

SLA Version AB1.1

THIS DOCUMENT IS A LEGAL AGREEMENT (“SLA” or “Agreement”) BETWEEN VMS SOFTWARE, INC. (“VSI”) AND YOU OR THE ORGANIZATION ON WHOSE BEHALF YOU ARE ENTERING INTO THIS AGREEMENT (“Customer”) IN RELATION TO VSI MAINTENANCE AND SUPPORT SERVICES. BY UNDERTAKING TO RECEIVE AND/OR PAYING FOR THE SERVICES DESCRIBED BELOW (“Services”), YOU ACCEPT THE FOLLOWING TERMS AND CONDITIONS. THIS AGREEMENT DESCRIBES YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE SERVICES.

The parties acknowledge that as part of the transaction to purchase or renew the Services, VSI shall deliver via email (“SLA Email”) to Customer, a unique SLA number (“SLA Number”), with associated term of coverage, including the effective date (“Effective Date”) for activating the Services.

The parties further acknowledge that Customer paid VSI for the Services as part of a bundled offering (the “Bundle”) comprised of (1) the Services and (2) an end user license (“EULA”) for the software (the “Software”) for which the Services are provided. The specific Bundle paid for by Customer, including the level of Services ordered, is described in the accepted Customer order documentation between Customer and VSI (“Transactional Documentation”).

A. SCOPE OF AGREEMENT

1. **VSI Service Responsibility:** VSI will provide Customers a support phone number to call for access to three levels of support in response to a Customer request for help with a Customer-identified problem with the Software (the “Problem”):
 - a) Level 1 support (“L1 Support”) includes:
 - i. verification and validation that the Customer is entitled to receive Services;
 - ii. logging of the Problem;
 - iii. recording the details of the Problem in a problem-management database; and
 - iv. dispatching the request for support as specified herein.
 - b) Level 2 support (“L2 Support”) includes:
 - i. answering Software installation, configuration and usage questions;
 - ii. isolation and identification of the Problem;
 - iii. determination of whether a solution is contained in the Software’s documentation;
 - iv. review of a symptoms-solutions database for known problem resolutions; and
 - v. depending on the outcome of prior analysis, L2 Support may also include an in-depth analysis of the Problem, attempt to recreate the Problem and to provide an acceptable Problem Resolution as defined below.

- c) Level 3 engineering support (“L3 Support”) is provided to Customer if the Problem cannot be resolved by L2 Support, and includes resolving problems in the Software that are determined to be, or are highly probable to be, the result of a design or manufacturing defect or the result of a complex interaction between the Software and another product that cannot be resolved by L2 Support, and which requires product design engineering knowledge or expertise to isolate and effect a Problem Resolution as defined below.
2. **Problem Resolution:** When used in the context of resolving the Problem, Problem Resolution shall mean any of the following:
- a) A solution to the Problem was delivered to the Customer in the form of a VSI-tested software patch, or a new image or revision. The solution was successfully installed, and is working without causing other problems. The call was closed.
 - b) A Problem and its cause was identified, however, a solution was not delivered to the Customer because VSI has determined that the proposed solution may cause serious regressions or subsequent problems due to constraints in the design and/or implementation of the Software.
 - c) VSI determined that the Problem report actually identified an expected behavior of the Software. No solution was required.
 - d) VSI determined that the Problem report did not identify a problem in the Software, but rather a Customer request for a feature or functional enhancement(s) to the Software; to be considered by VSI for future versions of the Software.
 - e) The Problem arose due to an error or inconsistency in the Software documentation (“Documentation”), rather than a problem in the Software itself. VSI will resolve the Problem by clarifying the Documentation.
 - f) The Problem only occurred once and cannot be reproduced by VSI after reasonable time and effort expended by VSI support personnel. The Problem is logged and closed without delivering a solution to the Customer.
 - g) A direct solution was not delivered to the Customer. However, VSI delivered a workaround that was acceptable to the Customer. The Problem ticket was closed.
 - h) VSI determined that the solution to the Problem was not economically feasible. The Customer was notified and VSI agreed to fix the Problem in a future version of the Software.
 - i) VSI determined that Problem reported did not warrant further effort.
 - j) VSI determined that the Software did not cause the Problem.
3. **Post Resolution.** VSI's support organization will make reasonable efforts to work all Customer Problem reports through to closure. During that process, VSI will communicate Problem Resolution status and news to Customer, commensurate with the type of support purchased by the Customer. Once the Problem has been resolved, VSI will provide to Customer a Problem Resolution report showing results and any necessary background information.
4. **Service Tiers.** VSI provides the Services in three tiers, differentiated by pricing, response time, daily coverage, and committed support resources (“Service Tiers”):
- a) **Bronze 9x5.** Terms of service provided in *Appendix A: Bronze 9x5*
 - b) **Silver 24x7.** Terms of service provided in *Appendix B: Silver 24x7*
 - c) **Platinum 24x7.** Terms of service provided in *Appendix C: Platinum 24x7*

- d) VSI shall provide Services to Customer based on the specific Service Tiers Customer purchased from VSI, as set forth in the Transactional Documentation. Although VSI provides a description of each of the Service Tiers in Appendix A, Appendix B, and Appendix C, only the appendix(ices) that corresponds to a purchased Service Tier are included in this Agreement. All other, non-corresponding appendices shall not be included in this SLA. For example:
- i. **Example 1:** if Customer purchased only the Bronze 9x5 Service Tier, then only *Appendix A: Bronze 9x5* shall be included in this SLA. Appendix B and Appendix C shall be excluded from this SLA.
 - ii. **Example 2:** if Customer purchased all three Service Tiers, then Appendix A, Appendix B and Appendix C shall all be included in this SLA.
- e) **Term:** VSI offers the Service Tiers in two predefined terms; one (1) year or three (3) years, starting on the Effective Date for each support item purchased by Customer.

B. EXCLUSIONS

1. This SLA is written in a spirit of good faith. VSI will always do everything possible to rectify every Problem submitted by Customer in a timely manner. However, there are a few exclusions that this SLA does not apply to:
 - a) Any software, whether developed by VSI or not, that is not listed in Transactional Documentation;
 - b) Any third-party software, hardware, or services, including viruses, worms, or other malware not deployed by VSI in the course of the Services;
 - c) Additionally, this SLA does not apply when:
 - i. The Problem was caused by using the Software in a way that is not recommended;
 - ii. The Problem was caused by unsupported equipment, hardware, software or other services.
2. This SLA does not apply in circumstances that could be reasonably said to be beyond VSI's control, such as: floods, war, acts of God (Force Majeure) and so on.
3. This SLA also does not apply if Customer is in breach of this SLA for any reason (e.g. late payment of fees).
4. Having said all that, VSI aims to be helpful and accommodating at all times, and assist Customer where reasonably possible.

C. CUSTOMER RESPONSIBILITIES

1. **Provide Timely Notification.** Customer shall notify VSI of any Problem in a timely manner.
2. **Grant Necessary Access.** Customer shall provide VSI with direct/indirect or remote access to Customer equipment, software, and/or services for the purpose of diagnosing and resolving the Problem.
3. **Reasonable Availability.** Customer shall provide reasonable availability of proper Customer representative(s) to VSI in VSI's efforts to resolve a Problem.
4. **Timely Payment.** Customer shall pay all Services Fees within the agreed upon due date(s).

D. PAYMENT TERMS

1. Service Fees:

- a) The Parties acknowledge that the Services Fees are detailed in Customer’s purchase order, or written acceptance of VSI’s written quote, pursuant to the Transactional Documentation.
- b) Customer agrees to pay the Service Fees prior to commencement of the Services, and in no case later than 30 days from VSI’s invoice date.
- c) Customer shall be responsible for all applicable taxes.

2. Cancellation:

- a) Customer may cancel this SLA at any time for any reason, by writing to:
 - i. Attn: Legal Department
VMS Software, Inc.
580 Main Street
Bolton, MA 01740
USA
 - ii. Or, Customer’s authorized representative may cancel this SLA by sending an email to the following email address, clearly stating Company’s directive to terminate the SLA: legal@vmssoftware.com
 - iii. To ensure proper handling of the cancellation request, Company shall include the following in its cancellation notice: Company’s legal name and the SLA Number(s) of the SLA(s) being cancelled.
- b) **Effect of Customer cancellation:** VSI shall refund to Customer the Service Fees only as provided below:
 - i. For 1-year SLA(s), Customer may only receive a full refund of the Service Fees if Customer cancelled the SLA within thirty (30) days after the Effective Date.
 - ii. For Customers who purchased 3-year SLA(s), Customer may receive a refund pursuant to the following schedule:

SLA Term	When Terminated	% SLA Fees Refunded
3 Years	30 days	100%
3 Years	Year 1†	2/3 or 66.67%
3 Years	Year 2	1/3 or 33.33%
3 Years	Year 3	0%

- iii. For Customers who terminate any SLA, regardless of term, Customer shall, immediately upon termination, lose the right to any future releases of the Software.
- c) VSI may cancel or terminate this SLA upon thirty (30) days prior written notice to Customer if:
 - i. Customer fails to pay the Service Fees within the agreed upon time;
 - ii. Customer breaches any other material element of the SLA, including but not limited to Section C. Customer Responsibilities above.
- d) From time to time, VSI may modify or discontinue one or more service offerings or benefits. VSI may proceed with such change upon sixty (60) days prior written notification to Customer.

E. GENERAL TERMS

1. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware in the United States of America, without regard to its choice of law principles. The parties consent to exclusive jurisdiction and venue in the federal and state courts sitting in the Commonwealth of Massachusetts in the United States of America.
2. **Confidential Information**
 - a) All information relating to Customer that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by VSI and will not be disclosed or used by VSI except to the extent that such disclosure or use is reasonably necessary to the performance of the Services.
 - b) All information relating to VSI that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Customer and will not be disclosed or used by Customer except to the extent that such disclosure or use is reasonably necessary to the performance of Customer's responsibilities set forth in *Section C. Customer Responsibilities* above.
 - c) These obligations of confidentiality will extend for a period of three (3) years after the termination of this agreement, but will not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.
3. **Warranty and Disclaimer.** VSI warrants that the Services will be performed in a workmanlike manner, and in conformity with generally prevailing industry standards. Customer must report to VSI, in writing, any material deficiencies in VSI's provision of the Services within ninety (90) days of Customer's receipt of the Services. Customer's exclusive remedy for the breach of the above warranty will be the re-performance of the Services within a commercially reasonable time. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. VSI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.
4. **Limitation of Liability, Indemnification.** Neither party will be liable to the other for special, indirect or consequential damages incurred or suffered by the other arising as a result of or related to the performance by VSI of the Services, whether in contract, tort, or otherwise, even if the other has been advised of the possibility of such loss or damages. Customer will indemnify and hold VSI harmless against any claims incurred by VSI arising out of or in conjunction with Customer's breach of this Agreement, as well as all reasonable costs, expenses and attorneys' fees incurred therein. VSI's total liability under this Agreement with respect to the Services, regardless of cause or theory of recovery, will not exceed the total amount of the Service Fees paid by Customer to VSI.
5. **Relation of Parties.** The performance by VSI of its duties and obligations under this Agreement will be that of an independent contractor, and nothing in this Agreement will create or imply an agency relationship between VSI and Customer, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.
6. **Assignment.** Neither party will assign this Agreement, in whole or in part, without the prior written consent of the other party. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

7. **Severability.** If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.
8. **No Waiver.** The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.
9. **Statute of Limitations.** The parties agree that any action in relation to an alleged breach of this Agreement shall be commenced within one year of the date of the breach, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute.
10. **Entire Agreement.** This Agreement together with any attachments referred to herein constitute the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

Appendix A: Bronze 9x5

1. **Bronze 9x5 Overview.** This support tier includes the following features:
 - a) remote telephone, technical support;
 - b) software updates, patches, and other periodic updates.
2. **Right to New Versions (“RTNV”).** During the Term of this Agreement, Customer shall have the right to freely upgrade to any and all versions of the Software, regardless of whether such version(s) is deemed minor or major. This right expires immediately upon termination of the Term.
3. **Hours of coverage.** Customers may contact VSI between the hours of 9:00 am and 5:00 pm local time per Customer site, Monday through Friday, excluding VSI holidays—see following URL for list of VSI holidays: <http://www.vmssoftware.com/holidays.html>
4. **VSI Response Times:** VSI will use commercially reasonable efforts to respond by phone and/or email within 4 hours of receiving and acknowledging Customer’s service request.
5. **Location:** Bronze 9x5 support is offered by phone, worldwide.
6. **Patches & Upgrades.** During the Term of the SLA, Customer has the right to access patches and periodic updates to the Software.

Appendix B: Silver 24x7

1. **Silver 24x7 Overview.** This support tier includes the following features:
 - a) remote telephone, technical support;
 - b) software updates, patches, and other periodic updates.
2. **Right to New Versions (“RTNV”).** During the Term of this Agreement, Customer shall have the right to freely upgrade to any and all versions of the Software, regardless of whether such version(s) is deemed minor or major. This right expires immediately upon termination of the Term.
3. **Hours of coverage.** Customers may contact VSI twenty-four hours a day, Monday through Sunday, including VSI holidays—see following URL for list of VSI holidays:
<http://www.vmssoftware.com/holidays.html>
4. **VSI Response Times:** VSI will use commercially reasonable efforts to respond by phone and/or email within 2 hours of receiving and acknowledging Customer’s service request.
5. **Location:** Silver 24x7 support is offered by phone, worldwide.
6. **Patches & Upgrades.** During the Term of the SLA, Customer has the right to access patches and periodic updates to the Software.

Appendix C: Platinum 24x7

1. **Platinum 24x7 Overview.** This support tier includes the following features:
 - a) remote telephone, technical support;
 - b) software updates, patches, and other periodic updates; and
 - c) Technical Account Manager (“TAM”) assigned to Customer’s account.
2. **Right to New Versions (“RTNV”).** During the Term of this Agreement, Customer shall have the right to freely upgrade to any and all versions of the Software, regardless of whether such version(s) is deemed minor or major. This right expires immediately upon termination of the Term.
3. **Hours of coverage.** Customers may contact VSI twenty-four hours a day, Monday through Sunday, including VSI holidays—see following URL for list of VSI holidays:
<http://www.vmssoftware.com/holidays.html>
4. **VSI Response Times:** VSI will use commercially reasonable efforts to respond by phone and/or email immediately upon receiving and acknowledging Customer’s service request.
5. **Location:** Platinum 24x7 support is offered by phone, worldwide.
6. **Patches & Upgrades.** During the Term of the SLA, Customer has the right to access patches and periodic updates to the Software.
7. **TAM.** VSI will assign a non-dedicated, remote TAM to assist Customer with:
 - a) Quarterly remote service review;
 - b) Quarterly analysis of Customer OS level, patch level and system configuration;
 - c) Quarterly assessment of training needs and areas for improvement; and
 - d) Quarterly trend analysis and recommendations for improving our response or procedural standards.