



## VMware, Inc. Support and Subscription Services Terms and Conditions

Under these Support and Subscription Services Terms and Conditions (this “Agreement”) VMware, Inc., a Delaware corporation, or VMware International Limited, a company organized under the laws of Ireland, as applicable (“VMware”), shall provide technical support and subscription services as more fully described herein to Customer, at the support level purchased by Customer as defined on the VMware Support Services website ([www.vmware.com/support](http://www.vmware.com/support)), commencing on the Effective Date. Relevant VMware entity, Customer, Effective Date, applicable Software, Support Level, Fees, License Administrator and Support Administrators are designated on either a Support and Subscription Services Order Form, Customer’s purchase order (“Purchase Order”) or, in the case of Customer’s purchase of support on a per incident basis (“Per Incident”), if applicable, the relevant information shall be as specified in the registration form completed by Customer upon such purchase (collectively the “Order”).

### 1. Definitions.

**1.1 “Additional Module”** means a module including additional features or functionality that were (1) made available by VMware in conjunction with a Major Release but not initially purchased by Customer or (2) subsequently made available by VMware.

Additional Modules are made available for purchase pursuant to separate licensing fee and separate purchase of Services. VMware in its discretion will designate what if anything constitutes an Additional Module, designating such by means of a descriptive name change (e.g. Software>>Software Clustering Module). Additional Modules will be considered “Software” for the purposes of this Agreement upon the purchase of Services for the Additional Module(s).

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

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

**1.4 “BCS Customer Team”** means a Customer team that: (i) consists of no more than six (6) technical contacts, (ii) has at least one (1) individual who has passed the relevant certification examinations and has been certified by VMware as a VMware Certified Professional, (iii) is centrally responsible for managing and supporting the Customer’s virtual infrastructure, (iv) develops and implements standards and processes for the management of all virtual systems supported, and (v) provides front line support for the virtual systems supported, making use of available technical repositories and experience to resolve known issues.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1.20 “Support Administrator”** means Customer-specified contact designated on the Order responsible for communicating and engaging VMware Global Support Services with respect to potential Errors. Customer may change its Support Administrator upon reasonable advance written notice to VMware.

**1.21 “Technical Support”** means the provision of technical assistance by VMware to the Support Administrator(s) with respect to the Software at the support level purchased by the Customer as indicated on the Order.

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

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

## 2. Service Terms.

**2.1 Provision of Services.** Subject to the terms of this Agreement, VMware shall provide the Services for which Customer has paid the applicable Fees. As part of the provision of applicable Services, Customer agrees to receive from VMware communications via e-mail, telephone, and other formats. Customer is deemed to have consented to receive certain communications that are considered an essential part of the Services (including, but not limited to, communications concerning an Error or other technical issue and the availability of new releases).

**2.2 Product End of Availability.** VMware may, at its discretion, retire any Software at any time (“End of Availability”). Notice of such End of Availability, which shall include the last date of general commercial availability of the Software, shall be provided via the VMware Support Services website at [www.vmware.com/support](http://www.vmware.com/support). Eighteen (18) months after the last date of general commercial availability, VMware will discontinue Services for such Software. With respect to the VMware Infrastructure software suite only, Services will continue to be made available after the last date of general commercial availability, in accordance with the VMware Infrastructure Support Life Cycle Policy as described in Section 2.3(a)(iii).

**2.3 Requirements.** Customer may purchase initial Services only for the most current, generally available release of the Software. Subject to Section 2.2, in accordance with VMware's support life cycle policies as provided on the VMware Support Services website ([www.vmware/support.com](http://www.vmware/support.com)):

(a) VMware will provide Services with respect to (i) the most current release of the Software for the Contract Term (ii) the immediately preceding release of the Software, but only for a period of eighteen (18) months following the next Major Release of the Software within the Contract Term and (iii) with respect to the VMware Infrastructure software suite only, in accordance with its VMware Infrastructure Support Life Cycle Policy as defined on [www.vmware/support.com](http://www.vmware/support.com). VMware reserves the right to amend its support life cycle policies from time to time.

(b) For all current and additional Software Product Licenses or Additional Modules purchased for a particular VMware Software product or suite, Customer must purchase and/or renew Services at the same support level in a given functional discipline (e.g. Test, Development, QA, Production).

(c) For most Software, including Additional Modules, a minimum of one (1) year of Services must be purchased. Please see the VMware Support Services website ([www.vmware.com/files/pdf/support/software\\_specific\\_support\\_requirements.pdf](http://www.vmware.com/files/pdf/support/software_specific_support_requirements.pdf)) for Software specific support requirements. VMware will provide Services for an initial term of one (1) year for which Customer has paid the applicable Fees, unless a different term is expressly provided for in the applicable Order. For multi-year Contract Terms, the terms and conditions of this Agreement, including Services, may be amended by VMware, in its sole discretion, after the first year of the Contract Term. If such a change is determined by VMware to adversely and materially impact the Customer, Customer will be provided with written notification at least thirty (30) days prior to the effect of any such change. Except as otherwise expressly set forth herein or in the applicable Order, Services previously purchased will automatically renew for successive one (1) year terms. Upon any renewal, VMware's then-current terms and conditions for the Services and this Agreement will apply, unless either party gives written notice of its intent not to renew at least thirty (30) days prior to the end of the current Contract Term. A decision to terminate Services or otherwise not renew Services will not terminate the applicable Software Product Licenses.

(d) VMware Global Support Services, during the course of providing Services may often be required to engage in problem analysis to determine whether or not a technical issue is related to any modification, addition and/or development of code scripts (whether by VMware, Customer or any third party), that deviates from the predefined product code tree(s)/modules developed by VMware for production deployment and/or use ("Modified Code"). Where VMware suspects that an issue may be related to Modified Code, VMware at its sole discretion, reserves the right to request that the Modified Code be removed. If VMware cannot directly identify the root cause of a problem or issue or reasonably suspects that the problem or issue is related to Modified Code, Customer shall be informed that additional assistance may be obtained by Customer directly from various product discussion forums or via engagement for an additional fee with VMware's consulting services group. Applicable response times shall be suspended during such problem analysis period.

**2.4 Eligibility.** Services do not cover the following situations:

(a) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by VMware; operation of the Software with other media not in accordance with the manufacturer's specifications; or causes other than ordinary use; or

(b) improper installation by Customer or use of the Software that deviates from any operating procedures as specified in the Documentation; or

(c) actual or attempted modification, alteration or addition to the Software undertaken by Customer or any third party; or

(d) Third Party Products, other than the interface of the Software with the Third Party Products; or

(e) Modified Code. Notwithstanding the foregoing, for the VMware vCenter Lifecycle Manager – Customized Option product, VMware Global Support Services will support the predefined product code tree(s)/modules developed by VMware for production deployment and/or use. No other Services shall be provided with respect to Modified Code unless Customer has entered into a separate engagement with VMware's consulting services group.

Services requested as a result of these situations will be billed at VMware's then-current hourly rates for consulting.

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

(a) Customer shall provide supervision, control and management of the use of the Software by its end user personnel.

(b) Customer shall document and promptly report all errors or malfunctions of the Software to VMware and take all steps necessary to rectify within a reasonable time after such corrective procedures have been received from VMware.

(c) Customer shall implement procedures for the protection of information and the implementation of backup facilities in the event of errors or malfunction of the Software or Computers on which the Software is used.

(d) Customer shall properly train its end user personnel in the use and application of the Software and any Computers on which the Software is used.

### 3. Fees.

#### 3.1 Fee Schedule.

(a) Except for purchases of Technical Support on a Per Incident basis, and unless otherwise indicated on the Order, Fees are payable on the Effective Date or, in the case of a renewal term, no later than the date of commencement of the applicable Contract Term, and due in accordance with Section 3.3 below. Customer agrees that Purchase Orders do not have to be signed to be valid and enforceable.

(b) The Fees for Services, including renewals, are at the then current list price. If Customer elects not to renew the Services or, in the case of Software that may initially be purchased without Services, if Customer elects not to purchase the Services when Customer acquires the Software Product License, Customer may later re-enroll or enroll, as the case may be, for the Services, subject to Subsection 3.1(d) below.

(c) For any renewal or addition of Services, which requires a minimum purchase of one (1) year, Customer may elect to make Services for all or a portion of its Software Product Licenses coterminous. In such event, VMware will prorate the applicable Fees for the current Contract Term(s) based on the number of full or partial months remaining in the current Contract Term(s).

(d) If Customer purchases Services after Customer acquired the Software Product License(s) or elected not to renew the Services and later wishes to re-enroll in the Services, Customer is required to pay: (i) the applicable Fees for the current Contract Term; (ii) the amount of Fees that would have been paid for the period of time that Customer had not enrolled in the Services, and (iii) a 20% reinstatement fee on the sum of the fees in (i) and (ii). Customer must move to the then-current latest release of the Software in order to re-enroll, or enroll, as the case may be, in the Services.

(e) Fees for Services are non-refundable upon payment.

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

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

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

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

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

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

## Attachment 1

### **VMware Support Programs and Subscription Services Fee Addendum**

#### **1. Services Fees**

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

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

(b) Fees for each renewal term for Workstation Complimentary Support will be ten percent (10%) of the price paid for the applicable Software Product License at the time of purchase.

(c) For a Customer who originally purchased Services from a VMware Authorized Service Provider and is renewing Technical Support only through the VMware Authorized Service Provider, the Customer may purchase Full Subscription Services separately on a renewal basis from VMware. In this case, the renewal fee for such Full Subscription Services shall be fourteen (14%) of the list price of the Software at the time the Software was purchased. "Authorized Service Provider" means a third party that is authorized under contract by VMware to provide first and/or second level Technical Support for VMware products.

(d) The following Software have Services pricing (initial as well as renewals, if any) not based on a percentage of list price of the Software for the Services levels set forth below:

Software	Services Level
VirtualCenter for VMware Server (version 1.4)	Per Incident Support
VMware vCenter Converter Standalone	Per Incident Support
VMware Infrastructure Foundation	Gold and Platinum Support and Subscription
VMware Server	Gold and Platinum Support and Subscription
VMware vCenter Server Foundation	Gold and Platinum Support and Subscription
VMware VMotion with Storage VMotion	Gold and Platinum Support and Subscription
VMware Workstation	Per Incident Support (for Customers not on other Services)
VMware Workstation	Site Support (for Customers not on other Services)
VMware Fusion	Subscription Services Only; No Technical Support
VMware Fusion	Per Incident Support (for Customers not on other Services)
VMware Fusion	Site Support (for Customers not on other Services)
VMware ESXi	Gold and Platinum Support and Subscription (for 1 year only at point of sale)
VMware ESXi	Per Incident Support (for Customers not on other Services)
VMware ThinApp	Gold and Platinum Support and Subscription ThinApp Suite Gold and Platinum Support and Subscription ThinApp Client
VMware Capacity Planner	Platinum Support and Subscription for worldwide partners only (complimentary web based support available for trained partners only- see (g) below)

(e) Business Critical Support is available for a fixed price (including renewals thereof), based on VMware's then-current list price, for an annual contract covering each supported BCS Customer Team. Additional technical contacts (including renewals thereof) beyond six

(6) may be added to the BCS Customer Team for a fixed annual fee. A discount of \$10,000 for a Customer that has contracted for, and currently has, one (1) or more VMware Technical Managers shall apply to Business Critical Support, including renewals thereof.

(f) Notwithstanding the foregoing, VMware may increase the Fees for any renewal term.

(g) VMware Capacity Planner is a system analysis tool created exclusively for VMware's worldwide partners. Web-based technical support for VMware Capacity planner is available without charge, if the partner has certified completion of VMware's Capacity Planner Partner Training. VMware will make commercially reasonable efforts to respond to Capacity Planner web-based support requests whenever possible. Platinum Support is also available for VMware capacity planner.. This Platinum level support offering is available to the VMware's partner community only.

(h) Customers purchasing Gold or Platinum Services for products where Services are not required (including VMware Server, ESXi, and Workstation), must purchase Services at the same service level for each Software Product License deployed in a given functional discipline (e.g. Test, Development, QA, Production).

(i) Site Support is available for certain products and is priced at a flat rate per license, with a minimum of 50 licenses. Site Support services include Technical Support and Subscription Services delivered to a Site Support Customer Team.