

EXHIBIT A1

VMWARE MASTER END USER LICENSE AGREEMENT FOR VMWARE INFRASTRUCTURE PRODUCTS (V13 EULA)

NOTICE: BY DOWNLOADING AND INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS VMWARE MASTER END USER LICENSE AGREEMENT (“EULA”). IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT DOWNLOAD, INSTALL, COPY OR USE THE SOFTWARE, AND YOU MAY RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, ALREADY PAID UPON SHOWING PROOF OF PAYMENT. “YOU” MEANS THE NATURAL PERSON OR THE ENTITY THAT IS AGREEING TO BE BOUND BY THIS EULA, THEIR EMPLOYEES AND THIRD PARTY CONTRACTORS THAT PROVIDE SERVICES TO YOU. YOU SHALL BE LIABLE FOR ANY FAILURE BY SUCH EMPLOYEES AND THIRD PARTY CONTRACTORS TO COMPLY WITH THE TERMS OF THIS EULA.

1. DEFINITIONS

- 1.1 **“Designated Administrative Access”** means that access to the standard user interfaces of a given instance of the Software (designated in this section) that you may grant to a designated third party (a) for which you have provided advance written notice to VMware that you are providing outsourced services and (b) for whose dedicated benefit you have licensed such instance of the Software. Designated Administrative Access is applicable only where you are 1) an IT outsourcing company that is providing outsourced IT services to a client company and 2) applicable only to the following Software: VMware ESX, VMware Server and VirtualCenter.
- 1.2 **“GPL Software”** means GPL software licensed to you under the GNU General Public License as published by the Free Software Foundation (GPL). A copy of the GPL is included on the media on which you received the Software or included in the files you downloaded, if you acquired the Software by electronic download.
- 1.3 **“Guest Operating Systems”** means instances of third-party operating systems licensed by you and installed in a Virtual Machine and run using the Software.
- 1.4 **“Licensed Additional Module”** means additional modules that may be provided with and/or used in conjunction with the Software for which you have paid the applicable license fee and accepted any applicable additional license terms.
- 1.5 **“Open Source Software”** means various open source software components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. The Open Source Software licenses can be found in the open_source_licenses.txt file, other materials accompanying the software package, the documentation or corresponding source files available at http://www.vmware.com/download/open_source.html.
- 1.6 **“Processor”** means a single, physical chip that houses no more than four (4) processor cores.
- 1.7 **“Server”** means a single physical computer of a type that meets the specifications as set forth in the applicable product documentation posted at <http://www.vmware.com/support/pubs/>. Multiple computers that share processing power or operate in a networked configuration as a single logical computer, such as a “server farm” or similar arrangement, constitute multiple Servers for the purpose of this EULA.
- 1.8 **“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, application programming interfaces, associated media, printed materials, online or electronic documentation, and any updates and maintenance releases thereto.
- 1.9 **“Software License Key”** means, if applicable, a serial number issued to you by VMware to activate and use the Software. A separate, additional Software License Key may be required to activate and use each Licensed Additional Module.
- 1.10 **“VMware Tools”** means a suite of utilities and drivers that may enhance the performance and functionality of your Guest Operating System. VMware Tools may include some or all of the following, depending on your Guest Operating System: an SVGA driver, a mouse driver, the VMware Tools control panel and support for features such as shared folders, drag and drop in Windows guests, shrinking virtual disks, time synchronization with the host, VMware Tools scripts, and connection and disconnection of devices while the virtual machine is running.
- 1.11 **“Virtual Machine”** means an instance of a Guest Operating System and any application programs installed thereon, running on a computing device on which the Software is installed, or suspended to disk or any other storage media accessible by the computing device.

2. GRANT AND USE RIGHTS FOR SOFTWARE.

- 2.1 **License.** The Software is licensed, not sold. Subject to the terms of this EULA, VMware hereby grants you a perpetual (except as otherwise expressly set forth in the License Type (as defined herein)), non-exclusive, non-transferable license, without rights to sublicense, to use the object code of the Software for your own internal information processing and computing needs, in accordance with the type of license applicable to such Software (“License Type”), as set forth in Section 8, for the purpose as set forth in the applicable documentation for the Software and to the extent permitted by your payment of applicable license fees under a VMware approved licensing model and/or your Software License Key. Depending upon the model utilized to compute the applicable license fees paid by you to use the Software (whether per Processor, per Virtual Machine, per user, or any other VMware approved licensing model), an applicable Software License Key may limit your usage of the Software accordingly. You may use the documentation accompanying the Software in connection with permitted uses of the Software.

- 2.2 **License Limitations.** You may not copy the Software except for a reasonable number of machine-readable copies of the Software for backup or archival purposes and except as expressly permitted in this EULA. You may not remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary markings on the Software. You are not granted any rights to any trademarks or service marks of VMware. VMware retains all rights not expressly granted to you in this EULA.
- 2.3 **Restrictions.** You may not (i) sell, lease, license, sublicense, distribute or otherwise transfer in whole or in part the Software or the Software License Key to another party; (ii) provide, disclose, divulge or make available to, or permit use of the Software in whole or in part by, any third party (except Designated Administrative Access) without VMware's prior written consent; (iii) modify or create derivative works based upon the Software; or (vi) use the Software to provide network, application hosting or other services to third parties, or otherwise use the Software on a service bureau or hosting basis for your customers, unless otherwise expressly permitted herein. Except to the extent expressly permitted by applicable law, and to the extent that VMware is not permitted by that applicable law to exclude or limit the following rights, you may not decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part. You may use the Software to conduct internal performance testing and benchmarking studies, the results of which you (and not unauthorized third parties) may publish or publicly disseminate; provided that VMware has reviewed and approved of the methodology, assumptions and other parameters of the study. Please contact VMware at benchmark@vmware.com to request such review.
- 2.4 **GPL Software.** You can redistribute and/or modify the GPL Software under the terms of the GPL. You may obtain a copy of the source code corresponding to the binaries for the GPL Software (the "GPL Source Files") by downloading the GPL Source Files from VMware's Web site at http://www.vmware.com/download/open_source.html, or by sending a request, with your name and address, to VMware at the address specified under the heading "Contact Information" below, in which case VMware will mail a copy of the GPL Source Files to you on a CD or equivalent physical medium. This offer to obtain a copy of the GPL Source Files is valid for three years from the date you acquired this Software product.
- 2.5 **VMware Tools.** You may distribute the VMware Tools to any third party provided that (i) you do not modify the VMware Tools; (ii) you distribute the VMware Tools in object code format only and solely in conjunction with, and as part of, the Virtual Machine you create with the Software; (iii) you do not use VMware's name, logo or trademarks to market the Virtual Machine you create with the Software and (iv) you acknowledge that you are responsible for obtaining the necessary licenses to any third party software, copyrighted materials and other content for you to operate and distribute a Virtual Machine that you have created. Notwithstanding the foregoing, you may refer to VMware names, logos or trademarks to indicate that the Virtual Machine you create with the Software are compatible with or designed for use with the Software.
- 2.6 **Licenses required for third-party software.** The Software enables you to run multiple instances of third-party guest operating systems and application programs. You are responsible for obtaining any licenses necessary to operate any such third-party software, including Guest Operating Systems.
- 2.7 **Audit Rights.** You will maintain accurate records as to your use of the Software as authorized by this EULA, for at least two (2) years from the last day on which support and subscription services expired for the applicable Software. VMware, or persons designated by VMware, will, at any time during the period when you are obliged to maintain such records, be entitled to inspect such records and your computing devices, in order to verify that the Software is used by you in accordance with the terms of this EULA and that you have paid the applicable license fees and support and subscription services fees for the Software; provided that VMware may conduct no more than one (1) audit in any twelve (12) month period. You shall promptly pay to VMware any underpayments revealed by any such audit. Any such audit will be performed at VMware's expense during normal business hours, provided that you shall promptly reimburse VMware for the cost of such audit and any applicable fees if such audit reveals an underpayment by you of more than five percent (5%) of the amounts payable by you to VMware for the period audited.
3. **TITLE.** VMware retains all right, title, and interest in and to the Software and the Software License Key and in all related copyrights, trade secrets, patents, trademarks, and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights.

4. SUPPORT AND SUBSCRIPTION SERVICES NOT INCLUDED

VMware will not provide any support services under this EULA. This EULA does not give you any rights to any updates or upgrades to the Software or to any extensions or enhancements to the Software developed by VMware at any time in the future. VMware may offer support and subscription services separately. If you have purchased VMware support and subscription services with the Software, these services are provided to you under the Support Contract Terms and Conditions posted on VMware's Web site at <http://www.vmware.com/support/> and by accepting the terms of this EULA you are accepting these Support Contract Terms and Conditions. Any supplemental software code or related materials that VMware provides to you as part of any support and subscription services are to be considered part of the Software and are subject to the terms and conditions of this EULA. VMware may use any technical information you provide to VMware for any VMware business purposes without restriction, including for product support and development. VMware will not use information in a form that personally identifies you.

5. TERMINATION

- 5.1 **Termination.** Either party may, by written notice to the other party terminate this EULA if the other party is in material breach of any term, condition or provision of this EULA, which breach, if capable of being cured, is not cured within thirty (30) days after having been provided with written notice of such breach.
- 5.2 **Effect of Termination.** In the event of termination, you must destroy all copies of the Software and Software License Key. In addition you must remove all copies of the Software, including all backup copies, from the Server and all computers and terminals on which it is installed.

6. LIMITED WARRANTY; INTELLECTUAL PROPERTY INDEMNIFICATION; LIMITATION OF LIABILITY; CONFIDENTIAL INFORMATION

- 6.1 **Limited Warranty.** VMware warrants that the media, if any, on which the Software is delivered will be free of defects and that the Software will substantially conform to the description contained in the applicable end user documentation with respect to the particular Software licensed under this EULA in each case for a period of ninety (90) days after the date of shipment of the Software License Key to you ("Warranty Period"). If during the Warranty Period the media is

defective and the version of that Software is still commercially available, your sole remedy will be that VMware shall, at its option, repair or replace the defective media returned to VMware within the Warranty Period. If you are returning a defective media, please [email VMware at sales@vmware.com](mailto:sales@vmware.com) to request a Return Authorization number (RMA) and further instructions. If during the Warranty Period the Software does not substantially conform to the description contained in the applicable end user documentation, your sole remedy will be that VMware shall, at its option, correct the defects in the Software or refund the license fees you paid, if any, related to the Software provided that (a) the Software has been properly installed and used at all times and in accordance with the instructions in the applicable end user documentation; (b) no modification, alteration or addition has been made to the Software product by persons other than VMware or VMware's authorized representative; and (c) VMware receives written notice of the non-conformity within ninety (90) days following shipment. EXCEPT FOR THE PRECEDING EXPRESS LIMITED WARRANTY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE MANDATORY LAW, VMWARE AND ITS LICENSORS PROVIDE THE SOFTWARE WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS EULA OR COMMUNICATION WITH YOU, AND VMWARE AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

6.2 Intellectual Property Indemnification.

(a) Subject to the remainder of this Section, VMware shall defend you against any third party claim that the Software infringe a U.S. patent or copyright ("Infringement Claim"), and indemnify you from the resulting costs and damages awarded against you to the third party making such Infringement Claim, by a court of competent jurisdiction, or agreed to in settlement; provided that you: (i) notify VMware promptly in writing of such claim, (ii) grants VMware sole control over the defense and settlement thereof, and (iii) reasonably cooperates in response to a VMware request for assistance. VMware will have the exclusive right to defend any such Infringement Claim and make settlements thereof at its own discretion, and you may not settle or compromise such Infringement Claim, except with prior written consent of VMware.

(b) Should any Software become, or in VMware's opinion be likely to become, the subject of such an Infringement Claim, VMware shall, at its option and expense: (i) procure for you the right to make continued use thereof, (ii) replace or modify such so that it becomes non-infringing, or (iii) request return of the Software and, upon receipt thereof, the corresponding licenses are terminated and VMware shall refund the price paid by you, less straight-line depreciation based on a three (3) year useful life.

(c) VMware shall have no liability if the alleged Infringement Claim is based on (i) combination with non-VMware products, provided, however, that third party products delivered by VMware with the Software and unmodified by Customer shall not be deemed to be non-VMware products, for purposes of the foregoing exclusion, (ii) use for a purpose or in a manner for which the Software was not designed, (iii) use of any older version of the Software when use of a newer VMware revision would have avoided the infringement, (iv) any modification not made with VMware's written approval, (v) any modifications made by VMware pursuant to your specific instructions, unless otherwise mutually agreed to by the parties in writing, or (vi) any intellectual property right owned or licensed by Customer, excluding the Software.

(d) THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

6.3 Confidential Information

(a) The term "Confidential Information" means information or materials provided by one party to the other which are in tangible form and labeled "confidential" or the like, or, if disclosed orally, are identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, are summarized, appropriately labeled and provided in tangible form. Information regarding VMware pricing, product roadmaps and strategic marketing plans, and the Software License Key, shall be considered Confidential Information whether or not marked or identified as such.

(b) The receiving party shall not: (i) disclose any Confidential Information to any third party, except as otherwise expressly permitted herein; (ii) make any use of Confidential Information except to exercise its rights and perform its obligations under this EULA; or (iii) make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a "need to know" such Confidential Information. The receiving party shall be held to the same standard of care as it applies to its own information and materials of a similar nature, and no less than reasonable care. The receiving party may disclose the other party's Confidential Information to the extent such disclosure is required by order or requirement of a court, administrative agency, or other governmental body, but only if the receiving party provides prompt written notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. The receiving party shall protect Confidential Information in the manner provided herein for three (3) years after receipt thereof, unless such obligation ceases earlier pursuant to paragraph (c) below, provided, however, that the Software License Key shall be kept in confidence pursuant to this EULA in perpetuity.

(c) Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the receiving party; (ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the receiving party without any use of Confidential Information of the disclosing party; or (v) becomes known to the receiving party, without restriction, from a source other than the disclosing party.

6.4 Limitation of Liability. WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS HEREUNDER, AND EXCEPT FOR THE BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE MANDATORY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS 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 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. WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS HEREUNDER, AND EXCEPT FOR THE BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, VMWARE AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED THE LICENSE FEES, IF ANY, PAID BY YOU FOR THE SOFTWARE LICENSED TO YOU UNDER THIS EULA. THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

7. GENERAL

- 7.1 **Entire Agreement.** This EULA sets forth VMware’s entire liability and your exclusive remedy with respect to the Software and supersedes the terms of any purchase orders and any other communications or advertising with respect to the Software. You acknowledge that this EULA is a complete statement of the agreement between you and VMware with respect to the Software, and that there are no other prior or contemporaneous understandings, promises, representations, or descriptions with respect to the Software.
- 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 document 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 **Governing Law.** This EULA will be governed by Ohio law and the United States of America, without regard to its choice of law principles. The United Nations Convention for the International Sale of Goods shall not apply.
- 7.6 **Government Restrictions.** You may not export or re-export the Software except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. The Software and accompanying 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, performing, displaying, or disclosing of the Software by the U.S. Government shall be governed solely by the terms of this EULA.
- 7.7 **Contact Information.** If you have any questions about this EULA, or if you want to contact VMware for any reason, please direct all correspondence to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America or email info@vmware.com.
- 7.8 **Other.** VMware is a registered trademark of VMware, Inc. in the United States and/or various jurisdictions.
- 7.9 **Publicity.** You agree that VMware may reference you as a customer of VMware, subject to your trademark and logo usage guidelines provided by you.

8. LICENSE TYPES

Software

Description of Software	License Type
VirtualCenter Server (including VMware Converter) [Note 1]	Per Server
VMware Infrastructure	Per Processor
VMware ACE and VMware ACE Management Server [Note 2]	Per Client
Virtual Desktop Infrastructure (VDI)	Concurrent Desktop Virtual Machine
Virtual Desktop Manager	Concurrent Desktop Virtual Machine
Lab Manager [Note 3 and Note 4]	Per Processor
Lab Manager Agent [Note 3]	Per Processor
VMware Workstation [Note 5]	Per Single User
VMware Fusion [Note 6]	Per Single User
VMware Lifecycle Manager	Per Processor
VMware Lifecycle Manager – Customization Option [Note 7]	
VMware Site Recovery Manager [Note 8]	Per Processor
VMware Stage Manager [Note 3 and Note 9]	Per Processor
IT Service Delivery Pack, consisting of the following components: <ul style="list-style-type: none"> • VMware Lifecycle Manager • Either VMware Stage Manager <u>or</u> Lab Manager, selected by you at the time of installation 	See License Type for Each Component
Management and Automation Promotion Bundle, consisting of the following components: <ul style="list-style-type: none"> • VMware Site Recovery Manager • IT Service Delivery Pack IT Service Delivery Pack, consisting of VMware Lifecycle Manager and either VMware Stage Manager <u>or</u> Lab Manager, selected by you at the time of installation 	See License Type for Each Component
VMware ThinApp Suite, consisting of the following: <ul style="list-style-type: none"> • One (1) license of VMware ThinApp Virtualization Packager [Note 10] • Fifty (50) licenses of VMware ThinApp Client [Note 10] • One (1) license of VMware Workstation 	Per Device for VMware ThinApp Virtualization Packager and VMware ThinApp Client; see License Type for Other Components

VMware ThinApp Client [Note 10]	Per Device
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License Types

License Type	Description of License Type
Per Server	A license to use the Software product on a single Server of the same physical form factor (rack mount servers, blade servers, etc.), if applicable.
Per Processor	A license to use the Software on a specified number of Processors.
Per Client	A license for an unspecified number of users to use the Software on a single desktop computer ("Client" is a single desktop computer).
Per Single User	A license for a single user to use a single copy of the Software product on a single desktop computer.
Concurrent Desktop Virtual Machine	<p>A license to use the Software product to: (i) host Desktop Virtual Machines on a Server, and (ii) use the Software product to connect to a hosted Desktop Virtual Machine from any devices provided that the total number of Desktop Virtual Machines which are Powered On, does not exceed the number of Desktop Virtual Machines for which you have paid the applicable license fee, each of which is running a validly licensed copy of the operating system for which the Software is designed as specified in the definition of Desktop Virtual Machine. For purposes of the foregoing, "Desktop Virtual Machine" is a hosted Virtual Machine which is running one of the following operating systems: Windows 95/98, Windows 2000 Professional, Windows XP Professional, Windows Vista Ultimate, Windows Vista Business, or Windows Vista Enterprise, and "Powered On" means a Desktop Virtual Machine which is receiving remote connections from a device which is used to interact and connect to a hosted Desktop Virtual Machine.</p> <p>Notwithstanding anything to the contrary herein, in the event that you have licensed Virtual Desktop Infrastructure which consists of VMware ESX with the following components - VirtualCenter Server, Virtual Desktop Manager or another Connection Broker - VMware licenses the Virtual Desktop Manager to you solely for managing Desktop Virtual Machine(s) on VMware ESX, except you may run Virtual Desktop Manager itself and VirtualCenter Server, and/or another Connection Broker on VMware ESX within an operating system of a Server. A "Connection Broker" is a device which: (a) accepts incoming connection requests from the device which is used to interact and connect to a hosted Desktop Virtual Machine, (b) locates an available hosted Desktop Virtual Machine, and (c) brokers the connection between the device which is used to interact and connect to a hosted Desktop Virtual Machine and the available hosted Desktop Virtual Machine.</p>
Per Device	<p>A license to use the Software on a Device. For purposes of the foregoing, the following definitions apply: (a) "Device" means a single client hardware device including personal computers, laptops, mobile devices, workstations, terminals, external media drives including flash USB, virtual hardware including virtual desktops (VDI) and any other hardware devices that enable an End User to Run a VMware ThinApp or the VMware ThinApp Packager Tool; (b) "Run" means using, accessing, displaying, running, copying, or installing a ThinApp, regardless of the Device; (c) "End User" means either: (i) an employee of your company, when you are distributing internally within your company; or (ii) your third party customer end user, when you are an independent software vendor ("ISV") and distributing your software application using VMware ThinApp; (d) "ThinApp" means a single run-time executable consisting of Customer Application(s) packaged together with the VOS; (e) "VMware ThinApp Packager Tool" means the VMware software development tool used to package Customer Application(s) together with the VOS into a ThinApp; (f) "Customer Application" means the software applications from a third party or developed by you, combined with the VOS to form a ThinApp; (g) "VOS" or "VMware ThinApp Virtual Operating System" means VMware's application virtualization runtime which is embedded in ThinApp packages by default when using the VMware ThinApp Packager Tool to create a ThinApp; (h) "VMware ThinApp" means the ThinApp Packager tool, the VOS, and any Documentation licensed to you under this EULA; (i) "Documentation" as used in connection with this VMware ThinApp Packager Tool and the VOS means the technical specification documentation generally available from VMware to you with regard to the VMware ThinApp Packager Tool and the VOS.</p>

Note 1: The following section applies to VMware Converter Enterprise Edition only:

The VMware Converter Enterprise Software contains third party products, including, but not limited to the Microsoft WinPE Development Tool and Microsoft® Windows® Preinstallation Environment, Version 2005 ("MS Products"). In addition to the license agreement provided in conjunction with the VMware Converter Enterprise Software, You hereby agree to the following additional license terms and restrictions pertaining to your use of the VMware Converter Enterprise Software:

(i) The VMware Converter Enterprise Software is limited for use as a boot, diagnostic, disaster recovery, setup, restoration, emergency services, installation, test and/or configuration utilities program, and not for use as a general purpose operating system or as a substitute for a fully functional version of any operating system product. The MS Products are provided "as is". The VMware Converter Enterprise Software contains a security feature that will cause the computer system to reboot without prior notification to the end-user after 24 hours of continuous use. All customer support issues pertaining to the VMware Converter Enterprise Software will be handled solely by VMware or its agents.

(ii) You shall not reverse engineer, decompile, or disassemble the MS Products, except to the extent expressly permitted by applicable law.

(iii) Limited Warranty. MICROSOFT AND ALL MICROSOFT AFFILIATES SPECIFICALLY DISCLAIM ANY AND ALL LIABILITY RELATED TO THE VMWARE CONVERTER ENTERPRISE SOFTWARE AND THE MS PRODUCTS. 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. THE FOREGOING SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER MICROSOFT AND ALL MICROSOFT AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

Note 2: The following section applies to VMware ACE and VMware ACE Management Server only:

The license grants you the right to use the Software: (i) for the purpose of creating, provisioning and running assured computing environments for your own internal information processing and computing needs (which shall include the provision of services to your customers); (ii) distribute copies of the VMware ACE Software to one or more contractors or consultants, provided that each copy of the VMware ACE Software is distributed with a validly licensed copy of an operating system preinstalled in a virtual machine to be operated in conjunction with the VMware ACE Software; (iii) distribute copies of the VMware ACE Software to one or more potential customers solely for the purpose of evaluating your product(s), provided that each copy of the VMware ACE Software is distributed with a copy of one of your software products and a validly licensed operating system preinstalled in a virtual machine to be operated in conjunction with the VMware ACE Software; and (iv) redistribute in accordance with subparagraph (ii) or (iii), to one or more potential customers, consultants or contractors, copies of the VMware ACE Software previously distributed by you in accordance with subparagraph (ii) or (iii) that have expired or are returned to you by the third parties to which such copies were previously distributed. You acknowledge that you are responsible for obtaining the necessary licenses to any third party software, copyrighted materials and other content for you to operate and distribute the Software.

Note 3: The following section applies to Lab Manager, Lab Manager Agent and VMware Stage Manager only:

Limited Warranty. WITH RESPECT TO ANY MICROSOFT SOFTWARE INCLUDED IN THE SOFTWARE, AND MICROSOFT'S LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED \$5.00 FOR SUCH SOFTWARE LICENSED TO YOU UNDER THIS EULA.

Note 4: The following section applies to Lab Manager only:

Notwithstanding anything to the contrary herein, the license to use Lab Manager is based on the number of Processors for each VMware ESX license being used with Lab Manager.

Note 5: The following section applies to VMware Workstation only if you are not purchasing support and subscription services at the time you are purchasing the VMware Workstation license(s).

For VMware Workstation Software product, the purchase of support and subscription services at the time the license is purchased is optional. If you do not purchase support and subscription services at the time the licenses are purchased, VMware may provide limited web-based support services related to this Software product for a period of thirty (30) days from the date of shipment. In addition, VMware will provide you with error corrections or fixes for VMware Workstation, at no charge, for a period of eighteen (18) months from the date of shipment ("Limited Update Services"). You may renew directly from VMware the Limited Update Services for successive twelve (12) month periods by paying a renewal fee equal to ten percent (10%) of the license fee paid by you for VMware Workstation.

Note 6: The following section applies to VMware Fusion only if you are not purchasing support and subscription services at the time you are purchasing the VMware Fusion license(s)

Notwithstanding Section 4 of this EULA, VMware may provide limited web-based support services related to the Software for a period of thirty (30) days after the date of purchase. Upon expiration of such thirty (30) day period, VMware will not provide any support services to you under this EULA, unless you purchase support services separately. Furthermore, any rebates generally offered by VMware in connection with VMware Fusion shall not apply.

Note 7: The following section applies to VMware Lifecycle Manager – Customization Option only:

The license for the VMware Lifecycle Manager - Customization Option is not based on Processor count but rather per VMware Lifecycle Manager Server. Customer can optionally add the VMware Lifecycle Manager - Customization Option on top of the standard product offering. In general, Customer will only need to deploy one (1) Lifecycle Manager Server for the VMware Lifecycle Manager – Customization Option. Notwithstanding anything to the contrary herein, in the event that you have licensed VMware Lifecycle Manager – Customization Option, VMware grants you, or a designated party of yours, permission to customize certain sets of editable library elements consisting of callback workflows, actions, policies, plug-ins, webviews and information panels, as more fully described in the applicable documentation for the Software ("Custom Library Elements") that are provided with the VMware Lifecycle Manager - Customization Option Software for furtherance of the purpose as set forth in the applicable documentation for the Software. If such customization is performed by VMware, any and all Custom Library Elements and intellectual property rights therein shall be owned by VMware, and VMware hereby grants you, at no additional charge, a non-exclusive, non-transferable, perpetual license to such Custom Library Elements solely for your internal business operation. If the customization is performed by a non-VMware party, any and all Custom Library Elements and intellectual property rights therein shall be owned by you, and you hereby grant VMware, at no charge, a non-exclusive, non-transferable, perpetual license to such Custom Library Elements for any purpose, including but not limited to the provisioning of professional services. All copies of such Custom Library Elements completed by VMware or a non-VMware party shall contain VMware's copyright and other proprietary notices. VMware makes no express or implied warranties with respect to the Custom Library Elements created by any non-VMware party, and Section 6.1 (Limited Warranty) and Section 6.2 (Intellectual Property Indemnification) shall not apply to any Custom Library Elements created by a non-VMware party.

Note 8: The following section applies to VMware Site Recovery Manager only:

Software License Keys will be delivered to you based upon the number of licenses you have purchased. You must maintain enough licenses for Site Recovery Manager so that the total number of Processors on all Servers installed with the VMware Virtualization Software Product (“Licensed Servers”) running Virtual Machines protected against disaster by Site Recovery Manager (“Protected Virtual Machines”) never exceeds the number of Processors licensed by you for Site Recovery Manager. You may transfer the Site Recovery Manager licenses from one Licensed Server to another. Under no circumstances shall the same Site Recovery Manager licenses be uploaded to two (2) different Licensed Servers concurrently. Software written by third party storage partners (“Storage Replication Adapters”) that is intended to enable communication between Site Recovery Manager and the third party storage partners’ replication products are distributed with the permission of the third party storage partners and governed by their respective end user license agreements. Notwithstanding anything to the contrary herein, the term “Software” as defined under this EULA, shall not include Storage Replication Adapters. As used herein, the term “VMware Virtualization Software Product” means a VMware product that enables Virtual Machines to run on a Server, including, VMware ESX, GSX Server and VMware Server.

Note 9: The following section applies to VMware Stage Manager only:

Serial numbers which encode a specific number of licensed Processors which correspond to the number of Processors in the Servers prepared and managed by Stage Manager (“Stage Manager Capacity License Keys”) may be used in conjunction with more than one (1) Stage Manager Server, provided that the total number of Processors in Prepared Hosts may not exceed the total number of VMware Stage Manager licenses. You may uninstall the Stage Manager Server Software from a Stage Manager Server and reinstall the Stage Manager Server Software on a different Server or Virtual Machine; there is no restriction on the number of such transfers. If you transfer the VMware ESX Software from one Server to another, then you may reassign the associated Stage Manager Capacity License Keys that had been assigned to the original Prepared Host to the new Server. However, you may not reassign Stage Manager Capacity License Keys from one Server to another Server for the purpose of temporarily managing the other Server. As used herein: (i) a “Stage Manager Server” is a Server or Virtual Machine on which Stage Manager Server Software is installed; (ii) “Stage Manager Server Software” is a proprietary server component of the Software which provides the user interface for management of Stage Manager Virtual Machines; (iii) a “Prepared Host” is an VMware ESX Server on which the Stage Manager Agent Software has been installed; (iv) “Stage Manager Agent Software” is a proprietary component of the Software that is installed on a VMware ESX Server that allows for the active management of Virtual Machines through the Stage Manager Server.

Note 10: The following section applies to VMware ThinApp only:

The license is for use of the VMware ThinApp Packager Tool internally in order to package, combine or incorporate Customer Application(s) with the VOS for the sole purpose, and only to the extent necessary, to create a ThinApp and to distribute the ThinApp directly to authorized End Users, but only in accordance with: (i) the Documentation, (ii) this EULA, and (iii) solely for use only by such authorized End Users and without any right of redistribution. You may install VMware ThinApp Packager Tool on a Device and make or store as many copies of the VMware ThinApp Packager Tool on that particular Device. However, the VMware ThinApp Packager Tool is licensed only to that Device. Subject to the remainder of this provision, You may uninstall the VMware ThinApp Packager Tool and re-install it on another Device for your use. You must have a separate VMware ThinApp Client license for each Device which Runs ThinApp(s). You may Run an unlimited number of ThinApps on a licensed Device. You must also have a valid license for each Customer Application packaged within ThinApp(s). Notwithstanding anything to the contrary herein, and for the avoidance of doubt, Dynamic Reassignment of VMware ThinApp Packager Tool licenses and/or VMware ThinApp licenses is prohibited. For purposes of the foregoing, “Dynamic Reassignment” means re-assigning VMware ThinApp at will for the purpose of sharing a single license between two (2) or more Devices Running a ThinApp or the VMware ThinApp Packager Tool.

Conditions on Distribution of ThinApp(s). Whether distributing the VMware ThinApp internally to your End Users, or as an ISV to your End Users (as defined above), each ThinApp must display the following notice when Run: “Powered by VMware. Portions of this software contain VMware, Inc. technology. Copyright © 1999-2008 VMware, Inc. All Rights Reserved.” You agree to be responsible for third party claims arising on account of your combination or incorporation of a Customer Application with the VOS to create a ThinApp or on account of your distribution of ThinApp(s). Additionally, your distribution rights are conditioned on your compliance with all terms and conditions of this EULA.

Additional ISV Distribution Requirements. Every ThinApp that you distribute to a third-party must include terms at least as restrictive as those set forth in this EULA. You agree to enforce such restrictions and notify VMware of any known breach of such restrictions.

EXHIBIT A2
VMWARE MASTER END USER LICENSE AGREEMENT FOR VSPHERE PRODUCTS (VSPHERE EULA)

NOTICE: BY DOWNLOADING AND INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS VMWARE MASTER END USER LICENSE AGREEMENT (“EULA”). IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MAY NOT DOWNLOAD, INSTALL, COPY OR USE THE SOFTWARE, AND YOU MAY RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, ALREADY PAID UPON SHOWING PROOF OF PAYMENT. “YOU” MEANS THE NATURAL PERSON OR THE ENTITY THAT IS AGREEING TO BE BOUND BY THIS EULA, THEIR EMPLOYEES AND THIRD PARTY CONTRACTORS THAT PROVIDE SERVICES TO YOU. YOU SHALL BE LIABLE FOR ANY FAILURE BY SUCH EMPLOYEES AND THIRD PARTY CONTRACTORS TO COMPLY WITH THE TERMS OF THIS EULA.

9. DEFINITIONS

- 1.1 “**Designated Administrative Access**” means that access to the standard user interfaces of a given instance of the Software (designated in this section) that you may grant to a designated third party (a) for which you have provided advance written notice to VMware that you are providing outsourced services and (b) for whose dedicated benefit you have licensed such instance of the Software. Designated Administrative Access is applicable only where you are 1) an IT outsourcing company that is providing outsourced IT services to a client company and 2) applicable only to the following Software: VMware ESX, VMware Server and vCenter Server.
- 1.2 “**Guest Operating Systems**” means instances of third-party operating systems licensed by you and installed in a Virtual Machine and run using the Software.
- 1.3 “**Licensed Additional Module**” means additional modules that may be provided with and/or used in conjunction with the Software for which you have paid the applicable license fee and accepted any applicable additional license terms.
- 1.4 “**Open Source Software**” means various open source software components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. The Open Source Software licenses can be found in the open_source_licenses.txt file, other materials accompanying the software package, the documentation or corresponding source files available at http://www.vmware.com/download/open_source.html. “Open Source Software” includes GPL Software.
- 1.5 “**Processor**” means a single, physical chip that houses no more than six (6) processor cores, except as otherwise expressly set forth in Section 8 below.
- 1.6 “**Server**” means a single physical computer of a type that meets the specifications as set forth in the applicable product documentation posted at <http://www.vmware.com/support/pubs/>. Multiple computers that share processing power or operate in a networked configuration as a single logical computer, such as a “server farm” or similar arrangement, constitute multiple Servers for the purpose of this EULA.
- 1.7 “**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, application programming interfaces, associated media, printed materials, online or electronic documentation, and any updates and maintenance releases thereto.
- 1.8 “**Software License Key**” means, if applicable, a serial number issued to you by VMware to activate and use the Software. A separate, additional Software License Key may be required to activate and use each Licensed Additional Module.
- 1.9 “**VMware Tools**” means a suite of utilities and drivers that can be installed in a Guest Operating System to enhance the performance and functionality of your Guest Operating System when running in a VMware Virtual Machine.
- 1.10 “**Virtual Machine**” means an instance of a Guest Operating System and any application programs installed thereon, running on a computing device on which the Software is installed, or suspended to disk or any other storage media accessible by the computing device.

10. GRANT AND USE RIGHTS FOR SOFTWARE.

- 2.1 **License.** The Software is licensed, not sold. Subject to the terms of this EULA, VMware hereby grants you a perpetual (except as otherwise expressly set forth in the License Type (as defined herein)), non-exclusive, non-transferable license, without rights to sublicense, to use the object code of the Software for your own internal information processing and computing purposes, in accordance with the type of license applicable to such Software (“License Type”), as set forth in Section 8, for the purpose as set forth in the applicable documentation for the Software and to the extent permitted by your payment of applicable license fees under a VMware approved licensing model and/or your Software License Key, and subject further to the technical restrictions of the Software and/or any additional licensing terms specified by VMware via product documentation, notification and/or policy change posted at <http://www.vmware.com>. Your use of the Software is limited to the country where you have been invoiced for purchase of the Software provided, however, that if you have been invoiced within any of the European Union member states, you may deploy the Software in any of the member states without the foregoing restriction being applicable, subject to the terms of the approved licensing model and the terms of this EULA. Depending upon the model utilized to compute the applicable license fees paid by you to use the Software (whether per Processor, per Virtual Machine, per user, or any other VMware approved licensing model), an applicable Software License Key may limit your usage of the Software accordingly. You may use the documentation accompanying the Software in connection with permitted uses of the Software.
- 2.2 **License Limitations.** You may not copy the Software except for a reasonable number of machine-readable copies of the Software for backup or archival purposes and except as expressly permitted in this EULA. You may not remove any titles, trademarks or trade names, copyright notices, legends, or other

proprietary markings on the Software. You are not granted any rights to any trademarks or service marks of VMware. VMware retains all rights not expressly granted to you in this EULA.

- 2.3 **Restrictions.** You may not (i) sell, lease, license, sublicense, distribute or otherwise transfer in whole or in part the Software or the Software License Key to another party; (ii) provide, disclose, divulge or make available to, or permit use of the Software in whole or in part by, any third party (except Designated Administrative Access) without VMware's prior written consent; (iii) modify or create derivative works based upon the Software; (iv) create, develop, license, install, use, or deploy any third party software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software, any additional licensing terms provided by VMware via product documentation, notification, and/or policy change posted at <http://www.vmware.com>, and the terms of this EULA; or (v) use the Software in connection with any business operation for which you provide services to third parties where such third parties may acquire Virtual Machines and install and run their own internal, third party-provided applications or applications provided by you, except that you shall be permitted to use the Software to provide third party services in cases where such third parties (including your end customers) do not have the ability to configure, manage or have access to the Virtual Machine (i.e. the virtualization layer is invisible to such third parties). Except to the extent expressly permitted by applicable law, and to the extent that VMware is not permitted by that applicable law to exclude or limit the following rights, you may not decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part. Before you exercise any rights that you believe to be entitled to based on mandatory law, you shall provide VMware with thirty (30) days prior written notice at info@vmware.com and provide all reasonably requested information to allow VMware to assess your claim and, at VMware's sole discretion, to provide alternatives that reduce any adverse impact on VMware's intellectual property or other rights. You may use the Software to conduct internal performance testing and benchmarking studies, the results of which you (and not unauthorized third parties) may publish or publicly disseminate; provided that VMware has reviewed and approved of the methodology, assumptions and other parameters of the study. Please contact VMware at benchmark@vmware.com to request such review. This performance and benchmark testing restriction applies to you only if you are a software or hardware vendor or if you are performing testing or benchmarking on the Software at the direction of or on behalf of a software or hardware vendor.
- 2.4 **VMware Tools.** You may distribute the 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; (ii) you do not use VMware's name, logo or trademarks to market the VMware Tools, except you may refer to VMware names, logos or trademarks to indicate that the VMware Tools are compatible with or designed for use with the Software, and (iii) you acknowledge that you are responsible for the use and distribution of the VMware Tools. Notwithstanding the foregoing, you may distribute and modify the Open Source Software in the VMware Tools, however, VMware may not provide any support, pursuant to Section 4, for such modified VMware Tools.
- 2.5 **Licenses required for third-party software.** The Software enables you to run multiple instances of third-party guest operating systems and application programs. You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software, including Guest Operating Systems and/or application programs.
- 2.6 **Audit Rights.** You will maintain accurate records as to your use of the Software as authorized by this EULA, for at least two (2) years from the last day on which support and subscription services expired for the applicable Software. VMware, or persons designated by VMware, will, at any time during the period when you are obliged to maintain such records, be entitled to inspect such records and your computing devices, in order to verify that the Software is used by you in accordance with the terms of this EULA and that you have paid the applicable license fees and support and subscription services fees for the Software; provided that VMware may conduct no more than one (1) audit in any twelve (12) month period. You shall promptly pay to VMware any underpayments revealed by any such audit. Any such audit will be performed at VMware's expense during normal business hours, provided that you shall promptly reimburse VMware for the cost of such audit and any applicable fees if such audit reveals an underpayment by you of more than five percent (5%) of the amounts payable by you to VMware for the period audited.
11. **TITLE.** VMware retains all right, title, and interest in and to the Software and the Software License Key and in all related copyrights, trade secrets, patents, trademarks, and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights.

12. SUPPORT AND SUBSCRIPTION SERVICES NOT INCLUDED

VMware will not provide any support services under this EULA. This EULA does not give you any rights to any updates or upgrades to the Software or to any extensions or enhancements to the Software developed by VMware at any time in the future. VMware may offer support and subscription services separately. If you have purchased VMware support and subscription services with the Software, these services are provided to you under the Support Contract Terms and Conditions posted on VMware's Web site at <http://www.vmware.com/support/> and by accepting the terms of this EULA you are accepting these Support Contract Terms and Conditions. Any supplemental software code or related materials that VMware provides to you as part of any support and subscription services are to be considered part of the Software and are subject to the terms and conditions of this EULA. VMware may use any technical information you provide to VMware for any VMware business purposes without restriction, including for product support and development. VMware will not use information in a form that personally identifies you.

13. TERMINATION

- 5.1 **Termination.** Either party may, by written notice to the other party terminate this EULA if the other party is in material breach of any term, condition or provision of this EULA (including, without limitation, your payment obligations, if any), which breach, if capable of being cured, is not cured within thirty (30) days after having been provided with written notice of such breach.
- 5.2 **Effect of Termination.** In the event of termination, you must destroy all copies of the Software and Software License Key. In addition you must remove all copies of the Software, including all backup copies, from the Server and all computers and terminals on which it is installed.

14. LIMITED WARRANTY; INTELLECTUAL PROPERTY INDEMNIFICATION; LIMITATION OF LIABILITY; CONFIDENTIAL INFORMATION

6.1 **Limited Warranty.** VMware warrants that the media, if any, on which the Software is delivered will be free of defects and that the Software will substantially conform to the description contained in the applicable end user documentation with respect to the particular Software licensed under this EULA in each case for a period of ninety (90) days after the date of shipment of the Software License Key to you ("Warranty Period"). If during the Warranty Period the media is defective and the version of that Software is still commercially available, your sole remedy will be that VMware shall, at its option, repair or replace the defective media returned to VMware within the Warranty Period. If you are returning a defective media, please [email VMware at sales@vmware.com](mailto:sales@vmware.com) to request a Return Authorization number (RMA) and further instructions. If during the Warranty Period the Software does not substantially conform to the description contained in the applicable end user documentation, your sole remedy will be that VMware shall, at its option, correct the defects in the Software or refund the license fees you paid, if any, related to the Software provided that (a) the Software has been properly installed and used at all times and in accordance with the instructions in the applicable end user documentation; (b) no modification, alteration or addition has been made to the Software product by persons other than VMware or VMware's authorized representative; and (c) VMware receives written notice of the non-conformity within ninety (90) days following shipment. EXCEPT FOR THE PRECEDING EXPRESS LIMITED WARRANTY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE MANDATORY LAW, VMWARE AND ITS LICENSORS PROVIDE THE SOFTWARE WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS EULA OR COMMUNICATION WITH YOU, AND VMWARE AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

6.2 Intellectual Property Indemnification.

1.3 (a) Subject to the remainder of this Section, VMware shall defend you against any third party claim that the Software infringe a U.S. patent or copyright ("Infringement Claim"), and indemnify you from the resulting costs and damages awarded against you to the third party making such Infringement Claim, by a court of competent jurisdiction, or agreed to in settlement; provided that you: (i) notify VMware promptly in writing of such claim, (ii) grants VMware sole control over the defense and settlement thereof, and (iii) reasonably cooperates in response to a VMware request for assistance. VMware will have the exclusive right to defend any such Infringement Claim and make settlements thereof at its own discretion, and you may not settle or compromise such Infringement Claim, except with prior written consent of VMware.

1.4 (b) Should any Software become, or in VMware's opinion be likely to become, the subject of such an Infringement Claim, VMware shall, at its option and expense: (i) procure for you the right to make continued use thereof, (ii) replace or modify such so that it becomes non-infringing, or (iii) request return of the Software and, upon receipt thereof, the corresponding licenses are terminated and VMware shall refund the price paid by you, less straight-line depreciation based on a three (3) year useful life.

1.5 (c) **VMware shall have no liability if the alleged Infringement Claim is based on (i) combination with non-VMware products, provided, however, that third party products delivered by VMware with the Software and unmodified by you shall not be deemed to be non-VMware products, for purposes of the foregoing exclusion, (ii) use for a purpose or in a manner for which the Software was not designed, (iii) use of any older version of the Software when use of a newer version would have avoided the infringement, (iv) any modification not made with VMware's written approval, (v) any modifications made by VMware pursuant to your specific instructions, unless otherwise mutually agreed to by the parties in writing, or (vi) any intellectual property right owned or licensed by you, excluding the Software.**

1.6 (d) THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

6.3 Confidential Information

1.7 (a) The term "Confidential Information" means information or materials provided by one party to the other which are in tangible form and labeled "confidential" or the like, or, if disclosed orally, are identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, are summarized, appropriately labeled and provided in tangible form. The following information shall be considered Confidential Information whether or not marked or identified as such: (i) the Software License Key; and (ii) information regarding VMware pricing, product roadmaps and strategic marketing plans.

(b) The receiving party shall not: (i) disclose any Confidential Information to any third party, except as otherwise expressly permitted herein; (ii) make any use of Confidential Information except: (1) to exercise its rights and perform its obligations under this EULA; or (2) in connection with the parties' ongoing business relationship; or (iii) make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a "need to know" such Confidential Information. The receiving party shall be held to the same standard of care as it applies to its own information and materials of a similar nature, and no less than reasonable care. The receiving party may disclose the other party's Confidential Information to the extent such disclosure is required by order or requirement of a court, administrative agency, or other governmental body, but only if the receiving party provides prompt written notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. The receiving party shall protect Confidential Information in the manner provided herein for three (3) years after receipt thereof, unless such obligation ceases earlier pursuant to paragraph (c) below, provided, however, that the Software License Key shall be kept in confidence pursuant to this EULA in perpetuity. Subject to this Section 6.3, the obligations of the parties shall survive termination of this EULA.

1.8 (c) Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the receiving party; (ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the receiving party without any use of Confidential Information of the disclosing party; or (v) becomes known to the receiving party, without restriction, from a source other than the disclosing party.

6.4 **Limitation of Liability.** WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS HEREUNDER, AND EXCEPT FOR THE BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE MANDATORY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS 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 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. WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS HEREUNDER, AND EXCEPT FOR THE BREACH OF CONFIDENTIALITY OBLIGATIONS HEREUNDER, VMWARE AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED THE LICENSE FEES, IF ANY, PAID BY YOU FOR THE SOFTWARE LICENSED TO YOU UNDER THIS EULA. THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

15. GENERAL

- 7.1 **Entire Agreement.** This EULA sets forth VMware's entire liability and your exclusive remedy with respect to the Software and supersedes the terms of any purchase orders and any other communications or advertising with respect to the Software. You acknowledge that this EULA is a complete statement of the agreement between you and VMware with respect to the Software, and that there are no other prior or contemporaneous understandings, promises, representations, or descriptions with respect to the Software.
- 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 document executed by the party against which it is asserted.
- 7.4 **Severability.** If any provision of this EULA is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this EULA will remain in full force and effect.
- 7.5 **Governing Law.** This EULA will be governed by Ohio law and the United States of America, without regard to its choice of law principles. The United Nations Convention for the International Sale of Goods shall not apply.
- 7.6 **Government Restrictions.** You may not export or re-export the Software except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. The Software and accompanying 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, performing, displaying, or disclosing of the Software by the U.S. Government shall be governed solely by the terms of this EULA.
- 7.7 **Contact Information.** If you have any questions about this EULA, or if you want to contact VMware for any reason, please direct all correspondence to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America or email info@vmware.com.
- 7.8 **Other.** VMware is a registered trademark of VMware, Inc. in the United States and/or various jurisdictions.
- 7.9 **Publicity.** You agree that VMware may reference you as a customer of VMware, subject to your trademark and logo usage guidelines provided by you.

16. LICENSE TYPES

Software

- 1.7 The Software and corresponding License Types are set forth below. Any VMware product that is not included in this Section 8 and acquired by way of a purchase order issued by you pursuant to this EULA shall be considered "Software" hereunder. Notwithstanding anything to the contrary herein, your use of such VMware product shall be subject to the terms accompanying such VMware product which pertain to the license being granted and any associated restrictions.

Description of Software	License Type
VMware vCenter Server (including VMware vCenter Converter) [Note 1]	Per Server
VMware vCenter Heartbeat [Note 2]	Per Server
VMware vSphere [Notes 3 and 4]	Per Processor
VMware View [Note 5]	Concurrent Desktop Virtual Machine
VMware View Manager [Note 5]	Concurrent Desktop Virtual Machine
VMware View Composer [Note 5]	Concurrent Desktop Virtual Machine
VMware vCenter Lab Manager [Notes 6 and 7]	Per Managed Processor
VMware vCenter Lifecycle Manager [Notes 7 and 8]	Per Managed Processor

Description of Software	License Type
VMware vCenter Lifecycle Manager – Customization Option [Notes 7, 8 and 9]	Per Server
VMware vCenter Site Recovery Manager [Note 7]	Per Managed Processor
VMware vCenter Stage Manager [Notes 6 and 7]	Per Managed Processor
VMware ThinApp Virtualization Packager [Note 10]	Per Device
VMware ThinApp Client [Note 10]	Per Device or Concurrent Desktop Virtual Machine
VMware ACE and VMware ACE Management Server [Note 11]	Per Client
VMware Workstation [Note 12]	Per Single User
VMware Fusion [Note 13]	Per Single User

For Bundles, Packs or Kits, refer to the License Type for each individual component within each such Bundle, Pack or Kit.

License Types

License Type	Description of License Type
Per Server	A license to use the Software product on a single Server of the same physical form factor (rack mount servers, blade servers, etc.), if applicable.
Per Processor	A license to use the Software on a specified number of Processors.
Per Managed Processor	A license to use the Software based on the number of Processors for each VMware Virtualization Software license being used with the applicable Software. “VMware Virtualization Software” means a VMware product that enables Virtual Machines to run on a Server, including, without limitation, VMware ESX, GSX Server and VMware Server.
Per Client	A license for an unspecified number of users to use the Software on a single desktop computer.
Per Single User	A license for a single user to use a single copy of the Software product on a single desktop computer.
Concurrent Desktop Virtual Machine	A license to use the Software product to host Desktop Virtual Machines on a Server and use the Software product to connect to a hosted Desktop Virtual Machine from any devices, provided that the total number of Desktop Virtual Machines which are Powered On, does not exceed the number of Desktop Virtual Machines for which you have paid the applicable license fee.
Per Device	A license to use the Software on a Device. For purposes of the foregoing, the following definitions apply: (a) “Device” means a single client hardware device including personal computers, laptops, mobile devices, workstations, terminals, external media drives including flash USB, virtual hardware including virtual desktops and any other hardware devices that enable an End User to Run a VMware ThinApp or the VMware ThinApp Packager Tool; (b) “Run” means using, accessing, displaying, running, copying, or installing a ThinApp, regardless of the Device; (c) “End User” means either: (i) an employee of your company, when you are distributing internally within your company; or (ii) your third party customer end user, when you are an independent software vendor (“ISV”) and distributing your software application using VMware ThinApp; (d) “ThinApp” means a single run-time executable consisting of Customer Application(s) packaged together with the VOS; (e) “VMware ThinApp Packager Tool” means the VMware software development tool used to package Customer Application(s) together with the VOS into a ThinApp; (f) “Customer Application” means the software applications from a third party or developed by you, combined with the VOS to form a ThinApp; (g) “VOS” or “VMware ThinApp Virtual Operating System” means VMware’s application virtualization runtime which is embedded in ThinApp packages by default when using the VMware ThinApp Packager Tool to create a ThinApp; (h) “VMware ThinApp” means the ThinApp Packager tool, the VOS, and any Documentation licensed to you under this EULA; (i) “Documentation” as used in connection with this VMware ThinApp Packager Tool and the VOS means the technical specification documentation generally available from VMware to you with regard to the VMware ThinApp Packager Tool and the VOS.

In the event of a conflict between the following License Type Notes and Sections 1 through 7 of the EULA, the License Type Notes shall prevail.

Note 1: The following section applies to VMware vCenter Server:

Notwithstanding anything to the contrary in the EULA, the license grants you the right to use the Software for hosting of computer application-based services from a Virtual Machine and the provisioning of such services via an internal or external network for third parties, provided such services do not allow the third parties to install, upload, or uninstall computer application(s) to and from the Virtual Machine(s).

If you have licensed VMware vCenter Server Foundation, your use of such Software shall be solely for managing up to three (3) Server hosts.

If you have licensed VMware vCenter Server Standard, the license grants you the right to install a copy of VMware vCenter Orchestrator (vCO) on one (1) physical or virtual server.

VMware vCenter Converter contains third party products, including, but not limited to the Microsoft WinPE Development Tool and Microsoft® Windows® Preinstallation Environment, Version 2005 ("MS Products"). You hereby agree to the following additional license terms and restrictions pertaining to your use of the MS Products:

(iv) The MS Products are limited for use as a boot, diagnostic, disaster recovery, setup, restoration, emergency services, installation, test and/or configuration utilities program, and not for use as a general purpose operating system or as a substitute for a fully functional version of any operating system product. The MS Products are provided "as is". The MS Products contains a security feature that will cause the computer system to reboot without prior notification to the end-user after 24 hours of continuous use. All customer support issues pertaining to the MS Products will be handled solely by VMware or its agents.

(v) You shall not reverse engineer, decompile, or disassemble the MS Products, except to the extent expressly permitted by applicable law.

(vi) Limitation of Liability. WITH RESPECT TO THE MS PRODUCTS, MICROSOFT'S LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED USD \$5.00 FOR THE MS PRODUCTS LICENSED TO YOU UNDER THIS EULA.

Note 2: The following section applies to VMware vCenter Server Heartbeat:

The license grants you the right to use the Software to: (i) use the vCenter Server Heartbeat Console to perform management operations on Protected vCenter Server, and (ii) use and reproduce the VMware vCenter Server Heartbeat Console for installation and operation of an unlimited number on your own internal computers or terminals solely for the purpose of accessing the Virtual Machines or Servers on which the licensed vCenter Server Heartbeat Software are installed. You may uninstall the vCenter Server Heartbeat Software from Virtual Machines or Servers on which it is installed and reinstall the vCenter Server Heartbeat Software on an equivalent number of different Virtual Machines or Servers, so long as you have a valid Software license for each Protected vCenter Server. You must have a valid license of the Software for each Protected vCenter Server. You may not use the Software to protect any additional databases, Servers, or Virtual Machines, other than those which contain VMware vCenter Server data. As used herein: (a) "vCenter Server Heartbeat Software" includes, without limitation, Protected vCenter Server and Standby vCenter Server, (b) "vCenter Server Heartbeat Console" is the component that provides the user interface to manage the Software, (c) "Protected vCenter Server" means an installation of the VMware vCenter Server and the associated database that contains VMware vCenter Server data, protected by the Software, located either in a Virtual Machine or on a Server, and (d) "Standby vCenter Server" means an instance of the Protected vCenter Server which is used solely for replicating and restoring the Protected vCenter Server.

Notwithstanding anything to the contrary in the EULA, the license grants you the right to use the Software for hosting of computer application-based services from a Virtual Machine and the provisioning of such services via an internal or external network for third parties, provided such services do not allow the third parties to install, upload, or uninstall computer application(s) to and from the Virtual Machine(s).

Note 3: The following section applies to VMware vSphere:

Notwithstanding anything to the contrary in the EULA, the license grants you the right to use the Software for hosting of computer application-based services from a Virtual Machine and the provisioning of such services via an internal or external network for third parties, provided such services do not allow the third parties to install, upload, or uninstall computer application(s) to and from the Virtual Machine(s).

Each license of the Software is limited for use on Servers with Processors with up to six (6) cores, except for VMware vSphere Advanced and VMware vSphere Enterprise Plus, in which case, your use of the Software is limited to Processors with up to twelve (12) cores. The maximum amount of physical memory on a Server that the Software is installed on and uses shall not exceed 256 gigabyte (GB). Servers with more than 256GB of physical memory shall require the use of VMware vSphere Enterprise Plus edition, which shall have no limitations on physical memory.

Note 4: The following section applies to VMware vSphere Essentials:

VMware licenses VMware vSphere Essentials and/or VMware vSphere Essentials Plus editions (collectively "Editions") to you solely for managing up to three (3) Server hosts, and your use of these Editions is limited to Servers with up to two (2) Processors. For these Editions, the Server hosts must be managed by the VMware vCenter Server that is provided with these Editions, and that same VMware vCenter Server cannot be used to manage other Server hosts not included with these Editions.

Note 5: The following section applies to VMware View, VMware View Manager and VMware View Composer:

Additional Definitions:

“Client” means a device which is used to interact and connect to a hosted Desktop Virtual Machine

“Connection Broker” is a device which: (a) accepts incoming connection requests from the Client(s), (b) locates an available hosted Desktop Virtual Machine, and (c) brokers the connection between the Client and the available hosted Desktop Virtual Machine.

“Desktop Virtual Machine” is a hosted Virtual Machine which is running one of the following operating systems: Windows 95/98, Windows 2000 Professional, Windows XP Professional, Windows Vista Ultimate, Windows Vista Business, or Windows Vista Enterprise.

“Linked Clone” means an image copy of a Desktop Virtual Machine created by VMware View Composer that shares virtual disks with a parent Virtual Machine.

“Physical and Blade PCs” means a physical PC or blade PC running any of the version of Windows operating systems specified at <http://www.vmware.com/info?id=739> that is used as a Client (as defined herein).

“Powered On” means a Desktop Virtual Machine which is receiving remote connections from a Client.

“Terminal Services Session” means a Windows terminal services session running on a valid Microsoft Windows 2000 (or above) Server license.

VMware View:

The license grants you the right to: (i) install the Software for the purpose of hosting Desktop Virtual Machines on a Server; and (ii) use the Software to connect to a hosted Desktop Virtual Machine from any devices provided that the total number of Desktop Virtual Machines which are Powered On, does not exceed the number of Desktop Virtual Machines for which you have paid the applicable license fee, each of which is running a validly licensed copy of the operating system for which the Software is designed as specified in the definition of Desktop Virtual Machine. Notwithstanding anything to the contrary herein, in the event that you have licensed VMware View which consists of VMware vSphere with any of the following components, vCenter Server, VMware View Manager, VMware View Composer, VMware ThinApp, or another Connection Broker, VMware licenses VMware ESX to you solely for hosting Desktop Virtual Machine(s), except you may run VMware View Manager itself, VMware vCenter Server, another Connection Broker, and/or any management and performance monitoring tools used solely for VMware ESX-hosted Desktop Virtual Machine(s) within an operating system of a Server.

VMware View Manager:

The license grants you the right to: (i) install the Software for the purpose of hosting Desktop Virtual Machines on a Server; and (ii) use the Software to connect to a hosted Desktop Virtual Machine or Terminal Services Session from any devices provided that the total number of Desktop Virtual Machines which are Powered On, and connections to Physical and Blade PCs and Terminal Services Sessions, do not exceed the number of concurrent connections for which you have paid the applicable license fee, each of which is running a validly licensed copy of the operating system for which the Software is designed as specified in the definition of Desktop Virtual Machine.

The license grants you the right to use Offline Desktop solely for the purposes of internal testing and evaluation. “Offline Desktop” is an experimental feature in VMware View Manager that enables the check-out and check-in of Desktop Virtual Machine images for use on client systems that are offline. VMware is under no obligation to provide support for Offline Desktop in any way or to provide any updates to you. Feedback, suggestions, ideas and other information which is provided by you to VMware in connection with Offline Desktop will become the property of VMware and may be used by VMware to improve or enhance its products and, accordingly, VMware shall have a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, distribute, modify, and otherwise exploit such feedback, suggestions, ideas and information without restriction.

LIMITATION OF LIABILITY. IT IS UNDERSTOOD THAT OFFLINE DESKTOP IS PROVIDED FOR LIMITED TESTING AND EVALUATION PURPOSES. ACCORDINGLY, WITHOUT LIMITING THE INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL VMWARE OR ITS SUPPLIERS HAVE LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF VMWARE AND ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

VMware View Composer:

The license grants you the right to: (i) install the Software for the purpose of creating Linked Clone(s), and (ii) to use the Software to connect to a Linked Clone from any devices provided that the total number of Desktop Virtual Machines and Linked Clones which are Powered On, and connections to Physical and Blade PCs and Terminal Services Sessions, do not exceed the number of concurrent connections for which you have paid the applicable license fee, each of which is running a validly licensed copy of the operating system for which the Software is designed as specified in the definition of Desktop Virtual Machine.

Note 6: The following section applies to VMware vCenter Lab Manager and VMware vCenter Stage Manager:

Limited Warranty. WITH RESPECT TO ANY MICROSOFT SOFTWARE INCLUDED IN THE SOFTWARE, MICROSOFT’S LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, EXCEED \$5.00 FOR SUCH SOFTWARE LICENSED TO YOU UNDER THIS EULA.

Note 7: The following section applies to VMware vCenter Lab Manager, VMware vCenter Lifecycle Manager, including VMware vCenter Lifecycle Manager – Customization Option, VMware vCenter Stage Manager and VMware vCenter Site Recovery Manager:

You must maintain enough licenses for the applicable Software so that the total number of Processors on all Servers installed with the VMware Virtualization Software ("Licensed Servers") running Virtual Machines never exceeds the number of Processors licensed by you for such Software. Subject to the foregoing, you may transfer the Software licenses from one Licensed Server to another. If you transfer the Software license from one Licensed Server to another, then you may reassign the associated License Keys that had been assigned to the original Licensed Server to the new Licensed Server. However, you may not reassign License Keys from one Licensed Server to another Server for the purpose of temporarily managing the other Server. For the avoidance of doubt, under no circumstances shall the same Software license be uploaded to two (2) different Licensed Servers concurrently. With respect to the VMware vCenter Site Recovery Manager Software, software written by third party storage partners ("Storage Replication Adapters") that is intended to enable communication between VMware vCenter Site Recovery Manager and the third party storage partners' replication products are distributed with the permission of the third party storage partners and governed by their respective end user license agreements from the third party storage partners. Notwithstanding anything to the contrary herein, the term "Software" as defined under this EULA, shall not include Storage Replication Adapters. 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 under any theory of liability, whether based in contract, tort, negligence, product liability or otherwise arising from the Storage Replication Adapters.

Note 8: The following section applies to VMware vCenter Lifecycle Manager, including VMware vCenter Lifecycle Manager – Customization Option:

Oracle Database JDBC Driver

The Software contains the Oracle Database JDBC Driver (version 10.1.0.2.0) and you hereby agree to the following additional licenses terms and conditions, which pertain to the Oracle Database JDBC Driver (version 10.1.0.2.0):

If you use open source software in conjunction with the Oracle Database JDBC Driver (version 10.1.0.2.0), you must ensure that your use does not create, grant, or purport to create or grant, to any third party any rights to or immunities under Oracle's intellectual property or proprietary rights in the Oracle Database JDBC Driver (version 10.1.0.2.0). You may not combine the Oracle Database JDBC Driver (version 10.1.0.2.0) with programs licensed under the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Oracle Database JDBC Driver (version 10.1.0.2.0) or any modifications thereto to become subject to the terms of the GPL. Oracle Corporation is a third party beneficiary to this EULA solely to the extent necessary to enforce this provision with respect to the Oracle Database JDBC Driver (version 10.1.0.2.0). Upon request, VMware is obligated to permit Oracle Corporation the right to inspect this EULA and records of end users' names, addresses, date of distribution and identity of programs distributed.

Note 9: The following section applies to VMware vCenter Lifecycle Manager – Customization Option only:

The license for the VMware vCenter Lifecycle Manager - Customization Option is not based on Processor count but rather per VMware Lifecycle Manager Server. You can optionally add the VMware vCenter Lifecycle Manager - Customization Option on top of the standard product offering. In general, you will only need to deploy one (1) Lifecycle Manager Server for the VMware vCenter Lifecycle Manager – Customization Option. Notwithstanding anything to the contrary herein, in the event that you have licensed VMware vCenter Lifecycle Manager – Customization Option, VMware grants you, or a designated party of yours, permission to customize certain sets of editable library elements consisting of callback workflows, actions, policies, plug-ins, webviews and information panels, as more fully described in the applicable documentation for the Software ("Library Elements") that are provided with the VMware vCenter Lifecycle Manager - Customization Option Software for furtherance of the purpose as set forth in the applicable documentation for the Software. Modifications made to such Library Elements shall be referred to herein as "Custom Library Elements." If such customization is performed by VMware, any and all Custom Library Elements and intellectual property rights therein shall be owned by VMware, and VMware hereby grants you, at no additional charge, a non-exclusive, non-transferable, perpetual license to such Custom Library Elements solely for your internal business operation. If the customization is performed by a non-VMware party, any and all Custom Library Elements and intellectual property rights therein shall be owned by you, and you hereby grant VMware, at no charge, a non-exclusive, non-transferable, perpetual license to such Custom Library Elements for any purpose, including but not limited to the provisioning of professional services. All copies of such Custom Library Elements completed by VMware or a non-VMware party shall contain VMware's copyright and other proprietary notices. VMware makes no express or implied warranties with respect to the Custom Library Elements created by any non-VMware party, and Section 6.1 (Limited Warranty) and Section 6.2 (Intellectual Property Indemnification) shall not apply to any Custom Library Elements.

Note 10: The following section applies to VMware ThinApp Virtualizer Packager and ThinApp Client:

The license is for use of the VMware ThinApp Packager Tool internally in order to package, combine or incorporate Customer Application(s) with the VOS for the sole purpose, and only to the extent necessary, to create a ThinApp and to distribute the ThinApp directly to authorized End Users, but only in accordance with: (i) the Documentation, (ii) this EULA, and (iii) solely for use only by such authorized End Users and without any right of redistribution. You may install VMware ThinApp Packager Tool on a Device and make or store as many copies of the VMware ThinApp Packager Tool on that particular Device. However, the VMware ThinApp Packager Tool is licensed only to that Device. Subject to the remainder of this provision, You may uninstall the VMware ThinApp Packager Tool and re-install it on another Device for your use. You must have a separate VMware ThinApp Client license for each Device of concurrent Desktop Virtual Machine, as applicable, which Runs ThinApp(s). You may Run an unlimited number of ThinApps on a licensed Device or concurrent Desktop Virtual Machine, as applicable. You must also have a valid license for each Customer Application packaged within ThinApp(s). Notwithstanding anything to the contrary herein, and for the avoidance of doubt, Dynamic Reassignment of VMware ThinApp Packager Tool licenses and/or VMware ThinApp licenses is prohibited. For purposes of the foregoing, "Dynamic Reassignment" means re-assigning VMware ThinApp at will for the purpose of sharing a single license between two (2) or more Devices Running a ThinApp or the VMware ThinApp Packager Tool, and "Desktop Virtual Machine" means a hosted Virtual Machine which is running one of the following operating systems: Windows 95/98, Windows 2000 Professional, Windows XP Professional, Windows Vista Ultimate, Windows Vista Business, or Windows Vista Enterprise.

Conditions on Distribution of ThinApp(s). Whether distributing the VMware ThinApp internally to your End Users, or as an ISV to your End Users (as defined above), each ThinApp must display the following notice when Run: "Powered by VMware. Portions of this software contain VMware, Inc. technology. Copyright © 1999-2008 VMware, Inc. All Rights Reserved." You agree to be responsible for third party claims arising on account of your combination or

incorporation of a Customer Application with the VOS to create a ThinApp or on account of your distribution of ThinApp(s). Additionally, your distribution rights are conditioned on your compliance with all terms and conditions of this EULA.

Additional ISV Distribution Requirements. Every ThinApp that you distribute to a third-party must include terms at least as restrictive as those set forth in this EULA. You agree to enforce such restrictions and notify VMware of any known breach of such restrictions.

Note 11: The following section applies to VMware ACE and VMware ACE Management Server:

The license grants you the right to use the Software: (i) for the purpose of creating, provisioning and running assured computing environments for your own internal information processing and computing needs (which shall include the provision of services to your customers); (ii) distribute copies of the VMware ACE Software to one or more contractors or consultants, provided that each copy of the VMware ACE Software is distributed with a validly licensed copy of an operating system preinstalled in a virtual machine to be operated in conjunction with the VMware ACE Software; (iii) distribute copies of the VMware ACE Software to one or more potential customers solely for the purpose of evaluating your product(s), provided that each copy of the VMware ACE Software is distributed with a copy of one of your software products and a validly licensed operating system preinstalled in a virtual machine to be operated in conjunction with the VMware ACE Software; and (iv) redistribute in accordance with subparagraph (ii) or (iii), to one or more potential customers, consultants or contractors, copies of the VMware ACE Software previously distributed by you in accordance with subparagraph (ii) or (iii) that have expired or are returned to you by the third parties to which such copies were previously distributed. You acknowledge that you are responsible for obtaining the necessary licenses to any third party software, copyrighted materials and other content for you to operate and distribute the Software.

Note 12: The following section applies to VMware Workstation only if you are not purchasing support and subscription services at the time you are purchasing the VMware Workstation license(s):

For VMware Workstation Software product, the purchase of support and subscription services at the time the license is purchased is optional. If you do not purchase support and subscription services at the time the licenses are purchased, VMware may provide limited web-based support services related to this Software product for a period of thirty (30) days from the date of shipment. In addition, VMware will provide you with error corrections or fixes for VMware Workstation, at no charge, for a period of eighteen (18) months from the date of shipment ("Limited Update Services"). You may renew directly from VMware the Limited Update Services for successive twelve (12) month periods by paying a renewal fee equal to ten percent (10%) of the license fee paid by you for VMware Workstation.

Note 13: The following section applies to VMware Fusion only if you are not purchasing support and subscription services at the time you are purchasing the VMware Fusion license(s):

Notwithstanding Section 4 of this EULA, VMware may provide limited web-based support services related to the Software for a period of thirty (30) days after the date of purchase. Upon expiration of such thirty (30) day period, VMware will not provide any support services to you under this EULA, unless you purchase support services separately. Furthermore, any rebates generally offered by VMware in connection with VMware Fusion shall not apply.