

VMware, Inc. Support and Subscription Services “SnS” Terms and Conditions

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 defined herein) (collectively, the “**Services**”), per the terms of this Agreement and as set forth at <http://www.vmware.com/support/services/> to Customer, for the specific Services level purchased. The applicable VMware entity, **Effective Date**, **Software**, and **Services** level will be set forth on the SnS order form, Customer’s purchase Order, or, if Customer has purchased support on a per incident basis (“**Per Incident**”), in the registration form completed by Customer upon such purchase (collectively the “**Order**”).

1. Definitions

- A. “Technical Support”** means the provision of technical assistance by VMware to the Customer Support Administrator(s) with respect to installation, analysis of problem reports, and Errors, at the corresponding support level purchased by the Customer.
- B. “Subscription Services”** means the provision of Major Releases, Minor Releases, Maintenance Releases, if any, to the Software, as well as corresponding Documentation to Customer’s License Administrator.
- 1. “Major Release”** also known generally as an “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**).
 - 2. “Minor Release”** means a generally available release of the Software that introduces a limited amount of new 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**).
 - 3. “Maintenance Release” 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**), or for certain Software, by means of a change in the digit of the Update number (e.g. **Software 5.0 Update 1**).
- C. “Services Period”** means the period for which Customer has purchased the Services and any subsequent renewal periods and shall commence: (a) for Software licenses for which Services are mandatory: on the date of shipment of the applicable Software license, and (b) for Software licenses for which Services are optional: on the date of purchase of the Services.
- D. “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.
- E. “Error”** means a failure in the Software to materially conform to the specifications as described in the applicable Documentation.
- F. “Services Fees”** means those fees that are applicable for the Services as specified in a corresponding VMware or reseller invoice.
- G. “License Administrator”** means the 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 licenses, Major, Minor and Maintenance 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.
- H. “Modified Code”** means any modification, addition and/or development of code scripts (whether created by VMware, Customer or any third party) that deviates from the predefined product code tree(s)/module(s) developed by VMware for production deployment and/or use, and specifically excludes customizable Software options made generally available by VMware and for which Services are available.
- I. “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 in addition to any vendor specific license terms provided with the Open Source Software.
- J. “Software”** means one or more individual VMware software products or software product suites made generally available by VMware and specified in the Order. Software does not include Third Party Products, Modified Code or customized deliverables that VMware creates specifically for Customer.

K. “Support Administrator” means the Customer-specified contact designated on the Order responsible for communicating and engaging VMware for Technical Support services with respect to problem reports. Customer’s primary License Administrator is responsible for the administration of authorized Support Administrators via the VMware support website.

L. “Third Party Products” means any third party proprietary software or hardware that is manufactured by a party other than VMware or its affiliates and has not been incorporated into VMware Software or Services offerings of VMware or its affiliates.

2. Service Terms

2.1 Provision of Services. VMware shall provide the Services at the Service level purchased during the Services Period, subject to Section 2.2 below. Detailed information on service level objectives, response times, business hours and contact numbers is located at www.vmware.com/support.

2.2 End of Availability. VMware may, at its discretion, decide to retire Software and/or Services at any time upon notice (“End of Availability”). Notice of End of Availability, last date of general commercial availability and applicable support lifecycle policies and timelines for discontinuance shall be provided via the VMware Support Services website at www.vmware.com/support.

2.3 Requirements. Customer may purchase initial Services only for the most current, generally available release of the Software. Limited exceptions may apply for specific Software as provided for at www.vmware.com/support.

- (a) For all current and additional Software licenses purchased for a particular VMware Software product or suite, including those where SnS is not required at the time of purchase of the applicable Software license (including but not limited to Workstation and VMware vSphere Hypervisor), Customer must purchase and/or renew Services at the same Services level in a given functional discipline (e.g. Test, Development, QA, Production).
- (b) For most Software, a minimum of one (1) year of Services must be purchased. For Software-specific support requirements, refer to www.vmware.com/files/pdf/support/software_specific_support_requirements.pdf. Subject to Section 2.2, VMware may update Services terms after the first year of the Services Period with thirty (30) days advance notice to Customer of any changes deemed by VMware to have potential adverse and/or material impacts to the Customer. Upon any renewal, VMware’s then current terms and conditions for the Services will apply. Except as otherwise expressly set forth herein or in the applicable Order, Services will automatically renew for successive one (1) year terms unless either party gives written notice of its intent not to renew at least thirty (30) days prior to the end of the current Services Term. A decision to terminate Services or otherwise not renew Services will not terminate the applicable Software licenses.
- (c) VMware, during the course of providing Technical Support, may be required to analyze whether or not a reported problem is related to Modified Code. Where VMware suspects that a problem may be related to Modified Code, VMware in its sole discretion, reserves the right to request that the Modified Code be removed. If VMware cannot directly identify the root cause of a problem, or reasonably suspects that the problem is related to Modified Code, Customer shall be informed that additional assistance may be obtained by Customer directly from various product discussion forums or via engagement for an additional fee with VMware’s consulting services group.

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

- (a) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by VMware; operation of the Software with other media not in accordance with the manufacturer’s specifications; or causes other than ordinary use; or
- (b) improper installation by Customer or use of the Software that deviates from any operating procedures as specified in the Documentation; or
- (c) actual or attempted modification, alteration or addition to the Software undertaken by Customer or any third party; or
- (d) Third Party Products, other than the interface of the Software with the Third Party Products; or
- (e) Modified Code; or
- (f) any customized deliverables created by VMware specifically for Customer as part of consulting services; or
- (g) any technical issue unrelated to an Error (please see the VMware Technical Support Guide available at www.vmware.com/support for examples).

2.5 Open Source Software Support. VMware’s general policy is that a Customer is not entitled to receive Services for Open Source Software not provided with the Software package, unless VMware specifically makes available Services for such Open Source Software on its Services price list and as detailed at www.vmware.com/support. The VMware Open Source Project Support Policy is located at <http://www.vmware.com/support/policies> and shall govern performance of Services for Open Source Software.

To the extent VMware provides Services for Open Source Software, this Agreement shall apply, and VMware will provide Services for the Open Source Software, pursuant to the terms herein, provided such Open Source Software has not been modified by Customer, its employees or agents.

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

- (a) Customer agrees to receive from VMware communications via e-mail, telephone, and other formats, regarding renewals, quotes, and other topics relating to Services (such as communications concerning an Error or other technical issue and the availability of new releases). Customer's Support Administrator shall cooperate to enable VMware to deliver the Services.
- (b) Customer is solely responsible for the use of the Software by its personnel and shall properly train its personnel in the use and application of the Software.
- (c) Customer shall promptly report to VMware all problems with the Software, and shall implement any corrective procedures provided by VMware reasonably promptly after receipt.
- (d) Customer is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used and should confirm that such data and information is protected and backed up before contacting VMware for Technical Support; VMware is not responsible for lost data or information in the event of Errors or other malfunction of the Software or computers on which the Software is used.

3. Services Fees

3.1 Services Fee Schedule

- (a) Unless otherwise indicated on the Order, Services 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 Services Period, and due in accordance with Section 3.3 below. Services Fees are non-refundable upon payment.
- (b) The Services Fees, including renewals, are at the then-current list price. VMware may increase applicable Services Fees for renewals. 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 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 licenses coterminous, in which case, VMware will prorate the applicable Services Fees for the current Services Period based on the number of full or partial months remaining in the current Services Period.
- (d) If Customer purchases Services after acquiring the Software licenses, or had elected not to renew Services and later wishes to re-enroll in the Services, Customer must move to the then-current latest Major Release of the Software, and must pay:
 - (i) the applicable Services Fees for the current Services Period, , and
 - (ii) the amount of Services 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 Services Fees in (i) and (ii).
- (e) In cases where Customer purchases a license to migrate up from one edition of the Software to another (e.g. VMware vSphere Standard to VMware vSphere Enterprise Plus), any unused period of the Services Period on the original license will be converted and used to extend the Services Period for the newly purchased upgraded license.

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

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

4. Limited Warranty. VMware warrants that the Services to be performed hereunder will be done in a workmanlike manner and shall conform to industry standards. Upon Customer providing VMware with a reasonably detailed written notice to cure within thirty (30) days of occurrence of the nonconformance, VMware will re-perform the Services to achieve commercially reasonable conformance with the above warranty. TO THE MAXIMUM EXTENT MANDATED BY LAW, 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. TO THE

MAXIMUM EXTENT MANDATED BY LAW, THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

5. Limitation of Liability. TO THE MAXIMUM EXTENT MANDATED BY LAW, 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. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO CUSTOMER. 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 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 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. Customer agrees that purchase orders do not have to be signed to be valid and enforceable. If any provision of this Agreement is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law. The version of the Technical Support guide found at www.vmware.com/support is the governing version of such document; any translation into other languages is for convenience only. VMware may update the Technical Support guide periodically, without prior notice.

Attachment 1
VMware Support Programs and Subscription Services Fee Addendum

- (a) Annual Services 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(c) below:

Services Level	Services Fee
Silver Support and Subscription (“SnS”) (VMware Workstation only)	18% of the then-current list price of the Software (no longer available as of 1 April 2010)
Basic SnS	21% of the then-current list price of the Software
Production SnS	25% of the then-current list price of the Software
For Zimbra Products only- Zimbra Advantage and Zimbra Premium**	Zimbra Advantage - 16% of the then-current list price of the Software Zimbra Premium – 20% of the then-current list price of the Software

*The foregoing does not apply to term-based Software licenses which are covered in the table below.

** Zimbra products include but are not limited to: Zimbra Collaboration Suite, Zimbra Connector for Blackberry, Zimbra Connector for Outlook, Zimbra Collaboration Suite Appliance and Zimbra Desktop; see subsection (j) below for additional details on support offerings. The foregoing listing of Zimbra products may be modified from time to time at VMware’s discretion.

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

Software	Services Level
VirtualCenter for VMware Server (version 1.4)	Per Incident Support
VMware vCenter Converter Standalone	Per Incident Support
VMware vSphere Standard Edition	Basic and Production SnS
VMware vCenter Server 4 Foundation for vSphere	Basic and Production SnS
VMware Workstation	Per Incident Support
VMware Fusion	Subscription Services Only; No Technical Support, Per Incident Support, or Desktop Standard Support
VMware vSphere ESXi Single Server	Basic and Production SnS (for one year only at point of sale) or Per Incident Support
VMware ThinApp Suite VMware ThinApp Client	Basic and Production SnS
VMware Capacity Planner	Production SnS for worldwide partners only (complimentary web based support available for trained partners only)
VMware vSphere Essentials Edition	Per Incident Support
vFabric Products	Developer(*), Basic and Production SnS on Term Licenses

* as further detailed at www.vmware.com/support

- (d) Business Critical Support (BCS) is available for a fixed price (including renewals thereof), based on VMware's then-current list price, for an annual contract covering each supported BCS Customer Team. Additional technical contacts (including renewals thereof) beyond six may be added to the BCS Customer Team for a fixed annual fee. A discount of twenty (20) percent off the then-current list price for Business Critical Support for a Customer that has contracted for, and currently has, one or more VMware Technical Account Managers shall apply to Business Critical Support, including renewals thereof. A BCS Customer Team means a Customer team that (i) consists of no more than six technical contacts, (ii) has at least one individual who has passed the relevant certification examinations and has been certified by VMware as a VMware Certified Professional, (iii) is centrally responsible for managing and supporting the Customer's virtual infrastructure, (iv) develops and implements standards and processes for the management of all virtual systems supported, and (v) provides front line support for the virtual systems supported, making use of available technical repositories and experience to resolve known issues.
- (e) Mission Critical Support (MCS) is available for a fixed price (including renewals thereof), based on VMware's then-current list price for an annual contract and is offered as a supplement to Production Support. MCS provides global, 24 X 7 support for Severity 1 issues as well as priority access to senior level Technical Support engineers for an unlimited number of Support Administrators. More details about the offering are available at www.vmware.com/support.
- (f) Desktop Standard Support is available for certain products and is priced at a flat rate per license, with a minimum of ten (10) licenses. Desktop Standard Support services include Technical SnS Services delivered to a Desktop Support Customer Team. A Desktop Standard Support Customer Team shall: (i) consist of no more than four (4) technical contacts, (ii) provide front line support for the desktop and virtual systems supported, making use of available technical repositories and experience to resolve known issues.
- (g) VMware Complimentary Update Service. For both the Fusion and Workstation products, VMware agrees to provide, for a period of eighteen (18) months from product purchase, Maintenance Releases and Minor Releases, if any, to Customer's License Administrator. This Complimentary Update Service does not include the provision of any Major Releases. Limited complimentary installation assistance will also be made for these products as further detailed at <http://www.vmware.com/support/services/complimentary.html>.
- (h) Customers may purchase Basic or Production Support only when a minimum of ten (10) licenses of VMware Workstation are purchased simultaneously.
- (i) With respect to Services for Zimbra products, VMware shall offer only Zimbra Advantage and Zimbra Premium level support and subscription. Such Advantage and Premium Support offerings are distinct and different from VMware's Basic and Production Support and Subscription Services in several key areas, including but not limited to: support response times, business hours and coverage, management of support contacts, support processes, escalation and resolution issues, urgency definitions, support exclusions, upgrades, maintenance and end of life policies. Details regarding Advantage and Premium level support and subscription are as further detailed at http://www.zimbra.com/support/support_overview.html.