

SOFTWARE MAINTENANCE AGREEMENT



Congratulations. You have licensed Vertiv Corporation (“Vertiv”) software described in the software activation documentation you received or on the reverse side of this Agreement (the “Software”). In addition, you have purchased Software Maintenance for the Software that will give you certain benefits depending on the package purchased. You will be required to pay an additional fee if these Software Maintenance services lapse and are subsequently resumed. The terms and conditions governing all of the Software Maintenance benefits and obligations for the Software are as follows:

1. Definitions.

- 1.1 **“Agreement”** means this Agreement.
 - 1.2 **“Confidential Information”** means all confidential information relating to the Product and Vertiv’s Intellectual Property Rights, together with all confidential information (in whatever media) related to Vertiv’s business.
 - 1.3 **“Documentation”** means written and/or online material provided by Vertiv in connection with the Software.
 - 1.4 **“Effective Date”** means the date you purchased Software Maintenance for the Software.
 - 1.5 **“Expiration Date”** means the date your Software Maintenance expires.
 - 1.6 **“Intellectual Property Rights”** include, without limitation, patents, patent applications, trademarks (registered or unregistered), copyrights, trade secrets, database rights, source code, designs (registered or unregistered), confidential information or know-how, or any rights of a similar nature existing anywhere in the world.
 - 1.7 **“Software Maintenance”** means the Software Maintenance services provided by Vertiv pursuant to this Agreement. Any changes made by Vertiv to the Software Maintenance benefits and services will be reflected online at www.Vertiv.com.
 - 1.8 **“Software Maintenance Package”** means the Silver or Gold Software Maintenance package you purchased. Details of each package can be found at www.Vertiv.com.
 - 1.9 **“New Releases”** means the latest version of the Software, including any updates, revisions, or modifications released by Vertiv.
 - 1.10 **“Product”** means the Software and Documentation.
 - 1.11 **“Software”** means Vertiv software, together with any New Releases provided by Vertiv under this Agreement.
2. **Services.** During the term of this Agreement, Vertiv will provide you with the following Software Maintenance services consistent with the Software Maintenance Package you purchased:
- 2.1 Vertiv shall provide the authorized licensee of the Software with all New Releases.
 - 2.2 Vertiv shall provide technical support via telephone during normal business hours in the geographical location (www.Vertiv.com). 24/7 coverage is also provided at these locations provided the appropriate coverage package is purchased.
 - 2.3 Vertiv shall also provide such other Software Maintenance services as it deems reasonably necessary to cause the Software to perform materially in accordance with the then current Documentation provided that you install all updates, modifications, and corrections provided by Vertiv and that your use of the Software is in accordance with this Agreement, the Documentation, and any applicable software license agreement that accompanies the Software, which is incorporated into this Agreement by this reference (“License Agreement”). Vertiv shall use its reasonable efforts to rectify any errors in the Software that you bring to the attention of Vertiv if Vertiv is able to confirm that such error or defect exists through independent testing.
 - 2.4 When notifying Vertiv of an error in the Software, you must provide Vertiv with an example of the error, the context in which the error was encountered, a description of the system configuration, and the steps necessary to generate or reproduce the error.
 - 2.5 If requested by Vertiv, you shall permit Vertiv or its representatives full access to the Software and the system on which it is installed during working hours (and any extra agreed cover) so that Vertiv can carry out its obligations under this Agreement.
 - 2.6 **Limitations.** Vertiv shall be under no obligation to furnish technical support or provide access to updates under these terms and conditions to the extent that such support or access to updates is required as a result of: (i) the operation of the Software in environmental conditions or configurations outside those prescribed in the Documentation; (ii) your material failure to maintain the Software in accordance with the Documentation provided to you with the Software or during the term of this Agreement; (iii) maintenance of the Software by anyone other than Vertiv or a third party authorized by Vertiv; and (iv) causes unrelated to the Software as delivered to you by Vertiv, including, without limitation, modifications to the Software, made by you or on your behalf. The Software Maintenance provided is further subject to the License Agreement(s) for the respective Software.

3. Warranties.

- 3.1 Vertiv represents that each Vertiv employee assigned to perform services under this Agreement possesses the skills and training necessary to be able to perform such services in a competent and professional manner.
- 3.2 THE EXPRESS WARRANTIES IN THIS SECTION 3 ARE EXCLUSIVE. VERTIV DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. VERTIV WILL NOT BE LIABLE TO YOU FOR ANY LOSS OF DATA OR SOFTWARE RESULTING FROM OR RELATING TO VERTIV’S SERVICES OR THE SOFTWARE.

- 3.3 IN NO EVENT WILL VERTIV BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES PROVIDED BY VERTIV, OR THE PRODUCT, EVEN IF VERTIV HAS BEEN ADVISED OF THE POSSIBILITY OR KNEW OF OR SHOULD HAVE KNOWN THEREOF. VERTIV'S TOTAL LIABILITY HEREUNDER, IF ANY, WILL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID TO VERTIV FOR SOFTWARE UPGRADE PROTECTION AND SUPPORT UNDER THIS AGREEMENT.
- 3.4 Some states do not allow limitations on an implied warranty and/or the exclusion of incidental, consequential, or special damages, so the above limitation or exclusion may not apply to you.
4. **Confidentiality.** If you receive any Confidential Information of Vertiv, you will not disclose such Confidential Information other than to persons in your organization who have a need to know and who will be required to comply with this section 4. You will not use Vertiv Confidential Information for any purpose inconsistent with the terms of this Agreement. Confidential Information does not include: (i) information publicly known prior to disclosure; (ii) information coming into your lawful possession without any confidentiality obligation; and (iii) information required to be disclosed pursuant to regulatory action or court order, provided adequate prior written notice of any request to disclose is given to Vertiv.
5. **Ownership.** Vertiv has granted to you a non-exclusive, non-transferable license to use the Product for internal business purposes only. You may make one copy of the Product for backup purposes only, but shall include therein all proprietary marks and notices included in the original. You may not otherwise copy or permit the copying of any part of the Product. The Product is Vertiv proprietary and exclusive property and constitutes its valuable trade secret. You will take reasonable steps to protect the trade secret of the Product. Vertiv shall own the entire right, title, and interest in and to all corrections, modifications, enhancements, programs, information and work product conceived, created or developed, alone or with you or others, as a result of or related to the performance of this Agreement. Except and to the extent expressly provided in the License Agreement with respect to the Software, Vertiv does not grant to you any right or license, express or implied, in or to the Product or any of the foregoing.
6. **Injunction Relief.** Each party acknowledges that a violation or threatened violation of section 4 or 5 of this Agreement would result in damage that is largely intangible but nonetheless real and that is incapable of complete remedy by award of damages. Thus, such violation or threatened violation will give Vertiv the right to a court-ordered injunction to specifically enforce such covenant or obligation.
7. **Term and Termination.** The original term of this Agreement will commence upon the Effective Date and expire on the Expiration Date. Near the Expiration Date, Vertiv will send you an invoice to automatically renew this Agreement. Your acceptance and renewal will be indicated by your submitting a purchase order to Vertiv or making payment of the invoice. The term of your renewal will commence on the day following the Expiration Date of the prior term, and the new term expires on the anniversary thereof, depending on the option you purchase. Your nonpayment of the invoice will indicate that you do not wish to renew this Agreement. If you elect not to procure continuous Software Maintenance but rather allow the Software Maintenance to lapse, then you will not be entitled to any New Releases published during the lapsed period. Should you wish to reactivate a lapsed Software Maintenance Agreement later than thirty (30) days after its expiration, you will be required to pay a reactivation fee equal to the amount of time that has lapsed since your Software Maintenance Agreement expired, in addition to the Software maintenance costs requested for the current year term. Software Maintenance is nontransferable.
8. **Data Collection and Use.** By using the Software, you grant Vertiv, its affiliates, subsidiaries, and service providers a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, your non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information ("Service Data") that is provided by, or on behalf of, you, or collected or compiled by Vertiv, its affiliates, subsidiaries, or service providers through the Software. Vertiv, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and services; and (iii) for scientific and technical research and marketing purposes. You are solely responsible for the Service Data, and you will secure and maintain all rights necessary for Vertiv, its affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Vertiv, its affiliates, subsidiaries, and service providers to you or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Vertiv, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal your identity. In accordance with applicable law, Service Data may be transferred, transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Vertiv, its affiliates, subsidiaries, or service providers maintain operations. By using the Software, you agree to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Vertiv, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Vertiv and its affiliates and subsidiaries business purposes in accordance with applicable law. The rights and licenses granted herein to Vertiv service providers shall only be granted to the extent service providers are providing goods and services on Vertiv's and its affiliates and subsidiaries behalf.
9. **Privacy.** Vertiv will collect and process personal data of those employed by or otherwise affiliated with buyer in accordance with Vertiv's "Privacy Notice for Customers and Suppliers – California" available here www.vertiv.com/ca-privacy (the "Notice"), which Notice the buyer hereby acknowledges having received, read, and understood. In the event of any queries or concerns with its contents, buyer must contact Vertiv at the contact details provided in the Notice prior to entering into this Agreement or the commencement of performance hereunder, in failure of which, the terms of the Notice will be deemed accepted and consented to in their entirety.

10. **Partial Invalidity.** If any provision of this Agreement is ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected.
11. **Governing Law.** For U.S. customers: This Agreement will be governed exclusively by the laws of the State of Alabama and venue regarding any action arising hereunder will be exclusively in Madison County, Alabama. For Canadian customers, this Agreement will be governed exclusively by the laws of the Province of Ontario, without reference to conflicts of laws provisions, and venue regarding any action arising hereunder will be exclusively in Toronto, Ontario. For Europe, Middle East and Africa customers: This Agreement will be governed exclusively by the laws of the Republic of Ireland, and venue regarding any action arising hereunder will be exclusively in the Republic of Ireland. For Asia and Asia Pacific customers: This Agreement will be governed exclusively by the laws of Singapore and venue regarding any action arising hereunder will be exclusively in Singapore.
12. **Entire Agreement.** This Agreement and its schedules constitute the entire agreement of the parties with respect to the subject matter hereof, and supersedes and cancels all prior agreements between the parties, written, oral, or implied with respect to the subject matter hereof. Only these terms and conditions, notwithstanding any preprinted or other terms and conditions on your purchase order or order acceptance, shall govern your purchase and Vertiv's provision of the support and Software Upgrade Protection described in this Agreement.
13. **Force Majeure.** In the event an act of government, war, fire, flood, act of God, power shortages or blackouts, breakdown of telephone lines and services, failure of the Internet, or other causes beyond the reasonable control of Vertiv prevents Vertiv from performing in accordance with the terms of this Agreement, such non-performance shall be excused and shall not be considered a breach or default for so long as such conditions prevail.



Vertiv.com | Vertiv Headquarters, 1050 Dearborn Drive, Columbus, OH, 43085, USA

© 2019 Vertiv Group Corp. All rights reserved. Vertiv and the Vertiv logo are trademarks or registered trademarks of Vertiv Group Corp. All other names and logos referred to are trade names, trademarks or registered trademarks of their respective owners. While every precaution has been taken to ensure accuracy and completeness herein, Vertiv Group Corp. assumes no responsibility, and disclaims all liability, for damages resulting from use of this information or for any errors or omissions. Specifications are subject to change without notice.

