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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 vCenter.

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. “Open Source Software” includes GPL Software.

1.6 “Processor” means a single, physical chip that houses no more than six (6) 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.

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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 and complying with any licenses necessary to operate any such third-party software, including Guest Operating Systems and/or application programs.

1 Audit Rights. You may perform an internal audit and will use best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses in use. You shall permit VMware to have access to records and computer systems and the right to audit such systems to insure software use is in accordance with its license terms. All vendor personnel must have appropriate security clearances to gain access to Licensee site or data. You shall promptly pay to VMware any underpayments revealed by any such audit.

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5. TERMINATION

5.1 Termination. Subject to FAR 52.212-4(d) (Disputes), 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. Notwithstanding the foregoing, FAR 52.212-4(d) shall not apply in the event of a termination as a result of a breach of Section 6.3 (Confidentiality). You shall also have the right to terminate under FAR 52.212-4(l) (Termination for the Government's Convenience), however the parties acknowledge that upon delivery of the Software, all of VMware's obligations related to the Software and Services have been fulfilled.

1 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.

2 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 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, subject to definitive agreement by the Department of Justice, 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. 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.

(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. These terms represent VMware’s customary commercial practices and are incorporated into VMware’s standard terms for commercial and government customers worldwide.

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 along with the BPA, where VMware is specifically indicated, 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 United States Federal 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.

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Software

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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 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 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 Infrastructure 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 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, 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. 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.

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VMware View Composer:

The license grants you the right to install VMware View Composer for the purpose of creating Linked Clone(s) and 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, 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 4: The following section applies to VMware vCenter Lab Manager and VMware vCenter Stage Manager only: 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 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 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 8: 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. Customer can optionally add the VMware vCenter 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 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 ("Custom 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. 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 9: The following section applies to VMware vCenter Lab Manager, VMware vCenter Lifecycle Manager, VMware vCenter Stage Manager and VMware vCenter Site Recovery Manager only: 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. Notwithstanding anything to the contrary herein, the term "Software" as defined under this EULA, shall not include Storage Replication Adapters.

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 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.