

VMware® vSphere Software Development Kit License Agreement

VMware, Inc. (“VMware”) provides the VMware vSphere Software Development Kit (collectively the “Software”) to you subject to the following terms and conditions. By downloading, installing, or using the Software, you (the individual or legal entity) agree to be bound by the terms of this license agreement (the “Agreement”). If you disagree with any of the following terms, then do not use the Software.

1. The Software contains a variety of materials, interface definitions, documentation, sample utility applications and sample code regarding programming interfaces to one or more VMware products that are referenced in such materials (the referenced products, “VMware Products”). This Software is intended to be used to develop software that interacts with the VMware Products.

2. **Use Rights:** Subject to the restrictions below, you may download and make a reasonable number of copies of the Software for your use solely for the purpose of creating software that communicates with VMware Products (your software, “Developer Software”). Some code may be designated as “distributable code” and/or “modifiable code” at <http://www.vmware.com/go/vwssdk-redistribution-info>. You may use and merge all or portions of the “distributable code” with your Developer Software. Any merged portion of any “distributable code” is subject to this Agreement. Additionally, you may modify or create derivative works of all or portions of the “modifiable code.” You are permitted to re-distribute the “distributable code” and the modified or derivative works of the “modifiable code” only as part of your Developer Software for non-commercial or commercial use; provided that you shall only distribute such code subject to a license agreement that protects VMware’s and its licensors’ interests consistent with the terms contained in this Agreement. Open source software components provided with the Software are licensed to you under the terms of the applicable license agreements included with such open source software components. The open source software licenses can be found in the open_source_licenses.txt file, other materials accompanying the Software, the documentation or corresponding source files available at http://www.vmware.com/download/open_source.html.

3. **Restrictions:** You agree that you will not (1) use the Software to create, design or develop anything other than Developer Software; (2) make any more copies of the Software than are reasonably necessary for the authorized use and backup and archival purposes; (3) modify, create derivative works of, reverse engineer, reverse compile, or disassemble the Software except as expressly permitted in Section 2; (4) distribute, sell, lease, rent, lend, or sublicense any part of the Software to any third party except as expressly permitted in Section 2; or (5) use the Software in any manner to (a) circumvent any technical restrictions of VMware Products or violate any additional licensing terms applicable to VMware Products that VMware provides through product documentation, email notification on the VMware website or in the terms of the End User License Agreements; (b) disable, remove, over-ride or modify the display of any VMware Product End User License Agreements that the VMware Products present to the end customers; or (c) upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware.

The restrictions in this Section 3 shall not apply if and to the extent they contradict mandatory local law (including, but not limited to, law implementing the EC Software Directive).

4. VMware retains ownership of the Software and all intellectual property rights embodied in the Software, including without limitation all copyrights, trade secrets and patents. You may not remove, delete or modify any of VMware copyright statements in the Software. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO VMWARE.

5. You may not use VMware's name, trademarks or service marks in connection with your Developer Software in a way that suggests your Developer Software is certified or endorsed by VMware.
6. You are not entitled under this Agreement to receive any VMware support or subscription services for the Software or any other services from VMware in connection with the Software. If you have purchased support and/or subscription services for a VMware product, such support and/or subscription services shall not apply to the Software or your use of the Software.
7. **Term, Termination and Changes:** This Agreement shall continue as long as you are in compliance with the terms specified herein or until otherwise terminated. You or VMware each may terminate this Agreement for any reason at any time. You agree, upon termination, to destroy all copies of the Software within your possession or control. The Confidential Information, Limitations of Warranties and Liability, and Indemnification sections set out in this Agreement shall survive any termination or expiration of this Agreement.
8. **Confidential Information:** "Confidential Information" means any information disclosed by VMware to you pursuant to this Agreement that is marked "Confidential," "Proprietary," or in some similar manner and any information which you knew or reasonably should have known to be confidential. You shall treat as confidential all Confidential Information of VMware and shall not use such Confidential Information except to exercise your rights or perform your obligations under this Agreement. You will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as you protect your own confidential or proprietary information of a similar nature but with no less than reasonable care. You shall not disclose such Confidential Information to any third party during or after the term of this Agreement. This paragraph will not apply to any Confidential Information that: (a) was rightfully in your possession prior to receipt of such Confidential Information from VMware; (b) is or becomes a matter of public knowledge through no fault of you; (c) is rightfully received from a third party without a duty of confidentiality; (d) is independently developed by you without breach of any confidentiality obligations; (e) is disclosed by you with VMware's prior written approval; or (f) you are required to disclose by applicable law or court order, provided that you notify VMware of such required disclosure promptly in writing and cooperate with VMware in any lawful action to contest or limit the scope of such required disclosure. You acknowledge that breach of this Section 8 will cause irreparable damage to VMware for which monetary damages will be an inadequate remedy. Accordingly, VMware will be entitled to seek and obtain injunctive and any other relief (legal or equitable) to restrain any breach or anticipated breach of this Section 8.

9. **Limitations of Warranties and Liability:** THE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL VMWARE BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SOFTWARE OR YOUR USE OF THE SOFTWARE, UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU.

VMWARE'S LIABILITY ARISING OUT OF THIS AGREEMENT AND THE SOFTWARE PROVIDED HEREUNDER WILL NOT, IN ANY EVENT, EXCEED US\$100.00.

THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER VMWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

10. **Indemnification:** You agree to defend, indemnify and hold harmless VMware, and any of its directors, officers, employees, affiliates and agents, from and against any and all claims, losses, damages, liabilities and other expenses (including reasonable attorneys' fees), arising from your modification of the "modifiable code," the distribution or use of your Developer Software by you or anyone else, and your breach of this Agreement.

11. **Export Control:** You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent, warrant and covenant that (1) you are not, and are not acting on behalf of, (a) 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 (b) 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 (2) you will not permit the Software 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.

12. **Data Privacy:**

(a) Consent for Collection and Use of Technical Data. You agree that VMware may periodically collect, process and store technical and related information about your device, system, application, peripherals and your use of the Software, including without limitation: internet protocol address, hardware identification, operating system, application software, peripheral hardware, number of active plugins and software development kits, the successful installation and launch of Software, and Software usage statistics (collectively, "Technical Data").

VMware will use Technical Data for internal statistical and analytical purposes to facilitate support, invoicing or online services, the provisioning of updates, and the development of VMware products and services. VMware may transfer Technical Data to other companies in the VMware worldwide group of companies from time to time.

(b) Log Files. You acknowledge that correspondence and log files generated in conjunction with a request for support services may contain sensitive, confidential or personal information. You are solely responsible for taking the steps necessary to protect such data, including obfuscating the logs or otherwise guarding such information prior to sending it to VMware.

13. These terms are governed by the laws of the State of California and the United States of America without regard to conflict of laws principles. The United Nations Convention for the International Sale of Goods shall not apply. You may not assign this Agreement. Any attempted assignment by you shall be void. These terms constitute the entire agreement between you and VMware with respect to the Software and supersede all prior written or oral communications, understandings and agreements. Any waiver of these terms must be in writing and signed by the waiving party to be effective. If any provision of these

terms is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law.