

## VMWARE END USER LICENSE AGREEMENT

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### 1. DEFINITIONS

- 1.1 “**Documentation**” means, collectively, the operation instructions, release notes, user manuals and/or help files for the Software in electronic or written form.
- 1.2 “**Guest Operating Systems**” means instances of third-party operating systems licensed separately by You and installed in a Virtual Machine.
- 1.3 “**Software**” means software products that are licensed to You under this EULA, including, but not limited to, any related components purchased or provided with the Software, Documentation, and any maintenance releases thereto.
- 1.4 “**Software License Key**” means a valid serial number issued to You to activate and use the Software.
- 1.5 “**Open Source Software**” means various software components including open source software, that may be part of the Software, each licensed to You under its own applicable license terms and conditions, which can be found in the open\_source\_licenses.txt file, the Documentation or as applicable, the corresponding source files for the Software available at [http://www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html).
- 1.6 “**Virtual Machine**” means a software container that can run its own operating system and execute applications like a physical machine.

### 2. GRANT AND USE RIGHTS FOR SOFTWARE

- 2.1 **License Grant.** The Software is licensed, not sold. Subject to the terms of this EULA, VMware grants You a non-exclusive, non-transferable license, without rights to sublicense, to use the Software in the country where You are invoiced in accordance with the Documentation and the VMware license model (per device, per processor, per server, per single user, per virtual machine,

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- 2.3 **VMware Tools.** You may use or distribute the suite of utilities and drivers that may be part of the Software ("VMware Tools") to any third party provided that (i) You only distribute the VMware Tools as a whole in object code format, whether or not as part of the Virtual Machine You create with the Software; and (ii) You agree to indemnify, hold harmless, and defend VMware from and against any claims or lawsuits, including attorneys' fees, that relate to your distribution of VMware Tools.
- 2.4 **Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies, the results of which only You may publish or publicly disseminate, provided that VMware has reviewed and approved of the methodology, assumptions and other parameters of your testing and studies. Please contact VMware at [benchmark@vmware.com](mailto:benchmark@vmware.com) to request such review. For VMware Workstation and Fusion benchmarks, You may publish or publicly disseminate the results without VMware's prior review and approval.
- 2.5 **Third-party Software.** You are responsible for separately obtaining and complying with any licenses necessary to operate third-party software, including but not limited to, Guest Operating Systems and application programs which the Software enables You to run.
- 2.6 **Data Collection and Privacy.** You agree that VMware may collect, use, store and transmit technical and related information about your use of the Software which may include internet

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- 2.7 **Audit Rights.** During the term of this EULA and for two (2) years after termination or expiration of the EULA or support and subscription services for the applicable Software has expired, You agree to maintain accurate records as to your installation and use of the Software, sufficient to provide evidence of compliance with the terms of this EULA. VMware, or an independent third party designated by VMware, may audit, upon written notice to You, your books, records, and computing devices to determine your compliance with this EULA and your payment of the applicable license and support services fees, if any, for the Software. VMware may conduct no more than one (1) audit in any twelve (12) month period. In the event that any such audit reveals an underpayment by You of more than five percent (5%) of the license amounts due to VMware in the period being audited, or that You have breached any term of the EULA, then, in addition to paying to VMware any underpayments for Software licenses and Support and Subscription (“SnS”) fees and any other remedies VMware may have, You will promptly pay to VMware the audit costs incurred by VMware.
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5. **TERMINATION.** VMware may terminate this EULA immediately upon notice if You fail to comply with any term of this EULA. In the event of termination, You must remove and destroy all copies of the Software and Software License Key(s), including all backup copies, from the server and all computers and terminals You own, possess or control and on which the Software is installed. Any obligations to pay fees incurred prior to termination and Sections 1, 2, 3, 6, and 7 of this EULA shall survive termination for any reason.
6. **LIMITED WARRANTY AND LIMITATION OF LIABILITY**
- 6.1 **Limited Warranty.** VMware warrants that (i) the physical media, if any, on which the Software is delivered will be free of defects in materials and workmanship; and (ii) that the Software will substantially conform to the functional description set forth in the standard Documentation accompanying the Software for a period of 90 days after the date of delivery of the Software License Key to You (“**Warranty Period**”). If the physical media is defective and is returned to VMware within the Warranty Period, your exclusive remedy will be VMware’s option to repair or replace the defective physical media.. To return the defective physical media, send an email to [sales@vmware.com](mailto:sales@vmware.com) to request a return authorization number. If during the Warranty Period the Software does not substantially conform to the functional description set forth in the Documentation, your exclusive remedy will be that VMware shall, at its sole option, correct the defects in the Software or refund the license fees You paid, if any, for the Software provided that (i) the Software has been properly installed and used at all times and in accordance with the

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## 7. GENERAL

7.1 **Entire Agreement.** This EULA represents the entire agreement between the parties with respect to the Software, and supersedes any prior or contemporaneous oral or written agreements concerning the subject matter contained herein.

7.2 **Headings.** Headings under this EULA are intended only for convenience and shall not affect the interpretation of this EULA.

7.3 **Waiver and Modification.** No failure of either party to exercise or enforce any of its rights under this EULA will act as a waiver of those rights. This EULA may only be modified, or any rights under it waived, by a written agreement executed by the party against which it is asserted.

7.4 **Severability.** If any provision of this EULA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this EULA will not be affected.

7.5 **Export Controls.** The Software is of United States origin and is provided subject to the U.S. Export Administration Regulations. Diversion contrary to U.S. law is prohibited. Without limiting the foregoing, you agree that (1) you are not, and are not acting on behalf of, any person who is a citizen, national, or resident of, or who is controlled by the government of, Cuba, Iran, North Korea, Sudan, or Syria, or any other country to which the United States has prohibited export transactions; (2) you are not, and are not acting on behalf of, 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; and (3) you will not use the Software for, and will not permit the Software to be used for, any purposes prohibited by law, including, without

limitation, for any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons.

- 7.6 **U.S. Government Restricted Rights.** The Software and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performance, display, or disclosure of the Software by the U.S. Government shall be governed solely by the terms of this EULA.
- 7.7 **Governing Law.** This EULA is governed by the laws of the State of California, United States of America, unless mandated by other law. The United Nations Convention for the International Sale of Goods shall not apply.
- 7.8 **Contact Information.** Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America. If You have any questions concerning this EULA, please send an email to [info@vmware.com](mailto:info@vmware.com).
8. **SOFTWARE-SPECIFIC TERMS AND CONDITIONS.** In addition to the above sections, the Software is subject to the following terms and conditions. In the event of any conflict between the Software-specific terms and conditions and sections 1-7 of the EULA, the Software-specific terms and conditions shall control.

#### **VMware vSphere**

“**Processor**” means a single, physical chip that houses a central processing unit that can execute computer programs.

“**Server**” means a hardware system capable of running the Software. A hardware partition or blade is considered a separate hardware system.

“**vRAM**” means the virtual memory configured to a single Virtual Machine.

#### Additional License Terms

You may install and use the Software on a Server that contains up to the maximum number of Processors for which you have paid the applicable license fees.

Hosting Rights and Restrictions. Notwithstanding anything to the contrary in this EULA, You may use the Software to deliver “internally developed applications” as a service to third parties via an internal or external network. An “internally developed application” is: (i) a computer application that You have created or developed, and (ii) a third party computer application(s) that (a) is ancillary to your application-based service, and (b) cannot be accessed directly by end users of your application-based service. Except as expressly provided in this paragraph and Section 2.2 of the EULA, the use of the Software for any other types of hosting or for the benefit of any third-party in any manner is strictly prohibited unless You are an authorized participant in a VMware program that is governed by a separate set of terms and conditions, which authorizes such activity.

vRAM Limitation. Your vRAM entitlement per Processor is determined by the edition of the Software that You have licensed and the total amount of configured vRAM cannot exceed the available amount of vRAM specified by the Software edition.

**Pooling of vRAM.** Subject to Section 2.1 of this EULA, You may aggregate the total amount of vRAM licensed for all vSphere licenses (the “**Pool**”), as long as those vSphere licenses are: (1) all of the same edition, and (2) all managed by a single instance of vCenter Server or by multiple vCenter Servers operating in linked mode. The 365-day moving average of “Daily vRAM Usage” cannot exceed the aggregate total licensed vRAM for the vSphere licenses in the Pool (“**Moving Average Restriction**”).

“Daily vRAM Usage” means the maximum amount of vRAM configured to all powered-on Virtual Machines in a Pool, in aggregate, that is recorded at any time during a day. For purposes of calculating Daily vRAM Usage, the amount of vRAM configured to each individual Virtual Machine is deemed to be the lesser of (a) the amount of virtual memory actually configured to such Virtual Machine, or, (b) 96 gigabytes.

If at any given time when the configured vRAM exceeds the available amount of vRAM, You must purchase additional Software licenses based on the difference between 1) the highest amount of vRAM configured and 2) the available vRAM in order to remain compliant with the vRAM limitation.

**vStorage API for Array Integration (VAAI).** You may use storage arrays that are certified for VAAI only with VMware vSphere Enterprise or Enterprise Plus editions.

**Third Party Multipathing.** You may use multipathing extensions module only with VMware vSphere Enterprise or Enterprise Plus editions.

**vSphere Auto Deploy.** You may use this feature only if You have licensed vSphere Enterprise Plus edition.

**vSphere View Accelerator.** You may use this feature only if You have licensed vSphere Enterprise Plus edition.

**VMware vSphere Essentials and VMware vSphere Essentials Plus** (collectively, the “**Essentials Kit**”)

In addition to the above license terms, You may install and use vSphere, included in the Essential Kit for up to three (3) Servers, with each Server having up to two (2) Processors.

Notwithstanding the terms of the Moving Average Restriction set forth above, the amount of vRAM managed by the VMware vCenter Server included with the Essentials Kit cannot exceed 192 GB of vRAM in its Pool at any time.

**VMware vSphere Essentials for Retail and Branch Offices and VMware vSphere Essentials Plus for Retail and Branch Offices** (collectively, the “**ROBO Kit**”)

In addition to the above license terms, You may install and use vSphere, included in the ROBO Kit for up to three (3) Servers per physical building, with each Server having up to two (2) Processors.

The number of physical buildings with Servers may not exceed the number of ROBO Kit licenses purchased.

Notwithstanding the terms of the Moving Average Restriction set forth above, the amount of vRAM managed by the VMware vCenter Server included with the ROBO Kit cannot exceed 192 GB of vRAM in its Pool at any time.

### **VMware vSphere Hypervisor**

You may only install and use vSphere Hypervisor on a Server that has up to 32GB of physical RAM and the vRAM entitlement for each Server is limited to 32 gigabytes.

### **VMware vSphere Desktop**

You may only install and use vSphere Desktop to host (i) a virtual desktop infrastructure for up to the number of Desktop Virtual Machines (as defined below in VMware View) for which You have paid the applicable license fees, and (ii) associated desktop management and monitoring tools. vSphere Desktop is not subject to a vRAM limitation.

### **VMware View**

**"Desktop Virtual Machine"** is a hosted Virtual Machine with one of the following Windows operating systems: XP, Vista, and 7.

**"Powered On Desktop Virtual Machine"** means a Desktop Virtual Machine receiving a remote connection from a device or running locally on a device.

In addition to the above license terms, You may use the Software for up to the total number of Powered On Desktop Virtual Machines for which You have paid the applicable license fees. The VMware vSphere, included in any VMware View edition, is not subject to a vRAM limitation, and your use of vSphere for VMware View is limited to hosting Desktop Virtual Machines and running VMware products which are included in the applicable View edition, or third party connection brokers and desktop management and monitoring tools. Your use of individual features included in a specific View edition is limited to that edition. The use of individual features interchangeably between View editions is strictly prohibited.

Customers who (i) purchased licenses for vSphere 4.x (or previous versions) prior to September 30, 2011, (ii) use such licensed software to host Desktop Virtual Machines or desktop management and monitoring tools, and (iii) hold current SnS agreements covering such licensed software, may upgrade to vSphere 5.0 while retaining their current licensing metric and associated restrictions and will not be required to adopt the vRAM restricted per-processor licensing model. Desktop licenses covered by this provision, however, may not be managed by the same instance of Virtual Center which is being used to manage non-Desktop Virtual Machines.