, but is not scalable.

“Severity Four” means general usage questions and cosmetic issues, including errors in the Service Offering Documentation. Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug affecting a small number of users. Acceptable workaround is available.

1.8.2 Upgrade/Downgrade of Severity Level. You must ensure that the assignment and adjustment of any Severity level designation is accurate based on the current impact on the production operation of the Service Offering. You acknowledge that VMware is not responsible for any failure to meet performance standards caused by your misuse or mis-assignment of Severity level designations. If, during the support request process, the issue warrants assignment of a higher Severity level than currently assigned or no longer warrants the Severity level currently assigned, you and VMware will adjust the Severity level to the appropriate level. In requesting any assignment of a higher Severity level, VMware may request that you provide additional information that demonstrates the increased impact of the issue.

1.9 VMware Utility Tools

If you decide to implement VMware utility tools (available for some Service Offerings), you are responsible for the successful installation and implementation of the utility tools within your environment as set forth in the specific Service Offering's configuration and installation documentation. Support requests can be filed to ask questions regarding the configuration, installation, or usage of the utility tools. Version control is based on major/minor version definitions, and these utility tools are made available in the VMware download center.

2. WARRANTY, LIMITATION OF LIABILITY, AND TERMINATION

2.1 Limited Warranty; Remedy. VMware warrants that the Cloud Support services will be performed in a workmanlike manner and will conform to industry standards. If you provide VMware with a reasonably detailed written notice of an alleged nonconformance, VMware will use reasonable efforts to re-perform the affected Cloud Support services. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY IS GIVEN EXPRESSLY IN PLACE OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY AND VMWARE'S STATED OBLIGATION AS SET FORTH IN THIS SECTION 2.1 IS YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF ANY CLOUD SUPPORT SERVICES.

2.2 Limitation of Liability.

2.2.1 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, VMWARE WILL NOT BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THESE CLOUD SUPPORT TERMS. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO CUSTOMERS IN THOSE JURISDICTIONS.

2.2.2 Cap on Monetary Liability. IF YOU PURCHASE VMWARE PREMIER SUPPORT, VMWARE'S LIABILITY UNDER THESE CLOUD SUPPORT TERMS FOR ANY CLAIM WITH RESPECT TO VMWARE PREMIER SUPPORT WILL NOT EXCEED THE FEES YOU PAID OR PAYABLE FOR VMWARE PREMIER SUPPORT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

2.3 Termination of Services. VMware may terminate all Cloud Support services at any time if (a) you are in breach of the Terms of Service, or (b) you are in material breach of these Cloud Support Terms.

3. TECHNICAL SUPPORT AND SUPPORT REQUEST .

3.1 Technical Support Request: In connection with the provision of Technical Support, VMware may access your tenant environment within the Service Offering to collect the necessary logs or validate your settings to respond to your support request. VMware will also use data generated in connection with your use of the Service Offering to provide Technical Support. To the extent VMware does not have access to any of your environments, you may upload or provide Support Request Content (as defined herein) to VMware, such as log files, screenshots and core dumps relating to or generated in connection with your infrastructure to assist VMware in providing Technical Support. You are solely responsible for taking steps necessary to protect any sensitive or confidential information included in Support Request Content including passwords, cryptographic keys or Personal Data. Those steps may include obfuscating or removing such information or otherwise working with VMware at the time of submission to limit the disclosure of such information.

3.2 Restricted Support Request Content. You must not submit any Support Request Content to VMware that: (a) you do not have the right to provide to VMware; (b) constitutes information that is regulated by the Health Insurance Portability and Accountability Act, as amended and supplemented, and the regulations thereunder (collectively, “HIPAA”), or any similar federal, state, or local laws, rules, or regulations, unless you have signed a Business Associate Agreement (as defined by HIPAA) with VMware; (c) contains financial account or payment information of an individual, government issued IDs, or other sensitive individually identifying information; or (d) is regulated by law or regulation without complying with the applicable laws or regulations. If you submit any Support Request Content in contravention of this Section 3.2, then you are solely responsible for the consequences of that submission.

3.3 Personal Data. To the extent you provide Personal Data (as defined in the Data Processing Addendum) to VMware as part of the Support Request Content, VMware will process the Personal Data in accordance with the Data Processing Addendum.

3.4 Use of Support Request Content. VMware may review and analyze Support Request Content to address a Technical Support request. VMware may use the results of that review and analysis, in combination with (i) data VMware collects from you regarding your use of the Service Offering (such as configuration, performance, and usage data) and (ii) information VMware maintains about your account, to provide support to VMware customers, and to improve VMware products, services, and user experiences.

3.5 Disclosure of Support Request Content. If VMware is required by a subpoena, court order, agency action, or any other legal or regulatory requirement to disclose any Support Request Content, VMware will provide you with notice and a copy of the demand, as soon as practicable, unless VMware is prohibited from doing so pursuant to applicable law or regulation. If you request, VMware will, at your expense, take reasonable steps to contest and to limit the scope of any required disclosure.

4. MISCELLANEOUS.

4.1 Transfer; Assignment. You may not assign or delegate your rights and obligations under these Cloud Support Terms to any third party without VMware’s prior written consent.

4.2 Governing Law. If the billing address for your Order is in the United States, these Cloud Support Terms are governed by the laws of the State of California and the federal laws of the United States. If the billing address for your Order is outside the United States, these Cloud Support Terms are governed by the laws of Ireland. Conflict of law rules are expressly disclaimed. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

4.3 Entire Agreement. These Cloud Support Terms, the Data Processing Addendum, the applicable Order, and the Terms of Service, together constitute the entire agreement of the parties with respect to provision of Cloud Support services by VMware to you, and supersedes all prior written or oral communications, understandings, and agreements.

4.4 Customer Forms. No terms of any purchase order or other business form that you may use to purchase an entitlement to the Service Offering, or to purchase VMware Premier Support, will affect the obligations of the parties under these Cloud Support Terms, and any purchase order or other business form which contains additional or conflicting terms is hereby rejected by VMware. You agree that purchase orders issued by you to purchase an entitlement to the Service offering or to purchase VMware Premier Support do not have to be signed by you to be valid and enforceable.

4.5 Amendment; Waiver. Any amendment to or waiver of the provisions of these Cloud Support Terms must be in writing signed by both parties to be effective.

4.6 Severability. If any provision of these Cloud Support Terms is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law.

4.7 Language. The English language versions of these Cloud Support Terms is the governing version, and any translation into languages other than English is for convenience only.

4.8 Survival. Any provision of these Cloud Support Terms that, by its nature and context is intended to survive, including provisions relation to payment of outstanding fees, confidentiality, warranties, and limitation of liability, will survive termination of these Cloud Support Terms. The Data Processing Addendum will continue to be effective to the extent VMware continues to process Personal Data after termination of these Cloud Support Terms.

4.9 Use of Third Parties. VMware may deliver the Cloud Support with the assistance of our affiliates or suppliers.

5. DEFINITIONS. For purposes of these Cloud Support Terms, the following definitions apply:

5.1 “Support Request Content” means data provided by you to VMware to address a Technical Support issue. Support Request Content does not include customer account or relationship data that VMware uses in connection with a Technical Support request, or data collected by VMware to verify the support entitlement or to facilitate any communications.

5.2 “Data Processing Addendum” means the then-current version of the VMware Data Processing Addendum located at:
<https://www.vmware.com/content/dam/digitalmarketing/vmware/en/pdf/downloads/eula/vmware-data-processing-addendum.pdf>.

5.3 “Technical Support” means telephone, chat, or web-based technical assistance by VMware to your technical contact(s) regarding your subscription to the Service Offering, errors, and technical product problems, at the corresponding Services level purchased.

5.4 “Third Party Products” means any software or hardware that is manufactured by a party other than VMware and is neither (i) delivered with the Service Offering, nor (ii) incorporated into the Service Offering.