



SUPPORT SERVICES TERMS AND CONDITIONS

1. **SUPPORT.** Customer is not entitled to support unless Customer has ordered and paid for Support Services as provided in the Quote or PO. Tintri by DDN, Inc., a Delaware corporation ("Tintri"), will use reasonable efforts to provide support services as described in these Support Services Terms and Conditions ("Support Services") for the term Customer has purchased, which commences upon Product shipment. Tintri may suspend performance of Support Services if Tintri does not receive payment when due or if Customer is in breach of any contractual obligation to Tintri. Tintri's Support Services contact information is available at <https://tintri.com/company/support/vmstore-support/>. Support Services are contacted primarily through Tintri's web support portal (generally accessible on a 24x7x365 basis excepting periodic maintenance or network unavailability) and secondarily through telephone support. Tintri's Support Services obligation is limited to using reasonable efforts to remedy a reported failure of the Products to substantially operate in accordance with Tintri's official specifications or Documentation (i.e., the then-current, generally available, written user manuals and online help and guides for Software provided by Tintri). Support Services do not include Hardware or Software installation, training, consulting services or preventative maintenance. Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions, which may be found at <https://tintri.com/company/support/vmstore-support/>.
 - A. **SOFTWARE SUBSCRIPTION.** Support Services include a subscription to all new releases of the Customer licensed Software issued by Tintri during Customer's term of Support Services which incorporate updates ("Releases"), but do not include enhancements licensed by Tintri for a separate fee at Tintri's discretion. Any Software which is provided as an update or replacement may only be installed as an update to the original Software on that Hardware. Any update to the Software or replacement Software will be subject to the terms and conditions set forth in the Purchase Terms and Conditions of which these Support Services Terms and Conditions are an integral part, and the End User License Agreement that applies to the original Software. Customer can download Releases from <https://tintri.com/company/support/vmstore-support/>. Tintri makes no commitment that it will deliver any future Release(s) and/or that the Hardware Customer has purchased will meet the hardware requirements for and operate with each Release available after the date of Customer's purchase of the Hardware.
 - B. **HARDWARE SUPPORT.** If Tintri determines that replacement parts are required for Support Services, then Tintri will use commercially reasonable efforts to deliver them to Customer, at no charge, by Tintri's onsite support response objective ("SRO") describe in the then-current technical severity levels and support levels ("SLA") posted on Tintri's support website at <https://tintri.com/company/support/vmstore-support/>. Tintri actual delivery times may vary if Customer's location is remote and/or if common carriers encounter delays or require special transportation arrangements in reaching Customer's site, or if customs clearances impose delays. Replacement parts may be new or refurbished. Defective parts must be returned under Tintri's RMA policy available at <https://tintri.com/company/support/vmstore-support/> or Tintri may invoice Customer for the replacement part. All Products that are replaced become Tintri property. Unless Customer requests otherwise, Tintri or a Tintri subcontractor will typically provide on-site installation within the SRO timeframe of the replacement part with Customer's reasonable assistance, except with respect to not-for-resale products (no on-site service will be provided with respect to not-for-resale products).
 - C. **SOFTWARE SUPPORT.** Tintri classifies Software problem severity based on their impact on Customer. The then-current SLA is posted on Tintri's support website at <https://tintri.com/company/support/vmstore-support/>. Tintri will use commercially reasonable efforts to acknowledge Customer's problem report and commence Support Services efforts within the initial technical response objective in accordance with the applicable SLA. Support Services are offered 24x7x365 through web support portal, telephone or email.
2. **EXCLUSIONS.** Tintri will have no Support Services obligations for any conditions attributable to: (i) negligence, misuse or abuse of the Product or accident or neglect by Customer or any third party; (ii) installation, operation or use of the Product other than in accordance with Tintri's official specifications and the applicable Documentation;



(iii) modifications, alterations or repairs to the Product made by a party other than Tintri or a party expressly authorized or designated by Tintri; (iv) use of a Product in an environment, in conditions, in a manner or for a purpose for which Product was not intended or designed or failure to maintain in accordance with Tintri's instructions, specifications or the applicable Documentation; (v) use of the Product in combination with any non-Tintri apparatus, data or programs outside Tintri's typical, recommended or reasonably anticipated use of the Products within its official Product specifications.; or (vi) causes beyond Tintri's control.

3. CONDITIONS TO TINTRI'S SUPPORT OBLIGATIONS. Customer needs to do the following as a condition to Tintri's provision of Support Services: (i) pay all applicable fees; (ii) designate from time to time a reasonable number of authorized persons trained by Tintri who can contact Tintri for Support Services, and these are Customer's only personnel entitled to contact Tintri for Support Services; (iii) register all Products with Tintri, and provide notice to Tintri of all sites and site moves; (iv) provide Tintri access to Customer's site and/or network and personnel as Tintri reasonably requests to assist Tintri in performing the Support Services; (v) enable Tintri's automated alert system on the Products which sends regular system status reports and alerts to Tintri when certain critical system events occur in the Product at Customer's site; (vi) use the Products in a supported configuration and maintain the Software within the then-current prior two Releases; (vii) install recommended replacement parts in the Products as reasonably directed by Tintri; (viii) refrain from arbitrarily changing Product settings or configurations reasonably recommended by Tintri; (ix) ensure that proper licenses have been obtained for all Software and adhere to all licensing terms and conditions; and (x) make available to Tintri any of Customer's systems data, information and other materials reasonably required by Tintri for the Support Services ("Customer Materials"), the accuracy of which is solely Customer's responsibility. Subject to Customer's rights in the Customer Materials, Tintri will exclusively own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by Tintri or Tintri's personnel in connection with performing Support Services ("Tintri Materials"), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. Customer will have no rights in the Tintri Materials except as expressly agreed to in writing by Tintri and Customer. Nothing in these Purchase Terms and Conditions will be deemed to restrict or limit Tintri's right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party. Customer agrees that it may be necessary for Tintri to collect, process and use Customer's data in order to perform Tintri obligations to provide Support Services. Customer consents to these activities and to the transfer of the data to Tintri affiliated companies and service providers located throughout the world who are subject to confidentiality agreements with Tintri. Tintri will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Products returned to Tintri for repair.
4. CONFIDENTIAL INFORMATION. Each of the parties ("Receiving Party") understands that the other ("Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business, including, without limitation computer programs, software, technical drawings, algorithms, know-how, trade secrets, formulas, processes, ideas, inventions (whether patentable or not), designs, schematics and other technical, business, financial, customer and product information, data and development plans, of any nature and in any form whatsoever, which to the extent previously, presently or subsequently disclosed to the Receiving Party is "Confidential Information" of the Disclosing Party (provided that such information was or is marked or designated in writing as "confidential," "proprietary," or any other similar term or designation or was or is disclosed in a manner that a reasonable person would have understood or understand that such information is confidential and proprietary). Customer agrees without limitation that Tintri's Product and Services prices, discounts and proposals to Customer are Tintri's Confidential Information. The Receiving Party agrees: (i) to hold the Disclosing Party's Confidential Information in confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials); (ii) not to divulge any such Confidential Information to any third person, except to those of its employees and subcontractors that need to know such Confidential Information for the purpose of performing hereunder, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein; (iii) not to make any use whatsoever at any time of such Confidential Information except to perform its obligations hereunder; and (iv) not to copy, decrypt, reverse assemble, disassemble,



decompile or reverse engineer any such Confidential Information. Without granting any right or license, the Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document: (i) is or becomes (through no improper action or inaction by the Receiving Party) readily available to the public; (ii) was in its possession or known by it without restriction prior to receipt from the Disclosing Party; (iii) was rightfully disclosed to it by a third party that rightfully received such information without restriction on disclosure or use; or (iv) was independently developed without use of any Confidential Information of the Disclosing Party. The Receiving Party may make disclosures required by law or court order provided the Receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows the Disclosing Party to participate in the proceeding. To the extent that any of Customer's Confidential Information includes personally identifiable information, then Customer consents to Tintri's use of such personally identifiable information in accordance with Tintri's then-current privacy policy, which may be found at <https://tintri.com/company/legal/privacy-policy/>. Customer acknowledges and agrees that any feedback, suggestions, comments, improvements, modifications and other information (including any ideas, concepts, "know-how" or techniques contained therein) that Customer provides to Tintri about its Products or Services or their performance (collectively, the "Feedback") shall not be deemed as Customer's Confidential Information and may be used, disclosed, disseminated or published by us for any purpose, including developing, manufacturing and marketing products and services incorporating Feedback, without obligation of any kind to Customer, Customer waives any rights whatsoever in or to all Feedback.

5. **REINSTATEMENT OF SUPPORT.** If Customer has not continuously purchased and complied with the terms and conditions of Support Services, Customer may request that Tintri perform an inspection of the Products and any professional services Tintri reasonably determines are required for the Products to be certified as substantially operating within their official Product specifications. After Tintri's certification, Customer may re-instate Support Services if Tintri then offers it in general commercial availability and upon payment to Tintri of: (i) time and materials services payment for certification described above; (ii) the pro rata Support Services fees that would have been payable at Tintri's then applicable annual rate of Support Services for the period the Products were not covered by Support Services; and (iii) the Support Services fees for the annual period commencing upon the re-instatement of Support Services.
6. **NON-TRANSFERABILITY.** If Customer sells or otherwise transfers any Hardware to any third party, Customer will either de-install and remove the Software from such Hardware prior to sale or transfer, or provide Tintri with reasonable written notice and an opportunity to remove or disable such Software prior to any sale or transfer of the Hardware. Subject to availability of resources, Tintri will provide de-installation services to Customer at Tintri's then current time and materials rates provided Customer has complied with these Purchase Terms and Conditions and entered into a separate agreement with Tintri to receive such de-installation services. Subject to availability of resources, Tintri will provide re-installation and re-certification services to a third party purchaser or transferee of Tintri Hardware, in each case at Tintri's then current time and materials rates provided the purchaser or transferee has: (i) met Tintri credit requirements; (ii) obtained a Software license from Tintri; (iii) entered into a separate agreement with Tintri to receive re-installation and re-certification services; (iv) obtained re-certification of the Products as installed; and (v) paid any Support Services reinstatement fees and purchased at least a one (1) year term of annual Support Services from Tintri commencing upon the date of Product transfer. Customer's remaining outstanding term of Support Services is not transferable. Notwithstanding the foregoing, Tintri reserves the right to refuse to grant a Software license or provide Services to a proposed purchaser or transferee as determined in Tintri's sole discretion.
7. **RELATIONSHIP OF THE PARTIES.** Tintri is performing Support Services as an independent contractor, and not as an employee, agent, joint venturer or partner of Customer, and neither of the parties has the authority to bind the other by contract or otherwise. Tintri acknowledges and agrees that Tintri personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Tintri is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between Tintri and Tintri personnel and the performance of Support Services by Tintri personnel.
8. **ENGLISH.** The parties agree and acknowledge that all Support Services will only be provided in the English language



and only within the United States and in Canada.

9. LIMITED WARRANTIES; WARRANTY DISCLAIMER; AND LIMITATION OF LIABILITY. TINTRI'S LIMITED WARRANTIES, WHICH INCLUDE TINTRI'S WARRANTY DISCLAIMER AND TINTRI'S LIMITATION OF LIABILITY, MAY BE FOUND AT [HTTPS://TINTRI.COM/COMPANY/SUPPORT/VMSTORE-SUPPORT/](https://tintri.com/company/support/vmstore-support/). THE LIMITED WARRANTIES ARE HEREBY INCORPORATED INTO AND MADE AN INTEGRAL PART OF THESE SUPPORT SERVICES TERMS AND CONDITIONS.

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