



Contract Number

23-204

SAP Number

Innovation and Technology Department

Department Contract Representative	Kim Lewis
Telephone Number	909-388-0522
Contractor	VMware
Contractor Representative	Christine Gillette
Telephone Number	310-625-3059
Contract Term	March 31, 2023, through March 30, 2026
Original Contract Amount	Not-toExceed \$1,542,364
Amendment Amount	N/A
Total Contract Amount	Not-toExceed \$1,542,364
Cost Center	1200604048

Briefly describe the general nature of the contract: *Enterprise License Agreement, including non-standard terms, with VMware for the period of March 31, 2023, through March 30, 2026, for software subscription and support services.*

FOR COUNTY USE ONLY

Approved as to Legal Form



Agnes Cheng, Deputy County Counsel

Date 3/1/2023

Reviewed for Contract Compliance



Date

Reviewed/Approved by Department



Date

VMWARE ENTERPRISE ORDER

Quote #: Q-E00552068

Agreement Number: 00672157

Customer Return Date: 3/31/2023

Customer EA Number: 115139190

Customer will issue PO to a VMware authorized reseller.

Customer Name: San Bernardino County

Customer Address: 670 E. Gilbert

San Bernardino, CA 92415 UNITED STATES

Effective Date: Three year term, commencing effective as of
March 31,2023

VMware Entity: VMware, Inc.

VMware Address: 3401 Hillview Avenue

Palo Alto, CA 94304

VMWARE OFFERINGS

CLOUD SERVICES			
DESCRIPTION OF CLOUD SERVICE	QUANTITY	SERVICE START DATE	SERVICE END DATE
VMware vSphere+ 3-Year Prepaid Commit - Per Core	1,216	Effective Date	36 Months from Effective Date
VMware vSphere+ Hourly Overage Rate - Per Core	1	Effective Date	36 Months from Effective Date
VMware vSphere+ 3-Year Prepaid Commit - Per Core	120	Effective Date	36 Months from Effective Date
VMware vSphere+ Hourly Overage Rate - Per Core	1	Effective Date	36 Months from Effective Date
VMware vSphere+ Hourly Overage Rate - Per Core	1	Effective Date	36 Months from Effective Date
Subscription Upgrade to VMware vSphere+ 3-Year Prepaid Commit - Per Core	288	Effective Date	36 Months from Effective Date

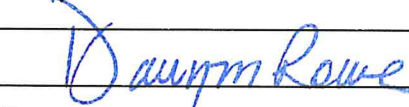
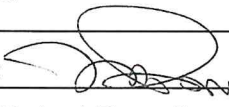
VMware Horizon Universal Subscription - (Core) Concurrent User Qty 50 - 12 Month Prepaid	1	Effective Date	Same end date as other Offerings
VMware Horizon Universal Subscription - (Add-On to Core) Concurrent User Qty 10 - 12 Month Prepaid	45	Effective Date	Same end date as other Offerings
CLOUD SERVICES END DATE	36 months following the Effective Date		

SUPPORT SERVICES FOR PREVIOUSLY LICENSED SOFTWARE		
SKU	DESCRIPTION OF PREVIOUSLY LICENSED SOFTWARE	Quantity
VC-SRM8-25E	VMware Site Recovery Manager 8 Enterprise (25 VM Pack)	9
VCS7-STD	VMware vCenter Server Standard for vSphere (Per Instance)	4
SUPPORT END DATE	36 months following the Effective Date	
SUPPORT LEVEL	Production Level	
Support Services for previously licensed Software do not require the payment of any license fees in this Enterprise Order for that Software. If the previously licensed Software includes any licenses granted to Customer's Affiliates, the purchase of Support Services for such Software under this Order does not automatically transfer those Software licenses to Customer.		

ENTERPRISE ORDER TERMS

1. VMware Offerings are governed by this Enterprise Order, the General Terms, the U.S. Public Sector Exhibit, the Software Exhibit, the Cloud Services Exhibit, and the Professional Services Exhibit, each of which are attached hereto and incorporated herein by reference and shall supersede the terms of the corresponding documents posted on VMware's website (collectively, the "Agreement"). In the event of a conflict among the documents comprising the Agreement, the order of precedence is as follows, the terms of this Enterprise Order, the General Terms, the respective exhibits, and offering specific terms will prevail.
2. All Guides and Service Level Agreements referenced in this Enterprise Order are available at <http://www.vmware.com/agreements - Offering Specific Terms>.
3. Delivery is deemed to occur: For Cloud Services, when VMware emails the Login Credentials to the email address associated with Customer's account.
4. When Customer purchases directly from VMware, Customer agrees to pay any invoice issued by VMware net 60 days from the date of the invoice.
5. This offer is contingent on Customer signing and returning this Enterprise Order and issuing a corresponding purchase order no later than the Customer Return Date.
6. Notwithstanding anything to the contrary in this Agreement, the term "**Customer**" as used in the Agreement shall mean San Bernardino County, which is not limited to its Innovation and Technology Department (ITD) but also includes all Customer departments that make purchases that meet Agreement eligibility criteria set by VMware. For avoidance of doubt, Customer departments are not nor shall they be deemed "Affiliates".
7. **Counterparts.** This Agreement may be executed in any number of counterparts by either handwritten or electronic signature, each of which counterparts may be delivered by emailing the other party to the Agreement a signed scanned document or electronically signed portable document format (pdf) version of the contract (as applicable). Each party agrees to the execution of this Agreement in this manner, and the parties acknowledge that execution in this manner creates a binding contract between the parties at the time of delivery of the last party's counterpart. Either party providing an electronic signature agrees to promptly execute and deliver to the other party an original executed Agreement upon request.

By signing below, each party acknowledges that it understands and agrees to the terms of this Agreement. Each of the individuals signing this Agreement represents that they have the authority to bind their respective party to its terms.

San Bernardino County		VMware Inc.	
Signature:		Signature:	
Name:	Dawn Rowe	Name:	Melani Powell
Title:	Chair, Board of Supervisors	Title:	Sr. Contracts Manager
Date	MAR 28 2023	Date:	03-15-2023

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNNA MONELL
Clerk of the Board of Supervisors
of the County of San Bernardino

By

Deputy



VMWARE GENERAL TERMS

Last updated: 16 June 2022

By downloading or using an Offering, Customer agrees to be bound by the terms of the Agreement.

1. OFFERINGS.

- 1.1. Applicable Terms. The terms of the Order and these General Terms, including applicable Exhibits and Offering-specific Notes (collectively, the "Agreement") govern Customer's use of the Offerings. The following descending order of precedence applies: (a) the Order; (b) the General Terms; (c) the Exhibits; and (d) the Offering-specific Notes.
- 1.2. Users. Customer is responsible for its Users' compliance with the Agreement.
- 1.3. Restrictions. Customer may use the Offerings only for its internal use and for the benefit of its Affiliates. Affiliates may not use the Offerings. Customer may not resell or sublicense its rights to the Offerings. Customer may not use the Offerings in an application service provider, service bureau, hosted IT service, or similar capacity for third parties.
- 1.4. Benchmarking. Customer may use the Offerings to conduct internal performance testing and benchmarking studies. Customer may only publish or distribute study results with third-parties with VMware's approval. Customer may submit requests to VMware by emailing benchmark@vmware.com.
- 1.5. Evaluations. Evaluations are for 30 days (unless VMware specifies otherwise in writing). Customer may not have access to data in the Evaluation after it ends. Evaluations are provided "AS IS" without indemnification, support, service level commitment, or warranty of any kind, express or implied.

2. ORDERS AND PAYMENTS.

- 2.1. Orders. Orders are binding when VMware accepts them, which is deemed to occur on Delivery.
- 2.2. Purchase Orders. Purchase orders do not have to be signed to be valid. Terms contained in any purchase order or other business form do not apply.
- 2.3. No Refunds. All Orders are non-refundable and non-cancellable except as expressly provided in the Agreement.
- 2.4. Overages. Customer must pay all fees for use of the Offerings, including amounts for add-on features and fees incurred based on usage. VMware may bill Customer directly for metered or overage fees, even if Customer originally purchased the Offerings through a VMware authorized reseller.
- 2.5. Direct Orders. This section 2.5 (Direct Orders) applies only to Orders placed directly with VMware. If Customer purchases entitlements to the Offerings through a VMware authorized reseller, different terms regarding invoicing, payment, and taxes may apply.
 - 2.5.1. Payments. Except as listed in an Order, fees for the Offerings will be governed by the applicable price list at the time of invoicing. Customer must pay all undisputed fees and approved expenses within 30 days from the date of invoice. After 30 days, interest will accrue at the lesser of 1.5% per month or the highest lawful rate.
 - 2.5.2. Disputes. To dispute any fees in good faith, Customer must notify VMware in writing of the reasons for the dispute before the payment due date. The parties must negotiate in good faith to resolve the dispute as soon as reasonably practicable. VMware will not suspend or terminate Customer's access to any Offering because of any unpaid, disputed fees while Customer and VMware are negotiating to resolve the dispute.
 - 2.5.3. Taxes. Fees are exclusive of Taxes. Customer must pay or reimburse VMware for all Taxes. If Customer is required to withhold any Tax, Customer must gross up its payments so that VMware receives all sums due in full. If Customer's address is outside of the United States, VMware will treat the Customer's "bill to" address as the place of supply for VAT purposes.

3. TERM.

- 3.1. Term. The Agreement applies to the Offerings from the effective date of the Order until the expiration or termination of Customer's entitlement to the Offerings as set forth in this Agreement.

- 3.2. Temporary Suspension. In the event of a significant security risk to a Service or its users, VMware may temporarily suspend Customer's use of that Service only for so long as needed to resolve the risk after providing written notice to Customer.
- 3.3. Termination for Cause. Either party may terminate the Agreement (in whole or in part) or Customer's entitlement to an Offering under the Agreement effective immediately upon written notice if the other party: (a) materially breaches any provision of the Agreement and fails to cure within 30 days after receiving written notice; or (b) becomes insolvent or subject to any form of bankruptcy proceeding.
- 3.4. Effect of Termination. Upon termination of the Agreement or part of it: (a) all entitlements to the applicable Offerings immediately end; (b) Customer must stop using, and destroy any copies of, those Offerings; and (c) each party must return or destroy any Confidential Information of the other party in its control (other than information that must be retained by law) if requested in writing by a party. Any provision that is intended by the parties to survive termination of the Agreement will survive.
- 3.5. Termination for Convenience. At any time, Customer may terminate the Agreement for convenience by providing written notice to VMware. Under no circumstances will any such termination for convenience entitle you to a refund of any of the fees paid for the Offerings.

4. CONFIDENTIAL INFORMATION.

- 4.1. Protection. Recipient must protect Discloser's Confidential Information with at least the same care as it protects its own Confidential Information but not less than reasonable care. Recipient may not use Discloser's Confidential Information except to exercise its rights and perform its obligations under the Agreement. Recipient may disclose Confidential Information only to Recipient's Affiliates, employees and contractors who need to know the Confidential Information for purposes of the Agreement and who have a duty of confidentiality no less restrictive than this section 4 (Confidential Information).
- 4.2. Exceptions. Recipient's obligations under section 4.1 (Protection) do not apply if the information: (a) is rightfully known by Recipient at the time of disclosure without any obligation of confidentiality; (b) is lawfully disclosed to Recipient by a third party without confidentiality restrictions; (c) becomes publicly available through no fault of Recipient; or (d) is independently developed by Recipient without access to or use of Discloser's Confidential Information.
- 4.3. Injunctive Relief. Nothing in the Agreement limits a party's right to seek equitable relief for breach of this section 4 (Confidential Information).

5. OWNERSHIP.

- 5.1. Customer Content. Customer retains all Intellectual Property Rights in and to Customer Content.
- 5.2. VMware IP. VMware retains all Intellectual Property Rights in and to the Offerings, including any improvements, enhancements, modifications, and derivative works. If Customer provides any feedback about the Offerings, VMware may use that feedback without restriction.
- 5.3. Reservation of Rights. Except as expressly stated in the Agreement, the Agreement does not grant either party any rights, implied or otherwise, to the other party's content or intellectual property.

6. LIMITED WARRANTIES.

- 6.1. Software and Cloud Services. VMware warrants that Software and Cloud Services will substantially conform with the Documentation: (a) for Software, for 90 days following Delivery; or (b) for Cloud Services, for the Subscription Term. Customer must properly install and use the Offerings without modification other than by VMware or its authorized representative and in accordance with the Documentation. Customer must notify VMware of an alleged breach of this warranty within the applicable warranty period. As Customer's sole remedy for a breach of this warranty, VMware must either: (1) correct any reproducible error in the Software or Cloud Service; or (2) replace the Software or Cloud Services with equivalent functionality at VMware's sole cost and expense. In the event VMware determines that it is unable to correct or replace, then VMware may terminate the Software or Cloud Service and refund applicable license fees (for Software) or unused, prepaid fees (for Cloud Services). VMware warrants and represents that all Offerings, and any enhancements thereto: (i) do not violate any copyright, patent, trademark or trade secrets law; (ii) do not constitute defamation or invasion of the right of privacy or publicity; and (iii) are not an infringement of any kind, of any rights or any third party.

- 6.2. Professional Services and Support Services. VMware warrants that Professional Services and Support Services will be performed in a professional manner following industry standards. Customer must notify VMware within 30 days of an alleged breach of this warranty. As Customer's sole remedy for a breach of this warranty, VMware must either: (a) rectify the breach; or (b) terminate the applicable Service and refund any unused, prepaid fees for that Service.
- 6.3. Disclaimer of Warranties. Except for the limited warranties in this section 6 (Limited Warranties), to the maximum extent permitted by law, VMware, for itself and on behalf of its suppliers, disclaims all warranties and conditions whether express, implied, or statutory, including any warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, non-infringement, and any warranty arising from course of dealing or course of performance, relating to the Offerings. Neither VMware nor its suppliers warrant that the Offerings will operate uninterrupted, that Offerings will be free from defects or errors, or that the Offerings will meet (or are designed to meet) Customer's requirements.

7. INDEMNIFICATION.

- 7.1. Defense and Indemnification. Subject to the remainder of this section 7 (Indemnification), VMware will: (a) defend Customer against any Infringement Claim; and (b) indemnify Customer from amounts finally awarded against Customer by a court of competent jurisdiction or a government agency, or agreed to in a settlement, for the Infringement Claim.
- 7.2. Requirements. Customer must provide VMware with prompt notice of any Infringement Claim and reasonably cooperate with VMware's requests for assistance. VMware will have sole control of the defense and settlement of the Infringement Claim, provided that VMware may not settle the claim or suit absent Customer's written consent unless such settlement: (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations on Customer other than an obligation to stop using the subject Offering. In the event that VMware has abandoned the defense of an Infringement Claim, Customer may (but shall not be obligated to) provide written notice to VMware of Customer's intent to take primary control of the defense within thirty (30) calendar days (the "Notice Period"). If VMware does not provide written assurances to Customer by the end of the Notice Period that VMware has not abandoned the defense of the Infringement Claim, Customer may (but shall not be obligated to) assume primary control of the defense until VMware provides written notice to Customer that VMware is re-assuming primary control, effective as set forth in such notice ("Customer Control Period"). VMware shall reimburse Customer for the reasonable attorneys' fees and costs incurred by Customer in connection with Customer's defense of the applicable claim during the Customer Control Period.
- 7.3. Exclusions. VMware has no obligation under this section 7 (Indemnification) with respect to an Infringement Claim based on: (a) combination of Indemnified Materials with non-VMware materials (other than non-VMware products that are listed on the Order and used in an unmodified form); (b) use of an older version of Indemnified Materials when use of a newer version delivered to Customer would have avoided the infringement; (c) any modification to Indemnified Materials other than those made by VMware; (d) any claim relating to open source software or freeware technology that is not embedded by VMware into the Offerings; or (e) any Indemnified Material provided on a no-charge, beta, or evaluation basis.
- 7.4. Remedies. In addition to VMware's indemnity obligations, if Indemnified Materials become, or in VMware's reasonable opinion are likely to become, the subject of an Infringement Claim, VMware must, at its option and expense, either: (a) procure the necessary rights for Customer to keep using the Indemnified Materials; or (b) modify or replace the Indemnified Materials to make them non-infringing. If those remedies are not commercially feasible, VMware may terminate Customer's entitlement to the Indemnified Materials and refund any applicable:

- (1) prepaid fees for Cloud Services or Subscription Software, prorated for the remaining portion of the then-current Subscription Term;
- (2) fees paid for Perpetual Licenses or Deliverables, less straight-line depreciation over a three-year useful life beginning on the delivery date; and
- (3) unused, prepaid fees for discontinued Support Services.

- 7.5. Sole Remedy. This section 7 (Indemnification) states Customer's sole remedy and VMware's entire liability for Infringement Claims.

8. LIMITATION OF LIABILITY.

- 8.1. Disclaimer. To the maximum extent permitted by law but subject to VMware's obligations under applicable support and service level agreements, neither party will be liable for lost profits or business opportunities, loss of use, loss of data, loss of goodwill, business interruption, or any indirect, special, incidental, or consequential damages under any theory of liability. This limitation will apply regardless of whether a party has been advised of the possibility of those damages and regardless of whether any remedy fails of its essential purpose.
- 8.2. Cap on Monetary Liability. Each party's aggregate liability under this Agreement will not exceed the greater of (a) the amounts paid or payable by Customer for the Offering giving rise to the claim in the 12 months prior to the event giving rise to the claim, except for Perpetual Licenses, where each party's aggregate liability will not exceed the license fees paid for the Software giving rise to the claim; or (b) Five Hundred Thousand Dollars USD (\$500,000.00)..
- 8.3. Exclusions. The limitations of liability in sections 8.1 (Disclaimer) and 8.2 (Cap on Monetary Liability) will not apply to: (a) VMware's indemnification obligations under section 7 (Indemnification); (b) either party's infringement of the other party's Intellectual Property Rights; (c) Customer's violation of section 2 of the Cloud Services Exhibit (Acceptable Use); (d) either party's breach of its obligations regarding Confidential Information; (e) either party's gross negligence, willful misconduct, violations of any laws, or fraudulent or criminal conduct; or (f) any liability that may not be limited by law.
- 8.4. Further Limitations. VMware's liability for any third-party software embedded into the Software or Cloud Services is subject to this section 8 (Limitation of Liability). VMware's suppliers have no liability under the Agreement, and Customer may not bring claims directly against them. VMware has no liability with respect to any Third-Party Content.

9. DATA USE AND PRIVACY.

- 9.1. Personal Data. If VMware acts as a processor of Personal Data, VMware will process Personal Data in accordance with the Data Processing Addendum.
- 9.2. Account, Operations, and Usage Data. VMware collects Customer contact and purchase information to manage Customer's account and to fulfill Orders. VMware also processes: (a) information necessary to facilitate delivery and operation of the Offerings, verify compliance with the terms of the Agreement, invoice, and provide Support Services; and (b) configuration, performance, and usage data to improve VMware products and services, and other analytics purposes as detailed in the Offering-specific Notes. To the extent any of that data includes information that identifies an individual, VMware will process that information in accordance with VMware's Products & Services Privacy Notice available at www.vmware.com/help/privacy.html.
- 9.3. Support Requests and Professional Services. Customer is responsible for taking steps necessary to protect any sensitive information or Personal Data that it provides to VMware while receiving Support Services or Professional Services. Those steps may include obfuscating or removing such information or working with VMware at the time of submission to limit disclosure.
- 9.4. Required Disclosures. VMware may disclose Customer Content or Confidential Information and Customer may disclose Confidential Information if VMware or Customer is required by law or by order of a judicial or administrative body of competent jurisdiction, provided that the discloser notifies the other party of such required disclosure promptly in writing.

(a "Demand"). Unless legally prohibited from doing so, VMware must provide Customer with notice and a copy of the Demand. If the Demand relates to Cloud Services, VMware must (i) inform the relevant authority that VMware is a service provider acting on Customer's behalf and all requests for access to Customer Content should be directed in writing to the contact Customer identifies (or if no contact is timely provided, to Customer's legal department) and (ii) only provide access to Customer Content with Customer's authorization. If Customer requests in writing and at Customer's expense, VMware must take reasonable steps to contest the Demand. If VMware is legally prohibited from notifying Customer of the Demand, VMware must evaluate the validity of the Demand, and, if VMware does not believe the Demand is legal, VMware must challenge the Demand. VMware must limit the scope of any disclosure to the minimum information required to comply with the Demand.

10. OPEN SOURCE SOFTWARE. Open source software is licensed to Customer under the open source software's own applicable license terms, which can be found in either the open source `licenses.txt` file accompanying the Offerings, the Documentation, or at www.vmware.com/download/open_source.html. These license terms are consistent with the license granted in the Agreement and may contain additional rights benefiting Customer. The open source license terms take precedence over the Agreement to the extent that the Agreement imposes greater restrictions

on Customer than the applicable open source license terms. To the extent the license for any open source software requires VMware to make the corresponding source code and/or modifications (the "Source Files") available to Customer, Customer may obtain a copy of the applicable Source Files at www.vmware.com/download/open_source.html or by sending a written request, with name and address, to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date Customer acquires its entitlement to the Offering.

11. MISCELLANEOUS.

- 11.1. **Transfer and Assignment.** Customer may not assign the Agreement or any Order without VMware's consent, which shall not be unreasonably withheld. VMware may assign the Agreement in whole or as part of a corporate reorganization, consolidation, merger, or sale of all of its assets, provided that VMware provides Customer with at least ten (10) days prior written notice of such assignment, or if legally prohibited from providing prior notice, within ten (10) days after the effective date of the assignment, and Customer shall have the right to terminate the Agreement, if required by applicable law. Any attempted assignment or transfer in violation of the foregoing will be void. Once validly assigned and subject to the foregoing, the Agreement will bind and inure to the benefit of the parties and their respective successors and assigns. Use by an Affiliate shall not be defined as a transfer nor an assignment.
- 11.2. **Notice.** All notices must be in writing. Notices to Customer will be given: (a) by email to the email address of the then current registered superuser on Customer's account ; or (b) by posting in the VMware customer portal. Legal notices to VMware will be given to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.
- 11.3. **Waiver.** Waiver of a breach of the Agreement will not constitute a waiver of any later breach.
- 11.4. **Severability.** If any part of the Agreement is held to be invalid or unenforceable, all remaining provisions will remain in force to the extent feasible to effectuate the intent of the parties.
- 11.5. **Insurance.** VMware will carry insurance for the term of the Agreement. VMware's Memorandum of Insurance may be viewed at www.vmware.com/agreements.
- 11.6. **Compliance with Laws.** Each party must comply with all applicable laws.
- 11.7. **Export Control.** The Offerings are subject to the U.S. Export Administration Regulations (including "deemed export" and "deemed re-export" regulations), and may be subject to the export control laws of other countries. Customer represents that: (a) Customer is not, and is not acting on behalf of: (1) any person who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (2) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List, or any similar applicable designated persons list; (b) Customer, will not permit the Offerings to be used for any purposes prohibited by law, including any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons; and (c) Customer is not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part, Customer's United States export privileges. Customer must notify VMware promptly if Customer becomes subject to any order of that type.
- 11.8. **Governing Law.** The Agreement is governed by the laws of the State of California and U.S. federal laws, if the billing address for Customer's Order is in the United States, and by the laws of Ireland if the billing address for Customer's Order is outside the United States. Conflict of law rules are expressly disclaimed. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 11.9. **U.S. Public Sector End User.** If Customer is a U.S. Public Sector End User, the U.S. Public Sector Exhibit available at www.vmware.com/agreements supersedes or modifies the referenced provisions of the Agreement.
- 11.10. **Third Party Rights.** Other than as expressly stated, the Agreement does not create any rights for any person who is not a party to it. Only persons who are parties to the Agreement may enforce or rely on any of its terms.
- 11.11. **Force Majeure.** Except for Customer's payment obligations, neither party will be liable for any delay or failure to perform due to any cause beyond the party's reasonable control, including labor disputes, industrial disturbances, systemic utility failures, acts of nature, pandemics, embargoes, riots, government orders, acts of terrorism, or war.

- 11.12. No Agency. Nothing in the Agreement is intended to constitute a fiduciary relationship, agency, joint venture, partnership, or trust between the parties. No party has authority to bind the other party.
- 11.13. Translation. This non-English version of these General Terms is provided only as a courtesy, and Customer's use of the Offerings is governed by the English version of these General Terms, published at www.vmware.com/agreements.
- 11.14. Counterparts. The Agreement may be signed electronically or in counterparts, in which case each signed copy will be deemed an original as though both signatures appeared on the same document. Either party providing an electronic signature agrees to promptly execute and deliver to the other party an original executed Agreement upon request.
- 11.15. Entire Agreement. The Agreement contains the entire agreement of the parties and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings, and agreements, whether written or oral, between the parties regarding its subject matter. The Agreement may be amended only in writing and signed by both parties.

12. DEFINITIONS.

Affiliate means an entity that is directly or indirectly controlled by, is under common control with, or controls that party, where "control" means an ownership, voting, or similar interest representing more than 50% of the total interests outstanding of that entity at that time.

Cloud Service means the VMware cloud service specified in Customer's Order.

Cloud Services Guide means the then-current VMware Cloud Services Guide, available at www.vmware.com/agreements.

Confidential Information means information or materials provided by a party ("Discloser") to the other party ("Recipient") that: (a) is in tangible form and labelled "confidential" or similar; or (b) if disclosed verbally or visually is clearly identified as confidential or proprietary at the time of disclosure and confirmed in writing within thirty (30) days thereafter. Confidential Information includes: (1) license keys; (2) VMware product roadmaps or strategic marketing plans; and (3) non-public materials relating to the Offerings; and (4) Customer Login Credentials. Customer means the entity identified in the Order as "Customer". Notwithstanding anything to the contrary in the foregoing, Confidential Information shall not include information that is subject to disclosure pursuant to the Ralph M. Brown Act, the California Public Records Act, or any federal, state, or local laws or by judicial or governmental process nor any publicly available information.

Customer Content means content uploaded by Customer or any User into the Cloud Service or provided to VMware as a part of Support Services, but does not include Third-Party Content or account information. For purposes of this definition, "content" means any data, including all text, sound, video, or image files, and software (including machine images).

Data Processing Addendum means the then-current VMware Data Processing Addendum, available at www.vmware.com/agreements.

Deliverables means any reports, analyses, scripts, templates, code, or other work results delivered by VMware as specified in the applicable SOW for Professional Services.

Delivery means: (a) for Cloud Services, when VMware emails the Login Credentials to the email address associated with Customer's account; (b) for Software, when VMware notifies Customer of availability of Software for download; (c) for Support Services, upon VMware's issuance of an invoice for those Support Services; (d) for Professional Services, as specified in the applicable SOW; (e) for purchasing program credits, when VMware makes the fund balance available in the applicable portal; and (f) for shipping and delivery of physical objects, Ex Works VMware's regional fulfillment facility (INCOTERMS 2020™).

Documentation means the product documentation describing the features, functionality, and use of the Offerings published and updated by VMware from time to time at docs.vmware.com.

Evaluation means an Offering (or part of an Offering) made available free of charge, for evaluation, trial, proof of concept, or similar purpose.

Exhibits means the exhibits to these General Terms (Software, Cloud Services, Professional Services, U.S. Federal, and VMware Entities) available at www.vmware.com/agreements.

Indemnified Materials means the Cloud Services, Software, and Deliverables.



Infringement Claim means any claim by a third party that the Indemnified Materials infringe any patent, trademark, or copyright of that third party, or misappropriate a trade secret (only to the extent that misappropriation is not a result of Customer's actions).

Intellectual Property Rights means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, know-how, inventions, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.

Login Credentials means any passwords, authentication keys, or security credentials that enable Customer's access to and management of the Cloud Service. Offering(s) means, collectively, Services or Software.

Offering-specific Notes means the applicable license notes or services notes found in the Product Guide, the Cloud Services Guide, and the Support Services Guide.

Order means an enterprise order, SOW, quote, or other ordering document for Offerings, issued by Customer to VMware or to Customer's VMware authorized reseller and accepted by VMware described in section 2 of these General Terms (Orders and Payments).

Perpetual License means a license to the Software with a perpetual term.

Personal Data is defined in the Data Processing Addendum.

Product Guide means VMware's then-current Product Guide available at www.vmware.com/agreements.

Professional Services means those services described in the applicable SOW.

Service Level Agreement means the then-current version of the applicable service level agreement for a Cloud Service, available at www.vmware.com/agreements.

Service(s) means Cloud Services, Support Services, or Professional Services.

Software means the VMware computer programs that Customer licenses under an Order, together with any related software code VMware provides as part of Support Services and that is not subject to a separate license agreement.

SOW means a written agreement between Customer and VMware containing project-specific details of the Professional Services or VMware online datasheet.

Subscription Software means Software that is licensed for a specific term.

Subscription Term means the period Customer is permitted to use a Cloud Service or Subscription Software, stated in the applicable Order. For any on-demand Cloud Services, Subscription Term means the period during which Customer uses the Cloud Service.

Support Services means VMware support and subscription services that are purchased under an Order or included with purchase of Subscription Software or Cloud Services.

Support Services Guide means VMware's then-current Support Services Guide, available at www.vmware.com/agreements.

Tax means any sales, consumption, VAT, GST, use, gross receipts, business and occupation, withholding, and other taxes (other than taxes on VMware income), export and import fees, customs duties, and similar fees imposed by any government or other authority.

Third-Party Agent means a third party delivering information technology services to Customer under a contract with Customer.

Third-Party Content means content provided by a third party that interoperates with a Cloud Service, but that is not part of the Cloud Service. Third-Party Content is optional and is subject to the third-party terms accompanying the Third-Party Content.

U.S. Public Sector End User means a U.S. Federal End User or a U.S. State or Local Government End User, as those terms are defined in the U.S. Public Sector Exhibit.

User means an employee, contractor, or Third-Party Agent that Customer authorizes to use the Offerings as permitted under the Agreement or under Customer's Login Credentials.

VMware means VMware, Inc., a Delaware corporation, if the billing address for the 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 the Order is outside the United States, except if the billing address for the Order is in the United Kingdom, Australia, or New Zealand or the Pacific Islands, in which case VMware means the applicable entity identified in the VMware Entities Exhibit found at www.vmware.com/agreements.



VMWARE SOFTWARE EXHIBIT

Last updated: 16 June 2022

This Software Exhibit to the General Terms applies if Customer purchases Software.

1. SOFTWARE.

- 1.1. License Grant. VMware grants Customer a non-exclusive, non-transferable (except as stated in the ELA) license to: (a) deploy the number of Software licenses stated in the Order within the Territory; and (b) use the Software and the Documentation during the term of the license, solely for Customer's internal business operations and subject to the provisions of the Product Guide. Licenses granted to Customer are for use of object code only. "Territory" means the country or countries in which Customer has been invoiced, unless more broadly defined in the Product Guide. If the Territory for Software includes any European Economic Area member states or the United Kingdom, Customer may deploy that Software throughout the European Economic Area and the United Kingdom.
- 1.2. Third-Party Agents. Customer may permit Third-Party Agents to deploy and use the Software on Customer's behalf solely to deliver services to Customer.
- 1.3. Copying Permitted. Customer may copy the Software and Documentation as necessary to deploy and use the number of copies licensed, but otherwise for archival purposes only.
- 1.4. Migrations. Customer may request licenses to the Software that may be used only to upgrade or replace hardware, change data centers, or upgrade to a newer version of the Software ("Migration Licenses"). Customer may only use Migration Licenses for the period granted by VMware. VMware's liability Migration Licenses is subject to section 8 (Limitation of Liability) of the VMware General Terms.
- 1.5. Cloud Services. If the Software includes a Cloud Service component or if a Software bundle includes a Cloud Service entitlement, that Cloud Service is subject to the Cloud Services Exhibit.

2. LICENSE RESTRICTIONS. Customer must not, and must not allow any third party to: (a) make the Software available in any form to any third parties, except as specified in section 1.2 of this Exhibit (Third-Party Agents); (b) transfer or sublicense the Software or Documentation to any third party (including an Affiliate), except as expressly permitted in section 11.1 of the General Terms (Transfer and Assignment); (c) modify, translate, enhance, or create derivative works from the Software; (d) reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except to the extent permitted by applicable law; or (e) remove any copyright or other proprietary notices.

3. RECORDS AND REPORTING.

- 3.1. VERIFICATION. Customer must reasonably cooperate with VMware to show compliance with the Agreement. VMware (or a third party engaged by VMware) may, at its sole cost, verify that compliance once in any 12-month period and only during normal business hours with reasonable prior notice and without unreasonably interfering with Customer's business activities. If verification reveals an underpayment of more than ten percent of the Software fees payable by Customer during the period reviewed, Customer must reimburse VMware for reasonable costs incurred.
- 3.2. REPORTING. Upon request by VMware at least 90 days prior to the expiration of Customer's entitlement to Support Services or Subscription Software, Customer must report to VMware by email to LicenseAdvisory@vmware.com the number of Software licenses Customer has deployed and information reasonably requested by VMware.

4. SUPPORT SERVICES. VMware will provide Support Services in accordance with the Support Services Guide and related policies available at www.vmware.com/support/policies. Customer's use of a Subscription Service release (as described in the Support Services Guide) will be subject to the terms of the Product Guide on the date Customer first installs that release.



VMWARE PROFESSIONAL SERVICES EXHIBIT

Last updated: 16 June 2022

This Professional Services Exhibit to the General Terms applies if Customer purchases Professional Services.

1. PROFESSIONAL SERVICES. VMware will provide Professional Services as described in the SOW.
2. PROCESS.
 - 2.1. Project Change Request. Either party may request a modification to agreed Deliverables or a material SOW provision by submitting a project change request ("PCR") to the other party. The parties will execute the PCR if it is mutually acceptable. VMware may not unreasonably refuse to accept a PCR initiated by Customer if Customer agrees to bear the pricing and schedule impacts. If the Parties are unable to agree within five (5) business days after the PCR is submitted, then the submitting Party may withdraw the PCR or terminate the SOW. If the SOW is terminated, Customer must pay for the Deliverables delivered, Professional Services performed, and all non-refundable expenses incurred by VMware (e.g. airfare).
 - 2.2. Customer Delays. VMware's performance of the Professional Services is contingent on Customer's timely delivery of required Customer Materials.
 - 2.3. Cancelling or Rescheduling. Customer must provide notice at least 10 business days prior to the start of the Professional Services to reschedule or cancel an SOW. If Customer reschedules or cancels an SOW, Customer must pay all non-refundable expenses incurred by VMware.
 - 2.4. Late Payments. VMware may suspend performance of Professional Services while any late payment is delinquent.
 - 2.5. Completion. VMware will provide Customer with a milestone completion form or timesheet for completed Professional Services. Customer has 10 business days to approve milestone completion forms or timesheets. Unless Customer provides written notice to VMware that the Professional Services do not substantially conform with the SOW within 10 business days, the Professional Services and Deliverables will be deemed accepted.
3. INTELLECTUAL PROPERTY.
 - 3.1. Ownership. Other than VMware Retained Materials, Customer will own the copyright to the portion of the Deliverables consisting solely of written reports, analyses, and other working papers, subject to Customer's full payment of all amounts due under the SOW and VMware's rights in the underlying intellectual property embodied in the Deliverables. Customer may not resell or distribute the Deliverables to any third party.
 - 3.2. VMware Retained Materials. VMware grants Customer a non-exclusive, non-transferrable, worldwide, perpetual license to use and copy the VMware Retained Materials only for Customer's internal business operations. Third-Party Agents may use the Deliverables only for the benefit of Customer. The license granted in this section 3.2 does not apply to Software, Cloud Services, or any products licensed under a separate agreement.
 - 3.3. Customer Materials. Customer grants VMware a non-exclusive, non-transferrable right to use Customer Materials solely for the benefit of Customer in the performance of Professional Services. Customer warrants that it has sufficient rights to Customer Materials for VMware to lawfully perform Professional Services.
4. NON-SOLICITATION. During the term of the SOW and for six months after, neither party will solicit the employment of the employees or contractors of the other party who were involved in the performance under the SOW. Any public solicitation not directed specifically to a person is not a solicitation for purpose of this provision. This provision is not intended to limit a person's right to change jobs.
5. ACKNOWLEDGEMENT. The Professional Services do not include significant production, modification, or customization of Software.
6. DEFINITIONS

Customer Materials means any materials or technology provided to VMware by Customer in connection with the Professional Services.

VMware Retained Materials means: (a) materials developed or obtained by or for VMware independently of any Professional Services; (b) subsets or modules of Deliverables that by themselves provide generic technical information not unique to Customer's business; and (c) scripts, codes, and templates VMware develops while performing any Professional Services.



U.S. PUBLIC SECTOR EXHIBIT

Last updated: 21 July 2022

If Customer is a U.S. Public Sector End User, this U.S. Public Sector Exhibit to the General Terms is incorporated into and applies to the Agreement. Section 1 applies only if Customer is a U.S. Federal End User. Section 2 applies only if Customer is a U.S. State or Local Government End User.

1. TERMS APPLICABLE TO U.S. FEDERAL END USERS.
 - 1.1. Replace the preamble to the General Terms with the following:

By purchasing an Offering under a contract or order that incorporates this Agreement, Customer agrees to be bound by the terms of this Agreement.
 - 1.2. Replace section 1.3 of the General Terms (Restrictions) with the following:

Restrictions. Customer may use the Offerings only for its internal use. Customer may not resell or sublicense its rights to the Offerings. Customer may not use the Offerings in an application service provider, service bureau, hosted IT service, or similar capacity for third parties.
 - 1.3. Replace section 2.1 of the General Terms (Orders) with the following:

Orders. All Orders must expressly incorporate this Agreement. Orders are binding when VMware accepts them, which is deemed to occur on Delivery.
 - 1.4. Replace section 2.2 of the General Terms (Purchase Orders) with the following:

Purchase Orders. Purchase orders do not have to be signed to be valid unless required by applicable law. Additional or conflicting terms contained in any purchase order or other business form do not apply, except to the extent that mandatory and applicable law requires the inclusion of such terms in the contract and Federal Acquisition Regulation ("FAR") 52.212-4(s) (Order of Precedence) further requires that such terms take precedence over addenda to the solicitation or contract.
 - 1.5. Replace section 2.3 of the General Terms (No Refunds) with the following:

No Refunds. All Orders are non-refundable and non-cancellable except as expressly provided in the Agreement. Any refunds to which Customer is entitled under this Agreement will be remitted to Customer or to the VMware channel partner from which Customer purchased the Offerings.
 - 1.6. Replace section 2.4 of the General Terms (Overages) with the following:

Overages. Customer must pay all fees for use of the Offerings, including amounts for add-on features and fees incurred based on usage. VMware reserves the right to seek recovery of any unpaid amounts in accordance with 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes).
 - 1.7. Replace section 2.5 of the General Terms (Direct Orders) with the following:

Direct Orders. This section 0 (Direct Orders) applies only to Orders placed directly with VMware. If Customer purchases entitlements to the Offerings through a VMware channel partner, terms regarding invoicing, payment, and taxes shall be as agreed between the VMware channel partner and Customer.
 - 1.8. Replace section 2.5.2 of the General Terms (Disputes) with the following:

Disputes. All disputes, including any dispute of fees, shall be resolved in accordance with 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes). The parties must negotiate in good faith to resolve the dispute as soon as reasonably practicable. VMware will not suspend or terminate Customer's access to any Offering because of any unpaid disputed fees while Customer and VMware are negotiating to resolve the dispute.
 - 1.9. Replace section 2.5.3 of the General Terms (Taxes) with the following:

Taxes. Fees are exclusive of Taxes. Customer must pay or reimburse VMware for all Taxes. If Customer is required to withhold any Tax, Customer must gross up its payments so that VMware receives all sums due in full. VMware will treat Customer's contact information as the place of supply for Taxes. This section 2.4.3 does not apply to Customer to the extent that Customer is exempt from any Taxes.

- 1.10. Replace section 3.3 of the General Terms (Termination for Cause) with the following:

Termination. Customer may terminate the Agreement (in whole or in part) or Customer's entitlement to an Offering under the Agreement in accordance with FAR 52.212-4(l) or FAR 52.212-4(m), if applicable. Subject to, and to the extent not prohibited by, 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes), VMware may terminate the Agreement (in whole or in part) or Customer's entitlement to an Offering under the Agreement effective immediately upon written notice if Customer materially breaches any provision of the Agreement and fails to cure within 30 days after receiving written notice.

- 1.11. Replace section 3.4 of the General Terms (Effect of Termination) with the following:

Effect of Termination. Upon termination of the Agreement or part of it: (a) all entitlements to the applicable Offerings immediately end; (b) Customer must stop using, and destroy any copies of, those Offerings; and (c) each party must return or destroy any Confidential Information of the other party in its control (other than information that must be retained by law). Any provision that is intended by the parties to survive termination of the Agreement will survive. Except as otherwise expressly provided in this Agreement or as required by applicable law or regulation, termination of the Agreement will not entitle Customer to any refunds, credits, or exchanges, and Customer will be liable for all fees incurred as of the effective termination date.

- 1.12. Replace section 4.2 of the General Terms (Exceptions) with the following:

Exceptions. Recipient's obligations under section 4.1 (Protection) do not apply if the information: (a) is rightfully known by Recipient at the time of disclosure without any obligation of confidentiality; (b) is lawfully disclosed to Recipient by a third party without confidentiality restrictions; (c) becomes publicly available through no fault of Recipient; or (d) is independently developed by Recipient without access to or use of Discloser's Confidential Information. In addition, Customer may disclose Confidential Information to the extent that disclosure is required by law or by order of a judicial or administrative body of competent jurisdiction, provided that Customer notifies VMware of the required disclosure promptly and in writing and cooperates with VMware, at VMware's expense, in any lawful action to contest or limit the scope of the required disclosure.

- 1.13. Replace section 7.1 of the General Terms (Indemnification) with the following:

Defense and Indemnification. Subject to the remainder of this section 7 (Indemnification) and 28 U.S.C. 516, VMware will indemnify Customer with regard to any Infringement Claim from amounts finally awarded against Customer by a court of competent jurisdiction or a government agency, or agreed to in a settlement approved by VMware, for the Infringement Claim.

- 1.14. Replace section 7.2 of the General Terms (Requirements) with the following:

Requirements. Customer must provide VMware with prompt notice of any Infringement Claim and reasonably cooperate with VMware's requests for assistance. Customer must make every effort to permit VMware to participate fully in the defense and/or settlement of any Infringement Claim.

- 1.15. Replace section 7.4 of the General Terms (Remedies) with the following:

Remedies. If Indemnified Materials become, or in VMware's reasonable opinion are likely to become, the subject of an Infringement Claim, VMware must, at its option and expense, either: (a) procure the necessary rights for Customer to keep using the Indemnified Materials; or (b) modify or replace the Indemnified Materials to make them non-infringing. If VMware determines that those remedies are not commercially feasible, Customer agrees to terminate Customer's entitlement to the Indemnified Materials upon VMware's written request, and upon termination VMware will refund any applicable:

- (1) prepaid fees for Cloud Services or Subscription Software, prorated for the remaining portion of the then-current Subscription Term;

- (2) fees paid for Perpetual Licenses or Deliverables, less straight-line depreciation over a three-year useful life; and
- (3) unused, prepaid fees for discontinued Support Services.

Nothing in this section 7.4 (Remedies) will limit VMware's obligations under section 7.1 (Defense and Indemnification), provided that (x) Customer replaces the Indemnified Materials upon VMware making alternate Indemnified Materials available to Customer and (y) Customer discontinues use of the allegedly infringing Indemnified Materials upon receiving VMware's written request for Customer to terminate the affected entitlement. The foregoing is subject to the Government's right to require continued use of the Indemnified Materials pursuant to 28 U.S.C. 1498. In the event of such continued use, Customer agrees to notify VMware in writing and undertake at Customer's own expense the defense of any Infringement Claim against Customer, and VMware shall have no further indemnification obligation; however, VMware may participate at our own expense in the defense of any such action if the Infringement Claim is against VMware.

- 1.16. Replace section 7.5 of the General Terms (Sole Remedy) with the following:

Sole Remedy. To the extent permitted by applicable law, this section 7 (Indemnification) states Customer's sole remedy and VMware's entire liability for Infringement Claims.

- 1.17. Replace section 8.4 of the General Terms (Further Limitations) with the following:

Further Limitations. VMware's liability for any third-party software embedded into the Software or Cloud Services is subject to this section 8 (Limitation of Liability). VMware's suppliers have no liability under the Agreement, and Customer may not bring claims directly against them. VMware has no liability with respect to any Third-Party Content. Nothing in this section 8 will impair the U.S. Government's right to recover for fraud or crimes arising out of this Agreement as permitted under any applicable federal fraud statute, including the False Claims Act (31 U.S.C. 3729-3733).

- 1.18. Replace section 11.1 of the General Terms (Transfer and Assignment) with the following:

Transfer and Assignment. Customer may not assign the Agreement or any Order without VMware's consent. VMware may assign its right to receive payment in accordance with the Assignment of Claims Act (31 U.S.C. 3727) and FAR 52.212-4(b), and VMware may assign this Agreement to the extent not prohibited by the Anti-Assignment Act (41 U.S.C. 15). Subject to the requirements of FAR 42.12 (Novation and Change-of-Name Agreements), Customer shall recognize VMware's successor in interest following a transfer of VMware's assets or a change in VMware's name. Any other attempted assignment or transfer by either party will be void. Once validly assigned or transferred, the Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

- 1.19. Replace section 11.8 of the General Terms (Governing Law) with the following:

Governing Law. The Agreement is governed by applicable U.S. federal laws. Conflict of law rules are expressly disclaimed. The United Nations Convention on Contracts for the International Sale of Goods does not apply. To the extent that any terms and conditions in this Agreement are inconsistent with applicable U.S. federal law, those terms shall be deemed deleted and unenforceable as applied to Customer's Order.

- 1.20. Replace section 11.10 of the General Terms (Third Party Rights) with the following:

Third Party Rights. Other than as expressly stated, the Agreement does not create any rights for any person who is not a party to it. Only persons who are parties to the Agreement may enforce or rely on any of its terms. Notwithstanding the foregoing, for any Orders placed with a VMware channel partner, the VMware channel partner may bring a claim to enforce the terms of this Agreement at VMware's request and on VMware's behalf.

- 1.21. Insert the following as section 11.11 of the General Terms:

Commercial Computer Software. The Software and Cloud Services are deemed to be "commercial computer software," and the accompanying Documentation is deemed to be "commercial computer software documentation," pursuant to FAR 12.212(b) and Defense Federal Acquisition Regulation Supplement (DFARS) 227.7202, as applicable. Any use, modification, reproduction, release, performance, display, or disclosure of the Software, Cloud Services, or Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

- 1.22. Following the new section 11.11 of the General Terms (Commercial Computer Software), re-number the remainder of section 11 of the General Terms as follows:
Section 11.12 (Force Majeure) Section
11.13 (No Agency)
Section 11.14 (Translation)
Section 11.15 (Counterparts)
Section 11.16 (Entire Agreement)
- 1.23. Delete “Affiliate” from section 12 of the General Terms (Definitions).
- 1.24. Replace the definition of “Delivery” in section 12 of the General Terms (Definitions) with the following:
Delivery means: (a) for Cloud Services, when VMware emails the Login Credentials to the email address associated with Customer’s account; (b) for Software, when VMware notifies Customer of availability of Software for download; (c) for Support Services, upon VMware’s issuance of an invoice for those Support Services; (d) for Professional Services, as specified in the applicable SOW; and (e) for shipping and delivery of physical objects, Ex Works VMware’s regional fulfillment facility (INCOTERMS 2020™).
- 1.25. Replace the definition of “Order” in section 12 of the General Terms (Definitions) with the following:
Order means an enterprise order, SOW, quote, or other ordering document for Offerings, issued by Customer to VMware or to Customer’s VMware channel partner that expressly incorporates this Agreement and that is accepted by VMware described in section 2 of these General Terms (Orders and Payments).
- 1.26. Replace the definition of “VMware” in section 12 of the General Terms (Definitions) with the following:
VMware means VMware, Inc., a Delaware corporation.
- 1.27. Insert the following as section 2.3 of the Cloud Services Exhibit:
VMware may ask Customer to act within a reasonable time to correct a violation of this section 2 (Acceptable Use), and if Customer fails to comply with that request, VMware may suspend Customer’s account pursuant to section 3.2 of the General Terms (Temporary Suspension). VMware will promptly reinstate Customer’s account once the violation has been resolved.
- 1.28. Replace section 4.2 of the Cloud Services Exhibit with the following:
If VMware makes a change that has a material, detrimental impact on Customer’s use of a Cloud Service, then VMware must notify Customer prior to the effective date of that change. Customer will have 30 days following the date of that notice to terminate its entitlement to the Cloud Service. Customer may terminate its entitlement to the Cloud Service under this section 0 by providing VMware notice that states the effective termination date. Subject to and to the extent not prohibited by 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes), VMware may end availability of a Cloud Service by providing at least six months’ prior notice.
- 1.29. Replace section 1.1 of the Software Exhibit (License Grant) with the following:
License Grant. VMware grants Customer a non-exclusive, non-transferable commercial computer software license to: (a) deploy the number of Software licenses stated in the Order within the Territory; and (b) use the Software and the Documentation during the term of the license, solely for Customer’s internal business operations and subject to the provisions of the Product Guide. Licenses granted to Customer are for use of object code only. “Territory” means the United States of America, including U.S. Government facilities located outside of the United States of America, unless more broadly defined in the Product Guide. For purposes of this section, “U.S. Government facilities” means any buildings, land, bases, installations, vessels, craft, and ships that are either (x) 100% owned and controlled by the U.S. Government, or (y) 100% leased to and controlled by the U.S. Government throughout the entire term of the Order.
- 1.30. Replace section 2 of the Software Exhibit (License Restrictions) with the following:

LICENSE RESTRICTIONS. Customer must not, and must not allow any third party to: (a) make the Software available in any form to any third parties, except as specified in section 1.2 of this Exhibit (Third-Party Agents); (b) transfer or sublicense the Software or Documentation to any third party, except as expressly permitted in section 0 of the General Terms (Transfer and Assignment); (c) modify, translate, enhance, or create derivative works from the Software; (d) reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except to the extent permitted by applicable law; or (e) remove any copyright or other proprietary notices.

- 1.31. Replace section 3.1 of the Software Exhibit (Verification) with the following:

VERIFICATION. Customer must cooperate with VMware to show compliance with the Agreement. VMware (or a third party engaged by VMware) may verify that compliance at VMware's expense once in any 12-month period with reasonable prior notice and without unreasonably interfering with Customer's business activities. VMware reserves the right to seek recovery of any underpayments revealed by the verification in accordance with 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes). No payment obligation shall arise on Customer's behalf until the conclusion of the dispute process. If the verification requires access to classified information, as that term is defined in the National Industrial Security Program Operating Manual (NISPOM), then the verification will be conducted by individuals possessing a personal security clearance as defined in the NISPOM ("PCL") at the appropriate level. In such cases, VMware and any third party engaged by VMware will disclose classified information only to person(s) who both possess a PCL and have a need to know.

- 1.32. Replace section 5 of the Professional Services Exhibit (Acknowledgment) with the following:

ACKNOWLEDGEMENT. The Professional Services are commercial services (as defined in FAR 2.101) and do not include significant production, modification, or customization of Software.

2. TERMS APPLICABLE TO U.S. STATE & LOCAL GOVERNMENT END USERS.

- 2.1. Replace the preamble to the General Terms with the following:

By purchasing an Offering under a contract or order that incorporates this Agreement, Customer agrees to be bound by the terms of this Agreement.

- 2.2. Replace section 2.1 of the General Terms (Orders) with the following:

Orders. All Orders must expressly incorporate this Agreement. Orders are binding when VMware accepts them, which is deemed to occur on Delivery.

- 2.3. Replace section 2.2 of the General Terms (Purchase Orders) with the following:

Purchase Orders. Purchase orders do not have to be signed to be valid unless required by applicable law. Additional or conflicting terms contained in any purchase order or other business form do not apply, except to the extent that Customer identifies the applicable law mandating the inclusion of such terms in the contract and requiring that such terms take precedence over addenda to the solicitation or contract.

- 2.4. Replace section 2.5 of the General Terms (Direct Orders) with the following:

Direct Orders. This section 0 (Direct Orders) applies only to Orders placed directly with VMware. If Customer purchases entitlements to the Offerings through a VMware channel partner, terms regarding invoicing, payment, and taxes shall be as agreed between the VMware channel partner and Customer.

- 2.5. Replace section 3.3 of the General Terms (Termination for Cause) with the following:

Termination. Subject to and to the extent not prohibited by applicable law, either party may terminate the Agreement (in whole or in part) or Customer's entitlement to an Offering under the Agreement effective immediately upon written notice if the other party (a) materially breaches any provision of the Agreement and fails to cure within 30 days after receiving written notice; or (b) becomes insolvent or subject to any form of bankruptcy proceeding. VMware acknowledges that Customer may have additional termination rights under applicable law, which in some jurisdictions may include a Customer's right to terminate the Agreement for convenience or a Customer's right to terminate the Agreement in the event that a legislative body does not make appropriated funds available ("NonAppropriation") for Customer to make upcoming payments under the Agreement.

- 2.6. Replace section 3.4 of the General Terms (Effect of Termination) with the following:

Effect of Termination. Upon termination of the Agreement or part of it: (a) all entitlements to the applicable Offerings immediately end; (b) Customer must stop using, and destroy any copies of, those Offerings if requested to do so in writing; and (c) each party must return or destroy any Confidential Information of the other party in its control (other than information that must be retained by law) if requested to do so in writing. Any provision that is intended by the parties to survive termination of the Agreement will survive. Termination for NonAppropriation of funds will not become effective prior to the date on which the budget for the next fiscal period goes into effect. Except as otherwise expressly provided in this Agreement or as required by applicable law or regulation, termination of the Agreement will not entitle Customer to any refunds, credits, or exchanges, and Customer will be liable for all earned fees incurred as of the effective termination date.

2.7. Replace section 7.1 of the General Terms (Indemnification) with the following:

2.8. Defense and Indemnification. Subject to the remainder of this section 7 (Indemnification) and applicable law, VMware will: (a) defend Customer against any Infringement Claim; and (b) indemnify and hold harmless Customer from amounts finally awarded against Customer by a court of competent jurisdiction or a government agency, or agreed to in a settlement approved by VMware, for the Infringement Claim. Replace section 7.2 of the General Terms (Requirements) with the following:

Requirements. Customer must provide VMware with prompt notice of any Infringement Claim and reasonably cooperate with VMware's requests for assistance. Customer must make every effort to permit VMware to control or participate fully in the defense and/or settlement of any Infringement Claim to the maximum extent allowed under applicable law, rules or regulations; however, VMware acknowledges that such participation may be under the control of the chief legal officer for the applicable State or Local Government End User.

2.9. Replace section 7.5 of the General Terms (Sole Remedy) with the following:

Sole Remedy. To the extent permitted by applicable law, this section 7 (Indemnification) states Customer's sole remedy and VMware's entire liability for Infringement Claims.

2.10. Replace section 11.8 of the General Terms (Governing Law) with the following:

Governing Law. The Agreement is governed by applicable laws of the U.S. state or territory in which Customer is located. Conflict of law rules are expressly disclaimed. The United Nations Convention on Contracts for the International Sale of Goods does not apply. To the extent that any terms and conditions in this Agreement are inconsistent with applicable laws of the U.S. state or territory in which Customer is located, those terms shall be deemed deleted and unenforceable as applied to Customer's Order. To the extent permitted by law, the state and federal courts located in San Bernardino County, California will be the exclusive jurisdiction for disputes arising out of or in connection with this Agreement.

3. DEFINITIONS

U.S. Federal End User means any of the following agencies or establishments of the U.S. Federal Government: (a) executive departments as defined by 5 U.S.C. 101; (b) military departments as defined by 5 U.S.C. 102; (c) government corporations as defined by 5 U.S.C. 103; (d) independent establishments as defined by 5 U.S.C. 104; and (e) any establishment in the legislative or judicial branch of the U.S. Federal Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

U.S. State & Local Government End User means any municipality, district, county, state, tribal, or territorial government entity, including any agency, department, commission, bureau, board, council, authority or other entity in the executive, legislative, or judicial branch of a state, local, tribal, or territorial government. For the avoidance of doubt, the foregoing includes (a) public K-12 schools and public universities; and (b) any hospitals, medical centers, or health facilities that have constitutional or statutory authority to conduct public procurements or are operated by any U.S. state, local, territorial, or tribal government.



VMWARE CLOUD SERVICES EXHIBIT

Last updated: 16 June 2022

This Cloud Services Exhibit to the General Terms applies if Customer purchases Cloud Services.

1. CLOUD SERVICES.
 - 1.1. Customer may use a Cloud Service for the Subscription Term in accordance with the Agreement and the Cloud Services Guide. VMware will deliver the Cloud Service in accordance with the Service Level Agreement.
 - 1.2. If the Cloud Service includes an entitlement to Software, that Software is subject to the Software Exhibit.
2. ACCEPTABLE USE.
 - 2.1. Customer must not use the Cloud Service: (a) in a way prohibited by law or that would cause a violation of law; (b) to violate the rights of others; (c) to try to gain unauthorized access to, test the vulnerability of, or disrupt any Service, device, data, account, or network; (d) to distribute spam or malware; (e) in a way that could cause harm or impair anyone's use of the Service; (f) in a way intended to work around technical limitations, recurring fees calculation, or usage limits of the Service; or (g) for High Risk Activities.
 - 2.2. Customer must not upload any content that: (a) may create a risk of harm to any person or property; (b) may constitute or contribute to a crime or a tort; (c) is illegal, unlawful, harmful, pornographic, defamatory, infringing, or invasive of personal privacy or publicity rights; (d) Customer does not have a right to upload; (e) information subject to HIPAA (unless Customer has signed a business associate agreement with VMware); (f) requires an export license or is restricted under applicable export control laws; (g) is required to be classified or listed on the United States Munitions list or similar list published for the jurisdiction in which the applicable data center is located; (h) contains ITAR-related data; or (i) is otherwise prohibited in the Agreement.
3. SECURITY MEASURES.
 - 3.1. VMware must implement and maintain appropriate technical and organizational security measures designed to protect the confidentiality, integrity, and security of Customer Content. VMware must not access or disclose Customer Content except as necessary to provide the Cloud Service, described in the Offering-specific Notes, or as described in section 9.4 of the General Terms (Required Disclosures). Uploading Customer Content to the Cloud Service is not a disclosure of Customer Content to VMware.
 - 3.2. Customer must: (a) take appropriate steps to protect Customer Content; (b) provide any necessary notices to and obtain any legally required consents from Customer's Users; (c) notify VMware as soon as possible if Customer believes its account has been compromised; and (d) reasonably cooperate with VMware to resolve issues related to Customer's use of the Cloud Service. Customer is responsible for ensuring that the Cloud Service is appropriate for Customer's intended use. Customer is responsible for any authorized use of the Service Offering that occurs under its Login Credentials.
4. MODIFICATIONS AND END OF AVAILABILITY.
 - 4.1. VMware may make commercially reasonable modifications to the Cloud Service, the Cloud Services Guide, or the Service Level Agreement. Any changes will become effective on the date published.
 - 4.2. If VMware makes a change that has a material, detrimental impact on Customer's use of a Cloud Service, then VMware must notify Customer prior to the effective date of that change. Customer will have 30 days following the date of that notice to terminate its entitlement to the Cloud Service. Customer may terminate its entitlement to the Cloud Service under this section 4.2 by providing VMware notice that states the effective termination date. Before ending the availability of a Cloud Service, VMware must provide at least six months' prior notice.
 - 4.3. Customer is responsible for all fees incurred prior to the effective termination date or end of availability of the Cloud Service. VMware will refund any prepaid fees, prorated as of the effective termination date or end of availability.
5. SUPPORT REQUESTS. VMware will provide Support Services for the Cloud Services in accordance with the support policies available at www.vmware.com/support/policies.html. VMware may require limited access to Customer's instance of the Cloud Service to respond to Customer's support requests.



6. DATA DELETION. Deletion of Customer Content on expiration or termination of Customer's entitlement to the Cloud Service will occur as specified in the Cloud Services Guide. Customer is responsible for ensuring that it has necessary copies of Customer Content prior to expiration or termination.

7. DEFINITIONS

High Risk Activities means workloads or applications relating to activities where failure could lead to personal injury, death, or environmental damage, including controlling aircraft or other modes of mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario.

HIPAA means the United States Health Insurance Portability and Accountability Act of 1996, as amended and supplemented, and the regulations issued under that Act. v.16 June 20.