VMware Technical Support and Subscription Services ("SnS") Terms and Conditions
(For On-Premise Software Products)

VMware, Inc., a Delaware corporation, or VMware International Limited, a company organized under the laws of Ireland, as applicable (**"VMware"**), will provide Technical Support and Subscription Services (**"Services"**) as specified in these Terms and Conditions (**"SnS Terms"**) to the customer identified in an Order (**"Customer"**), pursuant to these SnS Terms and the Data Processing Addendum (which is incorporated into these SnS Terms by this reference), and as set forth at the VMware Support Services Website, http://www.vmware.com/support/services.html. The VMware entity, effective date, Software, and Services level will be as set forth on the applicable enterprise license agreement, SnS order form, Customer's purchase order, or, if Customer has purchased support on a per-incident basis, the registration form completed by Customer for that purchase (each, an **"Order"**). Any terms used but not defined in these SnS Terms have the meanings set forth in the VMware End User License Agreement (**"EULA"**).

1. **Definitions.** For purposes of these SnS Terms, the following definitions apply:

1.1 "**Content**" means data provided by Customer to VMware to address a Technical Support issue. 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.

1.2 "**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.

1.3 "**Error**" means a failure in the Software to materially conform to the specifications described in the applicable product documentation ("**Documentation**").

1.4 "**Modified Code**" means any modification, addition and/or development of code scripts deviating from the predefined product code tree(s)/modules developed by VMware for production deployment or use. Modified Code excludes customizable Software options for which VMware offers Services.

1.5 "**Services Fees**" means the fees for Services specified in a VMware or reseller invoice.

1.6 "**Services Period**" means the period for which Customer has purchased the Services and any subsequent renewal periods, and commences: (a) for Software Licenses for which Services are mandatory, on the date the applicable Software License Key(s) are made available for download, and (b) for Software Licenses for which Services are optional, on the date of purchase of the Services.

1.7 "**Severity**" is a measure of the relative impact an Error has on the use of the Software, as assigned by Customer when opening a support request. The following Severity levels apply to all Software:

(a) "**Severity One**" means Customer's production server or other mission critical system(s) are down and no workaround is immediately available, and: (i) all or a substantial portion of Customer's mission critical data is at a significant risk of loss or corruption; or (ii) Customer has had a substantial loss of service; or (iii) Customer's business operations have been severely disrupted.

(b) "**Severity Two**" means that major functionality is severely impaired such that: (i) operations can continue in a restricted fashion, although long-term productivity might be adversely affected; or (ii) a major milestone is at risk; or (iii) ongoing and incremental installations are affected; or (iv) only a temporary workaround is available.

(c) "**Severity Three**" means a partial, non-critical loss of functionality of the Software such that: (i) the operation of some component(s) is impaired but allows the user to continue using the Software; or (ii) initial installation milestones are at minimal risk.

(d) "**Severity Four**" means general usage questions and cosmetic issues, including errors in the Documentation.

1.8 "**Software**" means software on the VMware price list, and all components shipped with the Software, including Open Source Software components.

1.9 "**Subscription Services**" means any Maintenance Releases, Minor Releases, and Major Releases to the Software and related Documentation that VMware provides to Customer.

(a) "**Maintenance Release**" or "**Update**" means a generally available release of the Software that typically provides maintenance corrections only or high severity bug fixes, designated 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 a change in the digit of the Update number (e.g., Software 5.0 Update 1).

(b) "**Minor Release**" means a generally available release of the Software that: (i) introduces a limited number of new features, functionality, and minor enhancements; (ii) fixes for high severity and high priority bugs identified in the current release; and (iii) is designated by a change in the digit to the right of the decimal point (e.g., Software 5.0>>Software 5.1).

(c) "**Major Release**" also known as an "**Upgrade**" means a generally available release of the Software that: (i) contains functional enhancements and extensions; (ii) fixes for high severity and high priority bugs; and (iii) is designated by VMware by a change in the digit to the left of the first decimal point (e.g., Software 5.0 >> Software 6.0).

1.10 "**Technical Support**" means telephone or web-based technical assistance by VMware to Customer's technical contact(s) regarding installation of the Software, Errors, and technical product problems, at the corresponding Services level purchased by Customer.

1.11 "**Third Party Products**" means any software or hardware that is manufactured by a party other than VMware and is either (i) not delivered with the Software, or (ii) not incorporated into the Software.

2.   Service Terms.

2.1   Provision of Services. VMware will provide Services to Customer during the Services Period at the Services level purchased. Customer's use of a Subscription Services release will be subject to the terms of the VMware Product Guide posted at https://www.vmware.com/download/eula on the date Customer first installs that release.

2.2   End of Availability. VMware may, at its discretion, decide to retire any Software and/or Services offering from time to time ("**End of Availability**"). VMware will notify affected customers, and will post information regarding End of Availability and the timeline for discontinuing the affected Services at https://www.vmware.com/support/policies/lifecycle.html. VMware has no obligation to provide Services for any Software after the End of Availability date published in the life cycle policy for that Software.

2.3   Purchase Requirements.

(a)   Except as otherwise provided, Customer must purchase Services for the initial Services Period for the most current, generally available version of the Software.

(b)   Customer must purchase and/or renew Services at the same Services level for all licenses for a particular Software product installed in a given environment, such as Test, Development, QA, or Production (e.g., a customer cannot purchase Production level support for only one license of vSphere in its lab and purchase Basic level support for the other vSphere licenses in that environment).

(c)   Except as otherwise provided in the applicable price list, the minimum term for any Services offering is one (1) year.

(d)   Upon renewal of Services, these SnS Terms will automatically update to the then-current Services terms and conditions set forth at https://www.vmware.com/files/pdf/support/support_terms_conditions.pdf.

2.4   Exclusions.

(a)   Services do not cover problems caused by the following:

(i) unusual external physical factors such as inclement weather conditions that cause electrical or electromagnetic stress, or a failure of electric power, air conditioning or humidity control; neglect; misuse; operation of the Software with other media not in accordance with manufacturer's specifications; or causes other than ordinary use;

(ii) use of the Software that deviates from any operating procedures as specified in the Documentation;

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

(iv) Modified Code;

(v) issues relating to VMware cloud service offerings;

(vi) any customized deliverables created by VMware, VMware partners, or third party service providers;

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

(b)   If VMware suspects that a reported problem may be related to Modified Code, VMware, may, in its sole discretion,

(i) request that the Modified Code be removed, and/or

(ii) inform Customer that additional assistance may be obtained by Customer from various product discussion forums or by engaging VMware's consulting services group for an additional fee.

2.5   Customer Responsibilities. VMware's obligation to provide the Services is subject to the following:

(a)   Customer agrees to receive communications from VMware via email, telephone, and other formats, regarding Services (such as communications concerning support coverage, Errors or other technical issues, availability of new releases of the Software, and training options).

(b)   Customer's technical contact must cooperate with VMware to enable VMware to deliver the Services.

(c) As between VMware and Customer, Customer is solely responsible for use of the Software by its personnel, and must properly train its personnel in the use of the Software.

(d) Customer must promptly report to VMware all problems with the Software, and must implement all corrective procedures provided by VMware reasonably promptly after receipt of the corrective procedures.

(e) Before contacting VMware for Technical Support, Customer must protect and back up the data and information stored on the systems on which the Software is used, and must confirm that the data and information is protected and backed up in accordance with any applicable Customer or regulatory requirements. VMware is not responsible for lost data or information in the event of Errors or other malfunction of the Software or the systems on which the Software is used.

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

3. Services Offerings and Services Fees.

3.1 Services Fees.

(a) Services Fees are payable on the effective date specified in the applicable Order or, in the case of a renewal Services Period, no later than the date of commencement of the renewal term. Services Fees are specified in the applicable price list and are non-refundable.

(b) If Customer renews or adds a Services offering that has a minimum term of one (1) year, Customer may elect to make Services for all of its Software Licenses coterminous with the renewed or added Services. In that case, VMware will prorate the applicable Services Fees to extend the current Services Period to make it coterminous with the renewed or added Services.

(c) For Software that is licensed on a perpetual basis, if Customer purchases Services after acquiring the Licenses, or had elected not to renew Services and later wishes to re-enroll in the Services, Customer must move to the then-current Major Release of the Software and must pay: (i) the applicable Services Fees for the current Services Period; (ii) the amount of Services Fees that would have been paid for the period of time that Customer was not enrolled in the Services, and (iii) a twenty percent (20%) reinstatement fee on the sum of the Services Fees in (i) and (ii).

(d) If Customer purchases a License to upgrade up from one edition of the Software to another (e.g., VMware vSphere Standard to VMware vSphere Enterprise Plus), any unused portion of the Services Period on the original License will be converted and used to extend the Services Period for the new License. This paragraph (d) does not apply to customers who have purchased Services through an enterprise license agreement.

3.2 Advanced and Complimentary Services Offerings.

(a) Certain advanced Services (e.g., Business Critical Support, Mission Critical Support, and Mission Critical Support for Workspace ONE) require that Customer also purchase a base level of support. See the Services description at https://www.vmware.com/support/services.html.

(b) VMware may, at its discretion, offer complimentary Services, including VMware Complimentary Update Services for certain Software, as more fully described on the VMware Technical Support Services website, at https://www.vmware.com/support/services/complimentary.html. "**VMware Complimentary Update Services**" means the provision of Maintenance Releases and Minor Releases to Customer, at no cost. This VMware Complimentary Update Service does not include providing any Major Releases.

4. Payment, Warranty, Limitation of Liability, and Termination

4.1 Payment Terms. VMware will invoice Customer or Customer's reseller for Services Fees promptly following Customer's purchase. Payment is due within thirty (30) days of the date of the invoice. Services Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Customer must 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 these SnS Terms (other than taxes on the net income of VMware). Amounts not paid on time are subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount allowed by applicable law. If payment of any Services Fee is delinquent, VMware may also suspend performance of all Services until such delinquency is corrected.

4.2 Limited Warranty. VMware warrants that the Services will be performed in a workmanlike manner and will conform to industry standards. Upon Customer providing VMware with a reasonably detailed written notice of the alleged nonconformance, VMware will use reasonable efforts to re-perform the Services. TO THE MAXIMUM EXTENT PERMITTED 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 PERMITTED BY LAW, THIS WARRANTY IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

4.3 Limitation of Liability. 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 SNS 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 CUSTOMER. VMWARE'S LIABILITY UNDER THESE SNS TERMS WILL NOT, IN ANY EVENT, EXCEED THE SERVICES FEES PAID BY CUSTOMER TO VMWARE FOR SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

4.4   Termination of Services. VMware may terminate all Services at any time if (a) Customer is in breach of its License restrictions or (b) Customer is in material breach of these SnS Terms.

5.   Customer Support Data.

5.1   Submission of Content. In connection with a Technical Support request, Customer may upload Content to VMware's systems. That Content will vary depending on the product and the context of the Technical Support issue. Content may consist of: (a) detailed system information about the failure such as the name and state of the affected operating system, logs, Virtual Machine descriptions (not including the contents of virtual disks or snapshot files), system identifiers, IP addresses, and user identifiers; and (b) core dumps, which may contain a full record of the memory image at the time of the crash including CPU and memory information related to the failure, passwords, cryptographic keys, and/or application data, depending upon the technical state at the time of the failure. Customer is solely responsible for taking steps necessary to protect any sensitive or confidential information, or Personal Data, included in Content. Those steps may include Customer obfuscating or removing such information or, depending on the product, otherwise working with VMware at the time of submission to limit the disclosure of such information.

5.2   Restricted Content. Customer must not submit any Content to VMware that: (a) Customer does 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 Customer has signed a Business Associate Agreement (as defined by HIPAA) with VMware; (c) contains financial information of any individual; or (d) is regulated by law or regulation without complying with the applicable laws or regulations. If Customer submits any Content in contravention of this Section 5.2, then Customer is solely responsible for the consequences of that submission.

5.3   Personal Data. To the extent Customer provides Personal Data (as defined in the Data Processing Addendum) to VMware as part of the Content, VMware will process the Personal Data in accordance with the Data Processing Addendum.

5.4   Use of Content. VMware may review and analyze 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 Customer regarding Customer's use of the Software (such as configuration, performance, and usage data) and (ii) information VMware maintains about the Customer's account, to provide support to VMware customers, and to improve VMware products, services, and user experiences.

5.5   Disclosure of Content. If VMware is required by a subpoena, court order, agency action, or any other legal or regulatory requirement, to disclose any Content, VMware will provide Customer 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 Customer requests, VMware will, at Customer's expense, take reasonable steps to contest and to limit the scope of any required disclosure.

6.   Miscellaneous.

6.1   Transfer; Assignment. Customer may not assign or delegate these SnS Terms to any third party without VMware's prior written consent.

6.2   Governing Law. These SnS Terms are governed by the laws of the State of California without regard to conflict of laws principles. Customer and VMware consent to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California for the adjudication of any disputes under these SnS Terms.

6.3   Entire Agreement. These SnS Terms, the Data Processing Addendum, the applicable Order, the EULA to the extent it applies, and the information on the VMware Support Services Website, together constitute the entire agreement of the parties with respect to provision of the Services by VMware to Customer, and supersedes all prior written or oral communications, understandings, and agreements.

6.4   Customer Forms. Except as expressly set forth in these SnS Terms, no terms of any purchase order or other business form that Customer may use will affect the obligations of the parties under these SnS Terms, and any purchase order or other business form which contains additional or conflicting terms is hereby rejected by VMware. Customer agrees that purchase orders do not have to be signed by Customer to be valid and enforceable.

6.5   Amendment and Waiver. Any amendment or waiver of the provisions of these SnS Terms must be in writing signed by both parties to be effective.

6.6   Severability. If any provision of these SnS 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.

6.7   Language. The English language versions of these SnS Terms, the Technical Support guide found at https://www.vmware.com/content/dam/digitalmarketing/vmware/en/pdf/support/tech-support-welcome-guide.pdf, and the policies at https://www.vmware.com/support/policies/index are the governing versions of such documents and policies; any translation into languages other than English is for convenience only.

6.8   **Survival.** Any provision of these SnS 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 SnS Terms. The Data Processing Addendum will continue to be effective to the extent VMware continues to process Personal Data after termination of these SnS Terms.

6.9   **Use of Third Parties.** VMware may deliver the Services with the assistance of our affiliates or suppliers.