



SLA Version 1.10

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 VSI Service Number (“VSN”), with associated term of coverage, including the effective date (“Effective Date”) for activating the Services.

VSI will supply the Services to Customer with respect to the software described in the purchase and sale documentation between Customer and VSI (“Transactional Documentation”), for which VSI has granted a license to Customer pursuant to an end user software license agreement (“EULA”), by and between VSI and Customer, and for whom the applicable maintenance and support fee has been paid.

Glossary:

- a. **Case Number:** A unique identifier assigned by VSI to track a Problem.
- b. **Defect:** Any reproducible failure fo the Product to operate in all material respects in accordance with the Documentation.
- c. **Documentation:** User manuals, specifications and technical guides describing the functionality and operation of the Product.
- d. **Problem:** A Product behavior or Product interaction that does not match Customer’s intended purpose. A Problem is not necessarily a Defect.
- e. **Product:** A validly licensed OpenVMS software product, software product bundle or software product service purchased from VSI or a VSI authorized partner.
- f. **RTmV:** (Right to Minor Versions) Customer’s right to freely upgrade to any new version of the Product as long as the upgrade version is a *dot* (.) release from Customer’s current version.
- g. **Service Tier:** The level of support Services purchased by Customer, as described below and in Appendices A-D hereto.
- h. **Software:** The unmodified executable images, scripts, templates and files contained in a Product package or kit supplied by VSI.
- i. **VSI Service Number (VSN) :** A unique identifier supplied by VSI to identify this Agreement and the Products covered hereunder.

A. SERVICES

1. Support Services. VSI shall perform L1 Support, L2 Support, and L3 Support Services (as defined below) in accordance with the benefits and limitations of the relevant Service Tier purchased by Customer. Such Services will be provided in accordance the terms and conditions of this Agreement. VSI will provide Customers a support phone number and email address for access to the following support Services in response to Customer-reported Problems:

a) Level 1 support (“L1 Support”) includes:

- i. verification and validation that the Customer is entitled to receive Services
- ii. searching solutions database for a known solution to the issue
- iii. recording the details of the Problem symptoms in a Problem-management database
- iv. supplying a Case Number to Customer for tracking the Problem; and
- v. dispatching the request for support to Level 2 or Level 3

b) Level 2 support (“L2 Support”) includes:

- i. Answering or providing relevant documentation for specific installation, configuration and usage questions
- ii. Troubleshooting advice for isolating the environment that produces the Problem.
- iii. Advice to reliably reproduce an unexpected observed Product behavior.
- iv. Attempt to reproduce the Problem in the VSI labs
- v. Recommendations to avoid the behavior without requiring changes to the Product, i.e. implementing a workaround
- vi. Identifying whether the Problem is likely root-caused by a Product covered in your VSN contract, or a third-party product
- vii. Identifying if the Problem is a Defect in the Product
- viii. Identifying if the Problem is the result of a complex interaction among the Product and third-party products
- ix. Provide responses to Customer requests for case status
- x. Elevating suspected Defects to L3 Support engineering
- xi. Reporting accurate status of Defects elevated to L3 Support
- xii. Providing access to solutions for Problems that require engineering changes

c) Level 3 support (“L3 Support”) includes:

- i. Determination if the Problem is a Defect
- ii. Determination if a Defect requires source code modification to a Product or Products
- iii. For the purpose of remedying Defects, making software changes, unit testing changes, and submitting changes for quality testing
- iv. Quality assurance testing of such Defect-related source code changes
- v. Ensuring such changes are delivered to the Customer and incorporated into future Product releases

2. Service Tiers. VSI provides the Services in four Service Tiers, differentiated by pricing, response time, daily coverage, and committed support resources:

- 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) **Gold 24x7.** Terms of service provided in *Appendix C: Gold 24x7*
- d) **Platinum 24x7.** Terms of service provided in *Appendix D: Platinum 24x7*

- e) 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 four Service Tiers in Appendix A through D, only the appendices that correspond to a purchased Service Tier are included in this Agreement. All other, non-corresponding appendices shall not be included in this SLA.
 - i. **Example 1:** if Customer purchased only the Bronze 9x5 Service Tier, then Appendix A: *Bronze 9x5* shall apply to this SLA. However, Appendix B, C, and D would be excluded from this SLA.
 - ii. **Example 2:** if Customer purchased all four Service Tiers, then Appendix A, B, C & D would be included in this SLA.
- f) **Term:** VSI offers the Service Tiers in four (4) predefined terms; one (1) year, three (3) years, four (4) years and five (5) years, starting on the Effective Date for each support item purchased by Customer.

B. EXCLUSIONS

1. VSI is not obligated to provide Services with respect to any of the following:
 - 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) Problems caused by using the Software in a way that is not recommended;
 - d) Problems caused by unsupported equipment, hardware, software or other services;
 - e) Problems or Defects caused by circumstances beyond VSI's reasonable control, such as: floods, war, acts of God and so on.
 - f) Any period of time during which Customer is in breach of this Agreement for any reason (e.g. late payment of fees).
2. This SLA does not include consultation services with VSI support personnel for non-remedial issues. Professional service hours must be purchased separately from remedial support for consultation. Classification of a Customer request as consultation is solely determined by VSI personnel. Some examples of consultation services not covered are:
 - a. Assistance designing and planning data center moves, hardware installations, migrations, software updates, Product configuration changes.
 - b. Installation and configuration of software or hardware including "hand-holding" Customer representatives through system administration tasks.
 - c. Analysis of hardware errors is the responsibility of the hardware support vendor.

Consultation services, if any, will be subject to a separate agreement by the parties.

C. CUSTOMER RESPONSIBILITIES

1. **Timely Payment.** Customer shall pay all Services Fees on or before the agreed upon due date(s).
2. **Provide Timely Notification.** Customer shall notify VSI of any Problem in a timely manner.
3. **Use Problem Reporting Channels:** See Appendix E for the Problem reporting elevation and escalation process. Customer should not report Problems by directly calling or emailing VSI employees, or by any other method not identified in Appendix E. Problems not reported through official support channels are excluded from this SLA.
4. **Support Entitlement Information:** Customer representative will supply the VSN to quickly identify the Product for which Services are requested.

5. **Pro-Active Support:** Customer will search the VSI knowledge base for articles related to the inquiry or Problem being reported. Customer will install pre-existing Product patches on the systems upon recommendation of VSI support engineers.
6. **Reasonable Availability.** Customer shall provide reasonable availability of OpenVMS knowledgeable personnel to assist VSI support engineers. Knowledgeable personnel mean system administrators or other IT resources with expertise in the DCL command language, OpenVMS file system utilities like copy and backup, network and storage management, Product installation and configuration and ability to work on an OpenVMS system without the direction of VSI support engineers.

Customer will supply complete, accurate, reliable and timely responses to VSI requests for information, data (including test data) and documentation required to troubleshoot the issue.

7. **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 if requested by VSI support personnel.
8. **Problems after Installs and Upgrades:** For Problems observed after Product installs or upgrades:
If Customer can demonstrate to VSI's satisfaction that the same configuration worked prior to a Product install or update, the Product configuration files were not changed, and the configuration consists solely of validly licensed Products covered under Agreement, VSI will perform Services in accordance herewith.

If the Problem occurs within a new configuration, or a configuration that has never previously operated with the Product without Problems, VSI will have no obligation to provide Services hereunder, unless and to the extent configuration changes were solely designed and performed by VSI professional services or an authorized VSI professional services partner, approved by VSI in writing prior to the configuration change. Such Services may be provided by VSI for additional service fees.
9. **Permission to Install Software:** Customer grants VSI permission to install scripts and tools to assist in Problem identification and debugging, with prior oral approval of Customer representative in each case.

D. Automatic Renewal

1. This SLA will automatically renew for additional one year periods at the end of each period hereof, unless and until:
 - a) Customer cancels the auto-renewal prior to any renewal hereof by giving notice in writing to VSI at the address in E.2.
 - b) If prices are scheduled to change at any renewal hereof, VSI must provide in writing the percentage amount or actual increase amount of such price change. Such notice of any change must be provided in writing at least 30 days prior to the annual renewal hereof.

E. 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, 4-year, and 5-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	33.3%
3 Years	Year 2	16.67%
3 Years	Year 3	0%
4 Years	30 days	100%
4 Years	Year 1	37.5%
4 Years	Year 2	25%
4 Years	Year 3	12.5%
4 Years	Year 4	0%
5 Years	30 days	100%
5 Years	Year 1	40%
5 Years	Year 2	30%
5 Years	Year 3	20%
5 Years	Year 4	10%
5 Years	Year 5	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, minor or major.
- 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 party's 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 Service Tier includes the following features:
 - a) remote telephone, technical support;
 - b) right to any minor versions of the Software (“RTmV”) during the Term at no additional charge as defined below; and
 - c) software updates, patches, and other periodic updates.
2. **Hours of coverage.** Customer is entitled to 8 hours of support coverage per day, Monday through Friday. Customer may contact VSI between the hours of 9:00 am and 5:00 pm local time in one location designated by Customer, typically the location specified in Customer’s purchase order. Customer may request a change to the primary timezone. Coverage days exclude government recognized national holidays in the customer location.
3. **VSI Response Times:** VSI will use commercially reasonable efforts to respond by phone and/or email within 4 hours of coverage when receiving Customer’s service request.
4. **Location:** Bronze 9x5 support is offered by phone and email, worldwide.
5. **RTmV.** RTmV or Right to Minor Versions grants Customer the right to freely upgrade to any new version of the Software as long as the upgrade version is a *dot* (.) release from Customer’s current version. For example, if Customer’s current version of the Software is V8.4-1H1, then any new version of the Software that changes the version number to the right of the dot(.) is considered a minor version. For example, new versions 8.4-2 or 8.4-2L1 would be considered minor version upgrades. However, if the version number to the left of the dot(.) changes upwards, for example from 8.4-1H1 to 9.2, that upgrade would be a major version upgrade and outside the scope of RTmV.
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 Service Tier includes the following features:
 - a) remote telephone, technical support;
 - b) right to any minor versions of the Software (“RTmV”) during the Term at no additional charge as defined below; and
 - c) software updates, patches, and other periodic updates.
2. **Hours of coverage.** Customers may contact VSI twenty-four hours a day, Monday through Sunday, including holidays.
3. **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.
4. **Location:** Silver 24x7 support is offered by phone and email, worldwide.
5. **RTmV.** RTmV or Right to Minor Versions grants Customer the right to freely upgrade to any new version of the Software as long as the upgrade version is a *dot* (.) release from Customer’s current version. For example, if Customer’s current version of the Software is V8.4-1H1, then any new version of the Software that changes the version number to the right of the dot(.) is considered a minor version. For example, new versions 8.4-2 or 8.4-2L1 would be considered minor version upgrades. However, if the version number to the left of the dot(.) changes upwards, for example from 8.4-1H1 to 9.2, that upgrade would be a major version upgrade and outside the scope of RTmV.
6. **Patches & Upgrades.** During the Term of the SLA, Customer has the right to access patches and periodic updates to the Software.

Appendix C: Gold 24x7

1. **Gold 24x7 Overview.** This Service Tier includes the following features:
 - a) remote telephone, technical support;
 - b) right to any minor versions of the Software (“RTmV”) during the Term at no additional charge as defined below;
 - c) software updates, patches, and other periodic updates; and
 - d) Technical Account Manager (“TAM”) assigned to Customer’s account.
2. **Hours of coverage.** Customers may contact VSI twenty-four hours a day, Monday through Sunday, including holidays.
3. **VSI Response Times:** VSI will use commercially reasonable efforts to respond by phone and/or email within 1 hour of receiving and acknowledging Customer’s service request.
4. **Location:** Gold 24x7 support is offered by phone, worldwide.
5. **RTmV.** RTmV or Right to Minor Versions grants Customer the right to freely upgrade to any new version of the Software as long as the upgrade version is a *dot* (.) release from Customer’s current version. For example, if Customer’s current version of the Software is V8.4-1H1, then any new version of the Software that changes the version number to the right of the dot(.) is considered a minor version. For example, new versions 8.4-2 or 8.4-2L1 would be considered minor version upgrades. However, if the version number to the left of the dot(.) changes upwards, for example from 8.4-1H1 to 9.2, that upgrade would be a major version upgrade and outside the scope of RTmV.
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.

Appendix D: Platinum 24x7

1. **Platinum 24x7 Overview.** This Service Tier includes the following features:
 - a) remote telephone, technical support;
 - b) right to any minor versions of the Software (“RTmV”) during the Term at no additional charge as defined below;
 - c) software updates, patches, and other periodic updates; and
 - d) Technical Account Manager (“TAM”) assigned to Customer’s account.
2. **Hours of coverage.** Customers may contact VSI twenty-four hours a day, Monday through Sunday, including holidays.
3. **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.
4. **Location:** Platinum 24x7 support is offered by phone and email, worldwide.
5. **RTmV.** RTmV or Right to Minor Versions grants Customer the right to freely upgrade to any new version of the Software as long as the upgrade version is a *dot* (.) release from Customer’s current version. For example, if Customer’s current version of the Software is V8.4-1H1, then any new version of the Software that changes the version number to the right of the dot(.) is considered a minor version. For example, new versions 8.4-2 or 8.4-2L1 would be considered minor version upgrades. However, if the version number to the left of the dot(.) changes upwards, for example from 8.4-1H1 to 9.2, that upgrade would be a major version upgrade and outside the scope of RTmV.
6. **Patches & Upgrades.** During the Term of the SLA, Customer has the right to access patches and periodic updates to the Software.
7. **Technical Account Manager:** VSI will assign a non-dedicated, remote Technical Account Manager (TAM) to assist Customers.
8. **Patch Analysis:** One-time VSI software patch analysis.
9. **Product Credits:** Customer receives VSI Training and VSI PERFDAT credits. Customer receives a credit of 2.5% of the overall support contract Customer paid value. The credit can be used towards purchases of the Perfdat product or VSI Training services at training.vmssoftware.com.

Appendix E: Elevation and Escalation Tree

Initial Contact for Inquiries and Problem Reporting

Report all Problems and direct all inquiries to the VSI software support email address or the VSI direct support phone number:

support@vmssoftware.com or Phone +1 978-451-0921

Reporting Critical Outage Problems

Always call the VSI support line number if your Problem involves critical outages to your production systems like system unavailability, system hangs, etc. Calling the phone number ensures the quickest response time.

Initial Problem Reporting

Problem Contract and System Information

This information should be communicated in the Problem report:

- The VSI Support Number (VSN) covering the affected Product and system.
- Your name, email address and phone number
- The server name(s) and cluster name(s) of the affected system(s) with the Problem. The system architecture, model number, serial number and operating system version.
- An accurate representation of the Problem's criticality: Production system unavailability, major Problem but production systems functional, minor Problem, nuisance, inquiry, suggestion.
- An accurate Problem statement describing the user visible symptoms. Is the Problem repeatable?

Dump and Traceback Files

If the Problem resulted in a system crash, process crash or software traceback display, VSI will create a drop box account to transfer the files to VSI for analysis. Files must be transferred using sftp protocol to the system vsiftp.vmssoftware.com.

Obtaining Status on Existing Cases

All contact to VSI generates a Problem Case Number. You receive a Case Number assigned to your inquiry or Problem at your initial report. Please include the Case Number in the subject line or text of email messages requesting status on existing Problems.

The Escalation Process

To discuss any issue with VMS Software Problem report handling, escalate the issue according to the below contact levels:

1. Contact the VSI support engineer assigned to the case tracking the issue. If issue cannot be resolved,
2. Contact your assigned Technical Account Manager to address the issue. If the issue cannot be addressed by your TAM,
3. Contact the VSI Technical Support Manager, Dave Sweeney at +1-978-451-0895 or Dave.Sweeney@vmssoftware.com. If issue cannot be resolved by VSI Technical Support Manager,
4. Customer and VSI management team will meet remotely to discuss the issue and come to a resolution action plan.

Feedback to the VSI Support Team

VMS Software Inc. encourages your customer experience feedback. Please send your feedback to support@vmssoftware.com.

