

VMware® Software Developer Kit (SDK) Agreement

VMware, Inc. (“VMware”) provides this Software Developer Kit (“SDK”) to you subject to the following terms and conditions. If you disagree with any of the following terms, then do not use this SDK.

1. This SDK contains a variety of materials, including but not limited to, interface definitions, documentation, and sample code regarding programming interfaces to one or more VMware products as referenced in such materials (“VMware Software”). This SDK is intended to serve as a guide for writing programs to interact with the VMware Software.
2. Subject to the restrictions below, you may download and make a reasonable number of copies of the SDK contents for your personal use solely for the purpose of creating software that communicates with VMware Software (“Developer Software”). You agree to defend, indemnify and hold harmless VMware, and any of its directors, officers, employees, affiliates or agents, from and against any and all claims, losses, damages, liabilities and other expenses (including reasonable attorneys’ fees), arising from your modification and distribution of the sample code or breach of this SDK Terms and Conditions.
3. **Restrictions:** You may not (1) use the SDK to design or develop anything other than Developer Software; (2) make any more copies of the SDK than are reasonably necessary for the authorized use and backup and archival purposes; (3) modify, create derivative works of, reverse engineer, reverse compile, or disassemble the SDK, except that you may modify and create derivative works of the sample code and distribute the modified sample code in connection with Developer Software; (4) distribute, sell, lease, rent, lend, or sublicense any part of the SDK to any third party except as designated herein and as necessary to distribute Developer Software; (5) use the SDK to design or develop software to upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware.
4. VMware retains ownership of the SDK, including without limitation all copyrights and other intellectual property rights therein.
5. You may not represent that the programs you develop using the SDK are certified or otherwise endorsed by VMware. You may not use the VMware name or any other trademarks or service marks of VMware in connection with programs that you develop using the SDK.
6. You will not receive any VMware support or subscription services for the SDK or any other services from VMware in connection with the SDK. If you have purchased support and/or subscription services for a VMware product, such support and/or subscription services shall not apply to the SDK or your use of the SDK.
7. **Term, Termination and Changes:** This Agreement shall continue as long as you are in compliance with the terms specified herein or until otherwise terminated. You and or VMware each may terminate this Agreement for any reason at any time. You agree, upon termination, to destroy all copies of the SDK within your possession or control. The Confidential Information, Limitations of Warranties, Liability and Indemnification sections set out in this Agreement shall survive any termination or expiration of this Agreement.
8. **Limitations of Warranties and Liability:** THE SDK IS PROVIDED “AS IS” WITHOUT ANY WARRANTIES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT

LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

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

VMWARE'S LIABILITY ARISING OUT OF THE SDK PROVIDED HEREUNDER WILL NOT, IN ANY EVENT, EXCEED US\$5.00.

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

9. These terms are governed by the laws of the State of California and the United States of America without regard to conflict of laws principles. You may not assign any part of this Agreement without the prior written consent of VMware. Any attempted assignment without consent shall be void. These terms constitute the entire agreement between you and VMware with respect to the SDK, and supersede all prior written or oral communications, understandings and agreements. Any waiver of these terms must be in writing to be effective. If any provision of these terms is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law.