

VMware License Assignment and Transfer Policy

Subject to Section A.2 below, as VMware's software license grant is personal to the customer, transfer requests may be approved or declined by VMware at VMware's sole discretion. That said, requests which fall under the categories set out in Section A.1 below will be considered favorably.

A. Reason for LATF

A.1 VMware will generally consider the following license transfer requests favorably, subject to the conditions/restrictions set out in Section B below:

1. **Acquisition:** 100% share or asset purchase of the current license owner by the new license recipient, i.e. current license owner has been 100% acquired by new license recipient.
2. **Merger:** A merge whereby two separate legal entities combine to form a new surviving entity, i.e. current license owner has been combined with new license recipient. This reason is not valid when a merger is due to bankruptcy or asset purchase that is not 100%.
3. **Divestiture:** A divestiture which involves the sale of substantially all (>80%) of the current license owner's assets.
4. **Bankruptcy:** Sale of current license owner's assets due to bankruptcy.
5. **Start of Outsourcing Arrangement:** Due to an acquisition of the current license owner's assets for purposes of outsourcing, managed or co-location services.
6. **Termination of Outsourcing Arrangement:** Due to the termination of an outsourcing, managed or co-location services contract where use of the licenses by the current license owner for the purpose of the outsourcing, managed services or co-location contract was permitted by VMware.
7. **Machinery of Government Change:** Change in legislation or restructure of Government Departments / Agencies.
8. **In-Territory corporate group restructures:** "Territory" means the country or countries in which the current license owner has been invoiced provided, however, that if the current license owner has been invoiced within any of the European Economic Area member states, then "Territory" means the European Economic Area.

A.2 Subject to the conditions / restrictions set out in Section B below, VMware will fulfill license transfer requests which may not be legally restricted or where the transfer was otherwise contractually agreed (ie, individually negotiated by the licensee with VMware under either a Master Software License Agreement, End User License Agreement, Enterprise License Agreement or other negotiated license agreement).

B. Conditions/Restrictions

All transfer requests are subject to the following conditions/restrictions:

- Where the transfer was contractually agreed as per Section A.2 above, all contractual conditions of assignment must have been fulfilled at the time of the transfer request.

- For transfer requests relating to licenses deployed under an Enterprise License Agreement (ELA), any contractual restrictions in the ELA will prevail.
- For cross border transfers, the assignor must have used the licenses for a minimum of 12 months prior to transfer, except to the extent transfers may not legally be restricted.
- VMware does not allow any transfer requests for subscription based licenses.
- VMware does not allow any transfer requests for licenses deployed under uncapped ELAs.
- VMware does not allow any transfer requests for licenses deployed under ELAs prior to the expiry of the ELA Period. Any transfers requested after the expiry of an ELA Period must include all license(s) deployed under the ELA. The assignor may not split license(s) deployed under an ELA for the purposes of a transfer request unless this has been contractually agreed.
- VMware does not allow any transfer requests which contravene applicable export control regulations or related laws.
- VMware does not allow any transfer requests where the assignor is the subject of a License Compliance audit.
- VMware does not allow any transfer requests where the assignor has invoices which have been outstanding for greater than 30 days.
- VMware does not allow any transfer requests where VMware considers that the assignor is effectively creating a secondary market for the sale of VMware products, except to the extent transfers may not legally be restricted.
- The assignee is required to agree to VMware's standard then-current terms and conditions for the licenses and services to be transferred (available at www.vmware.com/download/eula and <http://www.vmware.com/support/policies>).
- Where the transfer falls under category A.1(5) above, the assignee must agree that it may only use the software license(s) solely for the purposes of providing IT services to the assignor, and should those IT services be terminated for any reason, then the assignee must immediately destroy or delete all copies of such software license(s).
- On transfer, the assignor shall have no further rights with regard to the assigned software license(s) and shall destroy or delete all copies of their VMware software product(s) (including any back-up or archival copies).